

1 correct? 11:01:04

2 MR. CARRIGAN: Vague. 11:01:05

3 THE WITNESS: Yes. 11:01:05

4 BY MR. BENSHOOF: 11:01:06

5 Q. That's correct, did you say? 11:01:07

6 A. We -- not -- no. I -- we did a -- some years 11:01:09

7 prior to the sediment investigation, we did an analysis 11:01:17

8 of the various operations at NASSCO and Southwest Marine, 11:01:22

9 what kind of activities the -- took place at the 11:01:29

10 shipyards, what type of wastes were generated. And -- 11:01:35

11 and so the board relied on that information in developing 11:01:37

12 the allegations on the two shipyard facilities. 11:01:43

13 Q. And that information amongst other things 11:01:53

14 reflected, your experience, that these kinds of machinery 11:01:56

15 were typically sources of releases from -- of chemicals 11:01:58

16 of concern including PCBs to the environment; correct? 11:02:03

17 A. Any -- any of the activities we analyzed are 11:02:12

18 described in the DTR. I -- I don't know if winches were 11:02:17

19 described in there or not. 11:02:22

20 Q. Actually, the DTR doesn't associate PCBs with 11:02:30

21 any of the facilities at the shipyard. That was a course 11:02:33

22 of several questions I had with Mr. Carlisle to ask why 11:02:38

23 that was the case. And I still don't understand it. 11:02:42

24 But, I mean, you -- you know, for example, that -- that 11:02:44

25 PCBs were associated with all of the operations that 11:02:49

1 were -- or most all of the operations that we're looking 11:02:53
2 at on this particular exhibit. 11:02:55
3 MR. DART: Lacks foundation. 11:02:57
4 BY MR. BENSHOOF: 11:02:57
5 Q. Do you want to go into -- we can go into the DTR 11:02:58
6 right now. We can see that there's plenty of 11:03:00
7 descriptions of the shipyard operations. But there's no 11:03:06
8 mention that PCBs are associated with any of them. So 11:03:10
9 let's just start. 11:03:15
10 A. Okay. 11:03:17
11 Q. I'll turn you to -- your attention to 11:03:23
12 Section 9-3 -- excuse me -- 3-3 in the DTR. This is the 11:03:25
13 description of BAE. 11:03:32
14 MR. DART: Page 3-3? 11:03:41
15 MR. BENSHOOF: It begins, yes. 11:03:42
16 BY MR. BENSHOOF: 11:03:58
17 Q. Now turn the page, there's a number of different 11:03:59
18 operations discussed; correct? 11:04:03
19 A. Yes, uh-huh. 11:04:08
20 BY MR. BENSHOOF: 11:04:10
21 Q. And, for example, you're aware from the -- from 11:04:11
22 your research and work in the past that PCBs are 11:04:21
23 typically associated with electrical systems; correct? 11:04:28
24 A. Yes. 11:04:31
25 Q. And you would agree that nowhere in the 11:04:32

1 description of the shipyard's electrical system is that 11:04:36
2 referenced; correct? 11:04:39
3 MR. CARRIGAN: Document speaks for itself. 11:04:41
4 MR. DART: Join. 11:04:42
5 THE WITNESS: There's description of hydraulic 11:04:46
6 oils. But I -- as far as transformer oils. 11:04:48
7 BY MR. BENSHOOF: 11:04:56
8 Q. And so we agree in your -- that nowhere in the 11:05:01
9 DTR is a description of the electrical system operations 11:05:06
10 at the shipyards, whether it's BAE or any of the other 11:05:08
11 operators, is there any reference to the fact that those 11:05:12
12 were likely sources of PCB release. 11:05:15
13 You would agree with that? 11:05:19
14 MR. DART: Same objection. 11:05:20
15 MR. CARRIGAN: Document speaks for itself. 11:05:21
16 THE WITNESS: Yeah. We -- we made a broad 11:05:39
17 sweeping statement that metals, PCBs, and PAHs and other 11:05:42
18 constituents were generated as a result of activities at 11:05:55
19 BAE Systems, and that many of those same constituents 11:06:00
20 were present in elevated levels in the sediments 11:06:05
21 immediately offshore. 11:06:09
22 BY MR. BENSHOOF: 11:06:10
23 Q. Okay. 11:06:10
24 A. And that -- that was our -- that was the extent 11:06:10
25 of it. 11:06:14

1 Q. Okay. And that's at page -- you were reading 11:06:15
2 from page 3-9; correct? 11:06:20
3 A. Yes. 11:06:22
4 Q. But I want to talk about the description of the 11:06:23
5 operations. And let's just complete that. You're aware 11:06:26
6 that the PCBs were associated with the electrical systems 11:06:31
7 maintained by the shipyards; correct? 11:06:35
8 A. Are you asking did the DTR state that? 11:06:47
9 Q. No. I know the DTR doesn't. And I'm just -- 11:06:49
10 we're just now covering the fact that based upon your 11:06:51
11 prior experience, you were aware that PCBs were 11:06:54
12 associated with the electrical systems utilized in 11:06:58
13 shipyards. 11:07:01
14 A. Yeah, potentially could be, yes. 11:07:01
15 Q. And likewise, you were aware, based upon your 11:07:03
16 experience, that PCBs were associated with hydraulic 11:07:07
17 oils. 11:07:12
18 A. Yes. 11:07:13
19 Q. You were aware that, based upon your experience, 11:07:13
20 that PCBs were associated with marine paints? 11:07:16
21 A. Yes. 11:07:21
22 Q. You were aware that -- that PCBs were associated 11:07:27
23 with the cutting oils used in the machine shops in 11:07:34
24 shipyards; correct? 11:07:42
25 A. I guess I would say potentially so, yes. 11:07:49

1 Q. Okay. 11:07:55

2 And so when we go back to looking at 11:07:56

3 Exhibit 1263, you would agree that the facilities marked 11:08:05

4 as machine shop, electrical shop, were all sources of the 11:08:17

5 potential release of chemicals of concern including PCBs 11:08:26

6 to the bay; correct? 11:08:29

7 MR. DART: Lacks foundation. Document speaks 11:08:33

8 for itself. Calls for speculation. 11:08:34

9 THE WITNESS: Yes. We -- we made the sweeping 11:08:38

10 statement that I referenced earlier that linked the 11:08:42

11 sediments offshore to the totality of the -- all their 11:08:49

12 operations there. 11:08:53

13 BY MR. BENSHOOF: 11:08:54

14 Q. And now I'm getting a little bit more specific. 11:08:55

15 Because -- to -- to -- to specific facilities on the 11:08:58

16 shipyard. And if you don't know, Mr. Barker, I guess you 11:09:07

17 don't know whether or not releases of chemicals of 11:09:10

18 concern are commonly associated with such operations as 11:09:12

19 electrical shops. But I take it you know that from your 11:09:15

20 experience. 11:09:19

21 A. Potentially, could be. 11:09:19

22 Q. And that's because metals and PCBs are contained 11:09:20

23 in, amongst other things, electrical systems and are 11:09:25

24 contained in cutting fluids that are used in different 11:09:28

25 types of machine shops and electrical shops; correct? 11:09:31

1 MR. CARRIGAN: May lack foundation. 11:09:41
2 THE WITNESS: Potentially so with cutting oils, 11:09:44
3 yeah. 11:09:46
4 BY MR. BENSHOOF: 11:09:46
5 Q. The -- and no attempt was made to relate those 11:09:47
6 facilities that existed in -- at the shipyard in 1950, as 11:09:55
7 illustrated on Exhibit 1263, to locations of contaminated 11:10:02
8 sediments; correct? 11:10:09
9 A. Yes. We -- at the DTR just discussed operations 11:10:14
10 that are current -- that were currently conducted at the 11:10:19
11 time the DTR was prepared. 11:10:22
12 Q. But you would agree that knowing that these 11:10:26
13 different winches, electrical shops, and machine shops 11:10:29
14 were potential sources of the release of chemicals of 11:10:32
15 concern to the bay sediment, those -- the juxtaposition 11:10:36
16 of those facilities to areas of contamination would be 11:10:44
17 relevant to assessing the likely source of environmental 11:10:47
18 impacts, would you not? 11:10:52
19 A. Yes. If the board wanted to pursue that with a 11:10:57
20 finer lens, they -- we would get into detailed source 11:11:01
21 analysis of the operation. 11:11:05
22 Q. And we'll mark as exhibit -- let's just see if 11:11:12
23 we can go through these rather expeditiously because my 11:11:19
24 questions are really going to be the same, as they just 11:11:23
25 were. We're going to mark a 1956 certified Sanborn map 11:11:26

1 as exhibit next in order. 11:11:30

2 (Exhibit 1264 was marked.) 11:11:31

3 MR. CARRIGAN: Ward, are you going to mark 11:11:42

4 your -- 11:11:44

5 THE COURT REPORTER: Go ahead. 11:11:44

6 MR. CARRIGAN: -- highlighted versions? 11:11:44

7 MR. BENSHOOF: I don't think we're going to need 11:11:46

8 to. 11:11:48

9 MR. CARRIGAN: Okay. Very good. 11:11:48

10 MR. BENSHOOF: Because the questions are going 11:11:49

11 to be general, Mr. Barker. 11:11:50

12 BY MR. BENSHOOF: 11:11:52

13 Q. And am I -- we'll just -- looking at 1264, this 11:11:55

14 is another representation of facilities existing in the 11:12:00

15 shipyards during a period when, for example, you're aware 11:12:07

16 that PCBs were in common use in industrial operations, 11:12:10

17 including shipyard operations; correct? The 1950s? 11:12:15

18 A. Yes. 11:12:19

19 Q. And if the board wanted to use a finer lens to 11:12:20

20 attempt to attribute areas of contamination in the bay 11:12:24

21 sediments to specific sources within the shipyards, you 11:12:28

22 agree that, as with the 1950 location of facilities, the 11:12:33

23 board would want to consider the facilities described: 11:12:37

24 Shops, electrical shops, winches, et cetera, on this 11:12:40

25 document in making that finer lens examination; correct? 11:12:46

1 that we've discussed from the other exhibit, during this 11:14:54
2 time period of 1965, we see that the -- the right-hand 11:14:57
3 portion of the property on the east has been developed 11:15:02
4 with a large electrical repair shop and parts, electrical 11:15:06
5 equipment storage, and those sorts of facilities, a 11:15:11
6 marine shop. That all appears on the right of the 11:15:16
7 exhibit. 11:15:19
8 MR. DART: Document speaks for itself. Lacks 11:15:20
9 foundation. 11:15:21
10 BY MR. BENSHOOF: 11:15:21
11 Q. Yes, on the -- on the eastern portion of the 11:15:24
12 property? 11:15:26
13 A. Yeah. 11:15:27
14 MR. DART: Same. 11:15:27
15 MR. CARRIGAN: Join. 11:15:28
16 THE WITNESS: Yes, I -- I see that there's 11:15:28
17 electrical shop. 11:15:30
18 BY MR. BENSHOOF: 11:15:30
19 Q. Okay. And again, same question. If the board 11:15:32
20 wishes to use a finer lens to attempt to determine 11:15:36
21 whether or not the shipyards facilities were the source 11:15:41
22 of contaminants currently found in the bay, this would be 11:15:44
23 useful information to attempt to consider; correct? 11:15:48
24 A. Yeah. With a finer lens. Again, the board has 11:15:58
25 already analyzed information and named the shipyard in 11:16:02

1 the tentative cleanup order. 11:16:08

2 Q. Right. But if the board wanted to put a finer 11:16:11

3 lens on the allegation that SDG&E contributed, for 11:16:14

4 example, to conditions of contamination located in the 11:16:18

5 vicinity of storm drain Outfall No. 4, the board would 11:16:23

6 want to know what facilities did the shipyards have that 11:16:28

7 were located directly adjacent to that. Would you agree, 11:16:33

8 if they wanted to put that finer lens on it? 11:16:37

9 MR. CARRIGAN: Incomplete hypothetical. 11:16:40

10 MR. DART: Join. 11:16:42

11 THE WITNESS: Yes. The board would consider any 11:16:44

12 relevant information on pollutant sources that would have 11:16:46

13 discharged into that storm drain. 11:16:52

14 BY MR. BENSHOOF: 11:16:54

15 Q. And that was -- that was the purpose of the 11:16:55

16 question. It's not would they need any of this to add 11:16:56

17 the shipyards, because we've agreed that there's plenty 11:17:00

18 of evidence; it's just putting a finer lens on the source 11:17:03

19 of contaminants in particular areas. I take it you would 11:17:07

20 agree it would be helpful if somebody wanted to do that, 11:17:11

21 to look at what facilities existed in those areas; 11:17:14

22 correct? 11:17:18

23 MR. CARRIGAN: Incomplete hypothetical. 11:17:19

24 THE WITNESS: Yes. 11:17:23

25

1 BY MR. BENSHOOF: 11:17:23

2 Q. Then finally let's just look at one final 11:17:25

3 exhibit from the '70s. This is 1976 Sanborn map. And 11:17:27

4 this will be next in order. 11:17:34

5 (Exhibit 1267 was marked.) 11:17:35

6 BY MR. BENSHOOF: 11:17:45

7 Q. Now moving to the time period of 1976, where -- 11:17:58

8 which this Sanborn map is -- illustrates. Again, we 11:18:03

9 won't go through each of these facilities in detail, 11:18:08

10 Mr. Barker. Because you see that there are similar shops 11:18:11

11 and winches and storage areas to the facilities we 11:18:14

12 earlier discussed. 11:18:18

13 So my question is, once again, if the board 11:18:19

14 wanted to put a finer lens on what facility is owned by 11:18:22

15 whom were the source of contaminants to specific areas of 11:18:26

16 the bay, Exhibit 1267 would be amongst the information it 11:18:32

17 could consider. 11:18:36

18 MR. DART: Document speaks for itself. Lacks 11:18:38

19 foundation. 11:18:39

20 MR. CARRIGAN: Incomplete hypothetical. Join. 11:18:40

21 THE WITNESS: Yes. 11:18:49

22 BY MR. BENSHOOF: 11:18:50

23 Q. Now I want to next move to other information 11:18:50

24 that is in the record. We'll begin with 1260 -- 11:18:54

25 THE COURT REPORTER: Eight. Sixty-eight. 11:19:02

1 MR. BENSHOOF: SAR document 163094, SAR document 11:19:04
2 163118, SAR document 163121, SAR document 163129. We've 11:19:11
3 stapled them into one exhibit, Mr. Barker, just for 11:19:20
4 convenience. They're not -- they're separate documents 11:19:24
5 in the record. 11:19:27
6 (Exhibit 1268 was marked.) 11:19:28
7 BY MR. BENSHOOF: 11:19:35
8 Q. Actually, the first question I wanted to address 11:19:48
9 yourself to was page -- the second page of the exhibit, 11:19:50
10 3118. And you'll see that's a -- a map of the shipyard 11:19:56
11 facility, the Southwest Marine shipyard facility. And 11:20:11
12 it's a little bit indistinct in the corner, right-hand 11:20:14
13 corner, Mr. Barker. But the date is -- year date is '54. 11:20:18
14 But I agree it's relatively hard to read. 11:20:24
15 The -- now, one of the aspects of this exhibit 11:20:34
16 that I wanted to direct your attention to, Mr. Barker, is 11:20:41
17 in the upper portion of the exhibit, there's something 11:20:47
18 that reads "Transformer Slab," right adjacent to the 11:20:50
19 water. Do you see that? It's -- it's kind of hard to 11:20:55
20 make out some of these handwritten notations. 11:21:08
21 A. Yes. I see "Transf", T-r-a-n-s-f, "slab." 11:21:10
22 Q. Okay. And then do you see in the following 11:21:17
23 pages that the shipyard is now describing it as a 11:21:20
24 transformer, page 121 and 129, for example. Yard plot 11:21:24
25 plans from 1956 and 1959. 11:21:36

1 Protection Agency? Do you see that in the introduction? 11:25:15

2 A. Yes. 11:25:20

3 Q. And there's a description in the first page of 11:25:23

4 the report of the apparent problem. Do you see that? 11:25:29

5 A. Yes. 11:25:41

6 Q. And do you -- did you recognize this Bechtel 11:25:46

7 report at all, Mr. Barker? It does indicate it's stamped 11:25:50

8 received by your agency in 1994. 11:25:55

9 Is this part of what you recollect receiving, 11:26:01

10 the information you recollect receiving describing the 11:26:06

11 extent of environmental impacts caused by the shipyard 11:26:08

12 operation? 11:26:12

13 A. Periodically, we would get these inspection 11:26:14

14 reports, yeah. 11:26:17

15 Q. And you recognize that the Environmental 11:26:22

16 Protection Agency asked for Bechtel to prepare this 11:26:27

17 report to evaluate the extent of the environmental 11:26:32

18 impacts associated with the Southwest Marine shipyard 11:26:37

19 operation? 11:26:40

20 MR. CARRIGAN: Document speaks for itself. 11:26:41

21 Lacks foundation. 11:26:43

22 MR. DART: Join. 11:26:44

23 THE WITNESS: Yes. This was a -- I understood 11:26:47

24 this -- these were preliminary assessment reports, yes. 11:26:49

25

1 BY MR. BENSHOOF: 11:26:54

2 Q. And the -- and the information -- let's turn to 11:26:56

3 Figure 2-2, "Site Layout." And I'm particularly 11:27:27

4 interested, Mr. Barker, this is -- this is dated -- this 11:27:46

5 particular figure, the report is -- is dated in 1993. 11:27:55

6 But this particular figure illustrates -- does appear to 11:27:59

7 illustrate -- or the source of it is Southwest Marine's 11:28:03

8 BMP practices plan 1983. Do you see that at the bottom? 11:28:07

9 A. Yes. 11:28:15

10 Q. In any event, the -- it -- you see that the 11:28:15

11 report illustrates, beginning at the top, such facilities 11:28:23

12 of concern that -- as a waste oil -- waste oil storage 11:28:32

13 yard? 11:28:37

14 MR. CARRIGAN: Document speaks for itself. 11:28:38

15 MR. DART: Join. 11:28:40

16 THE WITNESS: I see a hazardous waste storage 11:28:47

17 yard. 11:28:50

18 BY MR. BENSHOOF: 11:28:50

19 Q. No, I'm -- just under parking lot? 11:28:51

20 A. Oh, parking lot. I see it. 11:28:53

21 Q. Aboveground waste oil storage tank. 11:28:53

22 A. Yeah, I see that. 11:28:57

23 Q. And you know that that's -- or do you know that 11:28:58

24 that Southwest Marine facility is on the property 11:29:04

25 subleased from San Diego Gas & Electric? 11:29:07

1 A. No. I mean, I -- I understand that there are -- 11:29:17
2 that there are operations alleged where -- where BAE's 11:29:24
3 alleged to have had operations on SDG&E's leasehold. 11:29:33
4 Q. Right. 11:29:37
5 A. But that's the extent of my knowledge. 11:29:38
6 Q. All right. Would -- in terms of -- we've 11:29:43
7 asked -- we've covered a number of questions regarding 11:29:45
8 the section that alleged a wastewater pond, SDG&E 11:29:48
9 wastewater pond contributions to sediment contamination. 11:29:54
10 But I take it -- we had talked about shipyard 11:29:58
11 operations in that area and features on the aerial 11:30:01
12 photographs. I take it you would want to consider the 11:30:04
13 extent to which Southwest Marine wastewater oil storage 11:30:07
14 and steam cleaning wash racks in the vicinity may have 11:30:11
15 contributed to the contamination which the DTR attributes 11:30:15
16 to SDG&E? 11:30:20
17 MR. DART: Document speaks for itself. Assumes 11:30:23
18 facts. 11:30:24
19 MR. CARRIGAN: Same objections. And incomplete 11:30:25
20 hypothetical. 11:30:27
21 THE WITNESS: If we wanted to document in 11:30:31
22 greater detail releases, we would analyze operations in 11:30:32
23 more detail that were held in the vicinity, yes. 11:30:40
24 BY MR. BENSHOOF: 11:30:42
25 Q. There's a -- do you see that Southwest Marine 11:30:49

1 site layout includes the illustrations of its Marine 11:30:52
2 Railway Operations 1, 2, and 3? Do you see that? 11:30:57
3 A. Yes. 11:31:00
4 Q. And once again, if the board wanted to put a 11:31:01
5 finer lens on the likely source of contaminants to the 11:31:04
6 sediment, it might want to look at the location of the 11:31:08
7 marine railways and where they were in -- in relationship 11:31:10
8 to areas of sediment contamination; correct? 11:31:15
9 MR. CARRIGAN: Same objection. 11:31:19
10 MR. DART: Join. 11:31:20
11 THE WITNESS: Yes. In a way, the board 11:31:26
12 considered some of these operations and their proximity 11:31:29
13 to the bay and named BAE in the cleanup order on that 11:31:37
14 basis. 11:31:41
15 BY MR. BENSHOOF: 11:31:41
16 Q. You say they were -- you believe it was 11:31:43
17 generally considered? 11:31:46
18 A. Yeah. Like the marine railways was -- there 11:31:47
19 were activities on -- on removing the marine railways 11:31:51
20 that occurred, I believe, during the 1990s. So the -- I 11:31:57
21 believe the marine railways were discussed in the DTR 11:32:09
22 when we were describing the types of operations -- 11:32:13
23 Q. Okay. 11:32:18
24 A. -- conducted there. So from that sense, a 11:32:18
25 general sense. 11:32:20

1 Q. Now, let's go and remember I asked you, what was 11:32:21
2 likely if -- if PCB concentrations were found on the roof 11:32:25
3 of SDG&E's Silvergate facility, what would the likely 11:32:30
4 source be? I asked you some of those questions. 11:32:35
5 A. Yes. 11:32:38
6 Q. So with that in mind, let's look at this 11:32:38
7 exhibit, and let's look at the location of 11:32:40
8 Southwest Marine's blast media waste storage silo. 11:32:43
9 Do you see that? 11:32:52
10 MR. CARRIGAN: Give us a hint. 11:32:56
11 MR. BENSHOOF: Excuse me. 11:32:57
12 MR. CARRIGAN: Got it. 11:32:58
13 BY MR. BENSHOOF: 11:32:59
14 Q. It's near Sampson Street. 11:33:01
15 A. Yes. 11:33:03
16 Q. And you see that that's located actually very 11:33:03
17 close to the SDG&E facility? 11:33:06
18 A. Yes. 11:33:16
19 Q. And you see that that -- turning at page 557, do 11:33:16
20 you see there's a photograph of, looks like, just piles, 11:33:23
21 open piles, of blast media waste? 11:33:30
22 MR. DART: If that was the question, lacks 11:33:42
23 foundation. The document speaks for itself. 11:33:43
24 MR. CARRIGAN: Join. 11:33:47
25 THE WITNESS: The question was? 11:33:52

1 BY MR. BENSHOOF: 11:33:52

2 Q. Do you see that the photograph that -- that 11:33:53

3 shows piles of blast media waste, Photograph No. 6? 11:33:57

4 A. Yes, I see that. 11:34:01

5 Q. And you see that by looking at page 545, how 11:34:03

6 close that area is to both SDG&E's facility and 11:34:09

7 Catch Basin No. 1? 11:34:13

8 MR. DART: Same objection. Lacks foundation. 11:34:16

9 Calls for speculation. 11:34:18

10 THE WITNESS: I see a proximity to SDG&E but not 11:34:18

11 Catch Basin 1. 11:34:25

12 BY MR. BENSHOOF: 11:34:26

13 Q. Let's then try to reconstruct where -- was 11:34:29

14 Catch Basin 1 located off of Sampson Street, do you know? 11:34:34

15 A. I -- I've not visited that site. So I don't 11:34:42

16 have -- I can't -- I'd have to look in the DTR to see if 11:34:45

17 there is a detailed description. 11:34:50

18 Q. Well, there isn't. But let's just use the 11:34:51

19 board's own document. Let's mark as 12 -- next in order? 11:34:55

20 THE COURT REPORTER: 1270. 11:35:09

21 MR. BENSHOOF: 1270. That wasn't even close to 11:35:09

22 what I was going to say. 11:35:09

23 (Exhibit 1270 was marked.) 11:35:09

24 BY MR. BENSHOOF: 11:35:16

25 Q. This is SAR document 280508. And it's actually 11:35:18

1 the -- I had marked before, sort of the hand-drawn map 11:35:28
2 that showed the location of Catch Basin 1. 11:35:33
3 And let's -- this is a fax from Ms. Ruth Kolb to 11:35:35
4 Craig Carlisle which is in the administrative record. It 11:35:39
5 says "Hi, Craig, here are some maps." And it's 11:35:43
6 titled, "Subject: Sampson Street investigation." 11:35:50
7 And the next page, Mr. Barker, 509, is a map; 11:35:54
8 correct? 11:35:58
9 MR. DART: Document speaks for itself. Lacks 11:35:59
10 foundation. He hasn't even been to the site. 11:36:00
11 BY MR. BENSHOOF: 11:36:02
12 Q. Do you recognize that as a map? 11:36:03
13 A. Yes, yes. 11:36:04
14 Q. And that map shows the location on Sampson -- at 11:36:05
15 the foot of Sampson Street of Catch Basin No. 1; correct? 11:36:10
16 MR. DART: Same objection. 11:36:14
17 MR. CARRIGAN: Speaks for itself. 11:36:15
18 BY MR. BENSHOOF: 11:36:16
19 Q. Now, with that information, Mr. Barker, in 11:36:16
20 looking at the foot of Sampson Street on the previous 11:36:25
21 exhibit, page 50545, and the juxtaposition to that area 11:36:30
22 at the foot of Sampson Street to those piles of 11:36:39
23 Southwest Marine waste that are illustrated on the 11:36:46
24 photograph at 557, do you think the board would want to 11:36:50
25 consider, in terms of attributing a source to the 11:36:53

1 sediment contaminants in Catch Basin 1, do you think the 11:36:56
2 board would want to consider the piles of waste that are 11:37:00
3 illustrated on the photograph at page 557 of the prior 11:37:04
4 exhibit? 11:37:10
5 MR. CARRIGAN: Incomplete hypothetical. 11:37:11
6 Document speaks for itself. 11:37:12
7 MR. DART: Join. Lacks foundation. Calls for 11:37:14
8 speculation. Assumes facts not in evidence. 11:37:16
9 THE WITNESS: It looks like it's in proximity to 11:37:25
10 it, yes. 11:37:28
11 BY MR. BENSHOOF: 11:37:28
12 Q. I mean, as a fair-minded investigator, 11:37:29
13 somebody's piled a bunch of hazardous waste next to a 11:37:31
14 catch basin, and somebody tells you that contaminants in 11:37:35
15 that catch basin are really from somebody else, you'd 11:37:39
16 want to at least ask yourself, Hmm, maybe we should look 11:37:41
17 at another source, Mr. Halvax's employer; right? 11:37:44
18 MR. DART: Same objections. 11:37:48
19 BY MR. BENSHOOF: 11:37:48
20 Q. And Mr. Halvax was pointing your agency to SDG&E 11:37:49
21 as the source for the contaminants in Catch Basin 1. 11:37:54
22 We've already seen that. 11:38:00
23 My question, Mr. Barker, is, now knowing that 11:38:01
24 BAE had a hazardous waste -- or had a blast waste storage 11:38:03
25 facility located in the proximity, you'd want to 11:38:05

1 consider, wouldn't you, whether or not the likely source 11:38:10
2 for what's in the catch basin are the piles of waste 11:38:13
3 shown on that Photograph No. 6? 11:38:18
4 MR. CARRIGAN: Incomplete hypothetical. 11:38:20
5 MR. DART: Same objections. Join. Misstates 11:38:21
6 testimony. 11:38:23
7 THE WITNESS: The -- the order -- the DTR 11:38:25
8 already alleges that BAE discharged pollutants into the 11:38:27
9 bay through several pathways including SW4 so... 11:38:34
10 BY MR. BENSHOOF: 11:38:38
11 Q. Right. But that wasn't my question. 11:38:39
12 My question was -- let's take a look at the 11:38:41
13 photograph of piles of BAE's waste, Photograph No. 6. 11:38:44
14 It's SAR 5057. 11:38:47
15 A. Okay. 5057. 11:38:52
16 Q. Five -- yeah, 50557. 11:38:54
17 A. Got it. 11:38:57
18 Q. We've got piles of waste shown. And this is -- 11:38:59
19 this is its EPA's report showing piles of waste on that 11:39:01
20 property of BAE. 11:39:06
21 A. Yeah. 11:39:07
22 Q. That you've agreed is located in proximity to 11:39:08
23 Catch Basin 1; correct? 11:39:11
24 MR. DART: Same objections. 11:39:14
25 THE WITNESS: Yes. 11:39:15

1 BY MR. BENSHOOF: 11:39:15

2 Q. Okay. Or we can go through the maps again, but 11:39:15

3 you've agreed to that. 11:39:19

4 So my question is, as a fair investigation of 11:39:20

5 who caused the contaminated sediments in CB1, wouldn't 11:39:22

6 you want to at least consider whether or not it was the 11:39:26

7 source for -- 11:39:29

8 A. Yeah. This -- yeah. 11:39:31

9 MR. CARRIGAN: Incomplete hypothetical. Go 11:39:32

10 ahead. 11:39:34

11 MR. DART: Same objections. 11:39:34

12 THE WITNESS: The -- the information in this 11:39:35

13 report is relevant. The operations conducted near that 11:39:37

14 SW1 that were conducted by BAE would all be relevant 11:39:42

15 considerations, yes. 11:39:48

16 BY MR. BENSHOOF: 11:39:49

17 Q. To why there's contamination in Catch Basin 1; 11:39:50

18 correct? 11:39:53

19 MR. DART: Same objections. 11:39:53

20 THE WITNESS: Yes. 11:39:55

21 MR. BENSHOOF: I'm at a breaking point. Should 11:39:57

22 we -- I can go until noon, or we can -- it's been -- 11:39:58

23 MR. CARRIGAN: I know you don't need a break. 11:40:02

24 But this is fine. 11:40:04

25 THE COURT REPORTER: Off the record? 11:40:07

1 MR. CARRIGAN: Yeah, please. 11:40:08

2 THE VIDEOGRAPHER: Time now is 11:40 a.m. Off 11:40:09

3 the record. 11:40:11

4 (A recess was taken.) 11:40:12

5 THE VIDEOGRAPHER: The time now is 12:46 p.m. 12:46:02

6 On the record. 12:46:04

7 BY MR. BENSHOOF: 12:46:04

8 Q. Good afternoon, Mr. Barker. I want to next turn 12:46:07

9 to Section 3.9.2 of the DTR. Would you go to that, 12:46:11

10 please? It's -- this is in the BAE shipyard section. 12:46:17

11 And it refers to a lawsuit that was brought by the 12:46:23

12 Natural Resource Defense Council against BAE in 1996, and 12:46:26

13 pages -- pages 3-51. 12:46:32

14 Now, the -- you see the section, "Court findings 12:46:39

15 and judgments against BAE Systems"? 12:46:42

16 A. Yes. 12:46:45

17 Q. And it refers to a lawsuit that was filed by the 12:46:47

18 Natural Resource Defense Council in 1996 under the Clean 12:46:51

19 Water Act against BAE, charging BAE with violating its 12:46:57

20 NPDES permit requirements. Do you see that? 12:47:01

21 A. Yes. 12:47:05

22 Q. And -- and the Water Board noted that lawsuit in 12:47:06

23 the DTR. It also went on to describe the conclusions 12:47:12

24 that the judge arrived at after trial; correct? 12:47:14

25 A. Yes. 12:47:18

1 Q. And I -- I'm -- so at least those conclusions 12:47:18
2 were deemed significant enough regarding BAE's liability 12:47:24
3 in this instance to quote in the DTR. Is that accurate? 12:47:30
4 A. Yes. 12:47:36
5 Q. And -- and did you or anybody on your staff look 12:47:37
6 at the evidence underlying the conclusions that the judge 12:47:42
7 reached in 1999 after trial of the case? 12:47:46
8 A. I believe I skimmed over some of the documents. 12:47:51
9 They -- and I believe they are in the administrative 12:47:58
10 record, if I'm not mistaken. 12:48:00
11 Q. Okay. Let me ask on some of the specific 12:48:02
12 findings of the judge. And you go on to note that his 12:48:05
13 ruling was appealed all the way to the U.S. Supreme Court 12:48:08
14 by BAE and affirmed. 12:48:14
15 A. Yes. 12:48:16
16 Q. The -- the court first found that -- or as you 12:48:20
17 quote, "The plaintiffs had presented convincing evidence 12:48:23
18 that defendant BAE had not made the required inspections 12:48:26
19 that it had claimed to have been made." 12:48:29
20 I take it you regarded that finding of the court 12:48:33
21 with some seriousness in terms of the trustworthiness of 12:48:36
22 the information provided by BAE? 12:48:41
23 A. We -- we looked at it, that paragraph overall, 12:48:43
24 as just evidence of poor housekeeping. And -- and I -- I 12:48:51
25 didn't really look at it in terms of truthfulness of 12:48:57

1 BAE's submittals. We get all kinds of submittals from 12:49:05
2 them. 12:49:10
3 Q. Right. 12:49:11
4 A. We -- we were -- we were always concerned with 12:49:12
5 analyzing the submittals and -- and we -- the board never 12:49:17
6 got into alleging a dishonest submittal, that kind of 12:49:23
7 thing. 12:49:31
8 Q. Okay. Well, yeah, and I don't want to get into 12:49:31
9 moral terms necessarily. But it struck me that with a 12:49:34
10 judge finding that apparently BAE had not made 12:49:41
11 inspections they claimed to have made, that that would 12:49:44
12 have some significance in terms of the trustworthiness of 12:49:47
13 their information. 12:49:50
14 MR. DART: Asked and answered. 12:49:51
15 BY MR. BENSHOOF: 12:49:51
16 Q. Did it -- did it not to you, Mr. Barker? 12:49:52
17 MR. DART: Asked and answered. 12:49:55
18 THE WITNESS: Not -- I -- the -- I didn't -- or 12:49:57
19 the word "trustworthiness" didn't come to mind when I 12:50:03
20 read that. It was more sloppy housekeeping, maybe not 12:50:07
21 even knowing how many inspections that they had actually 12:50:10
22 made, that kind of thing. 12:50:14
23 BY MR. BENSHOOF: 12:50:15
24 Q. Okay. 12:50:15
25 The court then went on to find that BAE Systems 12:50:20

1 had not maintained adequate records of the inspections it 12:50:35
2 claimed to have been made with, quote, The result that a 12:50:42
3 large number of inspection reports were missing, closed 12:50:45
4 quote. 12:50:48
5 Did you find that also to be true in your review 12:50:49
6 of BAE's reporting to the board? 12:50:53
7 A. That's not a theme that I'm familiar with, with 12:51:02
8 BAE, as far as -- I think we had various requirements 12:51:06
9 that they make periodic submittals with various 12:51:14
10 information. And as far as I know, the submittals were 12:51:17
11 made. 12:51:24
12 Q. Okay. But did you look at all into what was the 12:51:25
13 basis for the judge to conclude that BAE had not main -- 12:51:30
14 maintained adequate records of its inspections, with the 12:51:35
15 result that a large number of inspection reports were 12:51:38
16 missing? 12:51:40
17 MR. DART: Asked and answered. 12:51:41
18 MR. CARRIGAN: Join. 12:51:43
19 THE WITNESS: Just did a cursory scan of the 12:51:44
20 court's -- the -- the documents where the court's 12:51:48
21 decision was written up but didn't -- didn't analyze it 12:51:53
22 in detail. 12:51:57
23 BY MR. BENSHOOF: 12:51:58
24 Q. All right. 12:51:58
25 Do you know if that -- I take it you don't know 12:51:59

1 whether or not the evidence presented to the court called 12:52:02
2 into question the trustworthiness of individuals at BAE 12:52:07
3 that you were dealing with to provide you information. 12:52:11
4 A. No. I don't -- I don't remember seeing names in 12:52:14
5 the -- in the court document. 12:52:17
6 Q. The -- you see the judge concluded that 12:52:27
7 BAE Systems, the evidence showed that, quote, When 12:52:30
8 violations were reported, they were not always remedied 12:52:38
9 in a timely manner. 12:52:41
10 Do you see that? 12:52:44
11 MR. DART: Where are you referencing, Counsel. 12:52:46
12 MR. BENSHOOF: I'm referencing about the middle 12:52:47
13 portion of that paragraph, where the DTR is summarizing 12:52:49
14 the court's findings. 12:52:53
15 MR. DART: Is that in one of the numbered? 12:52:55
16 MR. BENSHOOF: Three, yeah. 12:52:56
17 MR. DART: Thank you. 12:52:57
18 MR. BENSHOOF: Yeah, "The reports demonstrated a 12:52:58
19 pattern of poor housekeeping and showed that violations 12:52:59
20 when reported were not always remedied in a timely 12:53:03
21 manner." 12:53:07
22 BY MR. BENSHOOF: 12:53:07
23 Q. Do you know what that refers to, Mr. Barker? 12:53:08
24 MR. DART: Vague. Asked and answered. 12:53:11
25 THE WITNESS: Hmm-mm. No. I -- I wasn't -- I 12:53:12

1 don't remember correlating those violations with -- 12:53:26
2 and -- and cross-checking them with violation -- or 12:53:31
3 reports submitted to the Water Board, doing that kind of 12:53:35
4 analysis. 12:53:39
5 BY MR. BENSHOOF: 12:53:39
6 Q. Okay. 12:53:40
7 Is it important to the Water Board's 12:53:41
8 implementation of its responsibilities that permit 12:53:43
9 holders remedy violations in a timely matter? I assume 12:53:46
10 it is. 12:53:50
11 A. Yes. 12:53:51
12 Q. And but you don't recall reviewing either the 12:53:51
13 specific evidence that the judge relied upon for finding 12:53:57
14 that they had not done that or, otherwise, looking at the 12:54:00
15 timeliness of BAE's actions and remedying their 12:54:03
16 violations. 12:54:09
17 MR. CARRIGAN: Asked and answered. 12:54:09
18 MR. DART: Joined. 12:54:10
19 THE WITNESS: No. No, we did not get into 12:54:11
20 analyzing how quickly BAE remedied violations that they 12:54:15
21 became aware of. 12:54:25
22 BY MR. BENSHOOF: 12:54:26
23 Q. Now, BAE had provided to the board in connection 12:54:27
24 with the NPDES permitting process plans to -- or various 12:54:33
25 plans and practices that it represented it would follow 12:54:43

1 to minimize discharges; correct? And comply with the 12:54:46
2 permits? 12:54:50
3 A. Yes. 12:54:51
4 Q. Now, the federal court found that BAE Systems 12:54:52
5 implementation of those plans was inadequate. And that 12:54:55
6 led to significant contributions of pollutants to the 12:54:58
7 BAE Systems leasehold. Do you see that? 12:55:02
8 A. Yes. 12:55:04
9 Q. And did you ever investigate what the federal 12:55:05
10 judge based that conclusion on? 12:55:07
11 MR. DART: Asked and answered. 12:55:15
12 THE WITNESS: Not -- not -- not in detail. 12:55:17
13 BY MR. BENSHOOF: 12:55:22
14 Q. And I take it in terms of trying to explain or 12:55:29
15 attribute the contaminants presently found in the bay 12:55:31
16 sediment at that site, I take it you haven't tried to 12:55:36
17 review the extent to which BAE's inadequate 12:55:39
18 implementation of its plans led to that -- led to that 12:55:43
19 contamination; correct? 12:55:46
20 A. I -- I believe there's statements in the chapter 12:55:47
21 that -- that quote particular provisions of the permit 12:55:58
22 that BAE was required to implement. For example, best 12:56:05
23 management practices to prevent or reduce discharges. 12:56:11
24 And I can't remember exactly what we commented on, on 12:56:19
25 that. I -- we -- we tabulated instances of discharges in 12:56:23

1 one of the tables. 12:56:36

2 Q. Correct. I know that. But at least I didn't 12:56:40

3 find anything in the DTR that was similar to what the 12:56:43

4 federal court found, including I didn't find any 12:56:47

5 observation that BAE had been inadequate in the 12:56:51

6 implementation of its plans. But I just may have missed 12:56:54

7 it. 12:56:57

8 A. No. We -- we were alleging at one time, not 12:56:58

9 necessarily this version of the DTR, that there had been 12:57:14

10 permit violations by BAE at the site. 12:57:18

11 Q. And do you know if those -- those allegations 12:57:24

12 were taken out at the request of BA -- BAE? 12:57:25

13 A. Is that -- 12:57:33

14 MR. CARRIGAN: I can't tell -- don't answer the 12:57:34

15 question to the extent it involves a communication from 12:57:36

16 me. If I've told you did B -- I guess -- 12:57:40

17 MR. DART: Or in mediation. 12:57:43

18 MR. CARRIGAN: I mean, there's no -- I don't 12:57:46

19 know if there's anything like that. 12:57:46

20 MR. BENSHOOF: I'll withdraw it. 12:57:48

21 MR. CARRIGAN: I guess -- 12:57:50

22 MR. BENSHOOF: I don't want to invade any 12:57:51

23 privileges or anything. 12:57:53

24 MR. CARRIGAN: Okay. Yeah. 12:57:54

25 THE WITNESS: Yeah. 12:57:54

1 MR. CARRIGAN: All right. He's withdrawn the 12:57:56
2 question. 12:57:57
3 THE WITNESS: Okay. 12:57:58
4 BY MR. BENSHOOF: 12:57:58
5 Q. Now, the federal court went on to find, quote, 12:58:02
6 That BAE Systems leasehold within the bay was devoid of 12:58:04
7 life. 12:58:08
8 A. Yes. I -- I remember that. 12:58:10
9 Q. I take it that's a rather significant finding to 12:58:13
10 make, is it not? 12:58:18
11 A. Yes. 12:58:22
12 Q. And that is that the leasehold, an area of the 12:58:23
13 bay, was devoid of life was something of particular 12:58:27
14 concern to the -- your board? 12:58:31
15 A. Yes. 12:58:32
16 Q. Now, did you -- but I take it you didn't look at 12:58:32
17 any of evidence that the judge relied upon to -- in 12:58:37
18 arriving at conclusion. 12:58:41
19 MR. CARRIGAN: Asked and answered. 12:58:44
20 MR. DART: Join. 12:58:44
21 THE WITNESS: By the time -- the answer is no. 12:58:46
22 The -- at -- at the time we were summarizing the 12:58:55
23 conclusions of the court, the board had developed its own 12:58:59
24 evidence through the sediment quality investigation about 12:59:03
25 what the status of marine life was at the site and -- and 12:59:11

1 what risks to marine life were -- or public health were 12:59:18
2 posed by the contaminants in the sediments. 12:59:22
3 BY MR. BENSHOOF: 12:59:25
4 Q. Now, the court went on to find, as you've 12:59:26
5 summarized in the DTR, quote, That the evidence 12:59:28
6 conclusively demonstrated that substantial quantities of 12:59:33
7 pollutants from BAE Systems paint blasting operations had 12:59:35
8 entered San Diego Bay in BAE Systems' storm water 12:59:39
9 discharges. 12:59:43
10 Do you see that, Item No. 6? 12:59:44
11 A. Yes. 12:59:55
12 Q. And amongst other places that BAE storm water is 12:59:56
13 discharged to the bay is in Outfall No. 4; correct? 01:00:00
14 A. Yes. 01:00:08
15 Q. And is it fair to say that you didn't look at 01:00:08
16 any of that evidence that the court relied upon to the 01:00:10
17 extent that it would explain some or all of the 01:00:13
18 contaminated conditions in the sediment in the vicinity 01:00:16
19 of Outfall No. 4; correct? 01:00:19
20 A. No, we did not look at what evidence the -- the 01:00:23
21 court was relying on when they reached these conclusions. 01:00:28
22 Q. You were subpoenaed to appear at that trial; am 01:00:40
23 I correct? 01:00:43
24 A. I don't believe I was, no. 01:00:45
25 Q. Actually, there is in the record a subpoena. 01:00:50

1 But I take it you don't -- you didn't appear. 01:00:53

2 A. I don't recall appearing. 01:00:57

3 Q. Okay. And you didn't -- to your -- and you 01:00:58

4 didn't give any testimony whether by deposition or live 01:01:03

5 appearance in that case? 01:01:06

6 A. I -- I -- I don't -- I don't recall that, no. 01:01:08

7 Q. Okay. I take it nobody from the board has 01:01:18

8 interviewed the witnesses to that -- that trial that 01:01:23

9 witnessed the different activities of BAE that the judge 01:01:31

10 summarized? 01:01:34

11 A. No. The board has not interviewed any -- 01:01:35

12 Q. And by board I mean staff. 01:01:39

13 A. Staff. No, the staff has not interviewed any 01:01:41

14 witnesses, with the exception of a phone conversation I 01:01:51

15 had with one of the environmental groups that had filed 01:02:00

16 the lawsuit. 01:02:06

17 Q. And what was that conversation, if you can just 01:02:08

18 summarize it? 01:02:10

19 A. Just -- just trying to figure out, determine 01:02:11

20 what occurred. 01:02:16

21 Q. In the trial? 01:02:18

22 A. In the trial. It was not an in-depth 01:02:19

23 conversation. 01:02:23

24 Q. I take it you would agree that if the board 01:02:26

25 wants to put a finer lens on the operations of BAE and 01:02:28

1 its predecessors that caused the contamination to the bay 01:02:35
2 sediments, a closer examination of the evidence in the 01:02:41
3 federal case, including interviews with the witnesses, 01:02:44
4 would be something the board could do? 01:02:49
5 MR. CARRIGAN: Incomplete hypothetical. 01:02:50
6 MR. DART: Join. 01:02:52
7 THE WITNESS: Yes. The board could -- could 01:02:53
8 choose to delve into the details of why the court reached 01:02:55
9 its decision. 01:03:00
10 BY MR. BENSHOOF: 01:03:01
11 Q. And would you agree that that would probably be 01:03:01
12 valuable to understanding the true scale of impacts 01:03:06
13 caused by BAE and its predecessors to the bay sediments? 01:03:09
14 MR. CARRIGAN: Incomplete hypothetical. 01:03:13
15 MR. DART: Join. 01:03:15
16 MR. CARRIGAN: Calls for a legal conclusion. 01:03:15
17 MR. DART: Join. 01:03:17
18 THE WITNESS: The -- the board in the DTR was 01:03:18
19 only interested in developing evidence to satisfy the 01:03:22
20 requirements of Water Code Section 13304. And -- and -- 01:03:26
21 and that was it with -- with respect to BAE. 01:03:35
22 BY MR. BENSHOOF: 01:03:38
23 Q. And understood. But if the -- if the -- anyone 01:03:39
24 was interested -- and I realize the board wasn't -- in 01:03:46
25 understanding the true scale of what BAE did to the bay 01:03:51

1 sediment through its operations, one place to start would 01:03:55
2 be the federal court evidence and the witnesses that 01:04:00
3 testified to the actions of BAE. 01:04:02
4 A. It's one source. 01:04:03
5 MR. DART: Assumes facts. 01:04:04
6 MR. CARRIGAN: Incomplete hypothetical. 01:04:05
7 MR. DART: Lacks foundation. And join. 01:04:07
8 THE WITNESS: That would be one source of 01:04:09
9 information. 01:04:10
10 BY MR. BENSHOOF: 01:04:10
11 Q. Now, let me mark as exhibit next in order 1271 a 01:04:16
12 fact sheet that the board developed in 1997. And I want 01:04:22
13 to just ask if you recognize this. It's SAR No. 50438. 01:04:26
14 (Exhibit 1271 was marked.) 01:04:32
15 THE WITNESS: I -- I see that this is a fact 01:05:01
16 sheet for a NPDS permit. 01:05:04
17 BY MR. BENSHOOF: 01:05:10
18 Q. And were you involved, Mr. Barker, in the 01:05:11
19 preparation of this document? 01:05:13
20 A. No, I was not. 01:05:14
21 Q. Would you describe just generally what you 01:05:15
22 recognize it as? 01:05:17
23 A. It's a -- it is -- one of the elements of an 01:05:18
24 NPDS permit is -- is a document called the "Fact Sheet," 01:05:23
25 which is meant to summarize the basis for requirements in 01:05:31

1 the permit and the legal authority, that type of thing. 01:05:35

2 Q. And -- excuse me -- do you recognize this as a 01:05:39

3 sheet that was generated by the regional water quality 01:05:41

4 control board to set forth the facts underlying the 01:05:48

5 requirements for discharge permits to be imposed on the 01:05:53

6 Southwest Marine and NASSCO ship -- shipyards? 01:05:57

7 MR. CARRIGAN: Document speaks for itself. 01:06:01

8 THE WITNESS: Yes. 01:06:04

9 BY MR. BENSHOOF: 01:06:05

10 Q. And -- and I realize that -- and part of the 01:06:05

11 purpose of this document, is it not, Mr. Barker, to 01:06:11

12 basically explain why the board is making the 01:06:19

13 requirements in the permit that it is regarding a 01:06:21

14 particular discharger? 01:06:25

15 A. Yes. 01:06:26

16 Q. And so in that instance in this fact sheet and 01:06:28

17 in others that support discharge permits, part of the 01:06:32

18 procedure of the board is to attempt thoroughly to 01:06:36

19 describe the operations and the discharges associated 01:06:41

20 with those operations; is that a fair statement? 01:06:44

21 A. Yes. 01:06:47

22 Q. And is that your understanding of what this 01:06:47

23 particular exhibit does with respect to both the 01:06:49

24 Southwest Marine and the NASSCO shipyard operations? 01:06:52

25 A. Yes. That's one of the goals of the documents. 01:06:56

1 Q. Okay. And -- pardon me -- and would it be an 01:06:59
2 accurate source of information today for someone to refer 01:07:10
3 to and rely on for a description of the BAE and NASSCO 01:07:14
4 shipyard operations and the discharges associated there 01:07:20
5 with? 01:07:25
6 MR. DART: Vague as to time. May lack 01:07:26
7 foundation. 01:07:28
8 MR. CARRIGAN: Join the time Objection. 01:07:30
9 THE WITNESS: Since the time of this fact sheet, 01:07:37
10 another at least two more NPDS permits have been reissued 01:07:40
11 to the BAE facility. These permits have a -- have an 01:07:46
12 effective term of five years. And they are reissued 01:07:54
13 approximately every five years. And the fact sheets are 01:07:58
14 updated as -- as operations change and that kind of 01:08:01
15 thing. So I -- there could have -- could well have been 01:08:05
16 differences in current -- today's operation versus what 01:08:09
17 was going on in 1997. 01:08:14
18 BY MR. BENSHOOF: 01:08:16
19 Q. Okay. 01:08:16
20 Offhand, do you know of any significant ones 01:08:19
21 that would -- that would affect the types and nature of 01:08:21
22 discharges from either shipyard? 01:08:25
23 A. Well, one major change has been in the -- how 01:08:30
24 the facilities deal with storm runoff from the facilities 01:08:39
25 from the first flush, which is a run -- runoff that 01:08:45

1 comes -- its initial runoff from a rainstorm where it's 01:08:53
2 usually assumed to have the maximum pollutant loading in 01:08:58
3 that is, I believe NASSCO and BAE divert that runoff and 01:09:03
4 send it to the sewer system currently, whereas back in 01:09:10
5 1990s and before, that wasn't done. 01:09:14

6 Q. Okay. It just went into the storm water system? 01:09:17

7 A. Yes. 01:09:20

8 Q. Any other significant difference between today 01:09:23
9 and the 1997 period that you can recall offhand? 01:09:26

10 A. I would imagine, especially since that federal 01:09:31
11 lawsuit that we discussed earlier, that the BMPs have 01:09:34
12 been reviewed and updated and implementation has been 01:09:42
13 tightened. 01:09:47

14 Q. And any others that you would recall offhand 01:09:51
15 that might be different from those reviewed in the fact 01:09:54
16 sheet? 01:09:57

17 A. I can't think of any right now, no. 01:10:11

18 Q. Okay. Now, I want to next move, Mr. Barker, to 01:10:13
19 a report submitted by Environ to the -- to the -- your 01:10:22
20 office in February of 2011. 01:10:27

21 Do you recall receiving through San Diego Gas & 01:10:33
22 Electric a report from the Environ firm in about that 01:10:38
23 time frame? 01:10:44

24 A. Yes. 01:10:45

25 Q. And I want to ask you a few questions about 01:10:47

1 that. And let's just mark the text of that document, and 01:10:51
2 then we'll get to the figures separately. But let's mark 01:10:58
3 the text as 1272. 01:11:01
4 (Exhibit 1272 was marked.) 01:11:03
5 MR. BENSHOOF: And you might want to refer to 01:11:16
6 figures for my questions. So let's mark those as -- 01:11:18
7 collectively as -- the figures to the Environ report as 01:11:22
8 1273. 01:11:26
9 (Exhibit 1273 was marked.) 01:11:26
10 BY MR. BENSHOOF: 01:11:27
11 Q. And if you need look at the full document, 01:11:36
12 that's here, too. 01:11:38
13 Now, let's -- let me ask you preliminarily, 01:11:42
14 Mr. Barker, you understood that -- I take it the Environ 01:11:46
15 report communicated to the board the results of certain 01:11:55
16 soil sampling conducted by the environmental consultant 01:11:58
17 to the Port of San Diego in December of 2010 on the 01:12:03
18 portion of the -- that portion of property that we talked 01:12:08
19 about before that BAE was subleasing from San Diego Gas & 01:12:12
20 Electric. 01:12:16
21 MR. DART: Document speaks for itself. 01:12:19
22 THE WITNESS: I'm -- I'm sorry. Could you 01:12:20
23 repeat that question? 01:12:24
24 BY MR. BENSHOOF: 01:12:24
25 Q. Did you -- well, let's just look at the -- 01:12:25

1 Exhibit 1272. You see that it begins -- the report 01:12:28
2 begins, "At the request of San Diego Gas & Electric, 01:12:32
3 SDG&E, Environ International Corporation has prepared 01:12:38
4 this summary letter to present the analytic chemistry 01:12:41
5 results of soil and cooling water solids samples 01:12:45
6 collected in December 2010 from the BAE subleasehold site 01:12:49
7 located in the City of San Diego, California." And 01:12:56
8 referring to the site as Figure 1. 01:13:00
9 Now, had you known that the Port had -- previous 01:13:07
10 to getting this data, Mr. Barker, that the Port had 01:13:12
11 conducted an investigation of that property with its 01:13:16
12 consultant Ninyo & Moore in December of 2010? 01:13:21
13 A. Was I aware of that investigation? 01:13:27
14 Q. Correct. 01:13:29
15 A. I -- yeah. I believe I was aware of some 01:13:34
16 investigations the Port was doing. But I didn't have 01:13:36
17 detailed knowledge of them. 01:13:38
18 Q. Okay. Did -- did the Port ever report to the 01:13:41
19 board what that investigation concluded? 01:13:45
20 A. I -- as -- as I recall, I heard -- well, I might 01:13:48
21 be broaching mediation. 01:13:57
22 Q. Okay. Outside of any attorney-client 01:13:59
23 conversation or mediation conversation, did the report -- 01:14:02
24 did the Port ever -- is that all right? 01:14:06
25 MR. CARRIGAN: Yeah. I think you can qualify 01:14:08

1 the -- this is really fresh information. I'm not sure 01:14:10
2 the staff has had time to review or digest this 01:14:14
3 information, as we've been sitting in depositions since 01:14:17
4 this time. But it's -- so -- and the same would be true 01:14:19
5 for any report we may have received from the Port. We -- 01:14:25
6 so you can ask Dave what he recalls about it. But that's 01:14:28
7 kind of the status of where we are on catching up on 01:14:35
8 things that are submitted to us. 01:14:38
9 MR. BENSHOOF: Right. 01:14:40
10 MR. CARRIGAN: Anyway, so... 01:14:41
11 MR. BENSHOOF: I realize there's been a few 01:14:42
12 things going on since February 10th, 2011. 01:14:45
13 BY MR. BENSHOOF: 01:14:47
14 Q. But did the -- outside of the mediation context 01:14:48
15 and any information you received from your counsel, did 01:14:51
16 the Port communicate to you that they had conducted this 01:14:57
17 investigation or any results of the investigation? 01:15:00
18 A. I was aware of an investigation. I've not seen 01:15:05
19 results or reviewed them or anything like that. 01:15:09
20 Q. Okay. So you've received, best you can recall, 01:15:13
21 no written report yet from the Port on their 01:15:18
22 investigation? 01:15:20
23 A. No. I personally have not. I guess it's always 01:15:20
24 possible some submittal was made to the executive officer 01:15:23
25 that I haven't seen. But I'm not aware. 01:15:26

1 Q. Okay. And let me ask, have you had a chance to 01:15:30
2 review the Environ report, Exhibit 1272? 01:15:34
3 A. No. 01:15:38
4 Q. Let me simply go to a couple portions of it. 01:15:45
5 And understanding that you haven't had a chance to 01:15:49
6 thoroughly review it, I think we'll still want to ask you 01:15:53
7 some questions. 01:15:58
8 There is a -- on the second page, there's a 01:16:00
9 description of the -- at the top, sample analysis, soil 01:16:09
10 sampling. And there's both a description of the number 01:16:15
11 of soil samples analyzed, 54. And you see Figure 2 on 01:16:21
12 Exhibit 1273, Mr. Barker, you might just open up that and 01:16:30
13 have it alongside. It's a separate exhibit. 01:16:34
14 MR. CARRIGAN: It's the next -- here we go. 01:16:42
15 THE WITNESS: I see. 01:16:43
16 BY MR. BENSHOOF: 01:16:43
17 Q. Just have that open, if you would. And that 01:16:44
18 exhibit, Figure 2, shows the soil sample locations that 01:16:51
19 the Port chose. And then you see the next page, Figure 3 01:16:55
20 shows that in its investigation the Port also took 01:17:04
21 samples of sediments found in the intake cooling water 01:17:08
22 line and the outfall cooling water lines. 01:17:14
23 Do you see that illustrated? 01:17:17
24 A. Yes. 01:17:19
25 Q. And the -- I take it you would agree that 01:17:24

1 analyzing data or more data regarding a property that's 01:17:32
2 of concern to the board for having been the source of 01:17:38
3 contaminants to the bay is something the board would want 01:17:42
4 to do; correct? 01:17:46
5 A. Yeah. If -- if the Port's data was available, 01:17:50
6 we would want to look at it, yes. 01:17:54
7 Q. Okay. And -- and you understand that -- that 01:17:56
8 the Environ report is a communication of that data to the 01:18:02
9 Water Board? 01:18:09
10 A. You're -- you're asking if -- if I'm aware 01:18:15
11 that -- 01:18:19
12 Q. The Environ report, 1272 and 1273, figures, 01:18:22
13 constitutes the report to the board of SDG&E's analysis 01:18:27
14 of the split samples taken during the course of that 01:18:34
15 investigation. 01:18:37
16 A. Oh. 01:18:38
17 MR. DART: Lacks foundation. 01:18:39
18 THE WITNESS: I haven't seen the Port's data, I 01:18:51
19 don't know where they collected samples. But this 01:18:55
20 document seems to be indicating -- let's -- I'll just 01:19:00
21 have to read it. 01:19:06
22 MR. BENSHOOF: Go right ahead and do that. 01:19:07
23 THE WITNESS: Okay. Figure 2. 01:19:17
24 Okay. I'm reading the paragraph, and I see that 01:19:47
25 Environ split the samples with the samples that were 01:19:50

1 collected by Ninyo & Moore and the Port District, yes. 01:19:56
2 BY MR. BENSHOOF: 01:20:01
3 Q. And you see that at Figure 2, there's an 01:20:04
4 illustration set forth of the sample locations. 01:20:14
5 A. Yes. 01:20:17
6 Q. Now, there's -- keep those open, Mr. Barker. 01:20:18
7 But I want you to refer to a section we discussed before 01:20:28
8 of the DTR, 9.10, at page 9-16. This is the -- this is 01:20:35
9 the portion of the DTR where the board is reviewing soil 01:20:43
10 sampling data conducted on this property by EMB America 01:20:48
11 in 2004. Do you see that? 01:20:59
12 A. In nine dash -- excuse me, what section? 01:21:01
13 Q. Section 9.10, and specifically Table 9-7. 01:21:06
14 A. Yes. I see that. 01:21:11
15 Q. And the -- and it was partly -- we'd talked 01:21:17
16 before about that the board took note in the earlier 01:21:29
17 sampling work done by ENV America of the chemicals of 01:21:38
18 concern, specifically PCBs and metals. And that's 01:21:45
19 summarized in 9-7; correct? 01:21:49
20 A. Oh, yes. 01:21:54
21 Q. And -- and then we -- we see that in work that 01:21:57
22 the Port did in December 2010, at least as reported to 01:22:09
23 you by Environ, there are a significantly larger array of 01:22:13
24 samples conducted over a larger area of that property; 01:22:19
25 correct? It's not just focused on the wastewater pond 01:22:22

1 area; it's focused on the whole sublease area. 01:22:26

2 MR. DART: Lacks foundation. Document speaks 01:22:30

3 for itself. 01:22:31

4 MR. CARRIGAN: Document speaks for itself. 01:22:33

5 THE WITNESS: Yes. It seems to be in a more 01:22:34

6 expanded area, I guess. 01:22:36

7 BY MR. BENSHOOF: 01:22:36

8 Q. Now, would you agree that with a -- with a -- 01:22:37

9 that generally, if the wastewater ponds that are 01:22:43

10 discussed in Section 9.10 were a source of PCB 01:22:47

11 contamination to the bay, that PCB would be appearing in 01:22:53

12 the samples taken by the Port? 01:22:59

13 MR. CARRIGAN: Calls for expert testimony. 01:23:02

14 Incomplete hypothetical. 01:23:04

15 MR. DART: Join. 01:23:06

16 THE WITNESS: I guess I would expect that, but 01:23:20

17 it's not necessarily an -- an outcome. The soil sampling 01:23:28

18 in the environment can be very transitory as far as the 01:23:42

19 levels found, particularly in areas where land use 01:23:46

20 patterns are changing or activities are changing, which 01:23:49

21 the board wouldn't have knowledge of, which could affect 01:23:53

22 the levels. But... 01:23:56

23 BY MR. BENSHOOF: 01:23:57

24 Q. Let me ask -- but you generally would have 01:23:59

25 expected it to show up. But there are reasons why it 01:24:01

1 might not. Is that a fair statement? 01:24:05

2 A. PCBs, one of the properties is they're very 01:24:07

3 persistent in the environment. 01:24:10

4 Q. So you would expect them to be there? 01:24:12

5 A. Yes. 01:24:14

6 Q. And I want you to -- and obviously, the -- one 01:24:15

7 surmises that the Port expected them to be there, too, 01:24:20

8 because that's why they went to all that effort. 01:24:24

9 Would one -- 01:24:26

10 MR. BROWN: Objection. Calls for speculation. 01:24:27

11 MR. BENSHOOF: Would that -- well, that's 01:24:28

12 probably true. I'll withdraw the question. 01:24:29

13 BY MR. BENSHOOF: 01:24:36

14 Q. Let me ask you to look at Table 2 of the -- I'm 01:24:37

15 sorry. I'm now back on the Environ report, Table 2, not 01:24:40

16 Figure 2. 01:24:45

17 MR. CARRIGAN: Oh, I'm sorry. 01:24:46

18 MR. BENSHOOF: Five minutes left on the tape. 01:24:58

19 But I'll just try to complete a couple of these 01:25:00

20 questions. 01:25:03

21 BY MR. BENSHOOF: 01:25:03

22 Q. You see that Table 2 sets forth the results for 01:25:04

23 PCBs, as -- at least as recorded by Environ and the split 01:25:09

24 samples it took from the Port's investigation? 01:25:15

25 MR. DART: Lacks foundation. The document 01:25:18

1 speaks for itself. 01:25:19

2 THE WITNESS: Yes. 01:25:22

3 BY MR. BENSHOOF: 01:25:22

4 Q. And I take it that in your consideration as to 01:25:23

5 whether or not any ponds maintained by SDG&E on this 01:25:27

6 property contributed PCB contamination to the bay, you 01:25:32

7 would want to consider this information, would you not? 01:25:36

8 A. Yes. It's relevant information. 01:25:41

9 Q. And I'll read what Environ -- how Environ 01:25:44

10 describes this data. And let me just -- you -- you go 01:25:57

11 ahead and continue to look at it. I want to know if you 01:25:58

12 would concur with Environ's observation. 01:26:02

13 And they describe, referring to this table, they 01:26:06

14 state, "Average concentrations of total PCB aroclors and 01:26:08

15 total PAHs in soils in the 2010 investigation were an 01:26:13

16 order of magnitude lower than average concentrations in 01:26:20

17 soils measured previously by ENV America, 2004, and were 01:26:23

18 one to two orders of magnitude lower than average 01:26:28

19 concentrations measured in San Diego Bay sediment within 01:26:32

20 the 'inside SWM' area." 01:26:36

21 Would you agree with that general statement, 01:26:42

22 Mr. Barker, looking at Table 2? 01:26:43

23 MR. CARRIGAN: Document speaks for itself. 01:26:47

24 MR. DART: Join. Lacks foundation. 01:26:49

25 THE WITNESS: To me, it's like comparing apples 01:27:09

1 and oranges. This is -- one sample survey had a larger 01:27:13
2 number of samples to -- to average over. 01:27:26
3 And so to compare the average from however many 01:27:29
4 samples this was -- was it 32, 31 -- to a -- to the 01:27:36
5 average value attained from a fewer sampling points, and 01:27:42
6 pointing out that the average -- from the larger group is 01:27:49
7 smaller than the other, I don't know that I could -- I 01:27:54
8 would take note of that but want to do more comparisons. 01:27:59
9 BY MR. BENSHOOF: 01:28:06
10 Q. Okay. And you would want to look at the -- not 01:28:09
11 just the average but the individual results; correct? 01:28:11
12 A. Yes. I'd like to -- would like to correlate 01:28:14
13 particular points where samples were collected and try to 01:28:18
14 correlate that with where the other samples were 01:28:21
15 collected. 01:28:26
16 Q. Disregarding the -- the average, why don't you 01:28:28
17 just look at the far right column, "Total Aroclors", -- 01:28:31
18 Total PCB Aroclors" on Table 2. 01:28:36
19 Wouldn't you agree that the concentrations 01:28:40
20 detected are, for the most part, beneath the cleanup 01:28:42
21 values that have been set for this site? 01:28:47
22 MR. CARRIGAN: Document speaks for itself. 01:28:51
23 MR. DART: Join. Lacks foundation. 01:28:52
24 MR. BENSHOOF: I only see, like, two instances 01:28:57
25 where it's not. But perhaps I'm just misreading it. 01:28:59

1 THE WITNESS: I -- I need to look at the cleanup 01:29:03
2 order just to get in mind what the cleanup value was. 01:29:05
3 MR. BENSHOOF: Okay. 01:29:09
4 MR. CARRIGAN: But we'll take your 01:29:09
5 representation as accurate, Counsel, if you have a 01:29:11
6 counsel for the witness. 01:29:15
7 BY MR. BENSHOOF: 01:29:16
8 Q. Yeah. Page 32-12 indicates that the PCBs, the 01:29:17
9 post -- post remedial SWAC value is 194 parts per billion 01:29:22
10 or .194 parts per million. Do you want to just verify 01:29:30
11 that? 01:29:35
12 A. Yeah. 194 parts per billion, yes. 01:29:41
13 Q. And I -- if you look at the data, doesn't it 01:29:46
14 indicate that in the 41 samples there are three instances 01:29:49
15 where the values are higher than that? 01:29:59
16 MR. CARRIGAN: Document speaks for itself. 01:30:01
17 MR. DART: Join. 01:30:03
18 THE WITNESS: Let's see. I see one, two, three, 01:30:12
19 four -- 01:30:20
20 MR. BENSHOOF: Should we change tapes? 01:30:36
21 THE WITNESS: Five. 01:30:38
22 MR. BENSHOOF: Five. We'll change types. 01:30:39
23 MR. CARRIGAN: We'll go off the record. Five is 01:30:40
24 the answer, though. 01:30:42
25 THE VIDEOGRAPHER: This ends Videotape No. 2 in 01:30:43

1 the deposition of David Barker, Volume No. 4. Today's 01:30:44
2 date is March 10th, 2011. The time is now 1:31 p.m. 01:30:48
3 Off the record. 01:30:53
4 (A recess was taken.) 01:30:55
5 THE VIDEOGRAPHER: This begins Videotape No. 3 01:41:00
6 in the deposition of David Barker, Volume No. 4. Today's 01:41:02
7 date is March 10th, 2011. The time is 1:41 p.m. On 01:41:07
8 the record. 01:41:13
9 BY MR. BENSHOOF: 01:41:13
10 Q. Mr. Barker, I wanted to ask you some further 01:41:17
11 questions on Table 2, so you've got the exhibit open to 01:41:19
12 that table. 01:41:24
13 A. Yes. 01:41:25
14 Q. In the far right column, total PCB aroclors, a 01:41:25
15 number of the entries have a less than particular number. 01:41:29
16 And is that your understanding that that's generally an 01:41:33
17 entry that reflects that the -- well, what does it 01:41:36
18 reflect in your understanding? Let me just have you 01:41:44
19 express it in your words. 01:41:46
20 A. It -- that the level has been quantified to 01:41:48
21 the -- within the level of detection of the test method 01:41:53
22 employed. 01:41:56
23 Q. So it's -- when it's a less than symbol there, 01:41:57
24 it's, basically, whatever's there is less than what the 01:42:01
25 instrument can detect? 01:42:06

1 MR. DART: Lacks foundation. 01:43:51

2 THE WITNESS: I -- yeah. The only thing I could 01:43:56

3 agree on is they are -- look like they're in the vicinity 01:43:59

4 of the pond. But I was not involved with the Port's -- 01:44:02

5 MR. BENSHOOF: Choices? 01:44:08

6 THE WITNESS: -- choices of sites or the details 01:44:09

7 of their investigation. And this is really the first day 01:44:11

8 I've even looked at this document we're referring to. 01:44:15

9 BY MR. BENSHOOF: 01:44:18

10 Q. Fair enough. And I just want to just ask, 01:44:19

11 looking at the locations chosen by the Port and -- and 01:44:24

12 then looking at the results for those borings, 16, 15, 01:44:30

13 13, 11, you see that all of those were basically 01:44:37

14 nondetect, correct, for PCBs? If you look at Table 2. 01:44:43

15 MR. DART: Document speaks for itself. 01:44:48

16 MR. CARRIGAN: I'll join that. 01:44:50

17 MR. BENSHOOF: I'm looking at ten, 11, 13, 14, 01:44:56

18 15. 01:45:00

19 MR. CARRIGAN: Okay. Your list is growing. 01:45:03

20 We'll look at ten, 11, 13, 15, 16. 01:45:05

21 THE WITNESS: Ten. Okay. Ten was below the 01:45:11

22 limit of detection. Well, there's -- there was one value 01:45:12

23 at 11 that was above the limit of detection. Thirteen. 01:45:20

24 MR. CARRIGAN: Thirteen. 01:45:33

25 THE WITNESS: Thirteen was all three values 01:45:34

1 were -- excuse me -- four values were below the limit of 01:45:36
2 detection. 01:45:41

3 MR. CARRIGAN: Fifteen. 01:45:45

4 THE WITNESS: And then 15, two -- looks like two 01:45:46
5 sample results. One was above the limit of detection, 01:45:53
6 and one was below the limit of detection. 01:45:57

7 MR. CARRIGAN: And 16. 01:46:02

8 THE WITNESS: Sixteen, both values were below 01:46:07
9 the limit of detection. 01:46:10

10 BY MR. BENSHOOF: 01:46:11

11 Q. Now, would you agree that if that -- if, in 01:46:12
12 fact, the wastewater ponds was the source of any 01:46:19
13 significant PCB contribution to the bay, the Port should 01:46:29
14 have found evidence of that in those borings that we've 01:46:34
15 just looked at? 01:46:37

16 MR. CARRIGAN: Incomplete hypothetical. Calls 01:46:38
17 for expert testimony. Lacks foundation. 01:46:40

18 MR. DART: Join. And it's vague. 01:46:44

19 THE WITNESS: No. I -- I -- since I wasn't 01:46:47
20 involved in the design of the investigation or privy to 01:46:51
21 the considerations that were made in the design, I -- 01:46:56
22 I -- I can't conclude that one way or the other. 01:47:00

23 BY MR. BENSHOOF: 01:47:07

24 Q. Okay. I take it you would agree that you would 01:47:08
25 want to consider this additional data in reconsidering 01:47:11

1 Section 9.10 of the DTR; correct? 01:47:20

2 A. Yes. I would want to consider this information, 01:47:24

3 yes. 01:47:27

4 Q. And if you were to confirm that the borings we 01:47:28

5 just looked at by virtue of aerial photograph or talking 01:47:34

6 with the Port, if you were to confirm that those borings 01:47:38

7 were selected in order to try to detect PCB in the area 01:47:43

8 of the former wastewater pond, would you agree that the 01:47:46

9 results tend to indicate the opposite? 01:47:50

10 MR. CARRIGAN: Same objections. 01:47:53

11 MR. DART: Join. 01:47:54

12 THE WITNESS: I would -- it's not conclusive one 01:47:57

13 way or the other. It's -- the larger number of samples 01:48:07

14 were below the limit of detection. I think it was two 01:48:11

15 samples were above. 01:48:16

16 BY MR. BENSHOOF: 01:48:19

17 Q. Okay. And I take it you would -- you would 01:48:20

18 agree that that -- that tends -- that data tends to put a 01:48:23

19 different characterization on the constituents in this 01:48:30

20 area than Table 9-7 does. 01:48:34

21 MR. CARRIGAN: Calls for expert opinion. Vague. 01:48:37

22 Lacks foundation. 01:48:41

23 MR. DART: Join. 01:48:42

24 THE WITNESS: I would -- I would just -- I would 01:48:44

25 want to correlate the sample results with the sample 01:48:46

1 locations used for 9-7 and -- and just consider how the 01:48:50
2 sample values may -- or how the PCB levels may have been 01:49:04
3 influenced over time at that site. It's just, like, more 01:49:08
4 information to consider and weigh and factor in. 01:49:14
5 BY MR. BENSHOOF: 01:49:17
6 Q. And in that process would you also want to 01:49:20
7 consider that one of the highest readings -- let's look 01:49:31
8 at sample result reported for SB32 of point -- of .415. 01:49:42
9 A. Okay. I see that. Now let me see where that 01:49:57
10 was collected. Okay. I've got it. 01:50:00
11 Q. Do you see that if you look at Figure 5, the 01:50:07
12 area of one of the highest PCB hits during the Port's 01:50:10
13 investigation was collected from an area on the property 01:50:14
14 that's immediately adjacent to the -- the outline of one 01:50:18
15 of the ships that was on the property during the period 01:50:22
16 it was used by Southwest Marine. Do you see that? 01:50:25
17 MR. CARRIGAN: Vague. Document speaks for 01:50:29
18 itself. 01:50:30
19 MR. DART: Join. No foundation. 01:50:32
20 THE WITNESS: I -- I see that the samples have 01:50:38
21 been overlaid with the 1958 photograph, yes. 01:50:39
22 BY MR. BENSHOOF: 01:50:43
23 Q. And you see this area which one of -- where one 01:50:43
24 of the highest reported results was on the leasehold is 01:50:47
25 not in the area north of the pond -- or north -- in the 01:50:52

1 pond area but, in fact, is adjacent to the figure of a 01:50:53
2 ship that sits on the site, correct, in this photograph? 01:50:56
3 MR. CARRIGAN: Document speaks for itself. 01:51:02
4 MR. DART: Same objections. 01:51:04
5 THE WITNESS: Yeah. I -- I would agree that the 01:51:05
6 sample location -- I mean, it's -- in this picture it's 01:51:07
7 closer to the ship that's been overlaid on the 01:51:20
8 photograph. 01:51:22
9 Q. And that would be information you would want to 01:51:23
10 consider in determining whether and to what extent BAE's 01:51:26
11 operations on that property, in fact, contributed to the 01:51:31
12 PCB levels that are located there; correct? 01:51:33
13 A. Yes, we would -- 01:51:37
14 MR. DART: Same objections and assumes facts. 01:51:37
15 THE WITNESS: We would look at that information, 01:51:41
16 yes. 01:51:44
17 BY MR. BENSHOOF: 01:51:50
18 Q. Now, in the -- the -- in your prior answer, you 01:51:52
19 referred to, I guess, the passage of time generally. And 01:51:54
20 I was -- I need to ask, Mr. Barker, I take it that given 01:51:59
21 the persistency of PCBs in the environment, you're not 01:52:06
22 suggesting, are you, that somehow PCBs would have 01:52:10
23 diminished in time on this property between the 2004 01:52:17
24 investigation reflected in Table 9-7 and the Port's 01:52:20
25 investigation six years later? 01:52:22

1 Q. Yeah. And -- and the -- right. And we're 01:54:28
2 just -- I'm not -- I guess I missed the point of your 01:54:40
3 observation, Mr. Barker. 01:54:44
4 A. I'm just saying -- 01:54:47
5 Q. Could you -- 01:54:48
6 A. -- there could be fluctuations in the -- in the 01:54:50
7 concentrations of the relative concentrations between the 01:54:53
8 aroclors where something that was one particular aroclor 01:54:57
9 at a particular point in time might show up later at 01:55:05
10 another time as -- as -- as -- where the mixtures of the 01:55:08
11 congeners that make up that aroclor, the proportions of 01:55:14
12 them have changed. 01:55:18
13 Q. Due to what? 01:55:19
14 A. Due to weathering. 01:55:20
15 Q. Has that been something, an inquiry that you've 01:55:25
16 made at any portion of this site? 01:55:31
17 A. No. 01:55:33
18 Q. So what you're describing as possibilities, I 01:55:36
19 take it you agree are -- are rather speculative at this 01:55:40
20 point in time? 01:55:45
21 A. Yes. But -- yes. 01:55:48
22 Q. And are -- are you talking about a -- this topic 01:55:53
23 of PCB degradation, is that something that you regard 01:55:58
24 yourself as having expertise in, or is it just something 01:56:02
25 that you're -- 01:56:05

1 persistent contaminant that are in some proportion to 01:57:46
2 those found in the area to which it was allegedly 01:57:52
3 transported. 01:57:57
4 MR. CARRIGAN: Asked and answered. 01:57:58
5 BY MR. BENSHOOF: 01:57:58
6 Q. Does that question make sense? 01:58:00
7 A. I'm -- I'm having a hard time following that 01:58:01
8 one. 01:58:04
9 Q. The -- the -- let's just look again at Table 2. 01:58:05
10 And you would agree that those results in Table 2 of 01:58:11
11 total PCB aroclors are substantially beneath results 01:58:16
12 reported in the sediment in the bay; correct? I mean, 01:58:21
13 Environ used the term "orders of magnitude." And would 01:58:25
14 you agree that -- with that characterization, orders of 01:58:30
15 magnitude less than what's found in the -- 01:58:34
16 A. I -- I would want to do my -- my own comparison. 01:58:37
17 Q. Okay. Fair enough. 01:58:42
18 A. Which I haven't done. 01:58:45
19 Q. Let me just -- let me just mark for the next in 01:58:46
20 order an exhibit that we prepared for purposes of the 01:58:53
21 questioning, Mr. Barker, that compares all the data, all 01:58:58
22 the data of the Port's investigation and all the -- the 01:59:03
23 Exponent data that's in the DTR. And I just want to ask 01:59:09
24 you a few questions with regard to what it shows. And 01:59:11
25 again, I know this is -- this is probably something you'd 01:59:15

1 want to do yourself. 01:59:17

2 MR. DART: Does that withstand a foundation 01:59:25

3 objection then? 01:59:29

4 MR. HANDMACHER: Actually, that -- what's the 01:59:32

5 exhibit number? 01:59:34

6 MR. BENSHOOF: This is 1274. 01:59:37

7 (Exhibit 1274 was marked.) 01:59:37

8 BY MR. BENSHOOF: 01:59:37

9 Q. Now, understanding that you would want to make 01:59:40

10 your own data summary, Mr. Barker, and so on, but would 01:59:42

11 you agree that the sort of comparison that's reflected on 01:59:50

12 Exhibit 1274, assuming it's accurate, is a comparison 01:59:54

13 that's useful to assess whether or not it's reasonable to 01:59:59

14 believe that a source on a particular property, here 02:00:05

15 described as the BAE subleasehold, could have been a 02:00:09

16 significant contributor to the contaminants in the bay 02:00:14

17 sediment that are referred to in the other two columns? 02:00:22

18 MR. DART: Lacks foundation. Calls for 02:00:28

19 speculation. Assumes facts. 02:00:29

20 THE WITNESS: It's -- 02:00:34

21 BY MR. BENSHOOF: 02:00:34

22 Q. In other words, the question is sort of what I'd 02:00:35

23 asked before. If a -- if a source exists on a -- had 02:00:37

24 existed in the form of what the DTR alleges, that is a 02:00:42

25 wastewater pond, the -- the testing of the sediments in 02:00:46

1 that property ought to show, should it not, levels of 02:00:51
2 contaminant that are -- that resemble the order of 02:00:57
3 magnitude found in the area to which they were 02:01:01
4 transported. 02:01:07
5 MR. DART: Same objections and vague. 02:01:09
6 MR. CARRIGAN: Join and incomplete hypothetical. 02:01:11
7 THE WITNESS: I'm going to -- I'm not sure what 02:01:21
8 you're asking me. So I'm going to repeat what I think 02:01:22
9 you're asking me and then answer that question. 02:01:26
10 You seem to be asking me, is it a relevant 02:01:29
11 consideration that samples from an -- an upland source 02:01:36
12 are significantly less than levels found in the receiving 02:01:46
13 water. 02:01:54
14 BY MR. BENSHOOF: 02:01:54
15 Q. Correct. 02:01:55
16 A. Okay. 02:01:55
17 Q. You're much better at asking my questions than I 02:01:56
18 am. 02:01:59
19 A. And, I mean, that's a consideration in looking 02:01:59
20 at that one -- one thing, we would consider is once the 02:02:12
21 sediment enters the -- or the pollutants would enter 02:02:18
22 the -- the bay, they tend to accumulate. They're not 02:02:21
23 subject to, for example, storm water actions that 02:02:29
24 could -- could -- that -- that could affect the levels. 02:02:35
25 They're -- they're -- they're just in the bay. And 02:02:48

1 they're subject to other factors once they're in the bay 02:02:50
2 that could have various effects on the levels but... 02:02:53
3 Q. If your own -- if your own investigation, 02:03:00
4 though, of the data showed, for example, that the -- that 02:03:03
5 confirms you what this exhibit shows, that the average of 02:03:08
6 the PCB aroclors on the subleasehold was 35 and its 02:03:13
7 maximum was 810, and that compares to SW1, 2 and 4 areas' 02:03:18
8 average of 5,400 and 36,000, I take it you would -- you 02:03:26
9 would look at that and say that raises a bit of a red 02:03:31
10 flag as to whether or not that property was the source 02:03:34
11 for those numbers would you not, sir? Whether you would 02:03:41
12 conclude conclusively, I'm not asking that. But that 02:03:44
13 would be a red flag in your mind, wouldn't it? 02:03:47
14 MR. DART: Objection. Assume facts. Incomplete 02:03:49
15 hypothetical and lacks foundation. 02:03:51
16 THE WITNESS: Yes. It's a consideration, again. 02:03:53
17 I mean, we would tend -- I would tend to approach this as 02:03:56
18 a legacy discharge, where the discharge is no longer 02:03:59
19 occurring. And what we're seeing on the upland source 02:04:05
20 might be just the -- the footprint of the discharge, the 02:04:13
21 trace levels, the remnants of the discharge. 02:04:16
22 And -- and the fact that those levels are a lot 02:04:22
23 lower than what's in the bay doesn't necessarily rule out 02:04:24
24 that at some point in time it could have been a more 02:04:28
25 significant pathway than what appears at present day. 02:04:30

1 But in the same breath, we would not, of course, 02:04:38
2 ignore the fact that there is a major shipyard also 02:04:42
3 tributary to the same area that could have influenced 02:04:46
4 the -- that area, as well. 02:04:51
5 BY MR. BENSHOOF: 02:04:53
6 Q. Wouldn't you expect a source area to show a 02:04:59
7 greater correlation to the levels in the receiving area 02:05:01
8 than is shown by this data, assuming it's correct? 02:05:04
9 MR. CARRIGAN: Calls for expert testimony. 02:05:06
10 Lacks foundation. Incomplete hypothetical. 02:05:07
11 MR. DART: Join. 02:05:09
12 THE WITNESS: It's -- it's been our experience 02:05:10
13 in other areas of the bay where -- where the upland 02:05:14
14 sources levels were quite a bit different than was out in 02:05:26
15 the bay. And yet, in the end, the upland source we were 02:05:30
16 looking at turned out to be the primary source. 02:05:35
17 BY MR. BENSHOOF: 02:05:40
18 Q. So it's not conclusive? 02:05:40
19 A. Yes. 02:05:42
20 Q. And -- and -- and yet you did agree that it 02:05:43
21 raises a concern in your mind in looking at data like 02:05:48
22 this as to whether or not the subleasehold could have 02:05:52
23 been a source to the concentrations that are reflected in 02:05:58
24 the bay. 02:06:04
25 A. Well, to look at the data, I would conclude that 02:06:05

1 they are a source but may not be the only source to 02:06:09
2 what's out in the bay. 02:06:12

3 Q. All right. And when you say they are, explain 02:06:13
4 that. 02:06:16

5 A. Or excuse me. That the -- just -- and I'm just 02:06:18
6 looking at this table, that the -- looking at values for 02:06:22
7 PCBs on the -- the subleasehold, that there are levels of 02:06:25
8 PCBs present there that are levels that are out in the 02:06:34
9 bay. And that's the kind of information we use to make 02:06:39
10 findings to establish a pathway to the bay from a source. 02:06:50

11 Q. There's levels here, there's levels there. But 02:06:55
12 we're talking about -- does the phrase "order of 02:06:58
13 magnitude," is that one that you're uncomfortable saying, 02:07:02
14 there's an order of magnitude difference between one 02:07:05
15 number and the other? 02:07:08

16 A. No. I -- no. I would concede that one 02:07:11
17 number -- the number out in the bay is far higher than 02:07:14
18 the number that's on the leasehold. 02:07:16

19 Q. So you would consider that, and you would 02:07:21
20 consider if it -- if I'm -- can accurately summarize our 02:07:24
21 earlier discussion, you'd also consider whether or not 02:07:28
22 the wastewater ponds were the subject for these values in 02:07:32
23 the leasehold, or whether it was the shipyard operations 02:07:41
24 there that we discussed earlier today; correct? 02:07:45

25 A. Yes. It's not -- it's -- it's kind of a complex 02:07:50

1 consideration. It's -- it's -- there's factors to be 02:07:52
2 weighed. 02:07:57

3 Q. And do you agree that at a very minimum, the 02:07:57
4 Section 9.10 of the DTR should be revised to at least 02:08:01
5 discuss these complex factors? 02:08:05

6 A. The type of information that's contained in your 02:08:10
7 letter, which was not available to us when we prepared 02:08:13
8 this, it's relevant information. 02:08:16

9 Q. Okay. 02:08:19

10 A. Yes. 02:08:20

11 Q. Now, let me go to another section of the DTR. 02:08:22
12 And that's Section 9.8 on page 9-11. It's titled 02:08:38
13 "Unauthorized Discharge of Toxic Pollutants to Land." 02:08:46

14 Could you just glance at that? And I have a 02:09:00
15 number of questions that I'm going to be asking about 02:09:03
16 that section. 02:09:05

17 A. All right. Okay. 02:09:06

18 Q. Now, is -- does reviewing that Section 9.8, 02:10:56
19 Mr. Barker, refresh your recollection that another 02:10:59
20 allegation that's made in the DTR against SDG&E is the 02:11:04
21 fact that releases of PCBs occurred at -- in the 02:11:09
22 Silvergate power plant facility that would have been 02:11:17
23 transmitted via storm water runoff to the MS4 storm water 02:11:20
24 system and, ultimately, to the outfall in the bay? 02:11:29

25 A. Yes. 02:11:36

1 Q. The -- I should have said the substation; 02:11:39
2 Silvergate substation. 02:11:46
3 And the -- now, and that allegation was -- was 02:11:48
4 based, was it not, Mr. Barker, on certain soil samples 02:11:56
5 that were taken in 2006 by the consulting firm of TN and 02:12:08
6 Associates; correct? 02:12:12
7 A. Yes. 02:12:14
8 Q. And in the substation -- or within the footprint 02:12:14
9 of the substation, the -- at that particular 02:12:19
10 investigation took 18 samples, and PCB levels were 02:12:23
11 reported in those samples. 02:12:33
12 A. Yes. 02:12:37
13 Q. And let's just identify the report that we're -- 02:12:38
14 I've been referring to as the next in order, 1275. 02:12:41
15 (Exhibit 1275 was marked.) 02:12:52
16 MR. CARRIGAN: Thank you. And these are 02:12:53
17 excerpts from the report? 02:13:03
18 MR. BENSHOOF: Correct. 02:13:05
19 BY MR. BENSHOOF: 02:13:05
20 Q. And the -- am I correct that the -- Table 9-4 of 02:13:06
21 the DTR sought to summarize the -- the data from those 02:13:16
22 18 samples. 02:13:24
23 A. Yes. 02:13:27
24 Q. Now, and one of the samples, specifically SS12, 02:13:28
25 had a high reading of 125,000 parts per billion or 125 02:13:35

1 parts per million. Do you see that? 02:13:43

2 A. Yes. 02:13:45

3 Q. Now, let me ask you, Mr. Barker, are you aware 02:13:51

4 that -- I assume you've seen investigations in the past 02:13:54

5 that have reported results, and then subsequent 02:13:58

6 investigations have tended to cast doubt on those results 02:14:05

7 in terms of whether they were, in fact, representative or 02:14:08

8 may have been outliers? 02:14:11

9 A. Yes. 02:14:13

10 Q. And oftentimes that subsequent investigations 02:14:16

11 with a greater sampling focus can help assess whether the 02:14:20

12 reported values are truly represented and what we call 02:14:27

13 outliers are not representative; correct? 02:14:31

14 A. Yes. It can help to provide a fuller picture, 02:14:34

15 yes. 02:14:38

16 Q. Okay. And I would like to, then, next mark 02:14:38

17 further information that was submitted to the board in 02:14:43

18 February 2011 as 1276. 02:14:45

19 (Exhibit 1276 was marked.) 02:14:48

20 BY MR. BENSHOOF: 02:14:48

21 Q. Now, I have put in front of you a further report 02:15:05

22 of TN and Associates, dated February 7th, 2011, that 02:15:15

23 provides additional information with regard to the 02:15:24

24 sampling conducted in 2006. 02:15:26

25 And do you recognize this document as having 02:15:34

1 Q. Okay. So we've got approximately 100 additional 02:17:43
2 samples, of sampling data points; correct? 02:17:47
3 A. I -- 02:17:52
4 Q. If that's -- if that's accurate? 02:17:53
5 A. Yeah, if that's accurate, yes. 02:17:55
6 Q. All right. And I appreciate you haven't had a 02:17:57
7 chance yet to go through this. 02:17:58
8 But I take it to -- to be able to look through a 02:18:00
9 hundred different or more data points would be important 02:18:05
10 for you to review in order to determine whether any of 02:18:11
11 the data in Table 9-4 is -- should more accurately be 02:18:13
12 characterized as an outlier. 02:18:21
13 A. Yes. It's supplementary information that -- 02:18:27
14 that we would consider. 02:18:29
15 Q. Okay. And I want you to look at page 6 of 10 in 02:18:38
16 Table 2. And I guess you may need to take my 02:18:44
17 representation on this because you haven't had time to 02:18:51
18 thoroughly analyze this. 02:18:56
19 But if you look at Sampling Point 51, you'll 02:18:58
20 notice that in the first sample interview, the total 02:19:03
21 aroclors of 7,500 parts per billion is reported at that 02:19:10
22 sampling location. 02:19:19
23 A. At S -- S51. 02:19:20
24 Q. Correct. 02:19:22
25 A. And I'm on page 6 of 10. 02:19:23

1 Q. If you look at "Total Aroclors," adding 54 and 02:19:26
2 60, 54 is reported at 3.5. 02:19:30
3 A. Right. 02:19:33
4 Q. Sixty is reported at 4.0. 02:19:34
5 A. Right. 02:19:36
6 Q. Total aroclors are indicated at that sampling 02:19:37
7 point of 7,500 parts per billion; correct? 02:19:39
8 A. Yes. 02:19:43
9 Q. And without spending the time to go through each 02:19:43
10 one of these, I'll represent to you, Mr. Barker, that 02:19:47
11 that's the highest reading obtained in these hundred-plus 02:19:49
12 samples. Okay? 02:19:55
13 Now I'd like you to consider that, that in 02:19:57
14 looking at a more comprehensive data set, the highest 02:19:59
15 reading was 7,500 parts per billion, and ask you whether 02:20:04
16 or not that would be information you would want to 02:20:08
17 consider, Mr. Barker, in determining whether the result 02:20:11
18 reported in Table 9-4 for Sampling Point 12 of 125,000, 02:20:14
19 considerably higher than the highest found in the other 02:20:20
20 data set, might be an outlier. 02:20:26
21 A. Yes. It -- I mean, they were taken at different 02:20:29
22 points in time. And -- but resampling of an -- of an 02:20:31
23 area is done. And that information should be considered. 02:20:40
24 Q. Okay. 02:20:47
25 And is it also relevant in your view, 02:20:47

1 Mr. Barker, to the allegations contained in 9.8, 02:21:18
2 unauthorized discharge to land, that as to whether or not 02:21:25
3 the discharges occurred within the containment structure 02:21:31
4 area that was part of the substation? 02:21:40
5 MR. CARRIGAN: Vague. 02:21:47
6 MR. BENSHOOF: Let me rephrase it so it's not 02:22:02
7 vague. 02:22:04
8 BY MR. BENSHOOF: 02:22:04
9 Q. Would you agree with me, Mr. Barker, that if the 02:22:04
10 soil samples reported on Table 9-4, let's assume that 02:22:07
11 they're not outliers, I take it from your prior testimony 02:22:11
12 you would want to review these to determine whether they 02:22:14
13 are outliers, particularly the high one. 02:22:17
14 But assuming they're not, I take it, it would be 02:22:20
15 relevant to you that as to whether or not that those 02:22:23
16 measurements of soil were taken within the area that the 02:22:28
17 DTR earlier describes as having been within a containment 02:22:32
18 area of concrete sumps as part of the spill prevention 02:22:43
19 and control plan measures for secondary containment? 02:22:49
20 MR. CARRIGAN: Where are you reading from, 02:22:53
21 Counsel? 02:22:55
22 MR. BENSHOOF: I'm sorry. It's at 9-3. Let's 02:22:55
23 go back to 9-3 again. 02:22:58
24 BY MR. BENSHOOF: 02:23:04
25 Q. And about the middle of the page, Mr. Barker, 02:23:04

1 the DTR states, "SDG&E reported that the facilities had 02:23:08
2 transformers on site. The transformers were contained 02:23:13
3 within concrete sumps as a part of the spill prevention 02:23:17
4 and control-plan measures for secondary containment for 02:23:21
5 oil storage units," citing to the report of ENV America. 02:23:27
6 And just looking at that, Mr. Barker, would you 02:23:35
7 agree that if the table set forth in the DTR at the 02:23:37
8 section we were just focused on, "Unauthorized Discharges 02:23:50
9 to Land," Section 9.8, if those discharges occurred 02:23:54
10 within the containment structure that's described in the 02:24:01
11 DTR, the assumption of -- that 9.8 is based on, that any 02:24:05
12 release would have necessarily have traveled into the 02:24:10
13 storm water system, would be incorrect; would you agree 02:24:14
14 with that? 02:24:16
15 A. I -- 02:24:17
16 MR. CARRIGAN: Compound and vague. 02:24:22
17 THE WITNESS: I'd have to review what we know 02:24:23
18 about the concrete sumps. I don't -- I've never seen 02:24:26
19 those sumps myself, and I'm not aware of -- so I really 02:24:37
20 can't comment on it. 02:24:43
21 BY MR. BENSHOOF: 02:24:44
22 Q. Okay. Let's look at the description again. 02:24:44
23 A. Certainly a consideration. 02:24:47
24 Q. Okay. Let's -- let's look at that, then. 02:24:49
25 Because the reference -- you do reference a document; 02:24:51

1 correct? 02:24:53

2 A. Yes. 02:24:54

3 Q. To back up your statement in the DTR -- 02:24:54

4 A. Yes. 02:24:57

5 Q. -- that there were containment structures? 02:24:57

6 A. Yes. Yes. 02:24:59

7 Q. And you referenced the ENV America 2004 report; 02:25:00

8 correct? 02:25:03

9 A. Yes. Yes. 02:25:07

10 Q. And that appears at SAR 193272 in the 02:25:07

11 administrative record through 193329. And I would just 02:25:13

12 simply for purposes of these questions, Mr. Barker, I've 02:25:18

13 turned the page to 19328, which describes the containment 02:25:21

14 structures present at the Silvergate substation. And I'd 02:25:27

15 like you to just review that, if you could. 02:25:31

16 A. Okay. 02:26:12

17 Q. For the record, that is marked as Exhibit 1020 02:26:13

18 to the Carlisle deposition. Keep that there in front of 02:26:16

19 you. I've got another copy here. 02:26:21

20 And would you agree, Mr. Barker, reading that 02:26:26

21 description, that if the soil results reported in the DTR 02:26:29

22 at Table 9-4 were results of soil within that structure 02:26:37

23 described in the ENV America report, that the assumption 02:26:45

24 of the DTR that any leak or discharge from the 02:26:50

25 transformers would have necessarily found its way into 02:26:54

1 the storm water conveyance system would be not accurate? 02:26:58

2 MR. CARRIGAN: Incomplete hypothetical. 02:27:02

3 THE WITNESS: I would agree it's a potential 02:27:07

4 pathway. It -- it may have been contained, or maybe it 02:27:10

5 was not contained. 02:27:18

6 BY MR. BENSHOOF: 02:27:19

7 Q. What would you -- because it's not -- you would 02:27:22

8 agree that the DTR does not describe it as merely a 02:27:27

9 potential pathway. The DTR alleges that the following: 02:27:35

10 "The PCB, metals, and TPH pollutants" -- and I'm reading 02:27:44

11 at page 9-7 so you can follow along. There's nothing 02:27:50

12 that says "a potential." It says, "They were or would 02:27:55

13 probably be discharged into San Diego Bay." 02:27:58

14 Would you agree, Mr. Barker, that that statement 02:28:01

15 is no longer valid given what you have just read about 02:28:05

16 the containment structure existing at that facility? 02:28:10

17 MR. CARRIGAN: Misstates the record. Misstates 02:28:14

18 facts in evidence. 02:28:16

19 BY MR. BENSHOOF: 02:28:17

20 Q. In other words, there -- would you agree there's 02:28:21

21 no factual basis for the Regional Board to allege that 02:28:24

22 the results shown in 9-4 would probably have been 02:28:28

23 discharged into the bay in view of the extensive 02:28:33

24 containment structure described? 02:28:38

25 MR. CARRIGAN: Incomplete hypothetical. 02:28:41

1 THE WITNESS: Could I ask you to point out where 02:28:45
2 in the DTR you -- you were reading a certain section? 02:28:47
3 BY MR. BENSHOOF: 02:28:51
4 Q. I'm sorry. It's right above Table 9-4. Let me 02:28:51
5 read it all into the record on page 9-12. 02:28:55
6 A. 9-12. Okay. 02:28:59
7 Q. Yeah. I apologize. 02:29:01
8 There's a table there, 9-4. And above that, the 02:29:02
9 Regional Board asserts that "PCBs, metals, and TPH 02:29:08
10 pollutants reported in the surface soils were discharged 02:29:13
11 or deposited over a large area where they were or would 02:29:17
12 probably be discharged into San Diego Bay via storm water 02:29:22
13 runoff, creating or threatening to create a condition of 02:29:25
14 pollution or nuisance." 02:29:29
15 Now, my question is related to that allegation, 02:29:31
16 Mr. Barker. And wouldn't you agree that having now 02:29:34
17 become aware of the fact that these samples were taken in 02:29:39
18 the vicinity of a containment structure, wouldn't you 02:29:43
19 agree that there is no evidence that those reported 02:29:48
20 contaminants would probably be discharged into the bay? 02:29:55
21 MR. CARRIGAN: Incomplete hypothetical. 02:30:00
22 THE WITNESS: Let's see. Right -- my first 02:30:04
23 question -- or the first thing I'd want to examine is 02:30:07
24 which samples were collected within the containment 02:30:11
25 structure out of the 18 that are cited there in that 02:30:16

1 table. And I'll -- that's -- 02:30:21

2 BY MR. BENSHOOF: 02:30:29

3 Q. Well, let's say No. 12 was. That's -- that is 02:30:30

4 one sample that the Regional Board was relying upon for 02:30:33

5 its allegation; correct? Just pick one, the highest one. 02:30:39

6 A. Okay. I -- 02:30:44

7 MR. CARRIGAN: There's no -- 02:30:49

8 MR. BENSHOOF: Let's say that that -- 02:30:49

9 MR. CARRIGAN: There's no question pending. 02:30:49

10 BY MR. BENSHOOF: 02:30:50

11 Q. Let's say you were -- your further investigation 02:30:51

12 concluded that that particular sample was one of several 02:30:57

13 that was located within the containment structure. 02:31:00

14 I take it you would agree that with that 02:31:03

15 background, there would be no substantial evidence to 02:31:08

16 support an assertion that whatever the release was that 02:31:12

17 was associated with that discharge would have probably 02:31:17

18 found its way into the bay. 02:31:21

19 MR. CARRIGAN: Incomplete hypothetical. 02:31:23

20 THE WITNESS: The statement that's above that 02:31:32

21 table seems to be, I believe, was -- was trying to 02:31:35

22 summarize a conclusion from the table taken in total that 02:31:40

23 the consideration that some of these samples may have 02:31:49

24 been in a containment structure which might have 02:31:53

25 contained them would be certainly a consideration. 02:31:59

1 But the -- the containment structure that's 02:32:07
2 described in the -- in the report is -- is -- is not full 02:32:09
3 containment. There's -- there's possibilities that 02:32:28
4 whatever was contained in that nevertheless left that 02:32:32
5 structure. 02:32:35
6 BY MR. BENSHOOF: 02:32:37
7 Q. But you would agree that that would be 02:32:38
8 speculative? 02:32:40
9 A. Well, examining the evidence in total where 02:32:47
10 there was PCBs found in the soil and PCBs found in the 02:32:51
11 storm drain and PCBs found in the bay, it's -- it's -- I 02:32:58
12 don't -- it's not speculative. It's got more weight than 02:33:04
13 that. 02:33:07
14 Q. But we've already gone through the whole storm 02:33:08
15 drain line of questioning, and you agree that it's now 02:33:11
16 very, very questionable as to whether or not the evidence 02:33:16
17 that you were relying on for there being PCBs from the 02:33:19
18 SDG&E facility, specifically Catch Basin No. 1, even 02:33:25
19 represents anything from the SDG&E facility. You 02:33:32
20 recognize that, don't you, sir? 02:33:36
21 MR. CARRIGAN: Misstates testimony. 02:33:38
22 MR. DART: Join. 02:33:40
23 THE WITNESS: I -- I -- we considered evidence 02:33:40
24 of other contributors to the storm drain that's relevant, 02:33:46
25 as we've discussed. 02:33:51

1 BY MR. BENSHOOF: 02:33:53

2 Q. In other words, you're not asserting that the -- 02:33:56

3 any of the soil sampling at the Silvergate facility is 02:33:59

4 evidence that the -- is substantial evidence that those 02:34:03

5 contaminants detected in Catch Basin No. 1 were from the 02:34:16

6 SDG&E facility, do you? You -- I think we talked about 02:34:23

7 the fact that you probably don't -- wouldn't conclude 02:34:26

8 that there was a PCB source on the roof of that facility. 02:34:30

9 MR. CARRIGAN: Calls for a legal conclusion and 02:34:34

10 misstates witness's testimony. 02:34:36

11 MR. DART: Join. Assumes facts. 02:34:38

12 MR. CARRIGAN: Assumes facts not in the record. 02:34:39

13 THE WITNESS: The -- the DTR asserts that there 02:34:45

14 is a pathway from -- from the SDG&E facility to the storm 02:34:49

15 drain. And those are the facts that I'm aware of. 02:34:57

16 BY MR. BENSHOOF: 02:35:00

17 Q. Right. But, I mean, an assertion isn't 02:35:01

18 evidence. And so this process is trying to identify what 02:35:04

19 evidence any of that is based on. And I think we agreed 02:35:08

20 in our discussion of -- let me just go back. 02:35:14

21 Your answer that the claims against SDG&E were 02:35:18

22 not speculative stated that there were PCBs found in the 02:35:23

23 soil and there were PCBs found in the storm drain and the 02:35:33

24 bay. We've already covered the fact that you never asked 02:35:41

25 anyone to do an analysis as to determine whether or not 02:35:48

1 the PCB contamination in the bay could be explained 02:35:55
2 solely by releases from the shipyard; correct? 02:35:58
3 A. Yes, that was correct. 02:36:03
4 Q. Okay. So that question's never even been asked. 02:36:05
5 Now, I take it the same is true for Catch Basin 02:36:08
6 No. 1. Now, you said there was evidence of PCBs in the 02:36:12
7 storm drain. But obviously, no one ever asked anybody to 02:36:17
8 verify that those came from SDG&E; correct? 02:36:21
9 A. We -- we established what we considered a 02:36:28
10 pathway of PCBs leading from the SDG&E facility to the 02:36:39
11 bay. 02:36:45
12 Q. Okay. Now -- 02:36:46
13 A. And -- 02:36:47
14 Q. Oh, go ahead. I'm sorry. 02:36:48
15 A. Just, you know, based on the conclusions and 02:36:51
16 data that's in the DTR. 02:36:53
17 Q. And I assume that everything we've talked about 02:36:56
18 over the last couple of deposition sessions, you'd 02:36:59
19 probably want to go back and reconsider that conclusion; 02:37:02
20 is that a fair statement? 02:37:05
21 A. Yeah. We've -- we've covered -- the -- the 02:37:11
22 information we've talked about, I think is -- it's all 02:37:15
23 relevant. It all meets the criteria that's described in 02:37:18
24 Resolution 92-49. I'm not sure in the end, after 02:37:22
25 considering it all, whether -- whether it would change 02:37:27

1 the result. 02:37:32

2 Q. Okay. And that's why we've focused on specific 02:37:34

3 pieces of the broad conclusion that the board has 02:37:37

4 reached. But I take it that after all of our discussion 02:37:41

5 today, you recognize that some doubt exists as to what -- 02:37:45

6 who -- who contributed -- 02:37:49

7 A. Yeah. 02:37:51

8 Q. -- to the contamination in SB -- or in 02:37:51

9 Catch Basin No. 1; correct? 02:37:54

10 MR. DART: Vague. Lacks foundation. 02:37:58

11 THE WITNESS: There's -- yeah. I would agree 02:38:02

12 that there's more information the board should consider 02:38:05

13 in the DTR in analyzing that pathway. 02:38:09

14 BY MR. BENSHOOF: 02:38:12

15 Q. And that there may be reasons to disbelieve 02:38:13

16 Mr. Halvax's assertion that SDG&E's facility drained into 02:38:20

17 that catch basin; correct? 02:38:26

18 MR. CARRIGAN: Asked and answered. 02:38:28

19 MR. DART: Join. 02:38:29

20 MR. CARRIGAN: Fifth time over this same topic, 02:38:30

21 Ward? Please. Please, move on. 02:38:32

22 THE WITNESS: Just in my mind, Mr. Halvax's 02:38:43

23 assertion was like an, oh, by the way, bit of 02:38:49

24 information. It was not the primary information we 02:38:56

25 considered in -- in establishing a pathway for SDG&E. 02:39:00

1 BY MR. BENSHOOF: 02:39:05

2 Q. Okay. And likewise, when you say you're not 02:39:06

3 sure if the board's conclusions would change at all, 02:39:18

4 that's understandable because a lot of this information 02:39:23

5 you've heard for the first time; correct? 02:39:26

6 A. Yes. 02:39:29

7 Q. Okay. You've never seen the aerial photographs 02:39:30

8 before that we went over; correct? 02:39:34

9 A. Yes, yes, yes. 02:39:36

10 Q. You've never -- you've never seen the Sanborn 02:39:39

11 maps that locate -- 02:39:42

12 A. No. 02:39:43

13 Q. -- the shipyard facilities. You hadn't known 02:39:43

14 that the 6-inch line that the catch basin drained from a 02:39:47

15 roof and not the facility itself. 02:39:50

16 MR. CARRIGAN: Assumes facts not in evidence. 02:39:52

17 MR. DART: Join. 02:39:54

18 BY MR. BENSHOOF: 02:39:54

19 Q. You hadn't known that the shipyards, at least 02:39:55

20 the sublease area, for 50-some years and had shipbuilding 02:39:57

21 and shipwrecking operations on that area. You hadn't 02:40:02

22 known of the Port's investigation or the results. 02:40:06

23 And I guess the general question would be, even 02:40:09

24 though you don't know where it would come out, would you 02:40:11

25 make the same recommendations today, knowing now what you 02:40:16

1 know, that you did before, which was to include SDG&E 02:40:21
2 within the tentative cleanup & abatement order? 02:40:26
3 MR. DART: Calls for speculation. Calls for a 02:40:31
4 legal conclusion. Assumes facts. Compound. 02:40:32
5 MR. CARRIGAN: Join all. And incomplete 02:40:36
6 hypothetical. 02:40:39
7 THE WITNESS: Yeah. Again, I would agree that 02:40:41
8 all of the information -- or -- or -- or not all, but a 02:40:44
9 lot of the information we've discussed today is relevant 02:40:50
10 to the board's consideration about the degree to which 02:40:54
11 PCB discharges pass through SW4 and in -- in -- into the 02:41:00
12 bay. 02:41:05
13 The -- what I meant by the statement where I 02:41:06
14 said I wasn't sure that it would change the outcome is 02:41:12
15 that under Resolution 92-49, the board is not concerned 02:41:16
16 with making pronouncements about whether one discharge 02:41:28
17 was a de minimis contribution and another was a -- a much 02:41:32
18 larger contribution. 02:41:38
19 The -- the resolution indicates that for a given 02:41:40
20 pollution problem in the bay, that the board should 02:41:47
21 identify responsible parties associated with the 02:41:50
22 discharge. And the degree to which -- the degree of what 02:41:55
23 party was most accountable for the discharge is -- is not 02:42:03
24 part of the board's proceedings in the cleanup and 02:42:07
25 abatement order. 02:42:10

1 BY MR. BENSHOOF: 02:42:11

2 Q. And I -- and you also, I think, explained to us 02:42:13

3 how the board policies require that there be substantial 02:42:17

4 evidence in support of the -- identifying the discharger; 02:42:21

5 correct? 02:42:27

6 A. Yes. 02:42:30

7 Q. And so my question is, Mr. Barker, as you sit 02:42:30

8 here today, knowing what you now know about the evidence 02:42:36

9 that the DTR relied upon, do you believe that there still 02:42:42

10 exists substantial evidence to identify SDG&E as a 02:42:47

11 discharger? 02:42:50

12 MR. CARRIGAN: Calls for a legal conclusion. 02:42:51

13 MR. DART: Join and same objections. 02:42:53

14 BY MR. BENSHOOF: 02:42:54

15 Q. Or is that something you would want to 02:42:55

16 reconsider after learning what you have over the last 02:42:56

17 couple of days? 02:43:01

18 MR. CARRIGAN: Same objections. 02:43:02

19 MR. DART: Join. 02:43:03

20 THE WITNESS: Part of the board's proceedings is 02:43:04

21 we're going to release the document, the -- the tentative 02:43:07

22 CAO and the DTR for comment, and allow submission of 02:43:14

23 additional information on all the issues covered in those 02:43:21

24 documents. And -- and I don't -- I'm not sure if I'm 02:43:25

25 answering your question. But in that process, we will 02:43:34

1 be, in effect, reconsidering everything that's in the 02:43:37
2 document in -- in light of new information that might be 02:43:40
3 coming into the board during that period. 02:43:48
4 BY MR. BENSHOOF: 02:43:50
5 Q. I think you tried to answer the question. I 02:43:50
6 don't think you did. 02:43:54
7 MR. CARRIGAN: I think that's a pretty good 02:43:55
8 answer, actually. 02:43:56
9 MR. BENSHOOF: But that's okay. I know 02:43:58
10 you're -- I know you're making your best efforts to. 02:43:58
11 BY MR. BENSHOOF: 02:44:01
12 Q. I want to get back to -- as part of that 02:44:09
13 reconsideration, Mr. Barker, I wanted to get back to 02:44:12
14 asking you sort of where we started, which is this 02:44:18
15 whole -- everything turns on whether somebody or some 02:44:20
16 business caused discharge which creates or threatens to 02:44:26
17 create a condition of pollution or nuisance. 02:44:34
18 A. Yes. 02:44:37
19 Q. And you agreed early on that not just any 02:44:37
20 discharge does that; correct? Not necessarily? 02:44:42
21 A. Yes. 02:44:48
22 Q. There's got to be a pathway; correct? 02:44:50
23 A. Yes. 02:44:52
24 Q. And does -- did you agree that that -- in order 02:44:53
25 for a discharge to constitute a -- something which 02:45:03

1 creates or threatens to create a condition of pollution, 02:45:12
2 there has to be more than a pathway; there has to be a 02:45:15
3 sufficient mass or volume of that discharge to alter the 02:45:19
4 quality of the receiving waters to the effect that it 02:45:26
5 unreasonably interferes with the beneficial uses of that 02:45:30
6 water? Is that basically not the test that you -- 02:45:35
7 MR. CARRIGAN: Calls for a legal conclusion. 02:45:38
8 BY MR. BENSHOOF: 02:45:38
9 Q. -- the test that you've applied in your role at 02:45:41
10 the water board for a number of years? 02:45:43
11 MR. CARRIGAN: Calls for a legal conclusion. 02:45:46
12 THE WITNESS: I'm -- I'll try to answer your 02:46:03
13 question. In -- in situations where there are more than 02:46:04
14 one discharge to a receiving water, the -- in determining 02:46:12
15 pollution effects, the board looks at the combined 02:46:23
16 effects of the results of the discharges from all the 02:46:26
17 sources in determining whether pollution conditions have 02:46:32
18 been created, and doesn't try to break down the residue 02:46:38
19 to, well, for example, again, this is a hypothetical. 02:46:44
20 But where discharges are going to the same 02:46:52
21 location, we don't try to determine which -- which 02:46:55
22 discharge caused the pollution effects. We determine 02:47:01
23 that there was a -- that there was a discharge into the 02:47:06
24 receiving waters and that the -- the result of -- of 02:47:10
25 the -- all of the discharges into the receiving water has 02:47:18

1 caused or created a pollution, condition of pollution. 02:47:21

2 BY MR. BENSHOOF: 02:47:25

3 Q. So it doesn't make any difference in the board's 02:47:26

4 mind whether or not a particular entity's release in and 02:47:30

5 of itself would have threatened to create any nuisance 02:47:33

6 or -- 02:47:37

7 A. Well -- 02:47:37

8 Q. -- condition of pollution? 02:47:37

9 MR. CARRIGAN: Calls for a legal conclusion. 02:47:39

10 MR. BENSHOOF: No. I meant in his mind as a 02:47:41

11 regulator. 02:47:43

12 BY MR. BENSHOOF: 02:47:43

13 Q. Does that make no difference at all? 02:47:44

14 MR. CARRIGAN: Same objection. 02:47:46

15 THE WITNESS: Well, with respect to -- to PCB 02:47:47

16 discharges into an area where PCBs are accumulating in 02:47:56

17 the sediments to levels that could adversely affect uses, 02:48:03

18 those discharges are prohibited. 02:48:14

19 BY MR. BENSHOOF: 02:48:16

20 Q. Yeah. And I'm not -- my question was slightly 02:48:22

21 different. I'm talking about what you and your practice 02:48:25

22 regards as substantial evidence that a party or an entity 02:48:35

23 has created or threatened to create a condition of 02:48:40

24 pollution. 02:48:43

25 And my question, Mr. Barker, was, are you 02:48:44

1 telling me that it's irrelevant to you in making that 02:48:46
2 judgment whether or not that party's discharge was of 02:48:50
3 sufficient mass or volume to alter the quality of the 02:48:56
4 receiving waters and unreasonably interfere with the 02:49:01
5 beneficial uses of that water? 02:49:05
6 MR. CARRIGAN: Calls for a legal conclusion. 02:49:07
7 THE WITNESS: The mass or volume of discharge 02:49:10
8 is -- is evidence that would be considered in issues 02:49:11
9 involving legacy discharges where the discharges are no 02:49:20
10 longer occurring or -- or -- or where the -- the mass or 02:49:25
11 volume are unknown. It's problematic figuring those type 02:49:31
12 of factors into the equation. I'm not saying they're 02:49:40
13 ruled out. I'm just saying they are -- sometimes that 02:49:44
14 information just does not exist. 02:49:51
15 For example, in this case we -- we don't have 02:49:55
16 data as we would for a sewage treatment plant where the 02:50:04
17 flow is documented on a given day and what the level of a 02:50:08
18 contaminant in the discharge was and -- and that type of 02:50:13
19 thing. With -- with the discharges we're talking about 02:50:16
20 today, where some may have been processed wastewater 02:50:21
21 discharges or discharges that occurred where pollutants 02:50:26
22 were washed into the bay over time, mass and volume 02:50:32
23 are -- are -- are not known. 02:50:36
24 BY MR. BENSHOOF: 02:50:42
25 Q. Well, actually, they are very well known with 02:50:42

1 regard to the discharges of BAE and Southwest Marine as a 02:50:46
2 result of the monitoring reports required since the 02:50:52
3 1970s; correct? They're very well known. 02:50:57
4 A. I -- I would say no, they're not known. The -- 02:51:01
5 the types of monitoring -- as I mentioned earlier, I 02:51:11
6 believe the board for many years did not -- did not 02:51:15
7 regulate or did not require monitoring of the sediment. 02:51:21
8 So the board was not in a position to know what kinds of 02:51:28
9 discharges were getting into the bay. 02:51:31
10 The board required implementation of BMPs to 02:51:33
11 control activities. Discharges -- and the monitoring was 02:51:36
12 not complete monitoring of -- of -- of the discharges. I 02:51:48
13 mean, there were some aspects of the operation that were 02:51:52
14 monitored, and where attempts were made to quantify ways 02:51:56
15 such as in the -- I think one -- one bit of information 02:52:00
16 we used to ask was how much solid waste was collected and 02:52:05
17 disposed of and that type of thing, sandblast waste. But 02:52:12
18 as far as measuring volumes going in the bay, I don't 02:52:15
19 think so. 02:52:19
20 Q. Well, that was one reason I actually, I asked 02:52:22
21 you whether you bothered to look at the federal court 02:52:25
22 trial evidence. Because the judge there apparently 02:52:28
23 didn't have any difficulty in concluding, quote, The 02:52:30
24 evidence conclusively demonstrated that substantial 02:52:33
25 quantities of pollutants from BAE Systems's 02:52:37

1 paint-blasting operations had entered San Diego Bay in 02:52:40
2 BAE Systems' storm water discharges. 02:52:43
3 So that wasn't an unknown to the federal court. 02:52:48
4 But I guess all these years it's been unknown to the 02:52:51
5 board. 02:52:54
6 MR. DART: Object to the characterization. 02:52:55
7 BY MR. BENSHOOF: 02:52:56
8 Q. The board has no clue as to what historically 02:52:57
9 BAE Systems has been discharging into the bay. 02:53:01
10 MR. CARRIGAN: Argumentative. Misstates the 02:53:04
11 witness's testimony. 02:53:06
12 MR. DART: Join. 02:53:07
13 MR. CARRIGAN: I think it may -- do you have -- 02:53:09
14 go ahead. 02:53:11
15 BY MR. BENSHOOF: 02:53:11
16 Q. No. 02:53:12
17 Is it your testimony, Mr. Barker, that you've 02:53:13
18 required all these reports, all this monitoring, going 02:53:14
19 out and sifting the sediment to actually weigh the grams 02:53:19
20 and the sample of paint chips, and all of those reports 02:53:23
21 required over all of these decades by the Water Board has 02:53:27
22 given it no clue as to the extent of impacts caused by 02:53:30
23 BAE Systems, Inc., to this sediment contamination? 02:53:34
24 MR. CARRIGAN: Argumentative. 02:53:38
25 THE WITNESS: The types of monitoring that's 02:53:39

1 done there is to collect evidence of discharge. But it's 02:53:42
2 not the type of monitoring done to -- that could measure 02:53:49
3 volume and mass of discharge. 02:53:55
4 For instance, in sandblasting activities, 02:53:58
5 pollutants could be conveyed into the bay by wind action. 02:54:01
6 The monitoring is not going to detect that kind of 02:54:05
7 release. 02:54:08
8 For many years, there was no storm water 02:54:10
9 monitoring done at the shipyards. That's only been a 02:54:13
10 development since the early '90s. And -- but the period 02:54:21
11 of discharges of concern predate that. So no, the board 02:54:27
12 does not have a complete picture on the -- on the -- on 02:54:33
13 the volume and mass of discharges released, just -- just 02:54:38
14 evidence that the discharges occurred but... 02:54:43
15 BY MR. BENSHOOF: 02:54:48
16 Q. Okay. Did you ask the -- I mean, since the 02:54:51
17 board doesn't have any of that evidence of quantity, 02:54:54
18 would it be relevant for you to inquire as to how the 02:54:59
19 federal court arrived at a conclusion that BAE -- the 02:55:04
20 evidence conclusively demonstrated that substantial 02:55:08
21 quantities of pollutants from BAE were discharged into 02:55:11
22 the bay? I mean, that would help the board, I assume. 02:55:14
23 MR. CARRIGAN: Asked and answered. 02:55:18
24 MR. DART: Object to the extent the statement in 02:55:18
25 the DTR varies from the court findings. 02:55:20

1 THE WITNESS: The -- we -- we took the findings 02:55:26
2 of the court into consideration. And -- and we named BAE 02:55:32
3 as a discharger in the cleanup and abatement order. 02:55:38
4 And -- and the board did not have a need to delve further 02:55:44
5 into that. 02:55:49
6 MR. BENSHOOF: Okay. 02:55:50
7 THE WITNESS: That was a fact that we cited and 02:55:52
8 used as a basis for naming BAE as a discharger in the 02:55:55
9 cleanup order. 02:56:01
10 MR. CARRIGAN: Okay. I think we've been going 02:56:02
11 for quite some time. 02:56:04
12 MR. BENSHOOF: Fair enough. 02:56:05
13 MR. CARRIGAN: Let's go off the record. 02:56:06
14 MR. BENSHOOF: Let's go that. Let's go off the 02:56:07
15 record. I think I'm within 20 minutes or so. 02:56:09
16 THE VIDEOGRAPHER: The time now is 2:56 p.m. 02:56:12
17 Off the record. 02:56:15
18 (A recess was taken.) 02:56:16
19 THE VIDEOGRAPHER: The time now is 3:08 p.m. On 03:08:04
20 the record. 03:08:06
21 BY MR. BENSHOOF: 03:08:06
22 Q. Now, there's lots of information in the record, 03:08:07
23 is there not, Mr. Barker, that -- that quantifies in 03:08:10
24 terms of volume the illicit discharges from BAE? Doesn't 03:08:15
25 the SAR include documents such as Environmental Affairs 03:08:22

1 Spill Elicit Discharge Report Form? We can go through 03:08:27
2 them all, spill elicit discharge log. So it's not true, 03:08:30
3 is it, that the board is without any means to go back and 03:08:35
4 look at its own files and start to quantify the volume of 03:08:38
5 elicit discharges caused by BAE? 03:08:42

6 A. Yes. I would just make the observation that 03:08:46
7 that may not be the total population of elicit 03:08:50
8 discharges. 03:08:56

9 Q. All right. 03:08:57

10 A. And I think the board has -- has done an 03:08:58
11 extensive tabulation of discharges from -- if we're 03:09:11
12 talking about BAE. 03:09:16

13 Q. Yeah. I'm just talking about -- but I'm on 03:09:19
14 volume. Your -- my impression from your prior testimony 03:09:22
15 was that there was no way for the board to estimate 03:09:25
16 volumes of elicit discharges caused by BAE. And my point 03:09:27
17 is, as a matter of fact, there's all sorts of forms that 03:09:32
18 the board has available to it where BAE reported itself 03:09:36
19 what the elicit discharges were and the volumes involved; 03:09:40
20 correct? 03:09:44

21 A. There may have been volumes on some of those 03:09:49
22 reports but not all. Sometimes it might be there was an 03:09:51
23 oil spill or there was an oil sheen in the water or -- 03:09:56
24 I'd have to review them all to see. 03:10:06

25 Q. Well, there's an "Estimated Volume" column on 03:10:08

1 their Spill and Elicit Discharge Log. We can -- we'll 03:10:11
2 just mark that for evidence purposes as next in order. 03:10:14
3 (Exhibit 1277 was marked.) 03:10:18
4 MR. HANDMACHER: 1277? 03:10:31
5 MR. BENSHOOF: And this is SAR document 013619. 03:10:36
6 MR. CARRIGAN: Yeah. 03:10:45
7 BY MR. BENSHOOF: 03:10:45
8 Q. You see that amongst the documents in the 03:10:51
9 administrative record submitted to the board on a 03:10:53
10 periodic basis by Mr. Halvax, this is -- this happens to 03:10:56
11 be his 1988 reports in September, and July is an elicit 03:11:02
12 discharge log that would give the board a basis to 03:11:08
13 calculate volumes? 03:11:11
14 MR. CARRIGAN: Document speaks for itself. 03:11:14
15 MR. BENSHOOF: And then we'll next mark -- 03:11:16
16 BY MR. BENSHOOF: 03:11:17
17 Q. You agree that there's a volume or estimated 03:11:19
18 amount column on that report? 03:11:22
19 A. Yes, yes. 03:11:23
20 Q. And you -- you recognize that there are any 03:11:24
21 number of reports like this in the administrative record 03:11:28
22 available to the Regional Board if it wanted to review 03:11:31
23 volumes associated with BAE? 03:11:35
24 A. Yes. There's volume data for certain types of 03:11:38
25 discharges but not all of the types of discharges that 03:11:41

1 the board was alleging. But like, for example, oil -- 03:11:45
2 oil spills where it was possible to get a volume. And 03:11:51
3 they gave us that information, yes. 03:11:56
4 Q. Now -- and there are, in addition to documents 03:11:59
5 in the record titled "Spill Elicit Discharge Logs," 03:12:12
6 there's also documents in the record, I'll give you one 03:12:15
7 example, SAR 35105, titled "Environmental Affairs Spill 03:12:18
8 Elicit Discharge Report Form." This will be 1278. 03:12:24
9 (Exhibit 1278 was marked.) 03:12:27
10 MR. BENSHOOF: And that's SAR 35105 in this 03:12:30
11 particular example. 03:12:33
12 BY MR. BENSHOOF: 03:12:33
13 Q. And the question is, Mr. Barker, you recognize 03:12:58
14 that the Regional Board has in its files and indeed 03:13:01
15 included in the administrative record a number of 03:13:04
16 different elicit discharge report forms that were filed 03:13:08
17 by BAE? 03:13:11
18 A. Yes. 03:13:14
19 Q. Of which this is one example, 1278? 03:13:15
20 A. Yes. 03:13:18
21 Q. And that a form has a Category No. 3, which 03:13:19
22 reads, "Estimated Volume of the Spill or Elicit 03:13:27
23 Discharge." You recognize that? 03:13:30
24 A. Yes. 03:13:33
25 Q. So if the board wanted to, it could go back and 03:13:33

1 access these reports that it has in its file and 03:13:38
2 determine at least what the volumes were in these reports 03:13:42
3 that were reported to it by BAE; correct? 03:13:43
4 A. Yes, for these types of discharges, yes. 03:13:46
5 Q. Now, as I understand it from your previous 03:13:53
6 testimony, you do believe it is irrelevant to being -- 03:13:56
7 for a party being named as a discharger whether or not 03:14:01
8 its discharge created or threatened to create a condition 03:14:05
9 of pollution in the bay. 03:14:11
10 A. Whether -- 03:14:12
11 MR. CARRIGAN: Calls -- calls for a legal 03:14:14
12 conclusion. Misstates testimony. Go ahead. 03:14:15
13 THE WITNESS: Yeah. The board typically looks 03:14:20
14 at, as far as whether a condition of pollution or 03:14:23
15 nuisance is created in the receiving water, the board 03:14:29
16 examines what is the -- what are the conditions in the 03:14:32
17 receiving water, and then makes decisions about whether 03:14:38
18 the levels of the contaminants in the receiving water, 03:14:46
19 what -- what effects on beneficial uses might -- they 03:14:50
20 might have. 03:14:52
21 BY MR. BENSHOOF: 03:14:52
22 Q. Okay. But that wasn't the question. The 03:14:52
23 question was -- perhaps you indirectly answered it. But 03:14:54
24 my question was more correctly and I'd appreciate you 03:15:00
25 responding to this one. 03:15:02

1 As far as you're concerned, it is irrelevant 03:15:04
2 whether the discharge of a single discharger was in a 03:15:07
3 sufficient mass or volume to itself create or threatened 03:15:15
4 to create a condition of pollution in the bay. 03:15:21
5 MR. CARRIGAN: Calls for a legal conclusion. 03:15:23
6 MR. DART: Join. And it's vague. 03:15:24
7 THE WITNESS: The board, I would say the board 03:15:31
8 would consider that but also consider the extent to which 03:15:34
9 that discharge contributed to a condition of pollution in 03:15:39
10 the bay. 03:15:43
11 BY MR. BENSHOOF: 03:15:43
12 Q. Okay. And am I correct that no where in the 03:15:44
13 DTR -- 03:15:51
14 A. May I -- 03:15:52
15 Q. Oh. 03:15:53
16 A. -- just amplify my answer? 03:15:54
17 Q. Sure. 03:15:57
18 A. Typically, the board looks at discharges in the 03:15:58
19 sense did they cause pollution conditions themselves or 03:16:01
20 contribute to the creation of pollution conditions, cause 03:16:05
21 or contribute. 03:16:10
22 Q. Regardless of whether they may have just been 03:16:11
23 simply a single molecule; is that your testimony? 03:16:13
24 MR. CARRIGAN: Calls for -- 03:16:17
25 BY MR. BENSHOOF: 03:16:18

1 Q. A single molecule discharged by SDG&E would, in 03:16:19
2 your judgment, be sufficient to cause SDG&E to be named 03:16:22
3 as a respondent on a cleanup and abatement order if that 03:16:26
4 single molecule combined with a hundred years' worth of 03:16:30
5 PCB discharges by the shipyard. Is that your testimony, 03:16:34
6 Mr. Barker? 03:16:38

7 MR. CARRIGAN: I believe this one was asked and 03:16:39
8 answered. But I'm also going to object on the basis that 03:16:40
9 it calls for a legal conclusion. 03:16:44

10 MR. DART: Incomplete hypothetical. Join. 03:16:47

11 MR. CARRIGAN: I'll join counsel for BAE also. 03:16:49

12 BY MR. BENSHOOF:

13 Q. Do you need the question repeated? 03:16:55

14 A. No. No. I -- the level and volume of discharge 03:16:57
15 are considerations. And the -- and the contribution of 03:17:04
16 the discharge to the -- to causing or creating pollution 03:17:13
17 conditions in the receiving water is a consideration. 03:17:21

18 Now, how the board would weigh those factors 03:17:26
19 might -- might differ between sites based on 03:17:32
20 site-specific information. And I would again point out 03:17:39
21 that Resolution 92-49 doesn't really -- doesn't comment 03:17:53
22 on de minimis contributions to a pollution condition 03:18:01
23 when -- in -- in the allocation of responsibilities to 03:18:14
24 parties. I guess there's room for judgment there. 03:18:17

25 Q. And I guess that's the -- one of the purposes of 03:18:22

1 my question, Mr. Carlisle -- or excuse me -- Mr. Barker, 03:18:24
2 which was to ask you how you apply judgment, if at all, 03:18:33
3 in making the recommendations which you make for purposes 03:18:39
4 of who should be named as a discharger. 03:18:43
5 And do you in your own judgment give any weight 03:18:46
6 to the volume or mass that's associated with the 03:18:51
7 contribution of that discharger? 03:18:58
8 MR. DART: Asked and answered. 03:19:01
9 MR. CARRIGAN: Join. 03:19:03
10 THE WITNESS: Yes. That's a relevant 03:19:08
11 consideration but not the -- a conclusionary type 03:19:11
12 consideration in and of itself. 03:19:18
13 BY MR. BENSHOOF:
14 Q. Okay. It's relevant. And in what -- in what 03:19:21
15 way was that weighed in connection with the decision to 03:19:23
16 add SDG&E as a discharger? 03:19:27
17 A. To the same extent it was weighed in add -- 03:19:37
18 adding BAE as a discharger. We -- we considered 03:19:39
19 activities that BAE was engaged in and the proximity of 03:19:47
20 those activities to surface waters and potential pathways 03:19:55
21 of release to surface waters and -- and concluded that 03:20:01
22 the levels in the sediment were associated with those 03:20:08
23 activities. And we did the same type of analysis with 03:20:12
24 SDG&E using the site-specific data that's described in 03:20:16
25 the DTR. 03:20:25

1 Q. You made no effort to quantify the volume of 03:20:27
2 releases that were allegedly attributed to SDG&E, did 03:20:33
3 you, sir? 03:20:37
4 A. The volume of releases, no, no. We looked at 03:20:44
5 evidence of -- evidence of releases and -- and -- and 03:20:48
6 whether there was a pathway of that evidence that would 03:20:55
7 link discharges from SDG&E to the sediment contaminant 03:21:02
8 levels out in the bay. 03:21:10
9 Q. Okay. But you did say, and I did ask you this 03:21:11
10 question. And I want to repeat it because I want it 03:21:14
11 answered. 03:21:17
12 I asked you the question, do you -- do you in 03:21:18
13 your own judgment give any weight to the volume or mass 03:21:23
14 that's associated with the contribution of that 03:21:26
15 discharger? 03:21:30
16 MR. CARRIGAN: Asked and answered. 03:21:31
17 MR. BENSHOOF: Right. Join. 03:21:32
18 BY MR. BENSHOOF:
19 Q. And you answered, "Yes, that's a relevant 03:21:35
20 consideration but not a conclusionary type of conclusion 03:21:37
21 in and of itself." 03:21:42
22 But it's fair to say, isn't it, Mr. Barker, that 03:21:43
23 you gave no consideration to that volume issue in 03:21:47
24 connection with SDG&E because you didn't have any 03:21:52
25 information -- your investigation didn't determine any 03:21:54

1 information as to volume or mass? 03:22:01

2 MR. CARRIGAN: Vague. 03:22:03

3 THE WITNESS: No. Our analysis was -- wasn't 03:22:04

4 based on the scale of the contribution. It was just 03:22:07

5 based on whether there was evidence of discharge of PCBs 03:22:11

6 from -- from either SDG&E or BAE. 03:22:19

7 MR. BENSHOOF: Okay. And I'm not -- 03:22:26

8 THE WITNESS: The board did not attempt to 03:22:28

9 allocate responsibility and -- and -- and apportion the 03:22:29

10 pollution between the two facilities. 03:22:38

11 BY MR. BENSHOOF:

12 Q. So as I understand your practice, and you'll 03:22:48

13 need to correct me if I'm wrong, I keep coming back to 03:22:52

14 this -- maybe it's the same question. But I'm getting a 03:22:55

15 different sense from you each time I ask it. 03:22:58

16 It seems to me your practice is, and tell me if 03:23:02

17 I'm wrong, because you read the law as saying if somebody 03:23:06

18 contributed with another, they're also liable. I take it 03:23:10

19 that's the way you read it in terms of a discharger. 03:23:14

20 MR. CARRIGAN: Calls for a legal conclusion. 03:23:16

21 BY MR. BENSHOOF:

22 Q. You would -- you would recommend to the board 03:23:18

23 that there were evidence of the discharge of a single 03:23:19

24 molecule by an entity that they should be added? I take 03:23:24

25 it you wouldn't do that. 03:23:27

1 You can answer. 03:24:50

2 THE WITNESS: Yes. We were -- we were alleging 03:24:51

3 contribution -- contributions to a common pollution 03:24:53

4 problem in the bay from both sources with -- without 03:24:58

5 trying to allocate who was more responsible. 03:25:02

6 BY MR. BENSHOOF:

7 Q. And have you -- do you believe that there's 03:25:08

8 language in the water code that supports that? 03:25:16

9 MR. CARRIGAN: Calls for a legal conclusion. 03:25:19

10 BY MR. BENSHOOF:

11 Q. You've obviously adopted it as a practice that a 03:25:22

12 discharger's discharge does not in itself have to 03:25:26

13 threaten to create a condition of pollution. And so I 03:25:30

14 assume you find in the water code that governs your 03:25:33

15 actions some language that says somebody can be liable if 03:25:36

16 their amount combines with others to create a condition 03:25:43

17 of pollution. 03:25:47

18 MR. CARRIGAN: Calls for a legal conclusion. 03:25:48

19 THE WITNESS: Yes. We believe that how we -- 03:25:50

20 the allegations that we structured met the requirements 03:25:56

21 of Water Code Section 13304. And that the factors we 03:25:59

22 considered met the definition of -- of the -- they 03:26:07

23 provided a basis for us to name both BAE and SDG&E in the 03:26:21

24 order. 03:26:27

25

1 BY MR. BENSHOOF:

2 Q. And you're familiar with the term of 03:26:28

3 "environmental fate model," fate and transport models? 03:26:31

4 A. Yes. 03:26:36

5 Q. And you -- you are aware that various models 03:26:36

6 exist which can determine whether or not the discharge of 03:26:41

7 a particular contaminant from a particular source was 03:26:46

8 released in a sufficient mass to cause a condition of 03:26:49

9 pollution or nuisance elsewhere? 03:26:52

10 MR. CARRIGAN: Calls for expert testimony. 03:26:55

11 You're asking if he's aware of those kinds of models? 03:26:57

12 MR. BENSHOOF: Right. 03:27:00

13 MR. CARRIGAN: Okay. 03:27:01

14 THE WITNESS: Yes. I'm aware that there's -- 03:27:02

15 fate and transport processes are modeled and projections 03:27:03

16 made from that. 03:27:10

17 BY MR. BENSHOOF:

18 Q. Right. And those could have been used to, for 03:27:11

19 example, say assume -- you know, what -- what mass would 03:27:13

20 have had to have been released from the Silvergate 03:27:18

21 substation in order to create a condition in the 03:27:21

22 sediments in excess of the cleanup levels; correct? Such 03:27:24

23 a model could have been used by the board to calculate a 03:27:27

24 mass? 03:27:30

25 MR. CARRIGAN: Lacks foundation. Assumes facts 03:27:31

1 not in evidence. Calls for speculation. 03:27:32

2 THE WITNESS: Yeah. I've never done that type 03:27:45

3 of -- of calculation. I assume it could be done. 03:27:47

4 BY MR. BENSHOOF:

5 Q. Okay. And, in fact, in preparing the DTR and 03:27:52

6 the tentative CAO, no such modeling analysis of that sort 03:28:01

7 was done by the Water Board because of your -- the belief 03:28:08

8 that you've testified to. 03:28:13

9 A. Right. 03:28:15

10 Q. That it was not the board's obligation to show 03:28:15

11 that a discharger's discharges would in and of themselves 03:28:21

12 create a condition of pollution. Is that fair? 03:28:25

13 MR. CARRIGAN: Calls for a legal conclusion. 03:28:28

14 THE WITNESS: No. We did not believe that we 03:28:32

15 had to establish that as a basis. 03:28:35

16 BY MR. BENSHOOF:

17 Q. And in fact, in preparing the DTR and tentative 03:28:41

18 CAO, the Water Board made no effort to assure that the 03:28:44

19 named dischargers were restricted only to those persons 03:28:47

20 where substantial evidence existed that those persons or 03:28:51

21 entities had themselves discharged contaminants in a 03:28:55

22 sufficient mass to cause a condition of pollution in the 03:28:58

23 bay, or threaten to cause such a condition? 03:29:04

24 A. The board's basis was whether a discharger 03:29:11

25 caused or permitted the discharge of -- of waste. And 03:29:13

1 the board believed it established that, as I've 03:29:19
2 mentioned, through upland soils samples that were 03:29:24
3 collected, the storm drain samples that were collected, 03:29:32
4 and the sediment samples out in the bay that were 03:29:36
5 collected. 03:29:39
6 Q. And then the -- so my question was, because of 03:29:40
7 that reason, in preparing the DTR and the tentative CAO, 03:29:42
8 the Water Board made no effort to assure that the named 03:29:47
9 dischargers -- dischargers were restricted to only those 03:29:50
10 persons where substantial evidence existed that such 03:29:55
11 persons had discharged contaminants in a sufficient mass 03:29:57
12 that in itself caused or threatened to cause a condition 03:30:02
13 of pollution in the bay? 03:30:07
14 A. No. Yeah, the board in its analysis of the 03:30:09
15 pollution effects looked at the pollution -- at 03:30:14
16 contaminant levels as they existed in the bay, which were 03:30:19
17 influenced by discharges from the different sources that 03:30:23
18 the board identified. And then so the -- yeah, the board 03:30:26
19 did not attempt to allocate who had the biggest discharge 03:30:32
20 into the area. 03:30:40
21 Q. Or whether that discharge in itself would have 03:30:42
22 threatened to cause a condition of pollution? 03:30:44
23 A. Yes, that's correct. 03:30:46
24 MR. BENSHOOF: That's all I've got. Thank you. 03:30:48
25 MR. CARRIGAN: Okay. Let's go off the record. 03:30:50

1 THE VIDEOGRAPHER: The time now is 3:31 p.m. 03:30:52
2 Off the record. 03:30:54
3 (A discussion was held off the record.) 03:30:55
4 THE VIDEOGRAPHER: This ends Videotape No. 3 in 03:31:47
5 the deposition of David Barker, Volume No. 4. Today's 03:31:50
6 date is March 10th, 2011. The time is now 3:32 p.m. 03:31:54
7 Off the record. 03:31:59
8 (A recess was taken.) 03:32:08
9 THE VIDEOGRAPHER: This begins Videotape No. 4 03:35:31
10 in the deposition of David Barker, Volume No. 4. Today's 03:35:33
11 date is March 10th, 2011. The time is 3:36 p.m. On 03:35:37
12 the record. 03:35:43
13 *** 03:35:43
14 EXAMINATION 03:35:43
15 BY MR. HANDMACHER:
16 Q. Mr. Barker, my name is Jim Handmacher. You 03:35:46
17 recall that I represent Campbell Industries in this 03:35:50
18 matter. 03:35:53
19 I think I just have a few minutes questions for 03:35:53
20 you. You have Exhibit 1263 in front of you, the 1950 03:35:53
21 Sanborn map; is that correct? 03:35:59
22 A. Yes. 03:36:01
23 Q. And do you see in the upper left quadrant of 03:36:02
24 that exhibit where the SDG&E plant is located? 03:36:05
25 A. Yes, I do. 03:36:10

1 Q. And do you see a reference just above on the 03:36:11
2 document "The Plant" where it has a label that says "Open 03:36:14
3 Transformer"? 03:36:19
4 A. Yes. 03:36:24
5 Q. Okay. Does it -- in your experience, would you 03:36:25
6 expect an open transformer located outside of a power 03:36:32
7 plant in 1950 to be within a containment structure? 03:36:36
8 MR. BENSHOOF: I'll object. Calling for 03:36:42
9 speculation. No foundation. 03:36:43
10 THE WITNESS: I -- I -- I don't know what 03:36:48
11 regulations were in effect at that time around 03:36:56
12 transformers. I would assume they were -- would be less 03:37:00
13 stringent than what is required now. 03:37:06
14 MR. BENSHOOF: Move to strike the latter 03:37:08
15 assumption as speculative. 03:37:10
16 BY MR. HANDMACHER:
17 Q. Do you know what is meant by the phrase "open 03:37:14
18 transformer"? 03:37:18
19 MR. BENSHOOF: Same thing, calling for 03:37:20
20 speculation. Lacks foundation. 03:37:22
21 THE WITNESS: No. Just reading that phrase, 03:37:23
22 I'm -- I'm not sure what that means. 03:37:26
23 BY MR. HANDMACHER:
24 Q. Let me have you turn to Finding 6 of the DTR. 03:37:32
25 I'll direct your attention to page 6-3. I believe this 03:37:39

1 is Master Exhibit 2. Do you have that in front of you? 03:37:51

2 A. Yes. 03:37:57

3 Q. Okay. And you recall that Finding 6 is the 03:37:57

4 finding regarding Campbell Industries? 03:38:00

5 A. Yes. 03:38:02

6 Q. Okay. And you were the -- designated as the 03:38:02

7 person most knowledgeable regarding Finding 6; is that 03:38:05

8 correct? 03:38:09

9 MR. CARRIGAN: Counsel, we don't have a 03:38:14

10 designation for a PMK on this topic. But Mr. Barker was 03:38:15

11 the supervisor for the project. 03:38:20

12 BY MR. HANDMACHER:

13 Q. Let me direct your attention, then, to page 6.3. 03:38:23

14 In the middle of the page is the paragraph that starts, 03:38:30

15 "In my letter dated March 5, 2004, Mr. Fernstrom of Marco 03:38:32

16 responded to the San Diego Water Board's investigative 03:38:38

17 order." 03:38:41

18 Do you see that paragraph? 03:38:42

19 A. Yes. 03:38:42

20 Q. And that's referring to a letter that 03:38:43

21 Mr. Fernstrom sent to the Water Board in -- in 2004; is 03:38:45

22 that correct? 03:38:48

23 A. Yes. 03:38:48

24 Q. And I want to go through with you briefly the -- 03:38:50

25 the statements that were made in Mr. Fernstrom's letter 03:38:52

1 as they are quoted on page 6.3. 03:38:58

2 He states in the second sentence that "Marco has 03:39:06

3 undertaken an internal search and has no information 03:39:09

4 pertaining to and has found no records of any alleged 03:39:13

5 Marco and/or Campbell Industry operations within or 03:39:16

6 adjacent to the current Southwest Marine leasehold from 03:39:20

7 1914 to 1979 or any other time." 03:39:24

8 Do you have any evidence that that statement is 03:39:29

9 incorrect? 03:39:31

10 A. The evidence that we have concerning Marco 03:39:55

11 would -- would be up in the second paragraph of page 6-3. 03:40:01

12 Q. Well, the sentence that I was just -- just read 03:40:10

13 to you, and I won't repeat it, is a statement as to the 03:40:12

14 steps that Marco had taken and the information that it 03:40:17

15 had found; is that correct? 03:40:21

16 A. Yes, that's what we understood. 03:40:23

17 Q. And do you have any evidence that the steps that 03:40:25

18 Marco had undertaken and the information that it found as 03:40:27

19 reported in this letter are inaccurate as of 2004? 03:40:31

20 A. At -- when we constructed this section, we felt 03:40:39

21 there was a disconnect between the February 2004 letter 03:40:46

22 and our findings up in -- in paragraph 2. 03:40:50

23 Q. What is the nature of that disconnect? 03:41:01

24 A. That -- where it's -- it indicated the stock of 03:41:03

25 Campbell Industries was acquired by Marco Holdings -- oh, 03:41:16

1 excuse me -- in 1979. And -- and the statement that was 03:41:23
2 in the letter said that there were no records of Marco or 03:41:33
3 Campbell Industry operations within or adjacent to the 03:41:44
4 Southwest Marine leasehold from 1914 to -- to 1979 or any 03:41:49
5 other time. And so we felt that we had evidence that had 03:41:56
6 pointed to a different conclusion. 03:42:10
7 Q. Did you have any evidence that in 2004, 03:42:12
8 Campbell Industries or Marco had any records of its 03:42:15
9 earlier operations at the site? 03:42:19
10 A. No. We only knew what evidence that -- that the 03:42:30
11 board had. 03:42:34
12 Q. Okay. So let me get back to the statement 03:42:35
13 that's in the letter, not whether or not you found any 03:42:38
14 evidence of Campbell's operations at the site, which are 03:42:41
15 not really disputed here. 03:42:44
16 The question I'm asking you is whether the 03:42:46
17 statement in the letter that Marco had undertaken an 03:42:49
18 internal review search and had located no records of its 03:42:52
19 earlier -- of any earlier operations at the site, do you 03:42:56
20 have any reason to think that statement is not true? 03:42:59
21 A. I'm hesitating a little bit because I believe we 03:43:25
22 commented on that further in the DTR. Let me just take a 03:43:28
23 minute to scan it quickly, and I'll -- yeah. 03:43:36
24 We, at the bottom of 6-3, had concluded that 03:43:44
25 Marco was not being responsive to the directives of the 03:43:50

1 order, of the investigative order. So we were -- I don't 03:43:54
2 know that we were -- I guess we were taking -- we were 03:44:01
3 taking issue with that. We -- we felt Marco was not 03:44:09
4 being responsive. 03:44:15

5 Q. How is it not responsive to look for documents 03:44:18
6 and then report that no such documents could be found? 03:44:20

7 A. We were drawing the conclusion that because of 03:44:39
8 the information that's up in paragraph 2, that we felt 03:44:44
9 Marco did have documents; although, we had no proof of 03:44:52
10 that. But we were -- we were viewing the type of 03:44:58
11 response we got from Marco as -- as not being forthcoming 03:45:02
12 and responsive. 03:45:08

13 We felt there was more information than what 03:45:11
14 Marco was indicating to us. But we weren't certain what 03:45:16
15 that information was. We had information that Marco had 03:45:20
16 an interest in the operations at the Southwest Marine 03:45:26
17 leasehold, and Marco seemed to be indicating that they -- 03:45:30
18 that they had no information and no records of it. And 03:45:34
19 so we -- I guess we -- we felt that was not being 03:45:42
20 responsive to the investigative order that had been 03:45:53
21 issued. We felt -- that's all I can say. 03:45:56

22 Q. Let's move on to the next sentence that was 03:46:00
23 contained in that letter. It said, "Marco" -- which is 03:46:02
24 defined in the letter as Marine Construction and Design 03:46:05
25 Company, "has no California operations or offices." 03:46:09

1 Do you have any evidence that that statement is 03:46:12
2 not true? 03:46:13
3 A. No. 03:46:16
4 Q. The next sentence said, "The Campbell Industries 03:46:17
5 subsidiary terminated all California operations in 1999 03:46:19
6 at Eighth Avenue and Harbor Drive." 03:46:25
7 Do you have any evidence that that statement is 03:46:28
8 not true? 03:46:30
9 A. No. 03:46:31
10 Q. The last sentence says, "The records we have 03:46:35
11 from California-based operations pertain to the Campbell 03:46:37
12 Shipyard Site at Eighth and Harbor and CAO 95-21." 03:46:40
13 Do you have any evidence that that statement is 03:46:46
14 not true as of the time this letter was written in 2004? 03:46:47
15 A. No. We had no -- no evidence. Although, we -- 03:47:03
16 the next paragraph we had drawn the conclusion that Marco 03:47:08
17 was not being responsive. We felt that the information 03:47:12
18 we had in paragraph 2 is information Marco should have 03:47:18
19 known. 03:47:26
20 THE COURT REPORTER: Should have what? 03:47:26
21 MR. CARRIGAN: Known. 03:47:26
22 THE WITNESS: Known. 03:47:26
23 THE COURT REPORTER: Thank you. 03:47:26
24 BY MR. HANDMACHER: 03:47:26
25 Q. Okay. Campbell Industries has been actively 03:47:32

1 involved in the Water Board proceedings and the mediation 03:47:34
2 for the Water Board proceedings since April of 2009; is 03:47:38
3 that correct? 03:47:41
4 A. Campbell Industries? 03:47:42
5 Q. Isn't that what I said? 03:47:47
6 A. Yes. 03:47:49
7 Q. And Campbell Industries has provided substantial 03:47:51
8 amount of information to the Cleanup Team since April of 03:47:56
9 nine -- 2009 as to the nature of its operations or its 03:48:00
10 ownership of the site and operation at the site from 1972 03:48:09
11 to 1979; correct? 03:48:14
12 A. Yes. 03:48:16
13 Q. And would you agree with me that since 03:48:17
14 Campbell Industries became involved in the Water Board 03:48:20
15 proceedings in April of 2009, that Campbell Industries 03:48:24
16 has been responsive to the Water Board's directive to 03:48:28
17 provide information regarding its operations? 03:48:33
18 A. Yes, to my knowledge. 03:48:36
19 Q. So as of the latest draft of the DTR, which is 03:48:38
20 what we're looking at that was issued in September of 03:48:43
21 2010, wouldn't you agree as of that time that the 03:48:46
22 determination that Marco or Campbell Industries was -- is 03:48:52
23 not responsive is no longer a basis for naming Marco or 03:48:56
24 Campbell Industries as a discharger? 03:49:02
25 A. I guess we might say was initially not 03:49:10

1 responsive. 03:49:14

2 Q. But at this point in time, it's no longer a 03:49:17

3 basis for naming Campbell Industries or Marco as a 03:49:20

4 discharger in these proceedings; correct? 03:49:23

5 A. I think I'm hesitating a little bit because I'd 03:49:25

6 like the cleanup order in front of me that names the 03:49:29

7 parties. But -- 03:49:33

8 Q. Okay. Take a look at the tentative CAO, 03:49:35

9 Exhibit 1, and look at paragraph 6. 03:49:39

10 A. Okay. 03:49:48

11 Q. Under the heading "Persons Responsible," it 03:49:52

12 refers to Campbell Industries, doesn't it? 03:49:54

13 A. Yes, it does. 03:49:56

14 Q. And there's no reference in there of Marco, is 03:49:57

15 there? 03:49:59

16 A. That's correct. 03:50:00

17 Q. And the Cleanup Team is not recommending that 03:50:01

18 Marine Construction Design Company be named as a 03:50:05

19 discharger in these proceedings, is it? 03:50:08

20 A. No. 03:50:11

21 Q. So going back, then, to Finding 6 in the DTR and 03:50:13

22 paragraph -- the language we've been looking at on 03:50:20

23 page 6.3, which says that Marco was not responsive and 03:50:22

24 Marco should be named as a discharger, would you agree 03:50:27

25 that language is no longer appropriate for the -- the 03:50:30

1	DTR?	03:50:32
2	A. Potentially so. I would reserve the -- would	03:50:37
3	want to discuss that with legal counsel. That's not a	03:50:41
4	matter that I've paid close attention to in all of the	03:50:44
5	information that's been -- we've been analyzing with	03:50:49
6	this. But legal counsel has evaluated that.	03:50:53
7	MR. HANDMACHER: I have no further questions.	03:50:58
8	Thank you.	03:50:59
9	MR. CARRIGAN: Let's go off the record.	03:51:00
10	THE VIDEOGRAPHER: Time now is 3:51 p.m. Off	03:51:01
11	the record.	03:51:03
12	(A recess was taken.)	03:51:04
13	THE VIDEOGRAPHER: The time now is 3:53 p.m. On	03:53:31
14	the record.	03:53:33
15	***	03:53:34
16	FURTHER EXAMINATION	03:53:34
17	BY MR. WATERMAN:	
18	Q. Mr. Barker, my name is Ryan Waterman. I'm an	03:53:35
19	attorney for Latham and Watkins, and we represent NASSCO	03:53:38
20	in this proceeding.	03:53:42
21	I understand that you've already given several	03:53:43
22	days of testimony with Mr. Richardson on behalf of -- in	03:53:45
23	testifying on behalf of NASSCO or behalf of the	03:53:50
24	Regional Board to NASSCO's questions.	03:53:52
25	So my questions are just going to be limited to	03:53:54

1 follow-up questions that continue lines of questioning 03:53:56
2 that you had already -- you already testified to. So 03:54:00
3 hopefully this is just to clarify and to follow up on 03:54:02
4 things where you had previously testified, and we just 03:54:06
5 want a little bit more information to clear up the 03:54:10
6 record. 03:54:12
7 A. Okay. 03:54:13
8 Q. I appreciate all your patience over these last 03:54:14
9 few days. You've really put a lot of energy and thought 03:54:16
10 into this. I really appreciate it. 03:54:23
11 A. Okay. Thank you. 03:54:24
12 Q. I'd like to start with what's been termed, I 03:54:29
13 think, the Commercial Basin -- Basin Boatyards CAOs. 03:54:33
14 Do you recall whether there was any testing done 03:54:38
15 there to determine whether there were benthic effects 03:54:40
16 from TBT, mercury, and PCBs? 03:54:43
17 A. These cleanups were done -- or the 03:54:55
18 investigations were done in the late 1980s or in the 1988 03:55:00
19 time frame, roughly. And this was about the time when 03:55:08
20 sediment quality triad analysis was first emerging as 03:55:12
21 a -- as the state-of-the-art way to analyze sediment. 03:55:16
22 And I -- I -- I know that sediment chemistry and 03:55:23
23 toxicity values were collected. I'm not sure if the 03:55:27
24 benthic community values were collected at that time. 03:55:31
25 The -- I think the Port District at some point 03:55:38

1 in time did some analysis of benthic communities in more 03:55:41
2 recent years over there, just to see what the health of 03:55:46
3 the communities were in present day. But I never saw the 03:55:50
4 results of that. 03:55:55
5 Q. Okay. I'm going to hand you what's been 03:55:56
6 previously marked as Barker deposition Exhibit 1225. 03:55:58
7 A. Okay. 03:56:03
8 Q. This is the -- just to summarize, this is the 03:56:16
9 Bay City Marine CAO. Do you agree that that's what that 03:56:18
10 is? 03:56:22
11 A. Yes. 03:56:23
12 Q. Looking at paragraph 13, which appears on 03:56:26
13 page CUT 009712, towards the bottom of that paragraph, do 03:56:30
14 you see where there were tests done on *Macoma nasuta*, a 03:56:37
15 species also used in testing at the shipyards? 03:56:42
16 A. Okay. Yes, I see that. 03:57:10
17 Q. And at paragraph 20, which appears on 03:57:12
18 pages CUT 009714 and runs on to 9715, do you see that 03:57:15
19 there were benthic toxicity tests including the ten-day 03:57:24
20 amphipod survival test and the bivalve larvae survival 03:57:29
21 test? 03:57:36
22 A. Yes. I see that. 03:57:42
23 Q. Would you expect benthic test organisms like the 03:57:43
24 amphipods, the bivalves, *Macoma nasuta* to respond to 03:57:46
25 contaminants like TBT, mercury, and PCBs the same way, 03:57:54

1 whether they were measured from the commercial basin's 03:58:01
2 shipyard area or the shipyard site that's at issue, the 03:58:08
3 tentative CAO in this case? 03:58:13
4 MR. CARRIGAN: Compound. 03:58:18
5 THE WITNESS: The -- the theory of the toxicity 03:58:19
6 test was the same, just analyzing the sediment under 03:58:24
7 laboratory conditions with test organisms. There -- 03:58:28
8 the -- the -- I'm not sure of what test organisms were 03:58:34
9 used here versus whether those same ones were in the 03:58:41
10 shipyard sediment analysis. That could have yielded 03:58:46
11 different results. And any changes in laboratory 03:58:53
12 procedures, et cetera, but from the 1980s to now could -- 03:59:00
13 might -- might have a bearing, yes. 03:59:07
14 Q. But if all things were hypothetically equal, the 03:59:09
15 test subject species were drawn from the same area, if 03:59:13
16 those species were exposed to TBT, mercury, or PCBs drawn 03:59:17
17 from the Commercial Basin's shipyard, you would expect 03:59:22
18 those organisms under test conditions to react the same 03:59:26
19 way that they would if contaminants of concern were drawn 03:59:29
20 from the shipyard site. 03:59:35
21 MR. CARRIGAN: Incomplete hypothetical. 03:59:37
22 THE WITNESS: Well, the levels that the -- the 03:59:38
23 type of sediment, there might be differences in that 03:59:45
24 between the sites, maybe in terms of the actual levels of 03:59:48
25 the contaminants, I'm not sure which site had higher 03:59:54

1 levels. The amount of the pollutant that would bind to 03:59:59
2 the sediment and not be bioavailable to the test 04:00:03
3 organisms may have been different. 04:00:07
4 So it's -- it's possible that you -- you could 04:00:09
5 take sediment from one site and get one result in the 04:00:13
6 toxicity test and go to another site for those reasons 04:00:17
7 and get a different result. 04:00:22
8 Q. Do you have any reason to believe that the 04:00:25
9 sediment at the Commercial Basin shipyard would result in 04:00:27
10 higher toxicity or lower toxicity to those types of 04:00:32
11 organisms than the shipyard site sediments? 04:00:37
12 A. The findings would be -- would -- it would be 04:00:44
13 interesting to look at that. I -- I'm just remembering 04:00:49
14 one thing the board was criticized for was trying to take 04:00:54
15 findings on the toxicity sample from the Campbell 04:01:00
16 Shipyard Site and -- and -- and transfer those findings 04:01:08
17 to the NASSCO site, that a couple of peer reviewers told 04:01:11
18 us that was scientifically inappropriate to do that. 04:01:17
19 Q. What report are you referring to, what peer 04:01:21
20 reviewers are you referring to? 04:01:24
21 A. There was a peer review report done towards the 04:01:26
22 end of the 1990s. Steve Bay from SCCWRP was one of the 04:01:33
23 reviewers. And I think an individual, Rusty Ferry, was 04:01:40
24 another one. And there was a third consult -- peer 04:01:47
25 reviewer that kind of represented the shipyard industry. 04:01:51

1 And all three kind of -- the board had a 04:01:55
2 proposal underway at that time to try to transfer the 04:01:57
3 findings from the Campbell Shipyard Site and use those 04:02:02
4 same finding in lieu of a site-specific investigation. 04:02:09
5 And so these three peer reviewers looked at that, and I 04:02:14
6 think two of the three indicated it was inappropriate. 04:02:18
7 Q. So if I understand your testimony correctly, 04:02:23
8 what would matter in terms of comparing reactions of test 04:02:25
9 organisms to substances that are in sediment, whether 04:02:31
10 it's from one site or another, would be things like grain 04:02:36
11 size of the sediment, maybe total organic carbon content, 04:02:39
12 maybe bioavailability of those substances in sediment; is 04:02:46
13 that correct? 04:02:50
14 A. Yes. Yes. And the pattern and mixture of, you 04:02:50
15 know, what suite of contaminants, in addition to the one 04:02:56
16 you're focusing on, might also be present. 04:02:59
17 Q. Yeah. And obviously levels of contaminants, as 04:03:02
18 well? 04:03:05
19 A. Right. The mixture of those, the different 04:03:05
20 types, et cetera. 04:03:07
21 Q. Would the size or the complexity of the 04:03:10
22 commercial operations at the -- if we were to isolate the 04:03:13
23 size and the complexity of the commercial operations in 04:03:18
24 one place versus another, would that factor into your 04:03:23
25 analysis as to whether benthic -- or these test organisms 04:03:25

1 would react more or less favorably under test conditions 04:03:35
2 to these substances? 04:03:39
3 A. No. I -- I -- I don't -- I don't believe so. 04:03:43
4 It would just be the-- the other factors I discussed. 04:03:45
5 Q. Do you mind if I grab that back? Thanks. 04:03:54
6 Last week you discussed some of the impacts that 04:04:00
7 would result from dredging to the mature benthic 04:04:03
8 communities and eelgrass beds that are already present at 04:04:06
9 the shipyard site. Do you remember that? 04:04:10
10 A. Yes. 04:04:12
11 Q. Would differences in physical characteristics of 04:04:12
12 the sediment surface after dredging affect what type of 04:04:15
13 benthic community will colonize after the dredging is 04:04:19
14 finished? 04:04:22
15 MR. CARRIGAN: Calls for an expert opinion. 04:04:24
16 THE WITNESS: Would -- would difference in the 04:04:26
17 sediment composition? 04:04:29
18 MR. WATERMAN: Right. 04:04:31
19 THE WITNESS: I suppose that might -- might 04:04:32
20 affect what type of benthic community, yes. 04:04:35
21 BY MR. WATERMAN:
22 Q. Counsel, is he not the person most knowledgeable 04:04:41
23 for the Regional Board on benthic community -- benthic 04:04:43
24 communities? Isn't he here to give that expert opinion? 04:04:48
25 MR. CARRIGAN: Yes, he is. I apologize. I 04:04:51

1 have -- had yet to shift gears into that speed. I'll 04:04:53
2 withdraw my objection. 04:04:56
3 MR. WATERMAN: Thank you. 04:04:59
4 BY MR. WATERMAN:
5 Q. Can you predict with any level of confidence 04:05:00
6 what type of benthic community would be reestablished 04:05:03
7 after the dredging is complete? 04:05:06
8 A. The assumption is -- is made by regulatory 04:05:18
9 agencies that benthic communities will eventually 04:05:22
10 reestablish themselves. 04:05:25
11 The -- the board, to my knowledge, has never 04:05:28
12 gotten into the fine points of comparing what type of 04:05:40
13 benthic community reemerged at a site following dredging 04:05:46
14 versus what type of benthic community was there before 04:05:51
15 dredging, as typically in the board's sediment cleanup 04:05:55
16 orders to date, there -- there really wasn't 04:06:04
17 post-remediation monitoring conducted to obtain that kind 04:06:07
18 of information. 04:06:14
19 And when we -- as we developed the current CAO, 04:06:14
20 we were careful to insert that in there because we felt 04:06:23
21 it was a data gap that we needed to fill. 04:06:26
22 Q. So your answer there is that, at least based on 04:06:30
23 the Regional Board's experience to date, you have no 04:06:32
24 basis on which to predict with any level of confidence 04:06:34
25 what type of benthic community will be reestablished 04:06:38

1 after the dredging? 04:06:41

2 A. Yeah. The board has not attempted to do that, 04:06:42

3 no. 04:06:44

4 Q. Is there any research that you're aware of in 04:06:45

5 the literature that discusses that type of an analysis? 04:06:47

6 A. There's -- there are documents I've seen that -- 04:06:53

7 that have indicated that for the regulatory agency to 04:06:59

8 consider whether the cure is worse than the disease with 04:07:09

9 respect to benthic communities, whether it is appropriate 04:07:13

10 to dredge and disrupt and destroy those communities than 04:07:18

11 it would have been just to take some other remediation 04:07:23

12 strategy and -- and strategy that would involve less 04:07:28

13 disruption to the benthic communities there on the site. 04:07:38

14 Q. Can you give me some examples where the cure is 04:07:41

15 worse than the disease to the benthic communities? 04:07:43

16 A. Maybe one -- one hypothetical might be where 04:07:48

17 there's contaminants in -- in the sediment that are above 04:07:58

18 background levels. But the extent and magnitude of those 04:08:02

19 levels is such that the board might look to some kind of 04:08:06

20 natural attenuation strategy to address any concerns 04:08:18

21 about the effects of -- of the contaminants on beneficial 04:08:26

22 uses and just leave things alone. 04:08:31

23 Q. Is it possible that invasive -- invasive 04:08:34

24 species, for example, could recolonate -- recolonize and 04:08:36

25 replace what would otherwise have been there -- what is 04:08:41

1 currently there as a benthic community? 04:08:44

2 A. I guess invasive species are a possibility at 04:08:52

3 any -- any site. I'm not personally familiar with the 04:08:57

4 pathway for -- at a dredge site of how invasive species 04:09:01

5 might be introduced to the site. But I suppose it's a 04:09:06

6 possibility. 04:09:09

7 Q. Can you predict with any level of confidence -- 04:09:12

8 well, let me -- let me step back and ask another question 04:09:17

9 first. 04:09:19

10 Would the existing eelgrass beds at the shipyard 04:09:20

11 site be affected by dredging the way the dredging 04:09:25

12 footprint is set up in the tentative CAO? 04:09:28

13 A. I haven't reviewed where the eelgrass -- grass 04:09:32

14 beds are in relation to the dredge footprint to answer 04:09:37

15 that question. 04:09:42

16 Q. If they are within the dredge footprint, would 04:09:45

17 they be destroyed by the dredging. 04:09:47

18 A. I would think they -- they would be disrupted or 04:09:49

19 destroyed, yes. 04:09:52

20 Q. Can you predict with any level of confidence 04:09:53

21 whether eelgrass beds could be reestablished after the 04:09:55

22 dredging? 04:09:58

23 A. That is one type of mitigation that is commonly 04:09:59

24 employed for sediment remediation action or other 04:10:04

25 dredging that's conducted in the bay that the resource 04:10:09

1 agencies look to, to re-establish eelgrass beds at 04:10:14
2 another location in the bay, yes. 04:10:20

3 Q. Last week you testified about the remedy 04:10:24
4 monitor -- monitored natural attenuation, or MNA? 04:10:26

5 A. Yes. 04:10:35

6 Q. Do you agree that the monitoring portion of MNA 04:10:35
7 is an important component of the remedy? 04:10:38

8 A. Yes. Yes, I would. For a site as -- for 04:10:43
9 instance, if that were employed at the shipyard site, 04:10:53
10 that would be a very important component, I would think. 04:10:56

11 Q. And that was because it's necessary to confirm 04:10:59
12 whether there is natural attenuation occurring; is that 04:11:02
13 correct? 04:11:05

14 A. Yes. And also to confirm permanent containment 04:11:06
15 of the contaminants of concern. 04:11:11

16 Q. In your experience, if the Regional Board 04:11:16
17 selected MNA as a remedy, but monitoring shows that the 04:11:18
18 remedy is not working as expected, does the 04:11:23
19 Regional Board then consider imposing another remedy to 04:11:26
20 address the situation? 04:11:30

21 A. I would think they could. 04:11:31

22 Q. Would one benefit of selecting monitored natural 04:11:36
23 attenuation as the remedy for the shipyard site be 04:11:40
24 avoiding the destruction of mature benthic communities 04:11:43
25 and eelgrass beds that are already there? 04:11:47

1 might have a greater pollutant load than later events? 04:13:23

2 MR. WATERMAN: Yes. 04:13:28

3 THE WITNESS: I mean, there's different 04:13:30

4 assumptions one could make. You -- you could -- all 04:13:31

5 things being equal, the initial rain events might have a 04:13:36

6 higher pollutant load than later events in the season, 04:13:47

7 yes. 04:13:50

8 BY MR. WATERMAN:

9 Q. That's because during the dry season when 04:13:51

10 there's no storm water flows, pollutants can accumulate? 04:13:53

11 A. Yes. 04:13:57

12 Q. So if one's going to accurately measure the 04:13:58

13 impact of pollutant loading from storm water flow into 04:14:01

14 San Diego Bay, would one want to measure pollutant 04:14:04

15 concentrations early in the rainy season as opposed to 04:14:10

16 later in the rainy season to get a better measurement of 04:14:13

17 that first flush effect? 04:14:17

18 A. Yeah, the pollutant loads could vary. And that 04:14:20

19 would be certainly a consideration that could be cranked 04:14:35

20 into the analysis. 04:14:42

21 Q. How would they vary? 04:14:52

22 A. Just -- well, the intensity of storms can -- can 04:14:56

23 vary. For instance, you could have lower residual 04:15:02

24 samples on the ground because it's later in the rainy 04:15:08

25 season but a higher rate of flow. And then so in terms 04:15:14

1 of mass, it's -- could be -- it -- it could -- could 04:15:18
2 still equate to earlier in the season where maybe a 04:15:25
3 rainfall event of -- that's less duration, less flow 04:15:30
4 involved but higher concentrations, if you kind of follow 04:15:35
5 what I'm saying. It's -- the mass of a discharge is 04:15:40
6 related both to the concentration of a contaminant and 04:15:45
7 the flow volume one assumes in computing that mass. 04:15:49
8 Q. But we could, as scientists could measure the 04:15:53
9 flow and the contaminant loading and create a ratio; is 04:15:56
10 that right? 04:15:59
11 A. Yeah. I believe you can model and make all 04:16:01
12 kinds of assumptions assume -- assuming there's a 04:16:04
13 rational basis for doing that, yeah. 04:16:07
14 Q. And under your -- your hypothetical where 04:16:11
15 earlier storm events have less flow, wouldn't you still 04:16:13
16 expect to see higher pollutant loading because of that 04:16:17
17 buildup during the dry season? 04:16:20
18 MR. CARRIGAN: Incomplete hypothetical. 04:16:22
19 THE WITNESS: It's possible it could -- could be 04:16:26
20 higher. It's -- you know, as I said, you could have a 04:16:28
21 bigger storm later in the season. And even though the 04:16:35
22 contaminant levels are low, the mass discharge could be 04:16:40
23 the same or more. 04:16:43
24 BY MR. WATERMAN:
25 Q. But on a proportional basis comparing flow and 04:16:45

1 contaminant loading, would you expect the earlier storm 04:16:48
2 events to have a higher concentration of contaminants for 04:16:51
3 flow than later events? 04:16:55
4 A. Yeah. 04:16:57
5 MR. CARRIGAN: Same objections. 04:16:57
6 THE WITNESS: I mean, that -- we would be 04:16:58
7 interested in that analysis and thinking about it and 04:17:00
8 what would be the best way to model that, yes. 04:17:04
9 BY MR. WATERMAN:
10 Q. But you don't have an opinion one way or the 04:17:07
11 other? 04:17:09
12 A. No, not right now, no. 04:17:10
13 Q. I thought I heard you testify earlier to the 04:17:12
14 concept of first flush events. 04:17:14
15 A. Yes. 04:17:17
16 Q. What did you mean by that? 04:17:17
17 A. These are -- there's a -- I can't remember 04:17:20
18 exactly how it is spelled out in the discharge permits. 04:17:29
19 But -- but it -- it involves the -- the determination 04:17:33
20 or -- it involves the concern with pollutant loads that 04:17:42
21 occur at a certain time period after a storm begins. 04:17:48
22 Because in a given storm event, the -- the pollutant load 04:17:53
23 typically decreases in a -- as the duration of the 04:18:01
24 event -- with the duration of the event. 04:18:13
25 And so the -- the first flush would be the 04:18:19

1 beginning of the storm that's -- that's coming into 04:18:21
2 contact with pollutants that have been, in theory, 04:18:26
3 accumulating and would have a higher load at the 04:18:28
4 beginning of the storm than later in the storm. 04:18:31
5 Q. Thank you. 04:18:35
6 I'd like to give you an excerpt of the DTR, 04:18:36
7 Volume 1. It's drawn from Section 4. And I've 04:18:41
8 highlighted some pieces of the -- the document. This is 04:18:46
9 master -- it's drawn from Master Exhibit 2A. 04:18:51
10 Did I represent that document properly? 04:19:00
11 A. Master Exhibit 2A. 04:19:03
12 Q. Just that it's part of DTR Volume 1. 04:19:06
13 A. Oh, yes. 04:19:08
14 Q. Looking at the -- looking at page 4-14, there's 04:19:13
15 a portion, I've highlighted it toward the top. 04:19:17
16 Do you see where it says, "Storm water outflows 04:19:20
17 from Chollas Creek has contributed to the accumulation of 04:19:23
18 pollutants in marine sediment at the Shipyard Sediment 04:19:27
19 Site"? 04:19:29
20 A. Yes. 04:19:33
21 Q. Do you have any reason to disagree with that 04:19:33
22 statement in the DTR? 04:19:35
23 A. No. 04:19:37
24 Q. A little further down on page 4-14 where the DTR 04:19:39
25 is discussing the shift study findings, do you see where 04:19:43

1 it says that, "Storm water plumes emanating from 04:19:47
2 Chollas Creek extended between 0.02 and 2.25 square 04:19:50
3 kilometers over San Diego Bay during small to moderately 04:19:57
4 sized storm events"? 04:20:02
5 A. Yes. 04:20:04
6 Q. And that toxicity extended up to one kilometer 04:20:05
7 from the mouth of Chollas Creek? 04:20:12
8 A. Yes. 04:20:14
9 Q. Wouldn't those areas mentioned in the shift 04:20:15
10 report include the inner portion of the NASSCO shipyard? 04:20:17
11 A. Yeah. Yes, we believe that these were facts we 04:20:28
12 were -- were documenting here in support of the statement 04:20:34
13 that the board has concluded that storm water outflows 04:20:41
14 has contributed to the accumulation of sediment 04:20:47
15 contaminants at the shipyard site. 04:20:50
16 Q. And would that include contaminants to areas 04:20:53
17 that are intended for remediation in the footprint, 04:20:58
18 including NA 19, NA 6, NA 15, and NA 17? 04:21:02
19 A. I think I have the cleanup order here. 04:21:11
20 Q. And if it helps, I have Attachment 2 to the 04:21:24
21 tentative order that shows the mouth of Chollas Creek and 04:21:27
22 then the remediation footprint. 04:21:30
23 A. Sure. 04:21:33
24 Q. Would you like that? 04:21:33
25 MR. CARRIGAN: That's what he's looking at. 04:21:35

1 THE WITNESS: But I wouldn't mind seeing the 04:21:36
2 color. 04:21:39
3 MR. WATERMAN: And for the record, he's looking 04:21:39
4 at Master Exhibit 1, Attachment 2. 04:21:41
5 THE WITNESS: And the question was? Would 04:21:50
6 the -- 04:21:52
7 BY MR. WATERMAN:
8 Q. Would the area of influence from storm water 04:21:53
9 plumes emanating from Chollas Creek include the inner 04:21:57
10 portions of the NASSCO shipyard, including the areas 04:22:01
11 slated for remediation NA 19, NA 06, NA 15, and NA 17? 04:22:05
12 MS. PERSSON: Calls for speculation. 04:22:16
13 THE WITNESS: We -- we believe those areas were 04:22:21
14 potentially subject to influence from -- from 04:22:23
15 Chollas Creek, yes. 04:22:28
16 BY MR. WATERMAN:
17 Q. Can I get that back? 04:22:32
18 I'm not sure whether or not this has been marked 04:22:54
19 as a Barker deposition exhibit yet. But it is the Order 04:22:56
20 No. R9-2007-43 from the California Regional Water Quality 04:23:00
21 Control Board, San Diego region, which is a resolution 04:23:11
22 adopting amendment to the water quality control plan for 04:23:14
23 the San Diego basin to incorporate total maximum daily 04:23:19
24 loads for dissolved copper, lead, and zinc in 04:23:23
25 Chollas Creek, tributary to San Diego Bay, otherwise 04:23:27

1 known as the Chollas Creek TMDL. 04:23:33

2 A. Yes. 04:23:35

3 Q. Has this been introduced as an exhibit? Why 04:23:38

4 don't we mark it as the next one. 04:23:42

5 THE COURT REPORTER: Okay. 04:23:47

6 MR. WATERMAN: What is the next deposition -- 04:23:47

7 or -- 04:23:47

8 THE COURT REPORTER: 1279. 04:23:47

9 MR. WATERMAN: Okay. So let's mark that as 04:23:47

10 exhibit -- Barker Exhibit 1279. 04:23:49

11 (Exhibit 1279 was marked.) 04:23:50

12 BY MR. WATERMAN:

13 Q. Are you familiar with the Chollas Creek TMDL? 04:24:00

14 A. Somewhat familiar. It's been -- been a while 04:24:04

15 since I've thought about it. 04:24:06

16 Q. Did include it in connection with your work on 04:24:08

17 the cleanup -- tentative cleanup & abatement order and 04:24:11

18 the DTR? 04:24:13

19 A. Yes. In the sense of it, we viewed it as part 04:24:15

20 of the source control measure for pollutant outflows from 04:24:20

21 the creek. 04:24:24

22 Q. You anticipated my next question. 04:24:25

23 How will the Chollas Creek TMDL affect -- affect 04:24:28

24 source control? 04:24:32

25 A. The -- as -- let me make sure I've -- this was 04:24:35

1 what we sometimes refer to as a concentration based TMDL. 04:24:51
2 Let's see. And down at the bottom of page 3, there is a 04:25:06
3 statement that said, "The waste load allocations are set 04:25:19
4 equal to 90 percent of the numeric targets loading 04:25:22
5 capacity." 04:25:26
6 And what -- what -- what this means is that 04:25:28
7 those waste load allocations would apply to any NPDS 04:25:32
8 permit outfall into Chollas Creek watershed. And -- and 04:25:37
9 it would -- one of the -- in the federal regulations when 04:25:46
10 those permits are opened for reissuance, they have to be 04:25:51
11 in conformance with any TMDLs that have been approved by 04:25:57
12 the San Diego Water Board and EPA. 04:26:06
13 And -- and in effect, this would establish 04:26:08
14 numeric effluent limits equal to 90 percent of the 04:26:10
15 numeric targets that are described in the TMDL. So it -- 04:26:16
16 all -- and this would all have the effect of reducing 04:26:20
17 pollutant loading to the creek and, hence -- and outflows 04:26:26
18 from the creek to the bay. 04:26:31
19 Q. Looking at paragraph 14 on Barker Exhibit 1279, 04:26:32
20 which is found on page 4, do you see the first sentence 04:26:38
21 there of paragraph 13 where it says, "Full implementation 04:26:43
22 of the TMDLs for dissolved copper, lead, and zinc shall 04:26:48
23 be completed within 20 years from the effective date of 04:26:52
24 the basin plan amendment"? 04:26:55
25 A. Let's see. On page -- 04:26:57

1 Q. Page 4, paragraph 13. 04:27:00
2 A. Paragraph -- 04:27:10
3 Q. Paragraph 13, page 4. 04:27:11
4 A. Oh, I'm looking at four here. Oh, excuse me. I 04:27:13
5 see. Okay. Thirteen. Okay. I see that. 04:27:18
6 Q. Okay. And then looking towards the back of -- 04:27:31
7 of Barker Exhibit 1279, and I think you were looking at 04:27:32
8 this, this is Attachment A. On page 6 of Attachment A, 04:27:44
9 there's a Table 4 entitled "Compliance Schedule." 04:27:50
10 A. Yes. 04:27:53
11 Q. Do you see there that Item 1 says the effective 04:27:55
12 date of the Chollas Creek metals, TMDL, and waste load 04:27:59
13 allocations is October 22nd, 2008? 04:28:02
14 A. Yes. 04:28:05
15 Q. So looking back at paragraph 13 on page 4, the 04:28:07
16 main section of the Barker Exhibit 1279, does that mean 04:28:12
17 that full compliance -- or full implementation of the 04:28:17
18 TMDL will occur by October 22nd, 2028? 04:28:18
19 A. Full implementation would be over the 20-year 04:28:31
20 period, yes. 04:28:34
21 Q. And by 2028, October 22nd, 2028, that's when 04:28:36
22 full implementation will have occurred? 04:28:42
23 A. Yes. 04:28:44
24 Q. So even assuming -- 04:28:46
25 A. Although, just I'd add the caveat no later than 04:28:47

1 that date. It's possible that various measures could be 04:28:51
2 taken to improve on that. 04:28:58

3 Q. Looking at Exhibit A to that, if you look at the 04:29:03
4 preceding page, the bottom of page 5 of Exhibit A -- or 04:29:21
5 Attachment A to Barker Exhibit 1279. At the bottom of 04:29:28
6 page 5, there's a Table 4. 04:29:37

7 A. I see it. Yes. I see it. 04:29:38

8 Q. And it has three rows for Compliance Years 1, 04:29:40
9 10, and 20. Do you see that? 04:29:43

10 A. Yes. 04:29:45

11 Q. So in Year 1, it looks like, to me, the 04:29:48
12 allowable exceedances for the waste load allocations is a 04:29:52
13 hundred percent for all contaminants; is that correct? 04:29:56

14 A. Yes. 04:29:59

15 Q. But by Compliance Year 10, it drops to 04:30:00
16 20 percent exceedances for all contaminants. I'm looking 04:30:03
17 here at the bottom of page 5. 04:30:08

18 A. Yeah. I'm just looking back to an earlier 04:30:10
19 finding. Bear with me just for one second. Okay. Yes. 04:30:12

20 So another way of looking at that is the TMDL 04:30:31
21 requires 80 percent reduction within the first ten years. 04:30:36

22 Q. But for that first ten-year period, no reduction 04:30:42
23 is required; right? It's just by year ten that they have 04:30:45
24 to have achieved that 80 percent reduction? 04:30:49

25 A. Yes. 04:30:51

1 Q. I understand it's probably unreasonable to think 04:30:52
2 that everybody's going to reduce their emissions by 04:30:54
3 80 percent overnight, maybe it will happen iteratively. 04:30:58
4 A. Yes. 04:31:04
5 Q. But as the TMDL stands, everybody could wait 04:31:04
6 until the last day before the ten years happen and then 04:31:07
7 flip a switch and reduce their exceedances; is that 04:31:10
8 correct? 04:31:15
9 A. Well, the way this TMDL will actually be 04:31:15
10 implemented is these criteria, the waste load allocation 04:31:19
11 and the compliance schedule is incorporated into the NPDS 04:31:26
12 permits. All dischargers' discharges that are going into 04:31:32
13 the Chollas Creek watershed. And then under the federal 04:31:40
14 regulations, the permit writers have the latitude to put 04:31:44
15 additional conditions, as long as those are consistent 04:31:53
16 with the assumption and requirements of the TMDL, into 04:31:58
17 the permit. 04:32:03
18 For instance, the permit writers could establish 04:32:04
19 other interim dates and targets that aren't mentioned in 04:32:08
20 the -- in the, kind of the master schedule of the TMDL 04:32:13
21 document, just depending on what type of discharge it is 04:32:17
22 and where they are on their curve in relation to those 04:32:22
23 concentrations. 04:32:27
24 Q. So your testimony is that over that first 04:32:28
25 ten-year period there will be a sliding scale of some 04:32:30

1 nature based on these renewals of these NPDS permits 04:32:34
2 iteratively, and then by the tenth year, you'll reach 04:32:37
3 that 20 percent exceedance level. 04:32:44

4 A. Yeah. The TMDLs don't really become enforceable 04:32:47
5 until they are incorporated in the NPDS permits. And 04:32:50
6 that's actually the next -- the board is working on the 04:32:55
7 reissuance for naval base San Diego. And that's one of 04:32:59
8 the first of the facilities that will have this 04:33:04
9 incorporated in the permit. And then the City of 04:33:06
10 San Diego's MS4 permit will be another one. So we 04:33:10
11 haven't taken that step yet. 04:33:15

12 Q. But under this compliance schedule here at the 04:33:21
13 bottom of page 5 of Attachment A, Barker Exhibit 1279, 04:33:23
14 assuming that implementation is timely and successful, 04:33:28
15 the latest date that that could happen would be 2028; is 04:33:34
16 that correct? 04:33:37

17 A. Yes. 04:33:38

18 Q. Okay. Is it likely that the shipyard sites will 04:33:38
19 be remediated under this tentative cleanup and abatement 04:33:43
20 order much earlier than 2028? 04:33:45

21 A. That's -- that's my hope, yes. 04:33:48

22 Q. When do you project the remediation to be 04:33:51
23 complete? 04:33:56

24 A. That's -- I think there's a schedule in the 04:33:57
25 cleanup order. I don't remember exactly what it said. 04:33:59

1 Q. Are you looking for Attachment 5 at the back 04:34:18
2 side, this chart? 04:34:20
3 A. Yes. And I think one of the directives might -- 04:34:22
4 might lay that out. Let's see. Okay. 04:34:30
5 Okay. So it must have referred to that schedule 04:34:44
6 that you're referring to there. Yeah. I see this. 04:34:47
7 Q. So this schedule, Attachment 5 in Master 04:34:51
8 Exhibit 1, has a five-year remedial action schedule; is 04:34:54
9 that right? 04:34:58
10 A. Yes. 04:34:59
11 Q. And it's currently the Regional Board's intent 04:34:59
12 to approve the tentative cleanup and abatement order this 04:35:02
13 year in 2011; is that correct? 04:35:05
14 A. Yes, that's -- 04:35:08
15 Q. So if everything works according to plan, we can 04:35:10
16 expect remediation to be completed by 2016, somewhere in 04:35:12
17 there, that range. 04:35:17
18 A. Yes. 04:35:18
19 Q. A full 12 years before source control at 04:35:19
20 Chollas Creek can be -- will be accomplished under the 04:35:23
21 time frames established in the Chollas Creek TMDL? 04:35:26
22 A. Well -- well, it would -- yeah, before the full 04:35:31
23 compliance. I guess with the caveat that 80 percent 04:35:37
24 reduction is required within ten years so there -- there 04:35:41
25 will be interim steps on the way. 04:35:47

1 One other factor I'd like to just throw in is 04:35:50
2 that there are legislative -- legislation being proposed 04:35:54
3 that, for example, is directed to auto manufacturers and 04:36:06
4 the amount of copper they include in their brake lining 04:36:15
5 systems. And there -- I think there's some proposed bill 04:36:18
6 out right now that if it were passed, would probably in 04:36:22
7 and of itself also result in a gradual reduction. So 04:36:25
8 reductions can come from various -- by various means. 04:36:34
9 They don't all come from the board. 04:36:38
10 Q. Right. But at least at this time, that's not 04:36:40
11 the -- 04:36:42
12 A. Right. 04:36:43
13 Q. -- current law or -- 04:36:43
14 A. Yes. Okay. 04:36:45
15 Q. Last week you testified about the permitting 04:36:48
16 process for near shore-confined disposal facilities or 04:36:50
17 CDFs, and also the permitting process for confined 04:36:54
18 aquatic disposal facilities or CADs. Do you recall that? 04:36:59
19 A. Yes. 04:37:04
20 Q. If I understand the way that a CDF would work 04:37:08
21 properly, if it was chosen as a remedy here, as part of 04:37:11
22 the remedy here, then the shipyard site dredge spoils 04:37:14
23 would be used to fill in a portion of San Diego Bay to 04:37:19
24 create land where previously it was bay; is that right? 04:37:22
25 A. Yes. Yes. 04:37:28

1 Q. And I think you testified previously that the 04:37:30
2 permitting process for a CAD, or confined aquatic 04:37:34
3 disposal facility, would be similar in nature to that for 04:37:40
4 a near shore confined disposal facility or CDF; is that 04:37:43
5 right? 04:37:48
6 A. Yes. 04:37:48
7 Q. I thought it might be helpful to look at the 04:38:01
8 Campbell sediment remediate -- remediation aquatic 04:38:03
9 enhancement EIR. This is a copy of the Campbell sediment 04:38:07
10 remediation aquatic enhancement draft supplemental 04:38:13
11 environmental impact report. I'd like to mark it as 04:38:17
12 Barker Exhibit 1280. 04:38:19
13 (Exhibit 1280 was marked.) 04:38:21
14 BY MR. WATERMAN:
15 Q. Mr. Barker, did I represent that document 04:38:39
16 properly? 04:38:41
17 A. Yes, you did. 04:38:42
18 Q. I'd like you to turn to page 2-7 in the 04:38:45
19 document. 04:38:48
20 A. Okay. 04:38:54
21 Q. And there's a heading there, it says, it's 04:38:55
22 Heading 2.6, "Intended Uses of This EIR." And the first 04:38:57
23 line says, "This EIR will be considered by the board in 04:39:05
24 their decisions regarding the following action." And 04:39:09
25 then there's a bullet that says, "Issuance by the Port of 04:39:12

1 a coastal development permit." Is that correct? 04:39:16

2 A. Yes. 04:39:21

3 Q. And then there are seven bullets following that 04:39:23

4 that outline the agencies that may have discretionary 04:39:28

5 approval or permitting authority over the project. 04:39:33

6 A. Yes. 04:39:37

7 Q. I'd like you to look at this list of permits 04:39:40

8 which was developed for a confined aquatic disposal 04:39:44

9 facility, or a CAD, at the Campbell shipyard and see if 04:39:49

10 there are any permits there that you think might be 04:39:53

11 missing from that list that would be required for a CAD. 04:39:55

12 A. It's possible. I recall that in the 04:40:24

13 Teledyne Ryan cap there was some type of permit or action 04:40:27

14 required from the Coastal Commission. And I don't -- oh, 04:40:40

15 excuse me. If that's what the first bullet is, then I 04:40:45

16 guess that's addressed. 04:40:49

17 Q. Great. So you think that that's a complete list 04:40:53

18 of permits? 04:40:55

19 A. It seems so to me. 04:40:56

20 Q. And in your opinion, would that be the line-up 04:40:59

21 of permits and agencies with discretionary approval that 04:41:03

22 we would expect to have be taking action for a confined 04:41:08

23 disposal facility or a CDF? 04:41:15

24 A. I -- I believe that it would, yes. The -- I'm 04:41:18

25 just -- it's possible that NOAA might be a commenting 04:41:23

1 agency. I don't think I see them listed there. 04:41:31

2 Q. I'd like to mark as deposition -- Barker 04:41:45

3 deposition Exhibit 1281 a Construction Quality Assurance 04:41:47

4 report and documentation of construction completion for 04:42:01

5 the Campbell shipyard bay sediment cap, prepared by 04:42:06

6 Anchor Environmental CALP of June 2008. 04:42:11

7 (Exhibit 1281 was marked.) 04:42:17

8 THE WITNESS: Okay. 04:42:20

9 BY MR. WATERMAN:

10 Q. Did I represent that document properly, 04:42:21

11 Mr. Barker? 04:42:22

12 A. Yes. 04:42:24

13 Q. I'd like you to turn to page 16 of that 04:42:25

14 document. Do you see Table 4-1 there, the summary of 04:42:28

15 dredged volumes? 04:42:45

16 A. Yes. 04:42:46

17 Q. And it looks like there in the first row that 04:42:47

18 the first -- the onset of the first dredging phase was 04:42:50

19 December 17th, 2005. 04:42:54

20 A. Yes. 04:42:57

21 Q. So looking back to the prior exhibit, 1280, 04:42:58

22 which was dated July 2003, do you think we can safely 04:43:03

23 assume that whatever permitting was required of those 04:43:15

24 agencies in -- on page 2-7 was completed in that 04:43:18

25 two-and-a-half-year period between July 2003 and 04:43:23

1 December 2005? 04:43:27

2 A. Yes. 04:43:29

3 Q. So that -- the outside limits of permitting was 04:43:30

4 about two and a half years for that CAD; is that right? 04:43:34

5 A. Yes. 04:43:39

6 Q. Do you know if there was any -- do you recall if 04:43:41

7 there was any litigation challenging any part of the 04:43:43

8 permitting process for this Campbell CAD? 04:43:45

9 A. The -- I don't remember any litigation over the 04:43:56

10 board's permitting of that site. I -- there was a threat 04:44:02

11 of litigation that was addressed by the Port during its 04:44:10

12 development of the EIR for the -- for the cap. 04:44:16

13 Q. And how was that threat of litigation averted, 04:44:22

14 if you remember? 04:44:26

15 A. I -- I attended a few meetings. And this was a 04:44:27

16 project that was being directed by the Port. And I 04:44:35

17 believe they factored in kind of an over-design for the 04:44:40

18 cap, so that when the cap was fully constructed, it 04:44:50

19 actually attained more stringent cleanup levels than what 04:44:53

20 the Water Board was requiring, thus affording a higher 04:44:57

21 degree of protection for the beneficial uses. And that 04:45:01

22 made the environmental groups at the time happy. 04:45:05

23 Q. I'd like to mark Barker Exhibit 1282. 04:45:10

24 (Exhibit 1282 was marked.) 04:45:23

25

1 BY MR. WATERMAN:

2 Q. And this is a long-term monitoring and reporting 04:45:25
3 plan for the former -- former Campbell shipyard prepared 04:45:28
4 by Ninyo & Moore on April 20th, 2005. 04:45:35

5 A. Okay. Yes. 04:45:49

6 Q. If you turn to page 1 of the document, not the 04:45:51
7 cover letter. I'm sorry, but the actual page 1 of the 04:45:57
8 report. The header of that page is, says "Introduction 04:46:00
9 and Site Description." 04:46:04

10 A. Right. 04:46:06

11 Q. And the second to last paragraph there, do you 04:46:07
12 see where it says "August" -- "On August 27, 2004, the 04:46:09
13 District, the San Diego BayKeeper, and the Surfrider 04:46:17
14 Foundation, jointly referred to as the Bay Council, 04:46:21
15 entered into a Memorandum of Understanding, MOU, to 04:46:24
16 design and implement specific monitoring requirements for 04:46:28
17 the sediment cap"? 04:46:32

18 A. Yes. 04:46:33

19 Q. Does that refresh your recollection of how 04:46:34
20 litigation was averted in that case? 04:46:36

21 A. Yeah. That was one example of it. 04:46:40

22 Q. Were there any other agreements that you were 04:46:45
23 aware of that were implemented in order to avert 04:46:47
24 litigation? 04:46:51

25 A. Other than the ones that I've already mentioned, 04:46:53

1 no. 04:46:57

2 Q. Do you have any perspective as to whether a 04:47:00

3 similar -- similar level of collaboration with the 04:47:02

4 environmental groups is likely to succeed here with 04:47:06

5 respect to the tentative cleanup & abatement order being 04:47:10

6 considered by the Regional Board? 04:47:13

7 MR. CARRIGAN: Calls for speculation. 04:47:14

8 MR. BROWN: Go ahead. Join. 04:47:18

9 THE WITNESS: At -- at this point in time, 04:47:20

10 I'm -- I don't believe the -- the environmental group 04:47:28

11 organizations are in agreement with the projected 04:47:33

12 footprint. And so it remains to be seen what -- what 04:47:37

13 they will think after the proceedings and hearings are 04:47:52

14 held and the board issues its decision. They could be 04:47:56

15 content, or they could be not content. 04:48:00

16 BY MR. WATERMAN:

17 Q. Last week you testified about the timing 04:48:10

18 necessary for the Regional Board to issue a 401 Water 04:48:12

19 Quality Certification. Remember that? 04:48:16

20 A. (Nods head.) 04:48:20

21 Q. And I think you testified that you have to ask 04:48:21

22 your staff in order to get a better idea of the typical 04:48:22

23 processing times for 401 certifications. Does that ring 04:48:27

24 a bell? 04:48:32

25 A. Yes. 04:48:32

1 Q. I'd like to mark as 12 -- 04:48:40

2 MR. CARRIGAN: Are we done with the Campbell 04:48:43

3 documents, Ryan? 04:48:44

4 MR. WATERMAN: Yes. 04:48:45

5 MR. CARRIGAN: Thank you. 04:48:46

6 MR. WATERMAN: I'd like to mark as 1283 a 04:48:47

7 printout from the San Diego Regional Water Board's 04:48:58

8 website from the Water Issues Programs, 401 certification 04:49:03

9 location. 04:49:13

10 (Exhibit 1283 was marked.) 04:49:14

11 BY MR. WATERMAN:

12 Q. And this printout was last updated on 04:49:15

13 February 23rd, 2011 and purports to be a pending water 04:49:17

14 quality certification applications report. 04:49:25

15 A. Let's see. Okay. 04:49:30

16 Q. Did I represent that -- the document accurately, 04:49:41

17 Mr. Barker? 04:49:42

18 A. Yes. 04:49:43

19 Q. So looking on page 1 of the report, does it 04:49:49

20 appear to you that the report is in date order with the 04:49:56

21 oldest pending certifications first and the most recent 04:49:58

22 certifications last? 04:50:03

23 A. Let's see. Yes, it does. 04:50:07

24 Q. And on page 1 of the water -- 401 Water Quality 04:50:13

25 Certification report -- 04:50:20

1 certification that's under consideration. 04:51:51

2 Q. So the "Date Posted on Web" date column is the 04:51:54

3 date when the Regional Board is giving notice to the 04:51:57

4 public that there's a complete application, it's now 04:52:00

5 pending before the board, and is under consideration? 04:52:04

6 A. Yes. 04:52:06

7 Q. And what was that -- what was the -- what's the 04:52:08

8 date of that very first row? 04:52:10

9 A. That's the -- very first row would be the 04:52:11

10 date -- excuse me. The date posted on the web in the 04:52:14

11 first row is October 11th, 2006. 04:52:19

12 Q. So the oldest current pending 401 certification 04:52:22

13 application's a little less than five years old; is that 04:52:29

14 right? 04:52:33

15 A. Yes. 04:52:33

16 Q. In looking at pages 4 through 21 of this report, 04:52:35

17 generally speaking, those -- those are all applications 04:52:42

18 that range in date from roughly December 2009, 04:52:46

19 January 2010, through current date, until late February; 04:52:52

20 is that correct? 04:52:58

21 A. Yes. 04:52:59

22 Q. So the bulk of this report, four -- from pages 4 04:53:00

23 to 21 are all reports or certifications that are -- have 04:53:03

24 been pending roughly a year or less. 04:53:08

25 A. Yes. 04:53:10

1 Q. So at least the pending certifications, the bulk 04:53:12
2 of them, are from the last year or so; is that correct? 04:53:16
3 A. Yes. 04:53:20
4 Q. Looking at page 1 again, do you agree that there 04:53:22
5 are two pending certifications from 2006? 04:53:29
6 A. Yes. It appears there are, yes. 04:53:34
7 Q. And six pending certifications from 2007? 04:53:39
8 A. Yes. 04:53:42
9 Q. So it's -- it's less common, but there are some 04:53:48
10 certifications that could be as old as four -- three or 04:53:52
11 four years old? 04:53:57
12 A. Yes, yeah. 04:54:00
13 Q. So just looking at this report, would you feel 04:54:01
14 comfortable saying that 401 certifications can range in 04:54:03
15 processing time anywhere from typical, something less 04:54:09
16 than a year, to atypical, maybe even up to four years? 04:54:13
17 A. For -- for our San Diego Bay projects which 04:54:18
18 involve certification projects involving docks and piers 04:54:25
19 and that kind of thing, the -- the average period to 04:54:35
20 obtain certification has been taking about a year. And 04:54:41
21 usually, the -- it's not that the process can't move 04:54:46
22 quicker; It's usually based on back and forth going with 04:54:51
23 the applicant on getting a complete application and then 04:54:57
24 agreeing on what mitigation is appropriate for the 04:55:01
25 project. And... 04:55:06

1 Q. Could the remediation that's contemplated in the 04:55:13
2 tentative cleanup & abatement order proceed prior to the 04:55:17
3 Regional Board issuing a 401 certification? 04:55:21
4 A. No. I do not believe so. 04:55:23
5 Q. I'm now on my last line of questioning. I think 04:55:29
6 we're going to close out before 5:00 o'clock. 04:55:32
7 A. Thank you. 04:55:34
8 Q. Do any other counsel have questions? I don't 04:55:37
9 want to misrepresent to the witness. 04:55:39
10 MR. BENSHOOF: I've got about an hour of 04:55:45
11 follow-up. 04:55:46
12 MR. CARRIGAN: Go ahead. 04:55:47
13 BY MR. WATERMAN:
14 Q. Are you aware of any shipyard sediment 04:55:51
15 remediation projects in California with cleanup levels as 04:55:53
16 low as those set in the tentative cleanup and abatement 04:55:58
17 order? 04:56:00
18 MR. CARRIGAN: Asked and answered. 04:56:01
19 MR. WATERMAN: That's already been asked? 04:56:01
20 MR. CARRIGAN: It was asked by Mr. Richardson. 04:56:03
21 MR. WATERMAN: My mistake. I'll withdraw the 04:56:05
22 question. 04:56:08
23 BY MR. WATERMAN:
24 Q. Did you search for any similar sites outside of 04:56:09
25 San Diego Bay to determine if existing cleanup levels 04:56:11

1 would be appropriate from those sites outside of 04:56:14
2 San Diego Bay to apply to the cleanup to the shipyard 04:56:16
3 site? 04:56:19
4 A. We reviewed -- I believe there was -- I 04:56:23
5 testified earlier, I think, on one site up in 04:56:30
6 San Francisco bay area, there was some shipyard site at 04:56:33
7 Hunter's Point area, I believe. We looked at it, but we 04:56:39
8 didn't spend a lot of time analyzing whether those levels 04:56:44
9 were appropriate at -- at the shipyard site. We put all 04:56:50
10 our energy on that with the work we did on considering 04:56:57
11 whether or not to use the Campbell shipyard levels. 04:57:03
12 Q. Was the Hunter's Point site a cleanup and 04:57:07
13 abatement order that had already been issued? 04:57:10
14 A. I -- I don't recall. It was -- it was a 04:57:14
15 sediment investigation. And it's been a long time since 04:57:16
16 we looked at it. And to be honest, I can't remember 04:57:20
17 right now what came out of that. We just kind of looked 04:57:23
18 at the analysis, and I don't even think there was any 04:57:32
19 documentation in the DTR on it. 04:57:37
20 Q. Was it a investigation conducted by the 04:57:39
21 San Francisco Regional Board? 04:57:43
22 A. I -- it may have been. But I -- I can't even 04:57:46
23 state that. I -- my staff looked at it, and they would 04:57:50
24 periodically advise me on things. But it was several 04:57:55
25 years ago. 04:57:59

1 Q. Besides the Hunter's Point site, there were no 04:58:01
2 other sites outside of San Diego Bay that you looked at 04:58:03
3 as potentially similar sites? 04:58:07

4 A. We took an interest in the Hudson River PCB 04:58:09
5 cleanup that's underway. But not with an angle towards 04:58:12
6 adopting findings from that and incorporating them into 04:58:23
7 this analysis. 04:58:27

8 Q. Mr. Barker, I'm going to hand you a excerpt from 04:58:32
9 Master Exhibit 1. It's page 15 of -- of Master Exhibit 04:58:35
10 1. And it just has the tentative cleanup levels chart 04:58:39
11 that shows the surface weighted average concentrations 04:58:45
12 for the contaminants of concern that have been set in the 04:58:50
13 tentative cleanup & abatement order for the shipyard 04:58:53
14 site. 04:58:56

15 A. Yes. 04:58:57

16 Q. Do you see that? 04:58:57

17 A. Yes. 04:58:58

18 Q. And I'm just going to briefly run through a 04:59:01
19 couple other EPA records of decision that address similar 04:59:03
20 contaminants and ask you to compare them to that table. 04:59:07

21 A. Okay. 04:59:11

22 Q. I'd like to mark as Barker Exhibit 1284 a EPA 04:59:15
23 Superfund record of decision for Commencement Bay in 04:59:27
24 Pierce County, Washington dated September 30th, 1989. 04:59:34
25 (Exhibit 1284 was marked.) 04:59:38

1 MR. CARRIGAN: This is a Superfund site, 04:59:46
2 Counsel? 04:59:48
3 MR. WATERMAN: Yeah. 04:59:49
4 MR. CARRIGAN: Okay. Let the record reflect. 04:59:49
5 BY MR. WATERMAN:
6 Q. Mr. Barker, is that what you've got in front of 04:59:55
7 you? 04:59:57
8 A. Yes, it is. 04:59:58
9 Q. Can you turn to the very last page where it says 04:59:59
10 "Table 5." 05:00:01
11 A. Yes. 05:00:08
12 Q. And in Table 5, there are three types of 05:00:11
13 contaminants that are similar to those that are listed in 05:00:13
14 Table 2 of Master Exhibit 1. In the very first set of 05:00:18
15 contaminants which was metals, do you see that on the top 05:00:25
16 of Barker Exhibit 1284? 05:00:30
17 A. Yes. 05:00:36
18 Q. Do you see the "Copper" line item? 05:00:38
19 A. Yes, I do. Yes, I do. 05:00:41
20 Q. Says 390 PPM, or 390 milligrams per kilogram dry 05:00:43
21 weight? 05:00:52
22 A. Mine says 390L. 05:00:53
23 Q. Right. Do you see that there? 05:00:55
24 A. Yes. 05:00:57
25 Q. Comparing that to Table 2, what is the copper 05:00:58

1 concentration for -- or the copper SWAC for the shipyard 05:01:01
2 site? 05:01:08
3 A. One -- 159 milligrams per kilogram. 05:01:12
4 Q. So roughly half that of what's in Commencement 05:01:16
5 Bay? 05:01:19
6 A. Yes. 05:01:23
7 Q. Looking down Table 5, do you see the "High 05:01:24
8 Molecular Weight PAH" line item? 05:01:27
9 A. Yes. 05:01:32
10 Q. And what does that read? 05:01:33
11 A. 17,000 milligrams per kilogram. 05:01:36
12 Q. And looking at Table 2 of Master Exhibit 1, what 05:01:40
13 is the HPAHs' -- or SWAC there? 05:01:42
14 A. It is 2,451 micrograms per kilogram. 05:01:49
15 Q. Roughly seven times lower; is that right? 05:01:54
16 A. I think even -- I mean, the units are -- are 05:02:10
17 different. If I'm reading this right, the high molecular 05:02:13
18 weight in Table 5 is 17,000 milligrams per kilogram. And 05:02:21
19 the HPAH level in the tentative cleanup order is 2,451 05:02:26
20 micrograms per kilogram. So it's -- which would be, I 05:02:33
21 guess, 2.4 milligrams per kilogram. So the 17,000 would 05:02:39
22 be many times higher. 05:02:46
23 Q. Mm-hmm. Looking at the "PCB" line item for 05:02:47
24 total PCBs. 05:02:57
25 A. Yes. Okay. 05:03:00

1 Q. Can you do that comparison? 05:03:03

2 A. Yes. It looks like it's 1,000 milligrams per 05:03:08

3 kilogram. I'm a little troubled by this letter "B" by 05:03:13

4 it. I don't know what those letters -- 05:03:19

5 Q. The footnotes are on the very back page. 05:03:23

6 A. Okay. I see. 05:03:26

7 Q. "B" stands for benthic. 05:03:27

8 A. Okay. So yeah. The total PCBs in Table 5 is 05:03:29

9 1,000 milligrams per kilogram. And in the cleanup order 05:03:33

10 there are 194 micrograms per kilograms of PCBs, many 05:03:39

11 times more stringent. 05:03:45

12 Q. And I'd like to introduce as Barker 05:03:49

13 Exhibit 1285. 05:03:51

14 (Exhibit 1285 was marked.) 05:03:52

15 BY MR. WATERMAN: 05:03:52

16 Q. This is the EPA Superfund record of decision for 05:04:03

17 the Puget Sound Naval Shipyard complex? 05:04:08

18 A. Yes. 05:04:14

19 Q. Dated June 13th, 2000? 05:04:19

20 A. Yes. 05:04:21

21 Q. We're just going to do the same type of 05:04:26

22 comparison we just did. I'd like you to look at -- 05:04:27

23 MR. CARRIGAN: This is another Superfund site? 05:04:31

24 MR. WATERMAN: Another Superfund site. 05:04:33

25 MR. CARRIGAN: NASSCO is not a Superfund site, 05:04:35

1 is it, not yet? 05:04:37

2 MR. WATERMAN: No. 05:04:38

3 MR. HANDMACHER: Might be easier for once. 05:04:41

4 BY MR. WATERMAN:

5 Q. I'd like you to look at Table 9.1 and Table 9.2, 05:04:48

6 which are on the second to last and the last page of this 05:04:52

7 exhibit. 05:04:56

8 A. Okay. 05:04:57

9 Q. And do you see the line item for PCBs in 05:05:02

10 Table 9.1 of Barker Exhibit 1285? 05:05:05

11 A. Yes. 05:05:11

12 Q. Where it says the action level is 12 milligrams 05:05:12

13 per kilogram of PCBs. 05:05:17

14 A. Yes. 05:05:20

15 Q. And would you -- if we were to do the conversion 05:05:22

16 to micrograms per kilogram, would that be 1200 micrograms 05:05:24

17 per kilogram? 05:05:30

18 A. Let's see. 12,000 micrograms per kilogram would 05:05:38

19 be -- excuse me. Hang on. It's late in the day. Am I 05:05:43

20 doing that right? Yes. It would be 12 times ten to the 05:05:47

21 third micrograms per kilogram, or 12,000 micrograms per 05:05:59

22 kilogram equals 12 milligrams per kilogram. 05:06:05

23 Q. Okay. I'd like you to turn to page -- 05:06:10

24 Table 9-2, next page. 05:06:13

25 A. Okay. 05:06:16

1 Q. Do you see where it says "Total PCBs" there? 05:06:17
2 A. Yes. 05:06:19
3 Q. And one of the columns says "Cleanup Goal,
4 1.2 milligrams per kilogram"? 05:06:24
5 A. Yes. 05:06:27
6 Q. So if we were going to do that conversion,
7 micrograms per kilogram, would that be 1200 micrograms
8 per kilogram? 05:06:34
9 A. Yes. 05:06:38
10 Q. Just comparing that to the shipyard site, once
11 again, the shipyard site, much lower concentrations for
12 SWAC? 05:06:50
13 A. Yes, it is. 05:06:50
14 Q. Looking back to the previous page for mercury,
15 on the very last line item, it says, "Three milligrams
16 per kilogram for mercury." 05:07:02
17 A. Yes. 05:07:06
18 Q. In comparing that to the shipyard site? 05:07:07
19 A. Yes. The shipyard SWAC value is .68 milligrams
20 per kilogram, which is less than that value, more
21 stringent. 05:07:27
22 MR. WATERMAN: Thank you. That was my very last 05:07:27
23 question. 05:07:30
24 THE WITNESS: Thank you very much. 05:07:31
25 MR. WATERMAN: Thank you very much. 05:07:32

1 MR. CARRIGAN: Let's go off the record. 05:07:33

2 MR. WATERMAN: I have the stipulation here. 05:07:44

3 Would you like me to read it into the record? 05:07:45

4 MR. CARRIGAN: Since we're still on the record, 05:07:47

5 let's do it. I'm sorry. I'm jumping the gun. 05:07:49

6 MR. WATERMAN: All right. Mr. Barker, I'd like 05:07:53

7 to thank you on behalf of all the parties here for your 05:07:55

8 patience and your diligence over these four days of 05:07:57

9 deposition. You've been an extremely good witness, and I 05:08:01

10 really appreciate it. Thank you very much. 05:08:04

11 THE WITNESS: Thank you. 05:08:05

12 MR. WATERMAN: The witness will have 30 days 05:08:06

13 after receipt of transcript by mail by the court reporter 05:08:08

14 to review, make any appropriate corrections and changes 05:08:12

15 and sign the depositions -- deposition transcript. 05:08:15

16 The witness will provide the corrected 05:08:19

17 transcript to the court reporter. If the witness fails 05:08:21

18 to review and sign the deposition within 30 -- the 30-day 05:08:28

19 period after receipt by mail, the unsigned deposition 05:08:32

20 shall be given the same effect as those signed by the 05:08:35

21 deponent according to CCP1225.530, Subsection D. Any 05:08:38

22 timely changes or corrections noted in transcript -- in 05:08:47

23 the transcript shall be sent to the court reporter to be 05:08:49

24 incorporated into the certified transcript. 05:08:54

25 The original transcript shall be kept by Latham 05:08:56

1 and Watkins after the court reporter incorporates any 05:08:59
2 changes or certifies no changes have been made by the 05:09:03
3 witness within the 30-day limit. 05:09:07
4 The original or any copy of the certified 05:09:09
5 transcript can be retained by any counsel in this action 05:09:13
6 to be used by any party for any purpose through the 05:09:16
7 conclusion of this action. So stipulated, Counsel? 05:09:21
8 MR. CARRIGAN: So stipulated. 05:09:26
9 THE VIDEOGRAPHER: This ends the videotaped 05:09:28
10 deposition of David Barker, Volume No. 4, Videotape 05:09:29
11 No. 4. Today's date is March 10th, 2011. The time is 05:09:31
12 5:09 p.m. Off the record. 05:09:36
13 (Whereupon the deposition was adjourned at 05:09:38
14 5:09 p.m.) 05:09:38
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1 I declare under penalty of perjury under the laws of the 05:09:38
2 State of California that the foregoing is true and 05:09:38
3 correct; that I have read my deposition and have made the 05:09:38
4 necessary corrections, additions or changes to my answers 05:09:38
5 I deem necessary. 05:09:38

6 05:09:38
7 Executed on this _____ day of _____, 05:09:38
8 2011. 05:09:38

9 _____ 05:09:38
10 DAVID BARKER

11 05:09:38

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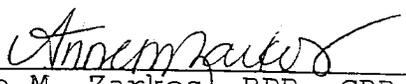
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I, ANNE M. ZARKOS, Certified Shorthand
Reporter for the State of California, do hereby certify:

That the witness in the foregoing deposition was by me
first duly sworn to testify to the truth, the whole
truth and nothing but the truth in the foregoing cause;
that the deposition was taken by me in machine shorthand
and later transcribed into typewriting, under my
direction, and that the foregoing contains a true record
of the testimony of the witness.

Dated: This 23 day of March, 2011
at San Diego, California.



Anne M. Zarkos RPR, CRR
CSR No. 13095

A				
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1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
2 SAN DIEGO REGION

3

4 IN RE THE MATTER OF)
5 TENTATIVE CLEANUP AND ABATEMENT)
6 ORDER NO. R9-2011-0001)
7 _____)

8

9 EXHIBIT BOOK ONE OF THREE TO THE
10 DEPOSITION OF DAVID BARKER
11 Volume I - IV
12 San Diego, California
13 2011

14

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16 Reported By: Anne M. Zarkos, RPR, CRR,
17 CSR No. 13095



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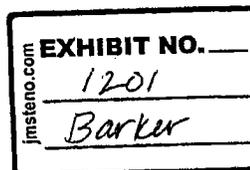
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11 Attorneys for Designated Party
 12 National Steel and Shipbuilding Company

13 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
 14 SAN DIEGO REGION

15 **IN THE MATTER OF:**

16 TENTATIVE CLEANUP AND
 17 ABATEMENT ORDER NO. R9-2011-0001

18 **NASSCO'S THIRD AMENDED NOTICE
 19 OF VIDEOTAPED DEPOSITION OF
 20 DAVID BARKER**

21 Date: March 1-3, 2011
 22 Time: 9:00 a.m.
 23 Place: Latham & Watkins LLP
 24 600 West Broadway, Suite 1800
 25 San Diego, CA 92101

26 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

27 NOTICE IS HEREBY GIVEN that, pursuant to the Presiding Officer's Order Issuing
 28 Final Discovery Plan dated February 18, 2010 and the Presiding Officer's October 27, 2010
 Discovery Order, that on March 1-3, 2011, at 9:00 a.m., National Steel and Shipbuilding
 Company ("NASSCO") will take the deposition of David Barker ("Deponent"). This deposition
 will take place at the law offices of Latham & Watkins LLP, 600 West Broadway, Suite 1800,
 San Diego, California, 92101, upon oral examination before a Certified Shorthand Reporter duly
 authorized to administer oaths, and will continue from day to day, Saturdays, Sundays and
 holidays excepted, until completed.

PLEASE TAKE FURTHER NOTICE that the deposition may also be videotaped,
 stenographically recorded, and recorded through such means as to provide the instant display of

1 the testimony. NASSCO reserves the right to use any videotaped portion of the deposition
2 testimony at a hearing in this matter.

3 **DOCUMENTS AND ITEMS TO BE PRODUCED**

4 David Barker is required to produce the following items:

5 **DEFINITIONS**

6 The following definitions shall apply to each category of documents set forth below:

7 1. "ADVISORY TEAM" shall mean and refer to the Advisory Team of the
8 California Regional Water Quality Control Board, San Diego Region ("Regional Board"),
9 specially formed in response to and for purposes of advising the Regional Board in connection
10 with its consideration of the TENTATIVE ORDER, and its agents, employees, attorneys,
11 investigators, consultants, affiliates, or anyone acting on its behalf.

12 2. "COMMUNICATIONS" shall mean and refer to the written or verbal exchange
13 of information by any means, including, without limitation, telephone, telecopy, facsimile, or
14 other electronic medium (including e-mail), letter, memorandum, notes or other writing method,
15 meeting, discussion, conversation or other form of verbal expression.

16 3. "DOCUMENT(S)" shall mean and refer to any and all written, printed,
17 typewritten, photographic, graphic, or recorded materials (by tape, video or otherwise), however
18 produced or reproduced, including data stored in a computer, data stored on removable magnetic
19 and optical media (e.g., magnetic tape, floppy disks, and recordable optical disks), e-mail, and
20 voice mail, which relate or pertain in any way to the subject matter to which the Interrogatory
21 refers. "DOCUMENT(S)" shall further include, without limitation, all preliminary, intermediate
22 and final drafts or versions of any DOCUMENT, as well as any notes, comments, and marginalia
23 appearing on any DOCUMENT, and shall not be limited in any way with respect to the process
24 by which any DOCUMENT was created, generated, or reproduced, or with respect to the
25 medium in which the document is embodied. DOCUMENT(S) shall include all "writing" and
26 tangible forms of expression falling within the scope of California Evidence Code § 250, within
27 YOUR custody, possession or control.

28 4. "ENVIRONMENTAL GROUPS" shall mean and refer to any and all non-profit

1 and/or advocacy organizations focused on environmental causes and issues, including but not
2 limited to Designated Parties San Diego Coastkeeper (formerly San Diego Baykeeper) and
3 Environmental Health Coalition.

4 5. "PERSON(S)" shall mean and refer to any natural person, proprietorship, public
5 or private corporation, limited or general partnership, trust, joint venture, firm, association,
6 organization, board, authority, governmental entity, or any other entity, including a
7 representative of such PERSON(S).

8 6. "RELATING TO" shall mean and refer to relating to, pertaining to, referring to,
9 evidencing, in connection with, reflecting, respecting, concerning, based upon, stating, showing,
10 establishing, supporting, bolstering, contradicting, refuting, diminishing, constituting, describing,
11 recording, noting, embodying, memorializing, containing, mentioning, studying, analyzing,
12 discussing, specifying, identifying, or in any other way bearing on the matter addressed in the
13 request, in whole or in part.

14 7. "SITE" shall mean and refer to the Shipyard Sediment Site, as described in the
15 TENTATIVE ORDER and TECHNICAL REPORT.

16 8. "TECHNICAL REPORT" shall mean and refer to the Draft Technical Report for
17 the TENTATIVE ORDER, publicly released on September 15, 2010, including but not limited to
18 the prior drafts released publicly on August 24, 2007, April 4, 2008 and December 22, 2009.

19 9. "TENTATIVE ORDER" shall mean and refer to Tentative Cleanup and
20 Abatement Order R9-2010-0002, publically released on September 15, 2010, including but not
21 limited to the prior drafts released publicly on April 29, 2005, August 24, 2007, April 4, 2008
22 and December 22, 2009.

23 10. "YOU" or "YOUR" shall mean the Deponent, including without limitation
24 YOUR employer or prior employer and its agents, employees, representatives, attorneys,
25 accountants, investigators, and insurance companies, and their employees, and anyone else
26 acting on your behalf). With respect to YOUR DOCUMENTS, it includes any DOCUMENTS
27 in YOUR possession, custody or control.

28 11. "PERSON" shall mean any entity or natural person.

DOCUMENT REQUESTS

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1. All DOCUMENTS RELATING TO any work YOU performed regarding the human health risk assessment utilized in connection with the proposed cleanup levels and remediation of the SITE.

2. All DOCUMENTS RELATING TO any work YOU performed regarding the ecological risk assessment utilized in connection with the proposed cleanup levels and remediation of the SITE.

3. All DOCUMENTS RELATING TO any work YOU performed regarding the economic feasibility analysis utilized in connection with the proposed cleanup levels and remediation of the SITE.

4. All DOCUMENTS RELATING TO any work YOU performed regarding the technological feasibility analysis utilized in connection with the proposed cleanup levels and remediation of the SITE.

5. All DOCUMENTS RELATING TO any work YOU performed regarding the cost analysis utilized in connection with the proposed cleanup levels and remediation of the SITE.

6. All DOCUMENTS RELATING TO any work YOU performed regarding the remedy selection alternatives analysis utilized in connection with the proposed cleanup levels and remediation of the SITE.

7. All DOCUMENTS RELATING TO any work YOU performed regarding the aquatic life impairment analysis utilized in connection with the proposed cleanup levels and remediation of the SITE.

8. All DOCUMENTS RELATING TO any work YOU performed regarding the aquatic-dependent wildlife impairment analysis utilized in connection with the proposed cleanup levels and remediation of the SITE.

9. All DOCUMENTS RELATING TO any work YOU performed regarding the bioavailability analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

1 10. All DOCUMENTS RELATING TO any work YOU performed regarding any
2 alternative sediment cleanup levels analysis utilized in connection with the proposed cleanup
3 levels and remediation of the SITE.

4 11. All DOCUMENTS RELATING TO any work YOU performed regarding any
5 remedial monitoring analysis utilized in connection with the proposed cleanup levels and
6 remediation of the SITE.

7 12. All DOCUMENTS RELATING TO any work YOU performed regarding the
8 analysis of the contribution of stormwater to sediment contamination in the San Diego Bay,
9 utilized in connection with the proposed cleanup levels and remediation of the SITE.

10 13. All DOCUMENTS RELATING TO any COMMUNICATIONS between YOU
11 and ENVIRONMENTAL GROUPS RELATING TO the TENTATIVE ORDER or
12 TECHNICAL REPORT.

13 14. All DOCUMENTS RELATING TO any COMMUNICATIONS between YOU
14 and any local, state or federal agency RELATING TO the TENTATIVE ORDER or
15 TECHNICAL REPORT.

16 15. All DOCUMENTS RELATING TO any COMMUNICATIONS between YOU
17 and the ADVISORY TEAM RELATING TO the TENTATIVE ORDER or TECHNICAL
18 REPORT.

19 16. All DOCUMENTS RELATING TO any COMMUNICATIONS between YOU
20 and any PERSON, other than a member of the CLEANUP TEAM, RELATING TO the
21 TENTATIVE ORDER or TECHNICAL REPORT.

22 Dated: February 11, 2011

LATHAM & WATKINS LLP

23
24 By  ser
25 Jeffrey P. Carlin
26 Attorneys for Designated Party
27 National Steel and Shipbuilding Company
28

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a
3 party to the within action. My business address is Latham & Watkins, 600 West Broadway,
4 Suite 1800, San Diego, California 92101. On February 11, 2011, I served the within
5 document(s):

6 **NASSCO'S THIRD AMENDED NOTICE OF VIDEOTAPED DEPOSITION OF**
7 **DAVID BARKER**

8 **BY E-MAIL:** I caused the above-referenced documents to be converted in digital
9 format (.pdf) and served by electronic mail to the addresses listed below.

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