

1 MR. WATERMAN: Objection as to time. 02:35:02
2 MR. BENSHOOF: At any time. 02:35:04
3 MR. WATERMAN: Vague as to time. 02:35:05
4 BY MR. BENSHOOF:
5 Q. In other words, we're dealing with a site that 02:35:08
6 has a shipyard. And that shipyard was in operation since 02:35:10
7 1914; correct? 02:35:14
8 A. Yes. 02:35:16
9 Q. Shipyards. And that those operations that have 02:35:16
10 been going on for decades, in your experience, involved 02:35:20
11 all of the chemicals of concern that have been found in 02:35:25
12 the sediment; correct? 02:35:27
13 A. Yes. 02:35:30
14 Q. Did you ever come to a conclusion that what you 02:35:31
15 were looking at in the sediment couldn't be explained 02:35:34
16 solely by the discharges from that shipyard operation? 02:35:38
17 A. That was a consideration at the board that no 02:35:45
18 additional parties needed to be added and that perhaps 02:35:59
19 just NASSCO and Southwest Marine were accountable for all 02:36:03
20 of the discharges. 02:36:08
21 Q. Okay. And my question is just slightly 02:36:10
22 different. But I want to get to your response, as well. 02:36:17
23 But you spent some time at the board looking at 02:36:21
24 sediment data for purposes of this DTR; correct? 02:36:25
25 A. Yes. 02:36:30

1 Q. And that sediment data reflected a number of 02:36:31
2 the -- or all of the chemicals of concern present in the 02:36:34
3 sediment at the shipyard. 02:36:37
4 A. Yes. 02:36:40
5 MR. WATERMAN: Objection. Vague as to shipyard. 02:36:41
6 Are you referring to the north or the south or the entire 02:36:43
7 site in one big lump? 02:36:46
8 MR. BENSHOOF: I'm now talking about -- well 02:36:49
9 taken. I'm now talking about the Southwest Marine or BAE 02:36:51
10 shipyard -- 02:36:56
11 THE WITNESS: Okay. 02:36:58
12 MR. BENSHOOF: -- site. So that's the north. 02:36:58
13 BY MR. BENSHOOF:
14 Q. And as you were supervising the review of that 02:37:04
15 sediment data, did you ever conclude, Mr. Barker, that 02:37:07
16 what you were seeing, whether it was metals or PCB or 02:37:10
17 anything else, could not be explained by release solely 02:37:15
18 from the shipyard, that it had to involve a release from 02:37:20
19 some other source? 02:37:24
20 A. No. I -- I never -- I -- I never concluded that 02:37:27
21 it had to come from a -- another source. 02:37:36
22 Q. And you never advised anybody at -- on your 02:37:39
23 staff that necessarily some other source had to have been 02:37:42
24 responsible for some portion of the sediment 02:37:48
25 contamination data that you were looking at; correct? 02:37:54

1 A. No. I never advised them that there were -- 02:37:58
2 that the source had to have come from multiple parties. 02:38:00
3 I mean, there was a potential for that, but it was not 02:38:05
4 a -- a command from me that it -- that that was how it 02:38:08
5 had to be set up. 02:38:14
6 Q. Okay. And that is basically because everything 02:38:15
7 that was there in the sediment data you knew from your 02:38:17
8 experience and investigation were chemicals associated 02:38:21
9 with shipyard operations and discharges from shipyards; 02:38:25
10 correct? 02:38:29
11 A. Yes. That was my initial presumption, yes. 02:38:30
12 Q. And -- and I take it that presumption has 02:38:32
13 carried through the decade and a half that you've been 02:38:36
14 working on this project. That is, that everything there 02:38:39
15 represents a chemical that is associated with shipyard 02:38:45
16 operations and shipyard discharges? And by the "there," 02:38:49
17 I mean in the sediment data of the Southwest Marine site 02:38:53
18 or portion of the site. 02:38:57
19 A. Yes. I believe that the -- I don't believe 02:39:02
20 there's any findings or sections of the DTR that allege 02:39:15
21 that the chemicals solely came from one facility or -- 02:39:22
22 and one facility only, other than possibly -- the 02:39:28
23 exception of that might be the TBT, which is a known 02:39:33
24 vessel hull paint. And that might be more heavily 02:39:35
25 associated with shipyards than some of the other 02:39:45

1 constituents. 02:39:48

2 Q. And I -- let me just re-ask the question that 02:39:50

3 I'd asked. I appreciate that, your response. But I 02:39:53

4 wanted to specifically address, you had talked about what 02:39:56

5 your initial presumption was. And that was that what you 02:40:06

6 were seeing in the sediment data were all chemicals that 02:40:10

7 you knew to be associated with shipyard operations and 02:40:14

8 shipyard discharges. 02:40:16

9 A. Yes. 02:40:20

10 Q. And that initial presumption that's carried 02:40:21

11 forward in the decade and a half or more that you've 02:40:24

12 worked on this project; correct? And it's because, if I 02:40:27

13 understand you correctly, that presumption is carried 02:40:30

14 forward because the sediment data tells -- or what you 02:40:32

15 see in the sediment are all chemicals associated -- that 02:40:38

16 you know to be associated with shipyard operations and 02:40:42

17 shipyard discharges. 02:40:45

18 MR. WATERMAN: Objection. Vague. Compound. 02:40:48

19 I'm not sure I understand the question. 02:40:50

20 BY MR. BENSHOOF:

21 Q. Have you changed your initial presumption? 02:40:58

22 A. My initial presumption was that the constituents 02:41:02

23 of concern were shipyard-related pollutants. Some had 02:41:09

24 them, again, may also be pollutants that could come from 02:41:19

25 other sources. But... 02:41:24

1 Q. But that all of them are constituents associated 02:41:27
2 with shipyard operations and discharges; that assumption 02:41:34
3 has carried through to today; correct? 02:41:38
4 MR. CARRIGAN: Asked and answered third time. 02:41:40
5 MR. BENSHOOF: Third time asked. 02:41:42
6 MR. WATERMAN: Join. 02:41:44
7 MR. CARRIGAN: Fourth time answered. 02:41:45
8 THE WITNESS: I -- there's a particular 02:41:47
9 document, actually, that when we initiated or issued -- 02:41:49
10 the board issued its 13267 Directive, there was a -- some 02:41:55
11 guidelines for conducting the study. And it listed 02:42:01
12 certain chemical analytes to be included in the 02:42:06
13 investigation. And that list was selected based on those 02:42:12
14 contaminants being associated with shipyard operations. 02:42:16
15 And that would be the list I would go to, to refer to 02:42:21
16 refresh my memory. 02:42:27
17 MR. BENSHOOF: And we're not going to do it 02:42:29
18 right now. We're actually going to take a break right 02:42:30
19 now. 02:42:32
20 THE VIDEOGRAPHER: Okay. 02:42:32
21 BY MR. BENSHOOF: 02:42:32
22 Q Because you've been going for a little bit over 02:42:33
23 an hour. But just before we leave this, what -- can you 02:42:33
24 give us any more of a description of that list, where we 02:42:36
25 could find it? 02:42:38

1 BY MR. BENSHOOF:

2 Q. We're back on the record, Mr. Barker, and I'd 02:54:43
3 ask you to look at Exhibit 1206 and identify what you 02:54:45
4 were referring to in your prior testimony. You stated 02:54:52
5 that there was a list attached, and that list, quote, was 02:54:55
6 selected based upon those contaminants being associated 02:55:00
7 with shipyard operations, closed quote. 02:55:03

8 So could you please identify the list in 02:55:06
9 Exhibit 1206, please. 02:55:08

10 A. Yes. I'm referring to a list that's on page 11 02:55:40
11 of the document in Section Roman Numeral 7A3, titled 02:55:51
12 "Sediment and Pore Water Chemistry." 02:55:59

13 Q. Could I see that just for a minute, please? And 02:56:02
14 that list at SAR page 287224 is -- reads as follows: 02:56:15

15 Quote, The list of contaminants to be measured 02:56:29
16 include metals arsenic, cadmium, chromium, copper, lead, 02:56:32
17 mercury, nickel, silver, zinc, butylene species; poly" -- 02:56:38
18 "polychlorinated biphenyls, PCBs; polychlorinated 02:56:41
19 triphenyls, PCTs; polyaromatic hydrocarbons, PAHs; total 02:56:47
20 petroleum hydrocarbons, TPH; and any other chemical 02:56:53
21 constituent associated with ship building and repair 02:56:57
22 activities believed to be present in the bay sediment. 02:57:00

23 So I take it that that's the list you're 02:57:04
24 referring to; correct? 02:57:07

25 A. Yes. 02:57:10

1 Q. And -- so all of those listed chemicals and 02:57:10
2 constituents were those which, based upon your experience 02:57:13
3 and the board's experience, were known to be associated 02:57:17
4 with ship building and repair activities. 02:57:20
5 A. Yes. 02:57:23
6 Q. Thank you. Now, could you turn to 02:57:27
7 Master Exhibit 2, the DTR. And I want to go through and 02:57:34
8 talk about the process briefly that you followed and some 02:57:42
9 of the criteria that you followed in putting together the 02:57:46
10 tentative cleanup and abatement order and abatement 02:57:50
11 order. 02:57:50
12 And I believe those are described at section -- 02:57:51
13 beginning in Section 1.3 where -- on page 1-4, where 02:57:57
14 there's an identification of -- and I am -- I am in 02:58:02
15 Section 1. There's an identification on 1.3 of 02:58:08
16 responsible parties. And then there's a description of 02:58:13
17 the legal authority which is Water Code 13304, followed 02:58:16
18 by several other sections; correct? 02:58:22
19 A. Yes. 02:58:28
20 Q. And I wanted to ask you to -- part of your 02:58:28
21 process and decision making process in terms of putting 02:58:32
22 together the DTR and the tentative cleanup and abatement 02:58:37
23 order was to try to follow as best you could guidance of 02:58:39
24 State Water Resources Control Board decisions. 02:58:43
25 A. Yes. 02:58:47

1 Q. And you outlined in Section 1.33 at page 1-6 02:58:47
2 those principles, or at least you extracted certain 02:58:55
3 principles from State Water Board decisions, and you 02:59:00
4 tried to summarize those at that section; correct? And 02:59:03
5 when I say you, I meant -- I mean yourself and the 02:59:07
6 Cleanup Team. 02:59:09
7 A. In Section 1 point -- 02:59:11
8 Q. Thirty-three. 02:59:14
9 A. As well as Section 1.3.2, as well. 02:59:21
10 Q. Okay. And I was -- there's a -- I'm looking at 02:59:26
11 page 1-6 of Master Exhibit 2. And there's a -- the third 02:59:32
12 bullet point there. And I believe you averted to this 02:59:36
13 before. And it reads as follows: 02:59:42
14 "There must be reasonable basis for naming a 02:59:44
15 responsible party, i.e., substantial evidence. It is 02:59:46
16 inappropriate to name persons who are only remotely 02:59:51
17 related to a problem such as suppliers and distributors 02:59:54
18 of gasoline." 02:59:58
19 And there's apparently State Board decisions 02:59:58
20 that deal expressly with suppliers and distributors of 03:00:01
21 gasoline; correct? 03:00:04
22 A. Yeah. I don't know exactly all the topics on 03:00:10
23 those decisions and parentheses. But they have a bearing 03:00:13
24 on that bullet, I guess. 03:00:19
25 Q. Okay. Now, the phrase "substantial evidence" is 03:00:21

1 used after the requirement that there be a reasonable 03:00:28
2 basis for naming a responsible party. Is that a concept 03:00:32
3 that -- it's a legal concept. And I don't mean to ask 03:00:36
4 you about -- for case authorities for what substantial 03:00:41
5 evidence means. But I take it, it's also a practical 03:00:44
6 concept that in the course of your duties at the 03:00:48
7 Water Board you have to interpret or apply in most cases. 03:00:51
8 A. Yes, I believe that's correct. 03:00:57
9 Q. And again, not -- not trying to give a legal 03:00:59
10 definition of the term, could you just express how you, 03:01:02
11 yourself, interpret and apply the concept of substantial 03:01:08
12 evidence when it comes to naming responsible parties 03:01:11
13 under cleanup and abatement orders? 03:01:15
14 A. The -- I would interpret that phrase to be 03:01:21
15 documentation based on the considerations described in 03:01:31
16 Resolution 92-49, which are cited in the preceding 03:01:35
17 section there. On page 1-6 there's some bullet points 03:01:42
18 that list some of those considerations. 03:01:50
19 Q. Correct. 03:01:52
20 So as you've applied the concept of substantial 03:02:07
21 evidence in your time at the Water Board, you've tried 03:02:14
22 to -- or you've, I take it, looked for documentation that 03:02:20
23 is called out in the bullet points above? 03:02:30
24 A. Well, this may be a nuance. 03:02:34
25 Q. Summarized. 03:02:40

1 A. The resolution -- resolution came into effect 03:02:41
2 in, I believe it was 1992. There was a period of time 03:02:43
3 when it wasn't around. But since its passage and -- or 03:02:46
4 adoption by the State Board, when we get involved in 03:02:49
5 investigations we -- we -- we look to those points there. 03:02:54
6 Q. And -- and that's -- those points are associated 03:02:59
7 with there being a reasonable basis to find that somebody 03:03:04
8 should be included in a cleanup and abatement order; 03:03:07
9 correct? 03:03:11
10 A. Yes. 03:03:11
11 Q. And the -- the -- the concept of -- well, let me 03:03:13
12 ask: 03:03:19
13 You had earlier talked about a discussion that 03:03:21
14 was held as to whether or not SDG&E should be included in 03:03:26
15 the parties named in a tentative cleanup and abatement 03:03:31
16 order. And what was the context of that discussion, if 03:03:34
17 you could, a time period roughly? I take it it was a 03:03:39
18 discussion amongst staff, or did it involve others? 03:03:43
19 A. Are you referring to that email you showed me 03:03:49
20 earlier? 03:03:53
21 Q. No. You had -- before we talked about that, you 03:03:54
22 had said, and I -- we can locate it in the transcript if 03:03:57
23 you'd like, but you had said there was a discussion at 03:04:04
24 the Water Board. 03:04:07
25 A. About adding other parties? 03:04:08

1 Q. And specifically you said there was a discussion 03:04:10
2 about SDG&E. 03:04:12

3 A. Oh. 03:04:14

4 Q. Well, let me ask -- 03:04:24

5 A. Okay. 03:04:25

6 Q. Was there a discussion that -- I mean, because 03:04:26
7 I'm interested in the -- the indication in State Board 03:04:28
8 decisions that it's inappropriate to name persons who are 03:04:33
9 only remotely related to the problem. 03:04:36

10 A. Right. 03:04:38

11 Q. And obviously, we're not dealing here with 03:04:39
12 suppliers and distributors of gasoline. But the prior -- 03:04:43
13 the concept is something that you've understood is 03:04:46
14 important to the State Board that people that are only 03:04:51
15 remotely related to a problem shouldn't be named as 03:04:53
16 responsible parties; correct? 03:04:58

17 A. Yes. 03:04:59

18 Q. And that's been a policy that you've tried to 03:05:00
19 follow for the period of time you've been at the 03:05:04
20 Water Board. 03:05:06

21 A. Yes. 03:05:07

22 Q. Now, was there a discussion as to whether or not 03:05:08
23 it was inappropriate to name SDG&E given the remoteness 03:05:14
24 of SDG -- SDG&E's relationship to the problem? 03:05:21

25 MR. CARRIGAN: Assumes facts not in evidence. 03:05:25

1 MR. DART: Same objections. Calls for 03:05:27
2 speculation. Misstates the record. 03:05:30
3 MR. WATERMAN: Join. 03:05:33
4 THE WITNESS: Yeah. There was a process that 03:05:36
5 the board followed to examine whether or not there was a 03:05:39
6 basis to -- to add other parties. And there were a 03:05:44
7 series of investigative orders that the board issued. I 03:05:49
8 don't remember exactly the year. Maybe, I don't know, 03:05:55
9 2004 time frame, perhaps, where we issued the orders to 03:06:04
10 specific parties and asked them to submit documentation 03:06:12
11 indicating why the board should not name them in a 03:06:18
12 cleanup and abatement order. 03:06:22
13 BY MR. BENSHOOF: 03:06:23
14 Q. Okay. 03:06:23
15 A. And I think one of those parties was SDG&E. 03:06:25
16 Q. The -- does the -- does the board follow a 03:06:30
17 policy, Mr. Barker, that if someone cannot establish why 03:06:48
18 they shouldn't be named, they will be named? I don't -- 03:06:53
19 I don't think. So I mean, that's not been my experience 03:06:58
20 with the board. But that's kind of how it sounded. 03:07:00
21 A. Yeah. I -- I was recalling that language in 03:07:04
22 those orders. But that would -- to do that precisely, I 03:07:08
23 would have to have a copy in front of me to see what it 03:07:12
24 actually said. 03:07:15
25 Q. But -- but am I correct that it's not the 03:07:16

1 board's policy that someone has to prove that they 03:07:18
2 shouldn't be named, otherwise they'll be named. I mean, 03:07:22
3 the board looks to have a basis in fact to name somebody; 03:07:25
4 correct? 03:07:28
5 MR. CARRIGAN: Incomplete hypothetical. 03:07:29
6 THE WITNESS: Yeah. The board, yes. To support 03:07:33
7 a finding to name a party, the board needs to establish 03:07:37
8 that -- that the party caused or permitted the discharge 03:07:41
9 of waste. 03:07:47
10 BY MR. BENSHOOF:
11 Q. And so you -- you would start with that, and you 03:07:48
12 would have evidence, and then you would ask for a party 03:07:50
13 to comment on that. 03:07:55
14 A. Yes. 03:07:55
15 Q. So it's not that with no evidence, if somebody 03:07:56
16 doesn't comment back, you just name them anyway. 03:07:58
17 A. No. 03:08:01
18 Q. Okay. Now, the DTR also after reviewing the 03:08:02
19 policies of -- of the State Board, it then goes on to 03:08:16
20 talk about what constitutes a condition of pollution and 03:08:23
21 contamination. And I'm referring to 1.4, Section 1.4, 03:08:27
22 where the -- there's language quoted. And I take it 03:08:33
23 that's the -- that language is from the Water Code as to 03:08:38
24 what defines both pollution and contamination. 03:08:42
25 Is that what the quoted language is in that 03:08:47

1 section, Mr. Barker? 03:08:51

2 A. Yes. 03:08:52

3 Q. And that's -- that's language that you seek to 03:08:52

4 follow and you use as your basic guidance in all of your 03:08:54

5 projects, including the decision as to whom to identify 03:09:00

6 in a temporary -- or in a cleanup and abatement order; 03:09:05

7 correct? 03:09:09

8 A. Yes. 03:09:09

9 Q. And again, I'm not -- I'm not asking you to be a 03:09:10

10 court to give us a legal definition of those terms. I 03:09:15

11 want to know how you apply them. And I want to start 03:09:17

12 with pollution. And I'll just read what it says in the 03:09:21

13 DTR and then ask you a couple of questions. 03:09:26

14 "Pollution is defined as an alteration of the 03:09:28

15 quality of the waters of the state by waste to a degree 03:09:31

16 which unreasonably affects the waters for beneficial 03:09:36

17 uses." 03:09:40

18 Do you see that? 03:09:41

19 A. Yes. 03:09:42

20 Q. Okay. And that -- and that is how you've 03:09:42

21 approached cleanup and abatement orders as a matter of 03:09:46

22 practice, looking for evidence that a discharge has 03:09:51

23 caused an alteration of quality of waters to a degree 03:09:54

24 which unreasonably affects the beneficial uses; is that 03:09:58

25 correct? 03:10:04

1 A. Yeah. That -- that's one -- one of the bases. 03:10:15

2 Q. And then nuisance is also another basis that you 03:10:17

3 talk about later. 03:10:21

4 A. Right. 03:10:21

5 Q. So we'll get to that. But I just -- I want to 03:10:21

6 understand that you in your own practice have followed 03:10:24

7 the -- the -- the basic -- this -- this definition. 03:10:26

8 A. Yes. 03:10:32

9 Q. And have you -- I mean, do you yourself apply 03:10:33

10 that portion of it where the -- the discharge is 03:10:43

11 pollution where it causes an alteration of the quality of 03:10:52

12 the waters? Is that important to you to see evidence of 03:10:55

13 that before naming somebody as a responsible party under 03:10:59

14 a cleanup and abatement order? 03:11:05

15 MR. CARRIGAN: Calls for a legal conclusion. 03:11:07

16 MR. BENSHOOF: Yeah. Not -- again, I'm just 03:11:09

17 asking for the practice that you follow as a senior 03:11:11

18 person on the Water Board in putting these cleanup and 03:11:14

19 abatement orders together. 03:11:16

20 MR. CARRIGAN: And I'll continue to assert my 03:11:18

21 objection to the question. But you can answer. 03:11:20

22 MR. BENSHOOF: Right. And you've referred to 03:11:22

23 the fact that you -- your staff and you put -- bring 03:11:23

24 together evidence, and you would have to have evidence 03:11:27

25 before you would -- that is of substantial quality under 03:11:29

1 the example cited before you would add somebody. 03:11:32

2 And I take it that amongst the evidence you 03:11:36

3 would look for, am I correct is that it caused a 03:11:39

4 condition of pollution or threatened to cause? 03:11:45

5 THE WITNESS: Yes, caused or -- actually -- 03:11:53

6 BY MR. BENSHOOF: 03:11:56

7 Q. I think the statute says "Created or threatens 03:11:57

8 to create." 03:12:01

9 A. Yes. 03:12:01

10 Q. Right. I'm not -- 03:12:02

11 A. Yeah. We're looking for that. We try to 03:12:03

12 analyze effects or potential effects in the receiving 03:12:12

13 water as part of the equation of making a finding. 03:12:15

14 Q. And there's a second component to the concept of 03:12:23

15 pollution under the Water Code that you quote here, which 03:12:28

16 is that there's not only an alteration of the quality of 03:12:30

17 water, but that alteration unreasonably affects 03:12:34

18 beneficial uses. You recognize that as being part of -- 03:12:38

19 A. Yes. 03:12:41

20 Q. -- the process. And -- and in fact, that is 03:12:42

21 also what you look for evidence of; is that correct, not 03:12:46

22 just an effect or not just an alteration of the quality 03:12:49

23 of water, but an alteration that is of such a, quote, 03:12:53

24 degree which unreasonably affects beneficial uses. 03:12:59

25 Is that a fair summary of what you do in your 03:13:04

1 role? 03:13:06

2 A. Yes. 03:13:06

3 Q. Okay. 03:13:07

4 Now, and so would it be fair to say that -- I 03:13:07

5 think you used the -- in terms of your own review of 03:13:21

6 evidence that -- I think you said you try to analyze the 03:13:32

7 effects or potential effects of a discharge in -- on the 03:13:37

8 receiving waters. 03:13:41

9 A. Yes. 03:13:43

10 Q. Now, in that effort to essentially determine 03:13:48

11 whether a discharge has created or threatens to create a 03:13:55

12 condition for pollution, of pollution -- and we'll get to 03:13:59

13 nuisance second. 03:14:03

14 But focusing on that, Mr. Barker, how do you 03:14:05

15 take into account a mass of the discharge or the volume 03:14:09

16 of the discharge? 03:14:15

17 MR. CARRIGAN: Incomplete hypothetical. Go 03:14:18

18 ahead. 03:14:22

19 THE WITNESS: Sometimes in analyzing the effects 03:14:24

20 of the discharge, the -- the volume, mass of the 03:14:28

21 discharge, may not be known. One of the difficulties 03:14:38

22 with contaminated sediment cleanups and allocating or 03:14:45

23 making association with responsible parties is the 03:14:54

24 discharges may have been caused in the past, and there's 03:14:58

25 no current discharges. They're legacy discharges. 03:15:02

1 So like in the -- in the sediment environment, 03:15:08
2 we might start off with just analyzing, well, what are 03:15:14
3 the levels of contaminants in the sediment just from what 03:15:18
4 evidence we have. And what are the potential effects on 03:15:22
5 the human health and the environment or beneficial uses 03:15:27
6 of the bay from that. And that -- that might not include 03:15:33
7 an assessment of, well, what mass of -- was actually 03:15:40
8 discharged to create that accumulation that's in the 03:15:45
9 sediments. 03:15:49
10 BY MR. BENSHOOF:
11 Q. Let me ask you this: In this case, in fact, 03:15:53
12 with regard to the operations of the shipyards, both 03:15:56
13 NASSCO and BAE or Southwest Marine, you had a couple of 03:15:59
14 decades of sediment monitoring reports that allowed you 03:16:06
15 to assess the direct impacts of those operations on the 03:16:11
16 sediments; correct? 03:16:14
17 MR. CARRIGAN: Misstates the evidence. Go 03:16:16
18 ahead. 03:16:18
19 MR. DART: Join. 03:16:19
20 MR. WATERMAN: Join. 03:16:20
21 THE WITNESS: Well, yeah. There were, yeah, 03:16:27
22 sediment monitoring stations established at strategic 03:16:29
23 locations on the shipyard leaseholds to try to measure 03:16:33
24 the impacts of any waste discharges from those 03:16:40
25 facilities. 03:16:43

1 BY MR. BENSHOOF:

2 Q. And you had spill reports and spill logs, 03:16:50
3 correct, from the shipyard? 03:17:02

4 A. Yes. 03:17:06

5 Q. And you would elicit discharge reports from 03:17:07
6 shipyards? 03:17:11

7 A. Yes. 03:17:12

8 Q. And so as regards to the shipyards' impact, it 03:17:13
9 wasn't -- you had -- you had means at your disposal to 03:17:18
10 verify that there were not only impacts, but that you had 03:17:23
11 means to quantify the volume or the mass of the impacts, 03:17:26
12 did you not? 03:17:30

13 MR. CARRIGAN: Incomplete hypothetical. Vague 03:17:31
14 as to time. 03:17:34

15 MR. DART: Join. 03:17:35

16 MR. WATERMAN: Counsel, when you say -- 03:17:36

17 MR. CARRIGAN: Lacks foundation. 03:17:37

18 MR. WATERMAN: When you say shipyards, are you 03:17:38
19 referring to the entire shipyard area? 03:17:40

20 MR. BENSHOOF: Right. I'm referring to both 03:17:43
21 shipyards upon whom the Water Board imposed sediment 03:17:44
22 monitoring conditions sometime in the '90s, I believe. 03:17:50

23 BY MR. BENSHOOF:

24 Q. And so you -- you're aware that in the 1990s 03:17:54
25 both -- both shipyards had imposed upon them semiannual 03:17:57

1 sediment monitoring requirements; correct? 03:18:02

2 A. Yes. 03:18:05

3 Q. And they generated approximately to date maybe 03:18:06

4 40 to 45 reports that -- twice a year that -- where they 03:18:09

5 were required to evaluate the conditions of the sediments 03:18:16

6 including, amongst other things, cataloging the paint 03:18:19

7 chips present in the sediments; correct? 03:18:24

8 A. Yes. 03:18:32

9 Q. And those reports that extend over a couple of 03:18:32

10 decades allow the Water Board to evaluate the -- the mass 03:18:35

11 of the contributions to the sediment contamination that 03:18:42

12 occurred in that period, does it not? 03:18:49

13 MR. WATERMAN: Objection. Lacks foundation. 03:18:52

14 What reports exactly are we talking about? 03:18:53

15 MR. BENSHOOF: The -- the sediment monitoring 03:18:56

16 reports. 03:18:58

17 THE WITNESS: No. I -- I don't believe the 03:19:03

18 sediment monitoring data in and of itself establishes 03:19:04

19 the --the what the mass loading of contaminants was. I 03:19:14

20 looked at it more as an indication that whatever may have 03:19:20

21 been discharged led to an accumulation of pollutants over 03:19:27

22 time. 03:19:35

23 BY MR. BENSHOOF: 03:19:36

24 Q. Okay. 03:19:36

25 A. One -- one of the difficulties in regulating the 03:19:38

1 shipyard industry over the year is there's various 03:19:40
2 pathways by which contaminants can get into the bay. 03:19:43
3 Some of them are airborne pathways where just blasting, 03:19:48
4 say, metal-blasting practices where paint chips find 03:19:54
5 their way in the bay. So it's not a traditional 03:20:01
6 wastewater discharge as -- such as what you would find 03:20:10
7 at -- at a sewage treatment plant, for example. It's 03:20:13
8 different. 03:20:18

9 Q. Right. The -- we'll look at those reports for 03:20:20
10 certain purposes a little bit later in detail. But I 03:20:25
11 didn't see any reference in the DTR to the review of any 03:20:29
12 of those reports. And indeed, I believe you agree with 03:20:36
13 me there would probably be 40 to 45 to 50 in total. 03:20:40

14 Do you recall whether anybody was instructed to 03:20:45
15 look at those reports? And I -- and I'm referring to the 03:20:47
16 semiannual sediment monitoring reports required by the 03:20:53
17 NPDES permits issued to those ship -- both shipyards. 03:20:57

18 A. Yeah. We looked at those reports for a basis 03:21:02
19 for investigating a sediment quality study to see if 03:21:05
20 there were any effects on benthic communities or -- or 03:21:12
21 threats to aquatic-dependent wildlife or human health 03:21:27
22 from the accumulation of pollutants there. 03:21:31

23 I -- I don't believe in the DTR that there is a 03:21:35
24 detailed assessment of the -- of the NPDS permit 03:21:39
25 monitoring, for example, that tracks the levels and their 03:21:46

1 fluctuation over time during the sampling events you're 03:21:50
2 talking about. 03:21:52

3 Q. Would you agree that -- and we're going to go 03:21:54
4 through a lot of data that I don't see reference to in 03:21:56
5 the DTR that -- that seems to be useful for identifying 03:21:58
6 sources. 03:22:03

7 But would you agree, Mr. Barker, that the 03:22:03
8 sediment monitoring reports that were required in the 03:22:08
9 shipyards for a couple decades would be amongst evidence 03:22:11
10 that would be useful to review in order to attempt to 03:22:15
11 determine the source of impacts to the bay sediment? 03:22:20

12 A. They -- yes. They could be one -- one source of 03:22:26
13 information for a detailed analysis. 03:22:33

14 Q. Back to the discussion of -- let me just ask, do 03:22:57
15 you know -- do you know why those reports were not used 03:22:59
16 for purposes of identifying the sediment impacts that 03:23:06
17 were caused by the two shipyards in this instance? 03:23:10

18 MR. CARRIGAN: Misstates testimony. I think he 03:23:13
19 just testified they were used. 03:23:15

20 MR. BENSHOOF: They were used for -- not to 03:23:17
21 identify sources. 03:23:18

22 BY MR. BENSHOOF: 03:23:19

23 Q. Am I -- am I correct, they were not -- they were 03:23:20
24 not used in a -- in a source identification way? 03:23:22

25 A. Well -- 03:23:25

1 MR. CARRIGAN: Vague. Misstates testimony. Go 03:23:26
2 ahead. 03:23:28
3 THE WITNESS: The reports were used as a basis 03:23:31
4 for -- for determining that there had been an 03:23:37
5 accumulation of pollutants in the San Diego Bay sediments 03:23:42
6 offshore of the two shipyards. And the board used that 03:23:47
7 information as a basis to require an extensive 03:23:52
8 sediment -- sediment quality study by NASSCO and 03:23:55
9 Southwest Marine. So they were used in that fashion. 03:24:02
10 And so part of that was in -- was also making some 03:24:05
11 conclusions about the source of that -- those 03:24:12
12 contaminants. And -- 03:24:18
13 BY MR. BENSHOOF:
14 Q. Were -- were they used too -- 03:24:19
15 MR. CARRIGAN: Are you finished with your 03:24:21
16 answer? 03:24:22
17 THE WITNESS: I was just going to add that the 03:24:24
18 board felt that they had found the -- at least two of the 03:24:27
19 primary sources of the contaminants. 03:24:34
20 BY MR. BENSHOOF:
21 Q. Now, were the -- were -- were those sediment 03:24:46
22 monitoring reports utilized, Mr. Barker, in any way to 03:24:50
23 attempt to determine whether or not Southwest Marine was 03:24:58
24 the exclusive source -- and by that, I mean the current 03:25:02
25 entity and all of its predecessors. 03:25:06

1 Were those reports used in any way to attempt to 03:25:09
2 determine whether or not Southwest Marine and its 03:25:11
3 predecessors were the sole source of impacts to the 03:25:14
4 sediment in that shipyard? 03:25:18
5 A. No. I don't think they were used in that way. 03:25:27
6 Q. Okay. 03:25:33
7 Was anybody asked to look at those reports to 03:25:34
8 determine whether or not the data reflected was 03:25:37
9 inconsistent with the allegations made against SDG&E, for 03:25:44
10 example? 03:25:47
11 A. Oh, okay. You're asking was anybody asked to 03:25:48
12 look at those reports with that question in mind. 03:25:55
13 Q. Correct. 03:25:59
14 A. I -- I don't recall that specifically. We may 03:26:00
15 have been asked. I -- I -- I just can't recall. 03:26:04
16 Q. Because you -- you know enough about Section 9 03:26:07
17 that, for example, a great weight is put on the presence 03:26:10
18 of Aroclor 1260 near the SW4 outfall; correct? 03:26:17
19 A. Yes. 03:26:22
20 Q. And did anybody look at the decades worth of 03:26:22
21 monitoring data generated by Southwest Marine and its 03:26:25
22 predecessors to determine whether or not alternatively 03:26:29
23 there might be a very simple explanation for the presence 03:26:32
24 of that Aroclor, that is, the operations of the shipyard? 03:26:36
25 MR. CARRIGAN: Asked and answered. I believe 03:26:44

1 the witness testified that the data indicated that the 03:26:47
2 shipyard is a source. 03:26:49
3 MR. BENSHOOF: Ah, ah, ah. Objection is asked 03:26:51
4 and answered. That's okay. I do want the witness's 03:26:53
5 response. 03:26:59
6 BY MR. BENSHOOF: 03:27:01
7 Q. So the question is, did anybody look at the 03:27:01
8 decades worth of monitoring data generated by 03:27:02
9 Southwest Marine and its predecessors to determine 03:27:05
10 whether or not alternatively there might be a very simple 03:27:09
11 explanation for the presence of Aroclor 1260 near 03:27:11
12 southwest -- or near Storm Water Outfall 4, and that is 03:27:16
13 the operations of the shipyard. Not as just one source 03:27:18
14 but as the source. 03:27:22
15 A. Oh, as the source. 03:27:23
16 Q. Correct. 03:27:25
17 A. I don't recall such an analysis being done, no. 03:27:26
18 Q. Matter of fact, is it fair to say that -- that 03:27:37
19 you don't recall -- am I correct that the sole evidence 03:27:38
20 of sediment quality looked at for purposes of the DTR and 03:27:46
21 the cleanup and abatement order liability sections was 03:27:50
22 the Exponent work of 2003? 03:27:54
23 MR. CARRIGAN: Vague. 03:27:59
24 THE WITNESS: Yeah. All -- all of the data that 03:28:00
25 was used and considered to -- for the cleanup and 03:28:08

1 abatement order is referenced in the -- in the DTR. I 03:28:16
2 mean, I guess there is an extensive administrative record 03:28:22
3 that, perhaps, talks about how we used some of the 03:28:25
4 monitoring information in the past. Mostly, as I recall, 03:28:31
5 to -- as a basis for requiring Southwest Marine and 03:28:34
6 NASSCO to undertake an investigation. 03:28:39
7 And then in recent years the focus has almost -- 03:28:43
8 has been very heavily on the 65 sampling stations that 03:28:50
9 were all part of the shipyard investigation. 03:28:56
10 BY MR. BENSHOOF:
11 Q. The Exponent report? 03:29:01
12 A. Yes. 03:29:02
13 Q. Now, returning to the -- your own concept, 03:29:07
14 understanding, and interpretation of a -- what is 03:29:15
15 necessary to constitute a threat to -- to create a 03:29:22
16 condition of nuisance or pollution, I take it you would 03:29:29
17 agree, Mr. Barker, that simply the -- the release of a 03:29:33
18 contaminant, regardless of mass or volume, doesn't 03:29:40
19 necessarily create such a threat. 03:29:45
20 Would you agree with that or not? 03:29:46
21 A. I think I would agree with that, yes. 03:29:58
22 Q. Now, we'll -- we'll go through Section 9 and -- 03:30:03
23 and some specifics. I don't want to do that now because 03:30:09
24 we'll need to take a break in a few minutes. 03:30:15
25 But is it fair to say, Mr. Barker, that nowhere 03:30:18

1 in connection with the investigation which the board did 03:30:24
2 concerning SDG&E and the discharges that are associated 03:30:28
3 with SDG&E, was there ever any estimate made of mass or 03:30:33
4 volume? 03:30:38

5 A. I think all of the information that we -- we 03:30:45
6 considered to name SDG&E is described in the report. And 03:30:51
7 I would just have to look at that section to see if 03:31:00
8 there's -- I'm not aware of some other study some -- 03:31:06
9 outside of the report that talks about flows or mass 03:31:08
10 volumes and such. 03:31:13

11 Q. Fair enough. Fair enough. We -- we'll go 03:31:15
12 through, then, each section with that in mind. I -- so 03:31:17
13 you can be sure you're on solid ground in answering. 03:31:22

14 A. Okay. 03:31:25

15 MR. BENSHOOF: Should we take -- you want to 03:31:26
16 take a break? I mean, I can go -- 03:31:27

17 MR. CARRIGAN: Sure. I know you don't need 03:31:28
18 breaks, Ward. Let's -- what time is it? 03:31:30

19 MR. BENSHOOF: It's 3:30. 03:31:34

20 MR. CARRIGAN: Yeah. Let's take a break and we 03:31:35
21 can get at least another hour in on the record. 03:31:36

22 THE VIDEOGRAPHER: This ends Videotape No. 3 in 03:31:41
23 the deposition of David Barker. The time is 3:31 p.m. 03:31:43

24 (A recess was taken.) 03:31:52

25 THE VIDEOGRAPHER: This begins Videotape No. 4 03:50:36

1 in the deposition of David Barker. The time on record is 03:50:39
2 3:50 p.m. 03:50:42
3 BY MR. BENSHOOF:
4 Q. Now, Mr. Barker, you had referred before we went 03:50:43
5 to our break about the -- in recent years the board's 03:50:46
6 chief focus for the development of the DTR and the 03:50:51
7 cleanup and abatement order has been the 2003 03:50:55
8 investigative work done by Exponent. 03:50:58
9 A. Yes. 03:51:01
10 Q. And -- and am I correct that the aspect of that 03:51:01
11 data that -- that the board used for purposes of 03:51:07
12 evaluating liability of parties was the upper 03:51:11
13 2 centimeters of their sampling data? Or is that -- do I 03:51:15
14 understand that correctly? 03:51:20
15 A. That the -- that the sampling depth was two 03:51:25
16 centimeters? 03:51:28
17 Q. Correct. 03:51:30
18 A. For -- yes. It was measuring the part of the 03:51:30
19 sediment that would be where contaminants could -- might 03:51:35
20 be bioavailable to marine organisms. 03:51:41
21 Q. That would have the most direct impact? 03:51:45
22 A. Yes. 03:51:47
23 Q. And -- and would you agree, though, that 03:51:48
24 understanding the condition of sediments at greater depth 03:51:51
25 is -- may not be as useful for the impact purposes but is 03:51:56

1 useful for understanding historical sources? 03:52:02

2 A. Yes. 03:52:05

3 Q. And -- and in fact, I want to go through now 03:52:05

4 data that are in -- is in the record but is not 03:52:15

5 referenced in the DTR, just to get your thoughts on 03:52:18

6 whether this data would be -- I'm specifically focused 03:52:23

7 now on the Southwest Marine site. 03:52:26

8 A. Okay. 03:52:28

9 Q. And your views on whether that would be useful 03:52:29

10 for analyzing historic sources, and particularly useful 03:52:32

11 for analyzing the degree to which the operations of the 03:52:37

12 Southwest Marine shipyard impacted the sediments. 03:52:41

13 So that's -- we will go through a few items. 03:52:44

14 And the first one that I wanted to direct your attention 03:52:48

15 to has been marked as Exhibit 1243. It's SAR No. 198846, 03:52:50

16 a document called "Final Remediation" -- "Final Report 03:52:58

17 Site Remediation," December 1998, Ogden Environmental and 03:53:01

18 Energy Services. 03:53:06

19 (Exhibit 1243 was marked.) 03:53:06

20 BY MR. BENSHOOF:

21 Q. And indeed, Mr. Barker, as with many of the 03:53:07

22 documents that I'm going to be asking you to look at, 03:53:10

23 what I've copied are just excerpts. And if you think 03:53:14

24 that there's context in the document that you would need 03:53:18

25 to look at a full version of it, you let us know because 03:53:21

1 we can go find that, too. But just for management 03:53:24
2 purposes, I thought experts -- excerpts, we'll try to do 03:53:27
3 it with that. Now -- 03:53:32
4 MR. WATERMAN: Counsel, could you read the SAR 03:53:33
5 number one more time? 03:53:36
6 MR. BENSHOOF: Yes. It's 198846. 03:53:38
7 MR. WATERMAN: Thank you very much. 03:53:40
8 BY MR. BENSHOOF:
9 Q. Now, do you recognize this report and the 03:53:41
10 circumstances under which it was prepared, Mr. Barker? 03:53:44
11 A. I recognize the title. I don't recall totally 03:53:50
12 the circumstances of the report. I do recall there was a 03:53:55
13 project to remove a marine railway at Southwest Marine. 03:54:01
14 Q. Okay. And in connection with that project, 03:54:06
15 Southwest Marine employed Ogden Environmental to conduct 03:54:09
16 certain environmental investigations and monitoring in 03:54:19
17 connection with the project; correct? 03:54:26
18 A. Yes, I -- well, I assume so. That was the title 03:54:28
19 here on the report. 03:54:30
20 Q. Now, since this was an assessment done in 1998 03:54:31
21 of the -- at least one of the two shipyards that are part 03:54:40
22 of this investigation, I wanted to direct your attention 03:54:48
23 to particular parts of it. 03:54:50
24 And the first page I'd like to direct your 03:54:53
25 attention to is 199165, where the Ogden reports PCB 03:54:55

1 results that -- from samples taken in the shipways at 03:55:11
2 the -- at the site, Southwest Marine site. 03:55:19
3 And I noticed that in connection with this 03:55:29
4 investigation, this again is 1998, the -- this particular 03:55:31
5 sample that is reflected on page 199165, 03:55:41
6 Southwest Marine's consultant is reporting a PCB hit of 03:55:47
7 155,400 parts per billion. Do you see that, total 03:55:51
8 Aroclors? 03:55:58
9 A. Let's see. I -- I don't see the 155. 03:56:04
10 Q. Well, if you add 85,800 and 69,600, would you 03:56:06
11 get a total Aroclor of 155,400? 03:56:11
12 MR. CARRIGAN: Document speaks for itself. 03:56:15
13 THE WITNESS: Okay. Yes. 03:56:18
14 BY MR. BENSHOOF:
15 Q. And you agree -- well, do you recall that that 03:56:23
16 is the highest concentration of PCBs measured at the 03:56:30
17 Shipyard Sediment Site? 03:56:34
18 A. I -- no, I don't recall that. I -- I recall 03:56:35
19 that the higher levels for PCBs were on the BAE end of 03:56:43
20 the site. But as to what were the particular stations, I 03:56:52
21 don't -- I'd have to look in the DTR and find all that. 03:56:57
22 Q. Correct. And I -- and I want to ask you -- let 03:57:02
23 me just put it a different way, then. 03:57:04
24 Assuming that this 155,400 parts per billion 03:57:08
25 represents the highest PCB detection anywhere on the 03:57:13

1 Shipyard Sediment Site, would you agree that it would be 03:57:18
2 data that the board would want to take into account in 03:57:21
3 its investigation? 03:57:25
4 MR. CARRIGAN: Incomplete hypothetical. 03:57:26
5 MR. DART: Join. 03:57:28
6 THE WITNESS: It -- yeah. It would be -- could 03:57:34
7 be evidence of past discharges that would be relevant to 03:57:37
8 the investigation. 03:57:41
9 BY MR. BENSHOOF:
10 Q. And indeed, this is one piece of evidence, is it 03:57:43
11 not, that reflects the fact that discharges associated 03:57:46
12 with the Southwest Marine operation include both 03:57:50
13 Aroclor 1248, as well as Aroclor 1260? Is that a fair 03:57:53
14 reading of this document in your mind? 03:57:59
15 MR. CARRIGAN: Misstates the evidence. 03:58:01
16 MR. DART: Join. Document speaks for itself. 03:58:03
17 THE WITNESS: I've just looked at the sample 03:58:08
18 results here. I -- I need to look in the document to see 03:58:10
19 exactly where this station was and what it's -- how this 03:58:18
20 report is using these sample results. 03:58:26
21 BY MR. BENSHOOF:
22 Q. Well, the -- the -- and we can do that. I -- 03:58:30
23 I -- I'm trying to see if we can approach it slightly 03:58:34
24 differently, though. 03:58:42
25 The -- you recognize -- and I take it you would 03:58:44

1 consider this to be -- that such a detection was -- was 03:58:52
2 measured at the site, you would consider it to be 03:58:57
3 important evidence that releases of Aroclor 1248 and 1260 03:59:03
4 were associated with the Southwest Marine operations, 03:59:09
5 would you not? 03:59:11
6 MR. CARRIGAN: Misstates the evidence. 03:59:12
7 MR. DART: Join. 03:59:15
8 MR. BENSHOOF: I'm just asking what you would 03:59:15
9 consider it to be. 03:59:16
10 THE WITNESS: I -- I -- 03:59:18
11 MR. CARRIGAN: Document speaks for itself. 03:59:19
12 MR. DART: And lacks foundation. 03:59:21
13 THE WITNESS: I would -- again, I -- I'm just 03:59:24
14 seeing sample results here. I -- I would like to see a 03:59:30
15 map of where this station was located and that type of 03:59:33
16 thing to -- to -- just to give me perspective. 03:59:39
17 BY MR. BENSHOOF:
18 Q. Okay. And if you were to find that the station 03:59:43
19 was located in the ways of the site, would you believe 03:59:45
20 this would be -- these reported results would be 03:59:49
21 important evidence of the fact that releases of 03:59:52
22 Aroclor 1248 and 1260 were both associated with 03:59:56
23 operations of Southwest Marine site. 04:00:00
24 MR. CARRIGAN: Document speaks for itself. 04:00:03
25 Incomplete hypothetical. 04:00:04

1 MR. DART: Join. And calls for speculation. 04:00:05

2 THE WITNESS: Are -- are you -- when you say 04:00:06

3 "ways of the site," you're referring to -- what -- what 04:00:10

4 does that term mean? 04:00:15

5 BY MR. BENSHOOF:

6 Q. The -- the shipways -- 04:00:17

7 A. Okay. 04:00:18

8 Q. -- of the site. And that's where the sampling 04:00:18

9 was done. I think you can -- you've -- you've turned it 04:00:20

10 to a page where the figure is -- 04:00:22

11 A. Okay. I see. I'm following now. 04:00:27

12 Q. And I -- we can -- we can look at the specific 04:00:29

13 locations. But I can keep it -- I'm trying to keep it on 04:00:31

14 kind of a general plane. If that doesn't work, it 04:00:35

15 doesn't work. 04:00:38

16 A. Yeah. 04:00:39

17 Q. But -- but assuming that you've confirmed that 04:00:39

18 this -- these sample results were taken from a location 04:00:41

19 in the shipways, that is, the waterways between the piers 04:00:43

20 of the site. 04:00:47

21 A. Okay. 04:00:51

22 Q. Would you consider that to be important evidence 04:00:51

23 that the release and discharge of Aroclors 1248 and 1260 04:00:55

24 were associated with the operation of the shipyards? 04:01:01

25 MR. DART: Same objections. 04:01:04

1 MR. CARRIGAN: Renew. 04:01:05

2 THE WITNESS: It -- yeah. So far in my mind, 04:01:07

3 it's evidence of a -- of a discharge of PCBs. I'm just 04:01:28

4 trying to visualize where the sample was taken. Is 04:01:33

5 this -- is this on land, underneath a former marine 04:01:37

6 railway? Or is it out in the bay? 04:01:42

7 BY MR. BENSHOOF:

8 Q. Well, when -- when I say "ways," I take it 04:01:48

9 that's not a -- is that not a term you're familiar with 04:01:52

10 in terms of the shipyards? 04:01:58

11 A. That's not a term I -- I usually use. I -- I'm 04:02:00

12 just looking at the title "Marine Railway." A marine 04:02:09

13 railway goes out into the water. Part of it might -- 04:02:12

14 it's used to haul a vessel up out of the water for 04:02:16

15 maintenance. 04:02:20

16 Q. Could you turn to Figure 1-1 in the DTR? 04:02:24

17 A. One -- 04:02:26

18 Q. It's at page -- I'm -- I'm now on 04:02:27

19 Master Exhibit 2. And I'm just -- it's just a figure of 04:02:29

20 the shipyard of the site. 04:02:32

21 A. Okay. 04:02:34

22 MR. DART: What page, Counsel? 04:02:35

23 MR. BENSHOOF: It's page 1-3. 04:02:36

24 THE WITNESS: Okay. All right. Okay. 04:02:42

25 BY MR. BENSHOOF:

1 Q. Now, do you understand that looking at the BAE 04:02:47
2 shipyard, that marine railways existed until 04:02:49
3 approximately 1998 in the areas of -- the water areas 04:02:55
4 between, for example, Pier 1 and Pier 2? 04:03:01
5 A. Okay. Yeah. 04:03:04
6 Q. And -- and do you understand that that's -- 04:03:09
7 those were also called Ways 1, 2, and 3, those areas 04:03:10
8 between the piers? 04:03:14
9 A. Okay. 04:03:17
10 Q. Now, and do you understand from the Ogden report 04:03:18
11 in 1998 that that is where Ogden was doing the sampling, 04:03:29
12 in the waterways between the piers? 04:03:34
13 A. Okay. So this is -- okay. 04:03:36
14 Q. And -- and -- and understanding the sampling and 04:03:44
15 that being refreshed, Mr. Barker, that that is the nature 04:03:53
16 of the investigation that was done by Ogden in 1998, that 04:03:56
17 is, that the sample reflected on 199164 was amongst 04:04:00
18 several samples taken of sediment in the ways, that is, 04:04:04
19 the water area between the piers. 04:04:10
20 A. Okay. 04:04:13
21 Q. Would you consider that data to be evidence that 04:04:14
22 Aroclors 1248 and 1260 were amongst the PCBs discharged 04:04:18
23 by operations at that shipyard? 04:04:25
24 MR. CARRIGAN: Lacks foundation. Calls for 04:04:29
25 speculation. Incomplete hypothetical. 04:04:30

1 MR. DART: Join. 04:04:33

2 MR. CARRIGAN: Document speaks for itself. 04:04:34

3 THE WITNESS: I -- I would -- I'm just -- I 04:04:39

4 would say that that could be evidence of that. It's not 04:04:43

5 conclusive in and of itself. But it's suggestive of 04:04:56

6 that. 04:05:01

7 BY MR. BENSHOOF:

8 Q. Would you -- I take it, amongst other things you 04:05:01

9 would do, would -- you would ask what was going on in 04:05:05

10 those areas, what manner of operations were undertaken 04:05:08

11 there? 04:05:13

12 A. Yes. And also maybe as part of that looking 04:05:14

13 at -- at other sampling data if it's available to -- at 04:05:19

14 other stations around the area, maybe to get a feel for 04:05:27

15 what the pattern of the PCB levels are, that type of 04:05:32

16 thing. 04:05:36

17 Q. The -- do you understand that the shipyards 04:05:39

18 historically were engaged in ship building and ship 04:05:46

19 repair activities? 04:05:49

20 A. Yes. 04:05:55

21 Q. And you understand that some portion of those 04:05:55

22 activities were conducted on what we've referred to as 04:05:57

23 the marine railways? 04:05:59

24 A. Yes. 04:06:02

25 Q. And you understand that there, in fact, was also 04:06:03

1 a dry dock there where other of those activities were 04:06:04
2 conducted? 04:06:07
3 MR. CARRIGAN: Calls for speculation. 04:06:12
4 MR. DART: Vague. 04:06:13
5 MR. CARRIGAN: Answer if you know. 04:06:13
6 THE WITNESS: Yeah. I -- I don't know right off 04:06:16
7 the top of my head. I -- I think there was, yes. 04:06:17
8 BY MR. BENSHOOF:
9 Q. Okay. And I'd turn your attention to the DTR, 04:06:21
10 Master Exhibit 2, page 3-3, the section on BAE. 04:06:33
11 A. Okay. Two -- 04:06:38
12 Q. 3-3. Excuse me. 04:06:49
13 A. Okay. 04:06:51
14 Q. And is this a -- do you recognize that this is a 04:06:51
15 section of -- or a portion of Section 3 of the DTR where 04:06:54
16 the BAE facility is described? 04:06:58
17 A. Yes. 04:07:03
18 Q. And amongst other things, this description 04:07:04
19 states, "Ship repair" -- "repair facilities at 04:07:11
20 BAE Systems have historically included five piers, two 04:07:14
21 floating docks, two marine railways winched together with 04:07:17
22 cranes, enable ships to be launched or repaired. 04:07:22
23 "Basic purpose of the dry dock is to separate 04:07:25
24 the vessel from the bay to provide access to parts of the 04:07:28
25 ship normally underwater. The piers are used to support 04:07:31

1 berth vessels that are undergoing maintenance and repair 04:07:35
2 operations, as well as berthing barges used to house 04:07:39
3 vessel crews while ship repairs are being conducted. 04:07:41
4 "Because dry dock space is limited and 04:07:45
5 expensive, many operations are conducted pier-side. 04:07:48
6 Marine railways were used to wheel vessels out of the 04:07:50
7 water, also called dry berthing a vessel. Activities 04:07:53
8 conducted on dry berth vessels are similar to those 04:07:57
9 conducted in dry docks but usually on a much smaller 04:08:02
10 scale. The marine railways located between Piers 1 and 2 04:08:06
11 were removed in 1998." 04:08:10
12 A. Okay. 04:08:12
13 Q. So refreshing your recollection with that basic 04:08:13
14 layout of BAE's facility, I take it that the location 04:08:16
15 of -- and -- and -- and refreshing your recollection that 04:08:23
16 much of the maintenance and repair operations were 04:08:27
17 conducted adjacent to the piers because dry dock 04:08:29
18 facilities were limited and expensive -- I take it 04:08:33
19 finding samples of the sediment adjacent to the piers in 04:08:37
20 the ways that reflect the concentrations of PCB 04:08:41
21 Aroclors 1248 and 1260 that we've noted would be 04:08:45
22 significant evidence, in your view, that -- of discharges 04:08:50
23 by the ship building and repair operations of 04:08:54
24 Southwest Marine into the bay sediment. 04:08:56
25 Is that a fair statement? 04:08:59

1 A. Yes. I believe that would -- it would be 04:09:00
2 evidence of that. I would still kind of caveat my 04:09:06
3 statement by wanting to review other data in the area to 04:09:11
4 further characterize that, rather than just a single 04:09:19
5 station point. 04:09:25
6 Q. And on -- in terms of other data, let's then 04:09:28
7 look at SAR 199060, another page of this report. 04:09:28
8 A. Okay. 04:09:33
9 Q. Where -- excuse me. 6-1. 04:09:33
10 And again, the report contains a -- 04:09:43
11 A. Excuse me. Hold on just one second. 04:09:51
12 Q. Pardon me. 04:09:54
13 A. I'm just trying to turn to the page quickly. 04:09:54
14 MS. PERSSON: 199061? 04:09:58
15 MR. BENSHOOF: Correct. I'm sorry. 04:10:00
16 THE WITNESS: Okay. Got it. 04:10:01
17 BY MR. BENSHOOF:
18 Q. Now, as is typical in many environmental 04:10:02
19 investigations, the work of Ogden included a log of 04:10:06
20 observations of the -- by the investigators of the 04:10:09
21 quality of the samples that they were retrieving, and any 04:10:14
22 odors or peculiar appearances associated with those 04:10:19
23 samples; correct? 04:10:23
24 A. Okay. Yes. 04:10:24
25 Q. Is that typical of the environmental 04:10:25

1 investigations to maintain such a log? 04:10:27

2 A. Yes, it is. 04:10:29

3 Q. And the investigators are supposed to record 04:10:30

4 anything in terms of the condition of the sample that 04:10:33

5 would be evidence of impact. Would that be a fair 04:10:35

6 statement? 04:10:40

7 A. Yes. 04:10:40

8 Q. And do you see that -- and this is the kind of 04:10:41

9 thing you would -- you mentioned you want to look at 04:10:43

10 additional data to determine the extent of the shipyard 04:10:47

11 impacts on the sediment. This would be the kind of thing 04:10:50

12 you would look at; correct? 04:10:52

13 A. Okay. Yes. 04:10:54

14 Q. And -- and -- and I see that it's kind of hard 04:10:54

15 to read, but under "Comments" is in this -- on this 04:10:59

16 particular log dated August 18th, 1998, 04:11:05

17 Southwest Marine's consultant is describing a 04:11:09

18 particular -- the particular appearance of this sediment. 04:11:14

19 And you see under "Comments," observes the "oil 04:11:19

20 water mousse layer of oil sheen." And then there's words 04:11:24

21 that I have a difficult time. But it was that oil water 04:11:31

22 mousse layer that does seem to indicate a pretty unusual 04:11:35

23 condition of bay sediment. It's not supposed to look 04:11:41

24 like oily moose, I assume? 04:11:44

25 MR. DART: Objection. The document speaks for 04:11:47

1 itself. 04:11:48

2 MR. BENSHOOF: That's not a technical term? 04:11:49

3 THE WITNESS: I'm not sure what oily moose is. 04:11:51

4 BY MR. BENSHOOF:

5 Q. Well, have you ever seen soil that's in that bad 04:11:54

6 of condition so it's described as an oil water moose? 04:11:56

7 A. I -- I've not seen that term used. 04:11:59

8 Q. Okay. I take it that would be something that 04:12:01

9 your attention would focus us on. 04:12:03

10 A. Yes. 04:12:06

11 Q. It's not exactly a natural condition; correct? 04:12:06

12 A. No. 04:12:09

13 Q. And it's indicated -- it's more evidence of 04:12:09

14 significant impact to the bay sediments by the operation 04:12:11

15 of Southwest Marine; correct? 04:12:13

16 MR. DART: Objection. Assumes facts. 04:12:16

17 Incomplete hypothetical. 04:12:17

18 MR. BENSHOOF: Would you -- 04:12:19

19 MR. CARRIGAN: Excuse me. Calls for 04:12:20

20 speculation. And the document speaks for itself. 04:12:20

21 BY MR. BENSHOOF:

22 Q. Would you consider it as more evidence of 04:12:22

23 significant impact to the bay sediments of -- by the 04:12:24

24 operations of Southwest Marine? 04:12:27

25 MR. DART: Same objections. 04:12:29

1 THE WITNESS: I -- I guess I'd be curious 04:12:30
2 what -- what that observation meant, oil water mousse 04:12:35
3 layer. I -- something stood out to the person that made 04:12:39
4 it. But I'm -- 04:12:46
5 BY MR. BENSHOOF:
6 Q. It would concern you in terms of impacts? 04:12:52
7 A. Just -- yeah. I -- 04:12:55
8 MR. DART: Same objections. 04:12:55
9 THE WITNESS: Take a look at -- it's right on a 04:12:58
10 row that's talking about appearance of oil or other 04:13:00
11 materials of petroleum origin. It -- you know, so it's a 04:13:04
12 contaminant-oriented comment. 04:13:10
13 BY MR. BENSHOOF:
14 Q. Okay. 04:13:14
15 Now, do you know whether anybody in putting 04:13:14
16 together the -- the DTR looked at any of the Ogden 04:13:17
17 observations that they made in 1998 or -- or interviewed 04:13:24
18 any of the people that worked on it to get their 04:13:27
19 perspective on the extent of the contamination that they 04:13:30
20 observed? 04:13:33
21 A. On -- on -- for this sampling exercise? 04:13:34
22 Q. Yeah. In putting together the DTR. 04:13:37
23 A. Okay. 04:13:40
24 Q. I take it that -- I mean, this -- this exercise 04:13:41
25 isn't referenced in the DTR. So I assume that it 04:13:43

1 wasn't -- wasn't relied on. 04:13:46

2 A. Right. 04:13:49

3 Q. And but the other question is, do you know if 04:13:49

4 anybody with the Water Board consulted the Ogden folks to 04:13:56

5 get their -- the benefit of their direct observations of 04:14:00

6 the condition of the sediments at Southwest Marine? 04:14:07

7 A. Oh. I'm -- I'm not aware of any such contacts, 04:14:13

8 no. 04:14:18

9 Q. Now, the description of the BAE facility that I 04:14:21

10 read into the record that's in the DTR makes reference to 04:14:25

11 the -- the five piers that are located there. And I take 04:14:30

12 it you know from your experience that -- and other 04:14:41

13 investigations in the bay that the piers in both this 04:14:49

14 facility and other facilities are a significant source of 04:14:52

15 creosote. 04:15:05

16 A. The -- yeah. The pier structure that the -- 04:15:08

17 that the surface piers rest on, yes. 04:15:13

18 Q. And the creosote, then, is directly -- or the -- 04:15:22

19 which chemicals of concern that are the subject of the 04:15:29

20 sediment investigation do you trace back to creosote? 04:15:32

21 A. Possibly PAHs. But I'm just -- just guessing. 04:15:42

22 I'd have to do some reading in the DTR on that. I think 04:15:47

23 there's a section in the Navy chapter where it's talking 04:15:52

24 about the Navy replacing their creosote piers with 04:16:00

25 noncreosote structures, where it talks about that. But 04:16:04

1 I'd have to refresh my memory. 04:16:10

2 Q. Okay. And we'll mark as... 04:16:12

3 THE COURT REPORTER: 1244. 04:17:07

4 BY MR. BENSHOOF:

5 Q. 1244 a further Ogden report. Or actually it's 04:17:08

6 the -- it's the same report. It was in another portion 04:17:13

7 of my outline. It's got different pages in it, so... It 04:17:18

8 relates to the creosote issue. 04:17:23

9 A. Okay. 04:17:25

10 (Exhibit 1244 was marked.) 04:17:25

11 THE COURT REPORTER: Did you mean to give me 04:17:39

12 two? 04:17:39

13 MR. CARRIGAN: One's for me. 04:17:39

14 THE COURT REPORTER: Here you go. 04:17:39

15 MR. CARRIGAN: Thank you. 04:17:39

16 BY MR. BENSHOOF:

17 Q. Now, just preliminarily, the -- the allegations 04:17:42

18 against SDG&E in the tentative cleanup and abatement 04:18:12

19 order include the allegation that SDG&E is responsible 04:18:13

20 for the discharge of PAHs to the bay. 04:18:20

21 But I take it, Mr. Barker, you're familiar with 04:18:27

22 the fact that it is fairly widely known that at least the 04:18:32

23 most prominent source of PAH contamination to bay 04:18:35

24 sediment is the result of the creosote-impregnated pier 04:18:41

25 pilings. 04:18:47

1 MR. DART: Assumes facts. May call for 04:18:50
2 speculation. 04:18:51
3 THE WITNESS: Yeah. I recall that there was a 04:18:52
4 study done that linked creosote pier pilings as a -- as a 04:18:53
5 source of PCBs. To -- to the extent that, I believe it 04:19:02
6 was the Navy that initiated a campaign to replace those 04:19:07
7 pilings with other material -- with pilings that were of 04:19:13
8 a different makeup. 04:19:18
9 MR. CARRIGAN: Did you mane PAHs or PCBs, 04:19:20
10 Mr. Barker? 04:19:23
11 THE WITNESS: PAHs. 04:19:25
12 MR. CARRIGAN: Very good. 04:19:27
13 BY MR. BENSHOOF:
14 Q. Yeah. Counsel is correct. You had said PCBs. 04:19:28
15 A. Oh, sorry. 04:19:34
16 MR. CARRIGAN: It's all right. 04:19:35
17 BY MR. BENSHOOF:
18 Q. And -- and is it -- would it have been 04:19:36
19 significant to you, Mr. Barker, in terms of assessing the 04:19:42
20 probable source of PAH contamination to the bay sediments 04:19:48
21 in the Southwest Marine shipyard location, to realize 04:19:53
22 that Ogden had identified creosote impregnated and coated 04:20:01
23 timbers in pier pilings in that shipyard? 04:20:10
24 MR. DART: Incomplete hypothetical. Calls for 04:20:14
25 speculation. 04:20:16

1 MR. BENSHOOF: And I'd refer you to -- let's 04:20:21
2 look at some of the observations so you know what I'm 04:20:22
3 looking at. And I'd start with SAR page 199055. 04:20:25
4 MR. CARRIGAN: That's it. 04:20:37
5 BY MR. BENSHOOF:
6 Q. And again, it's in the investigator's 04:20:39
7 handwriting. But I think you will agree that the -- 04:20:41
8 under that -- the first comment, the -- there's a 04:20:49
9 reference to creosote-coated debris. 04:21:00
10 A. Let's see. Okay. 04:21:07
11 Q. And I -- we're all kind of 04:21:11
12 handwriting-challenged. But this particular investigator 04:21:15
13 was, you know, definitely. 04:21:18
14 But you -- you do -- we can make out, can't we, 04:21:23
15 in comments that this investigator was observing on this 04:21:27
16 day, August 10th, '98, the existence of creosote-coated 04:21:31
17 debris in this one particular sample location? 04:21:38
18 A. Yes. Yes. It looks that way. 04:21:40
19 Q. And -- 04:21:43
20 MR. DART: Objection belated that the document 04:21:44
21 speaks for itself. 04:21:46
22 BY MR. BENSHOOF:
23 Q. And then turning the next page, there's just 04:21:48
24 another observation there, is there not, on their -- this 04:21:51
25 is at Ways 2 to 3. We again see the reference, the 04:21:55

1 investigator's reference to a condition which, quote, 04:22:04
2 appeared to be creosote-related. 04:22:11
3 Do you see that? 04:22:15
4 A. Now, you're on -- your second comment you're 04:22:20
5 reading from was in -- 04:22:23
6 Q. This column under "Ways 2-3" on page 056. 04:22:25
7 A. Okay. 04:22:31
8 Q. And just another observation of creosote-related 04:22:32
9 impacts. Do you see that? 04:22:36
10 A. Okay. I'm -- if you could point where -- 04:22:38
11 Q. If you can just promise not to read my secret 04:22:47
12 notes. 04:22:50
13 A. Okay. 04:22:50
14 MR. CARRIGAN: I think he means the highlighted 04:22:50
15 portions. 04:22:52
16 THE WITNESS: Oh. 04:22:54
17 MR. CARRIGAN: Right here. 04:22:55
18 THE WITNESS: Okay. 04:22:56
19 BY MR. BENSHOOF:
20 Q. So it's a couple of references -- 04:23:02
21 A. Yes. 04:23:03
22 Q. -- in this investigation to creosote debris and 04:23:03
23 creosote impacts. Am I -- and then there may be one 04:23:06
24 other that I want you to look at. And then there's a 04:23:14
25 third that I'd like you to look at. And that's on 04:23:33

1 page 60. We're going to have to bring document 04:23:36
2 interpreters to these depositions, but luckily I've got 04:23:47
3 Ms. Tracy. 04:23:51
4 But there's a third -- there's a third 04:23:52
5 reference, is there not, Mr. Barker, to creosote-related 04:23:53
6 debris and impact. 04:23:58
7 MR. CARRIGAN: Document speaks for itself. 04:24:00
8 THE WITNESS: I don't mean to be difficult, but 04:24:11
9 I'm just not seeing the word "creosote" where I'm 04:24:13
10 looking. 04:24:16
11 MR. BENSHOOF: He's talking about something that 04:24:18
12 appears to have leached from debris. And the word 04:24:20
13 creosote is -- 04:24:24
14 THE WITNESS: Oh, I see it. I see it. 04:24:25
15 BY MR. BENSHOOF:
16 Q. In any event, I didn't mean this to be a sort of 04:24:28
17 a scavenger hunt for words. But the -- the only point 04:24:30
18 is, am I correct that in order for you to evaluate the 04:24:34
19 likely source in the shipyard of PAH impacts, it would be 04:24:41
20 useful to reference the observations of creosote-related 04:24:47
21 impacts on debris that are contained in the Ogden 1998 04:24:52
22 report? 04:24:56
23 A. Certainly. That's supplementary evidence that 04:24:57
24 would be relevant, yes. 04:25:02
25 Q. I asked -- am I correct, Mr. Barker, that -- 04:25:07

1 because you had made an earlier reference to the fact 04:25:18
2 that the investigation -- and I don't want to put words 04:25:20
3 in your mouth -- but wasn't done in depth for purposes of 04:25:25
4 the DTR. 04:25:30
5 And Mr. Carlisle said -- I'd asked, "Did you 04:25:31
6 instruct anybody to do a comprehensive evaluation of the 04:25:34
7 shipyard sources and their related impacts?" And he 04:25:38
8 said, "No. We basically had enough under 04:25:41
9 Porter-Cologne." 04:25:43
10 Did -- did you ever ask anybody to go back into 04:25:48
11 the history of the shipyards, identify specific 04:25:52
12 facilities and specific time periods, evaluate from 04:25:56
13 historical materials the likely metals and oils used with 04:26:01
14 those equipments in those facilities, and then relate 04:26:07
15 that to the sediment data to try to determine whether or 04:26:11
16 not the impacts seen could be solely explained by those 04:26:13
17 facilities which were either on the water, over it, or 04:26:18
18 very near it? 04:26:21
19 MR. CARRIGAN: Misstates the witness's prior 04:26:23
20 testimony, both the witnesses. Go ahead. 04:26:25
21 THE WITNESS: Let me just refresh my memory in 04:26:31
22 Section 3. Yes. I -- I directed the staff to review 04:26:33
23 the -- the files and -- and to log discharges that they 04:26:54
24 felt there was -- where they felt there was evidence in 04:27:05
25 the file that discharges occurred and -- and tabulate 04:27:09

1 that information. 04:27:12

2 BY MR. BENSHOOF:

3 Q. Okay. Would you agree that -- that that is not 04:27:14

4 a resource or technique that can be relied upon to extend 04:27:23

5 back any further than the discharge reports extended? In 04:27:30

6 other words, we're dealing with a facility that operated 04:27:35

7 since 1914. 04:27:38

8 A. Right. 04:27:40

9 Q. That was probably completely unregulated until 04:27:40

10 the middle '70s. 04:27:43

11 A. That's correct. 04:27:45

12 Q. Okay. So who knows what happened; right? I 04:27:46

13 mean, just -- just in terms of discharge reports because 04:27:52

14 there weren't any. 04:27:55

15 A. Right. Well, I just know as far as the 04:28:00

16 Water Board goes, the regulation of shipyards largely 04:28:04

17 began after the Clean Water Act was passed in the early 04:28:12

18 '70s. 04:28:17

19 Q. Right. 04:28:18

20 A. There may have been some regulation of shipyards 04:28:19

21 under Porter-Cologne during the 1960s but... 04:28:24

22 Q. The requirement to do an NPDES discharge report 04:28:28

23 and permit was not imposed until sometime in the '70s; 04:28:33

24 correct? 04:28:37

25 A. Yes. 04:28:37

1 Q. So -- but there are other techniques available, 04:28:38
2 are there not, to -- I mean, we're dealing with a period 04:28:40
3 of time that without discharge reports, that would extend 04:28:44
4 from 1914 to sometime in the 1970s. So 60-some years? 04:28:48
5 A. Yes. 04:28:53
6 Q. And there are techniques available, aren't 04:28:53
7 there, to evaluate the likely impacts associated with 04:28:55
8 shipyard operations in those years? And for example, 04:28:58
9 there are services that provide descriptions of 04:29:04
10 facilities, map them out, that are available in the 04:29:07
11 record; correct? Like the Sanborn maps; you're familiar 04:29:12
12 with those, or are you? 04:29:16
13 A. That term doesn't trigger a -- 04:29:20
14 Q. Okay. 04:29:25
15 A. -- any recognition from me. 04:29:26
16 Q. Are you -- and we'll go over some of these 04:29:30
17 later -- but are you familiar with any service that your 04:29:30
18 board has used to try to reconstruct the likely 04:29:33
19 activities at a property in the past, before there were 04:29:37
20 facility inspections or discharge reports? 04:29:42
21 A. Usually, on the -- when the board has framed its 04:29:51
22 enforcement actions, it's mostly relied on information 04:29:59
23 that came in to the board. And there haven't been many 04:30:04
24 cases dealing with trying to characterize discharges that 04:30:13
25 may have occurred, say, before 1949 when the board first 04:30:20

1 was formed. 04:30:27

2 Q. Okay. 04:30:28

3 A. And so I don't have any -- any examples to draw 04:30:29

4 upon there. 04:30:35

5 Q. The -- the discharge reports that you asked your 04:30:36

6 staff to review for Southwest Marine shipyards, what -- 04:30:42

7 what did they reflect? 04:30:47

8 MR. CARRIGAN: Monitoring reports? 04:30:48

9 MR. BENSHOOF: Yeah. 04:30:50

10 BY MR. BENSHOOF:

11 Q. They were -- they were water discharges; 04:30:50

12 correct? 04:30:52

13 A. No, not necessarily. They were spill reports. 04:30:53

14 Some may have been -- I guess when you say "water 04:31:06

15 discharges," I'm thinking of a -- of a continual water 04:31:09

16 discharge. And shipyards don't have too many of those 04:31:14

17 types of discharges. It's usually intermittent waste 04:31:18

18 streams and... 04:31:22

19 Q. Did the shipyards ever report to the board on 04:31:25

20 the quantity of sandblast abrasive waste material that 04:31:28

21 was -- 04:31:33

22 A. Yes. At -- in the -- in the permits there's 04:31:34

23 language that asked them to quantify that material. And 04:31:41

24 those monitoring requirements have changed over time. I 04:31:45

25 do remember some of the older permits. That was, like, 04:31:50

1 the major information the monitoring was after, is how 04:31:55
2 much solid waste material are you generating, and where 04:32:01
3 is that material being hauled, and that kind of thing. 04:32:04
4 Q. Were they ever specifically required to report 04:32:11
5 concentrations of PCB associated with their abrasive 04:32:14
6 waste discharges? 04:32:16
7 A. I don't recall that being a -- a requirement. 04:32:20
8 Q. I don't think it was. But I was just curious. 04:32:24
9 The -- but you know, I take it, from other sources 04:32:26
10 that -- and learning that one impact that shipyard 04:32:32
11 operations have historically had on the bay sediments has 04:32:39
12 been through paint chips, paint that's associated with 04:32:43
13 their abrasive waste discharges; correct? 04:32:48
14 A. Yes. 04:32:51
15 Q. And that paint contains, you've mentioned 04:32:51
16 before, TBT, which is one of the chemicals of concern; 04:32:54
17 correct? 04:33:01
18 A. Yes. 04:33:01
19 Q. And you, I take it, know from research you've 04:33:02
20 done that it was also very typical to have PCBs added to 04:33:04
21 paints as plasticizers. 04:33:08
22 A. Yes. 04:33:11
23 MR. DART: Objection. Vague as to time. 04:33:13
24 BY MR. BENSHOOF:
25 Q. During the period that PCBs were added as 04:33:14

1 plasticizers to paint beginning in the '50s and the '60s. 04:33:17

2 A. Yes. 04:33:23

3 Q. And in fact, you -- while it may not have been 04:33:24

4 measured, I take it you're aware that one of the causes 04:33:30

5 of PCB impacts to bay sediments is exactly that, the 04:33:34

6 presence there of paint chips that have -- are 04:33:38

7 impregnated with PCBs that result from the blasting that 04:33:40

8 the shipyards do. 04:33:47

9 A. Yes. 04:33:50

10 Q. And indeed, did you recall that in the 04:33:51

11 semiannual monitoring reports that the shipyards were 04:33:58

12 inquire -- required to, in fact, sift through the 04:34:01

13 sediment to report back to the board on the -- the 04:34:05

14 quantity within their samples of paint chips because that 04:34:09

15 was a particular board concern? 04:34:13

16 A. Yes. 04:34:17

17 Q. Now, I didn't see anywhere in the DTR where that 04:34:18

18 data -- and again, we're talking about two decades worth 04:34:30

19 of sediment monitoring reports, was ever considered in 04:34:34

20 terms of this specific project of trying to account for 04:34:38

21 the source of the PCB contamination in the bay. 04:34:45

22 Was it ever looked at? 04:34:48

23 A. Yes, it was looked at. It was the primary 04:34:51

24 source of information that the board relied upon to -- as 04:35:00

25 the basis for the board's conclusion that there were 04:35:08

1 elevated contaminant levels offshore of NASSCO and 04:35:10
2 Southwest. And as I mentioned earlier, then the focus of 04:35:14
3 the effort went into doing a sediment quality 04:35:18
4 investigation to determine the effects of the 04:35:22
5 contaminants on the marine environment. 04:35:25
6 Q. And you would agree, though, that in terms of 04:35:31
7 describing the impacts from specific sources and the -- 04:35:33
8 in terms of the shipyards at Sections 3, 5, and 6, you 04:35:41
9 would -- you would agree that the board did not look at, 04:35:46
10 for example, the sediment monitoring reports received 04:35:54
11 from Southwest Marine to include within the BAE section 04:35:57
12 as evidence of their PCB impacts, or their causing PCB 04:36:02
13 impacts. 04:36:10
14 A. We included the monitoring reports in the 04:36:11
15 administrative record because they were information 04:36:15
16 considered along the way. But we did not tabulate an 04:36:20
17 analysis of those incorporated in the DTR. 04:36:23
18 Q. And let me -- I'll just continue going. But can 04:36:27
19 we go until 5:00, or do you want to stop before 5:00? 04:36:34
20 MR. CARRIGAN: How are you feeling, David? 04:36:37
21 THE WITNESS: Starting to fatigue. But -- 04:36:39
22 MR. BENSHOOF: I kind of thought so. 04:36:41
23 MR. CARRIGAN: I want to make sure you get your 04:36:42
24 best testimony. But I also must make sure that you 04:36:44
25 absolutely finish on the 10th -- or on the -- on the next 04:36:46

1 day. So -- 04:36:50

2 MS. TRACY: Can we take, like, a five-minute 04:36:53

3 break and then go for as long as David can. 04:36:55

4 THE WITNESS: Sure. 04:36:57

5 MS. TRACY: Is that okay? 04:36:58

6 MR. CARRIGAN: Let's go off the record. 04:36:59

7 THE VIDEOGRAPHER: Off the record. Time is 04:37:01

8 4:36 p.m. 04:37:03

9 (A recess was taken.) 04:37:07

10 THE VIDEOGRAPHER: Back on the record. Time is 04:46:09

11 4:46 p.m. 04:46:11

12 BY MR. BENSHOOF:

13 Q. Now, Mr. Barker, I just wanted to go over -- we 04:46:13

14 were talking about the sediment monitoring reports, and I 04:46:17

15 wanted to go over a couple -- and you indicated correctly 04:46:19

16 that they were, as far as you know, they were all -- many 04:46:22

17 of them were included in the administrative record. 04:46:25

18 And I -- we have located a couple that I wanted 04:46:27

19 to ask a question or two about. And this will be next -- 04:46:30

20 this will be next in order, which is? 04:46:34

21 THE COURT REPORTER: 1245. 04:46:45

22 (Exhibit 1245 was marked.) 04:46:45

23 BY MR. BENSHOOF:

24 Q. I've marked as 1245, Mr. Barker, a document. 04:46:47

25 It's SAR 035020. And it's one of the -- the many NPDES 04:46:53

1 marine sediment monitoring reports that were -- that 04:47:05
2 Southwest Marine was required to submit. Do you see 04:47:08
3 that? 04:47:11
4 A. Yes. 04:47:11
5 Q. And do you see that it -- this is an example of 04:47:12
6 a -- a report that analyzes paint chips, the quantity 04:47:20
7 in -- of those in the sediments? 04:47:30
8 A. Yeah. I see that paint chips were part of this 04:47:36
9 report. 04:47:41
10 Q. Okay. And then at page SAR 035032, there's a -- 04:47:41
11 a -- 04:47:55
12 MR. CARRIGAN: Almost at the end, second to the 04:47:57
13 last page. 04:47:59
14 BY MR. BENSHOOF:
15 Q. -- indication of the quantity of chips found in 04:48:00
16 the sediments. 04:48:03
17 A. Okay. We're on -- 04:48:07
18 MR. CARRIGAN: That's it. 04:48:09
19 THE WITNESS: -- 032. Okay. 04:48:10
20 BY MR. BENSHOOF:
21 Q. Yeah. 04:48:14
22 A. And the question was? 04:48:16
23 Q. Did you recognize this data, not the specific 04:48:17
24 data, but do you recognize this as where the report is 04:48:21
25 setting forth the -- the quantity measured in grams of 04:48:26

1 paint chips that were reported from certain samples? 04:48:32

2 A. Yes. 04:48:38

3 Q. And I take it you would agree that -- and in one 04:48:39

4 sampling location from a -- from the sample, they're 04:48:44

5 reporting that .49 grams of that sample consisted of 04:48:50

6 paint chips? 04:48:54

7 A. Yes. 04:48:56

8 Q. And I take it that other than designating this 04:48:57

9 to be a part of the record, you didn't ask your staff 04:49:07

10 to -- to look in detail at this report or any of the 04:49:10

11 others to determine to what degree this presence of paint 04:49:14

12 chips generated by the shipyard operations would indicate 04:49:21

13 it as the sole source for PCB and other metals 04:49:24

14 contamination to the site; correct? 04:49:29

15 A. Yeah. Our -- our basis, we included this in the 04:49:35

16 report because it formed the foundation for the 04:49:38

17 board's -- that led to the board's requirement in 2001 to 04:49:43

18 conduct a -- for BAE -- BAE to participate in a sediment 04:49:48

19 quality investigation. 04:49:54

20 Q. Because it was evidence that its paint chips 04:49:58

21 amongst other things had clearly impacted the sediment; 04:50:01

22 correct? 04:50:04

23 A. Yes. 04:50:05

24 Q. And paint chips were just one of the by-products 04:50:06

25 of the blasting operations at the shipyard; correct? 04:50:15

1 BY MR. BENSHOOF:

2 Q. And do you see yourself -- is this an internal 04:52:02
3 memorandum, Mr. Barker, that you see yourself as being 04:52:06
4 one of the addressees on? 04:52:10

5 A. Yes. 04:52:14

6 Q. And you see the date of this document from the 04:52:16
7 administrative record. And let me just read the record 04:52:20
8 number. It's 169862. 04:52:23

9 A. Yes. 04:52:28

10 Q. And -- and you see there's a handwritten 04:52:29
11 notation, "Keep in mind for CAO order DB." 04:52:35

12 A. Yes. 04:52:39

13 Q. And so that was your note to someone to make 04:52:40
14 sure that this subject of this memorandum was kept in 04:52:45
15 mind for the -- for an order to be issued against 04:52:50
16 Southwest Marine? 04:52:54

17 A. Yes. 04:52:57

18 Q. And the reason you did was because of what it 04:52:58
19 reported; correct? 04:53:00

20 A. Yes. 04:53:03

21 Q. And it reported that, quote, Dust from 04:53:03
22 sandblasting operations at Southwest Marine is 04:53:06
23 continually observed coming over the fence, referring to 04:53:08
24 a fence between Southwest Marine and Chevron. 04:53:12

25 Continues the report, "A haze over the 04:53:17

1 sandblasting area was obvious. When Chevron initiates 04:53:20
2 storm water sampling, it is most likely that analytic 04:53:27
3 results will show high concentrations of metals and TBT 04:53:31
4 unless the ground at Chevron is frequently swept." 04:53:35
5 Do you see that? 04:53:40
6 A. Yes. 04:53:40
7 Q. And so you're -- who's making this report, by 04:53:41
8 the way? 04:53:44
9 A. I believe it was a Regional Board employee at 04:53:50
10 the time. I think his name was Chris Sandel. 04:53:53
11 Q. And he goes on to report, "Southwest is causing 04:54:00
12 a nuisance at Chevron in discharging sandblast dust to 04:54:04
13 San Diego Bay through Chevron's storm drain system." 04:54:08
14 Do you see that? 04:54:13
15 A. Yes. 04:54:14
16 Q. And that was one of the reasons why you wanted 04:54:14
17 this kept in mind for issuance of a CAO against 04:54:16
18 Southwest Marine; correct? 04:54:21
19 A. Yes. 04:54:22
20 Q. And you recognize that one of the properties 04:54:23
21 surrounding Southwest Marine's facility is also the 04:54:24
22 property known as the Silvergate station of SDG&E's; 04:54:28
23 correct? 04:54:31
24 A. Yes. 04:54:32
25 Q. And do have any reason to believe that this 04:54:37

1 nuisance sandblasting operation by Southwest didn't 04:54:39
2 affect SDG&E's property, as well? 04:54:44
3 MR. CARRIGAN: Lacks foundation. Calls for 04:54:47
4 speculation. 04:54:49
5 MR. DART: Join. 04:54:49
6 THE WITNESS: Yeah. I -- I have no knowledge if 04:54:49
7 it did or did not. It... 04:54:52
8 BY MR. BENSHOOF:
9 Q. I take it you -- you know that -- you know that 04:54:59
10 Southwest, in this instance, apparently caused high 04:55:02
11 concentrations of metals and TBT to be transported to the 04:55:09
12 Chevron property. 04:55:16
13 MR. CARRIGAN: Misstates the document. 04:55:18
14 BY MR. BENSHOOF:
15 Q. Well, is that what it was being -- 04:55:19
16 MR. DART: Same objections from before. 04:55:21
17 BY MR. BENSHOOF:
18 Q. Is that what was being reported to you, that 04:55:23
19 Southwest operations were causing such concentrations to 04:55:26
20 be transported to the Chevron property? 04:55:29
21 MR. CARRIGAN: Document speaks for itself. 04:55:31
22 MR. DART: Join. 04:55:33
23 THE WITNESS: Yeah. I -- I think when I -- just 04:55:34
24 reading the document, it -- it was suggesting that 04:55:40
25 possibility that that might happen and that it was -- the 04:55:44

1 person was suggesting it might be interesting to go 04:55:52
2 sample the sediments to see if -- what shows -- what 04:55:54
3 would show up in the sediments that might be related to 04:56:02
4 this sandblasting debris. 04:56:05
5 Q. And if -- you'd agree that if the sandblasting 04:56:07
6 operations of Southwest Marine would cause the airborne 04:56:10
7 transportation of metals and TBT to adjacent properties, 04:56:13
8 they also could cause the airborne transportation of PCBs 04:56:17
9 to adjacent properties; would you agree? 04:56:21
10 MR. CARRIGAN: Lacks foundation. Calls for 04:56:24
11 speculation. 04:56:24
12 MR. DART: Join. 04:56:25
13 MR. CARRIGAN: Incomplete hypothetical. 04:56:25
14 MR. DART: Join. 04:56:27
15 THE WITNESS: Yeah. Yeah, I don't know. It 04:56:27
16 just would depend on what -- what they were sandblasting 04:56:35
17 and what its makeup was. 04:56:39
18 MR. BENSHOOF: Correct. 04:56:42
19 THE WITNESS: And all of those variables. 04:56:42
20 BY MR. BENSHOOF:
21 Q. And -- and you know from your prior experience 04:56:44
22 that amongst the things that were being sandblasted by 04:56:47
23 Southwest Marine, and indeed the source of the TBT were 04:56:54
24 the paints on hulls of vessels; correct? 04:56:57
25 A. That -- that TBT was in the vessel paints? 04:57:02

1 Q. Correct. And that's the reason it was -- that 04:57:07
2 was amongst the chemicals that were included in the 04:57:10
3 abrasive waste carried to adjacent properties, TBT. 04:57:13
4 A. Well, this memo is suggesting the possibility 04:57:18
5 that -- that that material might be in the -- what was 04:57:20
6 carried to the adjacent properties. And I guess it's -- 04:57:27
7 until there's a sample that shows exactly what it was, 04:57:34
8 it's just speculation, I guess. 04:57:36
9 Q. Okay. I take it what wasn't speculation was 04:57:41
10 that there was a -- that dust from sandblasting 04:57:43
11 operations at Southwest is continually observed coming 04:57:52
12 over the fence of the Chevron property. 04:57:55
13 MR. DART: Same objections. 04:57:58
14 MR. CARRIGAN: Document -- document speaks for 04:57:59
15 itself. 04:58:00
16 MR. BENSHOOF: That's not speculation; right? 04:58:02
17 It actually got there. 04:58:04
18 MR. DART: Same objections. 04:58:06
19 BY MR. BENSHOOF:
20 Q. Your -- your staff member is reporting that to 04:58:06
21 you? 04:58:09
22 A. Yeah. That -- that they were there, they 04:58:12
23 observed what they thought was dust on the ground at 04:58:16
24 Chevron that looked like it was coming from Southwest. 04:58:20
25 Q. And I take it you've got no reason to believe 04:58:26

1 that that was restricted to that particular day? 04:58:30

2 MR. CARRIGAN: Lacks foundation. Calls for -- 04:58:33

3 calls for speculation. Document speaks for itself. 04:58:36

4 MR. DART: Join. 04:58:39

5 MR. BENSHOOF: I'll rephrase it. 04:58:42

6 BY MR. BENSHOOF:

7 Q. Do you have any reason to believe that 04:58:44

8 Southwest's impact on adjacent properties was not a 04:58:45

9 continual process? 04:58:48

10 A. I -- I don't know whether it was intermittent or 04:58:50

11 continual or really to what extent that was happening. I 04:58:56

12 guess I heard anecdotal reports such as this one. And -- 04:59:03

13 and that's all I recall. 04:59:08

14 Q. Fair enough. You do recall that the quantities 04:59:11

15 of abrasive wastes generated by Southwest were rather 04:59:15

16 large; correct? 04:59:20

17 MR. DART: Vague as to time. 04:59:22

18 MR. CARRIGAN: Vague. 04:59:24

19 MR. DART: Lacks foundation. 04:59:26

20 THE WITNESS: I... 04:59:27

21 BY MR. BENSHOOF:

22 Q. Have you seen figures in the range of 04:59:28

23 185,000 tons a year being generated? 04:59:31

24 A. I -- 04:59:36

25 MR. DART: Vague. 04:59:36

1 THE WITNESS: Those -- no particular set of 04:59:47
2 numbers comes to mind on the -- I mean, we -- on how much 04:59:49
3 they generate in a year. We -- there might be 04:59:57
4 information in the record that -- that has that type of 05:00:01
5 stuff in there. But the DTR, I don't think had any 05:00:04
6 definitive statements about that. 05:00:10
7 BY MR. BENSHOOF:
8 Q. But you're -- you're familiar enough with the 05:00:13
9 probable sources of pollution caused by the shipyards to 05:00:18
10 know that one of the most problematic aspects of their 05:00:21
11 operations was the sandblasting part? 05:00:24
12 A. Yes. 05:00:26
13 MR. DART: Objection. Vague. May call for 05:00:27
14 expert testimony. 05:00:29
15 MR. BENSHOOF: I want to quickly identify a 05:00:39
16 couple of other documents before we break for the day, 05:00:40
17 Mr. Barker, just to try to complete an area of 05:00:43
18 questioning. And let's move to 124... 05:00:46
19 THE COURT REPORTER: Seven. 05:00:54
20 MR. BENSHOOF: Seven. 05:00:54
21 (Exhibit 1247 was marked.) 05:00:54
22 MR. BENSHOOF: And I just want to ask you for 05:00:55
23 your opinion on the usefulness of other sampling work 05:00:58
24 that Ogden did at about the same time as this December 05:01:05
25 report that we've been previously looking at. 05:01:07

1 First, I've had marked as 1247 a document 05:01:19
2 appearing at SAR 199495. Again, it's one of the several 05:01:24
3 reports generated by Southwest Marine's consultant in 05:01:33
4 1998 on the -- on this -- what they describe as the 05:01:37
5 sediment remediation project. 05:01:40
6 And I want to refer your attention specifically 05:01:47
7 to Figures 4, 5, and 6 where the Ogden Southwest Marine's 05:01:50
8 consultant is illustrating the variety of sampling points 05:02:05
9 that their investigation covered. And I take it 05:02:11
10 looking -- my question is sort of a general one. And 05:02:21
11 Figure 5 represents the sampling points for sediment 05:02:26
12 copper levels, and Figure 6 represents the sampling 05:02:29
13 points for sediment lead levels. 05:02:33
14 Am I correct in assuming, Mr. Barker, that this 05:02:36
15 is data that you would find to be useful to evaluate the 05:02:40
16 extent to which the shipyards, the BAE shipyard, 05:02:49
17 Southwest Marine shipyard operations and those of its 05:02:58
18 predecessors were the sole cause of copper and lead 05:03:01
19 contamination to the sediment at the sampling locations 05:03:05
20 indicated? 05:03:11
21 THE WITNESS: No. I -- I mean, this is 05:03:15
22 information that's -- I don't know that we would get into 05:03:18
23 making findings about -- using this to make findings 05:03:25
24 about whether BAE was the sole source of this. The -- 05:03:30
25 BY MR. BENSHOOF: 05:03:39

1 Q. I take it you would agree that it would be 05:03:39
2 useful -- 05:03:41
3 MR. CARRIGAN: Wait. Are you finished with your 05:03:42
4 answer, David? 05:03:44
5 THE WITNESS: I -- again, just to add on a 05:03:49
6 little bit, the board usually does not make findings like 05:03:51
7 that. They -- they -- in sediment contamination 05:03:58
8 situations, we look to associate contaminants with 05:04:07
9 responsible parties. 05:04:13
10 But when we make those findings, we don't 05:04:14
11 necessarily -- we don't say, there are no more 05:04:17
12 responsible parties to add. We don't say, all of this 05:04:21
13 material came from this party and not from this other 05:04:25
14 party. We approach it more with just kind of 05:04:28
15 establishing a pathway for a particular constituent back 05:04:33
16 to a particular party. And our analysis doesn't really 05:04:38
17 go deeper than that. 05:04:44
18 BY MR. BENSHOOF:
19 Q. But would it be fair to say that -- that the 05:04:46
20 data, sediment data, of the kind illustrated in the Ogden 05:04:50
21 report would be data you would want to look at to assess 05:04:56
22 the shipyard's impact on the sediments? 05:05:00
23 A. Yes. That would be. 05:05:04
24 Q. And at some point, Mr. Barker, isn't it also 05:05:06
25 fair to say that it's important for you to understand the 05:05:09

1 scale of Southwest Marine's impact to be able to fairly 05:05:15
2 evaluate whether to name additional parties? 05:05:19
3 MR. CARRIGAN: Calls for a legal conclusion. 05:05:23
4 MR. BENSHOOF: No. I'm just asking his own -- 05:05:24
5 MR. CARRIGAN: You're entitled to ask. I'm 05:05:26
6 entitled to object. Go ahead. 05:05:28
7 MR. BENSHOOF: Yeah. No, no. 05:05:30
8 BY MR. BENSHOOF: 05:05:30
9 Q. And I don't mean to be putting you in the role 05:05:30
10 of a lawyer. I'm just trying to figure out -- I know 05:05:33
11 your process over 30-some years has been a very thorough 05:05:34
12 one. 05:05:37
13 A. Yeah. 05:05:38
14 Q. And so the question was simply, at some point, 05:05:38
15 isn't it relevant to know the scale of Southwest Marine's 05:05:44
16 impacts in determining whether or not it is fair or, in 05:05:48
17 the words of the State Board decisions, reasonable to 05:05:55
18 identify another party as a cause? 05:05:59
19 MR. CARRIGAN: Same objection. Go ahead. 05:06:02
20 THE WITNESS: I -- I would -- the scale of 05:06:05
21 operations is a consideration in establishing a pathway 05:06:10
22 from a particular facility to a sampling location out in 05:06:16
23 the bay. And that -- that's a perspective that the -- 05:06:24
24 the -- that the board would look at that at. And in 05:06:29
25 making that association with that facility, we typically 05:06:38

1 don't make conclusionary-type findings that there isn't a 05:06:44
2 pathway for that same constituent from another facility 05:06:51
3 that may be a smaller operation but nonetheless a 05:06:56
4 contributor. 05:07:01
5 BY MR. BENSHOOF:
6 Q. Let me approach it slightly differently. 05:07:05
7 Southwest Marine, we -- we looked at the document where 05:07:08
8 Mr. Halvax was asking Mr. Carlisle to add or to look at 05:07:14
9 evidence that he had supplied of SDG&E discharges, and 05:07:20
10 Mr. Carlisle wrote back and said, give me a list or give 05:07:25
11 me a letter. We covered that. 05:07:30
12 A. Yes. 05:07:31
13 Q. And all I'm wondering, Mr. Barker, and I really 05:07:32
14 am focusing on the reasonable basis requirement for 05:07:36
15 naming somebody else. You have somebody that's a 05:07:40
16 representative of a discharger that has -- whose site is 05:07:44
17 described as appearing like oily moose. And -- and who's 05:07:50
18 had -- and his predecessors have operated there for 05:07:56
19 decades, whose site, as you've testified, has facilities 05:08:00
20 associated with it and operations associated with it that 05:08:08
21 involve every chemical of concern that is in the 05:08:12
22 sediments. 05:08:14
23 And so my question is, given all of that, in 05:08:16
24 looking at what Mr. Halvax wants Mr. Carlisle to do, that 05:08:18
25 is, go blame somebody else, isn't it relevant to know 05:08:24

1 whether or not the operations of Southwest Marine and its 05:08:28
2 practices were of such a scale that they could have 05:08:34
3 reasonably caused the entire effect seen in the 05:08:37
4 sediments? 05:08:42

5 MR. CARRIGAN: Misstates facts in evidence. 05:08:44
6 Misstates witness's testimony. Misstates documents. 05:08:45
7 Lacks foundation. Calls for speculation. Incomplete 05:08:49
8 hypothetical. 05:08:51

9 MR. DART: Join. And is based upon hearsay. 05:08:53

10 MR. BENSHOOF: Other than that, it sounds like a 05:08:56
11 good question. 05:08:58

12 MR. CARRIGAN: It just sounds like you want to 05:09:00
13 testify, Ward. Why don't you go ahead and do that. 05:09:01

14 MR. BENSHOOF: I'll try to rephrase it to take 05:09:08
15 out my testimony. 05:09:11

16 BY MR. BENSHOOF:

17 Q. But it's again, I know that you take the policy 05:09:13
18 to have a reasonable basis for something seriously. And 05:09:16
19 so it's just simply -- and I know that you don't sit 05:09:20
20 there and develop a ledger, necessarily, for each 05:09:23
21 responsible party as to amount given. I understand that. 05:09:27

22 But I guess what I'm wondering about, isn't 05:09:31
23 there -- you do evaluate evidence that's brought to you 05:09:35
24 by one responsible party that somebody else may have 05:09:39
25 caused a part of the problem; correct? You do, do that? 05:09:42

1 might be different depending on the scale of the 05:11:23
2 operations and all of those considerations. But -- but 05:11:25
3 the -- under the statute and Resolution 92-49 which, 05:11:31
4 where we have the directive to make a reasonable effort 05:11:38
5 to find all parties responsible for -- that may have 05:11:43
6 contributed to a pollution problem, to identify them and 05:11:53
7 hold them accountable. And we do that. But in doing 05:11:56
8 that we don't allocate percent responsibility between 05:12:00
9 the -- between the parties. We -- we -- the board 05:12:05
10 doesn't make findings on that. 05:12:13

11 BY MR. BENSHOOF:

12 Q. Let's just take kind of an extreme example. You 05:12:20
13 would agree that in looking at Mr. Halifax's letter, it 05:12:23
14 would have been relevant to know -- let's just say that 05:12:27
15 Southwest Marine had a PCB discharging machine set up on 05:12:30
16 one of the piers. You'd want to know something like 05:12:34
17 that? 05:12:38

18 MR. DART: Incomplete hypothetical. 05:12:38

19 MR. BENSHOOF: Yeah, I mean, I'm using an 05:12:39
20 extreme example, obviously, and there's no evidence that 05:12:41
21 that occurred. But that's my point. At some point, 05:12:44
22 isn't the scale of what a discharger in the position of 05:12:47
23 Southwest Marine was responsible for relevant to whether 05:12:50
24 it is reasonable to conclude -- I understand there's a 05:12:54
25 statutory duty to -- to be broad and cast a broad net. 05:12:57

1 My question was a little bit different, 05:13:01
2 Mr. Barker. It was, at some point, isn't it relevant as 05:13:03
3 to whether it's reasonable to cast that broad net to look 05:13:08
4 closely at the person that's sitting over the water? 05:13:12
5 MR. DART: Same objections. And asked and 05:13:17
6 answered. 05:13:18
7 MR. CARRIGAN: Yeah. I'm going to have to say 05:13:18
8 same objections and asked and answered. 05:13:20
9 THE WITNESS: Yeah. I -- yes. I think that's a 05:13:22
10 relevant consideration. And the board looked at that and 05:13:27
11 named that entity in the cleanup and abatement order and 05:13:33
12 came to that conclusion some -- some years ago. 05:13:38
13 But in -- in reaching that conclusion, the board 05:13:42
14 did not rule out the possibility that there were other 05:13:45
15 sources in the industrialized area that we're talking 05:13:49
16 about that could have also contributed to some extent to 05:13:55
17 the pollutants in the sediments. 05:13:58
18 And -- and we, as part of the process, we've -- 05:14:01
19 we went out to -- to see if other -- if there were other 05:14:08
20 parties that it -- where -- that it -- where -- where a 05:14:15
21 pathway for pollutant discharges into the 05:14:24
22 Shipyard Sediment Site could be established. And -- and 05:14:29
23 when we made those conclusions, we -- we named those 05:14:32
24 parties. 05:14:36
25 MR. BENSHOOF: Okay. You've been very patient 05:14:37

1 and gracious with your time, Mr. Barker. It's a long 05:14:39
2 day. Thank you very much. 05:14:41
3 THE WITNESS: Thank you. 05:14:43
4 MR. BENSHOOF: We'll resume on the 10th. 05:14:45
5 MR. CARRIGAN: Okay. 05:14:48
6 THE VIDEOGRAPHER: This ends the videotaped 05:14:50
7 deposition of David Barker, Volume No. 3, Videotape 05:14:51
8 No. 4. Today's date is March 3rd, 2011. Time is 05:14:54
9 5:15 p.m. Off the record. 05:14:59
10 (Whereupon the deposition was adjourned at 05:15:04
11 5:15 p.m.) 05:16:14
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1 I declare under penalty of perjury under the laws of the 05:16:14
2 State of California that the foregoing is true and 05:16:14
3 correct; that I have read my deposition and have made the 05:16:14
4 necessary corrections, additions or changes to my answers 05:16:14
5 I deem necessary. 05:16:14

6
7 Executed on this _____ day of _____, 05:16:14
8 2011. 05:16:14

9 _____ 05:16:14
10 DAVID BARKER

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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**, 20**11**
at San Diego, California.



Anne M. Zarkos RPR, CRR
CSR No. 13095

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN RE THE MATTER OF)
)
TENTATIVE CLEANUP AND ABATEMENT)
ORDER NO. R9-2011-0001)
)
)
)
_____)

**DEPOSITION OF DAVID BARKER
Volume IV, Pages 680 - 953
San Diego, California
March 10, 2011**

**Reported By: Anne M. Zarkos, RPR, CRR,
CSR No. 13095**



530 B Street
Suite 350
San Diego, CA
92101

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN RE THE MATTER OF)
)
TENTATIVE CLEANUP AND ABATEMENT)
ORDER NO. R9-2011-0001)
)
)
)
_____)

DEPOSITION OF DAVID BARKER,
taken by the Attorney for NASSCO, commencing at the hour
of 8:10 a.m. on Thursday, March 10, 2011, at
401 B Street, Suite 1700, San Diego, California, before
Anne M. Zarkos, RPR, CRR, CSR No. 13095, Certified
Shorthand Reporter in and for the State of California.

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APPEARANCES:

For the State Water Resource Control Board:
STATE WATER RESOURCES CONTROL BOARD
BY: CHRISTIAN CARRIGAN, ESQ.
P.O. Box 100
Sacramento, CA 95812-0100
916-322-3626

For National Steel and Shipbuilding Company:
LATHAM & WATKINS, LLP
BY: RYAN WATERMAN, ESQ.
600 West Broadway, Suite 1800
San Diego, CA 92101
619-236-1234

For the Port of San Diego:
BROWN & WINTERS
BY: WILLIAM D. BROWN, ESQ.
120 Birmingham Drive, Suite 110
Cardiff-by-the-Sea, CA 92007
760-633-4485

For BAE Systems:
DLA PIPER US, LLP
BY: MATTHEW B. DART, ESQ.
401 B Street, Suite 1700
San Diego, CA 92101
619-699-2628

For the City of San Diego:
GORDON & REES, LLP
BY: KARA PERSSON, ESQ.
101 West Broadway, Suite 1600
San Diego, CA 92101
619-230-7729

For San Diego Gas & Electric Company:
SEMPRA ENERGY
BY: JILL TRACY, ESQ.
101 Ash Street, HQ12
San Diego, CA 92101
619-699-5112

1 APPEARANCES (cont.):

2 For San Diego Gas & Electric Company:

3 ALSTON & BIRD, LLP

4 BY: WARD L. BENSHOOF, ESQ.

5 333 South Hope Street, 16th Floor

6 Los Angeles, CA 90071-3004

7 213-576-1108

8 For Campbell Industries:

9 MORTON MCGOLDRICK

10 JAMES V. HANDMACHER, ESQ.

11 820 A Street, Suite 600

12 Tacoma, WA 98402

13 253-627-8131

14 Also Present:

15 Melinda Bruce, Videographer

16

17

18

19

20

21

22

23

24

25

I N D E X

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1 THE VIDEOGRAPHER: Time on the record is 08:10:20
2 8:10 a.m. Today's date is March 10th, 2011. My name 08:10:21
3 is Melinda Bruce of Peterson Reporting, Video and 08:10:26
4 Litigation Services. 08:10:30
5 The court reporter today is Anne Zarkos of 08:10:31
6 Peterson Reporting, located at 530 B Street, Suite 350, 08:10:35
7 San Diego, California 92101. 08:10:37
8 This begins the videotaped deposition of 08:10:46
9 David Barker, Volume 4, testifying in the matter of 08:10:48
10 In Re Tentative Cleanup & Abatement Order 08:10:52
11 No. R9-2011-0001. The video and -- excuse me -- taken at 08:10:58
12 401 B Street, Suite 1700, San Diego, California 92101. 08:11:07
13 The video and audio recordings will take place 08:11:17
14 at all times during this deposition unless all counsel 08:11:19
15 agree to go off the record. The beginning and end of 08:11:22
16 each videotape will be announced. 08:11:26
17 Will counsel please identify yourselves and 08:11:28
18 state whom you represent. 08:11:29
19 MR. BENSHOOF: This the Ward Benshoof. I'll be 08:11:33
20 asking -- beginning asking the questions this morning. 08:11:37
21 I'm with the Alston & Berg firm and cocounsel with 08:11:40
22 Jill Tracy for SDG&E. 08:11:41
23 MS. TRACY: Jill Tracy for SDG&E. 08:11:43
24 MR. HANDMACHER: Jim Handmacher for 08:11:45
25 Campbell Industries. 08:11:48

Peterson Reporting, Video & Litigation Services

1 MR. BARRETT: David Barrett, SDG&E. 08:11:49
2 MR. BROWN: Bill Brown, Brown & Winters, for the 08:11:51
3 Port. 08:11:53
4 MR. WATERMAN: Ryan Waterman, Latham & Watkins, 08:11:55
5 for NASSCO. 08:11:55
6 MR. DART: Matt Dart for BAE Systems. 08:11:58
7 MR. CARRIGAN: Chris Carrigan for the San Diego 08:11:59
8 Water Board and the witness, Mr. Barker. 08:12:01
9 THE VIDEOGRAPHER: The court reporter may now 08:12:03
10 swear in or affirm the deponent. 08:12:05
11 *** 08:12:10
12 DAVID BARKER, 08:12:10
13 having first been duly sworn, testified as follows: 08:12:17
14 *** 08:12:17
15 FURTHER EXAMINATION 08:12:17
16 BY MR. BENSHOOF: 08:12:17
17 Q. Thank you. Good morning again, Mr. Barker. 08:12:20
18 A. Morning. 08:12:23
19 Q. We went over a lot of rules and procedures 08:12:24
20 regarding depositions, including the importance of you 08:12:26
21 pausing, make sure you understand the question, and me 08:12:30
22 not interrupting you when you're answering. So there's 08:12:33
23 rules we both need to follow. I'm assuming you remember 08:12:36
24 those from the other day, so we don't need to go over 08:12:39
25 them again. 08:12:42

1 per billion wasn't mentioned in the DTR. 08:14:21

2 So I was asking you, isn't this relevant 08:14:24

3 information to include in the DTR to determine who the 08:14:26

4 source was for PCBs at the shipyard. So that was the 08:14:29

5 context of the questioning. 08:14:32

6 And I just wanted to give you the full report. 08:14:33

7 A. Oh. 08:14:36

8 Q. In case you wanted in any way -- 08:14:37

9 MR. CARRIGAN: We don't -- I'm sorry, Counsel. 08:14:39

10 I don't mean to interrupt. We don't need to change our 08:14:41

11 testimony or augment it in any way. If you have a 08:14:44

12 question about the full document, you're welcome to levy 08:14:46

13 it, otherwise. 08:14:49

14 MR. BENSHOOF: Okay. 08:14:49

15 MR. CARRIGAN: -- I think we're good. 08:14:50

16 MR. BENSHOOF: That's fine. That's fine. 08:14:53

17 MR. CARRIGAN: Unless you have a different view 08:14:54

18 on it, David. 08:14:55

19 THE WITNESS: No. 08:14:56

20 BY MR. BENSHOOF: 08:14:56

21 Q. Okay. Were -- when we ended last week, 08:14:56

22 Mr. Barker, I think you agreed that before the 08:15:00

23 Regional Board proceeded to identify other suspected 08:15:09

24 dischargers, it was reasonable for the board to look 08:15:15

25 at -- closely at the Southwest Marine site. And I'll -- 08:15:18

1 let me refer you to the question and answer because I 08:15:21
2 want to begin there today. 08:15:23
3 I asked, "At some point isn't it relevant as to 08:15:26
4 whether it's reasonable to cast that broad net?" We were 08:15:29
5 talking about looking for other dischargers. "At some 08:15:33
6 point isn't it relevant as to whether it's reasonable to 08:15:36
7 cast that broad net to look closely at the person that's 08:15:38
8 sitting over the water, Southwest Marine?" 08:15:41
9 And you answered in part, "I think that's a 08:15:45
10 relevant consideration." And then you went on to say the 08:15:47
11 board didn't rule out other dischargers. 08:15:51
12 And so you would agree that it was relevant to 08:15:54
13 the board's duty to, quote, Look closely at 08:15:56
14 Southwest Marine because they were right over the water 08:16:00
15 in the sediment area of concern; correct? 08:16:02
16 A. Yes. 08:16:04
17 Q. Okay. Now, I take it you would also agree 08:16:05
18 that -- that -- that no one on the board staff was, in 08:16:09
19 fact, instructed to do a comprehensive examination of the 08:16:13
20 Southwest Marine site for purposes of identifying its 08:16:18
21 numerous point sources of PCB discharges. 08:16:23
22 Would you agree with that? 08:16:26
23 MR. DART: Objection. Assumes facts. 08:16:28
24 BY MR. BENSHOOF: 08:16:30
25 Q. Well let me -- I'll tell you what I'm referring 08:16:31

1 to, Mr. Barker. And you can tell me if his testimony was 08:16:33
2 truthful or not. It's Mr. Carlisle's testimony, 08:16:39
3 deposition testimony, reading from page 80, line 5. 08:16:41
4 "Did you instruct your staff to comprehensively 08:16:44
5 evaluate the various sources of shipyard operations that 08:16:47
6 could lead to PCB contamination of the bay?" 08:16:50
7 Answer, "No." 08:16:54
8 Question, "Why not?" 08:16:57
9 "Because we had sufficient evidence that the 08:16:58
10 shipyards were dischargers contributing to the 08:17:00
11 contamination. Therefore, we had sufficient evidence to 08:17:02
12 name them in the cleanup and abatement order." That was 08:17:07
13 Mr. Carlisle's sworn testimony. 08:17:11
14 Do you agree with that, Mr. Barker? 08:17:14
15 A. Yes. 08:17:16
16 Q. And would you also agree that it wasn't exactly 08:17:16
17 difficult to get sufficient information on the shipyards 08:17:19
18 in order to name them in this cleanup and abatement 08:17:23
19 order? 08:17:24
20 In other words, they didn't seriously contest 08:17:27
21 the fact that they had discharged the chemicals of 08:17:30
22 concern, did they? 08:17:32
23 A. I'm just trying to think of the -- the positions 08:17:41
24 have changed somewhat at different points in time. But 08:17:44
25 back when the -- at the time the board directed NASSCO 08:17:47

1 and Southwest Marine to do the detailed sediment 08:17:55
2 investigation, neither shipyard was contesting being 08:18:00
3 named as a discharger in that investigative order. 08:18:06
4 Q. You had literally sufficient information in the 08:18:10
5 1980s to probably name them as dischargers on a CAO; 08:18:12
6 correct? We didn't have to go through decades' worth of 08:18:16
7 work to figure that out? 08:18:20
8 A. Not -- not necessarily. The history of shipyard 08:18:25
9 regulation by the board has been one of -- of kind of 08:18:27
10 increasing regulation over time. For example, during the 08:18:31
11 1970s and, I think, throughout the 1980s, sediment 08:18:35
12 monitoring was not required at the shipyards as part of 08:18:44
13 the permit monitoring. And it was only in the early '90s 08:18:48
14 that that started up. 08:18:53
15 So the condition of the -- or sediment quality 08:18:54
16 conditions off the shipyards, the only way the board 08:19:00
17 obtained information from that was when it conducted its 08:19:07
18 own sampling, which it did periodically out in the bay. 08:19:10
19 And... 08:19:14
20 Q. Yeah. I mean, we -- we covered last time that 08:19:20
21 sometime in the '90s, the board imposed sediment 08:19:24
22 monitoring requirements on the shipyards; correct? 08:19:27
23 A. Yeah. 08:19:30
24 Q. And it was at that point that the board had 08:19:30
25 ample information to know that the shipyards were 08:19:34

1 discharging chemicals of concern to the bay; correct? 08:19:36

2 MR. CARRIGAN: Calls for a legal conclusion. Go 08:19:40

3 ahead. 08:19:42

4 MR. BENSHOOF: Not -- 08:19:44

5 MR. CARRIGAN: Vague. 08:19:45

6 BY MR. BENSHOOF: 08:19:45

7 Q. Look. I -- I -- I want to just simply make 08:19:45

8 clear that all of my questions are addressed to your 08:19:47

9 capacity as an employee of the Water Board and not as a 08:19:50

10 lawyer. 08:19:53

11 MR. CARRIGAN: And you're free to argue those 08:19:54

12 questions, and I will continue to assert objections that 08:19:56

13 I believe are meritorious. So we -- I think we 08:19:59

14 understand what we're doing here. 08:20:01

15 MR. BENSHOOF: Okay. 08:20:02

16 BY MR. BENSHOOF: 08:20:03

17 Q. When you started getting the sediment monitoring 08:20:08

18 reports, you started to accumulate adequate evidence to 08:20:10

19 name the shipyards; correct? 08:20:15

20 A. Yeah. Yeah, I mean, from our own sampling, I 08:20:17

21 think, in the administrative record there are documents 08:20:19

22 where we started -- that we began writing letters to 08:20:25

23 NASSCO and Southwest Marine expressing concern about the 08:20:32

24 sediment conditions offshore, and that concern increased 08:20:37

25 as -- as more sample data was turned in to the board. 08:20:40

1 Q. Now, was -- I'm assuming, Mr. Barker, that the 08:20:46
2 decision of the board not to conduct a comprehensive 08:20:52
3 examination of the shipyard dischargers into the bay was 08:20:55
4 made for the reasons that Mr. Carlisle stated, that you 08:21:01
5 just felt you had enough evidence without doing a 08:21:05
6 comprehensive study; is that accurate? 08:21:08
7 MR. CARRIGAN: Misstates testimony. Vague. 08:21:10
8 MR. DART: Join. 08:21:12
9 THE WITNESS: The process of -- the board had 08:21:13
10 been working with the shipyards in kind of a voluntary 08:21:16
11 arrangement for some time before the board issued the 08:21:25
12 investigative orders for the detailed study. 08:21:31
13 The -- we -- the board and NASSCO and 08:21:37
14 Southwest Marine went through a negotiated process to use 08:21:43
15 the Campbell shipyard cleanup levels and -- as the 08:21:52
16 cleanup goals for the site. And the -- and kind of based 08:22:02
17 on that arrangement, NASSCO and Southwest Marine went out 08:22:07
18 and did their own -- or did some sediment sampling. 08:22:11
19 And so by the time we issued the investigative 08:22:18
20 orders in 2001 for the detailed study, we had been 08:22:21
21 working with NASSCO and Southwest Marine for some time. 08:22:25
22 And -- and they were not contesting that they had had 08:22:28
23 discharges. 08:22:33
24 Q. Now, an objection was made that I 08:22:34
25 mischaracterized the testimony by both counsel for the 08:22:36

1 Water Board and Southwest Marine. And I want to make 08:22:40
2 sure that there's absolutely no confusion on this 08:22:44
3 question that I asked you about Mr. Carlisle's testimony. 08:22:49
4 I asked you if it was accurate when he testified 08:22:52
5 that he did not instruct his staff to comprehensively 08:22:57
6 evaluate the various sources of shipyard operations that 08:23:01
7 could lead to PC contamination of the bay, because in his 08:23:05
8 words, "We had sufficient evidence that the shipyards 08:23:09
9 were dischargers contributing to the contamination. 08:23:12
10 Therefore, we had sufficient evidence to name them in the 08:23:16
11 cleanup and abatement order." 08:23:18
12 That's what he testified to. If that's in any 08:23:21
13 way inaccurate, you need to tell me in what way it was 08:23:23
14 not truthful. Because I asked you, "Is that truthful," 08:23:26
15 and you had said "yes." So your -- I think requoted that 08:23:30
16 testimony, and your counsel said I misstated the record. 08:23:34
17 And I'm not going to misstate that record. 08:23:37
18 So I want to be crystal clear that at no time 08:23:40
19 did the board ever direct anybody to conduct a 08:23:44
20 comprehensive examination of the shipyard discharges that 08:23:47
21 could lead to PCB contamination of the bay. 08:23:52
22 MR. CARRIGAN: Misstates testimony. 08:23:56
23 MR. DART: Join. 08:23:59
24 THE WITNESS: I mean, I'm just trying to think. 08:24:07
25

1 BY MR. BENSHOOF: 08:24:09

2 Q. Let me restate it so you can put it in your own 08:24:10

3 words. 08:24:13

4 Did the board ever direct anybody to make a 08:24:14

5 comprehensive examination of the operations of either the 08:24:17

6 NASSCO shipyard or the Southwest Marine shipyard to 08:24:20

7 determine those operations that could lead to PCB 08:24:24

8 contamination of the bay? 08:24:31

9 MR. CARRIGAN: Asked and answered. Go ahead. 08:24:32

10 THE WITNESS: The -- I guess in responding to 08:24:34

11 that, I would say that the board -- again, I'm thinking 08:24:43

12 of the -- from the framework of the 19 -- late 1990s when 08:24:46

13 we were -- we were working extensively with the shipyards 08:24:54

14 and -- and indicating that we were associating their 08:25:00

15 operations with sediment conditions offshore. 08:25:05

16 The board had imposed sediment monitoring, and 08:25:10

17 also some detailed requirements for them to do chemical 08:25:15

18 inventories of the type of wastes they have had at its 08:25:19

19 site. So the board was relying on its history of 08:25:23

20 regulation of the site, its knowledge of the operations, 08:25:27

21 and the type of wastes generated at the site. 08:25:31

22 And then the sediment quality conditions 08:25:34

23 offshore and -- and the combination of all that 08:25:36

24 information was enough for us to make the finding that 08:25:40

25 the two facilities had discharged waste to the bay. 08:25:49

1 BY MR. BENSHOOF: 08:25:53

2 Q. Okay. For example, Mr. Barker. Am I correct? 08:25:53

3 MR. CARRIGAN: Are you finished with your 08:25:56

4 answer, David? 08:25:57

5 MR. BENSHOOF: I'm sorry. I thought you had. 08:25:58

6 THE WITNESS: Yes, I'm finished. Yes. 08:26:00

7 BY MR. BENSHOOF: 08:26:01

8 Q. For example, at no point in time did you ever 08:26:02

9 ask anybody on the staff to comprehensively look at the 08:26:04

10 operations that Southwest Marine had in the vicinity of 08:26:07

11 MS4, Storm Water Discharge Point 4; correct? SW4. You 08:26:12

12 never asked anybody to look at their operations there to 08:26:21

13 see whether or not the operations of Southwest Marine 08:26:24

14 might be accountable for the entirety of the sediment 08:26:27

15 impacts in that location, did you? 08:26:30

16 A. At -- at MS4? 08:26:32

17 Q. Correct. 08:26:36

18 MR. CARRIGAN: I believe the question was SW4. 08:26:39

19 I'm sorry. Just -- 08:26:42

20 MR. BENSHOOF: Yeah, okay. 08:26:43

21 MR. CARRIGAN: Outflow SW4. 08:26:45

22 THE WITNESS: Oh, SW4, okay. 08:26:46

23 MR. CARRIGAN: Ward, I don't mean to put words 08:26:46

24 in your mouth. 08:26:50

25 THE WITNESS: Okay. No, I don't recall asking 08:26:51

1 for a detailed investigation of the Southwest Marine 08:26:53
2 operations at -- in the area that would be tributary to 08:26:59
3 that storm drain. 08:27:04
4 BY MR. BENSHOOF: 08:27:06
5 Q. Okay. And matter of fact, you never asked for 08:27:06
6 any investigation, whether detailed or not, correct, as 08:27:09
7 to whether or not the operations of Southwest Marine 08:27:11
8 might be the source of all the impacts to the sediment in 08:27:15
9 the vicinity of SW4? 08:27:19
10 MR. DART: Vague as to Southwest Marine. 08:27:22
11 THE WITNESS: Well, yeah. 08:27:24
12 BY MR. BENSHOOF: 08:27:24
13 Q. We'll make Southwest Marine, I mean the same 08:27:28
14 thing as generically as I had indicated in the prior 08:27:30
15 deposition. Unless I say the current operator, I use 08:27:38
16 Southwest Marine shipyard to mean the current operator, 08:27:42
17 BAE, and its predecessors back to 1914. 08:27:46
18 So with that clarification, could you answer the 08:27:53
19 question, please, Mr. Barker? 08:27:55
20 A. The -- the board felt it -- it had the 08:27:56
21 information it needed to establish a pathway of -- to 08:28:02
22 associate the sediment quality conditions offshore with 08:28:15
23 Southwest Marine operations. 08:28:18
24 But the board did not try to answer if 08:28:22
25 Southwest Marine was a hundred percent responsible for 08:28:31

1 the sediment quality conditions, only that they 08:28:36
2 contributed to. That was our -- that was our -- that was 08:28:39
3 the framework in which we approached that issue. 08:28:45
4 Q. In terms of -- in terms of the contaminants 08:28:50
5 present in the vicinity of outfall SW4, would it make a 08:28:53
6 difference to you, Mr. Barker, as to the cause of that 08:28:58
7 contamination, whether or not Southwest Marine maintained 08:29:00
8 a hazardous waste compound adjacent to that outfall, for 08:29:05
9 example? 08:29:10
10 A. That would be -- 08:29:14
11 MR. DART: Incomplete hypothetical. 08:29:16
12 THE WITNESS: That would be -- that would be 08:29:18
13 good information. 08:29:21
14 BY MR. BENSHOOF: 08:29:21
15 Q. Right. Anybody reasonably -- 08:29:22
16 A. Right. 08:29:23
17 Q. -- assigning responsibility for bay 08:29:23
18 contamination would want to know whether or not within a 08:29:26
19 few feet of that outfall Southwest Marine maintained a 08:29:30
20 hazardous waste compound; correct? 08:29:33
21 A. Yes. That would -- that would be information 08:29:36
22 that we would certainly consider. 08:29:39
23 Q. And that was in the administrative record but 08:29:40
24 not considered at all in the DTR; correct? 08:29:43
25 MR. CARRIGAN: Misstates the document. 08:29:47

1 MR. DART: And the record. Join. 08:29:49

2 THE WITNESS: The -- the -- the board evaluated 08:29:51

3 the information. The board's basis for naming 08:29:55

4 Southwest Marine as a discharger is documented in the 08:30:01

5 DTR. And that -- that analysis didn't go into all 08:30:06

6 avenues that the board could have pursued. But it went 08:30:12

7 into the avenues the board felt necessary to support 08:30:15

8 naming Southwest Marine in the cleanup order. 08:30:20

9 MR. BENSHOOF: Let's look at -- we'll mark this 08:30:24

10 as next in order as 1248. 08:30:26

11 (Exhibit 1248 was marked.) 08:30:39

12 MR. CARRIGAN: Thank you, Ward. 08:30:40

13 BY MR. BENSHOOF: 08:30:41

14 Q. And I'm asking you to look at one of the items 08:30:41

15 in the administrative record. It's a report, actually, 08:30:43

16 that Southwest Marine issued in accordance with their 08:30:51

17 NPDES permit dated November 17, 1998. It's at 08:30:55

18 SAR 094971. 08:30:58

19 And the -- the DTR will reflect what was 08:31:05

20 considered in that document and what wasn't. But I'll at 08:31:08

21 least represent to you that I read the shipyard sections 08:31:11

22 very carefully, and I didn't see any reference to this 08:31:14

23 document. 08:31:18

24 But I -- more than that, I wanted to ask you 08:31:19

25 about whether or not you would consider some of the 08:31:22

1 information in this document relevant to the DTR. And 08:31:24
2 first of all, I'd like you to turn to SAR page 14987. 08:31:28
3 It's a -- Southwest Marine did a diagram of their site. 08:31:34
4 It's called -- they didn't label it. It doesn't have a 08:31:41
5 figure label. 14987. 08:31:47
6 MR. CARRIGAN: That's it. 08:31:52
7 THE WITNESS: Yeah. I got it. 08:31:52
8 BY MR. BENSHOOF: 08:31:54
9 Q. And you see they -- they seem to attribute 08:31:54
10 operations to SDG&E that, in fact, SDG&E doesn't have; 08:31:59
11 right? Do you see the former Chevron tank farm as 08:32:01
12 attributed by Southwest Marine to SDG&E? 08:32:06
13 MR. CARRIGAN: Lacks foundation. Calls for 08:32:11
14 speculation. 08:32:12
15 MR. DART: Document speaks for itself. 08:32:12
16 MR. BENSHOOF: Well, the document speaks for 08:32:14
17 itself. 08:32:15
18 BY MR. BENSHOOF: 08:32:16
19 Q. Do you recognize that as an error on the 08:32:17
20 document, Mr. Barker? 08:32:18
21 A. I -- let's see. I'm looking. I see "SDG&E tank 08:32:19
22 farm." 08:32:22
23 Q. Right. And there's no such thing, correct, as 08:32:22
24 far as you know? 08:32:26
25 A. I don't know. 08:32:27

1 Q. Okay. 08:32:28

2 A. Okay. 08:32:28

3 Q. You don't know that that was a former Chevron 08:32:28

4 tank farm? 08:32:31

5 A. I know there's a tank farm in the area. 08:32:31

6 Q. And it's not owned by SDG&E. 08:32:34

7 A. Okay. You're telling me that. Okay. 08:32:38

8 Q. Let's just look at -- 08:32:41

9 A. Okay. 08:32:42

10 Q. -- other information, then. 08:32:42

11 As far as I can tell, there are 30 storm drains 08:32:45

12 on the Southwest Marine property. And they're indicated 08:32:48

13 on this map as little dark squares. And the only reason 08:32:52

14 I count to 30 is I see, sort of in the center, the 08:32:58

15 number 30. 08:33:02

16 Is that -- do you generally agree that there are 08:33:03

17 approximately 30 storm drains that -- that take storm 08:33:05

18 water runoff from the SDG&E property and direct it to 08:33:11

19 outfall SW4? 08:33:15

20 MR. CARRIGAN: Document speaks for itself, vague 08:33:17

21 as to time. 08:33:19

22 MR. BROWN: Objection. Vague and ambiguous as 08:33:20

23 to time. 08:33:21

24 MR. DART: Join. And may lack foundation. 08:33:22

25 MS. PERSSON: Join. 08:33:25

1 BY MR. BENSHOOF: 08:33:25

2 Q. From whom at the time, November 17, 1998, for 08:33:29

3 starters. 08:33:35

4 A. Okay. 08:33:36

5 Q. You agree that at least Southwest Marine is 08:33:36

6 reporting that they have 30 storm drains on their 08:33:39

7 property draining in SW4 in 1998; correct? 08:33:42

8 A. Well, you know, I'm not counting all of them. I 08:33:49

9 see a number of places where they're indicating -- where 08:33:51

10 they're indicating storm drains, yes. 08:33:52

11 Q. Okay. 08:33:56

12 A. Yeah. 08:33:58

13 Q. And you recall that in naming SDG&E as a 08:33:59

14 discharger, the board relied very heavily on sediments -- 08:34:01

15 data from sediments extracted from a catch basin upstream 08:34:07

16 of SW4 outfall, correct, CB No. 1? 08:34:12

17 A. Yeah. 08:34:18

18 MR. CARRIGAN: Vague. 08:34:18

19 MS. PERSSON: Join. 08:34:19

20 BY MR. BENSHOOF: 08:34:19

21 Q. And that -- that analysis of sediment from one 08:34:20

22 catch basin was used in the DTR as supposed evidence of 08:34:22

23 SDG&E's contribution to the bay contamination; correct? 08:34:27

24 A. Yes. That was one of the lines of evidence. 08:34:32

25 Q. How many analyses did the Water Board make of 08:34:34

1 sediments in the 30 storm drains on the Southwest Marine 08:34:37
2 property? 08:34:42
3 A. None that I recall. 08:34:48
4 Q. Zero. 08:34:49
5 And -- and -- and yet -- and yet the 08:34:50
6 Water Board, in order to bring SDG&E -- SDG&E into the 08:34:53
7 proceeding, went up and relied on the sediments from one; 08:34:59
8 correct? 08:35:04
9 MR. CARRIGAN: Misstates the record. 08:35:05
10 BY MR. BENSHOOF: 08:35:06
11 Q. And no effort was made to compare the sediment 08:35:07
12 results in that catch basin with any of the 30 on the 08:35:10
13 Southwest Marine property; correct? 08:35:16
14 MR. DART: Assumes facts. 08:35:19
15 THE WITNESS: No. We just -- we just collected 08:35:22
16 that -- that sample. 08:35:24
17 BY MR. BENSHOOF: 08:35:25
18 Q. For example, Mr. Barker, if, in fact, the 08:35:26
19 chemical suite that was detected in Catch Basin No. 1 08:35:29
20 used as the evidence against SDG&E was, in fact, 08:35:33
21 replicated in the 30 storm drains on Southwest Marine's 08:35:37
22 property, wouldn't you consider that to be some evidence 08:35:41
23 of where the contaminants in that catch basin probably 08:35:45
24 came from? 08:35:48
25 MR. DART: Incomplete hypothetical. Calls for 08:35:50

1 speculation. 08:35:51

2 MR. CARRIGAN: Join. 08:35:52

3 THE WITNESS: Yeah. I mean, we're -- the board 08:35:59

4 is always open to new information. I would add, though, 08:36:01

5 that the -- the board did not rely solely on that sump 08:36:05

6 sample as a basis for naming SDG&E. There was other -- 08:36:11

7 other information we considered in conjunction with that 08:36:16

8 information. 08:36:19

9 BY MR. BENSHOOF: 08:36:19

10 Q. Right. We'll get to that. 08:36:20

11 Because amongst the other information that the 08:36:26

12 board relied heavily on was information of soil 08:36:29

13 sediments -- or soil samples from an area to the north of 08:36:33

14 the Southwest Marine site that had formerly had 08:36:38

15 wastewater ponds on it; correct? 08:36:44

16 A. Yes. 08:36:46

17 Q. Now -- and you relied very heavily on the -- the 08:36:48

18 soil sampling in that area as a basis to name SDG&E as a 08:36:54

19 discharger; correct? 08:36:59

20 MR. CARRIGAN: Document speaks for itself. 08:37:00

21 Act -- asked and answered. Vague. 08:37:01

22 THE WITNESS: The board considered the totality 08:37:07

23 of the information; the sediment conditions offshore, the 08:37:09

24 storm drain, the sump sample. 08:37:13

25 MR. BENSHOOF: Okay. 08:37:16

1 THE WITNESS: The soil samples. 08:37:17

2 BY MR. BENSHOOF: 08:37:18

3 Q. And we're going to get to each one. 08:37:18

4 A. Okay. 08:37:20

5 Q. We'll go through them one by one. We're on the 08:37:21

6 soil samples of the area where there had been wastewater 08:37:25

7 ponds. And that was part of the totality that the board 08:37:29

8 relied upon; correct? 08:37:33

9 A. Yes. 08:37:35

10 Q. And in relying upon that as part of the 08:37:36

11 totality, you assumed that the soil samples measured a 08:37:38

12 condition that was caused by SDG&E; i.e., its wastewater 08:37:45

13 ponds; correct? 08:37:50

14 A. Yes, yes. 08:37:54

15 Q. Did you know that Southwest Marine had, in fact, 08:37:55

16 conducted its own operations in -- in that same area? 08:37:57

17 MR. DART: Assumes facts not in evidence. 08:38:03

18 MR. CARRIGAN: Join. 08:38:06

19 THE WITNESS: No. Any -- any -- 08:38:07

20 BY MR. BENSHOOF: 08:38:09

21 Q. We'll put them in evidence if you don't know. 08:38:11

22 But the question was, did you know that Southwest Marine 08:38:13

23 had, in fact, conducted its own operations in that very 08:38:18

24 area that you were relying on as evidence of SDG&E's 08:38:21

25 discharges? 08:38:26

1 MR. BENSHOOF: We'll get into it. 08:39:38

2 MR. CARRIGAN: Calls for speculation. 08:39:39

3 MR. BENSHOOF: It's simply a question of did 08:39:40

4 they disclose it. 08:39:42

5 MR. CARRIGAN: The documents speak for 08:39:43

6 themselves. How does he know what was described in 08:39:43

7 640 documents, Ward? Please. 08:39:45

8 MR. BENSHOOF: I'm not asking him that question. 08:39:47

9 I'm asking him, did --did Southwest Marine ever disclose 08:39:48

10 to him in the course of all of their communications that 08:39:51

11 fact. 08:39:55

12 BY MR. BENSHOOF: 08:39:56

13 Q. Do you know whether or not they did? 08:39:56

14 A. I -- I don't know that they did. I -- I'm -- 08:39:58

15 I'm -- I don't remember any such communication. 08:40:03

16 Q. Okay. Would it have been important to you, 08:40:13

17 Mr. Barker, before accusing SDG&E of being a discharger 08:40:15

18 based upon that soil data to know whether or not that 08:40:18

19 data may have resulted, in fact, from somebody else's 08:40:20

20 operations? 08:40:23

21 A. We -- we looked at the data and analyzed it from 08:40:28

22 the perspective of our regulatory history with regulating 08:40:34

23 the -- the Silvergate power plant site and -- and felt 08:40:39

24 that it was reasonable to conclude that these pollutants 08:40:44

25 originated from SDG&E operations. 08:40:50

1 Q. Are you telling me, Mr. Barker, that if you had 08:40:54
2 been aware that -- that the San Diego Marine had, in 08:40:56
3 fact, conducted their shipbuilding and shipwrecking 08:41:02
4 operations on that very site, that you would have still 08:41:05
5 concluded that those soil contaminants must have been a 08:41:10
6 result of SDG&E and not the sort of the shipyard 08:41:15
7 operations that you've known historically are associated 08:41:19
8 with all the chemicals of concerns at this site? 08:41:22
9 MR. CARRIGAN: Argumentative. Incomplete 08:41:25
10 hypothetical. 08:41:26
11 MR. DART: Join. Calls for speculation. 08:41:27
12 THE WITNESS: We would have -- 08:41:31
13 MR. HANDMACHER: Vague as to San Diego Marine. 08:41:34
14 THE WITNESS: We would have weighed that 08:41:41
15 information. I'm not sure it would have been conclusive 08:41:42
16 in -- in our minds that -- that no pollutants were 08:41:44
17 discharged by SDG&E. 08:41:48
18 BY MR. BENSHOOF: 08:41:50
19 Q. Could you turn to that section of the DTR, 08:41:52
20 Section 9? 08:41:54
21 A. Okay. 08:41:54
22 Q. Let's just -- let's just pinpoint the -- what 08:41:55
23 you relied on and what, at least I believe, to be the 08:41:59
24 source of a serious error. It begins at nine -- 08:42:02
25 MR. CARRIGAN: I'm sorry. I've got the wrong 08:42:15

1 exhibit. 08:42:17

2 MR. BENSHOOF: Yeah. It begins at 9.10, 08:42:17

3 page 9-16. 08:42:20

4 MR. CARRIGAN: What was the page number again? 08:42:27

5 MR. BENSHOOF: 9-16. 08:42:29

6 BY MR. BENSHOOF: 08:42:30

7 Q. I want to go over this rather carefully, 08:42:37

8 Mr. Barker. Because in this section as I read it, you 08:42:39

9 are alleging -- by "you" I mean the Water Board -- in a 08:42:44

10 document that you supervised, is alleging that SDG&E's 08:42:49

11 wastewater pond operations were -- were responsible for 08:42:53

12 discharge of the chemicals of concern to the 08:42:56

13 San Diego Bay; correct? 08:42:59

14 A. Yes. 08:43:00

15 Q. And that allegation is based exclusively on the 08:43:03

16 soil boring data contained in table dash -- 9-7; correct? 08:43:07

17 MR. CARRIGAN: Document speaks for itself. So 08:43:15

18 does the record. 08:43:17

19 MR. DART: Join. 08:43:17

20 THE WITNESS: Yes. That's the -- that's the 08:43:32

21 basis for that -- that section. 08:43:33

22 BY MR. BENSHOOF: 08:43:35

23 Q. And -- and at the time you wrote this, you 08:43:35

24 assumed that the only possible source for the chemicals 08:43:37

25 of concern -- concern reflected in Table 9-7 were as -- 08:43:43

1 the wastewater pond operations of SDG&E; correct? 08:43:48

2 A. I -- I don't think that we were concluding 08:43:52

3 that -- that -- that SDG&E was the only possible source. 08:43:57

4 But we did conclude that from the totality of the 08:44:03

5 information and our knowledge of the Silvergate power 08:44:10

6 plant operations, that we believed the information was 08:44:14

7 enough to associate these pollutants with -- with SDG&E. 08:44:21

8 Q. Mr. Barker, your assumption was that the 08:44:28

9 contaminants reflected at Table 9-7 were a direct result 08:44:30

10 of the wastewater pond operations of SDG&E; correct? 08:44:34

11 A. Yes. 08:44:38

12 Q. All right. 08:44:40

13 And at the time you made that assumption, sir, I 08:44:40

14 take it you did not know that Southwest Marine had, in 08:44:43

15 fact, conducted shipbuilding and shipwrecking operations 08:44:46

16 in the same area; correct? 08:44:50

17 A. No. Our knowledge on that point was just that 08:44:53

18 Southwest Marine was next door. 08:44:58

19 Q. Okay. And in none of the communications that 08:45:02

20 they made with you over the years, including the data 08:45:04

21 package that Mr. Halvax gave you that we referred to, 08:45:07

22 where he wanted you to name SDG&E, was it ever made known 08:45:12

23 to you that they had, in fact, conducted shipbuilding and 08:45:15

24 shipwrecking operations on this SDG&E property; correct? 08:45:19

25 MR. CARRIGAN: Vague. 08:45:24

1 MR. DART: Assumes facts and still vague as to 08:45:24
2 Southwest Marine. 08:45:27
3 THE WITNESS: I -- I don't -- I don't know 08:45:29
4 whether there was communications from them that indicated 08:45:30
5 whether or not they had operations at that location. 08:45:34
6 BY MR. BENSHOOF: 08:45:37
7 Q. And you never investigated to determine whether 08:45:37
8 or not they did; correct? 08:45:39
9 A. No. 08:45:44
10 Q. And if it were to be disclosed to you, 08:45:45
11 Mr. Barker, that, in fact, that was the case, do you 08:45:47
12 believe that Section 9.10 should be at least rewritten? 08:45:50
13 MR. CARRIGAN: Incomplete hypothetical. 08:45:56
14 MR. DART: Join. 08:45:59
15 BY MR. BENSHOOF: 08:45:59
16 Q. Well, if you were -- if you were to discover 08:45:59
17 through this deposition, Mr. Barker, that 08:46:02
18 Southwest Marine in the 1960s and 1970s, 1980s and the 08:46:04
19 1990s conducted shipbuilding and shipwrecking operations 08:46:09
20 on that parcel of land subleased from SDG&E, would you at 08:46:13
21 least agree that Section 9.10 should be revisited and 08:46:17
22 perhaps withdrawn? 08:46:22
23 MR. CARRIGAN: Incomplete hypothetical. 08:46:23
24 MR. DART: Join. 08:46:25
25 THE WITNESS: Certainly -- 08:46:27

1 MR. CARRIGAN: Hold on. Calls for a legal 08:46:28
2 conclusion. Go ahead. 08:46:30
3 THE WITNESS: The --that information is -- is -- 08:46:33
4 is -- is certainly information that would be considered. 08:46:35
5 BY MR. BENSHOOF: 08:46:43
6 Q. Okay. Now, let's then start looking at the 08:46:43
7 information, and you can tell us at the end whether or 08:46:46
8 not the Water Board is willing to withdraw Section 9.10 08:46:48
9 based upon this information. 08:46:53
10 And we'll mark as next in order 1249, an aerial 08:46:55
11 photograph from the San Diego Historical Society that I 08:47:00
12 assume you've never seen before, but which I believe 08:47:05
13 we'll all agree plainly shows a shipbuilding and 08:47:08
14 shipwrecking operations by Southwest Marine on the 08:47:12
15 property that is being discussed in 9.10. 08:47:15
16 (Exhibit 1249 was marked.) 08:47:19
17 MR. CARRIGAN: Are there two? 08:47:31
18 MR. BENSHOOF: No. 08:47:32
19 MR. CARRIGAN: Okay. 08:47:32
20 BY MR. BENSHOOF: 08:47:32
21 Q. Now, I realize that -- well, let me just ask 08:47:33
22 foundationally, Mr. Barker. 08:47:38
23 You're aware that one way of investigating 08:47:39
24 historical activities on any property is to look for 08:47:45
25 aerial photographs that may have been taken historically? 08:47:48

1 operations caused the contaminants listed at Table 9.7, 08:48:57
2 it could have looks for aerial photographs exactly like 08:49:01
3 1249, couldn't it have? 08:49:04
4 A. Well, the board did issue a series of 08:49:07
5 investigative orders seeking that kind of information, I 08:49:09
6 believe, in 2003/2004 time span. And we did receive 08:49:15
7 aerial photos from some of the responders to those. 08:49:20
8 BY MR. BENSHOOF: 08:49:23
9 Q. Now, you see that on this aerial photograph from 08:49:24
10 19 -- the San Diego Historical Society -- they've just 08:49:28
11 dated it the 1970 to '73 period -- that there is a 08:49:31
12 ship -- you see the ship prominently on the property 08:49:39
13 that's the subject of 9.10? 08:49:43
14 MR. CARRIGAN: Vague. 08:49:47
15 THE WITNESS: Yeah. I see a ship. I'm -- I'm 08:49:54
16 not clear where these ponds are located on this photo. 08:49:56
17 BY MR. BENSHOOF: 08:50:03
18 Q. The -- do you know that the ship on the left is, 08:50:05
19 in fact, on property that's subleased from SDG&E by 08:50:10
20 Southwest Marine? Do you know that much, Mr. Barker, 08:50:16
21 that that's the property we're talking about in 08:50:19
22 Section 9.10. 08:50:21
23 A. No. 08:50:24
24 MR. CARRIGAN: Asked and answered. 08:50:24
25 BY MR. BENSHOOF: 08:50:24

1 Q. Could you help orient yourself by looking at the 08:50:25
2 cooling water discharge outlet directly underneath the 08:50:27
3 rear of that vessel? Does that help you locate the 08:50:31
4 vessel on the property of concern, Mr. Barker? 08:50:34
5 A. Yes. I see the -- the cooling water discharge. 08:50:45
6 Q. And you know the property above that used to be 08:50:49
7 property that was subject to a lease to SDG&E, correct, 08:50:51
8 and still is? 08:50:58
9 A. Yes. 08:51:02
10 Q. And did you -- did you not know that at some 08:51:03
11 time in the '50s Southwest Marine had subleased that 08:51:07
12 property from SDG&E? Had you not known that before, 08:51:10
13 Mr. Barker? 08:51:14
14 A. I -- I can't recall if that's discussed in the 08:51:14
15 DTR or not. 08:51:20
16 Q. It's not. 08:51:20
17 A. Okay. 08:51:21
18 Q. And -- and my question is, apparently, you 08:51:22
19 didn't know that when you were putting together these 08:51:26
20 allegations against SDG&E. 08:51:28
21 A. Okay. 08:51:31
22 MR. CARRIGAN: Record speaks for itself. 08:51:32
23 BY MR. BENSHOOF: 08:51:33
24 Q. Well, I mean, not okay, Mr. Barker. It's -- 08:51:33
25 again, you don't have to -- I just need to ask you what 08:51:35

1 you remember knowing when you put together the 08:51:40
2 allegations against SDG&E. 08:51:43
3 A. Okay. 08:51:46
4 Q. And as you sit here today, Mr. Barker, isn't it 08:51:46
5 correct that when you put together or supervised the 08:51:50
6 allegations contained in Section 9.10, that you did not 08:51:54
7 realize that since the 1950s, the portion of that 08:51:57
8 property that had contained the wastewater ponds had been 08:52:02
9 subleased by Southwest Marine for its ship repair and 08:52:07
10 shipwrecking operations? 08:52:11
11 A. Yes. No, I did not -- I was not aware of 08:52:14
12 Southwest's operations on SDG&E's leasehold. 08:52:18
13 Q. And as a fair-minded person, wouldn't you agree, 08:52:24
14 Mr. Barker, that you ought to consider that extensive 08:52:26
15 operation? I mean, we're talking about since the '50s -- 08:52:31
16 by Southwest Marine on that property before jumping to 08:52:35
17 the conclusion that the soil contaminants reflected in 08:52:41
18 9.7 had to be the result of SDG&E's wastewater pond 08:52:44
19 operations; correct? 08:52:49
20 MR. CARRIGAN: Vague. 08:52:51
21 MR. DART: Misstates the record. Assumes facts. 08:52:52
22 MR. CARRIGAN: Join. 08:52:54
23 THE WITNESS: Yeah. Relevant information that 08:52:56
24 would -- would -- should be factored into the board's 08:52:58
25 analysis. 08:53:01

1 BY MR. BENSHOOF: 08:53:01

2 Q. And would you agree, therefore, that you ought 08:53:02

3 to withdraw Section 9.1 of the DTR and reconsider it in 08:53:05

4 light of the fact that for more than 50 years, and 08:53:11

5 apparently undisclosed to you by Southwest Marine, they, 08:53:15

6 in fact, had operated on that property? 08:53:18

7 MR. CARRIGAN: Calls for a legal conclusion. 08:53:21

8 Incomplete hypothetical. 08:53:22

9 MR. DART: Join. Assumes facts. 08:53:24

10 MR. BENSHOOF: Yeah. It's a mystery to me why 08:53:25

11 the Water Board is defending the veracity of 08:53:26

12 Southwest Marine's nondisclosure. But I guess that's the 08:53:29

13 way it is in those proceedings. 08:53:32

14 MR. CARRIGAN: Move to strike counsel's 08:53:34

15 testimony from the record. 08:53:35

16 BY MR. BENSHOOF: 08:53:36

17 Q. Nobody told -- nobody told you that 08:53:37

18 Southwest Marine had operated there. 08:53:38

19 MR. CARRIGAN: Hold on. Ward, do you have a 08:53:40

20 question for the witness, or are you just going to 08:53:41

21 continue to badger him and testify? I mean, this is -- 08:53:44

22 MR. BENSHOOF: I'm not badgering, Mr. Carrigan. 08:53:47

23 The -- I'm mystified at your position in defending 08:53:49

24 nondisclosure by the operator. But, I mean, I guess 08:53:52

25 that's -- we just deal with it as it is. 08:53:54

1 MR. DART: And you're tying Southwest Marine's 08:53:57
2 disclosure which could only happen from '79 going forward 08:53:59
3 to -- back to the 1950s and trying to tie that to some 08:54:01
4 kind of wrongdoing? 08:54:04
5 BY MR. BENSHOOF: 08:54:07
6 Q. Did anybody ever tell you --I'll withdraw that. 08:54:08
7 You've already -- you've already answered that. 08:54:09
8 Now, the pending question was, Do you agree that 08:54:11
9 in light of knowing that that land had been operated that 08:54:13
10 contained Southwest Marine operations since the '50s, 08:54:18
11 Section 9.1 of the DTR ought to be withdrawn and 08:54:22
12 reconsidered? 08:54:27
13 MR. CARRIGAN: Calls for a legal conclusion. 08:54:27
14 Incomplete hypothetical. 08:54:28
15 MR. BENSHOOF: No, just as -- not as a lawyer 08:54:30
16 but as the person responsible for putting this together, 08:54:31
17 would you agree with me, now knowing what you had not 08:54:34
18 known when you put this together, that, in fact, that 08:54:37
19 territory had been the subject of operations by -- 08:54:41
20 subleased by Southwest Marine since the '50s, would you 08:54:45
21 agree that Section 9.10 should be withdrawn and 08:54:48
22 reconsidered? 08:54:51
23 MR. CARRIGAN: Same objections. 08:54:52
24 MR. DART: Join and assumes facts and misstates 08:54:53
25 the record. 08:54:55

1 MR. CARRIGAN: Join. 08:54:56

2 THE WITNESS: No, I would not -- not conclude 08:54:58

3 that it should be withdrawn. But -- 08:55:01

4 MR. BENSHOOF: Would you -- go ahead. 08:55:05

5 THE WITNESS: But as I mentioned, the board has 08:55:07

6 always -- the board likes information. And the board 08:55:11

7 would consider this information. 08:55:15

8 BY MR. BENSHOOF: 08:55:16

9 Q. And we'll go over some more information for the 08:55:17

10 board to consider in whether or not it's -- would be 08:55:19

11 arbitrary to not withdraw. 08:55:22

12 A. Am I permitted to ask a question? 08:55:26

13 Q. Yeah. I mean, I'll answer it if I can. 08:55:28

14 A. Okay. I just want to -- 08:55:30

15 MR. CARRIGAN: He wants to testify. So go 08:55:32

16 ahead. 08:55:33

17 THE WITNESS: I want to get my -- get straight 08:55:34

18 on my bearings. In this photo, where are the ponds? 08:55:35

19 Where were the ponds? I'm not oriented to this photo. 08:55:40

20 MR. BENSHOOF: The -- on and under the area of 08:55:45

21 the operations reflected there on Southwest Marine. 08:55:51

22 They're sub -- they're subletting the whole -- let's -- 08:55:54

23 we can actually look at another exhibit. And that can -- 08:55:57

24 that might help. 08:56:01

25 MR. CARRIGAN: Can we go off the record for a 08:56:02

1 couple minutes? 08:56:04

2 MR. BENSHOOF: Sure. You want to break? 08:56:05

3 MR. CARRIGAN: Just very brief, yes. 08:56:07

4 THE VIDEOGRAPHER: The time now is 8:56 a.m. 08:56:09

5 Off the record. 08:56:11

6 (A recess was taken.) 08:56:12

7 THE VIDEOGRAPHER: The time now is 9:01 a.m. On 09:01:11

8 the record. 09:01:13

9 BY MR. BENSHOOF: 09:01:14

10 Q. Mr. Barker, my -- my recollection is that the 09:01:15

11 wastewater ponds being addressed in Section 9.10 were 09:01:22

12 located to the north of the vessel that's illustrated in 09:01:28

13 that photograph. But I think we can actually see the 09:01:36

14 location in -- of those ponds in relationship to 09:01:38

15 Southwest Marine's shipbuilding and shipwrecking 09:01:43

16 operations in some other photographs. And we'll look at 09:01:47

17 that. So for what it's worth. 09:01:50

18 Let's then next move to -- 09:01:55

19 MR. BENSHOOF: What was that? 09:02:14

20 THE COURT REPORTER: 1250. Oh, 1249. 09:02:14

21 BY MR. BENSHOOF: 09:02:14

22 Q. You see the vehicles north of the vessel in 09:02:15

23 1249, Mr. Barker? There's vehicles and cranes visible. 09:02:18

24 A. Let's see. To the north is -- 09:02:24

25 Q. Of the vessel. Oh, excuse me. Off its bow. 09:02:26

1 known this, had this aerial photograph, it would have 09:07:02
2 wanted to investigate whether or not those dark patches 09:07:05
3 might be associated with the operations of 09:07:09
4 Southwest Marine? 09:07:11
5 MR. CARRIGAN: Incomplete hypothetical. 09:07:13
6 THE WITNESS: No. No. I -- I don't know just 09:07:14
7 how we would have reacted to those dark patches. 09:07:26
8 BY MR. BENSHOOF: 09:07:29
9 Q. Okay. 09:07:31
10 A. Okay. 09:07:31
11 Q. I take it you would have at least asked more 09:07:31
12 about what the operations of Southwest Marine on the 09:07:34
13 property consisted of from the '50s through the present 09:07:37
14 day? 09:07:41
15 A. Yes. 09:07:42
16 Q. Okay. And you'll agree that that inquiry has 09:07:43
17 never been made yet to this point? 09:07:46
18 A. Yes, not to my knowledge. 09:07:52
19 Q. Okay. And you would agree that at least it's a 09:07:53
20 fair question to ask and ought to be asked in -- in 09:07:56
21 potentially reconsidering the allegations of 9.12? 09:08:00
22 A. Yes. 09:08:05
23 Q. Excuse me. 9.10. 09:08:06
24 A. I -- I agree that's information the board should 09:08:08
25 be informed on. 09:08:11

1 Q. And you would agree that in your prior testimony 09:08:13
2 you had talked about the board believing there was a 09:08:19
3 pathway to the bay from these ponds down this leasehold; 09:08:22
4 correct? 09:08:31
5 A. Yes. 09:08:33
6 Q. And you would agree that the photographs that 09:08:34
7 we've looked at showing ships in that pathway might 09:08:37
8 effect that conclusion? 09:08:41
9 A. Yes. That would be information that should be 09:08:46
10 considered, yes. 09:08:49
11 Q. Let's just make sure that as the board is 09:08:54
12 reconsidering Section 9.10 that there's ample information 09:08:56
13 before the board. And so we will next mark as 1251 an 09:09:03
14 aerial photograph from University of Santa Barbara 09:09:09
15 archives dated 1969. 09:09:13
16 (Exhibit 1251 was marked.) 09:09:15
17 MR. BENSHOOF: What am I on? 09:09:34
18 MR. BROWN: 1251. 09:09:37
19 THE COURT REPORTER: 1251. 09:09:37
20 MR. BENSHOOF: I put 1264. I'm totally -- 09:09:38
21 MR. CARRIGAN: Isn't that one of the aroclors? 09:09:41
22 MR. BENSHOOF: I'm surprised I even know that. 09:09:43
23 BY MR. BENSHOOF: 09:09:45
24 Q. Looking at 1261, pardon me, 1251, once again you 09:09:51
25 see in this 1969 photograph, the same area is still being 09:10:00

1 used adjacent to the Southwest Marine property proper, 09:10:11
2 the subleased property from SDG&E, again we see the 09:10:14
3 outline of a ship being either built or wrecked on that 09:10:18
4 property; correct? 09:10:27
5 MR. CARRIGAN: Take a moment to orient yourself 09:10:28
6 on this photo, David, unless -- unless you've oriented 09:10:30
7 yourself. 09:10:33
8 THE WITNESS: No, I'm not oriented. Okay. And 09:10:33
9 then this is here. 09:10:37
10 MR. BENSHOOF: Pier 1, as Ms. Tracy is pointing 09:10:40
11 out, Pier 1 is a good reference point, Mr. Barker, if you 09:10:40
12 want to use it as such on the -- on the photographs. 09:10:47
13 THE WITNESS: Okay. 09:10:52
14 MR. BENSHOOF: Because it -- it exists at the 09:10:53
15 western end of the Southwest Marine lease. 09:10:59
16 THE WITNESS: Pier -- 09:11:07
17 MR. BENSHOOF: And then -- and then to the west 09:11:07
18 of Pier 1 is the subleased property. 09:11:08
19 THE WITNESS: Okay. So Pier 1 is the one where 09:11:11
20 I see the little triangle of -- 09:11:13
21 MR. BENSHOOF: No. 09:11:16
22 MR. CARRIGAN: I think that's two. 09:11:17
23 MR. BENSHOOF: That's Pier 2. 09:11:18
24 THE WITNESS: Okay. Pier 1 is the next one to 09:11:19
25 the west, I guess. 09:11:21

1 MR. BENSHOOF: To the west. And that roughly -- 09:11:23

2 THE WITNESS: Okay. 09:11:25

3 MR. BENSHOOF: -- marks the boundary of 09:11:26

4 Southwest Marine's lease. 09:11:28

5 THE WITNESS: All right. 09:11:30

6 BY MR. BENSHOOF: 09:11:30

7 Q. And then -- I say roughly because there's what 09:11:32

8 looks like a dock of sorts immediately to the west of 09:11:35

9 that pond, which vessels from time to time are hauled for 09:11:39

10 repair purposes. That is also on the Southwest Marine 09:11:46

11 direct lease. Immediately to the west of that, where you 09:11:51

12 see on this photograph the shape of a vessel, is the 09:11:54

13 leased property. 09:11:56

14 Immediately to the north of that vessel shape is 09:11:58

15 the area of the SDG&E lease where wastewater ponds had 09:12:02

16 existed for SDG&E's operations in the '50s. 09:12:08

17 A. Immediately to the -- to the north of that 09:12:15

18 vessel? 09:12:17

19 Q. Correct. That is the -- that is that area that 09:12:18

20 had been where the SDG&E ponds were located. 09:12:20

21 A. Okay. 09:12:24

22 Q. Now, we see on this photograph a dark area. And 09:12:25

23 I -- and I appreciate that very little can be drawn from 09:12:30

24 dark shapes and dark tones. But you do know that one of 09:12:38

25 those resources investigators use to follow up on, in 09:12:42

1 terms of whether or not that might indicate the existence 09:12:47
2 of the feature in which wastes would have been dumped, 09:12:53
3 are exactly the kind of thing we see in this photograph, 09:12:57
4 correct, to the north of the vessel? 09:13:00
5 MR. DART: Lacks foundation. Calls for 09:13:03
6 speculation. 09:13:04
7 MR. HANDMACHER: Assumes facts not in evidence. 09:13:05
8 THE WITNESS: Okay. To the -- to the north of 09:13:08
9 the vessel I see like a dark square there. 09:13:09
10 MR. BENSHOOF: Correct. And again, we can't 09:13:14
11 tell anything from this photograph but that it's a dark 09:13:16
12 square. 09:13:19
13 THE WITNESS: Right. 09:13:19
14 BY MR. BENSHOOF: 09:13:19
15 Q. You've got 30-some years experience in this 09:13:20
16 field, Mr. Barker. Am I correct that one of the things 09:13:22
17 you would like to know as an environmental investigator 09:13:27
18 is whether or not that dark square represented a feature 09:13:30
19 in which Southwest Marine's -- Southwest Marine may have 09:13:32
20 disposed of hazardous waste? 09:13:37
21 A. We would have -- we would have been curious 09:13:41
22 about it, yes. 09:13:45
23 Q. Okay. And so that's one of the things that you 09:13:46
24 will want to consider as you consider -- reconsider 09:13:51
25 Section 9.1; correct? 09:13:55

1 A. Yeah. It's information, right, yes. 09:13:58

2 Q. We'll supplement that information, then, with 09:14:02

3 another series of photographs we will mark next as 09:14:04

4 Exhibit 1252. A photograph dated November 27th, 1978, 09:14:06

5 from Continental Aerial Photo, Inc. 09:14:12

6 (Exhibit 1252 was marked.) 09:14:13

7 BY MR. BENSHOOF: 09:14:22

8 Q. Now, in this photograph, Mr. Barker, on the far 09:14:28

9 right is -- you can see Pier 1 if you turn it this way 09:14:33

10 (indicating). 09:14:40

11 A. Okay. 09:14:41

12 Q. Vertical. On the right is Pier 1. Do you see 09:14:41

13 that? 09:14:46

14 A. Yes. 09:14:47

15 Q. And then just immediately to the west of that, 09:14:47

16 there's a vessel that is the Southwest Marine property; 09:14:50

17 correct? 09:14:54

18 Immediately to the west of the vessel, we see a 09:14:56

19 debris area. Do you recognize that? Or you see that on 09:15:01

20 the -- 09:15:04

21 A. Yes. 09:15:05

22 Q. Okay. Now, that debris area is on the SDG&E 09:15:05

23 sublease. Okay? North of the debris area, you see, once 09:15:09

24 again, a dark square and debris around that square. 09:15:15

25 Do you see that to the north of the -- of the 09:15:21

1 debris area? 09:15:25

2 MR. CARRIGAN: Counsel and the witness are 09:15:27

3 pointing to the same area of the photograph, let the 09:15:28

4 record reflect. 09:15:31

5 BY MR. BENSHOOF: 09:15:31

6 Q. Could you just -- let me -- let me circle the 09:15:32

7 area that I want to just ask you about. Great. Anybody 09:15:34

8 have a pen that will write on a -- 09:15:49

9 MS. TRACY: Try this one. 09:15:51

10 BY MR. BENSHOOF: 09:15:54

11 Q. I've circled for a brief question, Mr. Barker, 09:15:57

12 the portion of 1252. 09:16:03

13 MR. DART: Can you hold it up real fast? 09:16:05

14 MR. BENSHOOF: 1252. 09:16:06

15 MR. HANDMACHER: So we can see it. 09:16:07

16 MR. CARRIGAN: The circle is right here, Counsel 09:16:10

17 (indicating). 09:16:12

18 MR. DART: Okay. Thank you. 09:16:13

19 BY MR. BENSHOOF: 09:16:14

20 Q. Now, that area, Mr. Barker, is roughly the -- 09:16:14

21 the area of, again, where the historical ponds had been 09:16:17

22 in the '50s for SDG&E. Am I correct that there's a 09:16:24

23 feature in the center of that area that, again, it's a 09:16:28

24 dark square, could be a pond, could be something else; 09:16:31

25 correct? 09:16:35

1 MR. DART: Lacks foundation. Calls for 09:16:35
2 speculation. 09:16:36
3 MR. BENSHOOF: It's not clear. 09:16:37
4 THE WITNESS: Yeah. It's not clear. 09:16:38
5 BY MR. BENSHOOF: 09:16:39
6 Q. It's just a dark square? 09:16:40
7 A. Yes. 09:16:42
8 Q. And surrounding that dark square are objects 09:16:42
9 that could be debris, it could be something else; 09:16:45
10 correct? 09:16:47
11 A. Yes. 09:16:48
12 Q. And isn't this, then, again, the kind of thing 09:16:48
13 that investigators use to determine whether or not that 09:16:52
14 particular area of the -- of the sublease where years 09:16:56
15 before there had been wastewater ponds of SDG&E was being 09:17:00
16 later used as a disposal site by Southwest Marine? 09:17:05
17 MR. CARRIGAN: Incomplete hypothetical. 09:17:09
18 MR. DART: Join. And assumes facts. 09:17:10
19 THE WITNESS: It's just information the board 09:17:15
20 would -- would look at. 09:17:16
21 BY MR. BENSHOOF: 09:17:18
22 Q. Okay. Let's mark as 1253 a similar photograph 09:17:20
23 from the year 1978, as well. 09:17:33
24 MR. CARRIGAN: Going to be another one. I just 09:17:40
25 want that make mine look something like what he circled. 09:17:49

1 THE WITNESS: Okay. 09:17:53
2 (Exhibit 1253 was marked.) 09:17:53
3 BY MR. BENSHOOF: 09:17:53
4 Q. This is another view of the sublease, 09:18:01
5 Mr. Barker. Once again, you can see a vessel that is on 09:18:03
6 the -- in that ramp that is the Southwest Marine 09:18:08
7 property -- lease, I should say. And then to the 09:18:13
8 north -- or the west of that vessel, you'll see this 1978 09:18:16
9 photograph similarly shows the same debris area that we 09:18:20
10 saw in Exhibit 1252; correct? 09:18:26
11 MR. DART: Same objections. 09:18:29
12 MR. CARRIGAN: Are you able to orient yourself 09:18:30
13 on this photo? Go ahead -- go ahead, David. 09:18:32
14 THE WITNESS: Yes. 09:18:37
15 MR. CARRIGAN: Okay. Very good. Okay. 09:18:38
16 BY MR. BENSHOOF: 09:18:39
17 Q. And -- and likewise, to the north of that debris 09:18:39
18 area of -- on the SDG&E property that's being subleased 09:18:42
19 by Southwest Marine, we see the same collection of 09:18:48
20 objects surrounding a square dark area; correct? 09:18:52
21 MR. CARRIGAN: Document speaks for itself. 09:18:56
22 THE WITNESS: Yes. 09:19:01
23 MR. CARRIGAN: Can you read it? 09:19:02
24 THE WITNESS: I see a square area there. 09:19:04
25 BY MR. BENSHOOF: 09:19:06

1 Q. With -- with objects of some sort surrounding 09:19:06
2 it? 09:19:08
3 A. Black spots. 09:19:10
4 Q. Right. And we can't tell from this photo 09:19:12
5 whether those objects might be barrels containing 09:19:14
6 chemicals of concern or something innocuous, could we? 09:19:17
7 A. No. I -- I can't distinguish it. 09:19:22
8 Q. And that's why these types of photographs are 09:19:26
9 used as a basis for further follow-up investigation to 09:19:28
10 simply inquire what was Southwest Marine doing at this 09:19:32
11 time, and was it using this property as a waste disposal 09:19:35
12 area; correct? 09:19:38
13 A. Yes. 09:19:44
14 Q. And you would agree that at least the board 09:19:45
15 should examine those issues as it reconsiders 09:19:47
16 Section 9.10, do you not? 09:19:50
17 MR. DART: Assumes facts and a legal conclusion. 09:19:56
18 THE WITNESS: Yeah. It's information that 09:19:59
19 should be considered. 09:20:01
20 BY MR. BENSHOOF: 09:20:02
21 Q. Thanks. Do you want me to get through the 09:20:03
22 photos or do you want to take a break? 09:20:10
23 MR. CARRIGAN: Whatever you'd like. I mean... 09:20:12
24 MR. BENSHOOF: I'd like to get through them. 09:20:14
25 MR. CARRIGAN: Yeah. Let's go ahead. 09:20:15

1 MR. BENSHOOF: Okay. 09:20:16

2 MR. CARRIGAN: Yeah. If you could just -- I 09:20:17

3 mean, we're introducing photos. 09:20:17

4 MR. BENSHOOF: Right. 09:20:18

5 MR. CARRIGAN: This is great evidence. 09:20:18

6 MR. BENSHOOF: Let me just complete it then. 09:20:20

7 MR. CARRIGAN: Loved to have had it a long time 09:20:24

8 ago. 09:20:28

9 MR. BENSHOOF: Well, wisdom that comes late is 09:20:28

10 still wisdom, Chris. 09:20:30

11 BY MR. BENSHOOF: 09:20:31

12 Q. Next we'll put in evidence as Exhibit 1254 a 09:20:33

13 1975 photograph. And I'll just ask the same questions 09:20:40

14 with regard to all of these and we can get through them. 09:20:43

15 (Exhibit 1254 was marked.) 09:20:47

16 BY MR. BENSHOOF: 09:20:54

17 Q. And orienting yourself, Mr. Barker, you see 09:21:07

18 Pier 1 in approximately the center portion of the 09:21:10

19 photograph. You see to the immediate west of that, that 09:21:13

20 ramp area which vessels in prior photos have been towed 09:21:17

21 up on. And then you see the land area to the west of 09:21:22

22 that, there's a larger vessel now in this 1975 09:21:26

23 photograph. And there look to be rectangular black 09:21:29

24 objects that could be trenches with liquid in them and 09:21:35

25 could be something completely different. Would you 09:21:38

1 agree? 09:21:40

2 A. To the -- 09:21:42

3 Q. North of the vessel. 09:21:44

4 A. North of the vessel, I see two irregular kind of 09:21:45

5 rectangular areas, yes. 09:21:50

6 Q. And we don't know what's in them, could be 09:21:52

7 liquid, could be hazardous waste, could be something 09:21:54

8 innocuous; correct? 09:21:57

9 A. Points of interest, yes. 09:21:59

10 Q. Again, same thing, you would want to inquire of 09:22:01

11 Southwest Marine what they were doing with the property 09:22:04

12 at this period of time that could have created features 09:22:06

13 like that; correct? 09:22:09

14 A. Yes. 09:22:14

15 Q. Next aerial photo will be marked as 1255. This 09:22:46

16 is from 1981. 09:22:51

17 (Exhibit 1255 was marked.) 09:22:54

18 BY MR. BENSHOOF: 09:23:03

19 Q. We'll mark a blowup of that photograph, 09:23:05

20 Mr. Barker, and ask you to look at it at the same time, 09:23:07

21 as Exhibit 1256. 09:23:11

22 (Exhibit 1256 was marked.) 09:23:13

23 MR. BENSHOOF: And -- 09:23:21

24 MR. DART: Counsel, is the source of that 09:23:27

25 photograph on there? 09:23:28

1 MR. BENSHOOF: Oh, excuse me. It's the 09:23:29
2 Historical aerials -- aerials.com. 09:23:30
3 MR. CARRIGAN: And are these references on the 09:23:36
4 bottom of the exhibits from the original or are those 09:23:37
5 placed by your office? 09:23:40
6 MR. BENSHOOF: I believe -- oh, these -- are you 09:23:43
7 speaking about what? 09:23:50
8 MR. DART: The data at the bottom. 09:23:53
9 MR. BENSHOOF: Those are identified -- those 09:23:55
10 were identified by us as a source -- source where we 09:23:57
11 obtained them. 09:24:01
12 BY MR. BENSHOOF: 09:24:01
13 Q. Again, Mr. Barker, these are -- this is a 09:24:07
14 different time period, 1981. But we see a vessel and we 09:24:11
15 see objects to the north of it. And same questions as 09:24:14
16 before, these would be items of interest in an 09:24:17
17 investigation of Southwest Marine's activities on the 09:24:19
18 property described in Section 9.10 of the DTR; correct? 09:24:23
19 A. Okay. 09:24:29
20 MR. DART: The document speaks for itself. 09:24:30
21 Lacks foundation and calls for speculation. 09:24:31
22 THE WITNESS: Objects to the north of the 09:24:39
23 vessel? 09:24:42
24 BY MR. BENSHOOF: 09:24:43
25 Q. Yeah. I -- the -- 09:24:44

1 going over these. It will be 1257. 09:25:46
2 (Exhibit 1257 was marked.) 09:25:48
3 BY MR. BENSHOOF: 09:25:49
4 Q. And this date is January 2003. And it shows the 09:25:49
5 area being subleased from SDG&E as being built out. I 09:26:01
6 think you would agree with that. 09:26:08
7 MR. DART: Same objection. Is there a question 09:26:23
8 pending? 09:26:26
9 MR. BENSHOOF: Not yet. But I just wanted to 09:26:27
10 just conclude the examination by showing the witness 09:26:29
11 the -- a more current depiction and showing the property 09:26:32
12 paved and with vehicles and buildings and other 09:26:39
13 improvements on the property. 09:26:43
14 BY MR. BENSHOOF: 09:26:44
15 Q. You see -- you see that, Mr. Barker, on this 09:26:45
16 photograph? 09:26:47
17 A. Yes, I do. 09:26:48
18 Q. That the area being subleased from SDG&E is now 09:26:49
19 improved with paving and buildings in contrast to the 09:26:52
20 earlier photographs; correct? 09:26:56
21 MR. DART: Same objections. 09:26:58
22 THE WITNESS: Yes. Objects are more distinct in 09:27:02
23 this photo. 09:27:05
24 BY MR. BENSHOOF: 09:27:05
25 Q. And again, it's just -- the changes in use of a 09:27:06

1 particular property over time to -- up to and including 09:27:10
2 its present use by Southwest Marine is something you 09:27:14
3 would want to evaluate in determining whether or not the 09:27:23
4 soil conditions that are reflected on Table 9 point -- 09:27:25
5 dash 7 of the DTR, in fact, relate to operations of SDG&E 09:27:27
6 or whether they relate to activities of Southwest Marine. 09:27:32
7 Would you agree? 09:27:38
8 A. Yes. Any of the documentation on historic 09:27:41
9 activities would be relevant. 09:27:47
10 MR. BENSHOOF: Why don't we take our break now. 09:27:49
11 And I'll clear all these clips. 09:27:52
12 THE VIDEOGRAPHER: The time now is 9:28 a.m. 09:27:55
13 Off the record. 09:27:57
14 (A recess was taken.) 09:27:59
15 THE VIDEOGRAPHER: The time now is 9:37 a.m. On 09:37:11
16 the record. 09:37:14
17 BY MR. BENSHOOF: 09:37:15
18 Q. Now, I want to now talk about, Mr. Barker, some 09:37:22
19 of the other aspects of the DTR, Section 9, that you 09:37:31
20 supervised. And I want to -- could you look at 09:37:34
21 Section 9.5, please, on page 9-3? It's headed, "SDG&E's 09:37:39
22 discharges have created pollution, contamination, and 09:37:50
23 nuisance conditions in San Diego Bay." 09:37:53
24 And could you just -- I want to refresh 09:37:56
25 yourself, I'd like you to just read to yourself, if you 09:37:59

1 would, the first paragraph there, it goes over on to the 09:38:02
2 next page, because I've got some questions on that. 09:38:07

3 A. Okay. 09:38:53

4 Q. Now, as I understand the allegations -- excuse 09:38:54
5 me -- the allegations against SDG&E as summarized in this 09:39:04
6 paragraph, Mr. Barker, the -- the board believes and 09:39:09
7 included SDG&E as a named discharger because it believed 09:39:15
8 that SDG&E was responsible for discharging chemicals of 09:39:23
9 concern, and that those same pollutants in the discharges 09:39:27
10 accumulated in the San Diego Bay sediment in the vicinity 09:39:34
11 of MS4 Storm Drain SW4, within the BA -- BAE Systems 09:39:38
12 facility portion of the Shipyard Sediment Site in 09:39:46
13 concentrations that adversely affect the beneficial uses 09:39:51
14 of San Diego Bay. 09:39:54

15 Is that an accurate summary of the Water Board's 09:39:55
16 belief as the basis for SDG&E's being named as a 09:39:59
17 discharger? 09:40:02

18 A. Yes. 09:40:03

19 Q. And I just want to make sure that we are clear 09:40:04
20 on the -- the area that's referred to here. It's 09:40:09
21 summarized as the sediment and the vicinity of MS4 Storm 09:40:17
22 Drain 4 as being the area that the board believes SDG&E 09:40:22
23 contributed to contamination of. 09:40:27

24 And by reference to Barker Exhibit 1220, could 09:40:29
25 you -- do you know, Mr. Barker, could you identify those 09:40:32

1 areas in the vicinity of Storm Drain SW4 that the board 09:40:38
2 is charging SDG&E with having contributed to the 09:40:44
3 contamination of? 09:40:47
4 A. Let's see. I believe we've summarized that data 09:40:54
5 in Table 9-6. And the data was for SW20, SW21, SW22, 09:40:58
6 SW23, SW24, SW25. 09:41:14
7 Q. Okay. And that is the area of the shipyard site 09:41:19
8 that the board believes SDG&E contributed to the 09:41:24
9 contamination of; correct? 09:41:28
10 A. Yes. 09:41:31
11 Q. And is that the extent of it? Correct? 09:41:33
12 MR. CARRIGAN: Calls for expert opinion. 09:41:36
13 MR. BENSHOOF: To your knowledge, in putting 09:41:38
14 together Section 9, did you mean to charge SDG&E with 09:41:40
15 contributing to the contamination of any other area of 09:41:44
16 the shipyard site? 09:41:47
17 We quoted -- or we documented only that 09:41:52
18 information that we were using to establish a pathway 09:41:55
19 from SDG&E operations into the Shipyard Sediment Site. 09:42:02
20 MR. BENSHOOF: Okay. 09:42:12
21 THE WITNESS: And we weren't -- we weren't 09:42:12
22 indicating that that data represented the full vertical, 09:42:14
23 horizontal extent of whatever the contribution was. It 09:42:20
24 was the data we wanted to use to establish the pathway. 09:42:27
25 BY MR. BENSHOOF: 09:42:34

1 Q. Well, did you -- did you conclude that the 09:42:36
2 impacts from SDG&E extended anywhere beyond that area 09:42:38
3 summarized at Table 9-6, those areas? 09:42:42
4 MR. CARRIGAN: Calls for expert testimony. 09:42:48
5 THE WITNESS: We didn't -- or yeah. We did not 09:42:50
6 make determination on extent of impacts from -- from any 09:42:57
7 of the parties named in the cleanup order, including 09:43:01
8 SDG&E. 09:43:05
9 BY MR. BENSHOOF: 09:43:05
10 Q. Okay. But you did conclude in the -- your 09:43:06
11 investigation that you believed the discharges from the 09:43:10
12 SDG&E facility impacted areas summarized as SW20 through 09:43:15
13 25; correct? 09:43:23
14 A. Yes. 09:43:24
15 Q. All right. 09:43:25
16 And did it make any difference to that 09:43:26
17 conclusion, Mr. Barker, to know whether or not that 09:43:33
18 area -- or to know the extent to which that specific area 09:43:40
19 that you believe was contributed to by SDG&E was impacted 09:43:44
20 by the operations of Southwest Marine historically? 09:43:49
21 MR. CARRIGAN: Vague. 09:43:56
22 THE WITNESS: Could you repeat that question? 09:44:03
23 BY MR. BENSHOOF: 09:44:04
24 Q. Certainly. Let me just -- let's go -- let's 09:44:10
25 focus on the contaminant data summarized at Table 9-6. 09:44:15

1 Do you have it? 09:44:27

2 A. Yes. 09:44:30

3 Q. You agree that shipyard operations, you know 09:44:30

4 historically contribute each of the chemicals summarized 09:44:39

5 there; correct? 09:44:48

6 MR. CARRIGAN: It's a lot of chemicals. Take a 09:44:51

7 look. 09:44:53

8 BY MR. BENSHOOF: 09:44:53

9 Q. Let me just -- I'll shorten it. 09:44:53

10 You are aware that shipyard operations 09:44:55

11 historically at this site have discharged PCBs and PAHs 09:44:58

12 to the bay sediment in the vicinity of Outfall 4, 09:45:05

13 including those areas described as SW20 through 25; 09:45:07

14 correct? 09:45:18

15 MR. DART: Lacks foundation. Calls for 09:45:19

16 speculation. 09:45:20

17 THE WITNESS: Yes. Yes. We -- we are -- the 09:45:21

18 tape -- the data in Table 9-6 isn't meant to reflect only 09:45:26

19 SDG&E's contribution to the sediment conditions. 09:45:34

20 BY MR. BENSHOOF: 09:45:38

21 Q. Right. And you have no idea because you never 09:45:39

22 made any attempt to evaluate what the percentage would be 09:45:43

23 of any SDG&E contamination versus the shipyard 09:45:49

24 contamination; correct? 09:45:54

25 A. That's correct, yes. 09:45:56

1 Q. So whether it's a fraction of a percent or more 09:45:57
2 than that, you wouldn't know? 09:46:00
3 MR. DART: Asked and answered. 09:46:02
4 THE WITNESS: Yes. That's correct. 09:46:04
5 BY MR. BENSHOOF: 09:46:05
6 Q. And -- and I take it that consistent with what 09:46:06
7 you said earlier, there was no comprehensive examination 09:46:15
8 done by the board of the shipyard operations surrounding 09:46:20
9 Outfall No. 4; correct? 09:46:23
10 A. No detailed investigation, no. 09:46:28
11 Q. Okay. 09:46:31
12 A. Other than, of course, noting that the shipyard 09:46:32
13 operations were a tributary to that area. 09:46:36
14 Q. Now, how was it in your view that releases from 09:46:40
15 the SDG&E facility found themselves to this area of 09:46:43
16 Outfall No. 4? 09:46:49
17 A. I -- I think -- believe the pathway we 09:46:50
18 documented or -- is the -- is the one with the storm 09:46:56
19 drain sump sampling we -- 09:47:04
20 Q. Catch basin? 09:47:05
21 A. Catch basin we discussed earlier. 09:47:06
22 Q. And I take it -- and that's the sole pathway -- 09:47:09
23 A. Well, the -- 09:47:12
24 Q. I need to complete my question. 09:47:14
25 MR. CARRIGAN: Let him -- let him finish. 09:47:16

1 BY MR. BENSHOOF: 09:47:16

2 Q. For the one and only time, you interrupted me. 09:47:17

3 A. I'm sorry. 09:47:19

4 Q. And I didn't interrupt you. 09:47:20

5 A. I'm sorry. 09:47:22

6 Q. That's perfectly all right. I did it several 09:47:23

7 times. 09:47:25

8 Is it fair to say, Mr. Barker, that that was the 09:47:26

9 pathway, from the catch basin to SW4, that the board 09:47:29

10 exclusively relied upon for its allegation that SDG&E 09:47:33

11 contributed to the contaminants summarized on Table 9-6? 09:47:40

12 MR. CARRIGAN: Documents and record speaks for 09:47:45

13 itself. 09:47:48

14 THE WITNESS: I believe that's one pathway we 09:47:53

15 documented. There's other possible pathways that 09:47:56

16 could -- could also be considered. And -- and I'd have 09:48:03

17 to re-read the text in 9-6. But storm run off, I think, 09:48:07

18 was mentioned in there. Storm run off maybe that would 09:48:14

19 find its way to the bay outside of the MS4 discharge. 09:48:17

20 BY MR. BENSHOOF: 09:48:23

21 Q. Well, actually, I don't recall ever having seen 09:48:24

22 that. So -- 09:48:26

23 A. Okay. 09:48:27

24 Q. -- my -- my own recollection was that the 09:48:29

25 exclusive pathway relied on was the catch basin through 09:48:32

1 SW4. So let's make sure we don't leave with any 09:48:36
2 confusion on that. 09:48:39
3 Would you please take the time you need to 09:48:40
4 review the document so we don't leave that unclear? 09:48:42
5 A. Yeah. Just a second. 09:48:55
6 I noted there's documentation of the cooling 09:51:25
7 water discharges which would have been discharged out of 09:51:28
8 another source besides the -- the SW4 storm drain. 09:51:35
9 Q. Right. 09:51:43
10 A. And -- 09:51:46
11 Q. No PCBs in that; right? Copper, nickel, zinc is 09:51:48
12 noted. 09:51:58
13 A. Well, these were level -- the values, for 09:51:59
14 example, in Table 9-3 were values that exceeded what 09:52:02
15 are -- what are called the California Toxic Rule 09:52:08
16 Standards. But that doesn't mean there was zero levels 09:52:14
17 of PCBs in that discharge. 09:52:19
18 Q. Well, there's no PCB noted in what your -- let 09:52:22
19 me just ask it a different way, Mr. Barker. 09:52:28
20 Exclusive pathway relied upon in the allegations 09:52:31
21 made against SDG&E is the storm water system referred to 09:52:34
22 or summarized in nine -- Table 9-6; correct? 09:52:44
23 MR. DART: Asked and answered. 09:52:53
24 BY MR. BENSHOOF: 09:52:53
25 Q. You didn't document any pathway -- 09:52:54

1 in its allegations against SDG&E was the storm water 09:54:32
2 conveyance system which resulted in an outfall at SW4. 09:54:37
3 MR. CARRIGAN: Document speaks for itself. 09:54:43
4 BY MR. BENSHOOF: 09:54:44
5 Q. Is that correct? 09:54:47
6 A. Well, I think we discussed other pathways, the 09:54:51
7 cooling water discharge pathway for one. The -- where 09:54:55
8 we -- where there's discussion of the overflows from the 09:55:03
9 ponds, it's -- from ponds that are in close proximity to 09:55:07
10 the bay, I don't know the overflows would have gone to 09:55:17
11 SW4 or not. So -- 09:55:21
12 Q. Okay. But -- 09:55:25
13 A. So certain things are -- certain things are kind 09:55:26
14 of described precisely. Others are just left in very 09:55:29
15 broad general terms. 09:55:32
16 Q. Okay. And -- and -- look, I'm just going back 09:55:36
17 to your term. By "documented pathway," what did you 09:55:38
18 mean? I mean, I took it you meant something that had 09:55:41
19 been established versus something that was speculative. 09:55:43
20 A. Okay. Yeah. 09:55:46
21 Q. Is that what you meant by that? 09:55:47
22 A. I would say that, yeah, the documentation was 09:55:49
23 more complete on the SW4 pathway, yes. 09:55:54
24 Q. And would you agree that the others that you've 09:55:59
25 discussed are possible, but it would be speculative to 09:56:01

1 draw a conclusion one way or the other on those today? 09:56:04

2 MR. CARRIGAN: Calls for a legal conclusion. 09:56:08

3 Document speaks for itself. 09:56:10

4 THE WITNESS: Well, the -- the cooling water 09:56:11

5 discharge pathway is not speculative. I mean, that's 09:56:15

6 very well defined. 09:56:18

7 MR. BENSHOOF: Okay. 09:56:21

8 THE WITNESS: The other -- the pathway about 09:56:21

9 where overflows from the ponds may have entered the bay 09:56:25

10 is not defined precisely. 09:56:29

11 BY MR. BENSHOOF: 09:56:31

12 Q. And -- and in terms of -- because I was asking 09:56:32

13 you about PCBs. You would agree -- you were sort of 09:56:37

14 arguing with me on that, Mr. Barker, because you said, 09:56:42

15 "That doesn't mean there's no PCBs." Let's just get it 09:56:45

16 straight. 09:56:48

17 There is no evidence of PCBs, is there, in the 09:56:49

18 cooling water discharge? 09:56:52

19 A. I believe in the administrative record 09:56:59

20 there's -- there's evidence that PCBs were present at 09:57:01

21 some level in the cooling water discharge. 09:57:07

22 Q. And there's also evidence that in -- in -- in 09:57:09

23 instances, those both -- all chemicals of concern were 09:57:13

24 higher in the intake line than they were in the discharge 09:57:20

25 line. You recall that being in the administrative 09:57:23

1 record, don't you? 09:57:26

2 A. No, I -- I don't recall that. 09:57:37

3 Q. Could you tell us where in the administrative 09:57:40

4 record there's any evidence of PCBs being in the cooling 09:57:42

5 water discharge? Because I've looked at it. And so far 09:57:46

6 as I know, that's not true. But if you know of 09:57:50

7 something, would you point it out to us, please? 09:57:52

8 A. Well, the -- 09:57:57

9 Q. You would agree, Mr. Barker, that one of the 09:58:03

10 chemicals that was used by the board to try to link SDG&E 09:58:07

11 to the bay sediment contamination was PCBs; correct? 09:58:10

12 A. Yes. 09:58:14

13 Q. And you wouldn't have intentionally left that 09:58:14

14 out of Table 9.3, "Discharges above CTR values occurring 09:58:16

15 from cooling water lines," would you have? I mean, it 09:58:24

16 was -- would be something you would want to put in to try 09:58:27

17 to link SDG&E to this issue. 09:58:30

18 A. If -- if the PCBs were exceeding the CTR, we 09:58:32

19 would have included those in the table. I was drawing 09:58:36

20 the distinction that there were other constituents in the 09:58:41

21 cooling water that we decided not to list in this table 09:58:45

22 but were nonetheless discharged, although at levels below 09:58:52

23 the CTR values. 09:58:57

24 Q. Okay. And you would agree that nowhere, 09:58:59

25 anywhere in the -- in the entire section alleging the 09:59:02

1 liability of SDG&E is there any allegation that PCBs 09:59:08
2 occurred in cooling water; right? 09:59:13
3 You can go ahead and read it. But I think it 09:59:14
4 speaks for itself that there's nothing -- no such 09:59:17
5 assertion. 09:59:21
6 A. Well, we do cite the permits that were issued to 09:59:23
7 SDG&E during the period of operation of the Silvergate 09:59:29
8 power plant. And those permits had effluent limits in 09:59:37
9 them for PCBs, which indicated PCBs were discharged at 09:59:42
10 some level from that facility. 09:59:47
11 Q. Is it your -- are you asserting, Mr. Barker, 09:59:50
12 that PCBs existed in the cooling water discharge that 09:59:54
13 contributed to the contamination of the bay? Are you 09:59:57
14 asserting that now? 10:00:01
15 A. No. The only thing that I'm asserting is 10:00:03
16 what's -- the analysis that's in -- in the DTR. 10:00:06
17 Q. Right. Correct. 10:00:09
18 And you would agree with me that it would be 10:00:10
19 wholly speculative to assert at this stage of the 10:00:13
20 proceedings that there were any PCBs in the cooling water 10:00:15
21 discharge that could have contributed to contamination of 10:00:19
22 the bay; correct? 10:00:21
23 A. It would -- the -- the board did not pursue that 10:00:26
24 analysis. 10:00:29
25 Q. Okay. And the analysis that the board pursued 10:00:30

1 for PCB contaminations to the bay caused by SDG&E was 10:00:32
2 exclusively related to the so-called pathway from SDG&E's 10:00:37
3 Silvergate facility to SW4; correct? 10:00:41
4 A. That -- that was the pathway, as I mentioned 10:00:44
5 earlier, where we -- it's documented more precisely. 10:00:52
6 Q. Okay. And that precise documentation, at least 10:00:57
7 in your view, consisted of having identified certain 10:00:59
8 contaminants in a catch basin adjacent to CD -- SDG&E's 10:01:05
9 property; correct? 10:01:10
10 A. Yes. 10:01:12
11 Q. Now, let's turn to that portion of the DTR 10:01:18
12 because I'll have some questions on that. And is that -- 10:01:25
13 do we find that at Section 9.9? 10:01:28
14 A. 9.9. Excuse me. Yes. 10:01:42
15 Q. And in this section am I correct that the board 10:01:47
16 is, for purposes of its allegation that a pathway was 10:01:50
17 established from the Silvergate facility of SDG&E's to 10:01:56
18 the bay, the board is relying entirely and exclusively on 10:01:59
19 certain sampling done in 2005 of sediments in a catch 10:02:04
20 basin adjacent to the SDG&E facility? 10:02:12
21 MR. CARRIGAN: Document speaks for itself. 10:02:17
22 THE WITNESS: Well, the catch basin sampling was 10:02:28
23 one part of the information we analyzed. 10:02:30
24 BY MR. BENSHOOF: 10:02:34
25 Q. I realize, Mr. Barker, that there's more 10:02:52

1 information analyzed in 9.9 than just simply the catch 10:02:55
2 basin data. We've already discussed that that section 10:02:59
3 also includes Table 9-6. So I didn't ask you what was 10:03:03
4 included in Section 9.9. 10:03:08
5 The the question, Mr. Barker, was, am I correct 10:03:10
6 that for purposes of the board's allegation that a 10:03:14
7 pathway had been established from SDG&E's Silvergate 10:03:18
8 facility to the bay, the board was relying entirely and 10:03:23
9 exclusively on sampling done in 2005 of sediments in 10:03:26
10 Catch Basin 1? 10:03:31
11 MR. CARRIGAN: Same objection. 10:03:35
12 THE WITNESS: This -- this is the -- the -- a 10:03:36
13 pathway the board documented in a more precise manner. 10:03:49
14 There is other potential pathways discussed but not -- 10:03:53
15 not documented to the same level of detail as what is in 10:03:59
16 9.9. 10:04:03
17 BY MR. BENSHOOF: 10:04:04
18 Q. I think we've already covered those, haven't we, 10:04:09
19 the wastewater runoff potential and the other things; 10:04:11
20 correct? 10:04:14
21 A. Yes, yes. 10:04:15
22 Q. Because I don't want to get into that. We've 10:04:16
23 already agreed -- we discussed that. And I'm happy with 10:04:17
24 that record. 10:04:21
25 I just want to now focus on Section 9.9. And 10:04:22

1 you agree that that entire allegation in 9.9 rests upon 10:04:27
2 the sampling in Catch Basin No. 1 in terms of tying that 10:04:31
3 to the Silvergate facility; correct? 10:04:36
4 MR. CARRIGAN: Document speaks for itself. 10:04:38
5 THE WITNESS: Yes, yes. 10:04:46
6 BY MR. BENSHOOF: 10:04:46
7 Q. Okay. Now, Mr. Barker [sic] testified and 10:04:47
8 Mr. Tobler have testified in this proceeding, and we can 10:04:51
9 look at that if you'd like, but that the board didn't do 10:04:54
10 any independent investigation to determine where those 10:04:57
11 contaminants in Catch Basin 1 originated from. 10:05:00
12 Would you agree with that? 10:05:04
13 MR. DART: Did you say "Mr. Barker testified"? 10:05:20
14 MR. BENSHOOF: I probably may have. I meant 10:05:22
15 Mr. Carlisle. I did say Mr. Barker. 10:05:23
16 BY MR. BENSHOOF: 10:05:29
17 Q. Mr. Carlisle testified and Mr. Tobler testified 10:05:29
18 in this proceeding that the board didn't undertake any 10:05:32
19 independent investigation to determine where the 10:05:36
20 contamination in Catch Basin 1 originated from but rather 10:05:39
21 relied upon the city's work. 10:05:44
22 Would you agree with that, Mr. Barker? 10:05:46
23 A. Yes. 10:05:48
24 Q. And were you aware, Mr. Barker, that in 10:05:48
25 connection with this particular notice of violation, that 10:05:56

1 the city had originally intended to issue that notice to 10:05:59
2 BAE? 10:06:03
3 A. Yes. I remember some discussion of that at the 10:06:10
4 time. 10:06:13
5 Q. And do you recall that BAE responded to that by 10:06:14
6 claiming it wasn't their discharge, and that the city 10:06:25
7 should issue the notice instead to SDG&E? 10:06:29
8 A. I -- I wasn't part of those conversations. All 10:06:35
9 I know that is -- is that ultimately the -- the City 10:06:39
10 decided to issue the NOV to SDG&E. 10:06:44
11 Q. Okay. Well, let's look at a document in the 10:06:47
12 record. It will be marked as 1259. 10:06:49
13 THE COURT REPORTER: Fifty-eight. 10:06:54
14 MR. BENSHOOF: Fifty-eight. If I get one right, 10:06:55
15 we'll have to mark that spot in the depo. 1259. 10:06:57
16 MR. CARRIGAN: 1258. 10:07:09
17 (Exhibit 1258 was marked.) 10:07:10
18 MR. BENSHOOF: Once in my brain, it just doesn't 10:07:16
19 leave. 10:07:18
20 BY MR. BENSHOOF: 10:07:18
21 Q. Mr. Barker, I don't intend to dwell on this. 10:07:18
22 It's a document from the administrative record 10:07:21
23 SAR 285339. It's a -- it appears to be an email exchange 10:07:24
24 between Ms. Kolb of the City of San Diego and Ms. Honma 10:07:29
25 of your staff, dated November 2005. Do you see that? 10:07:34

1 THE WITNESS: I don't know that they were -- 10:08:53
2 I -- anyway. They were certainly gathering information 10:08:58
3 to -- 10:09:02
4 BY MR. BENSHOOF: 10:09:03
5 Q. At SDG&E? 10:09:04
6 A. Right, yes. 10:09:04
7 Q. Okay. And then Ms. Kolb responds, "SDG&E was 10:09:05
8 issued an NOV." Do you see that? 10:09:09
9 A. Yes. 10:09:12
10 Q. "SDG&E cleaned the catch basin and are in the 10:09:12
11 process of trying to determine the origination of the 10:09:17
12 6-inch and 12-inch storm drains that enter into the 10:09:19
13 city's catch basin." Do you see that? 10:09:22
14 A. Yes. 10:09:25
15 Q. And do you agree that that would be relevant, 10:09:25
16 Mr. Barker, before alleging that -- or agreeing with 10:09:27
17 Mr. Halvax that SDG&E was responsible for those 10:09:32
18 discharges in the catch -- catch basin? Do you believe 10:09:36
19 it would be relevant to know where the lines entering 10:09:39
20 into that catch basin originated from? 10:09:44
21 MR. DART: Assumes facts. Lacks foundation. 10:09:46
22 Hearsay. 10:09:48
23 MR. CARRIGAN: Join. Incomplete hypothetical. 10:09:49
24 THE WITNESS: Yes, it would be relevant, yes. 10:09:54
25

1 BY MR. BENSHOOF: 10:09:55

2 Q. And matter of fact, somebody gave the 10:09:57

3 Water Board information that both those lines originated 10:09:59

4 from SDG&E's Silvergate facility; correct? That's what 10:10:02

5 the DTR at 9.9 says; correct? 10:10:13

6 A. Yes. 10:10:16

7 Q. And was that individual Mr. Halvax that gave 10:10:17

8 that Regional Board that information? 10:10:20

9 A. I -- 10:10:23

10 MR. CARRIGAN: Lacks foundation. 10:10:24

11 MR. DART: Join. 10:10:25

12 THE WITNESS: I don't know. 10:10:26

13 BY MR. BENSHOOF: 10:10:26

14 Q. Do you know whether it's true or not? 10:10:27

15 A. The board has not done its own investigation on 10:10:34

16 the routing of the storm drains into that sump. 10:10:37

17 Q. Okay. 10:10:42

18 A. And storm drains can lead to places you don't 10:10:43

19 necessarily expect. And -- and information can come in 10:10:52

20 later in an investigation to -- where -- to -- to reveal 10:10:56

21 that. 10:11:03

22 Q. Okay. Let's talk about, perhaps, some that 10:11:04

23 might be relevant. I'd like to mark as an exhibit an 10:11:06

24 aerial depiction that we prepared of the location of the 10:11:14

25 catch basin and its relationship to both Silvergate 10:11:21

1 substation as well as the BAE facility. And we'll mark 10:11:28
2 this as 1259. 10:11:32
3 (Exhibit 1259 was marked.) 10:11:34
4 BY MR. BENSHOOF: 10:11:34
5 Q. Now, again, Mr. Barker, this is a document that 10:12:03
6 we created just for purposes of these questions. And so 10:12:12
7 I will represent to you that it's an accurate aerial 10:12:14
8 photograph dated December 30th, 2003, of the area that 10:12:20
9 we're talking about. 10:12:23
10 And I take it you can roughly recognize the -- 10:12:24
11 SDG&E's former Silvergate substation as well as the 10:12:29
12 Southwest Marine/BAE shipyard on this photograph. 10:12:32
13 A. Yes. 10:12:36
14 Q. And I take it you also recognize the -- the 10:12:37
15 location of Sampson Street? 10:12:42
16 A. Yes. 10:12:44
17 Q. And do you happen to know the -- and we've got 10:12:44
18 other documents that -- that are actually part of the 10:12:52
19 administrative record. We can go through to establish 10:12:57
20 it. But does that location of CB-1, the catch basin, 10:13:01
21 look accurate to you? 10:13:07
22 A. I've not been to the site myself. So I -- I 10:13:14
23 couldn't speak to that. 10:13:16
24 Q. Let's just -- we can quickly look at a document, 10:13:18
25 then, in the administrative record that might help you. 10:13:23

1 We'll mark as 1260 Document SAR 280509. 10:13:27

2 (Exhibit 1260 was marked.) 10:13:33

3 BY MR. BENSHOOF: 10:13:40

4 Q. And now this document is -- it's part of the 10:13:51

5 administrative record. It shows a -- shows the catch 10:13:54

6 basin. Do you see that? 10:13:56

7 A. Yes. 10:14:02

8 Q. And you see that it shows that there's a portion 10:14:02

9 of it in which a 6-inch line is entering, a portion of it 10:14:04

10 in which a 12-inch line is entering, and then there's an 10:14:08

11 18-inch exit line; correct? 10:14:12

12 MR. DART: Document speaks for itself. Lacks 10:14:15

13 foundation. 10:14:17

14 THE WITNESS: Yes. 10:14:17

15 BY MR. BENSHOOF: 10:14:17

16 Q. And is that your understanding of the 10:14:18

17 arrangement of the catch basin? 10:14:20

18 MR. DART: Lacks foundation. 10:14:22

19 THE WITNESS: Yes. 10:14:23

20 BY MR. BENSHOOF: 10:14:23

21 Q. Now, would it be relevant for you to know that 10:14:24

22 the information set forth in the DTR as to where those 10:14:35

23 12-inch and 6-inch lines drain from was wrong? 10:14:46

24 MR. CARRIGAN: Incomplete hypothetical. 10:14:53

25 MR. DART: Join. Assumes facts. 10:14:54

1 THE WITNESS: Yes. 10:14:56

2 BY MR. BENSHOOF: 10:14:57

3 Q. And that specifically the information that 10:14:58

4 Mr. Halvax of Southwest Marine provided on -- to your 10:15:03

5 staff on November 17th, 2005, was untrue? Would that 10:15:08

6 be relevant? 10:15:13

7 MR. DART: Lacks foundation. Calls for 10:15:15

8 speculation. 10:15:16

9 THE WITNESS: I'm not sure what information he 10:15:17

10 provided us on November -- 10:15:20

11 Q. Quote, He said that the catch basin drained off 10:15:24

12 of SDG&E, closed quote. 10:15:26

13 A. Oh. 10:15:29

14 Q. Would it be relevant for you to know that that 10:15:30

15 was false? 10:15:32

16 MR. DART: Same objections. Document referenced 10:15:33

17 speaks for itself. It's based on hearsay. 10:15:35

18 THE WITNESS: Yes. 10:15:41

19 BY MR. BENSHOOF: 10:15:41

20 Q. I take it, it would be. 10:15:42

21 A. Yes. 10:15:43

22 Q. I mean, the entire allegation against SDG&E is 10:15:44

23 based upon the truth of Mr. Halvax's assertions; correct? 10:15:46

24 MR. CARRIGAN: Misstates the records. Misstates 10:15:51

25 the documents. 10:15:53

1 MR. DART: Join. Same objections. 10:15:54

2 THE WITNESS: The -- I don't know that only 10:15:59

3 Mr. Halvax's interpretation of what drains into the basin 10:16:03

4 was the only source of information the staff relied on. 10:16:09

5 They may -- they were in touch with the City of 10:16:14

6 San Diego, as well. I wasn't part of those 10:16:16

7 conversations. 10:16:19

8 Q. And you don't know whether or not, as far as you 10:16:21

9 know, the -- you don't know what the city did to confirm 10:16:24

10 whether Mr. Halvax's information was true or false; 10:16:27

11 correct? 10:16:31

12 A. That's correct. 10:16:32

13 Q. And you would agree that there's nothing in the 10:16:33

14 administrative record to indicate that anybody even 10:16:36

15 checked on whether or not Mr. Halvax's information was 10:16:39

16 true or false; correct? 10:16:43

17 MR. CARRIGAN: Record speaks for itself. 10:16:45

18 MR. DART: Join. 10:16:47

19 THE WITNESS: I was not part of the 10:16:48

20 conversations that the staff had with the city as to why 10:16:51

21 they issued the NOV to SDG&E. 10:16:56

22 BY MR. BENSHOOF: 10:17:02

23 Q. Okay. I take it you would agree that if the 10:17:03

24 information is -- that -- in the DTR is incorrect that it 10:17:07

25 should be at least reconsidered as to where those lines 10:17:16

1 drained from? 10:17:22

2 A. Yes. 10:17:23

3 Q. And would you agree that -- or do you know that 10:17:23

4 it was ultimately determined that the 6-inch line, in 10:17:27

5 fact, drained from the roof of the Silvergate facility 10:17:35

6 and not from the area surrounding it? 10:17:40

7 MR. CARRIGAN: Assumes facts not in evidence. 10:17:45

8 MR. DART: Join. 10:17:46

9 THE WITNESS: No. I'm -- I'm not aware of that. 10:17:47

10 BY MR. BENSHOOF: 10:17:48

11 Q. Okay. 10:17:49

12 And would it be fair to say that to the extent 10:17:49

13 that there were any chemicals of concern in a line 10:17:52

14 draining from a roof of any facility within the reach of 10:18:00

15 all of the sandblast material resulting from the 10:18:03

16 Southwest Marine operations, that you'd at least have to 10:18:06

17 ask, couldn't it have been those sandblasting abrasive 10:18:09

18 waste discharges that would have contributed to that -- 10:18:12

19 those chemicals? 10:18:16

20 In other words, if PCBs were found on the roof 10:18:18

21 of any facility near the shipyard, you'd want to know 10:18:21

22 what PCB source was up there on the roof; right? 10:18:26

23 A. Yes. 10:18:29

24 Q. It's not a typical place for there to be PCB 10:18:29

25 releases -- on roofs? 10:18:33

1 MR. CARRIGAN: Lacks foundation. Calls for 10:18:35
2 expert opinion. 10:18:36
3 MR. DART: Join. 10:18:37
4 THE WITNESS: Not typical but possible. 10:18:40
5 BY MR. BENSHOOF: 10:18:41
6 Q. Okay. Could be a machine up there discharging. 10:18:42
7 But in terms of the Silvergate substation, we 10:18:46
8 talked about earlier, one of your inspectors went out and 10:18:50
9 physically observed the haze on the Chevron property that 10:18:56
10 was coming over from the sandblasting operations at 10:18:59
11 Southwest Marine; correct? 10:19:04
12 A. Yes. I -- we reviewed -- I reviewed an email 10:19:07
13 discussing that. I'm not sure where the proximity of 10:19:12
14 that cloud was in relation to this -- the storm drain 10:19:18
15 site. 10:19:23
16 Q. You would -- if something -- if contaminants 10:19:24
17 were being drained from a roof anywhere around the 10:19:26
18 shipyard, you'd at least ask the question, could the 10:19:29
19 source of that contamination possibly be the shipyard 10:19:32
20 sandblasting and other operations in the shipyard that 10:19:37
21 led to aerial transport of contaminants, wouldn't you 10:19:40
22 not, sir? 10:19:43
23 MR. DART: Assumes facts. Incomplete 10:19:44
24 hypothetical. 10:19:45
25 MR. CARRIGAN: Join. 10:19:46

1 THE WITNESS: Yes. I mean, the -- the route 10:19:47
2 that these storm drains went to, what -- what area they 10:19:49
3 drained would be relevant information. 10:19:53
4 MR. BENSHOOF: Okay. The reporter needs -- or 10:19:58
5 the videographer needs to change her tape. We can take a 10:20:00
6 couple of minutes break. 10:20:04
7 MR. CARRIGAN: Yeah. Let's make -- let's make 10:20:06
8 it quick. 10:20:06
9 THE VIDEOGRAPHER: This ends Videotape No. 1 in 10:20:08
10 the deposition of David Barker, Volume No. 4. Today's 10:20:09
11 date is March 10th, 2011. The time is now 10:20 a.m. 10:20:13
12 Off the record. 10:20:18
13 (A recess was taken.) 10:20:19
14 THE VIDEOGRAPHER: This begins Videotape No. 2 10:29:04
15 in the deposition of David Barker, Volume No. 4. Today's 10:29:06
16 date is March 10th, 2011. The time is 10:29 a.m. On 10:29:11
17 the record. 10:29:16
18 BY MR. BENSHOOF: 10:29:18
19 Q. Now, I take it if it -- as of today's date still 10:29:19
20 hadn't been determined where the 12-inch lateral line 10:29:34
21 from the catch basin drained from, you'd want to know 10:29:36
22 that information too. Is that correct, Mr. Barker? We 10:29:40
23 talked about the 6-inch line; right? 10:29:43
24 A. Yes. 10:29:45
25 Q. And so if the 6-inch line drained from a roof 10:29:46

1 and if it's not known where the 12-inch lateral drained 10:29:50
2 from, you would want to know that in reassessing the 10:29:53
3 allegations against SDG&E in Section 9.9; correct? 10:29:56
4 A. Yes. 10:30:00
5 Q. Now, wouldn't another -- well, wouldn't you also 10:30:00
6 want to know, Mr. Barker, before alleging that SDG&E was 10:30:05
7 responsible for the sediment contaminants in 10:30:10
8 Catch Basin 1, wouldn't you also want to know how those 10:30:14
9 contaminants compared to sediments existing in the storm 10:30:18
10 drains on the BAE property? 10:30:22
11 MR. CARRIGAN: Asked and answered. 10:30:24
12 MR. DART: Join. Assumes facts. 10:30:28
13 THE WITNESS: Not -- not necessarily. Sometimes 10:30:30
14 the board uses other benchmarks to collect -- to compare 10:30:35
15 storm drain sample results to sometimes extensive storm 10:30:41
16 drain sampling is done that allows the type of comparison 10:30:45
17 you described. 10:30:49
18 BY MR. BENSHOOF: 10:30:50
19 Q. Okay. 10:30:51
20 Now, could you turn back to Exhibit 1248, which 10:30:52
21 is in front of you, Mr. Barker. It's this document in 10:30:58
22 the record, SAR 014971. And I want to -- you to open up 10:31:03
23 that become again to page 14987 which shows the storm 10:31:13
24 drain system existing in 1998 on the BAE property. It's 10:31:21
25 an exhibit. 10:31:33

1 MR. CARRIGAN: It's that map, that diagram that 10:31:34
2 we looked at before. 10:31:36
3 MR. BENSHOOF: Pages 987. 10:31:37
4 THE WITNESS: Nine. Okay. 985, six, got it. 10:31:39
5 BY MR. BENSHOOF: 10:31:44
6 Q. Okay. Now, Table 9.6 in the DTR, so I'm wanting 10:31:44
7 you to look at both, Table 9.6 highlights the data of 10:31:48
8 concern to the board regarding contaminants existing, PCB 10:31:57
9 and PAH contaminants existing in the vicinity of storm 10:32:06
10 drain Outfall No. 4; correct? 10:32:11
11 A. Yes. 10:32:13
12 Q. And you would agree that the operations of 10:32:15
13 Southwest Marine, both during the tenure of BAE and 10:32:22
14 before, drain to that same outfall from multiple sources 10:32:28
15 on the property; correct? 10:32:34
16 MR. DART: Lacks foundation. Calls for 10:32:36
17 speculation. 10:32:37
18 THE WITNESS: Well, yes. I'm aware that there's 10:32:43
19 drainage from the property into SW4, yes. 10:32:53
20 BY MR. BENSHOOF: 10:32:56
21 Q. All right. And at least in 19 -- November of 10:32:57
22 1998, that drainage in the areas of the property that 10:32:59
23 were connected to SW4 and the storm drains that were a 10:33:07
24 part of that drainage system are illustrated on that map 10:33:12
25 that we've just been looking at, SAR 14987; correct? 10:33:17

1 MR. DART: Same objections. The document speaks 10:33:23
2 for itself. 10:33:24
3 MR. CARRIGAN: Speaks for itself. 10:33:25
4 THE WITNESS: Yes. It shows storm drain 10:33:27
5 connections. 10:33:31
6 BY MR. BENSHOOF: 10:33:31
7 Q. Multiple storm drains collecting water from that 10:33:33
8 facility, all of it discharging into Outfall No. 4; 10:33:37
9 correct? 10:33:40
10 MR. DART: Same. 10:33:42
11 MR. CARRIGAN: Same objection. 10:33:43
12 THE WITNESS: I see some of them connecting 10:33:50
13 to -- to SW4. 10:33:52
14 BY MR. BENSHOOF: 10:33:56
15 Q. All right. 10:33:56
16 A. Yeah. 10:33:57
17 Q. All right. So there were multiple storm drains 10:33:57
18 on that SDG -- excuse me -- BAE property connecting to 10:33:59
19 Outfall No. 4; correct? 10:34:06
20 MR. DART: Same objections. Asked and answered. 10:34:09
21 BY MR. BENSHOOF: 10:34:09
22 Q. Is that correct, Mr. Barker? 10:34:10
23 MR. DART: Same objections. Asked and answered. 10:34:12
24 THE WITNESS: Yes. 10:34:14
25

1 BY MR. BENSHOOF: 10:34:15

2 Q. Now, not only are there multiple storm drains 10:34:16

3 from the BAE property connected to that outfall, but 10:34:21

4 there also are a variety of operations of BAE's that are 10:34:24

5 located near the outfall; correct? 10:34:31

6 MR. DART: Same objections. 10:34:34

7 MR. CARRIGAN: Document speaks for itself. 10:34:35

8 THE WITNESS: Yes. 10:35:03

9 BY MR. BENSHOOF: 10:35:03

10 Q. Now, back to Table 9-6, Mr. Barker, is the 10:35:06

11 Water Board alleging that SW4 is the only source of 10:35:17

12 impacts to those areas, SW20 through 25, that are 10:35:23

13 summarized on that table? 10:35:30

14 A. No. 10:35:37

15 Q. And because specifically you know that adjacent 10:35:38

16 to those areas, both over those areas on piers and 10:35:41

17 adjacent to them on land, the shipyards historically had 10:35:45

18 conducted operations that contributed PCBs and PAHs to 10:35:50

19 the contaminated sediments in those areas; correct? 10:35:54

20 A. Yes. 10:35:59

21 Q. For example, in 1998, BAE had a HAZMAT -- 10:36:00

22 HAZ waste compound located in the vicinity of SW4, did it 10:36:05

23 not? And that's shown on SAR 14986. 10:36:12

24 MR. CARRIGAN: Document speaks for itself. 10:36:20

25 MR. DART: Join. Lacks foundation. 10:36:22

1 THE WITNESS: Yes. I see a HAZ waste compound 10:36:29
2 noted on that document. 10:36:33
3 BY MR. BENSHOOF: 10:36:35
4 Q. And I guess to -- to locate that in 10:36:35
5 comparison -- or in reference to SW4, you probably need 10:36:42
6 to look at the page 14987. But it appears, does it not, 10:36:46
7 that -- 10:36:55
8 A. Yeah. 10:36:55
9 Q. -- the HAZ waste compound is in the vicinity of 10:36:56
10 SW4? 10:37:01
11 A. Yes. 10:37:02
12 MR. DART: Same objections. 10:37:03
13 BY MR. BENSHOOF: 10:37:03
14 Q. And -- 10:37:03
15 MR. CARRIGAN: Belatedly, I'll insert vague, 10:37:03
16 too, but... 10:37:04
17 BY MR. BENSHOOF: 10:37:04
18 Q. And also in the vicinity of SW4 is -- on land is 10:37:06
19 what Southwest Marine describes as a paint and sandblast 10:37:09
20 area? 10:37:13
21 A. Yes. 10:37:16
22 Q. And you see illustrated -- we're going to go 10:37:18
23 over a number of other exhibits that show the shipyard 10:37:20
24 operations. 10:37:24
25 But you see represented on this 1998 exhibits 10:37:28

1 other sources of chemicals of concerns, including PCBs 10:37:33
2 like electrical workshops and electrical shops and 10:37:36
3 cranes, illustrated as being other probable sources of 10:37:40
4 releases of chemicals of concern by the shipyards to the 10:37:46
5 area surrounding SW4? 10:37:49
6 MR. CARRIGAN: Calls for expert testimony. 10:37:53
7 MR. DART: Join and same prior objections. 10:37:55
8 THE WITNESS: Potential areas. I -- we did not 10:38:06
9 establish discharges from these facilities in detail 10:38:09
10 though. 10:38:13
11 BY MR. BENSHOOF: 10:38:13
12 Q. And I take it that was simply an inquiry that 10:38:13
13 the Water Board deemed to be unnecessary. 10:38:24
14 A. At that -- at the stage of the investigation in 10:38:29
15 post-2001. And the answer to that is yes. 10:38:38
16 Q. And that's because you had enough information 10:38:44
17 to, like Mr. Carlisle said, you had enough information to 10:38:47
18 add the shipyards as BAE, to the cleanup and abatement 10:38:51
19 order; correct? 10:38:54
20 MR. CARRIGAN: Asked and answered. 10:38:56
21 THE WITNESS: Yes. We were working, actually, 10:39:00
22 cooperatively with both of those entities. 10:39:02
23 BY MR. BENSHOOF: 10:39:06
24 Q. And -- and did you view a detailed investigation 10:39:07
25 of BAE's contribution to the -- to the sediment 10:39:12

1 contamination to being consistent with having a 10:39:17
2 cooperative relationship with them? In other words, did 10:39:21
3 they threaten to pull their support if the Water Board 10:39:23
4 looked too closely at their contributions? 10:39:26
5 A. No. I don't believe that issue came up. 10:39:30
6 Q. But you did link the not doing a detailed 10:39:35
7 investigation to working cooperatively with them. So 10:39:37
8 I -- I mean, the natural question is, Was there a quid 10:39:40
9 pro quo involved that the shipyards told the board that 10:39:44
10 if their operations were examined in too great a detail, 10:39:47
11 that they would discontinue cooperation? 10:39:52
12 MR. CARRIGAN: Misstates testimony. Asked and 10:39:54
13 answered. 10:39:55
14 MR. DART: Join. 10:39:57
15 THE WITNESS: No, no. There was no such 10:39:59
16 agreement either offered to the board or considered. 10:40:02
17 BY MR. BENSHOOF: 10:40:08
18 Q. The -- and we -- I take it, it's your view, 10:40:08
19 Mr. Barker, that the board could responsibly carry out 10:40:17
20 its responsibilities without doing a detailed 10:40:25
21 investigation to inquire whether or not the contributions 10:40:29
22 of the shipyard were of such a scale and extent that they 10:40:33
23 would solely explain the contaminations -- contamination 10:40:36
24 observed in the sediment? 10:40:42
25 MR. CARRIGAN: Asked and answered. 10:40:44

1 MR. DART: Join. And vague. 10:40:44

2 MR. CARRIGAN: We've spent a day on this, Ward. 10:40:46

3 We're going to go back to it again? 10:40:48

4 MR. BENSHOOF: I know. I don't want to. 10:40:50

5 MR. CARRIGAN: I mean, we spent a whole day on 10:40:50

6 this. 10:40:52

7 MR. BENSHOOF: I don't -- I actually don't want 10:40:52

8 to. Because you're quite correct. I covered it. 10:40:53

9 BY MR. BENSHOOF: 10:40:55

10 Q. Am I -- am I still correct, Mr. Barker, that the 10:40:56

11 board considered examining the scale of what the 10:41:02

12 shipyards caused in terms of their contribution to not be 10:41:04

13 immaterial? 10:41:12

14 A. I mean, the scale of their operations was a 10:41:13

15 consideration. And we summarized the activities. We -- 10:41:17

16 we did not do a detailed sampling survey of the property 10:41:20

17 to analyze all of the sources, actual or potential, for 10:41:26

18 discharge. 10:41:34

19 Q. Okay. 10:41:35

20 Let's look at some of that evidence, then, 10:41:36

21 and -- and we'll start with, again, another document in 10:41:39

22 the administrative record that Southwest Marine's 10:41:44

23 consultant generated in December of 1998. It's 10:41:47

24 SAR 061831. And this will be marked as next in order, 10:41:52

25 '61. 10:41:56

1 (Exhibit 1261 was marked.) 10:41:56

2 BY MR. BENSHOOF: 10:41:57

3 Q. I just wanted to look at the -- I've marked a 10:42:18

4 number of -- I've included a number of the pages of the 10:42:27

5 report in this exhibit, Mr. Barker. And I wanted to 10:42:30

6 direct your attention to exhibits -- or figures, I should 10:42:32

7 say, six through nine, and would ask you to just look at 10:42:38

8 those briefly, if you would. 10:42:53

9 They are exhibits that demonstrate where Ogden 10:42:55

10 sampled in generating this report. And, for -- for 10:43:01

11 example, Exhibit 5 shows where Ogden sampled and found 10:43:07

12 excessive copper levels. Exhibit 6 relates to findings 10:43:13

13 of excessive lead levels. Exhibit 7 reflects findings in 10:43:19

14 the shipyard, excessive mercury levels. Eight, zinc. 10:43:23

15 And nine, excessive PCB. And by "excessive," I mean 10:43:30

16 concentrations exceeding the cleanup goal concentrations. 10:43:34

17 Do you see those? 10:43:39

18 A. Yes. 10:43:42

19 Q. Now, I take it you would agree that -- let's 10:43:42

20 just turn to Figure 9 -- that -- that the same is true 10:43:47

21 with the other figures. But let's just focus on 10:43:51

22 Exhibit 9, that you would agree that sampling locations 10:43:54

23 reflect Southwest Marine's consultant Ogden found a 10:43:58

24 number of instances where surficial PCB levels exceeded 10:44:03

25 the AET concentration of .95. Do you see that? 10:44:10

1 MR. DART: Document speaks for itself. 10:44:16

2 MR. CARRIGAN: Join. 10:44:19

3 THE WITNESS: Well, let's see. Yes. Okay. I 10:44:27

4 see that, yes. 10:44:29

5 BY MR. BENSHOOF: 10:44:29

6 Q. And you see that a number of those are in the 10:44:30

7 vicinity of Storm Water Outfall No. 4? 10:44:33

8 A. Yes. 10:44:36

9 MR. DART: Same. 10:44:37

10 BY MR. BENSHOOF: 10:44:37

11 Q. And you will agree that this data was not 10:44:38

12 considered in -- by your staff in drafting Section 9 of 10:44:41

13 the DTR; correct? 10:44:44

14 A. No. The only data considered by us was the data 10:44:59

15 that's in that section of the DTR. 10:45:02

16 Q. Okay. And then for similar questions, let's 10:45:04

17 mark another document in the administrative record, 10:45:06

18 SAR 056453. It's an Appendix C to a Woodward-Clyde 10:45:10

19 report of 1992. 10:45:17

20 (Exhibit 1262 was marked.) 10:45:20

21 BY MR. BENSHOOF: 10:45:21

22 Q. And I take it you would agree that this sediment 10:45:36

23 sampling report done by SI -- or SAIC, Science 10:45:39

24 Applications International Corporation, prepared for 10:45:44

25 Southwest Marine, Incorporated, dated January 13th, 10:45:49

1 1992, was not considered by your staff in drafting 10:45:52
2 Section 9 of the DTR. 10:45:57

3 A. That's correct, yes. 10:46:02

4 Q. And could you look at -- I want to ask you a 10:46:03
5 question about the significance in your mind of -- I 10:46:08
6 forget the word that you used in your testimony. It 10:46:13
7 wasn't colocation of chemicals of concern. That's -- 10:46:17
8 that's the word I used. But for illustration purposes, I 10:46:20
9 wanted to ask you about a couple of pages. And perhaps 10:46:24
10 we can turn first to 574, or actually -- yeah. 10:46:28

11 Am I correct -- we had talked earlier about 10:46:57
12 indicator chemicals in the first day of examination. And 10:47:02
13 you had mentioned that a good indicator chemical -- I 10:47:05
14 believe I understood you correctly, that a good indicator 10:47:08
15 chemical of a shipyard impact would be TBT because in 10:47:14
16 this site, at least, they're the only known source of 10:47:18
17 that. 10:47:20

18 A. Yes. 10:47:21

19 Q. And I want to ask you to look at the data 10:47:22
20 reported by Southwest Marine in this particular study, 10:47:29
21 and ask you whether or not it would be relevant to 10:47:33
22 consider findings that show TBT and PCBs occurring in the 10:47:35
23 same location, as well as PAHs, and -- and ask you 10:47:45
24 whether or not that's at least one factor that you would 10:47:53
25 want to consider as to whether or not the sole -- sole 10:47:55

1 known source of one chemical could be the sole known -- 10:48:01
2 sole source of the others. 10:48:05
3 MR. CARRIGAN: Compound. Calls for expert 10:48:07
4 testimony. Incomplete hypothetical. 10:48:09
5 BY MR. BENSHOOF: 10:48:11
6 Q. Do you understand the question, Mr. Barker? It 10:48:12
7 was kind of long. 10:48:14
8 MR. DART: Join. 10:48:17
9 BY MR. BENSHOOF: 10:48:17
10 Q. Directly, you see that this is -- this sediment 10:48:18
11 report showing contaminant concentrations near Pier 1 -- 10:48:23
12 that's its label, Pier 1 is one of the Southwest Marine 10:48:28
13 piers -- shows TBT occurring in certain concentrations. 10:48:33
14 That's referred to in the data, is it not? 10:48:41
15 A. Yes. 10:48:45
16 Q. And it shows in that -- in those same sampling 10:48:46
17 locations, I'm looking at Sampling Location 7, for 10:48:49
18 example, shows PCBs also occurring. 10:48:52
19 A. Yes. 10:48:55
20 MR. DART: Document speaks for itself. 10:48:56
21 MR. CARRIGAN: Join. 10:48:57
22 BY MR. BENSHOOF: 10:48:57
23 Q. And then Sampling Location 8 shows TBT and also 10:48:57
24 shows PAHs. 10:49:03
25 MR. CARRIGAN: Same objection. 10:49:06

1 MR. DART: Join. 10:49:07

2 BY MR. BENSHOOF: 10:49:07

3 Q. Do you see that in the data? 10:49:08

4 A. Yes. 10:49:10

5 Q. Okay. So my question is, would you want to 10:49:10

6 consider -- I know this wasn't considered in the DTR. 10:49:15

7 But would it be the type of data you would want to 10:49:18

8 consider to -- knowing that the shipyard is the sole 10:49:20

9 source of the TBT, would it be relevant for you to 10:49:24

10 consider this kind of data to conclude whether or not the 10:49:27

11 shipyard would also be the sole source of the PCBs or the 10:49:31

12 PAHs? 10:49:35

13 MR. CARRIGAN: Vague. Calls for expert opinion. 10:49:36

14 Incomplete hypothetical. 10:49:38

15 MR. DART: Join. Lacks foundation. 10:49:39

16 THE WITNESS: Yeah. If -- if the board were to 10:49:47

17 try to pursue with a finer lens contributions of -- from 10:49:50

18 the BAE shipyard, the board would consider the data of 10:49:59

19 this type, the NPDS permit monitoring data, would -- 10:50:09

20 would examine all of it in its totality. 10:50:13

21 BY MR. BENSHOOF: 10:50:15

22 Q. Okay. But the -- and it may not. The answer 10:50:16

23 may be, no, you wouldn't consider it relevant for that 10:50:19

24 purpose. But I didn't ask, Mr. Barker, is this something 10:50:22

25 the board would want to consider in its totality? 10:50:25

1 Because that may have meaning to you, but it doesn't to 10:50:27
2 me. 10:50:31

3 I was more specifically focused on whether or 10:50:31
4 not you're seeing some data in a sampling location that 10:50:33
5 you know was contributed by only one source, TBT, would 10:50:41
6 that be relevant to you, to whether or not the PCBs 10:50:48
7 showing up in that same sample were also solely from -- 10:50:54
8 the sole source accountable for the other chemical? 10:51:02
9 That's the question. 10:51:05

10 MR. CARRIGAN: Incomplete hypothetical. Calls 10:51:06
11 for a legal conclusion. Vague. 10:51:08

12 MR. DART: Join. Assumes facts. 10:51:10

13 THE WITNESS: If we believe that the PCBs -- I'm 10:51:24
14 a little confused with the question. But it would be -- 10:51:34
15 I mean, the co-occurrence of PCBs with TBT would be a 10:51:39
16 consideration but not a conclusive consideration. But it 10:51:44
17 would be something we would look at, the pattern and 10:51:50
18 distribution of contaminants. 10:51:54

19 BY MR. BENSHOOF: 10:51:55

20 Q. So if you found that with some frequency, the 10:51:56
21 co-location of one chemical that you knew only came from 10:51:59
22 the shipyards with other chemicals, it would be a factor 10:52:03
23 you would consider as to whether there's any other source 10:52:07
24 that could be of -- that could have contributed; correct? 10:52:09
25 MR. CARRIGAN: Calls for a legal conclusion -- 10:52:13

1 excuse me -- calls for expert testimony and incomplete 10:52:14
2 hypothetical. 10:52:17

3 MR. DART: Join. Same objections. 10:52:19

4 THE WITNESS: Yeah. I -- I don't think the 10:52:21
5 board would -- would do such an analysis and rule out 10:52:22
6 other potential sources that might have pathways of their 10:52:28
7 own, based solely on the co-occurrence of PCBs with TBT. 10:52:34

8 BY MR. BENSHOOF: 10:52:41

9 Q. But you agree it would be one fact that you'd 10:52:43
10 want to consider? 10:52:45

11 A. Yes. 10:52:46

12 MR. DART: Same objections. 10:52:46

13 BY MR. BENSHOOF: 10:52:46

14 Q. And you agree it wasn't considered, this type of 10:52:47
15 data wasn't considered in drafting of the DTR? 10:52:49

16 MR. CARRIGAN: Assumes facts not in evidence. 10:52:52
17 Incomplete hypothetical. 10:52:54

18 MR. DART: Join. 10:52:58

19 THE WITNESS: The -- the co-occurrence of 10:52:58
20 contaminants in the sediment was considered to -- in 10:53:00
21 defining primary and secondary constituents of concern. 10:53:09

22 BY MR. BENSHOOF: 10:53:12

23 Q. Okay. It wasn't considered for purposes of 10:53:13
24 drafting any of the allegations against SDG&E, was it? 10:53:17

25 MR. CARRIGAN: Asked and answered. 10:53:21

1 THE WITNESS: No. 10:53:22

2 BY MR. BENSHOOF: 10:53:22

3 Q. Now, the -- we'd talked about what investigation 10:54:02

4 that the board did and what you were familiar with in 10:54:14

5 terms of identifying likely sources in the prior 10:54:20

6 deposition, Mr. Barker. And I mentioned -- or I asked 10:54:23

7 the question of whether or not the -- you recall whether 10:54:27

8 any -- any maps of the shipyards considered in terms of 10:54:35

9 trying to identify where the chemicals of concern came 10:54:42

10 from. 10:54:44

11 And specifically, I asked you about whether the 10:54:45

12 board made any effort to review historic Sanborn maps. 10:54:47

13 And you indicated to me that you weren't familiar with 10:54:52

14 that company or that term. Am I correct so far? 10:54:54

15 A. Yes. 10:54:58

16 Q. Okay. And so let me just represent to you 10:54:58

17 that -- the basis for my question. Then we're going to 10:55:02

18 look at some of that evidence. 10:55:07

19 But as I understand it, at least, the 10:55:09

20 Sanborn Company, Mr. Barker, I'll represent this to you, 10:55:12

21 has existed since the 1800s. And for purposes of 10:55:16

22 insurance underwriting and for mostly casualty policies, 10:55:20

23 fire -- fire insurance, is a company that thoroughly 10:55:27

24 would document urban areas of the United States for 10:55:32

25 purposes of just identifying for insurance companies what 10:55:34

1 was there, what they were insuring. So that's Sanborn. 10:55:37
2 And they continued to do that up until the '70s, I think. 10:55:42
3 In the process of that, they generated maps that 10:55:45
4 illustrate what exists on properties. So if it all goes 10:55:48
5 up in flames, they would know what to pay out. But in 10:55:53
6 recent years, those maps have been used by environmental 10:55:57
7 investigators, amongst others, to attempt to identify 10:56:00
8 historic sources. That's my testimony. It's my speech. 10:56:07
9 I think it's accurate. It commonly comes up in 10:56:10
10 depositions. 10:56:13
11 And it was obvious from the DTR, at least to me, 10:56:14
12 that the board hadn't accessed any of that information. 10:56:16
13 And maybe it's because the board wasn't aware of what it 10:56:19
14 was. I don't know. 10:56:22
15 But we need to look at some of that in order to 10:56:23
16 ask a question later, isn't this the kind of information 10:56:27
17 that we should be fairly considered before a cleanup and 10:56:32
18 abatement order is issued. And so we'll mark as 10:56:34
19 Exhibit 1263 the first of several. And it will just give 10:56:39
20 you an idea of what's out there that could be accessed by 10:56:48
21 the board. This is a 1950 certified Sanborn map. 10:56:51
22 (Exhibit 1263 was marked.) 10:56:55
23 MR. DART: Is there a question pending? 10:57:16
24 MR. BENSHOOF: Not -- not yet. I just want 10:57:17
25 to -- you know, let me, if you don't mind, it might be 10:57:18

1 easier if I just let the witness look at the one that 10:57:23
2 I've highlighted. 10:57:29
3 MR. CARRIGAN: Do you want to introduce that 10:57:31
4 into the record? 10:57:32
5 MR. BENSHOOF: Yeah. No problem. 10:57:33
6 MR. CARRIGAN: That's fine. 10:57:34
7 MR. BENSHOOF: I'm going to scribble out my 10:57:44
8 secret notes. Don't get too excited by that. They 10:57:46
9 really weren't too secret. 10:57:47
10 BY MR. BENSHOOF: 10:57:53
11 Q. But I'm going to -- let's just -- we're just 10:57:54
12 substituting for the exhibit a portion that has certain 10:57:55
13 highlighting. 10:58:02
14 And what I've done, Mr. Barker, is I've 10:58:03
15 highlighted facilities in the shipyard that are 10:58:06
16 documented by this map. And I just want to confirm your 10:58:10
17 understanding that all of these facilities are known 10:58:16
18 sources of chemicals of concern. And -- and so we've -- 10:58:19
19 I've highlighted, for example, certain winch -- the 10:58:26
20 location of certain winches adjacent to the marine ways. 10:58:33
21 And you'll see those highlighted on the map, do you not, 10:58:37
22 Mr. Barker? 10:58:41
23 A. Yes. 10:58:42
24 Q. And you're aware that winches typically were 10:58:43
25 contained amongst other chemicals of concern, hydraulic 10:58:46

1 oils? 10:58:50

2 A. Yes. 10:58:51

3 Q. And those hydraulic oils, particularly at this 10:58:51

4 time period, 1950 and thereafter, would contain amongst 10:58:53

5 other chemicals of concern, PCBs? 10:58:57

6 A. Possibly, yes. 10:59:00

7 Q. And metals, as well; correct? 10:59:01

8 A. Yes. 10:59:06

9 Q. And you see that those winches were located, and 10:59:08

10 you can see that there's, for example, a winch -- winches 10:59:11

11 are located directly on the piers over the -- over the 10:59:16

12 water. Do you so see that? 10:59:19

13 MR. DART: Object. The document speaks for 10:59:23

14 itself. I'm going to object to the alleged foundational 10:59:24

15 testimony from counsel supporting this document. 10:59:27

16 THE WITNESS: I see winches located near the 10:59:33

17 marine railways. 10:59:37

18 BY MR. BENSHOOF: 10:59:38

19 Q. And you see that there's an electrical shop out 10:59:39

20 on -- it's just called "Wharf," but it's wharf -- or 10:59:41

21 Pier 2. 10:59:47

22 MR. DART: Same objections. 10:59:53

23 MR. BENSHOOF: There's going to be plenty of 10:59:54

24 evidence on these things, so we don't need to dwell on 10:59:55

25 any particular one. 10:59:56

1 MR. DART: Is there a date? Sorry. While he's 10:59:57
2 looking, is there a date on there? 10:59:58
3 MR. BENSHOOF: 1950 certified Sanborn map. 11:00:00
4 MR. DART: It -- it -- it says it's a 11:00:06
5 representation of 1950? Okay. I didn't see the top. I 11:00:07
6 don't have a copy so... 11:00:11
7 MR. BENSHOOF: I'm sorry. Yeah, I don't -- 11:00:11
8 MR. DART: That's okay. Thank you. 11:00:13
9 MR. BENSHOOF: Fair question. 11:00:13
10 BY MR. BENSHOOF: 11:00:13
11 Q. In any event, Mr. Barker, you're aware that 11:00:14
12 shipyard operations have -- historically have had winches 11:00:17
13 located both on land and on piers in order to lift the 11:00:22
14 boats for purposes of the work that needs to be done on 11:00:26
15 them; correct? 11:00:29
16 A. Yes. 11:00:30
17 Q. These are heavy-duty winches that all contain 11:00:31
18 hydraulic oils that are potential sources of PCB releases 11:00:34
19 and metals releases to the environment; correct? 11:00:38
20 A. I was aware they contained hydraulic oils. But 11:00:43
21 I've never -- we've never done a chemical analysis other 11:00:48
22 than just the general knowledge about PCBs being present 11:00:51
23 in those oils. 11:00:57
24 Q. Okay. And nobody -- nobody on the staff was 11:00:58
25 instructed to do that in connection with this DTR; 11:01:01