

* BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

U.S. ENVIRONMENTAL PROTECTION AGENCY
SPRINGFIELD, MO

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IN THE MATTER OF:	:	
	:	
NEW PRIME, INC.,	:	
	:	
Respondent.	:	RCRA-08-2020-0007
	:	

Volume III

Wednesday,
October 26, 2022

The above-entitled matter came on for
hearing, pursuant to notice, at 8:00 a.m. CDT

BEFORE:

THE HONORABLE CHRISTINE COUGHLIN

Administrative Law Judge

APPEARANCES:

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WITNESS DIRECT CROSS REDIRECT RECROSS

Kelly O'Neill

EXHIBIT NO. MARK RECD

Respondent

Respondent

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1 P-R-O-C-E-E-D-I-N-G-S
 2 8:04 a.m.
 3 JUDGE COUGHLIN: We're on the record.
 4 Thank you. Okay, good morning, everyone. We are
 5 back, Day 3 of the New Prime hearing here in
 6 Springfield, Missouri.
 7 The date is Wednesday, October 26th,
 8 2022. And it's about 8:04 in the morning. So
 9 almost on time. I think my delay, not yours.
 10 So, anything we need to address before
 11 we get started with Respondent's next witness?
 12 MR. MCKAY: No, ma'am.
 13 JUDGE COUGHLIN: Okay, great. Please
 14 go ahead. No from the Region as well, I saw you
 15 nod. Thank you.
 16 MS. JACKSON: No, Your Honor.
 17 JUDGE COUGHLIN: Thank you. Please go
 18 ahead and call your next witness.
 19 MR. MCKAY: Thank you, Your Honor.
 20 And good morning.
 21 JUDGE COUGHLIN: Good morning.
 22 MR. MCKAY: Prime calls Kelly O'Neill.

6

1 Exhibit 06. And does that appear to be your
 2 resume?
 3 A It hasn't come up here, Counsel.
 4 Q Maybe I can fix that.
 5 A That's it, sir.
 6 Q Does that appear to be your resume?
 7 A It is.
 8 Q All right. And does that truly and
 9 accurately reflect your experience and your
 10 education and the other things that are reflected
 11 on that document?
 12 A It does.
 13 Q Let's begin, if we can, by having you
 14 describe in greater detail your present work as
 15 a, your present employment as an investigator?
 16 A As a private investigator I work on
 17 numerous different matters. Environmental
 18 matters, financial crimes matters. I do
 19 contested estate matters. I am involved in
 20 narcotics and money laundering investigations.
 21 Firearms and explosives. Violent and person
 22 crime. I do a lot of capital work in the last

5

1 JUDGE COUGHLIN: Good morning.
 2 WHEREUPON,
 3 KELLY O'NEILL
 4 was called as a witness by Counsel for the
 5 Respondent and, having been first duly sworn,
 6 assumed the witness stand, was examined and
 7 testified as follows:
 8 THE WITNESS: Yes, I do.
 9 JUDGE COUGHLIN: Thank you. Your
 10 Witness has been sworn. Please go ahead.
 11 DIRECT EXAMINATION
 12 BY MR. MCKAY:
 13 Q Will you say your name, and spell your
 14 last name for the record?
 15 A My name is Kelly O'Neill. My last
 16 name is spelled, O-N-E-I-L-L.
 17 Q Mr. O'Neill, what do you do for a
 18 living?
 19 A I'm a private investigator and
 20 consultant.
 21 Q All right. So I am going to pull up
 22 what has previously been admitted as Respondent's

7

1 two years.
 2 Q Okay. And you mentioned environmental
 3 crimes is one of the areas that you work in?
 4 A It is.
 5 Q And also, environmental work in
 6 general, do you also consult and work on
 7 environmental matters that are out of a criminal
 8 nature?
 9 A Yes, I do. I work with a couple of
 10 larger multibillion dollar companies and assist
 11 with consulting on internal investigations,
 12 security matters. And also on environmental
 13 matters to sort of keep them off the edge and
 14 away from EPA's criminal investigation division's
 15 radar screen.
 16 Q Does some of that work take you around
 17 the country and require you to travel?
 18 A It does.
 19 Q Yes. You travel pretty regularly in
 20 connection with your environmental work over the
 21 last few years?
 22 A Regretfully, yes.

1 Q Okay. And when I talk about your
2 work, I'm not talking about any work that you've
3 done for Prime to keep them off the edge, other
4 than, I guess this recent work in this case, is
5 that correct?

6 A That is correct.

7 Q Have you previously, well, why don't
8 we have you maybe go back a few steps and begin
9 by telling us about your education.

10 A So I have a, I grew up on a family
11 farm in Northern New York. And I have an
12 associate's degree in general agriculture.

13 And I didn't know what I was going to
14 do after I graduated from a two year college.
15 And I decided to drive truck for a couple of
16 years, and I did that. I had a commercial
17 driver's license in New York State and hauled
18 petroleum products and delivered them. Used
19 bills of lading, hazardous materials
20 transportation work.

21 And then I went back to college at a
22 State University of New York College and obtained

1 preliminary training that you received in
2 connection with that investigative work?

3 A Yes. I went through, of course, the
4 Border Patrol Academy. When I joined the border
5 patrol in 1982 I attended the criminal
6 investigator school at the Federal Law
7 Enforcement Training in Glynco, Georgia.

8 Prior to attending a specialized
9 school that taught the nuances of the Immigration
10 Naturalization Act, which I was charged with
11 enforcing from an administrative and criminal
12 side.

13 Q And at some point did you take another
14 job within the federal government?

15 A I did. In my latter portion of
16 working for U.S. Immigration I decided that
17 narcotics enforcement was going to be an
18 interesting area. And I started working for the
19 United States Customs Service, Office of
20 Investigations.

21 Q Can you describe maybe a little
22 greater detail what you did for U.S. Customs?

1 my four year degree in sociology with a minor in
2 Spanish.

3 Q And at some point then did you go to
4 work for the federal government?

5 A I did.

6 Q All right. And in what capacity did
7 you go to work for the federal government?

8 A In August of 1982 I thought it was a
9 great idea to become a border patrolman in
10 Newman, Arizona. The garden spot of the
11 Southwest. And had an adventure down there.

12 Q And is that reflected in, I'm going to
13 highlight the first two paragraphs on Page 3 of
14 Respondent's Exhibit 6.

15 A Yes. Those both reflect the work that
16 I did with U.S. Immigration for the first few
17 years of my federal law enforcement career.

18 Q And at some point you transferred, it
19 looks, appears to the Seattle office?

20 A I did. I transferred to an
21 investigative position in November of 1983.

22 Q And can you describe some of the

1 A In U.S. Customs I was involved in
2 essentially narcotics and money laundering
3 operations. Both regional, national and
4 international in scope.

5 Also worked on all kinds of crazy
6 aspects of the Bank Secrecy Act and the criminal
7 seizure of assets that were involved with this
8 area of investigation.

9 Q You possess a security clearance in
10 connected with that work?

11 A Yes, I possess a security clearance.
12 When I retired from the federal government I had
13 a top secret clearance.

14 Q Is that when you retired from the EPA
15 you had a TS?

16 A Correct.

17 Q A top secret clearance.

18 A I did.

19 Q All right. Let's, so we're being
20 complete here, Mr. O'Neill, let's also touch,
21 have you briefly touch on your other work you did
22 for, and let me ask it this way. At some point

12

1 did you join the EPA CID?
 2 A I did.
 3 Q All right. So let's touch on your
 4 other experiences with working with the federal
 5 government before joining the EPA CID, and have
 6 you describe that if you would.
 7 A In about 2008 I came, I was offered an
 8 opportunity to go to work at the Department of
 9 Interior Bureau of Land Management in their
 10 Office of Law Enforcement and Security. They had
 11 an Internal Affairs Division.
 12 I was given the opportunity to work
 13 there as a special agent, and I was the, after
 14 the chief retired I was the acting chief of the
 15 division for a number of months before I returned
 16 to EPA.
 17 Q So you worked for EPA first and then
 18 you went on to work for BLM?
 19 A That's correct.
 20 Q All right. So let's go now to your,
 21 what might be more relevant work for this case,
 22 let's go to your work for the EPA. So when did

14

1 agents throughout the federal government, with
 2 the exception of the DEA and the FBI. They have
 3 their own specific academies that they train at.
 4 But everyone else, from the secret
 5 service to the department of agriculture office
 6 and the inspector general, any alphabet soup
 7 agency that you throw in there, all of their
 8 special agents attend that school.
 9 And for EPA, they had an add-on school
 10 as well. They had a basic criminal investigator
 11 training program that was at the federal law
 12 enforcement academy in Glynco, Georgia as well.
 13 Q What about subject matter training?
 14 Something apart of your criminal work.
 15 Were you trained to understand and
 16 maybe at all to investigate the matters that are
 17 within the scope of the Environmental Protection
 18 Agency?
 19 A Yes. And that was really the biggest
 20 transition for folks like myself that had come
 21 from other law enforcement agencies. Some of the
 22 folks that EPA CID hires come out of either a law

13

1 you start working for the EPA?
 2 A I started working for the EPA after I
 3 got sick of being on the road for 200 days a year
 4 doing extra territory on the narcotics
 5 enforcement in Central and South America. I
 6 thought that I wanted to stay married so I
 7 decided to take a job with EPA.
 8 And candidly I just took the job to
 9 get my feet on the ground and transition to a
 10 different law enforcement agency. And I ended up
 11 working for EPA for 22 years.
 12 Q So is your first stint with the EPA,
 13 is that described in the paragraph that I have
 14 pulled up here on the screen that's before you,
 15 which is Page 2 of Respondent's Exhibit 6?
 16 A It is. I became a special agent with
 17 EPA in April of 1991.
 18 Q Can you describe the training that EPA
 19 provided you when you joined that agency?
 20 A I had already attended criminal
 21 investigator school, which is sort of the
 22 backbone for all of the 1811 series special

15

1 background or the region. Some of the folks in
 2 the region desire to be special agents. And if
 3 they're qualified, they're hired.
 4 So they had that background, and I did
 5 not. I struggled with college chemistry. And of
 6 course everyone has to get a taste of these
 7 complex statutes, which were highly focused upon
 8 in the add-on academy that the EPA CID operated.
 9 It was really concentration on three
 10 major subject areas. Resource Conservation
 11 Recovery Act, Clean Water Act and Clean Air Act.
 12 Which included Asbestos NESHAP matters and
 13 stationary source training.
 14 Q And did you receive training in all
 15 three of those subject areas?
 16 A Oh yes.
 17 Q Okay.
 18 A In addition to, as I say, the alphabet
 19 soup for EPA matters. Which FIFRA and AHERA and
 20 everybody got to witness that wonderful and
 21 exciting subject matter.
 22 Q Did that training, was that training

16

1 stagnate? Did it just end after you became an
 2 agent or did it continue throughout your
 3 employment at the EPA?
 4 A It continued. The Criminal
 5 Investigation Division has annual training
 6 seminars that folks attend. They also attend
 7 sort of, they attend a course and become HAZWOPER
 8 certified, 40-hour course when they first start
 9 in the division.
 10 Quarterly firearms qualifications.
 11 And of course at that time we were not working as
 12 much as with the NEIC as we did in later years,
 13 but we trained with the region often and attended
 14 courses on self-contained breathing apparatus use
 15 and certification. Drum sampling operations.
 16 And sort of really just a practical
 17 effort by the region to hammer these folks that
 18 had somehow, like myself, come from other law
 19 enforcement backgrounds into the regulatory.
 20 Tune them up to the regulatory scheme.
 21 Q And you used an acronyms, HAZWOPER.
 22 What did you, well maybe we should say, for the

18

1 discussed that, those time frames?
 2 A I think so. As a special agent though
 3 I was very much focused on the investigation and
 4 presentation of those case, criminal case matters
 5 to the United States Attorney's Offices for
 6 prosecution.
 7 Q So I am now turning to Page 1 of
 8 Respondent's Exhibit 6, and then let's go down
 9 to, we'll do this in chronological fashion. Will
 10 you say more about what's reflected in the time
 11 periods in, reflected in that paragraph there?
 12 A Yes. This period from June of '93 to
 13 August of '97 EPA had a need, EPA CID had a need
 14 for a presence in the State of Oregon. There was
 15 a lot of travel for Seattle based agents to
 16 travel there. And I was approached to see if I
 17 would be interesting in moving to Portland to
 18 attempt to establish a CID office in that
 19 location.
 20 Q Okay. And then there is a later time
 21 frame that's also reflected in there. The year
 22 is 2000 and 2008. And in the Boise office?

17

1 purposes of the court reporter, you use the
 2 letters that would encompass HAZWOPER and then
 3 explain, for the purpose of our proceedings here
 4 today, what that means?
 5 A Hazardous waste operations. It's, if
 6 nothing, EPA likes to crunch a bunch of acronyms
 7 into its vernacular. So that's a 40 hour course.
 8 It really taught folks to be aware of potential
 9 health problems that could come as a result of
 10 exposure to chemicals.
 11 And had a very big component on
 12 self-contained breathing apparatus work and
 13 different levels of PPE from Level 1 PPE to Level
 14 3. Personnel protective equipment, sorry.
 15 Q So why don't we, why don't you, if you
 16 would, walk us through your progression, if you
 17 will, at EPA. And I have pulled up here your
 18 work from 1991 to 1993, and then again from 2009
 19 to 2010. And if we've covered that sufficiently,
 20 I'm glad to move on to the next period of time
 21 reflected on your resume.
 22 Have we adequately, you think,

19

1 A Yes. I additionally established a
 2 Boise resident office. And both of these offices
 3 continue to exist today in viable fashion. There
 4 is a couple of agents, I think, that are in
 5 Boise. And maybe three that are in Portland,
 6 Oregon.
 7 I established the Boise office in
 8 August of 2000 and worked there until January of
 9 2008, when I had the opportunity to go to the
 10 Bureau of Land Management as a internal affairs
 11 investigator.
 12 Q Okay. So let's go, if we can then, to
 13 the last period of time that's reflected on your
 14 resume. The period of time with the EPA. 1997
 15 through 2000 and 2010 through 2014. Can you
 16 describe your work at EPA during those time
 17 periods?
 18 A In those time frames that you
 19 mentioned I worked as an assistant special
 20 agent-in-charge, which is the first line
 21 supervisor that's essentially between
 22 administrative staff, the special agents

20

1 throughout the region and the special agent in
2 charge who is setting broad goals for the region.

3 And the region's first CID line up
4 with the regions for the broader EPA. So in
5 Region 10 it was Washington, Oregon, Idaho and
6 Alaska. And Region 8 is obviously well
7 represented here today. I worked in both
8 locations.

9 And you're really screening leads that
10 are coming in. Agents come to you to see if
11 those are viable matters that should be
12 investigated further by the division, strategy
13 with respect to how to conduct those
14 investigations.

15 Monitoring cases that are in progress.
16 Probably around 100 case, active open cases at
17 any one time in the region that you're
18 supervising. So agents are doing interviews,
19 they're in the process of search warrant
20 operations.

21 They're in all stages of trials.
22 Everything from evaluating leads as they come

22

1 alphabet soup cases that were matters that were
2 enforced and investigated by EPA's criminal
3 investigation division.

4 Q And throughout this time period did
5 you continue to study and stay up to date on the
6 law surrounding RCRA?

7 A Yes.

8 Q All right. And have you continued to
9 do that to the present day in your capacity as a
10 private investigator?

11 A I do.

12 Q You mentioned that you worked with
13 Region 8 for a period of time. Did you actually
14 work physically out of their offices in Denver?

15 A I did. I transferred to Denver,
16 Colorado in the fall of 2009. And remained there
17 until around the fall of 2010, when it was
18 August, that my family in Boise was closer to
19 Seattle then it was to Denver. And so I
20 transferred to an ASAC position in Seattle when
21 one became available.

22 Q Where were you working at the time

21

1 into the door to supporting matters that are in
2 trial.

3 Q And you mentioned working as a
4 supervisor. Did you, while working in a
5 supervisory capacity, were you also investigating
6 cases yourself?

7 A Not as an assistant special
8 agent-in-charge. As a resident agent-in-charge I
9 carried a formidable case load and investigated
10 cases personally myself. As an ASAC I tried that
11 my first time around and people didn't like me
12 being unavailable working on my own cases so the
13 SAC decided that it was best that I not handle
14 any more cases myself.

15 Q And the cases that you were both
16 investigating and supervising during your
17 employment at EPA, were some of those RCRA cases?

18 A Yes, of course. When I first started
19 with CID I think the breakdown was about
20 30-30-30. Which 30 percent RCRA cases, 30
21 percent air cases, 30 percent Clean Water Act
22 cases. And about ten percent of miscellaneous

23

1 that you retired from the EPA?

2 A I was the assistant special
3 agent-in-charge in Seattle, Washington.

4 Q All right. And how many agents were
5 you, worked under your supervision?

6 A At the time I retired or --

7 Q Yes.

8 A At the time I retired there would have
9 been four in Seattle, or five in Seattle, three
10 in Portland, two in Boise and three in Anchorage.
11 As well as administrative support folks. One of
12 which was in Portland and one of which was in
13 Seattle as well.

14 Q You are familiar with the criminal
15 investigation that occurred in connection with
16 this case?

17 A I am.

18 Q Yes. And do you know Darren
19 Muggleston?

20 A I know Darren Muggleston.

21 Q Yes. And how do you know Mr.
22 Muggleston?

24

1 A I supervised Mr. Mugleston when I was
2 an assistant special agent-in-charge in Seattle.
3 He transferred in to the Boise office to fill my
4 vacancy when I left to go to the Bureau of Land
5 Management Office of Law Enforcement and
6 Security.

7 Q Okay. Same question with respect to
8 Marc Callaghan?

9 A Marc Callaghan and I have a longer
10 history than Mr. Mugleston and I. Mr. Callaghan
11 was an on-scene coordinator in region 10 working
12 out of Portland. And had the pleasurable
13 opportunity to work with him on a RCRA case in
14 Salmon, Idaho in the early 2000s. And he
15 happened to be the on-scene coordinator that was
16 assigned to it.

17 And that was a very unique case
18 because it was a sodium metal storage matter
19 where the water-reactive explosive elemental
20 metal that was involved in the case. And he did
21 a great job.

22 We went through a trial situation and

26

1 A I was a full-time agent that was
2 assigned to the Deepwater Horizon matter. I was
3 an agent that worked a lot on a matter involving
4 Alan Elias, which is a RCRA case that involved a
5 young man that was sent into a tank to remove a
6 bunch of hazardous waste and had a permanent
7 brain injury that went to trial.

8 Mr. Elias was sentenced to the longest
9 period of incarceration ever at that time with
10 EPA's criminal investigation division as a result
11 of the prosecution of that matter in the District
12 of Idaho.

13 Q Yes. And other cases that are worth
14 mentioning here this morning?

15 A There are many cases that have been
16 involved with other time. I've --

17 Q Did you work on the Prudhoe Bay Oil
18 Fields case?

19 A Prudhoe Bay Oil Fields, Vulcan
20 formation, RCRA and Clean Water Act matters.
21 Absolutely. I've worked many of those kinds of
22 cases.

25

1 I arm wrestled him to consider taking an agent
2 job with EPA's criminal investigation. And
3 supported fully his hire. And that's where he
4 ended up.

5 Q You recruited him to the EPA?

6 A I did. To the CID.

7 Q CID.

8 A Yes. He's done an on-scene
9 coordinator for the region.

10 Q He described you as a friend. Was
11 that a fair characterization?

12 A We continue to be friends.

13 Q All right.

14 A And I continue to be friends with
15 Agent Mugleston as well.

16 Q Very good.

17 A Retired Agent Mugleston I should say.

18 Q Very well. Would you describe, are
19 there notable cases you worked on while you were
20 at the EPA?

21 A There were.

22 Q Can you describe some of those?

27

1 Q Say again when you retired from the
2 EPA?

3 A I retired from EPA in January of 2014,
4 11 months, approximately 11 months prior to my
5 law enforcement mandatory retirement, Age 57.

6 Q And why is it that you retired 11
7 months before you were due to retire?

8 A Well, my wife had enough of my
9 traveling antics and because my wife and family
10 remained in Boise, when I took jobs in Denver,
11 Colorado and Seattle, Washington. And my wife's
12 mom was living in Boise. She had just gone into
13 hospice and my wife did the timeout sign, which I
14 recalled and understood. And it was time to
15 retire and go home and help family matters after
16 31 years and five months of working in federal
17 law enforcement.

18 Q So let's turn now, if we may, to your
19 work on this case. Were you retained by my law
20 firm to work on this case?

21 A I was retained by your law firm in the
22 fall of 2016 to work on this matter.

28

1 Q Okay. Was there a significant event,
2 as you understand it, that had occurred that
3 resulted in your retention?
4 A Yes there was.
5 Q Will you describe that?
6 A That event was that EPA's criminal
7 investigation division had paid a visit to the,
8 to Prime's Salt Lake City truck yard and
9 established that there was a trailer of material
10 that was stored onsite that was of interest to
11 them.
12 Q Okay. And tell me about your initial
13 involvement?
14 What did you do sort of out of the
15 gate, if you will?
16 A Am I authorized to disclose that sort
17 of operations --
18 Q Yes.
19 A -- by you?
20 Q Yes.
21 A An entity, a civil entity, law, or
22 excuse me, law firm in Salt Lake City, Strong &

30

1 Q Okay. And were those matters --
2 MR. FIGUR: Your Honor, I'm only
3 interrupting because I'm starting to have a hard
4 time hearing Counsel.
5 JUDGE COUGHLIN: Oh, okay.
6 MR. MCKAY: I apologize.
7 JUDGE COUGHLIN: Yes.
8 MR. MCKAY: I'll speak up.
9 JUDGE COUGHLIN: Ms. Tribett, is the
10 volume up all the way?
11 MS. TRIBETT: I don't have the --
12 JUDGE COUGHLIN: Oh, you don't have
13 the, okay.
14 MR. MCKAY: So we've exceeded my
15 capability here.
16 (Laughter.)
17 MR. MCKAY: Okay. And I will endeavor
18 to keep my voice up. And I think I can already
19 hear that it sounds a little bit louder.
20 JUDGE COUGHLIN: Yes. Thank you, Mr.
21 McKay.
22 BY MR. MCKAY:

29

1 Hanni, was contacted by Prime. I had the sense
2 that they had done other work for them. Their
3 law firm came to you as a result of this visit by
4 EPA's Criminal Investigation Division. And
5 that's how we began working on this case
6 together.
7 Q Did you have involvement in consulting
8 with the lawyers in Salt Lake City and
9 interfacing with the EPA CID about the disposal
10 of, appropriate disposal, of the materials that
11 were stored in Salt Lake City?
12 A I did.
13 Q All right. And could you, I want to
14 do this sort of in two parts. Is it your
15 understanding that there was a, that there were
16 barrels of product on the yard, that were located
17 at the yard, is that your understanding?
18 A Correct.
19 Q Okay. And was there also then the
20 remnants of a trailer that was on the yard in
21 Salt Lake City?
22 A There was.

31

1 Q So, Mr. O'Neill, we established that
2 there were two components to disposal that
3 occurred in Salt Lake City. One was the barrels,
4 if you will, the other was the trailer. Do I
5 have that right?
6 A That's correct.
7 Q Okay. And in addressing those
8 matters, is it your understanding that Prime
9 established guardrails or limitations on how
10 those matters should be properly disposed of?
11 A Well, Strong & Hanni, along with
12 Prime, hired a responsible and respected
13 environmental company, H2O Environmental, to work
14 on, work with them to make a determination as to
15 the proper mechanism for disposal for the
16 material and the drums, as well as the trailer.
17 Q And is it your understanding that
18 Prime was looking to cut costs or to do it in the
19 least expensive way in that process?
20 A Strong & Hanni and I had a substantial
21 disagreement with respect to disposal of the
22 trailer.

1 Q Say more about what you mean about
 2 that?
 3 A They wanted to be substantially more
 4 conservative than I believed that they needed to
 5 be. And they ultimately made a decision to
 6 dispose of the trailer as hazardous waste. And
 7 there was no way, after going through the
 8 regulations, that I could see how a piece of
 9 metal, such as the trailer, could be a hazardous
 10 waste.
 11 I mean, I went through the regulations
 12 with one of the attorneys from Strong & Hanni for
 13 well over an hour in a phone call. And I said, I
 14 literally went through, is it listed hazardous,
 15 is it office chemical, commercial chemical
 16 product. Yes, I mean, I thought through the
 17 characteristics of ignitability, toxicity,
 18 reactivity. It was a crazy discussion.
 19 And ultimately they were like, yes,
 20 we're going to dispose of it as a hazardous
 21 waste. And I said, my suggestion was to steam
 22 clean or powerwash the trailer to make a

1 MR. MCKAY: So I am going to turn your
 2 attention to what's been identified as
 3 Respondent's Exhibit 17.
 4 (Whereupon, the above-referred to
 5 document was marked as Respondent Exhibit No. 17
 6 for identification.)
 7 BY MR. MCKAY:
 8 Q Do you recognize that exhibit?
 9 A I do.
 10 Q Can you describe what's reflected on
 11 that exhibit?
 12 A This is a document that was provided
 13 to Prime by H2O Environmental in connection with
 14 the disposal of the items that we've previously
 15 discussed. The trailer and the drums of material
 16 that were at the Salt Lake City yard in Salt Lake
 17 City, Utah.
 18 Q And that might be a little bit
 19 difficult to read. Do you see reference to the
 20 drums or do you see reference to the trailer and
 21 the trailer debris?
 22 A That's actually, that's the trailer

1 determination if, and then dispose of it as a
 2 piece of solid waste.
 3 My contention was it was practical to
 4 do an analysis of the material that resulted from
 5 a good solid cleaning. A practical cleaning.
 6 And determine if that failed for one of the
 7 characteristics of hazardous waste.
 8 But I just had no concept of how the
 9 trailer could be classified as other than a piece
 10 of solid waste that was not hazardous in nature.
 11 Q And was it your understanding that
 12 Strong & Hanni had any limitations on, placed on
 13 it based on its client, Prime, on how to
 14 appropriately dispose of either the barrels or
 15 the burned trailer?
 16 A No. And there obviously was not
 17 because the trailer's disposal was, I think a
 18 \$12,000 disposal. I suggested steam washing it
 19 and selling it for a piece of scrap iron, which
 20 would have probably resulted in a \$70 positive
 21 payment back to the entity. And I was clearly
 22 outvoted.

1 they disposed as hazardous waste at the cost of
 2 \$13,000.
 3 Q And does that appear to be a true and
 4 accurate copy of what it purports to be, an
 5 exhibit reflecting the disposal of the trailer?
 6 A It does. It's an invoice from H2O
 7 Environmental to Prime, Incorporated.
 8 Q And I'll just page down to Page 2.
 9 I'll show you the full exhibit. Page 2. Page 3.
 10 Page 4. 5. And 6. Are all those documents
 11 appear to be related to the disposal of the
 12 trailer?
 13 A They do. The last three that you
 14 showed me are hazardous waste manifests.
 15 MR. MCKAY: Your Honor, I move
 16 Respondent's Exhibit 17 into evidence.
 17 JUDGE COUGHLIN: Any objection?
 18 MR. FIGUR: No objection, Your Honor.
 19 JUDGE COUGHLIN: All right. RX-17 is
 20 admitted.
 21 (Whereupon, the above-referred to
 22 document was received into evidence as Respondent

1 Exhibit No. 17.)
 2 BY MR. MCKAY:
 3 Q All right. Let's now turn to efforts
 4 that -- Did you make efforts then to investigate
 5 the matter?
 6 A I did.
 7 Q All right. And had, at the time you
 8 were retained, had a criminal case been filed
 9 such that discovery was made available to you?
 10 A Discovery was made available?
 11 Q No. Was discovery, had a criminal
 12 case been filed such that discovery was available
 13 to you?
 14 A No.
 15 Q All right.
 16 A No. There was no discovery provided
 17 by EPA or the united, excuse me, by the United
 18 States Attorney's Office in connection with the
 19 criminal environmental case. No.
 20 Q Yes. And --
 21 MR. FIGUR: Your Honor, can I
 22 interrupt for a second?

1 the course of the criminal investigation.
 2 Q Yes. And is it your understanding
 3 then that criminal, the criminal prosecution was
 4 actually declined in this matter?
 5 A It was declined. Yes.
 6 Q Okay. Did you participate in some of
 7 the discussions with the Department of Justice
 8 concerning this matter?
 9 A I did.
 10 Q Okay. So what did you do to begin
 11 investigating the matter?
 12 A First of all, we wanted to determine
 13 what was out there in the public records arena
 14 that might be available to us to give us some
 15 instruction as to investigative direction to
 16 proceed.
 17 Q Okay. And describe what you did then
 18 in connection with the public records arena?
 19 A I worked with your office in the
 20 issuance of public records request to entities
 21 that we believed could have been involved in the
 22 matter. And they included the EPA, National

1 JUDGE COUGHLIN: Yes.
 2 MR. FIGUR: I missed the time frame.
 3 The specific time frame that we're discussing.
 4 MR. MCKAY: At the time he was
 5 retained.
 6 MR. FIGUR: At the time. So that
 7 would be in late 2016?
 8 MR. MCKAY: No. That would have been
 9 early Fall of 2016.
 10 MR. FIGUR: Early fall. So can we get
 11 a month?
 12 THE WITNESS: September. September
 13 2016 is when I was retained by Mr. McKay's law
 14 firm.
 15 BY MR. MCKAY:
 16 Q And I asked you about it at the time
 17 that you were retained whether a criminal
 18 discovery was available. At any point throughout
 19 your association with this matter has discovery
 20 been made available to you?
 21 A No. There has been no discovery made
 22 available to EPA, excuse me, to your law firm in

1 Response Center, Idaho DEQ, Utah DEQ, Idaho State
 2 Patrol, Idaho Transportation Department. And a
 3 couple of Idaho agencies that were responsible
 4 for maintaining records with respect to, one
 5 being the Bureau of Homeland Security for
 6 StateComm communications.
 7 Elmore County Sheriff's Office. King
 8 Hill Rural Fire District. There was a good
 9 number of public records requests made in the
 10 case.
 11 Q Did you, and I'll come back to the
 12 public records aspects of this in a second, but
 13 did you attempt to interview, interview people?
 14 A I did.
 15 Q Yes. Did you interview people from
 16 within Prime?
 17 A I did.
 18 Q All right. And in connection with
 19 that, did the company Prime erect any barriers
 20 around who you could talk to and what you could
 21 talk about?
 22 A No.

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1 Q Okay. Do you feel like you had
 2 liberty to contact and talk with anybody in the
 3 company that you wish concerning the matters that
 4 were at issue here?
 5 A I did.
 6 Q All right. Other individuals, what
 7 other, give me an example of some of the other
 8 individuals that you contacted in connection with
 9 your investigation?
 10 A I contacted and interviewed Chief
 11 Janousek with the King Hill Rural Fire District.
 12 Contacted and interviewed Carl Vaughn with the
 13 Idaho Transportation Department.
 14 And I contacted, and attempted to
 15 interview, a gentleman by the name of Tim Corder
 16 with Corder-White Excavation. And EPA CID had
 17 sufficiently fussed him up. He was just angry
 18 and vitriol, that guy --
 19 MR. FIGUR: Your Honor, objection.
 20 That's a little bit of speculation. And it's
 21 characterizing someone else's state of mind when
 22 the Witness is attempting to investigate him. Or

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1 involved in the cleanup or hauling business, what
 2 else did he, what was his background, as you
 3 understood it?
 4 A He had his father had trucking
 5 companies. He was a partner in Corder-White
 6 Excavation which had a trucking side to it. And
 7 there is also this entity that was called Corder
 8 Trucking. Which is his father's company.
 9 He was also a, I don't know if it was
 10 at the time or previous to that that he was an
 11 Idaho State Senator who was highly offended when
 12 his ethics were called into question. And that's
 13 exactly what he told me.
 14 Q Very well. And we'll cover, I think,
 15 some of the substance of these interviews a
 16 little bit later in your testimony, but can you
 17 just maybe provide, can you provide an overview
 18 of the folks outside of Prime that you contacted
 19 in connection with your investigation?
 20 A Yes. I actually contacted a
 21 representative of Steelscape, which was the
 22 entity that was, the product that was involved in

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1 to interview. Sorry.
 2 JUDGE COUGHLIN: How about a little
 3 more context for that statement. Is that what
 4 the individual told you --
 5 THE WITNESS: I called him --
 6 JUDGE COUGHLIN: -- or was that just
 7 your impression or --
 8 THE WITNESS: No, ma'am. I called him
 9 seeking a time to do an in-person interview,
 10 which I am a huge advocate of, and he told me
 11 that Agent Mugleston had accused him of being a
 12 liar and that he "pissed" at these guys. And
 13 that he kicked him out of his office --
 14 JUDGE COUGHLIN: Okay.
 15 THE WITNESS: -- during their second
 16 interview.
 17 JUDGE COUGHLIN: Hold on one second.
 18 I'm going to overrule the objection. You can
 19 continue to respond if you wish.
 20 BY MR. MCKAY:
 21 Q And can I just interrupt for a second?
 22 What was Mr. Corder, Mr. Corder, besides being

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1 the fire was destined for an entity called
 2 Bushnell Warehouse in Portland, Oregon.
 3 And they held PPG product under a
 4 contract. They were required to keep a certain
 5 amount of these products on-hand, in inventory,
 6 for Steelscape. Which is a large company that
 7 manufactures a half million pounds of steel per
 8 year and uses these PPG products in its
 9 manufacturing process.
 10 Q Did you interview anybody associated
 11 with H2O?
 12 A I did.
 13 Q Did you interview anybody who was
 14 associated with Idaho Waste Systems?
 15 A I did.
 16 Q Okay. Did you interview anybody
 17 associated with B&W Wrecker?
 18 A I made several attempts to interview
 19 the, both the tow truck driver, a gentleman by
 20 the name of Sandy Derrick, and his boss, who was
 21 potentially a partner in the company. I don't
 22 know if he was or not. His name was Rick Lee.

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1 And I want to count the number of
 2 attempts I made. I think I made five different
 3 attempts to interview these individuals and they
 4 declined to meet with me. To answer questions.
 5 Q Okay. Any other interviews of note
 6 that are worth mentioning here, here this
 7 morning?
 8 A I think not.
 9 Q All right. So let's go now to the
 10 records that you were able to obtain through the
 11 public records process. You mentioned a records
 12 request to the Idaho Department of Environmental
 13 Quality. Did you, were you able to obtain
 14 records in connection with that, that request?
 15 A I was.
 16 Q Okay. And were there items of note
 17 that you observed when you received those
 18 records?
 19 A Yes.
 20 Q Okay. Could you describe what you
 21 mean by that? Or some of the items of note?
 22 A Of course, Idaho DEQ had the material

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1 document that was written, or has Ms. Vicente's
 2 name on it as a preparer.
 3 Q All right. So let's go to Page 2 of
 4 this document. Is this the incident that we're
 5 talking about here today?
 6 MR. FIGUR: Your Honor, just for the
 7 record, can we refer to the page number at the
 8 bottom instead of page number, and in this
 9 instance --
 10 MR. MCKAY: Yes.
 11 MR. FIGUR: -- Page 3 of 105, for
 12 clarity of the record?
 13 MR. MCKAY: Yes, and he's right, I
 14 should have done that. I meant to say Page 3 of
 15 this exhibit.
 16 JUDGE COUGHLIN: Okay, thank you.
 17 BY MR. MCKAY:
 18 Q So is Page 3 of Exhibit 7 in front of
 19 you, Mr. O'Neill?
 20 A Yes.
 21 Q Okay. And do you see the incident
 22 that I, that's at issue here, referred to in that

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1 safety data sheets that were associated with the
 2 products that were on the Prime truck at the time
 3 of the fire. There was a report by a woman by
 4 the name of Maureen Vicente, who was a hazardous
 5 waste science officer that became involved in the
 6 case on, or about, October 14th of 2015.
 7 There was analytical information in
 8 connection with environmental samples that were
 9 collected by contractors that provided those to
 10 Idaho DEQ. There was a form that related to the
 11 acquisition of a site identification number.
 12 It's essentially an EPA form but it
 13 has a Idaho DEQ title. They're delegated RCRA
 14 program. The state is in Idaho. And there was
 15 other information that was also available as
 16 well.
 17 Q All right. And let's now, I'm going
 18 to refer your attention to Complainant's Exhibit
 19 7. Which has been admitted into evidence.
 20 Have you seen that, that document
 21 before?
 22 A I have seen that. That's a five-page

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1 paragraph?
 2 A I do.
 3 Q Okay. Do you see reference to DEQ's
 4 involvement in the situation?
 5 A I do.
 6 Q And do you understand that DEQ was
 7 involved in this situation right from the
 8 beginning?
 9 A This is a, actually, it's an
 10 interesting mischaracterization. It says the
 11 Idaho DEQ, essentially, Boise Regional Office,
 12 was notified of the incident after the initial
 13 call.
 14 It's clear from StateComm records that
 15 Bobby Dye, from the Twin Falls office, was
 16 involved in communications with StateComm and a
 17 group of individuals on the night of the, at the
 18 time of the incident.
 19 Q And we'll take a look at that. We'll
 20 take a look at that in a minute, but that's the
 21 Idaho State Communication Center record that
 22 you're referring to?

1 A That's correct.
 2 Q All right. If we were to turn to the
 3 next page of Ms. Vicente's report. I'm focusing
 4 your attention now on Page 4 of exhibit, first
 5 paragraph of Page 4 of Exhibit 7.
 6 Do you see mention to Ms. Vicente, or
 7 to Idaho DEQ, consulting with the Idaho State
 8 Police and the Idaho State Police concerning this
 9 matter?
 10 A Yes. And I can tell from another
 11 record that's maintained by StateComm that that
 12 communication, the communication referred here,
 13 is a communication that occurred on October 14th
 14 of 2015.
 15 Q Okay. In fact, if we go back to the
 16 prior page, Page 3 of this Exhibit at the bottom,
 17 does that square with what you just said, when
 18 that communication occurred between DEQ on one
 19 hand and the Idaho State Police on the other?
 20 A That's correct.
 21 Q All right. And is there significance
 22 to what's reflected, in your mind, to what's

1 A -- State Police.
 2 Q The same Sergeant Bonner that we've
 3 heard referred to earlier in this proceeding that
 4 was present on scene at the time of the fire?
 5 A The same individual.
 6 Q All right. And Sergeant Bonner would
 7 you agree, or does it appear that Sergeant Bonner
 8 is critical of the decision to allow B&W to
 9 perform the cleanup of the fire scene?
 10 A He seems critical of that. Yes.
 11 Q Okay. And does the timing of this
 12 appear significant to you that he is expressing
 13 this criticism in this call on October 13th?
 14 A Yes.
 15 Q What do you mean? Could you explain
 16 that?
 17 A The Prime trailer fire occurred on the
 18 morning of September 27th. A Sunday morning.
 19 There was nothing stopping Trooper Bonner, if he
 20 was so concerned about this matter, from
 21 contacting the Boise regional office or the Idaho
 22 DEQ's state office with respect to this matter

1 reflected in that paragraph?
 2 A There is significance to it, yes.
 3 Q Could you describe that?
 4 A The Idaho DEQ Boise Regional Office,
 5 as you can see it's abbreviated here BRO,
 6 essentially represented to EPA's criminal
 7 investigation division that the first knew of
 8 this, the Idaho DEQ knew of this matter, was on
 9 October 14th. And that's misleading.
 10 As I said, an Idaho DEQ representative
 11 was contacted by State Communications and was in
 12 discussions with the incident commander at the
 13 time of the issue. It sounds like an internal
 14 communications issue within Idaho DEQ.
 15 Q And what about, and is it your
 16 understanding that this reference to speaking
 17 with ISP, is that a specific representative from
 18 the Idaho State Police?
 19 A It is. It is Sergeant Colin Bonner
 20 with the vehicle, the Commercial Vehicle Safety
 21 Group at Idaho DEQ --
 22 Q And the same sergeant --

1 the very following morning.
 2 Q And would that be even before the B&W
 3 chose to dispose of the materials, the remnants
 4 of the fire at Idaho Waste Systems?
 5 A Yes.
 6 Q Okay. Let's take a look, if we can,
 7 at the Idaho State Communications Record. Which
 8 is part of Complainant's Exhibit 7. Now I've
 9 turned to Page 7 of that exhibit. Do you have
 10 that in front of you?
 11 A I do.
 12 Q And what do you understand this
 13 document to be?
 14 A This document is essentially a log by
 15 Idaho State Communications to notate folks that
 16 participated in this particular hazardous waste
 17 incident, or hazardous materials incident. It
 18 lists their names. It lists some narrative with
 19 respect to actions taken, et cetera.
 20 Q So if we look at the bottom of Page 7,
 21 were those some of the individuals that, as you
 22 understand from this document, participated in

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1 managing the situation?

2 A Yes.

3 Q Okay. And are any of those agencies,
4 agencies that you're familiar with?

5 A Yes. I'm familiar virtually with
6 every one of those agencies that are listed on
7 there.

8 Q There is a reference to RRT Region 4
9 Boise. What do you understand that to be a
10 reference to?

11 A Regional Response Team 4 is an entity
12 that's associated with the Boise Fire Department
13 supported by the Boise Fire Department. And
14 there is certain individuals within the
15 department that are assigned full-time to this
16 specialized hazardous materials response group.

17 Q And is Regional Response Team 4, would
18 they be summoned to particular situations?

19 A Yes, they are.

20 Q And --

21 A Hazardous materials and weapons of
22 mass destruction situations are the areas of

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1 concern for this entity.

2 Q Is it your understanding that they
3 have specific subject matter expertise in
4 managing hazardous materials?

5 A Yes.

6 Q And why do you say that?

7 A Because I know Captain Riedinger who
8 is in charge of the entity. And I know from many
9 documents associated with the entity that they're
10 highly specialized in hazardous materials
11 response. That's why they were formed.

12 Q And if we turn to the next page of
13 this exhibit, Page 8, you see Captain Riedinger's
14 name anywhere in this exhibit?

15 A It's on the second line. He was
16 contacted 9/27/2015 at 0349 hours.

17 Q Is it your understanding from looking
18 at other documents that Captain Riedinger was
19 involved in other aspects of managing this
20 situation?

21 A Yes. Actually, Regional Response Team
22 4 actually rolled out as a request of the

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1 incident commander, Chief Janousek, King Hill
2 Rural Fire Department, to provide support with
3 respect to the incident.

4 Q Okay. So looking now at the part of
5 this page that I've called out here, were there
6 other agencies that were involved in the
7 management of this situation?

8 A Yes. Dan Bryant at ITD. District 3
9 is the hazardous materials representative for ITD
10 for the State of Idaho.

11 I don't know Kristin Jacobson with
12 ISP. But she is Region 3, which is in the area
13 that encompasses the location where this incident
14 occurred.

15 Matt Carr is an EPA on-scene
16 coordinator in Anchorage, Alaska, in the Alaska
17 Operations Office that I know.

18 And Brad Richy, the DHS director, is
19 listed on this. He was on the previous page as
20 well.

21 Q Would this suggest to you that EPA
22 Region 10 was notified of this incident?

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1 A Well the status indicates
2 acknowledged. And a contacted by. Which is
3 Kerry Jones. It appears to me that that is proof
4 that EPA was notified of the incident.

5 Q And Region 10, does that encompass the
6 area that's at issue here in Idaho?

7 A It does. Washington, Oregon, Idaho
8 and Alaska are the states that comprise Region 10
9 for EPA.

10 Q Okay. I want to take a look, if we
11 can, at certain entries that were made, and are
12 reflected, on this exhibit. In reviewing this
13 exhibit, do you see what appear to be real-time
14 entries that are made in connection with managing
15 the situation?

16 A I do.

17 Q All right. And let's begin, if we
18 can, at 3:29. Is there an entry that appears at
19 3:29?

20 A There is an entry at 3:29 on September
21 27th, yes. It says, Trooper Brennan advised
22 limited information of HAZMAT.

1 Q And would the fact that HAZMAT, that
2 HAZMAT may be involved, would that trigger than
3 the involvement of these other individuals and
4 agencies?

5 A For sure. And it would involve as
6 well Trooper Bonner. Sergeant Bonner. Who is
7 commercial vehicle section of ISP. They handle
8 the hazardous materials, transportation issues
9 within the state for the ISP. For the Idaho
10 State Patrol.

11 Q Okay. And at 3:40 there is mention of
12 Captain Riedinger from Regional Response Team 4.
13 Do you see that?

14 A I do.

15 Q All right. And then who do you
16 understand Derik Janousek to be?

17 A Derik Janousek is the Fire Chief for
18 King Hill Rural Fire Department. Which
19 responded, boots on the ground, four trucks, six
20 firefighters to this incident.

21 Q And what would Chief Janousek's role
22 have been on scene?

1 A He was the incident commander on the
2 scene until such time that he departed.

3 Q And what does that mean when a person
4 is the incident commander?

5 A So incident command is a structure
6 that essentially when the incident commander is
7 identified, and in this case Chief Janousek was
8 identified as the incident commander, everybody
9 essentially works for him. It doesn't matter who
10 you are.

11 Captain Riedinger is obviously a
12 full-time Boise Fire Department employee.
13 Certainly with substantial areas of
14 responsibility greater than Chief Janousek, but
15 Chief Janousek is the incident commander. And as
16 I said Daryl Riedinger and everybody listed here
17 are working for him until that incident is, has
18 concluded.

19 Q The decisions that he makes, control
20 what happens on scene while he's in that capacity
21 as incident commander?

22 A They do.

1 Q Okay. Turning your attention to the
2 entry at 403. Do you see reference to toxicity?

3 A I do. And the sentence exactly is,
4 RRT also agreed, there shouldn't be any problems
5 with toxicity, so once the visual hazards are
6 gone, it should be safe to open at least half of
7 the interstate.

8 Q And what does that mean, what does
9 suggest to you when it says, RRT also agreed?

10 A It's likely that, I don't know how to
11 answer that perfectly. The incident commander
12 was obviously expressing a concern with the
13 potential for toxicity. And that's the response
14 to it by the specialized response team. Captain
15 Riedinger, Regional Response Team 4.

16 Q And does that suggest to you that RRT,
17 the individual subject matter expertise are not
18 making that decision unilaterally, that they're
19 agreeing with who were others on scene there
20 should not be an issue with toxicity?

21 A That's correct.

22 Q Let's turn to --

1 JUDGE COUGHLIN: Mr. McKay, I don't
2 mean to interrupt you, but just one quick --

3 MR. MCKAY: Yes.

4 JUDGE COUGHLIN: This is just more for
5 my own understanding --

6 THE WITNESS: Yes, ma'am.

7 JUDGE COUGHLIN: -- of the concept of
8 incident commander. I've understood your
9 testimony, I'm just curious how is the
10 determination made as to who the IC is and if
11 that transfers to another individual, who makes
12 those decisions in the beginning and
13 subsequently?

14 THE WITNESS: It's generally the
15 highest ranking member in a fire department
16 that's actually present in response to an
17 incident like this. And this is Chief Janousek.

18 Chief Janousek remained the incident
19 commander until such time that he, his
20 department, departed. When that occurred, the
21 incident command position was relinquished to
22 Sergeant Bonner with the Idaho State Police

1 because the fire department's presence was no
2 longer required.

3 JUDGE COUGHLIN: And is that something
4 the fire chief has influence over or is it simply
5 whatever entity is now in control and the highest
6 ranking individual that represents that entity at
7 the time?

8 THE WITNESS: So the major response
9 entity in this particular case was the fire
10 department because they had the fire, right?

11 When the fire department decides that
12 the reason that they're there has concluded and
13 they decide to leave, it turns, it generally
14 reverts to law enforcement. And in this
15 particular case it did just that, which is the
16 system.

17 JUDGE COUGHLIN: Okay.

18 THE WITNESS: The incident command
19 system.

20 JUDGE COUGHLIN: Okay, thank you.
21 That's helpful. Please go ahead, Mr. McKay.

22 MR. MCKAY: Thank you, Your Honor.

1 A Autumn White, Bureau of Hazardous,
2 Bureau of Homeland Security Hazmat Duty Officer,
3 Bobby Dye, Idaho DEQ, DEQ Twin Falls, Daryl
4 Riedinger, who is Regional Response Team 4, Colin
5 Bonner, Idaho State Police, and Derik Janousek,
6 King Hill Rural Fire Department IC, incident
7 commander.

8 Q And is that also mentioned that
9 Captain Riedinger in Regional Response Team 4 is
10 on scene?

11 A Yes.

12 Q Okay. And Bobby Dye with DEQ, is DEQ,
13 I think you've indicated, that's the same agency
14 that Maureen Vicente, the author of the report
15 that is part of this exhibit, or that accept this
16 exhibit, they're with the same agency?

17 A That's correct.

18 Q Okay. And do you see mention of Idaho
19 State Police being involved in efforts to get a
20 cleanup crew onsite?

21 A I do. There is a sentence in, I guess
22 in the second or third paragraph, no matter how

1 BY MR. MCKAY:

2 Q So referring you now to the rest of
3 the chronological narrative reflected on this
4 page. I have now turned to Page 9 of Exhibit 7.
5 Do you have that in front of you?

6 A I do.

7 Q And does this indicate to you that
8 Regional Response Team 4 continued to be involved
9 in managing the situation?

10 A Well there is a run report associated
11 with their response. They actually went to the
12 site. And the response team folks met with King
13 Hill Rural Fire District and had a conversation
14 with respect to they're analysis of the problem
15 as it existed in what was required to abate those
16 issues.

17 Q Do you see reference at 6:25 to a
18 conference call that occurred?

19 A I do.

20 Q All right. And who do the
21 participants in that conference call appear to
22 be?

1 you try to figure that, at the 6:25 entry. ISP
2 is working to get a cleanup crew onsite.

3 Q Okay. Do you see any reference to B&W
4 Wrecker in this narrative here?

5 A I don't.

6 Q What's the last entry reflected on
7 this, this document?

8 A At 6:30, Autumn White advising
9 incident will remain at a level two, and Bobby
10 Dye agrees.

11 Q All right. And I think we, you were
12 present for, I think it was part of Special Agent
13 Callaghan's testimony, but I think he confirmed
14 that that's the end of this document insofar as
15 Ms. Vicente's report is concerned. And what I
16 mean by that is, if you turn to Page 10 of that
17 report, that's a new document.

18 A That's a new document. That's
19 correct.

20 Q Okay. So I'd like you to now look at
21 what has previously been admitted --

22 JUDGE COUGHLIN: Mr. McKay, just for

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1 one quick second. Are you familiar with the
 2 reference to a level two?
 3 THE WITNESS: I'm not.
 4 JUDGE COUGHLIN: Okay.
 5 THE WITNESS: That's a state
 6 reference, ma'am, that is not in my wheelhouse.
 7 I don't know that.
 8 JUDGE COUGHLIN: Okay, that's fine.
 9 Thank you. Please go ahead, Mr. McKay.
 10 THE WITNESS: I should make that
 11 clearer. I don't know the criteria for those
 12 designations.
 13 JUDGE COUGHLIN: Okay, thank you.
 14 THE WITNESS: I'm sorry.
 15 JUDGE COUGHLIN: That's okay. Thank
 16 you.
 17 MR. MCKAY: And I think I can probably
 18 clear that up for Her Honor --
 19 JUDGE COUGHLIN: Okay.
 20 MR. MCKAY: -- with another document
 21 at some point.
 22 JUDGE COUGHLIN: Great, thank you.

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1 same page.
 2 MR. MCKAY: Thank you.
 3 BY MR. MCKAY:
 4 Q So, Mr. O'Neill, turning your
 5 attention to Respondent's Exhibit 3, does this
 6 appear to be the same record that we were looking
 7 at as in Complainant's Exhibit 7, the report that
 8 was attached to Ms. Vicente's report?
 9 A It is.
 10 Q Okay. I want to now turn your
 11 attention to Page 3 of that report. Do you have
 12 -- Or Page 3 of this exhibit. Do you have Page 3
 13 in front of you?
 14 A I do.
 15 Q Do you see the 6:30 entry on this
 16 document?
 17 A I do.
 18 Q Is that the same entry that appeared
 19 on Complainant's Exhibit 7?
 20 A It is. And it is the last entry on
 21 the previous document that you showed me.
 22 Q Is there a subsequent entry that

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1 MR. MCKAY: You're welcome.
 2 MR. MCKAY: So I'm turning you now to
 3 what's been admitted, by stipulation, as
 4 Respondent's Exhibit 3. And, Your Honor, just as
 5 a housekeeping matter, my understanding is that
 6 we moved the admission, or the Court admitted the
 7 Respondent's exhibits that were identified as
 8 being admissible by stipulation?
 9 JUDGE COUGHLIN: Yes.
 10 MR. MCKAY: Okay. All right.
 11 JUDGE COUGHLIN: Yes.
 12 MR. MCKAY: Yes.
 13 JUDGE COUGHLIN: And I think I
 14 reviewed that on day one, but we can, when we
 15 have spare time we can review it again, but
 16 that's my understanding.
 17 MR. MCKAY: Mine too, I just, if I
 18 need to more formally move their admission, but
 19 my understanding is that we covered this on day
 20 one and I'm not free to show this Witness these
 21 admitted exhibits?
 22 JUDGE COUGHLIN: Yes. We're on the

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1 occurs at 6:56 a.m. of September 27th?
 2 A There is.
 3 Q Could you read what's reflected in
 4 that entry?
 5 A Colin Bonner, ISP, called in asking if
 6 B&W Towing could cleanup since that is who the
 7 semi company had contacted. Contacted Bobby Dye,
 8 DEQ Twin Falls, he stated they do not certify tow
 9 companies for cleanup but they do attend HAZMAT
 10 classes period. He stated a lot of times tow
 11 companies go out and cleanup as best as they can
 12 on HAZMAT calls. Passed the information to Colin
 13 Bonner along with if had any further questions
 14 feel free to contact us and we can get him
 15 through to Bobby Dye.
 16 Q What does that paragraph say to you?
 17 A It indicates to me that Sergeant
 18 Bonner had some question with respect to the
 19 capability of B&W Towing to perform the cleanup
 20 at the incident. He contacted StateComm,
 21 requested that they contact the Idaho DEQ
 22 representative.

1 The Idaho DEQ representative, Bobby
 2 Dye, indicated just what I read. He stated that
 3 DEQ does not certify cleanup companies, companies
 4 for cleanup, but they do attend HAZMAT classes
 5 and that a lot of times they can respond and
 6 cleanup as best they can on HAZMAT calls.
 7 Q Do you have any understanding or
 8 explanation for why this entry and DEQ's
 9 involvement in B&W's cleanup of this site was
 10 omitted from Ms. Vicente's report?
 11 A Well, there was a time in my life that
 12 I might have called that a material omission.
 13 Those are strong words. And that does appear to
 14 be what occurred here because I'm confident that
 15 Idaho DEQ had this complete report, and that's
 16 troubling.
 17 Q So, this is the report that Ms.
 18 Vicente, the report we saw is what Ms. Vicente
 19 presented to the CID, EPA CID, an incomplete
 20 report?
 21 A Correct.
 22 Q Turning back to -- Actually, let's

1 alarm indicate to you and what does arrival
 2 indicate to you?
 3 A This document is commonly referred to
 4 by fire departments as run reports. And the
 5 document essentially, when the entity was first,
 6 King Hill Rural Fire Department was first
 7 notified and the time that they arrived on scene.
 8 Which is a very response, impressive response for
 9 rural Idaho.
 10 Q Right. I think eight minutes after
 11 the alarm.
 12 A Impressive.
 13 Q And having a look at Page 2 of this
 14 exhibit, do you see reference to ignition and
 15 cause of ignition?
 16 A I do.
 17 Q All right. And what does that
 18 indicate to you?
 19 A The fire department made an assessment
 20 that there was a failure of equipment or heat
 21 that was the cause of ignition of the incident,
 22 the fire that was essentially the incident.

1 have a look at Respondent's Exhibit 5. Which has
 2 previously been admitted. Have you seen this
 3 exhibit before?
 4 A I have.
 5 Q All right. And does that appear to be
 6 the report from the King Hill Fire District?
 7 A It does.
 8 Q Okay. And just to sort of orient us
 9 here, is this the location of the fire, as you
 10 understand it, and the day and time at which the
 11 emergency dispatch was contacted?
 12 A Yes, it is.
 13 Q Okay. And what time is reflected,
 14 what time is reflected on the alarm on this
 15 report?
 16 A 2:47.
 17 Q Okay. And arrival, what time is
 18 reflected?
 19 A 02:55.
 20 Q And what does arrival, what does that
 21 indicate to you?
 22 Let me ask it this way. What does

1 Q And I want to now turn your attention
 2 to Page 3 of this exhibit. Do you have Page 3 in
 3 front of you?
 4 A I do.
 5 Q And would you, for the record, would
 6 you make -- Why don't you describe what's
 7 reflected in this paragraph rather than having
 8 you read it, which I think would be just
 9 redundant for the record. Would you just
 10 describe what you see reflected in this page of
 11 this exhibit?
 12 A This is the narrative that Chief
 13 Janousek used to describe the salient
 14 characteristics of his run. His essential
 15 response. The King Hill Rural Fire District's
 16 response to this incident.
 17 Q Does this paragraph reflect knowledge
 18 that a hazardous materials load was involved with
 19 this fire?
 20 A It does.
 21 Q Okay. Does it reflect Region 4 HAZMAT
 22 being involved in the response to the fire?

1 A It does.
 2 Q Okay. And there is a mention to
 3 Region 4 HAZMAT. Who do you understand that
 4 reference to be?
 5 A That's Regional Response Team 4.
 6 Captain Riedinger's entity.
 7 Q All right. And then would you mind
 8 reading the last couple sentences then of that
 9 paragraph?
 10 A All of the drums had vented and were
 11 still in the trailer. It was our determination
 12 that it went from a HAZMAT scene to a cleanup
 13 scene. We released Region 4 HAZMAT after that
 14 discussion. B&W Wrecker was on scene when we
 15 left, they were going to be in charge of the
 16 cleanup.
 17 Q Does this suggest to you that Captain
 18 Janousek was aware that B&W was going to perform
 19 the cleanup?
 20 A Yes.
 21 Q And I think we've established that at
 22 some point the scene was transitioned from

1 A I have a reaction to it. And that is
 2 that it creates a ton of confusion. Entities
 3 that I, individuals and entities that I spoke
 4 with and interviewed pertaining to this matter,
 5 subsequent to the incident all focus on this
 6 sentence.
 7 They make it clear that it created
 8 enough confusion within their entities and them
 9 individually that they took that essential
 10 language to interpret that it went from a HAZMAT
 11 scene to a solid waste scene. Idaho
 12 Transportation Department made that very clear.
 13 And it was very clear from talking to
 14 Carl Vaughn there that that sentence, and the
 15 rely of that sentence through the folks who were
 16 participating in that incident, caused a real
 17 problem.
 18 Q If you look at another page of this
 19 exhibit. I've now turned to Page 5 of
 20 respondent's Exhibit 5. Do you see that in front
 21 of you?
 22 A I do.

1 Captain Janousek's scene as the incident
 2 commander to Sergeant Bonner's scene as the
 3 incident commander?
 4 A And this is precisely when it
 5 happened. They were going to be in charge of the
 6 cleanup and it's essentially the last notation.
 7 Chief Janousek thought was appropriate to put in
 8 his run report.
 9 Q Does this suggest that Sergeant Bonner
 10 was, as the incident commander, was involved in
 11 permitting and allowing B&W Wrecker to perform
 12 the cleanup?
 13 A Yes.
 14 Q Okay. Did this occur at a time after
 15 he had consulted with the Idaho Department of
 16 Environmental Quality about the propriety of
 17 allowing B&W to do this cleanup?
 18 A Yes.
 19 Q The sentence, it was our determination
 20 that it went from a HAZMAT scene to a cleanup
 21 scene. What's your response -- Do you have a
 22 reaction to that particular sentence?

1 Q And what does that appear to depict?
 2 A It appears to depict the fire that was
 3 associated with the incident on September 27th,
 4 2015, that we're discussing today.
 5 Q And in your experience, does this
 6 appear to be an intense fire?
 7 A It does.
 8 Q And in your experience, can fires
 9 change the composition of the products that are
 10 involved in that fire?
 11 MR. FIGUR: Your Honor, objection.
 12 This calls for speculation outside of what this
 13 Witness has testified to as his experience and
 14 expertise are already.
 15 JUDGE COUGHLIN: Do you want to
 16 respond before I rule?
 17 MR. MCKAY: I've been asking him about
 18 this sentence that was written by the incident
 19 commander and his determination that it went from
 20 a HAZMAT scene to a cleanup scene. And now what
 21 I'm asking for, what I'm intending to ask him
 22 about, is whether that sort of determination

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1 seemed reasonable to others on this scene. And
2 so this is a foundational question leading to
3 that point.

4 JUDGE COUGHLIN: And I think what
5 you're getting at is whether he has the
6 substantive knowledge to respond to the question,
7 is that or did I misunderstand the --

8 MR. FIGUR: No, that was the original
9 one. But now that it's been re-characterized,
10 the objection would be to him speculating about
11 what others on the scene might reasonably
12 conclude about a hazardous waste determination.
13 And I think that that's objectionable because
14 it's speculating about others, what's in their
15 minds at the time.

16 MR. MCKAY: I'm not asking him to
17 speculate, I'm asking if it seems reasonable to
18 him that others might have accepted Captain
19 Janousek's conclusion.

20 MR. FIGUR: I withdraw my objection --

21 JUDGE COUGHLIN: Okay.

22 MR. FIGUR: -- Your Honor.

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1 Q If I were to turn back now to Exhibit
2 7, Complainant's Exhibit 7, Page 4, do you see a
3 reference to Idaho DEQ speaking to a
4 representative of Prime?

5 A I do.

6 Q Do you see reference to a Dave White?

7 A I do.

8 Q And does this indicate to you what Mr.
9 White said insofar as his impressions from the
10 aftermath of the accident?

11 A Mr. White indicated, Prime didn't
12 state, it's actually Mr. White stated that they
13 were, Prime was under the impression that none of
14 the accident related waste was hazardous.

15 Q All right. And it's important,
16 that's an important distinction that Idaho DEQ
17 was speaking to Mr. White. Mr. White was
18 speaking about what he knew and maybe not what
19 others in other divisions within the company
20 knew, does that seem appropriate or fair?

21 A It is.

22 Q Okay. Let's turn, if we can now, to

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1 JUDGE COUGHLIN: I was going to say,
2 on that basis I would overrule.

3 MR. FIGUR: I withdraw it.

4 JUDGE COUGHLIN: But okay, it's
5 withdrawn. Go ahead.

6 MR. MCKAY: Okay.

7 BY MR. MCKAY:

8 Q So returning to the question that I
9 had before you, is it your understanding that a
10 fire can change the makeup of the products that
11 may be involved in that fire?

12 A Certainly.

13 Q Yes. And does looking at these
14 photos, and other photos that you reviewed about
15 the intensity of the fire, does it provide, in
16 your judgment, does it provide an explanation for
17 why others might have accepted Captain Janousek's
18 determination that it went from a HAZMAT scene to
19 a cleanup scene?

20 A Yes.

21 (Off record comments.)

22 BY MR. MCKAY:

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1 Respondent's Exhibit 4. And I'm going to refer
2 your attention to Page 2 of that exhibit. That
3 appears to be a letter from my law firm seeking
4 public records, do I have that right?

5 A That's correct.

6 Q And who is that directed at, that
7 request?

8 A That's to the Region 4 Regional
9 Response Team. RRT 4.

10 Q All right. So now turning your
11 attention to the next page of that exhibit, Page
12 3. Does this appear to be then the record that
13 is from Regional Response Team 4 produced in
14 response to that public records request?

15 A It does. And this is RRT 4's run
16 report.

17 Q And does this paragraph that I've
18 highlighted for you here, does that indicate when
19 RRT 4 was notified and then arrived on scene?

20 A It does.

21 Q And could you say what that paragraph
22 indicates insofar as to when they were notified

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1 and when they arrived on scene, and ultimately
2 when the scene was cleared from their
3 perspective?

4 A The document indicates that the alarm
5 was 04:26:55 and that they're arrival on scene
6 was 05:45:00.

7 Q And then when was the matter cleared
8 from RRT 4's perspective?

9 A At 09:08:26.

10 Q I want to turn your attention to the
11 middle of this document. Do you see a paragraph
12 there concerning hazardous materials release?

13 A Yes.

14 Q Were any of the boxes associated with
15 hazardous materials released checked on this
16 document?

17 A No.

18 Q Okay. You don't know why that was
19 omitted from this document, do you?

20 A No. That appears to be a mistake.

21 Q But the mistake, nevertheless that is,
22 is reflected on a document that purports to

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1 describe what was happening at the scene?

2 A Clearly.

3 Q Turning your attention to the last
4 paragraph, or not, turning your attention to Page
5 3, Page 4 of Respondent's Exhibit 4. Is there a
6 summary, if you will, of RRT 4's involvement in
7 the situation?

8 A There is.

9 Q And could you just summarize what that
10 reflects?

11 A It's Captain Riedinger's narrative of
12 Regional Response Team 4's involvement in this
13 incident. It essentially indicates what they
14 discovered when they arrived onsite. Indicates
15 that the trailer was involved in the fire and the
16 tractor was cleared.

17 Most of all drums vented, so the bones
18 contributed to the fire. Bridge call came prior
19 to fire extinguishment and that they would
20 request documents if they were requested. The
21 fire was out when they arrived. They conducted a
22 scene survey, looked at shipping papers,

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1 discerned that there was no active leaks,
2 consulted with IC, who was Chief Janousek at the
3 King Hill Rural Fire District and ISP Connor
4 Bolin, which is obviously a transposition of a
5 few letters, it's Colin Bonnor, and agreed that
6 the scene was no longer mitigation but cleanup.

7 Second bridge call confirmed the
8 course of action was correct and they were
9 released by command.

10 Q So, does this seem appropriate to you
11 that these agencies are all talking and working
12 together and confirming a particular course of
13 action?

14 A Certainly.

15 Q And Regional Response Team 4, does
16 this indicate whether they agreed with a course
17 of action that was determined by the folks on
18 scene and the people making decisions concerning
19 the cleanup?

20 A It does.

21 Q Turning to Page 8 of Respondent's
22 Exhibit 4. What does that indicate to you?

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1 A It lists the fire department members
2 who were involved in the response. And it lists
3 their number of hours. This is important because
4 they're reimbursed back from the state on these
5 sorts of calls.

6 Q Okay. And in this instance were they
7 actually then reimbursed by Prime, is it your
8 understanding?

9 A I'm sorry?

10 Q Was it your understanding that Prime
11 actually then reimbursed this agency for the time
12 associated with their response or is that a cost
13 that's borne by the state?

14 A That's a cost that's borne by the
15 state. I don't know if there was a recovery with
16 respect to this or not. I know that Prime paid
17 for King Hill Rural Fire District's response, but
18 I'm simply not certain about that question with
19 respect to --

20 Q Fair --

21 A -- this entity.

22 Q Fair enough. And I think if you were

1 to look through the entirety of the King Hill
 2 Fire District exhibit, Respondent's exhibit, you
 3 would see reflected, I think you saw reflected
 4 that Prime had reimbursed the Fire District for
 5 their, the time associated with their response?
 6 A Yes, they did.
 7 Q Okay. So how many individuals from
 8 the Regional Response Team 4 were involved in
 9 responding to the situation?
 10 A It appears that there were six.
 11 Q And how many of those individuals --
 12 Was there another individual besides Captain
 13 Riedinger who also held the rank of captain?
 14 A I'm sorry?
 15 Q Was there another individual besides
 16 Captain Riedinger who also held the rank of
 17 captain, as reflected in this exhibit?
 18 A Yes, there are two captains. Roy
 19 Mitchell. And that's not an individual I am
 20 familiar with.
 21 Q But individuals that it would be fair
 22 to assume had substantial training in hazardous

1 have that in front of you?
 2 A I do.
 3 Q Do you see a reference on that page to
 4 the date of October 21 of 2015?
 5 A I see that, yes.
 6 Q And what is -- does that indicate that
 7 Ms. Vicente acquired the safety data sheets for
 8 the products at issue in this matter?
 9 A October 21, she indicates that she
 10 spoke with PPG and that PPG provided material
 11 safety data sheets for the four different types
 12 of paint products present on the truck at the
 13 time of the accident. I would call it an
 14 incident, but it's an accident here.
 15 Q Turning to now page 15 or page six,
 16 page seven of, I apologize, page five of
 17 Complainant's Exhibit 7 of this same document, do
 18 you have that in front of you?
 19 A Yes.
 20 Q And is it your understanding that Ms.
 21 Vicente contacted Premium Environmental Services
 22 at some point in connection with this matter?

1 materials management?
 2 A For sure.
 3 MR. MCKAY: Your Honor, we've been
 4 going at this for a couple hours now and I would,
 5 if the Court wishes I'll charge on, or it might
 6 at an appropriate time for a break as well.
 7 JUDGE COUGHLIN: Sure. How about we
 8 come back in ten minutes? Is that adequate?
 9 MR. MCKAY: Yes, ma'am.
 10 JUDGE COUGHLIN: Okay, great. All
 11 right, we'll be in recess until then. Thank you.
 12 (Whereupon, the above-entitled matter
 13 went off the record at 9:51 a.m. and resumed at
 14 10:01 a.m.)
 15 JUDGE COUGHLIN: We're back after a
 16 ten-minute break. Please go ahead, Mr. McKay.
 17 MR. MCKAY: Thank you, Your Honor.
 18 BY MR. MCKAY:
 19 Q Mr. O'Neill, I'd like to return if we
 20 could to Ms. Vicente's involvement and the report
 21 we prepared. So, if I could turn your attention
 22 to Complainant's Exhibit 7, page four. Do you

1 A Yes.
 2 Q And who do you understand Premium
 3 Environmental Services to be?
 4 A It's my understanding Premium
 5 Environmental Services is an environmental clean
 6 -- it's a contracting entity that Prime uses to
 7 handle hazardous materials' responses throughout
 8 the nation.
 9 Q And is it your understanding that --
 10 and I'll use the word -- is it okay to use the
 11 acronym PES for Premium Environmental Services?
 12 A I'll certainly know what that means.
 13 Q All right, and is it your
 14 understanding that PES does work for other
 15 trucking companies and other companies throughout
 16 the United States?
 17 A It's my understanding, yes.
 18 Q Yes, okay, and have you reviewed
 19 documents concerning Ms. Vicente's communications
 20 with PES aside from what's reflected on this
 21 specific exhibit that we're looking at?
 22 A I have.

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1 Q Tell me what you reviewed.

2 A I've reviewed PES's call log
3 essentially with respect to this incident. They
4 create a log. It's chronological in order and
5 they notate who they speak to, the days they
6 speak to them, which PES employee is involved in
7 that communication, and the person to whom
8 they're speaking.

9 Q Did you note any matters of
10 significance on that call log with respect to Ms.
11 Vicente's communication with PES and the fact
12 that she possessed the safety data sheets?

13 MR. FIGUR: Your Honor, I'm going to
14 object on the basis that this information could
15 have placed into the respondent's prehearing
16 exchange and this log could have been placed in,
17 and he's testifying to a document that will not
18 be placed into evidence.

19 JUDGE COUGHLIN: Mr. McKay?

20 MR. MCKAY: Well, I think the standard
21 -- hearsay is, of course, allowable, and the
22 standard is whether it's probative and whether

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1 it's reliable, and this is a witness who
2 testified he's reviewed those materials and now
3 can briefly describe what's reflected in those
4 materials and provide some context to these
5 communications. I don't think we were under an
6 obligation to put in these call logs in lieu of
7 testimony.

8 JUDGE COUGHLIN: Okay, but I'm a
9 little bit concerned about testimony about a log
10 for which I don't have the log, so I'm going to
11 sustain the objection.

12 BY MR. MCKAY:

13 Q At the time that Ms. Vicente contacted
14 PES, does it appear from this narrative or this
15 report that she had in her possession the safety
16 data sheets?

17 A Yes, for sure she did because it's
18 clear that on October 21, 2015, she was in
19 contact with PPG and indicates that she obtained
20 material safety data sheets.

21 Q And what would those safety data
22 sheets equip -- what information would that equip

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1 Ms. Vicente with that would inform her
2 communications, her future communications with
3 PES?

4 A Well, it could certainly give her an
5 indication of the potential hazards that might be
6 associated with those products.

7 Q And determinations then that might
8 help PES make decisions about how best to, you
9 know, proceed with managing the situation?

10 A Yes.

11 Q Did you -- in connection with your
12 investigation of this matter, did you attempt to
13 acquire information from the Idaho Transportation
14 Department?

15 A I did.

16 Q All right, were you successful in
17 those efforts?

18 A There's really two components to the
19 answer. We submitted a public records' request
20 to the entity through your law firm and I also
21 interviewed an individual, Carl Vaughn, who was a
22 representative of ITD.

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1 Q And was Carl Vaughn involved in the,
2 we'll call it the second cleanup, the cleanup
3 that was requested of Prime after the incident
4 fire? Was Mr. Vaughn, as you understand it,
5 involved in that situation?

6 A He was.

7 Q And did you learn from Mr. Vaughn that
8 the Idaho Transportation Department generated
9 records in connection with its involvement in
10 this situation?

11 A Yes, he indicated to me that there was
12 a meeting that he was required to attend with his
13 supervisor and the hazardous materials
14 representative for ITD, Dan Bryant, with Idaho
15 DEQ, and as a result of that meeting, there was a
16 --

17 I can't remember the exact words that
18 he used, but it was a written policy that was
19 created to avoid, quote-unquote, these kinds of
20 situations in the future.

21 Q Were you --

22 MR. FIGUR: Your Honor, I missed that.

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1 I apologize if it is clear, but can the witness
 2 restate which person made that statement?
 3 JUDGE COUGHLIN: Yes, can you repeat
 4 your answer?
 5 MR. O'NEILL: Carl Vaughn is the
 6 individual that advised me. He's a
 7 representative of ITD. He's the one that advised
 8 me that there was a policy that was created as a
 9 result of this meeting between the Idaho DEQ and
 10 the Idaho Transportation Department pertaining to
 11 this incident so these sorts of issues wouldn't
 12 arise in the future.
 13 BY MR. MCKAY:
 14 Q When you say these sorts of issues,
 15 what do you mean by that?
 16 A Mr. Vaughn told me that there was a
 17 great deal of misunderstanding between ITD and
 18 the Idaho DEQ with respect to the Prime trailer
 19 fire incident.
 20 Q And the document that was created Mr.
 21 Vaughn mentioned to you, were you successful in
 22 obtaining a copy of that document or other

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1 and the involvement of the Elmore County
 2 Sheriff's Office dispatch?
 3 A It did.
 4 Q All right, and what were you able to
 5 discern from that aspect of your investigation?
 6 A There's a dispatch log. They're the
 7 entity that actually alerted the -- that took the
 8 9-1-1 call from Mr. Drake, the truck driver, and
 9 dispatched emergency response entities to the
 10 incident.
 11 Q And did you determine that there was
 12 confusion regarding the materials that were at
 13 issue here?
 14 A Yes.
 15 Q And were you present when Mr. Drake,
 16 the truck driver involved, testified yesterday?
 17 A I was.
 18 Q All right, did that provide some
 19 context to what may have created that confusion?
 20 A It did.
 21 Q Can you describe, if you will, the
 22 confusion that existed, at least as you

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1 documents from the Idaho Transportation
 2 Department related to this?
 3 A That was not provided.
 4 Q And did Mr. Vaughn actually give the
 5 document, at least one of the documents that he
 6 mentioned that was prepared, a specific name?
 7 A Yes.
 8 Q Does after-action report sound
 9 accurate?
 10 A Those are the words that I was
 11 struggling to pull out of my brain earlier and it
 12 just didn't happen. It is exactly the wording he
 13 said.
 14 Q And you were not able to obtain the
 15 after-action report that would reflect the
 16 miscommunications that Mr. Vaughn described that
 17 occurred between Idaho Transportation Department
 18 on the one hand and the DEQ on the other?
 19 A That's correct. I was unable to
 20 obtain that.
 21 Q Did you -- did part of your
 22 investigation involve looking into the records

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1 understand it?
 2 A As I understand it, and after talking
 3 at length with Mr. Drake and reviewing the
 4 records provided by the Elmore County Sheriff's
 5 Office, it appears that he was flustered when he
 6 got his wife and pets out of the truck as it was
 7 on fire still connected to the trailer.
 8 He had neglected to reach down and
 9 grab his book, which would have included the bill
 10 of lading, out of the slot in the driver's door
 11 when he exited the passenger side of the vehicle.
 12 When he called 9-1-1, he transposed the UN for
 13 the load and that was the source of the
 14 confusion.
 15 Q And can you say more about the
 16 confusion associated with the transposition of
 17 those numbers?
 18 A Well, the number, the UN number that
 19 he provided was for a water-reactive material,
 20 and, of course, that concerned the fire
 21 department as well as the Idaho State Police who
 22 heard the UN number.

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1 Q And is it your understanding that
2 confusion though was ultimately worked out and
3 resolved such, in a way such that the emergency
4 responders could adequately address the
5 situation?

6 A It was, and it was, it appears to me
7 that it was, that communication was resolved in
8 short order.

9 Q I'd like to now ask you about whether
10 you made any attempts or were successful in
11 interviewing Chief Janousek with the King Hill
12 Fire District?

13 A I made one attempt, unsuccessful
14 attempt to interview him. I contacted him at his
15 day job as they say. He owns a tire shop in a
16 small town there where he works as well as the
17 fire chief for the city as well as the King Hill
18 Rural Fire District.

19 He had a child that had a scheduled
20 orthodontic appointment, asked me if I could come
21 back at a later time, and of course, I agreed to
22 do that.

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1 objection?

2 MR. FIGUR: Yeah, I'd like to make an
3 objection. I'm cognizant of the discussions that
4 we've had before about the use of IARs and the
5 objections that Prime's counsel have had to our
6 IARs.

7 We'd like to -- and understanding your
8 resolution of those issues, we'd like to make
9 those objections and note also -- well, actually
10 it's premature to make any further notes.

11 JUDGE COUGHLIN: Okay, I'm sorry,
12 because I'm not sure I'm following --

13 MR. FIGUR: So --

14 JUDGE COUGHLIN: -- which is probably
15 my fault.

16 (Simultaneous speaking.)

17 JUDGE COUGHLIN: We're on -- let me
18 just -- remind me one second, we're on CX -- what
19 are we on?

20 MR. McKAY: We're on Respondent's
21 Exhibit 7.

22 JUDGE COUGHLIN: RX 7?

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1 Q The position he holds as the fire
2 chief is a paid position, is it not?

3 A That's correct, it is.

4 Q And so --

5 A He's the only paid member of that
6 department.

7 Q All right, and your initial attempt to
8 contact him, my impression of what you just said
9 is it wasn't out of any resistance to talk to
10 you, it was just he had other matters going on
11 and, in fact, agreed to speak with you at a later
12 point?

13 A Correct.

14 MR. McKAY: And if I can show you what
15 has been marked as Respondent's Exhibit 7, will
16 you describe what's reflected in that document?
17 (Whereupon, the above-referred to
18 document was marked as Respondent Exhibit No. 7
19 for identification.)

20 BY MR. McKAY:

21 Q What is Respondent's Exhibit 7?

22 JUDGE COUGHLIN: Do you have an

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1 MR. McKAY: That's right.

2 JUDGE COUGHLIN: Okay, okay, sorry.

3 MR. McKAY: And I asked the question,
4 I've asked the witness to identify --

5 JUDGE COUGHLIN: Okay.

6 MR. McKAY: -- the document and I --

7 MR. FIGUR: Your Honor, it's
8 premature. I'll wait until Prime or Respondent
9 moves it into evidence or tries to move it into
10 evidence. Thank you.

11 JUDGE COUGHLIN: Okay, all right.

12 MR. McKAY: May I continue?

13 JUDGE COUGHLIN: Yes.

14 MR. McKAY: Yes.

15 BY MR. McKAY:

16 Q Will you describe what's reflected in
17 Respondent's Exhibit 7?

18 A Yes, this is a narrative that I wrote
19 documenting my contact with Chief Janousek on
20 September 8, 2016 at 11:29 a.m.

21 Q And what is an IA, an investigative
22 activity report?

1 A They're just a mechanism that serves
2 as a communication vehicle to document activities
3 that have been conducted by investigators,
4 whether they're -- I'm a private investigator. I
5 still use that vernacular, IAR. EPA's Criminal
6 Investigation Division continues to also use that
7 vernacular as well for these narratives.

8 Q And is this an accurate depiction or
9 description of your contact with Chief Janousek
10 on September 8, 2016 and anything that related to
11 that contact thereafter?

12 A It is.

13 Q And does it truly and accurately
14 reflect those contacts?

15 A Yes.

16 Q And do you understand Chief Janousek
17 to be an individual important to the management
18 of the scene on September 27, 2015 and related
19 issues?

20 A He was the incident commander for the
21 incident.

22 MR. McKAY: Your Honor, I move

1 issue.

2 JUDGE COUGHLIN: Okay, I'll just rule
3 now and then you can continue to question. As
4 with the IARs you submitted, which I admitted
5 over Respondent's objections, I will admit RX 7
6 over your objections and note, as I think I did
7 last time, that with respect to the hearsay
8 nature of it, whether or not exceptions to that
9 exist here, that it's admissible in these
10 proceedings, but the parties can always make
11 arguments as to how much weight I should afford
12 this or any other piece of evidence that comes
13 in. So, RX 7 is admitted over objection.

14 (Whereupon, the above-referred to
15 document was received into evidence as Respondent
16 Exhibit No. 7.)

17 MR. McKAY: I want to turn your
18 attention now to Respondent's Exhibit 8.

19 (Whereupon, the above-referred to
20 document was marked as Respondent's Exhibit No. 8
21 for identification.)

22 BY MR. McKAY:

1 Respondent's Exhibit 7 into evidence.

2 JUDGE COUGHLIN: Okay, now Mister --

3 MR. FIGUR: And now is the proper
4 time. Your Honor, I'd like to just raise an
5 objection to this IAR. The objections would be
6 the same as Respondent's objections to --

7 You know, cognizant of the colloquy
8 two days ago now, we'd like to raise the same
9 objections as Prime raised to ours and with the
10 added notation that there don't appear to be any
11 exceptions to the hearsay rule. We are cognizant
12 of your ruling --

13 JUDGE COUGHLIN: Okay.

14 MR. FIGUR: -- for the record.

15 JUDGE COUGHLIN: Thank you. Before I
16 rule, did you have any other questions you wanted
17 to ask the witness with regard to the latter
18 piece of Mr. Figur's objection or I can just rule
19 now?

20 MR. McKAY: If the court would like me
21 to respond, I will, but I also understanding your
22 ruling concerning the EPA's exhibits on this

1 Q Would you describe what this document
2 appears to be?

3 A Yes, this is a narrative that I
4 submitted for activity that I undertook on
5 October 7, 2016. It's my follow-up contact with
6 Chief Janousek of the King Hill Rural Fire
7 District.

8 Q And similar to the questions I asked
9 you concerning Respondent's Exhibit 7, this is an
10 IAR prepared for the same purposes as the other
11 IAR?

12 A That's correct.

13 Q All right, and does it truly and
14 accurately reflect the, what's stated on this
15 exhibit, the interactions and statements made by
16 Chief Janousek on the occasion that you had the
17 opportunity to speak with him?

18 A It does. What I would like to point
19 out to you however, sir, is that EPA's Criminal
20 Investigation Division does not have a policy of
21 recording every investigative contact it has with
22 individuals. They -- their policy allows

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1 discretion as to when to record and when not to
2 record. They routinely interview potential
3 targets of investigations, sometimes subjects.

4 I interview -- I record every
5 investigative contact I have because it provides
6 me with the best evidence that I can produce to
7 your office or to other attorneys' offices with
8 respect to that interaction.

9 Q And so in preparing IARs, which you
10 prepared in connection with that case, do you
11 listen to the recordings that you prepared so
12 that what you reflect on the IAR is an accurate
13 account of what was said?

14 A I use two computers to do these IARs.
15 I have the WMA file on one with headphones on
16 while I'm typing on the other, and as my billing
17 sometimes reflects much to your chagrin, that
18 they're overly detailed.

19 JUDGE COUGHLIN: And the nature of the
20 file you just described, I assume you're
21 referring to an audio file?

22 MR. O'NEILL: That's correct. It's an

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1 audio file of the interview that I've recorded.

2 BY MR. McKAY:

3 Q Is it your practice to omit things
4 from your IAR that might be reflected in that
5 audio recording?

6 A No, I'm very fastidious with respect
7 to detail and often it takes me hours and hours
8 to get these documents correct.

9 Q Is the IAR that is reflected on
10 Respondent's Exhibit 8 a true and accurate
11 reflection of your interview with Chief Janousek?

12 A It is.

13 MR. McKAY: I move it into evidence,
14 Your Honor, Respondent's Exhibit 8.

15 JUDGE COUGHLIN: Okay, Mr. Figur?

16 MR. FIGUR: Same objection.

17 JUDGE COUGHLIN: All right, okay,
18 thank you. I'll admit it over objection. RX 8
19 is admitted into evidence.

20 (Whereupon, the above-referred to
21 document was received into evidence as
22 Respondent's Exhibit No. 8.)

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1 BY MR. McKAY:

2 Q Aside from the matters that were
3 reflected on Chief Janousek's report that we
4 reviewed, were there matters that were discussed
5 with you during his interview that were of
6 significance to your investigation?

7 A Yes.

8 Q Will you describe those?

9 A Certainly the first one that peaked my
10 attention was that Chief Janousek indicated that
11 all of the drums that were involved with the load
12 BLEVEd, and that's an acronym for a boiling
13 liquid evaporative or evaporating vapor
14 explosion, and in reality, that's in error.

15 None of those drums BLEVEd. Had they
16 BLEVEd, they would have been scattered all over
17 the desert for potentially miles.

18 The bungs in the drum failed as
19 they're designed to do which allows for the drums
20 to vent, and that's what they did in the course
21 of this fire.

22 Q And does boiling liquid expanding

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1 vapor explosion sound like a more accurate
2 recitation of what that acronym means?

3 A It does.

4 Q All right, did you discuss with Chief
5 Janousek B&W's involvement and who may have
6 called B&W Wrecker?

7 A I did.

8 Q Will you describe that?

9 A Chief Janousek indicated that Elmore
10 County Dispatch is the entity that notified B&W
11 Wrecker to respond to the incident.

12 Q And why did Chief Janousek explain why
13 Elmore County would have contacted B&W Wrecker?

14 A B&W Wrecker is the closest heavy
15 wrecker, which is what was required to handle
16 this sort of incident.

17 Q Did Chief Janousek say anything with
18 respect to the placarding of the trailer?

19 A Chief Janousek was confused with
20 respect to that as well. He indicated that there
21 was a discrepancy between the placards that were
22 on the trailer and the bill of lading that he had

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1 been provided by Mr. Drake.

2 That, in fact, is in error. The
3 placards on the trailer and the UN numbers on the
4 bill of lading were synonymous. They matched.
5 He indicated that they did not.

6 Q And they matched, and so fair to say
7 then that the truck was appropriately placarded?

8 A That's correct.

9 Q Did Chief Janousek share with you any
10 comments concerning the wording of his report?

11 A He did.

12 Q Can you describe that?

13 A He chuckled about it a little bit, but
14 was, I think, mildly embarrassed. He indicated
15 to me that, he said, well, that language in my
16 narrative is what Darren caught me on, and I
17 chuckled with him as well and said, what does
18 that mean?

19 He said, well, the words were less
20 than perfect, and as a matter of fact, I've tried
21 to rectify that by attending a class to
22 understand how to better word the narratives in

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1 my reports in the future.

2 Q And by Darren, who did you understand
3 him to be referring to?

4 A He's referring to Agent Mugleston.

5 Q And have you reviewed the IAR prepared
6 by Mr. Mugleston, then Special Agent Mugleston,
7 in connection with his interview of Chief
8 Janousek?

9 A I have.

10 Q Do you see anything in that report
11 that reflects this subject matter?

12 A It does not.

13 Q Did Chief Janousek have an impression
14 about whether environmental samples were obtained
15 at the scene of the fire?

16 A He did.

17 Q And when I say at the scene of the
18 fire, I also mean at the time of the fire.

19 A That's correct.

20 Q Will you explain that?

21 A Chief Janousek told me that he was
22 quote-unquote pretty sure that regional response

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1 team four had taken environmental samples in
2 connection with the incident.

3 Q And do you believe that to be a
4 correct statement?

5 A No, I believe Chief Janousek is
6 mistaken when he told me that. It's clear from
7 the regional response team four's submission in
8 response to the public records' request that they
9 did not take environmental samples. At least
10 they didn't annotate that they, or document that
11 they took environmental samples.

12 Q Was there a discussion with Chief
13 Janousek about whether liquid paint remained at
14 the scene following the fire?

15 A It was Chief Janousek's
16 characterization that no liquid paint remained.
17 He contended that only sludge remained after the
18 fire.

19 Q Did he say anything with respect to
20 the chemicals that existed in the paint?

21 A He did.

22 Q What did he say about that?

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1 A He opined that the volatile organic
2 compounds contained in the paint had all
3 off-gassed through the evolution of the fire.

4 Q Did he say anything about any of those
5 chemicals having burned off?

6 A Yes.

7 Q And just to reiterate, this was the
8 gentleman who was the incident commander on
9 scene?

10 A That's correct.

11 Q And where is Prime's headquarters?
12 Where are they located?

13 A Prime's headquarters is located here
14 in Springfield, Missouri.

15 Q And would it seem reasonable to you,
16 Mr. O'Neill, that a company located in
17 Springfield, Missouri would rely on decisions and
18 information that were being communicated on the
19 scene by the emergency responders?

20 A Yes.

21 Q We've looked at this prior document,
22 Chief Janousek's report. Was there any doubt in

1 your mind after having interviewed Chief Janousek
 2 that he was aware that B&W would handle the
 3 cleanup?
 4 A There's no question that he was aware
 5 that they handled the cleanup.
 6 Q And did Chief Janousek at any point
 7 express concerns that he had, expressed to you
 8 concerns that he had at the scene that B&W was
 9 going to perform this cleanup?
 10 A Well, certainly he was aware that --
 11 he indicated to me that he had a conversation
 12 with Sergeant Bonner with respect to Sergeant
 13 Bonner's contention that B&W was not certified to
 14 participate in the cleanup and that's really
 15 where it was left.
 16 Q And ultimately sorted out between them
 17 and B&W was allowed to perform the cleanup by the
 18 incident commanders if you will?
 19 A Yes.
 20 MR. McKAY: The interview with Tim
 21 Corder, you mentioned that earlier, and I'll turn
 22 your attention to that, but before I do, let me,

1 this document, Agent O'Neill?
 2 A I'm familiar with this document
 3 because I wrote it.
 4 Q Does it go on to describe other
 5 attempts to contact B&W?
 6 A It does.
 7 Q Is it a true and accurate true or true
 8 and accurate reflection of your investigative
 9 activities and interactions with B&W?
 10 A Yes.
 11 MR. McKAY: All right, I move Exhibit
 12 9 into evidence.
 13 MR. FIGUR: Surprisingly, no
 14 objection.
 15 JUDGE COUGHLIN: Okay, RX 9 is
 16 admitted.
 17 (Whereupon, the above-referred to
 18 document was received into evidence as Respondent
 19 Exhibit No. 9.)
 20 MR. McKAY: Now let's go if we can to
 21 Exhibit, Respondent's Exhibit 10.
 22 (Whereupon, the above-referred to

1 just for recordkeeping purposes, let me have you
 2 look at Respondent's Exhibit 9.
 3 (Whereupon, the above-referred to
 4 document was marked as Respondent's Exhibit No. 9
 5 for identification.)
 6 BY MR. McKAY:
 7 Q You mentioned earlier your attempt to
 8 interview folks associated with B&W Wrecker. Do
 9 I have that right?
 10 A I did.
 11 Q Yeah, and could you describe what is
 12 reflected on Respondent's Exhibit 9?
 13 A This document is the narrative that I
 14 wrote to communicate to your office the instances
 15 that I attempted to contact B&W Wrecker
 16 employees, and this particular paragraph that you
 17 have indicates that on October 24, 2016 at 1515
 18 hours, which is 3:15 p.m., I made an unsuccessful
 19 attempt to contact Sandy Derrick, who was the B&W
 20 driver, at his location, B&W's location in
 21 Mountain Home, Idaho.
 22 Q And does this -- you're familiar with

1 document was marked as Respondent's Exhibit No.
 2 10 for identification.)
 3 BY MR. McKAY:
 4 Q Can you describe what is reflected in
 5 Respondent's Exhibit 10?
 6 A This is a summary of my telephonic
 7 contact with Tim Corder of Corder-White
 8 Excavation in an attempt to make an appointment
 9 to have a face-to-face interview.
 10 And I will note for you this
 11 conversation was not recorded. I wasn't
 12 expecting Mr. Corder to -- I was first expecting
 13 him to grant me a time for a face-to-face contact
 14 and I wasn't expecting what I heard on the other
 15 end of the phone. Had I looked around the
 16 corner, I would have recorded that conversation
 17 as well, but I did not.
 18 Q Did he agree to meet with you?
 19 A He did not.
 20 Q Did he --
 21 A He denied my request for a meeting.
 22 Q Did he make statements to you during

1 the course of your telephonic contact with him
 2 that's reflected in this exhibit?
 3 A Yes.
 4 Q All right, and notwithstanding the
 5 fact that you didn't record it, does this exhibit
 6 truly and accurately reflect your interactions
 7 with Mr. Corder?
 8 A It does. I was standing at my desk
 9 feverishly writing as he was yelling at me on the
 10 phone.
 11 MR. McKAY: Your Honor, I move into
 12 evidence Respondent's Exhibit 10.
 13 MR. FIGUR: Complainant objects.
 14 JUDGE COUGHLIN: Okay, for the --
 15 MR. FIGUR: Same basis.
 16 JUDGE COUGHLIN: -- same basis? Okay,
 17 all right, I'll admit it over objection. RX 10
 18 is admitted into evidence.
 19 (Whereupon, the above-referred to
 20 document was received into evidence as Respondent
 21 Exhibit No. 10.)
 22 BY MR. McKAY:

1 Q And I think maybe there was just some
 2 confusion and maybe you didn't realize you said
 3 PES and I was asking you then about the contacts
 4 that he had with PES, whether that would have
 5 occurred in proximity or at the time of the fire
 6 or if that occurred some number of weeks later?
 7 A That happened later, his contacts with
 8 PES.
 9 Q Okay.
 10 A They did not occur early on in this
 11 incident.
 12 Q All right, so you were describing then
 13 his contacts with B&W and the fact that he did
 14 not have contact with Prime during those first
 15 few days?
 16 A That's correct.
 17 Q All right, and to your knowledge,
 18 would Prime -- strike that. Describe what he
 19 stated about his interactions then with B&W and
 20 his involvement in addressing the fire and the
 21 cleanup?
 22 A As I said, B&W dropped off his side

1 Q Mr. O'Neill, were there matters that
 2 were discussed, or at least stated maybe is a
 3 better way to put it, by Mr. Corder during your
 4 telephonic interaction with him that were
 5 significant to you in your investigation?
 6 A Yes.
 7 Q Will you describe those?
 8 A The first one that jumped out with me
 9 was that he claimed to have never have had a
 10 contact with anyone at Prime. He said that his
 11 contacts were with PES and with B&W Wrecker.
 12 Q And the contact with PES, would that
 13 have occurred sometime after the fire on
 14 September 27 and the subsequent disposal the
 15 following day?
 16 A No.
 17 Q Okay --
 18 (Simultaneous speaking.)
 19 A No, Mr. Corder told me that B&W
 20 dropped off his side dump at his yard, directed
 21 him to take that material to Idaho Waste Systems,
 22 which he did the following day.

1 dump trailer at his business and instructed him
 2 to take the material that was in the trailer to
 3 Idaho Waste Systems for disposal, which he did.
 4 They also subsequently contacted him
 5 at a later time after Maureen Vicente with Idaho
 6 DEQ had interaction with ITD concerning a second
 7 cleanup that Idaho Department of Environmental
 8 Quality desired at the site of the fire.
 9 Q So, focusing now on the first cleanup
 10 and disposal, is it your clean impression from
 11 talking to Mr. Corder that B&W was directing his
 12 actions and where he should dispose of the
 13 remnants of that fire?
 14 A Yes, and in fact, Mr. Corder claimed
 15 that he never had a contact with Prime.
 16 Q And did he have -- did he express to
 17 you during your communications with him concerns
 18 about B&W's involvement in this situation and
 19 concerns that existed for him at the time that he
 20 took the actions that he did?
 21 A Well, certainly when I spoke to him,
 22 as you can see a good deal of time after his

1 first involvement with B&W on the 27th and the
2 28th, and his subsequent involvement with the
3 cleanup and PES to respond to the Idaho DEQ
4 concern, his contention was that the state
5 agencies had failed to do their job by allowing
6 B&W Wrecker to conduct this cleanup.

7 Q And he was not provided with -- is it
8 your understanding that B&W had the bill of
9 lading from the fire?

10 A Certainly, they did. I know that for
11 a fact. Steve Drake told me that he provided a
12 copy of the bill of lading to B&W and B&W
13 subsequently produced that document to Idaho
14 Waste Systems after being badgered to do so by
15 the entity three or four weeks after they
16 disposed of this first load of material there.

17 Q When you say after they disposed of
18 it, after Mr. Corder disposed of it?

19 A He drove the load for B&W. That's
20 correct.

21 Q And Mr. Corder was not provided with
22 -- B&W did not provide Mr. Corder with the bill

1 of lading that they had been provided?

2 A That's correct.

3 Q At the time you spoke to Mr. Corder,
4 had he -- was he familiar with Chief Janousek's
5 involvement and the report that he had prepared?

6 A He was. He had the verbiage down
7 precisely and when he started reading that to me
8 as I'm talking on the phone with him, I
9 immediately recognize that it's the narrative
10 from Chief Janousek's run report that he's
11 reading to me.

12 And he said this is my shield and I
13 was like listen, I'm not trying to do anything
14 here, and that was an interesting exchange that I
15 had with him.

16 Q Did Mr. Corder -- is it your
17 understanding that Mr. Corder responded to the
18 fire on September 27?

19 A He personally did not. B&W alerted
20 his dispatch person that they needed a truck and
21 that's -- he had another driver take the side
22 dump out to the site of the incident on the

1 morning of the 27th.

2 Q Mr. Corder was the one then who had
3 the unenviable task, if you will, in hindsight,
4 the unenviable task of having taken the remnants
5 of the fire to Idaho Waste Systems?

6 A He was.

7 Q Was Mr. Corder, did he have any
8 particular training or experience with hazardous
9 materials that he expressed to you during his
10 conversation?

11 A He did. He said he was HAZWOPER
12 certified as well and that he attended annual
13 eight-hour trainings as required to maintain that
14 status. He contended that it was a no harm, no
15 foul situation where he didn't have a HAZMAT
16 endorsement on his CDL and he had actually driven
17 the load of material to Idaho Waste Systems for
18 disposal.

19 Q Was he also then involved as you
20 understand in the later transportation of the
21 remnants of the second cleanup at US Ecology?

22 A He was.

1 Q And did he believe that he was
2 authorized to transport those materials to US
3 Ecology?

4 A Mr. Corder claimed that he had
5 badgered H2O Environmental. First, he wanted
6 them to supply a HAZMAT certified, excuse me,
7 endorsed CDL operator to drive his truck to US
8 Ecology. They declined to do so claiming that
9 there was an insurance issue.

10 And he claimed that ultimately, they
11 said to him oh, it's all right. You can go ahead
12 and transport that material to US Ecology. He
13 did so without a HAZMAT endorsement after that
14 material had been determined to be hazardous
15 waste.

16 Q The second cleanup, if you will, was
17 Mr. Corder involved in the actual cleanup of the
18 second site?

19 A I don't believe so.

20 Q Was there a -- as a result of that
21 second cleanup, did Mr. Corder or his company
22 come into possession of the product of that

1 cleanup, the remnants of that cleanup?
 2 A They did.
 3 Q All right, and is it your
 4 understanding then that Mr. Corder then was able
 5 to promptly dispose of the remnants of that
 6 cleanup contemporaneous with the cleanup having
 7 occurred?
 8 A Certainly not contemporaneously.
 9 That's when Idaho DEQ's contact with him began
 10 and they gave him an order, a verbal order not to
 11 move that truck until they gave him permission to
 12 do so after a hazardous waste determination had
 13 been made on the material contained in the truck.
 14 Q Was Mr. Corder present when
 15 environmental samples were obtained of the
 16 materials from the second cleanup?
 17 A He was.
 18 Q And is it your understanding -- who do
 19 you understand to have performed that sampling
 20 and analysis of those materials?
 21 A H2O Environmental was the entity that
 22 performed, that took the environmental sample.

1 is and what you did?
 2 A It was a woman by the name of Debbie,
 3 and I'm probably going to mispronounce her last
 4 name, C-L-O-U-D-T. Clue was the way she
 5 pronounced that.
 6 Q And were you able to actually speak
 7 with Mr. Cloudt, Ms. Cloudt about the situation
 8 and the disposal of materials at Idaho Waste
 9 Systems?
 10 A I was.
 11 Q Did she describe to you who had
 12 arranged the disposal of those systems?
 13 A B&W Wrecker is who she claimed
 14 arranged it.
 15 Q Did she indicate to you that Prime had
 16 had any involvement in the decision to dispose of
 17 those materials at Idaho Waste Systems?
 18 A I don't believe that she ever
 19 mentioned the word Prime.
 20 Q Did she indicate to you whether B&W
 21 Wrecking had provided her with the bill of lading
 22 that they possessed at the time of the disposal?

1 An entity called ECS, it's a lab, that analyzed
 2 the material and made the hazardous waste
 3 determination, toxicity characteristic
 4 determination that it was hazardous waste.
 5 Q Did Mr. Corder comment to you on the
 6 sampling that was done or the process by which
 7 samples were obtained from the second cleanup
 8 debris?
 9 A He did. He contended to me that the
 10 sampling effort by H2O was not representative of
 11 the material contained in the truck. He said
 12 that they went to the only place in the truck
 13 that had visible contamination and took a sample
 14 there, and he contended that the sample was not
 15 an appropriate sample to be submitted for
 16 analysis.
 17 Q Let's move to Idaho Waste Systems.
 18 Did you contact anybody from Idaho Waste Systems
 19 in connection with your investigation of this
 20 matter?
 21 A I did.
 22 Q All right, can you just say who that

1 A They were clearly, B&W Wrecker was
 2 clearly in possession of the bill of lading. We
 3 know that from Mr. Drake's interview with me.
 4 She was unable -- they did not provide that
 5 document to Mr. Corner at the time --
 6 Q Do you mean to Ms. Cloudt?
 7 A To Ms. Cloudt at the time that the
 8 material was disposed at the IWS site, Idaho
 9 Waste Systems' site. She, in her words, badgered
 10 them, B&W Wrecker, for more than three weeks
 11 before they provided her with a copy of the bill
 12 of lading which Mr. Drake had provided to B&W
 13 Wrecker.
 14 MR. FIGUR: And Your Honor, at this
 15 time, because there are two cleanups that they're
 16 discussing and they've shifted back and forth
 17 between them, I would just like the record
 18 clarified as to which load from which cleanup, so
 19 one load from one cleanup, one load from another.
 20 If they could clarify that for the record at this
 21 time, that would be very helpful.
 22 JUDGE COUGHLIN: Okay.

1 MR. McKAY: So, with all due respect
 2 to counsel, I think the record is clear, but I'm
 3 glad to say for counsel's benefit that the only
 4 disposal that Idaho Waste Systems was involved in
 5 was the first cleanup and the second cleanup
 6 involved US Geology if I have, US Ecology. I'm
 7 sorry I said Geology.
 8 JUDGE COUGHLIN: Okay.
 9 MR. McKAY: US Ecology. So, when I
 10 refer to -- when I'm asking Mr. O'Neill and other
 11 witnesses about Idaho Waste Systems, I'm only
 12 referring to the first cleanup.
 13 JUDGE COUGHLIN: Okay, and is that
 14 consistent with your understanding?
 15 MR. O'NEILL: It is, ma'am.
 16 JUDGE COUGHLIN: Okay, is that --
 17 MR. FIGUR: Thank you, Your Honor.
 18 JUDGE COUGHLIN: Okay.
 19 BY MR. McKAY:
 20 Q Did Ms. Cloudt of Idaho Waste Systems
 21 have any involvement with the EPA CID?
 22 A She did.

1 A Carl Vaughn is a representative of the
 2 Idaho Transportation Department. He's stationed
 3 in Mountain Home and the Mountain Home office has
 4 jurisdiction for the interstate in the area where
 5 this incident occurred.
 6 MR. McKAY: And I'm showing you now
 7 Respondent's Exhibit 11.
 8 (Whereupon, the above-referred to
 9 document was marked as Respondent Exhibit No. 11
 10 for identification.)
 11 BY MR. McKAY:
 12 Q Can you describe what's reflected in
 13 Respondent's Exhibit 11?
 14 A This is my narrative to document my
 15 recorded contact with Mr. Vaughn of ITD at his
 16 office in Mountain Home on December 2, 2016 at
 17 1507 hours, which is 3:07 p.m.
 18 Q And does this document reflect those
 19 interactions and statements that Mr. Vaughn made
 20 to you during the course of your recorded
 21 interaction with him?
 22 A It does.

1 Q Did she describe that involvement to
 2 you?
 3 A Yes, she did.
 4 Q Would you say what she said about that
 5 interaction?
 6 A She, it must be a common word in
 7 Idaho, but she said that she was pissed with
 8 EPA's Criminal Investigation Division. They came
 9 there and essentially accused her of taking a
 10 bribe to allow for the disposal of this first
 11 load of material at Idaho Waste Systems, and she
 12 was upset by that inference that she was, that
 13 her ethics would be compromised.
 14 Q Have you seen any evidence anywhere
 15 throughout your involvement or in this case that
 16 Ms. Cloudt was offered or accepted a bribe for
 17 Idaho Waste Systems' involvement in this
 18 situation?
 19 A No.
 20 Q I'd like to now turn to your interview
 21 of Carl Vaughn. Can you say again who Carl
 22 Vaughn is?

1 Q Is it a true and accurate reflection
 2 of those interactions?
 3 A It is.
 4 MR. McKAY: Your Honor, I move into
 5 evidence Respondent's Exhibit 11.
 6 MR. FIGUR: Complainant makes the same
 7 objection.
 8 JUDGE COUGHLIN: All right, thank you.
 9 I'll admit RX 11 into evidence over objection.
 10 (Whereupon, the above-referred to
 11 document was received into evidence as Respondent
 12 Exhibit No. 11.)
 13 MR. McKAY: Were there statements that
 14 Mr. Vaughn made to you during the course of your
 15 recorded interactions with him that you found
 16 significant to your -- your investigation?
 17 THE WITNESS: There were.
 18 BY MR. McKAY:
 19 Q Will you describe what you found
 20 significant in those statements?
 21 A The one that most significantly jumps
 22 out to me is his -- his concern about the

1 language that Chief Janousek used in his
 2 determination that this went from a HAZMAT scene
 3 to a cleanup scene. He contended that everyone
 4 downstream from the issuance of that believed
 5 that the material that they were involved in
 6 cleaning up was a solid waste.
 7 Q And with respect to other statements
 8 that Mr. Vaughn made to you, did he describe any
 9 actions that he took with respect to the scene
 10 that existed following the cleanup by B&W
 11 Wrecker?
 12 A He did. Mr. Vaughn indicated to me at
 13 the time of the incident he would have responded,
 14 but he was out of town. He did a drive-by of the
 15 scene and -- and indicated that it looked good to
 16 him when he was -- after he was alerted to the
 17 incident.
 18 He was subsequently contacted by Idaho
 19 DEQ Hazardous Waste Science Officer Maureen
 20 Vicente, who said that Idaho DEQ was not
 21 satisfied with the cleanup. And he subsequently
 22 returned to the site and agreed with her, after

1 entity that recommended Quarter White to
 2 participate in the second cleanup. They were
 3 aware through their conversations with Mr.
 4 Quarter or they claimed, maybe mistakenly, I'm
 5 not sure, if the Quarter has a hazardous waste
 6 trucking division in its trucking operations.
 7 And I'm not quite sure whether Mr.
 8 Vaughn was referring to Quarter White Excavation,
 9 or he was referring to Quarter, Inc., which is
 10 his father's company.
 11 Q That are two entities, as you
 12 understand it.
 13 A As I understand it, yes. But as Mr.
 14 Vaughn characterized to me, he believed that one
 15 of the entities, Quarter Trucking, was a
 16 hazardous -- a hazardous waste or hazardous
 17 materials transportation company.
 18 Q Have you seen documents that would
 19 suggest to you that the Department of
 20 Transportation was involved in, or the state of
 21 Idaho Department of Transportation was involved
 22 in recommending Quarter White?

1 this time getting out of his vehicle and walking
 2 the site where the incident occurred.
 3 Q So just want to understand that he
 4 initially drove by the scene and believed it to
 5 be adequately cleaned up and then later changed
 6 his position after being contacted by Ms.
 7 Vicente, do I have that right?
 8 A Correct, and after he had the
 9 opportunity to actually get out of his vehicle
 10 and walk the site.
 11 Q Okay. Are you aware of whether -- let
 12 me ask it this way, is Quarter White, Quarter
 13 White Trucking, is that the entity as you
 14 understand to be involved with the Mr. Quarter
 15 that you interviewed that's the subject of an
 16 earlier IAR?
 17 A Yes.
 18 Q All right. And do you believe that --
 19 have you seen a discussion of whether ITD was
 20 involved in recommending Quarter White to assist
 21 in that second cleanup?
 22 A He, yes, indicated that ITD is the

1 A I have.
 2 Q All right. Have you seen documents or
 3 emails with PPG that reflect that matter?
 4 A With PES, I'm correcting you, I hope
 5 correctly, on that.
 6 Q So you've seen that within PES's own
 7 documents.
 8 A I've seen that in PES's documents,
 9 yes.
 10 Q Okay, and have you also seen that
 11 reflected in PPG emails and correspondence? And
 12 if you haven't, then I --
 13 A I have not.
 14 Q Okay. I'm going to show you what was
 15 previously admitted by stipulation, Complainant's
 16 Exhibit 38. Do you have that document in front
 17 of you?
 18 A I do.
 19 Q Does that appear to be an email of
 20 November 10 from Dave White at Prime that
 21 indicates that the state of Idaho had recommended
 22 Quarter White Excavation to PES in connection

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1 with the second cleanup?
 2 A It had, and I -- now this refreshes my
 3 recollection. I have seen this document.
 4 Q I'd like to turn your attention to
 5 that aspect of your investigation where you --
 6 where you looked at the actual products at issue
 7 here, okay.
 8 A Yes.
 9 Q You mentioned -- and you were probably
 10 in court when Dr. Miller described the
 11 polyurethane product as something that would be
 12 used a primer on a wood fence. But were you able
 13 to actually make a determination as to the
 14 intended end use of these specific products?
 15 A I was.
 16 Q Did you look and see if there were
 17 other more common products that one might possess
 18 that had similarities to the products at issue
 19 here?
 20 A I did.
 21 Q All right, will you say what you did
 22 in that regard?

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1 would make it more dangerous than the products at
 2 issue here?
 3 A Potentially, certainly.
 4 Q Let's go to whether you were
 5 successful in determining the end use of this
 6 product.
 7 A I was.
 8 Q The intended end use of this product.
 9 A I was.
 10 Q And will you describe what you did in
 11 that regard.
 12 A I telephonically interviewed an
 13 individual by the name of Dan Hall. And he was a
 14 -- he is a Steelscape representative. Steelscape
 15 has a large steel manufacturing entity in Kalama,
 16 Washington. I was able to contact him to discuss
 17 these products.
 18 Q And what did you learn from your
 19 contact with Mr. Hall at Steelscape?
 20 A Mr. Hall indicated --
 21 MR. FIGUR: Your Honor, at this point,
 22 I'd like to object. There's nothing in evidence

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1 A I thought about common products that
 2 might be somewhat similar to this and actually
 3 went to the garage. It sounds pretty elementary,
 4 but went to the garage and looked around and saw
 5 the name Rust-Oleum on a spray can and started
 6 looking through material safety data sheets for
 7 Rust-Oleum paint, the kind that you would use for
 8 painting your patio furniture.
 9 Q Did it have similar -- do you know
 10 what flashpoint is?
 11 A I do.
 12 Q Did it have similar characteristics to
 13 that Rust-Oleum paint primer and the substance at
 14 issue here?
 15 A Flashpoint was substantially lower
 16 than the flashpoint of the products of the
 17 products that are involved in this incident.
 18 Q The flashpoint of Rust-Oleum primer
 19 has a lower flashpoint than the products at issue
 20 here?
 21 A That's correct.
 22 Q And by lower flashpoint, that means it

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1 about these conversations and so where is this
 2 coming from?
 3 MR. MCKAY: It's coming from his
 4 interview and discussions with this, the person
 5 that he's just mentioned.
 6 JUDGE COUGHLIN: Right. I assume that
 7 this did not result in an IAR that you created?
 8 THE WITNESS: This did result in an
 9 IAR I created.
 10 JUDGE COUGHLIN: Is that part of your
 11 exhibit?
 12 MR. MCKAY: It didn't, because it's
 13 just such a small part of this, you know,
 14 discussion. I, as I understand the rules from
 15 this tribunal, hearsay is permitted.
 16 He can describe what he was told by
 17 this witness in relative terms and if Counsel
 18 wishes to question the reliability or how much
 19 weight should be given to it, they can. But it
 20 does not go to the admissibility, I submit, your
 21 Honor.
 22 And it's -- and in fact, their --

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1 they've introduced IARs or they have recordings,
2 and these IARs reflect only a part of those
3 recordings. And so I submit that his
4 interactions with this witness and what he's
5 about to describe is more reliable than the
6 exhibits that the government and that have been
7 admitted into evidence in this case.

8 And I apologize, that was a long
9 response to their objection. But I think it's
10 important that this objection be seen in the
11 entire context of these proceedings.

12 JUDGE COUGHLIN: Okay. Anything else
13 that you'd like to be heard on, Mr. Figur?

14 MR. FIGUR: Yes, I think one thing
15 that your Honor, and I apologize, I can lean down
16 unless you can hear me.

17 JUDGE COUGHLIN: I can hear you.

18 MR. FIGUR: I apologize. I think some
19 of the broader context for the earlier colloquies
20 here are important. Counsel has indicated that
21 the Agency has not turned over all records
22 relating to this matter and has hinted that

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1 exculpatory evidence is being hidden from them.

2 When in fact all of the evidence that
3 the civil side of the Agency obtained from the
4 criminal side, meaning the criminal side kept the
5 stuff that civil shouldn't see, was actually
6 transferred to Counsel for Respondent on January
7 2, and we now have the date, January 2, 2021.

8 The only thing that wasn't transferred
9 was the recordings that we didn't have in our
10 possession at that time. Subsequently, Counsel
11 asked about those recordings and we engaged in an
12 email exchange. And we were -- we got the ones
13 we knew about that we could and were ready to
14 provide them.

15 So to say that they don't have to put
16 in everything that they have but we have to put
17 in everything that we do just doesn't seem fair.

18 MR. MCKAY: So they have the burden of
19 proof, of course, and I don't know, I'm not
20 accusing them of hiding exculpatory evidence. I
21 don't know what I don't know.

22 All I asked that witness is whether

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1 he made an attempt to determine whether
2 exculpatory evidence lives within that file and
3 whether those were turned over to the region.

4 And I don't think it's also accurate
5 to say that everything that CID had was turned
6 over to the region. By just looking at Special
7 Agent Callaghan's own affidavit, he indicates
8 that grand jury materials were not turned over.

9 And so I don't know what's within the
10 context of those -- of those materials, because
11 we didn't get them and they didn't get them. But
12 returning to the question --

13 JUDGE COUGHLIN: Yeah, I think we're
14 a little bit off topic, but I do understand why
15 you felt the need to respond.

16 MR. MCKAY: Return to the, yeah,
17 return to the question here. I'm sorry, I
18 interrupted.

19 JUDGE COUGHLIN: No, it's okay. I'm
20 not going to revisit the audio recordings because
21 I kind of went at length over that. And so I'm
22 not going to go over that interaction again and

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1 discussion again.

2 I guess my only -- my only concern,
3 and I hesitate to ask another question, you may
4 have already responded to this, though, is since
5 there had been an IAR produced as a result of
6 this conversation, why did you chose not to
7 submit it?

8 MR. MCKAY: I think at the time of the
9 preliminary hearing exchange, we did not fully
10 appreciate how we wished to present our case.
11 But certainly we appreciated that we would call
12 this witness as -- call Mr. O'Neill as a witness.

13 And that he would then proceed, and we
14 described this in our -- in our summary of what
15 he's going to say, his investigation.

16 His investigation covered many
17 different aspects that you have heard him
18 describe. But it's, again, it's -- I submit it's
19 not necessary to these proceedings that he
20 provide -- that his report be provided in lieu
21 his testimony. He can testify to -- to what he
22 was told, hearsay's permitted.

1 And Counsel can certainly get up and
2 ask him questions about whether the statements
3 he's made are accurate and question, you know,
4 raise questions about that issue.

5 I mean, I would hope -- I would hope
6 that after listening to, you know, Mr. O'Neill's
7 qualifications and his practices here that there
8 shouldn't be any doubt that what he's saying is
9 going to be an accurate reflection of what that
10 witness told him.

11 MR. FIGUR: And your Honor, that is
12 not part of our point. Whether it's accurate or
13 not at this moment isn't part of our point. It's
14 a question of whether or not this -- and whether
15 or not this important doesn't matter either.
16 It's whether we were able to prepare for a
17 hearing.

18 And what I think I've just heard
19 Counsel say is that they continued to develop
20 their case after the pre-hearing exchange, but
21 nothing was submitted about this, so.

22 MR. McKAY: That's not fair, we didn't

1 to make a determination as to how those -- what
2 the end use of those products, what they are?

3 A Yes.

4 Q Will you describe that?

5 A These products are -- are used to
6 prepare steel for customers of an entity named
7 Steel Scape from Kalama, WA.

8 Q And when you say prepare steel, what
9 do you mean by that? Do you understand that from
10 what you reviewed, independent from your
11 conversations with Mr. Hall?

12 A Prepare them is essentially code for
13 coat them. These products are used as coatings
14 for steel in the production process that Steel
15 Scape has.

16 Q Would primer be another word for
17 coating as you intended it?

18 A Yes, it's a preliminary coating. It's
19 not a top coat.

20 Q And are these -- are these products as
21 you understand it intended to address corrosion
22 and -- and protect against corrosion with respect

1 continue to develop our case. I mean, how we
2 present evidence at trial is something that we --
3 we made a decision about closer in time to trial.

4 But clearly the -- our pre-hearing
5 exchange contemplates that this witness is going
6 to describe the investigation that he conducted,
7 which in part involves his conversation with the
8 end user of the products at issue.

9 JUDGE COUGHLIN: All right. I
10 understand, and I'm going to sustain the
11 objection. You're welcome to argue my ruling
12 post, in any type of post-hearing brief or on
13 review, but I think it's appropriate to sustain
14 the objection given all that I heard.

15 MR. McKAY: Mr. O'Neill, let me ask it
16 this way, were you able to do any research on the
17 internet and otherwise publicly available
18 documents concerning the products at issue here
19 and the end use of those products?

20 THE WITNESS: I was.

21 BY MR. McKAY:

22 Q Were you successful in those efforts

1 to the materials that the primer is applied to?

2 A That's their intended purpose, yes.

3 Q Would it be reasonable to assume that
4 if a product intended to protect against
5 corrosion was sitting inside of a barrel, that it
6 would protect against corrosion of the barrel in
7 which it sat inside?

8 A From an internal environment,
9 certainly.

10 Q I'd like to -- I'd like to ask you
11 about Sandy Derrick. Who do you understand Sandy
12 Derrick to be?

13 A Sandy Derrick was the third truck
14 driver for D&W Wrecker, who was stationed in
15 Mountain Home. And he was the first responder, I
16 suppose, for the company to this incident.

17 Q And did you make an attempt to
18 interview Mr. Derrick yourself?

19 A I did, I made multiple attempts to
20 interview him, as we discussed earlier.

21 Q And I understand from your testimony
22 you were not successful in those efforts.

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1 A That's correct.

2 Q I'm going to turn your attention to
3 Complainant's Exhibit 22. Do you -- which has
4 been admitted. Do you see Complainant's
5 interview -- Complainant's Exhibit 22 in front of
6 you?

7 A I do.

8 Q Draw your attention to that aspect of
9 the first page of this report. You see reference
10 to Mr. Derrick having recorded using his personal
11 cellphone his interview by Special Agent
12 Mugleston.

13 A Yes, I see that.

14 MR. MCKAY: All right. And were -- in
15 the course of your investigation, were you able
16 to obtain access and to review the audio
17 recordings that -- audio recording that Mr.
18 Derrick obtained of his interactions with EPA CID
19 and Special Agent Mugleston?

20 MR. FIGUR: Your Honor, this goes to
21 both sides of the EPA's investigation, and this
22 question has already been asked and answered for

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1 the criminal side of this investigation. And
2 it's already been addressed on the civil side of
3 the investigation. So I'm not sure that this
4 question has any value.

5 It's been asked and answered twice,
6 right. The first time is he didn't have -- he
7 didn't get it during his -- when the criminal
8 investigation was going on. And we've already
9 established that he might have been able to get
10 it during the civil investigation and we finished
11 discussing that matter.

12 MR. MCKAY: I'm not sure if Counsel
13 appreciates where I'm going with this, and so --
14 JUDGE COUGHLIN: Okay.

15 MR. MCKAY: And so and, if I can --

16 JUDGE COUGHLIN: Is this resurrecting
17 the audio recording?

18 MR. MCKAY: It's not.

19 MR. FIGUR: I'll withdraw my
20 objection.

21 JUDGE COUGHLIN: Okay, please proceed.

22 MR. MCKAY: Were you able to listen to

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1 the audio recordings of Special Agent Mugleston's
2 interactions with Sandy Derrick?

3 BY MR. MCKAY:

4 Q And do you understand from this
5 exhibit that Mr. Derrick himself made a recording
6 of that -- at least this interaction on this
7 occasion?

8 A Yes.

9 Q And is it your understanding that Mr.
10 Derrick made a recording of a different
11 interaction with Special Agent Mugleston?

12 A Yes.

13 Q How do you understand that you came
14 into possession and were able to listen to those
15 recordings?

16 A I was presented -- provided those
17 recordings by your office.

18 Q And do you have an understanding about
19 whether B&W retained counsel in connection with
20 these proceedings?

21 A Yes.

22 Q All right, and do you have an

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1 understanding about whether Counsel for B&W
2 shared those recordings with my office and I in
3 turn shared them with you?

4 A That's correct.

5 MR. FIGUR: Your Honor, this, again,
6 we object. This was not provided to us at any
7 point during the pre-hearing exchange. Counsel
8 has said that contemporaneous recordings are the
9 best evidence, and yet they didn't share them
10 with us.

11 MR. MCKAY: He has them. He has --
12 Agent Mugleston recording this interview, he
13 says. And so he -- is Counsel suggesting I have
14 to share what it sounds like he possesses?

15 MR. FIGUR: Your Honor, this goes
16 straight back to the -- to the question of
17 whether and we, the civil side, could have or
18 should have had them and could have or should
19 have provided them to them. And it's the same --
20 it's just from the opposite side of the coin,
21 your Honor.

22 JUDGE COUGHLIN: Okay, well, you've

1 referenced two recordings.
 2 MR. McKAY: Yes.
 3 JUDGE COUGHLIN: One, as I understand
 4 it, one that was a product of then-Special Agent
 5 Mugleston's recording of the interview with Mr.
 6 Derrick, and one that Mr. Derrick recorded
 7 himself?
 8 MR. McKAY: No, I've referred to two
 9 files, two audio files.
 10 JUDGE COUGHLIN: Okay.
 11 MR. McKAY: Both -- both taken, if you
 12 will, created by Mr. Derrick that Mr. O'Neill has
 13 listened to.
 14 JUDGE COUGHLIN: Of his interview with
 15 Mr.?
 16 MR. McKAY: That's right.
 17 JUDGE COUGHLIN: With then-Special
 18 Agent Mugleston?
 19 MR. McKAY: That's right.
 20 JUDGE COUGHLIN: Okay. Ultimately
 21 what is this going to? What is -- what is the --
 22 I guess what I'm asking about is with regard to

1 are simply not reflected, including that, in
 2 Agent Mugleston's report. And so I think that
 3 too then goes to the completeness, reliability of
 4 these reports.
 5 And it should also maybe suggest to
 6 this court why when we were given the opportunity
 7 to have these recordings sort of on the fly, if
 8 you will, that we just didn't readily agree that
 9 they should be made a part of the record.
 10 Because if there's a -- if there's a
 11 criminal investigative agent who's making
 12 statements like that that we know about, I don't
 13 have any appreciation for and understanding of
 14 what other things he may have said that might be
 15 just as wrong as this statement that Prime is as
 16 dirty as it gets.
 17 And so we were reluctant just to agree
 18 in the blind that those recordings should be made
 19 part of this record. And I, so again, returning
 20 to this -- to his testimony now, I think this
 21 illustrates all of that.
 22 JUDGE COUGHLIN: Okay.

1 relevance and probativeness for what's before me,
 2 which is a penalty determination.
 3 MR. McKAY: Yeah, so one of the more
 4 significant matters is Special Agent Mugleston's
 5 statement to Mr. Derrick that Prime is as dirty
 6 as it gets. I'm sorry, I don't mean to -- I
 7 don't mean to elevate here.
 8 That is -- that is so -- that
 9 statement is both so wrong and so fundamental to
 10 what we believe Agent Mugleston's -- to Agent
 11 Mugleston's investigative efforts. And I think
 12 you see that refrain in some of his other
 13 statements to other -- other -- to other
 14 witnesses.
 15 I told your Honor that I was going to
 16 prove that up, and this is how I'm proving --
 17 this is how I'm proving that up right now, is by
 18 virtue of this witness having listened to this
 19 recording.
 20 The other significance is there are
 21 aspects in that interview, that recorded
 22 interview, that are simply not reflected, that

1 MR. FIGUR: And I don't understand,
 2 your Honor, why these recordings could not have
 3 been provided after received. And then knowing
 4 they were going to be considered and discussed by
 5 the witness for the purposes that were just
 6 discussed, or you gave two reasons.
 7 The second one seems as though that
 8 seems particularly important. But all of this,
 9 nothing you've said provides any reason why that
 10 shouldn't have been shared with us prior to the
 11 hearing.
 12 MR. McKAY: So when my co-counsel
 13 sends an email to Regional Counsel and says we'd
 14 like those recordings, and the response we get
 15 back is well, we don't intend to use them, we
 16 don't intend -- we're going to rely on the IARs.
 17 We don't intend to use them, and then
 18 we don't get them, I don't understand how to
 19 reconcile that now with that Counsel was saying.
 20 Is what Counsel -- and you see that in
 21 the email that I think has been made part of this
 22 record. I don't understand how to reconcile that

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1 with what Counsel is now saying, which is we
2 don't get to ask him questions about that because
3 we didn't put that into the record.

4 And what he's asking us to put into
5 the record really are the recordings that he --
6 that Regional Counsel, that Region VIII possesses
7 now, by virtue of the transfer of the criminal
8 file to their office. So they're not -- they're
9 not prejudiced by it, they're not prejudiced by
10 this. They have access to the very same
11 recordings.

12 MR. FIGUR: Your Honor, this goes
13 right back to the heart of this original
14 colloquy. The Agency, the civil side of the
15 Agency, has already said that they did not obtain
16 the recordings when the file, the portion of the
17 file that could be transferred to civil was
18 transferred to civil.

19 In January of 2021, the entire portion
20 of the file that civil had, the entire file that
21 civil had, which is portion of the criminal file,
22 was transferred. We did not have the audio

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1 recordings at that time. We had no intention of
2 using audio recordings that we did not have.

3 And when Counsel asked for them, we
4 said sure, let's talk about what you really want.
5 And I mean, it's already in your record of this
6 proceeding.

7 JUDGE COUGHLIN: Right, that you
8 (simultaneous speaking)

9 MR. FIGUR: The real question is is if
10 this is going into testimony today and they had
11 them in their possession, why didn't they share
12 those with us to put the contemporaneous
13 recording into the record, which is what they're
14 alleging that we're not doing.

15 And in Part 22 proceedings, this isn't
16 a criminal case where we have the burden of proof
17 beyond a reasonable doubt and all of that.

18 This is we have a burden of persuasion
19 on the penalty. But each party has equal
20 obligations to the pre-hearing exchange. And so
21 if they had that and they knew they going to have
22 the witness testify to it, it seems as though

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1 they should have shared it in advance of the
2 hearing.

3 And the pre-hearing exchange remained
4 open until August 24th.

5 JUDGE COUGHLIN: Okay. My concern is
6 this: I appreciate the significance of a lot of
7 this for the parties. But my focus here is very
8 narrow, it's very narrow. Liability has already
9 been established. I'm simply tasked at this
10 stage with calculating what, if any, appropriate
11 penalty should be assessed.

12 And I'm just not -- I feel like we're
13 sort of getting a bit off point with that end
14 goal of mine. Appreciating how important some of
15 these issues are to all of you.

16 So I say that not to minimize the
17 importance that it has for all of you, but I'm
18 concerned that we're taking a lot of time over
19 things that are not ultimately going to help me
20 decide what amount of penalty if any I should
21 assess in the case.

22 So I'm going to sustain the objection.

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1 And I'm going to ask and remind the parties that,
2 you know, of my focus. I realize this was a very
3 significant event that happened in 2015.

4 I certainly took note of what Mr.
5 Drake candidly revealed during his testimony.
6 And you know, what transpired amidst this
7 terrible accident. So I appreciate the emotion
8 and all that's gone into it.

9 But at this stage, I'm looking at
10 penalty. So I really, we're already here on day
11 three. We're supposed to wrap up on Friday. And
12 I just want to make sure we're all keeping our
13 eye on the balls as I see it.

14 So that's my ruling. Are you prepared
15 to carry on?

16 MR. MCKAY: I am. And so just so --
17 so I understand the ruling. There is an IAR that
18 was prepared by Special Agent Mugleston in
19 connection with his interview of Mr. Derrick,
20 which we're now talking about.

21 And so I'm confined -- I'm confined in
22 the presentation of our response to that IAR to

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1 what's within the four corners of that IAR, as I
2 understand it. I cannot ask him, this witness,
3 about things that he learned that were also said
4 that are not reflected in that IAR.

5 JUDGE COUGHLIN: Well, I think that
6 we're kind of bringing up these audio recordings
7 again, ultimately, right. Because we had that
8 discussion before with regard to those IARs that
9 were summaries of an audio recording that -- of
10 audio recordings, I should say, multiple IARs,
11 right, during their colloquy, that you don't
12 have. The email that I'm preserving for the
13 record.

14 So I feel like we're sort of getting
15 back to that point in perhaps a slightly
16 different way. So I'm not really inclined to
17 revisit my ruling on the audio recordings because
18 we had an extensive discussion about it, and I
19 felt like there was some resolution at least for
20 this hearing proceeding.

21 So I'm not really interested in
22 opening that up again. So what I would say in

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1 would inquire of this witness about matters that
2 he listened on audio recordings that Sandy
3 Derrick obtained in connection with his
4 interactions with Special Agent Muggleston with
5 the EPA CID.

6 And that he -- those recordings
7 reflect matters that are not in the IAR that the
8 EPA has offered and had admitted into evidence in
9 this proceeding. Including within those admitted
10 matters are Special Agent Muggleston's statements
11 to this witness that Prime is as dirty as they
12 get.

13 And there are -- there are other
14 matters, but that's a matter, one matter that I
15 wish to highlight, in part because I told the
16 court I would prove that up, and I'm prepared to
17 prove that up.

18 And I respect your ruling and I will
19 stand down and won't do that, but I wish to make
20 that offer of proof. And I'll -- there are, I
21 think, some matters that are within the IAR
22 itself that I can -- I can ask this witness about

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1 response is, to the extent that the questions are
2 attempting to resurrect the audio recordings, I
3 don't think we need to go any further on that
4 point.

5 Certainly, anything else you want to
6 talk about is fine. But I don't really -- and if
7 I have erred in that regard, that's why out of --
8 our of appropriateness to all of you I wanted to
9 preserve that email and my ruling.

10 Should a reviewing authority think I
11 erred in that regard, then I guess we'll see each
12 again at a later point in time.

13 And that's part of what happens. I
14 have a humble heart with this work, because it's
15 entirely possible. But that is my ruling, Mr.
16 McKay. So I don't really want to spend more time
17 on that, albeit in a slightly different way of
18 talking about it.

19 MR. MCKAY: May I make a brief offer
20 of proof, pursuant to the rules, your Honor?

21 JUDGE COUGHLIN: Yes.

22 MR. MCKAY: So if I were permitted, I

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1 now.

2 JUDGE COUGHLIN: Okay.

3 MR. MCKAY: Mr. O'Neill, you have in
4 front of you, well, actually still have in front
5 of your Complainant's Exhibit 22.

6 THE WITNESS: I do.

7 BY MR. MCKAY:

8 Q And does that, again, purport to be a
9 -- an interview that Special Agent Muggleston
10 conducted of Sandy Derrick with B&W Wrecking?

11 A It does. This is a March 30, 2016
12 interview that Mr. Muggleston, Agent Muggleston,
13 conducted.

14 Q So turning your attention to page 2,
15 do you see the part that I called out that
16 discusses Mr. Derrick speaking with Prime over
17 the phone -- over the phone and Mr. Derrick being
18 advised that the trailer was HAZMATed and had
19 paint on it?

20 A I see that, yes.

21 Q All right. And is there a reference
22 then to Mr. Derrick calling a Rick Lee?

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- 1 A There is.
- 2 Q And who do you understand Rick Lee to
3 be?
- 4 A Rick Lee is certainly Mr. Derrick's
5 supervisor. Could be a partner in the ownership
6 of the company. I've just never had the
7 opportunity to learn, ask Mr. Lee that question.
- 8 Q And does it appear that Mr. Derrick is
9 then communicating to Mr. Lee what Prime told him
10 about the nature of the -- of the load?
- 11 A It does.
- 12 Q I'm not going to turn your attention
13 to page 4 of this exhibit. Do you have page 4 in
14 front of you?
- 15 A I have that in front of me, yes, I'm
16 sorry.
- 17 Q And you see the paragraphs that I've
18 called out regarding what Mr. Derrick believed he
19 was told regarding the nature of the HAZMAT --
20 HAZMAT situation?
- 21 A Yes.
- 22 Q And will you describe what -- what Mr.

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- 1 by the Prime truck driver?
- 2 A Yes.
- 3 Q Turning now to page 5 of that -- of
4 that section. Does that address the remnants of
5 the paint that were left on the ground following
6 B&W's efforts to clean the matter up?
- 7 A It gives us some insight into what Mr.
8 Derrick thought that they should do or he should
9 do.
- 10 Q Does that suggest that B&W was
11 intending to return to the scene to clean up the
12 scene?
- 13 A It does.
- 14 Q Okay. Is there a reference to Mr.
15 Derrick's interview with IDEQ and what Mr.
16 Derrick believed to have been the results of the
17 fire insofar as hazardous materials were
18 concerned?
- 19 A Yes, it does.
- 20 Q I'm going to direct you to page 6 of
21 this exhibit and ask you if that reflects any
22 further discussions that Mr. Derrick may have had

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- 1 Derrick communicated to Special Agent Muggleston?
- 2 A Mr. Derrick claimed that he believed
3 that he was also told that the incident was no
4 longer a HAZMAT danger anymore because everything
5 got so hot it burned up. Because it got so hot
6 and burned up, excuse me.
- 7 Q And does this also describe
8 interactions Mr. Derrick then had with the Idaho
9 state police officer on scene regarding the
10 nature of the load?
- 11 A It does.
- 12 Q And I'm sorry, I'm going to stay on
13 that same page. Okay, does that refresh your
14 recollection as to Mr. Lee's capacity at B&W?
- 15 A It does.
- 16 Q And does that reflect that Mr. Derrick
17 specifically told Rick Lee that the paint
18 material was a HAZMAT load?
- 19 A Yes.
- 20 Q Okay. And does this also confirm
21 whether Mr. Derrick had a -- was provided a copy
22 of the bill of lading, which was provided to him

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- 1 with Prime regarding the load and the hazardous
2 materials nature of it?
- 3 A Yes, he indicated that he had no
4 further discussion with the material -- with
5 Prime about the material. And he repeated that
6 the material -- he was told by Prime that the
7 material was a hazardous waste load, or a
8 hazardous load, and it was paint.
- 9 Q Did you -- did you in the course, and
10 I think you indicated this, during the course of
11 your investigation, did you speak with
12 individuals within Prime regarding this incident?
- 13 A I spoke with a number of individuals
14 within Prime regarding this incident.
- 15 Q Did you -- did you -- in the course of
16 your interactions with those individuals, did you
17 -- did any of those individuals describe to you
18 Prime's, what they understood to be Prime's
19 company philosophy?
- 20 A They did.
- 21 Q Did you hear that repeatedly?
- 22 A Everyone I talked to.

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1 Q Were they reading off a card or were
2 they -- were they saying it as if they knew it
3 from memory?
4 A They knew it from memory and it was
5 clear to me from talking to them that they lived
6 that.
7 Q The culture of Prime?
8 A For sure.
9 Q You've investigated some bad actors in
10 this business, I expect.
11 A Yes, I have.
12 Q All right, and did you come away with,
13 after talking to the various individuals involved
14 in this matter, did you come away with an
15 impression regarding the company that's at issue
16 here, Prime, Inc.?
17 A I did.
18 Q Will you share that impression?
19 A Having done this work for almost 30 --
20 almost 40 years, I've got a pretty sensitive BS
21 meter. And I don't know how many companies have,
22 you know, let me read their mission statement or

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1 recall who David Oheim is?
2 A I do.
3 Q Right, and was Mr. Oheim, as you
4 understand it, involved in some aspect of this
5 situation?
6 A He was the road assist representative
7 that coordinated the movement of materials in
8 this incident.
9 Q And you -- and Mr. Oheim, just to be
10 clear, is Mr. Oheim still employed by Prime?
11 A It's my understanding that he's not.
12 Q Okay, and was Mr. Oheim, was he
13 employed within a particular division of -- of
14 Prime?
15 A Yes, he was in the road assist aspect
16 of Prime.
17 MR. McKAY: And will you say what is
18 what you understand to be his specific, what his
19 specific role was with respect to the burnt
20 trailer and the barrels that we were -- that we
21 were talking about that ultimately resided in the
22 terminal in Salt Lake City?

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1 their ethos printed in pretty fashion on the
2 wall.
3 And after you start speaking with the
4 number of folks that I spoke to at Prime, you
5 figure out that those statements are statements
6 that reside on a wall. And that was certainly
7 not my impression with Prime.
8 I had the very clear conclusion, not
9 just suggestion, that this how they work -- they
10 do work that way. Or, number one, they go
11 somewhere else. They're not employed there.
12 Either they embrace that mission statement and
13 the culture of the entity, or they're not working
14 there anymore.
15 And I was -- I'm very confident in
16 saying that Prime impressed me more with their
17 activities and who they are than any other
18 company I have ever had the pleasure and
19 sometimes the displeasure of investigating.
20 Q I want to -- I want to clear up or go
21 to your contact with one of those Prime
22 employees, David Oheim. Do you know, do you

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1 MR. FIGUR: Your Honor, at this time
2 I'd like to ask a question in aid of objection.
3 JUDGE COUGHLIN: Okay.
4 MR. FIGUR: Did you create an IAR of
5 your conversation with Mr. Oheim?
6 THE WITNESS: I did not. This was
7 when the criminal case was ongoing.
8 MR. FIGUR: Thank you.
9 THE WITNESS: And --
10 MR. FIGUR: Did you take notes?
11 THE WITNESS: I did.
12 MR. FIGUR: Thank you.
13 JUDGE COUGHLIN: Okay.
14 MR. McKAY: You can answer.
15 THE WITNESS: I'm sorry?
16 BY MR. McKAY:
17 Q You can answer the questions. You
18 were describing his involvement in the -- Mr.
19 Oheim's involvement in the -- the burnt trailer
20 and the intact barrels that ultimately ended up
21 residing in Salt Lake.
22 A He's the one that coordinated the

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1 movement of the trailer from the B&W's towing,
2 excuse me, B&W Wreckers' yard in Mountain Home,
3 Idaho, to Salt Lake, to Prime's facility in Salt
4 Lake City, Utah.

5 Q Okay. And who did Mr. Oheim
6 communicate with, what entity did he involve to
7 facilitate that transportation of those
8 materials?

9 A Brett's Towing

10 Q And were you in court yesterday when
11 Ms. McNeill, and Ms. McNeill testified that part
12 of her penalty calculation was based in part that
13 Mr. Oheim had not communicated to Brett's Towing
14 that they would be hauling paint back to Utah?

15 A Yes.

16 Q Do you believe that to be -- have been
17 accurate testimony?

18 A No.

19 Q Why do you say that?

20 A Because there's an email communication
21 from Mr. Oheim to Brett's Towing that indicates
22 otherwise.

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1 Q Do you recall the exact language that
2 was used?

3 A I don't.

4 Q If you were to see a -- see that email
5 again, would that refresh your recollection as to
6 the exact language that was used?

7 A It would.

8 Q Will you have a look at that, what's
9 now appeared before you on the screen. Is that
10 the email that you mentioned having read?

11 A It is.

12 Q That email from Mr. Oheim to Brett's
13 Towing.

14 A Yes.

15 Q And if you -- do you see reference in
16 that email to -- to a request from Mr. Oheim to
17 Brett's Towing that Brett's Towing -- that the
18 burnt trailer has within in drums which are still
19 intact and still sitting in the trailer?

20 A Yes.

21 Q And does that refresh your memory as
22 to the precise content of that email?

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1 MR. McKAY: And --

2 MR. FIGUR: Your Honor, I'd have to
3 object again. This email is not in evidence. It
4 is not part of -- yeah, it hasn't been submitted,
5 whether at any time, pre-hearing exchange or
6 close.

7 JUDGE COUGHLIN: I'm going to overrule
8 that objection. You can answer.

9 THE WITNESS: Well, I forgot your
10 question, sir.

11 MR. McKAY: Well, I think you answered
12 it. So you saw -- you saw an email.

13 THE WITNESS: I did.

14 BY MR. McKAY:

15 Q From Mr. Oheim to Brett's Towing
16 regarding the nature of the load.

17 A Yes, I did.

18 Q And did that, to your recollection,
19 did that inform Brett's Towing that there was
20 paint in -- that they were paint barrels that
21 they were going to be hauling back to Utah?

22 A It did.

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1 A Yes, it does.

2 MR. McKAY: Will you say, now that
3 you've refreshed your recollection, will you read
4 the first two --

5 MR. FIGUR: Your Honor --

6 MR. McKAY: Two sentences
7 (Simultaneous speaking)
8 -- can I finish?

9 MR. FIGUR: I'm objecting because
10 after his recollection was refreshed, it should
11 be taken down and then he should testify.

12 JUDGE COUGHLIN: Yes, I will sustain
13 that. I mean, it's one thing to refresh his
14 recollection. Once it's refreshed, and I haven't
15 been looking at that, so that's up for the
16 witness to indicate if his memory's been
17 refreshed. And if it has, then that should be
18 removed and he should be testifying from his
19 refreshed recollection.

20 MR. FIGUR: Thank you, your Honor.

21 MR. McKAY: And as you indicated, that
22 refreshed your recollection?

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1 THE WITNESS: I did.

2 BY MR. McKAY:

3 Q What does that email say to Brett's
4 Towing about what they were going to be hauling
5 to Salt Lake City?

6 A That the drums, there are drums that
7 remain on the trailer.

8 Q And was -- was there are reference, or
9 was Mr. Oheim under the impression that that
10 paint was a -- was a water-based paint?

11 A He was, and that was mistaken.

12 Q He expressed to you that that was a
13 mistake? Did he ever express to you that that
14 was a mistake that he had made?

15 A He did.

16 Q Do you know if there were others
17 involved in this situation who made the same
18 mistake about whether water-based paint was
19 involved?

20 A Yes.

21 Q I'm going to draw your attention now
22 to Complainant's Exhibit 54. Do you have that in

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1 front of you?

2 A I do.

3 Q And does this exhibit concern an
4 interview by CID of representative of the Idaho
5 Transportation Department?

6 A Yes, there -- Agent Muggleston
7 interviewed several individuals that were
8 employed by ITD.

9 Q And with respect to -- with respect to
10 Mr. Bowden with the Idaho Transportation
11 Department, do you see where he described what
12 his understanding or impression of the materials
13 that were at issue in this matter?

14 A Yes, he also -- he also mistakenly
15 indicated that the paint material was
16 water-based, which allowed for water to be used.

17 MR. McKAY: Your Honor, I'm very
18 close, but we are now approaching the noon hour,
19 almost at the noon hour. Would you like me to
20 sort of press on, or?

21 JUDGE COUGHLIN: Yes, please. As long
22 as you're comfortable. I mean, you know, if

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1 someone needs a comfort break, that's fine. But
2 I -- we're -- I'm concerned about finishing by
3 Friday at this point. So I hate to break it to
4 you but I'm probably going to need to curtail
5 lunch a bit, just to -

6 MR. McKAY: We're fine with moving
7 on--

8 JUDGE COUGHLIN: Yeah.

9 MR. McKAY: And a shorter lunch.

10 JUDGE COUGHLIN: Okay, great. Please
11 go ahead, Mr. --

12 MR. McKAY: And I'll say, your Honor,
13 I appreciate your concern. This is our longest
14 witness.

15 JUDGE COUGHLIN: It's okay. I mean,
16 look, it's a serious case. I want both sides to
17 have the time to produce what they want. But
18 this was part of it was sort of gauging as we go
19 and if I needed to just try to ensure that we
20 can, you know, finish on time. So, but take your
21 time and ask what you need.

22 MR. McKAY: Mr. O'Neill, do you recall

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1 speaking with a Gary Broderick at Prime?

2 THE WITNESS: With who?

3 BY MR. McKAY:

4 Q Gary Broderick.

5 A I do.

6 Q Yeah, and what is Mr. -- what did you
7 understand Mr. Broderick's capacity to be?

8 A Mr. Broderick is the supervising night
9 dispatcher for Prime.

10 Q And I want to, before I move to Mr.
11 Broderick, can I just cover one point on Mr.
12 Oheim that I failed to ask you about?

13 Is it your understanding that Mr.
14 Oheim, who was with Road Assist Department, that
15 he had in his position the bill of lading at a
16 point where he contacted Brett's Towing to
17 arrange the transportation of the -- of the
18 trailer and barrels to Utah?

19 A He didn't have -- he claimed that he
20 didn't have the bill of lading in his possession.
21 And as a test, I slid a copy of the bill of
22 lading in front of him.

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1 And the smoke that poured out his
2 ears, I mean figuratively, was pretty telling to
3 me that after the question, he had virtually no
4 idea what any of the notations on the bill of
5 lading signified.

6 Q Return to Mr. Broderick. Do you --
7 you understand him to be involved in what
8 capacity at Prime? Will you say that again so
9 that we could reorient ourselves here?

10 A He's the supervisory night dispatcher
11 at Prime and the individual who took the call
12 pertaining to this incident.

13 Q Okay, does he have any background in
14 law enforcement?

15 A He does, he was -- had a very
16 interesting background. He's a manager of a
17 Sears store and a two-year police officer with
18 LAPD, which was surprising.

19 Q And was he a long-term employee for
20 Prime as you understand it?

21 A Started driving a truck in 1988,
22 started working with Prime in 1995.

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1 MR. McKAY: Okay. And what did you
2 understand from him to be, you know, his role on
3 the night of this -- night of this incident?

4 MR. FIGUR: Your Honor, once again I'd
5 like to ask a question in aid of objection.

6 JUDGE COUGHLIN: Go ahead.

7 MR. FIGUR: Did you create an IAR of
8 this conversation?

9 THE WITNESS: No, I was directed by
10 Counsel as this criminal was proceeding at the
11 time I interviewed Mr. Broderick not to provide
12 -- not to create an IAR.

13 MR. FIGUR: And so to save time on
14 cross, is it true that you did not create any
15 IARs for any interviews you conducted during the
16 criminal -- the period of EPA's criminal
17 investigation?

18 THE WITNESS: Would you repeat that
19 please? I just didn't hear you.

20 MR. FIGUR: I tell you what, I'll save
21 that for cross. But thank you.

22 THE WITNESS: Sorry.

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1 MR. FIGUR: That's okay.

2 JUDGE COUGHLIN: Okay.

3 MR. McKAY: You can answer.

4 THE WITNESS: And if you'd repeat the
5 question I'd be happy to.

6 MR. McKAY: Will you describe Mr.
7 Broderick's involvement insofar as this
8 situation, insofar as this situation on that
9 early -- during the early morning hours of
10 September 27 of 2015.

11 THE WITNESS: He directed
12 communications be sent to certain entities within
13 Prime to advise them of the -- of the incident
14 itself. Road Assist being one, Safety was the
15 second one that I recall he mentioned.

16 BY MR. McKAY:

17 Q Two distinct entities within Prime?

18 A Yes.

19 Q And did Mr. Broderick express to you
20 any concern that the matter when referred to
21 Safety and referred to Road Assist, that the
22 matter would be managed correctly by Prime?

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1 A None at all.

2 Q Did he -- you say night manager. Does
3 that mean that he was present on scene at Prime
4 and available to assist the driver in the early
5 morning hours of Sunday, September 27 of 2015?

6 A He was at Prime's facility here in
7 Springfield, that's correct.

8 MR. McKAY: Your Honor, I may be
9 finished, but may I confer with my co-counsel?

10 JUDGE COUGHLIN: Absolutely.

11 MR. McKAY: That's all I have, your
12 Honor. Thank you.

13 JUDGE COUGHLIN: All right, thank you.

14 Okay, so it's just a few minutes past
15 noon. Why don't we reconvene at 12:30 and we can
16 pick up with cross.

17 MR. FIGUR: Thank you.

18 JUDGE COUGHLIN: All right? Okay,
19 thank you all. See you soon. We'll be in recess
20 til then.

21 (Whereupon, the above-entitled matter
22 went off the record at 12:03 p.m. and resumed at

1 12:32 p.m.)
 2 JUDGE COUGHLIN: Okay. We're back
 3 from break on time. Thank you for being flexible
 4 just to try to ensure we can finish as scheduled
 5 if possible.
 6 So I think we left off where, Mr.
 7 Figur, you're going to cross-examine?
 8 MR. FIGUR: Correct, Your Honor.
 9 JUDGE COUGHLIN: Please go ahead.
 10 CROSS EXAMINATION
 11 BY MR. FIGUR:
 12 Q So, Mr. O'Neill, how are you today?
 13 A I'm well, sir. How are you?
 14 Q Doing well, thanks. You've testified
 15 before, right?
 16 A Yes, I have.
 17 Q Okay. And so you understand that on
 18 cross examination, I'll be asking questions, and
 19 unless I'm looking for specific information,
 20 you're to answer yes or no; is that correct?
 21 A Yes, sir.
 22 Q Okay. Thanks. You know, you

1 mentioned early on that when you were EPA, you
 2 had a formidable caseload, didn't you?
 3 A I had a formidable caseload?
 4 Q Yes.
 5 A Yes, I did.
 6 Q Yes. And would you say that that's
 7 true of the other agents?
 8 A It's hard to say it, but no.
 9 MR. MACKAY: I'm going to object that
 10 he said what he said to the witness. The witness
 11 can answer his question. It'd be (audio
 12 interference) and if he --
 13 (Simultaneous speaking.)
 14 JUDGE COUGHLIN: I mean, you know,
 15 some elaboration, I think, is -- is fine. And
 16 you may very well want him to elaborate on his
 17 answer or point or -- or not.
 18 MR. FIGUR: Yes, Your Honor.
 19 JUDGE COUGHLIN: Okay.
 20 MR. FIGUR: And -- and as we saw with
 21 Mr. Drake, I did not hold Mr. Drake to that at
 22 all.

1 BY MR. FIGUR:
 2 Q Were you at EPA at the same time as
 3 Mr. Muggleston?
 4 A Employed at the same time?
 5 Q Yes.
 6 A I supervised Mr. Muggleston. Yeah.
 7 Q So are you aware that Mr. Muggleston
 8 was -- had -- the training Mr. Muggleston took to
 9 be a criminal investigator?
 10 A Yes.
 11 Q And is that similar to the training
 12 that you also undertook and described earlier
 13 today?
 14 A I did.
 15 Q Thank you.
 16 MR. FIGUR: So can we please -- yeah,
 17 can we please bring up Respondent's Exhibit 17?
 18 Yeah.
 19 BY MR. FIGUR:
 20 Q And one of the first things you
 21 discussed was the disposal of the trailer. And
 22 I'd like to go to the third page, I believe,

1 please. And for the record, this exhibit has
 2 been admitted. Fourth page -- apologies.
 3 So can you please read the box at the
 4 top left-hand corner of the page?
 5 A Nonhazardous Waste Manifest.
 6 Q Thank you. And can you please go to
 7 Section -- the -- down where it says Generator on
 8 the left, can you please read Section 9, Box 1?
 9 A Box 5, sir?
 10 Q Box 1.
 11 A Box 1?
 12 Q Yes, within -- so facility phone
 13 number would be above the chart, and then
 14 underneath, it says waste shipping name and
 15 description. Can you please read Box 1
 16 underneath that?
 17 A Nonhazardous, non-regulated industrial
 18 solid waste.
 19 Q Thank you. Can you move to page 5,
 20 please? And can you please read the top corner
 21 of page 5, the box in the top corner?
 22 A Nonhazardous Waste Manifest.

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1 Q Thank you. And can you please read
2 the same Box 1, the Box 1 that's in the same
3 location?
4 A Nonhazardous, non-regulated industrial
5 solid waste.
6 Q And can you please read page 6? I
7 mean please scroll to page 6 now. Can you please
8 read the same Box 1 in page 6?
9 A Nonhazardous Waste Manifest.
10 Q Thank you. And then Box 1 under waste
11 shipping name and description, Section 9?
12 A Nonhazardous, non-regulated something
13 -- industrial solid waste. Excuse me.
14 Q Thank you. And is -- do -- do those
15 three manifests reflect the debris from the Utah
16 facility?
17 A I'm sorry. I didn't hear your
18 question, sir.
19 Q Yeah. Sorry. Let's go back up to the
20 generator name and generator site address in
21 Section 5.
22 A I'm sorry. I'm not following the --

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1 interview with?
2 A Correct.
3 Q Thank you. Can you please go to
4 Complainant's Exhibit 7, page 3? And actually, I
5 do want to spend a minute going through some more
6 general questions before I get to that and start
7 back into your testimony today. Did you ever
8 conduct civil investigations while you were with
9 EPA? Civil investigations.
10 A No. That was not something that the
11 Agency was interested in and participating in.
12 Q The Agency -- the Agency -- so is it
13 fair to say that the Agency did not want criminal
14 investigators also doing civil investigations?
15 A That's correct. It was -- they wanted
16 to keep that separate and distinct.
17 Q And while you were with the EPA, did
18 you testify in civil cases?
19 A I think not.
20 Q Did you ever calculate a civil penalty
21 for any civil RCRA violations while at EPA?
22 A Never. No.

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1 excuse me. Prime Inc., 3770 West -- 200 -- 800
2 South, Salt Lake City, Utah.
3 Q And this reflects the Respondent's
4 facility in Utah?
5 A It does.
6 Q So these manifests are the ones that
7 you represented shipped hazardous waste?
8 A It was my understanding that they were
9 -- that the trailer was going to be disposed as
10 hazardous waste notwithstanding my argument that
11 it was not.
12 Q Thank you. So you -- you testified to
13 a lot of things, and I apologize for going
14 slowly. But sometimes I'm going to spend a
15 minute looking at my notes, and then I'll get
16 back to you. You testified that Mr. Corder was
17 an Idaho state senator; is that Corder Senior or
18 Corder Junior?
19 A That's Junior.
20 Q Was the state senator?
21 A That's correct.
22 Q The same person you had the lengthy

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1 Q And you left the Agency in 2014,
2 right?
3 A That's correct. January of 2014 I
4 retired.
5 Q Shortly before they kicked you out.
6 Just kidding. Since becoming a private
7 investigator, have you worked for criminal
8 prosecutors?
9 A That's -- that's generally my lane,
10 yes.
11 Q Okay. And have you worked for civil
12 prosecutors since 2014?
13 A Yes.
14 Q Okay. Have you testified in --
15 MR. MCKAY: I'm sorry. I don't mean
16 to interrupt you --
17 MR. FIGUR: I -- I'm moving forward.
18 MR. MCKAY: No, no, no. I -- I just
19 -- I just want to clarify, are you asking is he
20 -- since he retired, is he working for criminal
21 prosecutors --
22 MR. FIGUR: Yes.

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1 MR. MCKAY: -- or do you mean defense
2 attorneys?
3 MR. FIGUR: No, criminal prosecutors.
4 THE WITNESS: For criminal
5 prosecutors?
6 MR. FIGUR: Yes. That's what I said.
7 THE WITNESS: I misheard you. No.
8 I don't -- I -- I don't work for criminal
9 prosecutors. I work for defense counsel.
10 MR. FIGUR: Yeah. No. Thank you.
11 I'd much rather have him correct it. Thank you.
12 THE WITNESS: Sorry about that.
13 MR. FIGUR: Oh, no worries. No
14 worries. And I know I sometimes speak fast and
15 not loud enough, so just tell me.
16 BY MR. FIGUR:
17 Q Have you testified in matters for your
18 clients since you left EPA?
19 A No.
20 Q So this is the first time since you've
21 left EPA you're testifying?
22 A That's correct.

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1 A No. That wasn't the Agency's -- that
2 wasn't the Division's --
3 Q Actually -- I'm sorry. I'm -- I'm
4 asking about your practice when you were at the
5 Agency, not -- not policy guidance, but what you
6 did in light of policy guidance. But what you
7 did.
8 A I did not record every interview of
9 every subject during the time that I worked at
10 EPA.
11 Q And when you did record, did you
12 always create an IAR?
13 A Yes.
14 Q Okay. And generally, when you were a
15 federal investigator, did you try to schedule
16 interviews as quickly as possible after the
17 events under the circumstances?
18 A Yes.
19 Q And is one reason because memories
20 tend -- more likely than not tend to fade with
21 the passage of time?
22 A That's one reason.

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1 Q Okay. Are you being paid to testify
2 today?
3 A Yes. Of course, I'm being paid a
4 normal investigative rate. I don't have a -- a
5 -- a rate that I charge for testimony, no.
6 Q So, Mr. O'Neill, while at EPA, it was
7 your investigative best practice to record
8 interviews as you were conducting them?
9 A That's -- that's not actually correct.
10 The -- the Agency gave broad discretion on what
11 sort of recordings to do. I was a huge advocate
12 and had influence on national policy decisions
13 with respect to recording. As a result of some
14 of the experiences that I had in Internal Affairs
15 at the Bureau of Land Management, I highly
16 advocated that technique.
17 Q And when you did record interviews at
18 EPA, did you create IARs from them?
19 A Yes.
20 Q Every time? How about I qualify if
21 you thought the interview was valuable -- every
22 time you thought the interview had some value?

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1 Q And is another because if interviewees
2 know there is an investigation, it might affect
3 their answers?
4 A Could you repeat your question,
5 please?
6 Q Sure. Is another reason that you try
7 to schedule interviews as quickly as possible
8 under the circumstances -- and this is while you
9 were at the EPA -- because if interviewees know
10 that there is an existing investigation, it might
11 affect the answers to the questions you ask in
12 your interview?
13 A Yes.
14 Q Okay. And now that you're a private
15 investigator, do you still record interviews?
16 A I record every investigative contact
17 that I have now. I'm convinced that the best
18 evidence-gathering techniques are through
19 recordings, and that's, of course, what I do now.
20 Q Did you -- and do you create an IAR
21 for each recorded interview?
22 A No.

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1 Q Okay. Do you make notes of each
2 recorded interview so that you can refer to them
3 later, for example?

4 A Sorry. You're asking if I create
5 notes while I record?

6 Q No, after -- so okay.
7 Contemporaneously or afterwards, do you make
8 notes about what's in the recorded interview?

9 A I don't make notes. I -- I generally
10 write -- I -- I don't know if I've ever done a
11 recording that I've not created an -- a -- a
12 report.

13 Q Okay. But in this case here, you
14 testified earlier that because you were directed
15 by Counsel, you did not create IARs for the
16 interviews you conducted as part of this
17 investigation, correct?

18 A That's correct. Prime employees.

19 Q Right. During that time, did you
20 record those interviews?

21 A No.

22 Q Did you make notes about what you

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1 heard in those interviews?

2 A I did.

3 Q And did you review those notes before

4 --

5 (Simultaneous speaking.)

6 THE WITNESS: I reviewed those notes
7 and provided summaries of those notes to Mr.
8 McKay as privileged documents.

9 BY MR. FIGUR:

10 Q Thank you. Would you be able to
11 generate a list of all the people that you
12 interviewed that worked at Prime for this case?
13 I'm not asking for it. I'm just asking whether
14 you'd be able to generate such a list.

15 A From memory?

16 Q No. No, I'm not asking for the list.
17 I'm just asking whether you could.

18 A Yes.

19 Q Okay -- going back to your file. Have
20 you reviewed the exhibits that EPA proposed to
21 introduce into evidence in this matter in
22 preparation?

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1 A Yes.

2 Q Okay. And have you reviewed the --
3 the exhibits your client, Prime -- or your
4 client, Mr. McKay; sorry -- has proposed to
5 introduce into evidence in this matter?

6 A Yes.

7 Q Are there any records that you created
8 that are not being introduced -- to your
9 knowledge, are there any records that are created
10 by you that are not being introduced into
11 evidence in this case?

12 MR. MCKAY: I'm going to object. I --
13 I don't understand the relevance and the
14 probativeness of that question to -- to this
15 proceeding.

16 JUDGE COUGHLIN: Can you respond?

17 MR. FIGUR: Sure. Your Honor, I'm
18 just trying to figure out what -- what part of
19 the investigation is being presented to the
20 Court for consideration. Is it the whole
21 investigation? Is it the pieces that they
22 selected? That's -- that's really what I'm

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1 getting towards.

2 JUDGE COUGHLIN: Well, I -- I guess I
3 would ask how that's relevant to my penalty
4 assessment and not my penalty evaluation because,
5 you know, once again, I've got a very narrow
6 focus, and I don't --

7 MR. FIGUR: Sure. Thank you, Your
8 Honor. So, essentially, the -- where we stand
9 now positionally is -- is that we've put on our
10 penalty case, and we've explained what was
11 considered for the penalty. One of the primary
12 defenses that they've raised is that something
13 that we -- that the night of the fire, which we
14 gave them a pass on before, is pivotal to their
15 entire penalty defense.

16 And we've spent a lot of time here
17 talking about the night of the fire and the
18 implications even away from the trailer. But if
19 an investigation was conducted about all of that
20 and it relates to their defense and it's not all
21 in, then --

22 JUDGE COUGHLIN: Then I can't consider

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1 it.
 2 MR. FIGUR: Correct.
 3 JUDGE COUGHLIN: So, I mean, I can't
 4 consider what isn't here.
 5 MR. FIGUR: Correct.
 6 JUDGE COUGHLIN: So --
 7 MR. FIGUR: Okay. Thank you.
 8 JUDGE COUGHLIN: I mean, you know, I
 9 -- I'm -- I'm confined -- I'm not -- I'm not
 10 going to engage in speculation about what -- what
 11 things might contain and what else might be out
 12 there. I'm confined to the record before me, the
 13 evidentiary record, testimony --
 14 MR. FIGUR: Yeah.
 15 JUDGE COUGHLIN: -- documents I've
 16 admitted. And that's it.
 17 MR. FIGUR: Thank you, Your Honor, for
 18 that clarification.
 19 JUDGE COUGHLIN: Okay. All right. So
 20 I'm going to sustain the objection. Please
 21 proceed.
 22 MR. FIGUR: I'll move on.

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1 preliminary exchange a bunch of IARs that deal
 2 with the night of the fire and their
 3 investigation into it and argued that that has
 4 significance in these proceedings. So to -- to
 5 -- to say that it -- it -- to -- to -- to put it
 6 in those terms is just -- it's not fair.
 7 JUDGE COUGHLIN: I -- I understand.
 8 And I -- I think, to confirm for my own
 9 understanding, where any of that even comes into
 10 play, if I'm following, is with regard to
 11 calculation of the multi-day penalty, right?
 12 MR. FIGUR: That is --
 13 JUDGE COUGHLIN: When you -- the --
 14 the term -- the -- the phrase that you said, a
 15 pass for the night of the fire -- what I
 16 recollect, which may be inaccurate, was Ms.
 17 McNeill's testimony about when the -- when the
 18 time started to accrue and that things didn't
 19 count the night of the incident. It was the day
 20 after and then on.
 21 Is that the context for which you're
 22 making that -- you're making that -- referring to

201

1 JUDGE COUGHLIN: Okay.
 2 MR. FIGUR: And I really will try to
 3 move quickly, but there was a lot covered.
 4 JUDGE COUGHLIN: No, no. I -- I don't
 5 -- that's not to curtail your --
 6 MR. FIGUR: No --
 7 (Simultaneous speaking.)
 8 JUDGE COUGHLIN: I realize that the
 9 witness testified for several hours, so cover all
 10 you need. I'm just trying to keep the focus
 11 where I need to keep it.
 12 MR. FIGUR: Yes. Absolutely. And --
 13 and, Your Honor, that's part of our problem, of
 14 course, is that we've explained that we gave him
 15 a pass for the night of the fire. They've
 16 compelled us to look into it more deeply. So we
 17 are -- we have looked into it more deeply, and we
 18 are going to explore it. But --
 19 MR. MCKAY: Can I respond to that?
 20 And that's not fair. It's not fair to say they
 21 give us a pass for the night of the fire when
 22 they introduced in their Complainant's

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1 that phrase, or is that meaningful in some other
 2 context of penalty?
 3 MR. FIGUR: It's meaningful to the
 4 entire penalty calculation, Your Honor. Our
 5 position in -- in -- in the penalty was
 6 calculated with -- without regard to confusion
 7 the night of the fire.
 8 JUDGE COUGHLIN: Okay.
 9 MR. FIGUR: They -- they raised the
 10 night of the fire, and you asked to -- to hear
 11 more about the night of the fire. So we're
 12 prepared to talk about the night of the fire.
 13 JUDGE COUGHLIN: And you're welcome
 14 to. I mean, I -- you know, I guess I would just
 15 say cover what you really feel you need to --
 16 MR. FIGUR: Yes.
 17 JUDGE COUGHLIN: -- but appreciate the
 18 fact that I'm really just focused on what amount
 19 of penalty, if any, is appropriate to assess for
 20 the five counts of violations that have been
 21 determined -- for which the Respondent has been
 22 determined to be liable. That's --

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1 (Simultaneous speaking.)
 2 JUDGE COUGHLIN: -- that's really all
 3 I'm -- at the end of the day, that's all I'm
 4 really going to be focusing on --
 5 (Simultaneous speaking.)
 6 JUDGE COUGHLIN: -- none of these
 7 other kind of extraneous points that, out of
 8 courtesy to all of you, may be important for
 9 various reasons but are not important to me if
 10 it's not related to my penalty analysis.
 11 MR. FIGUR: Understood. And it's our
 12 understanding that Respondent wants to point
 13 heavily towards the night of the fire for -- for
 14 consideration for all of the counts. So --
 15 JUDGE COUGHLIN: And delve into it as
 16 you need.
 17 MR. FIGUR: Okay. Thank you.
 18 Is this -- I apologize. Can you
 19 please keep going down to the timeline here? I
 20 think I was using page numbers. Yes. Keep
 21 going. No, no. Sorry. What is this one? I'm
 22 sorry, Your Honor.

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1 Honor? I'm sorry. I'm going to leave that one
 2 alone. Can we move to page 4? Oh. Let's go to
 3 page 7.
 4 BY MR. FIGUR:
 5 Q So you stated that you know Mr.
 6 Reddinger, is it? Reddinger? Reddinger. And
 7 did you interview Mr. Reddinger?
 8 A I did not.
 9 Q Okay. Moving to page 8 -- yeah.
 10 Thank you. And you mentioned that Mr. Bryant,
 11 Dan Bryant, from ITD District 3 was notified,
 12 correct?
 13 A He's the HAZMAT representative for the
 14 state, and he acknowledged, it says.
 15 Q That notification. Correct.
 16 A Acknowledged notification.
 17 Q Was Mr. Bryant ever on scene?
 18 A Not -- not that I know of.
 19 Q Okay. And was there any evidence that
 20 you saw that he was ever consulted again after
 21 that point?
 22 A He attended the -- the meeting with

205

1 JUDGE COUGHLIN: It's okay.
 2 MR. FIGUR: Okay. Yeah. Let's stay
 3 with page 3. Apologies.
 4 JUDGE COUGHLIN: Okay. So we're on CX
 5 7, page 3?
 6 MR. FIGUR: Yes, and I'm again trying
 7 to find the language that I could have sworn I'd
 8 annotated. And I apologize. Okay. Yeah. Can
 9 you please go down to the bottom of the page?
 10 Thank you. That's where it is. So we're on CX
 11 07, page 3.
 12 BY MR. FIGUR:
 13 Q You -- you stated that this is a
 14 misrepresentation in Ms. -- Ms. Vicente's report;
 15 is that correct?
 16 A I did.
 17 Q And --
 18 A I didn't say a misrepresentation. I
 19 said it's misleading.
 20 Q I apologize. I wrote down
 21 misrepresentation.
 22 MR. FIGUR: And -- you know what, Your

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1 Idaho DEQ, I understand from Carl Vaughn's
 2 statements.
 3 Q Okay. But how about the night of the
 4 fire?
 5 A I -- I don't know that.
 6 Q Okay. We'll keep going. Let's stay
 7 on page 8 and go down to the 4:03 time stamp.
 8 And you stated that RRT are experts and -- and
 9 they know hazardous materials.
 10 A They're the specialized team that gets
 11 called out by fire departments.
 12 Q Can you please read from above where
 13 you read before? And start with Dan will check,
 14 please.
 15 A Dan will check into the closest
 16 backhoe for RRT 4 to use if needed to get the
 17 paint out of the ditch, comma, and he advised
 18 once the fumes and smoke went down, comma, the
 19 other side of the interstate could be opened back
 20 up.
 21 Q Thank you. So what were -- what --
 22 what does this indicate to you that they were

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1 discussing at that moment?
 2 A I--
 3 Q Go ahead and read what you read before
 4 in -- in the context of the sentence you just
 5 finished.
 6 A Shall I just continue to read, sir?
 7 Q Please. Please.
 8 A RRT also agreed, comma, there
 9 shouldn't be any problems with toxicity, comma,
 10 so once the visual hazards are gone, comma, it
 11 should be safe to open at least half the
 12 interstate. Period.
 13 Q So would it be fair to guess that it
 14 was the other half of the interstate that was
 15 being opened back up?
 16 A I think they closed the entire
 17 interstate both directions.
 18 Q And at this -- and at this point, does
 19 it seem as though they're talking about when they
 20 can open up the other side of the interstate?
 21 A That's the way I would interpret that.
 22 Q Thanks. And -- and just a very quick

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1 Q And is 9/27 the night of the fire?
 2 A 9/27 is the night of the fire.
 3 Q Thank you.
 4 MR. FIGUR: Can you please bring up
 5 Respondent's Exhibit -- apologies -- 3, page 3?
 6 BY MR. FIGUR:
 7 Q And this is a similar -- this is a
 8 similar chronology that you reviewed, and you
 9 noted that this one is different than the one
 10 provided in Complainant's prehearing exchange,
 11 correct?
 12 A That's correct.
 13 Q Can you please scroll to the bottom?
 14 And can you please read the print date?
 15 A 9/12/2016, 5:45:35 p.m.
 16 Q So isn't it possible that over the
 17 course of a year, different information might
 18 have been added from the night of the fire to a
 19 year later?
 20 A I suppose it's possible.
 21 Q Thank you. Okay. Let's stay on this
 22 exhibit and go back up to the 6:56 a.m. time

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1 cleanup of -- of a tiny point. BHS, Bureau of
 2 Homeland Security -- is that a federal agency or
 3 a state agency?
 4 A State agency.
 5 Q Thank you.
 6 A They're actually a division -- excuse
 7 me, a bureau -- contained within one of the
 8 larger state offices. They're not a stand-alone
 9 department.
 10 Q Thank you. I'm going to try to pull
 11 a couple of things together quickly.
 12 MR. FIGUR: Can we please go to the
 13 bottom of page 9? And can you please read --
 14 well, can you scroll up just enough so that it's
 15 clear that we're seeing everything? Sorry. I'm
 16 sorry. Just scroll to the bottom of the page so
 17 that we can see the entire bottom of the page.
 18 Thank you.
 19 BY MR. FIGUR:
 20 Q Can you please read on the right side
 21 the print stamp there? Sorry, Mr. O'Neill.
 22 A 9/27/2015, 6:39:38 a.m.

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1 stamp. And, Mr. O'Neill, are you aware of the
 2 approximate time that Sergeant Bonner arrived at
 3 the scene?
 4 A Idaho State Police didn't provide a
 5 response to the public records request, so we
 6 don't know what his arrival-on-scene time was.
 7 MR. FIGUR: It's in the record
 8 somewhere, Your Honor. But for the moment, I'll
 9 just note that I can show that it's approximately
 10 -- it's 4:59 a.m.
 11 JUDGE COUGHLIN: Okay.
 12 BY MR. FIGUR:
 13 Q Is it fair to say that it's almost
 14 7:00 a.m. that morning that Sergeant Bonner was
 15 concerned about -- well, what was Sergeant Bonner
 16 concerned about at 6:56 a.m. as reflected in
 17 this?
 18 A It says he called asking if B&W Towing
 19 could clean up since that's who'd have come that
 20 the semi company had contacted.
 21 Q Okay. Thank you. And at what time --
 22 and at what time was the conference that -- that

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1 -- that released RRT 4? It's -- it's on the
 2 screen.
 3 A I'm sorry?
 4 Q It -- it -- the answer's on the
 5 screen.
 6 A Oh. Here it is. 6:25, Darrell
 7 Reddinger advising RRT 4 is on scene, and there's
 8 no actively at 6:25 a.m.
 9 Q So -- thanks. So -- so almost a half
 10 hour later, Sergeant Bonner, who was on that call
 11 at 6:25, is still concerned about making sure
 12 that somebody with HAZMAT credentials is going to
 13 be there; is that correct?
 14 A It appears that way, yes.
 15 Q Thank you. So that call didn't lead
 16 anybody to think -- or didn't lead Sergeant
 17 Bonner to think that the situation was no longer
 18 a HAZMAT situation, did it? The 6:25 bridge
 19 call?
 20 A I don't know that I understand what
 21 your question is, sir.
 22 Q Okay. Let me get you there. Sergeant

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1 Bonner was on the call at 6:25.
 2 A That's correct.
 3 Q Regional Response Team 4 was released
 4 at the end of that call.
 5 A Correct.
 6 Q At the end of the call, it also
 7 remained a Level 2, which I don't believe you
 8 explained when you were on direct -- when you
 9 were on direct examination. You didn't know what
 10 Level 2 means.
 11 A I -- I -- I don't know what the
 12 state's criteria for Level 2 is.
 13 Q But certainly, 6:30 is Level 2, and
 14 6:56, Sergeant Bonner is still concerned that
 15 they need a HAZMAT team out there, correct?
 16 A Well, he's calling to ask if B&W
 17 Towing could clean up.
 18 Q Correct. And why is he asking whether
 19 B&W can clean up?
 20 MR. MCKAY: Well, I -- I would just
 21 object. It would call for him to speculate as to
 22 why --

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1 (Simultaneous speaking.)
 2 MR. FIGUR: Your Honor, it's -- it's
 3 --it's right here. Okay. You know what, Your
 4 Honor --
 5 JUDGE COUGHLIN: Or -- or if you
 6 wanted to rephrase --
 7 MR. FIGUR: I will.
 8 JUDGE COUGHLIN: I'll -- I'll sustain
 9 the objection. You can rephrase the question.
 10 MR. FIGUR: I'm -- I'm -- what I'm
 11 going to do is I may come back to this in a
 12 little while because I feel like we're going to
 13 -- we're going to bog down in a few things, and
 14 following his testimony is a little rough.
 15 BY MR. FIGUR:
 16 Q All right. So I'm going to try a
 17 slightly different approach, Mr. O'Neill. We're
 18 going to move to the night of the fire, and we're
 19 going to go through it differently than you went
 20 through it in your testimony.
 21 So, as you noted, Chief Janousek in
 22 the King Hill Rural Fire Department showed up

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1 pretty fast after the alarm, correct?
 2 A I did.
 3 Q And Chief Janousek was the initial
 4 incident commander, wasn't he?
 5 A That's correct.
 6 Q And -- and you also tried to contact
 7 B&W employees three times but were unable to,
 8 correct?
 9 A That's correct.
 10 Q And that's because -- you tried to
 11 contact them because B&W's active part in the
 12 story also starts in the early morning hours of
 13 the -- September 27th, doesn't it?
 14 A I didn't hear the last part of your
 15 question, so I'm --
 16 Q Yeah. Sorry.
 17 A -- very sorry.
 18 Q No, no. I -- I speak --
 19 A Twenty-five years of firearms exposure
 20 has done that to me.
 21 Q Yeah. No, no --
 22 JUDGE COUGHLIN: It's been a recurring

216

1 problem in the courtroom, sir.
 2 MR. FIGUR: Yeah, and it is -- it is
 3 partly my fault, Your Honor. I understand.
 4 JUDGE COUGHLIN: Well, actually, I
 5 wasn't directing it at you.
 6 MR. FIGUR: No -- thank you.
 7 JUDGE COUGHLIN: Just generally, kind
 8 of the acoustics, and sometimes it's just been
 9 hard to hear throughout this process.
 10 MR. FIGUR: All right.
 11 JUDGE COUGHLIN: Ms. Tribbett, you're
 12 cranked up all the way, right? Okay. On the
 13 puck. now I know what it's called. The puck.
 14 BY MR. FIGUR:
 15 Q So, during the course of the fire,
 16 there were a number of people on scene. You've
 17 already testified to that, correct?
 18 A That's correct.
 19 Q So the fire department was there.
 20 A That's correct.
 21 Q Elmore County Sheriffs were there.
 22 A Yes.

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1 Idaho State Patrol?
 2 A I did not.
 3 Q He was the second incident commander
 4 during the incident, correct?
 5 A That's correct.
 6 Q Okay. Did you have any conversations
 7 with Mr. -- Sergeant Bonner?
 8 A Regarding this matter, no.
 9 Q Okay. Did you interview or have
 10 conversations with anyone from the Regional
 11 Response Team 4?
 12 A No.
 13 Q Okay. Did you interview or have
 14 conversations with Mr. Bowden from ITD?
 15 A With Mr. --
 16 Q Bowden.
 17 A I did not.
 18 Q And --
 19 A I -- I take that back. He could have
 20 been -- he could have been the -- the
 21 gray-haired, bearded gentleman who was
 22 interjecting stuff as I was talking to -- to Carl

217

1 Q Idaho Transportation Department was
 2 there.
 3 A They were there after the fire for
 4 sure, but I don't -- I don't know if they were
 5 there when the fire was actually in progress.
 6 Q Okay. We'll get to that in a minute.
 7 Thank you. And then Idaho State Patrol was
 8 there, but Sergeant Bonner showed up later,
 9 correct?
 10 A That's correct.
 11 Q Okay. Did you have -- and then, of
 12 course, Mr. Drake and Ms. Duck were there. Did
 13 you have -- interview or have conversations with
 14 either of them?
 15 A With Mr. Drake and Ms. Duck?
 16 Q Yeah.
 17 A I did.
 18 Q Okay. And of course, Mr. Drake has
 19 already testified, correct?
 20 A That's correct.
 21 Q Did you have -- did you interview or
 22 have conversations with Sergeant Bonner of the

219

1 Vaughn. I -- I'm not sure of that man's
 2 identity.
 3 Q Fair enough. That wasn't an official
 4 interview, though, was it?
 5 A No. I didn't specifically interview
 6 him.
 7 Q But you shared his -- his opinions in
 8 your IAR.
 9 A Yes.
 10 Q Okay. But we didn't -- we -- nobody
 11 knows whether that's Mr. Bowden or not?
 12 A I have no idea.
 13 Q Okay. And did you interview or have
 14 a conversation with Mr. Myers of ITD?
 15 A I did not.
 16 Q Okay.
 17 A I don't -- again, I don't know that
 18 individual's name. I don't know if it's Mr.
 19 Bowden, Mr. Myers, Mr. Jones -- fill in the
 20 blank. I have no idea who that individual was.
 21 Q Understood. And frankly, the comments
 22 in there, therefore, couldn't be attributed to

220

1 either one of them, correct?
 2 A Correct.
 3 Q Okay.
 4 A Unidentified white male.
 5 Q With a lot of hair, I believe?
 6 A Excuse me?
 7 Q I thought you said with a lot of hair
 8 or something. But you did interview Mr. Bowden's
 9 and Mr. Myers' supervisor, Mr. Vaughn, correct?
 10 A That's correct.
 11 Q And you -- and you created the IAR --
 12 A I did.
 13 Q -- for that matter that's now Exhibit
 14 11?
 15 A That's correct.
 16 Q And Mr. Vaughn was on vacation the
 17 night of the fire, correct?
 18 A That's what you told me.
 19 Q Okay. So a driver for Corder or CWE,
 20 Mr. McCallum, was also on scene for part of the
 21 cleanup, wasn't he?
 22 A I'm sorry?

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1 A That's correct.
 2 Q Okay. So you have read our exhibits
 3 in preparation for testimony?
 4 A I've reviewed them.
 5 Q So -- and you didn't interview Mr.
 6 Reddinger of RRT 4?
 7 A I did not.
 8 Q Okay. Are you aware that Mr.
 9 Reddinger has told EPA that he didn't recall
 10 talking to Prime or Mr. Drake about whether the
 11 materials were HAZMAT or not?
 12 A I don't -- I don't recall --
 13 Q Okay.
 14 A -- seeing that.
 15 Q Do you know that Mr. Bowden, who was
 16 there near the start of the fire -- and we can
 17 show that -- never -- said he never discussed --
 18 and this is ITD. He said he never discussed
 19 whether the materials were HAZMAT with Prime or
 20 Mr. Drake?
 21 A I'm not -- I have not reviewed these
 22 -- these exhibits in enough detail to pick apart

221

1 Q A driver for Corder or CWE, Mr.
 2 McCallum, was also there on the scene during the
 3 cleanup, correct?
 4 A We learned that through -- through an
 5 IAR. I think that was likely provided by the
 6 civil side to Mr. McKay's office.
 7 Q We do have an IAR of Mr. McCallum,
 8 possibly two. Did you conduct interviews or have
 9 conversations with anyone else who was at the
 10 fire scene on September 27th, 2015?
 11 A Not that I recall. My interviews of
 12 those folks were Chief Janousek -- Chief
 13 Janousek, I think, is the only person that I
 14 interviewed who was there, sir.
 15 Q And you said you've read our exhibits
 16 in preparation for testimony today.
 17 A I need to correct my last answer. Of
 18 course, I interviewed Mr. Drake and Ms. Duck.
 19 Q Okay.
 20 A I apologize.
 21 Q And -- and since Mr. Drake has
 22 testified, we'll leave that one be.

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1 the -- the details that are contained therein.
 2 I'm sorry.
 3 Q And you can keep answering that,
 4 although you might want to shorten it a little.
 5 A I'm sorry?
 6 Q You might want to shorten it a little
 7 bit, but you can keep answering that. And -- and
 8 are you aware that Mr. Bowden left before B&W
 9 arrived?
 10 A I'm not.
 11 Q Okay. And are you aware that Mr.
 12 Myers of ITD said he never talked about hazardous
 13 waste or hazardous -- HAZMAT to Sandy Derrick of
 14 B&W?
 15 A Again, I -- I don't know those
 16 details.
 17 Q Okay. Are you aware that starting
 18 sometime after 5:00 a.m. -- and I realize we've
 19 already started touching on this -- that Sergeant
 20 Bonner repeatedly told Mr. Drake that the site
 21 was a HAZMAT site and needed to be treated as
 22 such?

1 A I -- I -- I don't know that. I -- I
 2 was under the distinct impression that Mr. Drake
 3 told -- told Sergeant Bonner that, this is my
 4 bill of lading. It's a HAZMAT load, and it's
 5 paint.
 6 Q That's right. He -- well, he -- we
 7 don't know whether he said that, but I'm asking
 8 what Mr. Bonner said to him after the fire was
 9 put out because if you remember, Sergeant Bonner
 10 arrived at 5:00 a.m. when the fire was already
 11 out. So I'm asking about what Sergeant Bonner
 12 told Mr. Drake.
 13 A I -- I -- I don't know anything about
 14 what their conversation was other than what Mr.
 15 Drake told me his conversation was with Mr.
 16 Bonner.
 17 Q Are you aware that Sergeant Bonner
 18 told B&W they needed HAZMAT credentials to do
 19 the cleanup?
 20 A Generally, yes.
 21 Q So let's recap. Regional Response
 22 Team 4 didn't call Prime in Springfield to tell

1 responsibility of the spiller. Period.
 2 Q So, with regard to why RRT 4 was
 3 released, does this explain anything?
 4 A There was nothing to mitigate.
 5 Q And can you explain what mitigation
 6 would mean as opposed to cleanup?
 7 A I don't think that I know what Mr.
 8 Reddinger means. My -- my definition of mitigate
 9 would be there's no -- there's no fire that's
 10 active, and they don't need to mitigate that
 11 emergency.
 12 Q Okay. Thanks. We'll -- we'll --
 13 we'll move on.
 14 A I'm sorry?
 15 Q We'll move on. When asked -- can you
 16 please read the last full paragraph that isn't
 17 one line?
 18 A The last full paragraph --
 19 Q Oh. I'm sorry. Yeah. Go ahead and
 20 -- and read, yeah, the last full paragraph. And
 21 then I'll have you read one more section.
 22 A When asked if he had any conversations

1 them it wasn't HAZMAT after the fire was over --
 2 Idaho Transportation District. Did they?
 3 MR. MCKAY: I'm going to object to the
 4 foundation.
 5 MR. FIGUR: I mean, Your Honor, I can
 6 show you -- show all of this.
 7 JUDGE COUGHLIN: Okay. All right.
 8 I'll sustain the objection. If you want to just
 9 pull up the -- pull up the exhibit.
 10 MR. FIGUR: Okay. Can you -- so we're
 11 going to be jumping around. Can you please pull
 12 up Complainant's Exhibit 22, page 2?
 13 BY MR. FIGUR:
 14 Q Can you start -- and since -- since
 15 your testimony was a little bit different, can
 16 you please read the first two paragraphs first?
 17 A Since there was nothing for RRT 4 to
 18 mitigate at the scene, comma, the site turned
 19 into a cleanup versus an emergency phase.
 20 Period. Captain Reddinger stated the RRT is not
 21 tasked do -- to do any hazardous material
 22 cleanup. period. The cleanup is the

1 with the trucking company, comma, Prime, comma,
 2 Incorporated, period, comma, Captain Reddinger
 3 could not recall having any conversations with
 4 the truck driver or anyone from Prime. Period.
 5 Captain Reddinger called Sergeant -- recalled
 6 Sergeant Colin Bonner, comma, Commercial Vehicle
 7 Safety Hazardous Materials Division, comma, Idaho
 8 State Capitol Police ISP, paren, comma, Meridian,
 9 Idaho, was the one speaking to the truck driver
 10 about obtaining a cleanup company.
 11 Q Thank you. And just to keep the
 12 record clean, I think it's okay -- maybe
 13 parentheses, but it's okay, as far as I'm
 14 concerned, for you to not worry about reading
 15 periods and commas, et cetera. Thank you.
 16 A Okay.
 17 Q And then can you go on and read the
 18 next sentence/paragraph, please?
 19 A Captain Reddinger said he never told
 20 anyone that the area was nonhazardous.
 21 Q Thank you. And can you please bring
 22 up Complainant's Exhibit 54? And we'll start at

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1 page 2. First, can you read the -- one, two,
 2 three, four -- fifth full sentence, please?
 3 A Fifth full sentence?
 4 Q Full -- full paragraph -- sorry --
 5 which is a (audio interference)
 6 A Begin with Bowden, sir?
 7 Q Yes. Thank you.
 8 A Bowden claimed he left the scene
 9 before the cleanup company, B&W Wrecking, arrived
 10 on the scene.
 11 Q Thank you. So Mr. Bowden couldn't
 12 have spoken with B&W Wrecking, correct?
 13 A Couldn't have spoken to whom?
 14 Q To B&W.
 15 (No audible response.)
 16 BY MR. FIGUR:
 17 Q Okay. And this is --
 18 JUDGE COUGHLIN: One second. I don't
 19 think I got a response to -- to your question.
 20 Did -- did you respond whether --
 21 could you repeat your last question? I didn't --
 22 I didn't hear an audible response, Mr. Figur. I

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1 is the best evidence of statements to refer to.
 2 I -- I'm sorry.
 3 Q Okay.
 4 MR. FIGUR: Can you please go to page
 5 3? Can you please go -- yeah. There you go.
 6 One, two, three, four, five.
 7 BY MR. FIGUR:
 8 Q Can you please read from Myers and
 9 Bowden stated?
 10 A Bowden stated he left the scene before
 11 B&W arrived on scene.
 12 Q And then please keep going.
 13 A Myers said he had conversations with
 14 Sandy Derrick from B&W, but they did not discuss
 15 anything about the incident.
 16 Q Okay.
 17 A Continue, sir?
 18 Q Yes, this last sentence. Thank you.
 19 A Myers and Bowden said they did not
 20 have any conversations with anyone about
 21 hazardous materials.
 22 Q Thank you.

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1 want to make sure it's captured on the record.
 2 MR. FIGUR: Thank you, Your Honor.
 3 BY MR. FIGUR:
 4 Q So Mr. Bowden of ITD, who was there,
 5 could not have spoken to B&W, correct?
 6 A Can you tell me the date of this
 7 interview by Mr. -- Agent Mugleston, please?
 8 Q Sure. Please scroll to the top.
 9 A February 24th? I -- I'm not sure Mr.
 10 Bowden is accurate. I don't know, but -- what
 11 his memory is. I mean, this is a few months
 12 after September 27th. I -- I -- I can't comment
 13 on his recollection of his presence or -- or --
 14 or lack thereof. I don't know.
 15 Q But it's fair to say that that's what
 16 he said in February?
 17 A Well, it's fair --
 18 Q That -- that he left before B&W
 19 arrived?
 20 A So it's fair to say that that's what's
 21 written in this IAR. This doesn't appear to be a
 22 recorded IAR, and I don't have a recording, which

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1 MR. FIGUR: And can you please go to
 2 Respondent's Exhibit 8, page 7?
 3 BY MR. FIGUR:
 4 Q Okay. Second paragraph, top of the
 5 page there. Can you read the second sentence in
 6 the second paragraph, starting Chief Janousek?
 7 A Chief Janousek stated that he did not
 8 have any contact with any of Prime's
 9 representatives other than the driver in
 10 connection with the incident.
 11 Q And --
 12 A And he's referring to the night of the
 13 incident, sir.
 14 Q Correct.
 15 MR. FIGUR: So can you please go to
 16 Complainant's Exhibit 18, page 2? Okay. Thank
 17 you. Let's -- okay. Thanks. Hold on. Okay.
 18 BY MR. FIGUR:
 19 Q So, from what you can see, I believe,
 20 the second paragraph from the bottom -- can you
 21 please read that?
 22 A When KHRFD was preparing to leave the

1 site, B&W Wrecker had arrived at the scene to
 2 begin the cleanup of the site.
 3 Q Apologies. Can you please read down
 4 two paragraphs from there, when asked?
 5 A When asked if someone at Prime will
 6 say the incident commander gave the permission to
 7 do a non-HAZMAT cleanup, Chief -- Fire Chief
 8 Janousek said he never told anyone, including
 9 Prime truck driver -- the Prime truck driver or
 10 anyone from B&W the waste was nonhazardous and
 11 that the waste did not need to be regulated.
 12 Fire Chief Janousek claimed he did not speak to
 13 anyone from Prime or B&W about the incident.
 14 Q Okay. Thank you. Let's turn to
 15 Prime's employees at the headquarters who were
 16 involved on the night of the 27th, and I'll try
 17 to be quick. You're aware that Mr. Drake calls
 18 Prime's road assistance around 2:40 a.m. Idaho
 19 time, correct?
 20 A I think he talked to dispatch. I --
 21 I think I testified that he spoke with night --
 22 night shift supervisor Gary Broderick at

1 Drake had gotten the truck separated from the
 2 trailer, there was a bunch of, I think, Qualcomm
 3 communications, and I believe that there was a
 4 number of phone calls back and forth between Mr.
 5 Drake and Prime that evening.
 6 Q And so other persons than Mr.
 7 Broderick would have been speaking to Mr. Drake.
 8 To your knowledge, did anyone at Prime speak to
 9 Chief Janousek after your interviews -- based on
 10 your interviews?
 11 A I don't -- I don't know that.
 12 Q Did anyone at Prime that night speak
 13 to either representative of ITD, Mr. Bowden or
 14 Mr. Myers?
 15 A I -- I don't know that either.
 16 Q Did anyone from Prime speak to Elmore
 17 County Sheriff?
 18 A Possibly. Possibly, because I recall
 19 a sentence somewhere that said Trent from Prime
 20 indicated that the correct UN number for the load
 21 that was on fire was thus and such, and maybe --
 22 Q And were any of those discussions

1 dispatch.
 2 Q So you testified that he spoke -- Mr.
 3 Drake, on the first call, spoke directly with
 4 Gary Broderick?
 5 A That's my -- yeah, that's my
 6 understanding. But I think road assistance was
 7 brought in very quickly after that initial
 8 notification.
 9 Q Okay. Did you conduct any interviews
 10 with -- well, did any other personnel work on the
 11 fire communications regarding the fire that
 12 night, to your knowledge?
 13 A Such as whom?
 14 Q Exactly. Was it just Mr. Broderick
 15 working with Mr. Drake that night?
 16 A I -- I spoke with Mr. Broderick and
 17 with -- with Mr. Drake.
 18 Q Correct, but Mr. Broderick was the
 19 only person at Prime that Drake spoke with that
 20 night?
 21 A I think not. Once -- once the fire
 22 was starting to evolve and he'd gotten the --

1 about whether the scene was HAZMAT the morning
 2 after the -- when the fire was put out?
 3 A Well, I've only testified as to one,
 4 right? Mr. -- a gentleman by the name of Trent,
 5 who I don't even know who that is.
 6 Q That's fair. Was that after the fire
 7 was put out?
 8 A I think not. I think that's when the
 9 fire was evolving, and they were having that
 10 discussion between the confusion in the UN
 11 numbers of the material contained in the trailer.
 12 Q So they wouldn't be discussing the
 13 character of the -- of the materials after the
 14 fire?
 15 A I -- I don't know that.
 16 Q Okay. So you're aware that before the
 17 shipment at issue here left the loading dock,
 18 someone at Prime's headquarters input the UN
 19 number for the shipment into its computer system,
 20 correct?
 21 A Would you repeat that question?
 22 Q Sure. Are you aware that before Prime

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1 -- the shipment left, in other words, when Mr.
 2 Drake and Ms. Duck picked it up, before they were
 3 allowed to leave, the UN number was input into
 4 Prime's computer system, correct?
 5 A I have the sense that -- that that
 6 communication is clear.
 7 Q And -- yes. Okay. So that didn't
 8 come through in your interviews, but you get the
 9 sense that it did.
 10 A Well -- no, no. It came -- it came
 11 through in interview of Mr. Drake. Mr. --
 12 Q Okay.
 13 A Mr. Drake told me the sequence that
 14 Prime has in place concerning the pickup of
 15 loads. And it's -- it's very clear and detailed.
 16 Q And that's in the computer system?
 17 A I'm sorry?
 18 Q And so the UN number is in the
 19 computer system?
 20 A It's my understanding it is.
 21 Q Okay. And did Prime put the fact that
 22 the bill of lading identified that the load

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1 Q We appreciate that. Thank you. And
 2 are you aware that at the time of the incident --
 3 (Simultaneous speaking.)
 4 BY MR. FIGUR:
 5 MR. FIGUR: I'm back to business.
 6 And, you're aware that Prime's
 7 practice at the time for HAZMAT incidents, was to
 8 call Premium, correct?
 9 MR. O'NEILL: That's correct. PES was
 10 their cleanup contractor that they consulted
 11 with.
 12 MR. FIGUR: And, Prime didn't call
 13 Chemtrec in the middle of the fire, did they?
 14 MR. O'NEILL: Not to the best of my
 15 knowledge. I've never interviewed anyone from
 16 Chemtrec. Possibly they did. I don't know.
 17 MR. FIGUR: And, Prime didn't, well,
 18 Chemtrec didn't show up the night of the fire or
 19 otherwise provide advice the night of the fire?
 20 MR. O'NEILL: That's my understanding.
 21 That's correct.
 22 MR. FIGUR: And, Prime didn't call

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1 contained a reportable quantity of strontium
 2 chromate into the computer system?
 3 A I don't -- I wouldn't know that.
 4 Q Okay. So, when anyone Prime is
 5 pulling up information about this shipment, would
 6 they see the UN number or not?
 7 A That's not something I know an answer
 8 to. I -- I know that they -- Oheim claimed that
 9 he didn't have immediate access to the bill of
 10 lading, and he's in road assistance, somebody
 11 that you would think would have that. So I don't
 12 know the answer to your question.
 13 Q Okay. Thank you. And you're aware
 14 that -- that PPG recommends right on the face of
 15 the bill of lading to call Chemtrec in case of
 16 fire?
 17 A They -- they do have that on the front
 18 of the bill of lading, but I don't know if that's
 19 a contractual obligation. And remember, Chemtrec
 20 is not a regulatory entity. They're much like
 21 DES. They're a cleanup and other resource
 22 entity.

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1 Premium the night of the fire, did they?
 2 MR. O'NEILL: They did not.
 3 MR. FIGUR: Okay.
 4 So Premium wasn't able to provide any
 5 advice?
 6 MR. O'NEILL: That's correct.
 7 MR. FIGUR: Okay.
 8 But sometime in the middle of the
 9 night, Prime did call B&W, correct?
 10 MR. O'NEILL: I wish I really knew who
 11 called B&, B&W. Because the record is, is
 12 confusing enough that I don't think I can answer
 13 that from an informed position.
 14 MR. FIGUR: If I'm not mistaken, and I
 15 will allow the record to correct me later, I
 16 believe Mr. Drake testified yesterday that Prime
 17 called.
 18 MR. O'NEILL: Okay.
 19 (Pause.)
 20 MR. FIGUR: So let's just stay with the
 21 fire one, a few more minutes.
 22 We have no information that any of the

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1 regulators called Prime directly about whether
 2 the scene was HAZMAT after the fire, do we?
 3 MR. O'NEILL: I don't recall seeing any
 4 written indication of that, no.
 5 MR. FIGUR: We have some indication
 6 that Mr. Drake was told that the load was HAZMAT.
 7 We have, don't we? By Prime?
 8 MR. O'NEILL: (No audible response.)
 9 MR. FIGUR: Oh, I'm sorry, I'm sorry.
 10 Mr. Drake knew the load was HAZMAT, correct?
 11 MR. O'NEILL: For sure he did. He knew
 12 it was, what he was hauling. He had a bill of
 13 lading, which he provided to the fire department.
 14 MR. FIGUR: And Mr. Drake was told by
 15 Sergeant Bonner after the fire was out, that it
 16 was still a HAZMAT scene, right?
 17 MR. O'NEILL: I don't know that. I
 18 don't recall Mr. Drake telling me that.
 19 MR. FIGUR: Okay, let's go to
 20 Complainant's Exhibit 17, page 2.
 21 (Pause.)
 22 MR. FIGUR: Let's go to the middle of

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1 driver's sending a Qualcomm, a computer message
 2 system inside the truck, message to Prime.
 3 In addition, Sergeant Bonner witnessed
 4 on at least two different occasions, Drake
 5 talking on the phone to someone at Prime.
 6 MR. FIGUR: Thank you.
 7 To you knowledge, are any of the
 8 Qualcomms from the night of the fire being
 9 submitted into evidence here?
 10 MR. O'NEILL: You know candidly, I
 11 don't think I, I have ever seen. I don't think
 12 they were transcribed. I don't think there is
 13 any of that information that was ever available
 14 to me.
 15 MR. FIGUR: So if they exist, you
 16 didn't see them either?
 17 MR. O'NEILL: That's correct.
 18 MR. FIGUR: Okay.
 19 MR. O'NEILL: If they exist, I take,
 20 take it from Mr. Drake that he was doing Qualcomm
 21 communications with Prime. I've just never seen
 22 them.

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1 the page, thanks.
 2 Can you see the paragraph three up
 3 from the bottom on my screen that starts,
 4 Sergeant Bonner explained?
 5 MR. O'NEILL: I see that, yes.
 6 MR. FIGUR: Can you please read that?
 7 MR. O'NEILL: Of course.
 8 Sergeant Bonner explained to Drake and
 9 Duck it was the responsibility of the spiller to
 10 clean up the scene.
 11 Sergeant Bonner explicitly informed
 12 Drake and Duck that the spill had to be properly
 13 cleaned up because the scene was a hazmass,
 14 HAZMAT site.
 15 MR. FIGUR: Please read the next
 16 paragraph.
 17 MR. O'NEILL: I'm sorry, sir?
 18 MR. FIGUR: Please read, please read
 19 the next paragraph.
 20 MR. O'NEILL: After explaining in
 21 detail of Prime's responsibility for a proper
 22 HAZMAT cleanup, Sergeant Bonner recalled the

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1 MR. FIGUR: Thank you.
 2 And so at the time Mr. -- Sergeant
 3 Bonner was talking to Mr. Drake, Sergeant Bonner,
 4 was Sergeant Bonner making Mr. Drake aware that
 5 in his view, and he was incident commander for
 6 the second phase, that it was a HAZMAT scene?
 7 MR. O'NEILL: That's what this report
 8 says. But I don't --
 9 (Simultaneous speaking.)
 10 MR. FIGUR: Okay, that's enough. If
 11 that's what the report says, fine.
 12 MR. O'NEILL: Well --
 13 (Simultaneous speaking.)
 14 MALE SPEAKER: He can explain.
 15 MR. FIGUR: And you can say the same
 16 thing over and over again. It's okay, we did it,
 17 we did it, too.
 18 MALE SPEAKER: All right.
 19 JUDGE COUGHLIN: Do you have?
 20 MR. FIGUR: No, I'm not going to cut
 21 him off. He can say it.
 22 JUDGE COUGHLIN: Go ahead. What would

1 you, what would you like to say in addition to?
 2 MR. O'NEILL: Mr. Mogelson's report
 3 doesn't indicate that this interview was
 4 recorded. It would be a huge breach of duty to
 5 record another law enforcement officer's
 6 statement, without advising him of that.
 7 And surprising as this may sound,
 8 after having reviewed thousands of investigative
 9 activity reports, they're sometimes inaccurate,
 10 sir.
 11 I mean that's why I'm a huge proponent
 12 of recording because it refreshes the agent's
 13 recollection, as to someone's statements.
 14 MR. FIGUR: Thank you.
 15 All right, and let's move on.
 16 So again there, you testified that
 17 there was a lot of confusion about Chief
 18 Janousek's statement, correct?
 19 MR. O'NEILL: Well certainly that was
 20 Carl Vaughan's perception of the situation. And
 21 candidly and looking back at the situation, it
 22 does appear to be that there was a, a substantial

1 And, this is the sentence that caused
 2 all of the hullabaloo.
 3 MR. O'NEILL: According to Mr. Vaughan.
 4 MR. FIGUR: Great. And, can you please
 5 go to the next page?
 6 Can you please read the date on the
 7 invoice?
 8 MR. O'NEILL: Read the date?
 9 MR. FIGUR: Yes.
 10 MR. O'NEILL: 9/28/2015.
 11 MR. FIGUR: Is 9/28 the same as the
 12 date of the fire?
 13 MR. O'NEILL: It's not the same date as
 14 the fire.
 15 MR. FIGUR: It's, what day is it? The
 16 next day?
 17 MR. O'NEILL: It's the day, that's
 18 right, the fire occurred on the 27th. This is
 19 dated the 28th.
 20 MR. FIGUR: So this written sentence.
 21 MR. O'NEILL: I'm sorry?
 22 MR. FIGUR: This is a written sentence

1 amount of confusion.
 2 MR. FIGUR: Chief Janousek said he
 3 never said it wasn't a HAZMAT scene, correct?
 4 MR. O'NEILL: He may have told Agent
 5 Mogelson that. I don't recall notating that in
 6 an investigative activity report that I wrote.
 7 MR. FIGUR: Can you please go to
 8 Complainant's Exhibit 53, page 1?
 9 So, the statement that Chief Janousek
 10 made that causes the confusion. Let's take a
 11 look at that.
 12 Can you please scroll down? Keep
 13 scrolling, sorry.
 14 I seem to have written this down
 15 incorrectly.
 16 (Pause.)
 17 MR. FIGUR: Okay, let's go to
 18 Complainant's Exhibit 18. Page oh, yes, okay,
 19 page 83. Yes, oh yes, there it is. Oh, it's
 20 Respondent's Exhibit.
 21 I'm sorry, it's true. Let's go to
 22 Respondent's Exhibit 8, page 14.

1 from the day after the fire, not the night of the
 2 fire, correct?
 3 MR. MCKAY: Objection, that's
 4 foundation and mischaracterizes the report that
 5 he was previously reading from, and now he's
 6 going to an invoice.
 7 MR. FIGUR: So, Your Honor, this is
 8 Respondent's Exhibit. Please go back up.
 9 (Simultaneous speaking.)
 10 MR. FIGUR: Oh, this one hasn't been
 11 admitted. Apologies.
 12 JUDGE COUGHLIN: No, no. If you're
 13 talking about RX 8, it is admitted.
 14 MR. FIGUR: My apologies.
 15 JUDGE COUGHLIN: That's all right.
 16 MR. MCKAY: So is he asking the
 17 witness?
 18 JUDGE COUGHLIN: Yes --
 19 (Simultaneous speaking.)
 20 MR. MCKAY: I mean he's conflating the
 21 report with the invoice.
 22 MR. FIGUR: So, go ahead and go back up

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1 to the report.

2 JUDGE COUGHLIN: I'm going to sustain
3 the objection, but you can follow up with some
4 additional questions to help the foundation for
5 this.

6 MR. FIGUR: What I'm asking for, Your
7 Honor, is for information that is contained
8 within a document that's already exhibit, I mean
9 that's already been entered by respondent as an
10 exhibit.

11 JUDGE COUGHLIN: Okay.

12 MR. FIGUR: And, so the date of the
13 incident is the 27th, correct?

14 MR. O'NEILL: That's correct.

15 MR. FIGUR: And, can you, okay, so
16 let's go to box E that's on the screen now, and
17 can you confirm that you've already talked about
18 the alarm, the arrival, and the, when the last
19 unit was cleared?

20 MR. O'NEILL: Last unit cleared
21 9/27/2015, 7:13, 0713.

22 MR. FIGUR: So is it fair to guess that

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1 Janousek, Chief Janousek left the scene at
2 approximately 7:13 in the morning?

3 MR. O'NEILL: No, I don't think that
4 is, that is fair. I think that they would have
5 left before that time. They probably came back
6 and cleared when the left the station.

7 I think they would probably have
8 cleaned equipment, refilled equipment with water.
9 And, I think that cleared means when they're
10 done. When they stopped their clock.

11 MR. FIGUR: I see. So, this time stamp
12 of 7:13 actually includes time back at the
13 firehouse?

14 MR. O'NEILL: I think so.

15 MR. FIGUR: Okay.

16 MR. O'NEILL: That's my sense.

17 MR. FIGUR: Thank you.

18 So at 7:13 a.m. in the morning is when
19 they returned to, or they finished doing the work
20 for this incident, correct?

21 MR. O'NEILL: That's my sense, yes.

22 MR. FIGUR: Would doing the work for

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1 the incident also include completing this report?
2 Likely, you don't know, of course.

3 But would it likely include Chief
4 Janousek running back to his office, and typing
5 away?

6 MR. O'NEILL: Yes, I don't know when he
7 completed it.

8 MR. FIGUR: It's okay.

9 MR. O'NEILL: We can talk about that.

10 MR. FIGUR: Okay, thank you.

11 And, do you have any information that
12 this report made it back out to the scene?

13 MR. O'NEILL: I don't know that.

14 MR. FIGUR: Okay.

15 And, do you know whether this report
16 accompanied an invoice from the rural, King Hill
17 Rural Fire Department, for payment for services
18 rendered during this incident?

19 MR. O'NEILL: I don't know that either.

20 MR. FIGUR: So you don't know when this
21 report would have made it into Prime's hands?

22 MR. O'NEILL: I don't.

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1 MR. FIGUR: Okay.

2 But it's safe to guess that it wasn't
3 in Prime's hands during the incident?

4 MR. O'NEILL: I'm sorry, but I don't
5 guess under oath.

6 MR. FIGUR: Okay.

7 All right, and you interviewed Chief
8 Janousek, didn't you?

9 MR. O'NEILL: I did.

10 MR. FIGUR: Okay.

11 Let's take a quick look at
12 Respondent's Exhibit 8, page 5.

13 (Pause.)

14 MR. FIGUR: Do you recollect what Chief
15 Janousek told you the crux of the matter the
16 night of the fire, actually was?

17 MR. O'NEILL: I'm sorry?

18 MR. FIGUR: Do you recollect what Chief
19 Janousek told you during this interview, was
20 actually the crux of the issue the night of the
21 fire?

22 MR. O'NEILL: He claimed that he

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1 believed that it was a, a fire as a result of a
 2 tire blowout.
 3 MR. FIGUR: Okay.
 4 And, are we on, can we move to page 8,
 5 please?
 6 Please continue to scroll down. Can
 7 you please read the paragraph that starts, Chief
 8 Janousek agreed?
 9 MR. O'NEILL: Chief Janousek agreed
 10 that the crux of the matter, is how the
 11 communication between B&W Wrecking and Prime took
 12 place.
 13 Keep reading, sir?
 14 MR. FIGUR: Yes, please.
 15 MR. O'NEILL: Chief Janousek stated
 16 that he is sure that B&W Wrecking represented to
 17 Prime, that it could handle the cleanup of the
 18 scene of the incident.
 19 Chief Janousek stated that B&W
 20 Wrecking might change its tune if the EPA, or
 21 Prime comes back on them.
 22 MR. FIGUR: Thank you, that's good

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1 please?
 2 And on Sunday the 28th, please go
 3 ahead and scroll down.
 4 Thank you, that's great.
 5 Does this email show that on the 28th,
 6 the day after the fire, Prime employees are
 7 trying to find out whether the trailer can be
 8 moved?
 9 MR. O'NEILL: It appears that way, yes.
 10 MR. FIGUR: And, Prime's computer
 11 system would still have shown that the, the load
 12 was UN 1263, correct?
 13 MR. O'NEILL: I would think somewhere
 14 in, in the universe of Prime, there's going to be
 15 that information. I assume that.
 16 MR. FIGUR: But it, but UN --
 17 (Simultaneous speaking.)
 18 MR. O'NEILL: I've never seen their
 19 computer system.
 20 MR. FIGUR: But UN 1263 would not be
 21 associated with a shipment, or would it be
 22 associated with a shipment?

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1 enough for now.
 2 And again, you tried to interview B&W
 3 representatives, but you were unsuccessful,
 4 right?
 5 MR. O'NEILL: That's correct.
 6 MR. FIGUR: Okay.
 7 And, just to go back and ask one more
 8 time, Prime could have called Chemtrec, couldn't
 9 they?
 10 MR. O'NEILL: Yes, certainly there was
 11 nothing that was stopping them from making that
 12 call.
 13 MR. FIGUR: And, Prime could have
 14 called Premium that night, couldn't they?
 15 MR. O'NEILL: They could have, yes.
 16 MR. FIGUR: Okay.
 17 But Prime called B&W, didn't they?
 18 You, actually I'm sorry. You have already said
 19 you don't know if they did.
 20 Let's go ahead and look a day or two
 21 after the fire.
 22 Can we go to Complainant's Exhibit 34,

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1 MR. O'NEILL: I missed the last part of
 2 your question. You trailed off on me.
 3 MR. FIGUR: So would it or would it not
 4 be associated with the shipment, if they put it
 5 into their computers?
 6 MR. O'NEILL: Yes, it would accurately
 7 represent the material that was being carried on
 8 the trailer at the time of the fire.
 9 MR. FIGUR: Okay, thank you.
 10 And on October 1st, Prime hires Bud
 11 Towing to bring the trailer and the drum down to
 12 Salt Lake, correct?
 13 MR. O'NEILL: Yes.
 14 MR. FIGUR: And, on October 13th, Prime
 15 tells PPG that the trailer burned to the ground,
 16 correct?
 17 MR. O'NEILL: Yes, I recall seeing an
 18 email.
 19 MR. FIGUR: Okay.
 20 And, Prime said that in response to
 21 PPG's renewed request for information on proper
 22 disposal, correct?

1 MR. O'NEILL: Yes, they were mistaken.
 2 MR. FIGUR: Who was mistaken?
 3 MR. O'NEILL: Prime was mistaken.
 4 MR. FIGUR: Okay, thank you.
 5 Can you please bring up Respondent's
 6 Exhibit 11, page 11?
 7 Can you please scroll down? Thank
 8 you.
 9 I'm sorry, can you scroll up so that
 10 we can see who the email is from, and who it's
 11 to?
 12 So is this an email from Scott
 13 Straiter at Premium Environmental?
 14 MR. O'NEILL: It is.
 15 MR. FIGUR: And, is it, was it dated
 16 Tuesday, October 20, 2015?
 17 MR. O'NEILL: It is.
 18 MR. FIGUR: And, do you see any Prime
 19 personnel in the to-line?
 20 MR. O'NEILL: Yes. I recognize the
 21 name David White. I spoke to him at Prime.
 22 MR. FIGUR: Okay. Why don't you

1 MR. O'NEILL: That's correct, well, it
 2 appears that.
 3 MR. FIGUR: It appears that they if
 4 they opened their inbox, they might get it?
 5 MR. O'NEILL: Right.
 6 MR. FIGUR: And, sorry, give me a
 7 second.
 8 (Pause.)
 9 MR. FIGUR: And, can you please scroll
 10 a little bit further down? Just a touch? Thank
 11 you.
 12 Would you mind reading the paragraph
 13 that starts, PES called?
 14 MR. O'NEILL: PES called Carl Vaughan,
 15 got further information that the site needed to
 16 be excavated.
 17 That the site needed to be excavated
 18 is about 300 feet by 60 feet, with a burrow pit
 19 100 feet long by 3 to 4 feet wide, and the paint
 20 was still soft.
 21 DEQ had the accident declared disaster
 22 and hazardous, and will remain hazardous until

1 continue reading through the to-list, just to see
 2 if you see anybody else.
 3 MR. O'NEILL: Margaret Banning, Jack
 4 Ewing.
 5 MR. FIGUR: I mean if you know them to
 6 be Prime employees.
 7 MR. O'NEILL: I don't know of those
 8 people.
 9 MR. FIGUR: So you don't know Steve
 10 Field?
 11 MR. O'NEILL: I know Steve Field, but
 12 I didn't read his name.
 13 MR. FIGUR: Right, I'm saying can you
 14 read through to yourself, and then tell us if you
 15 notice any other Prime employees?
 16 MR. O'NEILL: Yes.
 17 MR. FIGUR: Okay.
 18 MR. O'NEILL: For sure I know Steve
 19 Field, and I know Bill Sprague, Sprague.
 20 MR. FIGUR: Thank you.
 21 So on October 20th, three Prime
 22 employees are getting this email, correct?

1 cleanup is completed.
 2 The site still contains paint and
 3 melted aluminum. They're, the misspelling of
 4 there. There is also damage to the road that
 5 needs to be assessed for repairs.
 6 Carl Vaughan confirmed that CWE, LLC,
 7 is an authorized HAZMAT hauler, and the
 8 environmental cleanup company for the state.
 9 MR. FIGUR: Thank you.
 10 I hesitated to stop you. I would,
 11 I'll stop you before, but so is it fair to say
 12 that Premium was telling Prime representatives on
 13 the 20th that the fire site was declared a
 14 disaster, and hazardous, misspelled, I have a
 15 problem with typos, too, when I make them.
 16 And, will remain hazardous until the
 17 cleanup is complete?
 18 MR. O'NEILL: That's what I read from
 19 this email, yes.
 20 MR. FIGUR: And by now the 32 drums and
 21 the trailer are sitting in Prime's Salt Lake City
 22 lot, correct?

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1 MR. O'NEILL: Yes.
 2 MR. FIGUR: Okay.
 3 And, can you please bring up
 4 Complainant's Exhibit 52, page 7?
 5 (Pause.)
 6 MR. FIGUR: And, can you scroll down to
 7 the 21st, please?
 8 And, looking at the third bullet, does
 9 it appear that Mr. David White from Prime
 10 Trucking insurance spoke with Maureen Vicente?
 11 MR. O'NEILL: She indicated that he
 12 called and we spoke about how to handle the
 13 cleanup left over on the side of the road,
 14 properly going forward.
 15 MR. FIGUR: Okay.
 16 And, Mr. White appeared to be under
 17 what impression at that time?
 18 MR. O'NEILL: He was under the
 19 impression that the incident command, according
 20 to the detailed fire report, was giving the green
 21 light to B&W to perform the cleanup after the
 22 HAZMAT portion of the incident was over.

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1 hazardous that they deal with.
 2 MR. FIGUR: Oh, I wasn't asking that.
 3 MR. O'NEILL: Okay.
 4 MR. FIGUR: So.
 5 MR. O'NEILL: Sorry for that.
 6 MR. FIGUR: No, no worries. I think
 7 you answered my question the first time, and then
 8 might have thought you were answering --
 9 (Simultaneous speaking.)
 10 MR. FIGUR: -- a different question.
 11 MR. O'NEILL: Confused at the second?
 12 MR. FIGUR: Yes.
 13 MR. O'NEILL: Sorry.
 14 MR. FIGUR: Oh, no worries. I'm sure
 15 we're both getting tired.
 16 So we can skip all the different
 17 stories about the second cleanup, because this is
 18 a case about the trailer and the drums in Salt
 19 Lake City, correct?
 20 MR. O'NEILL: Correct.
 21 MR. FIGUR: And really the only portion
 22 of the, of the second cleanup that matters for

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1 MR. FIGUR: Okay, thank you.
 2 Did Mr. White work for Prime at the
 3 time?
 4 MR. O'NEILL: Yes.
 5 MR. FIGUR: Okay.
 6 Does Mr. White in this chain of, in
 7 this obviously Ms. Vicente's recollection,
 8 assure, does Mr. White assure Ms. Vicente that a
 9 qualified contractor is going to be used this
 10 time?
 11 MR. O'NEILL: Yes.
 12 MR. FIGUR: And, would Mr. White have
 13 made that representation if a qualified
 14 environmental contractor was not necessary?
 15 MR. O'NEILL: Probably, probably not,
 16 no.
 17 MR. FIGUR: So we can --
 18 (Simultaneous speaking.)
 19 MR. O'NEILL: Well, I take that back.
 20 PES also works on other cleanups I understand,
 21 with Prime as well.
 22 So I'm not sure that they're all

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1 this case is when the lab results came back from
 2 the truck, correct?
 3 MR. O'NEILL: Correct.
 4 MR. FIGUR: And, you testified that Mr.
 5 Quarter was, watched the sampling event and
 6 thought it was no good, correct?
 7 MR. O'NEILL: He claimed that he
 8 thought it was not a representative sample of
 9 material that was taken out of the truck.
 10 MR. FIGUR: And, do you know if Mr.
 11 Quarter has any expertise in RCRA sampling, to
 12 determine whether a waste is a RCRA is wasted?
 13 MR. O'NEILL: I take for granted that
 14 he has some familiarity with it because of his
 15 attendance at a HAZWOPER training, and his
 16 current status.
 17 MR. FIGUR: Yes, and I don't think you
 18 clarified for the record last time what HAZWOPER
 19 stands for. Do you mind?
 20 MR. O'NEILL: Hazardous waste
 21 operations.
 22 MR. FIGUR: Excellent.

1 MR. O'NEILL: It's a 40-hour initial
 2 course, and an annual 8-hour refreshers.
 3 MR. FIGUR: And, I now realize that I
 4 was mistaken in that recollection. I apologize.
 5 JUDGE COUGHLIN: Does that include
 6 sampling techniques?
 7 MR. O'NEILL: Your Honor, it's so long
 8 ago I candidly --
 9 (Simultaneous speaking.)
 10 JUDGE COUGHLIN: Okay.
 11 MR. O'NEILL: -- can't recall.
 12 JUDGE COUGHLIN: Okay, no problem.
 13 MR. FIGUR: So, but the results came
 14 back as RCRA hazardous for chromium, didn't they?
 15 MR. O'NEILL: That's correct.
 16 MR. FIGUR: And, then after getting the
 17 results back, Prime asks for and receives the
 18 SDSs from PPG on November 25th, correct?
 19 MR. O'NEILL: November 25th is when you
 20 say they had the SDSs?
 21 MR. FIGUR: Yes. An email from Mr.
 22 Lowe, if that refreshes your recollection.

1 this witness whether --
 2 MR. FIGUR: Oh.
 3 MR. MCKAY: -- something from a
 4 contract --
 5 MR. FIGUR: I withdraw the question.
 6 JUDGE COUGHLIN: Okay.
 7 MR. FIGUR: I withdraw the question.
 8 Thank you.
 9 If you'd just give me a minute, I'm
 10 going to check my other notes, and I might have
 11 one or two more questions for you (audio
 12 interference) we're done.
 13 (Pause.)
 14 MR. FIGUR: Oh, you testified, can you
 15 please go to Respondent's Exhibit 5, page 3?
 16 (Pause.)
 17 MR. FIGUR: So, you testified that it
 18 said in here that the bungs had all blown. All
 19 of the drums that had, all of the drums had
 20 venting.
 21 Would that mean that based on your
 22 description of them not leveeing, would this,

1 MR. O'NEILL: It does.
 2 MR. FIGUR: Okay.
 3 MR. O'NEILL: And, the answer is yes.
 4 MR. FIGUR: And then on November 30th,
 5 Prime's contract at Premium told IDQ that it was
 6 RCRA hazardous waste, both characteristic for
 7 chrome, as well as ignitable, didn't they?
 8 MR. O'NEILL: Yes.
 9 MR. FIGUR: Okay.
 10 And on December 7, 2015, Prime applied
 11 for an EPA RCRA ID number for the fire site,
 12 correct?
 13 MR. O'NEILL: It's my understanding
 14 that PES completed that paperwork for their
 15 client.
 16 MR. FIGUR: But in your experience,
 17 when a contractor is hired to do work, the work
 18 is imputed to them, to the person, the person is
 19 --
 20 (Simultaneous speaking.)
 21 MR. MCKAY: I (audio interference).
 22 That calls for a legal conclusion on the part of

1 would that mean that all the bungs had blown?
 2 Or would that have been the
 3 observation?
 4 MR. O'NEILL: That's what he indicated.
 5 MR. FIGUR: Okay.
 6 JUDGE COUGHLIN: So I guess just for
 7 my benefit, when there's reference to venting of
 8 the drum, I can understand that to mean that
 9 blows the bun covers off?
 10 MR. O'NEILL: That's correct, ma'am.
 11 JUDGE COUGHLIN: Okay, thank you.
 12 MR. FIGUR: And, that' keeps them from
 13 levying up to a point?
 14 MR. O'NEILL: That's correct, as well.
 15 MR. FIGUR: You mentioned that there
 16 were two RRT captains out at the fire scene,
 17 correct?
 18 MR. O'NEILL: That's what the public
 19 records request indicated.
 20 MR. FIGUR: Do you have any information
 21 that would cause you to think that they opined
 22 that the site was no longer a HAZMAT site?

1 MR. O'NEILL: I have no idea what sort
 2 of conversation they had. I'm sorry.
 3 MR. FIGUR: No, that's fine, thank you.
 4 So you spoke with Mr. Vaughan, who
 5 wasn't there the night of the fire, and you did
 6 not speak with the two ITD personnel, Bowden and
 7 Meyers, who were at the fire, correct?
 8 MR. O'NEILL: Maybe I did as I
 9 described to you earlier.
 10 MR. FIGUR: Oh yes, that's right. But
 11 we've determined that we have no way of knowing
 12 that.
 13 MR. O'NEILL: Somebody was chirping,
 14 and I don't know who that was.
 15 MR. FIGUR: And, the after action
 16 report between the ITD and IDEQ, was, was that
 17 necessary because mistakes were made?
 18 MR. O'NEILL: Yes.
 19 MR. FIGUR: Okay, thank you.
 20 I took a lot of notes.
 21 (Pause.)
 22 MR. FIGUR: I just have a few more

1 MR. FIGUR: You testified that Mr.
 2 Olheim works in Road Assist, correct? Worked in
 3 Road Assist?
 4 MR. O'NEILL: Olheim is in Road Assist,
 5 that's correct.
 6 MR. FIGUR: And, that Mr. Olheim didn't
 7 know how to read the bill of lading, correct?
 8 MR. O'NEILL: That's right. He didn't
 9 appear to understand the notations on it.
 10 MR. FIGUR: And, then the UN number
 11 would have been on the computer relating to that
 12 load, when Mr. Olheim was talking about, or was
 13 doing his work, when Mr. Olheim was doing his
 14 work, correct?
 15 MR. O'NEILL: In Prime's universe?
 16 MR. FIGUR: Yes.
 17 MR. O'NEILL: Yes, somewhere in Prime's
 18 universe. I don't know if he had access to the
 19 system that had that, or not.
 20 MR. FIGUR: But it would have been in
 21 the system?
 22 MR. O'NEILL: Oh yes, it would have

1 questions. Well, let's start with Complainant's
 2 Exhibit 22, page 4.
 3 MR. MCKAY: Your Honor, let me just I
 4 mean I've asked Mr., we have a witness which we
 5 want to be ready to go. So I've asked him to
 6 text that witness to have him head this way.
 7 So that's why Mr. Field is texting
 8 right now.
 9 JUDGE COUGHLIN: Oh, that's okay. No,
 10 I understand.
 11 MR. MCKAY: Yes.
 12 JUDGE COUGHLIN: There's a lot of
 13 coordination. It's no problem.
 14 MR. MCKAY: We're on point here, I just
 15 want to make sure that the Court understand
 16 what's going on here.
 17 JUDGE COUGHLIN: Thank you.
 18 MR. MCKAY: Yes.
 19 MR. FIGUR: You know what, I'm going to
 20 hold off on anymore fire related conversations
 21 for now.
 22 (Pause.)

1 been in Prime's --
 2 (Simultaneous speaking.
 3 MR. FIGUR: And, he was --
 4 MR. O'NEILL: -- system.
 5 MR. FIGUR: And so it's possible that
 6 he was doing his work without access to the, to
 7 that piece of information in that system?
 8 MR. O'NEILL: That's correct.
 9 MR. FIGUR: Okay, thank you.
 10 No further questions, Your Honor.
 11 JUDGE COUGHLIN: Okay.
 12 MR. MCKAY: Your Honor, I'll be brief,
 13 and may I also begin by saying I'm mindful that I
 14 said to you, that I would find within the
 15 documents what a level 2 incident meant.
 16 And, I've been furiously looking
 17 through the documents and I, I know it's in
 18 there, I just have not been able to put my
 19 fingers on it.
 20 And, so I don't know that I'm going to
 21 be able to follow through on that commitment
 22 right, with this, with this witness.

1 JUDGE COUGHLIN: That's okay.
 2 MR. MCKAY: All right.
 3 JUDGE COUGHLIN: That's all right.
 4 MR. MCKAY: Yes, thank you.
 5 And, so Mr. O'Neill, let me just
 6 follow up on a couple of things that counsel for
 7 the EPA raised with you.
 8 Respondent's Exhibit 17, the manifest
 9 that was associated with the disposal of the, the
 10 trailer.
 11 And, he quite correctly showed you
 12 that it was ultimately disposed of as an
 13 unregulated, non-hazardous waste.
 14 Did you see that?
 15 MR. O'NEILL: I saw that, but
 16 understand that that document is completed by the
 17 cleanup contractor. The environmental contractor
 18 that the entity is using.
 19 And, they agreed with me, sorry Prime,
 20 they agreed with me that it's a non-hazardous
 21 solid waste.
 22 REDIRECT EXAMINATION

1 to do TCLP work. And I, I don't know that
 2 there's a facility in the world that can do that.
 3 I'm just not sure.
 4 MR. MCKAY: Another topic that was
 5 discussed with you, was the Idaho State
 6 Communications Center report, what was, a portion
 7 of which was appended to Ms. Vicente's report,
 8 which is at Complainant's Exhibit 7.
 9 Do you recall that discussion on
 10 cross-examination?
 11 MR. O'NEILL: I do.
 12 MR. MCKAY: All right.
 13 And the suggestion was made that that,
 14 those entries from the day of the fire, could
 15 have been made some one year after those
 16 communications took place.
 17 Does that square with your
 18 understanding of how those entries are made?
 19 MR. FIGUR: Your Honor, that slightly
 20 mischaracterizes my question.
 21 JUDGE COUGHLIN: I honestly don't
 22 remember how that was characterized. So can you,

1 MR. MCKAY: And, I think what you were
 2 getting at in your earlier testimony, was it was
 3 originally being contemplated that that trailer
 4 would be treated as a hazardous waste, and
 5 disposed of accordingly.
 6 Is that what your testimony was
 7 getting at?
 8 MR. O'NEILL: That's correct.
 9 And I'm confident that Prime's order
 10 through Strong and Hanney, to H2O for the
 11 disposal of that trailer, was dispose of that as
 12 hazardous waste.
 13 Because we had such a, such a spirited
 14 discussion with respect to that.
 15 MR. MCKAY: All right.
 16 And, if it were to have been disposed
 17 of as a hazardous waste, it would be cut up into
 18 pieces, wrapped in concrete, et cetera?
 19 MR. O'NEILL: You don't know how to
 20 even test it. I mean, and that's what they were
 21 doing. They were unable to test it.
 22 You'd have to grind the entire trailer

1 either if you want to rephrase or at least just
 2 refresh my memory so I can rule.
 3 I'm sorry, but I'm --
 4 MR. FIGUR: Yes, it's --(Simultaneous
 5 speaking.)
 6 JUDGE COUGHLIN: -- a little weary,
 7 too, so.
 8 MR. MCKAY: And, I apologize
 9 (Simultaneous speaking.)
 10 JUDGE COUGHLIN: No, no, no, it's not
 11 your fault.
 12 MR. MCKAY: -- if I've contributed to
 13 that.
 14 JUDGE COUGHLIN: I know it's hard for
 15 everybody.
 16 MR. MCKAY: Yes.
 17 JUDGE COUGHLIN: It's a long hearing,
 18 and that's okay but I just I need, I don't
 19 remember. So can you guys refresh my memory?
 20 (Simultaneous speaking.)
 21 MR. MCKAY: Yes, so the context is
 22 there was a report prepared by Ms. Vicente with

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1 the IDEQ in 2016, that appends a document from
2 the Idaho State Communications Center.

3 JUDGE COUGHLIN: Okay.

4 MR. MCKAY: It's a chronological
5 narrative of what's happening real time at the
6 scene.

7 JUDGE COUGHLIN: Yes, okay, it's coming
8 back to me now.

9 MR. MCKAY: And it ends at a particular
10 time, and it omits an entry shortly thereafter,
11 that reflects an IDEQ representative actually
12 speaking with the Idaho State Police Trooper
13 Bonner, about permitting B&W to do the cleanup.

14 And so what I understood counsel's
15 point to be in questioning this witness was, well
16 maybe that report wasn't available to Ms. Vicente
17 when she prepared her report in 2016.

18 And so what I am now asking him to
19 clarify is, does that square with his
20 understanding of when those reports were
21 prepared.

22 JUDGE COUGHLIN: Okay, I think I

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1 understand the objection because what I
2 remembered you saying, Mr. Figur, was with regard
3 to the printout date at the bottom.

4 MR. FIGUR: Thank you.

5 JUDGE COUGHLIN: Okay.

6 In terms of when it was printed. And
7 I thought, although the court reporter would be
8 able to read this back most accurately, I thought
9 what you asked was, is it possible things could
10 have been added after the 2015 date of the one
11 print out, up to this 2016 date of the other.

12 MR. MCKAY: Correct, Your Honor.

13 JUDGE COUGHLIN: Okay that's what I
14 remember his question to be.

15 MR. MCKAY: Okay.

16 JUDGE COUGHLIN: So.

17 MR. MCKAY: So I'll maybe rephrase it.

18 JUDGE COUGHLIN: Okay.

19 MR. MCKAY: And if Ms. Vicente's report
20 is dated in 2016, does it seem reasonable to you
21 that a Idaho State, a fuller Idaho State
22 Communications report would have been available

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1 to her, that would have reflected all of the
2 communications that occurred on September 27,
3 2015?

4 MR. O'NEILL: Yes.

5 MR. MCKAY: There was a discussion
6 about Prime calling B&W during your
7 cross-examination.

8 And what I'd like to know is if Prime,
9 and I think you indicated you didn't know if
10 Prime called B&W or not, but did you have an
11 impression from your investigation, about whether
12 B&W was a, an acceptable contractor that, or
13 clean up company that was doing the sort of work
14 in the area, through your conversations with the
15 Elmore County Sheriff's Office dispatcher
16 otherwise?

17 MR. O'NEILL: For sure they were, and
18 Bobby Dye from Idaho DEQ itself indicates that
19 tow company's cleanup as best they can.

20 I know that that's the only heavy
21 wrecker in that area. When they represent that
22 they can handle the cleanup to the incident

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1 commander and Trooper, excuse me, Sergeant
2 Bonner, I don't know what else to say to that.
3 MR. MCKAY: And, there was a discussion
4 about Trooper, or Sergeant Bonner's statements to
5 Mr. Drake.

6 Or at least the statements that are
7 attributed to, or that he says that he had with
8 Mr. Drake, that are reflected in Special Agent
9 Mogelson's IAR.

10 Do you recall that?

11 MR. O'NEILL: I recall that.

12 MR. MCKAY: And can you tell from the
13 entry in that report, whether that conversation
14 occurred, that the conversation that he said
15 occurred, did it occur prior to the conversation
16 that he had then with Bobby Dye of DEQ, about the
17 propriety of B&W Wrecker performing the clean up?

18 MR. O'NEILL: It's certainly my sense
19 that that conversation took place before.
20 Because Trooper Bonner obviously had a concern or
21 a question in his mind, with respect to the
22 capabilities of B&W Wrecker being able to

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1 participate in the cleanup, and do it
2 appropriately.

3 MR. MCKAY: With respect to Chief
4 Janousek's report, and the language that we, that
5 has I think we paid some attention to during this
6 proceeding regarding the nature of the, the
7 scene.

8 Whether it went from a HAZMAT scene to
9 a clean up scene, would it seem reasonable to you
10 that an incident commander would use at the
11 scene, the same language and describing the same
12 terms, the words that he would later include in a
13 report?

14 MR. FIGUR: Your Honor, this calls for
15 speculation.

16 MR. MCKAY: I asked in his experience
17 if that seemed reasonable.

18 MR. FIGUR: This is pure speculation as
19 to what Chief Janousek might have said. No one
20 has, no information exists as to what Chief
21 Janousek said as he was clearing the scene and
22 leaving.

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1 All they point to is a report that was
2 generated after Chief Janousek left the scene.

3 JUDGE COUGHLIN: Okay, but the precise
4 wording of your question was what?

5 MR. MCKAY: Does it seem reasonable to
6 you whether and if Chief Janousek, who was on
7 scene, would use words at the scene that were
8 consistent to what, to what he wrote in his
9 report.

10 Whether that seems reasonable to this
11 witness.

12 JUDGE COUGHLIN: I'll overrule the
13 objection. And, I'm doing that based on your
14 experience as you've laid out, that I'm assuming
15 you can offer an opinion about that.

16 MR. O'NEILL: I can.

17 JUDGE COUGHLIN: Okay.

18 MR. O'NEILL: And, the answer is yes.

19 MR. MCKAY: And lastly, there was
20 reference to a Prime representative indicating to
21 PPG, his understanding that there was nothing
22 left to dispose of, that the trailer had burned

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1 to the ground.

2 Is that, is it your understanding that
3 the person who made that representation was in
4 sales for Prime?

5 MR. O'NEILL: Yes, that's one of the,
6 my observations with Prime is they don't
7 communicate well across disciplines, and they
8 don't calendar.

9 They don't follow up on stuff when
10 they say do it. And, some of them understands
11 it, and that's the, that's the problem I think
12 with sales.

13 MR. MCKAY: And, when you say don't, do
14 you mean to refer to that in the past tense?

15 Are you familiar with what corrections
16 Prime as made to their practices, to address this
17 issue?

18 MR. O'NEILL: There have been
19 substantial changes within Prime, concerning this
20 particular communication strategy since this
21 event.

22 MR. MCKAY: All right.

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1 That's all I have, thank you.

2 JUDGE COUGHLIN: Okay.

3 How do you know that?

4 MR. O'NEILL: I know that from talking
5 both with counsel and with Prime.

6 JUDGE COUGHLIN: Okay.

7 MR. MCKAY: And I'll develop that, Your
8 Honor, with, through my, through this next
9 witness.

10 JUDGE COUGHLIN: Okay.

11 All right, thank you.

12 MR. MCKAY: Yes.

13 JUDGE COUGHLIN: I just wanted to
14 follow up on one, on one question. When you,
15 because you made reference to it a couple of
16 times, so I understand.

17 Heavy wrecker. What is the heavy
18 designation? What does that signify?

19 MR. O'NEILL: They can handle tractor
20 trailers.

21 JUDGE COUGHLIN: Okay.

22 MR. O'NEILL: They can handle heavy

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1 equipment that's on the road. And, they have
 2 sufficient capacity to be able to haul tractor
 3 trailers, and larger vehicles that smaller
 4 wreckers that handle autos, are not generally
 5 used for.
 6 JUDGE COUGHLIN: Okay, thank you, thank
 7 you.
 8 MR. O'NEILL: Yes, ma'am.
 9 MR. MCKAY: That's all I have, Your
 10 Honor.
 11 JUDGE COUGHLIN: All right, thank you.
 12 MR. FIGUR: Your Honor, if you
 13 recollect the photograph from yesterday with the,
 14 the trailer on the back of a truck, that's,
 15 that's B&W's heavy wrecker.
 16 JUDGE COUGHLIN: Okay, thank you.
 17 MR. FIGUR: So I'm sorry, I just have
 18 two or three more questions, thanks.
 19 JUDGE COUGHLIN: Sure, take your time.
 20 MR. FIGUR: So you just testified that
 21 Mr. Derek from B&W, represented that he could
 22 handle the HAZMAT cleanup.

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1 MR. FIGUR: It would be the same,
 2 wouldn't it?
 3 MR. O'NEILL: It would be the same,
 4 that's correct.
 5 MR. FIGUR: Yes.
 6 So when Mr. Derek represents to the
 7 incident commander, that B&W is capable of
 8 handling a HAZMAT scene, B&W's not confused about
 9 whether it's a HAZMAT scene, correct?
 10 MR. O'NEILL: Are you asking me if?
 11 MR. FIGUR: Well, why would Mr. Derek
 12 say he has the needed credentials if the needed,
 13 if the needed credentials weren't necessary?
 14 MR. O'NEILL: I agree. That's --
 15 (Simultaneous speaking.)
 16 MR. FIGUR: Okay.
 17 MR. O'NEILL: -- that's not something
 18 you would do.
 19 MR. FIGUR: But Mr. Derek did say he
 20 didn't need credentials, right?
 21 MR. O'NEILL: Mr. Derek said that he
 22 didn't need a HAZMAT endorsement, to be able to

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1 He represented that to Chief Janousek?
 2 MR. O'NEILL: He represented that to
 3 Trooper Bonner, who certainly had jurisdiction
 4 over that situation.
 5 RECROSS EXAMINATION
 6 MR. FIGUR: Thank you, and that's the
 7 second half of my question.
 8 So when Chief Janousek left some time
 9 around 7:13, well, let's go back to the
 10 chronology for just one second.
 11 So at 6:30 it remains a level 2 HAZMAT
 12 scene, but RR4, RRT4 is released and the fire is
 13 out.
 14 So sometime between 6:30 and 7:15,
 15 lead is, incident command is transferred from
 16 Chief Janousek to Sergeant Bonner, correct?
 17 MR. O'NEILL: That's correct.
 18 MR. FIGUR: Okay.
 19 And would the, would Sergeant Bonner's
 20 authority and responsibility as incident command
 21 be any less than Chief Janousek's?
 22 MR. O'NEILL: (No audible response.)

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1 haul the material back.
 2 He contended with Sergeant Bonner that
 3 there was an exception to the, to the Idaho
 4 regulations pertaining to hazardous materials
 5 endorsements.
 6 Sergeant Bonner disagreed and said
 7 I'll check on that, I'll get back to you. We
 8 understand from Mr. Mogelson's interview that
 9 Sergeant Bonner never spoke with Mr. Derek again.
 10 To the best of our knowledge.
 11 MR. FIGUR: Thank you.
 12 And with that, I will, no more
 13 questions, Your Honor.
 14 JUDGE COUGHLIN: Okay.
 15 This is more of a housekeeping point
 16 on the admitted respondent's exhibits. You may
 17 be well aware, I'm just confirming before, before
 18 the witness is released.
 19 So RX 7, 8, 9, 10, and 11 were
 20 admitted. 12 has not been addressed. Was that
 21 your intention?
 22 MR. MCKAY: Yes.

1 JUDGE COUGHLIN: Okay, very good. Just
 2 wanted to check before, before Mr. O'Neill is
 3 released.
 4 Thank you very much for your
 5 testimony.
 6 MR. O'NEILL: Thank you, Your Honor.
 7 JUDGE COUGHLIN: Do you all want a
 8 quick break before we pick up with the next
 9 witness?
 10 MR. RYAN: Yes, please, Your Honor.
 11 JUDGE COUGHLIN: All right.
 12 Is 10 minutes good? Do you need a
 13 little?
 14 MR. RYAN: That's fine.
 15 JUDGE COUGHLIN: Ten minutes is great?
 16 Okay, I'll see you back here in 10 minutes then.
 17 Thank you.
 18 (Whereupon, the above-entitled matter
 19 went off the record at 2:23 p.m. and resumed at
 20 2:37 p.m.)
 21 JUDGE COUGHLIN: And are you ready for
 22 your next witness Mr. McKay?

1 Q How are you employed Mr. Field?
 2 A I'm the safety director at Prime.
 3 Q How long have you held the position of
 4 safety director?
 5 A Since April 1st, 2014.
 6 Q And how long have you been employed by
 7 Prime?
 8 A Since June 17th, 1996.
 9 Q So, what does that make this year for
 10 you at Prime?
 11 A A little past 26 years.
 12 Q All right. So, before we discuss in
 13 greater detail your employment at Prime, let's go
 14 back a few steps, and maybe have you tell the
 15 court some about you. Where did you grow up?
 16 A I grew up in New England, primarily
 17 New Hampshire, went to high school in New
 18 Hampshire, and I went to college in Vermont.
 19 Q Where in Vermont did you attend
 20 college?
 21 A Norwich University.
 22 Q Did you get a degree?

1 MR. MCKAY: Yes your honor, we are.
 2 Call Steven Field.
 3 JUDGE COUGHLIN: All right. Do you
 4 solemnly swear, or affirm under the penalty of
 5 perjury that the testimony you're about to give
 6 in this proceeding will be the truth?
 7 MR. FIELD: I do.
 8 WHEREUPON,
 9 STEVEN FIELD
 10 was called as a witness by Counsel for the
 11 Respondent and, having been first duly sworn,
 12 assumed the witness stand, was examined and
 13 testified as follows:
 14 JUDGE COUGHLIN: Thank you. Witness
 15 has been sworn.
 16 MR. MCKAY: Thank you your honor.
 17 Sir, say your name, and spell your last name for
 18 the record.
 19 MR. FIELD: Steven Allen Field,
 20 F-I-E-L-D.
 21 DIRECT EXAMINATION
 22 BY MR. MCKAY:

1 A A bachelor's of science in business
 2 administration.
 3 Q What did you do after graduating from
 4 college?
 5 A I entered the Marine Corps as a second
 6 lieutenant supply officer.
 7 Q And how long did you serve our country
 8 in the Marine Corps?
 9 A It was approximately ten years.
 10 Q Will you describe briefly your
 11 military service?
 12 A I was a supply officer stationed in
 13 North Carolina quite a bit. I spent a year in
 14 mainland Japan, a year in Okinawa that included a
 15 deployment to South Korea for three months.
 16 Q And when did you separate from the
 17 military?
 18 A It was about 1990 I think, '90, or
 19 '91, right in that area.
 20 Q What rank did you hold at the time you
 21 separated?
 22 A Captain.

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1 Q And was it an honorable discharge?

2 A It was.

3 Q What did you do after you left the
4 military?

5 A My first job was with Wells Fargo
6 Armored, the armored cars, you can see I was the
7 assistant branch manager in Charlotte. Picking
8 up deposits at banks, going to the Fed, picking
9 up deposits from retailers.

10 Q What did you do after that?

11 A After that I finally became a truck
12 driver. I'd been interested in trucks since I
13 was 16, and worked for a moving company, and I
14 joined Schneider National, went to their truck
15 driving school in Charlotte, and became an over
16 the road truck driver for a year.

17 Q And say again what year that was, if
18 you can?

19 A That was probably around '92 to '93
20 approximately.

21 Q Why were you interested in becoming a
22 truck driver?

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1 A I always wanted to do it, but my
2 parents convinced me to go to college, which was
3 a smart choice. But I knew I wanted to be in
4 trucking, and I thought if I had some driving
5 experience that that might be useful. And in my
6 opinion it turned out to be extremely valuable,
7 that I can somewhat relate to the drivers because
8 I have driven over the road, even though it was
9 only for a year.

10 Q Something that you rely upon your
11 experience in your present duties?

12 A I do, every day.

13 Q Did you hold any specific licenses, or
14 certifications that permitted you to drive a
15 truck?

16 A Yes, I had a class A CDL with a
17 hazardous materials endorsement.

18 Q And say again what year you joined
19 Prime?

20 A 1996, June.

21 Q How did that come about?

22 A When I decided okay, I've done my time

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1 driving, I want to get more into management
2 within the trucking community, I got a job in
3 South Carolina working for a trucking company
4 called Builders Transport. I worked in the
5 recruiting department, became the manager of that
6 department, and worked there from 1994 to June of
7 1996.

8 Q And you joined Prime thereafter?

9 A Yes, my boss at Builders Transport, he
10 had known Mr. Low, the founder of Prime
11 previously, Mr. Low asked him to come out to here
12 to be the safety director, and Don Lacey asked me
13 to go with him because we had worked together
14 closely for two years, and we worked well
15 together.

16 Q Were you familiar with Prime before
17 you came to work for them?

18 A I was to a degree, because we were in
19 the recruiting business. My department was
20 driver recruiting, so we knew most trucking
21 companies. I knew that they were located in
22 Springfield, that they had a lease program which

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1 wasn't that common back in the mid '90s, but I
2 was certainly familiar with them.

3 Q What was the size of Prime at the time
4 that you began your employment there?

5 A I would guess about 1500 trucks, 15 to
6 1700 trucks.

7 Q And has it grown over the years?

8 A It has?

9 Q Take us to present day, we'll talk
10 about that more in a little bit, but just to give
11 us a sense of where it was when you started, and
12 where it is today in terms of trucks?

13 A I believe our truck count on Monday
14 was just about exactly 7600 trucks.

15 Q When you hired on with Prime, what
16 department did you join?

17 A Safety.

18 Q Describe if you will, your progression
19 at Prime beginning with safety to your present
20 position as director of safety.

21 A I started as a safety supervisor
22 working for the safety director. Then in June of

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1 2001 I was selected to run the log department,
2 hours of service, keep track of driver's logs, we
3 were on paper at that time. But I stayed there
4 for quite a while, because we started
5 transitioning to electronic logs in 2017 I think
6 -- that's not right.

7 2009 we started transitioning to
8 electronic logs. So, I stayed through that, and
9 then when my predecessor Don Lacey retired in
10 2014, I was selected to take his position as
11 safety director.

12 Q The same Don Lacey who had encouraged
13 you to come join Prime, and work in the safety
14 department?

15 A That's correct.

16 Q What are your responsibilities as the
17 director of safety at Prime?

18 A I'm responsible for the overall
19 conduct of our drivers on the road. We have a
20 number of departments that fall under the safety
21 umbrella. We have safety proper, that deals with
22 drivers when they're involved in accidents. We

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1 analyze driver's records, we coach them in
2 certain areas, we're always monitoring their
3 performance.

4 Also under the safety umbrella comes
5 the log department, which keeps track of the
6 drivers. Drivers are limited to the number of
7 hours they can drive in a day, also in a week
8 generally they're limited. We also have the
9 driver personnel department, that keeps the
10 federally mandated driver qualification files.

11 Runs our pre-employment, and random drug testing
12 program.

13 And the citations department that
14 monitors roadside inspections, and citations that
15 drivers may receive.

16 Q And in your role as the director of
17 safety, you oversee all of those departments that
18 you just mentioned?

19 A Yes, I do.

20 Q Do you participate in ongoing
21 education applicable to the trucking industry?

22 A There's not a lot of formal education

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1 in safety within the industry. I think the
2 biggest way that you stay current is you read the
3 periodicals that come out. You attend safety
4 conferences, you work with your peers at other
5 companies, and share best practices. Safety is a
6 lot different than say sales, or something, we
7 don't keep stuff a secret.

8 If it's leading to better results for
9 us, I'm willing to share that with any trucking
10 company.

11 Q And hazardous materials, hauling of
12 hazardous materials, is that discussed in some of
13 the materials that you review, and discussions
14 that you have with others in the industry?

15 A It is. Hazardous materials is not a
16 very big portion of our business, but we do need
17 to be aware of it, and it does become a topic
18 from time to time.

19 Q Okay, so I'm going to ask you about
20 that here in a second, but the duties that you
21 described as the safety director, were those the
22 duties that existed in September of 2015 when the

299

1 accident at issue here occurred?

2 A They were. I think the biggest
3 difference, and maybe we'll get to it later,
4 between '15, and now, is that we've added people
5 for nights, and weekends that are permanently
6 assigned to work on site during those hours, but
7 the general responsibilities are the same.

8 Q What do you mean by that you've added
9 people who are permanently on site at present
10 day?

11 A As we've grown, it's really difficult
12 to keep up with having people on call. We've got
13 nearly 10000 drivers now, so we created a group
14 of folks, there's three on each team, they work
15 four days on, four days off, and at night they
16 cover safety, cargo claims, and logs. So,
17 they're kind of a hybrid, they cover several
18 departments, but they're there, available to
19 receive calls in real time from the drivers.

20 And we also now have a Saturday
21 coverage during the day, and Sunday coverage
22 during the day. So, we're covered virtually 24 7

300

1 now with people that are working.

2 Q What does Prime primarily haul, what
3 materials, goods, what does Prime -- I'll ask the
4 question that way, what does it primarily haul?

5 A The largest portion of our business is
6 refrigerated freight. That's freight that's
7 temperature controlled, that's our largest
8 division, it probably accounts for 75 percent of
9 our revenue. We also have a flatbed division,
10 those are the trailers you see that might be
11 hauling steel coils, or lumber, you can see the
12 product on a flatbed.

13 Tanker division, we have -- primarily
14 it's food products, but we also have a new
15 division we have that hauls products that go into
16 pet food, it fit well with us in the tanker
17 division. And we have an intermodal division,
18 which are the trailers for the containers that go
19 on the trains that move cargo that way. So, for
20 Prime itself, those are our four divisions, with
21 refrigerated being by far the largest.

22 Q All right, and within those divisions,

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1 you also haul all pharmaceuticals?

2 A We do. Food would be number one, but
3 pharmaceuticals is a big product that we haul,
4 because we have the capacity to haul it. We have
5 very new equipment, it's very reliable,
6 pharmaceutical loads can be extremely expensive
7 depending on what the product is. And we're
8 really a go to carrier for either the
9 pharmaceutical manufacturers, or the wholesalers
10 that are bringing products in from different
11 manufacturers.

12 Q Was Prime involved in the
13 transportation of vaccines to address the COVID
14 virus?

15 A I don't -- I thought they had -- I
16 don't remember us hauling the vaccines. I think
17 we hauled some of the test kits, but I don't
18 think we hauled per se, the vaccines.

19 Q Was Prime able to keep up, and running
20 during the pandemic, and the shut down if you
21 will, of much of our country?

22 A That's an interesting question, and

302

1 the answer to it is yes. We did have to shift a
2 lot of our associates to working remote from
3 home, because we've got a big facility with a lot
4 of people squeezed in there, and I think for
5 safety reasons, it was best to have as many of
6 our office people working from home as they
7 could.

8 My folks stayed in the office, because
9 we deal with drivers directly. The mechanics
10 stayed in the office, but I think the main point
11 to make is drivers can't work remote. The
12 drivers were out there during COVID, the entire
13 we'll call it two year period, delivering freight
14 as they always did, and maybe to a higher degree,
15 and better appreciation than they had received
16 prior to that.

17 Because I think the American public
18 realized that was a unique time for our country,
19 and really it was the truckers that really got us
20 through, and we're proud of them. Not just Prime
21 drivers, all drivers.

22 Q Yeah. Say more about the role of

303

1 trucking in the U.S. economy if you will.

2 A I'm a big fan of trucking, I mentioned
3 I moved furniture when I was 16, and I loved when
4 the big rigs come in, and there's about 3 million
5 over the road trucks on the road right there.
6 When I talk at our safety meetings, and talk at
7 different events, my point is that our trucking
8 industry is something that's unique to this
9 country.

10 It keeps our country going, businesses
11 are interested in just in time inventory, don't
12 want to stockpile ten weeks' worth of chicken,
13 they want two days' worth of chicken. So, we're
14 delivering a load, people are eating that the
15 next day, or so. The example I like to give is
16 how is someone eating a tomato in Maine in the
17 middle of winter?

18 Well, the way they're doing it is it
19 was picked in Mexico, or Southern California, and
20 was put on a truck, and was delivered by a
21 driver, probably a team like the Drakes in three
22 to four days. And that's how we have fresh food

304

1 year round. It's how we have anything, because
2 of truckers.

3 Q I'd like you to tell us more about
4 Prime. Are you familiar with the history of the
5 company Prime?

6 A I am. Prime was founded in 1970 by
7 Robert Low, he's our founder, president, and CEO.
8 It was founded just up the road here from
9 Springfield in a little town called Urbana.
10 Robert did it as a 19 year old college student
11 while he was also in the reserves for the Marine
12 Corps. He started it, he was ambitious, he
13 started it with just a couple of trucks, dump
14 trucks in fact.

15 But realized that wasn't going to be
16 year round business, transitioned into the
17 temperature controlled business, and basically
18 just grew the business, continued to grow it. It
19 stayed a family company, it's still owned by
20 Robert, and his wife Lawana, they own 100 percent
21 of the company. And we're still based here in
22 Springfield.

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1 we try to keep it that between any associate, and
2 Mr. Low, there's just one, maybe two levels,
3 we're very flat. But our departments, the
4 biggest one would be operations. That would
5 include dispatch, and sales for all our trucks.
6 We've got accounting, we've got IT, we've got
7 security, safety, recruiting, success leasing,
8 building maintenance, marketing.

9 Those are the ones that come to mind
10 the quickest.

11 Q What about road assist, where do they
12 fall within that category?

13 A They're really a subset of
14 maintenance. We have maintenance for our
15 grounds, but our biggest maintenance department
16 is the ones that do the repairs of the trucks,
17 the PMs of the trucks, maintain them. And then
18 as kind of a subset out of maintenance is our
19 road assist department.

20 Q And say, if you will, what road assist
21 does for Prime?

22 A Road assist is really the driver's one

305

1 Q And you mentioned the company
2 expanding over the years since it was founded.
3 How many employees does Prime currently have?

4 A I would say including our drivers, and
5 all the support personnel, we're probably around
6 12000 right now.

7 Q Does that include drivers such as Mr.
8 Drake, who continues to haul for Prime, even
9 though he now has his own company, and his own
10 DOT number?

11 A It does not, and I think Mr. Drake
12 explained that well, as you just mentioned, he
13 has his DOT number. I'm talking about drivers
14 that drive for Prime under DOT number 3706, or
15 directly support those. About all together,
16 12000 associates.

17 Q Okay. And are there different
18 departments outside of safety that exist within
19 Prime?

20 A There are.

21 Q Could you describe those departments?

22 A Sure. We're a very flat organization,

307

1 point of contact when he has an issue with his
2 truck. Whether it's a breakdown, he needs to get
3 a preventive maintenance done, he's got an issue
4 he needs to get into the shop. Road assist is
5 staffed 24 hours a day, 365 days a year. A Road
6 assist associate will support two, or three fleet
7 managers, and all their trucks.

8 And then when we get to nights, and
9 weekends, and holidays, people cover those shifts
10 as well. Road assist is always available to the
11 drivers.

12 Q With respect to your department, the
13 safety department, how many people work within
14 that department?

15 A In the departments that are safety,
16 and work with safety, we've got 26, and 1 part
17 time associate. I shouldn't say part time, we
18 share him with another department, so 26, and a
19 half.

20 Q Okay, is safety a point of emphasis at
21 Prime?

22 A It is, and it's really important that

308

1 we be safe. We don't want our drivers getting
2 hurt. We don't want anyone in public being hurt.
3 And at the end of the day, being safe is good
4 business, and we're in business, and accidents
5 are costly, even minor accidents are costly.
6 From repairs, or downtime where the truck can't
7 operate, delays in delivering freight.

8 So, I think all our departments are
9 tuned into safety, we get the support we need
10 from everyone, and I think again, Mr. Drake said
11 it very well, if there's maybe one point about
12 safety that we emphasize, that is if you're
13 tired, or the weather's not good, or you're just
14 not comfortable out there, park the truck, and
15 let us know what you're doing, and we'll
16 reschedule the appointment of that freight.

17 We like to say there's not a single
18 load we haul that's worth any of our drivers
19 getting hurt, or anyone in the motoring public
20 getting hurt.

21 Q Does Prime conduct safety meetings for
22 its drivers?

310

1 meeting on Friday of last week. Could you maybe
2 say some of the subjects that were discussed
3 during that meeting?

4 A Sure. We always start off with the
5 safety portion, it's myself, and normally one of
6 the safety supervisors will kind of start it. We
7 welcome the new associates, the new associates,
8 talking about drivers, that's their first real
9 introduction to Prime other than the classroom,
10 or getting a physical, or taking a drug test.
11 And we really like to welcome them, and maybe
12 just give them a few thoughts of Prime.

13 And while we're glad they're there,
14 and we appreciate them, then we go into our
15 inspection numbers for the week, how we're
16 inspected out on the road, what the results were.
17 We look if there's any major accidents that we
18 want to talk about. We try to make it
19 informative as well, so we'll have different
20 departments that talk about different subjects.
21 And if I remember last Friday, we had myself, and
22 Shawn Riker talking about Drivewise, a new

309

1 A We do. My predecessor Don Lacey
2 started those, he, and I started them together in
3 probably June of 1996 when we got there. We
4 started on one Saturday a month, and then we
5 moved it to every Friday. We used to make CDs of
6 them, and then we made cassettes, because every
7 driver can't come in to the meeting, that'd be
8 impossible.

9 But we've progressed to the point now
10 where we host it here in Springfield, it goes
11 over the internet to our terminal in Salt Lake
12 City, to our terminal in Pittston, and we also
13 put it on Facebook live, YouTube live so our
14 drivers can watch it. And then we put it out
15 there on the app so the drivers that are driving
16 -- I don't want them to watch it while they're
17 driving.

18 But when they stop, when they have
19 downtime, they can watch all the meetings right
20 on their phone.

21 Q Okay. And you were kind enough, I
22 believe, to invite Mr. Ryan, and I to a safety

311

1 product that we're looking at.

2 We have a system that allows us to
3 bypass scales, it weighs them automatically. But
4 this different product not only gives us that
5 feature, but it tells our drivers if they're
6 coming to a low bridge. We're at 13 6 our
7 trucks, and particularly in the northeast, and
8 Chicago there's a lot of 12 6 bridges. They're
9 marked, but unfortunately sometimes you do find
10 yourself right in front of one, or worse, under
11 it.

12 So, we're anxious to try those alerts,
13 steep grade, sharp curves, weather alerts that
14 can be focused just to the trucks in a particular
15 area. So, we talked about Drivewise last week.
16 I don't think we had maintenance, and we had a
17 few other topics. And then we always honor our
18 veterans. Robert's a veteran, I'm a veteran,
19 Steve Rudke, who I would call the number two in
20 the company was in the Army, he's a veteran.

21 So, we honor our veterans each week.
22 Now I remember, not next Friday, this Friday

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1 there's a special event in town for victims of
2 abuse, whether it's women, or men, it can be
3 either. So, we had one of our former drivers
4 that works in house kind of talk about that
5 event, and some of the issues she went through
6 earlier in her life, and how she's got it turned
7 around.

8 And then we close out with Steve Rudke
9 kind of talking about business conditions, what's
10 going on. And then when he's in town, which is
11 probably 45, 46 Fridays a month, Robert Low, our
12 founder, president, and CEO will close out the
13 meeting. So, we do that each Friday.

14 Q So, Robert Low was at that meeting on
15 Friday that we attended, is that unusual for the
16 founder, and CEO of the company to be there at a
17 safety meeting, and participate in that meeting?

18 A Not at all, it's unusual when he's not
19 there. I won't speak for Robert, but I think he
20 enjoys the meetings, he enjoys the interaction.
21 I brought him over to meet you two gentlemen, and
22 he's a very personable gentleman, and Prime is

313

1 his baby.

2 Q How many truck drivers would you
3 estimate were in that room with us for that
4 meeting?

5 A We probably had 50, or 60 there.
6 Probably 20 in Salt Lake City, 20 in Pittston,
7 Pennsylvania, and then we usually grab between 2,
8 and 300 people that are watching it live. And
9 then we'll get hundreds if not thousands of views
10 from putting it out on the app.

11 Q And let's maybe go to Respondent's
12 Exhibit No. 1. You mentioned a couple of
13 different locations where the safety meeting was
14 also occurring, and being broadcast. Are those
15 locations reflected on Respondent's Exhibit No.
16 1?

17 A Yes, presently the meeting is hosted
18 right there in the center of the country, right
19 where we are today in Springfield, Missouri. But
20 we also have a major terminal in the far east, in
21 Pittston, Pennsylvania, which is not too far from
22 Philadelphia, and in Salt Lake City, Utah. Those

314

1 are both major terminals for us.

2 Q And what else is, if you will, this is
3 in Respondent's Exhibit No. 1, which has been
4 admitted, are you familiar with this exhibit?

5 A I am.

6 Q Will you explain what's depicted on
7 Respondent's Exhibit No. 1?

8 A Those are where we have facilities
9 that either support local customers, or are on
10 customer's property. For example Laredo, that's
11 where all the freight crosses from Mexico. Our
12 tractors, and drivers don't go into Mexico, but
13 our trailers do, and our Mexican partner will
14 bring freight up from Mexico, bring it across the
15 border, and then we'll deliver it in the U.S.

16 And then hopefully get a load going to
17 Mexico, we'll bring it to Laredo, and swap out
18 with the Mexican carrier. The Florida locations
19 support our floral division. We're a primary
20 player in delivering fresh cut flowers, and
21 greens around the country. A lot of them come
22 from South America, get flown in there, and we

315

1 separate them, and put them for different
2 delivery around the country to wholesalers.

3 Lewiston, Maine started as supporting
4 a Walmart facility up there. Oxnard, California,
5 and Wilsonville are flowers, these are just
6 different locations that allow us to support our
7 customers around the country.

8 Q Speak to the Salt Lake City location,
9 what is located in Salt Lake City?

10 A We try to make our outside terminals
11 the main ones, Pittston, and Salt Lake City kind
12 of a miniature Springfield facility. By that I
13 mean there's associates there dispatching trucks,
14 there's sales associates there, there's a major
15 shop there that's probably open 24 hours a day.
16 Cafeteria for the drivers, shower for the
17 drivers.

18 You can, what we call drop trailers
19 there. It's secure parking, it's fenced in,
20 there's security guards. Basically all of those
21 three locations, Springfield, Salt Lake, and
22 Pittston are full service terminals.

316

1 Q Okay, let's take a look at
2 Respondent's Exhibit No. 2, which has similarly
3 been admitted. Are you familiar with this
4 exhibit?

5 A Yes sir.

6 Q What is depicted in Respondent's
7 Exhibit No. 2?

8 A It's a snapshot in time which
9 basically shows that snapshot where our trucks
10 are located. And there'll be many trucks for
11 each red dot in most cases. But it just kind of
12 shows as you get out west, they're primarily on
13 the east west interstate. California is huge for
14 us, as is Florida. You get up into the
15 northeast, we've always got hundreds of trucks up
16 there around Chicago. So, it's basically showing
17 where our trucks are operating.

18 Q And are you generally familiar with
19 how many miles Prime trucks travel over a year,
20 or over a particular period of time?

21 A Yes.

22 Q Can you speak to that?

318

1 together to go to different events. We have what
2 we call a staff meeting every Thursday, where all
3 the department heads -- we now unfortunately do
4 it via Teams, so we're not sitting together like
5 we used to, but all the departments talk about
6 what they're doing, Robert quizzes us on it.
7 Certainly every Friday we talk down at the safety
8 meeting.

9 In fact when it was over, I asked if
10 he had a minute to meet with you, and Mark, and
11 he said certainly.

12 Q Are there particular company
13 guidelines, or core principles that Prime
14 employees, including yourself, are taught?

15 A There are. Admittedly, we don't have
16 that I'm aware of, an employee manual. We keep
17 it very simple, yet it's very important, and I
18 keep mentioning Mr. Drake, I thought he did a
19 nice job in his deposition, and he really
20 remembered --

21 Q By deposition, you mean his testimony
22 yesterday?

317

1 A Yes, presently -- like last week we
2 ran 17.5 million miles I believe, and again
3 that's talking just about the Prime trucks, that
4 didn't count Mr. Drake. He's important to us,
5 all those folks are important, but these are ones
6 running under Prime's authority, that say Prime
7 on the side. I believe it was about 17, and a
8 half million last week. For a year right now we
9 do about 850 million miles.

10 Q In 2015, 2016 can you say how many
11 miles you were running at that time?

12 A At that time I would say we were
13 probably around 13, or 14 million a week, and
14 probably in the 600 million per year.

15 Q Who is your immediate supervisor as
16 the director of safety?

17 A I report to Mr. Low.

18 Q He's your boss?

19 A Yes sir.

20 Q Okay, and how often do you have
21 interactions with Mr. Low?

22 A As needed, we sometimes travel

319

1 A Testimony, yes sir, sorry. But it's
2 do your best, do what's right, treat others the
3 way you want to be treated. That truly is our
4 focus, and if you think about that, that's pretty
5 good. If you're faced with a problem, okay, I'm
6 going to do my best on it. If that means coming
7 in early, getting some help, whatever it is, I'm
8 going to do what's right.

9 We won't tolerate cheating, stealing,
10 things of that nature. And just be nice to
11 people. You can see in our meeting there, the
12 drivers are treated with respect. I want to be
13 treated with respect, I want to earn that, but
14 it's treat others the way you want to be treated,
15 so it's those three points. Do your best, do
16 what's right, and treat others the way you want
17 to be treated.

18 Q How is that message communicated to
19 Prime employees?

20 A It starts at orientation, we have
21 little cards. We don't have to carry them with
22 us, it's not hard to memorize, but it truly is

320

1 what we should be our guiding principles, just
2 those three basic principles.

3 Q Do those principles guide the
4 decisions that you make as the director of
5 safety?

6 A They do. Sometimes I might be
7 struggling on a decision, and I may say maybe
8 it's to pay something for a driver, or reimburse
9 a driver for something. I say accounting's not
10 going to like this, this is the right thing to
11 do, I'm going to do it because it's the right
12 thing to do, and I'll deal with accounting later.
13 And if I tell them this was the right thing to
14 do, they'll accept it.

15 Q How about with respect to compliance
16 with the law, do those principles guide you in
17 the decision you make?

18 A They do. Our expectation is that we
19 will comply with the law, we don't necessarily
20 agree with every law, but it's the law, we have
21 to comply with it. It's our expectation, we're
22 not perfect, our drivers aren't perfect, mistakes

321

1 are made, but the expectation is that we will
2 comply.

3 Q And the people that you regularly come
4 into contact with in your role at Prime, are most
5 of those long term Prime employees?

6 A We've got some real good seniority
7 there, and by that I mean what I'll call my class
8 of '96, I can name off a bunch of them that I
9 started with. Stan Alman, and Jason Seymour, and
10 Jamie Ely, they're all managers in the reefer
11 operations division. Brett Bonwiller is our
12 tanker manager.

13 Longevity is important to Prime, but
14 I think it's important to us as individuals too
15 because we've grown with the company, we've seen
16 the company double, triple in size, and we're
17 proud of it. It's not unusual to have associates
18 stay 30 years, we have some over 40 years right
19 now.

20 Q Why do you think that is, why do
21 people stay, and continue to work for Prime for
22 so long?

322

1 A We're an industry leader, Prime pays
2 well, we work very hard, but it pays well. I
3 think we're recognized for our efforts. We like
4 to have fun, it's a fun place to work. We don't
5 have offices, you've seen our facility. I don't
6 have an office, I'm in an open area, I can see my
7 associates, I can yell to them if I have to, come
8 over here, help me with this.

9 You hear a lot of laughing within the
10 building, and truly we're having fun working, but
11 we've managed to become the largest reefer
12 carrier in the country, and a major player in the
13 flatbed intermodal, and tanker division.

14 Q Is Prime involved in community, and
15 charitable endeavors?

16 A We are, we're a generous group. We
17 realize we've been fortunate, a lot of trucking
18 companies in our part of the country started
19 about the same time Robert started Prime. Most
20 of them are gone, some of them are at 200 trucks,
21 250 trucks, we're at 7600 trucks. We've been
22 very fortunate. And Robert is generous, I can

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1 tell you that during the two years of COVID where
2 we didn't have our picnics, our Christmas
3 parties, our dinners honoring 10 year, 15 year
4 associates.

5 Our highway diamonds dinner to honor
6 our women drivers, when we didn't do all that,
7 Robert took that money, and donated it to local
8 charity. What we would have spent for all those
9 functions.

10 Q And just briefly, are there any
11 charitable endeavors that are particularly
12 significant to you?

13 A Well, I think one that's significant
14 to our community is the COVID wing of one of our
15 hospitals that Robert funded. That was a
16 significant donation to have a floor for nothing
17 but COVID patients. And then there's one too,
18 where we support military veterans, maybe they're
19 going through some tough times, may have some
20 dark thoughts, we support that significantly.

21 Q And support, you've given your
22 military service?

1 A My service, Robert's service, Steve's
2 service, veterans are important to us, first
3 responders are, everyone's important to us, but
4 we have a special place in our heart for our
5 veterans.

6 Q How do you react when you hear a
7 suggestion that Prime is dirty, or is
8 purposefully not following the rules?

9 A That upset me, and I know you did it
10 intentionally, but you made sure I didn't know
11 that until I heard it, and it was disappointing
12 to hear that. And I heard Special Agent
13 Callahan's explanation that during a criminal
14 investigation they're trained to lie to get
15 information, I know they've got a job to do. But
16 it's just disappointing, we're not perfect.

17 We're far from perfect, but we're
18 going to do our best out there, and to say that
19 we're the worst of the worst, or as dirty as they
20 come, that's just wrong.

21 Q Let's turn to the trailer that's at
22 issue here, is it your understanding that this

1 for hazardous materials, as well his wife would.
2 Anyone that's operating the truck when there's
3 placarded amounts of hazardous materials in it
4 would have to have that endorsement on their
5 license.

6 Q Okay. And you mentioned that
7 hazardous materials are not a significant portion
8 of Prime's business. Can you say about what
9 portion hauling of hazardous materials
10 represents?

11 A It's going to be less than three
12 percent, it really becomes less each year. I
13 won't say we do it as a favor, but there's a few
14 customers that have asked us to haul hazardous
15 materials. A lot of people don't know that part
16 of the product that goes into Coca Cola products
17 is hazardous, so we haul for them. PPG
18 obviously, but it's not a significant portion by
19 far, of our business.

20 Q And was the same true back in
21 September of 2015 time frame when this particular
22 PPG load was hauled?

1 was a load of products that Prime was hauling for
2 PPG?

3 A That's correct.

4 Q And who is PPG?

5 A They're a company -- it might be
6 Pittsburgh Paint Group, or something like that,
7 but basically they produce industrial paints, and
8 products like that in the east.

9 Q All right. And you have an
10 understanding what driver for Prime was hauling
11 that load for PPG?

12 A I do.

13 Q And who was that person?

14 A It was Mr. Drake, and his wife.

15 Q Okay, and do you understand that that
16 was a hazardous materials load?

17 A That is correct.

18 Q Okay. And would Mr. Drake have to
19 have particular endorsements, or a specific
20 license that would permit him to haul a hazardous
21 materials load?

22 A Yes, he would need that endorsement

1 A Yes, we've never been a major
2 hazardous materials hauler, and there's some
3 products we won't haul. We haul primarily food
4 stuff products, we won't haul poisons, inhalation
5 hazards, explosives, and then after we haul one,
6 we get the trailer completely professionally
7 washed out, even if there was no issue with the
8 load. But again, it's not a primary part of our
9 business.

10 Q Do all Prime truck drivers have a
11 hazardous materials endorsement?

12 A They don't, we've gone through ebbs,
13 and flows with it sometimes, at some points
14 requiring it. But at the end of the day, if
15 someone's going to be a good driver for us, and
16 they don't want to haul hazardous materials,
17 we're not going to prevent that -- keep that from
18 working for us, or with us.

19 Q And back in 2015, was there a
20 requirement that Prime truck drivers have a
21 hazardous materials endorsement?

22 A I don't think there was. Again, we've

1 kind of gone back, and forth on it, but we'd
2 rather have a good, safe driver that has made the
3 decision I don't want to haul HAZMAT, and not
4 lose out on a good driver.

5 Q And you heard Mr. Drake's testimony
6 yesterday, where he indicated that he's no longer
7 -- he, and his wife are no longer hauling
8 hazardous material loads, is that a decision that
9 Prime respects, when a driver decides to proceed
10 that way?

11 A Yes, and it's a little bit different
12 with Mr. Drake, he's running his own business, he
13 can do what he wants. But the majority of our
14 drivers are either independent contractors, or
15 owner operators. So, they can pick, and choose
16 their freight. It's just not, in my opinion,
17 that important that they have the hazardous
18 materials endorsement.

19 The good point of them having it is it
20 opens up other opportunities for freight if
21 there's only one load where they're sitting, and
22 there's two trucks, and only one guy has his

1 HAZMAT, and it's a HAZMAT load, they'll get that
2 load. So, I think it has some value to it, but
3 we don't push it.

4 Q Okay, before the fire that occurred
5 here in Idaho in September of 2015, would this
6 load have been on your radar, would you have been
7 aware of it?

8 A Only if I had looked up the load. And
9 Mr. O'Neill was asked some questions about that,
10 to clarify, these loads are marked HAZMAT in our
11 system. If I for whatever reason was pulling up
12 Mr. Drake's truck, I could clearly see that it's
13 a HAZMAT load, and I could hit one key -- I
14 wouldn't know that it had chromium in it, but I
15 would know what the UN number is, it's visible to
16 us.

17 Q Okay, but it wouldn't have been on
18 your radar, as it were, at the time, until there
19 was something that brought it -- some event that
20 brought it to your attention, do I have that
21 right?

22 A That is correct.

1 Q What do you understand the product to
2 be that Mr. Drake was hauling?

3 A Paint.

4 Q And how did you become aware of this
5 load?

6 A As best I remember, I received a call
7 at home, it would have been Sunday morning, all
8 of us are always on call to help. At that point
9 we didn't have safety coverage 24 7, so it went
10 to our -- we call it night folks, even though it
11 was early in the morning, it was still the night
12 shift coming off. And when they were aware of
13 what had transpired, they called me.

14 Q And do you recall what you were told
15 when you were contacted about this incident?

16 A I don't specifically, but I know --
17 I've had enough phone calls, I know what I would
18 ask. I would ask is anybody hurt, our driver, or
19 any other vehicles involved? That's always my
20 first question, is anybody hurt? And then on
21 this one they would have told me well, it's a
22 HAZMAT load. And then I would ask what's going

1 on on the ground right there?

2 Has local enforcement called a cleanup
3 crew, is there a cleanup crew, do we need to do
4 that? I would ask questions.

5 Q And what's your understanding then of
6 what occurred in this instance after you were
7 informed of the fire, and the fact that it was a
8 HAZMAT load?

9 A As best I remember, and I have looked
10 at notes that are available, that it was a
11 significant fire, and it had reached the point
12 where as best our folks there -- meaning our
13 night folks there, that it was not going to be
14 considered a hazardous cleanup. That the product
15 basically had been consumed within the fire, and
16 there already was a crew out there, B&W, a
17 wrecker company out there that felt that they had
18 the ability to clean that up.

19 Q And what role do emergency personnel
20 on the ground play in these situations, insofar
21 as Prime is concerned?

22 A We're always taking our lead from the

1 emergency personnel. At the end of the day, we
 2 have to do whatever they require of us. In this
 3 case, we made the mess, we need to get the mess
 4 cleaned up. In our eyes, they're the boss,
 5 they're the authority, we take our guidance from
 6 them on what needs to be done.

7 Q And what was the process that existed
 8 at Prime at that time for managing a situation
 9 like this?

10 A There would really be a couple of
 11 options. One would be that someone had responded
 12 to the scene, whether they were called by local
 13 authorities, called by our road assist
 14 department, just showed up, and could they manage
 15 whatever the issue is? Normally our spills are
 16 diesel spills, whether sometimes you hit
 17 something in the road, the tanks ride kind of
 18 low, may puncture that little plug on the bottom,
 19 and you leak diesel fuel.

20 Might hit a deer, and leak antifreeze.
 21 But I apologize -- I got sidetracked, and I
 22 forget the question, my fault.

1 cleanup.

2 Q And was PES a contractor, a third
 3 party contractor that you were engaging as
 4 necessary back in this time frame, the 2015 time
 5 frame?

6 A Yes.

7 Q And why were they not engaged in this
 8 particular situation?

9 A I think the easy answer is, and the
 10 responsibility lies with me. I asked questions,
 11 I felt that the answers -- I was adequately
 12 satisfied that there was an approved cleanup crew
 13 out there. I didn't receive any calls from law
 14 enforcement, from any agency, which is very
 15 common when there's a spill, to get multiple
 16 calls on -- Prime, this isn't getting done right.

17 Either you're going to get it done
 18 right, or you're going to take over the cleanup.
 19 I didn't have any calls like that, I incorrectly
 20 made the assumption that I've got to live with,
 21 that we weren't going to need PES on this one.

22 Q And how was -- if you know, how was

1 Q No, I think you answered it. And I
 2 think you were -- I was asking you about what was
 3 the process that existed at Prime at the time
 4 this occurred, and I think you were answering the
 5 question, what was the process with respect to a
 6 hazardous materials situation, and I think you
 7 said the situations encountered previously were
 8 different situations.

9 Diesel fuel situations, if I
 10 understood your characterization?

11 A Yes, and that's correct, and one of
 12 the choices is the local responders are able to
 13 clean it up. And if that satisfies the local
 14 authorities, if they're going to do it
 15 completely, and legally, we're okay with that.
 16 But we've heard many times in the last two days,
 17 PES, and we do have that option, PES doesn't do
 18 any clean up themselves.

19 They're basically an administrator,
 20 they have a list of contacts around the country,
 21 cleanup crews that they can contact, and
 22 everything gets filtered through them for the

1 B&W selected to perform this cleanup?

2 A Now, that's another good question. I
 3 thought I heard yesterday, or this morning that
 4 local sheriff, I forget the county, called them,
 5 because I wrote that down. The possibilities are
 6 the local authorities called them, or our load
 7 assist department called them, and it's just not
 8 clear to me who called them.

9 Q Did Prime at the time sometimes refer,
 10 or rely on the recommendations made by local
 11 authorities as to qualified cleanup companies?

12 A We do, if it's someone we've used
 13 before, we're probably more comfortable with
 14 them. Idaho is a little bit more isolated,
 15 there's not a lot of choices right there, but at
 16 the end of the day we do have to rely on the
 17 local authorities, whether this organization is
 18 going to be capable of the cleanup.

19 Q Was it your impression that local
 20 emergency personnel, and authorities were
 21 involved in this situation?

22 A Yes.

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1 Q And is that comforting, or what's your
2 reaction to knowing that local emergency
3 personnel are there, and on the ground?

4 A When I say we, I mean Prime, we're
5 1500 miles away. We have Mr. Drake, and his wife
6 there, they've just been through a traumatic
7 experience. I'm not really depending on them to
8 be providing information, as much as I am from
9 the local authorities. And knowing that there
10 were local authorities there, and again, I wasn't
11 receiving any phone calls, I'm available 24 7.

12 Sergeant Bonner, what's unique about
13 him is that he's a commercial vehicle enforcement
14 officer. That means he, and his crew inspect big
15 trucks, he knows Prime, I bet he can recite our
16 DOT number, we go across his scales, he knows how
17 to get a hold of us.

18 Q And it would have been your
19 expectation at the time that if there were any
20 issue, that Sergeant Bonner simply could have
21 called the company Prime, which was available 24
22 hours a day at that time?

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1 wrong with the cleanup. And as best I can
2 remember, that was a Sunday, I don't think we got
3 any calls on Monday, or Tuesday.

4 I again, made an erroneous assumption
5 that well, everything must be good, I'm not
6 hearing from anyone.

7 Q You mentioned that this situation, and
8 maybe you didn't use the word unique, so maybe I
9 should ask it this way, was the magnitude of this
10 situation unique to Prime?

11 A Yes, because it was paint in the
12 trailer. Unfortunately trailer fires are not --
13 they're not common, but they do happen on a
14 somewhat regular basis in the trucking industry.
15 Either because a tire is running at low
16 inflation, and it's generating heat until it
17 combusts, or the hub freezes up, and basically
18 it's generating heat until it starts a fire.

19 Unfortunately we're familiar with
20 trailer fires, but what made this one unique was
21 it was a load of paint.

22 Q And are there -- I think you mentioned

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1 A Yes, and not only that, but it's also
2 based on my experience of other spills.
3 Admittedly not of this magnitude, but we do get
4 chewed out, for lack of a better word. There's a
5 diesel spill, and Prime, this isn't getting
6 handled right, here's what you need to do. But
7 we didn't get any calls like that.

8 Q B&W Contractor, is that a -- or B&W
9 Wrecker, was that a company that you yourself
10 were personally familiar with prior to this
11 situation?

12 A No.

13 Q And were you satisfied though, that
14 the cleanup company, that it was going to address
15 this situation would have been qualified to
16 perform that cleanup operation?

17 A Without being there, I'm kind of
18 taking the information that we can get from Mr.
19 Drake, and his wife. Any conversations any of
20 our people have had with the authorities there,
21 and we're literally not getting any information
22 that anything is wrong, that anything is going

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1 there are -- that you have PES available to you
2 in situations that involve hazardous materials,
3 did I understand that correctly?

4 A Yes, whether the load is placarded
5 hazardous, or it's a leak of some type.
6 Unfortunately sometimes from time to time, our
7 drivers do pass away on the road, and sometimes
8 the trucks need to be basically sanitized, PES
9 does all of that for us.

10 Q In hindsight, do you regret the
11 decision to not involve PES in this particular
12 situation?

13 A Yes. Looking at the information I
14 have now, and I don't have to stray very far to
15 realize that even though the information I'm
16 hearing, I think everything's okay, we're not
17 getting any calls from DEQ, EPA, DOT, the state
18 of Idaho, but as I look at it in retrospect, and
19 one thing that I have learned from this is any
20 time we have anything similar to this -- and we
21 haven't since this one happened, I'm going to
22 call PES.

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1 My folks are going to call PES. That
2 should have been done -- with the information I
3 have now, it should have been done from the
4 beginning. I was working with the information
5 that I had, I've got a lot more information now,
6 and that's the point we take away from this.
7 Regardless of what we're hearing, I should have
8 had PES be the first call we made.

9 Q So, has that caused a change in
10 procedure within Prime in terms of how it
11 addresses situations, or how it would address
12 situations like this? I understand that you
13 haven't had another situation like this occur,
14 thank goodness, but can you say that there has
15 been a change of process within Prime to -- that
16 you would follow if this situation should
17 reoccur?

18 A I think there's several changes, or
19 processes that we made. One is that 24 7
20 coverage that we now have, and those folks are
21 all trained. They know what to do, we do get --
22 we haul a lot of what's called palm oil on our

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1 tanker side, sometimes because of a
2 malfunctioning hose at a yard, it will fail, and
3 the palm oil will get onto the ground, and it's
4 very sticky.

5 We just don't hesitate to call PES.

6 Once Mr. White called Pes on this, you could tell
7 the response that we were taking as a company,
8 ultimately me, was not adequate. And I should
9 have had PES involved from the beginning.

10 Q Nevertheless, at the time that B&W was
11 hired to perform this cleanup, did you have any
12 indication that B&W was not capable, or qualified
13 to perform the cleanup?

14 A No. And I wasn't refraining from
15 calling PES to save money, or I don't want to
16 make another call, or I don't want anyone to know
17 about this spill, we're going to keep it a
18 secret, and get it cleaned up. I just felt from
19 the information I had at 3:00 o'clock on a Sunday
20 morning that the situation was under control.
21 And then kind of to repeat myself, for lack of
22 any calls from any agencies to say Prime, you've

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1 got to get a better handle on this. I just went
2 along that things are going well.

3 Q What was the role of the road assist
4 department with respect to this fire?

5 A Really two main functions. We already
6 had B&W out there, they'll work with B&W to get
7 the trailer, and the cargo off the road when
8 permitted by authorities, and taken to their lot.
9 Mr. Drake was able to drive his tractor away, so
10 we didn't need to worry about that. The second
11 part they had, which we messed up. I think Mr.
12 O'Neill was correct, we did not communicate well.

13 Dave Oheim thought he was doing the
14 right thing, because their role was to take that,
15 and store it in a safe location for what we call
16 a legal hold, if we were going to have a case
17 against the manufacturer, or someone for that
18 fire. We've had certain cases where we've been
19 able to recoup our losses. This one I don't
20 think was one of those. But unfortunately road
21 assist, and safety were working independently
22 when we should have been working together before

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1 anything was moved.

2 Q So, can you say more about the legal
3 hold, what's a legal hold?

4 A Legal hold, and it can be for a
5 perfectly functional tractor, and trailer that
6 was involved in an accident, that there may be
7 litigation on. We lock down all our electronic
8 records, we store the tractor, and trailer, and
9 put it on what we call legal hold. Repairs can't
10 be made on it, and it can't be used until our
11 local attorney decides that okay, we've done our
12 due diligence, we've preserved it, it's okay to
13 release that.

14 That used to be a little haphazard.
15 We realized we needed to do it better. So, one
16 of our liability adjusters now oversees that
17 program. There's only one person that can
18 release, or put something -- let me rephrase
19 that, that oversees the program, and that's one
20 of our in house adjusters. Any of the adjusters
21 can put it on legal hold, but it has to go
22 through Cammy Elder to take it off.

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1 So, there's no confusion on where a
2 piece of equipment is, why it's on legal hold,
3 and how long it's going to be on legal hold.

4 Q So, the burnt trailer, and the barrels
5 that were transported to Salt Lake City were on a
6 legal hold in Salt Lake City for a significant
7 period of time, were they not?

8 A Yes, they were.

9 Q And the process is different now,
10 where that trailer would sort of not live in a
11 remote corner of the Prime terminal in Salt Lake
12 City, and be forgotten about?

13 A The process is different in that we
14 have one program that lists everything that's on
15 legal hold. Those people that need to have
16 access to it do have access to it. And I do
17 think through oversight on Prime's part, it was
18 kind of forgotten right there, which should not
19 have happened. But we just left it there,
20 basically until the EPA showed up.

21 Q Were you aware that the burnt trailer,
22 and that the intact barrels from the load had

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1 been transported from Idaho to the terminal in
2 Salt Lake City?

3 A Not initially, and probably not until
4 kind of the investigation started. Probably I --
5 maybe through ignorance, did not know where it
6 was.

7 Q And you said the investigation
8 started, are you referring to when agents visited
9 Springfield in July of 2016, or the terminal in
10 August of 2016?

11 A Yes, I think that's when we realized
12 that we had some issues here. We still have that
13 trailer sitting there, we still have those
14 barrels sitting there.

15 Q Okay. Taking a step back to B&W's
16 involvement, to your knowledge, did Prime direct
17 B&W, tell B&W how to do the cleanup, or how to
18 dispose of the materials that it gathered from
19 the cleanup, or was B&W simply hired, and then
20 they made those decisions independent of Prime?

21 A There may have been some conversations
22 between our road assist folks, just so they knew

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1 what was going on. But we wouldn't direct them
2 on where to take it to ensure it was being
3 properly disposed of. I don't think there were
4 any conversations about that.

5 Q Okay. The trailer in this instance
6 that was placed on a legal hold, do you
7 understand the purpose in this instance for that
8 hold? And I think you started to, you said
9 something about that, but maybe say it a
10 different way, would that be to determine the
11 origin of the fire?

12 A Certainly, we want to know what caused
13 the fire, and we also want to know was it due to
14 product defect, was there a bad bearing in there,
15 a bad axle, was there something where we'd have a
16 legitimate claim for our losses.

17 Q And was Prime to your knowledge, able
18 to determine the cause of this particular fire?

19 A I don't think we conclusively
20 determined what caused the fire.

21 Q Do you have experience with blown
22 tires, and tires that ignite on the road in your

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1 capacity as the director of safety?

2 A Yes, I've got some general knowledge
3 of that.

4 Q Do you have any familiarity, or
5 understanding of what heat would be required to
6 cause a tire to ignite?

7 A It's significant, it's surprising how
8 much heat could be generated there, kind of the
9 figure if you look at it, if you google it, or
10 something, it's going to be like 400 degrees
11 Celsius, 750 degrees Fahrenheit at the point it
12 would ignite.

13 Q And you saw the photos of the fire in
14 this situation, granted it's sometime after the
15 fact, but does the fire that enveloped the
16 trailer in this situation, did that appear
17 significant to you?

18 A Yes, definitely.

19 Q I want to ask you some questions about
20 what we referred to as the second cleanup, do you
21 know what I mean when I refer to the second
22 cleanup?

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1 A I do.

2 Q At some point did somebody in the
3 Idaho Department of Environmental Quality
4 question the adequacy of the original cleanup?

5 A Yes. I think it was about three weeks
6 after the incident.

7 Q Okay, and what do you understand
8 happened with respect to that situation?

9 A That we were advised that the cleanup
10 was not adequate on the side of the road, and
11 that we would need a second cleanup, because it
12 wasn't cleaned up properly to the satisfaction of
13 the local authorities.

14 Q And how then did Prime respond to that
15 request for further cleanup?

16 A At that point I think we probably had
17 maybe lost some faith in B&W. They had the
18 chance, it didn't get done to the satisfaction of
19 local authorities, so we went to PES, kind of
20 brought them up to speed on what was going on,
21 and let them kind of look over the situation,
22 work with the local authorities, communicate with

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1 them, and get that second cleanup started.

2 Q Are you now aware that a hazardous
3 waste determination was made in connection with
4 that second cleanup?

5 A Yes.

6 Q Okay. And how come if the hazardous
7 waste determination was made with respect to the
8 second cleanup, that Prime didn't immediately
9 address the remnants of the load that was stored
10 in the Salt Lake City terminal?

11 A That's a good question, and when I
12 look at the communiques, or the emails that have
13 gone back, and forth, the interesting thing about
14 them, they're all focused on that piece of ground
15 on I84. I don't see anywhere, and I'm not making
16 an excuse, but I'm not seeing anywhere where they
17 go by the way, where is your trailer, where are
18 those drums that were left, where is the other
19 product?

20 So, I think all of us collectively
21 were focused on the ground right there, getting
22 that cleaned up.

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1 Q Was that trailer, those drums, was
2 that on your radar in any respect?

3 A At that point it was not, no.

4 Q Okay. But you're the director of
5 safety, right?

6 A Correct.

7 Q Is that something you should know?

8 A In hindsight, from what I've learned,
9 again, we thought we were doing a good job, but
10 when you gather all this information over the
11 last seven years, we did not do a good job, and
12 there's no way to sugarcoat that. We had that
13 trailer, we had that product sitting for maybe a
14 year in Salt Lake City. There was question about
15 the first cleanup, we did not do a good job.

16 Q At some point did federal agents visit
17 Springfield, Missouri, and come into contact with
18 Prime personnel?

19 A They did, and that was a very
20 interesting two days.

21 Q To your understanding, were those
22 agents invited by Prime to come to headquarters,

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1 and sit down, and meet with them, and talk about
2 what their concerns were?

3 A What they were doing was going to
4 individual associates' homes at night after
5 working hours attempting to contact various
6 associates, and with different degrees of success
7 I guess. But I think at least the ones that I'm
8 familiar with, all of them said the same thing.
9 This is not the appropriate place for you to be
10 answering -- this is not the appropriate place
11 for me to be answering your questions.

12 However, why don't you come to Prime
13 tomorrow morning, and we can sit down, whatever
14 you need we'll provide, we'll answer your
15 questions. But under the cover of darkness in
16 someone's driveway we did not feel was
17 appropriate, so I don't think a lot was
18 accomplished those two nights.

19 Q Did the agents accept the invitation
20 to come to Prime headquarters, and sit down with
21 Prime folks, and allow them to answer their
22 questions, and respond to whatever concerns they

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1 might have?

2 A They did not. And I don't know what
3 the training is for these special agents, and
4 what they're allowed to do, or not do. But
5 multiple times, they were told just come to
6 Prime, 2740 North Mayfair. And I remember,
7 because I think it may have been our general
8 counsel spoke to Special Agent Mugleston and he
9 said I can't get in because there's a gate.

10 The gate's a two by four that goes up,
11 and down, and it seemed that he couldn't get past
12 that, but we have a security officer right there
13 that looks to see who enters our property, and
14 then gets them to the right place. In my
15 opinion, there would be no reason for them not to
16 be able to get onto our property, and visit with
17 us if that's what they wanted to do.

18 Q There is mention of an email where an
19 individual from Prime responded to concern by PPG
20 concerning the load where that individual
21 indicated that there was nothing to dispose of,
22 that the entire load burned to the ground, are

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1 you familiar with that email?

2 A I am.

3 Q And who is the individual that sent
4 that email?

5 A I believe it was Keith McCoy from our
6 marketing department.

7 Q And was Mr. McCoy, to your knowledge,
8 aware that in fact the burnt trailer, and intact
9 barrels of product had been transferred to the
10 terminal in Salt Lake City?

11 A I'm sure he was not aware, because he
12 would not intentionally provide false information
13 to PPG. There was talk in that everything was
14 destroyed in the fire, he just basically ran with
15 that, and erroneously provided that information
16 to PPG.

17 Q Have you personally, and others at
18 Prime, spent time reflecting on this 2015 Idaho
19 fire, and actions taken after the fire?

20 A I can't speak for others. I know I've
21 spent a lot of time, because I was the one that
22 got the first call, and again, in hindsight, kind

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1 of started off on the wrong foot. Thought I had
2 the information I needed to make a decision. Now
3 with seven years of reflection, and research, and
4 investigation, yeah, we handled it incorrectly
5 from the very first phone call.

6 Q And you say you know how you have felt
7 about it, but have you discussed it with others
8 within Prime to address the situation, and to
9 take steps to ensure that this could not happen
10 again?

11 A Certainly, and particularly within my
12 group, because any spill is going to go through
13 my group in the safety department. And it's
14 crystal clear, regardless of what information
15 we're getting from the local authorities,
16 particularly if it's HAZMAT, that's a little
17 different than five gallons of diesel. This one
18 should have been handled differently.

19 And heaven forbid it happens again, it
20 will be handled differently. We won't make this
21 mistake again.

22 Q And how have you addressed that within

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1 the safety department? If this were to occur
2 again, on whose radar would this situation then
3 land, and who would then be responsible for
4 whatever occurred thereafter?

5 A The responsibility rests with me, but
6 whose radar it would land on would be my safety
7 supervisors, who are kind of my front line
8 managers that work with drivers, handle issues
9 like this, and my night folks that know very
10 clear where the mistake was made on this issue.
11 And that had we had a chance to do it again, this
12 is how we would handle it, and it's how we're
13 going to handle it in the future.

14 Q And you heard the phrase, or know the
15 phrase cradle to grave. Whose responsibility at
16 Prime then is a HAZMAT load, which becomes
17 involved in a situation like this, a fire, whose
18 responsibility is the cradle to grave management
19 of the remnants of that fire?

20 A It falls under the safety department.
21 And by that I mean we should be dictating to road
22 assist. Don't move that trailer, it's going to

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1 stay right there until we find out what's going
2 on with it. To our sales folks, don't be sending
3 information out about this load, we can just
4 coordinate this a lot better than we did, and
5 that's what we'll do if it ever happens again, we
6 won't repeat these mistakes.

7 Q You feel pretty confident in telling
8 Judge Coughlin that that's the present state of
9 affairs at Prime?

10 A Completely. Again, the responsibility
11 rests with me, but it's not as if it was a
12 complex solution. If we could go back in time to
13 that day, and I get that phone call again, I'd go
14 great, let me get a hold of PES, and we wouldn't
15 be sitting here today. But I can't change what
16 happened, but what I can do is change the future.
17 And being the one that's ultimately responsible,
18 making sure it doesn't happen.

19 It's an embarrassment to me, it's an
20 embarrassment to Prime that we're sitting here,
21 and I understand the government's position, we
22 should have done better.

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1 Q Were any of the decisions that were
2 made in this case done with the intention of
3 avoiding compliance with the law, saving money?

4 A No to both cases. We need to comply
5 with the law, we're good corporate citizens, we
6 make mistakes, but we need to comply with the
7 law, and there are some things that you can't
8 skim on, and one of them is a cleanup of this
9 type. And yeah, it was after the fact, but we
10 did spend a lot of money basically doing the best
11 we could to remediate the ground in Idaho,
12 properly dispose of the drums, and the trailer in
13 Utah.

14 This is not an issue where I don't
15 think we can afford this, or there's a way to do
16 this more cheaply, it doesn't come into play in
17 our decisions.

18 Q Are there financial constraints that
19 are placed on you as the director of safety in
20 how to manage these situations, or do you have
21 authority to make decisions, to spend whatever
22 money needs to be spent to properly address a

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1 situation like this?

2 A I have the authority to spend what we
3 need to. There's certain expectations, that in
4 our accounting system we reserve the money, we
5 mark it for that accident, if the costs are going
6 to go up, we increase our reserve. But I don't
7 hit a cap, I don't hit a limit where I need to
8 talk to accounting, or Mr. Low. You can't take a
9 shortcut on it, it needs to be cleaned up.

10 Q Have you ever been criticized by
11 anybody at Prime for involving PES in a situation
12 like some of the situations you've described, a
13 diesel spill, or anything having to do with
14 hazardous materials?

15 A No, not for the cost of the cleanup.

16 Q Do you believe that you have the
17 support of Mr. Low to manage these situations
18 correctly?

19 A I know we do.

20 Q Why do you say that?

21 A Robert entrusts myself, and my team to
22 do the right thing, it's his expectation. He

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1 would never undermine me, and say Steve, this
2 isn't good, spending 50000 dollars on this
3 cleanup, well it's what we need to do Robert.
4 And he may ask for an explanation, and I can
5 certainly tell him whatever he needs to know.
6 Here's a breakdown of the cost to the penny, but
7 it was the cost to clean it up.

8 Q And you have his support in that
9 regard?

10 A Yes.

11 MR. MCKAY: If I can, your honor, just
12 consult with my counsel?

13 JUDGE COUGHLIN: Sure.

14 BY MR. MCKAY:

15 Q So, I just want to be clear on
16 roadside, because if I understand how you
17 describe this, roadside in this situation was
18 operating independent of safety, so safety didn't
19 know what roadside was doing, and roadside may
20 not have had all of the information that safety
21 had in this situation, is that a fair
22 description?

1 A To be clear, we call them road assist,
 2 but I know what you're speaking about.
 3 MR. MCKAY: I meant road assist, yes.
 4 MR. FIELD: Road assist, and in the
 5 case of moving the trailer, yes. Safety, and
 6 road assist work very closely together. I think
 7 right now we work more closely than we ever have,
 8 running the number of miles we run, accidents do
 9 happen regardless of fault, we work hand in glove
 10 with them in knowing what our equipment is,
 11 putting it on a legal hold, how long it's going
 12 to be on a legal hold.
 13 But no, in 2015, in this case, at
 14 least for the movement of the trailer, and those
 15 remaining barrels, we were in silos, and we
 16 weren't talking to each other.
 17 BY MR. MCKAY:
 18 Q And maybe just say again, how has
 19 Prime addressed that so road assist is not going
 20 to be independently moving the remnants of a
 21 hazardous material load without safety's
 22 knowledge?

1 MR. MCKAY: I think that's all I have
 2 your honor, thank you very much.
 3 JUDGE COUGHLIN: Thank you.
 4 MR. FIGUR: Good afternoon Mr. Field.
 5 MR. FIELD: Good afternoon sir.
 6 CROSS EXAMINATION
 7 BY MR. FIGUR:
 8 Q So, you're here today testifying as
 9 Prime's representative, are you not?
 10 A That is correct.
 11 Q Okay, thanks. I'd like to just clear
 12 up one thing relatively quickly by looking at
 13 Complainant's Exhibit No. 22, page 2 I believe.
 14 People seem to think that there's been some
 15 confusion about who called Mr. Derrick of B&W.
 16 Can you please scroll down just a bit, and there
 17 is a paragraph in the middle of the screen now
 18 that says Derrick was questioned.
 19 And I'll continue reading about the
 20 September 27th semi trailer fire. Derrick said
 21 he got called in the middle of the night from
 22 Prime's breakdown department regarding the

1 A I think we have a much better working
 2 relationship with road assist. I've always
 3 respected those guys, Mr. Oheim is not with us
 4 anymore, Jared Hall does that, we couldn't ask
 5 for a better associate in managing this equipment
 6 after an accident. We see each other virtually
 7 every day. We can't let it happen again.
 8 Q I think you said previously that
 9 safety would direct road assist to not do
 10 anything with respect to the load without first
 11 consulting with safety, and making sure that
 12 safety was aware, and then of course PES would
 13 already have been involved by safety. If that's
 14 a fair summary of what you've said.
 15 A It's a fair summary, and I mentioned
 16 a spreadsheet that keeps track of our legal hold
 17 documents. I'm on distribution for that, I know
 18 every time a truck goes on, or off, or a trailer
 19 goes on, or off of legal hold. It's important
 20 that I know what's going on with those. And I
 21 think that leads to better communication as well,
 22 this sharing of information.

1 questioned fire incident. Is there any reason to
 2 believe that that part of Mr. Derrick's testimony
 3 is incorrect?
 4 A I wrote down, I can't remember if it
 5 was this morning, or yesterday, and I think it
 6 was the chief, help me with his name?
 7 MR. FIGUR: Yes, Chief Janousek.
 8 MR. FIELD: Janousek said that when
 9 they made that 911 call, Mr. Drake testified when
 10 he made the 911 call, it actually didn't go to
 11 the state police, it went to the local sheriff
 12 there, and I thought in one of the documents, he
 13 said that they called B&W. That what I --
 14 MR. FIGUR: That's correct, Chief
 15 Janousek does believe that the Elmore County
 16 Sheriff's Office comms called. But based on what
 17 you just read, did Mr. Derrick -- yeah, Mr.
 18 Derrick, I keep getting confused with the first
 19 name, last name. Did Mr. Derrick believe, when
 20 he was discussing this matter with Mr.
 21 Mondelston, that he got called by Prime's
 22 breakdown department? That's all I'm asking.

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1 MR. MCKAY: I'll just object,
2 foundation, and calls for speculation as to what
3 Mr. Derrick believes.

4 JUDGE COUGHLIN: Yes, sustained, you
5 can rephrase though if you wish. And also, just
6 I think you misspoke --

7 MR. FIGUR: Sorry.

8 JUDGE COUGHLIN: No, it's okay, I
9 think you referred to this as testimony, and this
10 is an investigative activity report, right?

11 MR. FIGUR: I did not mean testimony
12 your honor.

13 JUDGE COUGHLIN: All right, just so
14 that the witness isn't confused about in what
15 context this statement is attributed, but I
16 sustain the objection, so you'll need to
17 rephrase.

18 MR. FIGUR: Can you just please read
19 that sentence?

20 MR. FIELD: To myself, or out loud?

21 MR. FIGUR: Out loud.

22 MR. FIELD: Derrick was questioned

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1 about the September 27th, 2015 semi trailer fire.
2 Derrick said he got called in the middle of the
3 night from Prime's quote breakdown department
4 regarding the questioned fire incident.

5 MR. FIGUR: I think I'll leave it
6 there, thank you.

7 BY MR. FIGUR:

8 Q We're trying to get a handle on how
9 much HAZMAT Prime was actually shipping in the
10 September 2015 era, and in Exhibit No. 2, can you
11 please bring that up briefly? RX, sorry. Shows
12 a lot of red dots all over the country, and you
13 said that those represent more than one truck
14 often, correct?

15 A Yes, particularly when you're up in
16 the northeast there, it's all clustered together.
17 It could be an individual truck in Montana, but
18 not in the northeast.

19 Q And this is just a snapshot in time,
20 this is not a representation of every minute of
21 every day, correct, it's just one quick snapshot?

22 A That is correct.

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1 Q And you said approximately three
2 percent, three percent of your loads were HAZMAT,
3 is that at that time, or now?

4 A I think three percent is probably
5 accurate for 2015. I don't check it that often,
6 other than when I pay a dues to a society that we
7 belong to. I'd say it's probably less than three
8 percent right now.

9 Q Okay, and that's possibly because you
10 don't require the endorsements anymore, of every
11 driver?

12 A I don't think that's necessarily
13 correct. I think it's more a case of the freight
14 we haul, and what maybe our preferred freight is
15 for our preferred customers.

16 Q Okay, and you mentioned you transport
17 pharmaceuticals, are pharmaceuticals considered
18 HAZMAT material?

19 A I'm not aware of any pharmaceutical
20 load we've had that we've had to placard.

21 Q Okay. And are you aware that PPG said
22 that you were ranked number four on their list of

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1 companies to transport PPG's products at the time
2 of the incident?

3 A No sir.

4 Q Okay, can you please turn to
5 Complainant's Exhibit No. 16? Top of the second
6 page I believe. There you go, can you please
7 read the full sentence in the half paragraph at
8 the top there?

9 A Low claimed Prime knows PPG products
10 very well. Low estimated Prime is ranked about
11 fourth among the carriers on the amount of
12 business it does with PPG.

13 Q Okay, thank you. And can you please
14 read the first couple of lines of the second full
15 paragraph?

16 MR. FIELD: Starting again with Low
17 claimed?

18 MR. FIGUR: Yes, thank you.

19 MR. FIELD: Low claimed the paint
20 waste incident, and allegations regarding Prime
21 really quote surprised Low, because Low thought
22 Prime had a quote clear understanding of how

1 Prime was supposed to make contact with PPG's
 2 emergency response group.
 3 MR. FIGUR: Thank you. And today, you
 4 would of course call Premium, you testified to
 5 that?
 6 MR. FIELD: Yes.
 7 BY MR. FIGUR:
 8 Q Okay, thank you. Did you hear Mr.
 9 Drake testify that he picked up a Prime trailer
 10 at PPG?
 11 A Yes.
 12 Q And so does Prime store trailers at
 13 PPG for shipments?
 14 A Apparently we certainly did in 2015.
 15 That's not uncommon, it makes it easier for the
 16 driver, I think it makes it easier for the
 17 shipper, so if Mr. Drake said that, I have no
 18 reason to doubt that.
 19 Q Okay, and are you aware that Mr.
 20 Lieman who operates PPG's yard estimates that
 21 about 70 percent of PPG's loads generally are
 22 hazardous materials?

1 don't remember specifically sir.
 2 Q Okay, and did you communicate directly
 3 with Mr. Derrick the night of the fire, from B&W?
 4 A I don't know.
 5 JUDGE COUGHLIN: Not to interject, but
 6 you used an acronym Mr. Field, can you define
 7 what that is?
 8 MR. FIELD: FMCSA, Federal Motor
 9 Carrier Safety Administration, they're part of
 10 the DOT, and that's who regulates trucking.
 11 JUDGE COUGHLIN: Okay, and you're
 12 identified as the point of contact, that's what
 13 you said?
 14 MR. FIELD: Yes, we submit what's
 15 called an MCS150 normally about twice a year that
 16 gives different numbers for our company miles,
 17 the kind of cargo we haul, and point of contact,
 18 and I'm the point of contact.
 19 JUDGE COUGHLIN: Okay, thank you.
 20 MR. FIELD: Yes ma'am.
 21 JUDGE COUGHLIN: Please go ahead Mr.
 22 Figur.

1 A I'm not aware of that, but it doesn't
 2 surprise me.
 3 Q Okay, thank you. We're not going to
 4 spend much time on the night of the fire, I just
 5 want to make sure that I don't miss too many
 6 questions. So, you testified that after Prime's
 7 dispatch got the call from Mr. Drake, you were
 8 notified at home, correct?
 9 A Yes.
 10 Q Okay, and did you work directly with
 11 Mr. Drake after you were notified that night?
 12 A I don't remember. It wouldn't be
 13 unusual for me to call drivers directly, cell
 14 phones are great. I can login from home, and
 15 look up anyone's number, but I don't remember
 16 specifically if I was dealing with Mr. Drake, or
 17 some of our associates at work on Sunday were.
 18 Q Okay, and did you work directly with
 19 any of the responders the night of the fire?
 20 A Again, I don't remember. It wouldn't
 21 be unusual, my number is published on the FMCSA
 22 website as the point of contact for Prime, but I

1 MR. FIGUR: Okay, thank you.
 2 BY MR. FIGUR:
 3 Q Did you communicate directly with PPG
 4 on the night of the fire?
 5 A I don't remember specifically, but
 6 probably not, that's just an educated guess.
 7 Q Okay, and to your knowledge, are any
 8 of the Prime employees who did work with the
 9 persons directly involved in the fire that night,
 10 are any of them testifying other than Mr. Drake?
 11 So anybody in your department, road assist, is
 12 anybody testifying who was actually involved that
 13 night?
 14 A No sir, I don't believe so.
 15 Q Okay, and do all those -- well, not
 16 all of them, do any of them still work in Prime's
 17 Springfield headquarters?
 18 A Yes. I'd have to see specific names,
 19 but I'm pretty certain the majority still do.
 20 Q Okay, thank you, and you're speaking
 21 for Prime as a whole today then?
 22 MR. MCKAY: I don't know what that

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1 means.
 2 MR. FIGUR: Well, you said he was
 3 Prime's representative.
 4 MR. MCKAY: He's testifying as Steve
 5 Fields, director of safety. He's not --
 6 MR. FIGUR: Quite a bit of Mr. Field's
 7 testimony went directly to the company as a
 8 whole. So, I'm willing to forego that question,
 9 and move on in the interest of time, if nothing
 10 else.
 11 JUDGE COUGHLIN: Okay, yeah, I know
 12 he's here as your party representative throughout
 13 the hearing, and his role is clear. Did you want
 14 to pursue the question, or do you --
 15 MR. FIGUR: I don't think I need to at
 16 this time.
 17 JUDGE COUGHLIN: Okay.
 18 BY MR. FIGUR:
 19 Q Are Qualcomm messages recorded?
 20 MR. FIELD: Could you be a little more
 21 specific on what you mean by recorded?
 22 MR. FIGUR: Well, it's our present

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1 majority of our legal holds are because of an
 2 accident. Hypothetically someone runs into the
 3 back of our trailer, and gets hurt. We're going
 4 to put the trailer on legal hold, we're going to
 5 retain all our electronic records. Basically
 6 until any litigation is completed, or it's
 7 determined there is going to be no litigation.
 8 But for this one, this is really just
 9 product liability, I don't think we would have
 10 retained the Qualcomm specifically because of the
 11 fire.
 12 Q Okay. Mr. Drake testified that he
 13 asked Prime headquarters for pictures, didn't he?
 14 A I think it's the other way around,
 15 Prime asked Mr. Drake for pictures.
 16 Q Apologies, but Prime headquarters
 17 asked Mr. Drake for pictures, correct?
 18 A Correct.
 19 Q Thank you. The following question is
 20 did Prime receive pictures from Mr. Drake?
 21 A I believe we did. I can't say with
 22 certainty, technology changes over time, but

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1 understanding that they are kind of typed
 2 messages.
 3 MR. FIELD: That's correct.
 4 MR. FIGUR: And they go to, and from,
 5 for example, Mr. Drake's truck to headquarters,
 6 and back?
 7 MR. FIELD: Correct.
 8 BY MR. FIGUR:
 9 Q And are records, are the Qualcomms
 10 recorded anywhere? So, for instance, similarly
 11 to emails?
 12 A I think maybe a better word might be
 13 retained, they're retained for a minimum of six
 14 months, and on this one, I don't know if they
 15 were retained beyond that, but they're always
 16 retained for a minimum of six months.
 17 Q Okay, and you mentioned that a legal
 18 hold was placed on this event, on the trailer?
 19 A Yes sir, on the trailer.
 20 Q So, would the legal hold have applied
 21 to the Qualcomm messages?
 22 A No, probably not in this case. The

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1 right now it's very easy for drivers to send them
 2 over their phone using the app, and I'm just not
 3 sure in '15, but if Mr. Drake took pictures, we
 4 probably received them.
 5 Q Are you aware of any of them being
 6 entered into evidence, Mr. Drake's pictures?
 7 A I don't know if I'm the right person
 8 to answer that, I'm not sure where evidence
 9 starts, if that's the courtroom, or discovery, I
 10 don't think I know the answer to that.
 11 Q Just a very limited question about
 12 whether you're aware of them being submitted to
 13 this court at all, or for the purposes of this
 14 proceeding?
 15 A I don't know the answer to that sir.
 16 Q Okay, thank you. So, can you tell us
 17 a tiny bit more about the legal hold, is that a
 18 piece of paper, is it an email?
 19 A It's really more an email, we'll just
 20 do a hypothetical that we're stopped at a traffic
 21 light, and someone runs into the back of us,
 22 they're hurt. They may try to make a claim

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1 against us, we shouldn't have been stopped, or
2 the light had turned green, whatever it may be.
3 So, what happens is one of our liability
4 adjusters will send a message out, this truck,
5 and trailer is on legal hold.

6 Normally it's for a minimum of 30
7 days, and it goes on a spreadsheet, and those of
8 us on that distribution, like myself for example,
9 I'll see that truck's been added to legal hold.

10 Q I see, and I did not catch who issues
11 the legal hold?

12 A It can be any of the liability
13 adjusters, but once it's put on legal hold, it's
14 managed by Cammy Elder, who is our bodily injury
15 internal adjuster for Prime.

16 Q And are the subjects that are to be
17 held listed in the legal hold?

18 A Yes, tractor 1234, and trailer 567 are
19 placed on legal hold.

20 Q And to your knowledge is the legal
21 hold being placed into evidence in this
22 proceeding? You can say I don't know, it's fine.

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1 A Well, the procedure I just explained,
2 we didn't have in place in 2015, that's one of
3 our remedial actions over the years to do a
4 better job with those.

5 Q So, who issued the legal hold in 2015
6 for this incident?

7 A It was probably an informal, we've had
8 fires before, let's just hold this until
9 basically our in house legal counsel decides if
10 he's going to pursue any sort of claim.

11 Q So, you initiate the legal hold before
12 counsel says whether to, and what the length of
13 the hold should be, at that time?

14 A At that time it was much more
15 informal. It may have been at the same time, Mr.
16 Oheim may have checked with legal counsel, and
17 said do you want me to hold this trailer? I
18 don't know specifically.

19 Q Okay, and just a couple more questions
20 going back to the night of the fire. You said
21 that you take guidance from local authorities,
22 and the process of the time led you, the

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1 information that you requested led you to believe
2 that everything was proceeding correctly at that
3 time, is that correct?

4 A I'm not sure what I meant by the
5 information I requested.

6 Q You said you asked questions, and
7 based on the answers, and not hearing from the
8 local responders, you assumed everything was
9 fine, is that a fair estimation of what you said?

10 A That's fair, yes sir.

11 Q And at the time, did you have a view
12 as to whether, or not the materials that were
13 being cleaned up, again, at the night of the
14 fire, after the fire was over, did you have a
15 clear opinion of whether, or not those materials
16 were HAZMAT, or not HAZMAT?

17 A I don't think I had a clear
18 understanding of that that morning.

19 Q You believed that the cleanup was
20 being conducted correctly?

21 A Correct.

22 Q Okay. I think that's all your honor,

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1 thank you.

2 JUDGE COUGHLIN: Okay.

3 REDIRECT EXAMINATION

4 BY MR. MCKAY:

5 Q I want to be a little bit careful on
6 this issue, because of issues involving grand
7 jury secrecy. So, would you partly confine your
8 answer to the scope of my question, do you
9 understand that Mr. Field?

10 A Yes sir.

11 Q Prime received a grand jury subpoena
12 for documents in connection with this matter?

13 A Yes.

14 Q And did you help coordinate the
15 gathering of documents that were responsive to
16 that grand jury subpoena?

17 A I believe so.

18 Q And so if documents like photographs
19 from Mr. Oheim, and Qualcomm communications, and
20 matters that were relevant to this proceeding
21 were requested in that subpoena, would those have
22 all been turned over to the government?

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1 A Through your office, I would have
 2 turned them over to you, but yes, whatever we
 3 have that was asked for, we would have provided.
 4 Q And I assume you don't know whether --
 5 what the CID provided to EPA Region VIII?
 6 A That's accurate yes.
 7 Q So, it's possible if they don't have
 8 those materials, that much like your divisions
 9 were siloed, that divisions within the government
 10 are siloed as well?
 11 A I think that's a possibility, yes.
 12 Q That's all I have. And you understand
 13 that the government has the burden of proof in
 14 this case?
 15 MR. FIGUR: Your honor, I'd object on
 16 that is legal argument.
 17 MR. MCKAY: Fair enough, I'll withdraw
 18 it.
 19 JUDGE COUGHLIN: Okay.
 20 MR. FIGUR: And any follow up
 21 questions that I have would be legal argument as
 22 well, so I'm not going to have any follow up

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1 there.
 2 And maybe even some kind of open bar,
 3 or something, please don't indulge, I know it's
 4 tempting, but please don't indulge. So, there's
 5 something that's going to be going on, and
 6 hopefully the noise factor is not going to
 7 interfere with us. I'm hopeful of that, but it's
 8 sort of beyond my control as well. But because
 9 of that, we have the opportunity to stay a little
 10 bit later as well tomorrow.
 11 As long as any witness needs to be in
 12 the courtroom prior to 5:00 p.m., but we could
 13 stay until probably quarter to 6:00. To just
 14 give us a little bit more time, and a little bit
 15 more cushion to get through everything that I
 16 know both sides want to be able to get through
 17 this week. So, I mention that also, just so
 18 you're aware.
 19 Maybe be prepared to stay a little bit
 20 later tomorrow, and I still would like to limit
 21 the 30 minute lunch tomorrow too, just to make
 22 sure we're staying on track. So, please, go

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1 questions.
 2 JUDGE COUGHLIN: Okay, all right,
 3 thank you.
 4 MR. MCKAY: Thank you.
 5 JUDGE COUGHLIN: Thank you very much
 6 for your testimony.
 7 MR. FIELD: Thank you.
 8 JUDGE COUGHLIN: Who is up next?
 9 MR. MCKAY: William Sprague, and I
 10 have confidence we can complete him before the
 11 end of today. I don't anticipate that he'll be
 12 as lengthy as Mr. Field, and I'm prepared to call
 13 him, but also defer to the court on this issue.
 14 If you're ready to break for the day, we'll do
 15 that too.
 16 JUDGE COUGHLIN: I think it's helpful
 17 to press on, just to make sure we can get through
 18 what we can get through. Just as a quick side
 19 note, tomorrow, I think I mentioned this in the
 20 beginning, we were advised that there's some type
 21 of an event going on in the courthouse from 3:00
 22 to 6:00, and so there may be some activity out

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1 ahead, and please call your next witness.
 2 MR. MCKAY: Prime calls William
 3 Sprague.
 4 JUDGE COUGHLIN: Please raise your
 5 right hand. Do you solemnly swear, or affirm
 6 under the penalty of perjury that the testimony
 7 you're about to give in this proceeding will be
 8 the truth?
 9 MR. SPRAGUE: Yes, I do.
 10 WHEREUPON,
 11 WILLIAM SPRAGUE
 12 was called as a witness by Counsel for the
 13 Respondent and, having been first duly sworn,
 14 assumed the witness stand, was examined and
 15 testified as follows:
 16 JUDGE COUGHLIN: Thank you, please
 17 have a seat. The witness has been sworn, please
 18 go ahead.
 19 MR. MCKAY: Thank you your honor.
 20 Will you say your name, and spell your last name
 21 for the record?
 22 MR. SPRAGUE: William Austin Sprague,

1 last name spelling S-P-R-A-G-U-E.
 2 DIRECT EXAMINATION
 3 BY MR. MCKAY:
 4 Q How are you employed Mr. Sprague?
 5 A I'm employed with Prime Incorporated.
 6 Q How long have you been employed by
 7 Prime?
 8 A Just over 13 years.
 9 Q What's your current position?
 10 A Safety supervisor.
 11 Q How long have you had that position?
 12 A Just over eight years.
 13 Q Would you tell the judge some about --
 14 let's short circuit, were you employed in law
 15 enforcement prior to coming to work for Prime?
 16 A For a short time, yes I was.
 17 Q Okay, and will you describe your
 18 employment in law enforcement?
 19 A In 2001 I was in law enforcement
 20 academy. After graduation, I went straight to
 21 work for the Dallas County Sheriff's Department
 22 as a deputy sheriff. Worked in that capacity for

1 Q And the other agency that you worked
 2 with, will you say where that is located?
 3 A Bolivar City is located just north,
 4 and west of Springfield, approximately the same
 5 distance, about 30 miles.
 6 Q Okay. How is it that you came to work
 7 for Prime?
 8 A In 2009, I applied for Prime when
 9 another associate with Prime had told me that a
 10 position was open in their citations department,
 11 and it might be something I was interested in
 12 after I had dealt with tickets for years.
 13 Q Did that associate tell you things
 14 about Prime that made you interested in working
 15 for them?
 16 A I knew after her tenure of 30 plus
 17 years at that time, that must be a pretty good
 18 company, so I was very familiar with her, she had
 19 always talked about how good the company was.
 20 Q And tell me about you were then
 21 eventually hired on at Prime?
 22 A I was, yes.

1 right at one year before I moved to Bolivar City
 2 Police as a police officer. I was there for
 3 approximately one year before after about a 16
 4 hour training mission with the special response
 5 team, I had an injury that kind of creped up
 6 that I had been putting away for a lot of years.
 7 But it made it to where I couldn't put
 8 weight down on my leg, and I was told by a doctor
 9 I'd have to step out of full time law
 10 enforcement. After that point, I still reserved
 11 for eight years, but I got out of full time
 12 capacity.
 13 Q How many total years then, in either
 14 full time, or a reserve capacity did you work in
 15 law enforcement?
 16 A Ten years.
 17 Q And you mentioned some areas that may
 18 not be familiar to the court, or some of us who
 19 are not from around here. Dallas County, where
 20 is that?
 21 A Dallas County is just about 30 miles
 22 north of Springfield.

1 Q And did you interview before you were
 2 hired on?
 3 A I did, yes.
 4 Q Who did you interview with?
 5 A At that time my manager would have
 6 been Patty Hicks. I interviewed with her, and
 7 then I had a separate meeting with Mr. Robert
 8 Low.
 9 Q And who is Robert Low?
 10 A The owner of Prime Incorporated.
 11 Q Did you tell Mr. Low anything about
 12 why he should hire you to come to work for Prime?
 13 A Well, I mean I told him a lot about
 14 how I'm very detailed, and how I believe in
 15 always doing the right thing. And funny story,
 16 at the end of the conversation, I said in five
 17 years, I hope that you look back, and say that
 18 you made a good decision in hiring me, so 13
 19 years later, I think he's okay with that
 20 decision.
 21 Q Okay, fair enough. What was your
 22 first position when you came to work for Prime?

1 A I managed the citations department.
 2 Q Will you say more about what that
 3 entails?
 4 A We have a citations department at
 5 Prime that helps tickets that receive tickets on
 6 the road, of course we always tell them their
 7 best defense is don't get the ticket. But we
 8 have a department that helps them, because a lot
 9 of times being out on the road, it's hard for
 10 them to make sure they're taking care of tickets.
 11 So, we have a department they send those tickets
 12 to, we track the tickets.
 13 If they want help either fighting the
 14 ticket, we get them local attorney information
 15 wherever the ticket's from, we also call, and
 16 negotiate tickets with courts to see if there's
 17 any programs available for them. If they prefer
 18 just to pay the ticket, we also have the option
 19 to pay it for the driver, so we can track the
 20 payment, and make sure it's received, and the
 21 case closed.
 22 The citations department does all

1 motoring public for any load that we haul. It's
 2 not only important to in house associates, but
 3 drivers, and also our customers, and I say that
 4 because we have to have a good relationship with
 5 all three.
 6 And they all have to know that safety
 7 is a top priority, because our drivers have the
 8 authority to make the decision whether they feel
 9 it's safe to operate, or not. And that's
 10 important for our in house associates to know
 11 that if a driver doesn't feel safe, we will not
 12 force them to operate. But it's also important
 13 for our customers to know that relationship with
 14 Prime.
 15 Because if our driver makes that
 16 decision, the only thing we do at that point is
 17 communicate that decision to the customer, and
 18 then the customer knows that Prime will not force
 19 that driver to operate, and that's why it's
 20 always important to have safety as your highest
 21 calling, and for your customers to know that.
 22 Q Are you -- in your capacity as working

1 incoming DOT inspections. We document all of
 2 those, and get them sent back to the required
 3 state. We also in the citations department, we
 4 do all of -- if there's any licensing issues that
 5 a driver has, whether it's canceled, suspended,
 6 revoked, we work with those drivers to get all
 7 those resolved, and to make sure that they've got
 8 someone between them, and the DMV that can help
 9 them get those issues resolved.
 10 Q What was your next position within
 11 Prime?
 12 A I then took a position after five
 13 years in the citations department, I moved into
 14 as a safety supervisor.
 15 Q And what year was that?
 16 A 2014.
 17 Q And is safety a priority at Prime, can
 18 you speak to that?
 19 A I prefer to say that it's not a
 20 priority, it's our top priority. From the very
 21 beginning, we are always told that we will never
 22 sacrifice the safety of any associate, or the

1 within the safety department, are you familiar
 2 with standards within the trucking industry for
 3 safety?
 4 A Yes, I am.
 5 Q All right, and where does Prime fall
 6 in terms of those standards?
 7 A Probably as an industry leader in
 8 safety standards, and mostly in part because of
 9 the work we do with predictive behavior
 10 monitoring, and counseling.
 11 Q Will you describe what you mean by
 12 that?
 13 A For years Prime has been spec'ing our
 14 tractor equipment with safety technology that is
 15 designed to not only step in, and hopefully
 16 prevent accidents, or reduce the severity of them
 17 by applying the brakes, or slowing the truck
 18 down, or things of that nature. But we get
 19 alerts any time a driver applies the brakes
 20 significantly hard.
 21 Maybe they've reached a speed we feel
 22 is unsafe, maybe they've went into a ramp, or a

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1 corner too fast, or if they're following too
2 close. We get alerts from this equipment that
3 tells us that. We then take that, instead of
4 just the truck stepping in, and trying to reduce
5 the possibility of an accident, or reduce the
6 severity, we use each of these as a coachable
7 moment.

8 And that's pretty rare in this
9 industry, because we don't just let the truck
10 step in, we now use it so we can counsel the
11 drivers each time these happen, and that's one of
12 my main job functions. Is we've got to make sure
13 that these drivers know what the alert is, why
14 they're getting it, and then we use those to
15 change behavior.

16 Because we feel if we can not only
17 prevent the critical event from happening by
18 changing behavior, but we could potentially take
19 that driver out of the risk of having an accident
20 all together. And that's where we feel the
21 benefit of this type of technology is.

22 Q Is that technology required by the

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1 drivers that we feel prevent -- I'm sorry, they
2 have some type of risk associated to the company,
3 in other words by either critical events that
4 I've described, that's with the technology, what
5 we call those events, preventable accidents, or
6 any type of moving violations, or inspection
7 violations.

8 We identify those drivers that
9 accumulate those types of events, and then we
10 give them safety training where they have to
11 complete safety classes. And then one of the
12 biggest steps involved in this is they sit with a
13 safety supervisor, and we go over each, and every
14 one of these events once again, in an attempt to
15 change behavior.

16 And then we track those drivers to
17 make sure that they're complying with the
18 commitment they gave us to change, to make sure
19 that we feel it's safe to have them out on the
20 road.

21 BY MR. MCKAY:

22 Q Company wide safety meetings, could

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1 DOT, or other regulations?

2 A It is not required. And we won't wait
3 for it to be required. It's been on -- I've been
4 in the department 13, and a half years, it was on
5 there before I ever started. But we always use
6 it as this type of tool. It's not because it's
7 required, it's great that it's on there to
8 prevent accidents, but we use it as an actual
9 predictive behavior model, so we can focus on
10 drivers that have these types of events, and be
11 safer.

12 Q Do you know the -- does Prime
13 regularly conduct safety meetings?

14 MR. SPRAGUE: Are you referring to the
15 company wide safety meeting, or the -- I have
16 meetings every day at my desk?

17 MR. MCKAY: Why don't you set aside
18 company wide safety meetings for a second, and
19 speak some about the safety meetings that you're
20 describing.

21 MR. SPRAGUE: As a safety supervisor
22 one of our biggest functions is to identify

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1 you describe those?

2 A Every Friday morning at 8:00 o'clock
3 a.m. in the terminal in Springfield we broadcast
4 a safety meeting. It's also simulcast with Salt
5 Lake City, and Pittston, and it's put on YouTube
6 live, and Facebook live. As much as it's a
7 safety meeting, it's also a way for us to connect
8 with our drivers. It's a way for us to listen.
9 We never claim to be perfect, but we know if we
10 can listen to our drivers, and their input, that
11 we can get better.

12 So, we always want them to ask
13 questions, because we know if drivers have
14 questions in these meetings, that probably 100
15 other drivers have the same question. So, we use
16 these meetings as much to tell them what's going
17 on in the industry, what kind of things are going
18 on in our company, but as much to listen to them,
19 and see what concerns they have as well.

20 Q And the drivers participate in that
21 process, they ask questions, and do the thing
22 that you just described?

1 A Yes, they absolutely do. We have a
 2 lot of drivers, they'll fill our caf, every
 3 Friday, because Robert also buys everybody
 4 breakfast that comes to the meeting, and they
 5 give a lot of good input. We've learned a lot of
 6 good things from drivers from these meetings.
 7 Q And by Robert, do you mean Robert Low?
 8 A I'm sorry, yes, Robert Low, the owner.
 9 Q Are you acquainted with Mr. Low
 10 besides your interview?
 11 A Yes, I've had interactions with Mr.
 12 Low.
 13 Q Can you describe the interactions that
 14 you've had with Mr. Low over the years?
 15 A Through my 13 years, I've had multiple
 16 meetings with Mr. Low, I've spoke with him one on
 17 one many times, I've been to many events with
 18 him. But on a personal level outside of Prime,
 19 Robert Low is a very giving man, and every year
 20 for the past six years, I participate in an event
 21 called the 9/11 Memorial Stair Climb for our
 22 fallen firefighters from 9/11.

1 A Yes, I'm very familiar with it.
 2 Q Will you say what that is?
 3 A Do your best, do what's right, and
 4 treat others the way you want to be treated.
 5 Q You know it from memory?
 6 A It's been instilled in me since my
 7 interview, and I use those words every day when I
 8 speak with my drivers.
 9 Q And what do you mean that you use
 10 those words every day? Are they just words on a
 11 piece of paper, or do they have more meaning than
 12 that to you?
 13 A They have a lot more meaning than that
 14 to me, and it's not just Prime. I feel if we can
 15 satisfy those three things, we'll not only be
 16 successful, but we'll be doing it the correct
 17 way. And I bring those up when I meet with my
 18 drivers, because a lot of what we want them to do
 19 is to do their best, and do what's right. And
 20 then it's up to us to treat them the way we want
 21 them to be treated.
 22 Because a lot of what we do is respect

1 And Six years ago I was told about the
 2 event, I went to participate in it, and I went to
 3 Mr. Low, because it's also a fund raiser for the
 4 Fallen Firefighter Foundation. And as I told him
 5 about the event, he absolutely wanted to be a
 6 part of it. And he is not only my biggest
 7 financial supporter every year, but he is the
 8 biggest financial supporter of the event itself.
 9 And just as recent as last Christmas,
 10 my local sheriff in Dallas County, where I used
 11 to work as a deputy sheriff, he called me last
 12 Christmas, and said that their Shop with a Cop
 13 program was going to come up short on funds for
 14 helping needy children buy their families
 15 Christmas, and I went to Robert Low with that
 16 information, and he funded the event.
 17 And so, it means a lot to me
 18 personally, because I feel like I can approach
 19 him with anything.
 20 Q Are you familiar with Mr. Low, or the
 21 company's policy that applies to employees of
 22 Prime?

1 for our driers, they don't get a lot of respect,
 2 a lot of times out on the road, but they will
 3 always have respect from us.
 4 Q Are you familiar with the truck fire
 5 incident in Idaho in September of 2015?
 6 A Yes I am.
 7 Q Did that situation cause any changes
 8 to occur within the safety department regarding
 9 the response, or management of hazardous material
 10 loads?
 11 A Yes, it did.
 12 Q Will you describe what you mean by
 13 that?
 14 A I think the biggest way that things
 15 have changed, is we will always err on the side
 16 of caution. Every conversation that we've had
 17 regarding this has went towards we need to get
 18 our third party administrator involved on the
 19 very front side. Not always be under the
 20 understanding that the person on scene has the
 21 most authority to tell us that.
 22 But at least for them to not only

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1 protect us, protect the environment, if we get
2 them involved on the front side, if whoever is
3 hired to clean up, even if our administrator gets
4 turned away, they'll still track what's going on
5 at the scene for us to make sure that it's being
6 done, and handled the right way.

7 Q And that third party administrator,
8 who are you referring to?

9 A Premium Environmental Services, that's
10 who we use.

11 Q And how would you know how to get in
12 touch with them?

13 A Their number's on my phone, we have
14 magnets all over the safety department with that
15 number on it.

16 Q To your knowledge has a situation of
17 this magnitude ever occurred at Prime before this
18 incident in Idaho?

19 A I can only attest to the time that I
20 spent at Prime, and nothing to this magnitude has
21 happened before, or since.

22 Q Before, or since?

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1 A Correct.

2 Q In your role in the safety department,
3 has Prime, or Mr. Low placed financial
4 constraints on your ability to deal with
5 situations involving public safety?

6 A They have never put constraints. If
7 it's about doing the right thing, we spend what
8 money is needed.

9 Q And how about compliance with the law.
10 Has it ever been suggested to you that you ought
11 to skirt the law, or do something to avoid what
12 the law may require?

13 A Absolutely not, and it won't.

14 Q Do you feel confident that this
15 situation has been addressed in a way at Prime
16 such that it would not occur in the present day?

17 A I'm very confident that -- for one, I
18 don't want this isolated event to define us,
19 because that's not who we are as a company, we're
20 better than this. We admit we made mistakes, but
21 I think what shows the kind of company you are,
22 is how do you learn from those mistakes, and how

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1 do you put procedures in place to make sure that
2 you don't repeat them, and I feel that we've done
3 that.

4 MR. MCKAY: Your honor, if I could
5 just have a moment?

6 BY MR. MCKAY:

7 Q Just one clarification. When Prime
8 pays the traffic ticket of one of its drivers, is
9 the driver's pay adjusted to compensate for the
10 fact that they paid that ticket?

11 A Yes, I'm sorry, I should have been
12 more clear on that. We just handle the payment
13 for them, then their settlement is docked for
14 that payment. They do pay for the tickets, Prime
15 does not cover their tickets. And a lot of what
16 citation department does too, is share
17 information on maybe there's restrictions in
18 certain areas, and things to try, and prevent
19 tickets from happening.

20 So, a lot of what they do in that
21 department is as much prevention, but yes, the
22 payments of the tickets come from the driver, not

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1 the company.

2 MR. MCKAY: Very well, that's all I
3 have Mr. Sprague, thank you.

4 JUDGE COUGHLIN: Thank you. Do you
5 want to at least get -- I don't know how much
6 time you need, do you want to get started?

7 MS. JACKSON: We can certainly try,
8 and then you can cut me off, I just know we have
9 to clear out by 4:45, or 5:00?

10 JUDGE COUGHLIN: Well, I use 4:45 as
11 the mark, to make sure we're out by 5:00. How
12 much time do you all need to clear out?

13 MR. FIELD: Ten minutes.

14 MS. JACKSON: Five minutes.

15 MR. FIELD: Less, yeah.

16 JUDGE COUGHLIN: Yeah, so I'll kick
17 you at about ten minutes, I'll keep an eye on the
18 clock so that we're not cutting it too close, if
19 you don't mind starting your cross.

20 MS. JACKSON: Hopefully I can get
21 there. Hi, my name's Laurianne Jackson, I work
22 for Region VIII EPA. You have seen my colleague

1 up here earlier today, but I'm going to quickly
 2 just ask you a couple quick questions. Give me a
 3 minute, because I am going to try to make this
 4 brief. Let's pick up where you just left off.
 5 CROSS EXAMINATION
 6 BY MS. JACKSON:
 7 Q So, you said there are procedures in
 8 place so that this doesn't happen again, you
 9 don't have a repeat of what happened again. Are
 10 those procedures documented anywhere?
 11 A Not as much documented, as all of our
 12 associates know it in the safety department, and
 13 we've actually had two new associates since this
 14 all happened, and they're very aware of it,
 15 because we've sat down, and had meetings about
 16 it. But as far as documented, we just know to
 17 get PES involved on the front side, and not wait,
 18 and always err on the side of caution.
 19 Q Okay, so it's not documented, right?
 20 A Correct.
 21 Q All right, and I think you said,
 22 again, you mentioned training, has that training

1 If there was an accident involving
 2 hazardous materials in 2015, 2016, the safety
 3 department would have been involved, right?
 4 A Correct, we are involved in all
 5 accidents, that is correct.
 6 Q All right, and the safety department,
 7 so it's kind of generally the safety department
 8 that's making sure that hazardous materials are
 9 getting cleaned up?
 10 A Well, we're responsible for getting
 11 someone involved that can do that, not us
 12 personally getting cleaned up, but to make sure
 13 that we have a response team that does that.
 14 Q Okay, and you're the safety
 15 supervisor, or you're a safety supervisor at
 16 Prime?
 17 A That is correct.
 18 Q Okay, and you worked in the safety
 19 department since 2014, is that right?
 20 A That is correct.
 21 Q Okay, and then David White is also a
 22 safety supervisor for Prime, is that right?

1 been documented?
 2 MR. SPRAGUE: What training, what are
 3 you referring to?
 4 MS. JACKSON: I thought you were
 5 saying you work with the other employees in
 6 safety so that everyone knows you're going to
 7 call PES, and that's what's expected, is that
 8 just within your small department, or is that
 9 company wide?
 10 MR. SPRAGUE: I'm sorry, yes, that's
 11 within our department, because we're going to be
 12 the one responsible for making that call.
 13 BY MS. JACKSON:
 14 Q Okay, just one more quick series of
 15 questions. Okay, so if there's an accident
 16 involving hazardous materials, the safety
 17 department is involved? And I'm asking this --
 18 let's back up. I don't need to ask about what
 19 Prime does today, I think we've gotten enough of
 20 that testimony. I'm speaking specifically in the
 21 2015, 2016 period of kind of the incident that
 22 we're talking about, and the storage.

1 A That is correct.
 2 Q And David White is actually the safety
 3 supervisor that worked on the fire incident,
 4 right?
 5 A I believe he had some involvement, and
 6 what his involvement is, I can't attest to, I can
 7 only attest to mine.
 8 Q Okay, so would it be, I guess can you
 9 say whether, or not David White was the point of
 10 contact for Premium Environmental Services with
 11 this particular incident?
 12 A I can't, I'm not familiar with who
 13 called them, I do not know who was in contact
 14 with them, I did not.
 15 Q Okay, can you pull up RX 11? All the
 16 way to the bottom there, page 13. So, this is
 17 one of client's exhibits, it's been entered, and
 18 you'll see just in the middle, this says Premium
 19 Environmental Services, and the point of contact
 20 there says David White.
 21 A Yes, I see that.
 22 Q Okay, so based on this, would you say

1 that David White was probably the contact with
2 PES?

3 A It's not uncommon, Dave White does a
4 lot of work with PES, that is correct, he most
5 likely was the point of contact at that time.

6 Q Okay, but David White is not here to
7 testify today, correct?

8 A That is correct.

9 MS. JACKSON: That's all I have.

10 JUDGE COUGHLIN: Okay, thank you. Any
11 redirect?

12 MR. MCKAY: No thank you.

13 JUDGE COUGHLIN: Okay, thank you very
14 much for your testimony. All right, so we'll
15 reconvene 8:00 o'clock tomorrow. All right,
16 thank you very much, you all have a good evening.

17 (Whereupon, the above-entitled matter
18 went off the record at 4:42 p.m.)

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