

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 I

Monday,

October 24, 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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1 P-R-O-C-E-E-D-I-N-G-S
 2 (9:35 a.m.)
 3 JUDGE COUGHLIN: Okay, good morning,
 4 everyone. I'm Christine Coughlin. I'm an
 5 Administrative Law Judge with the Environmental
 6 Protection Agency. And I have been designated to
 7 preside over this matter.
 8 In the matter of New Prime, Inc., the
 9 Respondent and Region 8 of the Environmental
 10 Protection Agency. The Docket No. is RCRA-08-2020-
 11 0007.
 12 We are here in Springfield, Missouri and
 13 the date is Monday, October 24th of 2022. And we
 14 are getting started relatively on time. It's 8:37
 15 a.m. in the morning local time.
 16 I'd like to identify two attorneys that
 17 have accompanied me to this hearing. To my right is
 18 Michael Wright, he is an Senior Attorney Advisor
 19 with the Office and to my left is Alyssa Kasson
 20 Nelson who is an Attorney Advisor with our office.
 21 I'd like to go over some housekeeping
 22 matters, but before I do that, I'd like each party

1 to please just identify yourselves for the record
 2 and then we'll go from there and cover some
 3 logistics in the beginning. I'll begin with Region
 4 8.
 5 MS. JACKSON: Sure. Good morning, Your
 6 Honor. My name is Laurianne Jackson. And thank you
 7 for your patience this morning while we were getting
 8 the virtual stuff set up.
 9 JUDGE COUGHLIN: No problem.
 10 MR. FIGUR: Good morning, Your Honor.
 11 Charles Figur for EPA.
 12 JUDGE COUGHLIN: Good morning.
 13 MR. McKAY: Good morning, Your Honor. My
 14 name is Scott McKay. Nice to meet you.
 15 JUDGE COUGHLIN: Nice to meet you.
 16 MR. McKAY: I'm with Nevin, Benjamin and
 17 McKay in Boise, Idaho.
 18 JUDGE COUGHLIN: Okay, good morning.
 19 MR. McKAY: I represent New Prime.
 20 JUDGE COUGHLIN: Okay.
 21 MR. RYAN: And I'm Mark Ryan and I also
 22 represent New Prime.

1 JUDGE COUGHLIN: All right. Good morning
2 to all of you. All right, just a few logistics. I
3 think Alyssa's probably covered this with you, but
4 you know, it bears repeating.

5 I'd like to try and start at 8:30 in the
6 morning. It seems like that will be fine. The
7 doors open I believe at 7:30. The Courtroom will be
8 secured so in the event you want to leave anything
9 in here, you can, to facilitate setting up the next
10 day.

11 They close at 5:00 p.m. and so you know,
12 to be respectful of that, I'm going to plan on
13 wrapping up right at about a quarter until unless
14 you think you need more time to collect everything
15 and be on your way by 5:00 p.m.

16 So I don't want to impose on that. I'm
17 a visiting Judge here so I appreciate the
18 hospitality and like to reciprocate with politeness
19 as well.

20 I also understand there's no cafeteria,
21 vending machines, so we're going to take an hour for
22 lunch today and then I'd like to just see how things

1 I have no preference. It's really up to
2 you. Other than that, there's nothing that really
3 comes to mind. I do want to do a quick rundown of
4 the stipulated exhibits.

5 Just to make sure we're all on the same
6 page. And if you, if it's your intent to offer
7 those in up front, fine. If you don't and you'd
8 like to do that along the way, that's fine too. I
9 have no preference.

10 I'm just going to keep track and I'll
11 probably check in with you all each morning just to
12 make sure the expectation of what's been admitted or
13 not is what I have record of as well.

14 I've done a bunch of talking so anything
15 that you all need to ask me about housekeeping wise,
16 logistics before we get started? The Region?

17 MS. JACKSON: Your Honor, I was just
18 actually going to ask for preliminary the stipulate
19 exhibits and maybe a couple of things for judicial
20 notice. Would you like that after the openings?

21 JUDGE COUGHLIN: Sure, that's fine.
22 Okay.

1 proceed because I'd like to be able to give you that
2 on each day so you have some time just to relax,
3 recover, regroup, get something to eat and come back
4 refreshed.

5 If we're coming up to the deadline, then
6 we might need to adjust that, but as long as we're
7 moving kind of on track and looking to wrap up on
8 time, I'm happy to stick with that plan so that you
9 have adequate time to rest for lunch.

10 Other than that, I understand you'd each
11 like to make some openings. We'll obviously begin
12 with there and I think you're probably all very
13 familiar with this type of enforcement process.
14 I'll begin with the Region.

15 They'll present first. They bear the
16 burden. And then after that, I'll shift to
17 Respondent for the presentation of evidence, cross
18 examination, redirect.

19 If you wish to make a closing when we
20 wrap up, you certainly can and if you wish to
21 dispense with that and simply argue in post-hearing
22 briefs, that's fine too.

1 MS. JACKSON: That's fine.
2 JUDGE COUGHLIN: Anything from New Prime?
3 MR. McKAY: Just one thing, Your Honor.

4 Can we introduce Steve Field? He is the --
5 JUDGE COUGHLIN: Sure.

6 MR. McKAY: -- Director of Safety for
7 Prime and --

8 MR. FIELD: Good morning, Your Honor.

9 MR. McKAY: -- as company representative,
10 he'll be present during this proceeding.

11 JUDGE COUGHLIN: Okay. All right. Good
12 morning, welcome to you.

13 MR. FIELD: Thank you.

14 JUDGE COUGHLIN: Anything else then
15 before we get started? No? Okay. All right.
16 Would the Region like to begin with their opening
17 statement?

18 MS. JACKSON: Sure. Good morning, Your
19 Honor.

20 JUDGE COUGHLIN: Good morning.

21 MS. JACKSON: This case is about a
22 national trucking company that missed every sign on

12

1 the road to compliance until EPA came knocking. At
 2 this point, this is a simple case.
 3 The only matters at issues are the number
 4 of drums of hazardous waste that were transported
 5 and then improperly stored at Prime's facility.
 6 And whether the EPA appropriately applied
 7 the statutory factors using the RCRA penalty policy
 8 to the facts of this case when assessing the
 9 penalty.
 10 With regard to the first issue, the
 11 evidence will show there were at least 20 drums of
 12 hazardous waste, eight that were sampled and another
 13 12 that were analyzed by a trained Federal
 14 Investigators using XRF.
 15 As for the penalty, Prime generated and
 16 transported 32 drums of solid waste including at
 17 least 20 drums of hazardous waste following a
 18 roadside fire that turned drums from hazardous paint
 19 product into hazardous waste.
 20 On October 1st, 2016, approximately five
 21 days after the fire, Prime arranged for the
 22 transport of these burned drums and open drums of

14

1 for the gravity of violation that occurred.
 2 And they help ensure that a level playing
 3 field to make sure that noncompliance is considered,
 4 is not considered a part of doing business.
 5 You will hear from EPA's penalty witness,
 6 Ms. Kristin McNeill, explaining how EPA applied the
 7 statutory factors using the RCRA Penalty Policy
 8 based on the facts of this case to calculate a
 9 penalty of \$631,000, sorry \$631,402.
 10 You will also hear Prime make several
 11 arguments in support of a lower penalty. First,
 12 Prime argues that there was a lot of confusion
 13 during this fire.
 14 But the evidence will show that any
 15 confusion was short lived. As you have heard and
 16 will hear during testimony, our focus is on what
 17 happened in the days and months after the fire
 18 including after Prime heard from hazardous waste
 19 regulators and its own hazardous waste contractor.
 20 Second, Prime argues the EPA failed to
 21 consider Prime's history of compliance and
 22 cooperation after EPA began its investigation, but

13

1 hazardous waste on the open public roads for over
 2 300 miles without first conducting a hazardous waste
 3 determination, without a manifest and without a bill
 4 of lading and without a placarding.
 5 Prime then stored these 32 compromised
 6 drums including at least 20 drums of hazardous waste
 7 on a burnt, collapsed trailer missing the top half
 8 of its structure at its facility in Salt Lake City
 9 for over 300 days without proper storage conditions,
 10 without permit and without obtaining a facility
 11 specific ID number.
 12 Every mile that the waste traveled and
 13 every day that the waste was improperly stored
 14 presented a risk of release. These are precisely
 15 the kinds of conditions that the RCRA regulatory
 16 stream, sorry, scheme was designed to prevent.
 17 And should be, Prime should be held
 18 accountable. The statutory maximum is \$101,439 per
 19 day per violation. The RCRA Civil Penalty Policy is
 20 used by EPA to ensure the penalties that are
 21 assessed are fair and consistent from region to
 22 region across the country, that they are appropriate

15

1 the evidence will show that EPA did in fact consider
 2 Prime's cooperation and compliance history in its
 3 calculation of the proposed penalty.
 4 Third, Prime argues that this case does
 5 not warrant a finding of major, major or even
 6 moderate major under the Penalty Policy implying the
 7 EPA should have exercised its enforcement discretion
 8 and assessed the lower penalty.
 9 But the evidence will show that each of
 10 the relatively few violations, EPA chose to allege
 11 are fundamental to the RCRA program. And, EPA
 12 exercised its enforcement discretion in this case by
 13 only considering violations that occurred after the
 14 fire response.
 15 Further, you will hear from Ms. McNeill
 16 that the EPA exercised even more discretion when
 17 assessing the proposed penalty. Discretion in this
 18 case, however, does not mean giving Prime a pass and
 19 for admitted violations.
 20 And Prime's arguments regarding equitable
 21 factors should not be considered any, for any --
 22 sorry -- should not be considered to cause any

16

1 further downward adjustments.
 2 In this case, Prime ignored five big road
 3 signs on the road to compliance. The first sign,
 4 before the fire and on the night of the fire Prime
 5 had the bill of lading for NPPG.
 6 It said, for help and emergencies
 7 involving a spill, leak or fire, call Chemtrec.
 8 Prime didn't call Chemtrec. It also said that -- it
 9 also included a CERCLA reportable quantity
 10 designation in the event of a spill or a fire to the
 11 strontium chromate primer.
 12 Prime did not call the National Response
 13 Center. Finally, the bill of lading said had a UN
 14 1263 designation reflecting that the primer was Haz
 15 Class 3 material.
 16 This information was also in Prime's
 17 computer system for the shipment. In spite of all
 18 of this information, Prime failed to follow its own
 19 proclaimed procedures, which was to call a third-
 20 party environmental contractor.
 21 Instead, Prime called a local towing
 22 company that was not authorized to transport

18

1 calls Prime on or about October 21st, 2015, and
 2 explains to David White, Prime's Safety Supervisor
 3 that the fire scene needs additional cleanup, a
 4 second cleanup of the yellow primers paint stained
 5 soils that remained at the scene of the accident.
 6 And IDEQ had to subsequently inform Prime
 7 through its contractor Premium Environmental
 8 Services that the soils must be properly analyzed
 9 prior to disposal.
 10 And for three weeks, the drums of
 11 flammable and toxic hazardous waste have been
 12 sitting outside the Prime facility in Salt Lake
 13 City.
 14 Road sign number four, on or about
 15 November 25th, 2015, if not before, Prime received
 16 the SDS from IDQ containing detailed information
 17 about the chemical contents of all four products
 18 that were on the shipment including the Schrodinger
 19 chromate primer.
 20 The SDSs described in detail health risks
 21 from exposure and among other things, proper storage
 22 requirements. Still, the drums of hazardous waste

17

1 hazardous materials. Prime similarly ignored
 2 repeated warnings from Sergeant Bonner who was the
 3 hazardous material supervisor for the State, the
 4 Idaho State Police and an incident commander at the
 5 scene.
 6 The second road sign, emails between PPG,
 7 the manufacturer of the product, and Prime. The
 8 evidence will show that on September 30th and again
 9 on October 13th, PPG the manufacturer, emailed Prime
 10 requesting evidence or documentation of proper
 11 disposal and also pictures and a Police report.
 12 In response, PPG on, in response to PPG,
 13 Prime on October 13th, 2015, misrepresents that
 14 there's nothing to dispose of, the trailer has
 15 burned to the ground.
 16 Instead, Prime arranged for the drums of
 17 waste to be moved from BNW's lot where it was being
 18 charged for storage, from Idaho to Salt Lake City on
 19 October 1st.
 20 And within a few weeks of the fire, Prime
 21 ignored the third road sign that could have led it
 22 to compliance. IDEQ, the hazardous waste regulator,

19

1 sit outside the Prime facility open and unmanaged.
 2 And finally, road sign number five to
 3 RCRA compliance, analytical results from the second
 4 cleanup dated November 23rd, 2015, that reflected
 5 concentrations of chromium and in the mixture of
 6 yellow paint and soil from the second cleanup at
 7 18.5 milligrams per liter, over three times the
 8 regulatory legal limit.
 9 Still the drums of waste sit outside the
 10 Prime facility, open and unmanaged. Prime argues
 11 that there was no actual harm to human health and
 12 the environment and any potential for exposure is
 13 low.
 14 We will show that Respondent's attempt to
 15 characterize the storage of these hazardous waste
 16 drums in Salt Lake City as adequately protecting
 17 human health and the environment missed the RCRA
 18 mark entirely.
 19 Under the RCRA penalty policy, the
 20 potential for harm is a two-part analysis. There's
 21 a consideration for potential for harm to the
 22 program and the evidence will show that RCRA

20

1 provides a clear road map to compliance and that the
 2 violations EPA alleged in this matter are
 3 fundamental to that program.
 4 And then there's the potential for harm
 5 to human health and the environment. Actual harm is
 6 not required. Testimony from the EPA's expert
 7 toxicologist, Dr. Kristen Keteles will show that
 8 Respondent's assertion that there was a low risk of
 9 exposure simply cannot be made under these
 10 circumstances if one applies, sorry, accurately
 11 applies, risk assessment principles.
 12 Dr. Keteles will tell testify that a
 13 threat of harm existed due to the inherent toxicity
 14 of the waste and the potential for Prime employees,
 15 visitors and first responders to come into contact
 16 and therefore be exposed to the improperly stored
 17 waste.
 18 Complete exposure pathways, the risk of
 19 fire, and the inherent toxicity of the waste creates
 20 a substantial risk of harm to human health and the
 21 environment under the RCRA Civil Penalty Policy.
 22 Quite simply, Prime failed at every road

22

1 like.
 2 JUDGE COUGHLIN: You know, that's okay.
 3 I actually made a list of my own as I was going
 4 through the case because I realized there were a
 5 great many.
 6 MS. JACKSON: Yes.
 7 JUDGE COUGHLIN: But it's also for the
 8 Court Reporter's benefit. So did you use that?
 9 COURT REPORTER: I did.
 10 JUDGE COUGHLIN: You have it?
 11 COURT REPORTER: I do.
 12 JUDGE COUGHLIN: Perfect. Thank you so
 13 much.
 14 MS. JACKSON: Okay, thank you.
 15 MR. RYAN: Good morning, Your Honor. I'm
 16 Mark Ryan. I represent Prime. And I first of all
 17 I want to start out by thanking you for granting us
 18 the ability to give these opening arguments this
 19 morning.
 20 Prime is a trucking company that hauls
 21 primarily food and some pharmaceuticals, about 75
 22 percent of their business. They're not in the

21

1 sign to move forward to compliance. That is until
 2 EPA came knocking at the door. In closing, the EPA
 3 asks this Tribunal to impose a penalty that reflects
 4 the seriousness of these violations and will serve
 5 as a deterrent to Prime and others in the future.
 6 Thank you.
 7 JUDGE COUGHLIN: Okay, before you step
 8 away, let me ask you on -- a lot of acronyms in this
 9 case. So I think in point four you used an acronym
 10 on SDS or SES?
 11 MS. JACKSON: SDS.
 12 JUDGE COUGHLIN: Okay, that's what I
 13 thought you meant. I might have heard something
 14 else. In any event, can you please define what that
 15 is.
 16 MS. JACKSON: Absolutely. Those are
 17 Safety Data Sheets.
 18 JUDGE COUGHLIN: Okay, thank you.
 19 MS. JACKSON: They're used to be referred
 20 to as MSDSs, Material Safety Data Sheets. And, Your
 21 Honor, we have a list of acronyms we provided, but
 22 we're happy to provide one to you as well if you

23

1 hazardous waste business.
 2 They're not a battery recycling facility,
 3 they're not a metal manufacturer. They're a
 4 trucking company. They haul mostly frozen food and
 5 COVID vaccine.
 6 We admitted liability in this case
 7 because RCRA has a strict liability and my company
 8 steps, it takes responsibility for what they did.
 9 They violated the law, they admitted liability.
 10 And they accept that there's going to be
 11 a penalty in this case. They're a big company, they
 12 should have known better, but they made a mistake.
 13 That's what this is about.
 14 This is a mistake by a company that got
 15 some wrong information up front, didn't follow
 16 through properly, but has since fixed everything
 17 that could have possibly caused this problem in the
 18 first place.
 19 And the record will show there have been,
 20 there were no prior violations in this case, there
 21 have been no subsequent violations in this case.
 22 This is a company that really abides by the law.

1 So this case is really about is this case
 2 worth \$631,402 as the EPA has proposed? And it is
 3 not because Prime at all times acted in good faith.
 4 Did they make mistakes?

5 Yes, they did. But at no time did they
 6 try to evade the law. At no time did they try to
 7 save money. At no time did they try to argue
 8 loopholes in the law.

9 They made a mistake. And in the 50 years
 10 of this company's history which they've hauled
 11 hundreds of millions of miles per year of mostly
 12 food, they have not had a RCRA violation. Not
 13 before or after.

14 And that's important because this company
 15 really has no prior experience with RCRA violations.
 16 This was a first RCRA hazardous waste fire of this
 17 type the company had ever experienced.

18 And they haven't had one since. And
 19 you'll hear that from Mr. Field, my client, who will
 20 testify. He's Head of Safety at Prime and safety
 21 and he will testify that this is one off in the 50-
 22 year history in the company.

1 And they don't, they don't haul hazardous
 2 material, hazardous waste at all. Hazardous
 3 materials today account for less than 2 percent of
 4 their business. In 2015, it was less than 1
 5 percent, 3 percent of their business.

6 So it's a very small portion of what they
 7 do. The company is presently in full compliance
 8 with the law. They've had no, as I've mentioned,
 9 they've had no violations prior or since.

10 There was no actual harm caused by this.
 11 And my learned co-counsel, excuse me, opposing
 12 counsel is correct, RCRA looks at potential harm.

13 But it's important to remember nothing
 14 happened as a result of the storage of this
 15 transportation to Salt Lake City and the storage of
 16 this, of these materials in Salt Lake City.

17 And what you'll hear from Dr. Walker, our
 18 toxicology expert, is that there was a very low
 19 probability of anything happening given how it was
 20 stored.

21 So we're definitely going to have
 22 competing expert testimony in this case. I think

1 you will find Dr. Walker's testimony compelling.
 2 But it's important to remember that when Prime made
 3 this mistake they didn't do so out of greed or ill
 4 intent or -- it was an honest mistake.

5 So the fire occurred on September 27th,
 6 2015. And as Your Honor has, I'm sure has figured
 7 out from the pleadings, there was a lot of confusion
 8 at the fire.

9 There were multiple state, Federal and
 10 local agencies involved, including EPA. EPA was
 11 notified at 4:00 a.m. on the morning of the fire as
 12 part of the notification system.

13 The possible hazmat situation was
 14 involved. So EPA was notified right up front about
 15 this. And as a result of these miscommunications,
 16 some wrong decisions were made.

17 And the EPA is correct that after the
 18 initial decision was made to haul the trailer with
 19 its contents back to Salt Lake City, there were
 20 warning signs to Prime that this was hazardous
 21 waste.

22 But what we will hear from our client,

1 Mr. Field, is that there are two parts of, Prime's
 2 a big company, there were two parts of Prime that
 3 were dealing with this.

4 There was the safety group and the
 5 roadside assistance group. Safety was in charge of
 6 hiring the contractors, the RCRA expertise
 7 contractors, to come in and take care of the site.
 8 Okay?

9 Roadside Assist helps tow truckers away
 10 when the trucker has an accident or something on the
 11 road and they have, you know, thousands of trucks,
 12 Roadside Assist assists that trucker and gets their
 13 truck taken someplace.

14 And that's Roadside Assist took care of
 15 hauling this thing down to Salt Lake City. The
 16 problem is, Safety wasn't talking to Roadside
 17 Assist. That was a mistake and they fixed that.

18 And you're going to hear testimony from
 19 Mr. Field how that institutionally has been changed
 20 and will not happen again. So Roadside Assist
 21 hauled this, the trailer down to Salt Lake City
 22 where it was stored.

1 And in what, in Springfield, when you
2 hear of Prime referred to as Springfield, it's the
3 headquarters so when they say Springfield says this
4 or Springfield says this, it's the Prime
5 headquarters.

6 So Springfield placed a hold on the
7 trailer because it had been involved in a fire and
8 they wanted to find out what caused the fire. A
9 lot, you'll hear from Mr. Field, a lot of what Prime
10 does is safety people is they try and prevent future
11 accidents.

12 They take safety very, very seriously.
13 They have thousands of trucks moving millions of
14 miles around the country and they have to take
15 safety seriously.

16 So they put a hold on this just to figure
17 out why it burnt. It got put in the corner of the
18 Salt Lake City lot on a blind pad with a, you'll
19 hear the testimony that the Salt Lake City facility
20 is surrounded by a chain link fence, with barbed
21 wire on top and guards at all the gates.

22 No one comes and goes from this facility

1 EPA's involved. You guys have that trailer still,
2 cover it with tarps, leave it alone, don't touch it,
3 we have to preserve the evidence.

4 So that's what happened, that's where the
5 tarps came in to be. So the trailer sat there for
6 quite some time. And once EPA showed up on August
7 2nd to investigate for the part of the criminal
8 investigation, they issued a Preserve Letter which
9 we did, we followed it.

10 Prime complied with everything EPA told
11 it to do. Prime actually helped the CID
12 investigators move the drums with its forklifts.
13 These Prime forklifts that pick up the drums so the
14 EPA investigators could sample them.

15 Prime did everything EPA asked it to do.
16 And when the lift, the hold on trailer was lifted by
17 EPA, Prime immediately hired a RCRA contractor and
18 had it disposed of it properly.

19 And then finally you'll hear from Dr.
20 Walker as I mentioned before, Dr. Walker's going to
21 talk about the probability of harmful exposure and
22 that's an important part of this case because that

1 without passing by a guard or, you know, showing ID.
2 So they store the trailer down there. And it sits
3 for in the neighborhood of 300 days.

4 It got, basically, it got forgotten
5 about. Again, this was a mistake. We own this.
6 The, now there's been some discussion about the
7 tarps.

8 There was confusion on Mr. McKay's and my
9 part and also I think believe if you look at some of
10 the EPA documents, about when this thing was tarped.
11 It turns out it was tarped fairly late in the game.

12 The thing, the trailer sat there for much
13 of the time untarped just as it was brought down
14 they put it, left it alone under a legal hold. The
15 people in Salt Lake City said, we're told, don't
16 touch it.

17 Leave it alone because we don't want
18 anything disturbed in case we have to investigate
19 it. So it sat there untouched in a remote corner of
20 the lot with no tarps on it for much of the time.

21 Only when EPA CID became involved, then
22 the message came back from Springfield, oh, my gosh,

1 goes to the heart of EPA's penalty calculations.

2 And we believe those penalty calculations
3 were wrongly performed. So EAB has made it very
4 clear that no way that the ALJ was in no way
5 constrained by the Region's penalty proposal.

6 And we think the evidence will show, Your
7 Honor, that the EPA got it wrong here. Now, Your
8 Honor, probably knows that I was an EPA lawyer for
9 a long time. And I sat in that chair through many
10 of these cases.

11 And I have great respect for EPA and what
12 it does. I was an EPA lawyer for 24 years. And I
13 have a lot of respect for what these people are
14 doing today. These lawyers, they're doing a good
15 job, they're doing their job.

16 But when I brought cases, when I tried
17 cases, there were cases against bad actors, people
18 who were trying to evade the law, people who refused
19 to comply, people who were trying to find a loophole
20 of some sort, people who had caused great harm to
21 the environment.

22 This is not one of those cases. My

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1 client is not one of those bad actors. They made a
2 mistake, yes, but it was a mistake. I think when
3 you hear from the testimony of Mr. Sprag and Mr.
4 Field, and Mr. Singleton, what Your Honor I think
5 will carry away from that is that these are really
6 honest and law-abiding people.

7 They didn't mean wrong. Now RCRA has
8 strict liability statute. We recognize that.
9 That's why we didn't challenge the liability at all.

10 But those issues are important when you
11 assess the penalty under the RCRA statute which
12 requires good faith efforts to comply to be
13 considered.

14 And you'll hear a lot of testimony on
15 that. And the question is, is this case worth
16 \$630,402? And I think Your Honor will find that
17 with all the evidence considered, it is not. Thank
18 you very much.

19 JUDGE COUGHLIN: Thank you. Okay. One
20 other quick point before we deal with the stipulated
21 exhibits. We know that it's warm in here.

22 And the owner of the building's been

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1 Honor. Yes, same.

2 JUDGE COUGHLIN: Okay, great. All right.
3 So let me do a quick rundown and then we can take
4 care of that. Here's what I have. I'll begin with
5 Complainant's CEX1, CEX2, CEX6, CEX8 and if I'm
6 messing up, don't be shy, jump in.

7 Okay? CEX13, CEX15, CEX32, CEX33, CEX34,
8 CEX35, CEX36, CEX37, CEX38, CEX39, CEX40, CEX41,
9 CEX42, CEX43, CEX44, CEX45, CEX46, CEX47, CEX49,
10 CEX50, CEX64 core corrected, CEX67, and that's it
11 for Complainant's. Am I on track so far? Yes, I'm
12 getting nods.

13 MR. FIGUR: Yes, ma'am.

14 JUDGE COUGHLIN: Okay, thank you. And
15 then turning to Respondent's, RX1, RX2, RX3, RX4,
16 RX5, RX6, RX16, RX19. Is that correct?

17 MR. FIGUR: It is.

18 JUDGE COUGHLIN: Okay, great. Region 8?

19 MS. JACKSON: Yes.

20 JUDGE COUGHLIN: Okay. So you wish to
21 move that into evidence?

22 MS. JACKSON: Yes, Your Honor.

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1 contacted. So you might see a gentleman come in and
2 he's going to have to kind of come through here
3 hopefully behind you all and deal with that
4 thermostat.

5 So I just wanted to give everybody a
6 head's up that if that happens, I'm aware of it and
7 I don't want you to be alarmed. It's hopefully to
8 make everybody a little more comfortable from this
9 point forward.

10 So that should be the only interruption
11 that I'm aware of. Okay, are we ready to go through
12 the exhibits?

13 MS. JACKSON: Sure.

14 JUDGE COUGHLIN: Okay. Let me just do a
15 quick rundown, if this is the most efficient way,
16 I'm not sure, of what I have noted that both sides
17 have stipulated to with regard to authenticity and
18 admissibility.

19 And is it the intention of both sides to
20 for efficiency, move that in now?

21 MS. JACKSON: That's fine, Judge, or --

22 MR. MCKAY: I have no objection, Your

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1 JUDGE COUGHLIN: Okay. And --

2 MR. MCKAY: Same. We move the admission
3 of all the Respondent's exhibits you just
4 identified.

5 JUDGE COUGHLIN: All right, great, thank
6 you so much. They'll be admitted into evidence.
7 (Whereupon, the above-referred to
8 documents were received into evidence as Complainant
9 Exhibits 1, 2, 6, 8, 13, 15, 32 through 47, 49, 50,
10 64 core corrected, and 67 and Respondent Exhibits 1
11 through 6, 16, and 19.)

12 Okay, the other quick thing that I
13 neglected to do is just for each for side to just do
14 a quick rundown of the witnesses that you are
15 intending to present during the hearing.

16 Make sure I'm on the right page here. So
17 let me just start with Region 8 or Complainant. Can
18 you just tell me the names of who you're planning to
19 present?

20 MS. JACKSON: Yes, Your Honor. First we
21 have, excuse me, we'll have Marc Callaghan, he's the
22 virtual witness that's prepared and then we, next is

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1 Brad Miller.
 2 JUDGE COUGHLIN: Okay.
 3 MS. JACKSON: And then Kristin McNeill.
 4 And then finally, we'd like to reserve Dr. Kristen
 5 Keteles for rebuttal.
 6 JUDGE COUGHLIN: Okay. Thank you, and
 7 from New Prime?
 8 MR. McKAY: Yes, Your Honor. We intend
 9 to call Steve Drake.
 10 JUDGE COUGHLIN: Okay.
 11 MR. McKAY: Kelly O'Neill, Steve Field,
 12 William Sprague, Brian Singleton --
 13 JUDGE COUGHLIN: Okay.
 14 MR. McKAY: -- and Dr. Liz Walker.
 15 JUDGE COUGHLIN: Okay. Got it. Thank
 16 you. All right. I'll try to remember to offer up
 17 some comfort breaks along the way. But if you need
 18 one, just let me know. Happy to take that. Okay?
 19 Are we ready to get started with the first witness?
 20 MS. JACKSON: Yes, Your Honor. The only
 21 additional thing that we were going to request was
 22 judicial notice of EPA's websites that would include

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1 the two memoranda that were referenced in the EPA's
 2 explanation of penalty?
 3 MS. JACKSON: Yes, and they are also in
 4 our prehearing exchange.
 5 JUDGE COUGHLIN: Okay. All right. Would
 6 you like those websites before considering whether
 7 you wish to object or --
 8 MR. RYAN: No, Your Honor, we, I'm
 9 familiar with the documents. We're fine with them.
 10 JUDGE COUGHLIN: Okay, so I'll go ahead
 11 and take judicial notice of those as well.
 12 MS. JACKSON: Okay, great. Thank you.
 13 JUDGE COUGHLIN: Sure thing. All right,
 14 anything else before we get started with the first
 15 witness?
 16 MS. JACKSON: I don't think so.
 17 JUDGE COUGHLIN: Okay. And from New
 18 Prime, are you ready to go?
 19 MR. McKAY: Yes, we are, Your Honor.
 20 JUDGE COUGHLIN: All right, great. Okay,
 21 go ahead Ms. Jackson, please call your first
 22 witness.

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1 the RCRA Penalty Policy and just the U.S. Inflation
 2 Calculator.
 3 Both of those are known and accessible
 4 and readily available so it might ease things to
 5 have it judicially noticed.
 6 JUDGE COUGHLIN: Okay.
 7 MR. RYAN: No objections, Your Honor.
 8 JUDGE COUGHLIN: Okay. I will take
 9 judicial notice of those.
 10 MR. RYAN: And just so we're clear, we're
 11 talking about the 2003 RCRA Penalty Policy?
 12 MS. JACKSON: Yes, but that also
 13 actually, I'm sorry, I should be more clear.
 14 JUDGE COUGHLIN: Yes, I wanted to ask
 15 about that.
 16 MS. JACKSON: The RCRA Penalty Policy and
 17 also the Inflation Adjustment Memoranda. I actually
 18 meant to have, oh, I do have it. No, I don't. I
 19 thought I, sorry.
 20 I thought I had my, the internet website,
 21 but I don't. But I can provide that.
 22 JUDGE COUGHLIN: Okay. Those would be

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1 MS. JACKSON: Your Honor, the EPA would
 2 like to call Mr. Marc Callaghan.
 3 JUDGE COUGHLIN: Okay. Let me see if I
 4 can locate this a little better. Perfect. All
 5 right. Can Mr. Callaghan see me?
 6 MS. JACKSON: I can ask.
 7 JUDGE COUGHLIN: Mr. Callaghan, can you
 8 see me?
 9 MS. JACKSON: No, he cannot.
 10 MR. CALLAGHAN: I cannot, Your Honor.
 11 JUDGE COUGHLIN: Okay, we just can see
 12 you. All right, that's fine. I need to place you
 13 under oath so if you would please raise your right
 14 hand. I'm raising mine as well.
 15 WHEREUPON,
 16 MARC CALLAGHAN
 17 Was called as a witness by Counsel for
 18 the EPA, and after having been first duly sworn, was
 19 examined and testified as follows:
 20 JUDGE COUGHLIN: Okay. The witness has
 21 been sworn. Please go ahead.
 22 MS. JACKSON: Thank you. Good morning,

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1 Mr. Callaghan.
 2 THE WITNESS: Good morning.
 3 MS. JACKSON: Can you please state your
 4 name for the record?
 5 THE WITNESS: Marc Callaghan.
 6 DIRECT EXAMINATION
 7 BY MS. JACKSON:
 8 Q And where are you currently employed?
 9 A I work for the United States
 10 Environmental Protection Agency.
 11 Q And in what capacity do you work for the
 12 EPA
 13 A I'm a criminal investigator. My current
 14 title is National Forensics Coordinator.
 15 Q And how long have you worked for EPA in
 16 that role?
 17 A I've been a criminal investigator since
 18 2008 so approximately 14 years.
 19 Q Okay, when you say criminal investigator,
 20 is your title Special Agent? Is that correct?
 21 A It is.
 22 Q Okay. And can you describe and --

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1 Activity Report or we use an acronym as you might
 2 imagine, it's called an IAR.
 3 Q Okay, thank you, Mr. Callaghan, Ms.
 4 Tribett, can you please pull up CEX77. Your Honor,
 5 are you okay if we publish exhibits before they're
 6 admitted?
 7 JUDGE COUGHLIN: Yes.
 8 MS. JACKSON: Okay. So if you could pull
 9 up 77 and if you could just scroll through it
 10 slowly. Mr. Callaghan can you see exhibits from
 11 your vantage point?
 12 THE WITNESS: I do not. I do not see
 13 anything yet.
 14 MS. JACKSON: Okay, we just want to make
 15 sure.
 16 THE WITNESS: I see something very tiny.
 17 Let me see if I can enlarge this. I'm very big on
 18 your screen and the document's very small on the
 19 left.
 20 MS. JACKSON: Yes, I think we might be
 21 stuck with that so I apologize for straining your
 22 eyes.

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1 A I--
 2 Q Oh, go ahead.
 3 A I think my credentials specifically say
 4 Criminal Investigator. The name Special Agent,
 5 that's what they refer to us as.
 6 Q Okay. Thank you. Can you describe your
 7 duties and activities as a Special Agent?
 8 A So as a Criminal Investigator with the
 9 United States Environmental Protection Agency, we
 10 investigate the most egregious environmental crimes.
 11 Q And what do you do as part of those
 12 investigations?
 13 A A criminal investigation is composed of
 14 fact finding so we do a lot of interviews of
 15 individuals. We intake or combine and gather
 16 evidence, be that in the form of documents from
 17 other agencies or evidence that we may obtain
 18 ourselves.
 19 Q Okay, and how are those documented or how
 20 do you document that process?
 21 A We document our investigative activities
 22 in a record that we refer to as an Investigative

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1 THE WITNESS: That's okay, I'll look
 2 really closely here.
 3 MS. JACKSON: Okay, if you could scroll
 4 through it now that he can see it.
 5 MS. TRIBETT: It's only one page.
 6 MS. JACKSON: Oh, it's only one page.
 7 I'm sorry. This is CEX77 entitled Resume of Marc
 8 Callaghan. Did you prepare this document?
 9 (Whereupon, the above-referred to
 10 document was marked as Complainant Exhibit 77 for
 11 identification.)
 12 THE WITNESS: I did.
 13 BY MS. JACKSON:
 14 Q And is it true and accurate?
 15 A Yes.
 16 Q And just for the record, can you tell us
 17 what it is?
 18 A This is my resume.
 19 MS. JACKSON: Okay, Your Honor, --
 20 THE WITNESS: And --
 21 MS. JACKSON: I'm sorry, Marc, go ahead.
 22 THE WITNESS: It's a one-page resume.

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1 MS. JACKSON: Okay, Your Honor,
 2 Complainant requests the Tribunal please admit
 3 CEX77, the resume of Marc Callaghan.
 4 JUDGE COUGHLIN: Any objection from New
 5 Prime?
 6 MR. McKAY: No, ma'am.
 7 JUDGE COUGHLIN: All right, CEX77 is
 8 admitted.
 9 (Whereupon, the above-referred to
 10 document was received into evidence as Complainant
 11 Exhibit 77.)
 12 BY MS. JACKSON:
 13 Q Okay, before we looked at your resume, we
 14 were talking about Investigative Activity Reports.
 15 Can you describe those in a little more detail?
 16 A Yes, I can. So an Investigative Activity
 17 Report is used to capture that activity. And those
 18 are drafted by the Reporting Agency. Typically,
 19 that's the Special Agent that drafts those.
 20 And again, they're used to capture and
 21 memorialize the activity that's taken place.
 22 Q Okay, thank you. And when does the

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1 electronic case management system?
 2 A I'm very familiar with it. It's the
 3 system that I've used for my entire career as an
 4 Agent for the past approximately 14 years.
 5 Q And does that electronic case management
 6 system have built-in safeguards to ensure accuracy?
 7 A It does. It does. Technically you can't
 8 get into that system unless you have a Government
 9 issued computer with a Government-issued PIV card.
 10 The system itself has password protection
 11 once you use your computer and your PIV card to get
 12 to the site. Additionally, there's warnings that
 13 should anybody illegally insert or don't get into
 14 the system, that there's civil and criminal
 15 penalties that could be applied.
 16 Additionally, there's audit trails.
 17 There's audit capability on the, within the system
 18 such that an administrative can see what has taken
 19 place within that electronic system.
 20 Q Okay, and does the EPA keep its
 21 electronic case management system up to date and in
 22 good repair?

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1 Special Agent prepare these IARs generally?
 2 A As soon as practicable.
 3 Q And what do Special Agents do after the
 4 Report is prepared, the IARs?
 5 A The Special Agents will prepare those
 6 Reports in an electronic system. And when that
 7 document is prepared, the Agents will submit that
 8 for review by their supervisor. Their supervisor
 9 would then review that.
 10 If the supervisor has questions, they
 11 would have the opportunity to get back to the Agent
 12 to ask about that, but essentially and eventually
 13 the supervisor would approve that report and
 14 finalize it and it would then be retained in our
 15 electronic case file.
 16 Q Okay, and when you're referring to that
 17 electronic case file, does EPA Criminals
 18 Investigation Division have a, like an actual
 19 electronic case management system?
 20 A Yes, they do.
 21 Q Okay. As a Special Agent, how familiar
 22 are you with CIDs filing of records in that

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1 A Yes. They are constantly upgrading that
 2 system.
 3 Q And can you describe generally how
 4 documents are identified in the electronic case
 5 management system?
 6 A Yes. They are identified by a common
 7 case name and a unique case number that would appear
 8 at the top of each and every Investigative Activity
 9 Report.
 10 Q Okay and in this case, what was the case
 11 title or case name assigned?
 12 A Prime, Inc. should be the title and if
 13 somebody wanted to bring up an IAR so that I make
 14 sure that I'm doing that accurately, but there
 15 should be a title or case name.
 16 That should be Prime, Inc. And then the
 17 case number is unique as well and my recollection
 18 you get that with a 1001-0101.
 19 MS. JACKSON: I think we might need that
 20 up. Can we pull up an exhibit just to refresh your
 21 recollection. Let's look at CEX10. And if you
 22 could actually just go to the top.

1 BY MS. JACKSON:
 2 Q Mr. Callaghan, you'll see the case number
 3 --
 4 A Oh.
 5 Q -- and case title there. If you could
 6 read those for the record.
 7 A Yes, and I want to state that I made an
 8 incorrect statement. The case number that I
 9 recognize here as being associated with Prime, Inc.,
 10 the case number is 1003-0101 and I recognize that
 11 because the Boise office is the 1003, though 101 is
 12 specific for this case. The case title is Prime,
 13 Inc.
 14 Q And you know what, while we have this up,
 15 I'm going to go ahead and ask you about this
 16 particular exhibit. And you've described obviously
 17 that you recognize it. How do you recognize it?
 18 A I recognize this because it's an
 19 Investigative Activity Report. It's specific for
 20 the Prime, Inc. investigation as we've discussed.
 21 And give me a moment and I can tell you why else I
 22 recognize this.

1 requests the Tribunal admit CEX76 into evidence?
 2 JUDGE COUGHLIN: 76 or --
 3 MS. JACKSON: Oh my gosh, I'm so sorry,
 4 CEX10.
 5 JUDGE COUGHLIN: Okay.
 6 MS. JACKSON: That's not good for the
 7 record.
 8 JUDGE COUGHLIN: Any objection from
 9 Prime?
 10 MR. McKAY: May I inquire? I may have an
 11 objection, Your Honor.
 12 JUDGE COUGHLIN: Sure.
 13 MR. McKAY: Should I do that up there or
 14 should I do it right here?
 15 JUDGE COUGHLIN: You can do it right
 16 there. That's fine.
 17 MR. McKAY: Okay. Special Agent
 18 Callaghan, good morning. I'm Scott McKay. I'm a
 19 lawyer for Prime, Inc. and we're acquainted with
 20 each other. Right?
 21 THE WITNESS: Correct, Mr. McKay. Nice
 22 to meet you telephonically again.

1 Can you expand that synopsis section?
 2 I'm only seeing part of it. Brian Singleton,
 3 operations manager. Okay. I recognize this as an
 4 Investigative Activity that was conducted by Darren
 5 Mugleston (phonetic).
 6 (Whereupon, the above-referred to
 7 document was marked as Complainant Exhibit 10 for
 8 identification.)
 9 I was not a part of this. But this
 10 appears to be discussing the activity that took
 11 place at the Prime, Inc. facility regarding the
 12 trailer and the drums that were discovered there.
 13 Q Okay.
 14 MS. JACKSON: And Kate, this is a large
 15 exhibit, but if you could scroll through fairly
 16 quickly all the way to the bottom. Thank you. Now
 17 you can go back to the top please.
 18 BY MS. JACKSON:
 19 Q Mr. Callaghan, is this a true and
 20 accurate copy of CEX10?
 21 A Yes, it is.
 22 MS. JACKSON: Your Honor, Complainant

1 MR. McKAY: Yes, yes, nice to see you so
 2 to speak. So the Complainant's Exhibit 10 that you
 3 looked at. Have you reviewed that exhibit prior to
 4 your testimony here this morning?
 5 THE WITNESS: I did. I was familiar with
 6 this, Mr. McKay, as part of the case as it was
 7 ongoing and when Darren Mugleston was the lead
 8 agent.
 9 So I was familiar with this activity at
 10 the time and then in preparation for this, I did
 11 review this record.
 12 MR. McKAY: Do you have that exhibit in
 13 front of you or are you just relying on what you're
 14 seeing on the screen here this morning?
 15 THE WITNESS: I don't have anything open
 16 in front of me other than what the court is
 17 presenting to me.
 18 MR. McKAY: Oh.
 19 THE WITNESS: So I only have this one
 20 page that I can see.
 21 MR. McKAY: I think you indicated this is
 22 a IAR that was prepared by Special Agent Darren

1 Mugleston. Is that correct?
 2 THE WITNESS: Yes, sir.
 3 MR. McKAY: Okay. And it concerns how
 4 many inspections of the Prime facility?
 5 THE WITNESS: I'm looking closely again
 6 here. This appears to be, this one page that I can
 7 see appears to be --
 8 MS. JACKSON: It probably won't allow him
 9 to see attachments. Sorry, Marc. You'll have to go
 10 all the way to the bottom to see the attachments.
 11 Oh, stop.
 12 THE WITNESS: Yes, but scroll up to the
 13 top again if you would please. I want to read about
 14 these details.
 15 MR. McKAY: You're not familiar with
 16 those details. Is that fair to say?
 17 THE WITNESS: Well I want to be very
 18 careful here because you asked me a question if
 19 this, I think sir, your question was, does this
 20 represent one visit? Is that correct?
 21 MR. McKAY: I asked how many visits does
 22 it represent? You testified you're familiar with

1 talking about reflects the observations of Agent
 2 Mugleston, observations that you don't have personal
 3 knowledge of. Correct?
 4 THE WITNESS: That's correct, I don't
 5 have knowledge at the time, I just have knowledge of
 6 this report and, of course, my familiarity after,
 7 you know, in talking to Darren that he had been down
 8 there.
 9 MR. McKAY: Right. And there are CDs
 10 that presumably contain digital evidence that are
 11 reflected in this exhibit. Could you turn to Page
 12 4 of this exhibit? Do you see Page 4 of the
 13 exhibit, Special Agent?
 14 THE WITNESS: I believe I do see. The
 15 pages are blocked from me, but what I see in front
 16 of me if I can describe it.
 17 MR. McKAY: Sure.
 18 THE WITNESS: I see a photocopy of a CD
 19 that is title Prime, Inc. and has the case number,
 20 says "Master" on it.
 21 MR. McKAY: Did you open that CD in
 22 preparation for your testimony here this morning?

1 the exhibit, so I'd just like you to say how visits
 2 to the Prime facility are represented by this
 3 specific exhibit.
 4 THE WITNESS: So because of my knowledge
 5 of the case, although this synopsis appears to talk
 6 about one meeting, there's an attachment that I saw
 7 and I recall seeing and if you scroll to the second
 8 page, there's an attachment that is a report.
 9 It's an analytical report and that wasn't
 10 conducted until the second meeting on site.
 11 MR. McKAY: And you were not present on
 12 site at either the initial visit to Prime or, I
 13 think the second visit that you're now referring to
 14 that generated these analytical reports. Is that
 15 correct?
 16 THE WITNESS: That's correct. I was not
 17 present at either of these meetings.
 18 MR. McKAY: And those analytical reports
 19 were prepared by somebody else were they not?
 20 THE WITNESS: That's correct. They were
 21 prepared by EPA's NEIC in EPA's laboratory.
 22 MR. McKAY: And the IAR that we're

1 THE WITNESS: I did not.
 2 MR. McKAY: So you didn't confirm that
 3 what's on that CD, the materials contained in that
 4 CD are reflected in the entirety of this exhibit,
 5 Exhibit 10?
 6 THE WITNESS: No, I did not open up that
 7 CD and I don't know what that contains.
 8 MR. McKAY: Do you see reference to an
 9 interview with a Prime representative at the time of
 10 the first exhibit or the time of the first visit on
 11 August 1st of 2016?
 12 THE WITNESS: I'm sorry, Mr. McKay, can
 13 you repeat that question?
 14 MR. McKAY: Right. Do you see reference
 15 in this exhibit to an interview and statements that
 16 were made by a representative of Prime, Inc. during
 17 Mr. Mugleston's visit to the facility on August 1st?
 18 THE WITNESS: Can we scroll back up for
 19 me to see that?
 20 MR. McKAY: Maybe if you can, just turn
 21 to Page 2 of this exhibit.
 22 JUDGE COUGHLIN: Do you mean August 2nd?

1 MR. MCKAY: Page 2 of --
 2 JUDGE COUGHLIN: Yes.
 3 MR. MCKAY: -- the exhibit? Do you see
 4 where there's a reference to statements by
 5 Singleton, about halfway down the page, do you see
 6 that?
 7 THE WITNESS: Stand by please. I do see
 8 a statement upon reading. It says Singleton said
 9 there are 32 drums on the trailer, Singleton didn't
 10 know if the drums contained any material.
 11 MR. MCKAY: Okay. Do you know who
 12 Singleton is?
 13 THE WITNESS: Not without scrolling up.
 14 MR. MCKAY: Do you, as you sit here
 15 without scrolling up as you say and looking further
 16 at reading this exhibit as we're here in court, you
 17 don't know who the Singleton is that's referenced in
 18 this IAR?
 19 THE WITNESS: No.
 20 MR. MCKAY: Okay, so Your Honor, I
 21 object. I think there's a lack of reliability which
 22 I understand is the standard here. There's a lack

1 We understand obviously that we are still
 2 potentially subject to the rules of evidence. These
 3 I did jump ahead a little bit in terms of I can
 4 continue to lay a little bit more foundation with
 5 Mr. Callaghan.
 6 But these are Agency records that he
 7 reviewed, we filed or submitted an Affidavit. We
 8 were about to enter that in. I just got a little
 9 ahead of myself. Mr. Callaghan reviewed these
 10 documents in detail and submitted a sworn Affidavit.
 11 He has reviewed them. There are
 12 approximately like 36 exhibits here. They are very
 13 long. It is difficult for him to see and I do
 14 acknowledge that, but they are Agency records he
 15 received in the ordinary course of business.
 16 They were created in the ordinary course
 17 of business and I believe if we continue through, we
 18 can kind of put this to the side for now if you want
 19 to delay this ruling.
 20 I could continue to walk through and lay
 21 further foundation for his review of these
 22 documents. Finally, with regards to the recordings,

1 of foundation. This witness is not familiar with
 2 this notwithstanding his testimony on direct.
 3 He's not familiar with this exhibit such
 4 that he can establish its reliability and I,
 5 obviously it contains hearsay upon hearsay. And
 6 which further goes to a lack of reliability.
 7 There's a CD referenced that in this
 8 exhibit that Special Agent has not reviewed. Again,
 9 for the reasons I've indicated, I object to its
 10 admissibility.
 11 JUDGE COUGHLIN: All right. Mr.
 12 Callaghan, did you ever open that CD at any point?
 13 THE WITNESS: I do not recall, Your
 14 Honor, ever opening that CD.
 15 JUDGE COUGHLIN: Okay.
 16 MS. JACKSON: If I could respond, Your
 17 Honor.
 18 JUDGE COUGHLIN: Yes.
 19 MS. JACKSON: There's a few things to
 20 respond here. So I'm going to take them in turn.
 21 Obviously, Your Honor has ruled in past orders that
 22 hearsay is admissible.

1 those might come up again and I just wanted to kind
 2 of just quickly address that.
 3 We submitted our prehearing exchange
 4 almost two years ago. Those recordings, the video
 5 of the copies of the recordings were in there two
 6 years ago.
 7 We have always been transparent and
 8 provided documents upon request. We shared all of
 9 our criminal documents beyond what's in the
 10 prehearing exchange originally with Respondents.
 11 These recordings are not part of our case
 12 in chief. We did not view them as part of our case.
 13 They are a chain of custody issue. We are using the
 14 summaries -- under the Federal Rules of Evidence we
 15 can use summaries.
 16 And that's what we're using them for.
 17 I'm trying to think if there's anything else that I
 18 haven't addressed. But we would have been willing
 19 to provide those had they had Respondents raised it
 20 and been clear that they wanted copies of them.
 21 But I do feel like the issue of the CDs
 22 may come up again and I would like that kind of

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1 ruled on now rather than kind of continue to make
2 this an issue.

3 JUDGE COUGHLIN: Okay, understood. The
4 summaries that you're referring to, Ms. Jackson are,
5 are we speaking of the CD or what are you talking
6 about with the summaries?

7 MS. JACKSON: The Investigative Activity
8 Reports are summaries of the recordings.

9 JUDGE COUGHLIN: Oh well, oh yes.

10 MS. JACKSON: They're what agents kind of
11 put into the record. And I apologize, we could have
12 probably done a better job of explaining that
13 information from Mr. Callaghan, but yes.

14 So they have these CDs, those are kind of
15 for criminal chain of custody, those are stored in
16 a different place. And then the investigative IAR
17 are what's stored in the electronic case management
18 system. And that's what Mr. Callaghan reviewed.

19 JUDGE COUGHLIN: Okay. All right, I
20 understand. Before I rule and I do think I need to
21 rule --

22 MS. JACKSON: Sorry.

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1 JUDGE COUGHLIN: -- sooner than later
2 because I'm assuming this is the same landscape with
3 all the other IARs that you're going to seek to
4 admit because this witness is a substitute for Mr.
5 Mugleston.

6 MS. JACKSON: Yes.

7 JUDGE COUGHLIN: Correct?

8 MS. JACKSON: Since he's retired.

9 JUDGE COUGHLIN: Okay. So let's just
10 kind of deal with this now. I think it would be
11 helpful however since you did reference an Affidavit
12 to go ahead and cover that foundationally and then,
13 Mr. McKay, I will check in with you again.

14 MR. MCKAY: Okay.

15 JUDGE COUGHLIN: If you, you know, wish
16 to maintain that objection, I understand and I'll
17 rule if there's anything more you want to add. I
18 want to give you the opportunity to do that too.

19 MR. MCKAY: Okay.

20 JUDGE COUGHLIN: Okay?

21 MR. MCKAY: I have to say in response to
22 what she just said, that I'll stand down if you

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1 will, if --

2 JUDGE COUGHLIN: Well --

3 MR. MCKAY: -- you don't wish to hear
4 from me again.

5 JUDGE COUGHLIN: Yes, it might just be
6 since I'm asking her to review the Affidavit in the
7 event you have any questions for that too, maybe if
8 you don't mind, you can just lump it all together.

9 MR. MCKAY: Sure.

10 JUDGE COUGHLIN: Of the witness or just
11 of an objection.

12 MR. MCKAY: Thank you.

13 JUDGE COUGHLIN: Okay, absolutely.

14 Please go ahead, Ms. Jackson.

15 BY MS. JACKSON:

16 Q Okay, I got us a little off track, Marc,
17 or Mr. Callaghan. So let's move back. We were
18 talking about the case numbers and case title.

19 Were these same identifying factors used
20 consistently in the electronic case management
21 system for this case?

22 JUDGE COUGHLIN: Mr. Callaghan, I

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1 couldn't hear you respond.

2 THE WITNESS: I apologize, Your Honor.
3 My microphone was off. The answer is yes.

4 BY MS. JACKSON:

5 Q And then, Mr. Callaghan, did you prepare
6 a sworn Affidavit for this case?

7 A Yes, I did.

8 Q Mr. Callaghan, Ms. Tribett, would you
9 please publish CEX76? And if you could scroll all
10 the way to the bottom. Thank you. And then can you
11 go back up to the top please. Mr. Callaghan, did
12 you prepare this document?

13 A Yes, I did.

14 Q And what is it?

15 A This is an Affidavit that I prepared and
16 had witnessed, notarized. I saw my signature at the
17 bottom when you were scrolling. It gives a little
18 bit of my background and it talks about my review
19 of, if you scroll I think to the second or third
20 page, the IARs that I reviewed prior to my testimony
21 today.

22 (Whereupon, the above-referred to

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1 document was marked as Complainant Exhibit 76 for
2 identification.)

3 Q And is this Affidavit true and correct?

4 A Yes.

5 MS. JACKSON: Your Honor, Complainant
6 requests that the Tribunal admit CEX76 into
7 evidence.

8 JUDGE COUGHLIN: All right. Mr. McKay,
9 did you have some questions you wanted to ask the
10 witness first or do you have an objection?

11 MR. MCKAY: I do.

12 JUDGE COUGHLIN: Okay.

13 MR. MCKAY: Just, I understand she's only
14 moved to admit this specific exhibit, but I have
15 some questions regarding this exhibit if may.

16 JUDGE COUGHLIN: Absolutely.

17 MR. MCKAY: Yes, thank you. Special
18 Agent Callaghan, could you look at paragraph 13 of
19 this exhibit, it's on Page 2.

20 THE WITNESS: Can that be blown up for
21 me? I cannot see that.

22 JUDGE COUGHLIN: It might just, I don't

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1 mean to interject or interrupt your thought, but
2 could you provide him with a final copy of what you
3 provided to the Tribunal and to Respondents of your
4 final exhibits? He --

5 MS. JACKSON: Yes. Mr. Callaghan has
6 that. I just instructed him to kind of follow the
7 Court, but --

8 JUDGE COUGHLIN: Okay.

9 MS. JACKSON: -- Mr. Callaghan, can you
10 access these exhibits on your computer?

11 THE WITNESS: Yes, if it's okay with the
12 Court, I'll go ahead and open those up. I have a
13 hard copy on my computer.

14 JUDGE COUGHLIN: Okay, and just to be
15 clear, I'm talking about what was submitted just a
16 handful of days ago identified as Complainant's,
17 hold on. I want to make sure I've got this.

18 Complainant's hearing exhibits, final. Right?

19 MS. JACKSON: Yes.

20 JUDGE COUGHLIN: Okay. So that's, I want
21 to make sure you're looking at what I have and what
22 Respondent has.

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1 MS. JACKSON: Okay.

2 JUDGE COUGHLIN: Is that the same file
3 that has --

4 MS. JACKSON: I believe so. It should
5 have been two days ago and there are no changes
6 since these were submitted.

7 JUDGE COUGHLIN: I'm sorry what? And let
8 me have you identify yourself too.

9 MS. TRIBETT: Okay.

10 JUDGE COUGHLIN: I know you're assisting.

11 MS. TRIBETT: I'm sorry.

12 JUDGE COUGHLIN: No, that's okay.

13 MS. TRIBETT: My name is Kate Tribett.
14 I'm a paralegal with the United States EPA.

15 JUDGE COUGHLIN: Okay.

16 MS. TRIBETT: Mr. Callaghan was sent the
17 exhibits I believe several months ago. But there
18 have been no changes since when we sent it to him
19 and when we actually transferred the file to the
20 Court.

21 JUDGE COUGHLIN: Okay. All right so, Mr.

22 Callaghan, it might be easier because I can see what

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1 you're referring to about the shared screen and the
2 small display.

3 So it might be easier if you can also
4 pull it up on your end while it's being published to
5 maybe --

6 THE WITNESS: Yes, Your Honor.

7 JUDGE COUGHLIN: -- facilitate some of
8 this.

9 THE WITNESS: I have that paragraph up,
10 line 13 on my computer and I can share this with the
11 Court or I could read it to make sure we're all
12 talking about the same point.

13 MR. MCKAY: Sure. So we're talking about
14 the Exhibit, Complainant's Exhibit 76, paragraph 13.
15 Right? That's your understanding? That's what you
16 have in front of you.

17 THE WITNESS: That's my understanding.

18 MR. MCKAY: Yes, could you read that --

19 THE WITNESS: Yes, sure.

20 MR. MCKAY: Could you read paragraph 13?

21 THE WITNESS: I draft, maintained and had
22 access to all records associated with the Prime,

1 Inc. investigation in ECRS and then in OSHA.
 2 MR. McKAY: What did you mean by you
 3 draft all records associated with Prime, Inc.?
 4 THE WITNESS: That's a good question. So
 5 in this investigation, it's my recollection that I
 6 did draft some investigative activity reports
 7 associated with this case.
 8 I'm trying to think, I'm trying to
 9 recall, but I don't think they're exhibits that the
 10 Court is looking at.
 11 MR. McKAY: Right, and this paragraph
 12 suggests that you drafted all of the records
 13 associated with Prime, Inc. Is that an error?
 14 THE WITNESS: It is. I did not draft the
 15 majority, the majority of these are drafted by
 16 Darren Mugleston.
 17 MR. McKAY: He was the case agent?
 18 THE WITNESS: Correct.
 19 MR. McKAY: And by case Agent, I mean he
 20 had primary responsibility for the case whereas you
 21 did not.
 22 THE WITNESS: Darren Mugleston was the

1 agree with that?
 2 THE WITNESS: I did. I opened up every
 3 one of them and I think the question of review is
 4 one of, you know, what level of detail did I get in.
 5 I looked at these to confirm that they were EPA
 6 Investigative Activity Reports assigned to the case.
 7 MR. McKAY: Okay, so you --
 8 THE WITNESS: I also, sorry.
 9 MR. McKAY: I interrupted and I'm going
 10 to let you keep talking, sorry.
 11 THE WITNESS: So it was my understanding
 12 that my objective or the goal here was for me to go
 13 in to review these to become familiar with them.
 14 You know, I looked at them to make sure
 15 that they were associated with this investigation.
 16 I looked at them and generally read the synopsis and
 17 some of them I read in full.
 18 Others I read in part, but I wanted to be
 19 able to testify to the fact that these Investigative
 20 Activity Reports were true and accurate and that
 21 they were associated with this case.
 22 MR. McKAY: So what you can say, I

1 lead agent when this matter came to EPA for
 2 investigation so he was assigned as the lead agent.
 3 Now, over time, responsibilities changed
 4 and there was a point when Darren Mugleston retired
 5 and I was in charge of, I was the lead agent after
 6 he retired.
 7 MR. McKAY: Special Agent Mugleston did
 8 the bulk of the investigative work on this case.
 9 You would agree with that?
 10 THE WITNESS: Yes, I would.
 11 MR. McKAY: And did you draft this
 12 Affidavit or did somebody else draft it for your
 13 signature?
 14 THE WITNESS: It was draft primarily by
 15 Laurianne Jackson. I did review it, I did correct
 16 it. I made corrections and made sure that errors
 17 were corrected before submittal.
 18 MR. McKAY: Okay. And I think we
 19 established through Exhibit 10 that we looked at
 20 previously that you didn't necessarily go through
 21 and review carefully all of the Complainant's
 22 exhibits that are reflected in Table 1. Would you

1 believe, and correct me if I'm wrong, is that all of
 2 the documents, all of the exhibits that are
 3 reflected in Table 1 are part of EPA's CID records.
 4 Correct?
 5 THE WITNESS: Correct.
 6 MR. McKAY: Okay. But you don't have
 7 personal knowledge regarding the, concerning the
 8 bulk of these exhibits. Correct?
 9 THE WITNESS: I don't think that's a true
 10 statement. Because Darren was in the office with
 11 me, right. We were talking about these things.
 12 He was asking me for advice on, you know,
 13 how to move the case forward. There was open
 14 dialogue between us. I was familiar with this case.
 15 MR. McKAY: But if an IAR refers to an
 16 interview conducted by Darren and by Darren you mean
 17 Special Agent Darren Mugleston. Correct?
 18 THE WITNESS: Correct.
 19 MR. McKAY: So the interview was
 20 conducted by Special Agent Mugleston that you
 21 weren't present at, you would not have personal
 22 knowledge of that interview?

1 THE WITNESS: I would not have first-hand
 2 knowledge because I wasn't there, but I would know
 3 about it, you know, if Darren and I discussed it or
 4 if I reviewed it as part of the case file.
 5 MR. MCKAY: You would know what he told
 6 you or you would know what he wrote in his report.
 7 Correct?
 8 THE WITNESS: Correct.
 9 MR. MCKAY: And if there was a recording
 10 made of that interview, and if that recording is
 11 part of the CID files in this case, you did not
 12 necessarily go or you did not go and listen to any
 13 of those recordings to confirm the accuracy or the
 14 completeness of the IARs that are identified in
 15 Table 1 of this exhibit?
 16 THE WITNESS: That's not a true statement
 17 because I think if we were to scroll to my, to the
 18 exhibits, there would be an interview, there would
 19 be several of these interviews which were audio
 20 recorded interviews.
 21 And in anticipation of my testimony today
 22 I did listen to, for certain, two of these audio

1 the admissibility of Exhibit, I want to say Exhibit
 2 76, subject to the clarifications that have been
 3 made by this witness.
 4 And I think we just may have to take up
 5 some of these specific exhibits referred to in the
 6 Affidavit and consider that actionable.
 7 JUDGE COUGHLIN: All right. So CEX76,
 8 the Affidavit, with the clarifications noted by the
 9 witness is admitted without objection. I'll just
 10 deal with CEX10 right now.
 11 (Whereupon, the above-referred to
 12 document was received into evidence as Complainant
 13 Exhibit 76.)
 14 In light, it might be helpful in
 15 explanation of my ruling for other ones that are
 16 coming, that may be coming up. Which is not to
 17 dissuade New Prime from making a, you know,
 18 examination for foundational reasons or
 19 clarification at all.
 20 I understand the nature of the objection.
 21 I'm going to admit CEX10 over objection based on the
 22 liberal view of hearsay in an administrative

1 recorded interviews.
 2 MR. MCKAY: Can you say which two?
 3 THE WITNESS: I listened to the interview
 4 of Drake, the Prime truck driver and I listened to
 5 the interview of Bonner, ISP, the Idaho State Police
 6 Trooper.
 7 MR. MCKAY: Yes. Any others?
 8 THE WITNESS: I don't recall, Mr. McKay,
 9 listening to any others in preparation for today's
 10 activity.
 11 MR. MCKAY: Or how about in preparation
 12 for your signing of this Affidavit. It doesn't
 13 sound like you listened to the digital recordings
 14 prior to signing the Affidavit. Am I right about
 15 that?
 16 THE WITNESS: The two that I spoke to you
 17 about, I did listen to.
 18 MR. MCKAY: Okay.
 19 MS. JACKSON: Marc, can you clarify that?
 20 Before your Affidavit you said you listened to them?
 21 THE WITNESS: Yes.
 22 MR. MCKAY: Your Honor, I don't object to

1 proceeding.
 2 (Whereupon, the above-referred to
 3 document was received into evidence as Complainant
 4 Exhibit 10.)
 5 As you both know, we use the Federal
 6 Rules of Evidence as a guide, a very important
 7 guide, but the rules are a bit more relaxed in an
 8 administrative context.
 9 And so for that reason, I'm admitting it
 10 even though it obviously contains hearsay and other
 11 issues that you've noted, Mr. McKay. With that in
 12 mind, however, while it comes into evidence, it is
 13 still always subject to argument as to the amount of
 14 weight I should afford it.
 15 My tendency generally, unless something
 16 is very obviously unreliable, is to allow the
 17 evidence to come in, recognizing that this is akin
 18 to a bench trial, there's no jury, so it all comes
 19 up to me to parse through and determine the
 20 competence of the evidence before me when I have the
 21 entire record to review, evidentiary record.
 22 Let me be clear about that. And, to then

1 assign weight accordingly to pieces of evidence
 2 whether it's testimonial or documentary. So I say
 3 that just to kind of alert both sides that while I
 4 might allow evidence to come in, that if the parties
 5 want to argue as to, you know, how reliable it might
 6 be or how much weight or emphasis I should give it
 7 in evaluating the evidence when I need to draft a
 8 decision, that is always subject to argument.

9 Is that clear? Does it make sense? Are
 10 there any questions about it?

11 MR. McKAY: No. It's clear, Your Honor,
 12 and I represent to the Court that I can certainly
 13 have an examination and an objection like I have
 14 with Special Agent Callaghan on other exhibits.

15 And it doesn't, I understand the Court's
 16 ruling and so maybe to short circuit this, what I
 17 may do when the Government moves it's submissions,
 18 just simply ask for a, or that the Court recognize
 19 a standing objection to that exhibit. Just for
 20 purposes of having a full record here.

21 JUDGE COUGHLIN: That would be fine.

22 MR. McKAY: Okay.

1 JUDGE COUGHLIN: That would be fine.

2 MR. McKAY: Thank you.

3 JUDGE COUGHLIN: Thank you. Yes. And I
 4 guess the other point I'll sort of put out there is
 5 I'm not altogether clear as to whether Mr. Callaghan
 6 was involved in any of the actual drafting or had
 7 any first-hand information with regard to any of the
 8 other IARs.

9 Initially my impression was that he did
 10 not, that his familiarity was with perhaps other
 11 documents that have not been submitted in this
 12 matter, but then later I thought I heard something
 13 that made me question that.

14 So that is a point I want to have very
 15 clear as we move forward.

16 MS. JACKSON: Okay.

17 JUDGE COUGHLIN: So that I know exactly
 18 what the landscape is. And, Mr. McKay, to the
 19 extent you or Mr. Ryan need to ask a few questions
 20 to clarify that, if it's not otherwise clear before
 21 we get there, please do so because I want to make
 22 sure I have an understanding of that.

1 MR. McKAY: Thank you.

2 JUDGE COUGHLIN: Thank you.

3 MS. JACKSON: I just have one more
 4 clarification in terms of process. I believe now
 5 we're not going to try, we were going to potentially
 6 try for like global entry of the IARs as business
 7 records after kind of laying the foundation with Mr.
 8 Callaghan and then obviously talking about its
 9 admissibility in terms of its relevance to this case
 10 based on the fact that they're all from Prime.

11 I have another suggestion potentially
 12 would work for efficiency and if not, that's fine,
 13 we'll just walk through each exhibit, but one thing
 14 we were thinking about proposing was kind of doing
 15 what we would call kind of like larger categories of
 16 the documents.

17 Meaning the category of the documents
 18 where Mr. Callaghan has direct first-hand knowledge,
 19 a category where he is purely testifying as a
 20 Government Agency Record Custodian, and then another
 21 one where he is also testifying as a Records
 22 Custodian, but he's like, you know, these IARs like

1 transmitted documents primarily.

2 So kind of like larger categories. I'm
 3 getting the feeling that that is not going to work,
 4 that we need to just walk through every exhibit, but
 5 based on what Your Honor said about basically
 6 admitting most things subject to objection, I wanted
 7 to see if maybe we could take that approach.

8 JUDGE COUGHLIN: What says New Prime?

9 MR. McKAY: I certainly don't want to
 10 tell the Government how they wish to present their
 11 exhibits, but we certainly wish to make known our
 12 objections to a number of these exhibits.
 13 And so if it's offered in that sort of
 14 serial fashion, the counsel presents that we'll do
 15 our best to make the objections as, you know, given
 16 the Court's ruling to each of the exhibits if they
 17 in order to move them in.

18 Counsel's right. I mean there are
 19 certain of these exhibits in which Special Agent
 20 Callaghan is referenced and so he may not have been
 21 the author of the IAR, but he's, we now know because
 22 of the EPA's provided us with, you know, unredacted

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1 records that refer to him, we now know that he was
2 part of some of these.

3 So I'll defer to counsel however, you
4 know, she wishes to, you know, to address these
5 exhibits, but I just wish to be given the
6 opportunity to address them as well.

7 JUDGE COUGHLIN: Yes. I think maybe what
8 you could just do and I appreciate the offer, but
9 since there does seem to be some variation, it
10 sounds like there were three categories of issues.

11 And maybe just to keep it clear, I'll
12 just ask you to provide those points of
13 clarification when you're reviewing each exhibit so
14 that I understand the level of involvement or
15 whether it's review or purely, you know, a custodian
16 of records type of offer as does New Prime.

17 And then if there are any other
18 additional objections that need to be noted, New
19 Prime can address them.

20 MS. JACKSON: Okay.

21 JUDGE COUGHLIN: And we'll just go one by
22 one. I think if you're knowing this now and able to

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1 cover some of these points, I think that will build
2 some efficiency into the process.

3 But there are a lot of them and this is
4 an important case and there's a lot of money at
5 stake so I'd rather go through some of the detail so
6 that the record is very clear and we all understand,
7 you know, what the situation is.

8 MS. JACKSON: I understand. Thank you,
9 Your Honor.

10 JUDGE COUGHLIN: You bet, so before I
11 lose track, CEX76 was admitted without objection and
12 CEX10 is admitted over objection by New Prime.

13 MR. McKAY: Okay.

14 MS. JACKSON: Thank you, Your Honor.

15 BY MS. JACKSON:

16 Q Mr. Callaghan, I'm going to ask you just
17 a few more general questions and then we'll get to
18 each specific exhibit.

19 THE WITNESS: Yes. Laurianne, before you
20 proceed, can I make a correction to a statement I
21 made?

22 MS. JACKSON: Go ahead.

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1 THE WITNESS: So I said that I listened
2 to an interview an audio recorded interview of ISP
3 Trooper, I did not do that. I don't think, after
4 further recollection, I was just waiting patiently
5 for an opportunity to correct the record.

6 I did not listen to that. I do not think
7 one exists unless somebody can refresh my memory.
8 I did not listen to that audio recorded interview,
9 because we didn't record him based on my
10 recollection.

11 MS. JACKSON: Thank you, Mr. Callaghan.
12 There are a lot of interviews so it's
13 understandable. With regard, so I'm just going to,
14 some of it will be a little bit of repeat, but just
15 to kind of re-orient everybody in particular, what
16 was your role on the criminal investigation with
17 Prime?

18 THE WITNESS: So my role was just as a
19 supporting agent when Darren Muggleston, Special
20 Agent Darren Muggleston was the lead agent. I was
21 there just, you know, to talk about the case and to
22 help him out at times.

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1 So I was there to assist him I guess I
2 would say. But there came a point in time later
3 after Darren Muggleston retired that I became the
4 lead agent on this matter.

5 MS. JACKSON: Okay.

6 JUDGE COUGHLIN: Just if I can jump in
7 quickly. Do you know when that was, when that date
8 was that he retired and you became the lead?

9 THE WITNESS: I think that's in my
10 Affidavit. My recollection is it's a line item in
11 there and I'm thinking that it's in approximately
12 2016, sometime in 2016.

13 JUDGE COUGHLIN: So is it paragraph 12 of
14 CEX76, if you can see that?

15 THE WITNESS: Let me pull that up please.

16 JUDGE COUGHLIN: Okay.

17 THE WITNESS: Yes. Yes, Your Honor.

18 More specifically March 2016.

19 JUDGE COUGHLIN: All right, thank you.

20 MR. McKAY: Your Honor, I think there's
21 some, just so we're clear about this, I don't think
22 that, I think the question was, your question was,

1 when Darren Mugleston retired, he became co- or he
 2 became the lead agent.
 3 JUDGE COUGHLIN: Yes.
 4 MR. McKAY: The next paragraph says
 5 something different than that.
 6 JUDGE COUGHLIN: Okay.
 7 MR. McKAY: It describes him as becoming
 8 co-lead agent. And so I think maybe it's possible
 9 that Darren, Special Agent Mugleston retired after
 10 that date.
 11 JUDGE COUGHLIN: Okay, thank you,
 12 actually, Mr. McKay.
 13 MR. McKAY: Am I right about that,
 14 Special Agent?
 15 THE WITNESS: Mr. McKay, I can't recall
 16 when Darren Mugleston, my recollection was -- I just
 17 went into our electronic system and found out when
 18 my title changed to co-lead as I think where I got
 19 this paragraph from so as you may be right. I don't
 20 recall when Darren Mugleston retired.
 21 MR. McKAY: Well if there are exhibits,
 22 if there are IARs that were offered by Special Agent

1 retired?
 2 THE WITNESS: Yes, Your Honor.
 3 JUDGE COUGHLIN: Does anybody know when
 4 he retired?
 5 MS. JACKSON: I actually don't know the
 6 exact date of his retirement. I'm sorry.
 7 JUDGE COUGHLIN: Okay, all right. So
 8 we'll just, you know, gather what we can from the
 9 exhibits, but go ahead, Ms. Jackson.
 10 MS. JACKSON: I can certainly try to
 11 clarify that during break. Do you recall how EPA
 12 CID learned of this case?
 13 THE WITNESS: Yes, this was a, this was
 14 a matter that was in front of the Idaho Department
 15 of Environmental Quality, kind of our sister agency
 16 at the State level.
 17 They had this, they were looking into it
 18 and they contacted EPA, Darren Mugleston
 19 specifically, and asked for a meeting with us.
 20 BY MS. JACKSON:
 21 Q Okay, and how did EPA CID share the IARs
 22 related to Prime stored in the electronic case

1 Mugleston in, for example, August of 2016 would you
 2 agree with me that suggests he did not retire in
 3 March of 2016?
 4 THE WITNESS: Correct.
 5 MR. McKAY: Yes. And I think you
 6 indicated the inspection of the Prime facility
 7 occurred in August of 2016. Right?
 8 THE WITNESS: Yes, if that was CEX10 and
 9 that was the date on that.
 10 MR. McKAY: Yes.
 11 THE WITNESS: Then I would agree with
 12 that. It's not up in front of me, but if that's
 13 what that IAR says, I would agree with that.
 14 MR. McKAY: Okay. Your Honor, my
 15 apologies. I just have --
 16 JUDGE COUGHLIN: No, no I appreciate the
 17 clarification. I think I might have created some
 18 confusion by referring to that paragraph and not
 19 realizing the limitation so thank you for
 20 identifying that actually.
 21 So you were co-lead as of March 2016 and
 22 then thereafter we don't know when, Mr. Mugleston

1 management system with civil enforcement at EPA?
 2 A It's my understanding that the, that --
 3 well let me back up. I know specifically I closed
 4 this case, I closed the criminal case and I recall
 5 referring the matter to EPA's civil program for
 6 whatever follow up they deemed appropriate.
 7 So I closed the case and then it's my
 8 understanding that the RCEC provided these IARs to
 9 EPA's Region 8 Civil Program upon request.
 10 Q And can you clarify for the record, what
 11 you mean by RCEC?
 12 A Yes, RCEC is another acronym that stands
 13 for Regional Criminal Enforcement Counsel. They are
 14 attorneys that assist EPA's criminal investigation
 15 Division and specifically the agents.
 16 Q Okay and I know we touched on this --
 17 A So --
 18 Q Oh, go ahead.
 19 A To assist with legal matters so.
 20 Q And I know we touched on this previously,
 21 but just for clarification, in preparation of your
 22 Affidavit and for your testimony today, did you

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1 review all of the IARs listed in your Affidavit?
 2 MR. MCKAY: I think it's been asked and
 3 answered and clarified by this witness.
 4 MS. JACKSON: Okay.
 5 JUDGE COUGHLIN: I think you did actually
 6 ask that.
 7 MS. JACKSON: Yes.
 8 JUDGE COUGHLIN: Sustained.
 9 MS. JACKSON: Withdraw the question. But
 10 thank you. Sorry. Have any of these documents been
 11 altered in any way, well actually, I'm going to
 12 withdraw that because of all of our previous
 13 conversation. Thank you.
 14 Okay, we're going to turn to each
 15 exhibit. And just one second please.
 16 BY MS. JACKSON:
 17 Q Mr. Callaghan, you previously testified
 18 about the criminal enforcement division's management
 19 of IARs generally and in this case.
 20 I'm going to ask you a few questions
 21 about each IAR. Let's look at CEX, these are all
 22 from your Affidavit, CEX07. And actually before we

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1 supplied to --
 2 MS. JACKSON: Yes.
 3 JUDGE COUGHLIN: -- us and, I think that
 4 would be best so I'm happy to do that. It's almost
 5 10 past, why don't we come back in 10 minutes, 10:20
 6 a.m. and we'll pick up.
 7 MS. JACKSON: Okay, thank you.
 8 JUDGE COUGHLIN: Thank you.
 9 (Whereupon, the above-entitled matter
 10 went off the record at 11:07 a.m. and resumed at
 11 11:23 a.m.)
 12 JUDGE COUGHLIN: All right. We're back
 13 on the record. A little bit longer, but that's
 14 okay. Were you able to share the folder with Mr.
 15 Callaghan?
 16 MS. JACKSON: Yes, Your Honor.
 17 JUDGE COUGHLIN: Okay, great. All right.
 18 Please continue, Ms. Jackson.
 19 MS. JACKSON: Ms. Tribett, if you could
 20 please publish CX7 -- CX07.
 21 (Whereupon, the above-referred to
 22 document was marked as Complainant Exhibit 7 for

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1 begin, I'm sorry, Your Honor, I have one more
 2 clarification.
 3 I asked Ms. Tribett to send the file
 4 folder to Mr. Callaghan so he could be pulling up
 5 the exact same exhibits and we don't have access to
 6 do that. Is there a way that we can do that through
 7 --
 8 JUDGE COUGHLIN: Do you need Wi-Fi?
 9 MS. JACKSON: No, I think it's a matter
 10 of access, maybe having access to the folder, like
 11 it needs to be maybe --.
 12 MS. TRIBETT: Oh, it's because I can't do
 13 it while presenting to the Court. If we took a ten-
 14 minute recess --
 15 MS. JACKSON: I'm sorry. So I think that
 16 might, I'm sorry, I misunderstood the note. So if
 17 we could just take like a five or ten minute break
 18 that way we ensure that he has the correct records
 19 in front of him.
 20 I think that might help our record moving
 21 forward as we move on through the exhibits.
 22 JUDGE COUGHLIN: The same folder that you

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1 identification.)
 2 BY MS. JACKSON:
 3 Q Mr. Callaghan, can you see CX07?
 4 A I can see it in the screen -- I can see
 5 it on the screen and I can also pull it up
 6 independently, whichever is preferred here.
 7 Q Is what you're seeing on the screen
 8 readable to you?
 9 A It's a challenge. I prefer to pull it up
 10 through the file folder that Ms. Tribett sent me if
 11 that's okay.
 12 MS. JACKSON: I believe Your Honor said
 13 that was acceptable. Is that right?
 14 JUDGE COUGHLIN: Yes.
 15 MS. JACKSON: Yeah.
 16 JUDGE COUGHLIN: I mean any objection
 17 from New Prime?
 18 MR. MCKAY: No.
 19 JUDGE COUGHLIN: Okay.
 20 MR. MCKAY: I mean I guess we'll just
 21 take it as it comes and see how well it works, but
 22 no objection to the process.

1 JUDGE COUGHLIN: Okay.
 2 BY MS. JACKSON:
 3 Q Yes. Thank you, everyone for your
 4 patience as we deal with new virtual world. Do you
 5 recognize this exhibit?
 6 A Yes, I do.
 7 Q And how do you recognize it?
 8 A I recognize it based again on the case
 9 number and the case title as being related to Prime,
 10 Inc. Additionally, I recognize the subject of the
 11 report. It reminds me of this meeting that took
 12 place with IDEQ.
 13 Q Okay. And did you review this affidavit
 14 -- sorry -- this exhibit in preparation of your
 15 affidavit as well?
 16 A Yes, I did.
 17 MS. JACKSON: Kate, if you can kind of
 18 quickly scroll through to the bottom please. Maybe
 19 not that quick. Thank you. You can go back to the
 20 top.
 21 Mr. Callaghan, is CX07 a true and
 22 accurate copy of that investigation activity report

1 if you could scroll down towards the bottom. Could
 2 you go to the next page, Page 16 of this exhibit as
 3 well?
 4 So Mr. Callaghan, are you seeing the --
 5 on the exhibit that you're looking at, are you
 6 seeing the words that are reflected on the paper or
 7 are you seeing a bunch of characters for one, you
 8 know, a better term?
 9 THE WITNESS: I don't know that I
 10 understand the question.
 11 MR. MCKAY: Yeah. So are you able to for
 12 example on Page 16 of that exhibit, if you looked at
 13 Section 4, "inhalation" -- If you could scroll up --
 14 THE WITNESS: Yes, sir.
 15 MR. MCKAY: Are you able to read words in
 16 that section?
 17 THE WITNESS: Yes, I am.
 18 MR. MCKAY: So the exhibit that I have
 19 from the EPA, it's all characters and I'm glad to
 20 show counsel to help me understand this, but this is
 21 the form that we've received this.
 22 JUDGE COUGHLIN: Okay. Yeah, we need to

1 from the IDEQ inspection -- sorry, not IDEQ
 2 inspection. Let me correct that question. Is that
 3 a correct and true -- true and accurate copy of the
 4 IDEQ inspection report that was shared with the
 5 Agency?
 6 THE WITNESS: Yes.
 7 MS. JACKSON: Your Honor, at this time,
 8 Complainant requests the admission of CX07.
 9 JUDGE COUGHLIN: Any objection from New
 10 Prime?
 11 MR. MCKAY: Your Honor, and I promise not
 12 to do this for every exhibit. But may I just ask a
 13 couple questions of this witness?
 14 JUDGE COUGHLIN: You may.
 15
 16 MR. MCKAY: And I'll make other
 17 objections that don't require me to ask questions
 18 based upon your ruling.
 19 But Mr. Callaghan, could you turn to Page
 20 12? And if the Government could pull up Page 12 of
 21 this exhibit -- Complainant's Exhibit 7. Actually,
 22 if you would turn to Page 15 of this exhibit. And

1 -- we need to go through all this because New
 2 Prime's got to have what I have and what you have
 3 without any hindrance. So I'm glad you mentioned
 4 it.
 5 MS. JACKSON: Can I ask where those are
 6 from? Are they from the shared folder that we
 7 submitted to the Court?
 8 MR. MCKAY: Well, this is the -- And Your
 9 Honor, I'm showing EPA counsel now an exhibit that
 10 has been Bates stamped by the Government CX07, Page
 11 16 of 105. And what I see is these characters. I
 12 don't see any words on there and that's the form
 13 that we received this.
 14 MS. JACKSON: But in what manner, from
 15 where did you --
 16 MR. MCKAY: From the EPA.
 17 MS. JACKSON: Okay.
 18 MR. MCKAY: So I mean has there been a --
 19 I don't know, has there been a correction of that
 20 exhibit?
 21 MS. JACKSON: My question is like from
 22 what submittal, from what date so that we can

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1 clarify what you're looking at. Where is it from?
 2 What was shared with the Court? Because I believe
 3 the Court is looking at a clean version. I can't --
 4 I don't know what chronology might have happened.
 5 JUDGE COUGHLIN: So let's hold on for
 6 just a minute here. And I might need you to
 7 interject here for a minute because you received the
 8 folders titled "Final exhibits" from both
 9 Complainant and Respondent. And then you shared
 10 that with me last week, I think. I don't know the
 11 precise date, but it was sometime last week, I think
 12 toward the end of the week maybe or mid-week. But
 13 that's what I have. Is that the right process? I
 14 mean you got it from them. You shared it with me.
 15 MS. JACKSON: Yes.
 16 JUDGE COUGHLIN: Okay. Now in terms of
 17 was that the same process used for Respondent? Like
 18 did you share it with the Tribunal and Respondent?
 19 MS. JACKSON: Yes.
 20 JUDGE COUGHLIN: I wasn't privy to that
 21 initial -- that initial transmission, so I'm asking
 22 you.

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1 MS. TRIBETT: The links were shared with
 2 both Respondent and Complainant and they should have
 3 been able to access each other's folders.
 4 JUDGE COUGHLIN: Okay. And you did that?
 5 MS. TRIBETT: Yes.
 6 JUDGE COUGHLIN: Okay. So I don't know
 7 why this is happening, but obviously we need to halt
 8 and fix this before we go any further.
 9 MS. JACKSON: Your Honor, we do have a
 10 clean copy -- hard copies --
 11 JUDGE COUGHLIN: Okay.
 12 MS. JACKSON: -- of all exhibits.
 13 MR. MCKAY: I think it might also be
 14 useful to -- because the origin of this might very
 15 well be the Government's pre-hearing exchange. And
 16 it would be very easy to go look at Complainant's
 17 Exhibit 7 and see if what I've described is
 18 reflected on that pre-hearing exchange. I didn't
 19 contemplate that there would be -- We didn't
 20 contemplate that there would be a change in this
 21 exhibit on what, you know, EPA ultimately submitted.
 22 So I would suggest that we look at the pre-hearing

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1 MS. JACKSON: Yes.
 2 JUDGE COUGHLIN: Because I don't know why
 3 I'm seeing words, but they don't.
 4 MS. JACKSON: Well, there's a couple of
 5 things. We had the pre-hearing conference with
 6 Alyssa. We were told that's how we would share our
 7 exhibits. We would put them in the folder to you.
 8 And I believe that's what was done and that's what
 9 you're seeing here. We also -- We haven't changed
 10 the numbering of exhibits, so we also shared these
 11 exhibits with our pre-hearing exchange, you know,
 12 whatever, 18, 19 months ago. And this would have
 13 been in the core exhibits. So I can't speak to why
 14 -- I have no idea why their version looks different.
 15 That's the process that we took to share exhibits
 16 was filing in the shared folder with Alyssa.
 17 JUDGE COUGHLIN: But my question is --
 18 no, it's okay. We'll fix this. But what you shared
 19 with us last week, did they -- did Respondent also
 20 have a link to those final exhibits?
 21 MS. TRIBETT: Your Honor?
 22 JUDGE COUGHLIN: Yes.

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1 exchange and see what format that exists.
 2 JUDGE COUGHLIN: Okay.
 3 MS. JACKSON: Our tech just said that you
 4 can get errors if their version of Adobe is not the
 5 current version, so it depends on what version of
 6 Adobe you use.
 7 JUDGE COUGHLIN: And my reluctance to
 8 refer to the pre-hearing exchange is that at my
 9 direction, I asked Alyssa to communicate with -- it
 10 wasn't so much an issue with Respondent's exhibits,
 11 but there were very large documents of hundreds of
 12 pages within which multiple exhibits were contained.
 13 And that is not acceptable to me because I need to
 14 be able to go precisely to one exhibit, pull it up,
 15 and not waste time scrolling through a mass. So I
 16 asked -- I directed Alyssa to instruct both sides,
 17 but it was largely toward Complainant because that's
 18 where the issue was for me, to clean all that up.
 19 And not change, but simply to better organize so
 20 that I could quickly get my hands on the specific
 21 exhibit number.
 22 So that's why I would be reluctant to

1 rely to what's in the pre-hearing exchange. I'm not
 2 suggesting that the region has altered anything, but
 3 I wanted it organized better so that it would be
 4 easier for me and presumably Respondent to put their
 5 hands on a particular exhibit. So I'd really rather
 6 that if we can, we're working off the same folder of
 7 things so there's no confusion or question about
 8 what we're looking at. We're all looking at the
 9 same thing. It's very important, I think to protect
 10 the integrity of the proceeding. So is there a
 11 quick fix here?

12 MS. JACKSON: Well, one thing I was
 13 thinking if it's just -- I don't know, you know,
 14 this is large exhibit. So I'm not sure if it's just
 15 the safety data sheets. Those are elsewhere in the
 16 record because there are some kind of repetitive
 17 exhibits. So we could potentially -- I mean, we
 18 actually -- I believe one of the stipulated
 19 exhibits, RPPGs SDS's. So that information is
 20 available elsewhere. But I can't speak to -- I
 21 don't know exactly what we're trying to correct. If
 22 it's just the SDS's or if it's the entire files.

1 hearing exchange -- and I just want to quickly
 2 compare that to what I'm seeing here to see if
 3 there's a difference. I think it would have jumped
 4 out at me when I was taking a look, but let me just
 5 take a second here. Yeah. Yeah. No, it's the
 6 same. It's the same, what you're referring to. So
 7 it does appear to be something with the pre-hearing
 8 exchange submittal.

9 MS. JACKSON: Okay.

10 JUDGE COUGHLIN: Okay? Because I know
 11 exactly what Mr. McKay is referring to. There are
 12 a bunch of characters.

13 MS. JACKSON: I would just -- can I
 14 respond though?

15 JUDGE COUGHLIN: Yes.

16 MS. JACKSON: You know, I apologize that,
 17 that happened. There can be -- there's all kinds of
 18 technology things I guess that could have happened.
 19 But I will say, you know, we have shared -- outside
 20 of the pre-hearing exchange, we have shared all of
 21 these documents with Respondent. We also have been,
 22 I don't know, available for this correction. It

1 JUDGE COUGHLIN: Mr. McKay, is that the
 2 only problem you noted?

3 MR. MCKAY: Well, right. That's the only
 4 -- Pages 15 through 74 on this exhibit for us --

5 JUDGE COUGHLIN: Okay. Okay.

6 MR. MCKAY: -- appears unintelligible.

7 JUDGE COUGHLIN: Okay.

8 MR. MCKAY: And I use Adobe Pro, so I
 9 don't -- and I believe it's the latest version is
 10 Adobe Pro. So I'm not sure why I'm seeing what I'm
 11 seeing, except if -- and maybe what I'm seeing
 12 though is what was produced by the Government in the
 13 pre-hearing exchange. And as I said, I assumed the
 14 exhibit stayed the same. I mean it had the same
 15 amount of pages. It was numbered the same way and
 16 I didn't perceive that there was a variance, so I
 17 didn't correct it or whatever is causing -- whatever
 18 is causing them to see something different than what
 19 I'm seeing right now.

20 JUDGE COUGHLIN: Well, just really
 21 quickly because I actually have the proposed
 22 exhibits that had been submitted during the pre-

1 just feels like this should have been brought up at
 2 the pre-hearing exchange. Obviously it didn't come
 3 through in our final exhibits. We were unaware.

4 JUDGE COUGHLIN: Okay. Is this -- well,
 5 we need to fix it. I don't have the answer to your
 6 question with regard to technology. I mean I have
 7 the same Adobe and you know, I'm at EPA and they
 8 update things. But I see exactly what he is
 9 referring to. So we need to correct it and we can
 10 talk about how to do that in just a second. But has
 11 Respondent -- I don't know how widespread this. So
 12 has Respondent been able to adequately prepare for
 13 the hearing?

14 MR. MCKAY: Would it be okay for Mr. Ryan
 15 to answer? Because he's handling some of the
 16 witnesses that I think would be more relevant to
 17 this particular -- to this particular document that
 18 we're looking at.

19 JUDGE COUGHLIN: Okay.

20 MR. MCKAY: Would the Court be agreeable
 21 to Mr. Ryan to address your question?

22 JUDGE COUGHLIN: Absolutely, sure.

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1 MS. JACKSON: And can I just ask one
2 clarification on the corrupt version, it sounds like
3 of the pre-hearing exchange? What were the page
4 numbers? And then if we could just clarify those
5 are only the SDS pages?

6 JUDGE COUGHLIN: Well, if you -- what I
7 did was I scrolled through. And this is -- what I'm
8 looking at here is it was submitted -- Again, we're
9 talking the pre-hearing exchange process as CX1
10 through CX13. So that's a 531 page document. And
11 I'm scrolling through to get to CX7. And I focused
12 on the pages that Mr. McKay referred to. The
13 numbering is different because, you know, for
14 example where this begins on what I'm looking at is
15 -- Let me make sure I haven't missed -- Hold on a
16 second. And Mr. McKay, I'm assuming it's the same
17 for you.

18 MR. MCKAY: Yes.

19 JUDGE COUGHLIN: So let me get --

20 MR. MCKAY: And I can identify
21 specifically for the Court, the pages that I think
22 are -- that are a problem here. So it begins at

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1 mine and I'm almost there. This is why I corrected
2 what I did. Okay. Yeah, it's the same on my copy.

3 MS. JACKSON: I guess the way I would --
4 if I have the opportunity to clean it up, I would
5 just say those are the exact same pages and
6 documents in CX32 that's been stipulated to. It's
7 the safety data sheets.

8 JUDGE COUGHLIN: Okay.

9 MS. JACKSON: And CX7 that was filed on
10 the record apparently doesn't have whatever's going
11 on here. Correct? That's what's shown here.

12 JUDGE COUGHLIN: Well, but I mean to be
13 -- for clarification though, CX, what I was looking
14 at, what's published for the witness is in the
15 folder that was recently transmitted. I don't have
16 those issues either in that folder. But apparently
17 Respondent's pulling up copies that I suspect were
18 somehow part of the pre-hearing exchange where those
19 -- where those defects are occurring because I see
20 them in mine as well.

21 MS. JACKSON: Yes, Your Honor.

22 JUDGE COUGHLIN: So --

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1 Complainant's Exhibit 7, Page 13 of 105.

2 JUDGE COUGHLIN: Okay. Let me just -- I
3 just -- I just want to get there too.

4 MR. MCKAY: Yeah.

5 JUDGE COUGHLIN: Okay. Sorry, one
6 second. It's hard for me to -- Okay. Yes, that's
7 where I see it as well. So Page 13 of 105.

8 MR. MCKAY: And then skipping forward one
9 page, Your Honor, to Pages 15 through 74.

10 JUDGE COUGHLIN: Can you repeat the
11 second --

12 MR. MCKAY: Yes, ma'am. Pages 15 through
13 74 of this same exhibit.

14 JUDGE COUGHLIN: Oh, okay.

15 MS. JACKSON: Sorry. What were the first
16 two?

17 MR. MCKAY: The bottom of Page 14 --

18 MS. JACKSON: Okay.

19 MR. MCKAY: -- and then Pages 15 through
20 74.

21 MS. JACKSON: Okay.

22 JUDGE COUGHLIN: I'm just comparing with

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1 MR. RYAN: If I may, Your Honor?

2 JUDGE COUGHLIN: Yes.

3 MR. RYAN: The pre-hearing exchange is
4 the process by which we trade documents and know
5 what the other side is about. We received CX7, this
6 form, from EPA in the pre-hearing exchange. It's
7 unintelligible -- these little denominated pages.
8 And that's we relied on. And under (audio
9 interference) Part 22 and 22A, no documents -- any
10 document that has not been exchanged prior to -- 15
11 days prior to the hearing may not be admitted unless
12 good cause is shown. It's a shell. And this
13 corrected version, I believe came in outside that 15
14 day time period. So under the rules, I think it has
15 to be kept out.

16 JUDGE COUGHLIN: Okay. When did you
17 first discover it? I mean -- Well, actually strike
18 that. Okay. So let me ask you though --

19 MR. RYAN: Oh, no. I'm sorry. We
20 discovered this, you know, a long time ago. We
21 relied on this document. We didn't see the
22 corrected version until just now.

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1 JUDGE COUGHLIN: Okay. Ms. Jackson, you
2 indicated CX32 contains the same.
3 MS. JACKSON: Yes.
4 JUDGE COUGHLIN: Right?
5 MS. JACKSON: Yes, Your Honor.
6 JUDGE COUGHLIN: Okay. So let me --
7 Well, what I want to determine here is whether or
8 not this is a repeating issue or whether in another
9 exhibit that Respondent would have had, it's
10 rectified.
11 MS. JACKSON: Okay.
12 JUDGE COUGHLIN: Okay? Because that way
13 I could better address the concerns noted by Mr.
14 Ryan. So let me take a look at -- but I'm still a
15 little bit confused about what you've opened --
16 MR. RYAN: Okay.
17 JUDGE COUGHLIN: -- to prepare for today
18 because if -- What I don't understand is why the
19 folder that was submitted last week contains clear
20 copies of everything, you should have that as well.
21 MR. RYAN: We do, Your Honor.
22 JUDGE COUGHLIN: Okay.

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1 MR. RYAN: We assumed they were the same
2 as Exhibit 32.
3 JUDGE COUGHLIN: Okay.
4 MR. RYAN: But again, they're attached to
5 a longer report, Exhibit 7, which relies, you know,
6 on multiple documents within it.
7 JUDGE COUGHLIN: Okay. Okay. All right,
8 thank you. Let me just pull up 32. Now this is
9 another big one, 597 pages. Can you direct me to
10 what pages these duplicates would be in 32?
11 MS. JACKSON: Ms. Tribett.
12 (Off-microphone comments.)
13 JUDGE COUGHLIN: Okay. Alyssa just
14 directed me to Page 315.
15 MS. JACKSON: I apologize. Thank you.
16 JUDGE COUGHLIN: Okay. So let me go down
17 here. All right. Bear with me, I'm scrolling.
18 Okay. I'm scrolling through 32 -- CX32. And
19 starting at Page 315, which is where the safety data
20 sheet information begins. And it's clear. I'm not
21 seeing the repetition of the -- of the character
22 issues. And from what I understand from Respondent,

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1 MR. RYAN: We were relying on the pre-
2 hearing exchange documents. We assumed that the
3 documents that were submitted were the same as the
4 pre-hearing exchange.
5 JUDGE COUGHLIN: Okay. Okay. I
6 understand now. All right.
7 MR. RYAN: There was no reason for us to
8 go there and re-open and compare them. We just
9 assumed EPA was submitting the same documents.
10 JUDGE COUGHLIN: Okay. Did at any point
11 -- Did at any point, you or Mr. McKay or anyone
12 representing New Prime from either of your firms
13 reach out to Region 8 to identify the fact that
14 those pages contained a bunch of characters and were
15 --
16 MR. RYAN: No, Your Honor. We did not.
17 JUDGE COUGHLIN: And why was that?
18 MR. RYAN: We were relying on what they
19 submitted.
20 JUDGE COUGHLIN: Okay. Were you
21 otherwise independently familiar with them -- with
22 what they contained aside from those defects?

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1 that's a clean copy for you too. Right?
2 MR. RYAN: That's correct, Your Honor.
3 JUDGE COUGHLIN: Okay.
4 MR. RYAN: And we've stipulated to 32.
5 JUDGE COUGHLIN: Okay, all right. So I
6 don't think that there's going to be a problem with
7 moving forward then. I recognize that there are
8 issues in another exhibit. But thankfully there's
9 a duplicate and they're clear there. So you've at
10 least made aware of the information contained
11 through a clean exhibit. I'm not really happy about
12 seeing that. And I think there needs to be some
13 better attention paid during the pre-hearing
14 exchange process. But I think you've been saved by
15 the fact that there's a duplicate here that doesn't
16 contain the same errors. So because of that, I'll
17 move forward.
18 But I guess, you know, for clarity in
19 moving forward, I would like for Respondent to be
20 able to have in front of them, not exhibits that had
21 been submitted -- proposed exhibits submitted pre-
22 hearing that may contain any defects, but what we're

1 all looking at that's clean. Because I mean I'm not
 2 trying to tell you how to proceed, but if you're
 3 questioning this witness, you need a clean copy.
 4 And that's contained in what was submitted last
 5 week, at least with regard to this duplicate. So do
 6 you want to take a moment and see about pulling that
 7 up or are you able to pull from your stack of things
 8 to find a clean copy of the exhibit that's being
 9 referenced so you're not hindered in being able to
 10 question properly?
 11 MR. MCKAY: Yeah. We can do that on the
 12 fly --
 13 JUDGE COUGHLIN: Okay.
 14 MR. MCKAY: -- Your Honor.
 15 JUDGE COUGHLIN: Okay. All right.
 16 MR. MCKAY: And I'm finished with my
 17 inquiry of this witness in aid of objection. I do
 18 have a further objection to the exhibit. So
 19 whenever the Court wishes to hear that, I'll
 20 complete the objection.
 21 JUDGE COUGHLIN: Right now is just fine.
 22 MR. MCKAY: Thank you, Your Honor. So

1 here. And you know, again that would of course also
 2 constitute some level of -- some level of hearsay.
 3 And so not to belabor the point, we make the
 4 objection on the basis that we've previously made it
 5 for the reasons that I've stated here.
 6 JUDGE COUGHLIN: All right. Thank you,
 7 Mr. McKay. Understood. And I mean based on my
 8 prior ruling, I'll admit it.
 9 (Whereupon, the above-referred to
 10 document was received into evidence as Complainant
 11 Exhibit 7.)
 12 JUDGE COUGHLIN: But again, it's
 13 certainly appropriate to argue weight with these
 14 types of issues and whether I should afford
 15 something no weight because of that. So I leave
 16 that to the parties. But I will admit CX07 over the
 17 objections noted.
 18 MS. JACKSON: Thank you, Your Honor. Mr.
 19 Callaghan, if we could -- so we're going to skip
 20 over CX08. That's been stipulated to. And go to
 21 CX09. Do you have that up in front of you, Mr.
 22 Callaghan?

1 Complainant's Exhibit 7 reports to be a report from
 2 an individual at the Department of Environmental
 3 Quality that was delivered by another individual by
 4 email to Special Agent Mugleston -- in part, that's
 5 what it is. And none of those people, of course,
 6 are here. The report of the first individual of
 7 Department of Environmental Quality, Maureen Vicente
 8 has a bunch of double and triple hearsay.
 9 And even statements made by -- that
 10 report to be representations made by the Department
 11 of Transportation ISP. What the report reflects is
 12 that her office -- not saying who, contacted the
 13 Department of Transportation, not saying who,
 14 contacted ISP, not saying who and then they made
 15 statements. And that's in the -- that's in the
 16 report. And if Agent Mugleston were here, I could
 17 ask him about who are these people referred --
 18 provided he even knows because he wasn't the person
 19 who wrote that report.
 20 The report also contains -- contains
 21 analytical reports prepared by witnesses first
 22 disclosed by the EPA who they've chosen not to call

1 THE WITNESS: It's coming up for me on
 2 the shared folder.
 3 BY MS. JACKSON:
 4 Q Let us know when you're ready.
 5 A Yes. I have CX09 in front of me.
 6 Q And do you recognize this IAR?
 7 A I do recognize this IAR.
 8 (Whereupon, the above-referred to
 9 document was marked as Complainant Exhibit 9 for
 10 identification.)
 11 BY MS. JACKSON:
 12 Q How do you recognize it?
 13 A I recognize it again by the case number,
 14 it's specific for Prime. And then the case title
 15 being Prime Inc. Furthermore, if you give me just
 16 a moment -- And recognize it -- as the subject being
 17 the HAZMAT management and invoice for the disposal
 18 of U.S. Ecology.
 19 Q Okay. And did you review this
 20 IAR in preparation of your affidavit?
 21 A Yes.
 22 Q And is this is a true -- Actually, sorry.

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1 Ms. Tribett, could you just scroll to the bottom?
 2 I want to make sure you look at the whole -- Okay,
 3 you can go back up. Do you recognize this as a true
 4 and accurate copy of CX09?

5 A Yes.

6 MS. JACKSON: Your Honor, Complainant
 7 requests that the Tribunal admits CX09 into
 8 evidence.

9 JUDGE COUGHLIN: Any objection from New
 10 Prime or questions?

11 MR. MCKAY: Just recognizing the Court
 12 has granted us a standing objection. I objection on
 13 the bases previously stated.

14 JUDGE COUGHLIN: All right, thank you.

15 MS. JACKSON: If I could, Your Honor, can
 16 I do a quick standing kind of response to the
 17 objection?

18 JUDGE COUGHLIN: Yes.

19 MS. JACKSON: Okay, thank you. First of
 20 all, you know, Complainants would argue that live
 21 testimony in some ways is unnecessary here. These
 22 are self-authenticating exhibits with Mr.

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1 Callaghan's testimony. We've raised this issue in
 2 our previous motion, which we said that Your Honor
 3 wanted to wait and rule at the hearing. But I just
 4 want to make sure that it's clear for the record,
 5 all of these records are exact copies -- business
 6 records. They satisfy Federal Rule of Evidence
 7 8036. The Agency records are accompanied by Mr.
 8 Callaghan's affidavit to satisfy as a certification
 9 under 90211.

10 He's an employee of the Agency. He's
 11 testified to the Agency's regular practice. He
 12 signed a sworn affidavit to that effect. And the
 13 record -- He also testified that the records were
 14 created at or near the time of the criminal
 15 investigation. And the Agency maintains these
 16 records in its ordinary course of business. So
 17 while I completely agree with Your Honor's ruling,
 18 I just wanted to make sure and put that on the
 19 record. Obviously the weight of the evidence is in
 20 your hands. But I wanted to just make one response.
 21 And I'm happy to just kind of -- that be it for
 22 today.

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1 JUDGE COUGHLIN: All right. All right.
 2 A standing response, thank you. All right.
 3 Anything else from you New Prime?

4 MR. MCKAY: Well I think that the
 5 witness's testimony on these exhibits speaks for
 6 itself. So it's not Counsel's representations of
 7 what he said. It's what he said previously in this
 8 hearing. So I made my objection and understand the
 9 Court's ruling. Thank you.

10 JUDGE COUGHLIN: All right. All right.
 11 Thank you, both. I appreciate that. I think the
 12 record's clear. And I will admit CX09 over
 13 objection.

14 (Whereupon, the above-referred to
 15 document was received into evidence as Complainant
 16 Exhibit 9.)

17 BY MS. JACKSON:

18 Q Mr. Callaghan, we're going to move on to
 19 CX11. Actually sorry, we're going to skip that.
 20 Let's move on to CX12. Do you have it up, Mr.
 21 Callaghan?

22 A I do, yeah. Yes, I do.

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1 Q Do you recognize this exhibit?

2 A I do not recognize this exhibit. This is
 3 not one that was in my affidavit.

4 Q My apologies. Okay. Please take that --

5 A I mean I recognize -- I recognize part of
 6 it because part of the information in this record is
 7 duplicative of the last page. I can say that I
 8 recognize that from it being present in other
 9 records that I reviewed. But I did not review this
 10 prior to testimony.

11 Q Okay. Mr. Callaghan, I apologize. That
 12 was my mistake. We can move on. Please pull up
 13 CX14. Okay. Mr. Callaghan, do you recognize this
 14 exhibit, CX14?

15 A Yes, I do.

16 Q How do you recognize it?

17 A Again, by the case number specific to
 18 Prime, by the title. And I'm very familiar with the
 19 subject of this report, which is NEIC report. So
 20 yes, I am familiar with this and the attached
 21 report.

22 (Whereupon, the above-referred to

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1 document was marked as Complainant Exhibit 14 for
2 identification.)

3 MS. JACKSON: Ms. Tribett, if you could
4 scroll through the document. Okay, we've reached
5 the bottom. We're going to go back up to the top.

6 Mr. Callaghan, is this a true and accurate
7 copy of the document?

8 THE WITNESS: Yes.

9 MS. JACKSON: Your Honor, Complainant
10 requests that the Tribunal admit CX14 into evidence.

11 JUDGE COUGHLIN: Any objection from New
12 Prime?

13 MR. MCKAY: Your Honor, same objection I
14 made concerning this report on Complainant's Exhibit
15 10.

16 JUDGE COUGHLIN: All right, thank you.
17 I'll admit it over objection. CX14 is admitted.

18 (Whereupon, the above-referred to
19 document was received into evidence as Complainant
20 Exhibit 14.)

21 MS. JACKSON: Okay. Ms. Tribett, if you
22 could publish CX16.

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1 Mr. Callaghan, can you see this exhibit?

2 THE WITNESS: Yes, I'm pulling it up. I
3 had 15 open. Let me pull up 16. Yes, I can see
4 this -- CX16.

5 BY MS. JACKSON:

6 Q Mr. Callaghan, do you recognize this
7 exhibit?

8 A Yes, I do.

9 Q And how do you recognize it?

10 A Again, I recognize it by the case number
11 here and the title. And then --

12 Q Go ahead.

13 A Just further reading some synopsis
14 information here. Okay.

15 Q Did you review this IAR exhibit CX16 in
16 preparation for your affidavit?

17 A Yes, I did.

18 Q And could you describe what this
19 investigative -- the subject of this investigative
20 activity report please?

21 A Yes. So Darren Muggleston interviewed
22 Mark Lowe who worked for PPG.

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1 (Whereupon, the above-referred to
2 document was marked as Complainant Exhibit 16 for
3 identification.)

4 BY MS. JACKSON:

5 Q Okay. And is this a true and accurate
6 copy of that investigative activity report?

7 A Yes.

8 MS. JACKSON: Your Honor, Complainant
9 requests that the Tribunal admit CX16 into evidence.

10 JUDGE COUGHLIN: Any objection from New
11 Prime?

12 MR. MCKAY: Same objections I previously
13 stated, Your Honor.

14 JUDGE COUGHLIN: Thank you, Mr. McKay.
15 It will be admitted over objection.

16 (Whereupon, the above-referred to
17 document was received into evidence as Complainant
18 Exhibit 16.)

19 MS. JACKSON: Ms. Tribett, if you could
20 publish CX17.

21 Mr. Callaghan, can you see CX17?

22 THE WITNESS: Yes, I do.

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1 BY MS. JACKSON:

2 Q Okay. Do you recognize it?

3 A Yes, I do.

4 Q And how do you recognize it?

5 A Again, because it's specific to the
6 Prime, Inc. case based on its number, based on the
7 title. I recognize this as our IARs. I also
8 recognize this because I was present at this
9 interview.

10 (Whereupon, the above-referred to
11 document was marked as Complainant Exhibit 17 for
12 identification.)

13 BY MS. JACKSON:

14 Q Thank you. And did you review again this
15 IAR for your affidavit?

16 A Yes, I did.

17 MS. JACKSON: Ms. Tribett, if you could
18 scroll all the way through it. Thank you.

19 Mr. Callaghan, is this a true and
20 accurate copy of CX17?

21 THE WITNESS: Yes.

22 MS. JACKSON: Your Honor, Complainant

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1 requests the Tribunal admit CX17 into evidence.
 2 JUDGE COUGHLIN: Any objection by New
 3 Prime?
 4 MR. MCKAY: Same objection, Your Honor.
 5 Recognizing of course that the witness was present
 6 during the interview, but the report does contain
 7 layers of hearsay of the interviewee. The report
 8 says or reports to say what other people said to
 9 him. I understand the Court's prior ruling. I'll
 10 note that objection.
 11 JUDGE COUGHLIN: All right. Thank you,
 12 Mr. McKay. CX17 will be admitted over objection.
 13 (Whereupon, the above-referred to
 14 document was received into evidence as Complainant
 15 Exhibit 17.)
 16 MS. JACKSON: Ms. Tribett, if you could
 17 publish CX18 please.
 18 Mr. Callaghan, can you see CX18 on your
 19 screen?
 20 THE WITNESS: Yes, I can.
 21 BY MS. JACKSON:
 22 Q Do you recognize it?

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1 THE WITNESS: Yes.
 2 MS. JACKSON: Your Honor, Complainant
 3 requests that the Tribunal admit CX18 into evidence.
 4 JUDGE COUGHLIN: Any objection, Mr.
 5 McKay?
 6 MR. MCKAY: Same objection.
 7 JUDGE COUGHLIN: All right, thank you.
 8 It will be admitted over objection.
 9 (Whereupon, the above-referred to
 10 document was received into evidence as Complainant
 11 Exhibit 18.)
 12 MS. JACKSON: One second, Your Honor.
 13 Ms. Tribett, if you could publish CX19.
 14 Mr. Callaghan, can you see CX19?
 15 THE WITNESS: Yes, I can.
 16 BY MS. JACKSON:
 17 Q Do you recognize it?
 18 A Yes, I do.
 19 Q And how do you recognize it?
 20 A The case number associated with the
 21 Prime, Inc. investigation. The case title is Prime,
 22 Inc. And the subject of the report is documenting

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1 A Yes, I do.
 2 Q And how do you recognize it?
 3 A I recognize it based on the IAR,
 4 specifically the case number, the case title, and
 5 then the subject of the report.
 6 Q Can you read that subject of the report
 7 for the record please?
 8 A This is the -- this is an investigative
 9 activity report summarizing specifically interview
 10 documents from Derek Janousek.
 11 (Whereupon, the above-referred to
 12 document was marked as Complainant Exhibit 18 for
 13 identification.)
 14 BY MS. JACKSON:
 15 Q Thank you. And did you review this IAR
 16 in preparation of your affidavit?
 17 A Yes, I did.
 18 MS. JACKSON: Ms. Tribett, if you could
 19 scroll through so Mr. Callaghan can see the whole
 20 document.
 21 Mr. Callaghan, is this a true and
 22 accurate copy of CX18?

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1 an incident report from Boise Fire Department where
 2 they provided records to Special agent Darren
 3 Mugleston.
 4 (Whereupon, the above-referred to
 5 document was marked as Complainant Exhibit 19 for
 6 identification.)
 7 BY MS. JACKSON:
 8 Q And did you review this exhibit in
 9 preparation of your affidavit?
 10 A Yes, I did.
 11 Q Is this a true and accurate
 12 representation of a copy of that investigative
 13 activity report at CX19?
 14 A Yes, it is.
 15 MS. JACKSON: Your Honor, Complainant
 16 requests --
 17 THE WITNESS: Yes.
 18 MS. JACKSON: Oh, I'm sorry. Did you
 19 want to add something, Mr. Callaghan?
 20 THE WITNESS: No. Just confirming with
 21 a "yes" that this is true and accurate.
 22 MS. JACKSON: Your Honor, Complainant

1 requests that the Tribunal admit CX19 into evidence.
 2 MR. MCKAY: No objection.
 3 JUDGE COUGHLIN: All right. CX19 is
 4 admitted.
 5 (Whereupon, the above-referred to
 6 document was received into evidence as Complainant
 7 Exhibit 19.)
 8 MS. JACKSON: Okay. Ms. Tribett, if you
 9 could go to CX20.
 10 Mr. Callaghan, can you see that document?
 11 THE WITNESS: Yes.
 12 BY MS. JACKSON:
 13 Q Do you recognize CX20?
 14 A I do.
 15 Q How do you recognize it?
 16 A I recognize it based on the case number
 17 and the case title. And the subject of the report,
 18 "The Interview of Captain Grainger with the RRT --
 19 Regional Response Team 4."
 20 (Whereupon, the above-referred to
 21 document was marked as Complainant Exhibit 20 for
 22 identification.)

1 BY MS. JACKSON:
 2 Q Do you recognize this?
 3 A Yes, I can.
 4 Q How do you recognize it?
 5 A The case number is specific to Prime.
 6 The title is Prime, Inc. And the subject of the
 7 report is documenting for Darren Muggleston that he
 8 received some internal emails from PPG.
 9 Q And did you review this investigative
 10 activity report in preparation of your affidavit?
 11 Ms. Tribett, if you could scroll through
 12 -- Actually I don't know if that answer was audible.
 13 I'm going to repeat the question.
 14 MS. TRIBETT: You said 22, but he's
 15 looking at 21.
 16 BY MS. JACKSON:
 17 Q Mr. Callaghan, let's start over with
 18 this. We skipped CX21. We are in CX22. Let me
 19 know when you have CX22 in front of you on your
 20 screen.
 21 A Copy that. Stand by. I have CX22 in
 22 front of me.

1 MS. JACKSON: Ms. Tribett, if you could
 2 just scroll through the document. Thank you.
 3 Mr. Callaghan, did you review this IAR in
 4 preparation of your affidavit?
 5 THE WITNESS: Yes.
 6 BY MS. JACKSON:
 7 Q And is it a true and accurate copy?
 8 A Yes, it is.
 9 MS. JACKSON: Your Honor, Complainants
 10 request that the Tribunal admit CX20 into evidence.
 11 JUDGE COUGHLIN: Any objections?
 12 MR. MCKAY: Same objections previously
 13 stated.
 14 JUDGE COUGHLIN: All right. I'll admit
 15 it over objection.
 16 (Whereupon, the above-referred to
 17 document was received into evidence as Complainant
 18 Exhibit 20.)
 19 MS. JACKSON: Ms. Tribett, if you could
 20 pull up CX22.
 21 Mr. Callaghan, can you see that exhibit?
 22 THE WITNESS: Yes, I can.

1 Q Okay, thank you. Do you recognize CX22?
 2 A Yes, I do recognize CX22. I recognize it
 3 based on the case number specific to Prime, the case
 4 title. And I am familiar with the recorded
 5 interview here of Sandy Derrick, the D&W truck
 6 driver.
 7 (Whereupon, the above-referred to
 8 document was marked as Complainant Exhibit 22 for
 9 identification.)
 10 BY MS. JACKSON:
 11 Q Did you review this IAR in preparation of
 12 your affidavit?
 13 A Yes, I did.
 14 MS. JACKSON: Ms. Tribett, if you could
 15 scroll to the bottom.
 16 Is this IAR summarizing the recorded
 17 interview of Sandy Derrick, a true and accurate
 18 copy?
 19 THE WITNESS: Yes.
 20 MS. JACKSON: Your Honor, Complainants
 21 request that the Tribunal admit CX22 into evidence.
 22 JUDGE COUGHLIN: One quick question. Mr.

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1 Callaghan, when you said you were "familiar" with
2 CX22, are you familiar with it in a way other than
3 reviewing it per your affidavit --

4 THE WITNESS: Let me open it up, Your
5 Honor.

6 JUDGE COUGHLIN: -- or not? I just want
7 to kind of clarify your statement that you're
8 familiar with it.

9 THE WITNESS: I'm familiar. I've also
10 listened to this audio recorded interview at some
11 point -- At some point in the case, I did review --
12 listen to this interview of Sandy Derrick.

13 JUDGE COUGHLIN: Okay, thank you. Mr.
14 McKay from New Prime, any objection or questions?

15 MR. MCKAY: Can I ask a clarifying
16 question? So Special Agent Callaghan, during your
17 earlier testimony, you said that the only recordings
18 that you had listened to or interviews were of
19 Steven Drake, the Prime truck driver. And you
20 initially said Idaho State Police Officer -- Police
21 Trooper, Colin Bonner. And then you clarified of
22 course that you didn't listen to Colin Bonner

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1 because no recording exists. Do you now have a new
2 memory that you also listened to the audio recording
3 of Sandy Derrick?

4 THE WITNESS: I can't say that I listened
5 to this entire thing. It was more of a -- when
6 Darren Mugleston had this, I remember him pointing
7 out some comment. My recollection is this. Darren
8 let me listen to portions of this thing. I can't
9 say with certainty that prior to my testimony today,
10 I listened to this audio recording in its entirety.

11 But I do remember this and I remember discussing
12 this with Darren.

13 MR. MCKAY: Is it fair to say you think
14 you may have listened to portions of the audio
15 recording?

16 THE WITNESS: That's correct.

17 MR. MCKAY: Your Honor, same objection as
18 previously.

19 MS. JACKSON: And just a quick response.

20 JUDGE COUGHLIN: Sure.

21 MS. JACKSON: The United States is not
22 intending to enter the recordings into evidence.

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1 Yeah, that's all I'm going to say on that. And
2 again, Mr. Callaghan is a foundational witness to
3 talk about admissibility of these particular
4 documents, but not about the CDs. He is an
5 investigator. He was co-lead on this case. So I
6 believe he could have listened to all of them at
7 some point. But we're not planning on discussing
8 the recordings or presenting them as evidence in
9 this case.

10 MR. MCKAY: Agreed, Counsel. He could
11 have listened to them.

12 MS. JACKSON: Okay.

13 JUDGE COUGHLIN: All right, thank you.
14 I will admit CX22 over objection.

15 (Whereupon, the above-referred to
16 document was received into evidence as Complainant
17 Exhibit 22.)

18 BY MS. JACKSON:

19 Q All right. Let's move to CX23 please.

20 Mr. Callaghan, can you see CX23?

21 A I can.

22 Q Do you recognize it?

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1 A I do. I recognize it as the recorded
2 interview of Tim Corder. I recognize it as being
3 associated with Prime because of the case number
4 here on the IAR and the case title.
5 (Whereupon, the above-referred to
6 document was marked as Complainant Exhibit 23 for
7 identification.)

8 BY MS. JACKSON:

9 Q And did you review this IAR in
10 preparation of your affidavit?

11 A I did.

12 MS. JACKSON: Ms. Tribett, if you could
13 just scroll through the document.

14 Mr. Callaghan, is this a true and
15 accurate copy of the IAR identified as CX23?

16 THE WITNESS: Yes.

17 MS. JACKSON: Your Honor, Complainant
18 requests the Tribunal admit CX23 into evidence.

19 JUDGE COUGHLIN: Any objection?

20 MR. MCKAY: Same objection.

21 JUDGE COUGHLIN: All right. Admitted
22 over objection.

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1 (Whereupon, the above-referred to
2 document was received into evidence as Complainant
3 Exhibit 23.)
4 MS. JACKSON: Ms. Tribett, if you could
5 go to CX24.
6 Do you have that up, Mr. Callaghan?
7 THE WITNESS: Yes, I do.
8 BY MS. JACKSON:
9 Q Do you recognize CX24?
10 A Yes, I do.
11 Q And how do you recognize it?
12 A I recognize this as the case number
13 associated with Prime, the title of Prime, Inc. And
14 the subject of the report, recognizing invoices from
15 CWE.
16 (Whereupon, the above-referred to
17 document was marked as Complainant Exhibit 24 for
18 identification.)
19 BY MS. JACKSON:
20 Q And did you review this IAR in
21 preparation of your affidavit?
22 A Yes.

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1 Q Okay. Keep going.
2 A This title is associated with Prime, Inc.
3 And the subject of the interview -- stand by. Yes,
4 I do recognize the subject of this report. The
5 interview and documents of Richard (phonetic)
6 Simmons from H2O.
7 (Whereupon, the above-referred to
8 document was marked as Complainant Exhibit 25 for
9 identification.)
10 BY MS. JACKSON:
11 Q And Mr. Callaghan, were you present for
12 this interview?
13 A I was.
14 Q And did you review this IAR in
15 preparation of your affidavit?
16 A Yes, I did.
17 MS. JACKSON: Ms. Tribett, it's a little
18 long, so can you -- can you scroll to the bottom
19 please?
20 Mr. Callaghan, did you receive those
21 attachments to that exhibit as part of your --
22 (Simultaneous speaking.)

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1 MS. JACKSON: Ms. Tribett, if you could
2 scroll through to the bottom please.
3 Mr. Callaghan, is this a true and
4 accurate copy of the IAR identified as CX24?
5 THE WITNESS: Yes.
6 MS. JACKSON: Your Honor, Complainant
7 requests that the Tribunal admit CX24 into evidence.
8 JUDGE COUGHLIN: Any objection from New
9 Prime?
10 MR. MCKAY: Same objection.
11 JUDGE COUGHLIN: All right. I'll admit
12 CX24 over objection.
13 (Whereupon, the above-referred to
14 document was received into evidence as Complainant
15 Exhibit 24.)
16 BY MS. JACKSON:
17 Q Mr. Callaghan, we're moving to CX25 next.
18 A I have CX25 open.
19 Q Do you recognize CX25?
20 A Yes, I do.
21 Q How do you recognize it?
22 A The case number is the same.

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1 THE WITNESS: Yes, I did.
2 BY MS. JACKSON:
3 Q Thank you. Is this exhibit, CX25 a true
4 and accurate copy?
5 A Yes, it is.
6 MS. JACKSON: Your Honor, Complainant
7 requests that the Tribunal admits CX25 into
8 evidence.
9 JUDGE COUGHLIN: Any objection, Mr.
10 McKay?
11 MR. MCKAY: Same objection.
12 JUDGE COUGHLIN: All right. I'll admit
13 CX25 over objection.
14 (Whereupon, the above-referred to
15 document was received into evidence as Complainant
16 Exhibit 25.)
17 BY MS. JACKSON:
18 Q We can move to CX26 please. Mr.
19 Callaghan, do you see CX26?
20 A Yes.
21 Q Do you recognize this exhibit?
22 A Yes, I recognize this exhibit. The case

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1 number is for Prime. The case title is Prime, Inc.
 2 And the subject of the interview -- the subject of
 3 the report I should say, the interview of Noel
 4 Bailey, U.S. Ecology.
 5 (Whereupon, the above-referred to
 6 document was marked as Complainant Exhibit 26 for
 7 identification.)
 8 BY MS. JACKSON:
 9 Q And were you present at this -- Sorry.
 10 Go ahead, Marc -- Mr. Callaghan.
 11 A I recognize that -- that I was present
 12 during this interview of Noel Bailey.
 13 MS. JACKSON: Thank you. Ms. Tribett, if
 14 you could scroll to the bottom again.
 15 Mr. Callaghan, is this a true and
 16 accurate copy of what's been marked at CX26,
 17 reflecting the interview of Noel Bailey?
 18 THE WITNESS: Yes.
 19 MS. JACKSON: Your Honor, Complainant
 20 requests that the Tribunal admits CX26 into
 21 evidence.
 22 JUDGE COUGHLIN: Any objection, Mr.

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1 really offer it. It was just a mistake on my part.
 2 We're not using you to get that exhibit in.
 3 THE WITNESS: Okay.
 4 MS. JACKSON: I believe we've cleared up
 5 the record on that one. Thank you though. That was
 6 26. Let's move to CX27. Marc, can you see CX27?
 7 Sorry, Mr. Callaghan.
 8 THE WITNESS: Yes, I can.
 9 BY MS. JACKSON:
 10 Q Okay.
 11 A Yes, I can.
 12 Q Do you recognize CX27?
 13 A Yes. The case number is associated with
 14 Prime. The case title indicates that it's Prime,
 15 Inc. And the subject of the report, which is
 16 4/27/16, receipt of B&W records, I recognize the
 17 subject of the report.
 18 (Whereupon, the above-referred to
 19 document was marked as Complainant Exhibit 27 for
 20 identification.)
 21 BY MS. JACKSON:
 22 Q If you could scroll through the exhibit.

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1 McKay?
 2 MR. MCKAY: Just the ones previously
 3 noted, Your Honor.
 4 JUDGE COUGHLIN: Okay, all right. I'll
 5 admit it over objection.
 6 (Whereupon, the above-referred to
 7 document was received into evidence as Complainant
 8 Exhibit 26.)
 9 MS. JACKSON: Thank you.
 10 THE WITNESS: Do I have an obligation to
 11 tell the Court with respect to CX, I think it was 12
 12 that I didn't receive that --
 13 MS. JACKSON: No, that was a mistake on
 14 my part, Marc.
 15 THE WITNESS: What if those records that
 16 were in 12 that I didn't see until you put them up
 17 were present in other records that I did review?
 18 MS. JACKSON: I'll let you respond or
 19 should I?
 20 JUDGE COUGHLIN: You haven't really
 21 offered 12, so --
 22 MS. JACKSON: Yeah. Marc, I didn't

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1 Thank you. Mr. Callaghan, did you review this IAR
 2 in preparation of your affidavit?
 3 A Yes.
 4 Q And is it a true and accurate copy?
 5 A Yes.
 6 MS. JACKSON: Your Honor, Complainant
 7 requests that the Tribunal admit Exhibit CX27 into
 8 evidence.
 9 JUDGE COUGHLIN: Any objection from New
 10 Prime?
 11 MR. MCKAY: Same objection.
 12 JUDGE COUGHLIN: Okay, all right. I'll
 13 admit CX27 over objection.
 14 (Whereupon, the above-referred to
 15 document was received into evidence as Complainant
 16 Exhibit 27.)
 17 BY MS. JACKSON:
 18 Q If we could move to CX28 please. Mr.
 19 Callaghan, can you see CX28 on your screen?
 20 A Yes, I can.
 21 Q Do you recognize this exhibit?
 22 A Yes, I do. The case number is associated

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1 with Prime. The case title is Prime, Inc. And the
 2 subject of the report states "EPA hazards with
 3 identification number inquiry by IDEQ".
 4 (Whereupon, the above-referred to
 5 document was marked as Complainant Exhibit 28 for
 6 identification.)
 7 BY MS. JACKSON:
 8 Q And did you review this IAR in
 9 preparation of your affidavit?
 10 A Yes, I did.
 11 Q Is this a true and accurate copy of CE28?
 12 A Yes.
 13 MS. JACKSON: Your Honor, Complainant
 14 requests that the Tribunal admits CX28 into
 15 evidence.
 16 JUDGE COUGHLIN: New Prime any
 17 objections?
 18 MR. MCKAY: The same objections.
 19 JUDGE COUGHLIN: Okay. CX28 will be
 20 admitted over objection.
 21 (Whereupon, the above-referred to
 22 document was received into evidence as Complainant

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1 accurate copy of this IAR, labeled CX29?
 2 MR. MCKAY: Yes, it is.
 3 MS. JACKSON: Okay. Your Honor,
 4 Complainant requests that the Tribunal admits CX29
 5 into evidence.
 6 JUDGE COUGHLIN: And New Prime?
 7 MR. MCKAY: Same objection.
 8 JUDGE COUGHLIN: All right. CX29 will be
 9 admitted over objection.
 10 (Whereupon, the above-referred to
 11 document was received into evidence as Complainant
 12 Exhibit 29.)
 13 BY MS. JACKSON:
 14 Q CX30 please. Mr. Callaghan, can you see
 15 CX30 on your screen?
 16 A Yes, I can.
 17 Q Do you recognize it?
 18 A Yes.
 19 Q And how do you recognize it?
 20 A The case number is specific to Prime.
 21 The case title is Prime, Inc. And the subject of
 22 the report is "Consent search to sample drums at

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1 Exhibit 28.)
 2 BY MS. JACKSON:
 3 Q CX29 please. Mr. Callaghan, can you see
 4 CX29 on your screen?
 5 A Yes, I can.
 6 Q Do you recognize it?
 7 A Yes, I do.
 8 Q And how do you recognize it?
 9 A I recognize it based on the case number,
 10 the title Prime, Inc. And the subject of the report
 11 stating "Interview of Brett Bauer and Steve Mares,
 12 Brett's Towing.
 13 (Whereupon, the above-referred to
 14 document was marked as Complainant Exhibit 29 for
 15 identification.)
 16 BY MS. JACKSON:
 17 Q And did you review this IAR in
 18 preparation of your affidavit?
 19 A Yes, I did.
 20 MS. JACKSON: Ms. Tribett, if you'd just
 21 scroll to the second page.
 22 Mr. Callaghan, is this a true and

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1 Prime, Salt Lake City, Utah."
 2 (Whereupon, the above-referred to
 3 document was marked as Complainant Exhibit 30 for
 4 identification.)
 5 BY MS. JACKSON:
 6 Q Did you review this investigative
 7 activity report in preparation of your affidavit?
 8 A Yes.
 9 Q And is it a true and accurate copy?
 10 A Yes.
 11 MS. JACKSON: Your Honor, Complainant
 12 requests that the Tribunal admit CX30 into evidence.
 13 JUDGE COUGHLIN: Okay. And New Prime?
 14 MR. MCKAY: Same objection, I think with
 15 the added notion that it's redundant now with
 16 Complainant's Exhibit 10.
 17 JUDGE COUGHLIN: Okay.
 18 MR. MCKAY: -- the consent search on
 19 August 24th.
 20 JUDGE COUGHLIN: Okay.
 21 MR. MCKAY: You see the same documents in
 22 there.

1 JUDGE COUGHLIN: Okay, all right. I'll
 2 admit that over objection.
 3 (Whereupon, the above-referred to
 4 document was received into evidence as Complainant
 5 Exhibit 30.)
 6 MS. JACKSON: Ms. Tribett, if you could
 7 pull up CX31 please.
 8 Mr. Callaghan, do you have CX31 in front
 9 of you?
 10 THE WITNESS: Yes, I do.
 11 BY MS. JACKSON:
 12 Q Do you recognize it?
 13 A Yes, I do.
 14 Q And how do you recognize it?
 15 A The case number is Prime. The case title
 16 is associated with Prime. And the subject of report
 17 is "6/28/16, Transcript of recorded interview of Tim
 18 Corder, CWE".
 19 (Whereupon, the above-referred to
 20 document was marked as Complainant Exhibit 31 for
 21 identification.)
 22 BY MS. JACKSON:

1 Q Well the good news is, Mr. Callaghan, we
 2 get to jump ahead. The next several exhibits are
 3 stipulated to, so we are going to jump to -- all
 4 right, give me just one second please -- to CX52.
 5 Mr. Callaghan, do you see CX52 on your screen?
 6 A Yes, I do.
 7 Q Do you recognize it?
 8 A Yes, I do.
 9 Q And how do you recognize it?
 10 A The case number is associated with Prime.
 11 The case title is Prime, Inc. And this is
 12 documenting the receipt of allegations from IBEQ and
 13 I was present at this meeting.
 14 (Whereupon, the above-referred to
 15 document was marked as Complainant Exhibit 52 for
 16 identification.)
 17 BY MS. JACKSON:
 18 Q Mr. Callaghan, did you review this IAR in
 19 preparation of your affidavit as well?
 20 A Yes, I did.
 21 MS. JACKSON: Ms. Tribett, if you could
 22 scroll through the document to the bottom.

1 Q And did you review this exhibit in
 2 preparation of your affidavit?
 3 A Yes, I did.
 4 MS. JACKSON: Ms. Tribett, if you could
 5 scroll through this exhibit please. Thank you, Ms.
 6 Tribett.
 7 Mr. Callaghan, is this a true and
 8 accurate copy of that transcript -- Sorry. Is this
 9 a true and accurate copy of the IAR reflecting that
 10 transcript?
 11 THE WITNESS: Yes, it is.
 12 MS. JACKSON: Your Honor, Complainant
 13 requests that the Tribunal admit CX31 into evidence.
 14 JUDGE COUGHLIN: Okay. Any objection
 15 from New Prime?
 16 MR. MCKAY: Same objections, Your Honor.
 17 JUDGE COUGHLIN: Okay. I will admit CX31
 18 over objection.
 19 (Whereupon, the above-referred to
 20 document was received into evidence as Complainant
 21 Exhibit 31.)
 22 BY MS. JACKSON:

1 Mr. Callaghan, is this a true and
 2 accurate copy of CX52?
 3 THE WITNESS: Yes, it is.
 4 MS. JACKSON: Your Honor, Complainant
 5 requests that the Tribunal admit CX52 into evidence.
 6 JUDGE COUGHLIN: Any objection from New
 7 Prime?
 8 MR. MCKAY: Same objection.
 9 JUDGE COUGHLIN: Okay. CX52 is admitted
 10 over objection.
 11 (Whereupon, the above-referred to
 12 document was received into evidence as Complainant
 13 Exhibit 52.)
 14 MS. JACKSON: CX53 please, Ms. Tribett.
 15 Mr. Callaghan, do you have CX53 up on
 16 your screen?
 17 THE WITNESS: I do.
 18 BY MS. JACKSON:
 19 Q Do you recognize it?
 20 A Yes, I do. The case number is associated
 21 with Prime. The case title is Prime, Inc. And
 22 although there's a typo here, the subject of the

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1 report is "interview and invoice receipt of Janousek
 2 with KHRFB.
 3 (Whereupon, the above-referred to
 4 document was marked as Complainant Exhibit 53 for
 5 identification.)
 6 BY MS. JACKSON:
 7 Q And did you review this IAR in
 8 preparation of your affidavit?
 9 A I did.
 10 MS. JACKSON: Ms. Tribett, if you could
 11 scroll to the bottom of the exhibit.
 12 Mr. Callaghan, is this a true and
 13 accurate copy?
 14 THE WITNESS: Yes, it is.
 15 MS. JACKSON: Your Honor, Complainant
 16 requests that the Tribunal admit CX53 into evidence.
 17 JUDGE COUGHLIN: Okay. And objections
 18 from New Prime?
 19 MR. MCKAY: The same objections.
 20 JUDGE COUGHLIN: Okay. All right. CX53
 21 is admitted over objection.
 22 (Whereupon, the above-referred to

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1 accurate copy?
 2 THE WITNESS: Yes, it is.
 3 MS. JACKSON: Your Honor, Complaint
 4 requests the Tribunal admits CX54 into evidence.
 5 JUDGE COUGHLIN: Okay. And objections
 6 from New Prime?
 7 MR. MCKAY: May I just inquire briefly
 8 innate of objection --
 9 JUDGE COUGHLIN: Sure.
 10 MR. MCKAY: -- innate of further
 11 objection? Mr. Callaghan, if the report -- you
 12 indicate you were present during the IAR. And I
 13 think this and other IARs sometimes refer to follow-
 14 up activity by Special Agent Mugleston where he
 15 maybe follows up with the witness by telephone. And
 16 would you agree that with respect to those notations
 17 in the IAR where it's Agent Mugleston describing
 18 what he did, you were not present on those
 19 occasions.
 20 THE WITNESS: I would say that, that's,
 21 generally true, Mr. McKay. There were times that I
 22 may have been present during phone calls, but I

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1 document was received into evidence as Complainant
 2 Exhibit 53.)
 3 BY MS. JACKSON:
 4 Q CX54 please. Mr. Callaghan, do you see
 5 CX54 on your screen?
 6 A Yes, I do.
 7 Q Do you recognize it?
 8 A Yes, I do. The case number is associated
 9 with Prime. Case title is Prime, Inc. Subject of
 10 the report is "Interview of IKD employees, Vaughn,
 11 Myers, and Bowden". And I was present during this
 12 interview.
 13 (Whereupon, the above-referred to
 14 document was marked as Complainant Exhibit 54 for
 15 identification.)
 16 BY MS. JACKSON:
 17 Q And did you also review this IAR in
 18 preparation of your affidavit?
 19 A Yes, I did.
 20 MS. JACKSON: Ms. Tribett, if you could
 21 scroll to the bottom.
 22 Mr. Callaghan, is this a true and

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1 can't say with certainty that they were on that
 2 document that we just reviewed.
 3 MR. MCKAY: Thank you, Your Honor. And
 4 same objection.
 5 JUDGE COUGHLIN: All right, okay. Thank
 6 you. I'll admit CX54 over objection.
 7 (Whereupon, the above-referred to
 8 document was received into evidence as Complainant
 9 Exhibit 54.)
 10 BY MS. JACKSON:
 11 Q Can you pull up CX55 please. Mr.
 12 Callaghan, do you see CX55 on your screen?
 13 A Yes, I do.
 14 Q Do you recognize it?
 15 A Yes. The case number is associated with
 16 Prime. The case title is Prime, Inc. And the
 17 subject of report is the recorded interview of
 18 Steven Drake, the Prime truck driver.
 19 (Whereupon, above-referred to document
 20 was marked as Complainant Exhibit 55 for
 21 identification.)
 22 (Simultaneous speaking.)

1 THE WITNESS: This is an instance where
 2 I was present during a telephone contact to my
 3 recollection.
 4 BY MS. JACKSON:
 5 Q And to clarify, you were present at the
 6 time of this interview?
 7 A Yes. I was present during the telephonic
 8 contact and interview of Steven Drake.
 9 Q Thank you. And did you review this IAR
 10 in preparation of your affidavit?
 11 A Yes, I did.
 12 Q Is it a true and accurate copy?
 13 A Yes, it is.
 14 MS. JACKSON: Your Honor, Complainant
 15 requests that the Tribunal admit CX55 into evidence.
 16 JUDGE COUGHLIN: Okay. And objections
 17 from New Prime?
 18 MR. MCKAY: No objection.
 19 JUDGE COUGHLIN: Okay. CX55 is admitted.
 20 (Whereupon, the above-referred to
 21 document was received into evidence as Complainant
 22 Exhibit 55.)

1 MS. JACKSON: Your Honor, Complainant
 2 requests that the Tribunal admit CX56 into evidence.
 3 JUDGE COUGHLIN: Objections from New
 4 Prime?
 5 MR. MCKAY: Same objection.
 6 JUDGE COUGHLIN: Okay. CX56 is admitted
 7 over objection.
 8 (Whereupon, the above-referred to
 9 document was received into evidence as Complainant
 10 Exhibit 56.)
 11 MS. JACKSON: Ms. Tribett, if you could
 12 pull up CX57.
 13 Mr. Callaghan, do you recognize this
 14 exhibit?
 15 THE WITNESS: Mine's still opening. Yes,
 16 I recognize this. It's associated with the Prime
 17 investigation based on the case number. The case
 18 title is Prime, Inc. And the subject of the report
 19 is the interview of David McCollum, Quarter
 20 Trucking.
 21 (Whereupon, the above-referred to
 22 document was marked as Complainant Exhibit 57 for

1 BY MS. JACKSON:
 2 Q Let's go to CX56. Mr. Callaghan, do you
 3 recognize this exhibit?
 4 A Yes, I do.
 5 Q How do you recognize it?
 6 A The case number is associated with the
 7 Prime investigation. The case title is Prime, Inc.
 8 And the subject of the report is "04-14-16, recorded
 9 interview of Darren Byes, B&W."
 10 (Whereupon, the above-referred to
 11 document was marked as Complainant Exhibit 56 for
 12 identification.)
 13 BY MS. JACKSON:
 14 Q Did you review this IAR in preparation of
 15 your affidavit?
 16 A Yes.
 17 MS. JACKSON: Ms. Tribett, could you
 18 scroll to the bottom? Could you scroll through the
 19 exhibit? Thank you.
 20 Mr. Callaghan, is this a true and
 21 accurate copy of this IAR?
 22 THE WITNESS: Yes.

1 identification.)
 2 BY MS. JACKSON:
 3 Q And did you review this IAR in
 4 preparation of your affidavit?
 5 A Yes.
 6 MS. JACKSON: Ms. Tribett, if you could
 7 scroll through.
 8 Mr. Callaghan, is this a true and
 9 accurate copy of this IAR?
 10 THE WITNESS: Yes.
 11 MS. JACKSON: Your Honor, Complainant
 12 requests that the Tribunal admit CX57 into evidence.
 13 JUDGE COUGHLIN: Okay. Any objection
 14 from New Prime?
 15 MR. MCKAY: Same objection.
 16 JUDGE COUGHLIN: Okay. Fifty-seven is
 17 admitted over objection.
 18 (Whereupon, the above-referred to
 19 document was received into evidence as Complainant
 20 Exhibit 57.)
 21 BY MS. JACKSON:
 22 Q CX58 please. Mr. Callaghan, do you have

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1 CX58 on your screen?
 2 A Yes.
 3 Q Do you recognize it?
 4 A Yes. This is a case number for Prime.
 5 The title is Prime, Inc. And the subject of the
 6 report is the interview of Joni Stewart, Prime.
 7 (Whereupon, the above-referred to
 8 document was marked as Complainant Exhibit 58 for
 9 identification.)
 10 BY MS. JACKSON:
 11 Q Did you review it in preparation of your
 12 affidavit?
 13 A Yes.
 14 MS. JACKSON: Ms. Tribett, if you could
 15 just scroll through.
 16 Is it a true and accurate copy of this
 17 IAR?
 18 THE WITNESS: Yes.
 19 MS. JACKSON: Your Honor, Complainant
 20 requests that the Tribunal admits CX58 into
 21 evidence.
 22 JUDGE COUGHLIN: Okay. Mr. Callaghan,

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1 (Whereupon, the above-referred to
 2 document was marked as Complainant Exhibit 59 for
 3 identification.)
 4 BY MS. JACKSON:
 5 Q And did you review this IAR in
 6 preparation of your affidavit?
 7 A Yes, I did.
 8 MS. JACKSON: Ms. Tribett, if you could
 9 scroll to the bottom please. Thank you.
 10 Mr. Callaghan, is this a true and
 11 accurate copy of this IAR?
 12 THE WITNESS: Yes.
 13 MS. JACKSON: Your Honor, Complainant
 14 requests that the Tribunal admits CX59 into
 15 evidence.
 16 JUDGE COUGHLIN: Objections from New
 17 Prime?
 18 MR. MCKAY: Same objections.
 19 JUDGE COUGHLIN: All right. Fifty-nine
 20 is admitted over objection.
 21 (Whereupon, the above-referred to
 22 document was received into evidence as Complainant

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1 you said yes, it is a true and correct copy?
 2 THE WITNESS: That's correct.
 3 JUDGE COUGHLIN: Okay, all right. I
 4 didn't quite hear you. Any objection from New
 5 Prime?
 6 MR. MCKAY: Same objections.
 7 JUDGE COUGHLIN: Okay. CX58 is admitted
 8 over objection.
 9 (Whereupon, the above-referred to
 10 document was received into evidence as Complainant
 11 Exhibit 58.)
 12 MS. JACKSON: Ms. Tribett, if you could
 13 pull up CX59 please.
 14 Mr. Callaghan, can you see CX59 on your
 15 screen?
 16 THE WITNESS: Yes.
 17 BY MS. JACKSON:
 18 Q Do you recognize it?
 19 A Yes, I do. The case number is associated
 20 with Prime. The case title is Prime, Inc. The
 21 subject of the report: "7/19/16, transcript of
 22 recorded interview of Gary Broderick, Prime".

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1 Exhibit 59.)
 2 MS. JACKSON: Ms. Tribett, if you could
 3 pull up CX60.
 4 Mr. Callaghan, can you see CX60 on your
 5 screen?
 6 THE WITNESS: Yes.
 7 BY MS. JACKSON:
 8 Q Do you recognize it?
 9 A Yes, I do.
 10 Q How do you recognize it?
 11 A The case number assigned to Prime. The
 12 title is Prime, Inc. And the subject of the report
 13 is "Interview of Thomas Leman (phonetic) and J.B.
 14 Hunt."
 15 (Whereupon, the above-referred to
 16 document was marked as Complainant Exhibit 60 for
 17 identification.)
 18 BY MS. JACKSON:
 19 Q Did you review this IAR in preparation of
 20 your affidavit?
 21 A Yes, I did.
 22 Q And is it -- Oh, sorry. Let's scroll to

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1 the bottom please. Mr. Callaghan, is this a true
 2 and accurate copy?
 3 A Yes.
 4 MS. JACKSON: Your Honor, Complainant
 5 requests that the Tribunal admit CX60 into evidence.
 6 JUDGE COUGHLIN: Any objections from New
 7 Prime?
 8 MR. MCKAY: Same objection.
 9 JUDGE COUGHLIN: Okay. CX60 is admitted
 10 over objection.
 11 (Whereupon, the above-referred to
 12 document was received into evidence as Complainant
 13 Exhibit 60.)
 14 BY MS. JACKSON:
 15 Q CX61 please. Mr. Callaghan, do you have
 16 CX61 in front of you?
 17 A I do.
 18 Q Do you recognize it?
 19 A Yes. This is an IAR associated with the
 20 case number assigned to Prime. The case title is
 21 Prime, Inc. And the subject of the report is
 22 "4/14/16, recorded interview of Rick Lee, D&W".

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1 -- I lost my place -- If you could pull up CX62.
 2 Mr. Callaghan, do you have CX62 in front
 3 of you?
 4 THE WITNESS: I do.
 5 BY MS. JACKSON:
 6 Q Do you recognize it?
 7 A I do. I recognize it based on the case
 8 number assigned to Prime. The case title is Prime,
 9 Inc. And the subject of this report is "3/31/16,
 10 recorded interview of David McCullough, Quarter
 11 Trucking".
 12 (Whereupon, the above-referred to
 13 document was marked as Complainant Exhibit 62 for
 14 identification.)
 15 BY MS. JACKSON:
 16 Q And did you review this IAR in
 17 preparation of your affidavit?
 18 A I did.
 19 MS. JACKSON: Ms. Tribett, if you could
 20 just scroll to the bottom. Just for the record, on
 21 this exhibit, you'll see SA and then there's
 22 redacted language. That's a different special agent

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1 (Whereupon, the above-referred to
 2 document was marked as Complainant Exhibit 61 for
 3 identification.)
 4 BY MS. JACKSON:
 5 Q And did you review this IAR in
 6 preparation of your affidavit?
 7 A I did.
 8 MS. JACKSON: Sorry. Ms. Tribett, if you
 9 could just scroll to the bottom.
 10 Mr. Callaghan, is this a true and
 11 accurate copy?
 12 THE WITNESS: Yes, it is.
 13 MS. JACKSON: Your Honor, Complainant
 14 requests that the Tribunal admit CX61 into evidence.
 15 JUDGE COUGHLIN: Okay. Objections from
 16 New Prime?
 17 MR. MCKAY: Same objection.
 18 JUDGE COUGHLIN: Admitted over objection.
 19 (Whereupon, the above-referred to
 20 document was received into evidence as Complainant
 21 Exhibit 61.)
 22 MS. JACKSON: Ms. Tribett, if you could

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1 than Mr. Callaghan is testifying today.
 2 Mr. Callaghan, is this a true and
 3 accurate copy?
 4 THE WITNESS: Yes.
 5 MS. JACKSON: Your Honor, Complainant
 6 requests that the Tribunal admit CX62 into evidence.
 7 JUDGE COUGHLIN: Objections from New
 8 Prime?
 9 MR. MCKAY: Same objections.
 10 JUDGE COUGHLIN: All right. CX62 is
 11 admitted over objection.
 12 (Whereupon, the above-referred to
 13 document was received into evidence as Complainant
 14 Exhibit 62.)
 15 MS. JACKSON: Ms. Tribett, if you could
 16 pull up CX, thank you, 55 -- 65, you're right.
 17 Mr. Callaghan, do you have CX65 in front
 18 of you?
 19 THE WITNESS: I do.
 20 BY MS. JACKSON:
 21 Q Do you recognize it?
 22 A I do. I recognize it based on the

1 assignment of the case number that is specific to
 2 Prime. Case title is Prime, Inc. The subject of
 3 this report is "National response center inquiry".
 4 (Whereupon, the above-referred to
 5 document was marked as Complainant Exhibit 65 for
 6 identification.)
 7 BY MS. JACKSON:
 8 Q And did you review this IAR in
 9 preparation of your affidavit?
 10 A I did.
 11 Q And is this is a true and accurate copy?
 12 A Yes, it is.
 13 MS. JACKSON: Your Honor, Complainant
 14 requests that the Tribunal admit CX65 into evidence.
 15 JUDGE COUGHLIN: Objections from New
 16 Prime?
 17 MR. MCKAY: Same objection.
 18 JUDGE COUGHLIN: Okay. All right. CX65
 19 is admitted over objection.
 20 (Whereupon, the above-referred to
 21 document was received into evidence as Complainant
 22 Exhibit 65.)

1 JUDGE COUGHLIN: Sure. Absolutely, we
 2 can take our break right now.
 3 MR. MCKAY: Okay.
 4 JUDGE COUGHLIN: And then you could just
 5 pick up when we return. All right. So do you need
 6 some assistance with regard to having the exhibits?
 7 MR. MCKAY: I hope not.
 8 JUDGE COUGHLIN: Okay. All right. Just
 9 let me know if you do. Why don't we just come back
 10 at 1:00. And if you need any more time for the
 11 technical piece, just let me know.
 12 MR. MCKAY: I will.
 13 JUDGE COUGHLIN: Okay. All right. Well,
 14 we'll stand in recess and I'll see everyone back at
 15 noon -- sorry, at 1 o'clock. My apologies. Thank
 16 you.
 17 (Whereupon, the above-entitled matter
 18 went off the record at 12:48 p.m. and resumed at
 19 1:07 p.m.)
 20 JUDGE COUGHLIN: We're back on the record
 21 after a lunch break, a little bit over. Ten past,
 22 but we're all back and together. And Mr. McKay, are

1 MS. JACKSON: Your Honor, if I could just
 2 confer with my co-counsel for one minute?
 3 JUDGE COUGHLIN: Sure.
 4 MS. JACKSON: Mr. Callaghan, I'll be
 5 right back. Thank you, Your Honor. I just wanted
 6 to confer that we had gotten everything. Your
 7 Honor, Complainant reserves the right to call Mr.
 8 Callaghan on rebuttal as necessary, limited in scope
 9 of course. But otherwise Complainant rests with
 10 regards to the witness.
 11 JUDGE COUGHLIN: All right. Thank you,
 12 Ms. Jackson.
 13 MS. JACKSON: Thank you, Mr. Callaghan.
 14 JUDGE COUGHLIN: Any cross by New Prime?
 15 MR. MCKAY: Right, Your Honor. And I
 16 have -- I have the exhibits loaded on my computer
 17 and would be prepared to show to those witness. It
 18 might take a few minutes to get that set up.
 19 JUDGE COUGHLIN: Okay.
 20 MR. MCKAY: I'm wondering, we're ten of
 21 the noon hour. Would this be a good time to maybe
 22 take our noon break?

1 you ready to conduct cross?
 2 MR. MCKAY: I am.
 3 JUDGE COUGHLIN: Okay. Please go ahead.
 4 MR. MCKAY: Your Honor, I --
 5 MS. JACKSON: I apologize, Your Honor.
 6 Our paralegal just ran to grab her mouse so that she
 7 can work the exhibits.
 8 JUDGE COUGHLIN: Okay.
 9 MS. JACKSON: There she is.
 10 JUDGE COUGHLIN: Oh, okay. Great.
 11 Great.
 12 MS. JACKSON: Thank you. So now Mr.
 13 Callaghan's on the line, but I don't know what to do
 14 to populate him so that you can see.
 15 MR. MCKAY: I suggest we wait for the
 16 witness to appear before us.
 17 JUDGE COUGHLIN: To come back up, yes.
 18 I'm seeing a blank screen. Rick, can you hear us?
 19 THE WITNESS: Yes, I can hear you.
 20 PARTICIPANT: You have to give control to
 21 me.
 22 THE WITNESS: Can you hear me okay?

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1 MR. MCKAY: Yes.
 2 PARTICIPANT: You now appear on screen.
 3 MR. MCKAY: Your Honor, may I proceed?
 4 JUDGE COUGHLIN: Yes.
 5 CROSS EXAMINATION
 6 BY MR. MCKAY:
 7 Q Special Agent Callaghan, the case that we
 8 are discussing here today is -- it rises out of a
 9 trailer fire that happened in Idaho in September of
 10 2015. Do you agree with that?
 11 A Yes.
 12 Q So over -- in September of 2015 to be
 13 slightly more precise. Correct?
 14 A Correct.
 15 Q So over seven years ago? You have to --
 16 You have to answer audibly. You can't just shake
 17 your head. Could you answer audibly for the record?
 18 A I'm sorry. I didn't know if that was a
 19 statement or a question. Yes, more than over --
 20 approximately ten years ago.
 21 Q Do you know if anyone at EPA was notified
 22 on the day of the fire that there was a fire along

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1 Q I'd be glad to show -- you don't have to
 2 trust me. I'd be glad to show you what's previously
 3 been admitted as Complainant's Exhibit 15. Do you
 4 see that?
 5 A I don't yet, Mr. Ryan.
 6 JUDGE COUGHLIN: Actually, it's Mr.
 7 McKay.
 8 MR. MCKAY: Oh, Mr. McKay. I'm sorry.
 9 JUDGE COUGHLIN: Yeah, it's Mr. McKay
 10 who's questioning you.
 11 BY MR. MCKAY:
 12 Q Can you see what appears in the
 13 courtroom?
 14 A I cannot. I do not see anything yet.
 15 MR. MCKAY: Okay.
 16 MS. TRIBETT: No, he can't see the
 17 courtroom. He can only see my computer.
 18 MR. MCKAY: So this morning, he was
 19 seeing exhibits that were --
 20 MS. TRIBETT: On my computer.
 21 MR. MCKAY: -- that were displayed in the
 22 courtroom.

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1 Interstate 84 involving hazardous materials?
 2 A I was not aware of that until it was
 3 mentioned during today's proceeding.
 4 Q So the first time you heard that was when
 5 you listened to Mr. Ryan's opening statements this
 6 morning?
 7 A Correct.
 8 Q And the first time you heard that an EPA
 9 official may have been notified of the fire on the
 10 day of the fire was during Mr. Ryan's opening
 11 statement?
 12 A Sometime today somebody mentioned that.
 13 And I keyed into it because I wasn't aware of that.
 14 Q This matter was brought to the attention
 15 of your office, EPA CID at some point during 2015.
 16 Would you agree with that?
 17 A Yes.
 18 Q Okay. In fact, you attended a meeting on
 19 December 18, 2015 with IDEQ where they brought the
 20 matter to your attention. Do you recall that?
 21 A I do recall that meeting and I'm going to
 22 trust you on that date.

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1 MS. TRIBETT: Because he was looking at
 2 my computer.
 3 MR. MCKAY: Which was something different
 4 than what was displayed in the courtroom.
 5 MS. TRIBETT: No. What you saw was what
 6 he was seeing.
 7 MR. MCKAY: Is there a way that we can
 8 return to that so that he could see what's --
 9 MS. TRIBETT: I can pull it up on my
 10 computer.
 11 MR. MCKAY: Okay.
 12 MS. TRIBETT: Do you want that?
 13 MR. MCKAY: Please.
 14 MS. TRIBETT: Okay, yeah. What exhibit
 15 number?
 16 MR. MCKAY: Thank you. So would he see
 17 the callout of this?
 18 MS. TRIBETT: I could call him into the
 19 Teams meeting and he could see your computer, but
 20 then you couldn't see him.
 21 MR. MCKAY: Your Honor, I'm sorry. I
 22 apologize. I was under the impression that the

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1 witness was seeing what was actually being projected
2 in the courtroom. And it sounds like there was an
3 attempt to -- at least the Government's paralegal is
4 pulling up documents that were being projected in
5 the courtroom, but it may not have been the exact
6 same digital image. So I would ask that the witness
7 be able to see what -- what's in the record with
8 what we're showing, you know, in these proceedings.

9 JUDGE COUGHLIN: Right. What you've
10 prepared -- Respondent has prepared to show -- this
11 cut-out for example.

12 MR. MCKAY: Yes.

13 JUDGE COUGHLIN: So could that be
14 accomplished if Mr. McKay were to join the Teams
15 meeting?

16 MS. TRIBETT: Yes. Then you would share
17 your screen in the Teams meeting.

18 JUDGE COUGHLIN: Now is that -- and I
19 clearly appreciate how complicated some of the
20 technology can be. Is that something you could be
21 comfortable doing?

22 MR. MCKAY: Yes.

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1 that I'm describing. And I'll pull them out this
2 way, but I'll do my best to describe for the witness
3 what I'm looking at and direct him -- direct his
4 attention to that specific aspect of the exhibit.
5 Would that be okay?

6 JUDGE COUGHLIN: Perfect. I think that's
7 fine.

8 MR. MCKAY: All right. Mr. Callaghan --
9 Special Agent Callaghan, did you follow that?

10 THE WITNESS: Yes, sir. I think I did.
11 And to get at anything -- I have all the stuff that
12 Kate Tribett has provided in exhibits. So as was
13 the case previously, I think that if you tell me
14 which CX exhibit it is, I should be able to bring it
15 up and see it.

16 BY MR. MCKAY:

17 Q Right. So I'm going to now direct your
18 attention to Complainant's Exhibit 52, the first
19 page of that exhibit. Tell me when you have that
20 exhibit.

21 A Yes, sir. Stand by please.

22 JUDGE COUGHLIN: I don't mean to

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1 JUDGE COUGHLIN: It can be limited,
2 right? I mean he could join. Would he have control
3 over what he shares?

4 MS. TRIBETT: Yes. Yes.

5 JUDGE COUGHLIN: Okay. And then he could
6 leave the meeting and anything else that's on his
7 computer would be preserved. No one else would see
8 it.

9 MS. TRIBETT: What is on his screen will
10 be visible to the witness.

11 JUDGE COUGHLIN: Okay.

12 MS. TRIBETT: So this will not be using
13 his computer, but will just be viewing what's on the
14 monitor.

15 MR. MCKAY: Yeah. Maybe we can just do
16 this -- I'm just afraid that we're going to get
17 bogged down and a lot of complication with the Teams
18 meeting going on and then sharing the screen, and
19 then having the limitations of the size.

20 JUDGE COUGHLIN: Okay.

21 MR. MCKAY: And maybe what I could do is
22 simply ask that the witness pull up the documents

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1 interrupt, but I can no longer see the witness now.
2 So is there a way to -- you know how you pulled up
3 that pull-out, is there a way to remove that so that
4 I can see him again?

5 MR. MCKAY: Yeah. I don't think that
6 there is. I think it's -- either EPA is running the
7 -- you know, running what you see and what I see or
8 I'm running what you and I see. And I don't think
9 there's a way to blend the two or to do both.

10 JUDGE COUGHLIN: Okay. Do you need to
11 display these cut-outs?

12 MR. MCKAY: I think I can -- That would
13 be my preference --

14 JUDGE COUGHLIN: Okay.

15 MR. MCKAY: -- but I don't know that I
16 need it. I think I can -- I think I can direct the
17 witness to what I'm going to be showing the Court.

18 JUDGE COUGHLIN: Okay. And I in turn can
19 follow along with my copy. So I guess at this
20 point, how do we go about restoring the view of the
21 witness on the monitor?

22 MS. TRIBETT: We have to go back --

1 MR. MCKAY: Okay. Again, Your Honor,
 2 you're not -- you're not going to be in a position
 3 to see -- to see the portions of the exhibit that
 4 I'm calling out if we do that.
 5 JUDGE COUGHLIN: Right. What I can do --
 6 and it's your -- I mean to some extent, it's your
 7 choice. But I also -- you know, I think it's
 8 helpful for me to be able to observe the witness as
 9 the witness is testifying. You know, credibility
 10 issues. So you know, one solution could be that as
 11 you're drawing a particular focus to the witness in
 12 the document, I too can do the same as you're --
 13 you'd be in effect, directing both of us to a
 14 certain section. But I don't know if that's going
 15 to interfere with your presentation or not. I don't
 16 want you to feel as though you're (audio
 17 interference).
 18 MR. MCKAY: I mean if the Court is
 19 satisfied with this, I'm content to just have the
 20 witness appear for portions of his testimony here on
 21 cross examination by audio.
 22 JUDGE COUGHLIN: Okay.

1 I think that's a perfect solution.
 2 JUDGE COUGHLIN: Okay, great.
 3 MR. MCKAY: So if I can do the same maybe
 4 with my iPad if the Government could invite us to
 5 that Teams meeting.
 6 MS. TRIBETT: Sure. I just need email
 7 addresses to send the invite to.
 8 MR. MCKAY: Do you have to be (audio
 9 interference).
 10 JUDGE COUGHLIN: I need to be in the VPN
 11 right? I need to be in the -- I'm sorry. You go
 12 right ahead.
 13 MR. MCKAY: Can we go off the record for
 14 just a --
 15 JUDGE COUGHLIN: Yeah. Maybe for just a
 16 second.
 17 (Whereupon, the above-entitled matter
 18 went off the record at 1:21 p.m. and resumed at 1:27
 19 p.m.)
 20 JUDGE COUGHLIN: Okay. I have
 21 successfully joined the Teams meeting so I can see
 22 Mr. Callaghan, Special Agent Callaghan. I just

1 MR. MCKAY: And I just think that there
 2 are -- I'm going to be going through some of these
 3 documents that were admitted. And I think that the
 4 text of the documents is important.
 5 JUDGE COUGHLIN: Okay.
 6 MR. MCKAY: And I think that this witness
 7 will confirm that the text is what it is. And his
 8 demeanor and other things that might otherwise be
 9 important for other witnesses may not be so
 10 important in this phase of this proceeding, Your
 11 Honor.
 12 JUDGE COUGHLIN: Okay. That's fine. I
 13 think the only thing maybe I could offer up as a
 14 possible compromise might be what if I were to join
 15 the Teams meeting and pull up the witness on my work
 16 cell, so I could be watching him on my phone? Not
 17 to put you on the spot, Mr. Callaghan, to think that
 18 I'm trying to scrutinize every facial expression.
 19 But it is an obligation I have to observe the
 20 demeanor of the witness. And if we can kind of find
 21 this compromise, I think it would be ideal.
 22 MR. MCKAY: And may I do the same thing?

1 asked Mr. McKay if he could, and he can't,
 2 unfortunately.
 3 MR. MCKAY: I can't, and I will also say,
 4 for the record, I'm willing to forego seeing the
 5 witness at this stage of the proceeding. I think
 6 Her Honor wished to see the witness, and I'm glad
 7 you can, and I'm willing to proceed with that
 8 limitation.
 9 JUDGE COUGHLIN: Okay. All right. Very
 10 good. Thank you. Okay. Let's go ahead and
 11 continue.
 12 BY MR. MCKAY:
 13 Q Special Agent Callaghan, were you able to
 14 pull up Complainant's Exhibit 52?
 15 A Yes, sir, I was. There was something on
 16 my screen.
 17 Q Do you see the first paragraph of that
 18 exhibit?
 19 A Their synopsis?
 20 Q Yes.
 21 A Yes, I see that.
 22 Q Does that refer to the DEQ bringing this

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1 to the attention of CID, EPA CID on December 18, or
2 in December 2015?

3 A Yes. To me, this document records that we
4 went over and met with the DEQ on December 18.

5 Q Okay. So, you no longer have to take my
6 work, if you will, you agree that EPA CID was aware
7 of this matter in at least December 2015, correct?

8 A Correct.

9 Q When the criminal investigation was
10 started, Special Agent Darren Mugleston was the CID
11 Agent assigned the case.

12 A Correct.

13 Q And he is the resident agent in charge
14 of, was at the time, the resident agent in charge of
15 the Boise office?

16 A Correct.

17 Q I think you indicated previously he was
18 the case agent, so by case agent he had primary
19 responsibility for the case.

20 A Correct.

21 Q And that's why we see his name on so many
22 of the exhibits that we review today and not yours.

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1 A Correct.

2 Q Would you agree me, then, that Special
3 Agent Mugleston had far more involvement in this
4 case than you did?

5 A Yes.

6 Q Were you able to determine when Special
7 Agent Mugleston retired from the EPA?

8 A I did not look that up.

9 Q He still resides in the Boise area, does
10 he not?

11 A Yes, he does, that's my understanding.

12 Q When were you notified that Special
13 Agent, or Mr. Mugleston now did not wish to
14 participate in these proceedings?

15 A It was, sorry, Mr. McKay, can you repeat
16 that question?

17 Q When were you notified that Special Agent
18 or Mr. Mugleston did not wish to participate in
19 these proceedings necessitating your involvement?

20 A I believe it was from EPA's attorney,
21 Laurianne, that I learned that Darren was not
22 interested in participating in the (audio

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1 interference).

2 Q Can you say when that occurred?

3 A I can't. It was whenever they approached
4 me and asked me if I would be willing to do that.
5 So, whenever they planned things out, that's when I
6 got involved.

7 Q Do you know a general time frame? Last
8 couple of months, six months, or can you not say?

9 A It wasn't six months. I guess I was put,
10 roughly, if we're really pushing for a time frame,
11 two to three months.

12 Q To your knowledge, was the entirety of
13 the EPA CID file provided to EPA Region 8, the folks
14 that are handling this procedure?

15 A I cannot answer that, I do not know.

16 Q So, you are unable to say, for example,
17 I assume a grand jury was not provided, you would
18 agree with that, of course?

19 A Yes, and I was getting ready to correct
20 my statement that I knew and know a lot more than is
21 reflected, possibly, in this. I mean, I knew at one
22 time, and it was fresh because this was a criminal

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1 investigation.

2 Q Right. And my question goes to what
3 materials were turned over to Region 8 from the CID
4 file. Are you just not able to say whether the
5 entirety of those files were turned over?

6 A Yes, I'm not able to say what was turned
7 over.

8 Q I'm going to turn your attention to
9 Complainant's Exhibit 22. Let's start by looking at
10 the first page of that exhibit. Tell me when you're
11 looking at the first page of Exhibit 22.

12 A I am looking at the first page of Exhibit
13 22.

14 Q This is an exhibit that concerns the
15 interview of B&W truck driver Sandy Derrick
16 (phonetic), is it not?

17 A Correct, it is.

18 Q You see about two-thirds of the way down
19 the page there's a reference to that interview being
20 recorded. Do you see that?

21 A I see that.

22 Q And if you look at page 8 of this exhibit

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1 you would see that there's at least a photocopy of
 2 that digital recording, do you see that? A
 3 photocopy of the CD that is purported to contain
 4 that digital recording. Do you see that?
 5 A Yes.
 6 Q You don't know whether these digital
 7 recordings were turned over to Region 8, is that
 8 right?
 9 A That's correct.
 10 Q And you did not listen to many of these
 11 digital recordings that were created in this case in
 12 preparation for your testimony today?
 13 A That's correct.
 14 Q You would agree with me, would you not,
 15 that an actual recording is the most accurate
 16 reflection of what a person said, correct?
 17 A Agreed.
 18 Q And, in fact, an IAR, Investigative
 19 Activity Report, that's not a verbatim record of
 20 what a witness said. Instead, it's a summary of
 21 some of the things that were said by the witness.
 22 Would you agree with that?

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1 during the interview. This summary is not intended
 2 to be in chronological order or a verbatim account.
 3 It does not memorialize all statements made during
 4 the interview. The recording captures the actual
 5 words spoken. Did I read that correctly?
 6 A Yes, you did.
 7 Q Would you agree, as a general principle
 8 that that's an accurate statement, that if there's
 9 a recording of a witness interview that that
 10 recording would be a better, would more accurately
 11 capture exactly what the witness said, and, in fact,
 12 what the interviewer also said?
 13 A Yes.
 14 Q In your capacity as a CID agent, you're
 15 familiar, are you not, with the Government's
 16 obligation in a criminal case to turn over
 17 exculpatory evidence it possesses?
 18 MS. JACKSON: Objection, Your Honor.
 19 This is not a criminal matter, and I don't believe
 20 we need to be talking about criminal standards of
 21 proof or custody.
 22 MR. MILLER: It's not, and I will confirm

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1 A I agree with that.
 2 Q In fact, if you looked at what's
 3 previously been admitted as Complainant's Exhibit
 4 23, tell me when you have page 1 of Exhibit 3 in
 5 front of you.
 6 JUDGE COUGHLIN: Mr. McKay, page 1 of
 7 Exhibit 23?
 8 MR. MCKAY: Yes, ma'am.
 9 THE WITNESS: I have page 1 of 23 open.
 10 BY MR. MCKAY:
 11 Q You'll see that that is, in fact, an IAR
 12 of Agent Muggleston's interview of a ten quarter, is
 13 it not?
 14 A That's correct.
 15 Q If you look down to the third to last
 16 paragraph of that page, the paragraph that begins,
 17 A general summary, do you see that?
 18 A I do.
 19 Q Just tell me if I'm reading it correctly.
 20 A general summary of the audio recorded interview
 21 with quarter has been included below to provide an
 22 investigative reference to the topics discussed

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1 with the witness that it's not. I'd like to know
 2 what, if anything, he did to ensure that we have
 3 exculpatory evidence in the Government's possession.
 4 JUDGE COUGHLIN: Ms. Jackson.
 5 MS. JACKSON: Under part 22, we are
 6 required to provide you information that we believe
 7 is relative to the matter that we plan to present
 8 today. We have provided that information. In
 9 addition, we provided the entire criminal file that
 10 EPA Region 8 received some 20 months ago. We
 11 provided that to respondent. You have received all
 12 that information. In the terms of questioning, this
 13 witness and talking about these CDs, in particular,
 14 I feel like you should be foreclosed from raising
 15 this issue. In fact, I've tried in the past to
 16 communicate. Your co-counsel never made a clear
 17 request for anything, and we did not have them in
 18 our immediate possession. We were more than willing
 19 to provide them. We never received follow-up as a
 20 result. We did pull that information. We're happy
 21 to provide it to you, but we're not presenting that
 22 evidence today. Under Part 22 we're limited to

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1 what's in the pre-hearing exchange.
 2 JUDGE COUGHLIN: Okay. So, a couple of
 3 things. When I hear exculpatory, of course I start
 4 thinking criminal, and this is not that.
 5 The second point is, I'm only going to be
 6 considering what has been exchanged and then what's
 7 from that what is admitted into evidence, not
 8 anything outside of that. So, I'm not sure where
 9 you're headed with the questioning, but I will
 10 sustain the objection as it relates to that, and if
 11 you'd like to follow up with another question or
 12 just follow up with this line of thought in a
 13 different way, that's fine.
 14 MR. MCKAY: Right. And I think what
 15 counsel said is not necessarily accurate in terms of
 16 us requesting the digital recordings of interviews.
 17 We identified a number of IARs that had photocopies
 18 of CDs that purported to contain the actual
 19 recordings of the witness interviews. When we
 20 inquired about that we were told, well, we're not
 21 going to offer those. That, I submit, does not
 22 allow or excuse the failure to turn over what we

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1 you've highlighted here about the synopsis versus
 2 the full audio recording of the interview. Is that
 3 what you're talking about, the full audio recording
 4 of the interview, or are you talking about other
 5 things besides that?
 6 MR. MCKAY: Right. So, I'm talking about
 7 both. I'm talking about these CDs, these digital
 8 recordings, for one, and then I'm talking about
 9 whatever else might exist that we don't know about.
 10 We were never made privy to the file, the CID file.
 11 So, if there is exculpatory evidence that lives in
 12 that file that was not turned over to us, I think
 13 we're, respectfully, I think we're entitled to know
 14 at least the answer to that question or at least
 15 know the answer to the question about whether the
 16 witness did not perform any sort of an analysis
 17 about whether that file contained exculpatory
 18 evidence. I submit it's relevant, potentially
 19 relevant, at least to bias. The witness, I say this
 20 with all due respect to Special Agent Callaghan.
 21 I'm not suggesting he manipulated what we received
 22 and didn't receive, but I'd just like to know, was

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1 submit is an essential part of this exhibit. By the
 2 Government's own terms in these IARs, it's the most
 3 accurate statement of what was said during the
 4 interview, and we don't have it. So, if that wasn't
 5 turned over, and this witness was involved in that
 6 process.
 7 JUDGE COUGHLIN: One second, Ms. Jackson.
 8 MR. MCKAY: Was involved in this process
 9 of facilitating us receiving only part of the file
 10 and not receiving digital recordings, for example
 11 and what may be exculpatory evidence, I think that's
 12 relevant. The answer may be, I didn't make any
 13 attempt to determine whether we possessed
 14 exculpatory evidence, and so I can't say that that
 15 was turned over, and I've got to live with that
 16 answer.
 17 JUDGE COUGHLIN: Okay. But are we
 18 talking about, because I want to make sure I'm
 19 understanding the scope of this, are we talking
 20 about -- I haven't forgotten, Ms. Jackson, I just
 21 want to make sure I'm clear here. Are we talking
 22 about when there is the picture of the CD and what

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1 the search for exculpatory evidence made in
 2 connection with this matter?
 3 JUDGE COUGHLIN: Okay. Was there
 4 something else you wanted to add?
 5 MS. JACKSON: Sure. I'd be happy to
 6 respond. So, there's a couple things, again, under
 7 Part 22, we're looking at the prehearing exchange,
 8 we're not required to provide everything. I will
 9 say, as an officer of the court, that I did provide
 10 the full CID file that Region 8 received. With
 11 regards to the recordings, we offered them, they
 12 never followed up to get them. That was more
 13 recently. I'm not going to say that we offered that
 14 as part of the prehearing exchange, we didn't have
 15 them. But we did offer an email, which was never
 16 responded to, and a meeting that was not responded
 17 to. Finally, I guess that's my point. We have been
 18 transparent. This Part 22 matter, we didn't go
 19 through discovery. I'm sure you all had email we
 20 would've liked to have seen, we haven't seen them.
 21 So, I guess I just don't really, I feel like there's
 22 two different standards being put before the Court.

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1 JUDGE COUGHLIN: Okay. With respect to
2 other exculpatory evidence that might exist from a
3 criminal file, I'm sustaining the objection because
4 I don't think that belongs in this proceeding. I
5 have nothing to do with a criminal enforcement
6 action, and, in fact, I'm limited to a civil
7 enforcement action and to that which has been
8 exchanged, and from that information, that which is
9 offered into evidence. So, that's my ruling with
10 respect to the other things.

11 With regard to the actual audio recording
12 for which there is a synopsis that is covered in
13 part or to some extent in these IARs that have been
14 offered and admitted into evidence. I guess I'd
15 like to know a little bit more about that, and
16 whether or not, and this might require a moment of
17 research, but whether or not when bringing it into
18 question through cross examination you're entitled
19 to the full audio recording or not. That's
20 something I'd have to look into. But before I do,
21 let me ask, what effort was made to get them well
22 before now, knowing that these were going to be

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1 offered, the synopsis was going to be offered, and
2 frankly I hoped we wouldn't be talking about it at
3 this stage. So, can you respond to that?

4 MR. MCKAY: Right. I think counsel is
5 correct. I think there was an email exchange that
6 I wasn't a party to, but Mr. Ryan and Ms. Jackson
7 had an email exchange where Mr. Ryan, as I
8 understand it, inquired about the digital audio
9 recordings that apparently exist and was told by Ms.
10 Jackson in response that they're part of the CID
11 file and they didn't get them. I hesitate to say
12 much more because I think the email is going to
13 speak for itself in terms of what was said and what
14 was requested, and I think we provided that to the
15 Court.

16 MS. TRIBETT: Do you have it readily
17 available because if not, I don't have it either.

18 MR. MCKAY: I hear Your Honor. I'm glad
19 to table this for right now and move on with my
20 questioning. I don't wish to spend a bunch of the
21 Court's time on a potential discovery matter,
22 although, I think it's maybe farther than that given

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1 where we are and what's being offered into evidence
2 through the IARs.

3 JUDGE COUGHLIN: Yeah. I wanted to -- I
4 wish I had these rule numbers off the top of my head
5 to help me here.

6 MS. JACKSON: Federal Rules of Evidence
7 1006 provides that you are allowed to use summary of
8 writings.

9 JUDGE COUGHLIN: Right.

10 MS. JACKSON: I'm not presuming that's
11 where you're looking, I just wanted to.

12 JUDGE COUGHLIN: That might very well be
13 it. I'm going through the cobwebs of my mind. Let
14 me look here because that's what's coming into my
15 head, whether or not there's an obligation when
16 challenged, for you to be able to provide the full
17 material.

18 MR. MCKAY: Your Honor, I have the
19 exchange of email between the parties concerning
20 this issue, and I'd be glad to hand that up to the
21 Court so the Court can review that, if it wishes, as
22 part of this analysis.

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1 JUDGE COUGHLIN: Is it going to shed
2 light on this issue, you think?

3 MR. MCKAY: Well, it's certainly going to
4 shed light on the discussion. It's been generally
5 referred to by the parties, and I submit that this
6 is a more accurate description of what was said.

7 JUDGE COUGHLIN: Okay.

8 MR. MCKAY: I'm glad to offer that if you
9 wish to see it.

10 JUDGE COUGHLIN: Sure.

11 MR. MCKAY: I've handed counsel a copy.
12 I have another copy that, if I may approach, I'll
13 hand to Your Honor.

14 JUDGE COUGHLIN: Okay.

15 MR. MCKAY: Can I ask that the email
16 exchange be made part of the record because I think
17 it does reflect a request by my co-counsel, Mr.
18 Ryan, on August 17 to supply the digital recordings
19 of interviews that occurred.

20 JUDGE COUGHLIN: Ms. Jackson, would you
21 like to --

22 MS. JACKSON: I believe it says, see for

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1 example. We never had a conversation. We had a
 2 meeting set on Tuesday, which Mr. Ryan did not show
 3 up for. This has never been raised again. It was
 4 not raised at the pre-hearing conference. The CDs
 5 have been, the photocopies of the CDs have been with
 6 our exhibits since the very beginning in the pre-
 7 hearing exchange. I mean, you are correct, if you
 8 read that by itself, it looks like potentially it
 9 requests, but it also says, see for example. So, I
 10 was like, does he want all of the records, does he
 11 want just the recordings that are in the pre-hearing
 12 exchange. I didn't understand exactly what he
 13 wanted. I promptly responded despite the motion to
 14 compel. I promptly responded, being on vacation,
 15 and was more than happy, and, again, we actually did
 16 reach out to the Boise office to get these
 17 recordings just in case we did have a follow-up and
 18 a request, and it never happened. Again, in the
 19 interest of kind of narrowing things, we didn't even
 20 dig into that level.

21 JUDGE COUGHLIN: I guess one of the
 22 questions I have is, why are we dealing with this

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1 now? Why wasn't this the subject of a motion prior
 2 to coming to hearing if you wanted to try to compel
 3 it, if you knew you were going to delve into it and
 4 cross and want it, or just wanted the full audio
 5 recording. I guess, why am I being presented with
 6 this for the first time now at the hearing?

7 MR. MCKAY: Right. I think that's a fair
 8 question. I think the email exchange makes clear,
 9 when it says, will you please supply those to us,
 10 that we made that request and EPA chose to respond
 11 in the way that they did, which resulted in us not
 12 receiving it. So, we did not bring a motion to
 13 compel. This was August from this past summer,
 14 we're a few months away from the hearing that we're
 15 having here today. We believed that it was
 16 incumbent upon the EPA to provide the discs that
 17 were, provide the recordings that were referenced
 18 that it had ready access to, and they chose not to
 19 and that they should, in turn, then suffer the
 20 consequences of not providing that to us. We
 21 shouldn't have to bring a motion to compel to have
 22 them turn over what is essential and the best

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1 evidence in this case.
 2 JUDGE COUGHLIN: Okay. A distinction
 3 needs to be made, obviously, between what a party
 4 has tried to exchange amicably on their own versus
 5 invoking the power I have as a judge to entertain a
 6 motion and rule accordingly. So, I mean, at one
 7 level I feel like if it was that critical it
 8 should've been the subject of a motion that I would
 9 then be alerted to and rule upon one way or the
 10 other and then go from there. That said, I'm just
 11 looking over Rule 1006. So, I guess we need to have
 12 a little colloquy over this because a portion of
 13 1006, summaries to prove content, discuss my
 14 discretion. However, I should say commentary,
 15 really. Okay. I have some questions. One question
 16 is to Region 8. Why were the actual audio
 17 recordings not submitted once you had them? The
 18 full audio recording.

19 MS. JACKSON: It's my understanding, and,
 20 again, maybe Mark might be able to clarify this, but
 21 it's my understanding that the discs are labeled,
 22 and they're date stamped, and they're tracked,

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1 obviously separate. They can't go into our
 2 electronic case management system. And what was
 3 shared with me was provided from the RCEC and Region
 4 10, who worked with Mark, and she consolidated,
 5 pulled from OSHA, that was our electronic case
 6 management system at the time, and provided the
 7 record, minus 60 and minus the actual disc. So,
 8 honestly we had never looked at or considered, we
 9 didn't consider in our penalty calculation, we
 10 didn't look at the discs, and it wasn't until this
 11 August that we received the kind of request. I'll
 12 acknowledge it was a request, but we were seeking
 13 clarification, what do you want, when do you want to
 14 get it, and we'll get it to you. We have always
 15 been super transparent with our records. We
 16 provided that larger file, which was the CID
 17 criminal case filed that was basically referred to
 18 Region 8, and we provided that to Respondents almost
 19 19 months ago, maybe further now, after the pre-
 20 hearing exchange. So, we provided that information.
 21 We never heard anything about the CDs. I was a
 22 little surprised. So, my point was, what do we need

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1 to provide you? Let's have a discussion and you can
 2 tell me, and I'll make sure and get it. I did,
 3 following that email exchange, sent an email to the
 4 RCEC to ask her to physically go into the office,
 5 get it from wherever the Boise agent office, get
 6 them scanned, and send them over. There was
 7 absolutely no follow up to that email exchange that
 8 you see there. No further follow up. So, we
 9 grabbed it, but, again, I didn't know exactly what
 10 he wanted. I still don't know if what we grabbed
 11 was every recording.

12 JUDGE COUGHLIN: I suppose, really, what
 13 I'm focusing on here is a part from that
 14 communication that transpired, I guess what I'm
 15 grappling with is whether that still compels you to
 16 have the full recording available. I mean, you're
 17 offering the summary, and there are challenges that
 18 are being presented to me to these IARs, and
 19 explicit statements in these IARs that this is a
 20 synopsis, and the full audio recording is the most
 21 accurate, and yet, I don't have them, when that's
 22 being called into question. I'm a little concerned

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1 as to why they aren't here to be presented, at least
 2 now that it's being raised.

3 MS. JACKSON: Well, we certainly, we do
 4 have audio recordings. We did have the RCEC go back
 5 and reach out to the Boise office, and we do have
 6 the recordings. We're happy to share them with the
 7 Court and Respondents, but, again, I personally
 8 never felt like there was a request in earnest. It
 9 seemed a little bit like, I'm not sure what you
 10 want. We never had a conversation, we had a
 11 conversation scheduled, which Mr. Ryan failed to
 12 attend. We are happy to provide them, I just do not
 13 know for certain that ever recording from CID is in
 14 this. What I did have her do is go back and pull
 15 the recordings that are listed in the pre-hearing
 16 exchange.

17 JUDGE COUGHLIN: That's all I'm talking
 18 about. I'm not talking about the world of the CID
 19 file. I'm talking about the underlying full audio
 20 recordings that are referenced in these IAR reports
 21 that have been admitted into evidence. That's all
 22 I'm addressing here. So, if you have them.

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1 MS. JACKSON: I believe we do.
 2 JUDGE COUGHLIN: Then I think they need
 3 to be disclosed to me and to Respondent, and then it
 4 becomes a question of how much time you need to
 5 review them and how that's going to affect our time
 6 line right now with this witness, but I think they
 7 should be. I think they should be. Part of it not
 8 only is in response to Respondent's objections, but
 9 frankly, when I get back and I have to wade through
 10 this and reach a decision, I'm sort of left in the
 11 same position of looking at these summaries that are
 12 being challenged and not having the benefit of the
 13 underlying recording that the author of this IAR has
 14 already stated is the most accurate and reliable.
 15 So, I think it is messy at multiple levels to leave
 16 it like this. Since you have them, then that's
 17 great.

18 MS. JACKSON: Thank you, Your Honor.
 19 We'll upload those to the file share.

20 JUDGE COUGHLIN: Okay. So, Mr. McKay,
 21 how would you like to proceed?

22 MR. MCKAY: I think part of the

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1 challenge, Your Honor, is we could see the
 2 liability, so this comes down to penalty. I'm out
 3 here from Boise, and Mr. Ryan is out here from
 4 Washington State at substantial expense of his
 5 company. I think after a while I think we reach a
 6 point of diminishing economic return by requesting
 7 the time that I think would be necessary to review
 8 what sometimes are going to be very lengthy digital
 9 recordings, and then make use of that in a
 10 meaningful way in this proceeding. I don't see how
 11 it could happen this week. But I'm reluctant, and
 12 I don't believe that my client wishes for me to
 13 request a vacation of these proceedings to allow
 14 that to happen. So, I think I'm compelled to go
 15 forward given the limitations I've described.

16 JUDGE COUGHLIN: Okay. Would you like at
 17 least -- I think they still need to be turned over.
 18 Would you like the opportunity to submit argument
 19 about it post hearing?

20 MR. MCKAY: Yes.

21 JUDGE COUGHLIN: Okay. Without
 22 necessitating a continuance or reconvening at some

1 point but having the benefit of the full audio that
 2 I guess I will include in evidence. You can argue
 3 about that in your post hearing briefing. Is that
 4 a reasonable solution? I think that us having the
 5 digital recordings, I think it's important for that
 6 to occur, and to the extent that triggers a desire
 7 on our part to make an additional submission to the
 8 Court to have the record include what's on those,
 9 then we think that's the preferable process instead
 10 of just having these digital recordings in blind to
 11 the Court and made a part of the record without us
 12 having an opportunity to fully understand what's on
 13 there, to listen to them, because there might very
 14 well be things on there that should not be part of
 15 this record here.

16 MS. JACKSON: With all due respect, it
 17 feels a little bit like we're talking on two sides
 18 here. Do you need the recordings to fully
 19 understand what's in the IARs and check their
 20 credibility, or do they stand on their own? If you
 21 need them, I have no objection to admitting them
 22 into evidence. I'm not sure --

1 to have the full digital recording, and I want it
 2 too, and it's coming into evidence. Your objections
 3 can be noted and applied to that as well because
 4 it's, in effect, a subset of this. But I'm taking
 5 it. And you can present argument as you wish, but
 6 from my vantage point I'm thinking of it as the
 7 completeness of the record, if that's what, in
 8 effect, is being challenged here. What do you want
 9 to do? Do you want them knowing they're coming in,
 10 which I think is appropriate given my understanding
 11 of the Rule and what's transpired. Or do you want
 12 to simply leave it with these summaries and
 13 recognizing maybe some limitations in the arguments
 14 you can make given the options I'm giving you?

15 MR. MCKAY: May I have one minute to
 16 confer with my co-counsel and client?

17 JUDGE COUGHLIN: Do you want more than a
 18 minute?

19 MR. MCKAY: I don't think we need longer
 20 than that.

21 JUDGE COUGHLIN: Okay. Go right ahead.

22 MS. JACKSON: Marc, I don't know if

1 MR. MCKAY: I would say we need them,
 2 yes. That part is true. We need them, and then if
 3 we, after having the opportunity at the conclusion
 4 of these proceedings, to listen to what's on there,
 5 then we can decide what further action might be
 6 necessary, including motion to re-open the
 7 proceedings or a motion to augment the record or
 8 some sort of relief that would be necessitated by us
 9 having these only now, if you will.

10 JUDGE COUGHLIN: So, I think I'm not at
 11 this point really open to some of those options. At
 12 a certain point this evidentiary hearing closes, and
 13 my intention was that that would happen no later
 14 than Friday once we've gone through all this. I
 15 realize we've had some wrinkles, and that's fine.
 16 So, from my position, I would say if there's going
 17 to be an argument made that the summary that has
 18 been offered an admitted, often over objection by
 19 Respondent, is going to be challenged by you with
 20 regard to reliability or whether it's accurate when
 21 compared to the full digital recording, if that's a
 22 position that you're going to take, then I want you

1 you're still there, but if you need to take a
 2 bathroom break.

3 THE WITNESS: Thank you. I am here.
 4 Yes, if I can, I'll take a quick bathroom break.
 5 I'll be right back.

6 JUDGE COUGHLIN: Absolutely.

7 THE WITNESS: Thank you.

8 MS. JACKSON: Sorry about that, Your
 9 Honor.

10 JUDGE COUGHLIN: It's okay.

11 MR. MCKAY: Thank you, Your Honor. I
 12 appreciate the accommodation.

13 JUDGE COUGHLIN: Of course.

14 MR. MCKAY: So, given what the Court has
 15 told us are our limited options here, we're very
 16 reticent to allow the record to be -- to have
 17 included in the record recordings, evidence that we
 18 have not seen. I think in light of that, we would
 19 object to having included in the record now evidence
 20 which was not part of the pre-hearing exchange,
 21 which the Government did not provide to us in a
 22 timely way pursuant to its obligations under the

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1 pre-hearing exchange. So, we object to the
 2 inclusion of those materials in the record.
 3 JUDGE COUGHLIN: The full audio
 4 recording?
 5 MR. MCKAY: Yes.
 6 JUDGE COUGHLIN: Okay. All right. Well,
 7 I'm not going to ask they be produced then. Okay?
 8 I mean this came about based on the summaries, and
 9 my concern was if you had challenges to those
 10 summaries and what they represent compared to what
 11 the full audio contains, then the best way to
 12 evaluate that is by having the full audio recording
 13 to compare it to. I'm not, I suppose, sua sponte
 14 seeking that information out. Since it was being
 15 challenged, that's what I thought would be the fair
 16 resolution to it, and with reading Rule 1006 it
 17 seemed to fall in line with that. If you don't want
 18 them in evidence, then I won't ask them to be
 19 produced, and I won't take them either. But I just
 20 wanted you to know what my posture is. I'm not
 21 seeking out more things to add. It was really in
 22 response to what I thought I understood there to be

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1 evidence this email that you've supplied me a copy
 2 with and Ms. Jackson, but I do think it would be
 3 appropriate to make it a part of the overall case
 4 record distinct from the evidentiary record that
 5 I'll be using so that if there was a challenge to my
 6 ruling on this issue, a reviewing authority would
 7 have this to look at as well in evaluating my ruling
 8 and whether or not I committed error in making it.
 9 This is, I think, it adds some context, it was
 10 discussed, and although I wouldn't consider it in my
 11 decision, I think it's appropriate to include it as
 12 part of the case record so that if someone has to
 13 review my ruling they have this too to look at.
 14 Does that seem fair?
 15 MS. JACKSON: Yes.
 16 MR. MCKAY: I agree with that, Your
 17 Honor.
 18 JUDGE COUGHLIN: So, I'm going to hold
 19 onto this. I'll talk with Michael and Alyssa about
 20 making it part of our case record separate from the
 21 evidentiary record that I'm going to be relying on
 22 when I make my decision.

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1 a challenge to the fact that we're only talking
 2 about the summaries in these IARs. Rightfully, you
 3 have the chance to be able to look at the full
 4 recording for that purpose, if that makes sense. Of
 5 course, the other piece is, to what extent, how much
 6 emphasis is going to be placed on these IARs with
 7 regard to penalty anyway? So, something else to
 8 consider, but I'm more or less responding to what
 9 I'm understanding a position to be by New Prime as
 10 opposed to something on my own motion. So, with
 11 that in mind, do you want to proceed as is with just
 12 the summaries that are in evidence?
 13 MR. MCKAY: I understand your ruling,
 14 Your Honor, and I'm prepared to proceed.
 15 JUDGE COUGHLIN: Okay. All right. Very
 16 well. I guess let me do this also, kind of to
 17 preserve this colloquy and to the extent I have
 18 erred in any way in my ruling and my assessment of
 19 this. I'm always mindful of a reviewing authority
 20 as well, so that they have the full picture before
 21 them should anyone appeal my decision. So, with
 22 that in mind, my inclination is to not admit into

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1 MR. MCKAY: Very well.
 2 JUDGE COUGHLIN: Very well. I'll hold
 3 onto this. Please go ahead.
 4 BY MR. MCKAY:
 5 Q Special Agent Callaghan, are you still
 6 with us?
 7 A Yes, I'm here. I had a hard time finding
 8 the mic button. I'm back, yes, thank you.
 9 Q Do you recall the date of the Prime
 10 trailer fire in Idaho which was part of EPAs
 11 investigation?
 12 A September. I don't know the specific
 13 date.
 14 Q Do you know what day of the week and
 15 approximately what time of day the fire occurred?
 16 A I do not recall the day of the week, but
 17 it was in the early morning.
 18 Q Is it your understanding that there were
 19 many emergency responders and local regulators that
 20 were communicating on September 27, 2015 regarding
 21 the fire and the events involving the fire?
 22 MS. JACKSON: Sorry, Your Honor. I have

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1 a quick objection.
 2 JUDGE COUGHLIN: Okay.
 3 MS. JACKSON: Forgive me if I'm a little
 4 out of line here, but I think this is beyond the
 5 scope of what he testified to on direct, and, again,
 6 we've had conversations about this, we've really
 7 limited Mr. Callaghan's testimony because he is
 8 virtual, and because he obviously is not our penalty
 9 witness that the scope of his testimony was really
 10 to authenticate the records, speak to their
 11 admissibility, but not necessary to rehash the
 12 criminal investigation. That's not what we directed
 13 him about on our direct. So, I think this goes
 14 beyond the scope. I'm also not sure how deep you
 15 plan on going, if it's just the surface level. But
 16 that's my objection. It's just beyond the scope of
 17 what he was brought here to testify to.
 18 MR. MCKAY: So, the questions that I have
 19 are all contained within the four corners of the
 20 various exhibits that the EPA has offered through
 21 this witness. This witness testified (audio
 22 interference) has reviewed and has familiarity with.

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1 A Yes.
 2 Q Let's take a look at Respondent's Exhibit
 3 3, which has been admitted by stipulation and which
 4 is also part of Complainant's Exhibit 7. Do you
 5 have the Respondent's Exhibit 3, or do you only have
 6 the Complainant's exhibits, Special Agent Callaghan?
 7 A I'm checking now. I do have CEX3, Mr.
 8 McKay.
 9 JUDGE COUGHLIN: RX3, Mr. Callaghan?
 10 THE WITNESS: Thank you, Your Honor. I
 11 only have CEX3, it looks like.
 12 MR. MCKAY: Let's do it this way. Let's
 13 have you turn to Complainant's Exhibit 7. Tell me
 14 when you have that exhibit in front of you.
 15 THE WITNESS: I have CEX7 in front of my.
 16 BY MR. MCKAY:
 17 Q Can you turn to page 7 of that exhibit?
 18 A I'm at page 7 of the exhibit.
 19 Q Look at the bottom of that page and tell
 20 me -- let's go back a step. What is the document
 21 that we're looking at here, page 7 of Complainant's
 22 Exhibit 7?

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1 I'm about to show him a document, or an exhibit that
 2 EPA offered into evidence through this witness that
 3 goes right to this question that I just asked about
 4 the presence of emergency responders and local
 5 regulators at the fire scene.
 6 JUDGE COUGHLIN: Okay. On that basis,
 7 I'll overrule the objection. Go ahead.
 8 BY MR. MCKAY:
 9 Q Special Agent Callaghan, you can answer
 10 the question.
 11 A Mr. McKay, would you mind asking the
 12 question again?
 13 Q Is it your understanding that there were
 14 many emergency responders and local regulators that
 15 were communicating on September 27, 2015, the day
 16 that the fire -- regarding the events that were
 17 happening on the ground?
 18 A I don't like the word many. There were
 19 emergency responders that responded to the scene and
 20 formed an incident command system.
 21 Q You take issue with the word many, is
 22 that what I understood to say?

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1 A This is the Idaho State Communication
 2 Center Hazmat, is what it's kind of titled. It
 3 appears to be a record of their involvement in this
 4 matter.
 5 Q Will you tell the Court what the Idaho
 6 State Communication Center is?
 7 A The Idaho State Communication Center is
 8 a one stop shop for incidents that occur in the
 9 State of Idaho, and it's a notification system where
 10 events get reported. They come in, and they get
 11 reported to multiple agencies.
 12 Q Would you agree with me that at the
 13 bottom of page 7 of this exhibit there is listed a
 14 number of people who were contacted regarding this
 15 incident?
 16 A Yes.
 17 Q Including members of the Bureau of
 18 Homeland Security, DEQ, Health District Region 4,
 19 RRT Region 4. What is RRT Region 4? What does that
 20 stand for?
 21 A I believe that's Regional Response Team.
 22 Q Would that be a hazardous materials team?

1 A I believe that is their hazardous
 2 materials response team, yes.
 3 Q Elmore SO, does that stand for Elmore
 4 Sheriff's Office?
 5 A I'm not certain.
 6 Q What is the DHS Director, Brad Richey.
 7 A I don't know that either. I apologize.
 8 This is a State notification center, it's not a
 9 Federal notification center. I don't see any feds
 10 on here. I apologize for that.
 11 Q Hang with me. Let's go to the next page,
 12 then.
 13 A Page 8?
 14 Q Page 8.
 15 A I'm there now.
 16 Q Anybody from the EPA contacted? Look at
 17 the top of the page.
 18 A Thank you. Yes. EPA (audio
 19 interference).
 20 Q And how about TSA?
 21 A I do see TSA there too, correct. Yes.
 22 Q And a number of other agencies were

1 contacted or consulted in connection with this fire.
 2 Is that a fair statement?
 3 A Yes.
 4 Q If you were to turn to page 9 of this
 5 exhibit. Actually, strike that. Do you know who
 6 the incident commander was on this fire?
 7 A Mr. McKay, I believe it was -- you know
 8 it changes. The incident command system is complex,
 9 it's based on local and Federal relationships. So,
 10 I think that changed over time.
 11 Q Okay. Was the incident commander for a
 12 period of time, Chief Janousek with the King Hill
 13 Rural Fire District? Do you agree with that? Or do
 14 you not know?
 15 A I don't know from this information that's
 16 in front of me who the incident commander was,
 17 unless you can point that out to me. I'm not seeing
 18 that -- I can tell you that Janousek was. I know at
 19 one time, the one I do know was Colin Bonner.
 20 Q Let's stay, then, on page 8. Do you see
 21 the entry at 3:40 a.m. on that day?
 22 A Yes.

1 Q It references that conference call
 2 occurring at that time? Is that correct?
 3 A Yes. I see a full conference call. Yes.
 4 Q Do you see the reference to Derrick
 5 Janousek, fire chief with King Hill Rural Fire
 6 District?
 7 A I do, and I see that he's an incident
 8 commander there.
 9 Q So you would agree with me, then, he was
 10 the incident commander at that time?
 11 A Yes, that appears to be true.
 12 Q So, let's look down at the bottom of this
 13 page. The entry at 4:03. Is that a reference to
 14 the original response team four that we discussed
 15 earlier?
 16 A At 4:03 that starts out, IC confirmed the
 17 tractor (phonetic)?
 18 Q Yes, sir.
 19 A Yes, that appears to be RRT 4 that was
 20 previously identified on a previous page, page 7.
 21 Q And you would agree with me that those
 22 folks that make up Regional Response Team 4 are

1 subject matter experts, are they not?
 2 MS. JACKSON: Objection, Your Honor.
 3 Speculation.
 4 JUDGE COUGHLIN: Mr. Callaghan, are you
 5 independently aware of what their level of expertise
 6 is?
 7 THE WITNESS: The RRT 4 team. I don't
 8 know --
 9 JUDGE COUGHLIN: Then that's enough.
 10 That's enough. I'll sustain that.
 11 MR. MCKAY: I'll ask it a different way.
 12 JUDGE COUGHLIN: Okay.
 13 BY MR. MCKAY:
 14 Q MR. MCKAY: RRT 4 is called out
 15 when there is a hazardous materials situation
 16 frequently, right?
 17 A Correct. That's my understanding.
 18 Q And they're called out because they then
 19 make decisions regarding the management of the
 20 hazardous materials that are at issue, correct?
 21 MS. JACKSON: Again, objection,
 22 speculation. I think this goes beyond Mr.

1 Callaghan's testimony, but I also think you're
 2 asking him to speculate Idaho's practices.
 3 JUDGE COUGHLIN: Two things there, but as
 4 to the second, are you, I mean, do you have personal
 5 knowledge of any of this, Mr. Callaghan? Would you
 6 be able to respond to the question as opposed to
 7 guess? I don't want you to guess, so if you have
 8 independent knowledge and you can respond, that's
 9 fine, and I'll rule accordingly. If you don't, then
 10 I need to know that too and rule accordingly.
 11 THE WITNESS: Your Honor, the first
 12 approximately 10 years of my life, I -- and please
 13 cut me off if you start to feel like this is
 14 uncomfortable. But for the first 10 years of my
 15 life this was my world, hazmat response and
 16 responding to incidents on the side of the road.
 17 Then the next 14 I've been a Special Agent. So,
 18 when somebody asks me the question, is RRT a subject
 19 matter expert? I think the question needs to be
 20 more specific because they may be the expert at some
 21 point in the response and not another part of the
 22 response.

1 that you would be able to answer this question based
 2 on personal knowledge or not?
 3 THE WITNESS: Yes, I can answer this
 4 based on personal knowledge.
 5 JUDGE COUGHLIN: Hold on just a second.
 6 Let me just rule on the objection. I'll overrule
 7 the objection. You can certainly answer. Go ahead,
 8 Mr. Callaghan, thank you.
 9 THE WITNESS: Yes, the RRT would have the
 10 expertise at some level to make decisions regarding
 11 the incident, the hazmat incident, if they have all
 12 the correct information, too.
 13 BY MR. MCKAY:
 14 Q Let's turn to page 9 of this same
 15 exhibit.
 16 A I'm there on 9.
 17 Q I'm going to direct your attention to the
 18 last couple of chronological entries on this page.
 19 Do you see reference to a conference call at 6:25
 20 a.m.?
 21 A I do see that one starting at 6:25, yes.
 22 Q Okay. And would you agree with me that

1 JUDGE COUGHLIN: Okay. But do you have
 2 the requisite knowledge to be able to answer that,
 3 I guess based on your earlier experience?
 4 THE WITNESS: What was the specific
 5 question again, Mr. McKay?
 6 MR. MCKAY: I think you were mentioning
 7 my other question. The question that's before you
 8 now is whether RRT 4 is called out to hazardous
 9 material situations, and I think you indicated they
 10 are. So, the follow-up question, which I think
 11 we're hung up on here, is whether the RRT 4 is
 12 called out because they are looked to to make
 13 decisions regarding the management of those
 14 hazardous materials.
 15 JUDGE COUGHLIN: Before you answer,
 16 because there is an objection, so I need to rule.
 17 So, before you answer, one of my preliminary
 18 questions to you was, do you have the knowledge to
 19 be able to answer that question as opposed to guess
 20 or surmise, because from an evidentiary standpoint
 21 they're different things. Do I understand from what
 22 you said earlier about your experience in hazmat

1 there was a hazmat duty officer, Autumn White
 2 (phonetic) who participated in the conference call
 3 along with a DEQ representative?
 4 A Yes, I do see that and agree with that.
 5 Q Do you see reference to Darrel Redding
 6 (phonetic) or Regional Response Team 4?
 7 A Yes.
 8 Q A little further down, does it indicate
 9 that Regional Response Team 4 was actually on scene
 10 at the time that this fire was being managed?
 11 A Yes, they are on scene.
 12 Q What's the last entry that you see on
 13 this page?
 14 A At 0630, correction at 0630 Autumn White
 15 advising incident will remain at level 2, and Bobby
 16 Dye (phonetic) agrees.
 17 Q And if you turn to the next page, page 10
 18 of this exhibit, would you agree with me that moves
 19 on, that's a different document, is it not?
 20 A Yes. This appears to be an Idaho State
 21 Police record.
 22 Q Are you aware of whether Idaho DEQ was

1 consulted regarding the hiring of the company that
 2 performed the cleanup that morning?
 3 A No. I do not believe that the Idaho DEQ
 4 had any input on the cleanup contractor that was
 5 used that morning. I don't recall that.
 6 Q Do you have any information that the
 7 Idaho State Police captain on scene, Captain on
 8 scene Kevin Bonner (phonetic), whether he consulted
 9 with Idaho DEQ about the ability of the company that
 10 was hired to perform the clean up?
 11 A No. And I apologize. In preparation for
 12 my work here today, I did not anticipate this scope
 13 of questioning, so I don't know the answer to that
 14 question.
 15 JUDGE COUGHLIN: Let me just ask you
 16 this, because I meant to address it, and frankly I
 17 got off track with the second piece of your
 18 objection, Ms. Jackson, which had to do with scope
 19 and beyond the scope of direct. I'm a copious note
 20 taker, but sadly, with regard to CEX7, I didn't make
 21 notes as to whether this was a document that you had
 22 reviewed as part of your affidavit or had otherwise

1 record, such that I could speak to them and say that
 2 these are true and authentic records that the EPA
 3 maintained in the course of their normal business.
 4 I apologize, I did not get into the minutia and the
 5 details and try to get myself back up to speed with
 6 65 IARs from a case that I investigated seven years
 7 ago.
 8 JUDGE COUGHLIN: Okay. Understood, and
 9 thank you. So, there in evidence over your
 10 objections, and I want you to have the opportunity
 11 to question the witness about them. But recognizing
 12 that largely there doesn't seem to be any personal
 13 knowledge as to some of the pertinent facts in here
 14 that you were focused on. I think it may be to some
 15 extent pointless, but I want you to have the chance
 16 to question because they are in evidence. If this
 17 is a witness who reviewed them for purposes of
 18 saying, this is what I do, they're business records,
 19 they can come in under that even though author them
 20 and wasn't otherwise involved in to alleged facts
 21 coming out of the content, then I don't know to what
 22 extent he could truly be responsive to some of the

1 been familiar with. So, can you tell me whether
 2 this was a document that you reviewed as part of
 3 your affidavit or whether you had independent
 4 familiarity with it?
 5 THE WITNESS: Your Honor, I did review
 6 this for -- I did review this cursory. I recognize
 7 it as an IAR. I recognize it as an official
 8 document. I'm looking at 7 again now. I pursued
 9 this quickly, this entire document to be able to say
 10 that I did. I didn't memorize or retain specific
 11 information because I didn't believe that that was
 12 what was asked of me.
 13 JUDGE COUGHLIN: Okay. And you weren't
 14 otherwise familiar, in some of the other IARs I
 15 think you had offered that you might've been present
 16 for an interview or you had been familiar with it
 17 independent of reviewing it. So, this falls under
 18 the pure just reviewed category, is that right?
 19 THE WITNESS: Yes, I think so. And even
 20 the one that I was present at, Your Honor, for the
 21 purpose of what I thought was asked of me by the
 22 EPA, it was to review these as the custodian of

1 detailed questions you're asking. I mean, go ahead,
 2 it's just that I recognize the distinction here.
 3 MR. MCKAY: I mean, I think it's becoming
 4 abundantly clear, and I will say this, let me also
 5 say, maybe, this is a preliminary matter, I have a
 6 great deal of respect for Special Agent Callaghan.
 7 I know him context, you heard that through my
 8 questioning of him and aid of objection. When EPA
 9 proposed him as a substitute witness for Agent
 10 Mugleston and then submitted an affidavit that said
 11 that he had co-responsibility for this case, I
 12 expected that he would be in a position to testify
 13 substantively to the documents that are at issue
 14 here. It's become very clear, and I think this has
 15 prompted the Court to say now what it says, that he
 16 doesn't know what's reflected in these documents, he
 17 doesn't recall what, some parts he may have been a
 18 part of some years ago. I can conclude my
 19 questioning and go at it a different way through
 20 potentially a different witness later on in this
 21 case.
 22 JUDGE COUGHLIN: I mean, it's up to you,

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1 because I understand what the challenges are, and I
 2 think it's certainly appropriate for you to bring
 3 those to light as part of your presentation. I
 4 guess I just want it to be very clear, Mr.
 5 Callaghan, that to separate out your desire to want
 6 to answer and supply information from what you
 7 actually know and were truly involved in during
 8 this. I appreciate the position that you're in and
 9 the circumstances that the region faced with what
 10 was available to them to present when it came time
 11 to hearing. So, I'm cognizant of all that. I just
 12 want the record to be very clear about what you were
 13 actually involved in versus what you simply reviewed
 14 as a matter of course to be able to say, yes, this
 15 is a business record, this is what we typically do
 16 when we generate these reports. But in terms of
 17 knowledge or recollection of the particular facts
 18 that are being pulled out, if they are not present,
 19 that's something I need to know, and those
 20 distinctions need to be made. I think that that's
 21 the point of Mr. McKay's questions to you, so it's
 22 sufficient enough for you to just kind of let me

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1 he became my supervisor, yes, and we're still
 2 friends.
 3 Q He's somebody that you respect personally
 4 and professionally?
 5 A Absolutely.
 6 Q He's someone you know to have integrity?
 7 A Absolutely.
 8 MR. MCKAY: That's all I have, Your
 9 Honor.
 10 JUDGE COUGHLIN: All right. Thank you.
 11 Redirect?
 12 MS. JACKSON: Redirect?
 13 JUDGE COUGHLIN: Absolutely.
 14 REDIRECT EXAMINATION
 15 BY MS. JACKSON:
 16 Q Mr. Callaghan, just a couple quick
 17 questions. Just getting back to your role as
 18 records custodian for EPA and as a Special Agent.
 19 Do you have any reason to question the reliability
 20 or the truth and accuracy of any of the IARs that
 21 you helped submit into evidence today?
 22 A No. In fact, we just talked about Kelly

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1 know where that knowledge base is, if it's there at
 2 all? Does that make sense to you?
 3 THE WITNESS: I think so, Your Honor. I
 4 think so.
 5 JUDGE COUGHLIN: I appreciate you being
 6 here too. I'm not trying to be critical of you or
 7 either side, really, it's just where we are right
 8 now with things. Go ahead.
 9 MR. MCKAY: May I have just a minute to
 10 consult with my co-counsel?
 11 JUDGE COUGHLIN: Sure.
 12 BY MR. MCKAY:
 13 Q Special Agent Callaghan, I'm about at the
 14 end here. Let me just conclude here by asking if
 15 you know Kelly O'Neill.
 16 A Yes, I do.
 17 Q Do you know he was retained as an
 18 investigator by my firm to work on this case?
 19 A Yes, I am.
 20 Q He was your supervisor for a period of
 21 time?
 22 A He was my co-worker and friend and then

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1 O'Neill who I admire and trust, as I've already
 2 stated for the record. But again, Mugleston too was
 3 an outstanding agent, and his record keeping was
 4 some of the best. I actually modeled my own self
 5 after his ability to maintain these records, these
 6 IARs.
 7 MS. JACKSON: Thank you very much, Mr.
 8 Callaghan.
 9 THE WITNESS: Thank you.
 10 MS. JACKSON: I appreciate you offering
 11 your testimony today. I think at this point
 12 Complainant rests unless you have -- sorry, I'll
 13 give you the opportunity for a redirect.
 14 JUDGE COUGHLIN: Recross. Go ahead.
 15 RECROSS EXAMINATION
 16 BY MR. MCKAY:
 17 Q Special Agent Callaghan, you were not
 18 present during Mr. Mugleston's interviews of many of
 19 these witnesses, correct?
 20 A That's correct.
 21 Q And you would not be privy to some of the
 22 things that Mr. Mugleston may have said to some of

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1 these witnesses, correct?
 2 A That's correct.
 3 Q Would it be appropriate for Special Agent
 4 Mugleston to have told a witness that Prime is as
 5 dirty as they come?
 6 MS. JACKSON: Objection, Your Honor.
 7 JUDGE COUGHLIN: Hold on one second.
 8 MS. JACKSON: Objection. Speculation.
 9 JUDGE COUGHLIN: Is that something that
 10 you're --
 11 MR. MCKAY: I'm prepared to prove that.
 12 JUDGE COUGHLIN: I'll overrule. You can
 13 go ahead and answer.
 14 THE WITNESS: I would --
 15 MR. MCKAY: Go ahead.
 16 THE WITNESS: Could you ask that question
 17 again, Mr. McKay?
 18 BY MR. MCKAY?
 19 Q Would it be appropriate for Special Agent
 20 Mugleston to have said to a witness in this case
 21 that Prime is as dirty as they come?
 22 A So, what I'll say to that is, I'm not

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1 sure of the context of that. I don't know what
 2 witness that happened, but I want to tell you that
 3 we're criminal investigators, and we're actually
 4 trained to lie, and although it's hard for people to
 5 understand, we're there to get information from
 6 folks. He said that because he wanted to solicit an
 7 honest answer from somebody. I could see that as an
 8 investigative technique. We're trained to do that.
 9 We don't go up to people and say, hey, I'm an
 10 undercover cop here, are you selling drugs? So, I
 11 don't know the context of that conversation, and I
 12 think, I can't make a decision whether that would be
 13 appropriate or not.
 14 MR. MCKAY: That's all the questions I
 15 have. Thank you.
 16 JUDGE COUGHLIN: Okay. So, can I release
 17 Mr. Callaghan, or will he possibly be subject to
 18 recall on rebuttal? I don't know if you've
 19 discussed that with him or not.
 20 MS. JACKSON: We have discussed it with
 21 Mr. Callaghan. Can I discuss it real quick with my
 22 co-counsel?

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1 JUDGE COUGHLIN: Sure.
 2 MS. JACKSON: Your Honor, I doubt we're
 3 going to call him, but can we leave it open to call
 4 him on rebuttal if needed depending on what's
 5 presented during Respondent's case in chief?
 6 JUDGE COUGHLIN: Sure. Mr. Callaghan,
 7 you're prepared to possibly be recalled as a witness
 8 at some point during this week?
 9 THE WITNESS: Yes, Your Honor. I freed
 10 up the week, and I'm available should you need me.
 11 JUDGE COUGHLIN: Okay. Great. I'll
 12 leave that to Ms. Jackson to communicate with you
 13 about whether that's necessary. For now, I'll let
 14 you go, and I appreciate your participation today.
 15 THE WITNESS: Thank you, Your Honor.
 16 JUDGE COUGHLIN: Bye-bye.
 17 MR. RYAN: Your Honor.
 18 JUDGE COUGHLIN: Yes.
 19 MR. RYAN: May we request a five minute
 20 break?
 21 JUDGE COUGHLIN: Absolutely. I think
 22 that's a great idea. Would you like 10 minutes?

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1 MR. RYAN: Ten minutes would be.
 2 JUDGE COUGHLIN: All right. Why don't we
 3 come back around 3:00-ish, and I'll see you all
 4 then.
 5 (Whereupon, the above-entitled matter
 6 went off the record at 2:51 p.m. and resumed at 3:06
 7 p.m.)
 8 JUDGE COUGHLIN: Okay, back on record
 9 after a brief break, and who's up next?
 10 MR. FIGUR: Good afternoon, Your Honor.
 11 JUDGE COUGHLIN: Good afternoon.
 12 MR. FIGUR: And good afternoon, everyone
 13 else. Complainant would like to call Dr. Bradley
 14 Miller to the stand, please.
 15 JUDGE COUGHLIN: All right. Do you
 16 solemnly swear or affirm that the testimony you are
 17 about to give in these proceedings to be the truth?
 18 MR. MILLER: Yes.
 19 JUDGE COUGHLIN: Thank you, please be
 20 seated. The witness has been sworn.
 21 MR. FIGUR: Thank you. Could you please
 22 state your name for the record?

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1 MR. MILLER: Bradley Warren Miller.
 2 MR. FIGUR: And please state your title
 3 and where you work.
 4 MR. MILLER: I work at the National
 5 Enforcement Investigation Center. I'm the Principal
 6 Analytical Chemist.
 7 MR. FIGUR: And are you being paid for
 8 your testimony today?
 9 MR. MILLER: No, just my regular
 10 government salary.
 11 MR. FIGUR: Can you please tell us a
 12 little about what you know about this case?
 13 MR. MILLER: So what I know is that a
 14 trailer had caught on fire. The trailer was carrying
 15 products for -- PP&G products. According to the
 16 shipping manifest, safety data sheets that were in
 17 the manifest, there were four products in that
 18 trailer. After the trailer caught on fire, the
 19 material was transported from Idaho to Salt Lake
 20 City, Utah crimes facility.
 21 The material was stored outside until EPA
 22 investigators became aware of the material. At that

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1 chromium.
 2 During the laboratory analysis, NEIC
 3 staff also tested the material and determined in
 4 addition to being a hazardous waste with the
 5 characteristic of toxicity, the material also
 6 flashed such that it would carry the hazardous waste
 7 characteristic of ignitability, as well.
 8 MR. FIGUR: Dr. Miller, can you please
 9 explain how you came to be testifying here today?
 10 MR. MILLER: I was asked by the case team
 11 whether or not I might render an opinion as to
 12 whether or not the material in 12 of the drums which
 13 samples were not returned to NEIC, whether or not
 14 they might be characteristic hazardous waste.
 15 MR. FIGUR: Thank you. Before discussing
 16 any work you conducted, let's briefly turn to your
 17 qualifications for a moment. Have you prepared a
 18 curriculum vitae?
 19 MR. MILLER: Yes.
 20 MR. FIGUR: Please display Dr. Miller's
 21 CV. Please take a look at what's been marked as
 22 Complainant's Exhibit 78. Please scroll.

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1 time, EPA investigators asked staff at NEIC if they
 2 would go perform the inspection to determine whether
 3 any of the material in the 32 drums that were
 4 transported to the Salt Lake City facility -- 32 55-
 5 gallon drums -- if any of the material in those 32
 6 drums might be a characteristic hazardous waste.
 7 The NEIC staff went out and sampled all
 8 32 drums and made a preliminary determination that
 9 20 of those drums contained material that was
 10 consistent with one of the products listed in the
 11 safety data sheet. That product was called universal
 12 urethane yellow primer. So for the remainder of my
 13 testimony, I'll refer to that as the yellow primer.
 14 The NEIC field staff then took samples
 15 from eight of those drums and returned those to the
 16 laboratory. NEIC laboratory staff performed a
 17 variety of different analyses on that material and
 18 confirmed that the chromium in the eight samples
 19 that were returned to the lab exceeded the
 20 regulatory limit established under the Resource
 21 Conservation and Recovery Act to qualify it as a
 22 hazardous waste with the toxicity characteristic for

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1 MR. MILLER: I don't have it here. I can
 2 see it over there. Okay.
 3 MR. FIGUR: Did it show up?
 4 MR. MILLER: No, I do not have it here. I
 5 only see it on his computer screen.
 6 JUDGE COUGHLIN: Can you see this? I don't
 7 know if this is in your way. Can you see this?
 8 MR. MILLER: Yes, I can see that.
 9 JUDGE COUGHLIN: I can go off of -- if
 10 that's --
 11 MR. MILLER: Yeah, it just popped up.
 12 JUDGE COUGHLIN: It did, okay, great. Let
 13 me just flip this around.
 14 MR. MILLER: Thank you.
 15 MR. FIGUR: Technical difficulty solved,
 16 but I was debating whether or not to mention that
 17 this might be our first technical difficulty-free
 18 witness.
 19 JUDGE COUGHLIN: No problem.
 20 MR. FIGUR: Do you recognize this
 21 document?
 22 MR. MILLER: Yes.

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1 MR. FIGUR: And what is it?
 2 MR. MILLER: It is the CV I prepared.
 3 MR. FIGUR: You did prepare it. Is this a
 4 true and accurate copy of your CV?
 5 MR. MILLER: I believe so. If you scroll
 6 down, I'll --
 7 MR. FIGUR: Oh that's right, sorry. You
 8 couldn't see the last time unless Tribett scrolled.
 9 MR. MILLER: It's a very long CV, yes.
 10 MR. FIGUR: And Your Honor, for the
 11 purposes of clarity in the exhibit record, I note
 12 that Dr. Miller's CV also is attaching to the
 13 document marked as Complainant's Exhibit 75, but we
 14 are moving to enter this independently as Exhibit
 15 78. So now I'd like to move to enter this as
 16 Complainant's Exhibit 78.
 17 JUDGE COUGHLIN: Okay. I was going to ask
 18 you about that, because my numbering ended at 77. So
 19 this had been the appendix to 75 and now it's its
 20 own exhibit as 78. Okay, all right.
 21 MR. RYAN: No objection, Your Honor.
 22 JUDGE COUGHLIN: Okay, CEX78, which is Dr.

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1 Master's of Science in Biology, and that was awarded
 2 or earned in 2007.
 3 MR. FIGUR: Did you conduct any analytical
 4 chemistry work during this time?
 5 MR. MILLER: Yes. During my Master's work,
 6 I quantified nitrogen, phosphorous and potassium
 7 concentrations in tree seedlings and fungi. This
 8 work was done in support of habitat restoration of
 9 an endangered species in the Southern Appalachian
 10 Mountains.
 11 MR. FIGUR: Was any of this work
 12 published?
 13 MR. MILLER: My Master's thesis was
 14 published with their library, and a copy of my
 15 analytical results were given to the United States
 16 Forest Service.
 17 MR. FIGUR: Please tell us about your PhD.
 18 MR. MILLER: My PhD I earned at Virginia
 19 Tech in 2009, which is in Blacksburg, Virginia.
 20 That's Virginia Polytechnic Institute and State
 21 University.
 22 MR. FIGUR: Did you conduct any analytical

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1 Miller's CV, is admitted into evidence.
 2 MR. FIGUR: Now let's turn to your
 3 qualifications and a little bit of your educational
 4 history. Did you attend college, and if so, please
 5 explain when and where and the degrees you received.
 6 MR. MILLER: Yes, I went to Mount Olive
 7 College. I received a Bachelor's of Science in
 8 Biology, and that was in 1998. It's located in Mount
 9 Olive, North Carolina.
 10 MR. FIGUR: Did you perform any work
 11 during college related to analytical chemistry?
 12 MR. MILLER: Yes. While I was in college
 13 I held an internship with the State of North
 14 Carolina, where I did water quality tests on
 15 nutrients on public lands.
 16 MR. FIGUR: Did you attend graduate
 17 school?
 18 MR. MILLER: Yes, I did.
 19 MR. FIGUR: Did you get a Master's degree?
 20 MR. MILLER: Yes, I received a Master's
 21 degree from Appalachian State University that's
 22 located in Boone, North Carolina. I received a

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1 chemistry work during this time?
 2 MR. MILLER: I did. I performed a variety
 3 of chemical analyses. I don't know if I actually
 4 mentioned my PhD is in Forestry. I was trained as a
 5 soil as a soil chemist in the Forestry Department.
 6 Among the analytical research I did during my PhD
 7 work was to quantify both inorganic and organic
 8 phosphorous pools and soils in forest plantations.
 9 I did that by ICPOES analysis,
 10 Inductively Coupled Plasma Optical Emission
 11 Spectroscopy. In addition --
 12 MR. FIGUR: Let's take a quick break for
 13 a second and make sure that that's going to be
 14 properly recorded. It is? Okay, thank you. So I'm
 15 sorry, didn't mean to interrupt, please continue.
 16 MR. MILLER: That's okay. I'm sorry, I
 17 should slow down a little bit. So in addition to the
 18 work on inorganic and organic phosphorous pools, I
 19 also quantified what's called ligand exchangeable
 20 metals and phosphorous in forest soils, as well as
 21 organic matter. These components were in the soil
 22 surrounding tree roots, and so I quantified those

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1 components during my PhD work.
 2 MR. FIGUR: Has any of your PhD research
 3 been published?
 4 MR. MILLER: Yes. I authored/co-authored
 5 two peer-reviewed publications from my PhD research.
 6 MR. FIGUR: What work did you perform
 7 after you received your PhD?
 8 MR. MILLER: So upon completion of my PhD,
 9 I was hired into the EPA lab in Cincinnati, Ohio.
 10 The lab was a part of EPA's Office of Research &
 11 Development. It's called the Land Remediation and
 12 Pollution Control Division of EPA's ORD.
 13 I was employed by two different entities
 14 during that time. First, this was post-doctorate
 15 work that I did, so I was employed by the National
 16 Research Council first, and then followed I was
 17 employed by Oak Ridge Institute for Science &
 18 Education.
 19 MR. MILLER: Great, thank you. Did you
 20 perform any analytical chemistry work as part of
 21 your post-doctoral research?
 22 MR. MILLER: Yeah, I did. The analytical

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1 work that I performed during my post-doctorate was
 2 to use what's known as synchrotron speciation. That
 3 is an analysis technique that actually quantifies
 4 the number of protons or electrons that are in an
 5 analyte of concern.
 6 So I was looking at the redox state of a
 7 variety of metals, things such as chromium, arsenic,
 8 lead in environmental samples. From the work that we
 9 did, we made recommendations to the EPA on
 10 remediation goals for superfund sites.
 11 MR. FIGUR: Did you do any field work
 12 during this time?
 13 MR. MILLER: Yes, I did. In support of the
 14 research I was doing, I went to the field to collect
 15 soil samples that were contaminated with lead and
 16 arsenic. One of the instruments that I used was a
 17 XRF, x-ray fluorescence spectrometer, to collect
 18 those samples.
 19 MR. FIGUR: How long have you been at
 20 NEIC?
 21 MR. MILLER: I began work at NEIC in May
 22 of 2013.

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1 MR. FIGUR: And what is your present title
 2 at NEIC?
 3 MR. MILLER: My present title at NEIC is
 4 Principal Analytical Chemist. For the purposes of my
 5 employment with the EPA, I'm described as a physical
 6 scientist.
 7 MR. FIGUR: And that's an Office of
 8 Personnel Management classification?
 9 MR. MILLER: Yes.
 10 MR. FIGUR: But your title at NEIC is
 11 again?
 12 MR. MILLER: Principal Analytical Chemist.
 13 MR. FIGUR: Thank you. Can you very
 14 briefly describe the analytical chemistry work you
 15 perform at NEIC?
 16 MR. MILLER: The majority of the work that
 17 I perform at NEIC deals with when a sample comes in,
 18 I test to determine whether or not it has one or
 19 more of the RCRA hazardous waste characteristics,
 20 whether that's ignitability, corrosivity, toxicity
 21 or reactivity.
 22 While at NEIC, I also routinely perform

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1 EPA Test Method 1311, which is the toxicity
 2 characteristic leaching procedure or the TCLP
 3 procedure. The results of the TCLP procedure, you
 4 are looking at analytes such as arsenic, chromium,
 5 lead, and I perform those analyses by ICP-OES. Then
 6 I also take measurements at NEIC for pH flashpoint
 7 percent waters. I do x-ray diffractions and also
 8 test for cyanide.
 9 MR. FIGUR: Can you please give us a few
 10 examples of the types of samples that you analyze?
 11 MR. MILLER: Since my post-doctorate work
 12 in 2009, I've analyzed a wide variety of samples,
 13 everything from mine tailings to soils, everything
 14 from bone tissues to mouse feces. As a part of my
 15 work at NEIC, I also regularly will test liquids
 16 from abandoned drums.
 17 MR. FIGUR: What are your objectives when
 18 you analyze these samples?
 19 MR. MILLER: My objective typically is to
 20 quantify an analyte such as arsenic or lead.
 21 MR. FIGUR: Do you regularly write reports
 22 in your capacity as Principal Analytical Chemist?

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1 MR. MILLER: Yes. As noted in my CV, I've
2 authored 18 environmental enforcement reports.

3 MR. FIGUR: Have you authored any expert
4 reports in your capacity as Principal Analytical
5 Chemist?

6 MR. MILLER: Yes, I have authored one
7 expert report on the RCRA hazardous waste
8 characteristic of toxicity for a lead sludge.

9 MR. FIGUR: Have you given any lectures,
10 particularly relating to analytical chemistry?

11 MR. MILLER: I have given well over 20
12 lectures dealing with environmental contaminants,
13 heavy metals, also inorganics like phosphorous, as
14 a result of my PhD studies, Master's studies, and
15 work at NEIC.

16 MR. FIGUR: Are any of those listed in
17 your CV?

18 MR. MILLER: They are listed in my CV.

19 MR. FIGUR: Are you a member of any
20 particularly notable professional associations?

21 MR. MILLER: Yes. I am the US
22 Representative to the International Union of Pure

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1 and Applied Chemistry. I'm a member of the Chemistry
2 of the Environment Division of IUPAC. I was elected,
3 by the way, I should mention that I was elected into
4 IUPAC by chemists from around the world. IUPAC is
5 the governing body when it comes to inorganic or
6 organic components when it comes to nomenclature and
7 testing procedures.

8 MR. FIGUR: What are some of your
9 responsibilities as the representative of the United
10 States to this organization?

11 MR. MILLER: In my role in IUPAC, one of
12 the things that I do is to review proposals that are
13 sent by chemists from around the world to IUPAC, and
14 to determine whether or not those proposals are
15 adequate. IUPAC serves to promote the understanding
16 of science and chemistry for all chemists around the
17 world.

18 So I will review those proposals and then
19 vote to determine whether or not IUPAC should
20 provide funding for those proposals.

21 MR. FIGUR: Thank you. Are you or have you
22 been a member of any other professional

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1 organizations relating to the field of analytical
2 chemistry?

3 MR. MILLER: I have been a member of
4 several professional organizations. They're listed
5 on my CV. One of those includes the American
6 Chemical Society.

7 MR. FIGUR: Has any of your written work
8 been peer-reviewed?

9 MR. MILLER: Yes, I have over 10 peer-
10 reviewed publications that I've authored or co-
11 authored. Those are listed on the CV, as well.

12 MR. FIGUR: Did you conduct any analytical
13 chemistry and review the analytical work of others
14 relating to this case?

15 MR. MILLER: Yes.

16 MR. FIGUR: When conducting your work for
17 this matter, did you rely on specific scientific or
18 technical principals or methods that are widely used
19 in the field of analytical chemistry?

20 MR. MILLER: Yes.

21 MR. FIGUR: Do you believe your testimony
22 will be helpful in assisting this tribunal

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1 understand certain facts of this case?

2 MR. MILLER: Yes.

3 MR. FIGUR: Your Honor, at this time I
4 tender Dr. Miller as an expert in the field of
5 analytical chemistry.

6 MR. RYAN: No objections, Your Honor.

7 JUDGE COUGHLIN: All right, so deemed an
8 expert in that field of analytical chemistry.

9 MR. FIGUR: Thank you. So Dr. Miller,
10 again, what did the case team first ask of you?

11 MR. MILLER: They case team first asked me
12 to review the data to determine whether or not the
13 12 drums contained material consistent with the
14 yellow primer, and then whether or not I might
15 believe that that would be a characteristic
16 hazardous waste for toxicity.

17 MR. FIGUR: So what did you in response to
18 this initial request?

19 MR. MILLER: I reviewed the analytical
20 data from the laboratory. I reviewed the field data.
21 I reviewed the notes from all of the NEIC staff,
22 both field and lab staff, to make my preliminary

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1 determination that yes, I agreed based on the data
2 I reviewed that the material was consistent, in the
3 12 drums were consistent with the yellow primer
4 listed in the safety data sheet of the shipping
5 manifest.

6 MR. FIGUR: Did you make a preliminary
7 prediction at this time?

8 MR. MILLER: After confirming that yes, I
9 believed the material was consistent, I also looked
10 back at the NEIC laboratory results for the TCLP
11 procedure and then thought to myself yes, I thought
12 the 12 drums would also fail TCLP.

13 MR. FIGUR: Can you please display
14 demonstrative one?

15 MS. JACKSON: Your Honor, I'm just
16 realizing that we forgot to share demonstratives
17 before we began today.

18 MR. JENKINS: I think we all did.

19 MS. JACKSON: Apologies to the tribunal
20 and Respondents. We had talked about this in the
21 pre-hearing conference that we were going to share
22 with a follow-up email. We were going to share

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1 demonstratives in advance.

2 MR. FIGUR: In the morning.

3 MS. JACKSON: In the morning, yeah.

4 MR. FIGUR: In the morning of.

5 JUDGE COUGHLIN: Okay.

6 MR. FIGUR: Apologies.

7 JUDGE COUGHLIN: Can you share them now?

8 MS. JACKSON: Yes.

9 JUDGE COUGHLIN: Okay, and one other quick
10 point. In the final Complainant exhibits that I have
11 from last week, I don't have a CEX78 in here. Mr.
12 Morris, do you?

13 MR. MORRIS: I have not received --

14 MR. FIGUR: Your Honor, apologies. We
15 decided to split it off of Exhibit 75 because if Dr.
16 Miller was qualified as an expert, we weren't likely
17 to submit his expert report as an exhibit.

18 Therefore, his CV, which is an attachment, wouldn't
19 have gotten in.

20 JUDGE COUGHLIN: I see.

21 MR. FIGUR: So this past week we separated
22 it out and are bringing it to the Court today. It is

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1 already contained in Exhibit 75 unchanged, so
2 hopefully there's no prejudice to anybody by --

3 MR. RYAN: Your Honor, may I ask a
4 question?

5 JUDGE COUGHLIN: Sure.

6 MR. RYAN: Dr. Miller, as you were looking
7 at this demonstrative exhibit, which we're just
8 seeing now for the first time, on Line 3 of that
9 exhibit it says flashpoint 3 Celsius. Does your
10 expert report, which is Exhibit CEX75, did that
11 address flashpoint at all?

12 MR. MILLER: I reported the results of the
13 NEIC laboratory. It includes the flashpoint results.

14 MR. RYAN: But you yourself did not
15 investigate flashpoint, did you?

16 MR. MILLER: I investigated the notes in
17 the --

18 MR. FIGUR: Your Honor, this is something
19 for cross.

20 JUDGE COUGHLIN: Hold on one second. Hold
21 on one second.

22 MR. FIGUR: I'm sorry. This appears to be

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1 a question for cross as opposed to anything else.

2 JUDGE COUGHLIN: Well, okay, yeah, it's
3 getting a little bit confused with -- because I was
4 off on something else. But for foundational
5 purposes, I think it's appropriate to delve into
6 some of this. Like let me just stop for one minute.
7 Hold the thought, Mr. Ryan, because I'd like to kind
8 of clean up a little bit some of the housekeeping
9 stuff with this.

10 So first of all, I guess do you want to
11 just stick with your plan of having the CV a
12 separate exhibit as CEX78 in the event there are
13 objections to the report or --

14 MR. FIGUR: Or we don't move to enter it
15 if his testimony is sufficient. So it's been an open
16 question to us as to whether we would admit the
17 expert report after he was qualified and gave his
18 full testimony. We have no concern about offering it
19 into evidence, but we also weren't sure whether an
20 expert report, once an expert testifies, would be
21 objected to.

22 So instead of waiting until we got there

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1 to tease out his CV, we wanted his CV in front of
2 you for consideration as determination on whether he
3 was going to be an expert or not, or at least
4 qualified as an expert.

5 JUDGE COUGHLIN: Okay, so I want to just
6 sort of clean this up with respect to CEX78. I can
7 refer to the appendix, but it's been admitted as an
8 exhibit, and so we need to make sure that it exists
9 in terms of what the court reporter's going to have.

10 Because that's ultimately what we're left
11 with at the end of all this, is a hopefully very
12 clear transcript and list of exhibits, and whether
13 they were admitted, excluded, whatever. So in asking
14 Mr. Morris that question, he just said he doesn't
15 even have any of the Complainant's exhibits.

16 MR. MORRIS: And from the Respondent I
17 have a list, but I don't have any actual exhibits,
18 like actual documentation from either side.

19 MR. RYAN: I don't recollect --

20 MS. JACKSON: We can give him a copy.

21 JUDGE COUGHLIN: Yeah, the court reporter
22 needs to --

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1 MR. MORRIS: I personally didn't receive
2 them. You sent a copy already?

3 MS. JACKSON: Yes, we sent a copy.

4 MR. RYAN: We did the same, too.

5 MR. MORRIS: I can confirm that they have
6 it when I get back to the office.

7 JUDGE COUGHLIN: Okay, yeah, I need to
8 know, and I also need to know if you've got CEX78 as
9 a separate exhibit.

10 MR. MORRIS: I can ping John Mongoven
11 right now.

12 JUDGE COUGHLIN: Okay, that would be
13 great.

14 MR. MORRIS: Once we get a rhythm or a
15 colloquy, I can check.

16 JUDGE COUGHLIN: Okay, all right, because
17 I do not. Do you all have a CEX78?

18 MR. RYAN: Yeah, I believe we do.

19 JUDGE COUGHLIN: Okay, is there any
20 concern about treating Dr. Miller's CV, which had
21 been an appendix to CEX75, as a now-designated
22 CEX78?

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1 MR. RYAN: No, Your Honor.

2 JUDGE COUGHLIN: Okay, so the only thing
3 I want to do is make sure the court reporter's got
4 that so that the transcript is very clear and we
5 actually have a CEX78 ultimately in the evidentiary
6 record.

7 MR. JENKINS: Thank you, Your Honor.

8 JUDGE COUGHLIN: And for now I'll just
9 work off the appendix.

10 MR. MORRIS: One more thing, Your Honor?

11 JUDGE COUGHLIN: Mm-hmm.

12 MR. MORRIS: So I'm asking have they
13 gotten the exhibits, and if they have, is there a
14 Complainant's Exhibit 78?

15 JUDGE COUGHLIN: CEX78, yes.

16 MR. MORRIS: Okay, thank you.

17 JUDGE COUGHLIN: Yes, because --

18 MR. FIGUR: We can confirm -- sorry, Your
19 Honor, I didn't mean to interrupt.

20 JUDGE COUGHLIN: That's all right.

21 MR. FIGUR: We can confirm that it has not
22 been submitted yet to anybody else. We just thought

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1 we were going something for the convenience of the
2 Court and that it would be easy to update
3 particularly something like this.

4 JUDGE COUGHLIN: Okay.

5 MR. FIGUR: So we just figured this out
6 this past week.

7 JUDGE COUGHLIN: Okay. It's fine. It's
8 just all got to kind of line up in the end or else
9 it's just going to be a mess. That's part of my role
10 here. So yeah, if you could just circulate that,
11 that would be great. That way the record is clear as
12 to what it is. I do think, however, though, with
13 regard to -- cover what you will, obviously, with
14 Dr. Miller during his testimony.

15 I'm having some trouble conceptualizing
16 that that can truly be a substitute for the report
17 that's been proposed, because that's a fairly
18 lengthy document and fairly technical. So I don't
19 know if I would want to just kind of supplant one
20 for the other.

21 MR. FIGUR: That is not our intention,
22 Your Honor.

1 JUDGE COUGHLIN: Okay.
 2 MR. FIGUR: Not at all.
 3 JUDGE COUGHLIN: Okay, all right.
 4 MR. RYAN: For the record, Your Honor, we
 5 do not intend to object to the admission of
 6 Complainant's Exhibit 75.
 7 JUDGE COUGHLIN: Okay, that's helpful,
 8 too. Do we even need to worry then about a MR. CEX78
 9 anymore?
 10 MR. FIGUR: No, thank you, Your Honor.
 11 JUDGE COUGHLIN: Okay, so let's just
 12 scratch that about CEX78, Mr. Morris, and you'll go
 13 ahead and move to admit CEX75?
 14 MR. FIGUR: Yes. Can you please bring up
 15 CEX75?
 16 MR. MORRIS: And one more thing, Your
 17 Honor, when you talked about receipt of the
 18 exhibits, you mean the actual documents, not as list
 19 of exhibits? You mean the actual documents
 20 themselves, correct?
 21 JUDGE COUGHLIN: Correct, each and every
 22 one.

1 MR. FIGUR: Is it a true and accurate
 2 copy?
 3 MR. MILLER: Yes.
 4 MR. FIGUR: Your Honor, at this time,
 5 Complainant moves to enter Dr. Miller's expert
 6 report as Exhibit 75.
 7 JUDGE COUGHLIN: Okay.
 8 MR. RYAN: No objections, Your Honor.
 9 JUDGE COUGHLIN: All right, CEX75 is
 10 admitted.
 11 MR. FIGUR: Can you please go back to the
 12 demonstrative? Let's hold for one second. Would you
 13 like to renew your question?
 14 MR. RYAN: When you're done.
 15 MR. FIGUR: Okay. So Dr. Miller, did you
 16 prepare a demonstrative to assist the Court with
 17 your testimony today?
 18 MR. MILLER: Yes.
 19 MR. FIGUR: Please look at the display.
 20 Can you please scroll through? Is this your
 21 demonstrative?
 22 MR. MILLER: Yes.

1 MR. MORRIS: Each and every one, correct.
 2 JUDGE COUGHLIN: Yeah, you need to have
 3 that as part of the official record. The court
 4 reporter's got the official record from this
 5 proceeding, so that means each and every exhibit.
 6 And obviously listing what's admitted, what's maybe
 7 been excluded. Okay, all right.
 8 MR. MORRIS: Yeah, I've been doing that.
 9 JUDGE COUGHLIN: Okay, good, we're on the
 10 same page. All right, so we're dispensing with CEX78
 11 and we're just going to deal with CEX75. Go right
 12 ahead.
 13 MR. FIGUR: First I'd like to thank
 14 counsel for making this easy, and thank you for
 15 coming up with a solution, as well. So Dr. Miller,
 16 can you please take a look at what's been marked as
 17 Complainant's Exhibit 75? Please scroll. Let's go
 18 back to the top, thank you. Do you recognize this
 19 document?
 20 MR. MILLER: Yes.
 21 MR. FIGUR: And what is it?
 22 MR. MILLER: That is my expert report.

1 MR. FIGUR: Thank you. Did you prepare it?
 2 MR. MILLER: Yes.
 3 MR. RYAN: Your Honor, this appears to be
 4 a fairly lengthy document which we're seeing right
 5 now for the first time. Is there any chance we can
 6 get a copy of this?
 7 MR. FIGUR: Do you mind sending --
 8 JUDGE COUGHLIN: Yeah, I think that was
 9 where we left off, but I know you wanted to dispense
 10 with the question and move on. But yeah, I think we
 11 should all have this. Incidentally, is this -- with
 12 demonstrative aids, right, if it's truly an aid,
 13 then it's supposed to help facilitate some of the
 14 testimony. If you want me to be able to rely on any
 15 of that, then it's an exhibit. So you appreciate the
 16 distinction, right?
 17 MR. FIGUR: Absolutely, Your Honor, thank
 18 you.
 19 JUDGE COUGHLIN: Okay. And so what is this
 20 going to be?
 21 MR. FIGUR: So this is going to help Dr.
 22 Miller explain the steps he took in coming to his

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1 expert opinion.
 2 JUDGE COUGHLIN: Okay.
 3 MR. FIGUR: So it just simplifies things,
 4 hopefully for -- it hopefully simplifies things for
 5 everybody.
 6 JUDGE COUGHLIN: Okay.
 7 MR. RYAN: Again, Your Honor, it would be
 8 really helpful to us if we had a copy. We have not
 9 seen this. I thought when he first pulled it up it
 10 was just a single chart, but it looks like it goes
 11 on for many pages.
 12 JUDGE COUGHLIN: Okay, yeah, understood.
 13 MR. RYAN: In fairness --
 14 MR. FIGUR: Can we send him --
 15 JUDGE COUGHLIN: Yeah, so let's pause and
 16 exchange this, and let me give Respondent the
 17 opportunity to have some time to take a look at it
 18 and then we'll come back and pick up there.
 19 MR. RYAN: Thank you, Your Honor.
 20 JUDGE COUGHLIN: Okay.
 21 MR. FIGUR: Thank you, Your Honor.
 22 MR. RYAN: Are you sending it to me

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1 MR. MILLER: If that's okay.
 2 JUDGE COUGHLIN: Yeah, that's fine. We can
 3 check to see if we're able to print, as well, if a
 4 hard copy would be helpful.
 5 MR. RYAN: I'm trying to get on the wifi
 6 right now, Your Honor, so I can see the document
 7 they're sending me.
 8 MR. MILLER: Here you go, the second one
 9 (audio interference).
 10 JUDGE COUGHLIN: Thank you, Dr. Miller.
 11 MR. FIGUR: Your Honor, can we go off the
 12 record for just a second so I can --
 13 JUDGE COUGHLIN: Sure, we can go off the
 14 record.
 15 (Whereupon, the above-entitled matter
 16 went off the record at 3:40 p.m. and resumed at 3:41
 17 p.m.)
 18 JUDGE COUGHLIN: Quick question, though.
 19 These are not proposed exhibits, right? You're just
 20 doing them to help facilitate testimony?
 21 MR. FIGUR: Correct. To help Dr. Miller
 22 walk through each step of his process.

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1 electronically? Do you have a hard copy you could
 2 give us?
 3 MR. FIGUR: No.
 4 JUDGE COUGHLIN: How many demonstratives
 5 do you have?
 6 MR. FIGUR: Two. The second one is one
 7 page.
 8 JUDGE COUGHLIN: Okay. Why don't you send
 9 both?
 10 MR. FIGUR: Yes, we're going to do that.
 11 JUDGE COUGHLIN: Okay. And what I'll do is
 12 once I know that Respondent has it, then we'll take
 13 a break so that there's the opportunity to review
 14 it, and then we'll pick up after that.
 15 MR. FIGUR: Thank you, Your Honor. I was
 16 just checking to see if I had a hard copy and I do
 17 not.
 18 JUDGE COUGHLIN: Okay.
 19 MR. FIGUR: You might have it?
 20 MR. MILLER: I believe I have a hard copy.
 21 I might have a hard copy in the back right there.
 22 JUDGE COUGHLIN: Do you want to check?

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1 JUDGE COUGHLIN: Okay, all right.
 2 MR. RYAN: Chuck, is it five pages?
 3 MR. FIGUR: Yes.
 4 MR. RYAN: And I have all five here?
 5 MR. FIGUR: Yes.
 6 JUDGE COUGHLIN: Okay, I'm only staying on
 7 the record to make sure, Respondent, that you've
 8 received them. So you have them?
 9 MR. RYAN: Yeah, I have them, Your Honor.
 10 JUDGE COUGHLIN: Do you want some time?
 11 MR. RYAN: I am just about ready to
 12 proceed.
 13 JUDGE COUGHLIN: Okay, then we'll just
 14 stand by here on the record, but you're welcome to
 15 take some time if you need.
 16 MR. RYAN: Okay, on record may I just ask
 17 are these numbers straight out of the report?
 18 There's nothing new here that's not in the report?
 19 MR. MILLER: The numbers are straight out
 20 of the report, yes, sir.
 21 MR. RYAN: Then we can proceed.
 22 JUDGE COUGHLIN: Okay.

1 MR. RYAN: Thank you.
 2 MR. FIGUR: Okay, Dr. Miller, can you
 3 please explain the data you reviewed before
 4 determining if you could come to a preliminary
 5 conclusion?
 6 MR. MILLER: Yes, if the demonstrative
 7 could be displayed on my screen again it would be
 8 helpful. All right, so this is a table from my
 9 report. What I did was to compare the properties
 10 listed from PP&G's safety data sheet for the yellow
 11 primer with the NEIC results that the field and
 12 laboratory staff collected and then made this table.
 13 So the first column on the left is the properties
 14 that are listed on the safety data sheet.
 15 The second column are the results from
 16 the safety data sheet for PP&G, and then the third
 17 column are NEIC results. What you'll see in the
 18 first two rows for physical state and color, that it
 19 was a yellow liquid. The third row is flashpoint.
 20 The safety data sheet states the flashpoint of 44.44
 21 degrees. NEIC results were also 44 degrees.
 22 The densities were nearly identical at

1 procedure. As we mentioned before, eight of the
 2 drums were tested in the lab. Those are Drum 06 --
 3 the station is the second row -- Drum 06 through
 4 Drum 29.
 5 What you'll see is a range of values from
 6 approximately 37 mg/l of chromium through about 350
 7 milligrams of chromium per liter of TCLP extraction
 8 fluid.
 9 MR. FIGUR: Thank you. Dr. Miller, are
 10 there different forms of chromium?
 11 MR. MILLER: Yes, there are a variety of
 12 different chromium species or redox species. Pure
 13 chromium by itself is chromium in the zero valent
 14 state. So that is there are an equal number of
 15 protons and electrons. There is also trivalent
 16 chromium. This is a chromium species in which there
 17 are three more protons than there are electrons.
 18 And then lastly, many people are familiar
 19 with hexavalent chromium. This is chromium in which
 20 there are six more protons than there are electrons.
 21 MR. FIGUR: For purposes of the toxicity
 22 characteristic leaching procedure, or TCLP, does it

1 1.2 grams per mil. The percent solids that were
 2 tested reported on the safety data sheet and NEIC
 3 results are also very close. Then lastly, strontium
 4 chromate is one of the ingredients listed in the
 5 safety data sheet that gives this product its yellow
 6 color.
 7 That safety data sheet lists the percent
 8 strontium chromate between 7 and 25 percent. In the
 9 calculations, NEIC results were about 7.4 percent.
 10 MR. FIGUR: Thank you. Is this the same
 11 information that allowed you to make a preliminary
 12 prediction that the other 12 drums likely would fail
 13 the TCLP for chromium?
 14 MR. MILLER: These results, along with the
 15 NEIC laboratory results for the TCLP extraction.
 16 MR. FIGUR: Display Page 2. Can you
 17 briefly discuss the actual TCLP results for the
 18 eight drums?
 19 MR. MILLER: So these are the NEIC
 20 laboratory results. The second to last row are final
 21 chromium in the leachates. It's chromium in
 22 milligrams per liter for the TCLP extraction

1 matter which form of chromium is being measured?
 2 MR. MILLER: No, sir. It is only total
 3 chromium.
 4 MR. FIGUR: Thank you. Can you please
 5 bring up Complainant's Exhibit 12, Page 2? Can you
 6 please scroll down? Do you recognize this document?
 7 And will you explain a bit about what it is?
 8 MR. MILLER: I recognize this document as
 9 being the waste manifest that Prime Ink used to ship
 10 the 32 drums from its facility in Salt Lake to an
 11 RCRA-permitted treatment storage and disposal
 12 facility.
 13 MR. FIGUR: Can you please look at Section
 14 9A of the document and read Box 1?
 15 MR. MILLER: I see that section, but I
 16 cannot read that very well.
 17 MR. FIGUR: Can you please read at the top
 18 of the page? If you don't mind, please scroll up.
 19 Can you please read the manifest tracking number in
 20 its entirety?
 21 MR. MILLER: The manifest tracking number
 22 in Box 4 is 015158774JJK.

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1 MR. FIGUR: Thank you. Can you now please
2 bring up Respondent's Exhibit 16, Page 3? Can you
3 please read the manifest tracking number again?
4 MR. MILLER: Tracking number 015158774JJK.
5 MR. FIGUR: Is this the same manifest?
6 MR. MILLER: I believe so.
7 MR. FIGUR: Can you please read Box 1 of
8 Section 9A?
9 MR. MILLER: Not very well.
10 MR. FIGUR: Okay. Your Honor, both parties
11 submitted this exact same manifest. At the time, we
12 submitted it because we wanted to acknowledge that
13 Respondent did eventually send the waste at issue
14 off as hazardous waste. It was only recently upon
15 looking at this manifest again that we realized when
16 we looked at a cleaner subsequent copy that we
17 didn't feel it was necessary to place into evidence
18 that we found a readable Box 1 in Section 9B.
19 At this time, as a demonstrative, I'd
20 like to put it on screen and confirm that is the
21 exact same manifest in all respects except for one,
22 and then ask Dr. Miller to read the box. We don't

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1 consistent with the yellow primer and shipped under
2 this manifest contained trivalent chromium?
3 MR. MILLER: No, I don't believe any of
4 the material had trivalent chromium, regardless of
5 the outcome of my testimony.
6 MR. FIGUR: And would you have an opinion
7 on which species of chromium is in the waste?
8 MR. MILLER: Yes, based on the material
9 that I reviewed, the safety data sheets that was
10 produced by PP&G, it lists two ingredients, barium
11 chromate and strontium chromate. Chromate is
12 commonly accepted in chemistry to mean the
13 hexavalent species chrome 6.
14 MR. FIGUR: And to your knowledge, was any
15 speciation work done?
16 MR. MILLER: No. No speciation work was
17 performed that I'm aware of.
18 MR. FIGUR: Please bring up Complainant's
19 Exhibit 32, Page 31. And Your Honor, I'll note that
20 this is from the SDS. It's in the clean copy of
21 Exhibit 32, so it shouldn't be a problem as Exhibit
22 10 appears to have been.

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1 want to put this version of the manifest into
2 evidence. We just want to confirm that it's the same
3 manifest and then that it's an easily readable copy.
4 MR. RYAN: No objections.
5 JUDGE COUGHLIN: Okay.
6 MR. FIGUR: Dr. Miller, can you please
7 read the manifest tracking number?
8 MR. MILLER: 015158774JJK.
9 MR. FIGUR: And do you see any handwriting
10 on the manifest?
11 MR. MILLER: Yes, I do, under Box 1.
12 MR. FIGUR: Is there any handwriting or
13 other apparent change in Section 9A, Box 1?
14 MR. MILLER: None that I see.
15 MR. FIGUR: Can you please now read what
16 is in Box 1?
17 MR. MILLER: Yes. Inside Box 1 is UN1993
18 waste flammable liquids N.O.S. trivalent chromium
19 methyl ethyl ketone 3, PGII.
20 MR. FIGUR: Thank you, Dr. Miller. Please
21 go back to the demonstrative, Page 2. In your
22 opinion, is it likely that any of the drums

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1 JUDGE COUGHLIN: Okay.
2 MR. FIGUR: Do you recognize this
3 document? Can you please stay at the top for one
4 second?
5 MR. MILLER: Yeah, I believe this is the
6 safety data sheet for the universal urethane yellow
7 primer.
8 MR. FIGUR: Please scroll to Section 3.
9 What does Section 3 tell us?
10 MR. MILLER: So Section 3 of the safety
11 data sheet lists the composition information
12 ingredients. This includes all ingredients, any
13 additives that a company may include in their
14 product. And so what we see from this table on the
15 third row down is strontium chromate, and then at
16 the very bottom is barium chromate.
17 Again, I looked at the CAS numbers, which
18 is the third column on this table, and you'll see
19 the CAS number, which stands for the Chemical
20 Abstracts Service number, and I looked up the
21 information for this product, these two products,
22 rather, based on these CAS numbers. In my review of

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1 those CAS numbers, there was nothing that would
 2 suggest that these products or information from
 3 these CAS numbers would contain a trivalent chromium
 4 species.
 5 MR. FIGUR: Thank you.
 6 MR. RYAN: Your Honor, may I ask a
 7 question real quick? This doesn't appear to match my
 8 Exhibit 32.
 9 JUDGE COUGHLIN: Okay.
 10 MR. RYAN: From the pre-hearing exchange.
 11 What page in Exhibit 32 are you on?
 12 MR. FIGUR: We are on 33, I believe.
 13 MR. RYAN: Under Section 3? Page 33? The
 14 numbers are cut off on my copy. Can you pull up 33
 15 again?
 16 MR. MORRIS: Yes.
 17 MR. RYAN: Page 33 of 8 is what we're
 18 looking at?
 19 MR. MORRIS: Exhibit 32, Page 33.
 20 MR. RYAN: That's it, thank you. Okay.
 21 JUDGE COUGHLIN: All right, can you see
 22 it?

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1 describe what's on the screen now?
 2 MR. MILLER: So this demonstrative is a
 3 list of the most relevant literature that was cited
 4 in my expert report. It's broken down into three
 5 different components. The first is a list of
 6 industrial chemical references, so I used these
 7 materials to understand this product. Then second is
 8 physical and chemical standards, so I used these
 9 references to make sure that the atomic mass of
 10 chromium that I used was correct.
 11 Then the third was specific research that
 12 I was able to find in the scientific literature with
 13 respect to the different components listed in the
 14 SDS sheet.
 15 MR. FIGUR: Thank you. You were going to
 16 mention another step you took in your analysis.
 17 Could you please tell us about that now?
 18 MR. MILLER: So what I failed to mention
 19 is that I also performed geochemical modeling of the
 20 strontium chromate pigment, as well.
 21 MR. FIGUR: Can you tell us a tiny bit
 22 about the geochemical modeling you conducted?

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1 MR. RYAN: I can see it now, Your Honor.
 2 JUDGE COUGHLIN: All right, great.
 3 MR. RYAN: Unfortunately, the page numbers
 4 on my copy from the pre-hearing exchange were cut
 5 off so I couldn't find it. Thank you.
 6 JUDGE COUGHLIN: Okay, all right.
 7 MR. FIGUR: Okay, Dr. Miller, turning back
 8 to your primary tasks for this matter, what did you
 9 do after you made your preliminary prediction that
 10 the other 12 drums likely would fail the TCLP for
 11 chromium?
 12 MR. MILLER: So then I began an in-depth
 13 study of the product. I also reviewed all the
 14 relevant literature that I could find as it relates
 15 to this product. I once again went back to NEIC's
 16 field notes, field data, the laboratory notes, all
 17 of the laboratory notes, all of the laboratory data
 18 and reevaluated my preliminary prediction that the
 19 material would fail the TCLP test, and I began that
 20 study.
 21 MR. FIGUR: Thank you. Can you put up Page
 22 3 of the demonstrative now, please? Can you briefly

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1 MR. MILLER: Yes, sir. I used EPA's
 2 software called MINTEQA2. This is a computer
 3 software that predicts geochemical equilibrium in
 4 aqueous solutions, which is another way, much more
 5 simple to say this software predicts what is
 6 dissolved in a solution and what might be
 7 precipitated.
 8 MR. FIGUR: What were the results of your
 9 geochemical modeling?
 10 MR. MILLER: So when I performed this
 11 model of strontium chromate in the TCLP leachate,
 12 what the model results showed was that chromium was
 13 in excess of 2,000 milligrams per liter, which is
 14 400 times the regulatory limit under RCRA. It's also
 15 much higher than what the actual TCLP results were
 16 from the lab.
 17 MR. FIGUR: After obtaining the results
 18 from the geochemical model, did you attempt to
 19 understand the seemingly large difference between
 20 the model and the lab results?
 21 MR. MILLER: Yes. So with such a large
 22 difference I was concerned, so what I did was to go

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1 back and investigate again the individual components
2 listed on the safety data sheet for this product.
3 What I was aware of and became satisfied with is
4 that there were three different components within
5 this yellow primer that explained the difference
6 between the geochemical model and the laboratory
7 analytical results.

8 MR. FIGUR: Can you quickly explain those
9 three?

10 MR. MILLER: So this is a polyurethane
11 product. If you've ever had a wooden fence, you
12 apply polyurethane. Polyurethane is hydrophobic. It
13 doesn't want to dissolve in the TCLP extracting
14 solution. So that is one reason why the
15 concentration of chromium is different from the
16 model.

17 The second reason that the model results
18 were higher than the laboratory results would be
19 this product, polyurethane, when this is put
20 together, the strontium chromate pigments, those
21 pigments will actually get physically wrapped up by
22 the polyurethane compounds. As a result, they are

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1 sequestered within the polyurethane product, which
2 then again will not dissolve.

3 There's one other factor then. I'm
4 blanking on it at the moment. Oh, and so a third
5 component is actually two other ingredients that are
6 listed on the safety data sheet. One of those
7 ingredients for the product is kaolin, and a second
8 ingredient in the product is titanium dioxide.

9 The literature that I cited in my expert
10 report goes on to demonstrate that once the
11 strontium chromate, if it was exposed to the TCLP
12 leachate, those pigments may also absorb or adsorb,
13 more correctly, the chromium that had been leached
14 into the TCLP procedure. So think of it as that
15 chromium atom being absorbed onto the surface of
16 those pigments, and then that chromium would no
17 longer be in the TCLP.

18 So between these different factors, I
19 felt like I adequately understood why there was such
20 a large difference between the results of the
21 geochemical model and the laboratory results.

22 MR. FIGUR: Was the modeling useful? If

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1 so, how?

2 MR. MILLER: The modeling is very useful.
3 So first off, I wanted to make sure that I could
4 explain where the chromium came from. The model
5 predicts that strontium chromate pigment will
6 dissolve in the TCLP procedure. I wanted to
7 understand hey, what's the maximum concentration
8 that could dissolve and the analytical results are
9 less than that. It gives further confidence in the
10 results from the laboratory.

11 MR. FIGUR: When you say maximum
12 concentration, what did you use as your starting
13 point?

14 MR. MILLER: The starting point for the
15 maximum concentration in this model is the strontium
16 chromate pigment based on the composition listed in
17 the safety data sheets, and that would be at the low
18 end. I used the low end for this particular model.

19 MR. FIGUR: Thank you. Please move to Page
20 4. Is this table from your expert report?

21 MR. MILLER: This is similar to Table 5 in
22 my expert report. However, I rearranged the data to

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1 make it easier to explain my report, as well as a
2 few annotations.

3 MR. FIGUR: Can you please walk us through
4 the table?

5 MR. MILLER: So this is a table, in the
6 first column it lists the 20 containers of material
7 that was consistent with the yellow primer that the
8 field staff had sampled. Across the top of the
9 table, the second column are the XRF chromium
10 results. These were what were measured by the field
11 staff.

12 The next column is the measured TCLP
13 chromium, so these results are from the NEIC
14 laboratory, what we actually measured in the TCLP
15 leachate. The next column is the measured TCLP
16 leachate chromium. If I could back up just a little
17 bit, the first column, Drums 6 through 29, again,
18 those are the results from the eight drums that the
19 laboratory actually tested.

20 And then Drum 3 through Drum 32, that's
21 just approximately the bottom half of this table,
22 these are the results for the 12 drums that NEIC

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1 field staff took a sample, but the sample was not
2 returned to the laboratory for further analyses. So
3 the second column shows the XRF results.

4 Those XRF results are the amount of
5 chromium that NEIC field staff tested. You'll see
6 from Footnote 1 at the top of the table, next to
7 milligrams per kilogram, that first footnote I would
8 like to explain. The NEIC field staff walked out
9 with the XRF. XRF is capable of measuring metals in
10 the field.

11 When NEIC field staff performed those
12 measurements, because the concentration of chromium
13 in these products are so very high, it exceeds
14 what's called the linear range of the instrument. So
15 these concentrations, as I've noted, are
16 conservative, semi-quantitative results. Again, the
17 concentration is so high the field data, the
18 instrument gets a little wonky. But these are a good
19 estimate of the concentrations.

20 So the third column is the measured TCLP
21 chromium. So again, these are the eight drums that
22 NEIC field staff brought back with the values that

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1 were reported. Those values range from about 37 all
2 the way through 350 milligrams of chromium per
3 liter. For Drums 3 through Drums 32, you will see
4 that there is N/A, which is Not Applicable or Not
5 Analyzed. We didn't have laboratory samples for
6 those.

7 Continuing on to the next column entitled
8 measured TCLP leachable chromium and percentage. So
9 to derive these numbers, what I did was to take the
10 measured TCLP chromium, and that was the denominator
11 from the measured XRF chromium. So the measured XRF
12 for Drum 6 was 12,000. I divided that by the actual
13 analytical results of 36.8, and what you get is a
14 measured TCLP of 0.31 percent.

15 I did that for all the eight drums that
16 were tested. You see the measured TCLP was 0.31 all
17 the way up to 1.5 percent leachable chromium. The
18 next column to the right is the predicted TCLP
19 chromium. You'll note for the eight drums which NEIC
20 had samples, it says Not Applicable. I did not make
21 a predicted TCLP number there because we have a
22 measured TCLP number. But for Drums 3 through 32,

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1 there are a predicted TCLP chromium number.

2 So what I'd like to explain is how that
3 number is derived, and the column to the left is the
4 0.29 percent for the measured TCLP leachable
5 chromium. If you were to add, for all eight drums,
6 if you were to add up those values and get an
7 average leachable chromium from the eight drums,
8 what you would get is a value of approximately 0.42
9 percent leachable chromium.

10 That would include Drum 22, which is
11 highlighted in yellow. Drum 22 is 10 times higher,
12 way higher than the average of the remaining
13 results. I wanted to make sure to make a
14 conservative prediction of what the predicted TCLP
15 would be, so I removed Drum 22 from my calculation.

16 That is how you get the value of
17 predicted leachable chromium of 0.29 percent. I
18 wanted to make sure to have a conservative value
19 when making the prediction. So then you --

20 MR. FIGUR: I'm sorry. You go ahead. I
21 thought you were pausing, I apologize.

22 MR. MILLER: So when you multiple 0.29

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1 percent by the field measured XRF chromium, which is
2 for Drum 3 16,000, the predicted TCLP chromium comes
3 out at 46 milligrams of chromium per liter in the
4 TCLP leachate. That's how those numbers are derived.

5 And then the last column on the right is
6 the actual or predicted RCRA toxicity
7 characteristics. So given the information for those
8 eight drums at the top, the information I have and
9 the laboratory results, those six drums do meet the
10 definition of a RCRA characteristic hazardous waste
11 for toxicity.

12 MR. FIGUR: You derived the numbers for
13 the 12 drums at the bottom of the table and
14 predicted TCLP numbers for them. You've mentioned
15 you've been conservative in getting there. Have you
16 taken any further steps before reaching your
17 conclusion that you didn't include in the table?

18 MR. MILLER: I did also consider, in my
19 training as an analytical chemist, I wanted to be
20 conservative in making this prediction of what the
21 TCLP chromium would be, but I should not ignore
22 data. So whenever I considered the predicted values,

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1 I went back and said that one Drum 22, it is a valid
2 analytical result.

3 I did not use that in coming up with the
4 conservative estimate, but I did use that value --
5 when I considered the variability among the
6 analytical results, I included that value because a
7 high value or a value that's very different is going
8 to result in an uncertainty value that would be
9 larger.

10 So after I considered all the data, the
11 laboratory data, I came up with a more conservative
12 estimate of what the final TCLP results would be for
13 those 12 drums in question.

14 MR. FIGUR: So Dr. Miller, in your expert
15 opinion, would the yellow material in the 12 drums
16 not sampled NEIC have exceeded the RCRA toxicity
17 characteristic for chromium?

18 MR. MILLER: Yes. It is my opinion based
19 on the known chemistry of chromium, the known
20 chemistry of the strontium chromate pigment, the
21 data that I was presented and reviewed, it is my
22 opinion that all 12 of those drums would exceed the

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1 RCRA chromium level for the characteristic of
2 toxicity. That value is 5 milligrams per liter, and
3 I believe that those 12 drums would likely exceed,
4 by at least a factor of five, that critical level.

5 MR. FIGUR: Thank you, Dr. Miller. No
6 further questions at this time.

7 MR. RYAN: I have about two or three
8 questions for you, Dr. Miller. I'm Mark Ryan. I
9 represent Prime. You said earlier in your testimony
10 that you were asked by the team what was in the
11 other 12 drums. Are you aware from your
12 conversations with the team -- I assume by team you
13 mean the EPA counsel -- are you aware from the team
14 that Prime has never questioned the contents of
15 these drums?

16 MR. MILLER: I'm sorry? Repeat that again?

17 MR. RYAN: Are you aware from working with
18 the EPA that Prime in this case has never questioned
19 the contents of these drums?

20 MR. MILLER: Yes, I believe I'm aware of
21 that fact.

22 MR. RYAN: and you mentioned on the

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1 polyurethane, you were discussing this as
2 polyurethane primer, that it was hydrophobic.
3 Hydrophobic means it doesn't mix with water really,
4 doesn't it? Isn't that true?

5 MR. MILLER: Yes.

6 MR. RYAN: And I asked you a question
7 about this earlier on that demonstrative, you
8 mentioned the flashpoint, you were putting up the
9 results that you had seen from the NEIC
10 investigators who collected their samples on August
11 24th. But just to be clear, you, in your analytical
12 chemistry, in your report, you didn't take an
13 independent look at flashpoint, did you?

14 MR. MILLER: I reviewed all of the
15 flashpoint results from the NEIC laboratory.

16 MR. RYAN: Yes, I understand that. But you
17 didn't do any lab work yourself on flashpoint on the
18 samples from these --

19 MR. MILLER: No, sir, I did not do any lab
20 work.

21 MR. RYAN: That's all I have. Thank you,
22 Your Honor.

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1 JUDGE COUGHLIN: Okay. And Mr. Ryan, I
2 want to just clarify and make sure I'm following.
3 When you asked the witness that Prime has never
4 questioned the contents of these drums, you're
5 referring to the 12?

6 MR. RYAN: To any of them.

7 JUDGE COUGHLIN: Any of them?

8 MR. RYAN: Yeah. It's our position that
9 those drums were the paint that we picked up from
10 PPG and they made it back to Salt Lake City and
11 we've never questioned what's inside those drums.

12 JUDGE COUGHLIN: Okay, all right, thank
13 you. Any re-direct?

14 MR. FIGUR: No, no further questions.
15 Thank you.

16 JUDGE COUGHLIN: All right. Dr. Miller,
17 thank you very much for your testimony.

18 MR. MILLER: Thank you.

19 JUDGE COUGHLIN: Okay, it's 4:20. I don't
20 know who your next witness is and whether that means
21 you might need to break and continue or you want to
22 just start fresh in the morning? Where are we?

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1 MR. FIGUR: Your Honor, our next witness
2 is our penalty witness and her testimony will
3 probably be lengthy, and I'm guessing cross will be,
4 too. So might make most sense to start fresh in the
5 morning.

6 JUDGE COUGHLIN: All right. How do you
7 feel about that, Prime?

8 MR. RYAN: We're fine with it, Your Honor.

9 JUDGE COUGHLIN: Okay, all right. I hate
10 to sacrifice time, but I also want to make it
11 practical, too. Is there anyone else that could be
12 called to -- no?

13 MR. FIGUR: No, our only other witness
14 will be a rebuttal witness. I should've checked with
15 you first, but do you feel the same way?

16 JUDGE COUGHLIN: Basically there's no good
17 use of the remaining 25 minutes we've got. Okay, all
18 right. So why don't we do that then? We'll wrap up
19 for today. We can get started at 8:30 if that still
20 works for everyone?

21 MR. RYAN: We can go earlier, Your Honor.

22 JUDGE COUGHLIN: Okay. How about that?

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1 8:00?

2 MR. FIGUR: We're amenable.

3 JUDGE COUGHLIN: Okay, great. That will
4 maybe help us with some timing, too. Why don't we do
5 that? We'll reconvene at 8:00 a.m. tomorrow. Let me
6 just check in quickly while we have a few minutes.
7 Lunch, would you like an hour tomorrow? Would you
8 like to try to shorten it? Do you want to see how it
9 goes? I know that the food options are a little bit
10 challenging because there's nothing really close. We
11 ended up ordering in.

12 MR. RYAN: Your Honor, speaking for
13 myself, an hour would be nice, but I also am
14 cognizant of the possibly tight schedule considering
15 how things are going so far today. We shall see. I
16 think maybe Wednesday we look at shortening things
17 up to keep it moving? I think tomorrow we would
18 probably enjoy an hour.

19 JUDGE COUGHLIN: Okay, so let's plan on
20 that. I only ask because obviously if we're going to
21 shorten it you need to make arrangements, and I want
22 you to at least have a heads-up to do that. So we'll

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1 plan on an hour tomorrow and then see where we stand
2 for Wednesday. Anything else before we wrap up?

3 MR. FIGUR: Nothing from us, Your Honor.

4 JUDGE COUGHLIN: Okay. Then what I'll do
5 is for today we'll just stand in recess. We'll pick
6 up tomorrow at 8:00 a.m. I'm just going to take a
7 moment to collect my things, but we don't need to
8 stay on the record for that. I'll just reiterate not
9 to have any conversations with me. No one has, but
10 I'm just putting that out there. I hope you all have
11 a good night. We'll see you in the morning.

12 MR. RYAN: Thank you, Your Honor.

13 MR. FIGUR: Thank you, Your Honor.

14 (Whereupon, the above-entitled matter
15 went off the record at 4:20 p.m.)

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