

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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IN THE MATTER OF:	:
	: Docket No.
NEW PRIME, INC.,	: RCRA-08-2020-0007
	:
Respondent.	:
	:

Volume IV

Thursday,
October 27, 2022

United States Courthouse
Western District of Missouri
(Southern Division)
Bankruptcy Courtroom, Second Floor
222 N. John Q. Hammons Parkway
Springfield, Missouri 65806

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 8:00 a.m.
 3 JUDGE COUGHLIN: All right. Welcome
 4 back, everybody. Good morning, again. We're on
 5 day four, and today is Thursday, October 27th,
 6 just at 8:00 according to my watch which I like
 7 better than that clock. So anything we need to
 8 address before we get started with Respondent's
 9 next witness?
 10 MR. McKAY: No, ma'am.
 11 JUDGE COUGHLIN: Okay. No? No?
 12 MS. JACKSON: No, we're good.
 13 JUDGE COUGHLIN: Okay, wonderful. All
 14 right. Who would you like to call?
 15 MR. RYAN: Your Honor, real quickly,
 16 before I call Mr. Singleton, may I approach?
 17 JUDGE COUGHLIN: Sure -- sure.
 18 MR. RYAN: I have a minor housekeeping
 19 matter on the handling of evidence. I discussed
 20 this already with my opposing counsel.
 21 JUDGE COUGHLIN: Okay.
 22 MR. RYAN: We're going to have, on one

6

1 MR. RYAN: And then we just make it
 2 part of the record, and if we have this marked as
 3 14A so it be a distinct document from the one in
 4 the prehearing exchange, cause it had been marked
 5 by the witness.
 6 JUDGE COUGHLIN: It would be the
 7 marked up 14 that we're calling 14A?
 8 MR. RYAN: Exactly.
 9 JUDGE COUGHLIN: Yes. That's fine.
 10 MR. RYAN: If that works for you then
 11 --
 12 JUDGE COUGHLIN: That's fine and I
 13 think, you know, what I might do, too, just as --
 14 I always like to have a little contingency plan,
 15 so I may, if you don't mind once we're all
 16 finished, you all take photos, I may take it and
 17 do a quick scan from an app on my phone, which is
 18 what I did with that email --
 19 MR. RYAN: Okay.
 20 JUDGE COUGHLIN: -- so that I have a
 21 copy, too, just as a backup.
 22 MR. RYAN: Okay.

5

1 of the exhibits -- it will be Respondent's
 2 Exhibit 14 --
 3 JUDGE COUGHLIN: Okay.
 4 MR. RYAN: -- which is an aerial
 5 photo, I would like to have the witness mark it
 6 up just to show where things are.
 7 JUDGE COUGHLIN: Okay.
 8 MR. RYAN: I think it will be helpful
 9 for the Court to understand where this is and
 10 that is, and I propose we do it the old-fashioned
 11 way with a sharpie and a picture --
 12 JUDGE COUGHLIN: Okay.
 13 MR. RYAN: -- and then have the
 14 witness mark it up. You know, I'll make sure the
 15 record's clear what he's marking.
 16 JUDGE COUGHLIN: Okay.
 17 MR. RYAN: And we can either give it
 18 to Your Honor or to the court reporter, and I
 19 would suggest that opposing counsel and I take
 20 pictures of it so we have -- we know what he's
 21 done before it disappears.
 22 JUDGE COUGHLIN: Right.

7

1 JUDGE COUGHLIN: And then we'll hand
 2 it over to the court reporter to take back and
 3 make a part of the record.
 4 MR. RYAN: Okay.
 5 JUDGE COUGHLIN: You know, just
 6 because I've encountered issues sometimes with
 7 physical papers and the transmission of that, so
 8 I always like to have a backup plan.
 9 MR. RYAN: It's okay if it's --
 10 JUDGE COUGHLIN: Okay.
 11 MR. RYAN: -- and is that all right
 12 with you guys?
 13 MS. JACKSON: Yes.
 14 JUDGE COUGHLIN: Okay. All right,
 15 great. And Mr. Morris, your -- you'll be able to
 16 associate a paper document with the record of
 17 evidence of everything else that's digital?
 18 COURT REPORTER: Yes.
 19 JUDGE COUGHLIN: Okay, perfect.
 20 Great.
 21 MR. RYAN: And I want to thank counsel
 22 for being cooperative with me on this thing.

8

1 JUDGE COUGHLIN: Yes, absolutely.
 2 Thank you.
 3 MR. RYAN: With that, Your Honor, I'd
 4 like to call Mr. Singleton to the stand.
 5 JUDGE COUGHLIN: Okay. Good morning.
 6 MR. SINGLETON: Good morning.
 7 WHEREUPON,
 8 BRIAN SINGLETON
 9 was called as a witness by Counsel for the
 10 Respondent and, after having been first duly
 11 sworn, was examined and testified as follows:
 12 JUDGE COUGHLIN: All right. Thank
 13 you. Please have a seat. The witness has been
 14 sworn. Please, go ahead, Mr. Ryan.
 15 DIRECT EXAMINATION
 16 BY MR. RYAN:
 17 Q Mr. Singleton, could you please state
 18 and spell your name for the record?
 19 A Yes. Brian Matthew Singleton,
 20 Singleton, S-I-N-G-L-E-T-O-N.
 21 Q And who are you employed by?
 22 A Prime, Inc.

10

1 City?
 2 A Two thousand -- September of 2010.
 3 Q And what were your job duties at the
 4 time?
 5 A When I moved, I still had a few trucks
 6 that I was running because our operation wasn't
 7 big enough at the time to have a full-time
 8 operations manager there, so I did a little
 9 split, still was the fleet manager for a little
 10 while, and then -- and the operations manager as
 11 well.
 12 Q And when did ultimately become the
 13 manager of the Salt Lake City facility?
 14 A Pretty much since I got there in 2010,
 15 2011, somewhere around that -- that time.
 16 Q So you were wearing two hats at the
 17 time?
 18 A Yes, sir.
 19 Q Now as the terminal manager, what is
 20 your job now?
 21 A Basically, as terminal manager, I have
 22 multiple departments, and those departments have

9

1 Q And give me your job title at Prime?
 2 A I'm the terminal manager in Salt Lake
 3 City.
 4 Q And before we get into what you do as
 5 the terminal manager, could you give us a quick
 6 history of your work history?
 7 A Yes. I started about 16-1/2 years
 8 ago, started as a night fleet manager in -- here
 9 in Springfield. Then I moved to a daytime fleet
 10 manager role. And then in 2010, I moved to Salt
 11 Lake and become an operations manager and
 12 terminal manager in the Salt Lake facility.
 13 Q And what does a fleet manager do?
 14 A A fleet manager manages a fleet of
 15 trucks, you know, 60, 70, 80 trucks at a time;
 16 you know, talk to the driver, gets freight for
 17 the -- for the drive, etcetera.
 18 Q And then why did you move to Salt Lake
 19 City?
 20 A I moved there to become the operations
 21 manager of our facility there.
 22 Q And when did you move to Salt Lake

11

1 managers, and those managers report to me.
 2 Q And has the Salt Lake City facility
 3 grown over time?
 4 A Absolutely. We had -- in 2010, we had
 5 approximately probably 20 people there at the
 6 time when I got there, and today I probably have
 7 175.
 8 Q And also in terms of area, have you
 9 grown?
 10 A Yes, sir.
 11 Q And could you tell the Judge, you
 12 know, what -- where this facility is located and
 13 what it looks like?
 14 A Yes. The facility that we're talking
 15 about now we moved into in about 2015. It's
 16 basically by the airport. It's an industrial
 17 area of the city. You know, it's -- we have
 18 about 34 plus or minus acres there. We bought an
 19 existing trucking company at the time. We didn't
 20 buy the company, I'm sorry. We bought their
 21 facility at the time and the land next to it and
 22 then constructed a new shop and then eventually a

12

1 new amenities building for in-house associates
2 and our drivers.

3 Q Was -- that new shop and amenities
4 building, was that built -- when was that built?

5 A That would have been started
6 construction in probably fall of '15 or early '16
7 on the -- on the shop side, yes.

8 Q So going back to 2014-15, was the area
9 -- was your area 34 acres?

10 A It was two separate pieces of
11 property. The first set of property was the
12 existing trucking company that we bought their --
13 their facility. And then we bought the land next
14 door to it.

15 Q Okay. So --

16 A So I would say -- I think the original
17 was probably 18 acres and the other one was
18 probably 16 acres or so, the new.

19 Q So you're familiar with the trailer
20 that's at issue in this case, the one that held
21 the paint, correct?

22 A Yes, sir.

14

1 A Well, when -- you know, when a tractor
2 and trailer come through our inbound process, you
3 know, we give an inspection to the tractor and
4 the trailer. We -- you know, if there's any
5 repairs need to be made at that time, we do that
6 all inside right there.

7 Q So you have mechanics that --

8 A Absolutely, yes.

9 Q So the truck driver's out and he's got
10 a problem with his radiator, pulls into Salt Lake
11 City, he --

12 A Yes. We would -- we would prefer to
13 do our work -- our own work if -- we try not to
14 do any outside work if that makes sense.

15 Q Could you pull up Respondent's Exhibit
16 13? So Mr. Singleton, could you please -- I'm
17 showing you what's been marked Respondent's
18 Exhibit 13 on your screen. It's a Google Earth
19 image with a red dot approximately upper third
20 middle of the -- of this image. And next to the
21 red marker, it says Prime, Inc. Salt Lake City,
22 UT terminal. Do you see that?

13

1 Q And was that paint -- was that trailer
2 stored on the original property, the smaller
3 property?

4 A That's correct.

5 Q So why is -- why does Prime have this
6 facility in Salt Lake City?

7 A Well, you know, it's very important --
8 you know, we have a facility for -- already we've
9 had -- we have a facility in Pennsylvania, one
10 here in Springfield, and one in the west, which
11 is Salt Lake. It's very important that we have
12 something out west. We run a lot of freight out
13 there. It's really important that we get our
14 eyes on our equipment, you know, from a shop
15 standpoint. And then it's very important that
16 our drivers have a place to -- to take a rest, to
17 take a break, shower, food, everything you can
18 name. And Mr. Lowe (phonetic) is really good
19 about taking care of the drivers when it comes to
20 that type of thing.

21 Q You talk about a shop. What does a
22 shop do?

15

1 A Yes, sir.

2 Q And is that location, as you know it,
3 of the Prime Salt Lake City terminal?

4 A That's correct, yes, sir.

5 Q And could you please for the -- tell
6 the Court in the context of what you see in this
7 aerial photo what's around the Salt Lake City
8 facility?

9 A Just north of 80 right there, that's
10 the airport, the Salt Lake International Airport.
11 And then pretty much just west of, that's
12 Bangerter Highway, the 154 there. It -- all of
13 that's industrial. It's industrial pretty much
14 the whole entire map until you get probably --
15 you go all the way east of 215 over by Indiana
16 Avenue. If you see that, it's --

17 Q On the far right side?

18 A Far right, that's correct. It --
19 that's your first probably residential area right
20 there. It's a couple miles away from the
21 facility.

22 Q Okay. And is this aerial a fair and

16

1 accurate representation of the neighborhood and
 2 where Prime is located?
 3 A Yes, sir, it is.
 4 MR. RYAN: Okay. Your Honor, I move
 5 to admit Respondent's Exhibit 15 -- excuse me,
 6 13.
 7 JUDGE COUGHLIN: Okay. Any objection?
 8 MS. JACKSON: Well, I'd object -- I'm
 9 sorry. I'm fumbling through exhibits for a
 10 second because it's not dated.
 11 MR. RYAN: This was -- I'll state for
 12 the record I downloaded this from Google Earth --
 13 MS. JACKSON: I don't mean -- I mean
 14 I don't need you to lay the foundation.
 15 MR. RYAN: Well, I'm just saying where
 16 it came from. I -- for the record, this was put
 17 prehearing exchange. I downloaded it from Google
 18 Earth probably days before the prehearing
 19 exchange. I don't know what the date was that
 20 Google took this picture, but I believe that the
 21 witness has testified it's a fair and accurate
 22 representation.

18

1 JUDGE COUGHLIN: As like present day?
 2 THE WITNESS: Yes.
 3 JUDGE COUGHLIN: Okay.
 4 THE WITNESS: As far -- as far as I
 5 can tell, yes.
 6 JUDGE COUGHLIN: And I -- not to
 7 belabor, but when you're -- when you were
 8 referencing north and west, I'm assuming there
 9 isn't like a legend or scale to identify? So I'm
 10 assuming you're just referring to what a
 11 traditional north, straight up; west, to the left
 12 as you're looking at the photo and so forth?
 13 THE WITNESS: Yes, ma'am. I'm sorry.
 14 JUDGE COUGHLIN: No. That's okay.
 15 THE WITNESS: That map is -- I'm doing
 16 it by direction.
 17 JUDGE COUGHLIN: Okay.
 18 THE WITNESS: Yes, sorry.
 19 JUDGE COUGHLIN: Okay. That's all
 20 right. I just wanted it to kind of be clear for
 21 the record.
 22 MR. RYAN: So north is the top of the

17

1 MS. JACKSON: For what time period?
 2 MR. RYAN: Oh, it would have been
 3 whenever Google took this picture, around the
 4 time the prehearing exchange. So I -- I --
 5 MS. RODGERS: Thank you.
 6 JUDGE COUGHLIN: Okay. Do you have an
 7 objection then?
 8 MS. JACKSON: I would question the
 9 reliability of it. I don't -- I guess if we're
 10 able -- it's on the record so no.
 11 JUDGE COUGHLIN: Okay. All right.
 12 REX 13 is admitted.
 13 (Whereupon, the above-referred to
 14 document was received into evidence as
 15 Respondent's Exhibit 13.)
 16 MR. RYAN: Just to clear that up, Mr.
 17 Singleton, is there -- has anything changed that
 18 you can tell in this aerial photo, Exhibit 13,
 19 from what you understand the neighborhood to be?
 20 THE WITNESS: Not to my knowledge. I
 21 mean I don't know when it was taken, so it looks
 22 the same.

19

1 photo --
 2 THE WITNESS: Yes -- yes, sir.
 3 MR. RYAN: -- on Exhibit 13?
 4 THE WITNESS: Yes, sir.
 5 BY MR. RYAN:
 6 Q And west would be left?
 7 A Yes, sir.
 8 Q And east the right, and south would be
 9 to the bottom?
 10 A Yes, sir.
 11 MR. RYAN: Okay. Could you please
 12 pull up Respondent's Exhibit 14? Mr. Singleton,
 13 you have in front of you what's been marked
 14 Respondent's Exhibit 14. Do you recognize this
 15 photo?
 16 THE WITNESS: I do, yes, sir.
 17 BY MR. RYAN:
 18 Q And what is it showing?
 19 A That is our facility, would have been
 20 back in approximately 2016.
 21 Q And how do you know this is 2016?
 22 A We just started construction in the

20

1 building, the shop building is -- is up it looks
2 like, so that would have been at some point in
3 '16.

4 Q And when you say the shop building was
5 up, which building are we talking about?

6 A That be the large building on the
7 right side of the picture.

8 Q And the -- is that the second piece of
9 property you referred to earlier?

10 A Yes, sir.

11 Q And is this a fair and accurate
12 representation of what the facility looked like
13 in approximately 2016?

14 A That's correct, yes, sir.

15 MR. RYAN: Your Honor, I move to admit
16 the Respondent's Exhibit 14.

17 JUDGE COUGHLIN: Okay. Any objection?

18 MS. JACKSON: No objection, Your
19 Honor.

20 JUDGE COUGHLIN: Okay. REX 14 is
21 admitted.

22 (Whereupon, the above-referred to

21

1 document was received into evidence as
2 Respondent's Exhibit 14.)

3 MR. RYAN: So if I may approach, Your
4 Honor, with a Sharpie? This is -- you have 14.
5 I'm going to show him the same thing, REX.

6 JUDGE COUGHLIN: Thank you.

7 MR. RYAN: Mr. Singleton, I just
8 handed you a paper copy of the Respondent's 14
9 and a Sharpie pen. And I'm going to ask you to
10 make a few markings on this so the record is --

11 MS. JACKSON: I'm so sorry. I don't
12 mean to interrupt, but I'm just curious, can you
13 mark the screen and this at the same time so that
14 we can see what he's marking?

15 JUDGE COUGHLIN: Oh --

16 MS. JACKSON: I didn't think about
17 that earlier.

18 MR. RYAN: Is it -- if it's possible,
19 I have no objection.

20 JUDGE COUGHLIN: Yes. Well, yes,
21 unfortunately, I don't know the answer to the
22 technical question. Is there a capacity to do

22

1 that, to annotate on the screen?

2 MS. JACKSON: We did it by mistake
3 earlier.

4 JUDGE COUGHLIN: Oh --

5 MS. JACKSON: I think --

6 JUDGE COUGHLIN: -- okay. Do you know
7 how to do that?

8 THE WITNESS: I do not, no, ma'am.

9 JUDGE COUGHLIN: Does anyone know how
10 to do that?

11 THE WITNESS: I just touch the screen
12 or --

13 MS. JACKSON: He can just tap it and
14 see what happens in an innocuous place.

15 THE WITNESS: Nothing's happening.

16 MS. JACKSON: Okay. Then -- that's --
17 don't worry about it. That's fine.

18 MR. RYAN: I'll try to be as clear as
19 I can so there's no confusion and if necessary,
20 we can show you real quick.

21 MS. JACKSON: Thank you.

22 BY MR. RYAN:

23

1 Q So using your Sharpie pen, referring
2 to in this aerial photo, REX 14, we just talked
3 about the new shop, and just for clarity's sake,
4 I want to -- because I -- that right side of the
5 property was not where -- or excuse me -- let me
6 ask this question. Was -- where was the trailer
7 at issue in this case or roughly? Before you
8 mark it, tell me.

9 A It -- it's on the northeast corner of
10 the original property, which would be -- you see
11 where it says Pedigree Truck and Trailer Sales,
12 that building?

13 Q Yes.

14 A If you just went straight to the north
15 of that and to the right just a little bit, up in
16 that corner.

17 Q Okay. Could you make a circle where
18 the truck -- the trailer was stored, and then put
19 a T next to it?

20 A Okay.

21 Q So let the record reflect the witness
22 has just marked the location of the trailer in

24

1 2014 -- excuse me -- 2015-16, correct?
 2 A Yes, sir.
 3 MS. JACKSON: Can I just see it
 4 quickly?
 5 THE WITNESS: Yes, ma'am.
 6 JUDGE COUGHLIN: I want to make sure
 7 I'm following this. Okay, I see. Counsel, can
 8 you see this? Just come one up. I just want to
 9 make sure we're all on the same page, cause it --
 10 you know, it's important so just have a quick
 11 look.
 12 MS. JACKSON: Thank you.
 13 JUDGE COUGHLIN: Okay. All right.
 14 Yes. I think it was -- Mr. Ryan, I think you
 15 were very clear for the record. I just -- you
 16 know, I'm visual. I wanted to see it so thank
 17 you.
 18 MR. RYAN: I'm going to do this two
 19 more times, Your Honor, on this Exhibit. We're -
 20 - I'm going to try to make it simple as possible.
 21 JUDGE COUGHLIN: Okay.
 22 MR. RYAN: And so for the purposes of

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1 opposing counsel --
 2 JUDGE COUGHLIN: Yes.
 3 MR. RYAN: -- so everyone's clear?
 4 MS. JACKSON: Okay. Thanks.
 5 JUDGE COUGHLIN: Here you go. Thank
 6 you.
 7 MR. RYAN: So Mr. Singleton, what
 8 approximately is the distance from the back of
 9 the shop, which we have identified now on REX 14,
 10 to the area where the damaged trailer was stored?
 11 THE WITNESS: Approximately 220 feet.
 12 BY MR. RYAN:
 13 Q And what -- let's step back a second.
 14 What's the security situation at the Prime Salt
 15 Lake City facility; can you describe it to me,
 16 please?
 17 A We have 24/7 security. The property
 18 itself is surrounded by fence, barbed wire fence.
 19 Q And can -- are there gates going in
 20 and out of the facility?
 21 A There is, yes.
 22 Q And can anyone just driving by or

25

1 looking at this REX 14, could you tell me -- or
 2 in the 2014 time period -- excuse me -- 2015-16
 3 time period, where was the shop located exactly
 4 in the building we see to the south of the
 5 storage site?
 6 THE WITNESS: So the shop, going back
 7 referencing the Pedigree Truck and Trailer Sales
 8 note on the -- on the building back, like three-
 9 fourths of that building was the shop.
 10 BY MR. RYAN:
 11 Q Okay. And then could you just write
 12 shop, S-H-O-P on top of that area where the shop
 13 was located?
 14 A Yes, sir.
 15 Q And then just so we're clear, we're
 16 referring back to your earlier testimony. We
 17 talked about the new construction, and you dated
 18 this photo approximately 2016. Could you write
 19 new building on top of the new construction?
 20 A Yes, sir.
 21 MR. RYAN: Okay. Now could we just
 22 take a quick moment to show it to you and to

27

1 walking by in the street enter the facility?
 2 A They cannot.
 3 Q And what keeps people from entering
 4 the facility?
 5 A Well, the gates all have guards,
 6 security guards are at the gates and other than
 7 that would be fence.
 8 Q Okay. And then in 2015-16, the time
 9 the trailer was stored at the Salt Lake City
 10 facility, was that -- what was the security
 11 situation then?
 12 A It's -- it was the same.
 13 Q And we can see here there was
 14 construction going on. You did testify that the
 15 new facility was being built, the one you
 16 labeled, I think, new facility or new shop. The
 17 -- what was the security situation with -- when
 18 the construction was going on?
 19 A The construction company put up a
 20 fence around the construction site, and so they
 21 handled anybody that came in and out of the
 22 construction site.

1 Q And was -- was there -- were the
 2 people passing back and forth between the
 3 construction site and your active yard?
 4 A Oh, not to my knowledge, no.
 5 Q You mentioned that you had in 2010
 6 twenty people there and 170 working today. What
 7 is your policy on smoking for your employees?
 8 A We do not hire in-house associates
 9 that smoke.
 10 Q Can you pull up Respondent's Exhibit
 11 15, please? Mr. Singleton, do you recognize this
 12 photograph?
 13 A Yes, sir.
 14 Q What is it?
 15 A It's basically just a pan out of the
 16 last, which would have been what, 14 -- 14.
 17 Q And is it taken at the same time as
 18 Exhibit 14?
 19 A It looks similar, yes.
 20 Q Approximately 2016?
 21 A Yes, sir.
 22 Q And can you tell me, what does this

1 Respondent's Exhibit 15.
 2 JUDGE COUGHLIN: Any objection?
 3 MS. JACKSON: I object, Your Honor.
 4 Again, I don't know that we've established
 5 exactly when this was -- this image is supposed
 6 to reflect 2016? It's an entire year so I -- if
 7 we're really looking at what's going on on the
 8 property at the time, I don't feel like this is
 9 an accurate reflection, and I object.
 10 JUDGE COUGHLIN: Okay. I thought you
 11 covered some timeframe in your questions. Do you
 12 want to ask any -- do you want to tighten it up
 13 at all to respond to this or I guess -- I think
 14 you testified that this is what it looked like in
 15 2015 and 2016.
 16 THE WITNESS: This is more of 2016
 17 than the property was '15.
 18 JUDGE COUGHLIN: Okay. All right.
 19 Are you able to describe the differences between
 20 2015 and 2016 based on your knowledge of the
 21 property?
 22 THE WITNESS: I couldn't know that

1 picture show us?
 2 A It just shows a little bit larger of
 3 an aerial view of the property at the same time
 4 that we were just looking at, shows the property
 5 as a whole, railroad tracks behind it. We have
 6 XBO that's next door to us so. And it show
 7 basically --
 8 Q That's --
 9 A -- everything around us is --
 10 Q I'm sorry. You said XPO; can you tell
 11 me --
 12 A I'm sorry. That's another trucking
 13 company. I'm sorry. XBO Logistics.
 14 Q Okay.
 15 A So another trucking company there and
 16 then the industrial side pretty much all around
 17 us, warehouses.
 18 Q Is this a fair and accurate
 19 representation of the neighborhood which the
 20 Prime Salt Lake City facility is located?
 21 A Yes, sir, it is.
 22 MR. RYAN: Your Honor, I move to admit

1 down to a date, no, ma'am.
 2 JUDGE COUGHLIN: Okay. All right.
 3 Well, I'm going to allow it to come in, but with
 4 that bit of additional explanation as to what
 5 year in which it represents.
 6 MS. JACKSON: Thank you, Your Honor.
 7 JUDGE COUGHLIN: Yes. So --
 8 MR. RYAN: And for the record, Your
 9 Honor, this is not -- this particular exhibit is
 10 not being offered to try and discern where the
 11 truck was in relationship to fence or anything
 12 like that. This is just simply to try and show
 13 what the neighborhood looked like at the time.
 14 JUDGE COUGHLIN: Okay.
 15 MR. RYAN: That was -- that's the
 16 purpose of this exhibit.
 17 JUDGE COUGHLIN: All right. So REX 15
 18 is admitted over objection.
 19 (Whereupon, the above-referred to
 20 document was received into evidence as
 21 Respondent's Exhibit 15.)
 22 MR. RYAN: Mr. Singleton, turning your

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1 attention to the -- back to the trailer which is
2 at issue in this case, can you tell us, you know,
3 how that trailer ended up on your lot in Salt
4 Lake City?

5 THE WITNESS: Well, Lance Curtis is my
6 shop manager. He was in charge of that or knew
7 that was coming. My knowledge of it is -- is
8 there was a fire in Idaho. Brett's Towing
9 (phonetic) brought it down to us and it was
10 immediately put on legal hold from Springfield.

11 BY MR. RYAN:

12 Q All right. And what do you mean by
13 legal hold?

14 A It means basically our in-house
15 counsel or adjusters will tell us, you know, this
16 is potential legal matter, which means we put it
17 in a certain area. We don't touch it until
18 Springfield headquarters reaches back out and
19 tells us it's okay to put the truck back on the
20 road or the trailer, etcetera.

21 Q And when you say that we don't touch
22 it, what do you mean by that?

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1 again --

2 JUDGE COUGHLIN: Yes. You might -- if
3 you would repeat that and you could repeat your
4 answer just so we know there's a clear
5 transcript?

6 MR. RYAN: Your Honor, now --
7 (Simultaneous speaking.)

8 JUDGE COUGHLIN: You were --
9 (Simultaneous speaking.)

10 JUDGE COUGHLIN: -- you were -- I
11 think you were asking about where the trailer was
12 located and whether the witness's prior marking
13 of the T reflected that location.

14 MR. RYAN: So you testified earlier
15 that you made a small mark on the REX 14 and
16 marked it with a T. Is that where the trailer
17 was stored?

18 THE WITNESS: Yes, sir, it is.

19 BY MR. RYAN:

20 Q And why was that location picked to
21 store it?

22 A It -- it's just out of the way.

33

1 A Well, we put it in an area and we
2 literally don't touch it. It sits there.

3 Q And where did you put it when it
4 arrived?

5 A In that northeast corner just -- just
6 north of the current shop there.

7 Q Is that the area you marked on
8 Respondent's Exhibit --

9 A Yes, sir, it is?

10 Q -- 8:28:15. And Mr. Singleton, for
11 the record, we have a court reporter taking down
12 --

13 A Sure.

14 Q -- we talk -- we talk across each
15 other, it gets a little tough for him so we can
16 just try and do that, that be great. The --

17 JUDGE COUGHLIN: And actually, that
18 was an important point, so I want to make sure --
19 Mr. Morris, did you get the prior question and
20 answer fully on the record?

21 COURT REPORTER: It was maybe a little
22 bit of simultaneous speaking so maybe if he goes

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1 Q And what do you mean by out of the
2 way? Just give us a -- some understanding what
3 that means in the context of your operation
4 there?

5 A Well, it's in the northeast corner.
6 There's no trucks that will drive by there.
7 There's really no reason for anybody to be out
8 there associate-wise or -- or driver-wise.

9 Q And the -- where is the entrance to
10 the facility; what side of the lot?

11 A Well, you -- you access through the
12 south side of the lot.

13 Q and when -- when the construction was
14 going on in approximately the 2016 time period,
15 were there any trucks going back and forth
16 between the construction site and the terminal?

17 A No, not to my knowledge.

18 Q And what -- Westinghouse at separated
19 the construction site from your operating
20 terminal?

21 A Like I said before, they -- they built
22 a -- a fence. They being the construction

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1 company built a fence around the construction
2 site itself.

3 Q So -- and that -- did that separate
4 the operating terminal from the construction
5 site?

6 A Yes, sir.

7 Q Now after the trailer arrived in
8 October -- I believe the date is October 1, 2016
9 -- what happened next?

10 A Well, the trailer -- to my knowledge,
11 the trailer was put there, like I said, from
12 Brett's Towing. And then it was put on legal
13 hold and after that, we didn't touch it.

14 Q Okay. And then -- but did your -- you
15 mentioned Mr. Curtis works for you?

16 A That is correct.

17 Q And did Mr. Curtis take any actions on
18 this?

19 A He did. He called an environmental --
20 a local environmental company that come out and
21 disposed of the -- of the contents. He left them
22 a voicemail, and he -- and they never called

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1 back, and he never followed up.

2 Q Was the legal hold ever lifted to your
3 knowledge?

4 A Not to my knowledge.

5 Q And would you have been able to
6 dispose of the trailer before the legal hold was
7 lifted?

8 A Us personally, no. We wouldn't touch
9 it unless Springfield tells us to.

10 Q So Mr. Curtis called the environmental
11 company. Then what happened after that?

12 A Well, he never got a call back is my
13 understanding, and so -- and then he never
14 followed up with them after that.

15 Q And why didn't anyone follow-up on
16 this trailer sitting back in the corner?

17 A I have no idea. I can't answer that
18 question.

19 Q So from your perspective, what was --
20 what was that trailer doing back there.

21 A That trailer was just back there on
22 legal hold with other things on legal hold.

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1 Q So what types of things go on legal
2 hold and are placed back in that area; what's it
3 -- what you guys call that area back there?

4 A At the time, it was called the
5 boneyard.

6 Q And why do you call it the boneyard?

7 A Just cause that's where things just go
8 to sit. They don't -- you know, we're not moving
9 in and out or anything like that, and it's out of
10 the way.

11 Q Did you -- was the trailer ever moved
12 during the time it sat there 2015-16?

13 A It was. It was moved once. Lance
14 Curtis and two other shop gentlemen moved that
15 about probably 30 feet over from right to left in
16 the picture.

17 Q How did they move it?

18 A With forklifts.

19 Q So did they just pick it up and --

20 A That is correct.

21 Q -- drop and -- other than that, was it
22 ever --

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1 A No. It was never touched other than
2 that.

3 Q And how long did that operation take?

4 A I'm not real sure. I wasn't there,
5 sorry.

6 Q Was it a multi-day operation?

7 A Oh, no -- no. I mean just a few
8 minutes is what it would take, yes.

9 JUDGE COUGHLIN: And do you know how
10 far it was moved.

11 THE WITNESS: It's approximately about
12 30 feet.

13 JUDGE COUGHLIN: Okay. Thank you.

14 MR. RYAN: And why was it moved?

15 THE WITNESS: For the construction.
16 Construction asked us to move it, I think, to
17 pour more concrete over by there so.

18 MR. RYAN: Could you please pull up
19 Respondent's -- excuse me -- Complainant's
20 Exhibit 10 and page 5? So Mr. Singleton, while
21 we're waiting for that to come up, let me ask you
22 other questions. Do you recall the EPA CID

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1 coming in to do an inspection of your site?
 2 THE WITNESS: Yes.
 3 BY MR. RYAN:
 4 Q And do you recall how many times were
 5 they there?
 6 A I think they were there twice.
 7 Q Do you recall the dates?
 8 A I think it was August 2nd first time
 9 and then August 24th the second time. That would
 10 have been of 2016.
 11 Q And when EPA CID showed up, what
 12 happened; did you let them in?
 13 A Oh, yes -- yes, sir.
 14 Q Did you -- were you -- did you
 15 cooperate with EPA CID?
 16 A Fully, yes, sir.
 17 Q Did you assist them in any way?
 18 A Yes, sir.
 19 Q How did you do that?
 20 A I got a gentleman, an associate of
 21 ours to go out and uncover the -- the trailer
 22 with them, for them I guess.

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1 ours, and then on the right, I think that is
 2 Peter Christensen, our counsel at the time.
 3 Q Okay. And is this a fair and accurate
 4 representation of what the storage site looked
 5 like at the time, August 24, 2016?
 6 A Yes, sir.
 7 Q Is -- and that -- you see -- what is
 8 that piece of machinery we see on the right?
 9 A That's a forklift.
 10 Q And who does that belong to?
 11 A Prime.
 12 Q And did you use that forklift to
 13 assist in the inspection on the 24th?
 14 A I'm not sure when we -- what forklift
 15 we used, but I would assume that that's the
 16 forklift we used.
 17 Q And -- but you used a forklift?
 18 A Yes, sir.
 19 Q And what did you use the forklift for
 20 on the 24th?
 21 A They removed barrels, took the barrels
 22 off the trailer.

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1 Q And during the August 2nd visit by EPA
 2 CID, did they take samples?
 3 A I don't recall. I don't -- I don't
 4 think so, no.
 5 Q And -- but they came back, you said,
 6 on the 24th?
 7 A That is correct.
 8 Q And on the 24th, did they collect
 9 samples then?
 10 A Yes, sir.
 11 Q And did you assist them on the 24th?
 12 A Yes, sir.
 13 Q Referring you to Complainant's Exhibit
 14 10, page 5, which should be in front of you now,
 15 do you recognize that photograph?
 16 A I do, yes, sir.
 17 Q And who are those gentlemen in the
 18 photograph?
 19 A On the left in the blue shirt, that
 20 would be me. The gentleman on the top of the
 21 trailer moving the tarps, that would be
 22 Christopher Scoggins (phonetic), an associate of

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1 Q And that was at the request of EPA?
 2 A Yes, sir.
 3 Q And prior to this August 24, 2016
 4 date, had you ever removed any of the barrels
 5 from the trailer?
 6 A Not to my -- I did not, no.
 7 Q Or any of your staff?
 8 A Not to my knowledge at all.
 9 Q Now were -- you said you were in this
 10 photograph. Were you or any of your employees
 11 involved on this day, on the 24th, wearing
 12 personal protective equipment?
 13 A We were not, no.
 14 Q Did EPA recommend to you that you wear
 15 --
 16 A They did not recommend it.
 17 Q Could you pull up the next page of
 18 this Exhibit, CEX10 at page 6? Do you see this
 19 photograph in front of you now, Mr. Singleton?
 20 A Yes, sir.
 21 Q And is that a Prime employee we see
 22 there in the upper left-hand corner of this

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1 photograph?
 2 A It is, yes, sir.
 3 Q And is -- again, is he assisting EPA
 4 here with removing the tarps?
 5 A That is correct.
 6 Q And I think we'll move on to CEX10 at
 7 page 29. So this is a -- can you tell me what
 8 you see in this photograph, Mr. Singleton?
 9 A This is the trailer in question today,
 10 yes.
 11 Q It was -- were the tarps all removed
 12 at this point?
 13 A Yes, sir.
 14 Q Is that a fair and accurate
 15 representation of the -- what the trailer looked
 16 like when it was stored on the site in 2015 to
 17 2016?
 18 A Yes, sir.
 19 Q Go to Respondent's -- excuse me --
 20 Complainant's Exhibit CEX10 at 31. You recognize
 21 this photograph, Mr. Singleton --
 22 A Yes, sir.

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1 they were removed.
 2 Q And these are the ones I believe you
 3 testified that Prime removed at EPA's request?
 4 A That is correct.
 5 Q And so where those barrels are sitting
 6 now, that's not where the trailer was, is it?
 7 A Yes. I mean that's -- it's just in
 8 front of where the trailer was at.
 9 Q Okay. That's my point. It's not the
 10 trailer was elsewhere and then they moved them in
 11 front of --
 12 A Correct.
 13 (Simultaneous speaking.)
 14 Q And is this where EPA collected the
 15 samples?
 16 A That is correct.
 17 JUDGE COUGHLIN: So is the trailer
 18 what you can kind of see behind there --
 19 THE WITNESS: Yes.
 20 JUDGE COUGHLIN: -- behind the
 21 barrels?
 22 THE WITNESS: Yes, ma'am.

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1 Q -- or what's depicted in this
 2 photograph?
 3 A It's the same trailer.
 4 Q It looks like it's taken from a
 5 different angle as the prior one?
 6 A Yes, sir.
 7 Q Do you see a fence in the background?
 8 A Yes.
 9 Q Is that the fence you referred to
 10 earlier?
 11 A Yes. That would be the construction
 12 fence, yes, sir.
 13 Q And did that construction fence extend
 14 from the front to the back of the lot?
 15 A It did, yes, sir.
 16 Q Could you please go to Complainant's
 17 Exhibit 10 at page 47? Do you see Exhibit 10 at
 18 page 47 in front of you, Mr. Singleton?
 19 A Yes, sir.
 20 Q And you recognize what's in that
 21 photograph?
 22 A Yes. It was the paint barrels after

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1 JUDGE COUGHLIN: Okay. All right.
 2 Thank you.
 3 MR. RYAN: And what was the surface
 4 that the -- was underneath the trailer at the
 5 time it was stored?
 6 THE WITNESS: It was concrete.
 7 BY MR. RYAN:
 8 Q And there was a fence behind the
 9 trailer -- in looking in this photograph, on the
 10 far side of the photograph, we see some blue
 11 boxes that say APL on them; what is that we're
 12 seeing up there?
 13 A That's the railroad behind -- behind
 14 our property.
 15 Q Is that a train passing? It's not --
 16 A Yes. I mean depicts, yes -- yes.
 17 Q So between the -- between where the
 18 trailer was stored and the train, was there a
 19 fence?
 20 A Yes, sir.
 21 Q And then on the other side of the
 22 fence was the railroad tracks

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1 A That is correct.
 2 Q And then on the other side of the
 3 railroad tracks was?
 4 A I'm not sure.
 5 Q Now when EPA was visiting your site
 6 and taking these samples, did they ever tell you
 7 these drums were dangerous?
 8 A No, sir.
 9 Q No. Did they ever warn you to stay
 10 away from them?
 11 A No, sir.
 12 Q Did they ever ask you to -- after they
 13 left, did they ever ask you to plate -- either on
 14 August or on August 24th, did they ask you to
 15 cordon off the area in any way?
 16 A No, sir.
 17 Q Did they ask you to alert local
 18 authorities to the possibility of a dangerous
 19 situation?
 20 A No, sir.
 21 Q So after August -- the first visit in
 22 early August by CID, the EPA issued a letter to

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1 Q Did anyone ever tell you to hide its
 2 existence from anyone?
 3 A No, sir.
 4 Q How would you describe how this thing
 5 came to be sitting there for so long?
 6 A Well, I mean looking back, we made a
 7 mistake.
 8 Q And if you -- if this thing -- if
 9 today a truck like -- a trailer like this showed
 10 up with hazardous waste or materials on it, how
 11 would you handle it?
 12 A Well, would be more people involved.
 13 You know -- you know, we really -- this isn't --
 14 we made a mistake, you know, and today, you know,
 15 like Mr. Field's testimony, you know, we were
 16 very siloed back then I feel. And I mean -- by
 17 that I mean that we -- you know, we had a road
 18 assist department doing one thing and our safety
 19 department doing another, and Lance Curtis, my
 20 shop manager doing something else and, you know,
 21 we all thought we were doing the right thing in
 22 theory, but we should have been communicating,

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1 Prime saying don't touch the trailer; do you
 2 recall that?
 3 A I do, yes.
 4 Q And did you comply with that?
 5 A Yes, sir.
 6 Q And then at some point, they said that
 7 it's okay now to dispose of it, and what happened
 8 next?
 9 A I wasn't involved in that process at
 10 all.
 11 Q Was it --
 12 A It was disposed -- to -- it was
 13 disposed of, yes, sir.
 14 Q And that was handled by Springfield?
 15 A Yes, sir.
 16 Q Were you ever told by Prime to hide
 17 this in any way?
 18 A No, sir.
 19 Q Were you ever told by Springfield that
 20 we're going to save some money by not storing,
 21 getting rid of this right away?
 22 A No, sir.

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1 and we just didn't. And today, you know, those
 2 silos are not there.
 3 Q So would you describe communication
 4 today as better than in -- within the company,
 5 better than in 2015?
 6 A Yes, it's better. We're far from
 7 perfect still but it is definitely better.
 8 Q And you mentioned doing the right
 9 thing. Is that part of the company motto?
 10 A Yes, sir. Do your best, do what's
 11 right. Treat others the way you want to be
 12 treated.
 13 Q Is that something you actually
 14 believe?
 15 A It's how I raise my family, sir.
 16 MR. RYAN: May I have just a moment,
 17 Your Honor?
 18 JUDGE COUGHLIN: Sure.
 19 MR. RYAN: Your Honor, we have no
 20 markings for Exhibit 14.
 21 JUDGE COUGHLIN: Okay.
 22 MR. RYAN: So consistent with my

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1 earlier discussion, I'd like to have the witness
 2 maybe write 14A in the bottom right-hand corner -
 3 -
 4 JUDGE COUGHLIN: Okay.
 5 MR. RYAN: -- or REX14A. In the
 6 bottom right-hand, just write REX14A, and that
 7 will become that unique exhibit. And then
 8 perhaps after cross-examination is done -- and
 9 I'd be happy to provide that copy to opposing
 10 counsel to use during cross, and then we can take
 11 our pictures and then provide to the Court. Does
 12 that work for you?
 13 JUDGE COUGHLIN: Sure. That's fine.
 14 MR. RYAN: Thank you very much. I
 15 have no further questions.
 16 JUDGE COUGHLIN: So you wanted to move
 17 that in. Was there any objection to it?
 18 MS. JACKSON: No objection.
 19 JUDGE COUGHLIN: Okay. REX14A will be
 20 admitted into evidence.
 21 (Whereupon, the above-referred to
 22 document was marked as Respondent's Exhibit 14A

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1 of the drums and the trailer from Idaho to Salt
 2 Lake City; is that correct?
 3 THE WITNESS: I don't know who called
 4 the towing company. Is that -- is that the
 5 question?
 6 CROSS-EXAMINATION
 7 BY MS. JACKSON:
 8 Q Oh, okay -- okay. Were you here
 9 yesterday for the testimony?
 10 A I was.
 11 Q Would you agree that roadside assist
 12 called the transport --
 13 A To my -- to my knowledge, yes.
 14 Q And roadside assist is located in
 15 Springfield; is that correct?
 16 A At the -- I have people on site as
 17 well now but at the time, it was all in
 18 Springfield, yes.
 19 Q Thank you. And you testified that you
 20 were a facility manager at Prime, right, before
 21 this -- your current role?
 22 A Yes, ma'am.

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1 for identification and received into evidence.)
 2 MEMBER LEWIS: Good morning, Mr.
 3 Singleton.
 4 THE WITNESS: Good morning.
 5 JUDGE COUGHLIN: (Audio interference)
 6 picture. Thanks.
 7 MS. JACKSON: I actually --
 8 (Simultaneous speaking.)
 9 JUDGE COUGHLIN: Ms. Jackson, would
 10 you like 14A in front of you as you question?
 11 MS. JACKSON: Yes.
 12 JUDGE COUGHLIN: Okay.
 13 MS. JACKSON: I need this. Well, no,
 14 actually, I'm sorry. Mr. Singleton, you can
 15 keep.
 16 THE WITNESS: I will be referring to
 17 it but I've got my copy. Okay. Before we get to
 18 that particular image, though, you heard
 19 testimony about roadside assist for Prime, and
 20 would you agree that roadside assist arranged --
 21 and I believe you testified again this morning
 22 that roadside assist arranged for the transport

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1 Q And Prime is a national freight
 2 trucking company?
 3 A Yes, ma'am.
 4 Q And they're a logistics business
 5 moving freight?
 6 A Absolutely.
 7 Q So Prime -- and I think you talked
 8 about kind of tracking and managing -- Prime
 9 tracks and manages its fleet through an
 10 electronics system?
 11 A Yes.
 12 Q Okay. And part of fleet management is
 13 knowing where your materials are, your freight is
 14 at any given time?
 15 A That is correct.
 16 Q Okay. And then another general
 17 question. Back to your -- well, we're going to
 18 turn directly to Salt Lake City now. You're
 19 familiar with all aspects of the Salt Lake City
 20 facility?
 21 A Yes.
 22 Q Okay. And Prime's website for the

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1 Salt Lake City facility says that over 500
 2 drivers visit Prime's Salt Lake City facility
 3 every week; is that -- does that sound right?
 4 A That's correct.
 5 Q And about how many drivers would you
 6 say visited Salt Lake City's facility in the
 7 2015-2016 timeframe on a weekly basis?
 8 A I mean it'd be -- it'd be a guess. Is
 9 that what you prefer me to do?
 10 Q Well, I mean you are the facility
 11 manager, right?
 12 A Right. But I can't go back seven
 13 years and tell you how many trucks passed through
 14 --
 15 Q Okay. How about five years ago?
 16 A I have no idea.
 17 Q Okay. Apologies. And you testified
 18 that the trailer of drums were at the facility
 19 because they were placed on legal hold; is that
 20 correct?
 21 A Yes, ma'am.
 22 Q And I believe you said Springfield

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1 -- where the drums were that were under legal
 2 hold?
 3 A Yes, ma'am.
 4 Q Okay. Let's move to REX -- what's
 5 been marked now as REX14A. You were referencing
 6 that before. At the time of the EPA criminal
 7 inspection, you knew -- you were aware that there
 8 were 32 drums on the trailer, is that right?
 9 A I didn't know how many drums but, yes,
 10 knew there was drums on the trailer.
 11 Q Okay. If you could pull up CX10 at
 12 page 2? Go to the narrative, please? Just to
 13 help orient you, this is a investigative activity
 14 report written by Darren Levelston (phonetic) on
 15 behalf of EPA on the day of the CID inspection on
 16 August -- if you could go all the way to the top,
 17 please -- sorry -- on August 2nd. If you could
 18 back down to page two. I apologize.
 19 A Sorry, I don't have anything on my
 20 screen.
 21 Q Oh. Four days in and we're still
 22 making the same mistakes, apologies.

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1 says don't touch until Springfield says so; is
 2 that correct?
 3 A That is correct.
 4 Q But Mr. Curtis moved the trailer at
 5 one point, correct?
 6 A That's correct.
 7 Q And then back to the legal hold. Are
 8 you aware of any emails by prime personnel
 9 requesting permission to dispose?
 10 A I'm not aware of any emails.
 11 Q Okay. Then Prime has provided no
 12 documentation of a legal hold so was it
 13 documented anywhere?
 14 A Not to my knowledge, no, ma'am.
 15 Q Okay. And who issued that legal hold?
 16 A I don't know an individual person. I
 17 just know that it came from Springfield.
 18 Q And how did you receive the
 19 information?
 20 A I never received the information
 21 personally.
 22 Q But you operate the facility that the

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1 JUDGE COUGHLIN: There seems to be a
 2 delay in times.
 3 THE WITNESS: Yes. I was waiting and
 4 it never came so. Okay. We're good.
 5 MS. JACKSON: And you were present at
 6 this inspection; is that correct?
 7 THE WITNESS: Yes, ma'am.
 8 BY MS. JACKSON:
 9 Q And if you could read that seventh
 10 line on the -- they're kind of like paragraphs
 11 but also just seventh sentence --
 12 A Where it starts with Singleton?
 13 Q Yes.
 14 A Singleton said there were 32 drums on
 15 the trailer. Singleton didn't know if the drums
 16 contained any material.
 17 Q Okay. Were you aware of 32 drums on
 18 the trailer?
 19 A I guess I was aware of 32 drums on the
 20 trailer.
 21 Q Okay. But you didn't know what was in
 22 the drums?

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1 A That's correct.
 2 Q Or whether they had any material?
 3 A Yes, ma'am.
 4 Q Okay.
 5 A That's correct.
 6 Q Thank you. Let's turn to -- now let's
 7 turn to REX14A, please? Oh, I'm so sorry.
 8 You're right. If you could pull up 14 on the
 9 screen and then I think -- I have this copy and
 10 please remind me, Your Honor, if I forget to have
 11 him show you after I have him mark things.
 12 JUDGE COUGHLIN: So we're on REX14A?
 13 MS. JACKSON: A, yes.
 14 JUDGE COUGHLIN: Okay. You testified
 15 about the Prime Salt Lake City facility using
 16 this exhibit, correct?
 17 A Yes, ma'am.
 18 Q And this is a Google image of the
 19 Prime facility; is that right?
 20 A Yes -- yes, ma'am.
 21 Q Okay. And this image is undated?
 22 A Yes. I don't see a date.

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1 facility. You see the construction activity over
 2 in what would be consider the left top right
 3 corner over there?
 4 A That's correct.
 5 Q And is this the portion of the lot
 6 where -- the northeast portion of the lot where
 7 the drums were stored?
 8 A And you said the construction company
 9 put up a fence; is that correct?
 10 Q They did.
 11 A Do you see a fence in this picture?
 12 Q I do not.
 13 MS. JACKSON: Let's look at -- before
 14 you leave, one minute -- okay, let's go back to
 15 REX14A. And, Ms. Tribbett, if you could display
 16 REX14 just so I have it in front of me? Thank
 17 you. Can you mark on here where the construction
 18 fence is?
 19 JUDGE COUGHLIN: One -- just one
 20 second, quickly. It's probably too Type A but is
 21 there a different color Sharpie that anybody has?
 22 MS. JACKSON: I do.

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1 Q And I'm sorry. I had a little bit of
 2 a hard time keeping track. Is this you think
 3 representative of both 2015 and 2016?
 4 A I think this is 2016.
 5 Q 2016, okay. Do you know if this in
 6 August 2016?
 7 A I'm so sorry, I can't tell you.
 8 Q How about July 2016?
 9 A I can't tell you, I'm sorry.
 10 Q Okay. The drums aren't shown in this
 11 image, are they?
 12 A I do not see them, no.
 13 Q Okay. And for purposes of this case,
 14 the drums were stored in Salt Lake City between
 15 October 2015 and August 2016; is that correct?
 16 A That's correct.
 17 Q And there was construction going on
 18 during this time; is that right?
 19 A Yes, ma'am.
 20 Q Before I have you mark this, I'm going
 21 to flip back to CX10 at page 17. Again, just to
 22 orient you, this is from the inspection of the

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1 JUDGE COUGHLIN: Okay.
 2 MR. RYAN: I was going to say, Your
 3 Honor, if I may, maybe we can have a 14B, and 14B
 4 would be your markings?
 5 MS. JACKSON: Sure.
 6 JUDGE COUGHLIN: That's another way to
 7 do it. Just to --
 8 MR. RYAN: That way we --
 9 JUDGE COUGHLIN: -- otherwise, I'd
 10 shoot a color shot so I can keep track of --
 11 MR. RYAN: Counsel, I gave you my
 12 second copy if you -- it's identical if you want
 13 to use that to hand to him.
 14 MS. JACKSON: I wrote on it.
 15 MR. RYAN: Oh, I'm sorry -- I'm sorry.
 16 MS. JACKSON: No. I apologize. I
 17 didn't think that through.
 18 JUDGE COUGHLIN: Oh, no -- no -- no.
 19 MR. RYAN: Here we go. And his
 20 Sharpie is up there.
 21 MS. JACKSON: Oh.
 22 JUDGE COUGHLIN: So we're going to --

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1 okay, just -- so let me make this clear for the
 2 record. So we're not going to have two different
 3 colors on one exhibit. We're going to have a
 4 separate 14B that's the subject of cross that the
 5 witness will mark --
 6 MR. RYAN: Okay.
 7 JUDGE COUGHLIN: -- right? Is this
 8 what we're doing?
 9 MS. JACKSON: Potentially --
 10 MR. RYAN: It works --
 11 MS. JACKSON: -- yes, Your Honor.
 12 MR. RYAN: -- it works for me, Your
 13 Honor, if it's --
 14 MS. JACKSON: Okay.
 15 MR. RYAN: -- okay with counsel.
 16 JUDGE COUGHLIN: Okay. All right,
 17 great.
 18 MS. JACKSON: Okay.
 19 THE WITNESS: Do you want me to write
 20 REX14B in the corner?
 21 MS. JACKSON: Yes, please. Okay, yes.
 22 So we just looked at CEX10, and you saw that

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1 is between the -- you know, with regards to the
 2 REX14?
 3 THE WITNESS: Do you want me to mark
 4 it?
 5 MS. JACKSON: Yes.
 6 THE WITNESS: Well, the fence runs all
 7 along the north side of the property.
 8 BY MS. JACKSON:
 9 Q Okay. But is there fencing along
 10 either side of the property?
 11 A On the east and west side?
 12 Q Yes.
 13 A There is, yes.
 14 Q Okay. And does it go -- I guess -- I
 15 guess my question is, is that fencing all the way
 16 across where the ongoing construction was, too?
 17 A Correct.
 18 Q So this entire --
 19 A This entire length.
 20 Q -- trapezoidal shape, both lots --
 21 A Yes, ma'am.
 22 Q -- has a fence with barbed wire all

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1 picture where there was no fence there. Is it
 2 your contention that in this picture, there's a
 3 fence completely blocking the construction
 4 activity?
 5 THE WITNESS: I can't see a picture --
 6 I can't see a fence on this picture
 7 MS. JACKSON: Okay.
 8 JUDGE COUGHLIN: I think you left off
 9 with -- and I'm sorry if that derails the other
 10 color Sharpie - I think you were asking him a
 11 question about marking something to do with
 12 construction.
 13 MS. JACKSON: It was. It was about
 14 the fence but then he just answered it and said
 15 he can't see it so.
 16 JUDGE COUGHLIN: Okay.
 17 MS. JACKSON: I think we're okay.
 18 JUDGE COUGHLIN: Okay.
 19 MS. JACKSON: And you -- oh, but I
 20 would like you, while we're on this exhibit --
 21 you know, you described a fence with barbed wire
 22 kind of protecting. Can you show us where that

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1 the way around it?
 2 A All along the north side it does and
 3 the west side, the south side up until the gate.
 4 Q Okay. Where is -- can you mark the
 5 gate for me?
 6 A On -- yes.
 7 Q On 14, what will be 14B.
 8 A I'll draw a circle around. There's
 9 two gates. There's one for the drivers and then
 10 there's one for in-house associates.
 11 Q Okay.
 12 A Do you want me to do both?
 13 Q Yes, please.
 14 A Okay.
 15 JUDGE COUGHLIN: And how do you want
 16 him to mark it, like G1 --
 17 MS. JACKSON: I thought --
 18 JUDGE COUGHLIN: -- and G2 or?
 19 MS. JACKSON: Yes. That would be
 20 great. Thank you. And if it's okay, I'm going
 21 to approach the witness. I actually don't know
 22 what he's marking, so I'm going to go take a look

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1 and then I'll try to describe it for the record.
 2 Okay.
 3 JUDGE COUGHLIN: Okay. Trying to
 4 describe that for the record. I mean the, you
 5 know, that can come in but it's just for the
 6 transcript and to sort of orient whoever's
 7 reading the transcript, it might help if you can
 8 describe that a little bit.
 9 BY MS. JACKSON:
 10 Q And, Mr. Singleton, I'm going to try
 11 to describe it for the record. If I'm getting
 12 anything wrong, please correct me.
 13 A Yes, ma'am.
 14 Q It looks like on here you're marked
 15 kind of -- it's in the bottom third of the
 16 photograph, moving up kind of towards the parking
 17 lot. You would enter in at the cul-de-sac. And
 18 then there's a driveway there where you'd enter
 19 into what -- where we can see where cars are
 20 parked. That's a parking lot.
 21 And then if you were to travel up to
 22 the center from the cul-de-sac, there is another

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1 A Yes, ma'am.
 2 JUDGE COUGHLIN: Is the barbed wire
 3 going to be of any significance that it should be
 4 denoted? No?
 5 MS. JACKSON: Yes. Yes, that's true.
 6 You might as well mark where that is.
 7 JUDGE COUGHLIN: And, I mean, just for
 8 the sake of the witness, would some slashes over
 9 the top be good to identify the barbed nature of
 10 it as opposed to the unbarbed nature of it?
 11 MS. JACKSON: Yes, Your Honor. Thank
 12 you again.
 13 JUDGE COUGHLIN: Is that clear, Mr.
 14 Singleton?
 15 THE WITNESS: I think so.
 16 JUDGE COUGHLIN: Okay.
 17 THE WITNESS: I guess there's some
 18 parts in here, though, that I'm not real sure if
 19 were barbed or not barbed.
 20 BY MS. JACKSON:
 21 Q You can err on the side of barbed if
 22 you want. I, you know --

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1 building almost directly center of the page, the
 2 left of the Pedigree truck and trailer sales
 3 building.
 4 Is that accurate?
 5 A Yes, ma'am.
 6 Q Okay. I'm going to hand this back to
 7 you. I'm still confused.
 8 I would like you to mark exactly where
 9 the barbed wire fence fencing is around the
 10 property.
 11 A So, you want me to draw a circle
 12 around?
 13 Q Just lines that would reflect the
 14 fence.
 15 A So, there's fence with barbed wire,
 16 and then there's not, there's fence without
 17 barbed wire. I don't -- that's why I just want
 18 to make sure we're on the same page.
 19 Q Okay. Thank you for the
 20 clarification.
 21 Just mark the fencing that's
 22 surrounding the property.

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1 A Okay. I just didn't know the
 2 significance of what you wanted.
 3 Q The importance here is we are trying
 4 to get at the security of the facility, and
 5 trying to understand just the overall context.
 6 So, there's -- this is a little more information
 7 gathering for -- on our part.
 8 A Okay. So, I've done that. I don't
 9 recall the date of this picture so, therefore,
 10 I'm not real sure in front of the construction
 11 site exactly what they had out there.
 12 Q Okay.
 13 A If that makes sense.
 14 MR. RYAN: Excuse me. May I see real
 15 quick?
 16 MS. JACKSON: Oh, absolutely.
 17 BY MS. JACKSON:
 18 Q Thank you, Mr. Singleton.
 19 Okay, just to reflect for the record,
 20 it looks like you've drawn pretty much some
 21 fencing around the exterior, with the exception
 22 of where the gate would be, you know, to access

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1 that middle. It sounds like that's a security
2 building?

3 What is that in the middle of the
4 drive from the cul-de-sac, squarely in the middle
5 of the picture?

6 A That is where the trucks -- it's
7 inbound/outbound for the tractors and trailers.

8 Q Okay. And then there is fencing, it
9 looks like very clear fencing on the far north
10 side. There's fencing. That looks barbed where
11 the railroad tracks are?

12 A Yes, ma'am.

13 Q And then there is unbarbed fencing on
14 the far west side, here?

15 A I'm sorry. That, that is barbed as
16 well. I'm sorry.

17 Q Okay. That's okay.

18 A And I'm not sure about the, the south
19 side, if it's barbed or not.

20 Q But there's, so there's, and then
21 there's fencing on the south side up to the cul-
22 de-sac, after the cul-de-sac. And on the other

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1 side of the cul-de-sac is, there is fencing. And
2 then it looks like potentially, based on your
3 recollection it stopped at the construction area?

4 A Yes. Because I can't -- I know what's
5 there today but I can't tell you 6 years ago.
6 I'm sorry.

7 Q Okay.

8 JUDGE COUGHLIN: And I'm sorry to
9 interject, but while we're on this topic, was
10 there a separate entrance for the construction
11 site and the construction work, or did they go
12 through the main entrance of the property and?

13 THE WITNESS: There was, there was a
14 separate entrance for them.

15 JUDGE COUGHLIN: Okay.

16 THE WITNESS: Yes, ma'am. On the
17 right side, on the south side of the road, on 800
18 South going in.

19 JUDGE COUGHLIN: Okay.

20 THE WITNESS: You can see the vehicles
21 parked there, the construction vehicles.

22 JUDGE COUGHLIN: Okay.

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1 THE WITNESS: That's construction
2 workers. And they accessed it through that side.

3 JUDGE COUGHLIN: Okay. And so, the
4 entry there is, it's somewhere near where that
5 parking area is then for the construction area?

6 THE WITNESS: Where you see the Salt
7 Lake City inbound.

8 JUDGE COUGHLIN: Yes.

9 THE WITNESS: That, that is the area
10 that they, they would normally access from, the
11 construction folks would normally access the
12 property.

13 JUDGE COUGHLIN: Okay, great. Thank
14 you.

15 BY MS. JACKSON:

16 Q Okay. And earlier you testified that
17 the construction activity -- All right, let me
18 check my notes so that I get this right.

19 Where you were asked about whether or
20 not the construction, there was access between
21 the construction property and the paved part of
22 the facility. And I believe your response was

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1 not to my knowledge, no.

2 Is that right? Was there ever any
3 traffic from the construction side through the
4 Prime facility?

5 A Not to my knowledge. I don't know.
6 Well, I mean, I have no -- I couldn't tell you if
7 they accessed it or not.

8 Q Okay. I want to show you a Google
9 image, so via Google. It's not admitting this
10 into evidence. It's CX-74 at page 13.

11 MR. RYAN: Objection, Your Honor.
12 We've already gone over these exhibits. They're
13 not -- they were -- Your Honor already ruled that
14 they do not come in.

15 MS. JACKSON: Can I respond?

16 JUDGE COUGHLIN: Yes.

17 MS. JACKSON: I'm not admitting them
18 into evidence. We are not trying to bring them
19 in through this witness. This speaks to the
20 credibility of the witness.

21 You know, he's testified that there,
22 there was a fence, there was no construction

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1 activity. And I'm just trying -- this image is
2 dated for the time of the storage impact. So,
3 more reliable than an open time frame.

4 And I just wanted to ask this witness
5 about this reflection.

6 JUDGE COUGHLIN: Okay. But I guess,
7 I mean, I'll allow questioning for credibility
8 issues.

9 MS. JACKSON: Yes.

10 JUDGE COUGHLIN: But I just want to be
11 very clear about the date the images reflect.

12 MS. JACKSON: Yes.

13 JUDGE COUGHLIN: Because I think we
14 were --

15 MS. JACKSON: I will --

16 JUDGE COUGHLIN: -- I think we were
17 looking at, so if you're comparing the CX-74 at,
18 you're at page 2 or?

19 MS. JACKSON: Yes. Right.

20 JUDGE COUGHLIN: Okay.

21 MS. JACKSON: Oh, sorry. Thirteen.

22 JUDGE COUGHLIN: Oh, okay.

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1 Okay. Okay, I, because I was looking
2 at a 2015 date, and I was concerned that we were
3 comparing something from 2015 to 2016. But page
4 13 appears to be the image is dated July 8th,
5 2016?

6 MS. JACKSON: Uh-huh. Yes, Your
7 Honor.

8 JUDGE COUGHLIN: And that's what
9 you're comparing to RX-14?

10 MS. JACKSON: Yes, Your Honor.

11 JUDGE COUGHLIN: Which, Mr. Singleton,
12 I believe you said is representative of sometime
13 in 2016?

14 THE WITNESS: I would think, yes.

15 JUDGE COUGHLIN: Okay. All right.

16 Mr. Ryan, do you wish to be heard?

17 MR. RYAN: I think we need to lay a
18 foundation here that this witness is competent to
19 talk about what counsel has represented to him as
20 a particular date.

21 If he, if he knows this is from that
22 date, he can, he can talk about it. But if he

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1 doesn't, I would suggest that it suffers from the
2 same problems that Your Honor has already ruled
3 on.

4 JUDGE COUGHLIN: Yes, I agree.
5 Go ahead.

6 MS. JACKSON: Okay.

7 JUDGE COUGHLIN: You can ask some
8 questions to lay a foundation.

9 BY MS. JACKSON:

10 Q Well, the other picture we kind of
11 talked about the general time frame; correct?
12 The RX-14?

13 A Yes. I would say it's 2016 or so.

14 Q Okay. And you're the facility
15 manager; is that correct?

16 A Yes, ma'am.

17 Q And you're familiar with all the
18 aspects of the facility. My question to you
19 regarding this picture, is this a fair and
20 accurate representation of your facility in 2016?

21 JUDGE COUGHLIN: And we're looking at
22 CX-74 page?

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1 MS. JACKSON: Oh, I'm sorry.
2 Can you scroll up? I'm having a hard
3 time.

4 JUDGE COUGHLIN: I just, you know,
5 because we --

6 MS. JACKSON: Yes.

7 JUDGE COUGHLIN: -- we've got two
8 different pictures. I want to make sure. Okay.

9 MR. RYAN: And so we're clear, are we
10 saying any date for 2016?

11 MS. JACKSON: Yes.

12 THE WITNESS: I, I don't know what
13 date. This is our facility, yes.

14 BY MS. JACKSON:

15 Q Okay.

16 A I can't give you a date. I can't give
17 you a date on any picture you show me.

18 Q Okay. But do you see a fence there?

19 MR. RYAN: Your Honor, I believe --

20 THE WITNESS: By there do you mean --

21 MR. RYAN: -- the witness has just
22 testified --

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1 BY MS. JACKSON:
 2 Q In the picture.
 3 MR. RYAN: -- that he cannot establish
 4 when this picture was taken. If the offer of
 5 proof --
 6 MS. JACKSON: In 2016.
 7 MR. RYAN: May I, please? It's being
 8 offered to show a temporal time significant, for
 9 a time significant reason, he's testified he
 10 doesn't know. He can't testify based on what he
 11 sees when it was taken.
 12 MS. JACKSON: Okay.
 13 MR. RYAN: Therefore, I would object
 14 to any further questioning on this exhibit.
 15 JUDGE COUGHLIN: Okay.
 16 MS. JACKSON: Oh. And, sorry, Your
 17 Honor, --
 18 JUDGE COUGHLIN: Hold on just a sec.
 19 I'm thinking. I need to rule.
 20 But did you need to say something
 21 else?
 22 MS. JACKSON: I just wanted to reflect

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1 to me in this.
 2 Q Okay. And do you see it looks like
 3 there's a sort of barrier there in the middle of
 4 the picture, but it's, it's open and there's, you
 5 know, there's access between the construction
 6 side and the paved facility side.
 7 JUDGE COUGHLIN: Mr. Ryan?
 8 MR. RYAN: I believe -- I withdraw the
 9 question. Never mind. I'll withdraw.
 10 BY MS. JACKSON:
 11 Q Do you see those access points between
 12 the construction and the facility?
 13 A Yes. Yes, ma'am.
 14 Q Okay. And you'd agreed those -- Okay.
 15 Nope, withdrawn.
 16 And can you see the dirt that's kind
 17 of around? You said that you see the drum's
 18 there, do you see the dirt around the drum in the
 19 photo?
 20 A Yes, ma'am.
 21 Q Thank you. So, in fact, there's no
 22 fence blocking access between the two, those two

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1 that the image on our Google Earth image is
 2 actually reflected at the bottom of the page.
 3 JUDGE COUGHLIN: Yeah, the image date
 4 I see as that. But I think what Mr. Ryan is
 5 saying is with regard to the witness'
 6 recollection of it.
 7 So, I'm going to allow you to ask the
 8 question.
 9 But, Mr. Singleton, I want you to feel
 10 free, while cross is typically limited to yes or
 11 no, I want you to feel free to fully explain your
 12 answer and provide context for it. And if you
 13 don't know, just say you don't know.
 14 THE WITNESS: Yes, ma'am.
 15 JUDGE COUGHLIN: Go ahead.
 16 MS. JACKSON: Thank you, Your Honor.
 17 BY MS. JACKSON:
 18 Q Do you see the drum in the trailer in
 19 this photo?
 20 A Yes.
 21 Q And is it covered by a tarp?
 22 A I can't tell. It doesn't look like it

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1 points, is there?
 2 A There looks like there's two access
 3 points. I, I don't know if that's a fence that
 4 runs.
 5 Q Okay, thank you.
 6 MS. JACKSON: Just a couple of quick
 7 questions, then I think we're finished. If you
 8 could just give me one sec to look at my notes.
 9 (Pause.)
 10 MS. JACKSON: One moment, Your Honor.
 11 JUDGE COUGHLIN: Okay.
 12 MS. JACKSON: No further questions.
 13 JUDGE COUGHLIN: All right, thank you.
 14 MS. JACKSON: Thank you, Mr.
 15 Singleton.
 16 THE WITNESS: Thank you, ma'am.
 17 MS. JACKSON: Oh. Actually, I
 18 apologize. I should give you that exhibit.
 19 MR. RYAN: The witness I think, the
 20 witness should have it.
 21 THE WITNESS: I just have 14A. You
 22 took 14B, I think.

1 MR. RYAN: Okay. May I approach, Your
 2 Honor?
 3 JUDGE COUGHLIN: Yes.
 4 MR. RYAN: Now, on the fencing, can
 5 you pull up the Complainant's Exhibit 10 at 48?
 6 REDIRECT EXAMINATION
 7 BY MR. RYAN:
 8 Q Mr. Singleton, we looked at this
 9 picture earlier. Do you recall this?
 10 A I don't have anything just yet.
 11 Q Oh, I'm sorry. Let me get a copy of
 12 it.
 13 Do you see anything yet, Mr.
 14 Singleton?
 15 A I do. Yes, sir. Got it. Sorry.
 16 Q Now, we're looking at Complainant's
 17 Exhibit 10 at page 48. And we talked about that
 18 fence we see in the back. Is that what was known
 19 as a construction fence?
 20 A Yes, sir.
 21 Q Is that a permanent fence or a
 22 temporary fence?

1 were looking at in the prior photo?
 2 A That's what it would be, yes.
 3 Q Okay. And these photos, again, were
 4 taken by EPA during their August 24th inspection.
 5 Is it, is it safe to say that that fencing was
 6 taken down to assist EPA?
 7 A I can't say that, sir. I'm sorry.
 8 Q The temporary construction fencing
 9 like this can be broken down fairly quickly,
 10 can't it?
 11 A It can, yes.
 12 Q And be put back up?
 13 A Yes.
 14 Q Now, on the -- there was testimony on
 15 cross-examination regarding the number of drivers
 16 per week.
 17 On your website which you use, I
 18 believe there's currently 500 drivers per week.
 19 How many of those drivers at the time, in the
 20 2015-16 time frame went back to what you called
 21 the boneyard?
 22 A I wouldn't know a number. I would say

1 A It's temporary.
 2 Q And was it put up -- why was it put up
 3 there?
 4 A You know, construction companies put
 5 them up, you know, whenever they do construction
 6 a lot of times, is my --
 7 Q And when EPA -- did that fence remain
 8 there during the course of the construction?
 9 A I don't know if they took it up and
 10 down, changed it, moved it back and forth. I
 11 don't know exactly. Best of my knowledge there
 12 was a fence there.
 13 Q And did it, did it go from the front
 14 to the back of the construction site?
 15 A Yes.
 16 Q Can we turn to Complainant's Exhibit
 17 10 at page 14, please?
 18 And you see in the bottom left-hand
 19 corner of Complainant's Exhibit 10 at page 14, do
 20 you see some fencing on the ground?
 21 A Oh, yes, sir.
 22 Q Is that the construction fencing we

1 that it could be zero.
 2 Q Is there any reason, would there be
 3 any reason for a driver to go back to the
 4 boneyard?
 5 A That's just it, there would be no rea
 6 -- I mean, there's no reason for a driver to go
 7 back there.
 8 Q I'm sorry, could we go back to CX-10
 9 at 48, please.
 10 Again this is a photograph from the,
 11 CX-10 at 48 is a photograph from the August 24th
 12 EPA inspection. There's a person in the upper
 13 right-hand corner of the photograph. Do you know
 14 who that is?
 15 A I do not.
 16 Q Is he an EPA person or is he a, a
 17 Prime person, do you know?
 18 A I, I don't know.
 19 MR. RYAN: I have no further
 20 questions, Your Honor.
 21 JUDGE COUGHLIN: Okay.
 22 MS. JACKSON: No further questions,

1 Your Honor.
 2 JUDGE COUGHLIN: All right. So --
 3 MR. RYAN: I'm sorry. Please.
 4 JUDGE COUGHLIN: Go ahead.
 5 MR. RYAN: I was going to suggest now
 6 would be the time I would suggest to take care of
 7 14A and B.
 8 JUDGE COUGHLIN: Yes. So 14A was
 9 admitted already. Were you -- you were moving
 10 14B in?
 11 MS. JACKSON: Yes, Your Honor.
 12 JUDGE COUGHLIN: Okay.
 13 MS. JACKSON: I can make a formal
 14 motion to -- Complainant's request that we move
 15 14B from witness Singleton's testimony into
 16 evidence.
 17 JUDGE COUGHLIN: Okay. And was there
 18 any objection to that?
 19 MR. RYAN: No, Your Honor.
 20 JUDGE COUGHLIN: Okay. So, sure, so
 21 14A and B, I'm repeating myself with regard to A,
 22 but they're both admitted into evidence.

1 So, as I mentioned, I'm going to scan these and
 2 create a PDF and circulate it.
 3 I'm not going to email the parties
 4 directly with it. But Michael and/or Alissa will
 5 so that you have the PDF I've created. And then
 6 we'll hand the originals to the court reporter.
 7 Just backup measures to preserve it.
 8 MR. RYAN: That works fine for me,
 9 Your Honor.
 10 JUDGE COUGHLIN: Okay.
 11 MS. JACKSON: Thank you.
 12 JUDGE COUGHLIN: You bet.
 13 All right. So, I believe up next is
 14 Dr. Walker?
 15 MR. RYAN: That's correct, Your Honor.
 16 JUDGE COUGHLIN: Okay. Would you all
 17 like a brief break before we begin with Dr.
 18 Walker?
 19 MR. RYAN: Yes. A short break would
 20 be nice, Your Honor.
 21 JUDGE COUGHLIN: Okay. Okay, great.
 22 Why don't we come back in 10?

1 (Whereupon, the above-referred to
 2 document was received into evidence as
 3 Complainant's Exhibit 14B.)
 4 JUDGE COUGHLIN: And what I'll do is
 5 take them. Well, do you want to nab folders
 6 first?
 7 MR. RYAN: Yes. Can we just nab the
 8 folders real quick, Your Honor?
 9 JUDGE COUGHLIN: Sure. Yeah.
 10 MR. RYAN: And then we will provide
 11 them.
 12 JUDGE COUGHLIN: Yes. And then I, you
 13 know, during a break I'll do a quick scan. And
 14 then when we're back I'm going to state on the
 15 record that I handed them to the court reporter.
 16 MR. RYAN: Your Honor, may the witness
 17 be excused?
 18 JUDGE COUGHLIN: Oh yes. Yes. I'm
 19 sorry, Mr. Singleton. Thank you for your
 20 testimony.
 21 So I was just chatting with Michael.
 22 So he and I both have scanner apps on our phone.

1 MR. RYAN: Thank you.
 2 JUDGE COUGHLIN: Okay. See you then.
 3 (Whereupon, the above-entitled matter
 4 went off the record at 9:23 a.m. and resumed at
 5 9:35 a.m.)
 6 JUDGE COUGHLIN: We are on the record.
 7 We've got great scans of these two
 8 documents, thanks to Michael Wright, who has
 9 better technology than I do. So, he's going to
 10 send the parties copies of 14A and 14B.
 11 I'm inclined to hand them to the court
 12 reporter now, unless you think you might need to
 13 refer to them during the course of the hearing.
 14 If you're done, I'll pass them over.
 15 MR. RYAN: That works for me, Your
 16 Honor.
 17 JUDGE COUGHLIN: Okay.
 18 MS. JACKSON: Fine for me.
 19 JUDGE COUGHLIN: Okay. So, we're
 20 giving them to Mr. Morris now to make a part of
 21 the record, the official record of the hearing.
 22 Thank you.

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1 All right. So, are we ready to
2 proceed?
3 MR. RYAN: I am, Your Honor.
4 JUDGE COUGHLIN: All right, please go
5 ahead.
6 MR. RYAN: I'd like to call Dr.
7 Elizabeth Walker to the stand, Your Honor.
8 JUDGE COUGHLIN: All right.
9 WHEREUPON,
10 ELIZABETH G. WALKER
11 was called for examination by Counsel for the
12 Respondent and, after having been first duly
13 sworn, was examined, and testified as follows:
14 JUDGE COUGHLIN: Thank you, please be
15 seated. Dr. Walker's been sworn.
16 DIRECT EXAMINATION
17 BY MR. RYAN:
18 Q Dr. Walker, could you please state and
19 spell your name for the record?
20 A Elizabeth Gerbel (phonetic) Walker, W-
21 A-L-K-E-R.
22 Q And if you could please put RX-18 on

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1 Q Is this version of your CV, which was
2 provided in the context of a prehearing exchange
3 about two years ago; has there been any changes
4 to your CV since this was submitted?
5 A I have a few additional publications
6 and presentations that I've made. But otherwise
7 this is still representative. Yes, that's right.
8 Q Who are you currently employed by?
9 A I'm self-employed. I have my own
10 consulting firm, Elizabeth Walker Consulting.
11 Q Could you please summarize your
12 education for the Judge, please?
13 A Certainly. I have a B.S. in cellular
14 biology and a Ph.D. in toxicology from the
15 University of Washington's Department of
16 Environmental and Occupational Health Sciences.
17 I also have a specialized certificate
18 of environmental health risk assessment as well.
19 Q And as part of your Ph.D. work, what
20 was your dissertation on?
21 A I studied the effects of low dose
22 methylmercury on the developing brain.

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1 the screen?
2 Do you see that in front of you, Dr.
3 Walker?
4 (Whereupon, the above-referred to
5 document was marked as Respondent's Exhibit No.
6 18 for identification.)
7 A I do.
8 Q Okay. Is this a fair and accurate
9 representation of your resume, your CV?
10 A Yes, it is.
11 MR. RYAN: Your Honor, I move
12 Respondent's Exhibit 18 into the record.
13 JUDGE COUGHLIN: Okay. Is there any
14 objection?
15 MS. JACKSON: No objection, Your
16 Honor.
17 JUDGE COUGHLIN: All right, RX-18 is
18 admitted.
19 (Whereupon, the above-referred to
20 document was received into evidence as
21 Respondent's Exhibit No. 18.)
22 BY MR. RYAN:

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1 Specifically, I looked at the cellular signaling
2 pathways that were impacted by what were
3 environmentally relevant dietary exposure levels
4 of methylmercury in households during the
5 neurodevelopmental process might be influenced by
6 that chemical stressor.
7 So those same signaling pathways that
8 control cellular proliferation and
9 differentiation in specialized hexacells
10 (phonetic) in the brain, like neurons, taking
11 them from some kind of stem cell or pluripotent
12 cell into neurons of astrocytes or glia or
13 otherwise. The same signaling pathways that
14 control that are also responsible for responding
15 to environmental stressors.
16 And so I looked at how those exposures
17 to methylmercury at very low doses might impact
18 the developing brain by impacting those cellular
19 signaling pathways.
20 Q And since your Ph.D. dissertation work
21 have you developed any specializations?
22 A I would say that my specializations as

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1 a toxicologist are in risk assessment, risk
2 communication, risk perception as well. I've
3 worked extensively with biomarkers and
4 characterization of measurement methodologies,
5 and also air quality, specifically rural air
6 quality issues and wildfire smoke.

7 Q Can you describe to the Judge what a
8 toxicologist does?

9 A Sure. So the science of toxicology,
10 I like to impress small children by saying it's
11 the science of poison. That now it gets an eye
12 roll from my 13 -- 12-year-old daughter. But
13 generally a toxicologist deals with understanding
14 how chemical exposures occur, what the pathways
15 of exposure are, and then characterizing how
16 those exposures to toxins can cause harm or
17 contribute to disease.

18 So it starts with understanding how a
19 potential human or ecological organism could be
20 exposed. How that, if we're speaking about
21 humans, how that chemical might enter the body,
22 through what route, whether it's inhalation or

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1 at potential molecules that would be used as
2 medicines, but prior to those molecules ever
3 being used in humans for the first time.

4 Following that, I spent about a decade
5 at a nonprofit organization. That nonprofit
6 brought together scientists from academia, from
7 government, from industry to think about how we
8 could develop and what kinds of evidence and data
9 was necessary to develop more sensitive
10 biomarkers or indicators that drug -- drug
11 toxicity was occurring. So those were things
12 like biomarkers of kidney toxicity, liver --
13 muscle, et cetera.

14 That process in that 10 years at that
15 organization, the ultimate goal of those
16 interdisciplinary collaborations was to develop
17 an evidence package that would ultimately be
18 given to regulators, in this case FDA, the
19 European Medicines Agency, or the PMDA, which is
20 the Japanese FDA basically, summarizing the
21 science so that those regulators could then make
22 decisions about the benefits and risks of how to

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1 ingestion.

2 Once a chemical enters the body, what
3 happens to it? Is it made more toxic by some
4 kind of activation process? Is it detoxified by
5 many of the processes we have in our body to
6 protect us? How is it distributed throughout the
7 body? Are there particular target organs that
8 might be susceptible? And then, ultimately, how
9 is that chemical eliminated or excreted from the
10 body?

11 So generally speaking then,
12 toxicological risk assessment is kind of the
13 entirety of that process, thinking about under
14 specific exposure scenarios, how a chemical,
15 characterizing how a chemical might cause some
16 kind of harm.

17 Q Could you summarize your work
18 experience for us?

19 A I can, sure. So I began my career
20 while I was still in my Ph.D. at a biotechnology,
21 biopharmaceutical company. And I worked in the
22 safety assessment group there, so mainly looking

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1 incorporate those new biomarkers or novel
2 technologies into clinical trials for safety
3 assessment purposes.

4 And then, sorry, most recently I've
5 been working in environmental health more
6 directly. I work on a number of different
7 efforts at the local, state, and federal level to
8 think about the health risks from climate change,
9 and help develop effective adaptation and
10 mitigation strategies, specifically focusing on
11 vulnerable populations. Those are things like
12 extreme weather, heat, wildfire smoke, et cetera.

13 Q Who do you currently do most of your
14 work for?

15 A I have a few different clients right
16 now. The predominant bulk of my work right now
17 is for the Methow Valley Citizens' Council. They
18 --

19 Q Is that an environmental group?

20 A They are a conservation-focused
21 nonprofit. They are focused on clean air, clean
22 water, good, responsible land use and climate

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1 change.
 2 I also currently work for a Native
 3 American tribe in the area where I live in
 4 Central Washington. And I'm also the community-
 5 based organizational lead for two University of
 6 Washington research studies.
 7 Q And I see on your resume you have a
 8 number of publications. Can you briefly
 9 summarize your publication history for me?
 10 A Sure. So most of the publications are
 11 in the fields of toxicology or risk assessment.
 12 A number of them are related to biomarkers and
 13 measurement methodologies. There are several
 14 related to the value of collaboration, especially
 15 in the interdisciplinary environment where I've
 16 been helping facilitate work for a long time.
 17 And there are others as well focusing
 18 on risk of wildfire smoke.
 19 Q I show 19 publications on your, on
 20 your resume. You have other additional
 21 publications, or have you added more?
 22 A I believe there's one more that's been

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1 added since this.
 2 Q And are those publications all peer
 3 reviewed?
 4 A That's correct.
 5 Q Are you a member of any professional
 6 societies?
 7 A I am. I'm a member of the Society of
 8 Toxicology as well as the National Environmental
 9 Health Association and the Washington
 10 Environmental Health Association.
 11 MR. RYAN: Your Honor, I'd move to
 12 have Dr. Walker qualified as an expert in
 13 toxicology and risk assessment.
 14 JUDGE COUGHLIN: Any objection?
 15 MS. JACKSON: No objection, Your
 16 Honor.
 17 JUDGE COUGHLIN: All right. So
 18 deemed.
 19 BY MR. RYAN:
 20 Q Dr. Walker, have you ever testified
 21 before in court?
 22 A I have not.

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1 Q And are you being paid for your time
 2 working on this case?
 3 A I am.
 4 Q And how much is that?
 5 A \$250 an hour.
 6 Q Is that your typical rate you charge?
 7 A It is my typical rate. Although, for
 8 the opportunity to work for small nonprofit
 9 organizations I sometimes charge a lower rate.
 10 Q Did you prepare an expert report in
 11 this case?
 12 A I did.
 13 Q Could you please pull up RX-20?
 14 (Whereupon, the above-referred to
 15 document was marked as Respondent's Exhibit No.
 16 20 for identification.)
 17 Q Do you have RX-20 in front of you, Dr.
 18 Walker?
 19 A I do.
 20 Q Do you recognize this report?
 21 A I do.
 22 Q Is this the expert report you

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1 provided, you prepared in the context of this
 2 case?
 3 A It is.
 4 MR. RYAN: Move to admit RX-20, Your
 5 Honor.
 6 JUDGE COUGHLIN: Any objection?
 7 MS. JACKSON: No objection.
 8 JUDGE COUGHLIN: All right. RX-20 is
 9 admitted into evidence.
 10 (Whereupon, the above-referred to
 11 document was received into evidence as
 12 Respondent's Exhibit No. 20.)
 13 BY MR. RYAN:
 14 Q Since you prepared this report, have
 15 you learned any new facts that you did not know,
 16 that were relevant at the time you wrote this
 17 report?
 18 A Yes, I have.
 19 Q And what were those?
 20 A At the time of writing the report I
 21 understood that trailer was part or the entirety
 22 of the time it was stored at the Prime facility.

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1 And I now understand that not to be the case.
2 I've also come to understand the
3 location of the trailer relative to the entire
4 facility in a more precise manner.

5 And I also when I wrote the report did
6 not recognize that there have been estimates of
7 the total volume of material contained within the
8 drums. I thought that that was unknown at the
9 time.

10 Q Now, as you considered that new
11 information, has it changed your summary
12 conclusions in any way?

13 A It does not change my summary
14 conclusions.

15 Q What documents did you rely on in
16 other evidence in preparing your testimony?

17 A I looked at the NDIC report.

18 I looked at the EPA's proposed
19 explanation of the penalty.

20 I looked at the SDS and product
21 description for the paint involved.

22 I looked at many different photos of

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1 the site itself as well as aerial photos.

2 I did have time to speak with Mr.
3 Singleton.

4 I don't know if that's everything I
5 looked at in the entirety but --

6 Q Did you do any --

7 A -- but looked at the expert reports,
8 of course, of Dr. Keteles and Dr. Mueller.

9 Q And did you do any independent
10 research in preparation for this report?

11 A I did.

12 Q Can you briefly summarize that?

13 A Certainly.

14 I looked at literature related to the
15 chemical compounds found in the pain that were
16 listed in the SDS summary.

17 Q So, what was the starting point for
18 you providing an opinion in this case?

19 A I was asked to estimate or
20 characterize the probability of harm from paint
21 waste stored in an industrial facility in Salt
22 Lake City. And so, I began by looking at the

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1 EPA's proposed explanation of the penalty and the
2 language contained therein about the potential
3 for harm.

4 I think the whole of that document,
5 the precision of that language is important.

6 Q CX-4, could you pull that up?

7 Do you see on the screen in front of
8 you a document that's denoted CX-4, page 1 of 20?
9 Do you see that in front of you?

10 A I do.

11 Q And is this the document you were
12 referring to?

13 A It is.

14 Q And if we could highlight the last
15 full paragraph, please?

16 A May I go ahead and read from there?

17 Q Yes.

18 A So, this was where I began.

19 So, definitions there are obviously
20 very important, and precision of language. And
21 so, I utilized the EPA's definitions based on the
22 RCRA penalty assessment policy.

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1 And so, potential for harm -- and I'll
2 just go ahead and read.

3 MS. JACKSON: Your Honor, if I could,
4 sorry, if I could object. I'm sorry to interrupt
5 your testimony. I wasn't quite sure where she
6 was going to go.

7 Ms. Walker, sorry, Dr. Walker has not
8 been qualified as an expert on EPA's penalty
9 policy, the laws and regulations, or anything of
10 the sort. She's here to talk about risk. That's
11 fine. But I don't know that she's been qualified
12 to interpret the agency's policies.

13 JUDGE COUGHLIN: Okay. I, I wasn't
14 interpreting the testimony in that way.

15 Mr. Ryan, do you wish to respond?

16 MR. RYAN: Your Honor, the sentence
17 which we're looking at there talks about the
18 potential for harm based on the risk of exposure
19 and the EPA basis for their penalty calculation
20 in this case.

21 So, we have asked Dr. Walker to assess
22 EPA's methodology for assessing the environmental

1 and human health harm.
 2 JUDGE COUGHLIN: Okay. So, you're
 3 asking the witness to testify as to the
 4 methodology EPA uses to make, to make that
 5 evaluation, or tying those factors into her
 6 analysis?
 7 MR. RYAN: The latter, Your Honor.
 8 JUDGE COUGHLIN: Okay.
 9 MR. RYAN: They, in this document of
 10 theirs they argue the risk of exposure as a
 11 factor they considered.
 12 She's going to testify about what that
 13 term means and how it, how it could be applied in
 14 the real world.
 15 JUDGE COUGHLIN: Okay.
 16 MS. JACKSON: Okay. I just wanted to
 17 clarify. So, you're saying she's testifying to
 18 risk assessment and environmental exposure, and
 19 that's the scope here?
 20 MR. RYAN: In the context of the facts
 21 of the case.
 22 MS. JACKSON: Okay. Withdrawn.

1 potential seriousness of contamination.
 2 And so, your question was to where I
 3 started in approaching my expert report. And it
 4 was thinking about those two things, so the
 5 probability of exposure, and the potential
 6 seriousness of contamination.
 7 Q And you did that in the context of the
 8 trailer with drums on it stored at the Salt Lake
 9 City facility for Prime?
 10 A That's correct.
 11 Q So, how does your, how does the
 12 probability of exposure play a role in your
 13 analysis?
 14 A So, the basis of sort of understanding
 15 risk or approaching risk, the risk calculation,
 16 is we have really two main factors.
 17 And so, one is related to the
 18 probability of exposure and relating into all of
 19 the toxins or, you know, potential organisms
 20 stored in the receptors, either genes or
 21 ecological receptors. It's a little jargony, but
 22 that means that they used the term receptors, a

1 JUDGE COUGHLIN: Okay. All right,
 2 please go ahead.
 3 THE WITNESS: Sure. Thank you.
 4 So, potential for environmental fines
 5 in EPA's penalty assessment policy here, based on
 6 the risk of exposure and harm to the RCRA
 7 regulatory program.
 8 BY MR. RYAN:
 9 Q Okay. Just stop right there.
 10 Does in your opinion in any way relate
 11 to that last part here, harm to the RCRA
 12 regulatory program?
 13 A It does not, no. I'm just going to
 14 speak to risk of exposure, and that's the scope
 15 of the expert report.
 16 Q So, you're not here to testify about
 17 the RCRA program?
 18 A I am not.
 19 Q I'm sorry. Please go on.
 20 A Continuing then, the second sentence
 21 says EPA measures the risk of exposure by
 22 evaluating the probability of exposure and the

1 potential organism that might come into contact
 2 with the contaminant concerned, the paint in this
 3 case.
 4 So, there's probability of exposure.
 5 And then there's inherent hazard of
 6 the toxin itself, so, the paint.
 7 So, the simple way to understand that
 8 then is that toxins have an inherent hazard, and
 9 that's independent of the exposure. If you're
 10 not exposed to that hazard, the risk is zero.
 11 There's no way that you can have a risk for
 12 something that you're never exposed to.
 13 The example I use in my report is a
 14 rattlesnake bite and the potential harm:
 15 difficulty breathing, tissue swelling, et cetera,
 16 that can come from a rattlesnake bite. So, a
 17 rattlesnake is inherently dangerous or a hazard
 18 to any one of us sitting in this room.
 19 But unless you actually are bit by
 20 that rattlesnake, your risk of experiencing those
 21 adverse effects is zero.
 22 Q So, can you summarize your findings of

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1 when you analyzed the drums on the trailers in
2 Salt Lake City, could you summarize your findings
3 regarding that trailer storage for the Judge?

4 A I can.

5 In looking through the evidence I
6 determined that there was no evidence that any
7 harm had occurred to humans or any other
8 ecological receptors during that period of
9 storage.

10 I determined that the risk of exposure
11 was low.

12 I determined that the probability of
13 a fire occurring was also low.

14 And that, thus, the potential for harm
15 was also low.

16 Q And what was in the drums that were
17 being stored in Salt Lake City?

18 A I understand that it was paint waste.

19 Q And what were the toxicants of concern
20 -- or toxic substances of concern in the, in the
21 paint?

22 A Uh-huh. In the NDIC's report they

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1 sampled the drums and found that 20 of them
2 contained strontium chromate, which is consistent
3 with it being a chromate-based primer.

4 Strontium chromate is a known human
5 carcinogen. It's also a naturally occurring
6 element that's found in the Earth's crust. It's
7 characterized as a human carcinogen by the
8 International Agency for the Research on Cancer,
9 that's under WHO's supervision. IARC is the
10 global authority in determining and
11 characterizing whether agents cause cancer or
12 not.

13 For context, IARC has classified 122
14 agents total as known human carcinogens. These
15 include things like particulate matter and air
16 pollution, UV radiation, alcoholic beverages,
17 processed meat, with hepatitis B, C, and human
18 papillomavirus. So, a number of different other
19 agents as well.

20 And I name these just because they're
21 likely more familiar to all us, not to minimize
22 the seriousness of the fact that there was an

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1 known human carcinogen in this paint.

2 I do think, though, for context it's
3 important to note that our environment is full of
4 carcinogens. We live in a very chemical world.
5 And that we manage our risk of those carcinogens
6 by managing our exposure, or not managing our
7 exposure.

8 Q So, other than the strontium chromate,
9 what else was in the paint that you looked at?

10 A The SDS lists a total of 12 chemical
11 components as potential hazards.

12 The other 11 were predominantly
13 solvents that were also components in the paint.

14 The solvents themselves carry
15 additional risks. These are the types of risks
16 or hazards. There are known probable human
17 carcinogens. A known human carcinogen is IARC's
18 most severe categorization of carcinogens.

19 There were others in the paint that
20 are probable, classified as probable human
21 carcinogens.

22 There were also solvents that were

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1 known to have acute toxicity upon a single
2 exposure. So that would be where you had a large
3 one-time exposure to the chemical component of
4 the paint.

5 And in that instance CNS depression
6 was the toxicity of concern there, so this is
7 you'd experience dizziness, headache at high
8 enough and severe concentrations and
9 consciousness.

10 And then they also carried, some of
11 the chemicals carrier hazard of exposures,
12 longer-term exposures equally at lower doses over
13 time. Those kind of exposures included
14 reproductive toxicity potentially. Those would
15 be on the basis of animal studies carried out on
16 rabbits about potential reproductive harm, as
17 well as acute eye irritation in an acute, in an
18 setting as well.

19 So, there were a number of chemicals
20 in the paint that were certainly very
21 toxicological hazards.

22 Q To put these things in context,

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1 looking at this SDS that you looked at, are there
2 -- we're talking about paint here, that's the
3 case here at issue, and I believe the testimony
4 earlier from Mr. O'Neil was it had an intended
5 industrial application for coating metal parts.

6 Are there any more everyday products
7 that we encounter that have SDSes that look
8 similar to this?

9 A Yes. And, again, this is for context,
10 not to any way minimize the hazards contained in
11 the chemicals.

12 But, you know, an SDS is a very
13 functional and important communication tool for
14 potential hazard and instruction tool, whether
15 it's a consumer product or used in an
16 occupational setting, how that, warning against
17 how that chemical should be treated with caution.
18 So, there's some both signal hazard warnings as
19 well as descriptions that you'll find commonly on
20 these SDSes for, for any product, or any product
21 that assesses one.

22 So, I was here yesterday for Mr.

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1 O'Neil's testimony where he talked about getting
2 up and kind of walking around his house and
3 looking for other things that he might look up
4 the SDS for. And I actually did the same
5 exercise.

6 So, I went and gathered some nail
7 polish remover, and WD-40, and a couple of paint
8 products that I had used for home improvement
9 projects, refinishing my daughter's stand
10 recently.

11 And I found that on this SDS there
12 were a lot of the same signal kind of warnings as
13 we find in this case, including that all of them
14 were marked as highly flammable. All of them
15 recommended storing them under locked conditions.

16 They were all acute eye, eye
17 irritations as well, could cause acute eye
18 irritation. And one of the finishes of the paint
19 was also a reproductive hazard as well.

20 So, again, in summary I think it's
21 just, it's for, for context only. These SDS
22 statements that are quoted in the Dr. Keteles'

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1 report are quite alarming. And they should be.
2 They're meant to direct how we handle hazardous
3 chemicals with care to minimize exposure. That
4 exposure has to occur at appropriate levels,
5 significant enough levels for any adverse effects
6 or health effects to occur. So, the exposure is
7 really two parts.

8 Q Just so we're clear here, you're not
9 comparing nail polish and a spray can of paint in
10 your garage to --

11 A Yeah.

12 Q -- these barrels of paint stored here,
13 are you?

14 A No, I'm not. But, you know, the
15 amounts are obviously significantly different.

16 But I also just want to indicate, you
17 know, besides the fact that they, that barrels of
18 paint had been through a fire, and they were
19 indeed in drums that were sitting open to the
20 environment, they were contained in drums.

21 They re also not sort of exposed out,
22 poured out into, you know, like a kiddie pool full

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1 of paints that people are kind of actively
2 walking over and breathing in deep inhalations.
3 They're still contained to some extent.

4 Q So, you, you look at three scenarios
5 in your expert report. Could you describe the
6 three scenarios for me, please?

7 A Okay. So, you know, talked about the
8 importance of exposure pathways and exposure
9 scenarios. And so, what I did was first I looked
10 at the actual facts and events related to the
11 exposure scenario of the actual conditions under
12 which the paint was stored.

13 I also looked at the theme where what
14 potential exposures might occur if a theoretical
15 leak occurred.

16 And then I also looked at what I would
17 consider a worst case scenario for potential
18 exposure, which was a fire event.

19 Q Now, so let's take those one at a
20 time. Could you explain what your understanding
21 of where the paint was stored and how that
22 affected your opinion?

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1 A Yes.
 2 So, as I understand it, the paint was
 3 stored in a rather remote corner of an industrial
 4 facility, a large, open, flat yard in the middle
 5 of a very large, open, flat area in Salt Lake
 6 City that was full of industrial -- zoned
 7 industrial around the airport. It was open.
 8 And I looked on a map. You know,
 9 EPA's environmental justice screening tool. Used
 10 their screen and determined that the nearest
 11 neighborhood was about 2 miles away, residential
 12 neighborhood.
 13 I also understood that the facility
 14 is, is fenced, and that the location of where the
 15 trailer was stored in that yard was not a place
 16 where any workers spent any time. They didn't
 17 congregate there. They didn't walk by. It was
 18 not accessed on a routine basis for any period of
 19 time.
 20 I was able to review the aerial
 21 photographs of the site. And so, I used a
 22 tractor trailer, which I understand were an

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1 average length of 48 to 53 feet. So, I used 50
 2 feet as an approximate yardstick, if you will.
 3 And so I looked at the length of the tractor
 4 trailer on the map, and then I measured from the
 5 corner of the nearest building to where the
 6 trailer was set, using that yardstick.
 7 And I did that at a few different
 8 magnifications, and estimated that the corner of
 9 the nearest building in Prime's facility was 200
 10 to 250 feet, approximately, to the nearest corner
 11 of where the trailer was stored.
 12 And so, again, that, that affected
 13 what I'm thinking about with regards to potential
 14 exposures to workers onsite.
 15 Q Let's elaborate on that just a little
 16 bit. The distance, what does the distance tell
 17 you terms of probability of exposure?
 18 A Yeah. I mean, so, if it -- even if,
 19 so, the building is, you know, 200 to 250 feet
 20 away. I don't actually know where the entrance
 21 to that building is, but let's say, again
 22 conservatively, it's quite near to that corner.

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1 So, we have people coming in and out 200 feet
 2 away.
 3 That's still a very long distance.
 4 You know, it's about two-thirds of a football or
 5 a soccer field. And, again, these are drums of
 6 paint that are open to the environment, you know,
 7 the bungholes for these. And we probably are
 8 likely having a slow evaporation of solvents and
 9 other chemicals coming off those.
 10 The paint on the SDS does state that
 11 it has a very slow evaporation rate.
 12 And so the potential for someone
 13 getting a significant enough exposure to cause
 14 any kind of toxicological harm is extremely low.
 15 And just for reference, I think we've
 16 all probably been in a room whether it's either
 17 being painted or been in a room where something
 18 was recently painted and you might catch a whiff
 19 of something.
 20 This is really different. I'm
 21 imagining standing in an open yard, open to the
 22 environment, 200 feet away from something that

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1 may be having some vapors coming off of it. But
 2 at a distance that is such that, you know, it's
 3 hard to imagine toxicological harm occurring from
 4 that level of exposure to the paint.
 5 Q So, if there were a leak from one of
 6 these drums -- First of all, are you aware of any
 7 leaks from any of the drums?
 8 A I am not.
 9 Q And just hypothetically, if there were
 10 a leak, did you look at that, what would happen?
 11 A Yes.
 12 So, when I think about a leak
 13 occurring from one of these drums I imagine a
 14 small crack or a hole occurring that compromises
 15 the integrity. And that's in the sense I looked
 16 at the, the composition of the paint. So, the
 17 paint was characterized in the NDIC report as a
 18 semi-solid or a sludge. It was alternatively
 19 characterized as viscous.
 20 And so what that says to me is that
 21 this paint is not going anywhere fast. It's a
 22 thick substance that were there to be a leak in

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1 the drums it might ooze out of it. It's rate of
2 transport is likely to be very slow.

3 Q Was this paint water-soluble?

4 A It was not. And that's another
5 important point to make.

6 So, if, you know, it's a leak that
7 occurred, the trailer is sitting on a concrete
8 pad. That concrete pad is impermeable. Even if
9 the paint were to ooze down onto the pad, it's
10 still some distance from the edge of the pad and
11 it's going to move, if at all, very slowly,
12 probably in all directions.

13 And if it were to rain, the paint is
14 water-insoluble, so the rain would not be
15 expected to significantly accelerate the movement
16 of that or the transport of chemicals into the
17 environment or enter the soil.

18 I also understand there were not any
19 water wastes nearby. But, again, I don't see
20 this paint moving anywhere very rapidly.

21 Q The lack of water waste nearby, where
22 did you get that information from?

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1 A I believe that was in EPA's report.

2 Q Now, did you look at the -- what would
3 happen if it did reach the dirt or soaked into
4 the dirt?

5 A Again, it not being water soluble, I
6 don't think we're going anywhere very quickly,
7 so.

8 Q Okay. Now, let's turn to your
9 scenario under which you analyze the possibility
10 for fire. Could you talk about that?

11 A Certainly.

12 Q Let's start with the flash point.
13 There's been a lot of discussion as to that.

14 What is, please describe, explain to
15 the Judge what flash point means, what it is, and
16 how it's relevant?

17 A Okay. So, flash point is a
18 characteristic of a organic compound or any
19 compound whereby vapors can accumulate off of the
20 substance in a substantial fashion such that if
21 an ignition source is present it's possible for
22 them to ignite.

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1 Flash point is typically measured
2 either via a closed cup or an open cup method.
3 Closed cup is more standardized, with fewer
4 variables, and so it's the more commonly used
5 method. EPA in this case used a closed cup
6 method called Setaflash.

7 So, the closed cup method for
8 measuring flash point basically you have a closed
9 system with an ignition source inside that closed
10 system, as well as your material of interest.
11 And you begin to raise the temperature in the
12 presence of an ignition source. And at the
13 temperature where that material catches on fire,
14 that's determined to be the flash point.

15 So, the flash point reported on the
16 SDS for the paint here is 112 degrees Fahrenheit.

17 And so, in using that closed cup
18 method it's, it's great because it gives you a
19 way to control variables and then be able to have
20 a more standardized comparison, whether I'm
21 conducting that flash point measurement, you
22 know, here in the U.S., or someone's standing in

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1 a laboratory in Japan, or Germany, or anywhere in
2 the world.

3 However, it doesn't really very
4 accurately represent most real world conditions.
5 And it certainly doesn't represent the real world
6 conditions of how the paint was stored here. So,
7 we don't have a closed system. We have the paint
8 is stored in barrels and they're open to the
9 environment through that bunnhole.

10 We also don't have an ignition source.

11 And so those, including also, I
12 mentioned earlier, the SDS list says the paint
13 has a low evaporation rate. That's for the paint
14 substance overall.

15 Again, we're all probably familiar
16 with the fact that paints quickly separate when
17 it's been sitting for a long time. And it
18 appears that that was the case with this paint.

19 And looking at NDIC's report, there
20 were two different layers. One was a more clear
21 layer on top of it. And one was sort of a yellow
22 layer down below. So, the clear layer can be

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1 presumed to probably be the more volatile
2 chemicals in the paint substance that had
3 separated out.

4 Q Were they the solvents?

5 A Those would be the solvents, yep, that we
6 talked about earlier.

7 Q And the part down below that was
8 described as semi-solid, viscous, would that be
9 the strontium chromate and other chemicals?

10 A I don't believe that the two layers
11 were separately described with regards to their
12 physical characteristics. It was just for the
13 sample overall. But, presumably, yes, the layers
14 down below would be more of the semi-solid
15 sludge.

16 And I think we can also show that the
17 strontium chromate is going to stay chemically
18 bonded in that semi-solid sludge yellow layer
19 that's down below. We know that.

20 So, the strontium chromate under these
21 conditions is not, it's not bio-available is what
22 we say. It doesn't, it's not going to come off

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1 the substance, it's not going to be present in
2 any of the vapors that are lifting off under
3 environmental conditions and then potentially
4 inhaled.

5 Q So, going back to the closed cup test
6 and the flash point, I think you just testified
7 that you wouldn't expect to see environmental
8 conditions at the site to match those used in the
9 closed up test; is that correct?

10 A Yeah. So, you know, my understanding
11 was the paint sat onsite for approximately a
12 year. And there would be the temperatures, the
13 daily temperatures for Salt Lake City during the
14 time that it sat there. Salt Lake City has
15 fairly cold winters. But during summer the
16 temperatures, ambient temperatures did exceed 90,
17 and even 95 degrees, the daily highs at some
18 points.

19 Under those conditions one could
20 imagine that the paint did heat up to some
21 extent. But, again, that 112 degree closed cup
22 flash point measurement is, is not necessarily

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1 the temperature, even if the paint reached that
2 temperature, is not necessarily the temperature
3 at which the paint would ignite, even if an
4 ignition force was present.

5 So, you know, the biggest point here
6 for me about probability of fire is the ignition
7 point itself. As I understand the location of
8 the trailer and the drums, again they're in a
9 drum with a small hole at the top, off in a
10 remote corner of the year. The facility is
11 mostly fenced, there aren't workers nearby,
12 there's no activity taking place nearby.

13 And, so, I think it's a very low
14 probability that we could have that paint, even
15 if it was at the sufficient temperature for there
16 to be accumulated vapors that could ignite,
17 because of the lack of ignition source I just
18 believe that the probability of fire is low.

19 Q Could we pull up a Respondent's
20 exhibit now?

21 So, Dr. Walker, you have in front of
22 you a document marked RX-19, page 1 of 15.

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1 MR. RYAN: Your Honor, this has been
2 stipulated to so, therefore, already moved into
3 evidence.

4 BY MR. RYAN:

5 Q At the top left corner it says Salt
6 Lake City, Utah, weather history. Just down
7 below there's an October 2015.

8 Is this the weather data you reviewed?

9 A It is.

10 Q Uh-huh. And there are 15 pages in
11 this. And I don't think we have to go through
12 all 15 pages, at least not now.

13 Can we go to page 2 of, of this
14 document, please?

15 So, this would be for November. The
16 fire was October.

17 A Uh-huh.

18 Q And they run through December 2016.
19 So, is this your understanding that these, this
20 weather data you looked at was the actual data
21 from the approximate time the trailer was stored
22 in Salt Lake City?

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1 A It is.
 2 Yeah, and again, just what I observed
 3 in looking at this data is that approximately,
 4 you know, October through April ambient
 5 temperatures are pretty low.
 6 And then during the three summer
 7 months that the trailer was there is the only
 8 period of time where temperatures approached 90
 9 or 95 degrees. And even then that's, you know,
 10 that's a few days at a time, and the air cooling
 11 off in the nighttime, et cetera.
 12 Q So, is it safe to summarize that in
 13 terms of probability of exposure the number of
 14 days a year that were warm enough to approach the
 15 112 degree flash point were fairly small?
 16 A They were. I think we're only talking
 17 about maybe a couple of weeks.
 18 And the other important piece about
 19 temperature, too, is that temperature also
 20 impacts the volatility of the point, so the
 21 ability for vapors to come off of those drums
 22 and, you know, and create some kind of

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1 A Yes.
 2 Q And to your knowledge did it explode?
 3 A No. My, yeah, my understanding is
 4 that the bung holes vented. So, they did come
 5 off of there but the paint did not explode. And
 6 the material is not listed as explosive. Of the
 7 characteristics that one would find on an SDS, in
 8 this case it was not listed as explosive, it's
 9 actually listed as stable.
 10 Q So, if the worst happened and these
 11 paint drums did catch fire in Salt Lake City,
 12 when you expect them to explode, what kind of
 13 conditions?
 14 A No, I wouldn't expect them to explode.
 15 And, in fact, they had already been
 16 through a fire where they were exposed to upwards
 17 of potentially 1,000 degrees up to 1,500 degrees
 18 was the number that I quoted in my report from, I
 19 believe, the Highway Transportation Association,
 20 as potential temperatures typical of a car fire.
 21 They had already been exposed to that
 22 level of temperatures and they didn't explode.

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1 concentration that people might be exposed to.
 2 So, the warmer months are going to be a potential
 3 for that -- or that evaporation or volatilization
 4 to increase a little bit.
 5 But, again, so I think it's important
 6 to note that that's only part of the year that
 7 we're talking about. The rest of the time it's
 8 rather cold there. And so, we'll have less
 9 evaporation occurring.
 10 The other bit, again, I just want to
 11 also make a point about this also, that even when
 12 we do have some of the solvents causing vapors to
 13 rise off of that layer of the paint, there's
 14 still a very, very low concentration. So, and
 15 also, you know, again, off in the corner of the
 16 yard. So, I don't think that that's anything
 17 that we're concerned about for our workers.
 18 Q Now, have you looked at the photos
 19 from the night of the fire?
 20 A I have.
 21 Q And there was a rather large fire, if
 22 you recall?

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1 We don't actually know whether or not in the
 2 paint in the ones stored at the Salt Lake City
 3 facility did burn or not. We don't actually know
 4 what happened to the contents of it. It was
 5 certainly baked to some degree.
 6 But they were in the presence of, you
 7 know, high, high temperatures, certainly in the
 8 presence of an ignition source. They were
 9 engulfed in flames. And we still have, you know,
 10 almost full drums of these paints.
 11 So, you know, if I compare what
 12 happened to the drums, or what we know happened
 13 to the drums while they were sitting in a trailer
 14 fire with the environmental conditions that they
 15 were exposed to in the yard in Salt Lake City,
 16 and it just has a much lower probability of a
 17 fire occurring in that yard in Salt Lake City.
 18 Q Can you pull up Complainant's Exhibit
 19 4? And turn to page 13, please.
 20 Dr. Walker, do you see that exhibit in
 21 front of you, corrected, CX-4 corrected at 13?
 22 A I do.

1 Q And could you please highlight the
2 first full paragraph there, yeah, underneath the
3 chart.

4 This paragraph from the EPA penalty
5 policy calculation for the proposed penalty in
6 this case is labeled potential for harm. And
7 could you read the first sentence of that,
8 please?

9 A The violation poses or may pose a
10 significant risk of exposure of humans or other
11 environmental receptors to hazardous waste or
12 constituents; and or the actions may, the actions
13 have or may have a significant adverse effect on
14 statutory or regulatory purposes or procedures
15 for implementing the RCRA program.

16 Q Okay. So, I'm not going to ask your
17 opinion on anything after the semicolon because,
18 as you testified earlier, that's beyond the scope
19 of your, your expert opinion today.

20 So, focusing on the first clause of
21 that sentence, do you agree or disagree?

22 A I disagree about the significant risk

1 A I think there's a low probability of
2 harm occurring. Again, you know, just thinking
3 about the actual exposure scenario that we have
4 whereby anything vaporizing or coming off of this
5 paint is going to readily dissipate into the
6 surrounding environment. I just don't see that
7 there's any significant risk to workers or anyone
8 otherwise who may or may not be near this. And I
9 understand that there were not workers nearby,
10 and the probability of them being there is low,
11 as well.

12 Q Would you expect to the storage of
13 these paint drums in Salt Lake City to pose a
14 significant risk to any nearby homeowners?

15 A The map that I reviewed shows the
16 residential neighborhoods are over two miles
17 away, so I don't believe, you know, for the same
18 things we're talking about with regards to the
19 ability to generate any significant concentration
20 or otherwise, that's a significant distance away
21 from where the paint was stored.

22 Q So thank you very much, Dr. Walker.

1 of exposure. Again, as we started with,
2 significant risk of exposure is comprised of the
3 probability of exposure, as well as the
4 seriousness of contamination.

5 And I just think that probability of
6 exposure under the conditions described is low.

7 MS. JACKSON: Your Honor.

8 JUDGE COUGHLIN: Yes.

9 MS. JACKSON: I kind of renew my
10 objection from earlier. I feel like Dr. Walker
11 is testifying to the penalty policy and not risk
12 assessment generally.

13 JUDGE COUGHLIN: I'm going to overrule
14 that objection. I don't know if you wanted to --

15 THE WITNESS: Independent of the
16 language here, I don't believe that this poses a
17 significant risk of exposure. I can just use
18 that statement more generally, not attached to
19 the penalty policy.

20 BY MR. RYAN:

21 Q If it's not significant, how would you
22 characterize it?

1 Let's turn to your review of the report prepared
2 by Dr. Keteles in this case. Have you reviewed
3 that report?

4 A I have.

5 Q For the record, that's been marked,
6 that's the Complainant's Exhibit 66. And have
7 you drawn any conclusions based on your review of
8 that report? And if you need to see her report,
9 I'd be happy to pull it up.

10 A You can go ahead and pull it up.

11 MR. RYAN: Yes, can we pull up CM-66,
12 please? This has not been admitted yet, Your
13 Honor.

14 JUDGE COUGHLIN: Correct. Pages have.
15 This is the one where --

16 MR. RYAN: Yes, this is the drum logs
17 --

18 JUDGE COUGHLIN: Yes, yes.

19 MR. RYAN: That's correct, Your Honor.

20 JUDGE COUGHLIN: Can I just ask one
21 question?

22 MR. RYAN: Yes, yes, please.

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1 JUDGE COUGHLIN: When you mentioned
2 that the residential neighborhoods are over two
3 miles away --

4 THE WITNESS: Yes.

5 JUDGE COUGHLIN: And I understand your
6 testimony with regard to the consistency of the
7 material and the likelihood of it really moving
8 anywhere too quickly, but with regard to the
9 potential for vapors to release from the open
10 bung covers, the open bungholes --

11 THE WITNESS: Yes. That's an awkward
12 word.

13 JUDGE COUGHLIN: Yes. What about, did
14 you draw any conclusions about whether it could
15 affect air quality with respect to those
16 residential neighborhoods two miles away or maybe
17 that was part of your analysis, but I just wanted
18 to ask about emissions into the air that could
19 impact populations in addition to what might move
20 on the ground.

21 THE WITNESS: Yes, that's a good
22 question. In looking through the evaporation

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1 rate of the paint and considering the
2 environmental conditions, I don't believe that
3 we're going to have any kind of significant
4 contribution to air pollution or air quality or
5 otherwise that could impact neighborhoods two
6 miles away. We're just not talking about that
7 amount or level of chemical that's going to be
8 volatilizing and entering into the environment.

9 That said, I did not go through the
10 calculations to actually do that. And those are
11 possible; they're just quite complex with regards
12 to involving molar fractions and atmospheric
13 pressure, et cetera, so --

14 JUDGE COUGHLIN: Okay. Thank you.

15 THE WITNESS: Yes.

16 BY MR. RYAN:

17 Q We just pulled up on the screen in
18 front of you, Dr. Walker, Complainant's Exhibit
19 66. Is this the report of Dr. Keteles that you
20 reviewed?

21 A It is.

22 Q And can you tell us what opinions you

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1 have of her opinions of your work?

2 A I agree with much of what's contained
3 in Dr. Keteles's report. She accurately lists
4 the hazard as reported in the SDS related to the
5 paint and its chemical constituents. Where I
6 disagree is the probability is exposure, and
7 that's reviewed extensively, and I think perhaps
8 we could take a look at the conceptual site model
9 that she drew because it's a nice diagram sort of
10 explaining the potential exposure pathways that
11 she described.

12 MS. JACKSON: Your Honor, I object.
13 This hasn't been entered into evidence, and she's
14 going to walk through Dr. Keteles's analysis
15 before we've even heard from Dr. Keteles and use
16 her conceptual site model for her analysis. Is
17 that what's going on here? I feel like it's not
18 -- well, while I acknowledge the field log isn't
19 evidence, this exhibit is not yet. I'm happy if
20 she speaks generally to Dr. Keteles's --

21 MR. RYAN: Your Honor, we would be
22 more than happy to take her off the stand now and

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1 bring her back after Dr. Keteles testifies.

2 JUDGE COUGHLIN: Right. I was going
3 to -- I appreciate the point. I suppose if
4 you're planning to call Dr. Keteles and want me
5 to consider it --

6 MS. JACKSON: I understand.

7 JUDGE COUGHLIN: You know, I mean, if
8 not, then I might take a different tack. But if
9 you're planning to call her, it might just save a
10 little bit of time while Dr. Walker is on the
11 stand to address it and alleviate the need to
12 recall. But if that interferes with your
13 presentation, then let me know.

14 MS. JACKSON: No, Your Honor. I think
15 efficiency is good. So thank you.

16 JUDGE COUGHLIN: Okay, all right.
17 Okay. Please go ahead.

18 MR. RYAN: Thank you, Your Honor.

19 You were saying that you disagreed
20 with Dr. Keteles on a certain point.

21 Could we please pull this up, Exhibit
22 66, page eight, please? And could you please

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1 highlight the paragraph of page eight of 66?

2 BY MR. RYAN:

3 Q And this paragraph starts with risk
4 assessors identifying pathways or mechanisms.
5 Now, Dr. Walker, are you familiar with this
6 paragraph of Dr. Keteles's report?

7 A I am.

8 Q And could you discuss what you see
9 there and what your opinions are about --

10 A Sure. So this paragraph deals with
11 the fact that risk assessment or when conducting
12 a risk assessment, a risk assessor needs to think
13 through all the potential exposure pathways that
14 could occur. In this case, the historic paint
15 waste.

16 So, you know, we can think about known
17 exposure pathways under the actual scenario
18 itself, and then it's critical to think about
19 potential exposure pathways, who else you might
20 be concerned about, what other theoretical
21 scenarios could be imagined for other people or
22 ecological receptors to come into contact with

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1 that paint waste --

2 Q So when you say ecological receptors
3 --

4 A Just organisms.

5 Q -- like a lizard walking on the ground
6 would be an ecological receptor?

7 A Yes, yes. And so this paragraph in
8 her report talks about that. And so the
9 conceptual site model that we'll look at in just
10 a minute kind of lays out some of those exposure
11 pathways that we both considered.

12 What is of note to me in this
13 paragraph is a statement that cites a few
14 different EPA publications as its sources. A
15 completed exposure pathway exists when there's
16 evidence of or using best professional judgment a
17 strong likelihood of human or ecological
18 receptors coming in contact with site-related
19 contaminants.

20 Q And just for the record, you just
21 quoted from her report.

22 A I did. I just read from the report.

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1 And then it continues, potential exposure
2 pathways indicate that exposure to a contaminant
3 could have occurred in the past, could be
4 occurring currently, or could occur in the
5 future. So when we look at the conceptual site
6 model, Dr. Keteles has a few exposure pathways --

7 Q Can we go to the next page, please?

8 JUDGE COUGHLIN: Yes, there was a
9 little bit of overlap, and I want to make sure
10 her -- it's okay. I just want to make sure the
11 response was heard. Can you finish, repeat the
12 last part of what you just said, if you don't
13 mind?

14 THE WITNESS: Sure. And I think we
15 now have the contextual site model up in front of
16 all of us, so I can just refer to it there. So
17 you'll see here in red Dr. Keteles has several
18 different ways that a responder, worker, or
19 visitor, that there's evidence of or strong
20 probability of these receptors coming into
21 contact with the waste, and that's where I
22 disagree that we have a complete pathway here.

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1 And so I think, just briefly, for
2 potentially, you know, your understanding, Your
3 Honor --

4 JUDGE COUGHLIN: Please. From all of
5 you, please, go ahead.

6 THE WITNESS: So just really briefly,
7 and I'm sure Dr. Keteles will explain this later
8 it sounds like, but, basically, what this
9 represents is we have, you know, the drum sitting
10 and then we have the different ways that the
11 paint waste could potentially come into contact
12 with a responder, worker, or visitor either
13 through a process of volatilization directly from
14 the drum through a leak and then its
15 transportation in the environment and then the
16 way it enters the body.

17 BY MR. RYAN:

18 Q So where she has red squares,
19 according to her legend in the upper left-hand
20 corner, what we're looking at here on Exhibit 66,
21 she says the pathway is complete. You said, you
22 testified earlier you didn't think the pathway

1 was complete, so could you walk us through, like,
 2 for air inhalation, there are three red squares,
 3 could you tell us why it's inappropriate from
 4 your opinion to have those red?
 5 A Sure. So we've already discussed that
 6 the Prime site was not open to visitors, so it's
 7 highly unlikely that there are going to be
 8 visitors that are exposed to this waste. With
 9 regards to workers, the workers are rarely in the
 10 area of this paint waste either. And then with
 11 regards to responders, presumably this refers to
 12 emergency responders who would come and be
 13 summoned in case of a fire, they would be wearing
 14 personal protective equipment, and so it's
 15 unlikely that they would also have a significant
 16 inhalation exposure to the paint waste.
 17 Q And if you were to adopt this
 18 methodology, this graphic here, what color would
 19 you paint those three squares for air inhalation?
 20 A I think that, certainly, it's
 21 something less than red, so the pathway may be
 22 complete, so orange or something less than

1 similarly, you know, we don't have visitors on
 2 site; and then, for responders, they would,
 3 again, be wearing personal protective equipment.
 4 And for workers, I just think it's, again, highly
 5 unlikely for all the reasons discussed that
 6 they're coming into contact with the paint.
 7 Q So would you agree that, for dermal,
 8 it should not be red, those two, first two
 9 squares?
 10 A I do.
 11 Q And on the third category on this
 12 graphic, figure three, on Complainant's Exhibit
 13 66, the last category at the bottom is soil, and
 14 it shows both dermal and ingestion. Could you
 15 describe your analysis of that, please?
 16 A Same thing we've already talked about.
 17 The paint waste was unlikely to reach the soil,
 18 but, if it was, the responders would be wearing
 19 personal protective equipment if they were
 20 dealing with it. The workers are unlikely to be
 21 there. Ingestion, I believe, was described as
 22 accidental ingestion from dust that may be

1 orange. There's nothing between white and
 2 orange.
 3 Q You testified earlier that you
 4 considered the probability of exposure here, and
 5 correct me if I'm mischaracterizing your
 6 testimony in any way, as relatively low.
 7 A Yes.
 8 Q And how would you fit that
 9 characterization using Dr. Keteles's graphic
 10 here?
 11 A Relatively low is not one of the
 12 categories that I can choose here so --
 13 Q Well, if you were to modify this
 14 slightly, how would you do that?
 15 A These red would go to orange.
 16 Q Okay. So on leaks, she has two red
 17 and one orange. Could you tell us how you
 18 interpret that?
 19 A So what we're showing them is that, if
 20 material were to leak from the drum, potential
 21 exposure pathways of concern are through a dermal
 22 route of exposure, through the skin. And so,

1 contaminated and then got onto the skin of
 2 workers, and so, again, a low probability of them
 3 being there.
 4 Q Is there any evidence of this paint
 5 contaminating any dirt in the area?
 6 A Not that I'm aware of.
 7 MR. RYAN: May I just this moment,
 8 Your Honor?
 9 JUDGE COUGHLIN: Yes. And if you
 10 don't mind, I just, I think it's clear, but I
 11 just want to make sure. So with regard to this
 12 conceptual model that we've been looking at, is
 13 it your opinion and where you differ from that of
 14 Dr. Keteles when she presumably testifies about
 15 this that the red in each of these categories
 16 would be, at best, orange, if not less, as
 17 depicted in this legend?
 18 THE WITNESS: Yes.
 19 JUDGE COUGHLIN: Okay.
 20 THE WITNESS: And I'm using this as an
 21 example. There are also several paragraphs in
 22 her report where she describes variously high

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1 probabilities of exposure or significant risks,
 2 and, generally, I disagree with that
 3 characterization of risk for any of these
 4 exposure pathways.
 5 JUDGE COUGHLIN: Okay. Thank you.
 6 MR. RYAN: I have no further
 7 questions. Thank you, Dr. Walker.
 8 CROSS-EXAMINATION
 9 BY MS. JACKSON:
 10 Q Good morning, Dr. Keteles. I'm sorry.
 11 Dr. Walker.
 12 A Good morning.
 13 Q Just because of Dr. Keteles's report.
 14 I apologize. Just on my mind. Let's start
 15 again. Good morning.
 16 A Good morning.
 17 Q Let's talk generally about your
 18 assessment regarding the potential for exposure
 19 based on the storage conditions. And you
 20 referred to the SDS, and you referred to the
 21 hazard statements. I'd like to take a look at
 22 those real quick.

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1 vapors, correct? I'll be happy to pull it up if
 2 you'd like.
 3 A My understanding is that, because this
 4 was not locked away entirely, there is potential
 5 for some workers to come by and be exposed to
 6 very, very low levels of vapors, yes.
 7 Q And you testified as to potential
 8 health effects from the concentration of the
 9 vapors, not necessarily to describe the low
 10 concentrations but just concentrations generally
 11 being irritation and dizziness and headaches; is
 12 that correct?
 13 A That's what the SDS contains. It says
 14 that, at higher concentrations, those would be
 15 some of the symptoms that could be experienced.
 16 Q And those are potential adverse health
 17 effects, correct?
 18 A Those are symptoms, yes. And as I
 19 understand it, no one who has been around this
 20 paint has reported any indication that they
 21 experienced any kind of health effect.
 22 Q Okay. But just for the record, we're

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1 A Okay.
 2 Q If you could pull up CX-32 at page 32.
 3 And this is the SDS for the Universal Urethane
 4 yellow primer.
 5 A That's correct.
 6 Q And those hazard statements are up
 7 there at the top. If you could read those real
 8 quick.
 9 A This signal word hazard statements?
 10 Q Yes.
 11 A Okay. Flammable liquid and vapor.
 12 Harmful if swallowed or if inhaled. Causes
 13 serious eye irritation. Causes skin irritation.
 14 May cause an allergic skin reaction. May cause
 15 cancer. May damage fertility or the unborn
 16 child. May cause respiratory irritation. May
 17 cause damage to organs through prolonged or
 18 repeated exposure.
 19 Q Thank you. And, in fact, in your
 20 expert report that's been admitted at RX-3, you
 21 acknowledge that some workers may have passed by
 22 the drums and could have been exposed to solvent

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1 talking about potential effects here, not actual.
 2 A Sorry. Can you restate the question?
 3 Q I was asking you about potential
 4 health effects.
 5 A Can you restate the entirety of the
 6 question? Sorry.
 7 Q Okay. I asked about potential adverse
 8 health effects, I did not ask about whether or
 9 not anybody at the facility experienced those
 10 health effects.
 11 A So the SDS does report on the
 12 potential health effects that could be
 13 experienced by high enough exposures, yes.
 14 Q And would you agree with the SDS?
 15 A Yes.
 16 Q Okay. And in this case, at the Prime
 17 facility, you discussed the storage location and
 18 that kind of thing. The drums were stored
 19 outside, correct?
 20 A Yes.
 21 Q For over 300 days.
 22 A That's my understanding, yes.

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1 Q And that included the summer months.
 2 A Yes.
 3 Q And some of those days in Salt Lake
 4 City exceeded 95 degrees; is that correct?
 5 A Yes.
 6 Q And some even exceeded even a hundred
 7 degrees, correct?
 8 A I would have to look at the
 9 temperature data again. I didn't see any days
 10 that went over a hundred degrees for that actual
 11 year.
 12 MS. JACKSON: Can you pull up RX-19?
 13 BY MS. JACKSON:
 14 Q And, admittedly, this is kind of
 15 grass. It's not actual temperature data. It's
 16 just kind of a representation. But if you, I
 17 mean, if you see that line, it certainly looks at
 18 a hundred, doesn't it?
 19 A Squinting at this, I can actually see
 20 the line at a hundred.
 21 Q Sorry. I was trying to help.
 22 A Sorry. It just changed.

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1 over 95 degrees, correct?
 2 A We're looking at the data, and it does
 3 appear that there were some days in August that
 4 were over 95 degrees, correct.
 5 MS. JACKSON: Can you go to page ten?
 6 BY MS. JACKSON:
 7 Q And here, again, there appears to at
 8 least be a couple of days in this exhibit, RX-19
 9 at page ten, reflecting over a hundred degrees?
 10 A Yes.
 11 Q Okay. And during these times, you
 12 agree that the bung hole covers were missing on
 13 the drums?
 14 A Yes, that's my understanding.
 15 Q And the instructions in the SDS are
 16 intended to prevent exposure, correct?
 17 A That's correct.
 18 Q In your opinion, you testified that
 19 there wouldn't have been any individuals in the
 20 proximity of the drums for an extensive enough
 21 period to create an exposure; is that correct?
 22 A To create an exposure of any

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1 JUDGE COUGHLIN: I just want to make
 2 sure I'm on the right page. What page are you
 3 on, Ms. Jackson?
 4 MS. JACKSON: RX-11 at page 15, August
 5 of 2016.
 6 MR. RYAN: Is it 11 or 19?
 7 MS. JACKSON: Oh, my apologies.
 8 Where's the page. Oh, 11. Sorry.
 9 JUDGE COUGHLIN: Okay. So RX-19, page
 10 11?
 11 MS. JACKSON: Yes, Your Honor.
 12 JUDGE COUGHLIN: Okay.
 13 BY MS. JACKSON:
 14 Q We're looking at August of 2016, and
 15 it appears that it's up at a hundred.
 16 A I can see the line being listed out
 17 from a hundred, and it looks like, I think that
 18 would be August 2nd, the temperature may have
 19 reached 100 degrees. Otherwise, the rest of the
 20 line is below a hundred degrees, although close.
 21 Q Okay. And then, presumably, there are
 22 some other dates in August that were at least

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1 significance, that's my understanding from my
 2 conversations with Mr. Singleton, as well as
 3 reviewing the rest of the evidence.
 4 Q Okay. But I didn't hear you mention
 5 anything about the construction activity going on
 6 on the property.
 7 A I did not.
 8 Q Okay. So you didn't consider the
 9 construction activity in making your assessment?
 10 A The construction activity is something
 11 I learned about subsequent to writing the report.
 12 Q Okay. And it doesn't change your
 13 opinion?
 14 A It does not change my significant
 15 conclusions.
 16 Q Okay. What about, so earlier this
 17 morning, we heard Mr. Singleton talk about the
 18 maintenance shop at the Prime facility, and I
 19 believe that's in the pictures. If you want, we
 20 can pull them up. But when you were looking at
 21 that facility in proximity to the drums --
 22 actually, let's pull it up. I think it will be -

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1 - CX-10 at page 16. When you were evaluating the
2 distance from any structures, I believe you were
3 looking at this. This is a maintenance facility
4 at the site, according to Mr. Singleton; is that
5 your understanding, as well?

6 A That is my understanding.

7 Q And we heard Mr. Singleton talk about
8 how maintenance, Prime does its own maintenance
9 on shop, so, presumably, there would be traffic
10 kind of moving to and from the maintenance shop,
11 wouldn't there?

12 A Yes.

13 Q Okay.

14 JUDGE COUGHLIN: Was this the building
15 from which you measured the 200 to 250?

16 THE WITNESS: Yes, I believe so. So
17 it's about 200 to 250 feet away from where the
18 trailer is stored.

19 JUDGE COUGHLIN: Okay. Thank you.

20 MS. JACKSON: One moment, please.

21 BY MS. JACKSON:

22 Q And just to clarify, you didn't

161

1 actually visit the Prime facility when the drums
2 were stored there.

3 A I did not.

4 Q Okay. Have you visited since?

5 A I have not.

6 Q Okay. I want to turn for just a
7 second to your discussion of volatilization from
8 the drums and the evaporation rate, and you can
9 correct me if I misstate. I am no chemist or
10 toxicologist. The evaporation rate of the
11 strontium chromate primer is slow; is that
12 correct?

13 A That's correct.

14 Q And the evaporation rate is a measure
15 of how fast liquid changes into a vapor form?

16 A That's correct.

17 Q And the vapor pressure of the
18 hazardous waste is also low, right?

19 A The vapor pressure of the paint?

20 Q Of the -- yes.

21 A Is what we're talking about.

22 Q Of the drums based on the SDS, I

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1 should say, yes.

2 A So what I'm saying is low is the vapor
3 pressure of the paint as reported on the SDS.

4 Q Thank you. And that vapor pressure,
5 as reported by the SDS, is based on room
6 temperature; isn't that right?

7 A I actually don't know the answer to
8 that.

9 Q Okay. We can go to your report first
10 and then also the SDS, but in your report at RX-
11 20 at two. Now, if I can find -- I might be able
12 to find it better.

13 MS. JACKSON: Actually, rather than
14 her report, will you just pull up CX-32 at 39?
15 Scroll down, please.

16 BY MS. JACKSON:

17 Q Right there, it's indicated, it's also
18 indicated in your report, but do you see that on
19 the SDS where it's indicated at room temperature?

20 A The vapor pressure, yes.

21 Q But the drums were stored outside,
22 correct?

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1 A They were.

2 Q And the temperature impacts
3 evaporation?

4 A It does.

5 Q And in warmer temperatures,
6 evaporation rate increases; isn't that right?

7 A It does.

8 Q And in warmer temperatures, the vapor
9 pressure can also increase, correct?

10 A Yes. So then I would also direct you
11 to go look at the boiling point so --

12 Q No, you've answered my question.

13 Thank you. They can ask you about that in a
14 minute.

15 A Okay.

16 Q And the paint is generally intended to
17 evaporate quickly, isn't that right? Just paint
18 generally. You've talked about household
19 products and, in particular, this product, which
20 you've evaluated, it's intended to evaporate
21 quickly as part of being paint. You wouldn't
22 agree with that?

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1 A I'm not sure that makes sense that a
2 paint is intended to evaporate.

3 Q It's intended to dry quickly.

4 A Paint needs to dry. I agree.

5 MS. JACKSON: Go ahead.

6 JUDGE COUGHLIN: Well, so does that
7 have an impact on evaporation considerations, the
8 fact that its intended purpose is ultimately to
9 dry?

10 THE WITNESS: I don't believe that
11 there's necessarily a connection there. The
12 chemicals inside the paint that evaporate more
13 rapidly than some of the others, like the
14 strontium chromate, my understanding is they're
15 predominantly used as solvents or rather
16 materials that are necessary to bring everything
17 into, you know, one cohesive solution, not
18 necessarily related to the function of the paint
19 drying.

20 JUDGE COUGHLIN: Okay.

21 THE WITNESS: And, again, looking at
22 the SDS in front of me, the evaporation rate of

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1 the paint is 0.21. The standard of reference is
2 butyl acetate, which equals one, and the
3 categorization of anything that is a slow
4 evaporation rate is anything under 0.8. So we're
5 four-fold below the cutoff for what would be
6 considered as slow evaporation rate.

7 BY MS. JACKSON:

8 Q Okay. And we talked about how the
9 evaporation rate is slow, but it's dependent on
10 temperature, correct?

11 A That's correct. So if we want to go
12 back to the boiling point, the boiling point is
13 greater than a hundred degrees Fahrenheit, so the
14 boiling point is a reference and we don't know
15 how much higher than that it is. But, again,
16 yes, I will agree with you on principle that, as
17 ambient temperatures increase, we will have an
18 increase in evaporation of vapors.

19 Q Okay. And according to the SDS, the
20 vapor pressure is pretty close to the flashpoint,
21 isn't it?

22 A Could we look at that again?

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1 Q Sure. CX-32 at 39.

2 A Can you repeat your question, please?

3 Q Sure. According to the SDS, the
4 primer's vapor pressure is very close to the
5 flashpoint, isn't it?

6 A The primer's vapor pressure is given
7 in kilopascals. I'm not sure how you want me to
8 compare those things. The units are not the
9 same.

10 Q But you can do a comparison if you
11 were a chemist, correct?

12 A That's beyond my mental math capacity,
13 yes.

14 Q But you're not a chemist, correct?

15 A I'm a toxicologist, correct.

16 Q Okay. And does the flashpoint in the
17 chemical indicate a high volatility?

18 A A high volatility. Not necessarily.

19 Q It's flammable, isn't it?

20 A It is listed as flammable; that's
21 correct.

22 Q And if there were, based on the

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1 flashpoint data from NEIC and the flashpoint data
2 reflected here in the SDS, if there were
3 temperatures that caused the drums to exceed that
4 flashpoint of 111 degrees Fahrenheit -- sorry. I
5 may be summarizing incorrectly. I want to make
6 sure I'm right.

7 What was the flashpoint in the drums?

8 A It's 112 degrees Fahrenheit.

9 Q Sorry. Yes, I realized I was using
10 the NEIC data. If the drums were to exceed this
11 temperature, there could be enough vapor to
12 ignite, correct?

13 A So the closed-cup methodology, as we
14 talked about earlier, is not necessarily
15 indicative of real world conditions. What I
16 understand about the difference between the
17 closed-cup and the open-cup methodology, so,
18 again, the open cup is where you have, it's not a
19 sealed environment, which more accurately
20 represents the drums. Here we have the bungholes
21 that are open, and so any vapors as the paint is
22 heated are going to come out of there and not

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1 contribute to the accumulation of vapors that are
2 potentially at a concentration which can be
3 ignitable. Does that make sense? We have a
4 release valve, basically.

5 So my understanding is that the
6 difference typically in measured flashpoint
7 between an open and closed-cup system is
8 approximately 10 to 20 degrees Fahrenheit, so
9 we'd need another 10 to 20 degrees to reach a
10 flashpoint most likely under these real world
11 conditions.

12 Q Okay. But you didn't take
13 measurements at the site in terms of the
14 volatiles or volatility.

15 A No, I didn't visit the site.

16 Q My next question really has to deal
17 with -- there is flashpoint data. We have that
18 from NEIC. And you, I believe, testified earlier
19 about a lack of an ignition source, correct?

20 A That's correct.

21 Q And you also said that you haven't
22 visited the site. So my question to you is --

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1 let's just talk about some potential ignition
2 sources. Would static electricity be an ignition
3 source?

4 A Theoretically, yes.

5 Q Or a spark from metal hitting
6 concrete?

7 A Theoretically, yes.

8 Q Or drums hitting each other when
9 they're moved?

10 A If a spark was generated through that
11 process, yes.

12 Q Okay. And what about construction
13 equipment? Could it create an ignition source,
14 like backfiring or something like that?

15 A Theoretically, that could be an
16 ignition source.

17 Q Okay.

18 A I think it's important --

19 Q Nope, you've answered my question.
20 Thank you. They can handle it on redirect.

21 MR. RYAN: Your Honor, I think she's
22 entitled to answer --

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1 MS. JACKSON: I mean, she answered my
2 question.

3 MR. RYAN: I mean she's entitled to
4 finish her sentence.

5 JUDGE COUGHLIN: Go ahead and --

6 THE WITNESS: Thank you.

7 JUDGE COUGHLIN: And I appreciate it's
8 cross. It really should just be yes or no, but
9 I'll let -- it's only going to get covered on
10 redirect anyway, so just go ahead and --

11 THE WITNESS: Thanks. So I just
12 wanted to point out that that ignition source
13 needs to be directly at the level of the paint,
14 so we need to have it inside the actual barrel at
15 the surface of the paint to be considered at the
16 flashpoint. So if something sparks, but it's 20
17 yards away, that's not likely to be something
18 that's going to cause a fire.

19 JUDGE COUGHLIN: Actually, I didn't
20 want to interrupt you again, but that is a
21 question I was thinking about. So thank you for
22 answering that because I would have asked it

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1 anyway at some point.

2 BY MS. JACKSON:

3 Q Okay. And you learned about the
4 construction after you wrote your report, right?

5 A That's correct.

6 Q And could the distance from the
7 construction affect your conclusions? I mean,
8 did you consider that when you -- because I
9 believe you testified earlier that, you know,
10 none of your opinions have changed based on the
11 information that you've learned.

12 A Yes, my significant conclusions had
13 not changed. When I wrote my report, I was not
14 aware that there was construction, and my
15 understanding of the construction does not change
16 my conclusion significantly regarding the low
17 probability of a fire occurring.

18 Q I think we're almost done. I just
19 want to talk to you a little bit more about the
20 risk of fire. You talked about if the drums were
21 to catch on fire, aerosolization of the chromium
22 could occur; is that correct? Or at least it's

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1 in your report.
 2 A Yes. So chromium fumes, and I'm
 3 relying upon occupational studies related to the
 4 potential carcinogenicity of this product, but
 5 there are descriptions that chromium fumes can
 6 come off under industrial settings where they're
 7 being heated to hundreds of thousands of degrees.
 8 So either electroplating or welding or other
 9 scenarios like that, there's the potential for
 10 chromium fumes, yes.
 11 Q And those could be ingested, correct?
 12 A I'm sorry?
 13 Q Those could be ingested, the chromium
 14 fumes? If a worker were nearby, chromium fumes
 15 could be ingested.
 16 A No.
 17 Q No?
 18 A Technically, ingested means that
 19 you're swallowing a substance.
 20 Q Okay. For the layperson, it could be
 21 taken into the body.
 22 A They could be inhaled, yes.

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1 A I do.
 2 Q And to your knowledge, before EPA
 3 arrived, Prime had not conducted any waste
 4 characterization, had it?
 5 A I don't know the answer to that.
 6 Q Okay. Well, the drums that were
 7 stored at the facility weren't labeled, were
 8 they?
 9 A I do not believe that they were.
 10 Q And without a label, it's likely that
 11 Prime or the first responders wouldn't know what
 12 was in the drums; isn't that right?
 13 A I'm not certain about that.
 14 Q I think I just have -- oh, if we could
 15 look quickly at CX-10, page 16. You testified
 16 about your understanding of the proximity, and
 17 then you also talked about the materials being
 18 stored on a concrete pad. I just wanted to
 19 better understand what you mean or your
 20 understanding of a concrete pad. Is this what
 21 you're referring to?
 22 A The trailer appears to be on a

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1 Q Okay. And in the event of a fire, the
 2 SDS indicates that the primer could product
 3 decomposing byproducts; is that correct?
 4 A It does.
 5 Q Like carbon monoxide, phosphorus,
 6 halogenated compounds; is that right?
 7 A That's what's listed, yes.
 8 Q And in the event of a fire, first
 9 responders or employees could be exposed to these
 10 decomposition products, couldn't they?
 11 A First responders would be wearing
 12 personal protective equipment, as we discussed,
 13 yes.
 14 Q Would they be wearing PPE if they
 15 didn't know what was in the drums?
 16 A I can't attest to that.
 17 Q And, in fact, in your report, you said
 18 something about that the potential exposure for
 19 fire could be reduced if the fire, because the
 20 fire might have been rapidly discovered and
 21 extinguished at the facility. Do you recall
 22 that?

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1 concrete surface here. My understanding was,
 2 from my discussions with Mr. Singleton, as well
 3 as looking at a variety of aerial photos, that
 4 the trailer was on a concrete pad in every
 5 scenario that I looked at.
 6 Q Okay. Would you consider this a pad
 7 or just a paved parking lot?
 8 A I don't have the expertise to
 9 distinguish that, especially when it has, you
 10 know, some gravel and rocks on top of it.
 11 Q And some dirt?
 12 A Sure.
 13 Q Okay. And you're not aware of any air
 14 monitoring conducted by Prime at the facility,
 15 are you?
 16 A I'm not.
 17 Q And you're not a materials expert,
 18 materials management expert, I should say?
 19 A I am not a materials management
 20 expert, no.
 21 Q I had one more question, and now I
 22 can't find it. So give me one second, please.

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1 JUDGE COUGHLIN: Take your time.
 2 BY MS. JACKSON:
 3 Q Today, you looked at Dr. Keteles's --
 4 I can't find, but I'm just going to look for it.
 5 Today, you looked at Dr. Keteles's expert report
 6 and her conceptual site model; is that right?
 7 A Yes.
 8 Q Did you perform a conceptual site
 9 model for this, for your analysis in this case?
 10 A I did not draw out a formal conceptual
 11 site model, no.
 12 Q Okay. Thank you. No further
 13 questions.
 14 REDIRECT EXAMINATION
 15 BY MR. RYAN:
 16 Q Dr. Walker, on cross-examination, were
 17 there any answers you wanted to give that you
 18 were not allowed to give?
 19 A I had that impression, but I don't
 20 recall what they specifically were anymore.
 21 Q And regarding the people having
 22 theoretical access to the site, do you recall Mr.

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1 you discussed it needing to be at the same level.
 2 Can you offer an opinion as to how far away it
 3 would need to be in order to impact the material
 4 as an ignition source?
 5 THE WITNESS: Yes, I can offer an
 6 opinion, but it's going to be sort of
 7 frustrating. It depends because it's highly
 8 reliant upon the environmental conditions. So if
 9 we're talking about, so we've already discussed
 10 that the concentration of how much potentially
 11 ignitable vapor is coming off is temperature
 12 dependent and that there's a higher probability
 13 that some vapors would come off on a hot day. If
 14 that was a hot windy or breezy day, that's going
 15 to increase the movement of those and dispersion
 16 of those up into the environment. So in that
 17 case, it's also hard to image that an ignition
 18 source from, you know, some 10, 20, 30 feet away
 19 could have any impact on the ability of those
 20 vapors to ignite.
 21 I think, you know, to your point, with
 22 regards to the closed-cup methodology or the

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1 Singleton, you were in the courtroom this morning
 2 when Mr. Singleton testified?
 3 A That's correct.
 4 Q And you said you talked to Mr.
 5 Singleton on your own in the past?
 6 A I did.
 7 Q And what's your understanding of how
 8 many people went by that area they call the
 9 boneyard?
 10 A My understanding is that very few did,
 11 and it was, again, sort of a remote location
 12 where things were put intentionally to just be
 13 out of the way. Accordingly, they weren't
 14 accessed regularly, and no one walked by or stood
 15 there or congregated.
 16 MR. RYAN: I have no further
 17 questions. Thank you, Your Honor.
 18 JUDGE COUGHLIN: Okay. I wanted to
 19 just follow-up on the ignition source because I
 20 think you had responded, but, in your opinion,
 21 how close would it -- I know you had said
 22 something from 20 yards away wouldn't impact and

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1 open-cup methodology that's actually used to
 2 generate that 112-degree flashpoint, the ignition
 3 source is passed right at the surface of the
 4 material being tested, so there's no distance
 5 basically.
 6 JUDGE COUGHLIN: Okay.
 7 THE WITNESS: And a closed
 8 environment.
 9 JUDGE COUGHLIN: Okay.
 10 THE WITNESS: I remembered one thing.
 11 Could I respond to counsel's question about --
 12 JUDGE COUGHLIN: Yes.
 13 THE WITNESS: So the one thing I also
 14 just wanted to mention with regards to thinking
 15 about temperature and ambient temperature is that
 16 we're talking about fluctuating daytime highs and
 17 lows, and so, when we talk about a day that
 18 reaches a hundred degrees, that's the high point
 19 for that day. The number of hours that day might
 20 reasonably be at a hundred degrees is something
 21 less than 24 hours, we can say with confidence,
 22 maybe six hours or something like that.

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1 And so, similarly, for paint to, the
2 entirety of the barrel of paint to heat up to
3 that temperature, you just think about baking
4 something, right? You need to put your material
5 into that oven and then expose it to that higher
6 temperature for some period of time for it to
7 rise up to that temperature.

8 So, again, you know, it's a little bit
9 misleading to think about, you know, it's sitting
10 out in a hundred degrees and so we have the
11 instantaneous potential to reach the flashpoint.
12 That's not actually the case in a real world
13 scenario. Does that make sense?

14 JUDGE COUGHLIN: Okay. Is there an
15 indicator as to over what period of time or how
16 sustained a temperature needs to be in order to
17 have an impact?

18 THE WITNESS: I don't know that, but,
19 you know, it's dependent on volume. We have
20 large barrels of paint here.

21 JUDGE COUGHLIN: Okay. I had a
22 question before I give the chance for questions

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1 by you, Ms. Jackson, but before I ask it I want
2 to make sure that there's actually something in
3 evidence representative of it. And I wasn't sure
4 if there was a depiction in some of these photos
5 of some of the product being on the outside of
6 the drum and dried. Am I hallucinating, or does
7 that exist; do you know?

8 MS. JACKSON: That definitely exists.

9 MR. RYAN: Yes, it does exist, Your
10 Honor. They're in the August 24th inspection.

11 JUDGE COUGHLIN: Okay.

12 MR. RYAN: And it appears that they
13 are coming from the top of the barrel. The
14 barrels were moved for the EPA so they could
15 sample them, and you can see that there's fresh
16 paint coming down the side and on the ground.

17 JUDGE COUGHLIN: Okay.

18 MS. JACKSON: I believe there's some
19 reflected even in pictures in the drums, but I
20 can try to find those and show them to you later,
21 if that helps.

22 JUDGE COUGHLIN: Well, I had a

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1 question for Dr. Walker about it. Do you all
2 happen to know which exhibit page number that may
3 be could get pulled up so she could look --

4 MS. JACKSON: Well, we have some up
5 already from the NEIC inspection. That is
6 Exhibit --

7 JUDGE COUGHLIN: CX-10 maybe or --

8 MR. RYAN: Yes, Your Honor.

9 MS. JACKSON: CX-10 at page 56.

10 JUDGE COUGHLIN: Okay. Let me just go
11 there. And I guess, Dr. Walker, let me know if
12 you actually need to see it. It's more of a
13 general question. I just wanted to make sure I
14 wasn't referring to something that didn't
15 actually exist here.

16 But if there's some of this paint on
17 the outside of the drum, it's been spilled,
18 whether it's remnants from the fire or moving or
19 whatever, but it's on the outside of the drum and
20 it's dried. What impact does that pose? What
21 risk comes from that environment? Does it matter
22 at all?

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1 THE WITNESS: Yes, that's a good
2 question. Yes, so, once the paint has dried,
3 what can be said about it is that those volatile
4 chemicals that we're talking about of being
5 inhalation concern have evaporated, so they're no
6 longer a concern. The strontium chromate, for
7 example, is also still chemically bonded into
8 that paint and can no longer be released or can't
9 be released from that paint unless it was ground
10 up into some kind of dust or otherwise made
11 bioavailable to be inhaled.

12 JUDGE COUGHLIN: Okay. Thank you.
13 Mr. Ryan, was there anything else you needed to
14 cover?

15 MR. RYAN: No, Your Honor.

16 JUDGE COUGHLIN: Okay. And any
17 questions, Ms. Jackson?

18 MS. JACKSON: No further questions.

19 JUDGE COUGHLIN: Okay. Thank you very
20 much, Dr. Walker.

21 THE WITNESS: Thank you.

22 MR. RYAN: I'm ready to proceed, Your

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1 Honor. I think we have one more witness, as I
2 understand it, for rebuttal.
3 JUDGE COUGHLIN: Right. Not anything
4 else from respondent?
5 MR. RYAN: Oh, I'm sorry. Yes, Your
6 Honor.
7 JUDGE COUGHLIN: Okay, all right.
8 And, complainant, I'm assuming you're planning to
9 call at least Dr. Keteles, right?
10 MS. JACKSON: Yes, Your Honor.
11 JUDGE COUGHLIN: Okay. Would you all
12 like a brief break before we get to that point?
13 MS. JACKSON: I could use even just
14 five minutes, but just go to the restroom would
15 be great.
16 JUDGE COUGHLIN: Sure.
17 MS. JACKSON: Or we could do lunch,
18 actually, if you prefer, and then come back after
19 lunch. It's up to you. I will not be able to
20 complete my examination before lunch, if that
21 makes a difference.
22 JUDGE COUGHLIN: Well, then why don't

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1 we do that? Why don't we take an earlier break
2 for lunch just so that it might, I'm assuming it
3 would be helpful to all of you to be able to
4 cover it all in one span of time. So it's about
5 almost 11:15. We're going to come back at 11:45,
6 and we'll pick up. Is that -- well, all right.
7 MS. JACKSON: This is the last
8 witness, if that helps.
9 JUDGE COUGHLIN: Okay.
10 MS. JACKSON: We are not concerned
11 about the time for today from our perspective, if
12 you want to allow a little more time for lunch.
13 But we'll defer to you.
14 JUDGE COUGHLIN: Okay. How are you
15 all feeling in terms of any potential rebuttal?
16 I mean, basically, give me a sense, can we wrap
17 it up by tomorrow at the latest?
18 MR. RYAN: I suspect we can wrap it up
19 today.
20 JUDGE COUGHLIN: Okay. Even with an
21 hour break?
22 MR. MCKAY: Well, I would ask that of

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1 EPA.
2 JUDGE COUGHLIN: Okay.
3 MS. JACKSON: Just full disclosure,
4 we're going to come back with Dr. Keteles. I
5 can't specifically say how long, an hour at most
6 probably, and then potentially Ms. McNeill. I
7 haven't deferred with counsel so --
8 MR. FIGUR: We will be done today.
9 MS. JACKSON: Yes, we will be done
10 today, though.
11 MR. RYAN: With an hour break for
12 lunch?
13 MS. JACKSON: Yes.
14 MR. FIGUR: Yes, especially
15 considering the building is opened until six. We
16 won't get close to six, if you ask me personally,
17 but there's four of us here today.
18 MS. JACKSON: Part of it is 11 hours
19 so that we can change our flights.
20 MR. FIGUR: Well, and also our lunch
21 is across the street, so we literally run across
22 the street, eat, and come back and try to make it

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1 in a half an hour. An hour would be nice. And I
2 believe we'll be done today.
3 MS. JACKSON: Yes.
4 JUDGE COUGHLIN: Okay, great. So,
5 respondent, let me just check in with you, too,
6 because I don't know to what extent you might
7 anticipate any rebuttal. Are you all fairly
8 comfortable with the notion that we would be
9 concluding the hearing entirely today such that
10 we should look into arranging travel? It's no
11 pressure. We have until tomorrow, but I'm just
12 trying to get a sense.
13 MR. RYAN: I think it's highly likely.
14 If the EPA said they expect about an hour for Dr.
15 Keteles, I do not expect lengthy cross-
16 examination. Unless they're going to put another
17 witness on and that would go on forever, I would
18 suspect that we'll finish today.
19 JUDGE COUGHLIN: Okay, all right. So
20 let's do that. Let's take an hour. Let's come
21 back at 12:20, and we'll go from there. Okay,
22 great. Thank you.

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1 (Whereupon, the above-entitled matter
2 went off the record at 11:17 a.m. and resumed at
3 12:29 p.m.)

4 JUDGE COUGHLIN: Thanks for your
5 patience. I'm the one who was tardy trying to
6 change air travel. It's not fun with the federal
7 government, I'll just say that on the record
8 plain as day. For anyone listening, adjustments
9 are needed, from this humble ALJ's opinion.

10 MR. RYAN: Govtrip is your friend.

11 JUDGE COUGHLIN: What's that?

12 MR. RYAN: Govtrip is your friend.

13 JUDGE COUGHLIN: Oh, yes, yes. Okay.
14 But, anyway, thank you for waiting. I know I
15 kept you all waiting a little bit, so I'm sorry.
16 Are we ready to get started with your rebuttal
17 witness?

18 MS. JACKSON: Yes, Your Honor.

19 JUDGE COUGHLIN: Okay. Please go
20 ahead.

21 MS. JACKSON: The EPA would like to
22 call Dr. Kristin Keteles to the stand.

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1 State University with an emphasis in
2 environmental toxicology.

3 Q And what did you have to do to earn a
4 Ph.D. with a specialization in environmental
5 toxicology?

6 A I had to take a comprehensive list of
7 courses in toxicology, as well as chemistry and
8 biology. And then I had to complete original
9 research and public that research.

10 Q And was there training involved in
11 that?

12 A Yes. So as part of my training, I was
13 trained to evaluate the toxicity or potential
14 harm that could be caused from chemicals and to
15 look at exposures and how those exposures relate
16 to the harm.

17 Q And while you were working towards
18 your Ph.D., what kind of chemical agents did you
19 study?

20 A I studied a wide variety. In my
21 dissertation, I looked at trace metals, such as
22 copper, cadmium, and zinc. I also looked at a

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1 JUDGE COUGHLIN: The witness is sworn.
2 Please go ahead.

3 WHEREUPON,
4 KRISTIN KETELES
5 was called as a witness by Counsel for the
6 Complainant and, after having first been duly
7 sworn, was examined and testified as follows:
8 DIRECT EXAMINATION
9 BY MS. JACKSON:
10 Q Good afternoon, Dr. Keteles.
11 A Hello.
12 Q Can you please state your name for the
13 record?
14 A Yes. My name is Kristin Keteles.
15 Keteles is spelled K-E-T-E-L-E-S.
16 Q Okay. I'd like to begin with some
17 questions about your educational background. Can
18 you please give us a summary of your education?
19 A So I have a Bachelor's of Science in
20 marine science from Coastal Carolina University
21 with an emphasis in biology and chemistry, and
22 then I have a Ph.D. in zoology from Louisiana

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1 variety of petrochemicals, such as phenanthrene,
2 benzo(a)pyrene. And then in my course work, I
3 studied a variety of chemicals, PCBs, fibers like
4 asbestos, and even biologicals, such as botulinum
5 toxin.

6 Q Okay. Let's turn to your employment.
7 Where are you currently employed?
8 A I currently work for EPA's National
9 Enforcement Investigation Center, NEIC.

10 Q And in what capacity are you employed
11 at EPA?
12 A As a toxicologist.
13 Q And how long have you worked for the
14 EPA as a toxicologist?
15 A Fourteen years.
16 Q And have you just been assigned to
17 work in any other capacity for the EPA?
18 A Yes, I was recently promoted to a
19 science advisor toxicologist.
20 Q And what does a science advisor
21 toxicologist do?
22 A So I'm considered an international

1 expert in the field of toxicology, and I provide
2 expert advice to EPA's senior leadership on
3 matters involving toxicology and risk assessment.

4 Q And what kind of work do you do
5 generally as an environmental toxicologist at the
6 EPA?

7 A So I've been a risk assessor for 14
8 years. I've worked in the regional pesticides
9 program as a pesticides toxicologist. I was an
10 air toxics risk assessor. I was a toxicologist
11 for the Children's environmental health program,
12 and I also worked as a risk assessor in the
13 Superfund program assessing risk at hazardous
14 waste sites. And now, at NEIC, I primarily
15 assist the criminal program by, again, assessing
16 risk from the release of chemicals in criminal
17 cases, and then I synthesize information
18 regarding those releases to write expert opinion
19 reports on the potential for harm. And then I
20 often testify in court about that potential for
21 harm.

22 Q And you mentioned expert opinion

1 piece of information I need is exposure, which is
2 the level that people would be exposed to, as
3 well as how long they might be exposed.

4 Q And have you done any work involving
5 the assessment of risk associated with the
6 potential exposure to hazardous substances?

7 A Yes, routinely, in my job. When I was
8 in the pesticide program, I would assess risk
9 from pesticide releases, spills, pesticide
10 misuses. Also, working as a Superfund risk
11 assessor, I routinely assess risk at hazardous
12 waste sites.

13 Q And can you provide an example of the
14 types of risk and adverse health effects
15 associated with hazardous substances that you've
16 analyzed?

17 A Yes. So for pesticides, I've assessed
18 risk from pesticide spills, like some of the
19 pesticides cause nervous system effects. And
20 then, at Superfund sites, I've looked at
21 petrochemical releases. I've also looked at
22 metals and assess risk from metals and some of

1 reports. Are those reviewed by your peers?

2 A Yes. Per NEIC's accreditation, we are
3 required to get our reports peer reviewed.

4 Q Okay. And what do you generally do to
5 prepare reports and/or testimony for trial?

6 A Well, I look at the facts of the case,
7 such as any environmental data, any information
8 on exposure. I also research the inherent
9 toxicity chemical and use that information to
10 characterize risk or draw conclusions about risk
11 or the potential for harm.

12 Q Okay. And, Dr. Keteles, what's
13 involved in performing or conducting risk
14 assessments?

15 A So risk assessment is the process that
16 EPA uses in order to determine the nature and
17 magnitude of effects from contaminants in the
18 environment, whether it's a chemical or mineral
19 fiber, such as asbestos, or a biological. And
20 there's really two pieces of information that I
21 need to assess risk. One is I need to know the
22 inherent toxicity of the chemical, and the second

1 the adverse health effects, like, so for example,
2 lead would be neurological effects. Arsenic is a
3 carcinogen, so I've looked at the risk of cancer.
4 So a variety of different contaminants.

5 Q And have you published any scientific
6 articles?

7 A Yes, quite a few. My most recent work
8 has really been focused on new approach methods
9 in toxicology. Those are methods like looking at
10 cell-based tests in order to assess the toxicity,
11 particularly for chemicals which we don't have a
12 lot of data. So most of my more recent
13 publications have been, you know, focused on
14 these new approach methods.

15 Q And have you given professional
16 presentations on toxicology?

17 A Yes, quite a few. Recently, I had
18 presented about a pesticide exposure incident
19 where bison were potentially exposed to a
20 rodenticide, which put humans that might consume
21 those bison at risk. I've also presented on
22 worker lead exposure scenario and potential risk

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1 and harm to those workers.
 2 Q Thank you. Dr. Keteles, do you serve
 3 on any committees or groups for EPA?
 4 A Yes. I've served on EPA's Risk
 5 Assessment Forum. I was actually a chair of the
 6 Human Health Oversight Committee, HHOC. And what
 7 the HHOC does is we provide oversight to the
 8 development of guidance on risk assessment, so
 9 the HHOC oversees technical panels that actually
 10 write risk assessment guidance that's used by the
 11 agency across programs.
 12 Q Okay. And how about the Science
 13 Support Panel?
 14 A Yes. So the Science Support Panel is
 15 under the agency's Science Technology Policy
 16 Council, the STPC, and we serve as senior
 17 advisors to agency leadership, the career
 18 leaders.
 19 Q Okay. And, Dr. Keteles, are you
 20 affiliated with any professional organizations in
 21 the field of toxicology?
 22 A Yes, I am a member of the Society of

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1 Toxicology, similar to Dr. Walker.
 2 Q And what is required to become a
 3 member of the Society of Toxicology?
 4 A The requirement is to have work
 5 experience in the field of toxicology, as well as
 6 there's an education requirement. And then you
 7 also have to get a recommendation from a current
 8 member.
 9 Q Okay. And, Dr. Keteles, do you have
 10 a curriculum vitae?
 11 A I do.
 12 MS. JACKSON: Ms. Tribbett, if you
 13 could pull up CX-63. Can you just scroll to the
 14 bottom, please?
 15 (Whereupon, the above-referred to
 16 document was marked as Complainant's Exhibit No.
 17 63 for identification.)
 18 BY MS. JACKSON:
 19 Q Can you see that on your screen, Dr.
 20 Keteles?
 21 A I don't. I see it now.
 22 Q Okay. Then just -- yes, thank you.

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1 Do you recognize this?
 2 A Yes, I do.
 3 Q And what is it?
 4 A It's my CV.
 5 Q Okay. And did you prepare this?
 6 A I did.
 7 Q Is this a true and accurate
 8 representation of your CV?
 9 A It is, although I would note that the
 10 date is from January 2021, so I have recent
 11 activities that may not be captured here.
 12 Q Okay. Thank you.
 13 MS. JACKSON: Your Honor, the EPA
 14 offers to enter Dr. Keteles's CV identified as
 15 CX-63 into evidence.
 16 JUDGE COUGHLIN: Any objection?
 17 MR. RYAN: No objections, Your Honor.
 18 JUDGE COUGHLIN: Okay. CX-63 is
 19 admitted.
 20 (Whereupon, the above-referred to
 21 document was received into evidence as
 22 Complainant's Exhibit No. 63.)

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1 BY MS. JACKSON:
 2 Q Dr. Keteles, is working on cases
 3 similar to this case at issue today part of your
 4 normal duties at NEIC?
 5 A Yes, it is.
 6 Q Are you being compensated anything
 7 extra for your work on this case?
 8 A No, I only receive my normal
 9 government salary.
 10 Q Okay. Dr. Keteles, you mentioned that
 11 you have served as an expert witness. Can you
 12 share some background on the types of cases where
 13 you provided expert testimony to a court?
 14 A Yes. I testified in some pesticide
 15 cases, such as exposure from strychnine that
 16 resulted in the deaths of some dogs. I've
 17 testified in a bioterrorism incident that
 18 involved a select agent called ricin. I've
 19 testified in a couple of pediatric lead poisoning
 20 cases and then testified in an illegal hazardous
 21 waste disposal case involving a petrochemical
 22 called naphthalene, as well as corrosive waste

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1 that had a very high pH.

2 Q And, Dr. Keteles, about how many times
3 have you provided expert testimony in court?

4 A I've testified in court eight times.

5 Q And did the court qualify you as an
6 expert in each of those cases?

7 A Yes.

8 Q Dr. Keteles, when conducting your work
9 for this matter, did you rely on specific
10 scientific principles or methods that are widely
11 used in the field of toxicology?

12 A Yes, I relied on EPA's Risk Assessment
13 Guidance, including the principles of hazard
14 identification and exposure assessment.

15 Q And do you believe that your testimony
16 today will be useful in assisting the tribunal in
17 understanding certain facts of this case?

18 A Yes.

19 MS. JACKSON: Your Honor, at this
20 time, the EPA moves to have Dr. Keteles qualified
21 as an expert in the field of toxicology and risk
22 assessment.

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1 JUDGE COUGHLIN: Any objection?

2 MR. RYAN: No objections, Your Honor.

3 JUDGE COUGHLIN: Okay. So deemed.

4 BY MS. JACKSON:

5 Q Okay. Dr. Keteles, as an expert in
6 this case, let's talk about what you did and how
7 you did it. What were you asked to do in this
8 case?

9 A I was asked to review and evaluate a
10 report written by Dr. Elizabeth Walker. I was
11 also asked to review the facts of the case and
12 determine if there was the potential for harm
13 from the improper storage of waste at the Prime
14 site.

15 Q And did you prepare a report to assist
16 you in demonstrating your analysis and your
17 opinion to the tribunal?

18 A I did.

19 MS. JACKSON: If you could put up CX-
20 66.

21 (Whereupon, the above-referred to
22 document was marked as Complainant's Exhibit No.

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1 66 for identification.)

2 BY MS. JACKSON:

3 Q I'm now showing you what is marked as
4 CX-66. And while I acknowledge that the drum
5 logs have already been put in, I'm just going to
6 have you review the whole thing quickly. Okay.
7 And is this your report?

8 A Yes, it is.

9 Q Did you write this report?

10 A I did.

11 Q Can you please explain the materials
12 that you reviewed in creating your report?

13 A Well, I reviewed the report written by
14 Dr. Walker. I also reviewed the SDS for the
15 primer. I reviewed the drum logbook from NEIC.
16 I reviewed NEIC's analytical chemistry report,
17 and I reviewed CID's inspection report, as well
18 as looking at various photos from the site.

19 Q And, Dr. Keteles, does this report
20 accurately reflect the results of your analysis?

21 A It does.

22 MS. JACKSON: Your Honor, the EPA

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1 offers CX-66, Dr. Kristin Keteles's expert
2 report, into evidence.

3 MS. JACKSON: Any objection?

4 MR. RYAN: No objections, Your Honor.

5 MS. JACKSON: Okay. So, basically,
6 all of 66 is now admitted into evidence.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 Complainant's Exhibit No. 66.)

10 MS. JACKSON: Thank you, Your Honor.

11 BY MS. JACKSON:

12 Q Dr. Keteles, let's briefly start with
13 the NEIC report. What did you learn about the
14 nature of the substances in the burnt drums of
15 hazardous waste based on that report?

16 A Well, the waste in the drums contained
17 chromium. The measurements taken by NEIC
18 revealed levels greater than 35 milligrams per
19 liter, and then the results by XRF showed that
20 there were levels of chromium greater than 10,000
21 milligrams per kilogram. And then NEIC also
22 measured the flashpoint, and the flashpoint

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1 ranged from 43 to 45 degrees C. All these
2 measurements are consistent with the strontium
3 chromate primer.

4 Q And so what's the significance of
5 that, the mean consistent?

6 A The significance is that after the
7 fire the chemical constituents remained the same;
8 and, therefore, the SDS was applicable to the
9 material that was stored at Prime.

10 Q Okay. Thank you.

11 MS. JACKSON: Ms. Tribbett, if you
12 could pull up CX-32 at page 31.

13 BY MS. JACKSON:

14 Q Dr. Keteles, do you recognize this?

15 A Yes.

16 Q Let's turn -- well, I should say, for
17 the record, what are we looking at?

18 A We're looking at the safety data sheet
19 for the Universal Urethane yellow primer.

20 MS. JACKSON: Ms. Tribbett, if you
21 could scroll to page 33, please.

22 BY MS. JACKSON:

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1 Q We're looking here at Section 3. It
2 says composition information on ingredients.
3 What does this section in the SDS tell you about
4 the strontium chromate primer?

5 A It tells me that there are about 14
6 chemicals that are associated with the primer.

7 Q And what's the significance of the
8 presence of these chemicals in the primer?

9 A It also talks about the hazards that
10 are associated with those chemicals.

11 Q Okay. Let's go to section two.

12 Sorry. We're jumping around a little bit. Page
13 32. This is the hazards identification section.

14 What does this say about the hazards -- well,
15 we've already kind of talked about the hazards
16 associated with the chemicals. What do you take
17 away from this?

18 A Well, that it's flammable liquid
19 vapor. It's also hazardous to human health.
20 It's harmful if swallowed or inhaled. It causes
21 serious eye irritation. It causes skin
22 irritation. It may cause allergic skin reaction.

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1 It may cause cancer. It may damage fertility or
2 the unborn child. It may cause respiratory
3 irritation and may damage organs with prolonged
4 or repeated exposures.

5 Q And what do you know generally about
6 the human health effects from strontium chromate
7 and barium chromate?

8 A Well, chromate, or hexavalent
9 chromium, is a known human carcinogen, but there
10 are also non-cancer effects, such as it can
11 affect breathing, making breathing difficult. It
12 could also damage liver, kidney, as the SDS says
13 fertility. There's been studies that show that
14 it reduces sperm count in men. It could also
15 damage the unborn child.

16 Q And did you address the -- sorry.
17 What does the toxicity information for the primer
18 indicate to you?

19 A That it's hazardous to human health.

20 Q And did the fire or storage outside at
21 the Prime facility for over 300 days reduce the
22 inherent toxicity of the primer?

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1 A No. The material that was stored at
2 Prime is the same material that existed before
3 the fire; so, again, the SDS applies to it.

4 Q Okay. Dr. Keteles, I'd like to turn
5 to discussing the potential volatilization from
6 the drums. Actually, before we do that, you
7 heard Dr. Walker this morning speak about a
8 rattlesnake and the risk associated with that.

9 A Yes.

10 Q Do you agree with that example?

11 A I agree in that, yes, you will not
12 experience the adverse effects of venom unless
13 you're envenomated, but I don't agree that, if
14 you are in the presence of a rattlesnake, you are
15 at risk for being bit. Unless that rattlesnake
16 or locked away, you are still at risk for getting
17 bit. You are at risk for the exposure. And
18 then, if you are exposed and envenomated, then
19 you would be at risk for the adverse health
20 effects.

21 Q Okay. Thank you. Now, let's turn to
22 the potential volatilization in the drums. Can

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1 we start with a quick description of what is
 2 meant by volatilization and vapors?
 3 A Volatilization occurs when chemicals
 4 that are in a liquid become gas or vapor form.
 5 Q Okay. And does that make them capable
 6 of inhalation?
 7 A It does.
 8 Q Okay. And how does volatilization or
 9 evaporation rate relate to vapor pressure?
 10 A So the vapor pressure is when
 11 chemicals are leaving the liquid, they exert an
 12 upward pressure on air, and that measurement is
 13 vapor pressure.
 14 Q And did you consider any temperature
 15 data as part of your analysis?
 16 A Yes, I did, because temperature will
 17 affect vapor pressure and evaporation.
 18 Q And can you explain that temperature
 19 data?
 20 A Yes. I looked at the National Weather
 21 Service climate book. I looked at the average
 22 number of days that exceed 95 degrees Fahrenheit,

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1 would eject those vapors into the ambient air.
 2 And as the night cools, which Dr.
 3 Walker mentioned, what's going to happen is that
 4 you're going to actually, you're going to change
 5 the pressure difference between the head space
 6 and the ambient environment. So as it cools,
 7 it's actually going to cause more of a release of
 8 those vapors that are in the head space that had
 9 been heated up the day before. So what you're
 10 going to get is high temperatures in the morning
 11 because that's when the coldest temperatures are
 12 the day after a really warm day --
 13 Q Sorry. You said high temperatures in
 14 the morning. You mean high temperatures --
 15 A Oh, sorry. High temperatures the day
 16 before, cooling temperatures at night would cause
 17 a very rapid release of those volatile chemicals.
 18 MS. JACKSON: Go ahead.
 19 THE WITNESS: I know that was a lot.
 20 JUDGE COUGHLIN: Okay. A couple of
 21 things. I guess, to what you just said, can you
 22 explain why? And then can you also, when you

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1 which was 19 days. I also looked at the average
 2 number of days that exceed a hundred degrees
 3 Fahrenheit, and the average is four. However, in
 4 2016, 16 days exceeded a hundred degrees in Salt
 5 Lake City.
 6 Q And just to be clear, that National
 7 Weather Service data, is that available on the
 8 internet?
 9 A It is.
 10 Q Okay. And so could the temperatures
 11 at the Prime facility affect volatilization of
 12 the chemicals in the primer?
 13 A They absolutely would.
 14 Q How so?
 15 A The hotter temperatures would cause
 16 the volatile chemicals to become vapor. So
 17 during the day, it would get hot. That would
 18 heat up the metal drums. Then the vapor would
 19 form in the head space of the drum, and pressure
 20 would build up from these vapors in that head
 21 space. Eventually, the pressure would be great
 22 that the drums would actually breathe. They

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1 talk about head space, what are you referring to?
 2 THE WITNESS: Good question, Your
 3 Honor. So the head space is that space between
 4 the material and the drum. It would be empty, it
 5 would have air, right?
 6 JUDGE COUGHLIN: Okay.
 7 THE WITNESS: But the volatile
 8 chemicals are then going to leave that liquid and
 9 enter the head space as a vapor, and that vapor
 10 would build up and it would exert a pressure, and
 11 I can give you an example. You have a bottle of
 12 soda, and you open it, the gas comes out. The
 13 same thing is going to happen with the drum that
 14 you're going to have gas, but it's going to build
 15 up in that head space at the top of the liquid.
 16 And then due to the temperature difference
 17 between the inside and the outside of the drum,
 18 it's going to cause that vapor to escape, just
 19 like your soda bottle would.
 20 JUDGE COUGHLIN: Thank you.
 21 THE WITNESS: And that would, again,
 22 in the mornings, you could have quite high levels

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1 of vapor because of that rapid release of the
2 vapors that were in the head space.

3 JUDGE COUGHLIN: Thank you.

4 BY MS. JACKSON:

5 Q And, Dr. Keteles, so I guess my
6 question is do you agree with Dr. Walker's
7 opinion that the potential for exposure is low
8 because of volatilization or the evaporation rate
9 of the primer being low?

10 A No, I don't agree. And the reason I
11 don't agree is because what I just mentioned,
12 it's called breathing, drums breathe. And if you
13 look at the drum logbooks, NEIC actually measured
14 the volatile organic compounds with a
15 photoionization detector, and they got pretty
16 high levels of organic compounds in the vapor
17 above the drums that, on average, was 500 parts
18 per million. And those measurements were
19 actually taken in the afternoon. They would have
20 been much higher in the morning. And even at 500
21 parts per million, I would still expect that the
22 occupational exposure limits would be exceeded

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1 for some of those chemicals just based on the
2 composition of the chemicals that were in that
3 material.

4 Q Thank you. And, Dr. Keteles, you
5 mentioned that the PID measurements in the NEIC
6 logbook. What does that indicate to you
7 generally, the results that you were just
8 discussing?

9 A It indicates that the organic
10 chemicals were volatilizing. They were becoming
11 a vapor, and they could be inhaled.

12 Q And, Dr. Keteles, did any of the
13 inspection information you reviewed, sorry, any
14 of the other inspection information that you
15 reviewed indicate active volatilization of the
16 drums? In other words, chemicals leaving the
17 drums.

18 A Yes. The CID inspection report
19 mentioned that there was a strong chemical odor
20 when they removed the tarp, and that would also
21 indicate that the chemicals were volatilizing.

22 Q Okay. And do you agree with Dr.

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1 Walker's opinion that the chemical constituents
2 in the drums of hazardous waste were probably
3 present at low concentrations based on everything
4 you've just shared?

5 A No. Based on what I just shared, I
6 believe that the concentrations could actually be
7 quite high and even exceed some of the
8 occupational exposure limits.

9 Q And did you want to say anything about
10 the volume of the drums?

11 A Yes. The drum logbook does indicate
12 that most of the drums were quite full, three-
13 quarters full, seven-eighths full, so the volume
14 wasn't substantially reduced by the first fire.

15 Q And, Dr. Keteles, do you agree with
16 Dr. Walker's conclusion that any potential
17 exposure to solvent vapors would be very low and
18 brief and any vapor that may have been present
19 would be at much lower levels than those
20 considered safe under the permissible exposure
21 limits set by OSHA?

22 A So as I mentioned, the vapors could

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1 be, the levels could be quite high. It could
2 exceed some of those exposure limits set by, say,
3 OSHA. But one thing to keep in mind that the,
4 like, the PELs, the permissible exposure limits,
5 so they are based on an eight-hour time-weighted
6 average, so eight hours. Think of it this way:
7 that's your daily dose over eight hours is set by
8 the PEL. However, if the levels exceed the PEL,
9 you might get your daily dose a little sooner.
10 So let's just say the levels are double the PEL.
11 That would mean you would get your dose in four
12 hours and so forth.

13 OSHA allows employers to then reduce
14 people's exposure by time, so you would limit
15 your duration. Again, if you knew that there was
16 a release and you were monitoring that release,
17 which is what should have been done so we
18 actually knew what the exposure levels would be,
19 and then the employer can reduce the time that
20 employees are near that chemical. However,
21 hexavalent chrome is so hazardous that OSHA
22 doesn't allow you to manage exposure with time.

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1 Q So not with permissible exposure
2 limits?

3 A If you exceed the permissible exposure
4 limit, OSHA will not let employers reduce the
5 amount of time that they are near the chemical in
6 order to reduce their exposure. They have to
7 wear PPE. Well, first, you have to reduce the
8 exposure by using proper controls and then, as a
9 last resort, you would provide PPE.

10 Q Okay. And, Dr. Keteles, do you agree
11 with Dr. Walker's opinion that the chemical
12 constituents in the drums of waste were probably
13 present at low concentrations due to their
14 ability to rapidly dissipate?

15 A No, I don't agree with that, and that
16 is because the density of the vapor would be
17 greater than air, so it would actually sink. It
18 wouldn't just rise and dissipate. And also, if
19 you consider when NEIC sampled, it was actually a
20 fairly windy day. I went back and looked at the
21 historical records at the time that NEIC sampled,
22 and the winds were 10 to 20 miles an hour with

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1 gusts up to 30 miles an hour, and they were still
2 getting high readings of, again, average of 500
3 ppm, so that suggested it was dissipating but not
4 enough to really make it safe.

5 MS. JACKSON: Ms. Tribbett, if you
6 could pull up CX-32 at -- oh, you already have it
7 -- at 35, please.

8 BY MS. JACKSON:

9 Q This is the SDS associated with the
10 strontium chromate primer. I just wanted to have
11 this in front of you, but how does this language
12 in here under section five, firefighting
13 measures, inform your assessment?

14 A Well, it talks about how vapors may
15 accumulate in low or confined areas or travel a
16 considerable distance to a source of ignition and
17 flashback. So that speaks to the fact that it's
18 more dense than air and, therefore, it would
19 accumulate in lower confined areas, such as the
20 drums being stored on that trailer. They would
21 accumulate in there, and you could potentially,
22 it could have potentially, if there was an

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1 ignition source, it could ignite.

2 Q Okay. And, Dr. Keteles, do you agree
3 with Dr. Walker's opinion about the risk of fire
4 being improbable during the storage of the burned
5 drums of hazardous waste at Prime?

6 A No, I don't. And she did mention the
7 flashpoint of 112 degrees, so at 112 degrees you
8 could get enough vapor that could ignite in the
9 presence of an ignition source. And I believe
10 that you could exceed the flashpoint. These are
11 metal drums on a hot day, a hundred degrees. And
12 then, again, as the drums breathe and they
13 eliminate the vapors outside of the drum and it
14 could collect in the trailer or even it can
15 travel considerable distances along the ground,
16 if there's an ignition source, it could ignite
17 and catch fire again. The material in the drums
18 caught fire once. They could catch fire again.

19 Q And with regard to the flashpoint you
20 mentioned, can you give some examples of an
21 ignition source?

22 A Sure. So dragging a metal chain on

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1 the ground, just the metal drums banging
2 together, static electricity from, say, the tarp.
3 I did notice there was a train nearby. A spark
4 from the train that could set the brush on fire,
5 and then you have a flame which then could ignite
6 the waste. Pretty much anything that generates a
7 spark. A faulty electrical wire. Just the
8 construction equipment dragging a metal blade
9 across the concrete could generate a spark.

10 Q And, Dr. Keteles, can you explain the
11 potential release mechanisms from the drums in
12 the event of a fire?

13 A Yes. So the fire would create heat
14 and, initially, the volatile substances burn off.
15 You would get combustion byproducts as the
16 material burned, and the combustion byproducts
17 are mentioned in the SDS of what would form metal
18 oxides, halogen oxides, as well as fumes, smoke,
19 particulates from the material.

20 Q Thank you. Now let's turn back to the
21 parameters of a risk assessment. Can you remind
22 us how exposure fits into risk assessment?

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1 A Yes. So you need two pieces of the
2 puzzle to assess risk. You need to know the
3 inherent toxicity, the levels that would cause an
4 adverse health effect; and then you need to know
5 the actual exposure levels, what levels people
6 come in contact with and how long they come into
7 contact with it.

8 Q And did you evaluate how people could
9 be exposed at the Prime facility?

10 A I did.

11 Q Can you explain what you found? Well,
12 actually, we'll wait until we get to your
13 conceptual site model. Can you explain, did you
14 evaluate the exposure pathways?

15 A I did. I looked at exposure pathways,
16 which are how people can come in contact with a
17 chemical that's released into the environment.

18 MS. JACKSON: Okay. And, Ms.
19 Tribbett, if you could pull up CX-66, page nine,
20 figure three. Thank you.

21 BY MS. JACKSON:

22 Q I know we looked at this this morning,

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1 but can you describe for the record what we're
2 looking at in figure three?

3 A This is the conceptual site model that
4 I developed for the Prime hazardous waste storage
5 site. It's just a visual representation of the
6 source of contamination, how it's released into
7 the environment, where it ends up in the
8 environment, and then how people are exposed.

9 Q Okay. And can you explain how people
10 or organisms could be exposed to the hazardous
11 waste at the Prime facility using this figure?

12 A Sure. So you would have
13 volatilization, which we've already discussed,
14 again, due to heat from the sun, from the high
15 ambient temperatures, as well as fire. That
16 would release those chemicals into the air where
17 they could be inhaled. Also, just given the very
18 poor condition of the drums, they were rusted,
19 they were burned, they're missing their bunghole
20 covers. You could get leaks. Leaks could end up
21 in soil. There was dirt nearby the drums. Then
22 the soil could get blown, and it could end up in

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1 the air where it could also be inhaled. Also, if
2 the soil is contaminated, it can get on skin
3 where it then results in exposure.

4 You also have that paint on the
5 exterior of the drums. That's on a rusted drum.
6 It's probably going to fluff off and form this
7 dust and potentially contaminate the soil where,
8 again, that could result in an exposure pathway
9 to humans from just the dust containing the
10 hexavalent chrome from the paint that spilled.

11 Q Thank you. And who did you consider
12 to be potentially exposed to the hazardous waste
13 stored at the Prime facility?

14 A Well, I considered the workers because
15 they're present there. So at EPA, in risk
16 assessment, unless a site is completely locked
17 and inaccessible, we would consider the pathway
18 complete. So because the workers had access to
19 the drums, we consider that the pathway is
20 complete. We wouldn't rule it out. We would
21 still consider them at risk. They are potential
22 receptors because they still have access to it.

223

1 I also considered the first responders
2 that would respond in the event of a fire, and
3 then visitors that might be present at the site,
4 as well.

5 Q And what were some of the storage
6 conditions at the Prime facility that contributed
7 to this -- in your opinion, what were some of the
8 storage conditions at the Prime facility that
9 contributed to this potential for exposure?

10 A Well, the fact that the drums were
11 stored out in the sun. Again, in the hot summer
12 sun, they were stored on a tilted trailer. The
13 drums were in poor condition. They were rusted.
14 They had already been through a fire. They were
15 compromised. And so that's why I considered the
16 potential for volatilization, as well as the
17 leaks, and then the potential for fire, too, just
18 given the flashpoint and the flammability of the
19 material.

20 Q Okay. And similar to Dr. Walker, did
21 you review the Google imagery of the facility
22 during the period of storage? And if so, what

224

1 did it indicate to you?

2 A Yes, I did look at some Google Earth
3 images, and I noticed that there was construction
4 activity nearby, which, again, would result in
5 potential exposure to the construction workers.
6 I also noticed that there was train tracks
7 nearby, so that could be an ignition source, in
8 addition to the construction company. I noticed
9 that trucks, and, depending on what date you
10 looked at the Google Earth images, there were
11 trucks that had moved, so there was obviously
12 human activity there. People were there, and
13 people had access to those drums.

14 MS. JACKSON: Ms. Tribbett, if you
15 could pull up Exhibit CX-10 at page 16.

16 BY MS. JACKSON:

17 Q Do you recognize this photo?

18 A Yes, I do.

19 Q And what does this photo illustrate to
20 you with regards to the potential for exposure to
21 people at the Prime Salt Lake City facility?

22 A It shows the storage condition of the

225

1 drums. They're in a collapsing, tilting, burned
2 trailer. Close proximity to a building and
3 trucks, so, again, presumably, there would be
4 workers there. There's a fence that's down.
5 There's dirt, soil, on the ground.

6 Q Okay. Thanks. We're just going to
7 look at a couple more pictures at five, same
8 exhibit, so CX-10 at page five. You had
9 testified about the railroad behind. Is that
10 what you were referring to as an ignition source?

11 A Yes.

12 Q Okay. And then last picture, if we
13 could look at CX-10 at page 17. And what does
14 this photo illustrate to you with regards to
15 potential exposure to people at the facility?

16 A It shows the condition of the drums,
17 the bungs are open, which, again, would result in
18 breathing of the drums and the release of the
19 volatiles. They're also rusted, they're burned,
20 poor condition. There's metal nearby, which,
21 again, could generate a spark. There's also
22 heavy construction equipment, which could also

226

1 generate a spark and also indicates the presence
2 of human receptors.

3 Q And do you see that maintenance
4 facility there, as well?

5 A Yes, that's close by, as well. Again,
6 that indicates that there are workers present,
7 there are workers that have access to the drums.
8 They're not fenced in, so, yes, people had access
9 to it, so there could be exposure.

10 Q Okay. Thank you, Dr. Keteles. And
11 what are the possible medical conditions for
12 humans exposed to leaks or releases of the
13 hazardous waste from the drums?

14 A Well, referring to the SDS, breathing
15 difficulties, as well as headache, nausea from
16 the solvents which cause neurological effects
17 that Dr. Walker had mentioned, as well as
18 prolonged or repeated exposures could result in
19 kidney, liver damage, and then, of course, cancer
20 for prolonged exposure.

21 Q Okay. And this question is in
22 response to Dr. Walker's report. Is the risk of

227

1 exposure decreased because the drums were in a
2 fire previously?

3 A No, because the material is the same
4 as before the fire, so it's just as flammable as
5 it was before the fire.

6 Q And, Dr. Keteles, does the location of
7 the facility and a low-density population or
8 industrial area make the risk to employees, first
9 responders, and/or visitors a low risk?

10 A No. So at EPA, we don't have a de
11 minimis number of receptors. If people could
12 come in contact with it, we would consider the
13 risk. And just for an example, for my work
14 experience, I've assessed risk at sites that are
15 very remote, like in the national forest from,
16 say, illegal marijuana grows where they use a lot
17 of dangerous pesticides. And even though there
18 are no roads there and the chance of somebody
19 coming across it are probably low, like other
20 than a backpacker or forest ranger, we still
21 would consider that a risk and we would do
22 something about it by removing that hazardous

228

1 material.

2 Q And, Dr. Keteles, do you agree with
3 Dr. Walker's opinion that there's a low potential
4 for environmental risk from Prime storage of the
5 hazardous waste at the facility?

6 A Again, just with ecological receptors,
7 as with human receptors, if there is the
8 potential to come in contact with it, we would
9 still consider that in the risk assessment. So
10 if birds could access this facility, say small
11 mammals, reptiles, like what was mentioned, a
12 lizard, they would still be considered receptors
13 that could come in contact with this material
14 that wasn't properly stored.

15 Q Dr. Keteles, based on your knowledge
16 and experience in the field of toxicology, your
17 review of the materials in this case, including
18 Dr. Walker's report, do you have an opinion as to
19 whether Prime, Inc.'s storage of hazardous waste
20 created a potential for exposure?

21 A Yes, I believe there was a potential
22 for exposure because employees had access to the

229

1 site, the poor condition of the drums, missing
2 the bungs, the rusted and burned drums, and then
3 the potential for fire, took, they could catch
4 fire, there was a potential for exposure.

5 Q And you mentioned poor conditions of
6 the drums. How about the fact that it wasn't
7 labeled, they weren't labeled?

8 A Yes, that's definitely a very
9 important consideration because, without the
10 proper labeling, say an emergency responder that
11 arrives at the site wouldn't know that there's
12 hazardous waste there and that the fumes are
13 hazardous. In fact, in my work experience, I had
14 a very unfortunate case where volunteer
15 firefighters were exposed because they were
16 unaware of chemicals that were in a warehouse
17 that burned, and the same thing could happen
18 here. If there was a fire, firefighters could
19 show up and the drums aren't labeled. They don't
20 know what's in them or that it's hazardous.

21 Q Thank you. And, Dr. Keteles, based on
22 your knowledge and experience in the field of

230

1 toxicology and your review of the materials in
2 this case, including Dr. Walker's report, do you
3 have an opinion as to whether Prime, Inc.'s
4 storage of hazardous waste created a potential
5 for harm to human health and the environment?

6 A Yes. My opinion is that the storage
7 of this hazardous waste did create a potential
8 for harm, just, again, because we have the
9 potential for exposure, the inherent toxicity of
10 the waste, and then the potential for fire.

11 Q Okay. Thank you, Dr. Keteles. No
12 further questions at this time.

13 JUDGE COUGHLIN: Just one quick
14 question. I think you've already covered this
15 actually in one of your latter responses about no
16 de minimis standard regarding risk, and you used
17 the example of, you know, an otherwise remote
18 area and even if maybe one backpacker or a ranger
19 came into contact, EPA would still consider that
20 risk.

21 So as I'm looking at this photo as an
22 example -- and, counsel, I'm still on page 17 of

231

1 CX-10 -- and I think it was here that you talked
2 a little bit about, you know, the construction
3 activity, the equipment. So I see somebody, it
4 looks like a person, on a piece of equipment in
5 the back. So I guess what I'm asking about is
6 does proximity feed into the equation at all, or
7 is it simply because, you know, if there's
8 access, EPA considers that a risk?

9 THE WITNESS: Yes. So if there's
10 access, like I mentioned, unless a site is
11 completely locked, like locked and nobody can
12 access it, we would still consider that somebody
13 could come in contact with that. I mean, I've
14 had other sites that I've looked at and, unless
15 it's fenced off, we would consider the potential
16 for exposure, that there could be receptors.

17 But to answer your other question,
18 yes, distance would matter. But since Prime
19 didn't do the occupational monitoring, we don't
20 know how far away the vapors would travel. But
21 what I do know from the drum logs is that nearby
22 the drums the levels were high. And based on

232

1 that chemical composition that day, they would
 2 have likely exceeded some of the occupational
 3 exposure limits.
 4 JUDGE COUGHLIN: Okay. Thank you.
 5 Thank you very much.
 6 MS. JACKSON: Just one quick follow-up
 7 question, and I just want to, since we're still
 8 on this exhibit, I just wanted to have you -- do
 9 you see a fence there in between the drums and
 10 the construction activity?
 11 THE WITNESS: I don't.
 12 MS. JACKSON: Okay. Thank you.
 13 CROSS-EXAMINATION
 14 BY MR. RYAN:
 15 Q Good afternoon, Dr. Keteles, I'm Mark
 16 Ryan. I represent Prime. Since we were just
 17 talking about the fence and the lack of fence
 18 there in that last exhibit, 66 -- excuse me -- 10
 19 at page 17, this was taken on the day of the EPA
 20 inspection. Do you know whether EPA asked Prime
 21 to move that fence so that they could get these
 22 drums out?

234

1 A Yes.
 2 Q And is it always on behalf of the EPA?
 3 A Yes, because I'm employed by EPA.
 4 Q So you're always testifying in favor
 5 of the government?
 6 A I testify as their witness, but I
 7 wouldn't say in favor of the government.
 8 Q You're supporting government.
 9 A They use my testimony however they
 10 want to use it.
 11 Q Now, you attached the drum logs to
 12 your expert report, and we can pull this up if
 13 you want to see it, but there were several
 14 references to yellow viscous and opaque in the
 15 drum logs, another refers to white viscous
 16 opaque. Do you recall that?
 17 A Yes, I do.
 18 Q Okay. And would you agree with the
 19 definition of viscous as having a thick sticky
 20 consistency between solid and liquid?
 21 A That is the definition of viscous.
 22 Q And you would agree that thick and

233

1 A I don't.
 2 Q So that's a possibility?
 3 A Sure.
 4 Q We'll start with the end of your
 5 testimony, and then we'll go back for it, you
 6 said there was a potential for harm and a
 7 potential for exposure. Do you recall that?
 8 A Yes.
 9 Q And that's your professional opinion?
 10 A Yes, it is.
 11 Q And did you, I don't recall in your
 12 report you ever talked about the probability for
 13 harm.
 14 A No, I did not look at probability of
 15 harm. I just looked at potential for exposure
 16 and just the inherent toxicity because that's all
 17 the information that I had.
 18 Q Okay. And did you look at the
 19 probability of exposure?
 20 A No, I did not.
 21 Q Now, you testified, you said you've
 22 testified eight times before.

235

1 sticky substances flow less readily than other
 2 substances?
 3 A Yes.
 4 MR. RYAN: Could we pull up Exhibit
 5 CX-17, please? I'm sorry. Could you go to page
 6 nine? Could you rotate that? Sorry.
 7 BY MR. RYAN:
 8 Q So what I'm showing here, Dr. Keteles,
 9 is page 9 of 13 from Complainant's Exhibit 17.
 10 Have you ever seen this photo before?
 11 A I probably glanced at it at some point
 12 during my review.
 13 Q Would you agree this is a photo taken
 14 on the night of the fire?
 15 A It appears to be, from my
 16 recollection.
 17 Q And would you agree that --
 18 MS. JACKSON: Your Honor, can I just
 19 request that Mr. Ryan lay a little foundation so
 20 she knows what you're referencing, where you're
 21 looking at this, what it's from.
 22 MR. RYAN: This is from your exhibit

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1 --

2 MS. JACKSON: Yes, just what exhibit

3 this is. I just want to make sure Dr. Keteles

4 knows what she's looking at.

5 MR. RYAN: Okay. I'm sorry. Could

6 you go back to page one?

7 JUDGE COUGHLIN: I think it was, we're

8 in CX-17 at page nine, are we not?

9 MR. RYAN: Can we go back to page one,

10 so I can lay the foundation as requested?

11 BY MR. RYAN:

12 Q So earlier in your testimony, Dr.

13 Keteles, you said you reviewed some of the EPA

14 documents. Is this one of the -- and many of the

15 EPA photos. Is this one of the ones you

16 reviewed?

17 A Yes, it is.

18 Q So going back to page nine, this

19 appears to be a photo taken the night of the

20 fire. I think we already established that.

21 Would you agree that that substance on the ground

22 appears to be the paint?

238

1 objection. Go ahead. You can answer, unless you

2 need to restate it.

3 BY MR. RYAN:

4 Q Looking at this picture on page 13 of

5 Exhibit C-17, CX-17, excuse me, page 9 of 13 of

6 Exhibit CX-17, would you agree that the substance

7 we see on the ground here didn't flow very far?

8 A It's hard to say without contact, to

9 see the whole scene. And, and then it went -- it

10 went through fire, it was burned.

11 Q Okay.

12 A So, that's going to -- that's going to

13 influence it.

14 Q Okay. And would -- it would include

15 if they burned again, wouldn't it?

16 A Yes. To some extent it would.

17 Q Okay. Can we go to page 12 of this

18 Exhibit please? And could you update that,

19 please? Thank you.

20 So, this is from the same Exhibit,

21 Exhibit, Complainant's Exhibit 17. And this is

22 a, appears to be a picture of a burned drum with

237

1 A I can't confirm. I wasn't there, and

2 I don't have any data on the material that's on

3 the ground, so I do not know what that is.

4 Q Do you know anything other than paint

5 that spilled from the truck the night of the

6 fire?

7 A That I don't know because, again, I

8 wasn't there.

9 Q Okay. But whatever this substance is,

10 would you agree it didn't flow --

11 MS. JACKSON: Your Honor, I have to

12 object. Dr. Keteles is limited to the rebuttal

13 of Dr. Walker's report, and it really was focused

14 on the storage alone. I don't see why the night

15 of the fire or anything from the night of the

16 fire is relevant.

17 MR. RYAN: It goes to viscosity,

18 viscosity, Your Honor, which was definitely part

19 of her testimony.

20 MS. JACKSON: Well, I believe that's

21 been asked and answered.

22 JUDGE COUGHLIN: I'll overrule the

239

1 white substance coming out in a tube form.

2 Do you recognize this picture?

3 A Yeah. Again, it appears to be from

4 the CMB Report.

5 Q Um-hum. And would you agree that that

6 white substance in the tube form we see coming

7 from the bunghole is a, is paint?

8 A Yes, it's probably paint.

9 Q And you would agree that paint is not

10 water soluble, right?

11 A Right.

12 Q And because something is not water

13 soluble, it means it mixes less readily with

14 water, correct?

15 A Correct.

16 Q Can we pull up Dr. Keteles' expert

17 report, please? Which is CX66. And could we go

18 to page five, please?

19 Now, on direct examination, Dr.

20 Keteles, we talked about those bullet points

21 there in the middle.

22 And if we could highlight those bullet

240

1 points in the middle of that page five of Exhibit
2 66, that would be great.

3 And, I think, as I recall, you
4 described these as the, as the, you know, the bad
5 qualities, to use a lot, a better -- a common
6 word, of this paint.

7 And, the danger is a function of the
8 things -- the first four items says danger. And
9 I would assume that's a function of the other
10 things below it?

11 A These are the hazard statements for
12 the primer.

13 Q Okay. So, it says there's flammable
14 liquid and vapor. But, you would agree with Dr.
15 Walker, wouldn't you, that you need an ignition
16 source for something to catch fire?

17 A Yes. With this flammable material you
18 would need an ignition source.

19 Q And in the 300 some odd days it sat in
20 Salt Lake City, it didn't catch fire, did it?

21 A No. But, it had caught fire at one
22 point.

241

1 Q Correct. Yeah, no. The testimony
2 before was that the dragging tire heated to 750
3 degrees and started the fire.

4 The -- and I see you have your causes
5 serious eye irritation. There's no evidence that
6 anyone had any eye irritation anywhere near this
7 in the 300 some days it was there?

8 A I haven't seen any evidence of that.

9 Q Okay. And do we have any evidence of
10 anyone getting cancer from this?

11 A No.

12 Q Or any unborn children affected, or
13 women, you know, pregnant women being exposed to
14 it?

15 A No.

16 Q No. And the same thing for causing
17 respiratory irritation. We've seen pictures of
18 Prime employees helping the EPA move the drums.

19 And, the Prime employees were not
20 wearing PPE. Has there been any evidence that
21 any of them were harmed in any way?

22 A No.

242

1 Q And, it says, finally it says, may
2 cause damage to organs to prolonged or repeated
3 exposure. And so, 300 days this stuff was, this
4 paint was sitting on the Salt -- the Prime lot.

5 And, there was no evidence of anyone
6 having any organ damage, is there?

7 A No.

8 Q Now, you stated that you did not
9 evaluate the probability of exposure in your
10 report. But, I'm going to ask you a couple of
11 questions about probability, more in the
12 abstract.

13 So, if you're -- if you're close to a
14 toxic substance, you're more than likely to be
15 exposed to it. Would you agree with that?

16 A Correct.

17 Q And if you're further away, you're
18 less likely to be exposed?

19 A Or to be exposed to lower levels.

20 Q But, at some point, you wouldn't be
21 exposed at all, correct? If you're 100 miles
22 away, you're not going to be exposed.

243

1 A Sure. If you get far enough away.

2 Q Right.

3 A But, the only way to know that is to
4 monitor for it.

5 Q Now, you said you -- the NEIC
6 monitored for vapor in the air. Do you recall
7 that?

8 A Yes.

9 Q And I believe you said it was 500
10 parts per million?

11 A Correct. That's average.

12 Q Amongst the various samples they
13 collected.

14 A Yes. Among all the drums that they
15 sampled, --

16 Q Um-hum.

17 A They took PID measurements above the
18 drums.

19 Q Okay. And it was how far above the
20 drums did they collect that sample?

21 A Two inches.

22 Q Two inches. Okay. So, two inches

244

1 above the drum, is 500 parts per million.
 2 A Right.
 3 Q And you mentioned it was a windy day.
 4 A Yes.
 5 Q Okay. So, you would expect, wouldn't
 6 you not, that 500 parts per million two inches
 7 above the drum, would rapidly dissipate into the
 8 air on a windy day?
 9 A That day was a, I wouldn't say the
 10 best case scenario, but it's a better case
 11 scenario.
 12 Q Now, I'm not talking about at the two
 13 inch level. We -- we'll give you that at two
 14 inches, it was 500 parts per million.
 15 At 20 feet though, it would have
 16 dissipated, right?
 17 A No.
 18 Q It would still be 500 parts per
 19 million at 20 feet?
 20 A No. You're act -- you're actually
 21 incorrect. It would be at 20 feet. Those vapors
 22 are heavier than air.

246

1 vapors too. And it would also depend on the
 2 elevation of the ground, and if there's a low-
 3 lying area.
 4 Q Now, you heard the testimony -- you
 5 were in the courtroom the last few days I
 6 noticed.
 7 You heard the testimony from the Prime
 8 witness this morning, Brian Sing -- Mr. Singleton
 9 that people rarely -- the truckers who came in to
 10 have their trucks worked on, didn't go back
 11 there.
 12 You heard that?
 13 A He did say that.
 14 Q Yeah. And do you have any evidence
 15 that other than what Mr. Singleton stated this
 16 morning that any truckers were back there working
 17 on the trucks?
 18 A I don't. Just evidence that there's
 19 trucks and there's obviously human activity
 20 there.
 21 Q So, for you, in terms of your
 22 analysis, it's enough that they're just in the

245

1 So, they would sink. So, you would
 2 not see vapors at 20 feet above the drums.
 3 Q So, you're saying that the wind would
 4 not blow these vapors up?
 5 A No. I mean, the vapors are heavy.
 6 They're going to sink.
 7 Q So, they --
 8 (Simultaneous speaking.)
 9 A The wind might disburse them. But, it
 10 would disburse them, you know, at the ground
 11 level, because they're heavier than air.
 12 Unless you have a big updraft, I
 13 supposed. I'm not a meteorologist.
 14 Q Okay. And vapors on the ground would
 15 be less likely to be breathed, wouldn't they?
 16 A I could see a trucker that's working
 17 on his rig with his breathing field close to the
 18 ground.
 19 Q No, I said, as we walk around on our
 20 feet, we're less likely to encounter vapors on
 21 the ground. Isn't that correct?
 22 A It would also depend on the amount of

247

1 general area. That's enough?
 2 A They have the potential to come in
 3 contact with it. So, the exposure pathway is
 4 complete.
 5 Q But, you -- thank you. Now, we talked
 6 about the flash point a bit. No, let's go back
 7 for a second.
 8 On the -- on the drums, you talked
 9 about the vapor pressure building up in the top
 10 of the drums. Now, you would agree that the, as
 11 far as we know, all those bungholes were blown
 12 out of these drums.
 13 Isn't that correct?
 14 A Yes, I believe most of them were
 15 blown.
 16 Q Okay. And if one, if a bunghole was
 17 not blown, nothing would escape, correct?
 18 A Unless the pressure built up so much
 19 it would cause the bungs to release.
 20 Q Yeah. But, there's no evidence of any
 21 bungs releasing on this pre-order in Salt Lake
 22 City?

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1 A No. Because they'd already blown.
 2 Q So, when a bung hole blows, it's now
 3 open to the atmosphere, correct?
 4 A Correct.
 5 Q So, the pressure differential between
 6 the atmosphere and the drum would be essentially
 7 the same, wouldn't it?
 8 A No.
 9 Q How -- let me step back a second. You
 10 use the example of a soda pop bottle. Now,
 11 everyone, many of us have drunk some soda pop,
 12 put the cap back on.
 13 You wait a little bit; you open it up.
 14 You have a sss -- you hear a release of pressure,
 15 right?
 16 That didn't happen here, did it? Here
 17 the bung holes were never put back on. The
 18 bung holes were always gone, always missing.
 19 A No, they weren't. Which is what would
 20 cause the material to breath out of the
 21 bung holes.
 22 Q Okay. I think we're miscommunicating.

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1 The bung holes were open the entire time, correct?
 2 A Correct.
 3 Q So, it's not like a soda pop where you
 4 put the cap back on and then remove it. These
 5 bung holes were always missing.
 6 A Yes. But, there's still a temperature
 7 differential, which changes the pressure. As
 8 you're getting the material heated, it's forming
 9 vapors.
 10 Those vapors inside the drum are going
 11 to put pressure on the drum. And they're going
 12 to escape through the bung.
 13 And then, as the ambient temperature
 14 cool, you're going to have a temperature
 15 differential from what's inside the drum and
 16 what's outside. That creates a pressure
 17 difference too.
 18 Q But, you would agree that the drum was
 19 already at all times open to the atmosphere?
 20 A Yeah. The bungs open.
 21 Q Yeah.
 22 A But, there's still a pressure

250

1 differential. If you'd like me to explain
 2 further --
 3 Q No. I'm --
 4 A Okay.
 5 Q I'm good, thank you.
 6 A Okay.
 7 Q Now, you would agree that when you're
 8 near toxic substances wearing personal protective
 9 equipment, would reduce the risk of exposure.
 10 Would you agree with that statement?
 11 A It depends on the personal protection
 12 equipment. If it was appropriate for that, that
 13 chemical.
 14 Q Okay. Let's assume for the sake of
 15 argument that the person is wearing the
 16 appropriate personal protective equipment.
 17 It's been properly fitted to their
 18 face. And they're wearing whatever else they
 19 need.
 20 And that if properly employed that
 21 would reduce the risk of exposure, wouldn't it?
 22 A Perhaps. It would depend on the level

251

1 of chemical as well.
 2 Q So, I mean, you in your work at NEIC,
 3 you worked with a whole host of very dangerous
 4 chemicals, don't you?
 5 But you're evaluating?
 6 A I don't work with them. I get the
 7 data from the chemists.
 8 Q Okay. Let me rephrase the question.
 9 You at -- NEIC, as an -- as a part of EPA,
 10 routinely evaluates dangerous chemicals in the
 11 environment?
 12 A They do.
 13 Q Okay. And those dangerous chemicals
 14 run on a spectrum. Some are very dangerous and
 15 some are less dangerous. Would you agree?
 16 A Yes.
 17 Q For example hydrochloric acid is, you
 18 would agree that's a very dangerous chemical.
 19 A Yes.
 20 Q Yeah. And when NEIC people, or anyone
 21 from the EPA, does an inspection where they
 22 suspect hydrochloric acid is present, they will

252

1 take great precautions. Correct?
 2 A Correct.
 3 Q Yeah. But, this paint is not in that
 4 category, is it?
 5 A It's hazardous.
 6 Q That wasn't my question. It's not in
 7 the category of hydrochloric acid, is it?
 8 A It's -- it's different.
 9 Q So, there some discussion earlier, I
 10 think, I believe that the Judge asked a question
 11 about dry paint on the outside.
 12 If you had this -- if you had a bucket
 13 of this exact paint at home, and it had not been
 14 burned, and you spilled some on the outside, that
 15 would not be a -- that would have the same effect
 16 as here, wouldn't it?
 17 I mean, in terms of the dry paint on
 18 the outside, in terms of it's -- it's the
 19 likelihood of exposure to a human?
 20 A I'm not sure why you would have
 21 chromate based paint at your house.
 22 Q Okay.

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1 If you're storing your drum in a
 2 warehouse, it wouldn't be exposed to the
 3 elements. You wouldn't have that rapid
 4 degradation and formation of dust.
 5 Q And if it -- so, is there any of it
 6 that's the formation of dust from spilt paint at
 7 this site?
 8 A I don't think they collected samples
 9 of the dust.
 10 Q Or any of it is --
 11 A I would like to see that though. That
 12 would be very interesting.
 13 Q But, there is no evidence, as far as
 14 you know?
 15 A No.
 16 Q And there's no evidence of leaks from
 17 these drums, is there?
 18 A I mean, the spilled paint could come
 19 from a leak. I didn't inspect the individual
 20 drums.
 21 But, there was paint dripping down the
 22 drums, so.

253

1 A It's an industrial application.
 2 Q Okay. Let me -- let me rephrase the
 3 question.
 4 So, we have a 55 gallon drum of
 5 chromate based paint at Steel -- Steel Safe, I
 6 think, was the name of the company that was
 7 buying this stuff, this paint.
 8 And, it's perfectly usable. It's not
 9 been burned. It's not a hazardous waste. It's a
 10 hazardous material, the SDS says so.
 11 And they spill some down the side. It
 12 would be the same, basically the same risk of
 13 exposure as we have in Salt Lake City, isn't that
 14 correct?
 15 A I don't necessarily think so. I mean,
 16 in Salt Lake City you had the drums sitting
 17 outside exposed to the elements.
 18 So, the paint would be exposed to sun,
 19 --
 20 Q Um-hum.
 21 A The elements. It would break down.
 22 Become dust.

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1 Q Yeah. I will -- we will -- we will
 2 submit that during the inspection on August 24
 3 when the drums were picked up by a forklift, and
 4 we will --
 5 MS. JACKSON: Objection, Your Honor.
 6 He's testifying.
 7 MR. RYAN: I'm -- I'm describing one
 8 of the Exhibit's, Your Honor. But, we will agree
 9 that some paint spilled during the inspection.
 10 Are you aware of any -- other than the
 11 inspection, are you aware of any paint that
 12 spilled? Or leaked?
 13 THE WITNESS: Since I wasn't there,
 14 no.
 15 BY MR. RYAN:
 16 Q And have you ever been at the
 17 facility?
 18 A No, I have not.
 19 Q Have you ever observed any person --
 20 well, never mind.
 21 May I have just a moment, Your Honor?
 22 JUDGE COUGHLIN: Sure.

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1 MR. RYAN: Now, just a few more
2 questions, Dr. Keteles, and I appreciate your
3 time.
4 So, I believe -- I believe you're
5 aware there were two inspections. One on August
6 2 and one on August, I think, 24th, is that
7 right? 2016.
8 The first one was by the CID. And
9 then they came back on the 24th with NEIC. Is
10 that consistent with what you understand?
11 THE WITNESS: That's what I
12 understand.
13 BY MR. RYAN:
14 Q And I believe you heard testimony this
15 morning, since you've been here in court, that
16 you've seen photographs showing that Prime
17 employees around the drums, assisting CID in the
18 sampling.
19 And none of those Prime employees were
20 wearing PPE. Do you remember that? Do you
21 recall seeing that?
22 A Yes.

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1 A I don't know. Again, I wasn't there.
2 I didn't even work for NEIC at that time.
3 Q Okay. Would it be standard procedure
4 now for NEIC to ask a company to assist it with
5 drums, and not warn the workers that the -- the
6 company workers to wear -- personal protective
7 equipment if they thought it was dangerous?
8 A If they don't know that it's
9 dangerous, they wouldn't know to warn them.
10 Q But, if -- so, you're assuming NEIC
11 had no idea what they were sampling?
12 A I mean again, I didn't even work for
13 NEIC. I don't know what --
14 Q Okay.
15 A What they knew.
16 Q All right. So, if NEIC today, as from
17 what you know about NEIC, if they had no idea
18 what was in the drum, wouldn't they assume --
19 wouldn't they assume they needed to be, that one
20 needed to wear PPE?
21 A I don't think they would assume. It
22 depends on what's in the drum.

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1 Q Now, NEIC likely had the SDS for this
2 before they came?
3 A That I don't know.
4 Q And if they had the SDS, if they were
5 aware, I'm just talking about any NEIC procedure,
6 you work for NEIC.
7 If NEIC, excuse me, sends a person to
8 a site to take samples, and they know what's
9 probably in the drum, they will take the nor --
10 the necessary precautions, wouldn't they?
11 A They would do a job hazard analysis
12 and take the necessary precautions.
13 Q Right.
14 A If they knew what was present.
15 Q Right. And, EPA has known from the
16 very beginning of this investigation by CID,
17 sometime in late '15, early '16, that these drums
18 involved paint. Correct?
19 A That I don't know. I don't know what
20 they knew.
21 Q So, are you aware that anyone from
22 NEIC warned the Prime people to put on PPE?

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1 Q Well, if they --
2 A If they have reason to suspect it's
3 hazardous, they would. But, if they don't know
4 what's in it, they wouldn't know what type of
5 PPE.
6 So, had the drums been labeled, then
7 they might have an indication.
8 Q Okay. I'm going to repeat my question
9 one more time.
10 If they have no idea what's in the
11 drum, what substance will they think?
12 MS. JACKSON: Objection, Your Honor.
13 I think he's kind of getting in that territory of
14 speculation here.
15 MR. RYAN: She is a PhD scientist with
16 NEIC, Your Honor. I think she's entitled to tell
17 us what their procedures are.
18 JUDGE COUGHLIN: Yeah.
19 MS. JACKSON: But, Your Honor, she's
20 not a trained inspector. And, I don't think
21 she's inspecting the drums.
22 JUDGE COUGHLIN: Okay. I'll overrule

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1 the objection. If you don't know, just say you
2 don't know.

3 THE WITNESS: I don't know. I have a
4 PhD in toxicology. But again, I'm not a field
5 inspector.

6 I wasn't present. I don't know what
7 they knew.

8 MR. RYAN: Okay.

9 THE WITNESS: I don't know what the
10 scene was for them.

11 MR. RYAN: Okay. Thank you. Your
12 Honor, I have no further questions.

13 JUDGE COUGHLIN: Okay. I just had a
14 couple. I'll jump in, in case you all want to
15 ask anything else.

16 But, and this again maybe outside your
17 field of expertise. So, just tell me if it is.
18 It's just I'm wondering now.

19 Are -- if you know, are sampling
20 methods all the same?

21 And I'm asking the question with the
22 context of, if there are NEIC folks going to this

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1 okay. Well, and I'm not trying to ask you
2 something that's -- but, that then makes me think
3 wouldn't they need to know what the material was
4 if they're going out there to take samples?

5 THE WITNESS: Yeah. I mean, they
6 would -- they would need to know. But, if Prime
7 didn't tell them, then they might not know what
8 samples to collect.

9 JUDGE COUGHLIN: Okay. Okay. Okay.
10 And, a couple of other questions. If again, if
11 you know.

12 This paint, when it -- if it's -- if
13 it were being used as intended, let's say, would
14 PPE be required based on the contents of it?

15 THE WITNESS: So, I follow the SDS.
16 And the SDS does state that respiratory
17 protection is needed.

18 JUDGE COUGHLIN: Okay. So, some type
19 of PPE is --

20 THE WITNESS: Yes. The SDS prescribes
21 the PPE.

22 JUDGE COUGHLIN: If you're applying

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1 facility to take samples of these drums, do they
2 not need to have some idea of the material
3 they're sampling in order to do effective
4 sampling?

5 THE WITNESS: That's hard for me to
6 answer. So, I do know that NEIC, they have
7 procedures for field sampling.

8 But, I don't know what they would do
9 if they don't know what's present to sample. And
10 I suspect that they probably didn't know, because
11 they might have collected different samples or
12 more samples based on what we know about the
13 drums now.

14 But, I can't really speak to the field
15 program.

16 JUDGE COUGHLIN: Okay.

17 THE WITNESS: All I know is that, you
18 know, they have pretty rigorous procedures for
19 like how they collect samples.

20 But, they have to know what material
21 they're sampling to know which procedure to use.

22 JUDGE COUGHLIN: Okay. So, that --

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1 this --

2 (Simultaneous speaking.)

3 THE WITNESS: Yeah. I mean, we could
4 -- we could pull it up, if you need.

5 JUDE COUGHLIN: Okay. Do you have
6 that handy?

7 MR. FIGUR: Yes.

8 JUDGE COUGHLIN: Okay.
9 So I saw -- and thank you, counsel,
10 for pulling this up.

11 MS. JACKSON: Yeah.

12 JUDGE COUGHLIN: I saw the reference
13 for safe handling. And it referred to Section
14 Eight.

15 And I think now you're scrolling to
16 try to locate the --

17 MS. JACKSON: Yes.

18 JUDGE COUGHLIN: Okay. So, --

19 MS. JACKSON: Okay. So, for the
20 record, that's page 38.

21 JUDGE COUGHLIN: Okay.

22 MS. JACKSON: Of CEX 32.

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1 JUDGE COUGHLIN: Okay. Great.
 2 THE WITNESS: I don't see it.
 3 MS. JACKSON: Oh.
 4 Do you see it at -- oh, it's going on
 5 that.
 6 There you go.
 7 JUDGE COUGHLIN: Okay. Yeah, the
 8 individual protection measures. So, that's what
 9 would clue somebody in what you need to do to
 10 protect yourself if you're using -- if you're
 11 applying this product.
 12 THE WITNESS: Right.
 13 JUDGE COUGHLIN: Okay.
 14 THE WITNESS: So, again, you would do
 15 a job hazard analysis. You would know what the
 16 exposure limits are. Do the monitoring.
 17 And, that would, you know, that would
 18 ultimately determine the necessity for
 19 respiratory protective equipment.
 20 But, you'd have to do that monitoring
 21 to determine.
 22 JUDGE COUGHLIN: And it goes on, and

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1 just for context, because I think we're on the
 2 beginning. But, it --
 3 THE WITNESS: Yeah.
 4 JUDGE COUGHLIN: Goes further down.
 5 And I don't know if you're able to see that.
 6 But, okay.
 7 THE WITNESS: Yeah. It has the
 8 chemical resistant impervious gloves. So, you
 9 would select your respirator based on the known
 10 or anticipated exposure levels.
 11 JUDGE COUGHLIN: Okay. Okay. And,
 12 kind of switching a little bit now to like the
 13 vapors.
 14 Do you -- what would be in them? If
 15 you know. If you can --
 16 THE WITNESS: Yeah. So, like the
 17 chemicals, the volatile chemicals that are listed
 18 in the SDS, like the trimethylbenzenes can be --
 19 the naphtha, which is kind of just a mixture of
 20 different organic vapors.
 21 Those chemicals that are listed in the
 22 SDS, those volatile chemicals would be in the

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1 vapors.
 2 JUDGE COUGHLIN: Okay. And then, I
 3 think, at one point you were wanting to explain a
 4 little more about a pressure differential, even
 5 though the bung covers are missing.
 6 Do you remember what you wanted to
 7 say?
 8 THE WITNESS: Yeah.
 9 JUDGE COUGHLIN: Or if it would help
 10 me to understand?
 11 THE WITNESS: I thought this
 12 illustration might help. So, this is from, you
 13 know, weather.
 14 When you have a cold front and a warm
 15 front, there's wind. Because those differences
 16 in temperatures which creates the pressure
 17 differential, which causes air to move.
 18 So, the same thing with these drums,
 19 you're going to have a -- you're going to have a
 20 temperature difference, because those metal drums
 21 are going to heat up during the day on a hot day.
 22 And then overnight, as the

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1 temperatures cool, the ambient temperature
 2 outside the drums is cooler.
 3 So, you've got warm vapors, cool air.
 4 And just that temperature difference is going to
 5 cause a pressure difference. It's going to cause
 6 a release of those vapors.
 7 JUDGE COUGHLIN: Okay. Thank you.
 8 THE WITNESS: You're welcome.
 9 REDIRECT EXAMINATION
 10 MS. JACKSON: I just have one quick
 11 question for --
 12 THE WITNESS: Sure.
 13 BY MS. JACKSON:
 14 Q Just one question.
 15 A Okay.
 16 Q So, this is in response to a question
 17 you were asked on cross. Can you explain why you
 18 did not look at the probability of exposure and
 19 what you would need to look at that probability?
 20 A So, I was just asked to assess risk.
 21 And so, again, for a risk assessment, we look at
 22 the exposure, the levels, the durations, and we

1 look at the inherent toxicity.
 2 So, that's why I use those two things.
 3 We don't look at, what are the chances of
 4 somebody walking past the site.
 5 Just like with my example from the
 6 National Forest, with the illegal marijuana
 7 growth, we don't say, well there's a low
 8 probability of a back packer coming here, so
 9 we're just going to leave it in place.
 10 So, I mean, again, we would consider
 11 if there is a potential for human exposure, then
 12 we would do something about that.
 13 Q And what would you need to evaluate
 14 the possibility? Would you need exposure levels?
 15 A You would want to know like how often
 16 people are there. And again, we just look at,
 17 there's a potential for exposure.
 18 MS. JACKSON: Okay. Thank you.
 19 MR. RYAN: Your Honor, may we have a
 20 five minute break to look at these before we
 21 rest?
 22 JUDGE COUGHLIN: Yes.

1 right. Thank you very much, Dr. Keteles.
 2 THE WITNESS: You're welcome.
 3 JUDGE COUGHLIN: Anything else from
 4 Complainant in the way of rebuttal?
 5 MS. JACKSON: No, Your Honor.
 6 JUDGE COUGHLIN: Okay. And from
 7 Respondent?
 8 MR. RYAN: No, Your Honor. We're
 9 complete presentation.
 10 JUDGE COUGHLIN: Okay, great. Let me
 11 just, very quickly, make sure we all are on the
 12 same page with what's in evidence.
 13 And I'm going to kind of, you know,
 14 just speak in chunks to kind of make this simple,
 15 because I think it's the third time we're
 16 listening to it.
 17 But, so I'll start with Complainant's.
 18 And what I have admitted is CEX 1 through CEX 4
 19 corrected.
 20 And this includes that which was
 21 stipulated to. I'm just lumping it together to
 22 save time.

1 MR. RYAN: Thank you.
 2 JUDGE COUGHLIN: Absolutely. We'll
 3 come back, I guess, in -- well, why don't we just
 4 come back at 2:00?
 5 (Whereupon, the above-entitled matter
 6 went off the record at 1:53 p.m. and resumed at
 7 2:00 p.m.)
 8 JUDGE COUGHLIN: We're back on the
 9 record. If anybody happened to hear me when I
 10 said I just sent a mouse flying, I didn't mean
 11 literally an animal.
 12 It's a digital mouse under here that
 13 I kicked with my foot. And Alyssa said, you said
 14 you sent a mouse flying. And I was like, oh, not
 15 what I meant.
 16 (Laughter.)
 17 JUDGE COUGHLIN: So, you know, I
 18 haven't seen any animals in the courtroom. I
 19 don't want to create a false impression.
 20 MR. RYAN: I have no further
 21 questions, Your Honor.
 22 JUDGE COUGHLIN: Okay. Great. All

1 CEX 6 through CEX 10. CEX 13 through
 2 CEX 20. CEX 22 through CEX 31. Oh, I'm sorry.
 3 Actually, it's beyond that, because we have a
 4 bunch of stipulated.
 5 CEX 22 all the way through CEX 47.
 6 CEX 49 and 50. CEX 52 through CEX 67. And CEX
 7 75 through CEX 77.
 8 And, I guess just as a point of
 9 clarification, in addition to CEX 04 corrected,
 10 CEX 4 was also admitted into evidence.
 11 MR. RYAN: By this one.
 12 JUDGE COUGHLIN: Yes. Okay. And then
 13 so in terms of Complainant's, we're on the same
 14 page?
 15 MS. JACKSON: We are, Your Honor.
 16 JUDGE COUGHLIN: Okay. Great. And
 17 then turning to Respondent's, REX 1 through REX
 18 11. REX 13 through REX 20. Is that correct?
 19 MR. RYAN: And I admitted 14A and 14B.
 20 JUDGE COUGHLIN: Yes, thank you. And
 21 REX 14A and 14B. Michael, did you circulate
 22 those?

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1 COURT REPORTER: Yes.
 2 JUDGE COUGHLIN: Okay. Michel's
 3 circulated those. So, hopefully you'll have
 4 them.
 5 MS. JACKSON: Can I just ask a quick
 6 questions?
 7 JUDGE COUGHLIN: Sure.
 8 MS. JACKSON: For clarification. Was
 9 the resume of Kelly O'Neal admitted? I -- we
 10 don't have record of it.
 11 MR. RYAN: Yes. I believe all but one
 12 of our Exhibits were admitted in. We did not
 13 move it into evidence, but that was CEX -- yes.
 14 MS. JACKSON: Okay.
 15 MR. MCKAY: Kelly O'Neal's resume was
 16 in.
 17 MS. JACKSON: It's just our notes.
 18 Okay, thank you.
 19 JUDGE COUGHLIN: Yeah. The only thing
 20 I don't have in evidence from Respondent was REX
 21 12.
 22 MR. MCKAY: That's right.

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1 deadlines for post-hearing briefing.
 2 Typically, I start with Complainant.
 3 And then allow some time for Respondent, simply
 4 because they carry the initial burden.
 5 So I stagger it essentially for
 6 initial briefs and any reply briefs. And, then
 7 once that briefing schedule is closed, that's
 8 when I get to work reviewing everything and
 9 coming to a decision.
 10 And just the last housekeeping
 11 measure, as an FYI, that email that we talked
 12 about, has been uploaded and is in our case
 13 tracking system.
 14 And it's identified in the way that I,
 15 with the title that I gave it and read into the
 16 record. So it's been preserved. Anything else?
 17 MR. MCKAY: No, thank you.
 18 JUDGE COUGHLIN: All right. Well,
 19 thank you all very much. Safe travels home. And
 20 it's been a pleasure.
 21 I appreciate the opportunity to
 22 preside. The hearing is closed. And you can

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1 JUDGE COUGHLIN: Okay. All right,
 2 great. So, we're all on the same page. Anything
 3 else then? Before I wrap this up?
 4 MR. RYAN: No, Your Honor.
 5 JUDGE COUGHLIN: Okay.
 6 MS. JACKSON: No, Your Honor.
 7 JUDGE COUGHLIN: All right. Thank you
 8 all very much. I appreciate your flexibility,
 9 your courtesy, your professionalism.
 10 I wish you safe travels home. I'm
 11 going to just quickly, I guess, let you know, you
 12 may be familiar or not, once I close the
 13 evidentiary record here in just a few moments,
 14 I'll pack up and what not.
 15 But, in terms of what will follow from
 16 our office, is we will, I believe, eventually get
 17 the transcript of the hearing. And I believe we
 18 transmit that to all of you, to the parties.
 19 And then we'll be issuing an order
 20 that will outline deadlines for any motions to
 21 conform the transcript, should there be any
 22 errors that you need to identify, as well as some

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1 close the record. And I'll just take a minute to
 2 pack up.
 3 MR. MCKAY: Thank you, Your Honor.
 4 JUDGE COUGHLIN: Thank you.
 5 (Whereupon, the above-entitled matter
 6 went off the record at 2:06 p.m.)
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