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PIMA COUNTY DEPARTMENT
OF ENVIRONMENTAL QUALITY

PUBLIC HEARING

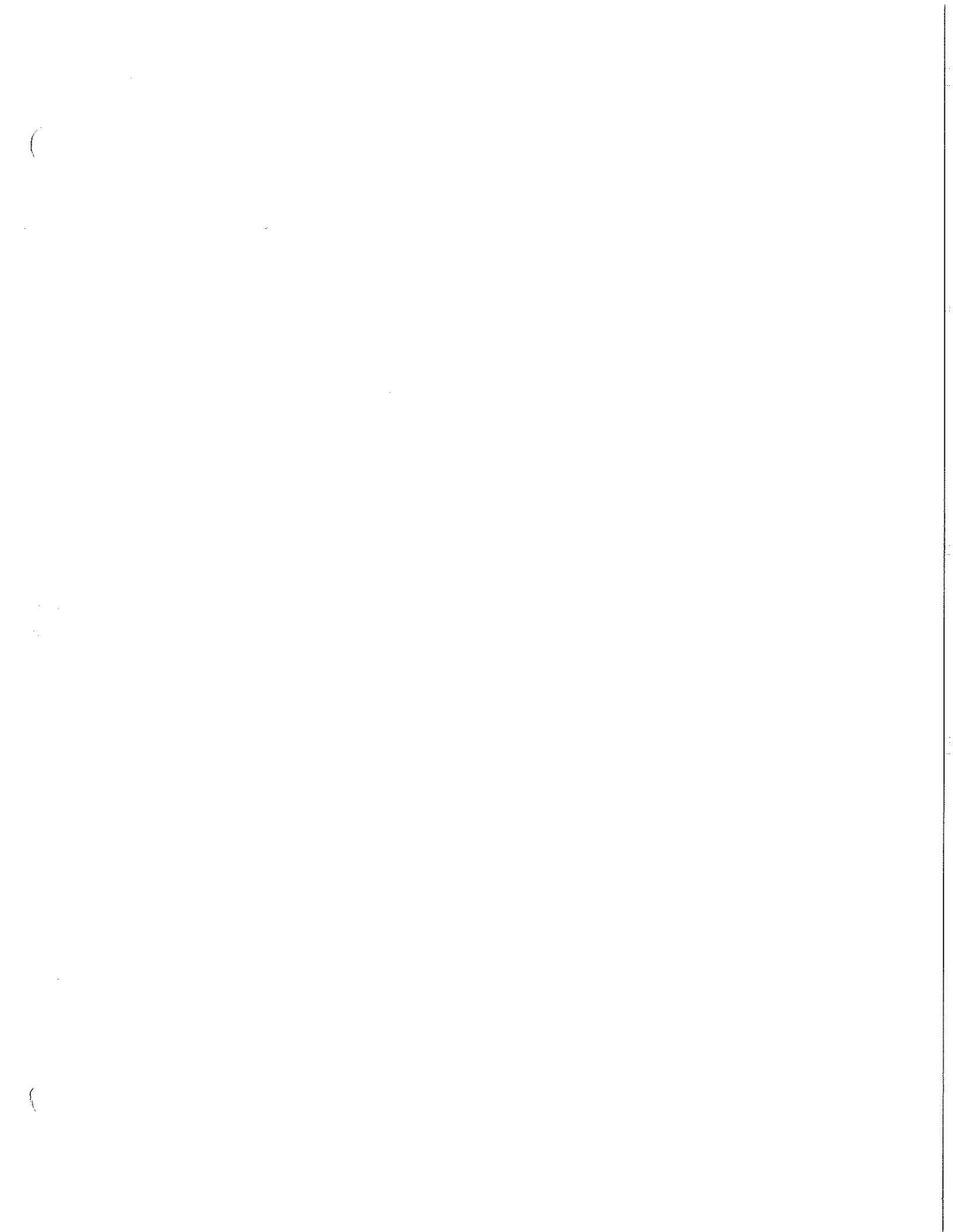
21 December 2006

2:30 p.m.

Tucson, Arizona

Reported by: Patricia Calabro, CSR, RPR, CCR
Certified Court Reporter
CA CSR No. 7906; RPR No. 20010; AZ CCR No. 50047

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PROCEEDINGS

14:29:58 1
2
3 DR. FRIEDMAN: I'd like to call the meeting to
4 order. And as part of calling to order, we would like to
14:41:08 5 have the roll called.

6 (Roll call of the Board.)

7 (Members present:

8 Barry A. Friedman, M.D.

9 James A Mather.

14:41:15 10 Dr. Thomas W. Peterson.

11 Dr. Caryl Brailsford.

12 Sheila Bowen not present.)

13 MS. SCHLOEMAN: You have a quorum, Mr. Chairman.

14 DR. FRIEDMAN: Thank you.

14:41:29 15 Under the Other Business, agenda number one, the
16 Board needs to appoint a Board secretary. The name that has
17 been submitted is Charlotte Schloeman. We will need a
18 motion.

19 MR. MATHER: So moved.

14:41:46 20 DR. PETERSON: Second.

21 DR. FRIEDMAN: Discussion.

22 All those in favor of Charlotte Schloeman?

23 Opposition?

24 Charlotte, you're it.

14: 1:57 25 MS. SCHLOEMAN: Thank you.

14:41:58 1 DR. FRIEDMAN: Before we get to the public hearing
2 for the day, I would like to point out that there is no Old
3 Business and that the minutes for the last meeting have
4 hopefully been reviewed.

14:42:12 5 Is there a motion to accept them as written?

6 MR. MATHER: So moved.

7 DR. FRIEDMAN: Motion moved.

8 DR. BRAILSFORD: Second.

9 DR. FRIEDMAN: Any discussion?

14:42:27 10 All those in favor signify by saying aye.

11 No opposition. The motion passed for accepting
12 the Old Minutes.

13 There are no continued hearings, which is item
14 number 3 on the agenda, so we will move into number 4 and
14:42:50 15 wait a few minutes and hope the missing person will arrive
16 here. If not, then we'll just proceed.

17 (Brief recess.)

18 DR. FRIEDMAN: We'll proceed to the lost and found
19 section, and the lost is now found.

14:43:36 20 I'd like to pull the missing person onto the
21 record.

22 We will proceed with the meeting/hearing, which is
23 New Public Hearing, Brush Ceramic Products, air quality
24 permit appeal.

14:43:50 25 MR. MATHER: Mr. Chairman, I would like to

14:43:54 1 announce that a friend of mine, Bates Butler, is a member of
2 the firm Fennemore Craig, which represents Brush Ceramic
3 Products. I don't believe that would be a conflict of
4 interest, though.

14:44:09 5 DR. FRIEDMAN: Any comment from the Board or from
6 attendees?

7 Thank you for the information.

8 we will proceed.

9 DR. PETERSON: Mr. Chairman.

14:44:25 10 DR. FRIEDMAN: Mr. Peterson.

11 DR. PETERSON: Tom is fine. In the interest of
12 full disclosure, a colleague, Eric Betterton, will be a
13 witness for the County, but I don't believe that will cause
14 any problems either.

14:44:43 15 DR. FRIEDMAN: Any comments from anyone?

16 MR. KULAKOFSKY: Rob Kulakofski.

17 I couldn't hear Dr. Peterson very well. Is there
18 a way you could turn up the microphone?

19 DR. PETERSON: I didn't have it on.

14:45:00 20 Let me repeat. One of the persons listed by Pima
21 County to perhaps testify at this hearing is Eric Betterton
22 who is a colleague of mine at the University of Arizona.

23 DR. BRAILSFORD: As long as we're doing
24 disclosure, I should also mention in the course of being a
14:45:27 25 physician I have practiced occupational medicine. I have

14:45:31 1 visited the facility and I've seen patients with beryllium
2 disease, but I don't think that's going to affect my
3 decisions in this matter.

4 DR. FRIEDMAN: Any comments from the Board members
14:45:44 5 or the public?

6 Okay. We'll proceed with --

7 MS. BOWEN: Mr. Chair. In disclosure. Mr.
8 Kulakofsky and I both serve on the Waste Water Advisory
9 Committee, on the same committee.

10 DR. FRIEDMAN: Any comments from the Board or
11 members of the public?

12 We will try and have the Board members speak up.

13 MR. MATHER: There is a motion by Brush regarding
14 the appointment of counsel for the two corporations.

15 DR. FRIEDMAN: I didn't realize that was a motion.
16 Counsel for Brush.

17 MR. FARGOTSTEIN: Yes, sir. My name is Phillip
18 Fargotstein, Fennemore Craig, and I represent Brush.

19 There are three procedural issues which we have
14:47:02 20 raised in our response in a supplemental motion.

21 The first one Mr. Mather was referring to is under
22 the Rules applicable, Rule 8F of the Board manual,
23 organizations can only be represented by counsel.

24 The appeal that was filed by EJAG was filed by a
14:47:27 25 non-attorney. The appeal filed by Center for Environmental

14:47:30 1 Connections is also filed by a non-attorney. The Center for
2 Environmental Connections is an Arizona corporation. I
3 attached those to our response, the documentation. EJAG,
4 the only EJAG I could find is an Oregon nonprofit
14:47:45 5 corporation, which is also a corporation. And therefore we
6 raise the corporation question and ask you to rule whether
7 there have been any valid appeals that have been filed
8 because they were not filed in accordance with the rules.

9 The second issue which we raised was that under
14:48:03 10 the Board's Rule 6A, appeal notices are required to be
11 specific as to what's being appealed.

12 If you look at the letters by EJAG and by the
13 Center, they reference two specific issues. One is the
14 ambient monitoring should be part of the permit under
14:48:21 15 separate contract.

16 And the second issue is that the permit allows
17 Brush to continue to operate even if they know they're
18 violating excess emissions.

19 Other than those two issues, we have asked the
14:48:34 20 Board to rule that no other issues be subject to testimony
21 today because they are not in accordance with the Board's
22 own rules as far as specific appeal issues.

23 The third issue, I just filed yesterday or day
24 before because I got a list of their witnesses late, they
14:48:52 25 listed the witnesses under Rule 8I. In addition to giving

14:48:56 1 you a list of witnesses the party is to give you a summary
2 of their testimony to allow the other parties to get a sense
3 of the testimony so we can prepare cross-examination.

14:49:10 4 The list of witnesses filed by EJAG and the Center
5 do not contain a summary.

6 So we ask the Board to rule whether they should
7 be allowed to present any testimony because they did not
8 comply with your rules.

14:49:25 9 This is the manual, dated 1978, which I understand
10 are the current rules that apply to the Board.

11 So there are three issues that have been raised,
12 what I call procedural issues.

13 DR. FRIEDMAN: I would like to open up the first
14 procedural issue to the Board for discussion and that would
14:49:36 15 be the legal ability -- I'm sorry, the absence of legal
16 counsel as far as we know from EJAG and the Center.

17 Board commentary?

18 MS. FRIAR: Mr. Chairman.

19 DR. FRIEDMAN: Legal counsel.

14:49:58 20 MS. FRIAR: Members of the Board, perhaps at this
21 point in time, prior to making your ruling, you would wish
22 to check with the two appellants to see if, in fact, they do
23 have legal counsel present to represent them.

24 DR. FRIEDMAN: Are representatives of either
14:50:12 25 organization here? I know one is.

14:50:14

1 Both of you are here. Do you have legal counsel
2 to represent you at this?

14:50:28

3 Neither -- both -- would you state that for the
4 panel? Verbally state your organization you're with and
5 your name.

6 MS. FRIAR: They'll need to come to the
7 microphone.

8 DR. FRIEDMAN: Come to the microphone, if you
9 will.

14:50:39

10 MS. BIRNIE: Thank you. My name is Pat Birnie
11 with the Environmental Justice Group.

12 We do not have legal counsel today.

13 Thank you.

14:50:53

14 MR. KULAKOFSKY: Rob Kulakofsky, Center for
15 Environmental Connections.

16 And I do not have legal counsel.

17 May I make one short comment?

18 DR. FRIEDMAN: Okay.

14:51:04

19 MR. KULAKOFSKY: That is, the letter we received
20 way back on November 7th, it was addressed to, Dear
21 Interested Party.

22 And we wrote -- it says that, PDEQ appreciates our
23 participation, and nowhere in here does it say that we need
24 legal counsel.

14:51:17

25 we did not understand that we needed legal counsel

14:51:21

1 until we received the rules of the Board, which was after we
2 had sent in our request.

3 So that's why we don't have legal counsel, other
4 than the fact that we can't afford it.

14:51:36

5 DR. FRIEDMAN: Thank you.

6 THE COURT REPORTER: Sir, before you sit down,
7 would you spell your last name for me, please.

8 MR. KULAKOFSKI: Sure. K-U-L-A-K-O-F-S-K-I.

9 DR. FRIEDMAN: Any commentary from legal?

14:51:56

10 MS. FRIAR: Mr. Chairman, members of the Board, I
11 believe there's two different issues here.

12 The first issue is who has the right to file a
13 request for appeal. The statute is fairly specific, saying
14 that any person may file request for appeal, and that was
15 done by Mrs. Birnie and Mr. Kulakofsky. And they are any
16 person.

14:52:18

17 when you get into the Board rules, the rules say
18 at a hearing they must be represented by counsel, it does
19 not say that for notice of appeal. That was properly filed.

14:52:36

20 It's what do you do at this point in time where
21 they do not have counsel that's important.

22 DR. FRIEDMAN: Any thoughts from members of the
23 Board?

24 Excuse me. State your name.

14:52:52

25 MS. BIRNIE: Pat Birnie. EJAG.

14:52:57 1 I need to clarify EJAG is not a corporation.
2 We're an affiliation of individuals. We are just an
3 organization. We have no corporate status.

4 DR. FRIEDMAN: Thank you.

14:53:11 5 Any comment from the Board about either of those
6 comments?

7 MS. BOWEN: I'd like to request clarification.
8 Sheila Bowen.

9 Item number 8 that was submitted to Fennemore
10 Craig, it does discuss the nonprofit corporation status of
11 EJAG. I would like some clarification on that.

12 MR. FARGOTSTEIN: I'll go first and invite
13 Ms. Birnie to come up.

14 Basically, in our motion, we went on the Internet
14:53:48 15 and tried to find any and all references to EJAG. The only
16 references we found originated back or connected back to the
17 Oregon Corporation called Environmental Justice Action
18 Group, which under Oregon law is a nonprofit corporation
19 under Oregon law.

14:54:02 20 And that's the basis for our motion. That's the
21 only EJAG we could find any reference.

22 And we looked at the Internet and articles and
23 whatnot and all the EJAGs that you see on the Internet,
24 various jurisdictions wind their way back to the Oregon
14:54:20 25 Corporation.

14:54:20

1 So that was the basis for our motion.

2 DR. FRIEDMAN: Thank you.

3 Any comment from EJAG?

4 You might want to stay seated close to the front.

14:54:34

5 MS. BIRNIE: I'll just sit in the front row.

6 We're just a group of individuals trying to be
7 helpful to the community. We are a project of the Center
8 for Environmental Connections, affiliated with them in a
9 very loose way.

14:54:51

10 I mean, as far as dotting I's and crossing T's,

11 I'm not legal enough to understand, but we're a community

12 organization trying to be a watchdog for a community

13 interest. We're just -- we're nonprofit. We don't have any

14 profit to make out of what we do. We're trying to look out

14:55:18

15 for the community interest.

16 DR. FRIEDMAN: Thanks for the clarification.

17 Any comments from the Board? Thoughts?

18 MS. BIRNIE: We're not part of Oregon. We have no

19 affiliation or have never had any correspondence with the

14:55:38

20 Oregon Corporation.

21 DR. PETERSON: Mr. Chairman, a question of

22 clarification.

23 Tom Peterson.

24 I'm a little unclear about what the Board is

14:55:49

25 trying to decide at this point. It seems to me that we need

14:55:54 1 direct legal counsel. If the laws or the bylaws of the
2 Board state one way and it's unambiguous, I don't think
3 there is any debate.

4 If there is some question in the interpretation,
14:56:08 5 maybe we could get a little guidance if that is, indeed, the
6 case.

7 It sounds like we really aren't in a position that
8 the Board should be commenting at this point about whether
9 we agree or disagree with the bylaws as they're written.

14:56:26 10 DR. FRIEDMAN: Do you think we should go into
11 executive session and talk with legal?

12 DR. PETERSON: I think that might be a good idea
13 to understand what exactly we as a Board can and cannot do.

14 I would move that we do that.

14:56:39 15 DR. FRIEDMAN: Motion on the floor to meet with
16 legal.

17 MS. BOWEN: Second.

18 DR. FRIEDMAN: All in favor second signify by
19 saying aye.

14:56:49 20 Any opposition?

21 There being none, we will go into executive
22 session with legal. Thank you.

23 (Executive session from 2:56 to 3:09 p.m.)

24 DR. FRIEDMAN: The executive session has been
15 6:37 25 closed and we're now back on the record.

15:16:42

1

We will proceed with the hearing now.

2

Any comments from the Board?

3

4

15:17:00

5

DR. BRAILSFORD: Mr. Chairman, I think we should clarify as far as the status of EJAG and what their corporation status is. Could we re-call Ms. Birnie and have her explain that for us, please?

6

7

DR. FRIEDMAN: Ms. Birnie is approaching.

8

MR. MATHER: Should she be sworn?

9

Female Speaker: I have to swear?

15:17:29

10

11

PAT BIRNIE,

12

sworn by Ms. Schloeman:

13

14

15:17:40

15

DR. BRAILSFORD: Could you clarify for us what the status of your organization is?

16

17

MS. BIRNIE: It's an organization of independent individuals who are concerned about the environment. We are not a corporation, we're not registered in any formal way.

18

19

We're very informal. It's just a collection of interested

15:18:12

20

people who are concerned about the environment and the

21

people that live in it.

22

DR. BRAILSFORD: Are there, again, connections with the national organization by the same name?

23

24

MS. BIRNIE: I didn't even know there was another

15 8:30

25

organization by the same name. I've never been in touch

15:18:33 1 with -- I mean, I didn't know it existed until it was
2 brought up. So we're not affiliated with any -- the only
3 other organization we're affiliated with is that we're more
4 or less a project of the environmental -- Center for
15:18:51 5 Environmental Connections.

6 DR. BRAILSFORD: Could you explain what that is,
7 please?

8 DR. FRIEDMAN: One moment, please.

9 MS. BIRNIE: We're just, we just come under the
10 umbrella of the Center for Environmental Connections.

11 DR. BRAILSFORD: At one point I think you
12 mentioned something about nonprofit status, I remember
13 hearing or reading about that.

14 MS. BIRNIE: Right. We don't have any money and
15 we don't work for a profit.

16 DR. FRIEDMAN: Dr. Peterson.

17 DR. PETERSON: A clarification. But when you said
18 nonprofit, you were not using that in a legal sense?

19 MS. BIRNIE: Correct.

15:19:51 20 DR. FRIEDMAN: I would like to ask --
21 Dr. Friedman -- what is your connection with the Center for
22 Environmental Connections?

23 MS. BIRNIE: It's a very loose connection. We're
24 just a project of the Center for Environmental Connections.

15:0:15 25 DR. FRIEDMAN: Do they have, are you a member of

15:20:18

1 them or --

2 MS. BIRNIE: Not really. We -- it's just that
3 we're, we're an offshoot you might say, a project of it.

4 DR. BRAILSFORD: This is Dr. Brailsford.

15:20:42

5 Could you give me an idea, do you have meetings,
6 do you guys get together, have meetings individually or as a
7 group?

8 I notice that the witness list from both
9 organizations are basically the same. Could you give us an
10 idea how you interact? Do you talk on the phone every day,
11 have a meeting once a year? Could you clarify that?

15:20:57

12 MS. BIRNIE: EJAG meets once a month for our EJAG
13 business. As far as meeting with the Center for
14 Environmental Connections, it's very rare that we meet with
15 them.

15:21:21

16 DR. PETERSON: Mr. Chairman.

17 DR. FRIEDMAN: Dr. Peterson.

18 DR. PETERSON: Tom Peterson.

19 It seems that given the description of EJAG and
20 trying to align this with our manual of procedures, this, it
21 seems, would fall more under the definition of a person
22 rather than an organization. And I would move that we
23 accept the testimony of EJAG as an individual without the
24 requirement of having counsel.

15:21:41

15:21:09

25 DR. FRIEDMAN: There's a motion on the floor. Is

15:22:12

1 there a second?

2

MS. BOWEN: Sheila Bowen.

3

Second.

4

DR. FRIEDMAN: Motion made and seconded. Any

15:22:20

5 further discussion?

6

MR. MATHER: This is Jim Mather speaking.

7

what I have heard is that they are an offshoot or

8

project of the Center for Environmental Connections which is

9

a corporation, and it would seem to me that they would fall

15:22:38

10

under that umbrella as part of that corporation and be

11

required to have counsel present.

12

DR. FRIEDMAN: Thank you.

13

Any other discussion?

14

MS. BOWEN: Mr. Chairman, based on the statements

15:22:55

15

made -- Sheila Bowen -- there have been no articles filed.

16

It is not filed as a corporation, at least as far as I

17

understand. Based on that understanding I would believe

18

that it's not a subsidiary of that corporation.

19

DR. FRIEDMAN: Thanks.

15:23:14

20

Any other discussion from Board members?

21

DR. PETERSON: Call the question.

22

DR. FRIEDMAN: The question has been called.

23

Let's do a roll call vote, please. The Chairman doesn't

24

vote. Members only. Committee members only, not the

15: 3:44

25

chairman.

15:23:48

1 MR. MATHER: Against.

2 MS. BOWEN: In favor.

3 DR. PETERSON: In favor.

4 DR. BRAILSFORD: I just want to clarify we're

15:24:07

5 voting to allow the EJAG as a group of individuals, correct?

6 Yes.

7 MS. SCHLOEMAN: Motion passes.

8 DR. FRIEDMAN: Vote is 3-1, motion passes.

9 You will be allowed to testify.

15:24:24

10 Thank you.

11 MS. BIRNIE: Thank you.

12 DR. FRIEDMAN: Now we'll try and look into the

13 issue for the Center for Environmental Connections.

14 Board members, questions or comments?

15:24:44

15 DR. BRAILSFORD: Could we have Mr. Kulakofsky come

16 up and answer the same questions?

17 MR. KULAKOFSKY: Rob Kulakofsky.

18 DR. BRAILSFORD: Could you tell us the status --

19 DR. FRIEDMAN: Would you like to swear him in,

15:25:05

20 first?

21 DR. FRIEDMAN: Thank you.

22 Go ahead, Carol.

23

24

15: 5:15

25

15:25:15

1

ROB KULAKOFSKY,

2

sworn by Ms. Schloeman:

3

DR. BRAILSFORD: This is Dr. Brailsford.

4

Could you explain the details of your organization

15:25:21

5

and its corporate status and some idea of the membership?

6

MR. KULAKOFSKY: We're a nonprofit corporation in

7

Arizona. We do allow membership, although we have never

8

pursued that. We just have a four-member board. We do not

9

solicit contributions. We have been given contributions in

15:25:44

10

the past.

11

Basically, what the Center for Environmental

12

Connections does is we try to bring different community

13

groups together and help them work together.

14

I would like to clarify our connection with

15:25:59

15

Environmental Justice Action Group, if I could at this

16

point.

17

Ms. Birnie said that EJAG is a project of Center

18

for Environmental Connections. What happened is, I

19

personally was involved in EJAG. We are just a community

15:26:19

20

group. EJAG is a community group of people concerned about

21

the environment and environmental justice.

22

I asked my board if we would be willing to on

23

occasion give the Environmental Justice Action Group money

24

for mailings and that sort of thing. In that respect, yes,

15:26:43

25

it's a project, but EJAG is a separate community

15:26:46

1 organization on its own.

2 Did that make sense?

3 DR. BRAILSFORD: Could you tell me who is on your
4 four-member board?

15:27:00

5 MR. KULAKOFSKY: Yes, Bates Spalding, myself,
6 Jonathan Candell and Lisa Stage.

7 DR. BRAILSFORD: None of those names are listed as
8 witnesses today?

9 MR. KULAKOFSKY: No.

15:27:13

10 Our letter to you is in support of EJAG. And
11 also, because I've been a member of EJAG for -- a number of
12 years personally. And that was why the people we -- that's
13 why the people we put down as Center for Environmental
14 Connections people to testify, you'll see that they're
15 basically the same people as EJAG. We are just here to
16 support EJAG.

15:27:41

17 DR. FRIEDMAN: Dr. Friedman.

18 I'm not quite sure what that means, you're here to
19 support EJAG.

15:27:56

20 MR. KULAKOFSKY: Center for Environmental
21 Connections. As I said, we're considering EJAG a project of
22 ours. It's a community group that existed before Center for
23 Environmental Connections contacted them in any way.

24 And the real connection is myself personally
25 because I have been involved in the Environmental Justice

15:3:17

15:28:19 1 Action Group.

2 DR. FRIEDMAN: However, you did send an appeal
3 representing your group.

4 MR. KULAKOFSKY: That's right.

15:28:29 5 DR. FRIEDMAN: So you're here supporting them, but
6 you're also here on behalf of your group?

7 MR. KULAKOFSKY: Absolutely.

8 DR. FRIEDMAN: which is a corporation?

9 MR. KULAKOFSKY: That's right.

15:28:44 10 DR. FRIEDMAN: Thank you.

11 MR. KULAKOFSKY: Thank you.

12 DR. FRIEDMAN: Any thoughts from the Board?

13 DR. PETERSON: All right, I'll take a shot at it
14 again.

15:28:57 15 Tom Peterson.

16 DR. FRIEDMAN: Microphone, Pete, it's on.

17 DR. PETERSON: In light of the fact that Center
18 for Environmental Connections is clearly an organization and
19 the rules stipulate that organizations must be represented
15:29:11 20 by legal counsel before this Hearing Board, I move that we
21 not allow Center for Environmental Connections to be part
22 of, one of the members of this appeal and that we hear
23 directly from EJAG and its witnesses.

24 DR. FRIEDMAN: There's a motion on the floor. A
1(9:37 25 second?

15:29:39 1 DR. BRAILSFORD: Mr. Chairman, could I have a
2 clarification on that? Since the list includes basically
3 the same people, does that mean we're excluding the people
4 on the Center for Environmental Connections witness list
15:29:53 5 from testifying?

6 DR. FRIEDMAN: I'm not sure. That's a question
7 the chair has to answer. But as a member of the committee,
8 I would think it would be limited to only the people who are
9 on EJAG's list.

15:30:06 10 DR. BRAILSFORD: I guess that's a point for us to
11 discuss. Does that mean the people on Environmental
12 Connections' list are therefore removed from the
13 Environmental Justice Action Group witness list?

14 DR. PETERSON: No. That's certainly -- Tom
15 Peterson -- that is not the intent of the motion. Simply
16 removing the Center for Environmental Connections and its
17 specifics of appeal from this process, that we would focus
18 only on the issues that were raised in the appeal by EJAG.

19 DR. FRIEDMAN: Thank you.

15:30:48 20 MR. MATHER: This is Jim Mather.

21 I think in your motion --

22 DR. FRIEDMAN: Can we have a second first --

23 MR. MATHER: Second.

24 DR. FRIEDMAN -- to the motion?

15:) :59 25 MR. MATHER: To the motion.

15:31:00 1 I think in your motion you mentioned this was an
2 organization rather than a corporation, and I think the
3 motion should be amended to say "corporation".

4 DR. PETERSON: You're absolutely right, my
15:31:10 5 apologies.

6 DR. FRIEDMAN: would you make amendment to that?
7 And it has been accepted by the maker of the
8 motion, seconded by the, the rest of the committee -- to
9 second the amendment?

15:31:25 10 MR. MATHER: I will second the amendment.

11 DR. FRIEDMAN: I know. You made it.

12 MS. BOWEN: Sheila Bowen.

13 Second.

14 DR. FRIEDMAN: We need to vote on the amended
15:31:37 15 motion, the amendment to the motion. All in favor of the
16 amendment to the motion, signify by saying aye.

17 Any opposition?

18 The amendment is now in place.

19 The motion, if the clerk will read the motion
15:31:50 20 again to clarify.

21 MS. SCHLOEMAN: I don't have it written down.

22 DR. FRIEDMAN: Or we'll have it restated by the
23 maker of the motion.

24 DR. PETERSON: Restate the motion? All right.

18 2:05 25 DR. FRIEDMAN: Motion and --

15:32:08

1 DR. PETERSON: Say again?

2 The motion is that we disallow the

3 participation -- is the right term, appellant -- in this

4 case from the -- Center for -- I'll get the name here, one

15:32:27

5 second. .

6 That we disallow the participation of Center for

7 Environmental Connections because it is a corporation and

8 does not have -- is not represented at this hearing by legal

9 counsel.

15:32:58

10 DR. FRIEDMAN: All those in favor of the motion?

11 Let's do a roll call vote.

12 MR. MATHER: In favor.

13 MS. BOWEN: In favor.

14 DR. PETERSON: In favor.

15:33:16

15 DR. BRAILSFORD: In favor.

16 DR. FRIEDMAN: In favor.

17 Motion carries. Thank you.

18 Who does the overview in that?

19 MS. FRIAR: Mr. Chairman, members of the Hearing

15:33:39

20 Board, you still have two other issues to discuss. One is

21 the specific issues that will be discussed for purposes of

22 the hearing.

23 DR. FRIEDMAN: That's right.

24 Tom.

16:3:52

25 DR. PETERSON: Tom Peterson.

15:33:54 1 Mr. Chairman, may I propose the method for taking
2 care of both of those issues?

3 To summarize items 2 and 3, they were that there
4 needed to be a specific list of issues that could be
15:34:12 5 appealed and that this hearing should be focused only on
6 those issues. And secondly, that a summary of issues to be
7 raised by each of the witnesses be presented.

8 Given the fact that we are now focusing
9 exclusively on the issues raised by the -- just a second.

15:34:40 10 DR. FRIEDMAN: EJAG.

11 DR. PETERSON: -- EJAG, Environmental Connections
12 group, I move the focus of this hearing be restricted to the
13 issues raised in the November 27th memo from Pat Birnie
14 representing EJAG that specifically reads, We believe PDEQ
15:35:05 15 should have included off-site air monitoring as a part of
16 the formal permit and not relegated it to an unenforceable
17 contract with Sunnyside School District.

18 This is the issue raised in my motion that the
19 hearing be restricted to that issue.

15:35:21 20 DR. FRIEDMAN: Motion on the floor. Second?

21 MS. BOWEN: Sheila Bowen.

22 Second.

23 DR. FRIEDMAN: Seconded.

24 Is there any further discussion?

15:35:32 25 All those in favor signify by saying aye.

15:35:36

1 Any opposition?

2 There being none, the motion carries.

3 Now the question overview.

4 MS. FRIAR: Mr. Chairman, ladies and gentlemen,

15:35:55

5 the Board at this point you would normally proceed with your

6 appellant and allow her to present your case and tell you

7 what the reason for their appeal is and what their case is.

8 And then the County and the intervener Brush will

9 be allowed to respond, as well.

15:36:15

10 DR. FRIEDMAN: Okay, Ms. Birnie, representing

11 Environmental Justice Action Group.

12 MS. BIRNIE: I don't have a copy of the letter

13 that I sent to you. I intended to bring it with me. It was

14 my recollection that I said that it was -- oh. Thank you.

15:36:56

15 We believe there are many details of permit number

16 1571 that need to be made more stringent, but of most urgent

17 concern -- I'm indicating there are many issues in addition

18 to this contract with the air monitoring.

19 There are -- it's just, it's criminal not to be

15:37:23

20 able to discuss all of the other issues. There's not that

21 many, it won't take that much time.

22 I feel the need to place on record -- I have a two

23 page -- one-and-a-half page statement that I would like to

24 read and I have other people that are on EJAG that I would

15:44

25 like to have give testimony in various aspects.

15:37:52 1 when the health of the community is what's at
2 concern, I think that we, as members of the community, have
3 a right to say, have our say.

4 And I have copies, written copies, for each of you
15:38:09 5 that I would like to also leave with you.

6 So I would beg your indulgence that I should read
7 my statement and -- which includes this.

8 DR. FRIEDMAN: Board comments to the question?

9 MS. BIRNIE: Pardon me?

15:38:31 10 DR. FRIEDMAN: I was asking if there were any
11 Board comments to the request to present the rest of the
12 information.

13 DR. PETERSON: Ms. Birnie, I fully appreciate the
14 sentiment you expressed. Let me remind you we have in this
15:38:48 15 notebook summaries of all of the concerns that have been
16 raised and addressed in various ways in previous
17 articulations from your group and others.

18 And I should also remind you, as was pointed out
19 by counsel for Brush Ceramics, there was a stipulation that
15:39:13 20 if there were was going to be information presented, that
21 specific summaries of that information be provided so that
22 people could properly respond to them. We did not receive
23 that information until just a couple of days ago.

24 Unfortunately, that's not the fault of the Board.
15 9:35 25 That is a requirement of the people who appeal.

15:39:38

1 Let me finish.

2 MS. BIRNIE: Okay.

3 DR. PETERSON: I think we're being fairly -- we
4 are treating you fairly and being as understanding as we
15:39:51 5 possibly can in allowing you to proceed with the issue that
6 you raised specifically in this letter, but to not deviate
7 from that particular issue.

8 MS. BIRNIE: I appreciate that the PDEQ has
9 responded to community comment. And this is one of the
15:40:13 10 things that we feel good about. We feel good that you have
11 responded to our request and are allowing a hearing this
12 afternoon.

13 But we're not satisfied with responses that were
14 given to many of the concerns.

15:40:30

15 We feel that rules are made in a way that doesn't
16 necessarily protect public health. Especially the federal
17 guidelines that are being used for limiting or allowing the
18 permit to go ahead. I mean, that regulation was established
19 in the 1940s before they really knew that much about
15:41:03 20 beryllium oxide and how toxic it is.

21 On a scale of toxicity, beryllium is very, very
22 close to plutonium in toxicity. We're not talking about
23 something that is a simple pollutant. I mean, there's all
24 kinds of particulate in the air, but it's not as deadly as
15:41:34 25 beryllium oxide. So we just feel very, very concerned.

15:41:45 1 If I'm being limited to this one constituent --
2 there are just too many -- I will give you my written
3 testimony and then the additional supplements because it
4 explains how there really is no -- no regulation -- no
15:42:10 5 amount of beryllium that is -- that would not cause
6 beryllium sensitization in the public. Some people are
7 resistant and others are not.

8 And also, one of our concerns --

9 DR. FRIEDMAN: Sorry to interrupt you.

15:42:32 10 Could we really address the issue that we're
11 dealing with? That is, whether or not we should proceed
12 with broader discussion today.

13 MS. BIRNIE: The issue of air monitoring is very,
14 very important. In the experience of Brush Ceramics'
15:42:54 15 original factory in Elmore, there was an accident there at
16 which a plume of -- a visible plume was caused to float over
17 the residential area near it. And it included, it had
18 beryllium dust in the plume. They had to evacuate the
19 community.

15:43:17 20 So it is really, really important that we have a
21 consistent air monitoring system that is very legally
22 required.

23 Let me seek my little reference to that.

24 DR. BRAILSFORD: Excuse me, ma'am, while you're
15:43:44 25 looking for that, I would like to make a comment from my

15:43:48 1 standpoint.

2 It's very difficult for us to make decisions on
3 statements like "many flaws" and "many issues", because that
4 can be so vague. So it would really help us if you could
15:44:00 5 give us some specific things that you are requesting and
6 some specific reasons why. That I think is what we're
7 trying to get discussed today.

8 MR. FARGOTSTEIN: Mr. Chairman, I hate to
9 interrupt, but I do feel I need to make an objection for the
15:44:25 10 record.

11 In view of the ruling that was passed by the
12 Board, I would object to any testimony either in writing or
13 verbally by any witness that goes beyond the issue of
14 whether or not the ambient monitoring should be part of the
15:44:38 15 permit or not.

16 So I would object to any allowance of this witness
17 to talk about other issues that were not specified that we
18 have had absolutely no opportunity to address.

19 DR. FRIEDMAN: Thank you.

15:44:54 20 MS. BIRNIE: We have been notified in the original
21 invitation that we needed to specify all of our objections
22 in writing in the initial request for a hearing. We would
23 have done that.

24 As Rob explained and quoted from the letter that
15:45:18 25 was sent to the public, it was not specific that we needed

15:45:21 1 to itemize all of our concerns. So if I'm going to be held
2 to that one item, then I feel very, very strongly that we
3 ask for a continuance of this hearing so that we can fully
4 prepare a more lengthy and specific concern.

15:45:44 5 DR. FRIEDMAN: A motion has been made and passed
6 that basically does limit it to that one item.

7 MS. BIRNIE: That's fair enough. We feel that the
8 permit should include the agreement with Sunnyside School in
9 order for the permit to be enforceable and for the air
10 monitoring to be totally effective, that it must also -- it
11 must be a part of the formal permit and not just a contract
12 on the side; that it is less enforceable and it is a mere
13 contract.

14 I would like to call on some of our members to
15 make more detailed comments on that.

16 DR. FRIEDMAN: They will address the, only the
17 issue at hand?

18 MS. FRIAR: That's true.

19 DR. FRIEDMAN: Does the Board have any problems
20 with that?

21 Okay, proceed. Thanks.

22 MS. BIRNIE: Can you assure me of a continuance so
23 that we can provide the Board with our other concerns?

24 DR. FRIEDMAN: I will address that to legal
25 counsel.

15:46:54

1 MS. FRIAR: Mr. Chairman, members of the Board,
2 there is no provision for a continuance to allow for
3 additional concerns to be stated. The rules are fairly
4 clear of the time frame and what has to be provided in the
5 appeal.

15:47:07

6 DR. FRIEDMAN: That time frame is?

7 MS. FRIAR: I believe it was 30 days from the
8 issuance of the permit.

15:47:18

9 DR. FRIEDMAN: which would make it fall on what
10 date?

11 MS. FRIAR: December 7th or December 8th.

12 DR. FRIEDMAN: The determination of time which the
13 appeal which we could not proceed further?

14 MS. FRIAR: Today.

15:47:31

15 DR. FRIEDMAN: Today.

16 MS. BIRNIE: would you allow Rob to speak on
17 behalf of EJAG? He will promise to wear his EJAG hat.
18 okay?

15:47:47

19 DR. FRIEDMAN: Question for legal. If he is not
20 listed as a witness, is he allowed to speak?

21 MS. FRIAR: Only those that are listed as
22 witnesses may present.

23 DR. FRIEDMAN: Only people who are listed as
24 witnesses are allowed to speak.

15:48:03

25 MS. BOWEN: He is listed.

15:48:05

1 DR. FRIEDMAN: He can speak. I assume his
2 swearing in earlier applies to now?

3 MS. FRIAR: Yes, it does.

15:48:16

4 Mr. Chairman, members of the Board, the counsel
5 both for the County and for Brush have opportunity to
6 cross-examine each of the witnesses.

7 DR. FRIEDMAN: Thank you.

15:48:34

8 MR. KULAKOFSKY: Once again, Rob Kulakofsky.
9 Sorry to be such a pain for you guys. No disrespect for the
10 Board. We are amateurs here, but we have done our homework.

15:49:02

11 And one of the things that, as was specified in
12 Ms. Birnie's comments and incidentally really does not say
13 in this letter that we got November 7th, that we have to be
14 specific. We have a whole bunch of stuff that we pared down
15 to three or four items we were concerned about.

15:49:27

16 I'll talk about the air monitoring.

1(9:51

17 The reason we feel so strongly about their
18 monitoring being tied to the permit and not a separate
19 contract is, as Ms. Birnie said, beryllium oxide is an
20 extremely dangerous pollutant. PDEQ received several
21 comments about air monitoring being part of the permit and
22 it was not just EJAG, it was from several different
23 organizations and individuals who sent that in. So it's not
24 just us who thinks it's very important to be part of the
25 permit.

15:49:52 1 And then it's our opinion that an outside
2 agreement between three parties is not an acceptable
3 arrangement. If monitoring is a requirement of the permit,
4 it would be a violation of the permit for them not to abide
15:50:12 5 with monitoring. There is a real assurance that this
6 monitoring will continue to take place, that will be paid
7 for if expenses go beyond where they were expected to go,
8 that will continue to happen. As we know inflation happens,
9 unfortunately.

15:50:30 10 And Mr. Bird, if he needs to testify, he at the
11 open house a week and a half ago, Mr. Bird of PDEQ stated
12 that if the air monitoring were tied to the permit -- this
13 is one of the reasons he gave for PDEQ not tying it to the
14 permit -- that if it were tied to the permit then Brush
15:50:53 15 would have to do the monitoring and that PDEQ would be
16 unable to do any additional monitoring.

17 I would submit to you that that's really not the
18 way it needs to be.

19 Currently, Brush and their temporary permit, they
15:51:16 20 were being required to do stack testing four times a year.
21 They used a third-party contract, okayed by MDEQ, observed
22 by PDEQ, everything went well. There is no reason why a
23 third-party contractor can't be used for the air monitoring.
24 It should be tied to the permit.

15:51:45 25 The other thing is the additional monitoring. If

15:51:49 1 PDEQ or anybody, for that matter, wants to test the air,
2 they're allowed to test the air. The air is free and
3 anybody can put a monitor up there. It's -- nobody is going
4 to stop you.

15:52:01 5 Yes, monitors make some noise, but there is a
6 vegetative buffer between the street, curb side across from
7 Brush plant and neighboring residences on the other side of
8 the plant. And the construction there is pretty loud
9 anyway, so I don't think that's going to be an issue.

15:52:21 10 So I think that that -- those are not good, solid
11 arguments to be made.

12 The fact that a lot of people in the community
13 wanted air monitoring to be happening and tied to this
14 permit is so if there is an excess amount of beryllium shown
15 in those shelters, that can be tied back to Brush's records.

15:52:45 16 They're required in this permit to keep records of
17 their -- you know, the amount of vacuum and that sort of
18 thing. So if there's a problem that they can tie back to
19 the, to the Brush Ceramic plant's facility versus what seems
15:53:09 20 to be excess emissions coming from the testing of the air
21 monitors, then there can be a regulatory issue.

22 We need to have some sort of a real regulatory
23 hammer along with this air monitoring instead of let's see
24 what happens in five years.

15 3:34 25 That's really all I have to say about the

15:53:37

1 monitoring.

2 DR. FRIEDMAN: Any questions -- before you sit
3 down, any questions from the Board?

4 Okay, opportunity for cross-examination from
5 Brush.

15:53:53

6 MR. FARGOTSTEIN: Yes, I do have a few questions.

7 I don't know if the Board received a copy, we
8 referred to it as Exhibit 4, which is the actual agreement
9 between Pima County and Brush Ceramic Products relating to
10 ambient monitoring. I would ask the following series of
11 questions.

15:54:07

12

13

EXAMINATION

14 BY MR. FARGOTSTEIN:

15:54:14

15 Q Sir, have you seen this contract?

16 A I saw a precursor to that.

17 Q Have you seen the final contract?

18 A I don't believe I have.

19 Q Let me hand you what is Brush Exhibit 4 as a

15:54:24

20 contract between public agency and private party and public
21 documents.

22 I have extra copies if the panel members do not.

23 Sir, either from your memory or precursor or

24 looking from this one, if this contracts calls for a

15:54:40

25 five-year term and calls for Brush to fund portions of that

15:54:45 1 ambient monitoring, you don't object to that, do you?

2 A I don't object to the ambient monitoring at all.
3 I applaud that. Thank you.

4 Q Under this contract, the entire monitoring machine
15:55:00 5 would be under the control of the County and all Brush is
6 doing is writing a check initially for \$40,000 and annually
7 for 10,000. You don't object to the County controlling
8 this, do you?

9 A No.

15:55:14 10 Q You mentioned that if this should be in the
11 permit, though, so it is not done, it would be a violation
12 of the permit. Do you remember saying that?

13 A Correct.

14 Q Would you agree that if you're concerned about the
15:55:25 15 results it's better to have the County controlling
16 everything than having Brush having anything to do with the
17 results for a fear of they would be accused of --

18 A There's no reason, sir, if air monitoring were
19 part of the permit there's no reason Pima County couldn't
15:55:43 20 continue to be doing the air monitoring or a third party
21 such as Sunnyside.

22 Q I ask you sir, if that happens and the County for
23 whatever reason, cutbacks, lack of personnel, vacation
24 scheduled, they don't do the testing as required, it is your
16:02 25 position that Brush's permit should therefore be revoked or

15:56:06 1 in violation because the County or Sunnyside didn't do what
2 they are supposed to?

3 A No. what I said is that Brush should pay for
4 this. Brush should pay for the monitoring and Brush should
15:56:19 5 be tied, the payment for the air monitoring should be tied
6 to the permit.

7 In other words, Brush should have to pay for the
8 monitoring through the permit. That should be a portion of
9 the requirements of the permit. So it becomes 51,000 over
15:56:39 10 five years, then Brush pays 51,000. If it's \$49,000, Brush
11 pays \$49,000.

12 Q You are aware by entering in this contract if they
13 don't meet the terms of the contract they are subject to
14 being sued by the County?

15:56:55 15 A Sure, but it doesn't affect your permit.

16 Q Are you aware, sir, under the terms of the permit
17 if the County becomes aware of information by ambient
18 monitoring by whatever source that raises questions
19 concerning whether or not the permit is sufficient, that the
15:57:10 20 County has a right to reopen the permit?

21 A Well, but Brush also has the ability to continue
22 operating with the emissions as allowed in this permit.

23 Q Okay.

24 A Okay.

15 7:26 25 Q You have seen the permit, right?

15:57:29

1 A Sure.

2 Q A portion of the permit says, It shall not be a
3 defense for a permit even in an enforcement action that
4 would have been necessary to halt or reduce the permit
5 activity in order to maintain compliance with conditions of
6 this permit.

15:57:39

7 Assuming that's in the permit, that would seem to
8 say that they can't continue to emit because if they do
9 they're going to get hit with a very big enforcement action
10 with penalties. would you agree with that?

15:57:54

11 A Possibly. Also in the permit it says, In case of
12 continuance or recurring excess emissions, the notification
13 requirements of this section are satisfied if the source
14 provides the required notification after excess emissions
15 are first detected and includes in the notification an
16 estimate of the time the excess emissions will continue.

15:58:11

17 So in other words, for reporting, you're still
18 allowed to continue excess emissions. My feeling is that
19 for as dangerous as beryllium oxide, that's not acceptable.
20 That's why I have a problem with it.

15:58:38

21 DR. FRIEDMAN: Could you clarify where you're
22 talking about when you discuss these issues?

23 MR. FARGOTSTEIN: Yes, sir. My reading,
24 Mr. Chairman, was on --

1(8:51

25 DR. FRIEDMAN: which tab?

15:58:54 1 MR. FARGOTSTEIN: It's our Exhibit Number 1, the
2 permit itself. And it was on page 5, middle of the page.
3 Section Roman numeral 2B.

4 Q BY MR. FARGOTSTEIN: Do you know if --

15:59:14 5 DR. FRIEDMAN: Wait a minute until we all know
6 where we are.

7 MR. FARGOTSTEIN: Sure. That's what it looks
8 like.

9 MR. MATHER: Tab 11, page 5.

15:59:30 10 DR. FRIEDMAN: Okay, go ahead.

11 Q BY MR. FARGOTSTEIN: Sir, you are aware if there
12 are excessive emissions, Brush is subject to enforcement
13 action by the County --

14 A Sure.

15:59:41 15 Q So as I understand it, you don't necessarily want
16 Brush to do the testing, ambient testing, you just want them
17 to pay for it and you want that same obligation to be in the
18 permit?

19 A Yes.

15:59:56 20 Q why?

21 A Because then we're guaranteed that if this goes
22 over \$50,000 then it will continue to be paid for.

23 The other reason is that, as I stated before, then
24 there's actually a regulatory connection between the air
1(0:15 25 monitoring and the permit.

16:00:20

1 Q But would you agree the County, based upon
2 monitoring, regardless who does it, who pays for it, would
3 you agree that the County gets information based upon that
4 monitoring that raises questions they have the right to
5 reopen this permit?

16:00:32

6 A Well, the question is, what raises questions? So
7 the answer is perhaps.

16:00:47

8 Q If the payment provision is in the permit, that's
9 not going to change, is it? It's still going to be up to
10 the County to take the results and assess them?

11 A Of course.

12 Q Is it your position that Brush should have to pay
13 all the cost of the ambient monitoring?

14 A Yes.

16:01:00

15 Q And you understand the contract is negotiated and
16 they are paying a chunk of the cost?

17 A I understand that.

18 Q But not all of it?

19 A I understand that.

16:01:09

20 MR. FARGOTSTEIN: Thank you. No further
21 questions.

22 DR. FRIEDMAN: Pima County? Comments?

23 MS. LUKACH: Lesley Lukach, Deputy County

24 Attorney. I represent Pima County and the Pima County Air

16:01:22

25 Quality Control District.

16:01:24

1 And I think that Mr. Fargotstein has asked all the
2 questions that we need of this witness. Thank you.

3 DR. FRIEDMAN: Thank you.

4 MS. BIRNIE: Any other questions?

16:01:43

5 DR. FRIEDMAN: Any other questions from the Board?
6 Brush, do you have anything you want to present?

7 MR. FARGOTSTEIN: Are there going to be any other
8 witnesses?

9 DR. FRIEDMAN: Any other witnesses, Ms. Birnie?

16:02:03

10 MS. BIRNIE: Yes, I call Brian Blank.

11 DR. FRIEDMAN: Brian Blank come to the microphone.
12 State your name, who you represent and then you'll
13 be sworn in.

14 MR. BLANK: My name is Brian Blank. I'm a member
15 of EJAG as a concerned citizen.

16:02:19

16

17 BRIAN BLANK,

18 sworn by Ms. Schloeman:

19

16:02:32

20 DR. FRIEDMAN: Proceed.

21 MR. BLANK: All right. I'm only allowed to speak
22 about whether or not the monitoring is included in the
23 permit? Is that my understanding? Is that what we're
24 talking about?

16:02:49

25 I have other issues that Pat Birnie alluded to.

16:02:52

1 DR. FRIEDMAN: The one issue.

2 MR. BLANK: All right.

3 well, the reason I believe air monitoring should
4 be included in the permit is because of the incredible
16:03:09 5 danger of beryllium oxide to the public health. And the
6 monitoring needs to be done under the most stringent
7 conditions, which I believe could be better done under a
8 permit which is legally enforceable, not a side contract.

9 I'm not a legal person, I'm a geologist. So my
16:03:39 10 concern mainly after reading about beryllium oxide and
11 attending various scientist's presentations including
12 Mr. Barracus, who is the Brush wellman environmental
13 manager, has written papers about how dangerous beryllium
14 oxide is.

16:04:03

15 The concern is that the wrong parameters are being
16 used to measure beryllium oxide emissions. So if there is a
17 lot of air monitoring, we would have a better chance of
18 keeping track of the emissions coming from the factory.

16:04:35

19 Mr. Barracus has wrote a paper, was co-authoring a
20 paper published in 2001, in which it was stated -- the
21 particle --

22 DR. FRIEDMAN: Excuse me, hold on for a second.

23 MR. FARGOTSTEIN: Mr. Chairman, my concern, my
24 objection is it goes beyond this witness.

16 4:57

25 To the extent there is reference to things that

16:05:01

1 PDEQ has reviewed and had their experts look at and made
2 judgment calls on, I have no objection.

3 If, in fact, what he is reading from is in the
4 PDEQ file, I don't have any objection. But if it's

16:05:14

5 something that has never been provided to the agency and now
6 being provided to this panel when they are asking you to
7 overrule the agency, I don't think it's proper for them to
8 be able to bring in evidence, document form or reading form,
9 that they have not given the agency an opportunity to
10 review.

16:05:33

11 DR. FRIEDMAN: Legal?

12 MS. FRIAR: I'm looking.

13 Mr. Chairman, members of the Board, if you believe
14 the evidence is probative and relevant to the topic, you may
15 accept it.

16:06:16

16 DR. FRIEDMAN: Any Board member comments?

17 DR. PETERSON: I'd like to hear what -- Tom
18 Peterson -- I would like to hear what Mr. Blank has to say.

19 DR. FRIEDMAN: Okay, proceed.

16:06:34

20 MR. BLANK: The question with air monitoring has
21 to do with whether or not it is protective of the public
22 health, and the latest scientific thinking is that perhaps
23 the standards are wrong. We need to actually count the
24 number of beryllium oxide particles to prevent disease
25 rather than be dependent on some mass per volume number.

16:07:02

16:07:06 1 This was stated also by Dr. Stefaniak at the
2 University of Arizona recently and Mr. Scheatzle was present
3 at that talk, and Mr. Barracus was there also, and
4 Dr. Betterton, who is a scientist from the University of
16:07:27 5 Arizona. Perhaps they could also make statements about
6 this.

7 Do you have any questions for me?

8 DR. FRIEDMAN: I have one, very procedural. Your
9 name and address?

10 MR. BLANK: Brian Blank. 2231 East Allen Street.
11 Tucson, Arizona. Zip code? 85719.

12 DR. FRIEDMAN: Any members of the Board have
13 questions?

14 DR. BRAILSFORD: Go ahead.

15 MS. BOWEN: Sheila Bowen.

16 I would like a clarification. The statement that
17 air quality monitoring would need to be included in the
18 permit, the permit requires that the facility meet state and
19 federal regulations for air quality and there are testing
20 provisions under that. There's the monitoring agreement
21 between Pima County, Brush and the school district that
22 allows for air quality monitoring.

23 So does that address the issue at hand that you're
24 discussing as far as having that particular count?

16:08:24 25 MR. BLAND: No. Like Rob said, anybody can do any
16:08:40

16:08:44 1 amount of monitoring they want, it's tying it to the factory
2 and to the permit.

3 Ms. Kramer, who is the head of PDEQ, stated to us
4 in the letter that even if we found manmade beryllium in the
16:09:01 5 soil, it would not interfere with the Brush's permit.

6 My question is, how did it get into the soil
7 around the factory, if it doesn't go into the air? It
8 doesn't crawl. It goes through the air, so we need to be
9 air monitoring beryllium.

16:09:20 10 DR. BRAILSFORD: Sir, this is Dr. Brailsford.
11 Could you give me an estimate of what the
12 background of beryllium in the United States is?

13 MR. BLAND: It's not a question of typical
14 background. There is natural beryllium in the rocks and
16:09:39 15 soil. These are usually beryllium silicates.

16 At the talk with Dr. Stefaniak, who also wrote
17 many papers with Mr. Barracus, he said it's a property of
18 the beryllium oxide itself that beryllium ore miners never
19 got sick. Beryllium cutters, having hundreds of years of
16:10:07 20 data in Germany of people that cut emeralds, which is a
21 beryllium mineral, no one got dizzy. It's a property that
22 is not found in any concentration in nature.

23 DR. FRIEDMAN: Do we have -- Dr. Friedman.

24 Do we have evidence that people casually exposed,
16:10:32 25 as opposed to those who work in factories, have any

16:10:37 1 underlying or susceptibility, increased susceptibility or
2 disease?

16:10:54 3 MR. BLAND: Historically, there have been
4 community cases of beryllium disease, of children dying and
5 people catching chronic beryllium disease from workers'
6 clothes in beryllium oxide countries. I can't give you
7 details, I just know about the history of this, that it has
8 happened.

16:11:15 9 And someone, I believe it was Rob or Pat Birnie,
10 stated that the standards that we're now using in the permit
11 are from 1949, I believe. The doctors didn't know how to
12 handle beryllium.

16:11:37 13 And we all know what's happened to the lead
14 standards. The lead standard has changed. There's no more
15 lead in our gasoline and industry claimed it would be the
16 end of the world if we removed lead from gasoline. We have
17 no lead in gasoline now, the air is cleaner and beryllium
18 standards are still way too high.

16:12:03 19 DR. PETERSON: Mr. Chairman, did you want to
20 follow up?

21 DR. FRIEDMAN: Go ahead.

22 MR. PETERSON: Tom Peterson.

16:12:15 23 Mr. Blank, I wanted to get on back on focus, which
24 has to do with the details of the permit and including
25 off-site air monitoring as part of the permit. The issues

16:12:19 1 that you are raising -- I'm asking to make sure I understand
2 the point that you are making.

3 The issues that you are raising primarily have to
4 do with whether or not the monitoring that would be
16:12:32 5 conducted, whether it's a part of the permit or not is
6 appropriate monitoring; am I correct with about that?

7 You are not debating whether this should be part
8 of the permit, but you're debating and challenging the
9 technique that's going to be used for monitoring altogether;
16:12:53 10 am I correct?

11 A If there is monitoring they could change the
12 measurements, they could count the number of particles, they
13 could do X-rated fraction, they could do isotopic analysis,
14 to prove the beryllium is likely to be anthropogenic, that
16:13:12 15 is a manmade beryllium product. They could prove it from
16 X-rated fraction.

17 These tests are not done because they are too
18 expensive. However, if a lot showed up in an air monitor
19 and it was under permit, I believe that there would be more
16:13:34 20 closely done analysis. And that it would be better to have
21 it in the permit.

22 DR. PETERSON: But again to my question, this has
23 nothing to do with the inclusion or exclusion of the
24 monitoring, you are debating the monitoring technique
16:13:51 25 itself?

16:13:54 1 Because if your issue is number versus mass or
2 where the mass is with respect to number, that is going to
3 be an issue that is to be addressed or could be addressed
4 whether this is part of the permit or not; am I correct?

16:14:10 5 MR. BLANK: I believe that should also be part of
6 the permit, how the beryllium is measured. However, since
7 I'm restricted to speaking about whether or not air
8 monitoring is done under the permit, I would prefer to have
9 it done under the permit.

16:14:29 10 DR. PETERSON: Thank you.

11 DR. BRAILSFORD: This is Dr. Brailsford.

12 I have been looking at this, and I see that the
13 method that they use is using atomic absorption. Can you
14 tell me why beryllium oxide would not show up on that?

16:14:53 15 MR. BLAND: That method measured, to my
16 understanding, is measured on total beryllium, the beryllium
17 element itself, how many atoms.

18 DR. BRAILSFORD: It measures the number of
19 molecules in atoms, yes.

16:15:14 20 I don't understand how beryllium oxide could not
21 be picked up by that, everything else would be environmental
22 sources.

23 MR. BLANK: You would get all the beryllium in the
24 soil, in the rock, plus the beryllium, plus any manmade
16: 5:31 25 beryllium that drifted in by the nearby manufacturing

16:15:36 1 process and you would get a total number. There's no way to
2 separate it out without doing a more detailed analysis.

3 DR. FRIEDMAN: Excuse me, are we drifting away
4 from the actual topic that we're trying to deal with?

16:15:55 5 That's a rhetorical question.

6 DR. BRAILSFORD: Mr. Chairman -- this is
7 Dr. Brailsford.

8 I think we are, but I guess I don't really see how
9 a discussion of methods used for the permit are necessarily
16:16:14 10 relevant to -- the methods used scientifically are
11 necessarily relevant to what we're talking about today.

12 DR. FRIEDMAN: Okay.

13 MS. BOWEN: Mr. Chairman.

14 Sheila Bowen.

16:16:28 15 I would like to ask a question about Attachment B
16 that was attached with Fennemore and Craig items, that was
17 the Brush Ceramic Products' response to notice of appeal.

18 And in there, item 6 of attachment B. Air sample
19 results shall not be used to determine air quality
16:16:45 20 compliance if I'm understanding that may be the issue at
21 hand, that perhaps we're discussing whether or not
22 compliance is somehow tied to this air quality monitoring.

23 MR. FARGOTSTEIN: Are you asking for
24 clarification?

16:17:04 25 MS. BOWEN: Yes, please.

16:17:06 1 MR. FARGOTSTEIN: As I understand the testimony to
2 this point, the concern is that although Brush volunteered
3 to pay for part of the cost of this monitoring, EJAG wants
4 my client to pay for all the monitoring and have a condition
16:17:22 5 of that payment as a condition of the permit.

6 whoever does the monitoring, whatever the results
7 are, I don't think they're saying if it's above a certain
8 level a permit is a violation, they are trying to somehow
9 connect the payment to the permit.

16:17:45 10 And I invite them, if I'm misinterpreting what I'm
11 saying --

12 MS. BOWEN: I would like clarification.

13 MR. BLANK: I'll ask someone who is not a
14 scientist to talk about the economic issues.

16:18:12 15 MR. FARGOTSTEIN: I do have some
16 cross-examination.

17
18 EXAMINATION

19 BY MR. FARGOTSTEIN:

16:18:14 20 Q Sir, I'm not a scientist so I rely upon what
21 others say.

22 I'm going to show you what is Brush Exhibit Number
23 3, which is the response to comments that was prepared by
24 DEQ, and it contains several studies and evaluations. Have
16:18:29 25 you read that document, sir?

16:18:31

1 A I don't think I have.

2 Q I'm going to show you a portion of a paragraph and
3 I'll direct the panel members to what I'm talking about.

16:18:45

4 I'm going to be asking this gentleman some
5 questions relating to Attachment 3 to that, responsiveness
6 comments. That's a health consultation prepared by the
7 Arizona Department of Health Services U.S. Department of
8 Health and Human Services.

16:19:18

9 MS. BOWEN: Just for clarification for the Hearing
10 Board, item 13.

11 MR. FARGOTSTEIN: Thank you, because I'm not quite
12 sure how your numbering was.

13 DR. BRAILSFORD: The health consultation?

16:19:26

14 MR. FARGOTSTEIN: Attachment 3, health
15 consultation.

16 DR. PETERSON: Ours is labeled Attachment 2.

17 MR. FARGOTSTEIN: There's also Attachment 3,
18 August 2005.

16:19:50

19 Q BY MR. FARGOTSTEIN: Sir, I call your attention to
20 page 3, and that's the response to some of the questions the
21 Board members asked.

22 Do you see the paragraph that I sort of bracketed
23 for you, sir?

24 A Yes.

16:00:03

25 Q And I'm not going to have you read that verbatim,

16:20:06

1 but as I understand it, that paragraph was an attempt by
2 this organization, the U.S. Department of Health, in
3 consultation with the local Department of Health, to answer
4 a question by Sunnyside School District as to how you
5 distinguish between manmade beryllium and naturally
6 occurring beryllium.

16:20:20

7 Am I correct, sir, that if you look at that
8 paragraph, the response of this agency was that if using the
9 isotropic ratio method you cannot distinguish between
10 manmade and naturally occurring beryllium, correct?

16:20:42

11 A I agree that's what it says here.

12 Q But you disagree with that?

13 A This is an untrue statement. Jason Malik said
14 that there's only one naturally occurring isotope. This is
15 not a peer reviewed document.

16:21:03

16 We talked to Dr. Betterton, who is PDEQ consultant
17 from the University of Arizona. He called this gray
18 literature basically, it's not respected in scientific
19 circles. And also, there are six, I believe, naturally
20 occurring isotopes of beryllium. You can look that up.

16:21:27

21 Q You disagree with this conclusion by this agency
22 who was asked questions by the school district?

23 A I disagree with that statement, yes.

24 Q If you turn the page, there was a question by one
25 of the Board members about background issues.

16:21:45

16:21:48 1 If you look at the top of page 4, you see that
2 paragraph talks about some sampling that was done in order
3 to determine some naturally occurring background levels in
4 Arizona in the soils?

16:22:00 5 A Sure, I see that.

6 Q Okay. And do you see the statement that what they
7 found was similar to the average background beryllium
8 concentrations and soil around Brush Ceramic Products?

9 I think it's almost the last sentence of that
10 paragraph.

11 DR. FRIEDMAN: Could you read that for the record?

12 MR. FARGOTSTEIN: The average beryllium
13 concentration of these three locations is .5 milligrams per
14 kilogram. That is similar to the average background
15 beryllium concentrations in soil around the Brush Ceramic
16 Products.

17 Q BY MR. FARGOTSTEIN: Do you see that, sir?

18 A Yes, I see that.

19 Q You don't disagree with that conclusion, do you?

16:22:39 20 A I disagree with the method they took an average.
21 There were some samples taken around the smoke stack that
22 were several times higher than that average background of
23 soil.

24 And the question is not whether natural beryllium
16 3:00 25 occurs in the soil, it does. The question is whether it's

16:23:03

1 beryllium oxide.

2 Q Sir, you also mentioned you were aware of findings
3 where people contracted beryllium-related diseases from
4 laundering clothes?

16:23:18

5 A I'm generally aware of the history.

6 Q You are aware of the safeguards in place at this
7 organization? People basically go in, they change out of
8 their street clothes, they put on work clothes, they come
9 back and change out of the work clothes, they are kept
10 on-site. They go out after taking showers in their street
11 clothes and out onto the street.

16:23:33

12 Are you aware of that?

13 A Yes, I'm also aware there are eight unfiltered
14 fans in the work areas in the Brush factory. And the
15 instruction in the permit says if anybody spills beryllium
16 oxide, first thing to do is turn off the fans.

16:23:51

17 Q You are aware PDEQ has thoroughly examined that
18 issue and have made whatever decisions they think are
19 necessary to protect the public?

16:24:11

20 A I believe they reviewed it and that's the
21 conclusion they came to.

22 Q Finally, sir, when you were discussing the type of
23 tests and whatnot, would you agree with me that under the
24 contract that is in place, the County, I guess in
25 consultation with the school district, will make all the

16:24:29

16:24:32

1 decisions concerning what type of testing, frequency of
2 testing and all those types of technical questions, correct?

3 Brush has nothing to do with the technical types
4 of tests they conduct, correct?

16:24:46

5 A Take your word for it.

6 Q Ask you to assume that the contract says we pay
7 money and the County controls everything else, would you
8 agree all these questions about technicality are questions
9 that the County may want to talk about once they start
10 setting up their system?

16:25:02

11 A I agree that that's one possibility. I think that
12 it would be better addressed in the permit that all the
13 technicalities and eventualities should address the permit,
14 not leave it open-ended like that.

16:25:22

15 DR. FRIEDMAN: Can I interject? I want to ask the
16 Board a question.

17 Are we getting off the topic?

18 MR. FARGOTSTEIN: I'm finished asking questions,
19 sir.

16:25:42

20 DR. FRIEDMAN: County.

21

22

EXAMINATION

23 BY MS. LUKACH:

24 Q Are you aware of any actual incidents of disease
25 occurring from beryllium occurring in Pima County?

16:25:48

16:25:52 1 A I believe I've read newspaper articles that refer
2 to 35 chronic beryllium disease cases at Brush and some
3 deaths.

4 Q when do you think those occurred?

16:26:07 5 A I don't know.

6 Q Do you think that all of the people that
7 contracted the disease were employees of Brush?

8 A I don't know. I could dig out the newspaper
9 articles and read them back to you.

16:26:23 10 MS. LUKACH: No other questions, thank you.

11 DR. FRIEDMAN: Thank you.

12 Any questions from the Board?

13 Ms. Birnie, any other witnesses?

14 MR. KULAKOFSKY: Rob Kulakofsky.

16:26:43 15 I would like to clarify a statement Brian made.
16 Eight powered exhaust fans, only six of those exhaust fans
17 actually are unfiltered. They are unfiltered and only six
18 of them come from the work area for where beryllium oxide is
19 used.

16:27:03 20 MS. BOWEN: Sheila Bowen.

21 I believe I read in the permit an attachment that
22 the fans were rerouted to a filtering apparatus. Can
23 someone clarify that?

24 MR. FARGOTSTEIN: I intend to call Mr. Scheatzle,
16:27:18 25 the general manager, to answer that.

16:27:20 1 My basic understanding is that there are some fans
2 that vent non-beryllium handling areas and those are the
3 fans that everybody seems to be talking about. Those are
4 the fans to extent there was any type of release in that
16:27:34 5 area which shouldn't occur there are immediate steps to be
6 taken.

7 The fans everybody is talking about are venting
8 non-beryllium handling areas. Everything that is in the
9 beryllium handling areas is filtered in filtered areas.

16:27:55 10 DR. FRIEDMAN: Are there anymore witnesses? We
11 are running out of time.

12 MS. NORDBROOK: Hello. My name is Terry
13 Nordbrook.

14 I live at 2602 East Helen Street. Tucson,
16:28:09 15 Arizona, 85716.

16 Thank you very much for the opportunity to speak.
17 I had just a couple of things to add to what the other
18 members of EJAG had said.

19 I am a student of -- in the master's in public
16:28:34 20 health program at University of Arizona. I'm studying
21 environmental and occupational health. I have been looking
22 into the beryllium issue.

23 I think one of the questions was EJAG's concern
24 about tying the permit with the air monitoring. Is it only
16: 3:53 25 to insure that Brush would be responsible for paying for the

16:28:57 1 air monitoring?

2 I think that the concern is that and something
3 much more important than that. I think the prize is the
4 health of the community and the fear is that there's a very
16:29:13 5 real possibility, well, that emissions are leaving the
6 factory.

7 we know that 10 grams a day are legally permitted
8 according to the federal rules, and 10 grams a day is a
9 massive amount of beryllium. It's clearly not a health
16:29:31 10 protective regulation.

11 Brush has done a lot of efforts, for which I
12 applauded them, industrial hygiene efforts to control this
13 very toxic substance from their workers and trying to put in
14 place protective systems.

16:29:52 15 The regulatory limits are really very lax. So
16 there's a lot of arguing. We have already had times when we
17 found beryllium in the community.

18 Sunnyside School District for years has been doing
19 similar monitoring for what we want to do and they have
16:30:16 20 found beryllium and found it in the wipe tests of the
21 ventilation systems. And they found it in the soil where
22 we're building new homes. So we keep finding it and we keep
23 not doing anything about what we find.

24 And there's a lot of unanswered questions. The
16:30:32 25 scientific progress hasn't really occurred to know whether

16:30:37 1 it's safe.

2 For instance, there are articles about occult
3 cases of diseases, hidden cases so that Tucson today might
4 have beryllium from exposures that already happened but we
16:30:52 5 don't have the science, it hasn't been funded, it hasn't
6 been conducted to reassure us truly.

7 we could have the Arizona Department of Health
8 come out with a report for what has, for what science has
9 come out, but the money is against the health in this case.
16:31:09 10 There's a lot more money to fight regulation than to fight
11 for public health.

12 And so in explaining one of the reasons why we
13 care that the permit is attached to the air monitoring
14 results is -- it's almost like a shell game happens.

16:31:29 15 whenever there's more bad news from Brush or anyplace with
16 environmental health and if the eyes on the prize is we want
17 safety in the community, but if the whole conversation turns
18 to well, does this result mean we ought to maybe think about
19 their permit again, then the conversation goes away from
16:31:53 20 protecting the community and it goes toward this whole cat
21 fight about maybe we should tie it to the permit.

22 It's almost like having that conversation happen
23 today, tie it to the permit today so that should it happen
24 that we get more positive air sampling results in the next
16:32:12 25 five years that we will be able to have a conversation that

16:32:15

1 might truly be health protective and not just -- I don't
2 know, chasing our tails again.

3 DR. FRIEDMAN: Any cross-examination by the County
4 or Brush?

16:32:30

5 DR. BRAILSFORD: We have questions.

6 MS. BOWEN: No.

7 DR. FRIEDMAN: Does the Board have questions?

8 DR. BRAILSFORD: This is Dr. Brailsford.

9 what is your suggestion to protect the community?

16:32:47

10 MS. NORDBROOK: well, there have been cases
11 reported in the literature where a small exposure combined
12 with a genetically susceptible person led to disease. Those
13 are the cases they mentioned such as the spouses of workers
14 coming down with disease. I think ATSDR found that in Ohio,
15 they looked at records from ten years.

16:33:15

16 DR. BRAILSFORD: They didn't live next to the
17 factory?

18 MS. NORDBROOK: True. I guess my point is that a
19 small amount of beryllium is enough to cause disease in a
20 susceptible person.

16:33:31

21 DR. BRAILSFORD: I understand that. My question
22 is, what is your suggestion?

23 MS. NORDBROOK: My suggestion is zero emissions.
24 Technology is there, but we don't even talk about it. I

16:33:47

25 mean, there are other precedents. I think the community of

16:33:52 1 Lorraine, Ohio, made a decision to forbid the use or
2 manufacture of beryllium in their town limits after several
3 of their community people died. This was back in the '40s.
4 They had 12 people die from the exposures coming from the
16:34:16 5 facility. Then they suffered a massive fire at the
6 facility.

7 Brush is located next to the airport, so it's a
8 high accident potential zone, and fires do happen, and there
9 are problems like that.

16:34:31 10 So Lorraine, Ohio, decided this is too dangerous a
11 substance to tolerate.

12 I think most countries in the world have not
13 participated in the manufacture of beryllium because they
14 don't like the risk associated.

16:34:48 15 We have had many Tucsonans die who, they are known
16 cases. I think they are -- you know, we're not accustomed
17 to -- in this country, we like business. We like people to
18 have a factory and employ people and do things and make
19 things. But there are costs associated with this -- you
16:35:19 20 know, this beryllium that makes it a difficult thing.

21 I think it's not unreasonable for us to say that
22 it's too dangerous to allow this factory to continue in this
23 enormously populated area.

24 In Ohio, it is very, very rural. There are only
16:35:37 25 200 adults in a mile and a half radius.

16:35:41 1 DR. PETERSON: Mr. Chairman, this is not part of
2 this hearing. That issue is not part of our purview. We
3 are focusing on specific issues of this permit.

4 If you could try to focus your answers related to
16:35:57 5 the permit.

6 MS. NORDBROOK: I guess I would appeal to you to
7 change the permit to tie the air monitoring to the permit so
8 that it would be revoked if the monitoring results found
9 beryllium in the community, which would be then very far
10 from the release place. You don't want to find it near
11 Sunnyside.

12 DR. FRIEDMAN: Thank you.

13 Any cross-examination?

14 MR. FARGOTSTEIN: Yes, your Honor.

15

16

EXAMINATION

17 BY MR. FARGOTSTEIN:

18 Q I appreciate your testimony, but let me ask you a
19 few questions. You have heard a lot of testimony; would you
16:36:34 20 agree that beryllium does occur naturally?

21 A Yes.

22 Q would you agree that if you have ambient
23 monitoring positions somewhere in the United States or
24 Arizona, it could pick up beryllium that's not manmade?

16:36:49 25 A Yes.

16:36:50 1 Q So, you know that just because an ambient system
2 picks up beryllium doesn't mean it came from a manmade
3 facility, right?

16:37:04 4 A Again, there is science that's not hard to do that
5 we are neglecting to do. So we could be putting monitors
6 not just in a little ring around Brush, which we have been
7 doing for a while, we could be putting them in other places.

16:37:22 8 Q You understand that under this contract, Brush has
9 already signed with the County, the County would have
10 authority to take our money and put those monitoring points
11 wherever they want to?

12 A And I very much appreciate that Brush is paying
13 for the air monitoring now, although I don't think it's been
14 a sufficient amount to cover the actual costs.

16:37:40 15 Q You want Brush to pay for all of the air
16 monitoring?

17 A It would be their responsibility. I think they
18 have caused this concern to occur and they are profiting
19 very much from their industry and it's the least they could
20 do.

16:37:54 21 Q Who should pay for the natural occurring
22 beryllium?

23 A Well, the thing that I suspect is happening is
24 that since you have a point source that emits beryllium,
16 8:12 25 since the Brush factory is there, that they would definitely

16:38:17 1 be a candidate for -- you could make a hypothesis that there
2 will be more beryllium in the air there than there would be
3 from nature.

4 Also like with asbestos, asbestos is something
16:38:31 5 that occurs naturally, but when it's dug up by human
6 industry that it has caused so many more deaths. If we were
7 leaving it alone in nature we would not be having the
8 problems that we're having.

9 MR. FARGOTSTEIN: No further questions.

16:38:52 10 DR. FRIEDMAN: Thank you.

11 Pima County?

12 MS. LUKACH: I have no questions.

13 DR. FRIEDMAN: Any other witnesses?

14 MS. BIRNIE: Thank you very much.

16:39:04 15 DR. FRIEDMAN: Last one.

16 If you will come up, state your name, address and
17 stick to the point if you could.

18 MS. MALCOLM: Hello. I'm real nervous about being
19 here.

16:39:23 20 Pat Malcolm. I live at 1309 East Lee Street.

21 And I'm here to make comment, I guess.

22 I think we're really blessed to have everybody in
23 this room, blessed to have those symbols on the walls in
24 this room, things we believe or hold of value.

16():51 25 what we are not blessed with today is Rosa

16:39:56 1 Malcondo. Her grandson sat over there for a while.

2 I don't know if you know who she is. She was a
3 worker at Brush wellman who passed way from berylliosis.

4 The reason we believe the permit should be tied to
16:40:14 5 whatever it's supposed to be tied to, so that I can say
6 something, is that I believe we're going off of a model of
7 exposure that is incomplete.

8 we're operating off of a model of exposure that is
9 incomplete based on people who have spoken here at our new
16:40:36 10 Center of Public Health at the university.

11 We have been very fortunate, two people, someone
12 from OSHA and one from LAOSH, who have talked to us that we
13 as human beings do not understand berylliosis and radium
14 exposure.

16:40:56 15 I do not believe that the president of Brush
16 wellman intentionally would like to say his decision-making
17 is responsible for the illness of anyone else at their
18 factory.

19 DR. FRIEDMAN: Excuse me, I hate to interrupt you,
16:41:11 20 but could you proceed on the topic rather than --

21 MS. MALCOLM: Okay, the topic is whether or not
22 the permit is tied to something or other. I can't -- my
23 brain is going dead right now, so I'm going to read what I
24 wrote.

16 1:37 25 A protective shield allows BEO particles to be

16:41:42 1 available to the body. That is not the largest determinate
2 exposure to the body, bioavailability is. So however we
3 constructed this permit, we based it on the wrong things, we
4 based it on the way of something out there as opposed to
16:42:00 5 how, when it makes contact with our body, it interacts with
6 our body.

7 I believe we're here today discussing whether or
8 not the air that we breathe and the beryllium that we're
9 going to be allowed to put into it is safe. What we're
16:42:14 10 getting from our scientific community is that no level is
11 safe. What we are doing instead is creating collateral
12 damage.

13 In America, in the America I believe in, there is
14 not a need to create collateral damage for --

16:42:33 15 MR. FARGOTSTEIN: Mr. Chair, I hate to intervene.

16 DR. FRIEDMAN: Excuse me.

17 MR. FARGOTSTEIN: I hate to interject. I would
18 object to this testimony because it is far afield from the
19 issue before the Board.

16:42:45 20 MS. MALCOLM: I thought the issue was air. I
21 thought each one of you was given the task of protecting us.
22 We're providing collateral damage. Obviously, you have an
23 interest in being here.

24 But do we need to do this at the expense of some
16:42:50 25 kid in South Tucson? I don't think so.

16:43:09 1 The America I believe in sets the bar high enough
2 that there are no losers, no loses, not you losing, not him
3 losing not anyone losing from how we decide to engage.
4 okay?

16:43:25 5 DR. FRIEDMAN: I'm sorry --

6 MS. MALCOLM: The standards --

7 DR. FRIEDMAN: I have to interject. I think we
8 are getting far afield from where we should be and the
9 questions --

16:43:34 10 MS. MALCOLM: What we should be doing is
11 protecting the public health.

12 DR. FRIEDMAN: Just a second. Hold on.

13 Does the Board agree? Signify by shaking your
14 head.

16:43:45 15 If you want her to continue testimony, it's fine
16 with me.

17 DR. PETERSON: I would really appreciate it if you
18 could focus on the question with regard to permit.

19 MS. MALCOLM: Okay. In regard to the permit --

16:44:01 20 DR. PETERSON: I know you have a written prepared
21 statement, and I would simply ask that in the next thirty
22 seconds you summarize what you have on there, unless there
23 are specific issues related to the question of the permit.
24 That is, the air quality monitoring related to the permit.

16:44:21 25 If you could please try to do that so we can focus

16:44:24 1 on those issues only.

2 we're not here to judge, to make decisions
3 regarding the issues of exposure to beryllium or things like
4 that, we are here to try and determine the specifics of this
16:44:37 5 particular permit.

6 All right?

7 MS. MALCOLM: I'm here to speak for the Rosa
8 Malcondos that are dead. what I want to say --

9 MR. FARGOTSTEIN: Your Honor.

16:44:47 10 DR. FRIEDMAN: That's not what we're here for.

11 MS. MALCOLM: -- for the ones that are living. I
12 want to speak for --

13 DR. FRIEDMAN: I don't want to be conflictual with
14 your opinions. Again, as Dr. Peterson said, we are here for
16:45:00 15 a specific purpose. we limited that very early on in
16 discussion. we would like to come to a conclusion on behalf
17 of the County -- not Pima County, but the people of the
18 county, based on the information that's available.

19 And I think we need to be specific about what
16:45:15 20 we're doing here instead of just rambling.

21 MS. MALCOLM: I don't believe I'm rambling.

22 DR. FRIEDMAN: I understand the emotional
23 component, but that's not what we're here for.

24 MS. MALCOLM: I believe we can all strive to
16:45:29 25 get --

16:45:31

1 DR. BRAILSFORD: Excuse me.

2 This is Dr. Brailsford.

3 Could you give me a specific request or something
4 that you would like done in this other than specific?

16:45:40

5 MS. MALCOLM: Something specific? Are you going
6 to let me talk? If you let me talk, what I'm going to say
7 is that we're always learning new things and we are setting
8 into place a five-year permit. Does that mean five years
9 from now the things we learn from today we might act on or
10 will we be allowed to act? At what point do we act on it?

16:45:59

11 DR. FRIEDMAN: Again, I understand what you're
12 saying and I'm sympathetic with what you're saying, but
13 that's not what we're here for now.

14 MS. MALCOLM: So tie it one thing to the other.

16:46:24

15 DR. FRIEDMAN: Any cross-examination?

16 MR. FARGOTSTEIN: No.

17 MR. KULAKOFSKY: Can I make one correction?

18 DR. FRIEDMAN: State your name, your correction.

19 MR. KULAKOFSKY: Rob Kulakofsky.

16:46:39

20 Permit page 21, item H, on the bottom. This
21 delineates the eight powered exhaust vents and it tells what
22 rooms they come out of.

23 One is the firing room, number one.

24 One is the lapping room where they actually grind
25 beryllium serums flat.

16: 5:55

16:46:58

1 Another one is the lapping room, another lapping
2 room.

3 Another one, firing room one. This is where they
4 have a kiln where they make the beryllium ceramics.

16:47:11

5 There are two in firing room one, two in firing
6 room two, one in the astro room, but there are eight power
7 vents delineated in this permit and they are not filtered.
8 As far as I can see, they never have been.

9

16:47:33

10 EXAMINATION

11 BY MR. FARGOTSTEIN:

12 Q Sir, as I understand it, DEQ has addressed these
13 vents in the permit?

14 A They talk about, they consider them potential
15 hazards. They ask for them to be turned off --

16:47:47

16 Q That's not my question. Listen to my question.
17 It is covered in the permit?

18 A It's not addressed properly in the permit.

19 Q That has nothing to do with the ambient monitoring
20 whether in the contract or in the permit, does it?

16:48:00

21 A I was just correcting your statement.

22 MS. BOWEN: Sheila Bowen.

23 Page 5 of 6 of the final TSD, that's where I read
24 it contained they controlled equipment and it goes through
25 the vents.

16:48:17

16:48:19

1

DR. PETERSON: Can we get -- Tom Peterson.

2

Can we get clarification? I am a little confused.

3

I want to make sure that I understand what is the

4

environmental condition as it pertains to the permit.

16:48:33

5

Are all of the vent fans associated with areas in which there could be beryllium processing filtered or not?

7

MR. FARGOTSTEIN: I'm asking Mr. Scheatzle.

8

DR. PETERSON: Maybe this is something for later.

9

16:48:58

10

MR. FARGOTSTEIN: I don't know if it's my manager of health or my general manager. I think Mr. Scheatzle got the short straw.

12

DR. FRIEDMAN: Name, address.

13

MR. SCHEATZLE: John Scheatzle, general manager, Brush Ceramic Products. 6100 South Tucson Boulevard, 85706. That's my business address.

16

16:49:22

15

DR. PETERSON: Again, because there's been, seems a difference in either interpretation of the permit or what legal counsel, your legal counsel has said, can you just clarify, are all of the vents, the forced air vents, orifices, whatever you want to call them, that do not go

21

through filtering device associated in areas where there is no beryllium processing or are there areas which there is beryllium processing that would have ventilators that would not necessarily go through the filters?

25

16:49:46

MR. SCHEATZLE: All particulate generating

16:50:14

1 operations are ventilated and filtered and discharged
2 through the stack.

3 Those ceiling fans are for heat abatement and they
4 were assessed to not be attached to particulate generating
16:50:28 5 operations. Based on historical testing, they are not
6 filtered, they discharge directly. They are not in powder
7 handling areas, they are not in areas that --

8 DR. PETERSON: Even under an upset condition there
9 would not be a potential of beryllium --

16:50:48

10 MR. SCHEATZLE: That is correct.

11 DR. PETERSON: -- emission of those?

12 MR. SCHEATZLE: That is correct.

13 DR. BRAILSFORD: Dr. Brailsford.

14 Those are the lapping room and firing room in this
15 document?

16:51:00

16 MR. SCHEATZLE: That's correct.

17 DR. PETERSON: Perhaps you can see why there is
18 some confusion.

19 MR. SCHEATZLE: I understand.

16:51:13

20 DR. PETERSON: Lapping room signifies processing,
21 firing room signifies --

22 MR. SCHEATZLE: That's particulate generating
23 operations.

24 DR. PETERSON: As opposed to?

16:51:24

25 MR. SCHEATZLE: Taking powder, filling a mold and

16:51:28 1 compressing that powder. That is particulate generating.

2 DR. PETERSON: Is lapping not a potential
3 particulate generating operation?

4 MR. SCHEATZLE: It would be under certain
16:51:40 5 conditions, but we lap using an oil based lubricant which
6 results in no particulate generation.

7 DR. BRAILSFORD: This is Dr. Brailsford.
8 How long have you monitored these vents?

9 MR. SCHEATZLE: I can't really answer that. I
16:52:00 10 know at least one sample, I know the permit requires us to
11 sample again prior to permit renewal.

12 DR. PETERSON: Could you say something about the
13 firing room? Is that what the process is there?

14 MR. SCHEATZLE: It's the process of the, using the
16:52:21 15 heat of the kilns to effect a physical change on the pressed
16 body to produce a solid ceramic.

17 DR. PETERSON: There is no potential for
18 particulate release.

19 MR. SCHEATZLE: Our data would say there is not.

16:52:41 20 DR. PETERSON: Thank you.

21 DR. FRIEDMAN: Do you have any other --

22 MR. KULAKOFSKY: I'm sorry, Rob Kulakofsky.

23 PDEQ has concerned concerns about the powered air
24 vents. It says the specific vents, this is a condition,
16: 3:10 25 specific vents are identified using the same numbering

16:53:12

1 scheme on the Brush Ceramic products --

2

MR. FARGOTSTEIN: Mr. Chairman, I'm going to object.

3

4

MR. KULAKOFSKY: I'm going to --

16:53:23

5

MR. FARGOTSTEIN: I can speak louder than you can, sir, so let me make my objection.

6

7

I'm going to object to any further discussion of the power vents. That is not the issue before this Board.

8

9

The power vents have been addressed by the agency.

16:53:37

10

Nobody challenged the positions and we -- candidly, I have let it go on because I'm much more differential to the Board going off on a tangent than the witnesses, but this is not the issue before this Board.

11

12

13

14

16:53:55

15

The issue before this Board is should the ambient monitoring, which was agreed to in the contract, be brought into the permit. And now we're talking about whether certain air vents which the County has looked at and approved the test on and basically incorporated to what they think is necessary in this permit.

16

17

18

19

16:54:12

20

I would object to this whole line of testimony.

21

DR. FRIEDMAN: Thank you.

22

MR. KULAKOFSKY: Read the permit.

23

DR. FRIEDMAN: Thank you.

24

Should we hear from Pima County?

16:54:26

25

MS. FRIAR: Brush.

16:54:27

1 DR. FRIEDMAN: Any comments from Brush?

2 MR. FARGOTSTEIN: No, sir.

3 DR. FRIEDMAN: Pima County? I think that
4 completes -- any other witnesses from -- good. Okay.

16:54:37

5 Any further discussion from the members of the
6 Board issue in the presentations?7 Therefore, we are toward the end of the hearing
8 and I would await any suggestions or comments or motions on
9 the part of the Board, I think.

16:55:00

10 MS. FRIAR: Excuse me, Mr. Chair, I believe the
11 parties may have misinterpreted your question. You're
12 asking both Brush and Pima County if they wish to present
13 witnesses at this time?

16:55:15

14 MR. FARGOTSTEIN: I do have one witness. I would
15 like to call Mr. Scheatzle before --16 DR. PETERSON: Mr. Chairman, I move we take a
17 ten-minute break.

18 DR. FRIEDMAN: Seconded by?

19 DR. BRAILSFORD: I'll second.

16:55:36

20 DR. FRIEDMAN: All in favor? Aye.

21 Break.

22 (Recess from 4:55 5:02 p.m. to taken.)

17(1:52

23 DR. FRIEDMAN: I'd like to call the meeting back
24 to order and Brush to make their opening statement and call
25 a witness or witnesses if there are any more.

17:02:55 1 MR. FARGOTSTEIN: Sir, I'm going to waive any
2 opening statement. I think we are well into the hearing. I
3 I'm going to call Mr. John Scheatzle.

4 DR. FRIEDMAN: You've already been sworn in.

17:03:10 5

6

EXAMINATION

7 BY MR. FARGOTSTEIN:

8 Q I'm going to do this in sort of a quick question
9 and answer format.

17:03:16 10

11 Mr. Scheatzle, as I understand it you're general
12 manager of the Brush facility?

12 A That's correct.

13 Q You were the one who signed the contract with the
14 County?

17:03:25 15

16 A That is true.

17 Q And I'm going to show you a copy, but I think all
18 the panel members have a copy. It's been referred to
19 before.

17:03:36 20

21 In the Brush response, which I forwarded to all
22 the panel members, I outlined several issues that I thought
23 should be addressed, of concern. One was certain legal
24 objections as to whether or not such ambient monitor could
25 be legally required.

17:03:55 25

26 Basically, did I advise you of certain legal
27 objections I felt there were to special required ambient

17:03:58

1 testing?

2 A Yes.

3 Q You have had a chance to look at the
4 responsiveness comments?

17:04:06

5 A Yes.

6 Q I believe the one is a 1999 Pima County Department
7 of Health report, one is a May 2000 U.S. Department of
8 Health Services report and another is August 2005 Department
9 of Health Services. They are all attachments to the
10 responsive comments.

17:04:22

11 Sir, I would ask you to assume all those reports
12 conclude there is no public health risk and there is no
13 threat to children by your facility or beryllium. Ask you
14 to assume that.

17:04:36

15 A That's true.

16 Q If that's the case and your lawyer tells you there
17 is no legal requirement to do ambient monitoring would you
18 explain to the Board why Brush decided to enter into this
19 voluntarily contract, which is a legally binding document,
20 committing you to fund a portion of that ambient air
21 monitoring system?

17:04:50

22 A Well, I mean, our facility is on the south side of
23 Tucson. Part of that community, we have employees that are
24 drawn from that community. We do a lot of work with the
25 community. We work a lot with the Sunnyside neighborhood

17:05:08

17:05:12 1 association, with local schools, on after school programs,
2 so we're part of that community. And we would not want to
3 do anything to make the community not feel secure. The
4 community asked for this.

17:05:27 5 Again, even though all the data shows repeatedly
6 that number one, the current standard is protected and,
7 number two, that we're far, far below that standard and
8 further it's been studied repeatedly, despite all that we
9 wanted to provide this extra level of reassurance to the
17:05:46 10 community because we're part of the community and our
11 employees are part of the community. That's why we do that.

12 Q With respect to this contract, what is Brush's
13 intent concerning compliance with the contract terms?

17:06:04 14 A We intend to fulfill the contract. I think we
15 could have, as a result of the appeals, had a justifiable
16 reason to not proceed until the appeals were settled under
17 the presumption that we may lose.

18 That's not what we did. We went ahead and
19 processed payment. I don't know whether PDEQ received it
17:06:25 20 yet. It's in the Brush payables and we intend to proceed
21 with the monitoring.

22 MR. FARGOTSTEIN: No further questions.

23 DR. FRIEDMAN: Ms. Birnie, do you have any
24 questions of Brush?

17:06:39 25 MS. BIRNIE: Yes.

EXAMINATION

17:06:44 1
2 BY MR. KULAKOFSKY:

3 Q Rob Kulakofsky.

4 You have always been obeying the law as Brush
17:06:54 5 Ceramics; correct?

6 A We have always obeyed the law in terms of
7 protection of our employees and we have always been
8 consistently far below the emissions of the permit.

9 Q So the quote you have in this -- let's see, The
17:07:14 10 Weekly, June 22nd, when asked about the impact beryllium had
11 on injured and deceased Brush employees, you responded, we
12 were always obeying the law?

13 MR. FARGOTSTEIN: Objection. Sir, he is not now
14 talking about employees. That comes under OSHA jurisdiction
17:07:33 15 which is entirely --

16 DR. FRIEDMAN: Legal agrees with him.

17 MS. KULAKOFSKY: That's my only question. Thank
18 you.

19 DR. FRIEDMAN: Pima County?

17:07:45 20 MS. LUKACH: I have no cross-examination.
21 I do have a couple of brief witnesses for the
22 Board.

23 DR. FRIEDMAN: Do you have an opening statement?

24 MS. LUKACH: I'll waive my opening statement.

17: :55 25 DR. PETERSON: Do we get a chance to ask

17:07:57 1 questions?

2 DR. FRIEDMAN: Yeah.

3 DR. PETERSON: would you mind speculating on what
4 you think might be the air quality monitoring that would
17:08:09 5 take place after the five-year contract expires?

6 MR. SCHEATZLE: I don't think I could speculate on
7 that. I think we would like to see the results of the data.

8 DR. PETERSON: Thank you.

9 MS. BOWEN: Sheila Bowen.

17:08:26 10 I would like to ask, the air quality results from
11 this monitoring won't be used for compliance. what is
12 purpose of the air quality monitoring?

13 MR. SCHEATZLE: It's a study to understand the
14 scientific method what the ambient beryllium levels are and
17:08:50 15 potentially right now it's to understand. There's been some
16 monitoring done, but it hasn't necessarily been done by
17 PDEQ.

18 DR. BRAILSFORD: This is Dr. Brailsford.

19 So the results of the study will, Pima County will
17:09:15 20 be looking at them. Is there any other purpose? will they
21 be -- I mean, what else are we going to do with that
22 information?

23 MR. SCHEATZLE: To understand and learn about the
24 ambient exposures in the environment.

17:09:31 25 You look at our stack tests. we have a 26 year

17:09:34

1 history of very low emission. In the last five or six
2 years, most of our tests have been non-detected. It's to
3 understand what the ambient levels are at the test
4 monitoring sites and what is the understanding in the
5 community, production of levels at Brush, all of those
6 things, that's the purpose of it.

17:09:51

7 DR. FRIEDMAN: Dr. Friedman.

8 I have a question. what if one of the monitoring
9 levels is high?

17:10:06

10 MR. SCHEATZLE: You would try to correlate that
11 with what was going on at the time.

12 DR. FRIEDMAN: would you call Pima County right
13 away or --

17:10:19

14 MR. SCHEATZLE: They're going to know before we
15 do.

16 DR. FRIEDMAN: I remember something about 72 hours
17 before you had to report.

18 MR. SCHEATZLE: These are continuous monitors that
19 circle the plant, filters are changed, compared to
20 something -- I think Pima County will call witnesses that
21 can explain.

17:10:30

22 what you've said is, what if one is high, you look
23 at what is going on in the community, did somebody bulldoze
24 a three acre site upwind of that.

17:10:50

25 DR. FRIEDMAN: Maybe I'm asking the question in

17:10:53 1 the wrong place.

2 MR. SCHEATZLE: Yeah, you should ask Pima County.

3 DR. FRIEDMAN: Any other questions for Pima
4 County?

17:11:11 5 MS. LUKACH: I would like to start by calling
6 Richard Grimaldi.

7 DR. FRIEDMAN: Name, address.

8 MR. GRIMALDI: Richard Grimaldi. Pima County
9 Department of Environmental Quality. 150 west Congress.

17:11:27 10

11

RICHARD GRIMALDI

12

sworn by Ms. Schloeman,

13

14 BY MS. LUKACH:

17:11:32 15 Q I'll do these questions as quickly as I can.

16

17 First of all, Mr. Grimaldi, did PDEQ consider
18 putting ambient air monitoring?

19

20 A Yes, we did. During development of this permit,
21 we had extensive public participation that lasted six years.

17:11:52 22

23

24 Public comment and hearings. This issue came up, as well as
25 a number of concerns about the health community. We looked
26 at it very closely.

27

28

29

30

31 We conferred with experts in the field, Pima

32 County Health Department, Arizona Department of Health

33 Services and we also conferred with experts in the field of

17:12:10 1 monitoring, at the University of Arizona atmospheric
2 Sciences Department.

3 In looking at the concerns that were being raised,
4 as well as the legal requirements on what we can do in a
17:12:22 5 permit, we felt that the type of conditions that would
6 require monitoring in a permit would be so narrow and so
7 inclusive that it really wouldn't get at the issue that the
8 community is interested in.

9 In order for a permit to be enforceable, it has to
17:12:41 10 be practically enforceable. That means very, very clear
11 black and white permit conditions. To have something they
12 are going to pay for monitoring or have monitoring moving
13 around wouldn't be enforceable.

14 The conditions would have to specify the types of
17:12:56 15 monitoring, how it's going to be done, the frequency, QAQC,
16 reporting. A number of those issues. That, in our mind,
17 seemed to narrow where this could go.

18 Looking at the need for data and really the need
19 for data for a couple different reasons. One, looking at
17:13:13 20 community health. We wanted to have flexibility. As we did
21 monitoring, we could change the monitoring regime, the
22 monitoring methods and try to get data that would be useful
23 to public health officials.

24 We wanted to look at being able to provide this
17:13:29 25 information to the community in a fairly quick manner.

17:13:34 1 Usually in a permit there's so much reporting and
2 QAQC that goes on before the information is given to the
3 agency, it wouldn't be timely. We wanted to provide
4 information to the public in a timely manner.

17:13:47 5 We have a web site to provide monitoring data,
6 ambient air quality standards, and we're going to put this
7 information also on the web page.

8 We also wanted to insure there was credibility to
9 the data. By being able to control quality assurance,
10 quality control, process, labs, we can confer with other
11 experts in the field, the University of Arizona, and we feel
12 we can develop very high credibility data.

13 When we turn it over to Brush through a permit
14 condition, they have the option or would have the option in
15 house or through a third party, it becomes very difficult to
16 turn that down.

17 One of the other things we are also concerned
18 about is what are we going to do with the data. Is it going
19 to be used to measure some level of compliance at the
17:14:33 20 facility?

21 There isn't a regulation that requires them to do
22 ambient air monitoring. The requirement in the federal
23 regulation is 10 grams in a 24-hour period out of their
24 entire facility.

17:14:46 25 So we wanted to be able to come up with something

17:14:49 1 that was useful to the community that actually meant real
2 data to the number of users we hope to get.

3 Q Is there a level that would be enforceable for
4 ambient air monitoring that could be included?

17:15:07 5 A Based on the federal regulations, state and local
6 regulations, there is a not a standard that this would be
7 measured against to determine compliance.

8 MS. LUKACH: I have nothing further from
9 Mr. Grimaldi.

17:15:19 10 DR. FRIEDMAN: Any questions from Brush?

11 MR. FARGOTSTEIN: No, sir.

12 DR. FRIEDMAN: Ms. Birnie.

13 MR. BLANK: I have a question.

14 DR. FRIEDMAN: State your name.

17:15:33 15 MR. BLANK: My name is Brian Blank. Should I ask
16 it from here?

17 DR. FRIEDMAN: Microphone.

18

19

EXAMINATION

17:15:40 20 BY MR. BLANK:

21 Q Mr. Grimaldi, when you were considering whether or
22 not to put monitoring requirements into the permit, did
23 Brush's lawyers send a letter threatening to sue PDEQ if you
24 did that?

17:15:59 25 A I believe Brush sent us a letter objecting to it.

17:16:03

1 whether it indicated they would sue, I don't recall. They
2 believed there was no legal basis for it.

3 Q Did you take that as a threat?

4 A We took it for what it stated.

17:16:19

5 Q A legal problem that you might have?

6 A Yes.

7 Q Would these air monitors detect an upset like
8 Brush had in 1994, when there was white powder coming out of
9 the factory?

17:16:41

10 A Ambient air monitor network would only pick up
11 something that was in its capture zone. So depending where
12 an upset was, where the wind direction is going and how far
13 the monitor is away would depend on whether it actually
14 detected or not.

17:16:59

15 MR. BLANK: Thank you.

16 DR. FRIEDMAN: Any questions from the Board?

17 DR. PETERSON: Mr. Grimaldi, would you quickly go
18 over what the plans are for the samples that you collect?

19 Are you going to, for example, try to separate the
20 beryllium to determine whether it is oxide and if so,
21 determine whether it's natural or not?

17:17:17

22 MR. GRIMALDI: We're working with Dr. Betterton
23 trying to come up with a specific monitoring plan on details
24 what we're going to do.

17:17:35

25 Right now, we're going to use the standard test

17:17:38

1 methods found in the CFR.

2 My understanding of conversations with experts in
3 the field like Dr. Betterton, at least at this time there
4 isn't a specific test that can determine that on a
5 sample-by-sample basis. He would be probably more
6 appropriate to discuss those issues.

17:17:53

7 But we're going to work in close collaboration so
8 we can get the best data we can.

17:18:07

9 DR. PETERSON: Can you say something about, at
10 least size fractionated samples?

11 MR. GRIMALDI: Yes, 10 microns and smaller.

12 DR. PETERSON: Thank you.

13 DR. BRAILSFORD: This is Dr. Brailsford.

17:18:25

14 So I understand you, all of the tests that you're
15 going to do will test for all of the beryllium and the
16 material whether manmade or natural, correct?

17 MR. GRIMALDI: The way monitoring works is like a
18 vacuum cleaner. We run the monitor for 24 hours. The
19 material is trapped on filter. The filter is sent for
20 laboratory analysis.

21 It gives us total beryllium, not where it came
22 from, and that's what we'll be able to detect.

23 DR. BRAILSFORD: It will include both sources?

24 MR. GRIMALDI: Both sources, yes.

25 MS. BOWEN: Sheila Bowen.

17:18:54

17:18:56 1 In the proposed monitoring strategy, PDEQ notes
2 that it would use this data to measure effectiveness of the
3 permit that it issued. I would like to ask for
4 clarification on what that intent is.

17:19:11 5 MR. GRIMALDI: what we're looking at doing with
6 this monitoring data over the first five-year term of the
7 permit is to try to correlate any activities going on within
8 the facility. Based on public comment, and there's
9 extensive monitoring reporting going on at Brush which they
10 are currently not doing, so we've got to have hard data what
11 they're doing, when they're doing it, how often, what's
12 going on with the facility itself.

17:19:31 13 There's requirements to do checks on the entire
14 facility on a weekly basis. We're also looking at
15 monitoring extensively the air pollution control system.

17:19:47 16 Looking at that information with whatever we would
17 see trend-wise in the data, if there's starting to be a
18 correlation with activities and data we're seeing, we can
19 come in and reopen the permit and strengthen the areas where
17:20:07 20 we think it might may be related.

21 DR. FRIEDMAN: One quick question.

22 Dr. Friedman.

23 Are you correlating at all with any information
24 obtained concurrently within the Pima County Health
17:20:20 25 Department?

17:20:22 1 MR. GRIMALDI: I don't believe at this time the
2 health department is doing anything with regards to
3 collection of data. This would be shared specifically with
4 the health department to get their input, evaluation.

17:20:38 5 DR. PETERSON: One more question. Am I right that
6 both the permit and the contract, the expiration of both of
7 those are coincident; is that right?

8 MR. GRIMALDI: Correct.

9 DR. PETERSON: I'll ask you the same question that
17:20:53 10 I asked Mr. Scheatzle. Can you speculate on what might take
11 place when both, when the permit is asked to be renewed and
12 what you might think would happen with regard to any
13 contractual obligations for ambient air quality monitoring?

14 MR. GRIMALDI: With regards to renewal of the
17:21:14 15 permit, we're anticipating using this data to either
16 strengthen the permit, further refine the permit, look at
17 specific areas, as we issue a second five-year term permit.
18 Whether the contract goes on into the future, at this point
19 I couldn't say. That would be something that would be
17:21:35 20 determined at that time by all the parties involved.

21 DR. PETERSON: Do you have any estimate of what
22 the relative cost of doing this monitoring is over the next
23 five-year period?

24 MR. GRIMALDI: Costs are going to be borne out, I
17:21:48 25 think, by three separate parties. You'll see Brush is

17:21:52 1 putting a financial contribution. Our department is
(2 absorbing the staffing requirements, we'll be maintaining
3 and running the monitoring.

4 At this point in time, we don't know exactly what
17:22:04 5 the costs are going to be and we'll capture that as we go
6 through this term. Particularly if we start changing the
7 monitoring regime, increasing it or decreasing it, we can
8 the see the changes in costs.

9 Finally, the Sunnyside School District will incur
17:22:19 10 costs. They have agreed to have a staff person help in
11 collection of filters, so they will incur those staff costs,
12 but I don't believe there's a figure on that.

13 DR. PETERSON: Thank you.

14 MS. BOWEN: Mr. Grimaldi, in respect to the
17:22:35 15 data -- Sheila Bowen -- this would go to the EPA
16 administrator?

17 MR. GRIMALDI: We would be sharing this with EPA,
18 Region 9. Specifically with this facility, Region 9 has
19 been very involved. The monitoring folks have been working
17:22:54 20 closely with the EPA monitoring folks.

21 We have had the permit go through review with EPA
22 Region 9 which was not required. It was a review we
23 requested to make sure we were writing a stringent permit.
24 And we also have joint inspection, so we would definitely be
17: 3:15 25 sharing with EPA.

17:23:18 1 MS. BOWEN: If I understand correctly on the
2 permit, the EPA administrator, based on information, could,
3 without reopening the permit, require some additional
4 testing on behalf of the current permit. Is that a
17:23:31 5 misunderstanding on my part or can you clear that up?

6 MR. GRIMALDI: There isn't the ability for EPA to
7 issue orders if they believe it's necessary to compel
8 someone to produce records or do testing, so I don't know if
9 you're referring to that or another set of authorities.

17:23:53 10 DR. FRIEDMAN: Thank you very much.

11 MS. LUKACH: Dr. Elizabeth McNeil.

12 DR. FRIEDMAN: Name and address.

13 THE WITNESS: Thank you. Elizabeth McNeil. Pima
14 County Health Department, 150 West Congress.

17 ELIZABETH MCNEIL, M.D.

18 sworn by Ms. Schloeman

19 EXAMINATION

17:24:17 20 BY MS. LUKACH:

21 Q Dr. McNeil, were you involved in some soil testing
22 in 1999?

23 A Yes, I was.

24 Q And did you prepare a report?

17:25 25 A Yes.

17:24:27 1 Q I believe that report is an attachment to the
2 responses to comments that PDEQ did in relation to the Brush
3 permit?

17:24:38 4 A And for the Board, that is the Attachment 1 to the
5 response to comments.

6 Q As a result of your study, did you see any reason
7 for PDEQ to do additional ambient air monitoring?

8 A We did not recommend additional air testing.

9 Q Why was that?

17:24:52 10 A We didn't feel that the public was at risk based
11 on the levels of beryllium that were being released from the
12 stacks, based on soil sampling that we conducted in the
13 area.

17:25:10 14 Q One last question. Some of the witnesses have
15 said that there is no safe level of beryllium. Do you agree
16 with that statement?

17 A Since beryllium is found naturally in the soil, I
18 would be hard pressed to say there isn't a safe level, but
19 there has been a great discussion of what's a safe level for
17:25:28 20 employees working with the material and being exposed in the
21 workplace.

22 But there have not been any instances of chronic
23 beryllium disease in the community surrounding beryllium
24 plants since 1950, with the one exception of the wife of an
17: 5:44 25 employee who had some unusual exposures, and that would lead

17:25:49 1 us to believe that current federal guidelines have been
2 effective in limiting and perhaps eliminating public health
3 risk.

4 Q The incident with the wife of an employee where
17:26:01 5 did that occur?

6 A That did not occur in Arizona. I believe it
7 occurred in Ohio, and she happened to launder her husband's
8 clothing and she had had several instances with large, large
9 exposures of beryllium powder and she attended to him when
17:26:17 10 he was ill and happened to be exposed to him at that time.
11 He had not been decontaminated.

12 MS. LUKACH: I have no further questions for
13 Dr. McNeil.

14 MR. FARGOTSTEIN: No questions.

17:26:30 15 DR. FRIEDMAN: Questions?

16 MR. BLANK: I'd like to ask a couple of questions.

17 DR. FRIEDMAN: Name. Come forward.

18 MR. BLANK: Brian Blank.

17:26:47 20 EXAMINATION
21

22 BY MR. BLANK:

23 Q I had some questions about the soil testing, which
24 I don't have a copy of the Pima County Health report in
17: 3:54 25 front of me. But I recall that there was something like 34

17:26:58 1 samples taken around the circle.

2 A There were 34 samples taken using a variety of
3 different measurements. Some were within the 150 to 170
4 yards, some were adjacent to the property and some samples
17:27:15 5 were further away, quarter mile or further on school
6 property in the Sunnyside School District.

7 Q And I believe you said in the report, or whoever
8 wrote the report said something like because of the wind
9 conditions and the height of the stack that air modeling
17:27:38 10 showed that any beryllium fallout from the smoke stack would
11 land within 170 yards of the stack; is that true more or
12 less?

13 A The Arizona State of Department of Health Services
14 and Arizona DEQ performed modeling on two different methods
17:27:59 15 using stack height, particle size, wind conditions. From
16 their models they came up with the 150 to 170 formation
17 deposition of beryllium particles.

18 we utilized that information but we sampled less
19 than that, we sampled farther than that. We did concentrate
17:28:22 20 our sampling where free prevailing wind patterns could have
21 carried them further northwest and on the southeast. We did
22 additional sampling in those areas.

23 Q Didn't the report also state the two samples
24 northwest of the stack, approximately 170 yards northwest of
17 8:41 25 the stack, exceeded the amounts that were allowed at the

17:28:46 1 time in the soil for residential areas; however this, the
2 report also stated that it was okay because it was a
3 nonresidential area?

4 And I have a follow-up.

17:28:59 5 A To clarify, there are no enforceable levels for
6 soil. There are remediation levels that are designed as
7 guidelines for when cleanup is done, like in a superfund
8 site, but those are not enforceable levels that would
9 require us to clean up the particular area.

17:29:22 10 There was one measurement that was 3.0 and I
11 believe one 1.9 by one laboratory. By a second laboratory
12 those values were lower. Background levels naturally in
13 Arizona have ranged up to 4. That's been a natural finding
14 in our soil.

17:29:42 15 Q weren't those particular high samples exactly
16 where you would expect to find high amounts from the outfall
17 from the stack northwest 170 yards from the stack?

18 A We did find higher levels in that 150 to 170,
19 including those two. The majority of the -- actually, the
17:30:06 20 average of the values in a perimeter around Brush was less
21 than 1.0, 150 to 170 yards around the site.

22 Levels further away were even less than our
23 background levels two miles away. And values right up
24 against Brush property lines were lower in about
17:30:27 25 approximately .6 on an average.

17:30:29 1 So in that way, to me, it verified the modeling
2 that the state health department used.

3 But I was not concerned about the values. They
4 seemed to point to the fact that stack emissions have
17:30:41 5 probably been historically low because the soil values still
6 were fairly consistent with the background.

7 Q Are you aware that that section that had the
8 values has become residential?

9 A Yes, I am.

17:31:00 10 MR. BLANK: Thank you.

11 MS. LUKACH: I have no further questions for
12 Dr. McNeil.

13 MR. FARGOTSTEIN: No questions.

14 DR. FRIEDMAN: Any questions from the Board?

17:31:12 15 DR. McNEIL: Thank you.

16 DR. FRIEDMAN: Okay. I think we have come to
17 the --

18 MS. LUKACH: One last witness, Dr. Betterton. It
19 will be fast, I promise.

17:32:29 20 THE WITNESS: I'm Eric Betterton. I'm a professor
21 of atmospheric sciences at the Department of Atmospheric
22 Sciences at the University of Arizona.

23 A little background, I teach courses in air
24 pollution, I conduct research in air quality and water
17:47 25 quality and I'm a paid independent third-party consultant

17:32:52 1 paid by Pima County, not by Pima County Department of
2 Environmental Quality.

3
4 ERIC BETTERTON

17:32:57 5 sworn by Ms. Schloeman

6
7 EXAMINATION

8 BY MS. LUKACH:

9 Q Dr. Betterton, are you familiar with the studies
17:33:07 10 that have been done in Pima County that about levels of
11 beryllium in the soil?

12 A Yes, I am.

13 Q Have you seen the conclusions in those studies
14 that suggests that no additional air monitoring is
17:33:20 15 necessary?

16 A Yes, I have.

17 Q Do you agree with those conclusions?

18 A I agree with them.

19 Q why do additional air monitoring then?

17:33:27 20 A My position right from the beginning is that I see
21 no real cause for concern currently, having examined the
22 data. I don't see evidence for a plume historically having
23 been dumped on the people there.

24 But I think we should continue to be vigilant.

17 3:46 25 And by that I mean, we should put out these ambient air

17:33:51 1 monitoring devices and just check that for the next five
2 years at least there is no plume of beryllium being emitted
3 by the factory.

17:34:06 4 Q was it unusual for some of the testing to find
5 levels of beryllium?

6 A No. The soil in Pima County, Arizona, is -- has
7 beryllium in it. I think the background is approximately
8 0.67 parts per million, as best as I can tell. I would
9 actually expect to find beryllium in most dust samples
10 because we live in a dusty, desert environment.

11 Q Is there any way to tell the naturally occurring
12 beryllium from beryllium that might have escaped from the
13 Brush plant?

14 A No, I have look for the methods and I can't find
15 any.

16 Q And you may have also heard testimony from the
17 appellants that they believe that no level of beryllium
18 exposure is safe. Do you believe that to be correct?

17:34:57 19 A well, I think the message is getting mixed. We
20 breathe dust, we all breathe dust that contains beryllium,
21 probably in the form of a silicate or something like that,
22 minerals within the dust. Pima County is not coming down
23 with berylliosis. We have lived here for hundreds of years,
24 there is no such thing.

17:35:14 25 However, in the work environment, people are being

17:35:18 1 imposed to a particular kind of beryllium, beryllium oxide
2 or well defined -- there the toxicology to me is a mystery.
3 I think it's interesting. I don't know in the workplace
4 it's currently possible to say what the safe level is.

17:35:40 5 we're not talking about the workplace, we're talking about
6 ambient air outside the factory.

7 Q Are you familiar with the plan for ambient air
8 monitoring that's not involved in the permit?

9 A Yes, I am.

17:35:50 10 Q Do you think it's a good plan?

11 A I think it's a good plan. with the current
12 technology, I think it's a good plan.

13 Q Do you think it would be better to have it in the
14 permit?

17:35:59 15 A Actually, no. If monitoring like this were within
16 the permit, it would be highly structured, become a part of
17 a legal document. If there was a need or a desire, for
18 example, to move a monitor from one location to another, if
19 the school shuts down, they have to take it off that
20 particular group.

21 To change the permit would require hearings, it
22 would require input from the public. The flexibility would
23 be totally lost.

24 If the monitoring was done outside the permit in a
17 5:38 25 contractual basis like this, if we need to add a monitor or

17:36:42 1 if we need to move a monitor or something like that, to
2 change the frequency of monitoring, we could do it without
3 public hearing.

4 MS. LUKACH: I have no further questions for
17:36:56 5 Dr. Betterton.

6 MR. FARGOTSTEIN: No questions.

7 DR. FRIEDMAN: Anybody from -- one question?
8 Come to the microphone.

9 MR. BLANK: I have one question.

17:37:11 10 DR. FRIEDMAN: Name.

11 MR. BLANK: Brian Blank.

12
13 EXAMINATION

14
17:37:17 15 BY MR. BLANK:

16 Q Dr. Betterton, in this article by Dave Devine in
17 the Tucson weekly of June 22 to June 28, which Rob
18 Kulakofsky already referred to, it states that you think the
19 idea to revise federal standards has some merit.

17:37:39 20 what federal standards are you talking about?

21 A I was thinking of federal standards within the
22 workplace.

23 Q All right. Well, if they need to be revised,
24 wouldn't it stand to reason that the federal standards
17:37:59 25 outside the workplace need to be revised because they are

17:38:03 1 based on mathematical formula based on what is toxic to
2 workers?

3 A It's a factor of something like ten times less for
4 the general public. I don't know if that's the number, but
17:38:18 5 it's something like that. They have decided to permit 10
6 grams per day based on the mass per volume measurements that
7 they probably would be exposed to.

8 MR. FARGOTSTEIN: Your Honor, before the doctor
9 answers I have no objection to the doctor's answer.

17:38:33 10 I would file an objection that we are now talking
11 about standards by EPA that are promulgated at the federal
12 level. I would hazard a guess that it's beyond the
13 jurisdictional reach of this Board, in any event.

14 DR. FRIEDMAN: Thank you. You can go ahead and
17:38:48 15 answer.

16 Q BY MR. BLANK: Well, my question to you was, I
17 don't really understand how that affects the incorporation
18 of ambient air monitoring in a permit, which is what I'm
19 restricted to talk about here. Setting local or federal
17:39:08 20 standards has nothing to do with ambient air monitoring
21 being in a permit or not?

22 Let me try to connect that. Perhaps if it was in
23 the permit, would you have a better handle on what people
24 were exposed to if a sample came especially high?

17 9:34 25 A If it were in the permit, and the sample was high,

17:39:38

1 I don't see how that would be any different from it being
2 outside the permit and a sample being higher.

3 I just don't -- I don't get where this question is
4 leading. I don't understand it.

17:39:53

5 Q I thought that you were referring to the federal
6 standards outside the factory, in addition to the ones
7 inside the factory. Perhaps I misunderstood what you
8 stated.

17:40:16

9 A well, I'm not familiar with that article. I don't
10 know what year it was published. I don't know under what
11 conditions the reporter was questioning me. I have no
12 recollection of that. I haven't read it, I haven't reviewed
13 it. I'm clearly not in a position to comment on it.

14 MR. BLANK: Fair enough.

17:40:35

15 DR. FRIEDMAN: Thank you.

16 Any further discussion?

17 MS. LUKACH: Nothing further.

17:40:49

18 DR. FRIEDMAN: Then now the Board -- any
19 discussion from the Board? Otherwise, it's probably time to
20 make a motion.

21 Alternatives to the motion, I think, are: we can
22 uphold the permit as issued. We can modify the permit as
23 would be consistent with law. Or lastly, we can reverse the
24 issuance of the permit.

17:41:12

25 I would be happy to hear a motion.

17:41:16

1 MR. MATHER: This is Jim Mather.

2 I would move that we uphold the permit as it
3 currently exists.

17:41:28

4 DR. FRIEDMAN: Motion on the floor to uphold the
5 permit as issued.

6 DR. PETERSON: Second.

7 DR. FRIEDMAN: Motion is seconded. Further
8 discussion by the Board?

17:41:41

9 DR. PETERSON: Just one very brief comment.
10 Resist any temptation to provide a sermonette or anything.11 I wanted to say that there were clearly issues
12 that were raised before this Board that were related more
13 toward work force or work area exposure. That is not the
14 purview of this Board, and I just hope that those that
15 brought it up understand that while there may be some
16 concerns about that and appreciation for the points raised
17 it is not part of our jurisdiction, that we are really
18 dealing with issues that relate to ambient air quality.

17:42:09

19 DR. FRIEDMAN: After that sermonette, do we have a
20 motion?

17:42:34

21 MS. FRIAR: There's a motion.

22 DR. FRIEDMAN: Do we have a second?

23 MS. FRIAR: There is a second.

24 DR. PETERSON: Call the question.

17:42:41

25 DR. FRIEDMAN: Okay. Let's do a voice vote.

17:42:51

1

MR. MATHER: In favor.

2

MS. BOWEN: In favor.

3

DR. PETERSON: In favor.

4

DR. BRAILSFORD: In favor.

17:42:59

5

DR. FRIEDMAN: In favor.

6

Motion carries 5-0. I think now we need to move
for adjournment.

8

DR. PETERSON: So moved.

9

DR. FRIEDMAN: Motion seconded. All in favor of
adjournment say aye.

17:43:17

10

11

No?

12

Meeting adjourned. Thank you very much.

13

(Adjournment at 5:44 p.m.)

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