

1 2STATE OF MICHIGAN

2 STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

3 In the matter of: File Nos.: GW1810162 and
MP 01 2007
4 The Petitions of the Keweenaw
Bay Indian Community, Huron Part: 31, Groundwater
5 Mountain Club, National Discharge
Wildlife Federation, and 632, Nonferrous
6 Yellow Dog Watershed Metallic
Environmental Preserve, Inc., Mineral Mining
7 on permits issued to Kennecott
Eagle Minerals Company. Agency: Department of
8 _____/ Environmental
Quality
9 Case Type: Water Bureau
10 and Office of
11 Geological
Survey

12
13 D R A F T T R A N S C R I P T

14 HEARING - VOLUME NO. XXX (30)

15 BEFORE RICHARD A. PATTERSON, ADMINISTRATIVE LAW JUDGE

16 Constitution Hall, 525 West Allegan, Lansing, Michigan

17 Thursday, June 19, 2008, 8:30 a.m.

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1 Lansing, Michigan

2 Thursday, June 19, 2008 - 8:37 a.m.

3 JUDGE PATTERSON: Did you say you did or did not
4 want to make an opening statement?

5 MR. REICHEL: I do not.

6 JUDGE PATTERSON: Do not. Okay.

7 MR. REICHEL: And just confirming what I indicated
8 yesterday, in the interest of moving forward, Respondent DEQ
9 is going to waive an opening statement, and we proceed to
10 call Mr. Joseph Maki as our next witness.

11 REPORTER: Do you solemnly swear or affirm the
12 testimony you're about to give will be the whole truth?

13 MR. MAKI: I do.

14 JOSEPH MAKI

15 having been called by the Respondent and sworn:

16 DIRECT EXAMINATION

17 BY MR. REICHEL:

18 Q Good morning, Mr. Maki. Could you please state your full
19 name and spell your last name for the record?

20 A Yes. Joseph Roy Maki, M-a-k-I.

21 Q Mr. Maki, you work for the Department of Environmental
22 Quality; correct?

23 A I do.

24 Q And in what division or office of the DEQ?

25 A I work for the Office of Geological Survey.

1 Q And where are you based in your work for the DEQ?

2 A I'm based in the Upper Peninsula district office.

3 Q Okay. And where is that located?

4 A That's located in Gwinn, Michigan.

5 Q And by way of background, sir, where are you from

6 originally?

7 A I'm originally from Houghton in the Upper Peninsula. I

8 graduated high school there.

9 Q Okay. Mr. Maki, your resume has been included in

10 Respondent's proposed Exhibit 12, which by stipulation of

11 the parties is already part of the record. I'd like to ask

12 you now, sir, to briefly review your formal education

13 beginning with college.

14 A I have a bachelor's of science degree in geology and a

15 concentration in hydrology from Central Michigan University.

16 Q In what year did you obtain that degree, sir?

17 A 1995.

18 Q Since completing your bachelor of science in geology and

19 hydrology, have you had occasion to take any other training

20 courses relevant to your work with the DEQ?

21 A I have.

22 Q Could you briefly outline for Judge Patterson what that's

23 entailed?

24 A Sure. A lot of these courses were called short courses,

25 extended learning courses that you got credit for. I took a

1 course in hydrogeologic modeling, MODFLOW modeling as we've
2 heard a lot about here, hydrologic testing methods, pump
3 test methods as we heard about here, geochemistry related to
4 mining, the effects of mining on hydrology as related to
5 geochemistry. And I also took a field study course up in
6 Thunder Bay, Ontario, where we went to a lot of existing and
7 abandoned mines which focused on prevention and mitigating
8 acid rock drainage.

9 Q After you received your degree, Mr. Maki, in 1995, how were
10 you first professionally employed?

11 A I started my employment at the Minnesota Department of
12 Natural Resources in the Division of Lands and Minerals.

13 Q Okay. And where were you located, sir?

14 A I was located in northern Minnesota, Grand Rapids,
15 Minnesota, which is about an hour and a half north and west
16 of Duluth, Minnesota.

17 Q And when you started with the Minnesota DNR, what was your
18 job title or function?

19 A I was hired in as a hydrogeologist -- essentially an
20 entry-level hydrogeologist where my functions were -- my job
21 functions were doing a lot of field data, which was
22 collecting flow measurements in streams, water level data in
23 pits, primarily focused on open pit iron mining on the
24 Minnesota Iron Range.

25 Q And did the particular branch or office of the Minnesota DNR

1 which you worked -- was that specifically involved in
2 regulating mining activity?

3 A It was.

4 Q During the course of your employment at the Minnesota DNR,
5 did your job responsibilities change or evolve over time?

6 A They did. My primary job responsibilities were kind of
7 twofold. One was we had a research component to our
8 division where my responsibilities were collecting and
9 evaluating hydrologic impacts from open pit mining, historic
10 mining and active mining, and then applying that to
11 potential future mines, as well as regulatory side of it
12 where we would regulate the mining companies as far as their
13 water discharge, their pumping, just assuring that the
14 effects on local hydrology were addressed.

15 Q I think you indicated already that your work with the
16 Minnesota DNR focused primarily on open pit iron mining; is
17 that correct?

18 A That's correct.

19 Q During the course of your work in the Minnesota DNR, did you
20 have occasion to have any contact with underground mining
21 activities either historic or active?

22 A I did.

23 Q And could you briefly describe what that was to the court?

24 A Yes. In the iron mining district in northern Minnesota, a
25 lot of the mines started out as open pit mines, and some of

1 them eventually turned into underground mines very, very
2 early on. Probably late 1800's or early 1900's when that
3 occurred. There were a couple -- at least one specific one
4 in northern Minnesota that was an underground mine kind of
5 similar to size of the Eagle project that's proposed. That
6 was closed down as an active operating mine. But they
7 opened it up as a state park, and they conducted tours down
8 into the mine. In the bottom parts of this mine, they had a
9 laboratory -- a big cavern that they mined out, and they
10 conducted experiments on it. And it was kind of a
11 continuing thing where they were mining and expanding on
12 that laboratory. So I had some experience primarily on
13 hydrologic effects of underground mining in that case. And
14 then there was a couple of other abandoned underground mines
15 that were presenting some water volume issues in connection
16 with open pit mines.

17 Q Okay. But again just so the record is clear, your
18 experience in Minnesota was primarily oriented towards open
19 pit -- I mean, the active mines were open pit mines;
20 correct?

21 A That is correct.

22 Q Did there come a time during your tenure at the Minnesota
23 DNR when you decided to relocate to Michigan?

24 A There did, yes.

25 Q Could you explain the circumstances of that?

1 A Yes. A position opened in the Upper Peninsula district
2 office as the U.P. district geologist. And being from the
3 U.P., I always wanted to get back to the Upper Peninsula.
4 So I had applied for that position and ultimately accepted
5 the job.

6 Q Okay. And again in what year did you start with the
7 Michigan DEQ?

8 A I believe it was early 2003 is when I started.

9 Q And when you started with the Michigan DEQ in 2003,
10 initially what was your job function?

11 A I had several job functions. I'll start with oversight of
12 some of the state statutes that were under OGS. Part 637 is
13 a statute that governs sand dune mining. We have one sand
14 dune mine in the Upper Peninsula. So I was responsible for
15 the inspections and enforcement and compliance requirements
16 of that facility as well as there is 631, which is -- at the
17 time was our existing mining statute, which primarily
18 governed the open pit -- two open pit active iron mines in
19 the Upper Peninsula. So I had responsibility similar to
20 this -- with those with inspection, compliance requirements.
21 As well, I had responsibilities for our state -- the state
22 statute Part 625, which is the Mineral Well Act which
23 governs essentially exploration drilling in the State of
24 Michigan. But I had responsibilities in the Upper
25 Peninsula. And those duties required me to do routine

1 inspections of exploration activities assuring that they
2 were meeting the requirements of 625.

3 Q And without going into a lot of detail about the
4 requirements, when you talk about Part 625, you're talking
5 about Part 625 of the Natural Resources and Environmental
6 Protection Act?

7 A That is correct.

8 Q If you know, sir, does the -- well, you do know. With
9 respect to Part 625, do the responsibilities include, among
10 other things, proper closure or plugging of boreholes or
11 drill wells after they've been advanced?

12 A It does. That's a very important part of that regulation is
13 to assure that the holes are properly abandoned, as we call
14 it, where they're plugged with cement and then ultimately
15 the site is reclaimed.

16 Q Is that one of the reasons -- was that one of the reasons
17 that you had occasion to observe and inspect exploratory
18 mineral wells?

19 A That's correct.

20 Q During the course of your work in the DEQ in the U.P.
21 district office, as you've just described, again you've
22 testified that -- a regular part of your duties, as I
23 understand it, you had occasion to monitor and observe well
24 drilling activity; is that correct?

25 A That's correct.

1 Q During the course of that work going back to the time period
2 in 2003, did you have occasion to note any particularly --
3 to you potentially significant drilling projects?

4 A Yes. I believe it was around early 2003, mid 2003, I had
5 been conducting inspections on some mineral well activity in
6 Menominee County which is the southern part of the Upper
7 Peninsula near the Wisconsin border. Primarily Lake
8 Township there was some exploration activity. I had
9 identified there that there was a significant concentration
10 of drilling compared to the -- what we call wildcat
11 drilling, a hole here and a hole here, there was a fairly
12 concentrated effort of drilling going on in this location.
13 And through my conversations with the drillers and the
14 geologists, I got kind of a feel of how deep they were
15 drilling and kind of what the mineralogy they were searching
16 for or at least trying to identify.

17 Q And with respect to this area of drilling activity near
18 Menominee or the vicinity of Menominee, what was the range
19 of depth approximately that they were drilling? Was this
20 near surface or at some depth?

21 A They had some near surface holes, but primarily the majority
22 of the holes were at depth, greater than 500 feet.

23 Q And based upon that, what, if any -- the information about
24 the well drilling depth and discussions with the driller,
25 what, if any, conclusion or inference did you draw about the

1 objective of this exploratory drilling?

2 A Well, my conclusions were that, one, they were not looking
3 for iron as we were used to active mining in the Upper
4 Peninsula. They were looking for what I referred to as
5 potentially base metal or precious metal; base metals
6 meaning zinc, copper, lead, those types of metal, which are
7 not iron. And the exploration activities were -- seemed to
8 be quite deep, which would lead me to believe that, if they
9 were to try to develop that orebody or that deposit, they
10 would have to do it through underground mining methods.

11 Q Mr. Maki, in preparation for your testimony today, have you
12 prepared some slides to help illustrate some of the points
13 that you expect to talk about?

14 A I have.

15 MR. REICHEL: I would note for the record that --
16 could you please put up Respondent's proposed Exhibit Number
17 207? Your Honor, this is, as the witness has indicated, a
18 series of slides that he has put together that we anticipate
19 using, as in the case with other witnesses, for
20 demonstrative purposes only. It has been disclosed to
21 opposing counsel before today's hearing.

22 Q Mr. Maki, we have up slide number 1 with a heading
23 "Development of Part 632." Is this one of the slides that
24 you prepared?

25 A It is.

1 Q Okay. I think just looking at the first two bullets, you've
2 already addressed those essentially; is that correct?

3 A That's correct.

4 Q As a result of -- before we go on, you've testified so far
5 about increased drilling activity in the vicinity of
6 Menominee closer to the Wisconsin border in the western
7 Upper Peninsula?

8 A Correct.

9 Q At or around the same time period, did you have occasion to
10 learn of any other areas where there was extensive
11 exploratory drilling?

12 A I did.

13 Q And what was that area?

14 A The area was essentially the Yellow Dog Plains just south of
15 Big Bay, Michigan, in the Upper Peninsula. Right around mid
16 2003, Kennecott Exploration was conducting exploration
17 activities in that vicinity. And once again, I recognized
18 that they were starting to kind of focus in on a general
19 area.

20 Q And again this is already clear from the record. What did
21 you learn about the approximate depth of the drilling as it
22 may relate to the potential of either open pit versus
23 surface mining?

24 A Well, I had recognized from conversations with the drillers
25 and exploration geologists that they were looking fairly

1 deep, greater than 500 feet again.

2 Q In light of that, what, if any, conclusion or concern did
3 you develop regarding how, if these -- if either of these
4 projects were to be developed, how they would be regulated
5 under then existing state law?

6 A Well, in anticipation or just from own personal review, I
7 looked at Part 631, which is the statute that I referenced
8 earlier which is our primary statute that we apply to open
9 pit iron mining. So I looked at that statute to determine
10 how that might apply to a potential underground base metal
11 or precious metal mine.

12 MR. REICHEL: Slide 2, please.

13 Q In looking at Part 632, what, if any, aspects of the statute
14 as you reviewed it raised any concern to you about potential
15 gaps in regulation?

16 A Well, in my review of Part 631, I had identified a portion
17 of that statute which we see up here on the slide that
18 primarily focused on and only included surface or open pit
19 mining methods. It specifically did not have any
20 information in there or any requirements for underground
21 mining methods.

22 Q So based upon that review, did you communicate to your
23 management that is -- or supervisors within the DEQ both the
24 fact that you were -- had become aware of this increased
25 drilling activity that appeared to be targeting mineral

1 formations -- non-metallic mineral formations at a depth
2 that would presumably require underground mining?

3 A I did. I informed my direct supervisor and upper management
4 in OGS, who, in turn, informed DEQ executive staff.

5 Q Okay. And just to be clear, when we talk about OGS, you
6 mean what? The Office of Geological Survey?

7 A Office of Geological Survey.

8 Q And while we're on the subject, could you briefly review
9 your management chain within the DEQ?

10 A Yes. Steve Wilson, he's the unit supervisor for the
11 Minerals and Mapping Unit. He's my direct supervisor. Hal
12 Fitch is the state geologist as well as the chief of the
13 Office of Geological Survey.

14 Q And above Mr. Fitch?

15 A It would go to, I believe, Jim Sygo, deputy director of DEQ,
16 and then Steve Chester, director of the DEQ.

17 Q Now, just to be clear, at the time of -- we're talking about
18 here; that is, 2003, if I understand it correctly; Mr. Sygo
19 was not the deputy director to whom you reported. Is that
20 correct?

21 A He was not. Mr. Skip Pruss was the deputy director at that
22 time.

23 Q Okay. But going back to what you were saying, you indicated
24 that briefed your management about this increased
25 exploratory activity and, I take it, raised an issue about

1 how -- if mines were to be developed, how they would be
2 regulated?

3 A That's correct.

4 Q And what if -- as a result of that briefing, what, if any,
5 actions were you directed to take?

6 A Well, ultimately I was asked to put together a presentation
7 on the activity -- exploration activity that was going on in
8 the Upper Peninsula and a summary of my conclusions of the
9 potential inadequacies of Part 631. I presented that
10 information to the DEQ executive staff, our director and all
11 of the executive managers. After that presentation, I was
12 asked to make that presentation to the Upper Peninsula
13 legislators. They happened to be in town at the time. So
14 they wanted to hear the presentation. And I should point
15 out that they had also been receiving calls from their
16 constituents expressing concern or asking questions about
17 the increased exploration activity in the U.P.

18 Q Right. And thank you for that clarification. Because
19 you're not implying, are you, Mr. Maki, that you personally
20 were individually or solely responsible for the development
21 of Part 632, are you?

22 A No; no, not at all. I think the public input was probably
23 the largest reason that this statute moved so quickly.

24 Q We're getting a little bit ahead of ourselves. After you
25 did this briefing to DEQ executive division and at their

1 request some legislators from the U.P., what other actions
2 were you asked to take or did you take?

3 A Well, it was essentially concluded that we needed to look at
4 potentially drafting a new statute. So in anticipation of
5 that, I was asked to do some research on existing statutes
6 throughout the United States. I picked states Wisconsin,
7 Minnesota and any other states that had essentially hard
8 rock mining, base metal mining or precious metal mining;
9 Arizona, Nevada, Alaska, California, Montana, several other
10 states. So what I did is I did research on their statutes,
11 reviewed their statutes, the information that they had in
12 there. And I followed that up with conversations with
13 essentially my counterparts in those states, the regulators
14 of those statutes, to find out what the good and what the
15 bad was of those statutes.

16 Q Okay. And based upon that review, what did you next?

17 MR. REICHEL: Could you please put up slide 3?

18 A Yes. I essentially drafted an outline where I gleaned from
19 those statutes and the conversations I had with the
20 regulators some proposed language that may be used in a new
21 statute. So ultimately as we go through this, we did -- and
22 we'll talk about the stakeholder group. This was kind of
23 the framework we used for developing the statute.

24 Q Okay. Let's back up. And just to be clear -- I mean, the
25 slide is here just to illustrate some of the points you want

1 to cover. Did -- at or around this time, did the Department
2 of Environmental Quality convene a stakeholder group; that
3 is, an informal group of various interests; to discuss
4 potential changes in regulation of underground mining in
5 Michigan?

6 A They did.

7 Q Okay. And when you talk about a stakeholder group, was this
8 something that you understood was intended to represent a
9 range of different interests?

10 A Yes.

11 Q And what state agencies were included in the stakeholder
12 group?

13 A The DEQ and DNR.

14 Q Okay. And did the stakeholder as it was convened also
15 include representatives of environmental conservation
16 organizations?

17 A It did.

18 Q And could you give Judge Patterson just by way of background
19 examples of what those organizations were?

20 A Absolutely. Well, National Wildlife Federation was part of
21 it, Huron Mountain Club was part of it, Keweenaw Bay Indian
22 Community was part of it, Sierra Club was part of it,
23 Michigan Environmental Council was part of it, Michigan
24 United Conservation Clubs was part of it, Trout Unlimited
25 was part of it, and I'm sure I've forgot some. But that's

1 generally the --

2 Q Again I'm just asking for illustration.

3 A Yes.

4 Q And did the stakeholder group also include any

5 representatives of the mining industry?

6 A They did; they did.

7 Q And could you give examples of who that would be?

8 A Well, Kennecott Eagle Minerals was part of the group,

9 Mineral Processing Corporation, which is the company that I

10 had referenced that was doing exploration in Menominee

11 County, Cleveland Cliffs, Incorporated, the Tilden Empire

12 Iron Mining Company in the Upper Peninsula and Detroit Salt

13 Mine was part of that group as well.

14 Q This stakeholder work group was convened, and this was in

15 2003; is that correct?

16 A That's correct.

17 Q And what did you understand the charge of that group to be?

18 A The charge was to draft language for either amending Part

19 631, our existing statute, or to draft new language for a

20 brand new statute.

21 Q And what role, if any, did you play in the stakeholder work

22 group process?

23 A I essentially was asked to participate as a technical

24 advisor to Hal Fitch and Skip Pruss during that process.

25 Q That is DEQ management?

1 A To DEQ management, correct.

2 Q And, if you know, did the stakeholder group have a series of
3 meetings where various proposals were discussed?

4 A Absolutely.

5 Q And ultimately, I take it, legislation was drafted and
6 introduced to the legislature?

7 A It was.

8 Q And was that legislation ultimately enacted as Part 632 of
9 the NREPA?

10 A Yes. On December 27, 2004, the statute was signed into law.

11 Q Mr. Maki, I take it you, by virtue of your work, have
12 familiarity with Part 632; is that correct?

13 A That's correct.

14 Q Does Part 632 include within its provisions an authority to
15 the DEQ -- or did it include authority to the DEQ to develop
16 or promulgate administrative rules to implement the statute?

17 A It does.

18 Q And if you recall, sir, did the statute specify a certain
19 time frame within which the DEQ is authorized to promulgate
20 such regulations?

21 A Yes. There's a 12-month window allotted for that.

22 Q So if I understand you correctly, the DEQ was authorized or,
23 if not, directed to promulgated regulations within 12 months
24 after the statute became effective; is that correct?

25 A Correct.

1 Q Okay. And as a result of that, what actions did the DEQ
2 take to implement -- or that is, to develop implementing
3 regulations?

4 A Well, once again, the DEQ formed a stakeholder group made up
5 of roughly the same participants of the work group that
6 drafted the statute. And the charge was to develop language
7 for administrative rules.

8 MR. REICHEL: Would you please put up slide 4,
9 please?

10 Q Does this slide outline part of that process?

11 A It does.

12 Q Okay. Again, you testified that there was a similar
13 stakeholder group. When you say that, do you mean that a
14 similar range of interests were represented in this work
15 group?

16 A A similar range of interests and, in many cases, the same
17 exact people.

18 Q And what role individually, Mr. Maki, did you play in this
19 process?

20 A Well, my role was to essentially chair a subgroup. I was
21 assigned to chair a subgroup to develop a portion of the
22 administrative rules.

23 Q And what was the subject matter or what were the subject
24 matter that you and other members of your subgroup were
25 focusing on?

1 A The mining reclamation environmental protection plan as well
2 as a contingency plan of the rule package.

3 Q Okay. Did that relate to particular subsections of the
4 NREPA -- Part 632?

5 A Right; correct. And they're outlined right there in my
6 second bullet point.

7 Q For the record, that's section 63205(2)(c) and (d); is that
8 correct?

9 A Correct.

10 Q And again, to your knowledge, sir, did the -- first of all,
11 just in terms of timing, when was this sub- -- strike that.
12 When was this work group convening?

13 A I believe it began convening in early 2005.

14 Q Okay. And that would be consistent with your testimony that
15 the DEQ was essentially allotted 12 months after the statute
16 became effective at the end of 2004?

17 A That's correct.

18 Q And again were there a series of meetings among the
19 participants in the stakeholder work group?

20 A Yes.

21 Q And was specific language -- or draft language for
22 administrative regulations discussed among the participants
23 in the work group?

24 A It was.

25 Q And ultimately did the Department of Environmental Quality

1 put -- draft proposed regulations and put them out for
2 formal promulgation under the Administrative Procedures Act?

3 A The department did, yes.

4 Q And if you know, as a part of that administrative rule
5 promulgation process, were there opportunities for public
6 notice and comment on the draft rules?

7 A There was.

8 Q And ultimately did the department promulgate administrative
9 rules to implement Part 632?

10 A Yes. The rules were promulgated on February 2nd, 2006.

11 Q Okay. So the process that you just -- some of the
12 activities you've just described included your participation
13 in the development as a part of a larger effort of many
14 individuals to develop both the statute and the rules that
15 is under Part 632. During this same time period in -- that
16 is, 2004, 2005, did you have any occasion to have
17 communications with representatives of Kennecott Exploration
18 Company or Kennecott Eagles Minerals Company about their
19 exploration and possible mine development?

20 A I did.

21 Q And could you describe, in a general sense, the nature of
22 those communications?

23 A Yes. Well, as my --

24 MR. REICHEL: Could you put up slide 5, please?

25 A As my slide indicates here, this occurred roughly between

1 2004 and 2005. In 2004 time frame, the company was still
2 actively conducting exploration activities. So our
3 conversations were primarily focused on exploration. As
4 they moved into, I guess, more of a baseline data collection
5 or evaluation, we had conversations with the company
6 regarding those types of activities.

7 Q And I believe this should be clear from the record, but just
8 to put it in context, under Part 632, to your knowledge, one
9 of the requirements that a person proposing to get a mining
10 permit under 632 -- an applicant for a mine permit under
11 Part 632 is required statutorily to provide various types of
12 information to the department; is that correct?

13 A That is correct.

14 Q And does that, to your knowledge, include an environmental
15 impact assessment?

16 A Yes, it does.

17 Q And would such an environmental impact assessment be
18 required to provide baseline data about existing conditions?

19 A That's correct; yes.

20 Q Okay. So is that the context in which, as you testified a
21 moment ago, you had some communications from Kennecott about
22 their collection of baseline data?

23 A That's correct.

24 Q Okay. And your slide indicates that some data collection
25 reports were submitted to the DEQ. So could you elaborate

1 on that, please?

2 A Yes. The company had submitted to us preliminary baseline
3 data that they had collected out on the Yellow Dog Plains.
4 They provided that to us for our review.

5 Q You say "review." Were you being asked to -- was there a
6 requirement that you formally approve these baseline data at
7 this time?

8 A There was no formal requirement to approve or even review
9 them. It was mainly for our own benefit to understand what
10 the company was doing out on the plains at that time.

11 Q And again just to be clear, the activity we're now
12 describing preceded or came before actually submitting an
13 application; is that correct?

14 A That's correct.

15 Q Did there come a time when the Kennecott Eagle Mining
16 Company wrote to the DEQ and stated its intention to submit
17 a mining application?

18 A Yes. As indicated in my third bullet, Kennecott Eagle
19 Minerals Company submitted a letter to us in mid 2005
20 indicating their intent to submit a mining permit
21 application.

22 Q Okay. And after receiving that notice, what, if any, action
23 did you or your management take to -- in anticipation of
24 receiving a possible mining permit application under Part
25 632?

1 A The department, primarily the Office of Geological Survey,
2 proceeded to establish a mining review team in anticipation
3 of receiving an application.

4 Q Could you explain to Judge Patterson what you mean by a
5 mining review team and what you understood its function to
6 be?

7 A Yes. Ultimately we had -- under the statutory requirements,
8 we knew there was a certain type of data and amount of data
9 that was going to be required to be submitted to the
10 department which required certain expertise in those fields
11 to be able to review that. So we began searching for that
12 expertise within the department, within the DEQ and the DNR,
13 and then ultimately we had to seek additional expertise
14 outside the department.

15 Q Okay. When you talk about expertise, are you talking about
16 people with specialized knowledge in particular areas that
17 would be addressed in some part of the permit application?

18 A That's correct.

19 Q Okay. And did, in fact, the department establish a mining
20 review team?

21 A The department did.

22 Q Okay.

23 MR. REICHEL: And could you put up the next slide,
24 please? This is slide 6.

25 Q This slide looked at having a mining review team. It lists

1 certain individuals and then has a description next to these
2 names. Let's walk through them one by one. You're the
3 first person listed, Mr. Maki. What was your function
4 within the mining review team?

5 A Well, as indicated on the slide, my primary role was the
6 application review coordinator. That was to just coordinate
7 the activities of the review -- for the review of the
8 application.

9 Q Okay. And the next person listed is Chuck or Charles
10 Thomas. First of all, who does he work for and in what
11 capacity?

12 A Mr. Thomas works for the Department of Environmental Quality
13 Water Bureau. He's an environmental engineer. And he is
14 located in the Upper Peninsula district office with me.

15 Q And how was it that he was called upon to serve on the
16 mining review team?

17 A Mr. Thomas was identified as somebody who had particular
18 expertise in U.P. hydrogeology and U.P. geology. And then
19 that's what we solicited from him is that expertise.

20 Q The next person on the list is Margie Ring. Again what
21 agency or who does Ms. Ring work for and in what capacity?

22 A Ms. Ring is another Department of Environmental Quality
23 employee. She works for the Waste and Hazardous Materials
24 Division. Ms. Ring is -- her primary responsibilities, I
25 believe, are -- and expertise is in liners for solid waste

1 and hazardous waste facilities.

2 Q Okay. Well, she's involved in, if you understand,
3 regulation of disposal areas, licenses?

4 A Correct. She's enforcement and administration of those
5 rules, yes.

6 Q And what aspects of the project or anticipated project was
7 she brought in to address?

8 A Well, as I indicated up here, the temporary development rock
9 storage area which has been referred to as the TDRSA
10 throughout this hearing.

11 Q And as the record reflects, is intended to operate as a
12 storage facility of development rock during the development
13 of the mine; is that correct?

14 A That's correct.

15 Q The next person listed on your list is Doug Pasco. Who does
16 Mr. Pasco work for and in what capacity?

17 A Mr. Pasco also works for Department of Environmental
18 Quality, the Water Bureau. Mr. Pasco is an environmental
19 engineer. However by formal education, Mr. Pasco was
20 trained as a mining engineer, and more specifically Mr.
21 Pasco had particular experience in underground mining in the
22 Upper Peninsula as well as a wide range of mining activities
23 in Minnesota.

24 Q So what aspects of the anticipated permit application or
25 permit review process was he assigned responsibility?

1 A Mr. Pasco was primarily asked to look at the mine design and
2 the general site layout, specific things related to the
3 mining activities.

4 Q The next individual listed is Kristen Mariuzza. Again, who
5 did Ms. Mariuzza work for and in what capacity?

6 A Yes. At the time, Ms. Mariuzza worked for Water Bureau in
7 the Department of Environmental Quality. But since Ms.
8 Mariuzza has left the department to be a full-time
9 stay-at-home mom. But at the time she worked for Water
10 Bureau. She's an environmental engineer. And her role was
11 to act as a liaison in one aspect between Water Bureau and
12 OGS. Ms. Mariuzza was part of the work group that drafted
13 the rules, so she had firsthand knowledge of those rules.
14 And her role was to basically interact between the
15 groundwater unit and Water Bureau and OGS. She also had
16 responsibilities in looking at the design of the wastewater
17 treatment system as well as some of the surface water
18 quality requirements and monitoring locations in the
19 application.

20 Q The next person listed is Jessica Mistak. And again who
21 does she work for and in what capacity?

22 A Ms. Mistak works for the Department of Natural Resources
23 Fisheries Division. Her role was to review the aquatic
24 resources and stream morphology information in the EIA of
25 the application.

1 Q If you know, where is Ms. Mistak based?

2 A She is based in the fish hatchery in the Upper Peninsula
3 located in Harvey, Michigan.

4 Q The next person on the list is Mike Koss. Who does Mr. Koss
5 work for and in what capacity?

6 A Mr. Koss works for the Department of Natural Resources
7 Wildlife Division. At the time, Mr. Koss was the area
8 wildlife biologist. And he was asked to come in and review
9 the portions in the EIA which addressed wildlife and
10 threatened and endangered species.

11 Q Now, the next person listed is Ted Eary. Who is Mr. Eary --
12 who does Mr. Eary work for and how did he become involved in
13 this project?

14 A As I mentioned earlier, we had to go outside of the -- out
15 of the agencies -- out of the state agencies to look for
16 people with certain expertise. And this is one area we
17 recognized in our initial reviews, geochemistry,
18 particularly mining geochemistry. And so Dr. Eary works for
19 MFG, Incorporated, out of Colorado.

20 Q What is MFG?

21 A MFG is a consulting firm. I'm not sure what MFG actually
22 stands for.

23 Q How was it that MFG became involved?

24 A We contacted MFG to do the review of the geochemistry work
25 that was provided in the application.

1 Q The next person listed is Keith Smith. Who does Mr. Smith
2 for and in what capacity?

3 A Yeah. Once again, this was a -- financial assurance is what
4 Mr. Smith worked on. It was in an area that we felt that we
5 did not have internal expertise so we needed to go outside
6 to an outside contractor. Mr. Smith works for ARCADIS. His
7 office is located in Helena, Montana. And Mr. Smith was
8 asked to come in and review the financial assurance sections
9 of the application.

10 Q The next person listed is Dr. David Sainsbury. The Tribunal
11 has already heard extensive testimony and his deposition
12 transcript is already in the record. But again, could you
13 briefly explain for the record how it was that Mr. Sainsbury
14 became involved in assisting the DEQ in reviewing the permit
15 application?

16 A Yes. Shortly after we received the application, as we were
17 reviewing it, we recognized that, well, first of all, Mr.
18 Pasco, who was the mine engineer, didn't really have the
19 expertise to review the rock mechanics. And we didn't have
20 anybody internally that had that expertise. So we made a
21 decision that we needed to go outside the agency once again.
22 So my first was to talk to Dr. Eary and Mr. Smith, because
23 those were two firms that we had already had contractors
24 with, to see if they had individuals in their firms that
25 would be capable of reviewing the rock mechanics. Dr. Eary

1 indicated his firm had individuals that would be able to do
2 that. And those individuals ultimately subcontractor Dr.
3 Sainsbury from Itasca Consulting out of Minneapolis,
4 Minnesota, to do the rock mechanic evaluation.

5 Q And the last person you have listed here -- listed on this
6 slide is Dr. Wilson Blake, who has already testified and the
7 record already reflects the nature of his involvement. But
8 just for purposes of continuity, first of all, Mr. Blake was
9 not initially involved in the mine permit review; is that
10 correct?

11 A That's correct.

12 Q But he did become involved at a later stage in the process
13 to provide further review of the rock mechanic issue?

14 A That's correct.

15 Q I'd like to ask you now, Mr. Maki, to outline a little bit
16 more what your individual role was in this process of
17 considering the mining permit application.

18 MR. REICHEL: Could you put up slide 7, please?

19 A Yes.

20 Q Well, first of all, I think you've already testified to
21 this. But your role was one of coordinating review. Could
22 you elaborate on the kinds of tasks that you undertook?

23 A Right. In my role of coordinating the review, as the slide
24 continues to show, there are several things that I was
25 responsible for. First of all, once we received the

1 application, my role was to essentially disseminate the
2 application -- appropriate sections to the review team for
3 their review. I also provided the mining review team with
4 their -- the sections of Part 632 of the rules that applied
5 to their particular review. And then I coordinated and
6 scheduled any meetings between the mining review team and
7 Kennecott Eagle Minerals. At points in the review process,
8 there were things that would come up, some simple questions
9 that the review team might have. And I would facilitate
10 either a conference call or a face-to-face meeting with the
11 company and the team to discuss those issues.

12 MR. REICHEL: Could you put up slide 8, please?

13 Q Again, this slide outlines some additional tasks that you
14 performed individually as part of this process. Could you,
15 for the record, elaborate on what those included?

16 A Yes. I also coordinated and scheduled periodic progress
17 meetings with the mining team. The main purpose of that was
18 to find out where they were in their review process and, as
19 well, inform them and keep them informed of the statutory
20 time lines that are required through that process which
21 included, as I'll get into this, public meetings and things
22 of that nature. So they were just essentially progress
23 report meetings.

24 Q Okay. And again I'll be asking more questions about this.
25 But at various stages of the permit review -- or application

1 review process -- excuse me -- comments were received from
2 the public. What was your role with respect to those?

3 A Well, yes. Concurrently with the review going on, we also
4 in my responsibilities were to assist with coordinating a
5 public meeting. In the statutes early in the process, the
6 department is required to hold a public meeting. So I
7 assisting in coordinating that meeting in the Upper
8 Peninsula. Then we -- under the statute there's a window
9 that we accept written public comments from the public. And
10 then my responsibilities were to assist in compiling the
11 public comment document and then distributing those comments
12 to the mining team for their review and consideration.

13 MR. REICHEL: Could you go to slide 9, please?

14 A And does this slide continue your outline of the activities
15 that you performed?

16 Q Let me -- without necessarily following this slide verbatim,
17 let me just ask you, as the -- you testified that the
18 application as well as comments received from the public
19 were distributed among the team members; correct?

20 A That's correct.

21 Q And as this process unfolded, did you solicit or seek input
22 from the team members on aspects of the permit application
23 within their respective areas of expertise?

24 A I did.

25 Q And in doing that, what sorts of questions or issues

1 specifically did you ask team members to provide you with
2 recommendations or comments?

3 A I'm not sure I understand that.

4 Q Well, let me state this. You've testified that -- as I
5 understand it, that you distributed the application
6 materials as well as public comments to the team members.
7 You had also provided the team members by way of background
8 if they weren't already familiar with provisions of Part
9 632, the statute and the rules.

10 A Yes.

11 Q What were you asking them to look at? What kinds of -- what
12 were you seeking their input on?

13 A I was seeking their input on primarily in the early stages
14 was to identify any areas within the application that they
15 required additional information or needed clarification on.

16 Q And as the process developed, were you also seeking their
17 input as to whether or not with respect to the issues they
18 were asked to look at the information available did or did
19 not satisfy the requirements of Part 632 and its rules?

20 A Oh, absolutely. Ultimately the goal was to -- through the
21 mining team to identify was this -- did this application
22 meet the requirements and comply with Part 632 and its
23 rules.

24 Q And did the -- did you also solicit from team members any
25 recommendations they had with respect to potential specific

1 conditions that would or should be -- they recommended that
2 should be included within a permit if it were to be issued?

3 A I did.

4 Q And throughout this process, did you have occasion to
5 consult with your supervisors in the DEQ?

6 A I did.

7 Q The third bullet on slide 9 talks about -- it says you
8 polled mining review team to determine if there was
9 consensus on the permit decision. Could you explain what
10 you mean by that?

11 A Well, in the early stages when we were getting to the point
12 where we had to make a proposed decision to either issue or
13 deny the permit, I polled the team to determine what that
14 decision should be.

15 Q Okay. And your next bullet notes that you made the mining
16 review team's recommendation to issue the permit to your
17 management; is that correct?

18 A That's correct.

19 Q And again I think we'll go into a little more detail on the
20 chronology later. But I just wanted to have you give Judge
21 Patterson a sense of what role you played in this process.
22 Okay. Obviously an application for a mining permit under
23 Part 632 is ultimately received. I'd like now to go
24 chronologically through that review process.

25 MR. REICHEL: Could you put up slide 10, please?

1 Q Now, the first three bullets refer, Mr. Maki, to permit
2 application submitted to the DEQ on February 27, 2006; is
3 that correct?

4 A That's correct.

5 Q And the first one is an application for Part 632 permit; is
6 that correct?

7 A That's correct.

8 Q And, Mr. Maki, during your course of your work for the DEQ,
9 did you, in fact, have occasion to review the permit
10 application in its entirety?

11 A I did.

12 Q And do you -- so you have knowledge of what was contained
13 within the permit application; correct?

14 A Correct.

15 Q And have you also had occasion to look at the series of
16 documents that we have marked for identification in this
17 proceeding as Respondent's Exhibits 25 through 41?

18 A I have.

19 Q And to your knowledge, sir, do those designated exhibits --
20 do they or do they not include the permit application and
21 supporting documents and appendices that Kennecott submitted
22 to the DEQ as of February of 2006?

23 A They do include those.

24 Q The court has -- Judge Patterson has already heard and the
25 record contains certainly many individual or discrete --

1 discussions of many individual discrete sections of the
2 permit application supporting documents. But just to give
3 Judge Patterson a sense and to establish on the record some
4 sense of how extensive this permit application is, I asked
5 you, Mr. Maki, the other day to actually physically look at
6 all of the permit applications lined up in binders on a
7 shelf?

8 A Yes, you did.

9 Q And at least to give some indication of the approximate
10 physical dimension; that is, how much shelf space these
11 various volumes in total occupy?

12 A Correct.

13 Q And what did you observe in that regard?

14 A When measuring those documents, they measured to
15 approximately 4 feet.

16 Q I haven't asked you to undertake a page count. But would it
17 be safe to say that it's in the thousands of pages?

18 A Yes. I believe a page count was conducted early on, and it
19 was in the 8,000 page range.

20 Q Now, your slide also notes that, at the same time, that
21 Kennecott submitted to the DEQ applications for a permit
22 under Part 31 for groundwater discharge; is that correct?

23 A That's correct.

24 Q And also submitted an application for an air permit under
25 Part 55 of the NREPA; correct?

1 A Correct.

2 Q Now, as you well know, this proceeding here involves both
3 the Part 632 and Part 31 permit. But just so the record is
4 clear, the mining review team which you essentially chaired
5 or coordinated was responsible for reviewing which of these
6 permit applications?

7 A Our responsibility was the Part 632 permit application.

8 Q Okay. And to your knowledge, did separate staff or other
9 staff within the DEQ participate in the review and decision
10 making with regard to the Part 31 permit application?

11 A They did.

12 Q And what branch of the DEQ was that?

13 A That -- Water Bureau.

14 Q Okay. And similarly with respect to Part 55, who in the DEQ
15 handled that?

16 A The Air Quality Division was responsible for that permit
17 application review.

18 Q Okay. The next bullet on your slide indicates that, in
19 March 2006, there was a notification to KMEC (sic) that the
20 mining permit application was administratively incomplete.

21 MR. REICHEL: Could you please display
22 Respondent's proposed Exhibit 44?

23 Q We'll talk a bit -- I'll ask you to talk a bit, Mr. Maki,
24 about administrative completeness or incompleteness. But is
25 it your understanding that, under the statute as a threshold

1 matter, the department is required to determine whether the
2 permit application is, quote, "administratively complete"?

3 A Yes, we are.

4 Q Okay. I've displayed what's been marked for identification
5 as Respondent's Exhibit Number 44, which is the
6 correspondence with the data indicated earlier. Do you
7 recognize this document, sir?

8 A I do.

9 Q And what -- and who sent -- this is addressed to Mr. Cherry
10 of Kennecott; is that correct?

11 A That's correct.

12 Q Without reading the entire document, is this the document
13 that was referred to on your slide?

14 A It is.

15 Q And to your knowledge, what issue or issues did the
16 department identify at this time; that is, as of March 8th
17 of 2006; with respect to the administrative completeness or
18 lack of completeness of the permit application?

19 A As indicated here in the first paragraph, the DEQ had
20 determined that the application was, in fact,
21 administratively incomplete. We had requested that they
22 provide additional information regarding financial
23 assurance.

24 Q Okay. The nature of financial assurance that was being
25 proposed?

1 A Right.

2 Q Did the department receive a response from Kennecott to that
3 communication?

4 A We did.

5 MR. REICHEL: Could you please display proposed
6 Exhibit 45?

7 Q First of all, do you recognize the heading on this document,
8 sir?

9 A Yes, I do.

10 Q So this is a letter dated March 9th, 2006, to Mr. Fitch from
11 Kennecott -- from KEMC; is that correct?

12 A That's correct.

13 Q And are you familiar with this letter?

14 A I am.

15 Q And did this letter provide clarification of the financial
16 assurance issue raised in the preceding exhibit?

17 A It did.

18 MR. REICHEL: Could you please display
19 Respondent's Exhibit 46?

20 Q This is a letter dated March 10th, 2006, from the DEQ to Mr.
21 Cherry; correct?

22 A That's correct.

23 Q Are you familiar with this document?

24 A I am.

25 Q And what was the substance of this communication from DEQ to

1 Kennecott?

2 A The department informed Kennecott that the information they
3 provided was sufficient to make the application
4 administratively complete.

5 Q There has been in this proceeding in the petitions -- excuse
6 me -- petition filed in this case a contention made that the
7 permit application was, in fact, not administratively
8 complete. I'd like to walk you through now, sir, what Part
9 632 and its rules provide on that subject and your
10 understanding of that. But first of all, have you, by
11 virtue of your work with the DEQ, reviewed the relevant
12 provisions of both Part 632 -- or Part 632 as it relates to
13 administrative completeness?

14 A I have.

15 MR. REICHEL: Could you please display slide 12?

16 Q What's depicted on this slide, sir?

17 A This is essentially the definition taken out of Section
18 632.01(a) of Part 632 for administrative complete.

19 Q And could you just read that into the record, sir?

20 A Yes.

21 "Administrative complete' means an application
22 for a mining permit under this part that is determined
23 by the department to contain all of the documents and
24 information required under this part and any rules
25 promulgated under this part."

1 Q Okay. If you know, Mr. Maki, does Part 632 itself list
2 the -- and the rules list the documents and information
3 required to be submitted as a part of a mining permit
4 application?

5 A It does.

6 MR. REICHEL: Could you please turn to slide 13?

7 Q What is depicted on this slide and the following slide, sir?

8 A Okay. This is essentially that we were referring to under
9 Section 63205(2) and Part 632 identifying the information
10 and documents required to make the application
11 administratively complete.

12 Q Could you walk through what those are, please?

13 A I sure can. A completed permit application form must be
14 supplied, the permit application fee of \$5,000, an
15 environmental impact assessment -- and it continues on the
16 next slide.

17 MR. REICHEL: Could you go to slide 14, please?

18 A A mining reclamation and environmental protection plan, a
19 contingency plan, financial assurance as described in
20 Section 63211 of Part 632, a list of other state and federal
21 permits that are anticipated to be required. And then under
22 Rule 201(1)(h) of Part 632 rules, an additional one was
23 added for administratively completeness, and that's an
24 organization report.

25 Q Is that -- does this list reflect your understanding, sir,

1 of what the applicant was required to submit as a part of
2 the permit application?

3 A It is.

4 Q Okay. And, Mr. Maki, based upon your working with Part 632,
5 are you aware as to what, if any, time lines are provided in
6 the statute with respect to determining when it is to be
7 determined that an application is administratively complete?

8 A I am. On the next slide it talks a little bit about that.
9 Effective 14 days after we receive the application, the
10 department must make a determination of administratively
11 complete.

12 Q Okay.

13 MR. REICHEL: Could you put up slide 15, please?

14 Q Is this what you're referring to?

15 A This is what I'm referring to.

16 Q And so the record is clear, which subsection of the statute
17 are you referred to?

18 A This is Section 63205(4).

19 Q Okay. So under this statute -- strike that. So essentially
20 this 14 days within which the department must determine
21 whether or not the application is administratively complete;
22 is that correct?

23 A That's correct.

24 Q And does the statute also identify what action the
25 department is to take if it determines that the application

1 -- within that 14-day period if it determines the
2 application is not administratively complete?

3 A Right. Slide 16 identifies what those requirements are.

4 MR. REICHEL: Could you put up 16, please?

5 A So under Section 63205(5), essentially that -- if --

6 "The department must notify the applicant that the
7 application is not administratively complete specifying
8 the information necessary to make the application
9 administratively complete. The running of the 14-day
10 period under subsection 4 is tolled until the applicant
11 submits to the department the specified information."

12 Q Okay. Give the structure of the statute; that is, the
13 requirements as to what is it be submitted and the
14 provisions you've just talked about in terms of the time
15 frame to make a determination of administrative
16 completeness; is it -- what is your understanding with
17 respect to whether the statute contemplates in this initial
18 14-day period -- and specifically do you understand the
19 statute to contemplate a full substantive review of the
20 contents of the permit application?

21 A It does not. It requires the department to essentially
22 follow the checklist that we identified to determine that
23 the information and documents were supplied -- or submitted
24 in the application.

25 Q Okay. And indeed, as a practical matter in this case, do

1 you believe using this permit application that brings us
2 here today -- in your view, would it have been feasible,
3 physically possible to engage in a detailed substantive
4 review of the permit application materials you've described
5 within 14 days?

6 A It would not have been.

7 Q Mr. Maki, what is your understanding, if any, of what Part
8 632 says about whether a determination of administrative
9 completeness allows or does not allow the department to
10 request additional information thereafter?

11 A The statute allows even after determination of
12 administrative completeness -- it allows the department to
13 request additional information. If you go to slide 17, it
14 gives the specific language. So under Section 63205(9) of
15 Part 632 as well as under Rule 201(4)(f):

16 "A determination that an application is
17 administratively complete does not preclude the department
18 from requiring additional information from the applicant."

19 Q Okay. I'd like to return now to the chronology of the
20 department's review of the mine permit application submitted
21 by Kennecott that underlies this case.

22 MR. REICHEL: If we go to slide 18, please.

23 Q Okay. After the application was determined to be
24 administratively complete, what steps did you next take?

25 A Well, once again as I mentioned before, I disseminated the

1 appropriate portions of the application to the mining review
2 team. And during this time frame, the mining review team
3 reviewed and commented on the application. This is where
4 they provided me comments on the application where they felt
5 there was a need for additional information or
6 clarification.

7 Q Okay. This slide references a public meeting. Could you
8 explain both when that occurred and why it was done?

9 A Right. As I mentioned earlier, during the mining -- the
10 review of the application, concurrently the statute requires
11 us within 42 days -- and we'll get into more of that --
12 after the administrative completeness has been determined of
13 the application to hold a public meeting. And on April
14 18th, 2006, a public meeting was held at Northern Michigan
15 University.

16 Q And was there -- in addition to the public meeting, was
17 there a public comment period within which the DEQ invited
18 the public to submit comments on the permit application?

19 A There was. For 28 days following the close of the public
20 meeting, May 17th, 2006, was the close of the public comment
21 period.

22 Q Now, did the DEQ's notices to the public during this time
23 frame -- did they or did they not provide the public with
24 information as to where they could obtain access to a copy
25 of the permit application materials?

1 A They did. And we also had it posted on our website the
2 locations and the applications and the application itself
3 was posted on our website.

4 Q In electronic form, someone could go and view this and
5 download it?

6 A Correct; correct. And the application was -- a hard copy of
7 the application was posted at the Powell Township Hall, the
8 Michigamee Township Hall, Peter White Library in Marquette
9 as well as the DEQ office out in Gwinn and the DNR office in
10 Marquette.

11 Q And did, in fact, the agency receive written comments from
12 the public on the initial permit application?

13 A We did.

14 Q And what did you do with those comments, sir?

15 A Well, we compiled those comments and provided a copy of that
16 compilation of comments to the mine team for their review
17 and consideration.

18 Q Okay.

19 A And then ultimately the -- with the -- as I mentioned up
20 here, the mining team had reviewed and made comments on the
21 application. So I took the comments that the mining team
22 had provided me, incorporated them in a letter with, in
23 part, some of the public comments that were provided to the
24 department.

25 Q Now, you're saying "incorporated." Let's break this down.

1 This June 21, 2006, letter, --

2 A Yes.

3 Q -- what was the purpose of this letter?

4 A This letter was drafted and sent to Kennecott Eagle Minerals

5 listing essentially some -- we required some clarification

6 or additional information regarding the permit application.

7 MR. REICHEL: Could you please display

8 Respondent's proposed Exhibit 67?

9 Q Mr. Maki, do you recognize this document?

10 A I do.

11 Q What is it, sir?

12 A This is a letter that I drafted to Kennecott Eagle Minerals

13 which outlined or identified the mining review team's

14 request for additional information and as well in part some

15 of the public comments that we have received.

16 MR. REICHEL: Okay. Could you scroll down,

17 please? Okay. Just pause it there.

18 Q Beginning about halfway down the first page there's the

19 statement, "Please" -- could you just read that, because --

20 A Yes. "Please respond by addressing the following."

21 Q Okay. And then what follows that is a series of -- I

22 believe you testified some 91 numbered paragraphs with

23 statements; is that correct?

24 A That's correct.

25 Q Okay. And these were specific items where you based upon

1 recommendations from mining team members and also in light
2 of public comments that you received where you requested
3 additional information or clarification from Kennecott?

4 A That's correct.

5 Q And did Kennecott ultimately provide a written response to
6 that June 21st, 2006, letter?

7 A They did. On October 27th on slide 19 it shows that KEMC
8 responded to our June 21st letter.

9 MR. REICHEL: Could you put up slide 19, please?

10 Q Okay. So you indicated a moment ago, Mr. Maki, the slide
11 indicates -- to your knowledge, sir, on October 27th, 2006,
12 Kennecott provided a response to the letter we just
13 discussed?

14 A They did.

15 Q Okay. And was that response contained in a series of
16 documents submitted by Kennecott to the department?

17 A It was.

18 Q Okay. And are those -- the slide references Exhibits 69,
19 70, 71 and 72. Have you reviewed those proposed exhibits?

20 A I have.

21 Q Okay. I don't want to go through them all in detail.

22 MR. REICHEL: But could you please bring up
23 Exhibit 69? Could you scroll down, please? Hold it there.

24 Q Is this -- this a cover letter -- is that correct, sir? --
25 from Mr. Cherry of Kennecott to Mr. Fitch at the DEQ?

1 A It is.

2 Q And what does this indicate is being transmitted?

3 A This indicates that this is KEMC's response to the
4 Department's June 21st, 2006, letter requesting additional
5 information.

6 MR. REICHEL: Okay. Could you scroll down please
7 to the next page, next, please. Okay.

8 Q This next -- I believe this is the third page of this
9 document that is Proposed Exhibit 69. It's another cover
10 letter from Mr. Stephen Donohue -- he's testified in this
11 case -- to Mr. Cherry; is that correct?

12 A That's correct.

13 Q And what does this indicate he's providing to -- or
14 transmitting to --

15 A Essentially the same -- the information that we requested in
16 that June 21st letter.

17 MR. REICHEL: Go to the next page, please.

18 Q Is this -- what is this depicted here?

19 A This is the cover letter on their response -- or one of the
20 cover letters on there, on the response to our June 21st
21 letter, KEMC's response to our letter.

22 MR. REICHEL: Okay. Could you go to the next
23 page, please?

24 Q I'm not going to ask you to review each and every thing,
25 each and every aspect of this. But you have reviewed this

1 document in some depth, have you not, sir?

2 A I have.

3 Q And does this document, the first page of which we're now
4 displaying, does this have a comment and response preceding
5 a numbered sequence based upon your June 26th, 2006,
6 letter -- June 21st, 2006, letter?

7 A It does.

8 Q If you know, Mr. Maki, was this document accompanied by some
9 other materials submitted at the same time by Kennecott?

10 A It was.

11 Q And were those additional or supporting materials included
12 in Proposed Exhibits 70, 71 and 72?

13 A They were.

14 Q Mr. Maki, after you -- after the Department received this
15 information from Kennecott, what actions did you -- what did
16 you do with that information?

17 A Essentially what I did is I took this response from
18 Kennecott and disseminated the responses -- the appropriate
19 responses to the mine team review -- the members of the mine
20 review team.

21 Q And what did -- did the DEQ provide notice to the public of
22 the supplemental information submitted in October 2006 by
23 Kennecott?

24 A We did. The Department did.

25 Q And how did you do that?

1 A The Department posted the information on their website as
2 well as posted on the website an opportunity for the public
3 to submit written comments on this document as well as we
4 posted it in the Marquette Mining Journal a time for the
5 opportunity of the public to respond to it.

6 MR. REICHEL: Okay. Could you go back to slide
7 19, please?

8 Q Following up on what you just indicated, Mr. Maki, your
9 second bullet on slide 19 indicates between October 2006 and
10 December 2006 -- why don't you explain what this says and
11 what actually happened?

12 A Right. Again, as I mentioned, we opened up an opportunity
13 for the public to review KEMC's October 27th response to our
14 91 comments. So between this time the mining review team
15 was provided the comments that we received from the public
16 and KEMC's response. And their task was to review that
17 response to determine if it met their requirements or
18 answered their questions and to consider the comments that
19 were presented by the public regarding that document.

20 Q And again, as you disseminated this material to the mining
21 team members; that is, both the supplemental information
22 from Kennecott as well as the public comments received; what
23 were you -- what were you asking mining review team members
24 to do or get back to you on?

25 A I was asking them to review that document and determine

1 whether or not the document addressed their concerns or
2 questions or provided them the information they needed to
3 continue their and complete their review.

4 Q And were you also asking them to consider the comments made
5 by the public on that question or any other question to --
6 that bore on whether or not a permit should be issued?

7 A I was. I did.

8 Q And ultimately did you -- I believe you touched on this
9 before, but I want to go over it in a little more depth.
10 Ultimately did you actually solicit input from each of the
11 team members as to what their recommendations would be with
12 respect to whether a permit should issue or be denied? And
13 if so, under what conditions?

14 A I did.

15 MR. REICHEL: Go to slide 20, please.

16 Q And what was the -- well, first of all, did you actually
17 convene a meeting of the mining review team?

18 A I did.

19 Q And you posed the question that I just asked you about?

20 A That's correct.

21 Q And what was the response that you received? What was the
22 recommendation of the team members?

23 A There was a unanimous recommendation to -- response to
24 recommend to DEQ management that the permit be issued.

25 Q And did you communicate that recommendation to your

1 supervisor?

2 A I did.

3 MR. REICHEL: Could you please bring up Proposed
4 Exhibit 79?

5 Q What is this document, sir?

6 A This is an e-mail that I sent to Mr. Steve Wilson, my direct
7 supervisor, where I presented the recommendations of the
8 mining team to issue the permit.

9 Q Again, when you say "unanimous recommendation," at the risk
10 of asking the obvious, Mr. Maki, did you join in this
11 recommendation?

12 A I did.

13 Q And again, with respect to your recommendation on this
14 subject, what conclusion had you reached as to whether or
15 not the information provided and considered by the
16 Department whether it did or did not satisfy the
17 requirements of Part 632 and its rules?

18 A My conclusion was that it did satisfy the requirements of
19 Part 632 and its rules.

20 Q If you know, was your; that is, the team's; recommendation
21 to Mr. Wilson reflected in Proposed Exhibit 79, was that
22 communicated up your management chain to other decision
23 makers within the Department?

24 A It did. It was communicated, I believe, all the way to the
25 director eventually.

1 Q And as of -- did the Department ultimately in January of
2 2007 announce a proposed decision to issue a permit?

3 A The Department did.

4 MR. REICHEL: Could you please bring up Proposed
5 Exhibit 83?

6 Q What is this document, sir?

7 A This is the Department's notification to the public of our
8 decision to -- the proposed decision to issue the mining
9 permit. As well, it incorporates the response to public
10 comments that we received during the open window of the
11 comment period for the Kennecott's response to our June 21st
12 letter.

13 Q And just I believe this should already be evident from the
14 record but, as you understand it, under Part 632, is the
15 Department -- is it or is it not required before actually
16 issuing a -- or making a decision to issue or deny a permit
17 under Part 632, is it required to notify the public of that
18 proposed decision that is issued or denial, and to solicit
19 public comment on that decision?

20 A It is.

21 Q And do you understand that this was the intended function of
22 the Proposed Exhibit 83?

23 A I understand that, yes.

24 MR. REICHEL: Could you go to Proposed Exhibit 90?

25 Q Do you recognize this document, sir?

1 A I do.

2 Q And what is its subject and date?

3 A It essentially is our proposed general and special permit
4 conditions for the mining permit.

5 Q And what date does it have?

6 A February 23rd, 2007.

7 Q And if you know, how did the -- did the DEQ disseminate this
8 to the public, and by what means?

9 A This was posted on our website.

10 Q Mr. Maki, if you know, did the Department subsequently on
11 March 1st of 2007 announce that it was withdrawing that
12 proposed decision?

13 A It did.

14 Q And if you know, Mr. Maki, as of July 30th, 2007, did the
15 DEQ announce to the public that it was reinstating its
16 proposed decision to issue the mining permit?

17 A They did, yes.

18 Q Now, prior to the July 30th, 2007, notice to the public that
19 it again proposed to issue a mining permit to Kennecott, if
20 you know from your involvement in this project, in that time
21 frame, did the DEQ retain the services of Dr. Wilson Blake?

22 A They did.

23 Q And prior to the July 30th, 2007, re-notice of the proposed
24 decision to issue the mining permit, did the DEQ -- did the
25 mining review team again confer as to whether or not a

1 permit should be issued and under what conditions?

2 A They did.

3 Q And what was the -- I take it their recommendation was to
4 proceed with permit issuance?

5 A It was.

6 MR. REICHEL: Could we go to slide 22, please?

7 Q Continuing the chronology from July forward, on August 10th,
8 could you walk through the next steps that were followed in
9 this process?

10 A Yes. On August 10th there was a couple of times that we put
11 our public notice in the newspapers, but on August 10th was
12 our final one, updating -- an updated notice of consolidated
13 public comment period and hearings. Now, the consolidated
14 public comment period and hearings was essentially -- it
15 included three actions by the Department of Environmental
16 Quality and two actions by the DNR. So in the consolidation
17 part we had Part 632 permit consideration; Part 55, air
18 quality permit consideration; a Part 31, water bureau permit
19 consideration; and then two considerations under the
20 Department of Natural Resources. So we announced that we
21 were consolidating all those public hearings, and we kind of
22 committed to that early on in the process.

23 Q And again, as a part of this process, if you know, was a
24 draft Part 632 mining permit included within the notice to
25 the public and made available for public access?

1 A It was.

2 Q And in fact, were public hearings held under this
3 consolidated public comment process that you just described?

4 A They were. On September 10th we held our first public
5 hearing at Northern Michigan University. Then the 11th
6 through the 13th we held additional public hearings. These
7 are in the Upper Peninsula hearings; held additional ones in
8 the Upper Peninsula from 11 through the 13th at the West
9 Branch Community Center in Marquette County. And then on
10 September 19th we held an additional public hearing down
11 here in Lansing at the Lansing Center.

12 Q And as a part of the statutory public participation process,
13 did the DEQ notify the public that in addition to the public
14 hearings there was an established time period within which
15 interested persons could submit written comments to the
16 Department for its consideration?

17 A We did. In our notice we identified that there would be a
18 window of opportunity for written public comments.

19 Q And what was the identified close of that public comment
20 period?

21 A October 17th, 2007, was the close of the public comment
22 period.

23 Q And I think the record already clearly reflects that the
24 Department received substantial public comment or a number
25 of public comments as a result of this. What action -- what

1 process was followed, to your knowledge, by the Department
2 with respect to the public comments that were received in
3 the fall of 2007?

4 A Once the close of the public comment period, we compiled the
5 public comments into a document and once again presented
6 those -- that compiled document to the mining review team
7 for their consideration in the final decision.

8 Q And among the comments that were made available to the
9 mining review team, did that include comments submitted by
10 any Petitioners in this case?

11 A It did.

12 Q And if you know, sir, did any either members of the mining
13 review team or other DEQ staff as a result of receiving
14 comments from one or more Petitioners request some
15 additional or backup information with respect to those?

16 A Yes. A few of the mining team -- one of the mining team
17 members did, and some of the other members for the other
18 divisions reviewing other additional -- the other permits.

19 Q And were you involved in communicating with one or more of
20 the commenters requesting that additional information?

21 A I was. I was assigned to make that communication.

22 Q And to your knowledge, did the commenter or commenters
23 provide the additional information requested?

24 A They did.

25 Q Okay. You've testified that the public comments were,

1 again, distributed to the mining review team. Were the
2 members of the mining review team asked to review and
3 provide a response to those comments?

4 A They were.

5 Q And did various members of the mining review team do so?

6 A They did.

7 Q And as a result of that, what recommendation did you and
8 other members of the mining team make with respect to
9 issuance of the permit?

10 A Our recommendation was that we uphold the proposed decision
11 to issue the mining permit.

12 Q And as a part of this process, was another draft of the
13 permit, a final draft, prepared?

14 A There was. Before the permit was officially signed, that
15 document was distributed to the mining review team members
16 for a final review and consideration.

17 Q And to your knowledge, did the mining review team -- you and
18 other members of the mining review team concur in the
19 issuance of the permit in the form that it was ultimately
20 drafted?

21 A We did.

22 Q And again, this is already reflected in the record, but the
23 permits, the Part 632, Part 31 and Part 55 permits, were
24 issued on December 14th, 2007; is that correct?

25 A That's correct.

1 Q And with respect to the Part 632 permit, who ultimately
2 signed that permit?

3 A Deputy Director Jim Sygo.

4 Q And if you know, does his responsibility include -- within
5 the DEQ include supervision of among other things the Part
6 632 program or the OGS?

7 A That's correct.

8 Q Mr. Maki, the permit, I believe, itself is already in
9 evidence and the Court has heard testimony about various
10 aspects of it, but I would like to -- but sort of in an
11 isolated way and I think just in the interest of clarifying
12 the record, I would like to --

13 MR. REICHEL: Can you please put up Proposed
14 Exhibit 117?

15 Q I'd like to walk through, not line by line, but walk through
16 some of the overall sections of the permit so that Judge
17 Patterson understands the overall structure of the permit
18 and some of the kinds of conditions that it contains. Okay.
19 We have displayed on the screen the first page of Exhibit
20 117. This is the Part 632 mining permit that we've just
21 been talking about; is that correct?

22 A That's correct.

23 Q And after you get to the cover page --

24 MR. REICHEL: Can you go to the next page, please?

25 Q There's a section that begins with the heading "General

1 Permit Conditions." Do you see that?

2 A I do.

3 Q And, again, without going through all of it, from there I
4 believe to is it page six, if you could jump ahead, there
5 are a series of what are referred to as "General Permit
6 Conditions"?

7 A That's correct.

8 Q And, Mr. Maki, are these intended to -- were the general
9 permit conditions intended to more generally describe the
10 scope of the activities authorized by the permit and make
11 provisions with respect to whether and if it could be
12 transferred, things of that nature?

13 A That's correct.

14 Q There is another section that has the heading "Special
15 Permit Conditions." Do you see that, sir?

16 A I do.

17 Q Now, is this Special Permit Condition section, does this --
18 does this or does this not reflect the recommendations of
19 you and other mining review team members with respect to the
20 topics covered?

21 A It does.

22 Q And then it's organized into certain alphabetically
23 designated sections, the first one being "General." Again,
24 I don't want together through this line by line, but I'd
25 like you to make note of a few of these provisions. On the

1 first page of the special permit conditions, under A, under
2 A1, does this permit reflect that the DEQ may modify or
3 amend the permit conditions?

4 A It does.

5 Q If necessary; is that correct?

6 A Correct.

7 Q Turning now to subsection B, with the heading "Other Permits
8 and Requirements," does this section identify some of the
9 other legal requirements that would apply to this activity?

10 A It does.

11 Q And do those include, among other things, operating
12 conformance with the air use permit and the groundwater
13 discharge permit; is that correct?

14 A That's correct.

15 Q As well as a notice of coverage for storm water management
16 during construction and a notice of intent for storm water
17 management under sub B1?

18 A That's correct.

19 Q Do subsections B3 and 4 identify a requirement to prepare
20 and implement a spill prevention and control countermeasures
21 plan; that is, an SPCC plan; for the fuel storage area?

22 A It does.

23 MR. REICHEL: Go to the next page, please.

24 Q Looking at condition B7, does that require the permittee, in
25 this case Kennecott, to prepare a pollution incident

1 prevention plan to address potential spillage of fuel, salt
2 and other polluting materials?

3 A It does.

4 Q Under Subsection C, Coverage, does this -- as the title
5 suggests, does this subsection of special conditions outline
6 the scope of the activities that are actually covered by the
7 permit application -- or the permit, I should say?

8 A Yes, it does.

9 Q And looking at C1, what does that indicate about the scope
10 of the coverage?

11 A It covers the construction, operation, closure and
12 post-closure monitoring, reclamation and any necessary
13 remediation of the whole project.

14 Q Okay. And could you read the second sentence of C1?

15 A "However, this mining permit shall not supercede or
16 contravene any provisions or remediation and other
17 application parts of NREPA."

18 Q And does this then go on to subsection C to describe the
19 facilities that were expected to be or are authorized to be
20 constructed and operated?

21 A It does.

22 MR. REICHEL: Directing your attention, if we
23 could, go to page -- the next page please, which is page
24 four of the special conditions, special condition number
25 eight -- six. I'm sorry.

1 Q Does this, among other things, indicate that deviation --
2 any deviation from the permit requirements -- strike that.
3 Does this require the permittee to conduct mining activities
4 in accordance with the approved plans laid out in the
5 application and the supplemental materials --

6 A It does.

7 Q -- as provided in this permit?

8 A Yes, it does.

9 Q And does it indicate that if the only way of doing something
10 different would be through an amendment to the permit
11 approved by DEQ?

12 A That's correct.

13 Q In subsection seven, the next section, what does this say
14 with respect to chemical or physical processing of the ore
15 at the site?

16 A It essentially says that the permittee is not allowed to do
17 mineral processing at the facility.

18 Q Other than the crushing that is accounted for?

19 A Other than the primary crushing that was identified in the
20 application.

21 Q Subsection D with the heading "Surface Facilities," again, I
22 don't want to go through this every subparagraph, but does
23 this describe how the surface facilities are to be
24 constructed and maintained?

25 A It does.

1 Q If you could go to page six of this document, or page six of
2 the -- with the subsection E, Mining Plan? Does this
3 subsection E, which begins on page six and continues to page
4 seven, does this outline the mining methods and the scope of
5 the mining activities that were authorized by the permit?

6 A It does.

7 Q Including, as the Court has already heard testimony, the
8 upper mine elevation limit; is that correct?

9 A Yes.

10 Q And looking at E sub 8, which begins at the bottom of page
11 six and extends on page seven, does this permit condition,
12 among other things, require the permittee to collect in situ
13 stress data and standard geologic, geotechnical and
14 hydrologic data to evaluate rock stability for the overlying
15 level or levels?

16 A It does.

17 Q Does it go on to prescribe supplemental diamond drilling if
18 necessary to fill any data gaps and a physical 3D model to
19 be developed and maintained to assess ground and hydrologic
20 conditions?

21 A Yes, it does.

22 Q Again, there's been testimony on this already by other
23 witnesses. But is its intent to address, among other
24 things, the issue of insuring the development -- continued
25 development of initial -- additional information with

1 respect to mine stability and hydrology throughout the
2 process?

3 A That's correct.

4 Q Subsection F has the heading "Development Rock." Again,
5 does this subsection deal with how the development rock is
6 to be managed, stored at the site?

7 A It does.

8 Q And does it include specific conditions governing the
9 construction of the -- and the performance of the temporary
10 development rock storage area?

11 A It does.

12 Q Does it also include inspection and maintenance
13 requirements?

14 A Yes.

15 Q Turning to page 11, subsection G, "Ore Transporting and
16 Processing," again, as the title suggests, does this
17 prescribe methods to be followed by the permittee with
18 respect to how they were going to transport and process the
19 ore developed at the mine?

20 A Yes.

21 Q Does it include provisions, among other things, for handling
22 those materials inside a building or buildings?

23 A Yes.

24 Q And does it prescribe methods or controls on how the ore is
25 to be transported including, among other things, the use of

1 covered trucks?

2 A Yes.

3 Q Directing your attention to sub G, sub 7?

4 Q Turning to page 12, subsection H, "Water Management and
5 Treatment," does this section of the permit prescribe the
6 methods that are to be used by the permittee to collect,
7 treat and manage water on the site?

8 A It does.

9 Q And does that include both water produced for the mining
10 operation as well as noncontact water?

11 A Yes.

12 Q Turning to page 15 of subsection I with the heading "Waste
13 Management," does this section of the permit prescribe or
14 limit the way the permittee is allowed to dispose of various
15 waste materials at the site?

16 A It does.

17 Q And does it require that materials be properly characterized
18 prior to disposal to determine whether they are regulated as
19 waste and, if regulated as waste, to be disposed at licensed
20 facilities?

21 A That's correct.

22 Q Subsections J and K deal respectively with management of
23 hazardous materials and soil erosion and sedimentation
24 control; is that correct?

25 A That's correct.

1 Q Now, turning to page 16, there were several pages of special
2 permit conditions under sub L, Monitoring; is that correct?
3 A That's correct.
4 Q Without going through each and every one of these in detail,
5 and many of them have been touched upon, is it fair to say
6 that the permit requires in this section the, among other
7 things, the permittee to establish some additional
8 groundwater and surface water monitoring locations beyond
9 those originally proposed in various locations for the
10 purpose of monitoring both groundwater, surface water and
11 wetland conditions in the vicinity of the site?
12 A It does.
13 Q And does it prescribe the parameters to be tested and the
14 frequency with which the data collected are to be reported
15 to the Department?
16 A It does.
17 Q Does it also explicitly require the permittee as a part of
18 this permit to comply with the groundwater discharge permit
19 conditions?
20 A It does.
21 Q And with respect to Monitoring -- and this is a very long
22 section -- does the -- turning to page 26, condition 42,
23 does this prescribe requirements with respect to
24 post-closure management and monitoring of the mine for 20
25 years after the completion of mine reflooding and surface

1 reclamation?

2 A Yes.

3 Q Turning to page 28, subsection M, does this portion of the
4 special conditions of the permit address certain
5 contingencies and contingency measures that the permittee is
6 required to implement?

7 A Yes, it does.

8 Q Does that include, among other things, provisions with
9 respect to emergency management and response?

10 A Yes.

11 Q Turning to page 32, subsection N, Groundwater and Surface
12 Water Sampling Procedures, again, does this portion of the
13 permit prescribe particular sampling and analytic procedures
14 to be used to report various data that the permittee is
15 required to collect?

16 A It does.

17 Q Turning to page 33, subsection P, does this address the
18 reclamation plan for the mine?

19 A Yes, it does.

20 Q Again, there's already been testimony on this, so I'm not
21 going to ask you to detail it. But does this section of the
22 permit prescribe certain methods and activities that the
23 permittee is required to implement following completion of
24 the mining activities?

25 A Yes, it does.

1 Q And does it contemplate and indeed require that following
2 completion of all mining activities that the surface of the
3 site be restored to a condition essentially similar to that
4 which existed prior to the mining activities?

5 A It does.

6 Q Including the removal of all -- ultimate removal of all the
7 surface structures and facilities; is that correct?

8 A Correct.

9 Q As well as plans for re-vegetation of the surface?

10 A Yes.

11 Q Mr. Maki, I think we've covered all of this, but I want the
12 record to -- we've covered some of these points, but I want
13 the record to be very clear with respect to the steps that
14 the Department took to satisfy the public participation
15 requirements with respect to Part 632. Again, you testified
16 that your familiar with the statute. And if you know, sir,
17 under subsection 63205(6), is the Department required to
18 within a certain number of days after determining that a
19 permit application is administratively complete to provide
20 notice and then conduct a public meeting?

21 A That's correct; within 42 days after determination of
22 administratively complete, the Department must make that
23 notice.

24 Q And did it do so in this case in the time frame prescribed
25 by the statute?

1 A It did.

2 Q Was that the public meeting in April of 2006 that you
3 testified to previously?

4 A That was.

5 Q And is there also a requirement to provide an opportunity
6 for public comment within that time period?

7 A That's correct; 28 days following the close of the public
8 meeting, there's an opportunity for public comments to be
9 submitted. And we did indeed allow that.

10 Q Okay. With respect to subsection 63205(7), does that
11 portion of the statute require the Department to provide
12 notice to the public of a proposed decision to grant or deny
13 a mining permit?

14 A It does.

15 Q and does it prescribe an opportunity for public hearings on
16 that decision?

17 A It does.

18 Q And did the Department comply with, either meet or exceed
19 the requirements of that section of the statute with respect
20 to public hearings and notice?

21 A It did.

22 MR. REICHEL: May I have just a moment, Your
23 Honor?

24 JUDGE PATTERSON: Sure.

25 MR. REICHEL: I have some exhibit issues I want to

1 address. I would propose to take a short break here.

2 JUDGE PATTERSON: Okay.

3 MR. REICHEL: Thank you.

4 (Off the record)

5 MR. REICHEL: Judge, are you ready to proceed?

6 JUDGE PATTERSON: Yes, I am.

7 MR. REICHEL: Before I get into the exhibits, it's
8 been pointed out to me that it's possible that during the
9 direct examination of Mr. Maki in referring to the date on
10 which Kennecott submitted its permit applications, I may
11 have said February 27th. I don't recall frankly.

12 Q In any event, Mr. Maki, so the record is clear, to your
13 knowledge, was the date on which the applications were
14 submitted by Kennecott February 22nd, 2006?

15 A Correct.

16 Q Okay. Thank you.

17 MR. REICHEL: Your Honor, at this time I'd like to
18 address some issues pertaining to exhibits. First, we would
19 offer solely for demonstrative purposes the series of slides
20 that Mr. Maki's discussed, which we've marked for
21 identification as Respondent's Proposed Exhibit 207.

22 MR. WALLACE: I have no objection.

23 MS. HALLEY: No objection.

24 MR. LEWIS: No objection, Your Honor.

25 (Respondent's Exhibit 207 received)

1 MR. REICHEL: I would like to offer the following
2 exhibits. I guess I'll do them one at a time. Respondent's
3 Proposed Exhibits -- I'll do this -- 44, 45 and 46, which
4 were a series of correspondence relating to the
5 determination of administrative incompleteness, the
6 Kennecott response and the DEQ response.

7 MS. HALLEY: No objection.

8 MR. WALLACE: No objection.

9 MR. LEWIS: No objection.

10 JUDGE PATTERSON: Okay. No objection, those will
11 be entered.

12 (Respondent's Exhibits 44 through 46 received)

13 MR. REICHEL: Okay. Next I would move for
14 admission of Respondent's Proposed Exhibit 67. That is the
15 June 2006 letter from the DEQ to Kennecott identifying 91
16 issues on which it requested additional information.

17 MS. HALLEY: No objection.

18 MR. WALLACE: No objection.

19 MR. LEWIS: No objection.

20 JUDGE PATTERSON: No objection, they will be
21 entered.

22 (Respondent's Exhibit 67 received)

23 MR. REICHEL: Next, Your Honor, we would move for
24 admission of Proposed Exhibits -- Respondent's Proposed
25 Exhibits 69, 70, 71 and 72, which consist of the materials

1 submitted by Kennecott to DEQ in response to Exhibit 67.

2 MS. HALLEY: Your Honor, I don't object to
3 Exhibits 69. However, Exhibits 70, 71 and 72 are appendices
4 to Exhibit 69. But Exhibit 70 is over 200 pages, Exhibit 71
5 is over 500 pages. And they contain materials that have not
6 been -- some of them have not been discussed in this court.
7 I'm willing to stipulate to admitting them as a
8 demonstrative to illustrate that they were an attachment to
9 Exhibit 69, but not for the truth of what they contain.

10 MR. WALLACE: That's Huron Mountain Club's
11 position as well.

12 MR. REICHEL: Well, Your Honor, I think the record
13 is clear from Mr. Maki's testimony that these; that is, 70,
14 71 and 72; were attached to and essentially an extension of
15 Exhibit 69, which were the responses by Kennecott to the
16 series of questions or requests that the DEQ posed in June
17 2006 that Mr. Maki has discussed and about which there's
18 already been testimony in this case. And further, Mr. Maki
19 has testified that each of those documents were included
20 within the universe of documents that the DEQ made available
21 to the public through posting on website and solicited
22 public comment on. I think that it's entirely appropriate
23 that they be admitted into evidence as part of this record.

24 MS. HALLEY: Your Honor, I hate to quarrel with
25 Mr. Reichel, but they are a series of independent reports by

1 at least three or four different groups or individuals, some
2 of whom have not appeared before this court at all. And
3 I'm -- and we haven't even discussed many of the items and
4 contents of those reports.

5 MR. REICHEL: Well, Your Honor, are you --

6 MR. LEWIS: Well, I did want to add, I've noted
7 this for the record before, Your Honor, that in the Part 632
8 permit, both the mine permit application materials, all of
9 them are in fact incorporated and made a part of the actual
10 permit, as are the answers to these 91 questions that Mr.
11 Reichel discussed with Mr. Maki and is now offering.

12 MR. REICHEL: That is my understanding as well.
13 Again, the --

14 JUDGE PATTERSON: So you're saying in essence
15 they've already been admitted as part of the permit?

16 MR. LEWIS: Yeah, that's part of my position that
17 they have been. And to the extent they have not, that they
18 ought to be.

19 MR. WALLACE: Well, they were --

20 MS. HALLEY: Well, Your Honor, part of what we're
21 doing here is trying to decide if that permit and all the
22 documents that back it up are valid. So Mr. Lewis' logic is
23 a little circular there.

24 MR. WALLACE: And I think we were very clear
25 before, and I think it's been the ruling of the Court to

1 date that the materials -- unidentified and unauthenticated
2 materials that were submitted as part of the application are
3 admitted for the purpose of reflecting in this record the
4 entire application and all that it contains, but not for the
5 truth of the matter -- of any matter contained therein
6 without the authors here to be cross-examined. We've been
7 proceeding that way for a number of weeks now.

8 MR. LEWIS: Let me just note for the record the
9 relevant sections, Your Honor. I believe the permit itself
10 is DEQ Exhibit 117; is that correct?

11 MR. REICHEL: That's correct, Counsel.

12 MR. LEWIS: And is that the permit that's been
13 entered into evidence already?

14 MR. REICHEL: Yes, it has been.

15 MR. LEWIS: Okay. On the first page of that
16 permit, Your Honor, it says, among other things, that the
17 terms and conditions that are set forth in the application
18 for mining permit submitted by Kennecott Eagle Minerals
19 Company for the Eagle project including all supplemental
20 documents, amending, clarifying or revising the initial
21 submittal of the permit application and including the mining
22 reclamation and environmental protection plan are
23 incorporated in and become a part of this mining permit.
24 Then on page four of the permit special permit conditions,
25 it would be section C6 on page four, it says in the last

1 sentence, "The permit application includes the applicant's
2 October 27, 2006, response to the MDEQ's June 21, 2006,
3 request for additional information." And I believe
4 that those are --

5 MR. REICHEL: That is correct.

6 MR. LEWIS: -- the records we've been referring
7 to.

8 MR. REICHEL: That is right. The response
9 consists of 69, 70, 71 and 72 that were the subject of my
10 offer.

11 MS. HALLEY: Your Honor, if I might?

12 JUDGE PATTERSON: Sure.

13 MS. HALLEY: It would fly in the face of this
14 court's previous rulings about the admissibility of the
15 pieces of the application that have been incorporated into
16 the permit. I don't quarrel with Mr. Lewis' recitation of
17 what the permit states. However, to go along with that
18 logic would make this whole proceeding irrelevant. If all
19 of the things that underlie the permit, including, in his
20 opinion, the application, appendices and everything else,
21 are already accepted for the truth of the matter asserted,
22 then I'm not sure what we're doing here.

23 MR. REICHEL: May I -- are you finished, Counsel?

24 MS. HALLEY: Yes.

25 MR. REICHEL: Just by way of response to Ms.

1 Halley's last point; I think it certainly wouldn't make this
2 proceeding in any way superfluous or irrelevant. As your
3 Honor as noted, this is a de novo proceeding. The point is
4 that these documents were submitted to the Department as
5 part of the information that it considered in making its
6 permit decision. They have been subject to public comment.
7 They have been, and may still be to the extent Petitioners
8 seek to do so in rebuttal, contradicted, rebutted or
9 whatever in terms of the truth of the statements contained
10 within them, but I don't think that admitting them into
11 evidence as a part of this record in any way renders this
12 proceeding superfluous or unnecessary.

13 MR. WALLACE: And that's precisely the opposite of
14 the argument that was used to keep out materials we
15 submitted with our public comments, your Honor, and which
16 you denied admission to, because we didn't -- for some of
17 them we had no authors; there was no opportunity to cross-
18 examine. That's exactly the ruling of the court today.

19 MS. HALLEY: And -- sorry.

20 MR. WALLACE: That they're in the record and the
21 public's seen them and all the parties have seen them is not
22 the standard of admissibility for this de novo proceeding;
23 it's whether they're admissible, whether there's a witness
24 here to cross-examine, whether the truth can be tested. And
25 that has been the court's ruling to today.

1 MS. HALLEY: Mr. Reichel's last point, that these
2 reports may be rebutted, I'm afraid is not quite accurate,
3 because we don't have witnesses necessarily to correspond
4 with each of those reports. We have no way to cross-examine
5 anybody about them.

6 MR. LEWIS: I'd just like to note again, this has
7 been on the point that Mr. Wallace makes again. It's been
8 hashed and rehashed. But I would like to remind the court
9 that this was the subject of a Motion in Limine we filed
10 earlier in this case. And there is a distinction and I
11 think some important distinctions between the mine permit
12 application materials submitted to the DEQ as part of the
13 permit application process submitted by Kennecott. They
14 were required to be produced, prepared and submitted to the
15 DEQ as a matter of law as part of the application process,
16 and the DEQ had to necessarily rely on those materials in
17 its decision-making process.

18 Secondly, they are in fact, as I've again reminded
19 the court, incorporated and made as a matter of law part of
20 the actual permit. It is the permit that's been challenged
21 in this proceeding by the Petitioners. The Petitioners
22 spent some several days challenging all of the various
23 aspects of the permit, the mine permit application, the
24 basis for the permitting decision. It strikes me that the
25 mine permit application materials are in fact the basis for

1 the DEQ's decision. And I would also note again as we
2 discussed in our Motion in Limine, other than those
3 distinctions, the fundamental -- another fundamental problem
4 with the Petitioners' so-called public comments, which is
5 what Mr. Wallace has referred to, is that they in fact
6 included a great deal of unscientific documentation not in
7 the form of any kind of reports.

8 They included, for instance, lengthy letters by
9 attorneys on behalf of the Petitioners advocating certain
10 legal positions and they included unscientific advocacy
11 statements by various interested parties. And that was
12 another fundamental distinction between the kinds of so-
13 called reports that the Petitioners sought to admit in this
14 case and what we're now talking about.

15 MR. WALLACE: Excuse me, your Honor, but that's
16 not the reason they were kept out. The reason they were
17 kept out was the authors weren't here to be cross-examined
18 as to the truth of the contents.

19 MR. LEWIS: Well, that wouldn't --

20 MR. WALLACE: That's not -- that was not the
21 subject of the Motion in Limine which was denied. That's
22 another entire point, which is the many, many reports that
23 have been brought into this court after the application was
24 accepted, and that's what your Honor has ruled on and ruled
25 against us. But in terms of putting in several-hundred-page

1 documents for the truth of the matter asserted without the
2 authors and without an opportunity to cross-examine -- I
3 mean, it wouldn't even be practical to voir dire this
4 gentleman about them. Frankly, we'd be here for months.
5 That's just not the way to do it and we haven't done it up
6 'til this point in this proceeding. This is de novo. They
7 have to prove the facts that they're offering. And we're
8 not arguing against their admissibility into the record for
9 the purpose that the court has previously admitted some of
10 the documents, which is to show that the DEQ received them,
11 that they're part of the permit application, that they were
12 relied upon; that's fine. We just don't want them admitted
13 because there's no basis to do so as true facts that they
14 can propose findings of fact about. That makes no sense,
15 because we've had no opportunity to cross-examine on that
16 basis.

17 JUDGE PATTERSON: Anything else?

18 MR. REICHEL: No, your Honor.

19 MR. LEWIS: No, your Honor.

20 JUDGE PATTERSON: I assume probably, Mr. Reichel,
21 some of these will come into play through some of the
22 following witnesses, or reviewed of those particular?

23 MR. REICHEL: Portions of them.

24 JUDGE PATTERSON: And I assume some are probably
25 not relevant to the Petitioners' contentions in this case.

1 MR. REICHEL: That's true. There are some --
2 undoubtedly some, as is the case -- in 69, for example, are
3 any number of documents; there are things that are addressed
4 that are not the subject of the petition, so I mean, --

5 JUDGE PATTERSON: I'm going to admit them with the
6 limitation that the Petitioners are asking for.

7 MR. REICHEL: And just so --

8 JUDGE PATTERSON: I'm sort of operating in a
9 vacuum here, because I don't know what exactly is there,
10 because frankly I haven't reviewed that. I think we have an
11 adequate record on the contentions of the Petitioners as it
12 relates to that testimoningly.

13 MR. REICHEL: Just so I'm -- your Honor, as I
14 understand it Exhibit 69 -- Respondent's Exhibit 69 was
15 admitted unconditionally. 70, 71, 72 are offered for the
16 limited purpose described by Mr. Wallace and Ms. Halley of
17 documenting that this was the information submitted to and
18 considered by the DEQ?

19 JUDGE PATTERSON: Correct.

20 MR. LEWIS: They weren't offered on that basis; as
21 being admitted on that basis is my understanding.

22 MR. REICHEL: That's correct. I misspoke.

23 JUDGE PATTERSON: Right.

24 MR. REICHEL: Thank you, Counsel.

25 (Respondent's Exhibit 69, 70, 71 and 72 received)

1 MR. REICHEL: Continuing, move for admission of
2 Respondent's Proposed Exhibit 79, which was the January 4,
3 2007 memo. Mr. Maki testified earlier about the mining
4 team's recommendations.

5 MR. WALLACE: No objection.

6 MS. HALLEY: No objection.

7 JUDGE PATTERSON: No objection --

8 MR. LEWIS: No objection.

9 JUDGE PATTERSON: I'm sorry. No objection, that
10 will be entered.

11 (Respondent's Exhibit 79 received)

12 MR. REICHEL: Next Respondent's Proposed Exhibit
13 83, which is the January 9th, 2007 proposed decision by the
14 DEQ -- initial proposed decision to issue a Part 632 permit
15 and response to public comments.

16 MR. WALLACE: No objection.

17 MS. HALLEY: No objection.

18 MR. LEWIS: No objection.

19 JUDGE PATTERSON: No objection, that will be
20 entered.

21 (Respondent's Exhibit 83 received)

22 MR. REICHEL: Next I would move for admission of
23 Respondent's Proposed Exhibit Number 90, which is the
24 February 23rd, 2007 draft general and special permit
25 conditions that was posted on the DEQ website.

1 MS. HALLEY: No objection.

2 MR. WALLACE: No objection.

3 MR. LEWIS: No objection.

4 JUDGE PATTERSON: No objection, that will be
5 entered.

6 (Respondent's Exhibit 90 received)

7 MR. REICHEL: Also move for admission of
8 Respondent's Proposed Exhibit 104, which was the August
9 10th, 2007 Notice of Consolidated Public Comment Period and
10 Hearings that Mr. Maki testified about.

11 MS. HALLEY: No objection.

12 MR. WALLACE: No objection.

13 MR. LEWIS: No objection.

14 JUDGE PATTERSON: That will be entered.

15 (Respondent's Exhibit 104 received)

16 MR. REICHEL: And that concludes the -- my offer
17 of exhibits. At this time I would pass the witness.

18 JUDGE PATTERSON: Okay.

19 MS. HALLEY: Good morning, Mr. Maki.

20 THE WITNESS: Good morning.

21 MS. HALLEY: We know each other, but for the
22 record I'm Michelle Halley representing the National
23 Wildlife Federation and the Yellow Dog Watershed Preserve.

24 CROSS-EXAMINATION

25 BY MS. HALLEY:

1 Q Where do you live?

2 A I live in Gwinn, Michigan; Upper Peninsula.

3 Q How far away from the mine site is that?

4 A Forty miles maybe.

5 Q Now, you talked a little bit about your experience in the
6 short courses related to metallic sulfide mining?

7 A Yes.

8 Q How long were the short courses?

9 A In some instances they were three days; some were a week.
10 It varied.

11 Q If you had to try to give a total for those courses that had
12 to do with metallic sulfide mining specifically, what would
13 that be?

14 A A total of days?

15 Q Days, weeks, whatever it is.

16 A A week and a half.

17 Q Okay. When you were working as a hydrogeologist for the
18 Minnesota DNR were there any operating metallic sulfide
19 mines in Minnesota at that point?

20 A There was not.

21 Q Okay. Now, you referenced an underground mine that I think
22 is at this point not operational and it wasn't then either;
23 is that correct?

24 A It's operational but not operational as a production mine.

25 Q Okay. Well, what is it operational as?

1 A As a research laboratory.

2 Q Research?

3 A And a state park.

4 Q Is it experiencing any problems unique to underground
5 mining?

6 A It is not. No; not that I'm aware of.

7 Q Does that mine have any problems with water flowing through
8 the crown pillar?

9 A It does not, no.

10 Q Does it have any acid mine drainage problems?

11 A No, it does not.

12 Q I think you talked a little bit about the statutes that
13 you're responsible for coordinating -- is that the right
14 word? -- for the DEQ including Part 637, Part 631 and part
15 625 of NREPA?

16 A Coordinating as well as physical inspections and compliance
17 requirements.

18 Q Has Part 632 been added to your list?

19 A It has.

20 Q Okay. Now, for Part 625, which governs exploration --
21 mineral exploration; right?

22 A Correct.

23 Q Are there permits required for mineral exploration in the
24 Central and Western U.P.?

25 A There are if the first rock encountered by the driller is

1 younger than Precambrian age rock.

2 Q Is most of the rock in Central and Western U.P. Precambrian
3 or not?

4 A I would say it is; most of it is Precambrian.

5 Q So the bulk of exploration activities going on in the
6 Central and Western U.P. don't require permits?

7 A They do not.

8 Q Okay. So you -- have you done any permitting for any
9 exploration in the Central and Western U.P.?

10 A We have not.

11 Q So you haven't done a hydrology study or an EIA or anything
12 like that for any of your responsibilities under Part 625?

13 A No, I have not.

14 Q Okay. Now, Part 631, to my understanding, governs open pit
15 iron mining; is that correct?

16 A It does now.

17 Q It does now? Okay. What does that mean?

18 A Well, originally before 632 came to light it governed open
19 pit mining of any metallic nature, including copper, nickel.
20 But as a result of the stipulation in there that it only
21 governed open pit is where we got to the point of the new
22 statute.

23 Q I see. All right. Now tell me what your responsibilities
24 related to Part 631. You said coordination and physical
25 inspection; is that right?

1 A That's correct.

2 Q Have you ever been responsible for a permitting process
3 under Part 631?

4 A No, I have not.

5 Q Okay. Now explain to me -- are you the only person in the
6 state responsible for administering and applying Part 631?

7 A No.

8 Q Who else?

9 A Melanie Humphrey.

10 Q What's the division of labor between you and Ms. Humphrey?

11 A I'm a lead worker. I'm not her direct supervisor; I qualify
12 it as a lead worker.

13 Q But I mean practically speaking, what do you do? What does
14 she do?

15 A Oh. She does more of the field inspections, primarily for
16 625. She does a portion of 631 as well as 637.

17 Q What does she do for 631?

18 A She will engage in inspections of the reclamation activities
19 at the Tilden and Empire Mines. That's the only portion of
20 that that she --

21 Q When did she start working for the DEQ?

22 A Ooh, I don't really know. Two or three years ago maybe.
23 I'm not positive.

24 Q And before she came to the DEQ were you responsible for all
25 of the inspections?

1 A I was, yes.

2 Q When's the last time you were at -- I think we'll just
3 dispense with this right now. The Empire and Tilden Mines
4 are the two operating mines under Part 631; right?

5 A Correct.

6 Q Okay. So when is the last time that you were at the Empire
7 or the Tilden Mine?

8 A Probably late last year.

9 Q Okay. And how often do you go there?

10 A We try to do a quarterly inspection at the facility.

11 Q You try to; do you actually make out there four times a
12 year?

13 A Sometimes more. I should say that at a minimum a quarterly
14 inspection.

15 Q Quarterly give or take?

16 A Give or take, yes. And meaning, I try to; Melanie assists
17 in that as well, so --

18 Q So you go together?

19 A Sometimes together; sometimes separate.

20 Q Okay. What do you do when you're there?

21 A It varies. Depends on what we want to look at. CCI is
22 undergoing a fairly extensive reclamation program using
23 paper residuals that they're putting under stockpiles for
24 grass growing. We'll investigate those. We may look at
25 abandoned pit areas looking at the water fillage, the -- if

1 there's any erosional issues; any of their rock stockpiles
2 we look for erosional issues. They have some very large
3 rock stockpiles, as you're aware of, right along one of the
4 roads up there between -- in Palmer, Michigan. So those
5 stockpiles are very visible to the public, so we try to
6 assure that they're doing their due diligence of maintaining
7 the erosion control in those stockpiles.

8 Q Do Empire or Tilden have acid mine drainage problems?

9 A Not that I'm aware of.

10 Q And they don't have crown pillars; right? They're open pit
11 mines?

12 A They are open pit.

13 Q Now, you talked about one and a half weeks of training
14 specific to the issues concerning metallic sulfide mining?

15 A Yes.

16 Q Do you have any other experience -- work experience in
17 sulfide mining?

18 A I do not.

19 Q Now, would you agree with me that this is a fairly complex
20 and multi-faceted project?

21 A I would agree.

22 Q Now, have you ever been responsible for permitting anything
23 like this before?

24 A I have not.

25 Q Have you been involved in reviewing any project of this

1 scope and nature before?

2 A I have.

3 Q When was that?

4 A In Minnesota there was a new project coming on line and
5 there was an EIA associated with that that I was responsible
6 for reviewing.

7 Q Was that a sulfide mine?

8 A It was not, no. No.

9 Q Okay. So you would agree, I think, that sulfide mines have
10 very unique concerns. Geochemical concerns particularly;
11 right? Water quality concerns?

12 A I would say particularly geochemical concerns. I can't
13 think of any others offhand, but if I were to put my finger
14 on it that would be the uniqueness of this type of mining.

15 Q Okay. And this particular mine carries with it some unique
16 concerns too -- right? -- like the crown pillar stability,
17 because the river is above the crown pillar?

18 A Oh, I think every mine carries some uniqueness, because
19 every mine is different. So to categorize it that this is
20 more unique than another mine? I wouldn't say that.

21 Q You don't think that the fact that it's underneath the
22 Salmon Trout River makes it unique?

23 A No, I don't.

24 Q Did you make a recommendation to someone to approve the 632
25 permit?

1 A Did I make a recommendation specifically myself?

2 Q Uh-huh (affirmative).

3 A I wrote the recommendation; I was not the main person making
4 the recommendation though.

5 MS. HALLEY: Your Honor, I need to take a minute.
6 We have a technical difficulty here.

7 JUDGE PATTERSON: Okay.

8 MS. HALLEY: I apologize.

9 JUDGE PATTERSON: That's fine.

10 (Off the record)

11 MS. HALLEY: I apologize for the delay there.
12 Okay. Probably need to clarify where these exhibits are
13 coming from. Before these proceedings began we were
14 provided with a file from the respondent labeled "Kennecott
15 Eagle Minerals Company, MDEQ file." And these exhibit --
16 well, this exhibit -- some of our exhibits will come from
17 this disk, which I believe are designated as Petitioner's
18 Exhibit 6. And then some will come from the DEQ's website,
19 which are labeled as Petitioner's Exhibit 5. However, since
20 the numbering of those documents some of them don't even
21 really have numbers, so the description of what we're
22 dealing with may not be particularly efficient, but it's the
23 best we have to work with.

24 JUDGE PATTERSON: Okay.

25 MS. HALLEY: And the file that we were given; I'm

1 not sure what the respondent's intention was with giving us
2 this disk. I don't know if it was meant to represent the
3 record of this case or not, but we would like the record to
4 reflect that the file contains this disk labeled "MDEQ File"
5 contains thousands of files in very -- in various states of
6 completeness and thousands of e-mails with no attachments
7 and that sort of thing numbered in a haphazard way. So if
8 this was intended to be the record, we object, but it's what
9 we have to work with so it's what we're using.

10 MR. REICHEL: Your Honor, I'd like to respond to
11 that.

12 JUDGE PATTERSON: Please.

13 MR. REICHEL: First of all, and I believe this was
14 addressed on the record before. As the court is well aware
15 there was a prehearing motion to compel discovery or seeking
16 discovery that your Honor ruled on. In response to that
17 motion the respondent indicated that all or substantially
18 all of the documents that have been -- were the subject of
19 the request have been provided to the Petitioners in
20 response to previous Freedom of Information Act requests.
21 There apparently was some dispute about that point. After
22 the motion was ruled on and denied and at the time -- at or
23 about the date the parties were designated to exchange their
24 respective exhibit lists, in an effort to be cooperative I
25 obtained from DEQ a disk containing what I understood to be

1 the available -- the most complete available compilation of
2 DEQ documents pertaining to the Agency's consideration of
3 the mining permit application at issue here. That was
4 transmitted voluntarily to counsel. It was not represented
5 to be "the Agency record."

6 I would note that as a procedural matter the
7 Agency record -- the record of the proceeding is the record
8 that is being created in this case. It was simply an effort
9 in good faith to be responsive to the formal and informal
10 requests by Petitioners to make available to them what
11 documents we had available and we did so to the best of our
12 ability. It was provided to them in the form that it
13 existed available to me; it was not intended to confuse,
14 hide or anything else. It was not -- and I want to
15 emphasize this -- intended to be or represented to be a
16 formally compiled record of the DEQ's decision; rather, it
17 was intended to be as comprehensive of a compilation of
18 documents, including e-mails, that were available to me to
19 address the repeated requests by respondent's -- excuse
20 me -- Petitioners' counsel for disclosure of records that
21 they asserted had not been provided. That was the context
22 in which it was offered.

23 Now, we would note that pursuant to agreement of
24 the parties it was agreed that after those documents were
25 provided to counsel -- counsel for all parties -- that the

1 counsel, including Petitioners would have an opportunity to
2 go through those documents and identify documents that they
3 wished to make exhibit in these proceedings and supplement
4 their exhibit list. And supplemental exhibit lists were
5 submitted both by counsel for -- Mr. Haynes, as I understood
6 it, on behalf of the Petitioners that he represents,
7 including the NWF, and Mr. Eggan on behalf of his clients
8 with respect to the Part 31 proceeding. And they did so and
9 they identified certain documents and they are what they
10 are. I don't believe that this (indicating) document is
11 among any of these supplemental -- identified exhibits on
12 supplement exhibit lists.

13 So and I don't frankly purport to understand,
14 because I've not -- it's not been feasible for me to review
15 the entire contents of this disk that Ms. Halley described
16 given its scope. So without looking at it I don't know what
17 it is. I would note for the record that this is not
18 something that has been identified -- and I would also note
19 that the disk that we're talking about here, your Honor, was
20 transmitted to counsel -- all counsel in the very first work
21 week of April. I'd have to pull my file but I believe it
22 was April 1st or April 2nd, within the short time of the
23 deadline for disclosure. Again, we weren't providing this
24 as the administrative record; it was just an attempt to
25 provide additional -- access to additional documents. So I

1 want the record to clearly reflect that.

2 And I -- to my knowledge this document has, prior
3 to today, not been identified in any form as -- unless it
4 was on the DEQ website, which respondent's -- excuse me --
5 Petitioners' exhibit list did identify documents posted on
6 the DEQ website. We understand that. At least I'm not
7 aware as to whether or not this is among them. But bottom
8 line, your Honor, is to my knowledge at least -- perhaps
9 counsel can enlighten me where this document appears on
10 their -- either their original or supplemental exhibit list.

11 MS. HALLEY: Well, first of all, I don't disagree
12 with Mr. Reichel's representation of this disk, but I want
13 the record to be clear that it is not a formal record up
14 until the beginning of this proceeding. I think we've done
15 that. This document, as I stated, is not from this disk,
16 but I felt we needed to address this disk before we got
17 started here. This is from the appendix of Dr. Inman's
18 report, which is posted on the DEQ website, which is
19 referenced as Petitioner's Exhibit 5 and this is Appendix 5,
20 document five.

21 JUDGE PATTERSON: I'm sorry. This is from Donald
22 Inman's reports?

23 MS. HALLEY: Yes.

24 JUDGE PATTERSON: Okay.

25 MS. HALLEY: Appendix 5-5.

1 MR. LEWIS: I don't see -- is this Exhibit 5 from
2 the Part 632 exhibit list?

3 MS. HALLEY: If you look at Petitioners'
4 description of -- in Number 5, Petitioner's 5 --

5 MR. LEWIS: That's what I'm looking at. I'm
6 asking you is that where it is in the Part 632 exhibit list?

7 MS. HALLEY: Yes; yes, it is.

8 MR. LEWIS: And that says, "The text of and
9 documents available on the DEQ website."

10 MS. HALLEY: A particular section of the DEQ
11 website, yes.

12 MR. LEWIS: Well, I guess what I'd like to get
13 handle on; is this some huge collective assemblage of
14 documents you're referring as Exhibit 5?

15 MS. HALLEY: It is the materials available on the
16 Kennecott section of the DEQ's website. It's only material
17 that's been put there by the DEQ.

18 MR. LEWIS: Well, I think I understand that. My
19 question is I guess I'm concerned -- and we've had this
20 problem with some of the other kind of combined large
21 exhibits listed on the Petitioners' exhibit list is it makes
22 it horribly difficult to identify what the exhibit is. If
23 we're going to be talking about particular individual
24 documents out of this, and I would hope that -- well, I'm
25 concerned again it's going to cause substantial delay and I

1 think in retrospect it would have been nice with the time
2 available if counsel could have been able to carve out
3 individual documents and made them exhibits. But I guess
4 we'll have to proceed and see how you intend to identify
5 these for the record, but that would be my concern about
6 this again, your Honor.

7 MS. HALLEY: Your Honor, I will be as specific as
8 I possibly can when mentioning these documents.

9 JUDGE PATTERSON: All right. We'll just have to
10 take it as it comes I guess.

11 MR. REICHEL: And at this point frankly I couldn't
12 read it. I guess I need new glasses.

13 JUDGE PATTERSON: Me neither.

14 MR. REICHEL: But now that counsel has indicated
15 that this is an excerpt from what was referred to as the
16 Inman report, I would like to interpose an objection at this
17 time on the basis of relevance to any inquiry into the so-
18 called Inman report. As your Honor may recall, in the
19 Motion for Discovery -- I believe that was the title -- or
20 to compel discovery filed by one or more of the Petitioners
21 with respect to their request to have the DEQ produce
22 additional documents one of the asserted bases for that
23 request was allegedly that the DEQ had failed to comply with
24 the Freedom of Information Act request and referred to the -
25 - what was characterized, I believe, as the so-called

1 "Sainsbury incident" the substance of which was the
2 contention that the DEQ in general, and Mr. Maki in
3 particular, had allegedly suppressed or intentionally
4 suppressed information provided by Mr. Sainsbury to the DEQ
5 and, thereby, sought to preclude public consideration of
6 that.

7 Your Honor, that issue is not relevant in this
8 proceeding. The fact is, as the record already reflects,
9 the strictly a procedural issue. The fact is that the so-
10 called Sainsbury report or reports, the documents in
11 question, were in fact fully disclosed. They indeed are
12 already in evidence in this case. Further, as noted in our
13 response to the Petitioners' Motion to Compel Discovery --
14 and ironically Mr. Inman, who was brought in independently
15 to review the circumstances surrounding the Department's
16 handling of this document concluded specifically that there
17 was no intent to suppress or prevent public access to these
18 documents. And as the court has also heard testimony from
19 Dr. Wilson Blake that the DEQ also brought him in to
20 independently review that issue.

21 The bottom line is this, your Honor. The issue of
22 what Mr. Inman found or concluded with respect to the DEQ's
23 handling of the Sainsbury report or reports, so-called, has
24 no relevance in this proceeding. The report or the
25 documents are in evidence. They're available to this

1 tribunal to consider in whatever way, shape or form it
2 wants, number one. Number two, the fact is that those
3 documents were provided to the public and the Petitioners
4 before the Agency made its decision to issue the permit that
5 brings us here today. So I respectfully submit that whether
6 it's through this document or any other document, inquiry
7 into the so-called "Sainsbury incident" or the Inman report
8 is not relevant to any issue in this case.

9 MR. LEWIS: I join -- intervenor joins in the --
10 Mr. Reichel's objection, your Honor.

11 MS. HALLEY: Your Honor, these materials are,
12 first of all, on the DEQ website, on a website they created
13 specifically for the Eagle project. Any claim that these
14 materials are not relevant are rebutted by their presence on
15 this particular website that is wholly of the DEQ's design
16 and their own control. That just doesn't hold water. Now,
17 the argument that the issues discussed by Dr. Inman are
18 irrelevant flies in the face of what this proceeding is
19 about in part. Part of what we're doing here is putting on
20 a case so that your Honor can decide whether the procedures
21 were followed, whether the Part 632 and the -- I'm sorry --
22 the rules that go with it were followed, and those are
23 procedural questions.

24 The procedure of the processing of this permit and
25 all of its bits and pieces that go with it certainly are

1 relevant to this proceeding, including where they came from,
2 how they got to be in the record, when they got to be in the
3 record; if or if not they were fully disclosed to the
4 public. Those are relevant questions going to whether Part
5 632 and its rules and the procedures laid out in them were
6 followed.

7 Now, if the respondents were going to produce Dr.
8 Inman as a witness we would defer this whole discussion to
9 him. However, they are not. Mr. Maki is the only witness
10 here on this list that I know of who has knowledge about the
11 things leading up to the Inman report and, you know, he's
12 the only OGS employee who is set to testify in this case.
13 So if the respondents want to offer Dr. Inman as a witness
14 we'll be happy to defer this discussion until he's here.
15 But as far as I know he's not on their witness list and Mr.
16 Maki is the only person with whom we have the opportunity to
17 discuss these matters.

18 And furthermore, Mr. Maki brought up the Sainsbury
19 reports on direct examination. They discussed them during
20 his direct examination making it clearly relevant enough for
21 them to talk about it in their direct and, therefore, we
22 have the right to cross-examine him on it.

23 MR. REICHEL: May I respond, your Honor?

24 JUDGE PATTERSON: Sure.

25 MR. REICHEL: Point by point. First of all, the

1 fact that a document is posted on the DEQ website does not
2 make it relevant or admissible in this proceeding. It's
3 used in this proceeding -- there are all kinds of things on
4 the DEQ website. Ipso facto, it doesn't make them relevant.
5 The issues in this proceeding, as your Honor is aware, is
6 whether and under what conditions the DEQ should make a
7 final decision to issue the permit that is at issue here.

8 Now, with respect to the issue of whether or not
9 the procedures required by the act and the rules were
10 followed. Notably absent from counsel's argument is any
11 contention by reference to any specific provision of the
12 statute or rules that establishes that the Department has
13 not followed the procedures specified by the rules either
14 with respect to disclosure or opportunity for public
15 comment, and in that regard the gist of this whole Sainsbury
16 suppression of evidence red herring is the contention that
17 there was an effort -- a conscious effort by the DEQ to
18 shield from the public some documents prepared by Mr.
19 Sainsbury and they were not -- the public was not allowed to
20 provide -- consider them or offer comment on them.

21 The record is clear and undisputed as it stands
22 today that the -- before the DEQ issued its proposed
23 decision in July 30, 2007 to issue the permit, that as Mr.
24 Maki described led to the decision in December that brings
25 us here today, the DEQ disclosed to the public, including

1 the Petitioners, the documents in question. Mr. Sainsbury
2 has already testified through deposition; his testimony is
3 in evidence. It includes testimony that --

4 JUDGE PATTERSON: And for the record, I have
5 reviewed that.

6 MR. REICHEL: You have nor have not?

7 JUDGE PATTERSON: I have.

8 MR. REICHEL: Okay. So you're aware of that. And
9 he testifies among other things that he was not instructed
10 to suppress or withhold the document. In any event, the
11 mere fact this was posted on the website does not make it
12 relevant to the issue as to whether or not this proposed
13 mine complies with the requirements of Part 632 and its
14 rules. And in fact there is no contention made that the
15 Department's initial handling of this document violated or
16 violates today any requirement of Part 632 or its rules.
17 And then finally, the suggestion that they wouldn't ask Mr.
18 Maki this if we brought forth Dr. Inman begs the question.
19 We didn't list Dr. Inman as a witness because he has nothing
20 relevant to testify to.

21 The bottom line, your Honor, is while, yes, one of
22 the things that this tribunal needs to consider is whether
23 or not the Agency properly processed the permit, I submit to
24 you based upon review of Part 632 and as -- other statutes
25 that this tribunal regularly applies, that inquiry into the

1 procedural regularity includes whether or not the Agency
2 followed the process prescribed in its rules and which
3 include typically, and in this case, specific requirements
4 for notice, opportunity for comment, et cetera. We've
5 already established on direct examination that that process
6 has been followed. The fact that the Sainsbury document was
7 referred to briefly in my direct examination doesn't alter
8 that. We're not saying that any mention of the Sainsbury
9 documents are irrelevant or that -- the fact is, his
10 testimony -- deposition testimony and the documents that he
11 authored that were the subject of all of this controversy in
12 the first place are already in the record. That does not
13 make -- open the door to this wholly collateral inquiry,
14 this flogging this dead horse that somehow Mr. Maki or
15 someone suppressed this information. So I respectfully
16 submit, your Honor, that there is no basis for inquiry into
17 this as a part of this record.

18 MR. WALLACE: Your Honor, if I may respond
19 briefly.

20 JUDGE PATTERSON: Go ahead.

21 MR. WALLACE: I think that we've been here nearly
22 all morning now. The main purpose of, as far as I could
23 tell, Mr. Maki's testimony has been somewhat limited to the
24 regularity of the application review process. We've looked
25 at many exhibits; they're now as demonstrative exhibits

1 admitted into court. They're entitled, "Application Review
2 Process" date by date by date what occurred and to get
3 across in the record that this was handled with regularity
4 and properly and responsibility and professionally. And it
5 includes -- I'm looking at slide 21 of this demonstrative
6 exhibit. "March 1, 2007 DEQ announces withdrawal of
7 proposed decision." Well, I think we're going to drift over
8 into the world of George Orwell if we put in the record this
9 mysterious entry.

10 We've had testimony about it in the context of the
11 perfect regularity of this process without being allowed to
12 inquire of Mr. Maki as to something that was highly
13 irregular, which was the only documents we've seen that
14 we're specifically critical of the way Golder has done its
15 work; very critical of Golder. Golder on whom much of this
16 case is based. And that witness being Dr. Sainsbury who
17 has -- is extremely well credentialed. And he submitted his
18 report to the DEQ and it was taken out of the record -- it
19 was deep-six'd or sent back or whatever the details
20 presumably shortly from Mr. Maki.

21 And it doesn't -- we're not talking -- this is not
22 an ethical proceeding or a criminal proceeding or anything
23 of the kind. It's about whether this application has been
24 correctly under the law reviewed. And there was a very odd
25 and troubling circumstance, so troubling that the director

1 withdrew approval of the proposed -- withdrew the proposed
2 decision. And this is our one chance, your Honor, to learn
3 about that and make a record of it. The door has been
4 opened by their exhibits. This is the purpose of Mr. Maki's
5 being here. We have allowed this -- we ought to be allowed
6 to spend a little time looking into something that was
7 highly irregular that the public ought to know about and
8 that this record ought to contain.

9 MR. REICHEL: I don't want to go on forever, your
10 Honor, just very briefly. In fact this was not, as a matter
11 of fact, highly irregular and that is what Dr. Inman
12 concluded, number one. Number two -- and I can't emphasize
13 this too much -- the Sainsbury documents are in the record.
14 His testimony is in the record. There is no contention --
15 no credible contention that I've heard that the alleged
16 irregularity in the Department's handling of the initial
17 Sainsbury documents violated Part 632.

18 In any event, the issue in this case is whether or
19 not the permit should be issued in light of all of the
20 relevant evidence. And there's no dispute that the
21 conclusions, writings of Dr. Sainsbury have gone into the
22 record. They are what they are. Your Honor will have to
23 consider them. But to pursue this collateral process of
24 dredging up a unsubstantiated allegation that somehow the
25 DEQ intentionally suppressed evidence, which is in fact was

1 disclosed before it made its decision and is already in this
2 record, is irrelevant and a waste of time.

3 MS. HALLEY: Your Honor, I'd just like to assure
4 you we have no interest in so-called "flogging" Mr. Maki.
5 What we are interested in is really understanding the
6 process that's gone on here. That is entirely relevant to
7 your consideration of this matter. Mr. Reichel's right that
8 part of what you're considering here is whether and under
9 what circumstances this permit should be issued. But it's
10 also whether the process that the DEQ followed to grant the
11 permit in the first place was proper, appropriate and
12 lawful. That is part of this court's jurisdiction in this
13 matter and it's wholly relevant.

14 JUDGE PATTERSON: I'm going to overrule the
15 objection. As Mr. Wallace pointed out, there -- for lack of
16 a better term -- is a gap in the record at this point as to
17 the withdrawal of the proposed decision. I'm not sure what
18 this document specifically is, but my understanding is that
19 the Inman report basically exculpated the Department, but if
20 you want to pursue that go ahead.

21 MS. HALLEY: Well, your Honor, this exhibit is an
22 attachment to the Inman report. I actually wasn't planning
23 to go into the discussion of that just yet. But the topic
24 came up because we're here.

25 JUDGE PATTERSON: Okay. Go ahead.

1 MS. HALLEY: Okay. Thank you, your Honor.

2 Q Mr. Maki, this is OGS organizational chart; right?

3 A Correct.

4 Q Okay. Do you have a pointer up there?

5 A I do.

6 Q Okay. Could you show us where you appear on this

7 organizational chart, your position and your name?

8 A Way down here (indicating).

9 JUDGE PATTERSON: Dead last.

10 Q Thank goodness, huh?

11 A Uh-huh (affirmative).

12 Q All right. And who is your direct supervisor, Mr. Maki?

13 A Mr. Steven Wilson.

14 Q And who's his direct supervisor?

15 A I believe Thomas Godbold is.

16 Q And then moving up the chain?

17 A And then Hal Fitch.

18 Q Okay. Now, what is Mr. Wilson's role in supervising your

19 work? How often do you talk to him; what do you talk to him

20 about? How do you interact with him?

21 A Right. Mr. Wilson is my direct supervisor. We

22 communicate -- I couldn't tell you how regularly.

23 Q Daily, weekly, monthly?

24 A It varies. I really -- everyday for some certain

25 circumstances; maybe once a week for others, but I couldn't

1 really tell you offhand. But yes, his role is to supervise
2 my work.

3 Q And so when you have questions about things do you go to Mr.
4 Wilson?

5 A I do, yes.

6 Q Have you gone to him for guidance in the course of this
7 proceeding in looking at -- well, not this proceeding here,
8 the court proceeding; I mean in the context of considering
9 the Eagle application.

10 A I have at times, yes.

11 Q And how about Mr. Fitch?

12 A Mr. Fitch as well, yes.

13 Q Now, below your name is Melanie Humphrey. Now, does that
14 mean that you supervise her?

15 A It means, again, like I said, I'm a lead worker so I
16 essentially dictate the work that she does. But as far as
17 being her direct supervisor and signing her time sheets, no,
18 that would -- those responsibilities are for Mr. Wilson.

19 Q But you direct her work?

20 A I do in some cases, yes. I mean, Mr. Wilson will have her -
21 - I mean, he's ultimately our supervisor, but as far as in
22 the U.P. district for certain aspects I do direct her work.

23 Q I see. Who made the final decision to issue the Part 632
24 permit?

25 A I believe it was Jim Sygo, Deputy Director Jim Sygo.

1 Q So he made the final decision as in it's his signature that
2 appears on the permit; right?

3 A That's correct.

4 Q Okay. So how did he arrive at his conclusion to sign that
5 permit?

6 A Well, he had recommendations from the mining team which I
7 was a part of. We had conferences with Mr. Sygo where he
8 asked pointed questions to the mining team regarding their
9 review and their conclusions and recommendations.

10 Q So can you just tell me the chain of events from your view
11 that the mining team agreed to issue the permit and then
12 what happened?

13 A At which point are we talking about?

14 Q The final permit.

15 A The final permit?

16 Q Yeah, that's what I'm talking about.

17 A Could you repeat that question again?

18 Q Sure. What chain of events starting with your decision to
19 recommend approval of the permit -- what change of events
20 happened that led up to Jim Sygo's signature on the front
21 page of the permit?

22 A We --

23 Q You made a --

24 A I'm not -- I guess I'm not following.

25 Q Okay. Did you make a recommendation to somebody to approve

1 the permit?

2 A Did I personally make a recommendation?

3 Q Sure.

4 A I don't believe the final decision was a written document.
5 I can't recall, but I believe it was more of a -- through
6 communication with Mr. Sygo. What happened was the permit
7 prior to issuance, the final permit, a draft went around to
8 all the mine team members for our review and comments that
9 we may have and concerns that may be -- that was the last
10 activity that happened. And those comments would have been
11 reported, I believe, to Mr. Sygo.

12 Q Okay. So your mining team came to an agreement about the
13 application; is that right?

14 A In the early stages, yes. Okay. Go ahead and --

15 Q Did the mining team make a recommendation to someone to
16 approve the permit?

17 A I don't recall a recommendation, an actual letter. Is that
18 what you're talking about, each mining team member making a
19 recommendation?

20 Q Well, maybe I can refresh your memory.

21 MS. HALLEY: Now, we're back to the disk issue.
22 This is -- the disk was designated as Petitioner's Exhibit 6
23 and we are using from that disk, it's folder 200-and- --
24 it's labeled "245 Response" and it's file number 4573.

25 MR. REICHEL: Excuse me, Counsel. You're saying

1 that the entire disk was designated Exhibit 6? That's not
2 my recollection. After the disk was provided there was a
3 supplemental designation of exhibits that included some -- a
4 limited number of documents from that disk.

5 MS. HALLEY: I'm not intending to offer this as an
6 exhibit, Mr. Reichel.

7 MR. REICHEL: So you're just using this to refresh
8 his recollection?

9 MS. HALLEY: Exactly.

10 MR. REICHEL: All right. Thank you.

11 Q Now, Mr. Maki, does this trigger your memory about a
12 recommendation made that you wrote indicating that the
13 mining team was recommending approval to Steve Wilson?

14 A Right. This was not the final decision though.

15 Q I see. So this was --

16 A This was the proposed decision.

17 Q I see. Okay. So what process was followed for the final
18 decision then? Did the mining team again make a
19 recommendation?

20 A Yeah. The final process -- boy, there was several processes
21 so I'm going to have to really reach deep for this. Again,
22 what happened was after public hearing we collected public
23 comments; there was a review and consideration of the public
24 comments provided. Each mining team member looked at those
25 public comments, considered them in their final decision.

1 But the final decision really was the permit came around to
2 everybody in a draft form for their review; did that
3 permit -- do they still support issuing that permit I guess
4 is what the intent of that review was. And if they did have
5 issues, the way I understand it, it was supposed to be
6 presented to Mr. Sygo.

7 Q I see.

8 A So I was not really involved in that, you know, like I was
9 here where the mining team, we sat, I polled the mining
10 team; we, I guess, concluded that a decision could be made
11 and I recommended that decision to Mr. Wilson. But at the
12 final end of it Mr. Sygo directed that.

13 Q So just to be clear, this an interoffice communication to
14 Steve Wilson from you, Joe Maki, on January 4th, 2006?

15 A That's what it says, yes.

16 Q Okay. Do you recall this document now that we've put --

17 A Could you scroll up? Let me read it. No, that might be a
18 little far.

19 Q So the first sentence says, "The mining team has completed a
20 thorough and accurate review of Kennecott's Eagle Mine
21 application submitted to the DEQ on February 22nd, 2006"?

22 A Right. I'm reading just the document right now, if that's
23 all right to confirm that that's what I --

24 Q Sure; sure.

25 (Witness reviews document)

1 A Yes. That is a document that I sent to Mr. Wilson.

2 Q Okay. Thank you. How much of your work time is dedicated
3 to the Eagle project?

4 A Well, at different phases of this project, like right now,
5 100 percent of my time. During the initial review probably
6 100 percent of the time. There were some interim points
7 that at one point zero percent of my time, so --

8 Q When was that?

9 A That was during the -- let's see. I forget what it's
10 called. There was a court case that was being looked at
11 regarding Part 632. I can't remember.

12 Q The administrative completeness challenge?

13 A That's it, yes.

14 Q Was there another time when zero percent of your time was
15 spent on Part 632 on this particular project?

16 A There was, yes.

17 Q And what was that?

18 A That was during the Dr. Inman's investigation into what went
19 on with the Sainsbury reports.

20 Q How long did that period last?

21 A I don't know offhand. I think from the beginning 'til three
22 months maybe. I'm not positive.

23 Q All right. Mr. Maki, do you recall a letter being issued to
24 Director Chester from Governor Granholm?

25 A Oh, I do, yes.

1 Q Okay. Do you recall the gist of that letter?

2 A The gist I think was that she was encouraging the director
3 to provide a thorough review of Kennecott's application.

4 Q We'll look at it just to be clear. What I'm referencing is
5 Petitioner's Exhibit 25. Well, while we're working on that,
6 your understanding of the letter is that it directed
7 Director Chester to conduct a thorough review for this
8 project; is that right? Oh, there we go. Is this the
9 letter, Mr. Maki?

10 A Could you scroll down just so I can confirm that it was?
11 Yes, that's the letter.

12 Q Could you just read the last paragraph there?

13 A "I am now directing" -- it's kind of hard --

14 Q Just the first sentence.

15 A Oh.

16 "I am now directing that you give rigorous and
17 thorough review to Kennecott's permit application and
18 insure that they meet each and every aspect of the new
19 regulations and that any authorized activity not harm
20 or impair our public trust resources."

21 Q Okay. Thank you. So the date of this letter is February
22 23rd, 2006. That was approximately about a week after you
23 received the application from Kennecott?

24 A Could I -- do we have a date on when we received that
25 application?

1 Q My understanding is that was February 14th.

2 A I believe it was a different date, but --

3 JUDGE PATTERSON: I have the 22nd.

4 THE WITNESS: That's what I was going to say.

5 MS. HALLEY: What do you have?

6 JUDGE PATTERSON: The 22nd.

7 THE WITNESS: February 22nd is --

8 MS. HALLEY: 22nd? Okay.

9 A So it was the day after we received the application.

10 Q Wouldn't disagree with you about that. Okay. Now, given

11 Governor Granholm's direction about the level of

12 thoroughness she was ordering for this particular project,

13 did you have discussions with your superiors, Mr. Wilson or

14 Mr. Fitch or Director Chester or at that time Deputy

15 Director Skip Press, about how in fact to accomplish what

16 she references a very thorough, complete review that insures

17 that each and every point of the regulations is met?

18 A You know, I don't recall having a conversation like that.

19 Q Do you recall any discussions about this letter at all?

20 A I don't, no.

21 MS. HALLEY: All right. Your Honor, we're going

22 to be moving into a different area. It's almost noon.

23 JUDGE PATTERSON: Okay. We'll break now.

24 MS. HALLEY: Thank you.

25 (Off the record)

1 JUDGE PATTERSON: Ready?

2 MS. HALLEY: Yes.

3 JUDGE PATTERSON: Okay.

4 Q Mr. Maki, I have just some questions about some of your
5 slides, and Barb is going to project them up. So let me
6 start with slide number 2. The second bullet point
7 references a presentation to U.P. legislators. Do you
8 remember who was at the meeting?

9 A The legislators that were at the meeting?

10 Q Yes.

11 A Would you like me to list their names?

12 Q Please?

13 A Yes, I do remember. Representative -- well, Senator Prusi,
14 Representative Adamini, Representative Brown and
15 Representative Casperson were at the meeting.

16 Q And were anybody other than you and the legislators at the
17 meeting?

18 A Yes, there were other people there.

19 Q Who else?

20 A Deputy Director Pruss and I believe Hal Fitch was there as
21 well.

22 Q Is that all?

23 A That's all that I recall.

24 Q Slide 3 please. I just have a clarification in this slide.
25 The second bullet point references developing underground

1 mining regulations, but really at this point in your
2 presentation, you're really talking about the statute, not
3 the rules; is that correct?

4 A That's correct.

5 Q Okay. Thank you. Now, the reason that's an important
6 point, I think, is because actually there were two separate
7 processes for developing the statute and developing the
8 rules; right?

9 A That's correct.

10 Q Okay. Now, would you describe the Part 632 development
11 process as a consensus project?

12 A I don't understand.

13 Q The process that was gone through to develop Part 632, the
14 statute, would you describe that as a consensus project?

15 A I still don't follow.

16 Q Did all the parties reach consensus on what Part 632 should
17 contain?

18 A I understand that's what happened. I was not there at that
19 particular meeting when that took place, but that's what I
20 understand.

21 Q All right. Now, would you characterize the process of
22 developing the rules as a consensus process?

23 A I guess I would not; no.

24 Q What happened when the group had differences of opinion
25 about what the rules should contain?

1 A What happened? I don't understand.

2 Q How were the disputes settled when varying parties in the
3 room had disputes what the rules should contain?

4 A Well, from what I recall, there was some sidebar discussions
5 that went on between the groups, some of which I wasn't
6 privy to so I'm not really sure.

7 Q You don't know what happened when the groups disagreed with
8 each other about what should be in the rules or disagreed
9 with the DEQ about what should be in the rules. How did
10 that decision get made? Somehow somebody had to decide what
11 the rules would be like. Who made those decisions?

12 A I'm not aware of who made that decision. I did not make
13 that decision, but I'm not aware of who would have made that
14 decision.

15

16 Q Who was chairing most of the meetings?

17 A For the rules work group?

18 Q For the rules.

19 A Hal Fitch and Lynne Boyd from the DNR chaired those
20 meetings.

21 Q Who was responsible for taking the recommendations of the
22 group sort of back when we weren't meeting; who incorporated
23 the group's input into the drafts and then brought it back
24 and went through that process many times?

25 A I think it was Hal Fitch, but I'm not certain.

1 Q Now, who promulgated the rules finally? Is that an agency
2 decision?

3 A Correct. You're kind of going out of my knowledge of the
4 process. I believe there is an agency that once language is
5 drafted it goes to I think it's SOAHR is the --

6 Q Right. I'm not asking sort of the legislative history of
7 the rules necessarily. I'm just trying to understand whose
8 words appeared in sort of the final rules document as we
9 know and use them today? Who had the last say?

10 A I'm not sure. I guess I don't understand.

11 Q Okay. Okay. Slide 5 please. Okay. The first bullet
12 references, "Ongoing communications with Kennecott Eagle
13 Minerals Company (KEMC) in 2004 and 2005." What was the
14 nature of those communicating? What did you talk about?

15 A Well, depending on what point in time, Kennecott was still
16 engaged in an exploration program, and the dates, I'm not
17 exactly sure when. When that transferred from exploration
18 to evaluation of a mine, I'm not sure. But essentially
19 between those dates, conversations involved exploration.
20 And at some point in time, they transferred into what would
21 be the requirements for collecting data and the data
22 requirements for an application for a permit.

23 Q When were the rules finalized?

24 A Could I check my references here?

25 Q Absolutely.

1 (Witness reviews document)

2 A February 2nd, 2006.

3 Q So before the rules were finalized and even before the
4 statute was signed, you were talking to the company about
5 the requirements and what they needed to be doing.

6 A No, not necessarily.

7 Q Well, if the statute was signed into law in 2005 and the
8 rules were signed in 2006 and you were meeting in 2004, 2004
9 is before 2005 and 2006; right?

10 A Correct; correct.

11 Q Okay. Now, does 632 contemplate any sort of pre-application
12 process?

13 A I think it does. I don't recall offhand. We've drafted
14 procedures since then which maybe that's where that's
15 located. So I'm not sure. If I had a moment to go through
16 the rules, maybe I could find that.

17 Q Sure. Take a moment if you need it. Go ahead.

18 A This may take a little while.

19 (Witness reviews document)

20 A I don't see anything in the rules that actually dictate that
21 we have a pre-application.

22 Q So there's no formal requirement for you to do anything
23 before an application is filed; is that correct?

24 A That's what it appears; that's correct; yes.

25 Q And do you -- did you get permission to sort of engage in

1 this pre-application process or not?

2 A I don't recall getting permission.

3 Q So why did you do it? If you didn't have permission and
4 it's not authorized by any law, what was the goal?

5 A Well, the primary goal was, again, for the exploration side
6 of things; that is part of our job is --

7 Q Right. But I'm talking about just pertaining to Part 632
8 right now.

9 A Rephrase that question, please.

10 Q I'm only asking you about communications that relate to Part
11 632, not necessarily exploration which would be governed, if
12 at all, under Part 625.

13 A Okay. Well, the meetings essentially was the company
14 informing us what they were doing on their site for our own
15 benefit to understand what was going on. At the time, we
16 were getting several inquiries from the public on what was
17 happening out there. So we would inquire to the company
18 what was actually going on out on their site.

19 Q I see. All right. Slide 6, please. Now, in slide 6, this
20 appears to be a list of people on the mining team.

21 A Correct.

22 Q Now, I just have a couple of questions about this. Kristen
23 Mariuzza, you made a point of saying that she had attended
24 the rules sessions and was very familiar with the rules
25 because of that.

1 A Right. I don't think I would characterize it as very
2 familiar. She was familiar with the rules.

3 Q Do you know how many of the rules sessions she attended?

4 A I don't.

5 Q Slide 7, please. Now, the fourth bullet point here
6 discusses your role as coordinating the scheduling meetings
7 between the mining review team and Kennecott?

8 A Correct.

9 Q How often did Kennecott come to the mining review team
10 meetings?

11 A This was actually at the request of the mining team to meet
12 with Kennecott.

13 Q How often did they come?

14 A Maybe three times, four times maybe.

15 Q Now, did you ever consider including anybody else in the
16 mining review team other than DEQ staff?

17 A We did. We had outside consultants.

18 Q Okay. Other than DEQ staff and outside consultants?

19 A No, we didn't consider anybody else; no.

20 Q So you felt you had all of the expertise you could possibly
21 need?

22 A We felt we had an adequate team; yes.

23 Q Slide 9, please. On the second bullet point you're
24 referencing consultation with DEQ management as necessary.
25 Who does that include?

1 A Well, it included different people at various times, but
2 primarily in the early stages it included Hal Fitch and Skip
3 Pruss. And then later stages after Mr. Pruss left the
4 agency, it included Jim Sygo.

5 Q And your supervisor Steve Wilson, I presume?

6 A Steve was part of those meetings as well.

7 Q Anybody else?

8 A I don't recall anybody else.

9 Q Now, the third point references polling the mining team to
10 determine if there was consensus about the permit decision.
11 What does the word "consensus" mean to you?

12 A What consensus means is that all the team members agreed
13 that they're at the point where they can make a decision.

14 Q Slide 10, please. Now, relating to the Part 632 permit
15 application and the mining team, what is your understanding
16 of Part 632's sort of -- the way it's been characterized as
17 an umbrella statute? You've heard, I think, that term has
18 been used in many different settings.

19 A It has.

20 Q What does that mean to you?

21 A I think -- well, my personal understanding of that would be
22 that it's designed to maybe address things that other
23 statutes may not. Specifically it's a mining statute, but
24 there are other parts of that that there's some overlap
25 between the Water Bureau statutes and maybe some of the

1 other statutes. It was never designed to supercede any of
2 these statutes that are up there, but maybe to kind of bring
3 them together.

4 Q In fact, the cumulative impacts analysis and the EIA and
5 other parts of Part 632 actually contemplate some of the
6 same issues that were raised in the Part 31 and the Part 55
7 permit applications; right?

8 A One more time, please?

9 Q I'm wondering if you would agree with me that the Part 632
10 application, specifically the requirements for assessments
11 under the EIA and the cumulative impacts analysis and some
12 of the other portions, but those are the primary ones, if
13 they have some overlap with issues relevant to Part 31 and
14 Part 55?

15 A I'd agree with that; yes.

16 Q And, in fact, you -- the DEQ held joint public hearings on
17 all three, and it was sort of treated as an omnibus type
18 process -- right? -- all at one time?

19 A Right; that's correct.

20 Q Did you have anybody from the air division on your mining
21 team?

22 A Initially we had Tom Maki is a U.P. employee in our quality
23 division. But as the process moved forward, the air quality
24 sections of that were being -- mainly being addressed by the
25 air quality division.

1 Q Right. So why did he stop attending your mining team
2 meetings?

3 A Well, Mr. Maki is primarily a field investigator, not
4 necessarily a permit writer or handles permitting in air
5 quality. So he attended meetings periodically.

6 Q Throughout the whole process?

7 A Throughout the whole process. I can't tell you how many
8 he's attended.

9 Q But he's not listed on your list of members.

10 A No, because he did not have an active role in doing a review
11 of the Part 632 permit.

12 Q I see. So who did review the air portions of the Part 632
13 permit?

14 A The air portions which were included in 632 were the
15 reference to Part 55 permit. So we relied on the air
16 quality division to take the lead on that review and that
17 evaluation.

18 Q So you're saying there's no part of the air considerations
19 that went on under Part 632 that are not contained in the
20 Part 55 process?

21 A Well, that was a mouthful. I can't -- with that one.

22 Q I'm just making sure I understand what you're saying. And
23 my understanding is that what you just said is that there is
24 no part -- there is no air review process or anything like
25 that that went on in consideration of the Part 632 permit

1 application that is not included in the Part 55 permit?

2 A You lost me there. I'm sorry. I'm trying to keep up with
3 you here.

4 Q Okay. Is there any consideration of anything to do with air
5 in the Part 632 section of this project that your part --
6 that, you know, that's yours, that is not included in the
7 Part 55 permit application?

8 A Maybe I'm just nervous, I guess.

9 Q Was the entire air analysis done by the Part 55 people?

10 A That's correct.

11 Q Okay. Now, at some point in our discussion of slide 10, you
12 talked about the length of the application, 8,000 pages or
13 thereabouts; right?

14 A Correct.

15 Q But you're not suggesting that just because the application
16 would be long that that necessarily implies that it was
17 complete or thorough?

18 A No, not at all.

19 Q Slide 19, please. All right. The second bullet point here
20 indicates that the mining review team reviewed the compiled
21 public comments and Kennecott's October 27th response;
22 right?

23 A That's correct.

24 Q Now, when would the mining review team have received those
25 public comments?

1 A The public comments I believe we're referring to here are
2 the comments that we received regarding the October 27th
3 document. Is that what you're referring to?

4 Q I'm going off of your slide. You tell me. I'm not sure.

5 A Well, what I'm talking about with compiled public comments
6 is that the department opened up a 42-day window for the
7 public to have an opportunity to review this KMEC October
8 27th document. And after the close of that, the comments
9 were then considered by the mining team and DEQ management,
10 for that matter.

11 Q So when did the comment period close?

12 A I don't know.

13 Q Do you recall?

14 A I don't recall.

15 Q But you said it was how many days? 42 days you --

16 A I believe we gave -- we opened it up to a 42-day window.
17 I'm not positive, but I think it was a 42-day window of
18 accepting public comments on that.

19 Q So when would your mining team members, when would they have
20 received the comments? It says they reviewed them. So when
21 did they get them?

22 A You mean a date? I don't know what date that would have
23 been.

24 Q Okay.

25 MS. HALLEY: We need to switch projectors for just

1 a moment. While we're waiting, this is Petitioner's Exhibit
2 6, and it is in the -- this is the disc and it's in the
3 e-mails folder titled "OGS/KEMC/doc/319." And if you're
4 working from an electronic version, it's page 171. Okay.

5 Q Now, this e-mail from you to members of your mining team is
6 dated January 4th, 2007 and it says, "Here are the public
7 comments you requested;" right?

8 A That's correct. That's what it says.

9 Q Now, because of the disc format that we received this
10 material in, we didn't get whatever was attached to this.
11 Do you recall what was attached to this?

12 A I don't.

13 Q Well, public comments at that time would have been what --
14 on what? It's where we're at in the process here.

15 A January 4th, 2007. Where were we at in the process?

16 Q Well, your slide 19 says that the last point on that slide
17 was that the mining team was -- had reviewed the compiled
18 public comments. So that was October 2006. We could swap
19 back, and it might help if we can look at the slides again.

20 A I'm looking at the slides right now.

21 Q Okay. But we'll swap back anyway. So this is the next
22 slide, slide 20. And the first bullet point says January
23 4th, 2007, "Recommendations from mining team to issue the
24 permit." So I'm trying to understand how they could be
25 receiving the public comments and issuing the recommendation

1 on the same day.

2 A I don't recall what was sent in that e-mail or even what
3 that was about actually.

4 Q Did you convene a meeting of the mining team on or about
5 January 4th?

6 A You know, I don't remember the exact day, but I -- we
7 convened the mining team prior to this recommendation.

8 Q But you don't know what public comments you sent them also
9 on January 4th, the same day?

10 A I don't. I don't recall what that --

11 Q Slide 21, please. Now, we've talked a little bit before
12 about the withdrawal of the proposed decision on March 1st
13 of 2007. Now, that was due to the -- what we sort of call
14 the Sainsbury incident; is that right? Is that what caused
15 the withdrawal of the proposed decision?

16 A It is.

17 Q And on or about -- well, before March 1st, Director Chester
18 became aware of the Sainsbury reports; right?

19 A I believe so; yes.

20 Q Just so we're filling in some of the time here between March
21 and July, during that time period, Dr. Inman undertook his
22 investigation; right?

23 A That's correct.

24 Q And did we also -- do you know if Dr. Sainsbury was also
25 deposed during that time?

1 A Yes; yes.

2 Q Did you attend his deposition?

3 A I did.

4 Q And where was it held?

5 A It was held in Minneapolis, Minnesota.

6 Q Thank you. Slide 22, please. Now, when we were discussing
7 I believe the issuance of Part 632, Mr. Reichel walked you
8 through some of the permit provisions; right?

9 A He did.

10 Q Okay. Do you still have the permit there in front of you?

11 A I do.

12 Q Could you look at section M which is pages 28 through 31 of
13 the special conditions section?

14 JUDGE PATTERSON: What were those pages?

15 MS. HALLEY: 28 through 31 of the special
16 conditions section.

17 A Okay.

18 Q Got it?

19 A Looked through all of them.

20 Q Well, I just want you to have it there --

21 A Okay.

22 Q -- so that you can refer to it. Now, what section of the
23 permit is that just for the record? The section then --

24 A The contingency section.

25 Q Contingency. Okay. Now, could you please take a look

1 through that section or just tell us, if you remember, if
2 there's any discussion of subsidence in that section?

3 (Witness reviews document)

4 A There is not.

5 Q Okay. Any discussion of crown pillar failure?

6 A In this section?

7 Q Right.

8 A There is not.

9 Q Any discussion of a catastrophic event?

10 A Could you define "catastrophic event"?

11 Q Well, people also refer to it as an act of God, that sort of
12 thing.

13 A Such as a fire or a tornado or --

14 Q Tornado, I suppose. Maybe fire like a forest fire but not
15 like a mine fire.

16 A Okay. No, then there is not.

17 Q Now, were you here for Dr. Workman's testimony?

18 A I don't recall who Dr. Workman is now.

19 Q He testified about the fish baseline data that he's
20 collected on behalf of Kennecott. We've had quite a parade,
21 I understand.

22 A Yes, there has been. And there's been a lot of
23 conversations about fish.

24 Q There have. Okay. That's okay.

25 A If you gave me a date, maybe -- I don't know. I don't

1 recall.

2 Q Well, it was just a few days ago. Who can tell at this
3 point? Okay. Well, Dr. Workman, the record would reflect,
4 testified about the importance of assessing the worst case
5 scenario from a scientific point of view. Now, does that
6 section about contingencies address a worst case scenario
7 contingency?

8 A For which -- for what type of activity? Just any activity?

9 Q Any at all. Can you find anything in there?

10 A That contemplates a worst case -- well, I guess what would
11 you consider a worst case scenario? There's many aspects in
12 this contingency plan.

13 Q What would you consider a worst case scenario?

14 A Well, in one of them they talk about an event of a rollover
15 of a truck.

16 Q Okay.

17 A Well, that, to me, might be a worst case scenario for that
18 particular contingency.

19 Q Sure.

20 A So is there a specific contingency you're looking at for a
21 worst case scenario?

22 Q Well, let's assume that things aren't going well at the mine
23 site for whatever reason. The wastewater treatment plant is
24 clogged up for a week and they can't get the part in because
25 it's February and we're in the middle of a blizzard. Is

1 that contemplated anywhere?

2 A If the wastewater treatment plant closed down?

3 Q For a longer -- for a substantial period of time.

4 A No. I don't see anything in there for that.

5 Q How about if the inflow to the mine is, you know, not 60

6 gallons per minute but, you know, 500 gallons per minute?

7 Is there a contingency for that?

8 A I don't see one, no.

9 Q Is there a contingency that considers that the vent -- the

10 vent raise filtering system doesn't work, gets a rip in it,

11 you know, gets clogged up? Is there any contingency about

12 what to do if that happens?

13 A NO, there is not.

14 Q Is there any contingency in there that discusses what to do

15 if the underground mine workings after they're re-flooded

16 leach contaminated water out into aquifers?

17 A There's no contingency that addresses that specifically, no.

18 Q All right. Will you turn to page 7 in the special permit

19 conditions there? Now, Mr. Reichel pointed out this section

20 to you, I believe. And it's the section that allows the DEQ

21 to amend the permit; right? Is that right?

22 MR. REICHEL: Objection. Calls for a legal

23 conclusion.

24 A Is it --

25 Q Mr. Maki, is --

1 JUDGE PATTERSON: I'm not sure it calls for a
2 legal conclusion.

3 MS. HALLEY: I'm just asking him to read it and
4 tell me if he agrees that that's what it says.

5 A You said page 7?

6 Q Of the special permit conditions. Am I putting you in the
7 wrong spot? Just bear with me a minute and I'll find it.

8 MR. REICHEL: Counsel, if it would be of any
9 assistance or to the court, we can put the permit up on the
10 screen.

11 MS. HALLEY: This will be fairly short.

12 Q It's page 3. I apologize.

13 A Page 3.

14 Q Section E.

15 A Page 3 of the special permit conditions?

16 Q It's number 5. "This mining permit may be amended subject
17 to the requirements."

18 A Okay.

19 Q It begins that way. Do you see that?

20 A On page 3, number 5, of special permit conditions, I have,
21 "The backfill facility includes the following."

22 Q Oh, I'm sorry. It's page 3 of the first -- just the regular
23 conditions.

24 A Okay.

25 Q I apologize.

1 A That's fine. Now what I am reading again now?

2 Q Page 3, number 5 of the regular conditions. "This mining
3 permit may be amended subject to the requirements." Do you
4 see that?

5 A I do see that.

6 Q Okay. What is your understanding of that clause in the
7 permit?

8 A My understanding is that the department may at any time if
9 deemed necessary amend the permit and, if the applicant
10 wishes to amend the permit, may file a request to the
11 department for an amendment.

12 Q Does that process contain any sort of public participation?

13 A It does.

14 Q How so?

15 A Can I go to the statute?

16 Q Sure. In fact, we can put it up if you want to. We could
17 switch back. It'll be the statute, Section 63207, sub 6.
18 All right. So you have a copy of Part 632 with you?

19 A I do.

20 Q And it's also on the screen. Now, the permit references
21 subsection 6 as well as a rule, but I want to deal with this
22 right now. So what part of an amendment process contains a
23 public review?

24 A Under subsection C, if the department determines that the
25 request is a significant change from the conditions of the

1 approving mining permit, the department may submit their
2 request for amendment to the same review process --
3 amendment to the same review process that's provided for a
4 new permit application in Section 63204(4) to (9).

5 Q Now, do you understand that it's up to the DEQ to decide
6 whether or not any amendment goes through the public review
7 process?

8 A I understand that, yes.

9 Q So there may be changes made, but the public won't have a
10 way to participate in that; is that right?

11 A I couldn't answer that, because that wouldn't be a decision
12 that I would make.

13 Q Well, how would you interpret the word "significant"?

14 A Again, that wouldn't be a decision that I would be
15 responsible for making, so I --

16 Q Well, as the OGS person responsible for Part 632, what are
17 some of the things you would consider to be a significant
18 change?

19 A Boy, that's a lot of speculation.

20 Q Or if you can figure out what you think a minor change would
21 be, you can tell me that, too. Either one.

22 A I guess I'm not comfortable making that decision, because --
23 or making that comment, because I wouldn't make that
24 decision at my level. That decision wouldn't be made at my
25 level.

1 Q But you would probably make a recommendation. You've made a
2 recommendation about almost everything that's --

3 A I believe I probably would make a recommendation.

4 Q So what would you recommend if -- let's see -- if the
5 company wanted to change the location of some surface
6 facilities? Would that, in your opinion, minor or
7 significant?

8 A What surface facilities?

9 Q If they wanted to move things around, if they needed --
10 let's just assume that maybe the portal was going to be in a
11 different spot. Minor or significant?

12 A It depends where the new location would be. I guess, if the
13 portal was going to be moved over 10 feet because the
14 drilling indicated something -- in my personal opinion, that
15 might be a minor amendment. If they were to move it
16 directly over the orebody and do a complete shaft, I'd say
17 that would be a major amendment.

18 Q Now, if you had to, you know, pick like the top five or six
19 big areas that are -- that you've considered in this
20 application, what would they be? Hydrology, geology,
21 geochemistry? What sort of --

22 A We considered all of those, yes.

23 Q Okay. And, well, tell me what are the -- okay. You're
24 agreeing with me, geology, hydrology. What else?
25 Geochemistry I think I said.

1 A Yes.

2 Q Okay. What other big topics did you consider? Rock
3 mechanics?

4 A Yes.

5 Q All right. Baseline data; right?

6 A Yes.

7 Q Am I missing anything big there?

8 A You know, I can't think off of the top of my head. There
9 were many aspects to this application that we considered, so
10 it's hard to rattle them off the top of my head.

11 Q Sure. Now, did you collect any independent data? Well, not
12 you personally but the DEQ. Did you collect any independent
13 data related to geology, for example? Did you go out there
14 and --

15 A During this process or prior to this process? Because
16 Geological Survey has collected significant amount of data
17 out there prior to this project.

18 Q Well, whatever data you have brought to bear on the
19 consideration of this application is what I'm interested in.

20 A Okay. Repeat that one more time.

21 Q I'm wondering if you've collected any geological data -- in
22 other words, did you go out and drill any core?

23 A We did not, no.

24 Q And did you do any hydrology field work? Do you have your
25 own piezometers out there?

1 A No, we don't.

2 Q Did you send somebody out to do a wetlands assessment or
3 delineation?

4 A We did not.

5 Q Did you get any core samples from Kennecott in order to
6 conduct your own humidity cell tests?

7 A No, we did not.

8 Q Did you send anybody out to do a threatened and endangered
9 species survey?

10 A We did not.

11 Q Did you send anybody out to Eagle Rock to assess that site
12 for cultural significance?

13 A I don't -- there was some activity. I don't believe we
14 have, no.

15 Q So your decision to grant this application is based fully on
16 data provided to you by the company?

17 A That's correct.

18 MS. HALLEY: Could you scroll to 63202 of the Part
19 632?

20 Q Now, Mr. Maki, we saw the letter from Governor Granholm
21 expressing that she wanted a very thorough review of this
22 project; right?

23 A That's correct.

24 Q And do you know if there's anything behind that letter? Why
25 was she so concerned about this project? I mean, I'm

1 assuming you don't get letters like that every day from the
2 governor -- right? -- for every project that the DEQ looks
3 at? Do you?

4 A I did not receive the letter.

5 Q Does the DEQ, do you think, normally?

6 A I wouldn't have any clue. I have no idea.

7 Q Now, I'd like you to read subsections C and D which are the
8 legislative findings that go along with Part 632.

9 Q Okay.

10 "Nonferrous metallic sulfide deposits are
11 different from the iron oxide ore deposits currently
12 being mined in Michigan in that the sulfide minerals
13 may react when exposed to air and water to form acid
14 rock drainage. If the mineral products and waste
15 material associated with nonferrous metallic sulfide
16 mining operations are not properly managed and
17 controlled, they can cause significant damage to the
18 environment, impact human health and degrade the
19 quality of life of the impacted community."

20 Q Okay.

21 A (D):

22 "The special concerns surrounding nonferrous
23 metallic mineral mining warrant additional regulatory
24 measures beyond those applied to current iron mining
25 operations."

1 Q So these particular concerns about sulfide mining are what
2 triggered the development of Part 632, in part; right?

3 A Correct.

4 Q And this additional regulatory oversight that Part 632
5 contemplates; is that right?

6 A That's correct.

7 Q Okay. Is it common for the DEQ to gather any of its own
8 independent data for projects?

9 A What sort of project? Any project in general or --

10 Q In the course of your permitting processes that you have
11 going on here, is it a common thing to do to go out and
12 collect your own data?

13 A I don't believe it is.

14 Q Okay. So this project in that sense was treated just like
15 all the others?

16 A In that sense, yes.

17 Q All right. Now, are you acquainted with the fact that
18 United States EPA is requiring an underground injection
19 control permit, at least one, for this project?

20 A I'm aware of that, yes.

21 Q Okay. And did you have somebody on your mining team who was
22 responsible for groundwater matters?

23 A Groundwater as in just hydrology or the groundwater permit?

24 Q I want to know who on your Part 632 mining team was the
25 person responsible for reviewing the groundwater and

1 hydrology portions of this application.

2 A That would have been Chuck Thomas.

3 Q Chuck Thomas. Okay. Now, were you here for Gregory
4 Council's testimony? Do you remember him?

5 A Yes, I was here.

6 Q Now, he testified about the Fletcher Driscoll model which
7 was, in fact, the only model that the DEQ had when it
8 approved this permit; correct?

9 A Correct.

10 Q And that's a MODFLOW model, which it sounds like you have
11 some familiarity with?

12 A Some, yes.

13 Q Okay. Now, Mr. Council testified that that particular
14 model, the Fletcher Driscoll model, had some flaws; right?

15 A I don't recall it. I remember him saying something about
16 it. I don't remember if it was flaws or what the term was.

17 Q Do you remember him saying that it didn't meet the ASTM
18 standards?

19 A I don't recall him saying that but --

20 Q Now, are you involved at all or is anyone from the DEQ
21 involved in the EPA's process of considering that UIC permit
22 that they've required?

23 A Not that I'm aware of no. If there are, I'm not aware of
24 that.

25 Q Have you shared any relevant information with the EPA?

1 A I have not personally, no.

2 Q Has anybody that you know of?

3 A I don't know of anybody, no.

4 Q Okay. Have you requested any information from them on the
5 groundwater situation at the site?

6 A No, I have not.

7 Q Do you know why they decided to require a UIC permit?

8 A I don't know.

9 Q Are you at all interested in what their analysis of the
10 groundwater at the site is turning up?

11 A Well, the way I understand it, the UIC permit is attached to
12 or in addition to --

13 Q Okay. You can talk about that. But my question was, are
14 you interested in what their analysis of the groundwater and
15 the hydrology at the site is revealing? Are you interested
16 in that?

17 A I'm not -- I don't understand what you're -- am I interested
18 in what now?

19 Q You've agreed, I think, that the EPA has required at least
20 one UIC permit for this site; right?

21 A I believe so, yes.

22 Q Now, my question to you is, are you or is anybody that you
23 know of from the DEQ interested in what the analysis that
24 they're going through in considering that permit is
25 revealing?

1 A That would be a good question to ask the Water Bureau staff.

2 Q Do you know of anybody who is --

3 A I don't know. That's why I'd say ask them. They may have
4 required or requested.

5 Q All right. Do you know the next step for the EPA in their
6 UIC process?

7 A I don't. I'm not very familiar with that program.

8 Q Okay. Now, were you the leader of the mining team or are
9 you still ongoing; right?

10 A I'm a coordinator of the mine team.

11 Q Coordinator. Okay. It's still ongoing, the mining team?

12 A Are we still reviewing?

13 Q No. Do you still have discussions? Do you still meet? Is
14 there still a mining review team, I guess, is what I'm
15 asking you?

16 A Well, I don't know of any formal dismantling of the mining
17 team. But we have not had any further discussions.

18 Q Okay. Now, on slide 6 of your -- you know what? I'm sorry.
19 We'll go back to that in a minute. Could you tell me what
20 was the purpose of the mining team?

21 A To review the application.

22 Q Okay. With the goal of what? Reviewing it why?

23 A To make a recommendation to DEQ management whether the team
24 believed it was -- or a recommendation to either issue or
25 deny.

1 Q And it's an interdisciplinary team?

2 A It is.

3 Q Now, do you know if members of the team communicated outside
4 of meetings -- mining team meetings?

5 A Communicated?

6 Q Did they email each other? Did they have phone calls? Did
7 they chat in the hallway?

8 A Oh, I would suspect they did. I don't have any personal
9 knowledge of that.

10 Q How often did the mining team meet?

11 A I don't know the exact number. I would guess a half a dozen
12 times throughout the process.

13 Q Six times?

14 A Possibly. I don't recall exactly.

15 Q Where did you meet physically?

16 A At the DEQ headquarters in Gwinn.

17 Q And who was there? Who was physically present at the
18 meetings?

19 A The members -- the DEQ and DNR members that were on the team
20 were physically present.

21 Q All of the members were present at every meeting?

22 A The DEQ member and DNR members, I believe, were present and
23 at the meetings.

24 Q Every person every time?

25 A I believe so.

1 Q That would be phenomenal if it were true. I wish I could
2 get response to my meetings like that.

3 A You know, I don't want to say definitively, because there
4 may have been a time that somebody didn't make it. But I
5 would say the majority of the mining team at a minimum was
6 there aside from the consultants -- outside consultants.

7 Q And were they a part of the meetings?

8 A At some times we had meetings with them.

9 Q So the outside consultants were present for some of the
10 meetings but not all?

11 A Yeah. I don't recall exactly how often. I know they
12 weren't all at part of -- any of the meetings at one time.

13 Q Did they join telephonically or did they come to Gwinn?

14 A Correct; correct.

15 Q Telephonically?

16 A Yes.

17 Q Did you keep attendance at those meetings?

18 A No.

19 Q I'm assuming you discussed technical matters; right?

20 A Yeah. Depending on where we were in the process, sometimes
21 the meeting would be just getting an update on where the
22 team members were in their review process. There may not
23 have been any technical discussions. It may have just been
24 process. And I would inform them of where we were with
25 setting up the public meeting and time lines like that.

1 Q All right. Did you keep minutes of those meetings?

2 A We did not.

3 Q So you had meetings with your mining team discussing things
4 varying from very technical topics to procedural issues, but
5 there's no minutes of the meetings?

6 A That's correct.

7 Q Why didn't you keep minutes of the meetings?

8 A I just -- I just didn't keep minutes. When we had the
9 meetings, it was a fairly -- the process -- the time frame
10 was somewhat condensed. We had to get through subjects
11 quickly -- or not quickly. But we -- I just didn't take the
12 time to take minutes.

13 Q Did you communicate with the members between meetings?

14 A Sometimes, yes.

15 Q How did you do that?

16 A I think most of the time it was verbally, just face-to-face
17 communication.

18 Q How would you characterize the workings -- the working
19 relationships in the mining team?

20 A Could you rephrase that? I don't know what you mean.

21 Q Well, let me --

22 MS. HALLEY: This is Petitioner's Exhibit 5. It's
23 the Inman report, page 4.

24 MR. REICHEL: Your Honor, while it's coming up,
25 I'd just like to request a continuing objection on the

1 record to this line of inquiry.

2 JUDGE PATTERSON: You may have that.

3 MS. HALLEY: Could you scroll down just a little
4 bit for me? I need the physical page 4. This is not it.
5 Can you just scroll down a little bit to the next page?
6 Thank you.

7 Q Now, if you look at number 5, the very last sentence -- and
8 you can read number 5 so you understand sort of the period
9 of time that Dr. Inman is talking about here. But the last
10 sentence says:

11 "However, some mining team review -- some mining
12 application review team members still have some
13 concerns regarding the draft permit conditions that
14 need to be addressed before a final permit is ever
15 issued."

16 Do you see that?

17 A I see that.

18 Q Okay. Do you know what those concerns were?

19 A I don't. I can speculate but I'm not sure what -- what
20 mining team member may have made that statement.

21 Q Well, for the record, it's plural. So --

22 A Or which members may have made that statement.

23 Q But you don't know what concerns Dr. Inman was referencing
24 here?

25 A I don't.

1 Q Okay. So do you know then if they were addressed in the
2 final permit if we don't know which ones we're talking about
3 here?

4 A Well, like I said, I could -- there were some conditions
5 that were -- after this was all done, this investigation,
6 and we got back on track. Some minor conditions were
7 presented at -- particularly with fish sampling that the DNR
8 had wanted some additional sampling. I think that's what
9 that may have referenced, but I'm not positive. But that
10 was an addition to the conditions prior to the final
11 issuance.

12 Q Now, before we go any further with this, I have some
13 questions about who was actually on the mining team. Okay.

14 A Okay.

15 Q Because slide 6 -- well, we already saw it. We won't look
16 at it again. But there's a different list in different
17 spots.

18 MS. HALLEY: So could we go to the Inman Appendix
19 number 3?

20 Q We're putting up Petitioner's Exhibit 5, the Inman
21 appendices again. And it's Appendix 3. Now, this is, as I
22 said, Appendix 3 of Inman's appendices to his report. Okay?

23 A Yes.

24 Q Now, this is labeled at the top as the "State of Michigan
25 Part 632 Mining Application Review Team," and his table of

1 contents reflects that you gave him this list?

2 A Correct.

3 Q Do you remember that?

4 A I remember that.

5 Q Okay.

6 MS. HALLEY: Now, could you scroll down a little
7 bit?

8 Q Now, this list is different from the list on your slide,
9 because this list includes -- let's see -- right here it
10 includes Rick Pawley; correct?

11 A Correct.

12 Q And down here it includes Bill Brondyke?

13 A That's correct.

14 Q So this is a different list than the list that's on your
15 slide?

16 A That's correct.

17 Q So were Brondyke and Pawley members of the team or not?

18 A No.

19 Q No?

20 A No. Mr. Brondyke actually attended most of the mining team
21 meetings just as a -- kind of a liaison between the DNR
22 permitting process and our permitting process.

23 Q I see. Okay.

24 A Mr. Pawley is actually a field inspector of storage tanks --
25 fuel storage tanks.

1 Q All right.

2 A Originally when we were putting together a mining team list,
3 we thought that, because they were theoretically going to
4 have to store fuel out there, that his involvement might be
5 necessary. As we got into the process, he kind of concluded
6 that his involvement doesn't come until after tanks are
7 actually installed and that type of inspection.

8 Q Okay.

9 A So he kind of requested that he didn't need to be part of
10 that process anymore.

11 Q Okay. All right. And now could you just go one page down
12 to Appendix 4 of this report? Now, on this page, this is
13 Dr. Inman's list of who he interviewed for his
14 investigation; right? I mean, it's not labeled that but
15 that's what it is.

16 A Okay. If you say so.

17 Q Do you disagree with me?

18 A I don't. I'm not even -- I haven't seen the report in a
19 long time, but I'll take your word for it.

20 Q Okay. Now, this list here includes Hal Fitch who he
21 interviewed. It's my understanding he was interviewed. And
22 then over in the column it says, "Mining team member," and
23 it says "yes." Is or was Hal Fitch a member of the mining
24 team?

25 A Well, Hal Fitch is my ultimate superior, so he has control

1 of the mining team.

2 Q All right. So it's accurate to say that he's a member of
3 the mining team?

4 A I would say in general, yes. I mean, he's my boss. Did he
5 participate in my team discussions? Not all the time. But
6 towards the end, there was some mining team discussions that
7 he was part of.

8 Q So that would mean that Steve Wilson is part of the mining
9 team, too? He's between you and Mr. Fitch.

10 A Again Mr. Wilson was at some level.

11 Q Okay. All right. What is your understanding of the Freedom
12 of Information Act? What's the purpose of it?

13 A For public to be able to get access to documents, I guess --
14 governmental documents.

15 Q Okay. Now, what was the process for FOIA requests related
16 to this project? How were they handled?

17 A Well, we have a --

18 MR. REICHEL: Excuse me. I'm going to interpose
19 an objection. I don't believe that any issue -- that this
20 Tribunal has any jurisdiction to consider any claim or
21 suggestion that the department did or did not comply with
22 FOIA. That is in no way part of the issue -- legal or
23 factual issues before this Tribunal. There is nothing --
24 it's entirely collateral to this proceeding, and I don't
25 think there's any basis for engaging in an inquiry about

1 this witness' understanding of FOIA, DEQ procedures for
2 complying with FOIA. It's simply not germane in this case.

3 MS. HALLEY: Your Honor, Dr. Inman would disagree.
4 He has quite a discussion about FOIA responses and the whole
5 FOIA process of the DEQ OGS. And that's -- the scope of my
6 cross-examination will be limited to Dr. Inman's inquiry.

7 MR. REICHEL: Well, again, your Honor, with all
8 respect, that begs the question. I mean, as I suggested
9 earlier -- and I know you've ruled -- but the Inman report
10 itself is irrelevant. But we're now going one step beyond
11 that and suggesting that whatever Dr. Inman's understanding
12 of the DEQ's FOIA procedures are is somehow germane in this
13 case is going even further afield of any issue that's
14 relevant here, which again is is the permit properly issued
15 or not and, if so, under what conditions. Does the -- has
16 the department processed this permit application in
17 compliance with Part 632? In no way is this an issue about
18 whether or not the department has complied with the Freedom
19 of Information Act.

20 MS. HALLEY: Your Honor, Dr. Inman interviewed
21 these 19 people. And part of his discussion with these
22 people -- and some of them were interviewed solely to
23 discuss FOIA issues, I believe, like Tina Mitchell and I
24 think -- I can't read it -- Tina Mitchell at least. You
25 know, her primary responsibility here was administrative and

1 administering FOIA requests. And Dr. Inman found that the
2 handling of FOIA requests was relevant, that it did impact
3 Petitioner's ability to participate in the process laid out
4 in Part 632. And it is certainly relevant.

5 When we were having the discussion a little while
6 ago about Dr. Inman's report, Mr. Reichel was making the
7 argument that it should be accepted as a matter that's
8 settled. And if we want to really explore whether it's
9 settled or not, then we have to be able to look at his
10 report. And your Honor has already ruled on that issue.

11 MR. REICHEL: Well, precisely. But, look, your
12 Honor, with all respect, if the -- if this Tribunal wants to
13 -- I mean, I still don't think it's relevant. If this
14 Tribunal believes that somehow it's relevant to its inquiry
15 to consider the Inman report, I mean, it can reveal it. In
16 fact, I believe you actually have been given access to a
17 copy in a pre-hearing motion. But again my objection is --
18 the fact that Dr. Inman interview someone doesn't mean that
19 whatever he stated or found in an interview establishes a
20 fact as to whether or not this permit should issue or
21 whether or not the department's processing of this permit
22 complied with 632 and its rules.

23 MR. LEWIS: Was there a prior ruling on the FOIA
24 issue? I seem to have that in my mind --

25 JUDGE PATTERSON: You know, I think it was.

1 MR. LEWIS: -- that that was brought up and --

2 JUDGE PATTERSON: In my advancing age, I don't
3 remember what the ruling was.

4 MR. LEWIS: I seems to me that that could have
5 been part of the motion in limine. And I'm thinking the
6 court ruled on that.

7 JUDGE PATTERSON: I think I did, but I don't know
8 what I said.

9 MR. LEWIS: I think you ruled it was not relevant.

10 MR. REICHEL: Yeah. Thank you, Counsel. I
11 believe -- that is my recollection. I don't have that in
12 front of me.

13 JUDGE PATTERSON: I can find that if we want to
14 take the time to do it.

15 MR. REICHEL: I stated my position, your Honor.
16 I'll leave it to you.

17 MR. LEWIS: I'll join with Mr. Reichel. And it's
18 my understanding it's not legally relevant to this
19 proceeding. I think we did brief that in terms of a motion
20 in limine.

21 JUDGE PATTERSON: My recollection was that I think
22 I said something to the effect that I didn't have
23 jurisdiction to address compliance with FOIA. But if you
24 wanted to explore that as a facet of the permit review
25 process, that was --

1 MS. HALLEY: Your Honor, we're not asking you to
2 necessarily make a FOIA --

3 JUDGE PATTERSON: That's going from memory, which
4 is dangerous territory these days.

5 MS. HALLEY: -- determination here. I'm perfectly
6 willing to admit that we're not trying to get you to make
7 any sort of FOIA determination here. That's not what we're
8 trying to do.

9 JUDGE PATTERSON: With that limitation, go ahead.

10 MS. HALLEY: Thank you.

11 Q When requests for information came in from the public to the
12 DEQ -- and I'm assuming there were probably many; right?
13 Over the course of this project?

14 A I believe so, yes.

15 Q When those requests for information came in, what happened
16 to them?

17 A I don't know. They come into a FOIA coordinator, and I'm
18 not sure what the process is, quite frankly.

19 Q Who is the FOIA coordinator?

20 A There's many levels of this. There's a department FOIA
21 coordinator, and I believe we also have a division or office
22 FOIA coordinator. And then it trickles all the way down to,
23 in our case in the Upper Peninsula, Tina Mitchell, or
24 whatever her name is. There we go --

25 Q Tina Mitchell?

1 A Tina Mitchell would be our coordinator for FOIA in the Upper
2 Peninsula office.

3 Q All right. And how did you interact with her regarding FOIA
4 requests?

5 A Well, when a FOIA request would come in, we had a file where
6 we would put documents in that we deemed as FOIA-able. And
7 she would then take those documents and produce them if it
8 met the request of the FOIA.

9 Q So you made the determination about whether documents
10 related to this project were FOIA-able or not?

11 A In some instances, so.

12 Q But just so the record is clear, when we're using the word
13 "FOIA-able," we mean that it is subject to disclosure to the
14 public when asked; right?

15 A Okay.

16 Q Able to be acquired under the Freedom of Information Act?

17 A Okay. Right; yes.

18 Q Okay. Now, are there exemptions to the Freedom of
19 Information Act?

20 A I believe they are. But if you ask me what they are, I
21 couldn't tell you.

22 Q Okay. Well, how did you make your decision about whether or
23 not something was FOIA-able?

24 A Well, in some instances, under like Part 625, there is an
25 exemption in that statute that says it's not FOIA-able.

1 Q Yes.

2 A Whether it's actually culled out and labeled in a FOIA law,
3 I don't know.

4 Q So how did you make the determination about whether to put
5 it in the FOIA-able box or to put it somewhere else? How
6 did you decide that?

7 A Well, when we were -- during the process, as Dr. Inman
8 points out, that there's a bit of confusion amongst staff on
9 what the requirements of FOIA was. My understanding was
10 that, at that time, that draft documents were not FOIA-able,
11 that they were works in progress.

12 Q Okay. Does the phrase "deliberative process" ring a bell?
13 Is that what you're referring to?

14 A That's correct. Under a deliberative process to come to a
15 decision.

16 Q All right. Now, does the application of an exemption depend
17 on who the requesting party is?

18 A I don't understand.

19 Q Does the application of an exemption -- let's say the
20 deliberative process exemption just as an example. Does it
21 apply the same to all the requests that you receive or do
22 you somehow look at it on a case-by-case basis and decide,
23 "Well, it doesn't apply here. It does apply here"?

24 A No. Again, when I put documents in the FOIA file, whoever
25 FOIA'd that information would essentially receive that

1 information.

2 Q All right. I understand.

3 MS. HALLEY: Could you pull up -- it's called --
4 FOIA.

5 Q So you're aware that both the Keweenaw Bay Indian Community
6 and NWF from time to time submitted FOIA requests to the
7 DEQ; right?

8 A I'm aware of that, yes.

9 Q Did you receive those requests?

10 A Not personally, no.

11 Q Okay. So let me get this straight. You made a decision
12 about whether or not to put something in a box, and then
13 Tina Mitchell or somebody else came along and processed the
14 individual requests?

15 A Right. She kept the file. I wouldn't just say it's a box,
16 but it's a file.

17 Q Well, I hear you said box. I was just adopting your term.

18 A It's a file.

19 Q Okay.

20 A And she had it tabulated so she understood what was in that
21 file. And so when a request came in -- and I'm speaking
22 purely on my understanding of how she handled that. And she
23 would -- whatever the FOIA request might be, then she would
24 process that FOIA. And that FOIA would be processed through
25 Lansing, and they would make the final decision, the way I

1 understand it, on what actually went out.

2 Q So the files were kept in Gwinn, but the decision was made
3 in Lansing?

4 A No. I wouldn't say all the files were kept in Gwinn. Some
5 files were in Lansing; some files were in Gwinn.

6 Q I see. Okay. Could you just -- you see this is from the
7 Honigman Law Firm representing the Keweenaw Bay Indian
8 Community?

9 A Yes.

10 Q October 23rd, 2006?

11 A Yes.

12 Q Okay. All right. Now, the part of this that is relevant,
13 can you see what it is they're requesting, the inset portion
14 in the middle there?

15 A I don't suppose you could point out what you're talking
16 about?

17 Q Sure. That's fine. Let's see. Let's start right here
18 (indicating).

19 "This request includes but is not limited to
20 documents prepared by or sent from or to the following
21 individuals and the organizations that employ them:
22 Ted Eary, Keith Smith, Mahesh Vidi- -- I don't know --
23 V, David Sainsbury, Dean Premo, Nick DeGraeve, Dennis
24 McCauley and other employee or subcontractor of MFG,
25 Inc., ARCADIS, Itasca Consulting Group, White Water

1 Associates or Great Lakes Environmental Center
2 including employees or subcontractors of any affiliate
3 subsidiaries or parent corporations of the foregoing
4 organizations."

5 It's a mouthful.

6 A Yeah. I see it, though, and understand it.

7 Q What is -- in laymen's term, what are they asking for here?

8 A They're asking for --

9 Q Documents?

10 A -- documents prepared by or sent from.

11 Q Okay. Between these people including Sainsbury and Itasca;
12 right?

13 A Correct.

14 Q Okay. Now, do you know when it is that Kennecott got the
15 Sainsbury reports?

16 A Yes, I do.

17 Q When was that?

18 A When the doctors -- well, first of all, the documents came
19 to me via a copy of an email. They were sent to Mahesh
20 Vidyasagar, who was actually working for MFG, contractor
21 David Sainsbury, I believe. Sainsbury had copied those to
22 me. As all of the documents that were coming in, say, from
23 Ted Eary of MFG, ARCADIS and any of the other folks, I then
24 forwarded those documents on to Kennecott for their
25 response. That was early in the process.

1 Q So anything that you got from your subcontractors you
2 forwarded on for Kennecott to respond to you; right?

3 A To me, correct.

4 Q So when did they get the Sainsbury report?

5 A I don't recall exactly when that happened.

6 Q Roughly?

7 A Very shortly probably after I received it.

8 Q When did you receive it?

9 A I don't remember. I don't remember the date that that came
10 in.

11 Q All right.

12 A I'm sure there's a date on the document or something.

13 Q Well, I have a reference to a memo that you received from
14 Mahesh Vidyasagar on May 5th of 2006. Does that sound about
15 right?

16 A That could very well be.

17 Q So May 5th, 2006, Kennecott -- roughly Kennecott got the
18 Sainsbury reports? Is that about right?

19 A That's -- about then, yes.

20 Q All right.

21 MS. HALLEY: Now, could we go back to that email
22 that we were just -- the -- no, not that one. The FOIA
23 request.

24 Q Now, this request came in October 23rd -- on October 23rd,
25 2006; right?

1 A Yes.

2 Q Okay.

3 MS. HALLEY: Could you scroll down?

4 Q Do you remember whether this request was denied or granted?

5 A I don't remember. I'm not aware.

6 Q Okay. Will you just take a minute to review this letter and
7 let me know what the DEQ response was?

8 (Witness reviews document)

9 A How far would you like me to read on this?

10 Q Just until you're comfortable telling me what the DEQ's
11 response to the request was. We can scroll down if you need
12 more.

13 A It's hard to read it from over here.

14 Q Well, feel free to move closer if you need to.

15 (Witness reviews document)

16 A Okay. Reason for denial. Okay. They denied it.

17 Q They denied it; right?

18 A They denied it, yes.

19 Q Okay. Now, do you have any idea why this request was denied
20 in October of 2006 when, in fact, you had the document and
21 Kennecott had these documents in May of 2006?

22 A I'm not aware of why that would have been denied.

23 Q Okay.

24 A I wasn't responsible for making the denial.

25 Q All right. Could we go back to the Inman report.

1 JUDGE PATTERSON: Who signed that?

2 MS. HALLEY: That's signed by Pam Studebaker.

3 MS. HALLEY: Can you go back to the Inman report?

4 Q Now, number 4 -- this is the text of Inman's request. Okay.

5 And it says here:

6 "Mr. Maki took on the responsibility of document
7 processing and FOIA responses believing it was his duty
8 to perform these functions as coordinator for mining
9 review team."

10 So I'm having a hard time correlating this understanding of
11 Dr. Inman's with this notion that you didn't have knowledge
12 about what was going on with FOIA's.

13 A I'm not sure how Dr. Inman came to that conclusion. But
14 again, our process for FOIA's in DEQ has -- as you said,
15 Pamela Studebaker is responsible for some level of FOIA.
16 Again my responsibility was -- what I understood was to put
17 the documents that I was receiving that I felt were -- fell
18 under the requirements of FOIA into a file for our secretary
19 to process. I'm not sure how Dr. Inman got to that
20 conclusion.

21 Q So did you see FOIA requests that arrived at the Gwinn
22 office?

23 A On occasion, I did if there was clarification that was
24 needed, if the secretary didn't understand what the FOIA
25 request was.

1 Q Did you ever discuss with Tina Mitchell or Ann Wilson -- I
2 believe Ann is the other person who handles FOIA requests;
3 right?

4 A I don't -- it's not Ann Wilson. No. I can't remember what
5 her last name is.

6 Q Oh, Zaenglea.

7 A Yeah, Zaenglea; yes.

8 Q Thank you for the correction. Did you ever discuss
9 responses to FOIA requests with Tina or Ann?

10 A Responses to them or -- you know, like a written response?

11 Q No. Did you ever discuss with Ms. Mitchell or Ms. Zaenglea
12 the FOIA requests?

13 A Yes. From time to time we did, yes.

14 Q Okay. And did you discuss with them what you felt was
15 appropriate or not appropriate to be sent to the requester
16 in response to their request?

17 A I don't think we ever had those conversations. I don't
18 remember that particularly. At least -- I may have. I
19 don't recall.

20 Q So are you saying that Dr. Inman is wrong?

21 A I would say Dr. Inman is mistaken with his interpretation of
22 that, yes.

23 Q So it sounds like there were sort of two different processes
24 going on when it came to documents coming in and out of your
25 office. There was the process that went on with the

1 consultant -- the DEQ consultants, you and Kennecott. That
2 was one process, one sort of path of communication. And
3 then there was another process which was available to the
4 public which was FOIA; is that correct?

5 A One more time?

6 Q Well, you described the process by which you handled
7 documents, that you received them from your consultants.
8 Okay. You got them?

9 A Correct.

10 Q By email, I'm guessing, or mail or some way?

11 A Or the consultant actually directly sent it on.

12 Q Okay.

13 A Yes.

14 Q And then that information went directly to Kennecott; is
15 that right?

16 A Yeah; yes.

17 Q Okay. Now, you weren't sending that same information out to
18 the public. You weren't posting it on the website. You
19 weren't sending it to any of the Petitioners sitting here?

20 A No, I was not.

21 Q Okay. So for those of us over here, the Petitioners and the
22 public in general, our avenue for getting information was
23 through FOIA; is that correct?

24 A I believe that probably, yes.

25 Q Okay. So there were two different processes in place, one

1 for the public, FOIA, a different one for your consultants,
2 you and Kennecott?

3 A I wouldn't call that a different process. It wasn't like
4 Kennecott could call us and ask for any documents. The
5 process was that we were requesting additional information
6 from the company. And in the early stages of those -- of
7 the processing of the permit, which is a normal process of
8 the permit -- its iterative -- we'll present to the company
9 what we think are the inadequacies or if there's questions
10 in their permit, and they're responsible to respond to
11 those. So that was the process I guess you're referring to.

12 Q Which is a separate process from a process that's available
13 to the public?

14 A I guess, yes.

15 MS. HALLEY: Can we have -- let's see -- Appendix
16 5, which is the electronic page 333.

17 Q Now, this document is from Petitioner's Exhibit 5. It's
18 Appendix -- it's in Appendix 5 of the Inman report found on
19 page 331 of the electronic file. Now, this is a FOIA
20 request; right?

21 A Correct.

22 Q Is that what it is?

23 A It looks like it, yes.

24 Q And who is it from?

25 A Kennecott.

1 Q And when was it received at the DEQ?

2 A November 14th, 2006.

3 Q All right. Now, just so we're getting things in order here,
4 when was KBIC's FOIA request; do you remember?

5 A I don't remember.

6 Q Okay. Well, the record looks like it was in October of --
7 October 23rd actually of 2006.

8 A Okay.

9 Q So just a couple of weeks before this. Okay?

10 A Okay.

11 MS. HALLEY: Now, could we just go to the next --
12 actually two pages later, Doreen? Sorry. Two pages -- we
13 want to be electronic page 333. Sorry.

14 Q Now, what was requested from Kennecott here?

15 A It says, "All correspondence and documents between Joe Maki,
16 MFG and Itasca."

17 Q Okay. Now, does this page indicate to you that this
18 response was given? It says right here what?

19 A Yeah. I guess that's what that means.

20 Q Okay. Do you know what was given to Kennecott in response
21 to this request?

22 A I don't.

23 Q You don't?

24 A No.

25 Q Okay. Well, are you aware that NWF FOIA'd the DEQ in May of

1 2006 to find out what the contents of those 62 pages were?
2 Did you know that?

3 A I didn't know that.

4 Q Okay. May 2007. I apologize. Okay. Now, what we got back
5 was a file of about 62 pages that included all three
6 Sainsbury reports. So the company got the reports from you
7 in May of 2006.

8 MR. BRACKEN: Your Honor, may I interpose an
9 objection here? She's testifying about things -- and we've
10 established for quite some time that Mr. Maki wasn't the one
11 who was involved for making the final decisions on the FOIA
12 requests. We kind of keep running around the bushes. She's
13 asking him to answer these questions. He's not involved in
14 that part of the process.

15 MR. REICHEL: I join in that objection. And again
16 if it's not already clear, I have a continuing objection to
17 this whole line of inquiry.

18 MS. HALLEY: Your Honor, that's at least debatable
19 given that Dr. Inman concluded that, quote, "Mr. Maki took
20 on the responsibility of document processing and FOIA
21 responses."

22 MR. BRACKEN: Yeah. But you already have the
23 answer. This witness has testified under oath and Dr. Inman
24 didn't testify under oath. This witness has testified he
25 didn't have that and Mr. Inman -- or Dr. Inman is wrong. So

1 you can keep beating a dead horse. But this person has
2 testified under oath -- and that's the only thing we have
3 under oath -- he wasn't involved in the process except as
4 he's already testified to. And now we're going to go and
5 ask him what happened and to draw conclusions about what the
6 DEQ did in the process that he wasn't involved in. We've
7 been on this for a half an hour, and she keeps asking the
8 same questions of a person who doesn't have knowledge.

9 MS. HALLEY: Your Honor, if he doesn't know, the
10 witness can response that he doesn't know. He's answering
11 the questions.

12 JUDGE PATTERSON: Well, how many times does he
13 have to say that?

14 MR. BRACKEN: That's the point. He doesn't know.

15 MS. HALLEY: All right. I'll wrap it up. I'll
16 wrap up this line of testimony.

17 JUDGE PATTERSON: All right.

18 MS. HALLEY: Thank you, your Honor.

19 Q So in May of 2006 Kennecott got the Sainsbury reports;
20 correct?

21 A I don't know that for a fact, no.

22 Q You said you sent them to them?

23 A Hold on. I thought you mean from this FOIA. Yes, you're
24 correct on that. Yes.

25 Q Okay. And in October of 2006, the Keweenaw Bay Indian

1 Community's request for that same information was denied?

2 A According to that FOIA request, yes.

3 Q And for some reason, Kennecott submitted a FOIA request for
4 that same information in November of 2006; right? And
5 according to this document, they received 62 pages of
6 material?

7 MR. BRACKEN: Objection. You asked him to
8 speculate as to what this meant. That's the problem. He
9 doesn't have personal knowledge. He was asked and he said,
10 "Well, it looks like that might have been what happened."
11 But he doesn't have knowledge of it. Your point has been
12 made. But this person doesn't have knowledge of whether it
13 was sent or not. He can only make the same supposition that
14 some of us can make from looking at it, which appears to be
15 a post-it note.

16 MR. WALLACE: Well, they can argue about what's
17 true or not true. But we've looked at a document here where
18 this gentleman was identified as being in charge of FOIA for
19 the office of the U.P. So it's fair to ask him these
20 questions. We have a document that says he was in charge.

21 MR. BRACKEN: No. You have an unsworn statement
22 and a document that he has already said is not true.

23 MR. WALLACE: It's a document you folks have
24 advanced as being the truth and final answer on other
25 points. So maybe you have to live with it on this point.

1 MR. BRACKEN: Well, that's not how documents go.
2 Some things can be true in a document; some things can't.

3 JUDGE PATTERSON: I think, Counsel, you've made
4 your point. Apparently it's -- some material was given to
5 some requests and it wasn't to others. Exactly why that
6 happened, I don't think Mr. Maki -- he's disclaimed any
7 knowledge of that.

8 MS. HALLEY: I'll move on. Thank you, your Honor.

9 Q Mr. Maki, have you seen cores from the Eagle project?
10 Cores?

11 A Yes, I have.

12 Q Okay. Where have you seen them?

13 A The -- Kennecott has a laboratory in -- I think it's out
14 near Negaunee by the old airport. And that's where they do
15 their core logging. So I had an occasion to go in there and
16 just look at the technology that they were using for core
17 logging.

18 Q And when have you been to that facility in Negaunee?

19 A That would have been -- I can't recall the date. It must
20 have been in 200- -- maybe 2005 sometime.

21 Q Have you only been there once?

22 A I've only been there maybe three times.

23 Q Roughly in the same time period?

24 A No, I wouldn't say so. Maybe -- I couldn't tell you spread
25 out the times were.

1 Q Okay. Now, were you invited to go there or did you ask to
2 go there? How did the visits come up?

3 A Well, usually what it involved is we would be doing an
4 inspection up on the Yellow Dog Plains with mineral wells.
5 And I might have a question for Andrew Ware, their
6 geologist. So the phone coverage out there was very
7 limited. So I would just come down 510 and then swing in
8 there and talk to Andrew.

9 Q I see. So your visits were just incidental in the course of
10 your other work?

11 A They were. But one other time I was invited by a group from
12 NMU to come and participate in a discussion about
13 exploration and things like that. That was -- might have
14 been in 200- -- early 2000. It was when they first got
15 moved into that area.

16 Q At the core shed?

17 A At the core shed, yes.

18 Q Now, when you went to the core shed, what did you do there?

19 A Like I hand mentioned, it would usually be a conversation
20 with Andrew Ware about the exploration drilling. At one
21 time he offered to show me around the facility and how they
22 were recording their -- logging their core.

23 Q I see. Did you inspect the core?

24 A No, I did not.

25 Q Did you ever ask to have any of the core?

1 A I never did, no.

2 Q How about the drilling logs? Have you ever seen the
3 drilling logs? My understanding from previous testimony is
4 that they're also kept at that same facility.

5 A I never saw the drilling logs, no.

6 Q Have you ever asked to see them?

7 A I did not, no.

8 Q Have you ever asked for copies?

9 A No.

10 Q And you didn't ask to see the cores or for copies of the
11 drilling logs even after Petitioners in this case and other
12 members of the public submitted public comments that drew
13 into question the validity of Kennecott's crown pillar
14 analyses?

15 A No, I never did.

16 Q Are you aware that at least two of Petitioner's FOIA
17 requests asked to have access to the cores so that our
18 experts could inspect them visually?

19 A You know, I heard testimony about that, but I'm not aware of
20 a FOIA request that actually requested that. I'm not sure.
21 I may have seen it. I don't recall. But I'm getting a
22 little fuzzy between what I've heard in the testimony.

23 MS. HALLEY: It might be a good time for a break,
24 your Honor. We're moving into a different area.

25 JUDGE PATTERSON: It's always a good time for a

1 break.

2 (Off the record)

3 JUDGE PATTERSON: Whenever you're ready.

4 MS. HALLEY: Okay. I think it would be helpful
5 for the court -- for us to walk through a time line of
6 events. We've sort of jumped around and the process itself
7 has sort of been back and forth in time. So I'd like to try
8 to do that.

9 JUDGE PATTERSON: Time line for?

10 MS. HALLEY: Sort of major events from the filing
11 of the application until early 2007 when the decision was
12 released. I'm just going to --

13 JUDGE PATTERSON: I thought Mr. Maki did that.

14 MS. HALLEY: Well, then, it'll go very quickly.

15 JUDGE PATTERSON: Okay.

16 Q So, Mr. Maki, the application was filed on I think you said
17 February 22nd, 2006?

18 MR. LEWIS: It's in the slides.

19 THE WITNESS: I'm getting there.

20 JUDGE PATTERSON: Number ten.

21 THE WITNESS: Number ten.

22 A Yes.

23 Q Okay. And shortly thereafter on April 10 DEQ Exhibit 50
24 represents a conference call that you had with Itasca and
25 Kennecott? You can pull it up if you need it but, if you

1 don't, then let's just walk through it quickly.

2 A What was that? It was a conference call?

3 Q Conference call with Itasca, Kennecott and yourself.

4 A Correct. I recall that.

5 Q Okay. Good. And then on April 18th, Sainsbury sent a
6 request to Golder for clarification about their RMR system,
7 which RMR system they were using?

8 A Yes, something of that nature; yes.

9 Q All right. It's referenced in DEQ Exhibit 51?

10 A Right. I don't remember exactly what it is, but I know it
11 was about RMR.

12 Q And then on April 25th Golder response to Sainsbury?

13 A Correct.

14 Q Dr. Sainsbury. And that response was posted on the DEQ's
15 website?

16 A That's correct.

17 Q All right. And then on May 4th Dr. Sainsbury sent his first
18 report to MFG?

19 A Okay. Correct. I believe so, yes.

20 Q And that report, the first one May 4th, is Petitioner's
21 Exhibit 7 Appendix 5. All right. And then in -- also on
22 May 4th Mr. Vidyasargar -- Mahesh sent a message to Dr.
23 Sainsbury about some changes that he felt needed to be made
24 to that document. Do you recall that?

25 A Was I copied on that? I don't know if I was copied on that.

1 Q Let's pull it up and see.

2 MS. HALLEY: Let's see. If the Intervenors will
3 indulge me, I'd like to use their Elmo machine. Would that
4 be --

5 MR. LEWIS: Help yourself.

6 MS. HALLEY: Thank you.

7 Q All right. Now, this is an e-mail from Mahesh to Dr.
8 Sainsbury indicating that he needs to make some changes to
9 that May 4th document; is that right?

10 A That's what it says.

11 Q Okay.

12 MR. REICHEL: Counsel, is this document -- I
13 apologize if you said this. Has this been identified as an
14 exhibit?

15 MS. HALLEY: I believe that this is from the
16 Sainsbury deposition, Appendix 11.

17 MR. BRACKEN: My concern, Your Honor, about these
18 exhibits right now, she says she wants to establish a time
19 line, and that's fine. But here's the first exhibit that
20 she wants to show and the first document, and the witness
21 isn't a party to it. So it speaks for itself. And if she
22 wants a time line somewhere else in the case, it speaks for
23 itself. I don't think this is the right person to establish
24 the time line regarding things that he wasn't a party to. I
25 mean, we can read it just as well as he can.

1 MS. HALLEY: I believe that all of the other
2 exhibits that will be used here involve Mr. Maki. If that's
3 a concern, I think it'll be addressed in its own right.

4 MR. LEWIS: I think, I find could clarify for the
5 record, did you say it's from Exhibit 11 from the Sainsbury
6 deposition?

7 MS. HALLEY: Yes.

8 MR. LEWIS: I think that's the one we excluded.

9 JUDGE PATTERSON: It is.

10 MS. HALLEY: It's been excluded. I intend to
11 revisit that. But for this point I'm only using these as
12 demonstrative exhibits and I have not moved to enter this or
13 any of the others.

14 MR. BRACKEN: Well, it wasn't demonstrative. He's
15 talking about establishing a time line. That's evidentiary,
16 not demonstrative. That's what you introduced as the line
17 of questioning now.

18 MS. HALLEY: Well, if Mr. Maki remembers the
19 events, then I can use the --

20 JUDGE PATTERSON: You want him to remember
21 something he wasn't part of? You weren't copied with this,
22 were you?

23 THE WITNESS: No, sir, I was not. I don't believe
24 I've ever seen it.

25 MS. HALLEY: Okay. Then I will move right along.

1 That's fine. If he says he doesn't know, we'll go.

2 Q Now, on May 5th, is it your understanding that Dr. Sainsbury
3 sent another report to MFG with changes recommended by
4 Mahesh?

5 A I know there was another report, but I don't know what
6 happened between that.

7 Q Okay. But you agree with me that there was a May 4th report
8 and the May 5th report, and in between something happened,
9 some changes were made?

10 A I guess I never looked at the two reports side by side to
11 confirm there was changes made. But I agree there was two
12 reports.

13 Q Now, it looks as if you received Dr. Sainsbury's final memo,
14 or at that time it was termed as the final memo. We know
15 later that things changed. But on May 5th this is an e-mail
16 to you; right? It says, "Here is David's technical
17 memorandum for subsidence"; correct?

18 A Yeah; that's correct. That's what it says.

19 Q And then on May 22nd there was actually a different version
20 of this memo that was about seven pages that was sent;
21 right? That's Appendix 4 to Petitioner's Exhibit 7.

22 (Witness reviews document)

23 Q You don't recall that there was a later report later in May?

24 A I remember the May 22nd memo. I guess I don't recall that
25 there was a first one. But this obviously indicates that

1 there may have been. But I do recall --

2 Q It indicates that you got it --

3 A Right.

4 Q -- or it was sent to you?

5 A Correct.

6 Q And then so you agree there was a May 22nd memo; right?

7 A Correct.

8 Q Now, when did you receive that May 22nd memo?

9 A Did I receive it on May 22nd? I don't recall.

10 Q Thereabouts, though?

11 A Thereabouts. I suspect it was probably shortly after it was

12 drafted.

13 Q Now, this message is from Mahesh to David Sainsbury. The

14 relevant part, though, is down here where it says --

15 MR. LEWIS: What exhibit is this?

16 MS. HALLEY: Oh, I'm sorry. This is Petitioner's

17 Exhibit 7, Appendix 11, number 37.

18 MR. LEWIS: Has it been admitted into evidence?

19 MS. HALLEY: No.

20 MR. LEWIS: Is it part of the Exhibit 11 of the

21 Sainsbury deposition?

22 MS. HALLEY: It is. I'm using it to help trigger

23 Mr. Maki's memory.

24 MR. LEWIS: Well, we skipped past the addressee

25 list pretty fast, but I didn't see Mr. Maki's name on it.

1 MS. HALLEY: No. But his name is mentioned in the
2 body of the e-mail, so I'd like him to respond to what he
3 had to do with this message.

4 MR. LEWIS: This is the same objection that I had
5 to the last document in this category, Your Honor. It's not
6 in evidence. In fact, the Petitioners had sought to bring
7 this information into evidence earlier for reasons we need
8 not review now. But the effort was not successful. Exhibit
9 11 is not in evidence and there's been no indication that
10 Mr. Maki has been copied on this document or otherwise has
11 seen it before. And I don't believe there's a foundation to
12 ask Mr. Maki questions about something that he wasn't
13 apparently copied on or a party to.

14 MS. HALLEY: Maybe I could back up for a minute
15 and I will address Mr. Lewis' concern.

16 Q Mr. Maki, did you respond in any way to the report you got
17 on May 22nd?

18 A Did I respond to --

19 Q Did you respond back to Mahesh Vidyasargar in any way?

20 A We might have had a conversation about the report. I don't
21 recall exactly what it was. Quite frankly, I think the
22 conversation was that if I needed -- for a report for me to
23 use in drafting comments or requests for information as a
24 company, that I needed something maybe a little more, I
25 guess, tabulated. I recall that. But I don't recall -- I

1 don't recall that statement particularly.

2 Q The statement? What statement?

3 MR. LEWIS: Just a minute. That's my objection.

4 JUDGE PATTERSON: We're getting ahead of
5 ourselves.

6 JUDGE PATTERSON: She's attempting to put this
7 into evidence and there's no foundation for it. We had an
8 earlier discussion about the Sainsbury deposition and these
9 documents. And the fundamental problem was that we were not
10 given an opportunity to cross-examine him about these
11 documents and learn what may or may not be true about them.
12 And again, she's attempting to put into evidence now the
13 same information by asking Mr. Maki what it says on an
14 e-mail that he was not a party to.

15 MR. REICHEL: I join in the objection.

16 MR. WALLACE: But questions relating to this
17 seeking to refresh the recollection of the witness are in
18 order. You can do that with any document. It doesn't have
19 to go into evidence ultimately.

20 MR. LEWIS: Well, it's not the proper procedure to
21 read the information on the document as you, I think, must
22 know, Mr. Wallace. The procedure first is to establish that
23 the witness does not a present recollection, that he should
24 have had one, then to show him the document, then to return
25 to your seat, then to ask the witness if this witness'

1 recollection has been refreshed. It is certainly not the
2 proper procedure to read into evidence what the document
3 says and attempt to excuse that as attempting to refresh
4 recollection. That's not the procedure.

5 MS. HALLEY: Mr. Lewis, I resent the inference
6 that you're making that I'm reading this material into the
7 record. I have done no such thing.

8 MR. LEWIS: Well, either -- you asked Mr. Maki to
9 read it. That's my objection. I'm objecting to that.

10 JUDGE PATTERSON: And I believe his response was
11 he doesn't recall making that statement; is that correct?

12 THE WITNESS: That's correct.

13 JUDGE PATTERSON: I think that solves the problem.

14 Q Do you recall asking to have references to outside mines
15 removed from the report, to other mines?

16 A I don't recall that, no.

17 Q Do you have any idea why MFG would have perceived that you
18 did?

19 A No, I don't. Like I said, when I had a conversation with
20 Mr. Vidyasargar, or how ever you say it, we discussed at
21 that time I was instructed to draft a letter to the company
22 presenting our request for additional information. The
23 original Sainsbury report did not -- wasn't presented where
24 I would be able to glean from that the information that I
25 needed to put into a letter to the complain. I'd requested,

1 if I recall -- and this is going back awhile -- for Mr.
2 Vidyasargar to try to see if what could get something a
3 little more to the point or something more clear for me to
4 be able to glean and put my comments into the letter. I
5 don't recall saying does not want reference to any outside
6 mines specifically by name or location. I'm not sure where
7 that came from.

8 Q Well, we'll talk more about the differences in those reports
9 in a moment. Now, we covered a few minutes ago --

10 MS. HALLEY: Well, may I go back to my seat, Your
11 Honor? I think I'm done with this for a moment.

12 JUDGE PATTERSON: Sure.

13 Q All right. Are you familiar with Jack Wittman?

14 A Am I familiar with him?

15 Q Well, does the name ring a bell?

16 A I do recall seeing his name or maybe even heard it in this
17 testimony. I do remember -- recall hearing the name,
18 though.

19 Q Do you know what he has to do with Sainsbury incident?

20 A Yeah. I believe he contacted, if I recall, Dr. Sainsbury
21 and asked him some questions.

22 MS. HALLEY: That was on or about October 3rd.

23 MR. REICHEL: Objection. Is Counsel testifying,
24 or is that a question?

25 MS. HALLEY: Mr. Maki didn't seem to know.

1 THE WITNESS: I do not know.

2 JUDGE PATTERSON: Well, if he doesn't know, it
3 shouldn't come in through you.

4 MS. HALLEY: Okay.

5 Q Now, do you remember, Mr. Maki, that when we were looking at
6 KBIC's FOIA request for the Sainsbury documents that they
7 were -- that request was dated October 23rd -- it's the one
8 we looked at a little while ago -- of 2006?

9 A What request was that for?

10 Q The KBIC's FOIA request for the Sainsbury documents.

11 A What was the date again?

12 Q My recollection is that it was October 23rd, 2006. Do you
13 recall that?

14 A You know, we've had a lot of dates that's been flushing
15 around here. I'll take your word for it, but I don't -- I
16 don't recall the exact date.

17 Q Now, did Sainsbury issue another report on November 9th of
18 2006?

19 JUDGE PATTERSON: If you know.

20 A I don't remember the date. Another report on November 9th?

21 Q My understanding is that it is a two-page report. We could
22 put it up on the screen, if that would be helpful.

23 A Let's look at that, yes.

24 MS. HALLEY: It's DEQ Exhibit 75, Respondent's 75.

25 Q This is Respondent Exhibit Number 75 to Mahesh, Ted Eary and

1 also to you; right, Mr. Maki?

2 A That's correct.

3 Q From David Sainsbury?

4 A Correct.

5 Q Dated November 9th, 2006?

6 A Yes.

7 Q Do you know the gist of this memorandum?

8 A Could you scroll down and let me look at it? I believe this

9 is Dr. Sainsbury after he reviewed Kennecott's responses,

10 this is where he proposed that the project could move

11 forward with the limitations.

12 Q That's right. Did you talk to him about this document?

13 A We had a conference call prior to this document, I believe.

14 Q What did you discuss?

15 A Well, Dr. Sainsbury wanted to know what his role was, you

16 know, what was the next step, you know, what he needed to

17 provide for us.

18 Q And what did you tell him?

19 A I told him have needed to provide us with his final comments

20 and any recommendations he might have.

21 MS. HALLEY: You may shut that off.

22 Q And just so it's clear, this document was dated November

23 9th; right? Is that right?

24 A Correct.

25 Q Did Dr. Sainsbury talk to you about anything else before his

1 November 9th memo?

2 A No, he didn't. I had very little conversation with Dr.
3 Sainsbury. It primarily went through MFG.

4 Q Okay. Did he indicate that he wanted to consult with
5 anybody else about this project?

6 A He did at one point in time ask if he could ask some
7 questions, I think, to -- he had somebody he knew at Rio
8 Tinto. But I don't recall exactly what that was.

9 Q But you remember that he wanted to discuss it with somebody
10 at Rio Tinto?

11 A I do recall that, yes.

12 Q Well, let's see if this has anything to do with your
13 discussion with Dr. Sainsbury. So you can see, this is a
14 message from Sainsbury to --

15 MR. REICHEL: Excuse me, Counsel. I'm going to --
16 Your Honor, I'm going to interpose an objection. Although I
17 can't see it clearly on the screen, I'm fairly certain that
18 what's been projected here that Counsel is now about to
19 characterize the contents of was a document that this
20 witness hasn't authored, that apparently was disclosed at
21 the time of Mr. Sainsbury deposition. This is the subject
22 of whether -- the subject of objections and a prior ruling
23 by this tribunal as to whether or not this document is one
24 of the exhibits to the Sainsbury deposition would be
25 admissible in this proceeding. As the Court may recall, you

1 may recall, Your Honor, you ultimately concluded that it
2 would not be. So at this point, I want to note that
3 objection, the prior ruling, particularly with respect to
4 stating the contents of this document on the record.

5 MR. LEWIS: Same objection, Your Honor. Again, it
6 appears to be nothing that was copied to Mr. Maki. And I
7 think it would be appropriate for Counsel to identify
8 exhibits before attempting to discuss them or put the
9 contents of exhibits into the record. This is occurring
10 with too much frequency, I think. And I ought not have to
11 be as vigilant as it seems I have to be this afternoon. It
12 would be helpful if the exhibits could be identified before
13 attempts to read evidence into the recall are made.

14 MS. HALLEY: Well, for the record, this is
15 Petitioners's Exhibit 7, Appendix 11, number 42. And as to
16 the objection, Mr. Maki is referenced in this message as
17 giving Dr. Sainsbury permission, which was required, for him
18 to have this communication with a representative of Rio
19 Tinto. Whether Mr. Maki was a party to the communication or
20 not, his permission was required in order for it to happen,
21 and it references that in the very sentence of the document.

22 MR. REICHEL: Well, Your Honor, whether or not Mr.
23 Maki -- Mr. Sainsbury requested permission from Mr. Maki
24 under the terms of contractual or subcontractual arrangement
25 is not the issue. Clearly, the objective of this is to seek

1 to introduce through one way or another into substantive
2 evidence the contents of Mr. Sainsbury's communication to
3 the recipient of this e-mail. And although as Mr. Maki has
4 testified, he recalls having a discussion with Mr. Sainsbury
5 about the possibility of a communication with a third party,
6 there's no evidence whatsoever to establish that Mr. Maki
7 directed Mr. Sainsbury to do this or instructed him to do
8 this as any part of his contractual obligations to the
9 Department and that he was not in doing this acting in any
10 way as an agent of the DEQ.

11 MS. HALLEY: Your Honor, I'm afraid that we have a
12 fundamental misunderstanding about your ruling on this
13 Appendix 11. Our recollection is that you deferred ruling
14 on the admissibility of Appendix 11. I think perhaps we
15 need to sort that out.

16 JUDGE PATTERSON: No. I think I excluded it. I
17 think my ruling was that I limited the exhibits to those
18 that were entered during Dr. Sainsbury's deposition to the
19 exclusion of 11 on the basis that those were not subject to
20 cross-examination and hearsay.

21 MR. WALLACE: Well, just to move things forward
22 here, I mean, this e-mail is in the record. In any event,
23 we've all seen it several times. It's either, you know,
24 never going to be admitted, which is fine, then it's just
25 part of the record as a document that was offered and was

1 not admitted. It's in the record. Now it's being used to
2 refresh this gentleman's recollection, and he told us that
3 his permission was asked. And there are more details about
4 that, and Ms. Halley is simply asking those more details.
5 He can either remember those additional details or not. But
6 the content of this is exactly what he just testified to,
7 which is permission was asked.

8 JUDGE PATTERSON: I guess I'm at a loss to see
9 what the point of all this is. Where are you going with
10 this thing?

11 MS. HALLEY: Well, this is part of establishing
12 the time line of what went on and when and how the Sainsbury
13 documents came to be part of the record and when and how
14 they were considered by the DEQ and the public. I mean,
15 this is the ruling you've made that this is relevant; not
16 this particular document, I understand, but the issue.
17 We're not going to use this document as an exhibit, which I
18 have not offered it as an exhibit. I'm just simply asking
19 Mr. Maki to read it and tell me if he knows anything about
20 this document. He was at Dr. Sainsbury's deposition. And I
21 believe this issue was discussed there, so he is familiar
22 with this topic.

23 MR. REICHEL: Your Honor, I would note --

24 JUDGE PATTERSON: Well, why don't you limit your
25 inquiry in asking him that as opposed to using the document,

1 if he remembers it or he doesn't, giving Dr. Sainsbury
2 permission to talk to Rio Tinto or correspond with them?

3 Q Mr. Maki, do you remember giving Dr. Sainsbury permission to
4 correspond with Rio Tinto?

5 A I do.

6 Q Do you remember what he wanted to respond with Rio Tinto
7 about, what subject?

8 A He didn't indicate exactly what he wanted to talk to them
9 about. He said he wanted to confer with them on some of his
10 review.

11 Q And you have no idea what that meant?

12 A I didn't.

13 Q Do you have any idea if he wanted to talk about the
14 stability of the crown pillar or not?

15 A That was actually during the time I -- I was actually
16 traveling and out of state. And when he asked, he said that
17 he had a couple of questions that he might like to pose to
18 Rio Tinto. This was earlier on, I think. And I said that
19 would be fine. If it was what he needed to finalize his
20 review, I said that would be fine.

21 Q Do you recall Dr. Sainsbury's discussion of this in his
22 deposition? Well, were you at his deposition?

23 A I was at his deposition. But honestly, I don't recall this
24 part.

25 Q Okay. All right. Thank you. Do you recall if it was

1 January 9th of 2007 that the DEQ issued its proposed
2 decision to grant the permit?

3 A Yes, January 9th.

4 Q And do you recall if it was February 26th of 2007 that the
5 National Wildlife Federation informed Steve Chester of the
6 Sainsbury reports that at that point in time were not
7 reflected in the record?

8 A I don't know when that happened.

9 Q Okay. And do you know whether on February 27th of 2007
10 Director Chester indicated that you had not received those
11 documents?

12 A I don't recall that, no.

13 Q Okay.

14 MS. HALLEY: All right. Could we go to
15 Petitioner's -- it's the Inman appendices 6G. This is
16 Petitioner's Exhibit 6, the appendices to the Inman report,
17 appendix 5-6G.

18 Q Mr. Maki, what did you do with the May 22nd document once
19 you got it?

20 A The May 22nd -- refresh, what document?

21 Q The Sainsbury report dated May 22nd of 2006.

22 A I utilized that document to draft up some of the 91 comments
23 that we sent to the applicant.

24 Q Okay. And then what?

25 A I believe I sent the letter.

1 Q What did you do with the Sainsbury report?

2 A I believe the document was put in the file, but we were
3 unable to locate it when -- during the -- when Director
4 Chester was asking about it.

5 Q Right. So it wasn't in the file?

6 A It was not in the file.

7 Q Why wasn't it in the file?

8 A Well, there was some speculation that possibly one of our
9 FOIA coordinators may have given the original document out
10 by accident, but --

11 Q Did you only have one?

12 A Of the --

13 Q Of the report.

14 A Yeah. I believe we had one document. It was -- like I
15 said, it was sent to me and so that I could prepare the
16 letter -- the letter that we sent to the company. That's
17 what I had requested from Mahesh Vidyasargar was to provide
18 me with that -- with more of a summary of the comments that
19 Dr. Sainsbury was looking to require -- or request
20 additional information.

21 Q Did you keep the May 22nd report?

22 A Did I keep it?

23 Q Did you keep it?

24 A I put it in the file. But again, we do not have a copy of
25 it in the file.

1 Q What file are you referring to?

2 A Our Kennecott file. We had a file with various pieces of
3 information. Our review file, I guess, is what I called it.

4 Q So it wasn't in that file?

5 A It was not when the director asked for it, from what you're
6 referring to, I believe. We did not have that document. I
7 had recalled getting it, but I could not -- I could not find
8 it.

9 Q What about the May 5th report?

10 A That document when -- you mean what happened to it?

11 Q Was it in the file?

12 A May 5th report? Is that the first report from Dr.
13 Sainsbury? Yes.

14 Q That's my understanding.

15 A That was not in the file.

16 Q Well, actually my understanding is that there were -- there
17 was a May 4th, then a May 5th and then the May 22nd. We're
18 talking about the reports in May.

19 A Okay.

20 Q Was the May 4th report in the file?

21 A It was not.

22 Q Was the May 5th report in the file?

23 A That was not either.

24 Q And the May 22nd report not in the file?

25 A It was not.

1 Q Was it on your computer somehow, any of them?

2 A The May 22nd may have been on my computer. I don't recall
3 about the other two.

4 Q Well, when the director asked for it, did you give it to him
5 from your computer, then?

6 A I'm not, you know -- I'm not sure if we asked Mahesh
7 Vidyasargar to send them to us or if I -- my memory is a
8 little -- I don't recall exactly how that came. We got the
9 documents, but I'm not sure if it was from Mahesh. Because
10 Mahesh was the -- my primary contact at MFG. So we may have
11 had to actually contact him for the document.

12 Q Because you didn't have it, any three of those?

13 A That's correct. We didn't have any three of those
14 documents.

15 Q Or any one of the three, I should say?

16 A We didn't have any of the documents; correct.

17 Q Any one of those three, but you don't know why not?

18 A I don't -- what was that?

19 Q Do you know why? Why didn't you have any one of those three
20 key documents?

21 A The May 22nd document I'm not sure what happened. I was --
22 thought that we had put that in our file. The other two
23 documents that were sent to me were sent via an e-mail -- or
24 the other one, I guess, the May 5th document sent to me as a
25 copy of an e-mail. It wasn't sent directly to me. And I

1 deleted that from my e-mail whence I requested that. Well,
2 let me back up. The document was deleted from my e-mail,
3 the May 5th one.

4 Q Either you deleted it or somebody else deleted it.

5 A I deleted it. I deleted that document. It was a draft
6 document and it did not meet my requirements that I was
7 looking for from Dr. Sainsbury.

8 Q Why not?

9 A Because it was a very technical report, and I was required
10 to put together a list -- a request list of information to
11 the company. And that report I believe was -- it would have
12 been difficult for me to, like I said before, glean the
13 types of information that would be necessary to articulate
14 what Dr. Sainsbury wanted in a request. So I'd asked Mr.
15 Vidyasargar to see if I could get something that was a
16 little more of a summary.

17 Q How did the document change from the May 4th or 5th, we're
18 not sure, to the May 22nd document?

19 A I think really the main thing was that Dr. Sainsbury put it
20 in more of a bulleted form of the things that he thought
21 were inadequate in the application.

22 MS. HALLEY: Can we look at Petitioner's Exhibit
23 7, Appendix 5? I believe it's also referred to as
24 Respondent Exhibit 57.

25 Q Now, Mr. Maki, what did you tell Dr. Inman about the reason

1 that you sent back the earlier memos?

2 A This was a report, not a memo, I don't believe.

3 Q Well --

4 A Was it a memo?

5 Q In some instances they're labeled technical memo and some
6 technical review. So I'm not trying to mislead you in any
7 way. It's just --

8 A I believe I told Dr. Inman that it did not meet my needs of
9 what I needed from their review. If you looked at, say, Dr.
10 Eary's report that he sent in, it was a very point by point,
11 "Here's what I need. Here's a request," something that I
12 could put into a letter to the company requesting additional
13 information as the mining -- all the mining team members.
14 Dr. Sainsbury's report was more of like a -- in my mind,
15 more of a dissertation. I'm not a rock mechanics expert, so
16 I did not want to misrepresent his concerns. So that's why
17 I asked for more of a point by point.

18 MS. HALLEY: All right. Can you scroll down to
19 the next page, please?

20 Q Now, what we're looking at is the earlier May report. Do
21 you agree with me? That's what this is?

22 A I agree, yes.

23 Q Okay. Now, could you read the third paragraph?

24 A "The analysis techniques used to assess the Eagle
25 crown pillar stability do not reflect industry best

1 practice. In addition, the hydrologic stability of the
2 crown pillar has not been considered. Therefore, the
3 conclusions made within the Eagle project mining permit
4 application regarding crown pillar subsidence are not
5 considered to be defensible."

6 Q That paragraph, I think you'll agree with me, does not
7 appear in the May 22nd memo. Is that too technical for you
8 to understand?

9 A No.

10 Q Okay. Now, the reason you told Dr. Inman that you needed
11 Dr. Sainsbury to rework this was because it was too
12 technical?

13 A The majority of it, yes, was.

14 Q Okay. But the things that got changed, you know, really are
15 not technical at all. Do you characterize that particular
16 paragraph as too technical to understand?

17 A No, I don't.

18 Q Okay. In fact, the whole executive summary was taken out;
19 right?

20 MS. HALLEY: Could we go to the next page?

21 Q So these points, for example, just to maybe read the second
22 to the last one.

23 A "Crown pillar hydrologic stability was not considered in the
24 crown pillar subsidence analysis or the bedrock
25 hydrogeological investigation."

1 Q Is that too technical to understand?

2 A No.

3 Q Okay. How about the last one?

4 A "Long-term time-dependent behavior of the Eagle
5 crown pillar was not considered as part of the
6 analysis. Carter 2000, Carter, Miller 1996, and
7 Hutchinson 2000 indicate that the time-dependent
8 degradation of surface crown pillar is a serious
9 concern."

10 Q Too technical?

11 A No, not very.

12 MS. HALLEY: The next page, please.

13 Q Then we have a Table of Contents?

14 A Uh-huh (affirmative).

15 MS. HALLEY: Okay. Next page. Down a little
16 lower below the figure, please. Just a moment, please. Oh,
17 next page please, below the figure. Okay. Stop.

18 Q The sentence right after the figure, could you read that?

19 A "The Salmon Trout River flows above the orebody and the area
20 is surrounded by wetlands as illustrated in Figure 2A and
21 Figure 2B."

22 Q Too technical?

23 A No.

24 MS. HALLEY: Okay. Next page.

25 Q These photographs, too technical?

1 A No.

2 MS. HALLEY: Now, if we keep going down to page
3 11 -- I don't know if that's the electronic page number,
4 Doreen. On the hard copy it's page 11. Okay. Scroll down
5 please to the bottom of the page.

6 Q Now, these last two paragraphs, could you just take a minute
7 and take a look at those and tell us what they're
8 discussing?

9 A The last two paragraphs under Section 8?

10 Q Yes. Well, they're not the last two paragraphs in Section
11 8, just to be clear. They're the last two paragraphs on
12 this page.

13 A Okay.

14 (Witness reviews document)

15 A Well, the second paragraph is actually cut off there.

16 Q Right. If you're done, we can scroll to the next page.

17 A Yes.

18 MS. HALLEY: Okay. Go ahead. And keep going down
19 to below the figure, please.

20 A I'm done.

21 Q Okay. Wait a minute. What's that a figure of?

22 A That's a "Schematic of surface subsidence observed at the
23 Athens Mine."

24 Q All right. And what was Section 8 generally discussing?

25 A It was discussing the subsidence that occurred at the Athens

1 Mine.

2 Q And it also discussed the South Mine; right?

3 A The South Mine?

4 Q INCO South Mine.

5 A Oh, yes. INCO's mine, yes.

6 Q Okay. Now, this whole section was deleted from Sainsbury's
7 next iteration to you; right?

8 A Yes, I believe so.

9 Q Okay. Just a minute. Could you read the second full
10 paragraph on this page?

11 (Witness reviews document)

12 A Okay.

13 MS. HALLEY: Okay. Go ahead, please.

14 Q Go ahead and read that paragraph, sir, and then we'll move
15 on. Just say when you're ready to move to the next page.

16 (Witness reviews document)

17 A I'm ready.

18 Q Okay.

19 A Do you want me to continue reading?

20 Q Yes. I want you to go ahead and familiarize with this
21 section.

22 A Is there going to be a test after this?

23 Q No. I just want to make sure we're --

24 A Because I'm not guaranteeing I'm going to remember
25 everything I read.

1 Q -- all on the same page. No. I just want to make sure
2 we're understanding each other.

3 (Witness reviews document)

4 A Okay.

5 Q Okay. Now, generally what does this section discuss?

6 A I believe it's hydraulic conductivity.

7 Q Right. And it talked about studies at the Crandon --
8 proposed Crandon Mine that never occurred; right?

9 A Correct.

10 Q And the type of analyses they did at the Crandon Mine?

11 A Yes.

12 Q And then it goes on to talk about specific concerns about
13 mining underneath water bodies; right?

14 A I believe it did, yes.

15 Q Now, this whole section was taken out of his next report;
16 right?

17 A I believe it was, yes.

18 Q And those sections reference actually by name other mines;
19 right?

20 A It does.

21 MS. HALLEY: Could we go to the next page, please?
22 Keep going.

23 Q Okay. The second to the last bullet item there, would you
24 read that? Maybe you could read that one out loud since
25 it's short.

1 A "The horizontal stress assumed throughout the
2 stability and subsidence analyses have been
3 underestimated. Based upon the excessive horizontal
4 stress observed at the White Pine Copper Mine in the
5 Michigan Upper Peninsula, Parker 1966, a sensitivity
6 study should be conducted to determine crown pillar
7 behavior under a variety of possible horizontal stress
8 conditions."

9 Q All right. So in this bullet point Dr. Sainsbury is
10 referencing Mr. Parker's study, which in fact Mr. Parker
11 testified about; right?

12 A Correct.

13 Q And suggesting that that information is relevant; right?

14 A You mean the data from White Pine? I think he's saying that
15 the methods are relevant. I don't think he's actually
16 saying -- oh, yeah, I guess he is saying that. Yes.

17 Q And this was deleted? This was deleted from the May 22nd
18 report?

19 A I guess, yes.

20 Q Is that too technical to understand?

21 A That's what he's saying here is that he's identifying some
22 methodologies that could be used.

23 Q Right. I understand what he's saying.

24 A So, no, it's not too technical to understand.

25 Q Okay. Where does Mr. Parker live; do you know?

1 A I think he lives up in Copper Country.

2 Q He does. How far away is that from Gwinn?

3 A Where Mr. Parker lives, maybe two hours and 15 minutes.

4 Q Was anything preventing you from, you know, calling Mr.

5 Parker and talking to him about the White Pine Mine?

6 A I had no clue who Mr. Parker was until he came here -- came

7 here and testified.

8 Q Well, except that his study was referenced in this document

9 and you saw that; right?

10 A I did. And 1966, I didn't know if Mr. Parker was alive or

11 dead or -- again, I did not know who Mr. Parker was.

12 MS. HALLEY: Okay. Next page, please.

13 Q Now, the last three bullet points, maybe you could read

14 those, since they're short.

15 A Read them out loud?

16 Q Please.

17 A "Considering the uncertainties with the modeling

18 input parameters and the significant limitations of the

19 elastic analysis, a very low level of confidence should

20 be applied to the predicted subsidence levels of the

21 Eagle crown pillar.

22 Crown pillar hydrologic stability was not

23 considered in the crown pillar subsidence analysis or

24 the bedrock hydrologic investigation. The long-term

25 time-dependent behavior of the Eagle crown pillar was

1 not considered as part of the analysis. Carter 2000,
2 Carter and Miller 1996, and Hutchinson 2000 indicate
3 that the time-dependent degradation of surface crown
4 pillars is a serious concern."

5 Q Those were removed from the next iteration of this report;
6 right?

7 A I'm not sure. I guess I'll take your word for it.

8 Q Now, Mr. Maki, the things that were removed from this report
9 don't strike me as particularly technical. And in fact,
10 when I've asked you that question, you've said, "No, they're
11 not overly technical."

12 A Sure; the things you pointed out.

13 Q Right. Which were the things that were removed?

14 A Okay.

15 Q Okay. So if your direction to MFG and they sent that on to
16 Sainsbury was to remove technical information, is that what
17 happened?

18 A That's not what -- you're misrepresenting what I had
19 requested.

20 Q Oh, I'm sorry. Then correct me.

21 A I requested from MFG that they instruct Itasca to send me --
22 I didn't say remove anything. I didn't say remove anything
23 technical. I said I needed something in more of a bulleted
24 form like Dr. Eary had provided me that I could essentially
25 cut and paste and put into a letter form.

1 Q All right.

2 A That's what I was requesting. I did not want to
3 misrepresent what Dr. Sainsbury was putting in his report.
4 And I didn't feel qualified to make determinations on
5 whether this was a question, an observation or something
6 that was absolutely necessary to continue with the review.
7 I wanted him to put together something that he needed as the
8 mining team did that they could use to continue their
9 review.

10 Q And this type of information that we just reviewed wasn't
11 useful for that purpose to you?

12 A It was not my decision to take that information out. I
13 relied on Dr. -- I relied on Mahesh Vidyasargar to instruct
14 Dr. Sainsbury to put together a document that I could use.
15 I did not tell him what to take out or what to put in.

16 Q The things that got taken out, are those things that you
17 find useful in your review of this project at that point in
18 time?

19 A I did not consider them, because I was not conducting that
20 review. That was out of the scope of my evaluation -- well
21 out of the scope of my evaluation.

22 Q So you never considered Sainsbury's reports? Is that what
23 you just said?

24 A No, I never said that at all.

25 Q Okay. Well, then let's back up. I thought I just heard you

1 say that you didn't consider them. What did you mean by
2 "them." Maybe I'm misunderstanding something.

3 A Maybe you could repeat the question so I --

4 Q Well, I was asking you if the portions of this report that
5 you received -- okay -- and we just went over the portions
6 that were pulled out from the next iteration -- okay -- are
7 those pieces of information that are useful to you in your
8 review of this project?

9 A What was useful to me --

10 Q Okay. You can explain it, but just "yes" or "no" first.

11 A No, I don't think they were useful to me; no.

12 Q Okay. So unuseful in the fact that you didn't keep them;
13 right?

14 A I wouldn't characterize it like that, no.

15 Q Well, you didn't have them when somebody requested them from
16 you; right?

17 A That's correct.

18 Q So you didn't keep them?

19 A That's correct.

20 Q Did you ask anybody else at the DEQ to look at this
21 material?

22 A I did.

23 Q Who did you ask?

24 A I asked Doug Pascoe. And he indicated that he just didn't
25 have the qualifications or background to review this

1 material.

2 Q Did you actually show the material to him?

3 A I believe I may have showed him the information. But I
4 asked him if he had the ability to review this type of
5 information, and he indicated he did not so I didn't push it
6 any further.

7 Q So at that point you realized that you had nobody on your
8 mining team who was capable of utilizing this material?

9 A No. I had somebody on my mining team, Dr. Sainsbury, who
10 was contracted to provide us with -- initially to provide me
11 with information that he would need to continue his review
12 or additional information that would assist him in his
13 review. And then ultimately at the end of that he would be
14 asked to make a recommendation.

15 Q All right. So you relied solely on Dr. Sainsbury for your
16 rock mechanics analysis of this project?

17 A No, because we ultimately hired Dr. Blake as well.

18 Q Okay. At that point in time you were relying completely on
19 Dr. Sainsbury?

20 A That's correct.

21 Q Okay. He was the only person on your mining team capable of
22 a thorough review of the rock mechanics?

23 A That's correct.

24 Q That's correct? Okay. Now, the third paragraph here says
25 that, "The mining permit application regarding crown pillar

1 subsidence, the conclusions, are not considered to be
2 defensible." Is that what it says?

3 A That's what it says.

4 Q Okay. And you received this document on or about --
5 what? -- May 4th or 5th, 2006?

6 A Somewhere around there yes.

7 Q And then on January 9th of 2007 -- right? -- we already
8 covered this ground, the DEQ issued a proposed decision to
9 grant this permit; is that right?

10 A Could you start over again? I'm not following the time line
11 here.

12 Q Okay. The first question was, I think we've already covered
13 all this, but just so we're on the same page, you received
14 this document on or about May -- in May of 2006; right?

15 A Correct; yes.

16 Q Okay. And in January of 2007 you issued a proposed -- the
17 DEQ issued a proposed decision to grant the permit; right?

18 A That's correct.

19 Q Okay. And the only person you knew who was capable of
20 understanding or analyzing rock mechanics arrived at this
21 conclusion; correct?

22 A That's correct.

23 Q And you went ahead and issued a proposed decision to grant
24 the permit anyway; is that right?

25 A Following his recommendation.

1 Q Following his recommendation?

2 A Correct.

3 Q What recommendation is that?

4 A I believe there was a e-mail that he submitted, a memo
5 indicating that he would -- he could support the issuance of
6 the permit with conditions.

7 Q Did Dr. Inman's report turn up any procedural problems with
8 the application process?

9 A You know, I don't remember exactly what his recommendations
10 were. If we could look at that, then -- you know, I don't
11 recall.

12 Q All right. Read the last sentence of number 1 there.

13 A "At the same time, Part 632 rules required DEQ to
14 process the permit application under specific timelines
15 which may have been too short, given that no experience
16 had been gained, nor procedures developed for
17 processing applications under the new statute and
18 rules."

19 Q Okay. What is Dr. Inman referencing there when he says "no
20 experience had been gained, nor procedures developed for
21 processing applications under the new statute and rules"?

22 A Well, I'm not sure about experience gained, but as far as --
23 there had been no procedures developed prior to a permit
24 being applied for.

25 Q What procedures do you think were lacking?

1 MR. REICHEL: Objection. I don't believe this
2 witness has testified that he has concluded that any
3 procedures were lacking.

4 Q Do you agree with Mr. Inman, that procedures were lacking
5 under the new statute and rules?

6 A I agree there were no procedures.

7 Q Okay. What procedures do you think should have been in
8 place?

9 A I'm not all that sure I understand. What procedures should
10 have been in place prior to an application?

11 Q For processing the application.

12 A You know, I think we had Part 632, which was pretty well
13 defined what our procedures were for processing an
14 application, but --

15 Q But 632 doesn't address organizational issues, like who does
16 what, and --

17 A Well, it doesn't, no. No. You know, essentially we drew
18 from our experience within the Department processing
19 applications.

20 Q All right. The last paragraph there describes you as a
21 competent, take-charge type of person. That's a nice --
22 that's a nice compliment. And then goes on to say that you
23 have a significant sense of responsibility. Okay? Agree
24 with that?

25 A (No verbal response)

1 Q And then it goes on to say, quote, "'This was my baby' was
2 how he referred to his responsibilities for the Kennecott
3 application." It seems like to me a phrase that's unclear
4 what that means. Does that mean that you were interested in
5 this project?

6 A Was I interested in the project? I found the project
7 interesting.

8 Q And you already testified that you spent a lot of time on
9 the project, a hundred percent of your work time, or big
10 chunks anyway; not always, but --

11 A That's correct.

12 Q Okay. For how many years has that been the case?

13 A When did we receive the application? Well, you know, I'd
14 have to say not just this project but the whole Part 632
15 process I've been involved in right from the get-go;
16 involved in assisting in drafting the statute and rules.

17 Q Well, that's a good point. I mean, this project, the Eagle
18 project is what triggered that process; right? The
19 exploration going on.

20 A Partly this project, and another project as well. This
21 wasn't --

22 Q The back 40?

23 A Correct.

24 Q But they hadn't filed an application yet?

25 A They had not; no.

1 Q Have they so far?

2 A They have not; no. They may have while I've been gone, but
3 I don't believe so. So I guess to get back to the question,
4 was -- what was the question again?

5 Q Well, about how many years has this been the main focus of
6 your work?

7 A Well, since approximately February 22nd, 2006. When we
8 received the application I spent, I would say, the majority
9 of my time working on this project.

10 Q How many discussions do you think you've had with Mr. Cherry
11 since -- well, since 2004 if we're going to take into
12 account your preapplication process?

13 A Discussions as in just --

14 Q Talking about the project, discussing technical issues,
15 procedural issues, et cetera.

16 A I don't -- I have no clue. I wouldn't even begin to fathom
17 a guess.

18 Q About how often do you talk to representative -- any
19 representative of the company?

20 A Depending on the issue it could be once a week, but I guess
21 there's no norm.

22 Q Okay. But you're very close to this project?

23 A I've been working on it, yes.

24 Q Now, you're familiar, Mr. Maki, that the DNR owns land in
25 the vicinity of the proposed site and that Kennecott

1 requested a surface lease to use state land for some of
2 their surface facilities; right?

3 A I'm aware of that, yes.

4 Q And to the best of your knowledge has the DNR agreed to
5 issue that lease?

6 A I believe they have.

7 Q Do you know when they did that roughly?

8 A I don't.

9 Q Was it before or after your decision -- DEQ's decision to
10 grant the permits?

11 A I believe it was after.

12 Q Now, did you know that after DEQ had issued its permits the
13 DNR issued a series of questions about the mining proposal?

14 A What was the question? Was I --

15 Q Are you aware that after DEQ granted the permits the DNR
16 sent the company several requests for new and substantial
17 information that they -- that questions still remained about
18 in their minds?

19 A Yeah, I do recall that. Yes.

20 Q And do you recall that those questions covered topics, like
21 crown pillar stability?

22 A Boy, I'd have to refresh my memory. I can't remember all
23 the topics that were in that. I vaguely remember some of
24 them.

25 Q Well, what do you remember? What are the topics you

1 remember?

2 A I know they had some -- I think they were having some
3 questions about what was going to be left underground. But
4 I can't remember all of the questions; no.

5 Q Do you remember they had concerns about the cultural impacts
6 to Eagle Rock?

7 A You know, I don't recall.

8 Q But you do agree with me that the DNR had a series of
9 serious questions remaining about the project after the DEQ
10 permits were issued?

11 A I know they had a list of questions. I don't know how
12 serious or -- I can't recall how serious or the nature of
13 the questions.

14 Q Okay. Now, Mr. Maki, if you had to describe your
15 relationship with Kennecott what word would you choose?

16 A "Regulator."

17 Q "Regulator"? Okay. Friendly? Just "yes" or "no."

18 A Am I friendly? I consider myself friendly.

19 Q Not yourself; I would agree. But I mean your relationship
20 with the company. I mean, you have a lot of exchange. You
21 talk about things regularly; right?

22 A We have had exchange regularly. I'm not following the
23 question really.

24 Q No, it's just -- you've answered it I think. Okay?

25 A Okay.

1 Q Now, I think you testified that Mr. Wilson is your direct
2 supervisor; right?

3 A That's correct.

4 Q And that he's been involved in this process?

5 A To some extent, yes.

6 MS. HALLEY: This is Petitioner's Exhibit 6 and
7 the -- it's the DEQ file disk and the 245 response folder,
8 and this document will be file number 368.

9 Q Now, how would you describe the DEQ's relationship to
10 Kennecott in a general way?

11 A I can only speak for myself. I don't know how other DEQ
12 staff interact with Kennecott.

13 Q Fair enough. Would it trouble you if anybody on the DEQ
14 staff were referring to members of the public, especially
15 the Keweenaw Bay Indian Community as sort of an outsider in
16 the process? Would that trouble you at all?

17 A That they were an outsider in the process? I don't
18 understand.

19 Q Okay. Well, let's look at this e-mail. This is a message -
20 -

21 MR. REICHEL: Counsel, excuse me. You indicated
22 before that this -- if I understood you, that was an e-mail
23 included on a disk, I believe we discussed previously?

24 MS. HALLEY: That's correct.

25 MR. REICHEL: That I provided to you on or about

1 April 1st or 2nd of this year?

2 MS. HALLEY: Right.

3 MR. REICHEL: You referenced it as Exhibit --
4 Petitioner's Exhibit 6. Now, I have to get your -- was this
5 designated as -- was this e-mail designated on your
6 supplemental exhibit list as something you intended to use?
7 As I recall, your co-counsel, Mr. Haynes, after we produced
8 this file disclosed certain documents from that that you
9 proposed to use as exhibits. And I don't have it in front
10 of me, but can you tell me whether this document has been
11 specifically identified as a proposed exhibit either -- on
12 your supplement exhibit list?

13 MS. HALLEY: Well, on our original exhibit list
14 petitioner's item number 6 references the DEQ -- I think we
15 may have at that point referred to it as a record, but over
16 the course of time that nomenclature has changed. And then
17 on our -- for our supplemental exhibit list we in fact did
18 not designate files from this disk on the understanding that
19 this is material provided by the Department of Environmental
20 Quality and we really couldn't imagine that the Department
21 of Environmental Quality would object to the use of their
22 own documents generated by their own employees.

23 MR. REICHEL: Well, it's not an issue of objecting
24 to the use of DEQ employees; it's an issue of -- as
25 discussed by all parties in this. It's an issue of timely

1 identification of exhibits. And again, it is my
2 understanding of the communications among counsel that at
3 the time that we were approaching the deadline for sharing
4 exhibit lists, which was established in the order of about
5 April 1st that I indicated to counsel that I intended to
6 provide what documents I had available to me, which I
7 undertook to do. It was my further understanding that after
8 that material had been reviewed that counsel for petitioners
9 would then designate through some supplementation of their
10 exhibit list which of the wealth of documents included on
11 this disk that you alluded to earlier you intended to use so
12 we would have some notice in advance of the -- this
13 proceeding.

14 Now, I would note for the record that, again, I
15 believe that the -- there was a supplemental Part 632
16 exhibit list wherein I believe your co-counsel Mr. Haynes
17 identified a series of documents that I understood to have
18 been culled from this disk.

19 MS. HALLEY: No. No documents from this disk were
20 referenced in our supplemental filing, because -- well, we
21 didn't have time, frankly, to cull through the tens of
22 thousands of uncatalogged documents on this disk in order to
23 do that. And furthermore, again, these are documents that
24 were provided to us by the Department; therefore, we had no
25 reason to anticipate that the Department itself would object

1 to the use of their own material in this proceeding.

2 MR. REICHEL: Well, of course, the Department of
3 Environmental Quality generates, as you are aware, like any
4 state agency, you know, a wealth of documents. The fact
5 that the Department has generated a document does not
6 necessarily make it; A, admissible in this proceeding in
7 terms of relevance; B, it doesn't necessarily make it the
8 subject of inquiry with a particular witness who, as appears
9 to be the case here, may not even been copied on the
10 document in question. So I guess I have a concern as to --
11 I haven't objected yet because I don't know, but I wanted to
12 establish on the record; A, what was being proffered, and
13 what use you intend to make it. Because I think you've
14 acknowledged that this document -- and I don't know if
15 you're offering it as evidence or for what purpose you want
16 to examine this witness, but I think it's established that
17 this document has not been individually identified by any of
18 the petitioners prior to today as something you propose to
19 use in this hearing.

20 MS. HALLEY: That is true.

21 MR. LEWIS: If I could just add something in
22 support of Mr. Reichel's explanation. We got an original of
23 the petitioners' exhibit list and on that list Exhibit 6,
24 which is the one Ms. Halley referred to, says,

25 "All documents contained in the DEQ file

1 concerning the mining permit application not included
2 in Exhibits 1, 2, 3, 4, or 5, specific documents to be
3 identified following petitioners' receipt of these
4 documents from DEQ."

5 And I believe that's what Mr. Reichel was just referring to.

6 Then we did get the supplemental part 632 exhibit
7 list thereafter as Mr. Reichel referred to as his
8 understanding would be done, and there are in fact some
9 documents listed from the original Exhibit 6 in the
10 supplemental. There are specifically three, as I read it:
11 6-A, 6-B, 6-C the specific documents identified. So we --
12 my understanding conforms with Mr. Reichel's understanding,
13 which is further confirmed by the two exhibit lists
14 themselves. And finally, I note for the record that Mr.
15 Reichel in previous presentations to the court has indicated
16 that in fact this material was produced voluntarily and that
17 the petitioners' Motion for Discovery have been denied; that
18 Mr. Reichel argued in the prior motions that all this
19 documentation had been sent to, received by the petitioners
20 earlier via FOIA's but he nevertheless as a matter of
21 courtesy and to eliminate further argument provided this
22 entire new set of the same information, I believe he
23 indicated in early April. So I just wanted to add that to
24 the record, your Honor.

25 MR. WALLACE: And my only comment is that our

1 paltry collection of some later documents which happened to
2 come from the respondent's own files don't begin to compare
3 to the hundreds of documents created after the witness --
4 after the exhibit list was -- deadline was set and days
5 before trial some that we saw and sometimes we'd get clumps
6 of 60 or 80 during their case, new documents that have
7 been -- made it into the record as demonstrative exhibits
8 and we've got like two or three of these things and we're
9 arguing about it for 20 minutes. Your Honor has hundreds of
10 documents that were created long after the exhibit list
11 was -- were exchanged. So I think this is a really minor
12 point. It's in front of us all. Whether it's admitted or
13 not is another question, but it just doesn't compare to the
14 process that we've been subjected to in the presentation of
15 their case.

16 MR. EGGAN: I have to join in that objection, your
17 Honor -- in that comment, your Honor, I don't know how many
18 times we have asked this court to exclude documents in these
19 proceedings that have -- that were presented late, far after
20 they -- the time for submitting exhibits and the court has
21 allowed them in. And we would ask that these documents be
22 allowed.

23 MR. REICHEL: Well, your Honor, I guess --

24 JUDGE PATTERSON: I don't know if you're objecting
25 or not.

1 MR. REICHEL: I have not. I mean, I wanted to
2 state my position on the record so it was clear before we
3 got into any substantive discussion of this and to ask
4 counsel -- though she has confirmed what the status of this,
5 but I -- at this point, unless and until I hear a question,
6 I'm not going to object. But I -- as a threshold matter I
7 wanted -- before we get into this I wanted to state
8 clearly -- first to inquire as to whether this had been
9 specifically identified as an exhibit -- it had not -- so
10 that I could then determine whether or not an objection on
11 that basis or some other basis was appropriate.

12 MR. LEWIS: And I'm not making an objection at
13 this point either. I just wanted to help clarify the
14 record, your Honor.

15 MS. HALLEY: May I proceed?

16 JUDGE PATTERSON: Yup.

17 MS. HALLEY: I'm unclear about this objection or
18 lack of objection.

19 JUDGE PATTERSON: There isn't an objection at this
20 point.

21 MS. HALLEY: Okay. That's why I'm hesitating.
22 I'm bracing myself. Okay.

23 Q Now, Mr. Maki, the second portion of this e-mail appears to
24 be from Steve Wilson to Eugene Smary. Do you know Eugene
25 Smary?

1 A I do.

2 Q And who does he work for?

3 A I forget. What is it, a law firm? Warner, Norcross and
4 Judd.

5 Q Representing Kennecott in this proceeding?

6 A Correct.

7 Q Okay. I wonder, Mr. Maki, if you could read Mr. Wilson's e-
8 mail to Mr. Smary.

9 MR. REICHEL: Objection. On the face of this
10 there's no indication whatsoever that Mr. Maki was a
11 recipient or copied on this. So first of all, seeking to
12 introduce its contents or read them into the record through
13 this witness, there's no foundation whatsoever. There's no
14 foundation that he was party to any such communication
15 between Mr. Smary and Mr. Wilson. So that's one objection.
16 And then my other -- I would now state an objection to any
17 use of this document on the basis that I alluded to before,
18 which was that it has been in the possession of the
19 petitioners for two and a half months, something approaching
20 that. And if they intended to use this presumably in some
21 fashion, they could have supplemented their exhibit list to
22 put us on notice of that fact. But in any event, I think
23 fundamentally there's no foundation for this witness having
24 any knowledge of the communication in question.

25 MS. HALLEY: Well, I'd like to try to establish

1 that foundation, your Honor. That's the point of
2 questioning the witness.

3 MR. REICHEL: But you -- excuse me. But, your
4 Honor, counsel asked him to read this first. I mean, --

5 MS. HALLEY: I did.

6 MR. LEWIS: That's not foundation.

7 JUDGE PATTERSON: If you want to pursue a
8 foundation that's another thing.

9 Q Well, Mr. Maki, maybe you could read it to yourself so that
10 you're familiar with what I'm about to ask you. Okay?

11 A What am I reading again?

12 Q I want you to read the bottom half of this screen, which is
13 an e-mail message from Mr. Wilson to Eugene Smary and the
14 subject line is: "A question of tribal rights ..." Okay?

15 A Okay.

16 Q Now, do you have any idea why Mr. Wilson would be referring
17 to Eugene Smary as a friendly face?

18 A I have no --

19 MR. LEWIS: Excuse me. Same objection, your
20 Honor. Again, there's no foundation for this.

21 MR. REICHEL: I join in the objection.

22 MS. HALLEY: He can say he doesn't know, your
23 Honor.

24 MR. LEWIS: She's reading into the record portions
25 of this document. We had an objection to the contents of

1 this document coming into the record. A misunderstanding
2 apparently as to the nature of having to establish
3 foundation before submitting evidence in court.

4 MS. HALLEY: Your Honor, I have not offered this
5 evidence as an exhibit.

6 MR. REICHEL: But, your Honor, counsel is
7 eliciting -- you know, is eliciting the substance of this
8 document trying to up it in the record and framing a
9 question -- and the simple fact is it would -- on its face
10 there's no indication that Mr. Maki was a recipient.
11 There's no foundation that he has any knowledge of this
12 communication. So I don't believe there's any basis for
13 directly or indirectly asking him to comment on,
14 characterize or state or respond to a question that
15 paraphrases the contents of this document.

16 MS. HALLEY: Well, for one thing, your Honor, this
17 message clearly references this project for which Mr. Maki
18 is responsible. Steve Wilson is his direct supervisor and
19 he has testified that he discusses this issue with Mr.
20 Wilson, that they have meetings, that they -- that he, you
21 know, is part of this process. We don't know the answers
22 until we ask the questions. The logic is circular here.

23 MR. WALLACE: And it's a party admission by MDEQ.
24 This is -- Mr. Wilson is an agent of MDEQ as Mr. Smary is of
25 Kennecott.

1 MS. HALLEY: If they'd like to produce Mr. Wilson
2 to question about this, I have no objection to that
3 whatsoever. Otherwise, we're -- we have Mr. Maki. He's
4 the only representative of OGS we have.

5 MR. REICHEL: Well, first of all, this is not --
6 again, there's no foundation that he has any -- the fact
7 that Mr. Wilson was and is Mr. Maki's supervisor is not the
8 point. I mean, he has testified certainly on direct
9 examination, on cross that from time to time Mr. Maki
10 consulted with his supervisors including Mr. Wilson, but
11 that doesn't establish a foundation that Mr. Wilson
12 conferred with Mr. Maki about what communications he does or
13 does not have with third parties. And further, with respect
14 to Mr. Wallace's suggestion that this is a party admission,
15 again, it's not a foundation that this communication was
16 made by whatever it was, made by Wilson -- Mr. Wilson --
17 excuse me -- in the course of his employment or as a regular
18 part of his -- you know, within the scope of his functions
19 within the DEQ.

20 MR. WALLACE: You're referring to
21 wilson@michigan.gov?

22 MR. BRACKEN: It's not an admission at all.

23 JUDGE PATTERSON: No, I agree with that.

24 MR. BRACKEN: There may be questions that could be
25 asked, but they can't be asked by reading the document into

1 the record -- you can ask, "Do you know this document?"
2 Let's start out with that one. That's a foundational
3 question.

4 JUDGE PATTERSON: That would have been my
5 question: "Have you ever seen this before?" Mr. Maki, have
6 you ever seen this before?

7 THE WITNESS: No, sir, I have not.

8 JUDGE PATTERSON: I just don't frankly, Counsel,
9 feel there's proper foundation for Mr. Maki to testify to
10 this. I'll sustain the objection.

11 MS. HALLEY: Your Honor, may I ask one question
12 that might clarify my point of this document?

13 JUDGE PATTERSON: Okay.

14 Q The last sentence of this e-mail references a trump card.
15 Do you have any idea what that might mean in the context of
16 the sentence?

17 A I don't.

18 MR. LEWIS: Objection. Same objection.

19 A I've never seen the document and I'm not sure what Mr.
20 Wilson was referring to.

21 Q I'll move on.

22 THE WITNESS: Your Honor, would it be possible to
23 take a restroom break at some point?

24 JUDGE PATTERSON: Mr. Maki would like a break.

25 MS. HALLEY: Certainly.

1 (Off the record)

2 Q Mr. Maki, this is a document from that same disk of
3 information from the DEQ.

4 MS. HALLEY: For the record it's Petitioner's 6
5 and in the 245 response and it's file number 2476.

6 Q And it describes in some pretty significant detail sort of a
7 plan to develop something called a -- well, there are a
8 number of names being contemplated in this particular
9 document, but something like "Michigan Minerals Matter" or
10 something along those lines; that's one of the names. Are
11 you familiar with this?

12 A I've never seen this document; no.

13 Q Are you familiar with the concept of the DEQ developing a
14 facility -- well, I can -- mineralogical museum; are you
15 familiar with DEQ's plans to have anything to do with a
16 mineralogical museum?

17 A I guess I don't recall anything about a mineralogical
18 museum; no.

19 Q Additional core shed; is that --

20 A I think, yeah, the core repository that we have -- that we
21 oversee. I know we're -- there was an attempt to make
22 that -- to try to get some -- I don't know all the details
23 of it. I have not been involved in that at all.

24 Q So but Melanie -- is Melanie Humphrey the person overseeing
25 this then?

1 A Melanie is directly involved with this.

2 Q Melanie is directly involved in it?

3 A Yes.

4 Q Okay. And it looks as if -- well, are you familiar with the
5 fact that the DEQ is contemplating developing a 501(c)(3)
6 organization in order to apparently manage and establish
7 this additional core shed facility?

8 A I'm aware of that, yes.

9 Q Now, if we look at the proposed executive committee of this
10 501(c)(3) organization, --

11 A Uh-huh (affirmative).

12 Q -- who is listed there as the CEO?

13 A Hal Fitch.

14 Q Okay. And then it lists some other members of the executive
15 committee; right?

16 A Correct.

17 Q All right. Now, that includes Mr. Cherry from Kennecott?

18 A That's what it says, yes.

19 Q And it includes Al Tripple from Minerals Processing Corp?

20 A That's what it says, yes.

21 Q Okay. Now, what exactly is the purpose of this 501(c)(3)
22 that -- of which it is proposed that Hal Fitch be the chief
23 executive officer and among others Mr. Cherry and Al Tripple
24 be essentially board members it looks as if?

25 A Honestly, I have not had any involvement in that. As I

1 understand about the process -- or what -- the facility and
2 that it was being contemplated a 501(c)(3), but that's
3 really as far as I've gone. I've never seen this document.
4 I've never seen any of the board members or proposed board
5 members.

6 Q Okay. Do you know if the DEQ chairs any other 501(c)(3)
7 organizations?

8 A I'm not aware. I guess I don't know.

9 Q Okay. Now, you said you're aware that the DEQ is in the
10 process or is it -- I mean, where is this at the process,
11 this --

12 A I'd have no idea where it's at in the process.

13 Q Okay. But you understand that 501(c)(3) organizations take
14 money -- right? -- and provide tax benefits for their
15 donors?

16 A What was that? I didn't hear you.

17 Q 501(c)(3) organizations accept donations primarily; right?

18 A I understand that, yes.

19 Q Okay. And provide tax benefits to their donors?

20 A I'm not aware of that, but I understand roughly what
21 501(c)(3) is.

22 Q Okay. Now, the 501(c)(3) that the DEQ appears to be in the
23 process of forming along with -- well, from the other page
24 we saw Kennecott and Aquila represented by Mr.'s Cherry --
25 well, it's Mr. Cherry and Mr. Tripple. Do you have any idea

1 how they're planning to fund that 501(c)(3) organization?

2 A No. Like I said, I have had very -- I have had no
3 involvement in that process at all.

4 Q Would it trouble you at all if you knew that the DEQ was in
5 the process of developing a 501(c)(3) organization with the
6 state geologist as the chief executive officer and the
7 representatives of mining companies as the board given that
8 you described your relationship to the company as, in your
9 word -- just one word -- "regulator"?

10 MR. REICHEL: I'm going to interpose an objection.
11 You know, I don't want to make this proceeding any longer,
12 but I think we've gone far afield of anything that is
13 relevant in this proceeding. First of all, this witness has
14 testified that he has only the barest of knowledge. He has
15 no familiarity with either of these documents. It's not --
16 there's no foundation that in fact the DEQ is now or has in
17 fact established an organization of this kind with the
18 participation involved. I don't see how this line of
19 inquiry; A, is appropriate with this witness; B, is relevant
20 to any issue in this case.

21 MR. LEWIS: I agree, your Honor.

22 MS. HALLEY: Your Honor, I just asked him a simple
23 question about how he feels about something that the agency
24 that he's working for is doing. I'm not asking him to make
25 any factual statement about it at all.

1 MR. REICHEL: Well, your Honor, again, there's no
2 foundation in this record that in fact the DEQ is doing
3 this. I mean, what we've seen so far are a couple of
4 documents projected which I believe have dates going back
5 two years or more, or a year and a half or more where
6 certain people are discussing the possibility of such an
7 organization. In any event, this witness has no -- he's
8 already testified he has essentially no knowledge of this
9 and is not involved in it. And you know, whether or not
10 this organization was ever formed, who its members are is
11 no -- is not germane in this proceeding. I mean, if --
12 presumably this is being offered to imply some sort of bias
13 or whatever. I don't know. But I don't understand how this
14 line of inquiry is relevant particularly with this witness.
15 And again, there's no foundation.

16 MR. WALLACE: Well, I -- my understanding -- and
17 maybe I'm wrong -- is that Mr. Maki is going to be the
18 highest ranking official from respondent MDEQ to testify,
19 maybe the only one possibly knowledgeable about matters at
20 this level. This is the best we can do. You know, if they
21 proffer other witnesses that are more knowledgeable, but
22 it's hard to escape the idea that this is pertinent to a
23 question of unbiased regulation and we ought to be able to
24 ask whomever we can ask at this proceeding the questions. I
25 mean, if he doesn't know anything, then here we are. But

1 posing the questions to the senior person --

2 JUDGE PATTERSON: Well, I guess if you want to ask
3 him if he has an opinion, go ahead. I'm not sure he does.

4 A You know, I would like to have more information before
5 forming an opinion. Again, I don't know anything about it.
6 I don't know the circumstances behind it. Just from what
7 you explained to me -- I don't know anything about it. I
8 normally wouldn't like to form an opinion on something that
9 I personally have very little knowledge about.

10 Q We could put up the other document that has more details and
11 you can take the time you need to review it. Is that what
12 you'd like to do?

13 JUDGE PATTERSON: What other document? The one
14 you showed him previously?

15 MS. HALLEY: Right. It had --

16 JUDGE PATTERSON: Well, he's already reviewed that
17 and he said he --

18 Q So you don't have an opinion?

19 A I really don't.

20 Q Okay.

21 MS. HALLEY: And again, this is from the file
22 provided by DEQ in the 245 response folder, file number
23 2,379.

24 Q Mr. Maki, are you familiar with a group called the Citizens
25 for Responsible Mining?

1 A I've heard that. Oh, yes. Yes. Yes, I am familiar with
2 it.

3 Q What do you know about that group?

4 A They have a website. That's about as much as I know.

5 Q What is their position on this mine, if you know?

6 A I think their position is that they support responsible
7 mining.

8 Q Right, but I asked you if you know their position on this
9 mine. Do you know if they support it or oppose it, or --

10 A I've never read the whole website, so I'm not even sure.
11 I'm not sure. If you had something here I could confirm,
12 but I don't recall.

13 Q Well, we'll see if this triggers your memory about who they
14 are and what they're all about. Now, this is a message to
15 Mr. -- do you know Mr. Peterson, his relationship to the
16 Citizens for Responsible Mining?

17 A I don't know Mr. Peterson; no.

18 Q Okay. Does reading this message from Mr. Peterson to
19 Steve -- to Mr. Peterson from Steve Wilson trigger -- you
20 know, looking at their website or anything help you remember
21 what they're all about?

22 A It really doesn't. I have looked at their website. I just
23 don't recall how their position is. From what I understand
24 it was a -- they support responsible mining; that's --

25 Q Okay. Let's see. Now, Mr. Maki, are you on the mailing

1 list for the Citizens for Responsible Mining?

2 A I am not, no.

3 Q Are they listed on your favorites?

4 A They may be. I don't recall, but they may very well be.
5 I'd have to look.

6 Q Is "Save the Wild U.P." listed on your favorites?

7 A It is.

8 Q Okay. Just curious.

9 A Yes.

10 Q Mr. Maki, have you ever heard the phrase "a mine is a
11 terrible thing to waste"?

12 A A mine, m-I-n-e?

13 Q M-I-n-e. Have you ever heard that phrase before?

14 A I haven't, no.

15 Q All right. You know Mr. Al Tripple?

16 A I do.

17 Q Okay. How do you know him; in what capacity?

18 A Well, Al was part of the work group with us drafting the --
19 I don't know if it was the statute. Was it the statute? I
20 think statute and rules, something like that. But that's
21 where I got to know Al.

22 Q Okay. And have you had contact with him since that time?

23 A Yes, I have.

24 Q Okay. For example, what?

25 A Al is essentially working on the Aquila project in Menominee

1 County.

2 Q I understand that. And what's the nature of your
3 communications with him? Is it about that project or --

4 A It is about that project, yes.

5 Q Okay. Has Mr. Tripple ever invited you on a trip?

6 A Invited me on a trip? I don't recall being invited by Mr.
7 Tripple on a trip.

8 Q Well, maybe this will help. Okay. This is a message out of
9 that same file from the DEQ, Petitioner's 6 out of the 245
10 responses folder, number 2,485. Now, this -- the top I
11 can't tell who that's from, but it says, "Joe, it's a go."
12 But, you know, based on the form that we received and I
13 can't tell who this is, but the bottom message here is from
14 you; right?

15 A Yup.

16 Q To Hal and Steve. I assume that's Hal Fitch and Steve
17 Wilson?

18 A That's correct; yes.

19 Q Okay. Now, it says, "Al Tripple has felt it would be
20 beneficial for me to visit some active mine sites and
21 volunteered to act a tour guide"?

22 A Correct.

23 Q Okay. Are you remembering now that he's invited you on a
24 trip?

25 A Yeah, this is when -- yes, I do remember.

1 Q Okay. Then tell us about this offer.

2 A He didn't invite to like take us there; he invited us that
3 once we were there he would facilitate these tours at these
4 mines. And at the time -- Al wears a couple of different
5 hats and he is a consultant for the Minnesota Department of
6 Natural Resources who I used to work for, and through that
7 communications with my contacts at the Minnesota DNR still
8 and Al's involvement the Minnesota DNR staff was going out
9 to look at some active sulfide mines, and that's how I got
10 involved in that.

11 Q Did you actually go on the trip?

12 A I did.

13 Q When was the trip?

14 A I believe it was in October of -- boy, I can't remember the
15 year. October --

16 Q Well, would it have been 2006, since this message -- from
17 2006?

18 A Yeah, it must have been. Yes.

19 Q Okay. Did anybody else from the DEQ go?

20 A Yes, Steve Wilson went along.

21 Q Okay. Let's see. So you and Al Tripple and Mr. Wilson and
22 other people from Minnesota?

23 A Yes, several Minnesota DNR and Minnesota pollution control
24 agency staff were part of this kind of field tour.

25 Q And what role did Mr. Tripple play in the tour?

1 A Well, Mr. Tripple, again, was acting as a agent for
2 Minnesota Department of natural Resources. He's doing some
3 work for them. And his role was, if I recall, some of the
4 mine sites that were out in that area he was familiar with
5 and had contacts with those people and essentially set up
6 the tours for us at those sites.

7 Q So where exactly did you go?

8 A It was in Northern Nevada.

9 Q Okay. And it looks as if there were tours and meetings.
10 What were the meetings?

11 A We met with the -- I don't know what their department is --
12 Department of Environmental Quality, I guess, Nevada -- or --
13 - yeah, Nevada, state agencies as well as -- I think the
14 BLM, we met with them to just kind of talk about their
15 processes for regulating mining and permitting and things of
16 that nature.

17 Q Okay. I think you indicated in your slides that you were
18 responsible for compiling public comments; is that right?

19 A I assisted in -- I assisted in that, yes.

20 Q Okay. Well, what do you mean? How did the process work?

21 A Well, the public comments were sent to Mr. Wilson, and then
22 Mr. Wilson would essentially categorize the comments and
23 then provide them to me, and then I put them in our comment
24 response format and then distributed those comments to the
25 mining team for consideration.

1 Q How were they logged? I mean, the statute requires that the
2 DEQ take into account the public -- public comments; right?

3 A Correct.

4 Q Okay. How were they physically logged?

5 A I don't know what you mean "physically logged."

6 Q Well, okay. If you received a letter on paper, what
7 happened to it?

8 A That all came to Lansing, so I'm not really sure how that
9 whole process was handled.

10 Q I see. What about e-mails; any idea how they were actually
11 categorized, cataloged, counted?

12 A You know, again, I don't know. The e-mails came into a
13 central e-mail location that, again, I wasn't -- that was
14 just out of my, I guess, scope of involvement of the
15 project.

16 Q Do you have any idea how many comments were received about
17 this project, the Eagle project?

18 A I don't know; a lot.

19 Q A lot. I mean, are we talking -- what's the range of a lot,
20 a hundred, 5,000, what?

21 A Honestly, I really don't have any clue. I don't know.
22 Because I did not see all the comments; I just saw the ones
23 that we responded to.

24 Q I recall hearing something in the neighborhood of 5,000.
25 Would you disagree with that?

1 A I have no reason to disagree with that; no.

2 Q And did you attend the public meetings in Marquette and
3 Lansing?

4 A The public meeting?

5 Q Well, there was at least one public meeting very early on in
6 the process and then there were, I think, two -- at least
7 two public hearings.

8 A Well, I attended all the meetings and hearings.

9 Q Okay. And do you recall what the majority of the testifiers
10 had to say there?

11 A At which one?

12 Q Well, first of all -- let's just back up for a minute. The
13 very first public meeting in Marquette; remember that?

14 A Could you give me a date? You know, --

15 Q Now, your stretching my abilities here. That would have
16 been, I believe, in August of 2006.

17 A So that was after we received the permit. I don't recall
18 one in August; I thought we had one in April.

19 Q You know, I stand corrected, Mr. Maki. You're right. Thank
20 you. Were you at that public meeting?

21 A In April?

22 Q Yes.

23 A Yes, I was.

24 Q And about how many people were there?

25 A Well, I'm guessing over 200, I'm not positive though.

1 Q You have a safe assumption. And, you know, what did most of
2 the testifiers say?

3 A The majority of them spoke in opposition of the mine.

4 Q What were the reasons they gave?

5 A Boy, a whole host of them. Do you want to me to kind of
6 pick out a couple, or -- I'm not --

7 Q If you can remember.

8 A I think some of the reasons were that the Yellow Dog Plains
9 was considered a pristine area and they didn't feel it was
10 appropriate to put a mine there. Some had concerns about
11 water quality. You know, there was a whole list of things
12 that people presented.

13 Q And then there was a public hearing -- right? -- on that
14 same proposed decision?

15 A Yes, several of them.

16 Q Several. And how many people do you think attended those
17 hearings?

18 A Well, we had -- what did we have? Let me -- I don't
19 remember how many days of hearings we had. I know we had
20 five in the -- I think it was five in the U.P. I don't
21 recall how many people. I mean, it was -- because we had so
22 many days of hearings, people were coming and going. I
23 don't know.

24 Q Did anybody keep tack of that?

25 A I'm sure somebody probably did; I've never seen the total

1 though.

2 Q Okay. Was it more than 200? More than 500? More than a
3 thousand?

4 A I would say it was more than 500, but beyond that I wouldn't
5 know.

6 Q And did the majority of those testifiers also oppose the
7 mine?

8 A Now, during that process I was not in the hearing room the
9 majority of the time; I was actually stationed outside of
10 the hearing room. So I -- you know, when I was in there I
11 would venture to guess that the majority of the people I
12 heard were in opposition, but I was not in the hearing room
13 the whole time.

14 Q In your opinion does Part 632 require a pretty extensive
15 public process; in other words, ability for the public to
16 review the application and to comment on it both in writing
17 and through hearings?

18 A I believe it does, yes.

19 Q Why is that? Why do you think?

20 A I think because folks like yourself were on the committee
21 for drafting the statute and felt it was important.

22 Q Do you feel it's important?

23 A I don't disagree with it at all; no.

24 Q Did you ever discuss public participation with other people
25 in the DEQ?

1 A I may have; I don't know. That's pretty broad.

2 Q Okay. Did you ever discuss it with your supervisors, Mr.
3 Wilson and Mr. Fitch?

4 A Just in general public participation, or --

5 Q The importance of it or whether it was just a pain in your
6 neck, or however you might have felt about it.

7 A I don't recall that; no.

8 Q So no matter how the Department felt about it, despite the
9 fact that the majority of public comments were opposed to
10 the mine, the permits were issued; right?

11 A That's correct.

12 Q Are you aware of any petition that was circulated and
13 presented to the governor about this project?

14 A I'm aware of a petition. I believe it was brought to maybe
15 one of our hearings, but I'm not aware that it was presented
16 to the governor. If it was I guess I --

17 Q That's okay. Do you know how many people signed the
18 petition?

19 A I don't know off the top of my head; no.

20 Q Okay.

21 MS. HALLEY: This is from Petitioner's Exhibit 6,
22 the 245 response folder again. This is file number 4,692-A.

23 Q And it appears to be somebody from the State of Michigan; I
24 don't know. I have no idea who this person actually is;
25 however, what they have here and came from your own file is

1 a statement that some 10,000 residents signed a petition.
2 You're familiar with the petition; right?

3 A I'm familiar, yes.

4 Q Do you have any reason to doubt that this is correct and
5 that over 10,000 residents signed a petition --

6 A I have no reason to doubt that.

7 Q -- opposing the project?

8 A No; no, I don't.

9 Q And that they felt that even with the new statutory
10 regulations that the area proposed for this mine was not an
11 appropriate place for the mine; is that right?

12 A What are you asking me now?

13 Q If the petitioners -- not the petitioners in this case, but
14 the people who signed the petition seemed to believe that
15 sulfide mining could not be done safely on the Yellow Dog
16 Plains. Is that your understanding of the petition?

17 A I have no understanding of the petition, and that's what it
18 says right there. I knew there was a petition signed, but I
19 don't know anything about it.

20 Q Now, do you remember discussions during the rule-making
21 process that focused on whether or not citing requirements
22 should be included in the rules of Part 632?

23 A I do recall that, yes.

24 Q What's your understanding of the citing requirement in the
25 context that it was discussed there?

1 A That the -- what I recall was that some language was
2 presented, I believe, from either South Dakota or North
3 Dakota that identified citing criteria. I don't know much
4 about it though.

5 Q Well, what was the point of the citing criteria?

6 A I think the point was to identify areas that shouldn't be
7 mined; I'm not positive though. I vaguely remember that. I
8 wasn't -- I really wasn't part of that discussion with the
9 citing.

10 Q Was that provision included in the Part 632 rules or
11 statute?

12 A It was not; no.

13 Q Mr. Maki, are you familiar with Eagle Rock?

14 A I am.

15 Q Have you been there?

16 A Yes.

17 Q When's the last time you were there?

18 A I think it was last fall.

19 Q What did you hear when you were there?

20 A What did I hear? I don't know what you mean, "what did I
21 hear?"

22 Q When you were standing there what did you hear? That's it;
23 that's the question.

24 A I think I heard Melanie talking to me when we were out
25 there.

1 Q Did you hear any cars? Did you hear any horns blowing?

2 A No, I did not. No.

3 Q Did you hear, you know, a factory running or something like

4 that?

5 A No, nothing like that.

6 Q Did you hear birds?

7 A I'm sure I did. I don't -- you know, I didn't take note

8 that I was hearing birds.

9 Q Wind in the trees probably?

10 A I didn't take note of that. I live in the country too, so

11 I --

12 Q Okay. Lucky you. Now, were you here when the Keweenaw Bay

13 Indian Community folks were testifying about Eagle Rock?

14 Were you here for their testimony?

15 A I believe I was, yes.

16 Q Okay. Now, do you remember that they testified that Eagle

17 Rock is a place of worship for them? Do you recall that

18 testimony?

19 A I do recall that, yes.

20 Q Okay. Now, I'm sorry if I asked this before, but I'm sort

21 of losing track honestly. Do you know if there's been any

22 on-the-ground assessment of Eagle Rock performed by the

23 State?

24 A I don't recall if there was or not.

25 Q If there was who would have done it?

1 A You know, I don't know what they're called, the group.
2 There's a state archeologist, but I'm not sure what office
3 they're in.

4 Q The State Historical Preservation Officer?

5 A That may very well be. That would be the person or the
6 group that would do something like that.

7 Q Now, to your knowledge have they done any on-the-ground
8 assessment of the significance -- cultural significance of
9 Eagle Rock?

10 A I don't know. I have no knowledge of that.

11 Q Have you asked them to?

12 A I have not.

13 Q Has anybody from the DEQ asked them to?

14 A No; not that I'm aware of.

15 Q Now, was the cultural significance of Eagle Rock taken into
16 account in your decision-making process?

17 A We had the -- out of that department a gentleman review the
18 archeological information out of the application, and so
19 that was considered when making our decision.

20 Q Considered -- I'm sorry. I'm missing something here.
21 Considered by whom?

22 A I think it was -- I can't remember his name. We had
23 presented the information from the -- in the application and
24 the IA regarding the archeological study to -- I can't
25 remember his name. I'm sorry.

1 Q Okay. Well, I --

2 A But somebody out of that office to review that information
3 and we do have on the file that -- his recommendations.

4 Q Okay. Did his recommendations include -- did he indicate
5 that it was acceptable to fence off Eagle Rock from people
6 who regard it as a place of worship --

7 A I don't --

8 Q -- from native people who regard it as a place of worship?

9 A I don't recall that; no. I'd have to look at what his
10 recommendation was.

11 Q But the permit was issued with that understanding; right?
12 The fence line goes around and precludes entry or access of
13 the public to Eagle Rock; right?

14 A That's correct.

15 Q So whether -- we don't know what he recommended; I don't and
16 you don't, so -- but no matter what he recommended, that's
17 the way the permit is?

18 A That's correct.

19 Q Okay. Does the DEQ have a particular interest in rock
20 outcrops?

21 A A particular interest?

22 Q Yeah.

23 A Like?

24 Q Does the DEQ actually purchase rock outcrops from time to
25 time if they are unique for the purpose of preserving them

1 as a rock outcrop for some reason?

2 A I have no idea.

3 Q Okay. Well, let's see if this will trigger your memory at
4 all. So just to be clear, in this instance the DEQ permit
5 allows the Eagle Rock to be completely fenced off from the
6 public; right?

7 A That's correct.

8 Q Okay. And to have a big hole blasted into it; right?

9 MR. REICHEL: Objection; lack of foundation.

10 MR. LEWIS: Form of the question.

11 MR. REICHEL: Yeah, I don't think the record
12 supports testimony that there's a hole blasted into the rock
13 above the surface.

14 Q Is there going to be a hole in Eagle Rock?

15 A Below surface there'll be a porthole.

16 Q Will it be blasted into the rock?

17 A Yeah. I believe so, yes.

18 Q Okay. All right. Now, Mr. Maki, I don't know if this is
19 you, "Joe," and I don't know if "Steve" is Mr. Wilson, but
20 maybe you can shed some light on this. Just take a minute
21 to look this over, but a summary is that it's a discussion
22 of preserving rock outcrops.

23 A Okay. Let me look. Where am I reading now?

24 Q Well, this is where "Joe" appears and "Steve," which I think
25 may be you and Mr. Wilson but I'm not sure, so just -- and

1 it's from Doug Daniels, senior geologist, so it makes sense
2 to me that you might have received this e-mail and it was
3 back in 2006. So just take a few minutes to look it over
4 and see if any of this discussion about preserving rock
5 outcrops, you know, makes any sense to you. It might not; I
6 don't know.

7 A You know, I don't recall this e-mail. I'm not even sure
8 what it refers to.

9 Q Well, let's see. Outcrop preservation. Okay?

10 A Yeah.

11 Q And up here it's talking about nominating an outcrop for
12 purchase by the Michigan Natural Resources Trust Fund. I
13 was hoping you knew more about this than I do.

14 A I don't. Honestly I don't. If that is me -- I don't know
15 if it, but I don't recall this e-mail. And I -- honestly, I
16 have no knowledge of the DEQ purchasing outcrops.

17 Q Okay. Well, it looks like they -- there's something going
18 on here about preserving outcrops. Would you agree with me
19 about that?

20 MR. BRACKEN: Objection, your Honor.

21 MR. LEWIS: Objection.

22 MR. BRACKEN: I'm sorry.

23 MR. LEWIS: Objection; foundation.

24 JUDGE PATTERSON: I'll sustain the objection.

25 Q Mr. Maki, if your agency were going to preserve outcrops, do

1 you believe that an outcrop that's a place of worship for
2 tribal people might be an important one to preserve?

3 A Well, first of all, I have no knowledge that the DEQ even
4 considers outcrops to purchase and why they would try to
5 purchase them, I have no idea. This is a very new concept
6 to me as well, so I don't know.

7 Q I'm just going from this document; that's all I have. So
8 maybe we don't know anything more between us.

9 A I guess not.

10 Q Okay. Do you recall the application fee for a Part 632?

11 A \$5,000.

12 Q All right. And \$5,000; do you have any idea between the
13 consultants that you've hired and your own time and the time
14 of other DEQ staff people and travel and everything else how
15 much the DEQ has expended on this project so far? Just a
16 ballpark; I know it's --

17 A I'm not sure, over \$5,000.

18 Q I'd say. Okay. Quite a bit more I would venture to say.
19 I would imagine. I don't really have a firm grasp on what
20 we spent.

21 Q How then is the work on this project funded given that the
22 application fee was only 5,000? And I think we all agree
23 that the expenditures have outstripped that a long, long
24 time ago.

25 A That's really above -- you know, levels above me on how

1 money is allocated for things.

2 Q I see. Okay. Now, if this mine ends up being constructed,
3 how will it be regulated?

4 A Could you --

5 Q Well, who will have regulatory authority over this mine?
6 The DEQ of course, but from a personnel perspective is that
7 you? Is that Ms. Humphrey? Is it Mr. Fitch? Mr. Wilson?
8 Who is it?

9 A The actual people doing the physical work?

10 Q Yes.

11 A Well, myself and Ms. Humphrey for one portion of it.
12 There's going to be water bureau staff that would be also
13 involved at many levels. And air quality staff that would
14 involved at certain levels. So to -- I'm not sure the
15 number of people or even who the people would be. Those are
16 roughly the divisions within the Department that would have
17 oversight. Well, we'd rely on waste and hazardous material
18 division as well for guidance on inspections and things like
19 that of the TDRSA.

20 Q And just so that I remember properly, you try to get to the
21 Empire and Tilden Mines quarterly?

22 A Quarterly is roughly what we try to do, yes.

23 Q Have you developed a schedule for, you know, inspections or
24 anything like that at this mine site?

25 A At the Eagle Mine site?

1 Q At the Eagle Mine site.

2 A No, we have not done anything like that yet. It's not a
3 mine site yet, so --

4 Q Now, Mr. Maki, what's your understanding of the affected
5 area?

6 A The affected area is an area that includes or is outside the
7 mine site that has potential to be affected by the project.

8 Q What's the affected area designated by this application?

9 A I think there's probably multiple layers of that affected
10 area, depending on what the media is.

11 Q Okay. Go ahead and take it media by media.

12 A I think for -- well, I can only do it from memory. I mean,
13 there's many of them -- many things in the application. But
14 yeah, I'm not sure I'm comfortable taking it from memory
15 actually.

16 Q Okay. Maybe we should revisit this tomorrow morning.

17 A That would be fine.

18 Q If you want to take the evening to refresh your memory about
19 it that's okay.

20 A So that means I'd have a quiz on it then in the morning, or
21 would we actually put the application up and --

22 Q Well, we could put it up.

23 A -- review it that way. Because I honestly -- it's a -- as
24 we know, it's a voluminous document and to try to just from
25 memory to make that would be very difficult.

1 Q It's not a quiz at all; no. I'd really be interested in
2 your perception of what the affected area is based on the
3 application. So if you want to do it tomorrow morning after
4 you've had a chance to look at the documents tonight and we
5 can put it on the screen and go through it; that's fine with
6 me. Is that what you'd like to do?

7 A Really, I don't make the decisions around here, so --

8 Q Well, I'm offering.

9 MR. LEWIS: I think it's painfully obvious the
10 witness would not like to do that. He's indicated to
11 various people during the course of the day that his desire
12 was to be done and go back home this evening, so I think
13 that's painfully obvious. To the extent there's some
14 suggestion that he has to go back and do homework to satisfy
15 questions of counsel, I think that's more a matter of
16 counsel having an obligation to be prepared to do a cross-
17 examination, rather than requiring this witness to stay
18 around longer than he should have been required to stay
19 around to do additional homework at the pleasure of counsel.

20 MS. HALLEY: Well, I'm not sure how Mr. Maki's
21 answer reflects on my preparation for cross-examination,
22 first of all. Second of all, we're not going to be done
23 today anyway and I felt that I was making a nice offer to
24 Mr. Maki that he could go back and review the documents.
25 We've done this from time to time with other experts. If he

1 doesn't want to he doesn't have to. It's just an offer.

2 JUDGE PATTERSON: Are you referring to the
3 application?

4 MS. HALLEY: Yes. Particularly the EIA, which
5 contains the -- whatever description there is to be had
6 anyway about the affected area. That's all.

7 MR. LEWIS: I would just note I assume it's there
8 to be found and that they could have been found.

9 MR. REICHEL: Well, your Honor, I don't want to
10 belabor this point, but I do think it would be helpful in
11 clarity of the record whether the questions posed today are
12 posed tomorrow that we understand what the question is
13 exactly to be --

14 MS. HALLEY: The question is what is Mr. Maki's
15 understanding of the affected area.

16 MR. REICHEL: As defined in the Environmental
17 Impact Assessment?

18 MS. HALLEY: Yes.

19 JUDGE PATTERSON: Are you willing to take a look
20 at the EIA?

21 Q Or if you can answer it now answer it now. I'm not trying
22 to give you a homework assignment, as Mr. Lewis insinuated.
23 I just want you to have the benefit of looking at the
24 materials before you answer; that's all.

25 A I really have no desire to go and read the EIA tonight.

1 JUDGE PATTERSON: I know you don't.

2 Q Well, then do you know what the affected area is?

3 A Like I said, the affected area was defined for certain --
4 like for air, for water, for, you know, soil disruption,
5 things like that. There was many aspects to affected area.
6 There was also a study area that was -- that defined the
7 scope of the study for that particular media. So it's not
8 just the affected area was X for the whole mine site. I
9 believe -- my recollection from the EIA and supplemental
10 information that it was -- it's a little more complicated
11 than that.

12 Q Okay. Well, maybe I can simplify it by asking you, what is
13 the largest acreage for any of the media that you're talking
14 about, air, water, disturbance, whatever? What's the
15 largest acreage that was identified as the affected area?

16 A I believe it was 95 acres. That might have been it. But
17 again this is off the top of my head.

18 Q Okay. And that 95 acres happens to coincide with the sort
19 of footprint -- right? -- of the actual mine site?

20 A Well, that was the largest area, yes, that was identified,
21 which is the footprint of the mine site.

22 Q So according to the EIA and your understanding of it, there
23 really -- there is no affected area defined as this
24 definition indicates an area outside of the mining area
25 where the land, surface water, groundwater or air resources

1 are determined through an EIA to be potentially affected by
2 mining operations within the proposed mining area; is that
3 right?

4 A No. I don't think that's right.

5 Q Well, you just told me, I believe -- and correct me if I'm
6 getting things wrong -- that the -- what your understanding
7 of the affected area is is that it's inside the fence line
8 or at the -- extends to the fence line, the footprint of the
9 site essentially?

10 A I believe what I testified to was that that was the largest
11 identified affected area.

12 Q Okay. But is that not -- doesn't that description then
13 better meet this definition which is of the mining area,
14 "which is an area of land from which earth material is
15 removed in connection with nonferrous metallic mining"?

16 A Where are we looking at? What mining area?

17 Q Right here (indicating).

18 A It does meet that definition as well, yes.

19 Q Well, it appears to me that it really can't meet both
20 because affected area -- that definition is very clear that
21 it means an area outside of the mining area. So those are
22 two different things, not the same thing; right?

23 A Correct. An affected area means an area outside of the mine
24 area.

25 Q Okay. Now, is it your understanding that the EIA actually

1 designated any area outside of the mining area?

2 A You know, again I'd have to really -- if you have the EIA up
3 here, I'd be glad to look at it, but I can't recall off the
4 top of my head. Again, it was a fairly voluminous document.
5 For me to --

6 Q I understand that. All right.

7 MS. HALLEY: Could we scroll down to 63205,
8 please? A little further down, I think.

9 Q All right. Could we look at subsection (c), which is right
10 here (indicating), and maybe you could just read that
11 portion out loud.

12 A What portion? Subsection (c)?

13 Q Not the whole thing; just the first main paragraph there.

14 A "A mining reclamation and environmental protect
15 plan for the proposed mining operation, including
16 beneficiation operations that will reasonably minimize
17 the actual and potential adverse impacts on natural
18 resources, the environment and public health and safety
19 within the mining area and the affected area. The plan
20 shall address unique issues associated with nonferrous
21 metallic mining and shall include the following."

22 Q I think you testified that you headed the subgroup that
23 developed rules related to this particular rule -- or this
24 particular piece of the statute; right?

25 A The mining and reclamation, yes, I did.

1 Q Okay. All right. Now, if we look at the next clause here,
2 (I), it describes a description of materials, methods and
3 techniques that will be utilized; right?

4 A Correct.

5 Q Okay. Now, are there any materials, methods and techniques
6 that have not been described in the application?

7 A There are. Explain that question again.

8 Q My question to you is, are there any materials, methods and
9 techniques that have not been described in the application?

10 MR. REICHEL: Object to the form of the question
11 unless it's clarified as to -- presumably in the universe of
12 materials, methods and techniques that exist in the world,
13 presumably they're not in this application. Is the question
14 directed to are there materials, methods or techniques that
15 he understands are proposed to be employed here that are not
16 described? I don't think the question is --

17 MS. HALLEY: That's my question, Mr. Reichel.
18 Thank you for the clarification.

19 A Go ahead. One more time, please.

20 Q Okay. My question is, are there materials, methods and
21 techniques that will be utilized, as you understand it, in
22 the course of constructing or operating this mine for which
23 there were not descriptions provided in the application?

24 A Could you give me an example? I'm not sure what you're
25 referring to.

1 Q Well, one that comes to mind is backfill. We've heard some
2 testimony from Dr. Stone about this technique of bucket
3 testing, the strength of the backfill and all sorts of
4 information about how the strength of the backfill and
5 whether or not it's holding up and that sort thing, how
6 those types of things can be tested; right?

7 A Correct.

8 Q Okay. Was any of that information included in the
9 application?

10 A The description of the materials, methods and techniques
11 that would be used for that?

12 Q In this particular instance, the technique for testing the
13 strength of the backfill in the mine.

14 A That was not included in the application, no.

15 Q Let's see. How about the materials that are to be used for
16 blasting?

17 A It was identified what type of material would be used for
18 blasting.

19 Q Well, I would agree with you that there were several types
20 of materials identified. But do we know which one?

21 A I thought it did identify exactly what the blasting material
22 is. But I'd have to refresh my memory on the application.
23 But these are techniques that are widely used and accepted
24 throughout the mining industry.

25 Q Pardon me?

1 A These are techniques that are widely used and accepted
2 throughout the mining industry.

3 Q Okay. What's the relevance of that?

4 A Well, if you read (yy) there, it says that, "Except that
5 such information may not be" --

6 Q Read the whole thing for the record. Okay?

7 A "Information that demonstrates that all methods,
8 materials and techniques proposed to be utilized are
9 capable of accomplishing their stated objectives in
10 protecting the environment and public health except
11 that such information may not be required for methods,
12 materials and techniques that are widely used in mining
13 or other industries and are generally accepted as
14 effective."

15 Q All right. I'm not sure how that relates to (I), which is
16 simply a description. And then this is information that
17 demonstrates that these things will be capable of
18 accomplishing their stated objectives; right?

19 A Correct. I think there's a description of what they plan to
20 do.

21 Q There's a description of testing the strength of the
22 backfill in the application?

23 A No. There's a description that -- well, that description of
24 materials, methods and techniques does not necessarily say
25 that it's testing. It's just a description of materials,

1 methods and techniques that will be used. They've
2 identified that they're going to use cemented backfill.

3 Q Right. But if we look at (I) which requires a description
4 of materials, methods and techniques that will be utilized,
5 is the -- are the techniques that are used for ensuring that
6 the backfill is standing up over time -- are those
7 techniques described in the application?

8 A They are not.

9 Q Are the techniques about blasting described in the
10 application? Is there a blast plan included in the
11 application?

12 A There is not, no.

13 Q How about the aggregate that's to be used for the backfill?
14 Is there a description of that?

15 A Other than that clean aggregate will be used, but that's the
16 description of it.

17 Q Does the description include anything about the size of it,
18 the grading of it?

19 A You know, I don't recall. I'd have to refresh my memory,
20 but I don't recall.

21 Q Now, if we look at subsection (d) -- what is your
22 understanding of subsection (d), Mr. Maki?

23 A That a contingency plan lists what should be included and
24 that it must be provided to an emergency management
25 coordinator.

1 Q All right. Keep reading.

2 A Would you like me to read this?

3 Q Well, I guess I want to make sure you see this portion of
4 the law. It says that a contingency plan is required for
5 significant incidents or failures; right?

6 A That's what it says, yes.

7 Q Okay. Now, I think maybe we've already covered this ground,
8 but I want to be clear that actually there is no contingency
9 plan in the application or in the permit as it's issued for
10 a crown pillar failure; right?

11 A I'd have to refer to the application for the crown pillar
12 failure. It is not in the permit as we identified. But I'd
13 have to look at the application.

14 Q I think earlier today you said that it didn't.

15 A I did not say that. I agreed that -- when we went through
16 this, it was not in there. But I have not agreed that it
17 wasn't in the --

18 Q Number 3 here -- this is still Section 63205 of Part 632 of
19 NREPA. Could you read number 3?

20 A "The applicant has the burden of establishing that
21 the terms and conditions set forth in the permit
22 application mining reclamation and environmental
23 protection plan and environmental impact assessment
24 will result in a mining operation that reasonably
25 minimizes actual or potential adverse impacts on air,

1 water and other natural resources and meets the
2 requirements of this act."

3 Q Okay. What does it mean to you that the applicant has the
4 burden of establishing that their operation won't -- well,
5 that their plans will result in a mining operation that
6 minimizes impacts? What does it mean to you the phrase "the
7 applicant has the burden"?

8 A Well, essentially the responsibilities is on the company to
9 provide us with that information that assures that -- or
10 that meets these requirements.

11 Q Okay.

12 MS. HALLEY: Could we go to the next page, Doreen,
13 to subsections (11) and (12)?

14 Q Now, subsections (11) and (12) also of part 63205 of Part
15 632 of NREPA provide your agency with the requirements for
16 whether or not a permit can be issued; right?

17 A What are we looking at again?

18 Q I'm looking at subsections (11) and (12).

19 A Okay.

20 Q Okay. Subsection (11) lays out the terms under which your
21 department could grant a permit; right?

22 A Correct.

23 Q And could you just read that language for the record?

24 A Starting with (11)?

25 Q Starting with (11). Subsection (b) would be okay, I think.

1 A Okay.

2 "Subject to subsection (10), the department shall
3 approve a mining permit if it determines both of the
4 following: The permit application meets the
5 requirements of this part. The proposed mining
6 operation will not pollute, impair or destroy the air,
7 water or other natural resources or the public trust in
8 those resources in accordance with Part 17 of this act.
9 In making this determination, the department shall take
10 into account the extent to which other permit
11 determinations afford protection to natural resources.
12 For the purposes of this subsection, excavation and
13 removal of nonferrous metallic minerals and of
14 associated overburden and waste rock in and of itself
15 does not constitute pollution, impairment or
16 destruction of those natural resources."

17 Q Now, subsection (12) indicates that, if the conditions in
18 subsection (11), which you just read, are not met, the
19 department shall deny the permit; right?

20 A That is correct.

21 Q Now, given the section we just read before this about the
22 burden of proof being on the applicant, would you agree with
23 me that the burden of proof is on the applicant to prove
24 that they will not pollute, impair or destroy the air, water
25 or other natural resources of the public trust and those

1 resources in accordance with Part 17, which is the Michigan
2 Environmental Protection Act, for the record?

3 A The applicant does have the burden under this section, yes.

4 Q Okay. The burden that they will not pollute; right?

5 A I don't -- the Part 17 of this act -- I'm not familiar with
6 Part 17, so I'm not sure.

7 Q Okay.

8 A I'm not sure of the contents of that.

9 Q Okay. But they have the burden of proving that they will
10 not pollute natural resources; right?

11 A I think we determined -- the department -- it says that
12 subsection (10) -- "The department shall approve a mining
13 permit if it determines both of the following." But you're
14 right. They have to provide us the information that we
15 would be able to use to make that determination.

16 Q So the applicant has the burden of proving that they will
17 not pollute air, water or other natural resources; right?

18 A Well, I don't understand that. I'm not sure what your
19 question --

20 Q I'm just asking do you agree with me about that -- that
21 that's what the language here says?

22 A It does not say that, because it doesn't say anything about
23 the applicant having the burden of proof there.

24 Q But we just read that.

25 A We read that in the previous section.

1 Q Right. But we could go back and look at it if you want to.
2 Well, let's not go back on the screen. I'll just read.

3 "The applicant has the burden of establishing that
4 the terms and conditions set forth in the permit
5 application, mining, reclamation and environmental
6 protection plan and environmental assessment will
7 result in a mining operation that reasonably minimizes
8 actual or potential adverse impacts on air, water and
9 other natural resources and meets the requirements of
10 this act."

11 Right?

12 A Correct.

13 Q So all of these requirements -- for the whole Part 632 and
14 its rules, the applicant has the burden; right?

15 A I'm not sure.

16 Q Well, what standard did you apply when you were reviewing
17 the application?

18 A As far as what the applicant provided?

19 Q No. As far as what they had to prove to you. Did they have
20 to prove to you that they would not pollute, impair or
21 destroy the air, water or other natural resources and the
22 burden was on them to do that?

23 MR. LEWIS: Objection. Asked and answered, your
24 Honor. The witness has already testified to the section
25 (11) that counsel is quizzing him about again. And he's

1 already testified that he disagrees with counsel's
2 characterization of what that section means. And I think
3 re-asking it a fourth and fifth time is not going to change
4 the story very much.

5 MS. HALLEY: Your Honor, it's --

6 JUDGE PATTERSON: Well, I think it's almost asking
7 a legal conclusion, isn't it? It's really --

8 MS. HALLEY: If I might --

9 JUDGE PATTERSON: -- an issue for me, I think.

10 MR. LEWIS: I believe it is, your Honor.

11 MS. HALLEY: Granted that it may be bordering on
12 that but, if you put that into the context that Mr. Maki was
13 the head of the mining team that recommended -- was
14 responsible for recommending approval or denial of the
15 permit, it is important to know whether or not he
16 understands the statute and the rules that he was
17 responsible for applying and how he interpreted them when he
18 did that.

19 JUDGE PATTERSON: If he did that. I'm not sure
20 he's the one that made the decision.

21 MS. HALLEY: He made a recommendation. His team
22 made a recommendation, and he was a part of it.

23 JUDGE PATTERSON: Well, what about the fact that
24 it's been asked and answered?

25 MS. HALLEY: Well, I was trying to refresh Mr.

1 Maki's memory about the section he read a few minutes ago,
2 because we weren't connecting the dots.

3 MR. LEWIS: Mr. Maki discussed both sections, your
4 Honor, I think at least on two occasions. And again I think
5 it's fully asked and fully answered at this point.

6 JUDGE PATTERSON: I tend to agree with that. I
7 think he's done the best he can in answering it.

8 MS. HALLEY: Okay.

9 Q Mr. Maki, what standard did you apply in guiding your team's
10 review of the application and ultimately making a
11 recommendation that the application be approved and a permit
12 be granted? What was the standard you used?

13 A We referred to the rule package and under the rules
14 identified the sections that were required to be submitted
15 by the applicant and did those indeed meet the requirements
16 of the rules. And there's many rules that are there.

17 Q There are. Did you apply this section of the statute to
18 your analysis?

19 A I did not, no.

20 Q Did the mining team apply this section of the statute to its
21 analysis?

22 A I don't believe so, no.

23 Q Could we go on to rule 202(b)? It's page -- the page number
24 at the bottom will be page 21. Okay. Mr. Maki, I'd like
25 for you to read subsection (b) of rule 202, which relates to

1 cumulative impacts.

2 A "An analysis of the potential cumulative impacts on
3 each of the conditions or features listed in sub-rule
4 (2) of this rule within the mining area and the
5 affected area for all proposed mining activities and
6 through all processes or mechanisms. The analysis
7 shall consider additive effects and the assessment of
8 significant interactions between chemical and physical
9 properties of any discharges with reference to the
10 physical and chemical characteristics of the
11 environmental into which the discharge may be
12 released."

13 Q All right. Now, what is your understanding of a cumulative
14 impact analysis?

15 A We have a definition of it in here.

16 Q Would do?

17 A I believe. Cumulative impacts?

18 Q Really? I looked for it a hundred times. If it's there,
19 I'd love for you to enlighten me about it. Maybe I've been
20 missing it all this time. That's possible. Can you find
21 it?

22 A Page 16, Section H.

23 Q Okay. Oh, I see. It's defined in the rules; right?

24 A That's correct.

25 Q Okay. Is it defined in the statute?

1 A It is not, no.

2 Q Okay. Go ahead. Can you read that, please?

3 A I can.

4 " 'Cumulative impact' means the environmental
5 impact that results from the proposed mining activities
6 when added to other past, present and reasonably
7 foreseeable future activities."

8 Q All right. Now, can we go back to where we were? So we are
9 supposed to be looking at the impacts of past, present and
10 future activities roughly?

11 A That's what the definition indicates, yes.

12 Q Okay. Now, this -- and the rule goes on to say, "Within the
13 mining area," which is basically inside the footprint;
14 right?

15 A Correct.

16 Q And the affected area, which, if there is one defined, would
17 be outside of the fence line -- area outside of the fence
18 line potentially impacted; right?

19 A Correct.

20 Q Okay. Now, from all proposed mining activities and through
21 all processes or mechanisms; right? Is that what it says?

22 A That's what it says, yeah.

23 Q Okay. Now, could we go back -- not on the screen
24 necessarily, but could we go back and look at the definition
25 of mining activity for a moment just so we're clear about

1 the scope of what this entails?

2 MS. HALLEY: You know what? It's 6:00 o'clock.
3 I'm not -- it's certainly up to your Honor what we do at
4 this point. I'm -- you know, I have probably half an hour
5 in wrapping up.

6 JUDGE PATTERSON: Okay. Why don't we break for
7 the night.

8 (Proceeding adjourned at 5:59 p.m.)

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