PIMA COUNTY DEPARTMENT

OF ENVIRONMENTAL QUALITY

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PROCEEDINGS

DR. FRIEDMAN: I'd like to call the meeting to order. And as part of calling to order, we would like to have the roll called.

(Roll call of the Board.)

(Members present:

Barry A. Friedman, M.D.

James A Mather.

Dr. Thomas W. Peterson.

Dr. Caryl Brailsford.

Sheila Bowen not present.)

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

DR. FRIEDMAN: Thank you.

Under the Other Business, agenda number one, the Board needs to appoint a Board secretary. The name that has been submitted is Charlotte Schloeman. We will need a motion.

MR. MATHER: So moved.

DR. PETERSON: Second.

DR. FRIEDMAN: Discussion.

All those in favor of Charlotte Schloeman?

Opposition?

Charlotte, you're it.

MS. SCHLOEMAN: Thank you.

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

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

MR. MATHER: So moved.

DR. FRIEDMAN: Motion moved.

DR. BRAILSFORD: Second.

DR. FRIEDMAN: Any discussion?

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

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

There are no continued hearings, which is item number 3 on the agenda, so we will move into number 4 and

14:42:50 wait a few minutes and hope the missing person will arrive here. If not, then we'll just proceed.

(Brief recess.)

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

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

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

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

announce that a friend of mine, Bates Butler, is a member of the firm Fennemore Craig, which represents Brush Ceramic Products. I don't believe that would be a conflict of interest, though.

DR. FRIEDMAN: Any comment from the Board or from attendees?

Thank you for the information.

We will proceed.

DR. PETERSON: Mr. Chairman.

DR. FRIEDMAN: Mr. Peterson.

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

DR. FRIEDMAN: Any comments from anyone?

MR. KULAKOFSKY: Rob Kulakofski.

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

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

Let me repeat. One of the persons listed by Pima County to perhaps testify at this hearing is Eric Betterton who is a colleague of mine at the University of Arizona.

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

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

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

Okay. We'll proceed with --

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

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

We will try and have the Board members speak up.

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

DR. FRIEDMAN: I didn't realize that was a motion.

Counsel for Brush.

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

There are three procedural issues which we have raised in our response in a supplemental motion.

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

The appeal that was filed by EJAG was filed by a non-attorney. The appeal filed by Center for Environmental

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

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

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

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

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

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

you a list of witnesses the party is to give you a summary of their testimony to allow the other parties to get a sense of the testimony so we can prepare cross-examination.

The list of witnesses filed by EJAG and the Center do not contain a summary.

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

This is the manual, dated 1978, which I understand are the current rules that apply to the Board.

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

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

Board commentary?

MS. FRIAR: Mr. Chairman.

DR. FRIEDMAN: Legal counsel.

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

DR. FRIEDMAN: Are representatives of either organization here? I know one is.

14:50:14 Both of you are here. Do you have legal counsel to represent you at this?

Neither -- both -- would you state that for the panel? Verbally state your organization you're with and

14:50:28 your name.

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

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

14:50:39 MS. BIRNIE: Thank you. My name is Pat Birnie with the Environmental Justice Group.

We do not have legal counsel today.

Thank you.

MR. KULAKOFSKY: Rob Kulakofsky, Center for

14:50:53 Environmental Connections.

And I do not have legal counsel.

May I make one short comment?

DR. FRIEDMAN: Okay.

MR. KULAKOFSKY: That is, the letter we received

14:51:04 way back on November 7th, it was addressed to, Dear Interested Party.

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

14(:17 We did not understand that we needed legal counsel

14:51:21 until we received the rules of the Board, which was after we had sent in our request.

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

14:51:36 DR. FRIEDMAN: Thank you.

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

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

DR. FRIEDMAN: Any commentary from legal?

14:51:56 MS. FRIAR: Mr. Chairman, members of the Board, I believe there's two different issues here.

The first issue is who has the right to file a request for appeal. The statute is fairly specific, saying that any person may file request for appeal, and that was

14:52:18 done by Mrs. Birnie and Mr. Kulakofsky. And they are any person.

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

14:52:36 It's what do you do at this point in time where they do not have counsel that's important.

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

Excuse me. State your name.

14(:52 MS. BIRNIE: Pat Birnie. EJAG.

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

DR. FRIEDMAN: Thank you.

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

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

Item number 8 that was submitted to Fennemore 14:53:27 Craig, it does discuss the nonprofit corporation status of EJAG. I would like some clarification on that.

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

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

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

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

So that was the basis for our motion.

DR. FRIEDMAN: Thank you.

Any comment from EJAG?

You might want to stay seated close to the front.

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

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

I mean, as far as dotting I's and crossing T's, I'm not legal enough to understand, but we're a community organization trying to be a watchdog for a community interest. We're just -- we're nonprofit. We don't have any profit to make out of what we do. We're trying to look out for the community interest.

DR. FRIEDMAN: Thanks for the clarification.

Any comments from the Board? Thoughts?

MS. BIRNIE: We're not part of Oregon. We have no affiliation or have never had any correspondence with the Oregon Corporation.

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

Tom Peterson.

I'm a little unclear about what the Board is trying to decide at this point. It seems to me that we need

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

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

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

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

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

I would move that we do that.

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

MS. BOWEN: Second.

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

14:56:49 Any opposition?

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

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

DR. FRIEDMAN: The executive session has been 15:06:37 closed and we're now back on the record.

15:16:42 We will proceed with the hearing now.

Any comments from the Board?

DR. BRAILSFORD: Mr. Chairman, I think we should clarify as far as the status of EJAG and what their 15:17:00 corporation status is. Could we re-call Ms. Birnie and have her explain that for us, please?

DR. FRIEDMAN: Ms. Birnie is approaching.

MR. MATHER: Should she be sworn?

Female Speaker: I have to swear?

15:17:29

PAT BIRNIE,

sworn by Ms. Schloeman:

DR. BRAILSFORD: Could you clarify for us what the 15:17:40 status of your organization is?

MS. BIRNIE: It's an organization of independent individuals who are concerned about the environment. We are not a corporation, we're not registered in any formal way. We're very informal. It's just a collection of interested 15:18:12 people who are concerned about the environment and the people that live in it.

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

MS. BIRNIE: I didn't even know there was another 15 8:30 organization by the same name. I've never been in touch

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

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

DR. FRIEDMAN: One moment, please.

MS. BIRNIE: We're just, we just come under the
15:19:05 umbrella of the Center for Environmental Connections.

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

MS. BIRNIE: Right. We don't have any money and
15:19:25 we don't work for a profit.

DR. FRIEDMAN: Dr. Peterson.

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

MS. BIRNIE: Correct.

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

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

19 0:15 DR. FRIEDMAN: Do they have, are you a member of

15:20:18 them or --

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

DR. BRAILSFORD: This is Dr. Brailsford.

15:20:42 Could you give me an idea, do you have meetings, do you guys get together, have meetings individually or as a group?

I notice that the witness list from both organizations are basically the same. Could you give us an

15:20:57 idea how you interact? Do you talk on the phone every day, have a meeting once a year? Could you clarify that?

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

15:21:21 them.

DR. PETERSON: Mr. Chairman.

DR. FRIEDMAN: Dr. Peterson.

DR. PETERSON: Tom Peterson.

It seems that given the description of EJAG and

15:21:41 trying to align this with our manual of procedures, this, it seems, would fall more under the definition of a person rather than an organization. And I would move that we accept the testimony of EJAG as an individual without the requirement of having counsel.

15 2:09 DR. FRIEDMAN: There's a motion on the floor. Is

there a second?

MS. BOWEN: Sheila Bowen.

Second.

DR. FRIEDMAN: Motion made and seconded. Any further discussion?

MR. MATHER: This is Jim Mather speaking.

What I have heard is that they are an offshoot or project of the Center for Environmental Connections which is a corporation, and it would seem to me that they would fall under that umbrella as part of that corporation and be required to have counsel present.

DR. FRIEDMAN: Thank you.

Any other discussion?

MS. BOWEN: Mr. Chairman, based on the statements made -- Sheila Bowen -- there have been no articles filed. It is not filed as a corporation, at least as far as I understand. Based on that understanding I would believe that it's not a subsidiary of that corporation.

DR. FRIEDMAN: Thanks.

Any other discussion from Board members?

DR. PETERSON: Call the question.

DR. FRIEDMAN: The question has been called. Let's do a roll call vote, please. The Chairman doesn't vote. Members only. Committee members only, not the chairman.

15:23:48 MR. MATHER: Against.
MS. BOWEN: In favor.
DR. PETERSON: In favor.
DR. BRAILSFORD: I just want to clarify we're
15:24:07 voting to allow the EJAG as a group of individuals, correct?
Yes.
MS. SCHLOEMAN: Motion passes.
DR. FRIEDMAN: Vote is 3-1, motion passes.
You will be allowed to testify.
15:24:24 Thank you.
MS. BIRNIE: Thank you.
DR. FRIEDMAN: Now we'll try and look into the
issue for the Center for Environmental Connections.
Board members, questions or comments?
15:24:44 DR. BRAILSFORD: Could we have Mr. Kulakofsky come
up and answer the same questions?
MR. KULAKOFSKY: Rob Kulakofsky.
DR. BRAILSFORD: Could you tell us the status --
DR. FRIEDMAN: Would you like to swear him in,
15:25:05 first?
DR. FRIEDMAN: Thank you.
Go ahead, Carol.
15 5:15

ROB KULAKOFSKY,

sworn by Ms. Schloeman:

DR. BRAILSFORD: This is Dr. Brailsford.

Could you explain the details of your organization and its corporate status and some idea of the membership?

MR. KULAKOFSKY: We're a nonprofit corporation in Arizona. We do allow membership, although we have never pursued that. We just have a four-member board. We do not solicit contributions. We have been given contributions in the past.

Basically, what the Center for Environmental Connections does is we try to bring different community groups together and help them work together.

I would like to clarify our connection with Environmental Justice Action Group, if I could at this point.

Ms. Birnie said that EJAG is a project of Center for Environmental Connections. What happened is, I personally was involved in EJAG. We are just a community group. EJAG is a community group of people concerned about the environment and environmental justice.

I asked my board if we would be willing to on occasion give the Environmental Justice Action Group money for mailings and that sort of thing. In that respect, yes, it's a project, but EJAG is a separate community

15:26:46 organization on its own.

Did that make sense?

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

15:27:00 MR. KULAKOFSKY: Yes, Bates Spalding, myself, Jonathan Candell and Lisa Stage.

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

MR. KULAKOFSKY: No.

15:27:13 Our letter to you is in support of EJAG. And also, because I've been a member of EJAG for -- a number of years personally. And that was why the people we -- that's why the people we put down as Center for Environmental Connections people to testify, you'll see that they're

15:27:41 basically the same people as EJAG. We are just here to support EJAG.

DR. FRIEDMAN: Dr. Friedman.

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

15:27:56 MR. KULAKOFSKY: Center for Environmental Connections. As I said, we're considering EJAG a project of ours. It's a community group that existed before Center for Environmental Connections contacted them in any way.

And the real connection is myself personally

15 3:17 because I have been involved in the Environmental Justice

Action Group.

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

MR. KULAKOFSKY: That's right.

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

MR. KULAKOFSKY: Absolutely.

DR. FRIEDMAN: Which is a corporation?

MR. KULAKOFSKY: That's right.

DR. FRIEDMAN: Thank you.

MR. KULAKOFSKY: Thank you.

DR. FRIEDMAN: Any thoughts from the Board?

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

Tom Peterson.

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

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

DR. FRIEDMAN: There's a motion on the floor. A second?

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

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

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

DR. PETERSON: No. That's certainly -- Tom
15:30:25 Peterson -- that is not the intent of the motion. Simply removing the Center for Environmental Connections and its specifics of appeal from this process, that we would focus only on the issues that were raised in the appeal by EJAG.

DR. FRIEDMAN: Thank you.

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

I think in your motion --

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

MR. MATHER: Second.

DR. FRIEDMAN -- to the motion?

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

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

DR. PETERSON: You're absolutely right, my apologies.

15:31:10 DR. FRIEDMAN: Would you make amendment to that?

And it has been accepted by the maker of the motion, seconded by the, the rest of the committee -- to second the amendment?

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

DR. FRIEDMAN: I know. You made it.

MS. BOWEN: Sheila Bowen.

Second.

DR. FRIEDMAN: We need to vote on the amended

15:31:37 motion, the amendment to the motion. All in favor of the amendment to the motion, signify by saying aye.

Any opposition?

The amendment is now in place.

The motion, if the clerk will read the motion

15:31:50 again to clarify.

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

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

DR. PETERSON: Restate the motion? All right.

1(2:05 DR. FRIEDMAN: Motion and --

15:32:08 DR. PETERSON: Say again?

The motion is that we disallow the participation -- is the right term, appellant -- in this case from the -- Center for -- I'll get the name here, one

15:32:27 second. .

That we disallow the participation of Center for Environmental Connections because it is a corporation and does not have -- is not represented at this hearing by legal counsel.

15:32:58 DR. FRIEDMAN: All those in favor of the motion? Let's do a roll call vote.

MR. MATHER: In favor.

MS. BOWEN: In favor.

DR. PETERSON: In favor.

15:33:16 DR. BRAILSFORD: In favor.

DR. FRIEDMAN: In favor.

Motion carries. Thank you.

Who does the overview in that?

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

15:33:39 Board, you still have two other issues to discuss. One is the specific issues that will be discussed for purposes of the hearing.

DR. FRIEDMAN: That's right.

Tom.

1(3:52 DR. PETERSON: Tom Peterson.

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

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

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

15:34:40 DR. FRIEDMAN: EJAG.

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

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

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

MS. BOWEN: Sheila Bowen.

Second.

DR. FRIEDMAN: Seconded.

Is there any further discussion?

1(5:32 All those in favor signify by saying aye.

15:35:36 Any opposition?

There being none, the motion carries.

Now the question overview.

MS. FRIAR: Mr. Chairman, ladies and gentlemen, the Board at this point you would normally proceed with your 15:35:55 appellant and allow her to present your case and tell you what the reason for their appeal is and what their case is.

And then the County and the intervener Brush will be allowed to respond, as well.

15:36:15 DR. FRIEDMAN: Okay, Ms. Birnie, representing Environmental Justice Action Group.

MS. BIRNIE: I don't have a copy of the letter that I sent to you. I intended to bring it with me. It was my recollection that I said that it was -- oh. Thank you.

15:36:56 We believe there are many details of permit number 1571 that need to be made more stringent, but of most urgent concern -- I'm indicating there are many issues in addition to this contract with the air monitoring.

There are -- it's just, it's criminal not to be 15:37:23 able to discuss all of the other issues. There's not that many, it won't take that much time.

I feel the need to place on record -- I have a two page -- one-and-a-half page statement that I would like to read and I have other people that are on EJAG that I would 15:[illegible]:44 like to have give testimony in various aspects.

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

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

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

DR. FRIEDMAN: Board comments to the question?

MS. BIRNIE: Pardon me?

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

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

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

Unfortunately, that's not the fault of the Board. 15:39:35 That is a requirement of the people who appeal.

15:39:38 Let me finish.

MS. BIRNIE: Okay.

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

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

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

15:40:30 We feel that rules are made in a way that doesn't necessarily protect public health. Especially the federal guidelines that are being used for limiting or allowing the permit to go ahead. I mean, that regulation was established in the 1940s before they really knew that much about 15:41:03 beryllium oxide and how toxic it is.

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

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

And also, one of our concerns --

DR. FRIEDMAN: Sorry to interrupt you.

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

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

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

Let me seek my little reference to that.

DR. BRAILSFORD: Excuse me, ma'am, while you're
1(3:44 looking for that, I would like to make a comment from my

15:43:48 standpoint.

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

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

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

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

DR. FRIEDMAN: Thank you.

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

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

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

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

MS. BIRNIE: That's fair enough. We feel that the permit should include the agreement with Sunnyside School in order for the permit to be enforceable and for the air

15:46:09 monitoring to be totally effective, that it must also -- it must be a part of the formal permit and not just a contract on the side; that it is less enforceable and it is a mere contract.

I would like to call on some of our members to

15:46:28 make more detailed comments on that.

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

MS. FRIAR: That's true.

DR. FRIEDMAN: Does the Board have any problems

15:46:38 with that?

Okay, proceed. Thanks.

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

DR. FRIEDMAN: I will address that to legal

15:46:51 counsel.

15:46:54 MS. FRIAR: Mr. Chairman, members of the Board, there is no provision for a continuance to allow for additional concerns to be stated. The rules are fairly clear of the time frame and what has to be provided in the
15:47:07 appeal.

DR. FRIEDMAN: That time frame is?

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

DR. FRIEDMAN: Which would make it fall on what
15:47:18 date?

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

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

MS. FRIAR: Today.

15:47:31 DR. FRIEDMAN: Today.

MS. BIRNIE: Would you allow Rob to speak on behalf of EJAG? He will promise to wear his EJAG hat. Okay?

DR. FRIEDMAN: Question for legal. If he is not
15:47:47 listed as a witness, is he allowed to speak?

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

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

15 8:03 MS. BOWEN: He is listed.

15:48:05 DR. FRIEDMAN: He can speak. I assume his swearing in earlier applies to now?

MS. FRIAR: Yes, it does.

Mr. Chairman, members of the Board, the counsel 15:48:16 both for the County and for Brush have opportunity to cross-examine each of the witnesses.

DR. FRIEDMAN: Thank you.

MR. KULAKOFSKY: Once again, Rob Kulakofsky. Sorry to be such a pain for you guys. No disrespect for the 15:48:34 Board. We are amateurs here, but we have done our homework.

And one of the things that, as was specified in Ms. Birnie's comments and incidentally really does not say in this letter that we got November 7th, that we have to be specific. We have a whole bunch of stuff that we pared down 15:49:02 to three or four items we were concerned about.

I'll talk about the air monitoring.

The reason we feel so strongly about their monitoring being tied to the permit and not a separate contract is, as Ms. Birnie said, beryllium oxide is an 15:49:27 extremely dangerous pollutant. PDEQ received several comments about air monitoring being part of the permit and it was not just EJAG, it was from several different organizations and individuals who sent that in. So it's not just us who thinks it's very important to be part of the 1(9:51 permit.

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

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

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

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

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

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

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

So I think that that -- those are not good, solid arguments to be made.

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

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

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

That's really all I have to say about the

monitoring.

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

Okay, opportunity for cross-examination from Brush.

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

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

EXAMINATION

BY MR. FARGOTSTEIN:

Q Sir, have you seen this contract?

A I saw a precursor to that.

Q Have you seen the final contract?

A I don't believe I have.

Q Let me hand you what is Brush Exhibit 4 as a contract between public agency and private party and public documents.

I have extra copies if the panel members do not.

Sir, either from your memory or precursor or looking from this one, if this contracts calls for a five-year term and calls for Brush to fund portions of that

15:54:45 ambient monitoring, you don't object to that, do you?
A I don't object to the ambient monitoring at all. I applaud that. Thank you.
Q Under this contract, the entire monitoring machine
15:55:00 would be under the control of the County and all Brush is doing is writing a check initially for $40,000 and annually for 10,000. You don't object to the County controlling this, do you?
A No.
15:55:14 Q You mentioned that if this should be in the permit, though, so it is not done, it would be a violation of the permit. Do you remember saying that?
A Correct.
Q Would you agree that if you're concerned about the
15:55:25 results it's better to have the County controlling everything than having Brush having anything to do with the results for a fear of they would be accused of --
A There's no reason, sir, if air monitoring were part of the permit there's no reason Pima County couldn't
15:55:43 continue to be doing the air monitoring or a third party such as Sunnyside.
Q I ask you sir, if that happens and the County for whatever reason, cutbacks, lack of personnel, vacation scheduled, they don't do the testing as required, it is your
16:02 position that Brush's permit should therefore be revoked or

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

A No. What I said is that Brush should pay for this. Brush should pay for the monitoring and Brush should

15:56:19 be tied, the payment for the air monitoring should be tied to the permit.

In other words, Brush should have to pay for the monitoring through the permit. That should be a portion of the requirements of the permit. So it becomes 51,000 over

15:56:39 five years, then Brush pays 51,000. If it's $49,000, Brush pays $49,000.

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

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

Q Are you aware, sir, under the terms of the permit if the County becomes aware of information by ambient monitoring by whatever source that raises questions concerning whether or not the permit is sufficient, that the

15:57:10 County has a right to reopen the permit?

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

Q Okay.

A Okay.

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

15:57:29 A Sure.

Q A portion of the permit says, It shall not be a defense for a permit even in an enforcement action that would have been necessary to halt or reduce the permit 15:57:39 activity in order to maintain compliance with conditions of this permit.

Assuming that's in the permit, that would seem to say that they can't continue to emit because if they do they're going to get hit with a very big enforcement action 15:57:54 with penalties. Would you agree with that?

A Possibly. Also in the permit it says, In case of continuance or recurring excess emissions, the notification requirements of this section are satisfied if the source provides the required notification after excess emissions 15:58:11 are first detected and includes in the notification an estimate of the time the excess emissions will continue.

So in other words, for reporting, you're still allowed to continue excess emissions. My feeling is that for as dangerous as beryllium oxide, that's not acceptable. 15:58:38 That's why I have a problem with it.

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

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

1(8:51 DR. FRIEDMAN: Which tab?

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

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

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

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

MR. MATHER: Tab 11, page 5.

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

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

A Sure.

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

A Yes.

15:59:56 Q Why?

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

The other reason is that, as I stated before, then there's actually a regulatory connection between the air monitoring and the permit.

16:00:20 Q But would you agree the County, based upon monitoring, regardless who does it, who pays for it, would you agree that the County gets information based upon that monitoring that raises questions they have the right to
16:00:32 reopen this permit?

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

Q If the payment provision is in the permit, that's not going to change, is it? It's still going to be up to
16:00:47 the County to take the results and assess them?

A Of course.

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

A Yes.

16:01:00 Q And you understand the contract is negotiated and they are paying a chunk of the cost?

A I understand that.

Q But not all of it?

A I understand that.

16:01:09 MR. FARGOTSTEIN: Thank you. No further questions.

DR. FRIEDMAN: Pima County? Comments?

MS. LUKACH: Lesley Lukach, Deputy County Attorney. I represent Pima County and the Pima County Air
16:01:22 Quality Control District.

16:01:24 And I think that Mr. Fargotstein has asked all the questions that we need of this witness. Thank you.

DR. FRIEDMAN: Thank you.

MS. BIRNIE: Any other questions?

16:01:43 DR. FRIEDMAN: Any other questions from the Board? Brush, do you have anything you want to present?

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

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

16:02:03 MS. BIRNIE: Yes, I call Brian Blank.

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

MR. BLANK: My name is Brian Blank. I'm a member

16:02:19 of EJAG as a concerned citizen.

BRIAN BLANK,

sworn by Ms. Schloeman:

16:02:32 DR. FRIEDMAN: Proceed.

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

16 2:49 I have other issues that Pat Birnie alluded to.

DR. FRIEDMAN: The one issue.

MR. BLANK: All right.

Well, the reason I believe air monitoring should be included in the permit is because of the incredible danger of beryllium oxide to the public health. And the monitoring needs to be done under the most stringent conditions, which I believe could be better done under a permit which is legally enforceable, not a side contract.

I'm not a legal person, I'm a geologist. So my concern mainly after reading about beryllium oxide and attending various scientist's presentations including Mr. Barracus, who is the Brush Wellman environmental manager, has written papers about how dangerous beryllium oxide is.

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

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

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

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

To the extent there is reference to things that

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

If, in fact, what he is reading from is in the PDEQ file, I don't have any objection. But if it's something that has never been provided to the agency and now being provided to this panel when they are asking you to overrule the agency, I don't think it's proper for them to be able to bring in evidence, document form or reading form, that they have not given the agency an opportunity to review.

DR. FRIEDMAN: Legal?

MS. FRIAR: I'm looking.

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

DR. FRIEDMAN: Any Board member comments?

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

DR. FRIEDMAN: Okay, proceed.

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

This was stated also by Dr. Stefaniak at the University of Arizona recently and Mr. Scheatzle was present at that talk, and Mr. Barracus was there also, and Dr. Betterton, who is a scientist from the University of Arizona. Perhaps they could also make statements about this.

Do you have any questions for me?

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

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

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

DR. BRAILSFORD: Go ahead.

MS. BOWEN: Sheila Bowen.

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

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

MR. BLAND: No. Like Rob said, anybody can do any

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

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

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

16:09:20 DR. BRAILSFORD: Sir, this is Dr. Brailsford.

Could you give me an estimate of what the background of beryllium in the United States is?

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

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

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

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

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

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

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

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

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

DR. FRIEDMAN: Go ahead.

MR. PETERSON: Tom Peterson.

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

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

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

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

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

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

DR. PETERSON: But again to my question, this has nothing to do with the inclusion or exclusion of the monitoring, you are debating the monitoring technique
1(3:51 itself?

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

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

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

DR. BRAILSFORD: This is Dr. Brailsford.

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

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

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

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

MR. BLANK: You would get all the beryllium in the soil, in the rock, plus the beryllium, plus any manmade beryllium that drifted in by the nearby manufacturing

16:15:31

process and you would get a total number. There's no way to separate it out without doing a more detailed analysis.

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

That's a rhetorical question.

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

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

DR. FRIEDMAN: Okay.

MS. BOWEN: Mr. Chairman.

Sheila Bowen.

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

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

MR. FARGOTSTEIN: Are you asking for clarification?

MS. BOWEN: Yes, please.

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

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

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

MS. BOWEN: I would like clarification.

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

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

EXAMINATION

BY MR. FARGOTSTEIN:

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

I'm going to show you what is Brush Exhibit Number 3, which is the response to comments that was prepared by DEQ, and it contains several studies and evaluations. Have 16 8:29 you read that document, sir?

16:18:31 A I don't think I have.

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

I'm going to be asking this gentleman some

16:18:45 questions relating to Attachment 3 to that, responsiveness comments. That's a health consultation prepared by the Arizona Department of Health Services U.S. Department of Health and Human Services.

MS. BOWEN: Just for clarification for the Hearing

16:19:18 Board, item 13.

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

DR. BRAILSFORD: The health consultation?

MR. FARGOTSTEIN: Attachment 3, health

16:19:26 consultation.

DR. PETERSON: Ours is labeled Attachment 2.

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

Q BY MR. FARGOTSTEIN: Sir, I call your attention to

16:19:50 page 3, and that's the response to some of the questions the Board members asked.

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

A Yes.

16:20:03 Q And I'm not going to have you read that verbatim,

16:20:06 but as I understand it, that paragraph was an attempt by this organization, the U.S. Department of Health, in consultation with the local Department of Health, to answer a question by Sunnyside School District as to how you
16:20:20 distinguish between manmade beryllium and naturally occurring beryllium.

Am I correct, sir, that if you look at that paragraph, the response of this agency was that if using the isotropic ratio method you cannot distinguish between
16:20:42 manmade and naturally occurring beryllium, correct?

A I agree that's what it says here.

Q But you disagree with that?

A This is an untrue statement. Jason Malik said that there's only one naturally occurring isotope. This is
16:21:03 not a peer reviewed document.

We talked to Dr. Betterton, who is PDEQ consultant from the University of Arizona. He called this gray literature basically, it's not respected in scientific circles. And also, there are six, I believe, naturally
16:21:27 occurring isotopes of beryllium. You can look that up.

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

A I disagree with that statement, yes.

Q If you turn the page, there was a question by one
1(1:45 of the Board members about background issues.

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

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

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

I think it's almost the last sentence of that

16:22:15 paragraph.

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

MR. FARGOTSTEIN: The average beryllium concentration of these three locations is .5 milligrams per kilogram. That is similar to the average background

16:22:27 beryllium concentrations in soil around the Brush Ceramic Products.

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

A Yes, I see that.

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

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

And the question is not whether natural beryllium

16:23:00 occurs in the soil, it does. The question is whether it's

beryllium oxide.

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

A I'm generally aware of the history.

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

Are you aware of that?

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

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

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

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

16:24:32 decisions concerning what type of testing, frequency of testing and all those types of technical questions, correct?

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

16:24:46 A Take your word for it.

Q Ask you to assume that the contract says we pay money and the County controls everything else, would you agree all these questions about technicality are questions that the County may want to talk about once they start

16:25:02 setting up their system?

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

16:25:22 DR. FRIEDMAN: Can I interject? I want to ask the Board a question.

Are we getting off the topic?

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

16:25:42 DR. FRIEDMAN: County.

EXAMINATION

BY MS. LUKACH:

Q Are you aware of any actual incidents of disease

1(5:48 occurring from beryllium occurring in Pima County?

A I believe I've read newspaper articles that refer to 35 chronic beryllium disease cases at Brush and some deaths.

Q When do you think those occurred?

A I don't know.

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

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

MS. LUKACH: No other questions, thank you.

DR. FRIEDMAN: Thank you.

Any questions from the Board?

Ms. Birnie, any other witnesses?

MR. KULAKOFSKY: Rob Kulakofsky.

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

MS. BOWEN: Sheila Bowen.

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

MR. FARGOTSTEIN: I intend to call Mr. Scheatzle, the general manager, to answer that.

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

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

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

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

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

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

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

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

16:28:57 air monitoring?

I think that the concern is that and something much more important than that. I think the prize is the health of the community and the fear is that there's a very real possibility, well, that emissions are leaving the factory.

16:29:13

We know that 10 grams a day are legally permitted according to the federal rules, and 10 grams a day is a massive amount of beryllium. It's clearly not a health protective regulation.

16:29:31

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

16:29:52

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

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

16:30:16

And there's a lot of unanswered questions. The scientific progress hasn't really occurred to know whether

16:30:32

16:30:37 it's safe.

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

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

And so in explaining one of the reasons why we care that the permit is attached to the air monitoring results is -- it's almost like a shell game happens.
16:31:29 Whenever there's more bad news from Brush or anyplace with environmental health and if the eyes on the prize is we want safety in the community, but if the whole conversation turns to well, does this result mean we ought to maybe think about their permit again, then the conversation goes away from
16:31:53 protecting the community and it goes toward this whole cat fight about maybe we should tie it to the permit.

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

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

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

DR. BRAILSFORD: We have questions.

MS. BOWEN: No.

DR. FRIEDMAN: Does the Board have questions?

DR. BRAILSFORD: This is Dr. Brailsford.

What is your suggestion to protect the community?

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

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

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

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

MS. NORDBROOK: My suggestion is zero emissions. Technology is there, but we don't even talk about it. I mean, there are other precedents. I think the community of

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

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

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

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

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

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

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

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

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

MS. NORDBROOK: I guess I would appeal to you to change the permit to tie the air monitoring to the permit so that it would be revoked if the monitoring results found beryllium in the community, which would be then very far
16:36:15 from the release place. You don't want to find it near Sunnyside.

DR. FRIEDMAN: Thank you.

Any cross-examination?

MR. FARGOTSTEIN: Yes, your Honor.

16:36:25

EXAMINATION

BY MR. FARGOTSTEIN:

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

A Yes.

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

16:36:49 A Yes.

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

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

Q You understand that under this contract, Brush has already signed with the County, the County would have authority to take our money and put those monitoring points wherever they want to?

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

Q You want Brush to pay for all of the air monitoring?

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

Q Who should pay for the natural occurring beryllium?

A Well, the thing that I suspect is happening is that since you have a point source that emits beryllium, since the Brush factory is there, that they would definitely

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

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

MR. FARGOTSTEIN: No further questions.

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

Pima County?

MS. LUKACH: I have no questions.

DR. FRIEDMAN: Any other witnesses?

MS. BIRNIE: Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DR. FRIEDMAN: Excuse me.

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

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

But do we need to do this at the expense of some
16:43:05 kid in South Tucson? I don't think so.

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

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

MS. MALCOLM: The standards --

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

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

DR. FRIEDMAN: Just a second. Hold on.

Does the Board agree? Signify by shaking your head.

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

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

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

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

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

16:44:24 on those issues only.

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

All right?

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

MR. FARGOTSTEIN: Your Honor.

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

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

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

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

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

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

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

16:45:31 DR. BRAILSFORD: Excuse me.

This is Dr. Brailsford.

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

16:45:40 MS. MALCOLM: Something specific? Are you going to let me talk? If you let me talk, what I'm going to say is that we're always learning new things and we are setting into place a five-year permit. Does that mean five years from now the things we learn from today we might act on or

16:45:59 will we be allowed to act? At what point do we act on it?

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

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

16:46:24 DR. FRIEDMAN: Any cross-examination?

MR. FARGOTSTEIN: No.

MR. KULAKOFSKY: Can I make one correction?

DR. FRIEDMAN: State your name, your correction.

MR. KULAKOFSKY: Rob Kulakofsky.

16:46:39 Permit page 21, item H, on the bottom. This delineates the eight powered exhaust vents and it tells what rooms they come out of.

One is the firing room, number one.

One is the lapping room where they actually grind

16:46:55 beryllium serums flat.

Another one is the lapping room, another lapping room.

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

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

EXAMINATION

BY MR. FARGOTSTEIN:

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

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

Q That's not my question. Listen to my question.

It is covered in the permit?

A It's not addressed properly in the permit.

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

A I was just correcting your statement.

MS. BOWEN: Sheila Bowen.

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

16:48:19 DR. PETERSON: Can we get -- Tom Peterson.

Can we get clarification? I am a little confused. I want to make sure that I understand what is the environmental condition as it pertains to the permit.

16:48:33 Are all of the vent fans associated with areas in which there could be beryllium processing filtered or not?

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

DR. PETERSON: Maybe this is something for later.

MR. FARGOTSTEIN: I don't know if it's my manager

16:48:58 of health or my general manager. I think Mr. Scheatzle got the short straw.

DR. FRIEDMAN: Name, address.

MR. SCHEATZLE: John Scheatzle, general manager, Brush Ceramic Products. 6100 South Tucson Boulevard, 85706.

16:49:22 That's my business address.

DR. PETERSON: Again, because there's been, seems a difference in either interpretation of the permit or what legal counsel, your legal counsel has said, can you just clarify, are all of the vents, the forced air vents,

16:49:46 orifices, whatever you want to call them, that do not go through filtering device associated in areas where there is no beryllium processing or are there areas which there is beryllium processing that would have ventilators that would not necessarily go through the filters?

16( ):11 MR. SCHEATZLE: All particulate generating

operations are ventilated and filtered and discharged through the stack.

Those ceiling fans are for heat abatement and they were assessed to not be attached to particulate generating operations. Based on historical testing, they are not filtered, they discharge directly. They are not in powder handling areas, they are not in areas that --

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

MR. SCHEATZLE: That is correct.

DR. PETERSON: -- emission of those?

MR. SCHEATZLE: That is correct.

DR. BRAILSFORD: Dr. Brailsford.

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

MR. SCHEATZLE: That's correct.

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

MR. SCHEATZLE: I understand.

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

MR. SCHEATZLE: That's particulate generating operations.

DR. PETERSON: As opposed to?

MR. SCHEATZLE: Taking powder, filling a mold and

compressing that powder. That is particulate generating.

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

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

DR. BRAILSFORD: This is Dr. Brailsford.

How long have you monitored these vents?

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

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

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

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

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

DR. PETERSON: Thank you.

DR. FRIEDMAN: Do you have any other --

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

PDEQ has concerned concerns about the powered air vents. It says the specific vents, this is a condition, specific vents are identified using the same numbering

scheme on the Brush Ceramic products --

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

MR. KULAKOFSKY: I'm going to --

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

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

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

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

I would object to this whole line of testimony.

DR. FRIEDMAN: Thank you.

MR. KULAKOFSKY: Read the permit.

DR. FRIEDMAN: Thank you.

Should we hear from Pima County?

MS. FRIAR: Brush.

DR. FRIEDMAN: Any comments from Brush?

MR. FARGOTSTEIN: No, sir.

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

Any further discussion from the members of the Board issue in the presentations?

Therefore, we are toward the end of the hearing and I would await any suggestions or comments or motions on the part of the Board, I think.

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

MR. FARGOTSTEIN: I do have one witness. I would like to call Mr. Scheatzle before --

DR. PETERSON: Mr. Chairman, I move we take a ten-minute break.

DR. FRIEDMAN: Seconded by?

DR. BRAILSFORD: I'll second.

DR. FRIEDMAN: All in favor? Aye.

Break.

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

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

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

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

17:03:10

EXAMINATION

BY MR. FARGOTSTEIN:

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

17:03:16 Mr. Scheatzle, as I understand it you're general manager of the Brush facility?

A That's correct.

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

17:03:25 A That is true.

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

In the Brush response, which I forwarded to all 17:03:36 the panel members, I outlined several issues that I thought should be addressed, of concern. One was certain legal objections as to whether or not such ambient monitor could be legally required.

Basically, did I advise you of certain legal 17:03:55 objections I felt there were to special required ambient

testing?

A Yes.

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

A Yes.

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

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

A That's true.

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

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

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

Again, even though all the data shows repeatedly that number one, the current standard is protected and, number two, that we're far, far below that standard and further it's been studied repeatedly, despite all that we wanted to provide this extra level of reassurance to the community because we're part of the community and our employees are part of the community. That's why we do that.

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

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

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

MR. FARGOTSTEIN: No further questions.

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

MS. BIRNIE: Yes.

EXAMINATION

BY MR. KULAKOFSKY:

Q Rob Kulakofsky.

You have always been obeying the law as Brush Ceramics; correct?

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

Q So the quote you have in this -- let's see, The Weekly, June 22nd, when asked about the impact beryllium had on injured and deceased Brush employees, you responded, We were always obeying the law?

MR. FARGOTSTEIN: Objection. Sir, he is not now talking about employees. That comes under OSHA jurisdiction which is entirely --

DR. FRIEDMAN: Legal agrees with him.

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

DR. FRIEDMAN: Pima County?

MS. LUKACH: I have no cross-examination.

I do have a couple of brief witnesses for the Board.

DR. FRIEDMAN: Do you have an opening statement?

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

DR. PETERSON: Do we get a chance to ask

17:07:57 questions?

DR. FRIEDMAN: Yeah.

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

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

DR. PETERSON: Thank you.

MS. BOWEN: Sheila Bowen.

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

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

DR. BRAILSFORD: This is Dr. Brailsford.

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

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

17( )9:31 You look at our stack tests. We have a 26 year

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

DR. FRIEDMAN: Dr. Friedman.

I have a question. What if one of the monitoring levels is high?

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

DR. FRIEDMAN: Would you call Pima County right away or --

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

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

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

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

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

the wrong place.

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

DR. FRIEDMAN: Any other questions for Pima County?

MS. LUKACH: I would like to start by calling Richard Grimaldi.

DR. FRIEDMAN: Name, address.

MR. GRIMALDI: Richard Grimaldi. Pima County Department of Environmental Quality. 150 West Congress.

RICHARD GRIMALDI

sworn by Ms. Schloeman,

BY MS. LUKACH:

Q I'll do these questions as quickly as I can.

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

A Yes, we did. During development of this permit, we had extensive public participation that lasted six years. Public comment and hearings. This issue came up, as well as a number of concerns about the health community. We looked at it very closely.

We conferred with experts in the field, Pima County Health Department, Arizona Department of Health Services and we also conferred with experts in the field of

monitoring, at the University of Arizona atmospheric Sciences Department.

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

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

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

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

We wanted to look at being able to provide this information to the community in a fairly quick manner.

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

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

We also wanted to insure there was credibility to the data. By being able to control quality assurance, 17:14:02 quality control, process, labs, we can confer with other experts in the field, the University of Arizona, and we feel we can develop very high credibility data.

When we turn it over to Brush through a permit condition, they have the option or would have the option in 17:14:20 house or through a third party, it becomes very difficult to turn that down.

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

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

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

that was useful to the community that actually meant real data to the number of users we hope to get.

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

A Based on the federal regulations, state and local regulations, there is a not a standard that this would be measured against to determine compliance.

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

DR. FRIEDMAN: Any questions from Brush?

MR. FARGOTSTEIN: No, sir.

DR. FRIEDMAN: Ms. Birnie.

MR. BLANK: I have a question.

DR. FRIEDMAN: State your name.

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

DR. FRIEDMAN: Microphone.

EXAMINATION

BY MR. BLANK:

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

A I believe Brush sent us a letter objecting to it.

17:16:03 whether it indicated they would sue, I don't recall. They believed there was no legal basis for it.

Q Did you take that as a threat?

A We took it for what it stated.

17:16:19 Q A legal problem that you might have?

A Yes.

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

17:16:41 A Ambient air monitor network would only pick up something that was in its capture zone. So depending where an upset was, where the wind direction is going and how far the monitor is away would depend on whether it actually detected or not.

17:16:59 MR. BLANK: Thank you.

DR. FRIEDMAN: Any questions from the Board?

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

Are you going to, for example, try to separate the

17:17:17 beryllium to determine whether it is oxide and if so, determine whether it's natural or not?

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

17:17:35 Right now, we're going to use the standard test

17:17:38 methods found in the CFR.

My understanding of conversations with experts in the field like Dr. Betterton, at least at this time there isn't a specific test that can determine that on a
17:17:53 sample-by-sample basis. He would be probably more appropriate to discuss those issues.

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

DR. PETERSON: Can you say something about, at
17:18:07 least size fractionated samples?

MR. GRIMALDI: Yes, 10 microns and smaller.

DR. PETERSON: Thank you.

DR. BRAILSFORD: This is Dr. Brailsford.

So I understand you, all of the tests that you're
17:18:25 going to do will test for all of the beryllium and the material whether manmade or natural, correct?

MR. GRIMALDI: The way monitoring works is like a vacuum cleaner. We run the monitor for 24 hours. The material is trapped on filter. The filter is sent for
17:18:41 laboratory analysis.

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

DR. BRAILSFORD: It will include both sources?

MR. GRIMALDI: Both sources, yes.

17(3:54 MS. BOWEN: Sheila Bowen.

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

17:19:11 MR. GRIMALDI: What we're looking at doing with this monitoring data over the first five-year term of the permit is to try to correlate any activities going on within the facility. Based on public comment, and there's extensive monitoring reporting going on at Brush which they 17:19:31 are currently not doing, so we've got to have hard data what they're doing, when they're doing it, how often, what's going on with the facility itself.

There's requirements to do checks on the entire facility on a weekly basis. We're also looking at 17:19:47 monitoring extensively the air pollution control system.

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

DR. FRIEDMAN: One quick question.

Dr. Friedman.

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

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

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

MR. GRIMALDI: Correct.

DR. PETERSON: I'll ask you the same question that

17:20:53 I asked Mr. Scheatzle. Can you speculate on what might take place when both, when the permit is asked to be renewed and what you might think would happen with regard to any contractual obligations for ambient air quality monitoring?

MR. GRIMALDI: With regards to renewal of the

17:21:14 permit, we're anticipating using this data to either strengthen the permit, further refine the permit, look at specific areas, as we issue a second five-year term permit. Whether the contract goes on into the future, at this point I couldn't say. That would be something that would be

17:21:35 determined at that time by all the parties involved.

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

MR. GRIMALDI: Costs are going to be borne out, I

17:21:48 think, by three separate parties. You'll see Brush is

putting a financial contribution. Our department is absorbing the staffing requirements, we'll be maintaining and running the monitoring.

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

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

DR. PETERSON: Thank you.

MS. BOWEN: Mr. Grimaldi, in respect to the data -- Sheila Bowen -- this would go to the EPA administrator?

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

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

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

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

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

MS. LUKACH: Dr. Elizabeth McNeil.

DR. FRIEDMAN: Name and address.

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

17:24:17

ELIZABETH McNEIL, M.D.

sworn by Ms. Schloeman

EXAMINATION

17:24:17 BY MS. LUKACH:

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

A Yes, I was.

Q And did you prepare a report?

17:[illegible]:25 A Yes.

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

A And for the Board, that is the Attachment 1 to the

17:24:38 response to comments.

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

A We did not recommend additional air testing.

Q Why was that?

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

Q One last question. Some of the witnesses have

17:25:10 said that there is no safe level of beryllium. Do you agree with that statement?

A Since beryllium is found naturally in the soil, I would be hard pressed to say there isn't a safe level, but there has been a great discussion of what's a safe level for

17:25:28 employees working with the material and being exposed in the workplace.

But there have not been any instances of chronic beryllium disease in the community surrounding beryllium plants since 1950, with the one exception of the wife of an

17:25:44 employee who had some unusual exposures, and that would lead

us to believe that current federal guidelines have been effective in limiting and perhaps eliminating public health risk.

Q The incident with the wife of an employee where did that occur?

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

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

MR. FARGOTSTEIN: No questions.

DR. FRIEDMAN: Questions?

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

DR. FRIEDMAN: Name. Come forward.

MR. BLANK: Brian Blank.

EXAMINATION

BY MR. BLANK:

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

samples taken around the circle.

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

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

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

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

Q Didn't the report also state the two samples northwest of the stack, approximately 170 yards northwest of the stack, exceeded the amounts that were allowed at the

time in the soil for residential areas; however this, the report also stated that it was okay because it was a nonresidential area?

And I have a follow-up.

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

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

Q Weren't those particular high samples exactly where you would expect to find high amounts from the outfall from the stack northwest 170 yards from the stack?

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

Levels further away were even less than our background levels two miles away. And values right up against Brush property lines were lower in about approximately .6 on an average.

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

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

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

A Yes, I am.

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

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

MR. FARGOTSTEIN: No questions.

DR. FRIEDMAN: Any questions from the Board?

17:31:12 DR. MCNEIL: Thank you.

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

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

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

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

paid by Pima County, not by Pima County Department of Environmental Quality.

ERIC BETTERTON

sworn by Ms. Schloeman

EXAMINATION

BY MS. LUKACH:

Q Dr. Betterton, are you familiar with the studies that have been done in Pima County that about levels of beryllium in the soil?

A Yes, I am.

Q Have you seen the conclusions in those studies that suggests that no additional air monitoring is necessary?

A Yes, I have.

Q Do you agree with those conclusions?

A I agree with them.

Q Why do additional air monitoring then?

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

But I think we should continue to be vigilant. And by that I mean, we should put out these ambient air

monitoring devices and just check that for the next five years at least there is no plume of beryllium being emitted by the factory.

Q Was it unusual for some of the testing to find levels of beryllium?

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

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

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

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

A Well, I think the message is getting mixed. We breathe dust, we all breathe dust that contains beryllium, probably in the form of a silicate or something like that, minerals within the dust. Pima County is not coming down with berylliosis. We have lived here for hundreds of years, there is no such thing.

However, in the work environment, people are being

imposed to a particular kind of beryllium, beryllium oxide or well defined -- there the toxicology to me is a mystery. I think it's interesting. I don't know in the workplace it's currently possible to say what the safe level is. We're not talking about the workplace, we're talking about ambient air outside the factory.

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

A Yes, I am.

Q Do you think it's a good plan?

A I think it's a good plan. With the current technology, I think it's a good plan.

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

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

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

If the monitoring was done outside the permit in a contractual basis like this, if we need to add a monitor or

if we need to move a monitor or something like that, to change the frequency of monitoring, we could do it without public hearing.

MS. LUKACH: I have no further questions for Dr. Betterton.

MR. FARGOTSTEIN: No questions.

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

MR. BLANK: I have one question.

DR. FRIEDMAN: Name.

MR. BLANK: Brian Blank.

EXAMINATION

BY MR. BLANK:

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

What federal standards are you talking about?

A I was thinking of federal standards within the workplace.

Q All right. Well, if they need to be revised, wouldn't it stand to reason that the federal standards outside the workplace need to be revised because they are

based on mathematical formula based on what is toxic to workers?

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

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

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

DR. FRIEDMAN: Thank you. You can go ahead and answer.

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

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

A If it were in the permit, and the sample was high,

17:39:38 I don't see how that would be any different from it being outside the permit and a sample being higher.

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

17:39:53 Q I thought that you were referring to the federal standards outside the factory, in addition to the ones inside the factory. Perhaps I misunderstood what you stated.

A Well, I'm not familiar with that article. I don't 17:40:16 know what year it was published. I don't know under what conditions the reporter was questioning me. I have no recollection of that. I haven't read it, I haven't reviewed it. I'm clearly not in a position to comment on it.

MR. BLANK: Fair enough.

17:40:35 DR. FRIEDMAN: Thank you.

Any further discussion?

MS. LUKACH: Nothing further.

DR. FRIEDMAN: Then now the Board -- any discussion from the Board? Otherwise, it's probably time to 17:40:49 make a motion.

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

17:41:12 I would be happy to hear a motion.

17:41:16 MR. MATHER: This is Jim Mather.

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

DR. FRIEDMAN: Motion on the floor to uphold the
17:41:28 permit as issued.

DR. PETERSON: Second.

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

DR. PETERSON: Just one very brief comment.
17:41:41 Resist any temptation to provide a sermonette or anything.

I wanted to say that there were clearly issues that were raised before this Board that were related more toward work force or work area exposure. That is not the purview of this Board, and I just hope that those that
17:42:09 brought it up understand that while there may be some concerns about that and appreciation for the points raised it is not part of our jurisdiction, that we are really dealing with issues that relate to ambient air quality.

DR. FRIEDMAN: After that sermonette, do we have a
17:42:34 motion?

MS. FRIAR: There's a motion.

DR. FRIEDMAN: Do we have a second?

MS. FRIAR: There is a second.

DR. PETERSON: Call the question.

17:42:41 DR. FRIEDMAN: Okay. Let's do a voice vote.

17:42:51 MR. MATHER: In favor.

MS. BOWEN: In favor.

DR. PETERSON: In favor.

DR. BRAILSFORD: In favor.

17:42:59 DR. FRIEDMAN: In favor.

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

DR. PETERSON: So moved.

DR. FRIEDMAN: Motion seconded. All in favor of

17:43:17 adjournment say aye.

No?

Meeting adjourned. Thank you very much.

(Adjournment at 5:44 p.m.)

17:43:30

CERTIFICATE

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

17:43:30 BE IT KNOWN that the foregoing proceedings were taken before me, PATRICIA CALABRO, CSR, RPR, CR, in and for the County of Pima, State of Arizona; That the foregoing pages are a true and correct transcript of all proceedings, all done to the best of my ability.

17:43:30 I DO FURTHER CERTIFY that I am not a relative or attorney of either party, or otherwise interested in the events of this action.

17:43:30 Patricia Calabro

Patricia Calabro, CSR, RPR, CR
Certified Reporter
CSR # 7906; RPR # 20010; CR # 50047