

UNITED STATES
DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration
Office of Pipeline Safety

**PUBLIC HEARING ON RESPONSE PLANS FOR
ON-SHORE OIL PIPELINES
49 CFR Part 194**

Ballroom D
New Orleans Hilton
2 Poydras Street
New Orleans, Louisiana

Wednesday,
January 29, 1997

8:30 a.m.

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Corporate Response Group

Office of Pipeline Safety

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STACEY GERARD
TONI HUNDLEY
MELANIE BARBER
CHRIS HOIDAL
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AL GARNETT

Research and Special Programs Administration

PAUL SANCHEZ

Also Present

LARRY MAGNI
American Petroleum Institute

GLENN EPLER

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Corporate Response Group

GWYNETTE BROUSSARD
Shell Oil Pipe Line Products

Also Present (Continued)

DON SMITH
Environmental Protection Agency

STEVE STREATER
Mobil Oil Corporation

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P R O C E E D I N G S

8:30 a.m.

Opening Remarks and Ground Rules

MR. BRADSHAW: Welcome to DOT's Public Hearing on the Interim Final Rule, 49 CFR 194, for Facility Response Planning.

We'd like to start off this morning with a few opening remarks from Stacey Gerard, whom you know.

My name is Bob Bradshaw. I'm with the Corporate Response Group, a contractor to DOT, and I'll

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be moderating the session this morning, and following Stacey, we will have Paul Sanchez of Legal Department, and then we'll go around the room, introduce everybody so we get to know each other a little bit better.

But let's start with Stacey's comments.

MS. GERARD: Well, good morning. I am happy to see you guys. I -- I know some of you in the audience, but I guess we've been doing this for long enough that some of the people that started in this program have gone on to bigger and better things, and there's a lot of new folks in the audience.

We decided that it was time to get together and just take a retrospective look back not just at the rule but the program in general and how -- how it's been going.

When started in the OPA program about three, I guess it is, three years ago now, seems like much longer, we were completely new to the subject. It was a very different kind of program for the Office of Pipeline Safety. Almost to a person, the Office of Pipeline Safety didn't think they belonged in the Oil Pollution Act Program business, and OPS fought it tooth

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and nail, and API decided that they would, you know, tell the department that they thought we should do it, and we took on our new responsibilities and jumped in with both feet and maybe surprised you a little bit.

So, we have no idea if there's anything about the program that you think needs to be changed. Things have been relatively quiet over the last few years. Jim Taylor says to me and Chris Hoidal before him used to say, you know, we don't -- we don't see very much of you, Stacey, and I say, "Well, that's a really good sign, you know, because if I was hearing any problems, you'd be seeing a lot more of me", and you guys have been relatively quiet about this program, and we -- we just wanted to take the time today to say how's it going? Are there things about the program that you would like to see changed?

We think there's some things that are kind of housekeeping issues with the rule, that ought to be changed, and then there's some other issues that are on the agenda today that we want to hear whether you think greater specificity would be an improvement or not.

So, this is to be a very open discussion.

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We're mainly going to be in the listening mode. We have no strong ideas about what needs to be changed, and we want to hear from you, and we'll be wanting to hear from you for at least the 60-day period after today.

So, without further ado, Paul?

MR. BRADSHAW: Paul Sanchez.

MR. SANCHEZ: Yes. Hello. My name is Paul Sanchez. I'm with the Office of the Chief Counsel in RSPA, and I'm just going to say a few words.

I just wanted to reiterate what you'll probably hear a couple of times today; that is, that those of us here from RSPA and the Office of Pipeline Safety are here to listen to your comments. We're not here to -- to debate on the issues. We just want to get a feel for what people's opinions are on the issues that come up today, and based on whatever your comments are and your input, we will take that into consideration at a later date.

No final decisions are going to be made today on what we discuss, and hopefully it will run smoothly, and we'll be able to -- to at least answer any

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questions that you have, but we will not -- we'll try not to engage in active debate on each one of the issues.

Thank you.

MR. BRADSHAW: Thanks, Paul.

I think we'd like to continue with the introduction process now, starting with the front table, and we'll ask everyone to state your name and the agency or company that you're representing, please, starting with Toni.

MS. HUNDLEY: Toni Hundley, Department of Transportation, Office of Pipeline Safety.

MS. BARBER: Melanie Barber, OPS.

MR. BRADSHAW: We know Stacey.

MR. TAYLOR: Jim Taylor, U.S. Department of Transportation, Office of Pipeline Safety.

MR. BRADSHAW: Chris?

MR. HOIDAL: Chris Hoidal, Office of Pipeline Safety.

MR. MAGNI: Larry Magni, Staff with API.

MR. BRADSHAW: Start up here. Glenn?

MR. EPLER: Glenn Epler with Corporate

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Response Group.

MR. BRADSHAW: Okay. Great. Let's talk a little bit about the format and approach we want to use today to conduct the public hearing, and we -- we kicked a couple of options around internally and tried to come up with the best approach.

Does everyone have one of the agendas that as passed out at the front table? Good.

MR. TAYLOR: And a special welcome to Roland Guidry, who just arrived.

MR. BRADSHAW: We are going to try to take the interim final rule on a section-by-section basis, and ask for a show of hands and solicit comments for issues or items particular to each section. Now, that may be a little bit different than what you had envisioned or planned.

If you've prepared statements, and they go across the board, you're going to have an opportunity to submit that written material, and I guess the record is going to be open for 60 days after this public hearing to submit additional comments.

But if you would work with us, please, on

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this format, if you could take your prepared comments and work them in to the appropriate section on the agenda, we'll try to group together all of the issues at one time, and perhaps get some feedback from one another as -- as new items come up.

In looking at the agenda, you'll see that it's a very rigorous, tight schedule. Don't be too concerned if you're looking at this, and there's an item on there important to you that we only have 20 or 30 minutes planned for.

We want to start off adhering rather strictly to this, but we're going to play it by ear. We really didn't -- weren't sure how many folks were going to show up today, how many -- how much time would be needed for your comments. So, we're going to start with a very strict adherence to this, but we'll -- we'll flex it as we need to. We'll accommodate you, and we'll be sure that we get everybody's views and all of the issues on the agenda before the end of the day.

Some of these that we've allocated 10 or 20 minutes for -- excuse me -- may -- may take zero or five minutes. So, we'll be able to accommodate you,

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I'm sure.

We have a court reporter or a recorder here today to take the comments. So, please keep in mind when you stand and give your comments, if you would again state your name and the agency or company that you're representing, so we can get that properly on the record.

We have John in the back here with the microphone, who will be able to come over and -- and give that to you, so we're sure to capture everything on the record.

What else do we need to talk about here? What's that? Beepers. Yes. Well, we have a couple of administrative items as well.

You'll see on the agenda that we have a couple of breaks planned. We have lunch planned for an hour. Again, we want to -- we want to adhere very strictly to that. So, we're going to start at 10:00 after that first break. We're not going to wait for a quorum of the public to return from the break because there's so much ground to cover.

The same with lunch. We've got one hour

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planned for lunch, but if, by 11 or 11:30, it looks like we're moving on pretty well, we'll take a look at that, and if we can increase it 15 or 30 minutes, we'll do that.

Pagers. All of us in the room today have an emergency response function probably. 75 or 80 percent of us are wearing pagers. We don't want to be plagued with beeps and buzzes all morning. So, if you could, please, if you have a silent function, a silent alarm, switch it to that. It might minimize the inconvenience to us.

What else did I forget, John? Restrooms. Does everybody know where restrooms are? Down the hall to the left. Telephones out the door and to the right. I think that does it.

Discussion of 49 CFR 194.1 - Purpose

MR. BRADSHAW: Okay. We're going to take the interim final rule section-by-section, and we're going to start with Section 194.1, which is Purpose.

Does anyone have any comments or suggestions for revision of the Purpose Section of the interim final rule?

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(No response)

MR. BRADSHAW: I see none. I'm already back on schedule, Jim.

Discussion of 49 CFR 194.3 - Applicability

MR. BRADSHAW: The next one is 194.3, Applicability.

Scott?

MR. BENTON: Scott Benton, Texas General Land Office.

Just a definition or understanding of what on-shore means, and understanding that there may be a fairly recent MOU between DOT and MMS to help understand where the offshore/on-shore really meets.

MR. BRADSHAW: Okay. Does that constitute a jurisdictional issue then? Would you say?

MR. BENTON: Yes.

MR. BRADSHAW: Jim, did you want to comment to that?

MR. TAYLOR: Yeah. Just -- just to give you the background on that, OPS has been working with MMS for well over a year now on a memorandum of understanding that was consummated in December 1996. It was

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signed by Secretary of Transportation and Secretary of the Interior, and what that did is clarify -- it didn't overhaul but it clarified the jurisdictional boundaries for offshore facilities.

At the risk of over-simplifying a six-page MOU, the one-sentence summary is that the jurisdiction boundary for the pipeline going from an offshore facility on shore is at the point at which the custody of the oil changes from -- from the producer to the transporter.

MR. BRADSHAW: Scott, does that do it? Does that cover --

MS. GERARD: Richard, did you want to make a comment on that?

MR. HURIEAUX: Yes, thank you. The MOU doesn't address on-shore versus offshore. It addresses the jurisdiction --

MS. GERARD: Take the mike, Rich.

MR. HURIEAUX: I thought I was loud enough, guess not. Is it on? Okay.

The MOU really doesn't address on-shore versus offshore. It addresses only offshore pipelines,

the split in jurisdiction and the coordination between Minerals Management Service and Office of Pipeline Safety.

So, the MOU in no way tries to define on-shore. It really has no impact on this process at all.

MR. BRADSHAW: Okay. Anything else under Applicability?

MR. STREATER: Yes. First, the first question on these jurisdictional issues, I guess this question originally came from the Office of Pipeline Safety. Was that your intention, was to discuss the MOU, or did it go beyond that?

MS. GERARD: I think our concern was just to make sure that people were aware of the MOU, period.

MR. STREATER: Okay. And then my next comment is regarding, I guess, your Question Number 8, and I think it falls in the Applicability part, and that is in regard to the NTSB recommendation.

Again, my name is Steve Streater with Mobil, and these are some comments from API.

MR. BRADSHAW: Would that be the substantial threat?

MR. STREATER: Yes.

MR. BRADSHAW: Okay. I think we have that on the agenda for a little bit later under -- at 11:30.

MR. STREATER: Okay.

MR. BRADSHAW: If you can hold that for a few moments.

MR. STREATER: I can do that.

MR. BRADSHAW: We had another comment over here.

QUESTION: Where would natural gas pipeline possibly become an oil pipeline under those conditions?

MR. BRADSHAW: Yeah. Go ahead, Chris.

MR. HOIDAL: Condensates that are injected incidental to the production of natural gas, we typically have -- we have not looked at those from an oil spill response planning viewpoint.

MR. TAYLOR: And -- and the reason for that is that condensates don't behave like oils. When -- when the condensate hits the water, you don't have a persistent liquid. You may have a fire and explosion hazard, but you don't have a clean-up hazard per se, and because the response to it is different and because

the chemical and physical properties of natural gas condensate are different from -- from oils, we don't treat it like an oil.

QUESTION: Would that consideration also be given to natural gas leaks from a natural gas processing plant or an oil pipeline?

MR. TAYLOR: It all depends on the physical and chemical properties of that natural gas line. If it's got a vapor pressure high enough to be considered a highly-volatile liquid, and that's 276 kilopath scales at 40 degrees Celsius, then we don't consider it an oil. If it's got a vapor pressure lower than that, then it's persistent enough for us to treat it like an oil. So, you've got to look at the MSDS and find out what the physical and chemical properties are.

QUESTION: Say that again.

MR. TAYLOR: 40 kilopath scales. Correction. 276 kilopath scales at 40 degrees Celsius, which is 195. -- it's the definition of a highly-volatile liquid out of 195.2. That's the same as 40 psia at a hundred degrees Fahrenheit.

Oh, we have a late-arriving guest. Don Smith

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from EPA's Dallas Office. Welcome, Don.

MR. SMITH: The question just asked, is that definition of oil or vapor or 194?

MR. TAYLOR: Yes.

MR. SMITH: Both DOT and EPA are currently working on a definition of oil. Your question would fall out. It would need to be an oil, but not necessarily for regulatory purposes.

I'm sorry. For purposes of a definition, defining what oil is, both DOT and EPA and the United States Coast Guard, Office of Pipeline Safety, and EPA in Washington, D.C., are now currently defining the characteristics of what an oil is.

Some condensates and some gas -- natural gas lines would fall out as a defining element for oil for reporting purposes and responding purposes, but I assume your -- your -- the way you all addressed it is for regulatory compliance.

MR. TAYLOR: OPA 90 response plans --

MR. SMITH: Right.

MR. TAYLOR: -- is the context of the question.

MR. SMITH: That would be the way they'd be texting that, but, yes, natural gas and condensates could be defined as oils as they're defined under 40 CFR Part 110, which is the reporting requirement tool.

MR. TAYLOR: So, there's a distinction between what you have to call the national response center for when it hits the water as opposed to what you have to have Part 194 facility response plan for. That's the distinction.

Don't forget to state your name.

MR. MANGANARO: I won't. John Manganaro, Response Management Associates.

To further along the definition here so I understand, the response planning requirements for natural gas may allow them to follow so you don't need to make an FRP. However, for responses, if you still have a natural gas, sludge, oil, sheen upon the surface of the water, you still need to respond, but you don't need a response planning document, is that --

MR. SMITH: Do you have to report that?

MR. MANGANARO: Hm-hmm.

MR. SMITH: The response is almost no

response.

MR. MANGANARO: Okay.

MR. TAYLOR: So, the reporting requirement will probably stay the same, will stay the same for -- for that because it meets the definition of an oil under 110. However, you don't have to write an FRP.

MR. BRADSHAW: Right. The -- again, the distinction here is this morning, we're talking about a definition of oil for purposes of whether you need an OPA 90 facility response plan.

And we're probably going to revisit the definition of oil here momentarily in the next section, but for the record, Don, that response was by Don Smith of EPA, Region VI, and you didn't have a microphone. So, I'm not sure you picked up all of the response. You did or didn't?

COURT REPORTER: I did not.

MR. BRADSHAW: You did not. Would you mind repeating that last part.

MR. SMITH: Real quickly, and I apologize for that, and also I apologize for being somewhat late.

The definition of oil for purposes of

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reporting, and I qualify, for purposes of reporting, not necessarily for purposes of preparing response plans, the definition of oil is defined both by Department of Transportation and by the U.S. Environmental Protection Agency.

The agencies traditionally have kept that fuels, lubricants and things of that nature are all oils. That includes some edible oils, some natural oils, things of that nature.

To better define what an oil is for purposes of reporting, the agencies have gotten together and are setting up a new definition of what oil is and actually providing a list of what those oils are.

I think Jim's statements kind of drives home the point. For purposes of complying and requiring with provisions under 195 -- excuse me -- 194, the purpose of what an oil is for the regulation serves a different definition than what a reporting requirement is, although they're always considered oils in some form or fashion.

What you're having to do as a result of that is the key.

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MR. BYRD: Bill Byrd with RCP.

Just one suggestion under Applicability. It would be useful to the regulated community if you mentioned specifically the MOU between the DOT and the EPA regarding jurisdictions.

When you read the EPA's facility response plan rules, that MOU is in fact Appendix A of their rules, and it's mentioned specifically when they talk about where their applicability is and is not, but that MOU is not mentioned within the DOT rules for applicability, even though it does apply, and it would prevent some confusion if you spelled it out specifically.

Thank you.

Discussion of 49 CFR 194.5 - Definitions

MR. BRADSHAW: All right. I think we're ready to move on to the definition Definitions Section, and since there are a number of them, why don't I go through them one-by-one? If we have comments, we'll take it, and then we'll move on. If we don't.

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Starting with adverse weather, definition of adverse weather, anything there?

(No response)

MR. BRADSHAW: No. Barrel?

(No response)

MR. BRADSHAW: No. Breakout tank?

(No response)

MR. BRADSHAW: No. Okay. Well, we're going to have a chance to revisit breakout tanks, I think, on a couple of occasions today.

What else? Coastal zone?

(No response)

MR. BRADSHAW: Contract or other approved means? Yes, sir?

MR. STREATER: Again, my name is Steve Streater with Mobil.

I'd like to make a proposal here to make some subtle changes to the current 194.5 contract or approved means, and I'll read this aloud to you. It's under Item Number 1 there.

A written contract or other legal binding agreement, such as a letter agreement, of intent to

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respond between the operator and a response contractor or other response organization identified and ensuring the availability of sufficient personnel and equipment within the stipulated response times for specified geographic area, and the change would be to delete "specified" and put in "sufficient personnel".

Additionally, it is recommended that we add the following options: a document which identifies the personnel, equipment and services capable of being provided by the response contractor within the stipulated response times and specified geographic areas, sets out the parties' acknowledgement that the response contractor intends to commit the resources in the event of a response, and permits the OPS to verify the availability of the response resources identified through tests, inspections and drills.

An additional paragraph. For the facility that could reasonably be expected to cause substantial harm to the environment with the consent of the response contractor, oil spill removal organization, the identification of a response contractor or other spill removal organization with sufficient equipment

and personnel which are available within the stipulated response times and the geographical area.

Let me give you a little bit of a rationale on that. API believes that the current definition is too restrictive and does not allow the industry enough flexibility to effectively ensure the availability of private response resources.

By requiring that specified personnel and equipment within a stipulated response time for a specified geographic area be available, it unnecessarily restricts the ability of a spill responder to utilize fully -- utilize fully the work force available within a geographic area.

For example, a response contractor based in Texas may use a particular individual to operate heavy equipment. If that contractor entered into a contractual agreement to respond to a different operator facilities in Florida and California, it would be unlikely that the contractor could honor the agreement as to the individual's availability both -- to both facilities simultaneously.

The intent of the definition is to provide a

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sufficient amount of personnel for response purposes without specifically identifying the individual. The addition of these two options that I outlined will greatly increase the amount of private resources available to respond to pipeline spills, particularly in cases concerning smaller response contractors.

Some of the current state contingency planning regulations adopted since the enactment of the OPA regulation allow for these types of agreements as means of ensuring contractor availability.

MR. BRADSHAW: Thank you.

Any comments or questions from the panel?

Any -- yes, sir? Don?

MR. SMITH: Just one comment to that. How do you define sufficiently on your proposal, to do sufficiently? How would you define that sufficient term in terms of meeting the present regulatory requirement?

MR. STREATER: I think you have to look at each scenario and make that determination and work in conjunction with OPS or the Texas General Land Office. You know, that's where that definition comes into

play. You know, what is determined to be sufficient? I mean I don't know that it's an ambiguous term by any means, but, you know, you've got to be reasonable in what's available in the specific geographic location.

MS. GERARD: Comment?

MR. BRADSHAW: Yes.

MS. GERARD: Steve, would that -- would -- are you suggesting that we would have to consider sufficient in terms of our evaluation of response strategies?

In other words, are you implying that we should have a different type of mechanism for evaluation of response strategies to determine sufficiency?

MR. STREATER: It may warrant a different type of evaluation method over what is currently utilized, but I think especially the geographic location issue, you've got to look at what the specific needs are in the specific area instead of looking at it from East Coast to West Coast, which is not reasonable, especially the way that most companies are set up and the way that they're broken into various business

units.

MS. GERARD: Hm-hmm. I say that because about three years ago, there was some discussion about having a different type of scenario-type description involved as part of the response plan just to be a kind of a sampling of a way a company would describe its capability, and I was just wondering if your sufficient could in some way be tied to that.

I -- I'm just -- I know that there would be people who would be concerned about our ability to gauge sufficient and how we might do that.

MR. MANGANARO: John Manganaro, Response Management Associates.

As a suggestion to enhance sufficient, would the existing EPA and Coast Guard response criteria, which identifies how much equipment during which tier response, Tier 1, Tier 2, Tier 3, for response help in identifying what sufficient would be in that the contractor now or the -- the company could identify not necessarily using an OSRO but if they want to identify some other company that isn't classified, can now compare response times against we've got this much

boom, this much -- this many people? They do have a response management system in place and so on.

So, maybe similar tied to what Coast Guard and EPA is currently using?

MS. GERARD: Well, that's -- that's what we're here to hear, what people think about that, and we certainly steered away from that approach a few years ago, and now we're looking back historically, on our historical experience, and seeing if that approach was a good one or not.

You know, this is about validating whether what we've done is appropriate or not.

MR. BRADSHAW: Don, would you like to join the table up front, because I think you're going to be deeply involved in these discussions?

MS. GERARD: Yeah. Don -- Don, we don't want you to be thinking you can make a quick get-away.

MR. BRADSHAW: Yeah.

MR. SMITH: I'll be glad to do that.

MR. BRADSHAW: Okay. Are we -- yes? Scott?

MR. BENTON: I'm not sure. I see later in the program, it talked about the NAVIC and the EPA

looking at tiers, but I'd like to just comment that we have found in Texas that scenario-based analysis is an excellent way to ground truth the reality of a plan. It makes it more specific. There have to be some gives and takes because you can't have a scenario for every situation, but it's an excellent way to look at the sufficiency issue and make it practically-based.

MR. BRADSHAW: Any other comments on this particular section?

Gwynette?

MS. BROUSSARD: I guess this is in -- Gwynette Broussard with Shell Oil Products Company, and it's in response to a comment that was made by a gentleman.

I think there's a question that was listed in the Federal Register dealing with the NAVIC and the EPA guidelines, and the American Petroleum Institute, together with Shell Oil Products, has developed a comment on that particular issue.

49 CFR 194.15 outlines the response resource requirements that must be identified in a facility response plan. The NAVIC as well as the EPA guidelines

for assessment of adequacy of an operator's response resources were specifically developed for each agency's OPA rule requirements and its particular sector industry.

The NAVIC and the EPA guidance is appropriate for those sectors. However, it is inappropriate for our industry and may result in conflicting requirements and interpretations.

The OPS should assess the adequacy of an operator's response resources based on Part 194.115 requirements as established and go further to improve those.

As an aside, on behalf of Shell Oil Products Company, I'd like to kind of tell you also that we agree with Scott Benton of the Texas Railroad Commission. Worst case discharge planning scenarios are really the best gauge because that gives you an actual idea of what's available.

Also, in support of what Steve Streater of Mobil indicated, I think we have to have the flexibility to not specify but to have sufficient resources at our capability.

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Unlike other sectors of the industry, pipelines span tremendous geographic locations and very isolated locations, and sometimes we have to do an incredible amount of maneuvering in order to meet the response capabilities.

So, again, we -- we adhere to the comments that API proposed as well as Steve Streater and urge the Office of Pipeline Safety to consider our recommendation.

MR. BRADSHAW: Thank you.

In Section 115, we're going to return to this issue because that is the response resources element of the plan, and I'm sure we're going to have some more comments on that aspect of it and EPA's take on it as well as the NAVIC.

Should we move on to the Definition Section -- or we're in the Definition Section. The next definition is environmentally sensitive areas.

(No response)

MR. BRADSHAW: Nothing on environmentally sensitive areas? How about?

MS. GERARD: Let it go.

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MR. BRADSHAW: I'm surprised. Okay.

MS. GERARD: Are you going to introduce these new OPS visitors here?

MR. TAYLOR: Welcome. Oh, here we go. Terry Binns from Southwest Region and Benny Andrews from our Atlanta Office.

MS. GERARD: Otherwise known as Southern.

MR. TAYLOR: Yes.

MR. BRADSHAW: And I've misplaced my page. Who can help me with the next definition?

MR. STREATER: High-volume areas.

MR. BRADSHAW: High-volume areas.

MR. STREATER: Just a couple of subtle changes to help clarify. Again, I'm Steve Streater with Mobil.

I'd like to propose the following definition for high-volume areas. High-volume area means an area which an oil pipeline having a nominal outside diameter of 20 inches or more crosses a major river or other navigable waters which, because of both the velocity of the river and the vessel traffic on the river, would require a more rapid response in the case of the worst

case discharge or substantial threat of such a discharge.

Appendix B to this part contains a list of some of the high-volume areas in the United States.

Some of the rationale. The existing definition does not clearly indicate whether high-volume areas must have both high-flow velocity and vessel traffic or just one of these criteria.

For instance, it is not clear if a river with a high-flow velocity but no vessel traffic would be considered a high-volume area.

API suggests that both the conditions be necessary to qualify as a high-volume area. The change from an "a" to a "the" clarifies the intent of the rule by specifying that the one single worst discharge case exists.

MR. BRADSHAW: Anything else on high-volume?

(No response)

MR. BRADSHAW: Okay. Inland area definition.

MR. STREATER: I have one.

MR. BRADSHAW: Sure.

MR. STREATER: I have some comments on the

facility response review protocol that is at 9.1 and 9.2.

MR. BRADSHAW: Facility response review protocol.

MR. STREATER: Yeah.

MR. BRADSHAW: We're still in the Definitions here?

MR. STREATER: Well, it would fall within this category, but we can address it later, if you'd like.

MR. BRADSHAW: I think it reappears under another section for high-volume. We can --

MS. GERARD: I -- I -- question on the high-volume. I think -- I think I'm the only person that was -- is here from the OPS staff at the time we were writing the rule. This was even before Chris, which is really old, and I think at the time that our concern was more about vessel traffic increasing the likelihood as opposed to the velocity issue, and I mean velocity here is -- is -- is a good thing, right? No?

I mean is velocity good or bad from a response standpoint? Responder?

MR. BRADSHAW: Velocity?

MS. GERARD: Yeah.

MR. BRADSHAW: Of the -- of the river? Sure.
That's important.

MS. GERARD: No, but I mean is it -- is it good that the product gets taken from the point and moves down and causes --

MR. BRADSHAW: No.

MS. GERARD: Yeah. So, it's difficult.

MR. EPLER: It's both good and bad, depending on the environmental, you know, sensitive areas that it's traversing or where the, you know, the natural containment areas like. So, it's --

MS. GERARD: Okay.

MR. EPLER: -- good and bad, depending on the environment.

MS. GERARD: Okay. Well, is the API thought then that velocity makes response difficult, and high-volume increases the likelihood? So, you have a likely and difficult scenario, and you need both criteria in order to be on that list? Is that what you guys are saying for the lay person here? Is that it? Okay.

Just wanted to understand. Thank you.

MR. BYRD: Bill Byrd again.

Two comments. One, I'm not sure why Appendix B contains a list of some of the high-volume areas of the United States, but obviously you did not intend to be exclusive there, and I'm not -- I'm not here to comment whether that's right or wrong.

But I'm frankly confused on Appendix B as written now where it lists other navigable waters at the end for no apparent reason. There are a lot of navigable waters. I'm not sure why these are listed.

MS. GERARD: You mean why those rivers?

MR. BYRD: Well, for instance, Cook Inlet, Alaska, is listed just under other navigable waters, but it's not listed as a high-volume area the way I read Appendix B.

MS. GERARD: Well, I -- I can only tell you that putting the list together for the high-volume areas, as I say, you know, we were very new at this. It was done quickly, and then nobody -- you know, we -- we're questioning whether that's a good list or not. That's the question.

MR. BYRD: Yeah, and my question was should -- should we omit the other navigable water section of Appendix B?

MR. TAYLOR: That's -- that's something we're looking for comments on. Something else in a broader sense that we'd like your input on is whether the high-volume area thing is really a relevant planning consideration. Is that something that you really want to expend a lot of effort focusing on as opposed to other things?

How much weight in your planning process should the commercial vessel traffic have as opposed to should you be more concerned with what Glenn said about the -- the environmentally sensitive areas where the oil might impact?

MS. GERARD: Is it that a big likelihood factor?

MR. TAYLOR: So, the question is how relevant a consideration is the high-volume areas?

MR. MANGANARO: John Manganaro, Response Management again.

I believe the relevancy of identifying a

high-volume port area may have to do with the issue of response contractors being more readily available in that area, so that you -- you do have a requirement for, say, six hour, I think is what it is, during a first level as opposed to 12 hours in the low-volume port area because you need more time to -- to pull in response equipment to an area that doesn't have high volume in it due to -- due to traffic or due to industry in the area.

MR. BRADSHAW: Thank you.

Anything else on high-volume?

(No response)

MR. BRADSHAW: Next definition is inland area. Anything there?

(No response)

MR. BRADSHAW: No. Inland zone.

(No response)

MR. BRADSHAW: Line section.

(No response)

MR. BRADSHAW: Major river.

(No response)

MR. BRADSHAW: Maximum extent practicable.

(No response)

MR. BRADSHAW: No comments. Oil spill removal organization. I skipped navigable waters. Sorry. Anything on navigable waters?

MR. FLOERKE: Is it on? Oh. I'm Rob Floerke with California Department of Fish and Game.

Speaking on behalf of the department who is a
--

MR. BRADSHAW: Glenn, give him the other mike. That mike's not working.

MR. FLOERKE: Testing.

MR. BRADSHAW: Speak more closely into it.

MR. FLOERKE: On behalf of the department, who is a wildlife trustee in California, the department would prefer that OPS use the broadest possible definition of navigable waters found under the Clean Water Act, 33 United States Code Section 1362(7), as interpreted by the courts, and I'd like to make that recommendation.

MS. GERARD: And that is the definition we use.

MR. TAYLOR: Just -- just to give you some of

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the background on how DOT has approached that, the statutory authority for Part 194 is OPA 90, the Clean Water Act as amended, and the definition of navigable waters that we use for purposes of spill response planning is indeed very broad. It's waters of the United States. It means oceans, rivers, lakes, streams, creeks, dry creek beds, plia lakes, prairie potholes, and the list goes on.

We -- it -- it -- it's not intended to refer to navigability in fact. It's not intended to restrict it to waters that are used for commercial vessel traffic.

MR. BRADSHAW: Anything else on navigable?

MR. FLOERKE: I'd like to clarify that, that the last section of that said --

MR. BRADSHAW: It's working.

MR. FLOERKE: Okay. Great. It says waters where a substantial likelihood of commercial navigation exists, and those types of terms for commercial fisheries was causing some confusion. So, thank you for clarifying that on the broadest possible interpretation.

MR. BRADSHAW: Okay. Thank you.

I guess I also skipped oil.

MR. STREATER: Again, Steve Streater with Mobil.

As a member of API, I'd like to make the following proposal to change the definition of oil as I think it's already caused some confusion as comments were made earlier.

We'd like to propose this change. Oil means petroleum or petroleum products, such as crude oil, fuel oil and gasoline, that is a potentially-recoverable commodity. Petroleum or petroleum products, such as HVLs, highly-volatile liquids, liquified natural gas, LNGs, and liquified petroleum gas, LPGs, are not included.

The current definition does not clearly capture those petroleum or petroleum products which were intended to be included under the OPA Act. This revision provides that clarity and allows consistency in application.

MR. TAYLOR: Just for clarification, would it be acceptable to define it in terms of its physical

properties, in terms of its vapor pressure? Could we draw the boundary line by saying crude oil or refined products who have a vapor pressure less than the 195 definition for HVL would -- would be considered oil for purposes of 194?

MR. STREATER: For HVL, you -- you could probably do that, but I think the crude oils, you know, there's such a wide variety of crude oils that exist today, you know, with the varying vapor pressures.

MR. TAYLOR: But presumably they all have vapor pressures less than the 40 psia, right? I mean by definition, crude is persistent.

MR. STREATER: That -- that's correct. Okay. Also, one of your questions addressed this specific issue of including Coast Guard definition, and --

MR. TAYLOR: And we are seeking comment on that.

MR. STREATER: Okay. Currently, the document that's referenced, the Coast Guard document, dated February 24th, 1995, provides an extensive listing of substances that could reasonably be expected within marine transportation.

However, this list does not provide clarity within the scope of 49 CFR 194. API believes the definition of oil that I just provided you provides for both consistency and clarity.

Let me give you a couple of examples that are on that list. Walnut oil, sunflower seed oil, and the list, I guess, probably has about 300 of these items, which may be or may not be all inclusive, and I think just provides more confusion and does not allow for consistency and clarity.

MR. BRADSHAW: That referenced Coast Guard memo is in the package that you all have as well, just for reference purposes.

MR. TAYLOR: And copies of the package are available on the table out in the lobby.

MR. SMITH: Yeah. Just to comment on that real quick. It was that list, plus an EPA list and, oh, a paper that was printed -- presented in, I think it was, 1973 API/EPA/U.S. Coast Guard conference back in 1973 or '72, I think it was.

But basically those two lists were combined. Some of the information in there was culled out in

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terms of these are oils, these are not oils.

The way the draft language is right now basically is it's taking that list, and it's saying these are all known, is commonly referred to as oils, and it includes gasoline and some of those other things.

I would clearly tell you that the Oil Pollution Act as well as the Clean Water Act does say, and it uses these words very explicitly, it says, "but not limited to", meaning the normal definition of petroleum, thinking in terms of gasoline and fuel oil or diesel fuel and crude oil, is the limiting factors.

The Clean Water Act definition goes back significant amount of time and so does the -- and OPA reinforces that definition relative to what oil can be.

The agencies -- all the agencies that regulate and define what an oil is, that includes that parameter of edible oils, those natural oils, all the above.

All of them -- when you consider them in terms of a spill response mode, the equipment you have to use is similar. The -- what it does in the environment is similar. How it responds in the water

is similar. There's not a lot of distinction relative to how you got to respond to one, but the facts remain is it's a not limited to factor.

The agencies -- the agencies, when they revisit this definition, and I hope probably by this summer, they should have something out, a definitive list of what is an oil, and if it's not -- if it's not clear if it's an oil or not, then under that listing, it will have some factors, some formulas, that you can go through that will -- to help you decide whether this is an oil or is not an oil, and based on that, if you don't fit one of these formulas, then you're considered not to be an oil and potentially a hazardous substance or something else, whatever the case may be, but clearly not regulated as an oil as it pertains to this list, and this definition of not limited to.

MR. BRADSHAW: Scott?

MR. BENTON: I apologize to the audience for having so many thoughts. So, I'll try to keep it down.

I'd just offer a caution. From Rob's comments and from Don's comments, it appeared that what's referenced in the definitions here seems to not

clearly state that it's a Clean Water Act definition, either for oil or for navigable waters, and perhaps it may be worthwhile stating that clearly and then offering an appendix or an appendix as further clarification. That way, legally, it covers it maybe a lot nicer.

MR. TAYLOR: Maybe we could add something to the purpose statement right at the front of the rule. Now, -- now, it does -- at the very end of the rule, where it identifies -- excuse me -- the very beginning of the rule, where it identifies the statutory authorities, it gives the U.S. code citation, but it doesn't say Clean Water Act, and, so, unless somebody went to the U.S. Code and actually looked it up, they -- they might not recognize it as such.

MR. STREATER: Steve Streater again with Mobil, and I guess a more personal comment than anything.

You know, I helped tried to clean up this definition of oil myself, and mostly because of the confusion that seems to exist, the one thing that I would offer to you is to try not to make this whole

thing very confusing.

I mean we could write volumes and volumes on what is a definition of oil. I think for consistency and clarity throughout the industry, throughout the government, we should try to make -- make it as simple as possible, so people don't have to set there with four or five staff members and say okay, does this work, does this not work? You know, try to keep it very clear and very concise, and then we can move on to the next title.

MR. TAYLOR: And I guess the basic question that we're looking for input on is does it make your lives -- as the regulated community, does it make your lives simpler or more complicated if we give you an explicit list as the Coast Guard did for the folks that they regulate? And that -- that's what we're -- what we're looking for comment on.

Is -- is your life easier or more difficult if we give you an explicit list?

MR. STREATER: As a -- as a member of, I think, a major oil company in the U.S., we've come to live and come to understand what it applies to and what

it does not apply to, you know, and we were trying to clarify this definition so that, you know, it's very clear, based upon our work with the regulators, and what we do as a part of our every-day business.

So, I guess I offer to you let's don't get back and reinvent the wheel. Let's try to maintain some consistency and clarity and keep moving forward.

MS. BROUSSARD: I guess I'm confused, Gwynette Broussard with Shell Oil, and I just want to expand or ask Don a question.

I thought you said in your earlier comment that this inter-agency task force that's working on the definition of oil was doing it for purposes of reporting and possibly response but not for regulatory purposes.

But then I'm hearing, at least I thought from what I heard a moment ago and that's probably where the confusion comes in, that you were advocating to apply that list to this regulatory program and utilize it within the definition of oil, and I -- I just want to make sure I don't misunderstand where the focus is and where we're going.

MR. SMITH: Okay. First of all, there was basically two questions that are being asked, and to clarify the point, for purposes of reporting under 40 CFR Part 110, and also in response to a question, if you're reporting, you're -- it's based on does something cause a sheen or emulsion or sludge or deposit upon or below the surface of waters of the United States? That's the reporting requirement.

Many different oils and many things that we possibly would not consider to be oils are on the present Coast Guard list and on some of EPA's list, to be quite frank.

For reporting purposes, that definition is being redefine so it better clarifies what has to be reported to and what can be cleaned up and responded to using the, for instance, Oil Spill Liability Trust Fund. What can the public use funding for to go clean something up? Is it an oil? Can we use this fund for that purposes? And it kind of -- that is a driving force for helping define it.

For purposes of regulatory concerns, the question was -- help me out here a little bit, Jim, I'm

assuming that you were talking about why would you -- why or should you even prepare a response plan for a pipeline operation for purposes of regulatory compliance?

If DOT -- and I'm assuming a little bit here.

If DOT is saying that for regulatory purposes, we're not requiring you to prepare a plan based on the fact -- from a compliance standpoint, we don't want to say this is an oil, then you wouldn't prepare a plan based on that compliance issue. That's the distinction.

But there is a common definition for oil, and it's been in the Clean Water Act for a long time.

Another question arises from all this for purposes of clarity and consistency, is should DOT as a part of the rulemaking adopt the -- the more broader definition, I guess you would say, the Coast Guard's definition, EPA's definition, as opposed to the one that's a regulatory compliance issue?

What they're doing is not unlike many regulatory programs. There may be a very large broad definition of a particular product that's going to be regulated, but when it comes down to compliance and

requiring particular activities, not all of that broad definition is included in the top facilities that are required to do something.

So, you may see a large universe of oils, but a small universe of oil for compliance and preparing response plans that are required to do that based on an act or regulatory requirement.

I think I would propose, and then this is clearly from our point of view, EPA's point of view, for consistency purposes, that all agencies adopt the definitions that the task force comes out with. It's going to be much larger -- it will be smaller than the Coast Guard one, I'll tell you that now, but it will be larger than what EPA's technically was for some -- some time, and it includes some things that from just a basic science standpoint don't look like oils, but they've been -- been responded to in the past using the trust funds to do just that.

So, the legal definition of oil includes some things that would look like almost hazardous materials in that respect. So, point being is there's that new -- new definition come out. It's not new in terms of

what the Act's going to say, but there will be this list of things that are called oils.

I would propose that you adopt that, and the formulas that if you're not sure whether it's an oil if it doesn't fit this formula, it's out of there, meaning you're not regulated or you're not going to have to report under this requirement, under 40 CFR Part 110, under that purpose.

Does that help clarify? I hope it does.

MS. BROUSSARD: Is OPS participating in this activity?

MR. SMITH: All I can assume from the actual membership was there was extended -- extended to EPA -- from EPA -- actually it started with the Coast Guard, is the best way to put it, under the Department of Transportation.

Coast Guard, EPA, and I assume fairly surely that some literature is passing back between all the agencies relative to comments and suggestions relative to this list.

Now, I can't say verbatim that Jim Taylor's been on this particular deal, and I don't know if

anybody at this table's been there.

MS. GERARD: No.

MR. TAYLOR: No, we -- we haven't participated in the crisis thus far. It sounds like it's something we need to get plugged into. But we also -- we're starting to get bogged down.

MR. BRADSHAW: Right. It's an important definition, and hopefully it's the most complex one we're going to hit on the rest of this list.

Anything else on oil before we leave it?

(No response)

MR. REZVANI: Matt Rezvani from Arco Pipeline.

When I look at 195, I -- I see that, for example, that OPS has jurisdiction over -- it has certain jurisdiction. If I carry, say, almond oil in my pipeline, OPS obviously doesn't have jurisdiction.

I think for the purpose of OPS and the 194, it probably makes sense to keep the definition of the oil for the stuff that OPS has jurisdiction over. Anything else, if I have -- if I carry it in my pipeline, and it spills out, then it becomes under the

jurisdiction of EPA or the U.S. Coast Guard, and then you can apply those definitions to it for the purpose of basically response planning and contingency planning.

MR. SMITH: Can I make one quick comment? EPA doesn't regulate pipelines. They are a designated -- pre-designated on-scene coordinator, just like the United States Coast Guard is.

If something spills from that pipeline, either EPA or DOT's Coast Guard will be the responding agency. They will be the directing body on how and what's got to be cleaned up, how it's got to be done, and how clean is clean issues.

But as regulating body relative to that pipeline and its pipeline operations, unless there's some component that has been identified through a memorandum of understanding with EPA or Coast Guard, our regulatory authorities don't exist in that -- with the pipeline operation itself, but there are certain components of the pipeline operation under the MOU that -- where we have some jurisdiction.

So, regardless of your concerns, I don't

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think it's an issue of EPA going to start regulating something because you call it -- call it an oil or something else because clearly that's a purview of the Department of Transportation under Office of Pipeline Safety.

MR. REZVANI: That was -- that was -- actually that wasn't my intent, but neither OPS has jurisdiction over a pipeline that, say, carries almond oil.

So, what I was saying that because OPS has a clear jurisdiction over what type of pipeline operates, then if there is a spill from a pipeline that carries anything besides what's in 195, then for the purpose of clean-up and contingency planning, then EPA would probably respond to this site or the Coast Guard would respond to this site.

MR. TAYLOR: Just -- just one final point. We do need to move on to other topics, but the jurisdiction over who regulates the facility has nothing to do with what the commodity is. The jurisdiction of -- of the U.S. Department of Transportation, Office of Pipeline Safety, is on-shore transportation-

related pipelines.

Now, to my knowledge, there are no on-shore transportation-related pipelines carrying olive oil. However, if there were, they would be subject to the U.S. Department of Transportation. The commodity is immaterial. It's a matter of the definition of the -- of what constitutes an on-shore transportation-related facility which is defined by the MOU that Don mentioned a few minutes ago.

MR. BRADSHAW: All right. I think we have that issue on the record, and we need to move on. We're getting a little tight for time here. Hopefully we can breeze through these remaining definitions.

Let's take a look quickly under Oil Spill Removal Organization. Any comments there?

Go ahead, Scott.

MR. BENTON: The only thing is this may infer to some folks that this is a Coast Guard OSRO, and I don't think that's what this means. I think it's any oil spill removal organization. I would just offer that as a caution.

MR. BRADSHAW: Okay. On-scene coordinator.

(No response)

MR. BRADSHAW: On-shore oil pipeline facilities.

(No response)

MR. BRADSHAW: Operator.

(No response)

MR. BRADSHAW: No comments. Pipeline.

(No response)

MR. BRADSHAW: No comment. Qualified individual.

(No response)

MR. BRADSHAW: Response activities.

(No response)

MR. BRADSHAW: Response area.

(No response)

MR. BRADSHAW: Response plan.

(No response)

MR. BRADSHAW: Response resources.

(No response)

MR. BRADSHAW: Response zone.

(No response)

MR. BRADSHAW: Am I giving you enough time to

check your notes?

Specified minimum yield strength.

(No response)

MR. BRADSHAW: Stress level.

(No response)

MR. BRADSHAW: Worst case discharge.

(No response)

MR. BRADSHAW: And I think that's all for
Definitions.

We'll move on, if there are no other comments
on Definitions.

Scott?

MR. BENTON: Response activities. Again, it
seems to me in reading the definition very literally,
is that this talks about containment and removal versus
treatment. So, my question earlier about what
pipelines are covered, dispersant is used, in situ
burning by remediation techniques or treatments, and I
want to make sure they're not omitted as a response
activity.

MR. TAYLOR: Okay. So, you're suggesting
that we add the word "and treatment" in addition to

containment and removal. Okay.

MR. BRADSHAW: Any other comment on Definitions?

(No response)

MR. BRADSHAW: We're ready then to move on to 194.7.

Gwynette?

MS. BROUSSARD: Just a caution in response to what Scott said. Treatment sometimes also means to the reader or to a responsible party as getting into remediation. So, you have to be very careful when you use the word "treatment" that you're not also implying remediation planning within the response plan.

I think the reason -- and if I remember back in '92-93 when we were dealing with this issue on this particular definition, that was the concern originally why we didn't put the word "treatment" in there, because to us, response ends after it's been removed from the area versus after treatment afterwards.

We would actually consider in situ burning and others as actually removal versus treatment.

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Again, it's -- it's again terminology which every reader, I guess, interprets on his own level, but there is some -- some concern that if you use the word "treatment", you could be implying remediation.

MR. TAYLOR: So, -- so, would you suggest that the phrase "or taking of other actions as necessary to minimize or mitigate damage to the environment", would you say that that encompasses treatment?

MS. BROUSSARD: No, I would not. To us, response planning is just that, the containment and removal. Remediation process, of course, begins after that and that can be an extended process, actually implies other different types of laws that could be utilized.

So, for us, there is a distinct difference there. We'll maybe look at that as API and consider it and maybe give you some proposed language, if you think it's an important issue to clarify, that there's some concern.

I have not heard of anyone within my own industry voicing any concern as to the definition that

you currently have and the application of it on the ground at sites.

MR. TAYLOR: But this is an example of why we'll keep the docket open for 60 days after today.

Discussion of 49 CFR 194.7 - Operating Restrictions
and Interim Operating Authorization

MR. BRADSHAW: Okay. We are ready to move on, I believe, to 194.7, which is Operating Restrictions and Interim Operating Authorization.

Any comments on that section?

(No response)

MR. BRADSHAW: No. Anything up here?

(No response)

Discussion of 49 CFR 194.101 - Operators Required to
Submit Plans

MR. BRADSHAW: The next section begins Subpart (b), 194.101, Operators Required to Submit Plans.

Any comments there? Joyce?

MS. CHILLINGWORTH: Joyce Chillingworth with Williams Energy Group, speaking for API.

We have some prepared comments here. It is

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recommended that 194.101(b)(2)(ii) be changed as indicated by the bold-faced and underlined item. I'll emphasize it when I get to it.

A line section that is six and five-eighths inches or less in outside nominal diameter or, and here we're changing the "or" from an "and", is 10 miles or less in length where the operator determines that it is unlikely that the worst case discharge from any point on the line section would be adversely affected within four hours after the initiation of the discharge, any navigable waters, public drinking water intake or environmentally sensitive areas.

The rationale behind this now ties in with it. Right now, the way the law is written, it is inconsistent. The exemptions in Paragraph B are inconsistent as follows. (b)(2) provides exemptions under specific circumstances for specific pipeline segments.

Line sections which are greater than six and five-eighths inches in outside nominal diameter and greater than 10 miles in length.

2. Line sections which are equal to or less

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than six and five-eighths inches in outside nominal diameter and less than 10 miles in length.

Noticeably absent from these exemptions are the following two cases. Line sections greater than six and five-eighths inches nominal outside diameter and less than 10 miles in length, and line sections equal to or less than six and five-eighths inches nominal outside diameter and greater than 10 miles in length.

This changing the -- from "and" to "or" would then make this more inclusive and would also eliminate the inconsistencies.

MR. BRADSHAW: Any comment from our panel?

MR. TAYLOR: Good point. We'll -- we'll take a look at that.

MR. BRADSHAW: All right. Any other comments on this section?

MR. MANGANARO: Thank you, Gwynette. John Manganaro, Response Management Associates.

Conceptual question or statement. The plans that are being submitted -- are being developed by industry are being submitted to RSPA for review and

approval. However, the on-scene coordinator is either EPA or Coast Guard.

Does it -- does it make sense to have the OSC going on scene overseeing a response operation, determining whether it's adequate or not, if they haven't been the reviewing authority or somehow been in on the loop on the review of the plans?

And I don't mean to burden EPA or Coast Guard with additional plan reviews. It just to me seems a little inconsistent.

MS. GERARD: Well, that -- that provision was made several years ago. I know there's some issue about whether it was clear enough or not throughout the document, but the opportunity to EPA and Coast Guard, OSC, has always been there to review the plans.

MR. MANGANARO: And I realize that it was in there, but in practicality, it's -- it's never -- it's never been done.

MR. TAYLOR: Well, this -- this was the subject of a lengthy and lively debate last year among the various agencies of the National Response Team, and the Readers Digest summary here is that even though the

Office of Pipeline Safety is not the pre-designated federal on-scene coordinator, we are there on spill day as a part of the supporting cast. We're there as a resource person to the FOSC, and -- and something that we do in the interest of inter-agency coordination is that when we review a facility response plan, the plan itself, of course, is available to the OSC for their perusal, and that -- and that's written into our reg as well.

Something else that we do to take the initiative in terms of informing the OSCs as to the strengths and weaknesses of these plans as we review them is that we cc the pre-designated on-scene coordinator, whether it's EPA or Coast Guard, with a copy of the plan review findings when we send them to the operator, and the idea here is that on spill day, that EPA or Coast Guard on-scene coordinator hopefully will not show up without ever having any background information as to -- to that pipeline operator's response capabilities.

MR. SMITH: Yeah. Just to kind of drive home the point, we get tons of cc's, I should say, is the

best way to put it. We get some comment and review on that activity.

Trust me when I say that as an on-scene coordinator, as a senior on-scene coordinator, I'm definitely concerned about a document I've never seen before. So, there is a constant interaction. I don't think there's been a major spill that I can't think of that my office hasn't been talking with Jim's office or with the Coast Guard office, whatever the case may be.

Ultimately, it boils down to good review and good evaluation criteria in the first place. There are some things that clearly in the response document that DOT is truly the authority and expert you want to go to, that EPA, we don't -- like I said, we don't build pipelines. We don't inspect pipelines, but we do respond to the spills.

We're going to be involved in response planning portion of it in some form or fashion, whether it's through area contingency planning, through a cc version and evaluation.

Clearly if I found something wrong, I'd definitely bring it to Jim's attention, if something

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just simply didn't make sense.

MS. GERARD: And an additional point of clarification. At the time the rule was written, we did not always dispatch. We usually did not dispatch somebody to the scene of a major accident. This was a change that we instituted after San Jacinto.

MR. BRADSHAW: Okay. Any final comments on Section 101?

(No response)

MR. BRADSHAW: And we're about on schedule.

MS. GERARD: And that --

MR. BRADSHAW: Stacey?

MS. GERARD: And that -- that dispatch is strictly to be a liaison to the OSC, and it's separate from our prevention responsibilities. I need to make that point.

MR. BRADSHAW: Okay. I think we're just about on schedule. It's time for a 10-minute break, and we will start back promptly at 10:00.

(Whereupon, a recess was taken.)

MR. BRADSHAW: If you haven't signed in at the front desk, please make sure you do so before lunch

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time. We have most of our panel. You folks in the center. Okay. Folks toward the center aisle, let's use this one, and Glenn and John will get the outside edges.

We want to back up a moment to 194.101 We have an additional response from Leroy here, if we could start with that.

MR. ANDERSON: Thank you. Leroy Anderson with Kaneb Pipe Line Company.

It seemed appropriate that working for a smaller operator, we wanted to emphasize that revisiting the definition or the designation for exemption is an issue that we agree with the API comments and would stress to the agency that it's something we would really appreciate a revisit on that issue to be taken into consideration.

Thank you.

Discussion of 49 CFR 194.103 - Significant and Substantial Harm, Definition

MR. BRADSHAW: Okay. We're going to start with Section 103, which is significant and substantial harm.

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Comments on significant and substantial harm?

Joyce? Want to use the center?

MS. CHILLINGWORTH: Again, Joyce
Chillingworth, speaking for API.

It is recommended that 194.103(b) be changed to read: if one or more line sections within a response zone are expected to cause significant and substantial harm, the response zone plan must be submitted for approval required by 194.119. An operator will not have to submit separate plans for each line section. Within a response zone, only those line sections expected to cause significant and substantial harm shall be considered for the purpose of response plan review and approval.

The rationale behind this is the entire response zone does not need to be considered significant and substantial harm if only a small area or areas within the zone could be affected by a significant and substantial harm line section or line sections.

Operators may utilize response zones based on geographic or regional considerations without the

burden of planning for and obtaining approval for areas remote from significant and substantial harm line sections.

MR. BRADSHAW: Any other comments on significant and substantial harm? Scott?

MR. BENTON: Scott Benton, Texas General Land Office.

Just reading Section 103(c), would -- again, I apologize for my maybe lack of understanding, but the indication seems to give that looking back on past history is a predictor for the future as to whether an operator may analyze whether it's going to be significant or substantial harm.

Haven't seen a lot of first-time spills, again I just have trouble with placing historical evidence based on an analysis. So, I would -- would offer that as -- as caution on Items, I think really, 1, 2 and 3, and would suggest some reference to the worst case discharge, which we're getting to, should play into making a determination of significant and substantial harm.

MR. BRADSHAW: Anything else on this section?

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(No response)

MR. BRADSHAW: In the previous section, we discussed somewhat the issue of "and" versus "or", and I'm not sure we've completely addressed it. It also pertains to this section.

Jim, did you want to comment on that?

MR. TAYLOR: Yeah. If I can expand on this, what we're -- what we're really hoping to get some comments on is right now, 194.103(c) -- I'll just start in mid-sentence.

It says, "The pipeline is greater than six and five-eighths inches in outside nominal diameter, greater than 10 miles in length, and the line section", and then it goes on to list several things.

We're looking for some comments on whether that "and" should be an "or", and this -- it's like school house rock, the old conjunction junction, what's your function.

Well, we -- we're -- we're looking for some input on whether that "and" should be changed to an "or" because it's possible for -- under this definition, for a line to be a 24-inch line but only

nine and a half miles long, and it would not be -- and it would not be considered sig and sub.

Alternatively, you could have a four-inch line that's a thousand miles long that also might not be captured under sig and sub, and we're looking for some input as to whether that's a loophole that needs to be closed.

MR. ANDERSON: Leroy Anderson with Kaneb Pipe Line.

I doubt that you'll find many thousand mile long four-inch lines, but beyond that, as far as Kaneb's viewpoint's concerned, "or" is a lot better than "and".

MS. CHILLINGWORTH: Just without going through it real closely, I think if you do put an "or" in there instead of an "and", you probably have to revisit the definition or the exemptions under 101, also, to make sure there's a consistency there.

MR. TAYLOR: Good point.

MR. BRADSHAW: And for the record, that was Joyce Chillingworth.

Section 103, any additional? Gwynette?

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MS. BROUSSARD: Gwynette Broussard, Shell Oil Products.

As I read 10 -- that particular section, Jim, so what you're suggesting is that it has to be greater than six and five-eighths in outside nominal diameter, greater than 10 miles in length, and the suggestion would be is to change the "and" to an "or", the line section and then one or five, 1 through 5.

So, for instance, sig -- I just -- I just want -- I'm trying to -- you kind of caught me off-guard. I'm trying to run through my mind. So, for instance, if I had a six and five inch line, 10 and a half miles long, that is located within a one-mile radius of a potentially-affected ESA, and ESA, of course, is broadly defined in this particular rule, and could reasonably be expected to reach that ESA, then that particular 10 and a half mile line would be considered sig and sub?

MR. TAYLOR: That's correct, and -- and that is one of the possibilities, putting the "or" just before that list of five items.

MS. GERARD: He didn't say it was a good

idea. He just --

MS. BROUSSARD: No, no. I'm -- I'm trying -- I'm trying to run it through my mind. I can see where the "or" could be utilized especially for some of the first three criteria.

When you get down to the other two, when you've got the "or" in there, I guess in my mind, as -- thinking back on how we put together our plans, I don't think -- what you'll find or what might happen, I guess it needs to be analyzed, and that might be something we all might want to go back and think about.

Would there be -- how many line segments would not be sig and sub? There probably would be a plethora of more sig and substantial harm, and I'm not sure it actually is meeting the intent.

I guess -- I guess we need to think that through as to whether or not the "or" really would add value at that point.

MR. HOIDAL: Gwynette, we had a -- this is Chris Hoidal.

We had many plans. Let's say the pipeline would be 24 inches in diameter, nine miles long.

Technically, it's not sig and sub. Most operators obviously opted -- you know, let's say they're in the middle of a bayou or something. They opted voluntarily to call themselves sig and sub and designated themselves because they know they'd have some significant impact.

But it was a loophole. You know, like I said, nine-nine and a half miles long, 24-inch diameter, there's a lot of volume there, but technically they could slip through and call themselves substantial even if they're in the middle right next to a drinking water intake.

MR. TAYLOR: And -- and, so, the other possibility -- Gwynette -- Gwynette identified one possibility, which was putting the "or" just before that list of Items 1 through 5.

Another possibility, and again something that we're looking for comment on, is whether it also makes sense or alternatively would make sense to put the "or" between the diameter and the length.

MS. GERARD: Just keeping in mind what the point is here. This is not about whether anybody's

planning or not. It's whether or not the Federal Government has to review and approve.

So, it seems to me more an issue of have we had experience with lines that would be substantial, that as a result of our not having reviewed and approved the plan, we don't think that the planning is good enough, and we're having response problems. That to me seems to be more the issue.

MR. BYRD: Bill Byrd again.

I agree with your conjunction junction function statement there. If we put the "or" where we originally talked about it before the third item instead of "and the line section", we say "or the line section", then we're making all three of them "or", and I -- I agree with your second proposal to put the "or" between the diameter and the length, which is what you originally were getting at, you know.

Do you have a real long line that's just below the diameter function? If you -- if you put the "or" between those two functions and leave the "and" at the last part of the statement, I think you've made -- you've closed the loophole you're concerned about

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without causing every pipeline that's regulated to be sig and sub.

MR. BRADSHAW: Any other comments here?

MR. FLAHERTY: Doug Flaherty, PTS, Inc.

I actually came to observe today and not comment, but this "and" and "or" thing has me concerned with regards to the impact on industry.

As Gwynette just alluded to, I think it needs to be visited. I just -- it strikes me as significant and changes the intent of the section. Any time you change an "and" to an "or" or an "or" to an "and", it could be significant.

I'm just saying that I think it deserves revisiting, especially on the part of industry. That's the end of the comment.

MS. GERARD: And the issue here is not about planning, but about OPS reviewing and approving.

Discussion of 49 CFR 194.105, Worst Case Discharge,
Secondary Containment Credit Issue

MR. BRADSHAW: Okay. We are ready to move on, I believe, to Section 105, which is Worst Case Discharge.

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Comments on worst case discharge?

MR. STREATER: Steve Streater with Mobil.

I'd like to address one of the questions that OPS proposed, and the specific question is, should operators be able to take 50 percent credit for secondary containment around breakout tanks in calculating their worst case discharge volumes, 49 CFR 194.105(d)(3)?

The owner or the operator should be allowed to designate the credit taken at a specific location for its secondary containment around its single largest storage tank or battery of tanks when calculating the worst case discharge volumes.

Storage tank facilities and their associated secondary containment systems are not universal in design, operation or potential risk. Each operator should be allowed to evaluate its designated worst case discharge storage tank facility design together with its associated secondary containment system to determine the appropriate containment credit.

Industry practice during the development phase of an open response zone plan utilizes

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engineering science to establish tank and secondary containment system volume relationships.

In situations where secondary containment volumes do not support worst case total volumes, operators develop additional response and spill prevention methods for the facility response plan.

Pre-determined credit adjustments for secondary containment systems, system calculated volumes, such as one size fits all mentality, does not allow -- okay. I've lost that. Hello?

MR. BRADSHAW: We hear you.

MR. STREATER: Are we back? Okay. Pre-determined credit adjustments for secondary containment system calculated volumes does not allow the operator to use established risk assessment methods and risk management practices.

MR. TAYLOR: Question for clarification. Question for microphone -- for point of clarification.

The -- the current regulation does not specify how much credit an operator could take. This actually has some -- some fiscal implications for operators because it affects how much money they have

to spend to acquire response resources, and that's driven by the amount of their worst case discharge.

On what basis could RSPA decide how much credit to allow an operator to take, and do you see it as a problem that under your suggestion, you could have one operator taking a higher percentage credit than another operator?

MR. STREATER: Well, I think it goes back to the methodology. I mean it's the -- goes back to one size fits all. I don't think you can pre-determine credits. I think you got to allow engineering judgment, you know, to determine the size of the secondary containment based upon your worst case discharge, and I mean, you know, whether it's a Mobil or a Shell or an Arco or whatever it is, you know, the situation is going to be different.

You've got to calculate those volumes for that particular situation, and to have pre-determined credit of 80 percent, 75 percent, 50 percent, I mean there's no science that's associated with that. That's just like an arbitrary number that, you know, has no backing to it.

MR. SMITH: I'd like to add a couple comments for consideration, if you all do decide to use a credit scenario.

Containment systems traditionally are earthen materials of nature. Yes, containment systems, even when it's the catastrophic failure of a tank, some gets out, some stays in. If the Ashland spill told us anything, that the stuff that stayed in did permeate the soils and still made it to the surface water of the United States.

So, when considering the use of credits, be wary of the fact that you do -- you are dealing with earthen-type materials, unless it's some other system, an HTP liner or whatever the case may be. Take those things into consideration whether a facility or tank should have credit based on its containment system because the response on the Ashland thing was two ways.

It was surface discharge, and then it was sub-surface discharge. So, there was still a response being mounted even though containment was still in place there.

Another thing that you might want to take

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into consideration, given credits, is where facility -- where you have pipeline operations where there's a combination of complex issues, where there's EPA/DOT issues involved, EPA currently does not allow credit for any secondary containment issues unless it's in relationship to a single tank component only, where there is only one tank inside the containment area.

So, those are some things you might want to from a regulatory standpoint be cross-referencing to see if it's in conflict with something of that nature.

MS. GERARD: I have a question for Steve. It's my understanding that operators currently provide quite a range of different kinds of information in presenting how they calculate their worst case discharge for tank, and I'm wondering how you guys would feel about some sort of a format that might in a more standardized way demonstrate what your thinking is based on factors that you've built in to tank protection. Structural kinds of things.

MR. STREATER: I think in many situations, you know, we have the data, have gone out there and collected data, to determine the secondary containment.

You know, then you would apply that to your worst case discharge, you know, scenario.

So, I -- I think, you know, everybody's going to handle it a little bit differently, but the ultimate answer would be very close to the same. I think you, you know, have to rely upon sound judgment to make that decision. I mean volume's a volume. It -- you know, whether you use metrics or, you know, standard, it's not really going to change.

MR. TAYLOR: Well, we are certainly seeking comments on this issue in particular from the industry side. We want to know how much supporting documentation you all are prepared to provide in order to justify whatever credit you'd like to take for secondary containment.

MR. STREATER: Well, you know, I'm not sure that we want to even discuss the credit. I think we need to use the exact numbers that are calculated there.

MS. FRIEDMAN: My name is Bonnie Friedman. I'm with the State of Alaska, Environmental Conservation, and I wanted to just share some of our

experiences working with secondary containment.

Right now, we do -- we are prescriptive. We do give credit of 60 percent for having secondary containment around storage tanks, but I do want to say that in giving this credit, we're very prescriptive in what we give the credit for to prevent under -- to prevent below-surface contamination. We do have requirements for meeting sufficiently impermeable regulations.

Right now, we're working on a white paper where the department is trying to define in a better way what sufficiently impermeable is. We're also getting some contractors on board to assist us in evaluating the -- the applicant's request for the secondary containment impermeability.

So, we -- you know, we are working with that.

We have been improving our contingency plans, and we've found that 60 percent has been adequate for -- for us.

In addition to the -- the liner, we're also looking at -- we have also specific requirements for the berms and -- and dikes.

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I also just wanted to make a couple of comments about the definition here for worst case discharge that DOT is presenting, and what we have for a worst case discharge for pipelines is very similar to your definition. Ours is a little bit more defined, where we also subtract some volume for hydraulic characteristics of the pipeline.

In addition, we also look at -- we add information for the estimated amount of time it would take to detect a spill.

Thanks.

MR. JANAK: Jordan Janak with All American Pipeline.

Regarding the secondary containment, you might want to refer -- there is some industry standards to how to design secondary containments and to what capacities. So, they're not willy-nilly design, and I think that needs to be taken into consideration when you're reviewing what credit needs to be given because if we got to construct these and design them for certain containment, then I think as an industry we should be given some credit for that.

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I think you also have to look at the permeability issue, too. We transport primarily a heavy crude, and it's just like molasses. It will take a long time to permeate just a few inches of the soil, but if you got a light product, like diesel, that's another issue.

So, there may be have to be some considerations in that regard, too.

MS. BRANDT: Jeannie Brandt, Department of Ecology, Washington State.

We don't give any credit for secondary containment at all. I'm sorry? Oh, you're not hearing me? Okay.

Mainly because we figure that this is a planning standard. It has nothing to do -- it's -- we had to pick amount, you know, that people need to plan for, and the way that we deal with it, and it's not within the regulation, but as part of our documentation that we give out, we have benchmarks, and the people -- different periods within the response, they have to have certain amounts or be able to -- like for a pipeline tank farms, within the first hour, you should

be able to begin recovery at a rate of one percent of the worst case spill volume per hour, and it goes on and on and on.

And they're not required to have equipment beyond the one-to-two hour level right there, but they have to be able to locate it.

I think it's a good way because, frankly, especially now with so many people depending on so few OSROs or PRCs that we call them in our state, chances are all the equipment is not going to be there. So, within your plan, you need to have a lot of resources that you can tap into.

I know when we did our first reviews of plans, people would get very upset. We're not going to spill that amount. It's going to stay in secondary containment. Our worst case spill scenarios always have the disclaimer at the top saying this will never happen, but you're making us write this, you know.

Again, it's just a volume. We don't expect it to happen either. It's -- it's a volume, and I can't see us ever giving credit for it. So, within the State of Washington, you're going to have to, you know,

have it for the whole worst case spill scenario anyway.

MR. MANGANARO: John Manganaro, Response Management.

The response planning, I think, is a good idea to have some sort of credit given for either engineering designs, whether it's secondary containment or some other design that's built into the system, because what you're trying to protect is navigable waters, and if you're showing that your secondary containment system or your engineering design is preventing a certain amount of your largest pipeline or breakout tank, whatever it is, from getting to a navigable waterway, then emergency response equipment, skimmers, booms, solvents, to protect that navigable waterway should only be identified for what is going to potentially impact that navigable waterway.

I don't know that a hundred percent of the secondary containment is the right thing because of wave action when you do have a break, just like Ashland and what happened over there, but certainly some percentage is probably in order, considering persistent/non-persistent oils, how heavy that oil may

be, maybe it will go through for the design or the secondary containment system meeting industry standards.

MR. BENTON: Scott Benton, General Land Office.

Just wanted to give you my read on what I see this doing. First off, it seems -- Part 105 seems to be two parts. It says, "Determine what your worst case discharge is and then determine what that volume is."

What I -- what I would hope is that the volume doesn't necessarily drive your determination of what the worst case discharge was. Point in case is that in a response zone, you cross a river that's within a half mile of a wildlife refuge, and that goes all the way to -- to a breakout tank, and volume would show the breakout tank may be your biggest concern, but your worst case discharge, in the broad sense, would definitely be the -- looking at bottom line impact.

So, I -- I just want to make sure I'm not -- does volume drive this or am I misreading it?

MR. TAYLOR: Well, as the rule is written now, volume does drive it, and this is something that

we're really interested in getting comments on. It's written into the definitions up front in 194.5. It's -- it's also written here in 194.105(b).

It says, "The worst case discharge is the largest volume." Right now, the -- the rule as written says worst equals biggest, and it sounds like the General Land Office's position is that worst should be more than just biggest. It should be hardest to clean up or in terms of severity of impact on the environment.

MR. BENTON: Yes, that's what -- that's what I'm saying, and also it -- it's just a real indication of our total philosophy, Jim. We want analysis, not easily done formulas that take you away from that.

MR. BRADSHAW: So, we are talking about the distinction between worst case scenario and worst case discharge, something that we've had discussions on a lot.

MR. STREATER: Steve Streater again.

I just want to reiterate, you know, somebody had mentioned a hundred percent credit, you know, we talk 50 percent credit, 60 percent credit. I still

think that you need to use sound science instead of just an arbitrary number, you know, to come up with your worst case, you know, scenario.

The other issue is on response plans themselves. You know, we take these very seriously, and we develop the response plans with the appropriate response materials, you know, resources, personnel, whatever it may be. So, it's just not a plan that necessarily goes up on the shelf, even though you probably hear that a lot, you know. We do develop those, and we run drills based upon those. We give those plans to you for -- for review and approval.

So, those plans are utilized. They're not just, you know, a plan that does go and sit on the shelf. We do utilize those.

MR. TAYLOR: And, boy, we love to hear that, too.

MR. BRADSHAW: Okay. Our discussion in this section has focused primarily on the secondary containment issue.

Are there any comments on the other methodologies of calculating the worst case discharge?

(No response)

MR. BRADSHAW: No? Okay. Our next section is 107, but I think before we do that, we have a presentation scheduled, right, Jim?

MR. TAYLOR: Yeah.

MR. BRADSHAW: Mr. Al Garnett of the Office of Pipeline Safety has a presentation on breakout tanks, I believe.

Briefing on RSPA Breakout Tank Regulations

MR. GARNETT: I'm Al Garnett. I work in the Washington Office of the Pipeline -- of the Office of Pipeline Safety, in the Standards and Technology Group.

This morning, I'd like to present our plan to adopt certain industry standards into the pipeline safety regulations.

The scope of my presentation will be the OPS regulatory jurisdiction, a description of typical breakout tanks, the number of breakout tanks and the commodities stored, table of breakout tank accidents, industry standards versus those in our Part 195, and, last and very briefly, to outline the scope of selected API standards and one NFPA code being considered for

adoption into the pipeline safety regs by a process known as incorporation by reference.

Next. Our regulatory jurisdiction comes from 49 CFR Part 195, which is the transportation of hazardous liquids by pipeline.

Section 192 -- Section 195.2, which is reversed up there, I think, defines pipeline systems to mean all parts through which a hazardous liquid moves, such as the pumps, the line pipe, the valves, the fittings, the meters, and, finally, breakout tanks.

Breakout tanks are tanks used to receive -- to relieve surges in the hazardous liquid pipelines or to receive and store hazardous liquids for re-injection and continued transportation by pipeline.

Although other tanks may be at a pipeline terminal, only the breakout tanks are regulated by OPS.

Breakout tanks are designed, constructed, operated and maintained the same industry standards as other above-ground storage tanks. Breakout tanks are simply tanks selected by the operator to be in breakout tank service.

Next. Breakout tanks are unique structures.

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Generally the breakout tank bottom rests on the soil or bed of sand. The cylindrical shell is erected as a series of six or eight foot tall rings. The rings are composed of progressively thinner plates.

Most breakout tanks have an internal floating or an external floating roof. Thus, this large complex -- complex structure has both stationery and moving components.

Breakout tanks generally range in size at pipeline terminals. On the lower end, from 60-foot diameter by 48-foot high with a capacity of 24,000 barrels, to at the upper end somewhere around 200-foot diameter by 48-foot high, which is the capacity of some 268,000 barrels. Of course, each barrel is the equivalent of 42 gallons.

The next slide shows two illustrations from API 575. I know that a good many people here are knowledgeable about tanks. I've -- I just want to discuss some of the features of them because they support the relevancy of the standards that we've selected for possible incorporation.

At the top is an annular pontoon floating

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roof tank. The annular pontoon's divided into several liquid type compartments. Rain and melted snow collects in the sump in the center of the floating roof and passes down through the stored product by means of a water drain line that exits near the bottom of the tank shell.

The diameter of the floating roof is several inches smaller than the inside diameter of the tank shell, and this annular gap is covered by a flexible peripheral seal.

The short vertical lines are adjustable legs. When necessary to take the tank out of service, the operator climbs down the rolling ladder on to the floating roof, pushes the legs down and locks them into the high-leg position.

Then the liquid is pumped down, and the floating roof lands. When the liquid is pumped down, and the floating roof lands, it is supported on these legs. The high-leg position provides about six foot of head room underneath the floating roof, and after this space is properly cleaned and vapor-freed, it can be entered to perform whatever work is necessary.

The lower illustration is a cross section of a fixed cone roof with an internal floater. The fixed cone roof shields the internal floater from both rain and snow.

The fixed cone roof is supported by a series of vertical columns and then perlins and rafters. The internal floating roof has both peripheral seals and seals in the column-negotiating devices around each of the vertical roof support columns.

This floater also has support legs. Although it's not done very often, access to the internal floating roof and service is by a vertical ladder. Peripheral cone roof vents allow wind to pass through the space above the floating roof and purge any vapors that might have escaped past the seals.

If the tank is over-filled, overflows at the top of the shell protect the internal floater from being crushed against the underside of the fixed cone roof.

The other device common to both floating roofs are anti-static grounding devices between the floater and the tank shell, and vacuum-release devices

that prevent a partial vacuum from developing underneath the floaters when they land on their leg -- on their legs and the liquid continues to be withdrawn. All of the items I mentioned are covered by the standards that we are considering for adoption.

In 1989, API sponsored a study to determine the various -- the number of tanks in various operations. The number of tanks that were in transportation-related operations, which are -- which are defined as breakout tanks, was about 9,000. The commodities -- the hazardous liquid commodities stored are petroleum, such as crude oil, condensates and LPG, and the petroleum products, such as heating oil, diesel fuel, kerosene, automobile gasoline, aviation gasoline and jet fuel.

Next. This is a table of the annual number of breakout tank accidents reported to the Office of Pipeline Safety. You'll note that the total reported in this 10-year period is a 152, which means there were approximately 15 reportable accidents per year.

These reportable accidents, some 25 involved leaks in the tank floor, some around 30 are incorrect

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operation by the operator, eight were from outside forces, 26 were malfunction controller release equipment, and some -- and there was 63 others which broke down in the problems with the -- with a roof water drain line, lightening, and tank overflowing. You note in -- note there were no deaths in the column on the right-hand side. There were three injuries.

In 1994, the -- there were two injuries which occurred while a floating roof tank was on its high leg and was being gas-freed. An explosion and fire destroyed the 55,000-barrel tank and caused some \$2 million worth of property damage.

In '95, one person was injured when the liquid level control malfunctioned that resulted in the tank overflowing, explosion occurred that resulted in \$40,000 worth of property damage.

Next. In January of '88, the failure of a reconstructed tank, not a breakout tank, at a barge terminal near Pittsburgh released some 3.9 million gallons of diesel oil. This event focused considerable industry attention on storage tanks and resulted in the updating of existing standards and developing -- and

the development of new standards.

However, OPS regulations for breakout tanks are very, very limited, and those that are in there are too generalized. For example, our design requirements are in 195.132, and that simply says that breakout tanks are to be designed to withstand the stress produced by the stored liquid and anticipated external loads.

Now you might know that API 650, which is the most common industry standard that speaks to this, in order to follow through with that -- the description of the -- the response to those loads, that standard's five-eighths inches thick.

I moved a little fast there. But going back to the previous one, Jim. We need to bring the federal regulations up to the level of the best industry standards and procedures, and the appropriate OPS catch-up is the adoption of selected industry standards by incorporation by reference.

The first industry standard we're considering is API's 334. A leak in a tank bottom is often difficult to detect. This standard demonstrates the

various leak detection technologies. The first discussed is inventory control. Of course, that just simply uses meters to compare the additions and withdrawals over a period of time. Then there's a volumetric mass method, and that method -- and that measures the change in liquid level or mass after the tanks and lines are blinded off.

Now, the acoustical method detects the continuous sound of liquid passing through cracks in the tank floor and the intermittent sound which is caused by the release of air from the soil at the leak location.

The fourth is the soil vapor monitoring method, which utilizes chemical markers. This illustration is taken from API 334, and it shows the soil vapor monitoring method. Chemical markers are introduced into the stored liquid. They fall to the bottom of the tank. There are probes underneath the tank. You notice that the end of the probe stops at different locations inside -- underneath the tank, and whenever the marker migrates into a probe, it is detected by an analyzer, and from that information, the

operator has a general location of where the leak is occurring,

The next one is API 575, inspection of low-pressure storage tanks. I feel that this is a great source of information for an inexperienced tank inspector. It's loaded with photos of internal and external corrosion, photos showing cracks, failures of riveted and welded joints, problems with roof seals collapse, floating roofs and collapsed tanks.

It talks about the frequency of inspection, and I think one of the most very helpful parts of this standards are the inspection checklist. The checklist is divided into in-service checklists which is comprised of some four pages of items to look for on the exterior of the tank while it's still in service. For out-of-service, there is seven pages of items to look for on the interior of the tank.

API Standard 620 is currently referenced in Part 193 for our -- on our regs for LNG. This standard talks about materials, design, welding, fabrication, inspection and testing. A small number of breakout tanks are designed and constructed to this standard.

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API 650. Most breakout tanks are built to this standard. It has materials, designs, fabrication, erection, inspection of joints, welding and welding qualifications. It talks about hydrostatic testing and pneumatic testing of the roof plates.

Filling a tank with water applies an internal loading that's about 30 percent greater than that that's produced from most crude oils or refined product.

API 651 is a more recent standard. It's a cathodic protection of above-ground storage tanks. It discusses corrosion control, the -- of course where you need the cathodic protections on the underside of the tank bottom. It applies to both new and existing tanks. It discusses corrosion mechanisms. It helps you determine the need for cathodic protection. It talks about foundation soil conditions, rectifiers, anodes, and it talks about the monitoring of the system by reference cells.

Next. This next is an illustration taken from API 651, and it's one of the many illustrations in there, and it shows the installation of a reference

cell under a tank.

API 652, lining of above-ground storage tanks, is also a recent standard. You know, salt water from crude oils often settles out in the bottom and causes corrosion of the internal tank bottom and a little bit up the side walls.

This standard is applicable to new and existing tanks. It talks about the need to sand blast the tank and material properties of various available lining. Of course, the exterior of the tank bottom may additionally require cathodic protection.

API 653. This is a recent standard. It talks about tank inspection, repair, alterations and reconstruction. It pertains to tanks built to API 650 and takes over after the API 650 tank is put into service. It provides minimum requirements for -- for welded and riveted joints, and it has a very interesting part on brittle fracture considerations.

It talks about hydrostatic testing of reconstructed tanks for a period of 24 hours. I think this standard was probably developed after the failure at the -- of the tank in the Pittsburgh area, and that,

of course, was a reconstructed tank, and there's just a lot of concerns about the -- about the loss of the paper trail of the -- of the metals and the reconstructed tank. So, it has a little greater time period for the hydrostatic test.

A very interesting part of the -- of this standard is the authorized inspector certification. This is an API program that's been out there for about three or four years, and I understand that there may be in the area of 2,000 inspectors that have received certification under this program.

The -- the standard talks about the application forms. You've -- they -- they've got the standards, the forms in there, where the -- where a prospective candidate needs to put down his education and experience. He has to pass a five-hour examination which is given in the United States at several locations in the Spring and the Fall, and beyond that, there's a -- a fee to take the examination of about \$600.

API 2000 is venting. It talks about the need for normal venting, about abnormal venting, when

there's a fire inside the tank or when the tank contents are feeling the heat from a fire in an adjacent tank. It talks about vacuum release to prevent the collapse of floating roofs as liquid is drawn down below the level of the floating roof, and it helps the operator select the installation of various available venting devices and talks about how they're to be maintained.

API 2003 is protection against ignitions arising out of static, lightening and stray current. It talks about the factors that creates the generation of static electricity, talks about bonding, talks about proper clothing, natural fibers, like cotton and wool, create less static than rayon or orlon.

It talks about metal tanks that rest on the -- on the ground really don't need grounding rods. It talks about lightening. It talks about flame arrestors for fixed roof tanks, and it talks about open-floating roofs, the need for shunts on the peripheral seals.

It talks about the Faraday cage effect to protect -- that protects internal floating roofs from -- from lightening, and it talks about the preventive -

- that preventive measures most necessary before floating roofs become buoyant.

When a floating roof is on its high legs, filling the surface underneath -- the area underneath the floating roof releases vapors as the liquid comes in in a turbulent manner, and as the liquid rises, it forces these vapors past the seals. During this time, the space above the tank can -- can be for a short while in the flammable range until these vapors are swept out of the tank through the vents.

API 2015 is the safe entry and cleaning of petroleum storage tanks. It talks about the need for proper preparation, and the insurance that all inlet and outlet lines are blinded off. It talks about the need to disconnect all electrical devices in the tank, and it talks about the program for lock-out and tag-out.

It talks about the need for atmospheric testing, both for flammable vapors and ensure there's enough oxygen in the tank. It talks about the need for the entry permits to be issued only by a qualified person, and then it talks about the requirements for

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hot work inside the tank after it's cleaned and about what's necessary to return the tank to service.

API 2021 talks about fighting fires in and around flammable and combustible liquid storage tanks.

This -- these practical tank-fighting guidelines would augment our Section 195.430, which is fire-fighting equipment.

Now, currently, we say the operator must maintain adequate fire-fighting equipment at the breakout tank area, but we -- there's nothing in there that guides the operator in -- in equipment and techniques to fight the fire.

This standard talks about agents for fire extinguishers. It talks about the cooling water sprays, about the discussion of handling fires in various types of tanks, and talks about the problems from boil-over.

Next. API 2026 is safety set on the floating roofs. It talks about the hazardous of descent on to in-service floating roofs and the precautions for persons performing maintenance on floating roofs while the tanks are in service.

It talks about the problem of falling down internal ladders and falling through floating roofs, and it talks about common rescue equipment.

API 2350 is overfill production -- protection for storage tanks in petroleum facilities. It talks about the reduction of overfills by safe operating procedures and proper equipment, and the required maintenance and training for this equipment. As you may recall, the table of breakout tank accidents included several overfills.

This is one of the illustrations in API 2350 in the -- on the right-hand side, this is mounted on the wind girder of an exterior open floater, and if, for some reason, the liquid rises behind -- above its normal setting -- normal high level, the displacer is pushed up against the switch, and the -- and down in a -- a horn blows or a red light blinks in the control room.

If that doesn't inform somebody to do something about this problem, then there's a high-high setting, and when the -- and when that -- when the floating roof hits that displacer, it often shuts down

or diverts the incoming stream before the overflows are reached.

Standard 2610 is the design, construction, operation, maintenance and inspection of breakout tank facilities. It's a recent standard. It aggregates a wide base of current industry experience into a cohesive standard comprising a range of best industry practices.

It talks about regulatory trends, waste management and air emissions. It talks about emergency response and control and training. It's really a complete general reference source and lists over a hundred applicable standards and codes. I think it's a great training resource.

The last is NFPA 30, which is the flammable and combustible liquids code. For this standard, we would not reference the whole standard, but we would simply reference the three chapters shown, the first being the definition of combustible -- of combustible and flammable liquids. The second is impounding around dikes by tanking, by impounding around tanks by diking, and the third is remote impounding.

All right. The last overhead is really a flow diagram. It illustrates our plan to incorporate standards developed by the industry and standards that are familiar with -- with industry people into the hazardous liquid pipeline safety regulations.

Thank you. I have copies of these standards with me. If anybody wants to glance through one later on in the back of the room, I'd be glad to show them to you.

MR. BRADSHAW: Thank you, sir.

We're doing pretty well on time, in good shape here. We're going to move into the Section --

MR. SMITH: Excuse me. Before we move on, I just want to kind of make a couple comments. We definitely, EPA from our perspective, would encourage the adoption of those standards.

What we have found in our inspections at pipeline facilities where EPA has jurisdiction in those areas, that the higher-end product, like gasolines, the raw -- the -- as opposed to the raw product or crude, we find that certain -- certain commodities are protected better in those storage tanks.

So, we find that industry standards are being practiced where gasoline or jet fuel or high-end product is being stored. When you get down to the crude oil, the raw product, there's -- there are occasions where we run into tank operators who simply do not employ those standards on a voluntary basis or, if they do, they abridge them or change the way they implement them.

So, if you brought in as a full-fledged requirement for the whole commodity group, then, yes, I definitely would encourage it.

For EPA's purposes and for people in the crowd, I perhaps maybe ought to consider this putting in some preamble language, when it comes down to breakout tanks and transportation versus non-transportation-related issues for EPA versus Department of Transportation, who has jurisdiction and why and for what reason, we would like to see some encouragement for the facilities to (1) examine about three or four different components.

One is examine under 195.1(b), which -- where it states, "this part does not apply", meaning it talks

about a breakout storage tank is one that relieves surges and receives oil by pipeline and transfers the oil owned by a pipeline.

But then it qualifies and says a breakout storage tank is not applicable -- it is not a breakout storage tank if this part does not apply under 195.1(b)(7), and it says, "under these circumstances", and this is where you wind up getting involved with EPA, and that's kind of driving you towards the memorandum of understanding.

We'd like to see some reference to get facilities to go look at that part that does not apply.

It's where you have a tank -- a similar pipeline facility where breakout tanks are being utilized, where a tankage at that facility receives oil by tank truck, by barge, vessel, aircraft or any other non-pipeline mode.

It's that case in point where if you go to the memorandum of understanding between EPA and DOT, that if you look in Section 2 of the Definitions, it says non -- what is non-transportation. All those components that are identified as this part does not

apply under 195 are referenced in Section 2 of the Definition as being non-transportation-related.

What I'm saying is you could have a facility that has breakout storage tanks and storage tanks that EPA would come in and regulate these storage tanks. DOT would regulate the transportation-related portion of a storage tank.

I know there is some cases where you -- one storage tank shares two different capacities. It receives oil by pipeline and pushes it on by pipeline, but it also has a transfer component by a non-pipeline mode.

In those cases, we believe those to be by the definition under 194 as complex facilities, meaning multiple jurisdiction. It's not unlike a facility down in this region where they receive oil by barge, but they also receive oil by pipeline and transfer it on by pipeline.

There's a requirement to submit a plan both to Coast Guard and to Office of Pipeline Safety, meaning that's a complex facility. It's regulated by both those agencies under the Department of

Transportation.

There is some components where EPA does just that, but if you -- I would encourage you in your regulatory writing, somewhere in your preamble, to encourage facility operators to go read the 195.1(b) section, read the Section 2 of the memorandum of understanding, and then go to 40 CFR Part 112.1(a), which is the General Applicability, which will give you some prescription why EPA is looking at these specific facilities.

Trust when I say that EPA has an active involvement in this area, and we continue to be involved in there. It's one thing we would like to do, is reduce the confusion in that area. The last thing we want to do is take enforcement action against somebody for failure to have done something.

So, as a matter of homework and as a matter of reference for this regulation, reference those points. Go do your homework. Read the part where it does not apply and reference that to the MOU, then reference it to 112, and I think you'll see where EPA's coming from relative to its jurisdiction when it

involves facilities that has breakout storage tanks.

MR. STREATER: I'd like to -- Steve Streater with Mobil.

I'd like to go back to your point there, Don. We've done quite a bit of homework on that. In fact, the Office of Pipeline Safety has provided us clarification on the issue of breakout tanks based upon, you know, you talking about complex issues.

So, you know, they've indicated to us in writing, not -- not just us, but to the industry, you know, what is a breakout tank and what is not, clarified, you know, those parts of 195.

I mean it's -- it was fairly clear to us, and we as an industry had asked for some clarification, and they have provided that. So.

MR. SMITH: I guess my comment to what you would be -- EPA would provide you clarification, too, on what it's going to regulate as opposed to what it's not going to regulate.

If it's clearly a tank that receives oil by pipeline and transfers it by pipeline, there's no other component associated with it as identified in

195.1(b)(7), then if it's identified in 1(b)(7), then it has a potential to be regulated by EPA, too. That's the thing that we use as a clarifying component for you.

Not to turn this into a debate, but simply as a reference tool as to why EPA's looking at those -- those regulations there.

MS. GERARD: Just an additional point on this sort of larger issue as we've been discussing it in Washington since the Summer and today.

One of the reasons why we made the presentation today, asked Al to make the presentation on things that he's considering doing to improve our regulations on tanks, is because this has been an issue we've been discussing with EPA headquarters, and sort of as a part of a long-term strategy to clarify this point and clarify misunderstandings or clarify issues, I guess, about the quality of protection afforded by the different regulations.

We've taken the strategy of trying to upgrade our regulations. We -- we've used the term "parity", to bring our regulations into parity, so that EPA

doesn't see any distinction between the quality of the regulations we have to protect tanks and theirs, to make performance really a non-issue here.

So, we thought that this was a kind of a left-hand/right-hand issue here. The -- the non-OPA part of the -- of the shop was considering doing this, and we thought we needed to sort of state this in a public way so that people commenting on the OPA rule understood the -- sort of the regulatory improvement program that was being considered here about tanks.

We didn't intend to debate the jurisdiction question today, just to make a presentation and be able to take comments about what, you know, Al is considering -- considering going.

MR. STREATER: I guess my concern is, you know, it's fairly clear in the regulation as to what is determined to be a breakout tank. Additionally, Office of Pipeline Safety has provided that clarification in writing, and most of the operators, it's very clear to them, and I guess my concern is, is that somebody changes horses in the middle of a ride.

MR. SMITH: Well, in response to that, and to

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kind of drive this home, DOT's own training documents in their training school that they teach, I think it's in Oklahoma City, in there, they have these diagrams that stipulate -- gives their inspectors some guidelines as to what -- where they find complex facilities at, where there tanks wind up being EPA or OPS kind of issues, and it's those documents as well as our -- the memorandum of understanding as well as the 195 that EPA utilizes as a means to determine whether it has a jurisdictional issue there or not.

So, we're drawing from the same resource that you are relative to that. It's not our intention to go grab new territory because clearly there are tanks that are clearly defined as breakout storage tanks, and that's exactly what they do.

It's when they meet other criteria that gets them into other ball games as -- is the way we look at it, and, quite frankly, it involves non-transportation-related issues.

Here again, I didn't mean for this to turn into a debate, just simply as a point of reference as to if you're wondering why EPA's there, it is this

rationale that we're -- where our criteria goes, and I strongly encourage everybody to get a copy of the schematics that DOT has drawn up.

As far as consistency within the industry, I have received significant number of pipeline plans for breakout storage tanks as well as facilities. I know -- I guess what I'm saying is there's disagreement in your own industry relative to what is a breakout storage tank because I've had several pipeline operators to submit plans to me following the outline set in the schematics, following the outline set in the MOU and following the outlet set in 195(b)(1)(7).

And on that point, you have one side saying yes, and you have one side saying no in your own industry, and, of course, we have our disagreement or gray areas up here. There's no doubt about that.

But rest assured from our perspective, we want you to be fully understanding of where we want you to -- where you want to see where we're coming from, and our whole purpose -- I think my purpose here today was to provide in some preamble language or some reference to that point. Why we are here and under

these circumstances.

MR. BRADSHAW: Okay. We have a couple more commenters on this subject, and then we'll need to move on.

MS. FRIEDMAN: I -- Bonnie Friedman with the State of Alaska.

I just have a comment referring back to the question of adopting industry standards, and I do want to mention that the State of Alaska has adopted through their regulations the API 653 standard for inspection and maintenance of tanks.

I do want to say, though, that in Mr. Garnett's presentation, that there's -- that we've -- that the distinction is made between some of the API publications that are listed that are recommended practices or the guidelines.

We've just worked -- I've just worked recently with Alyeska Pipeline on some of the leak detection requirements using the -- the -- the guidelines, and certainly we -- we make a big distinction there between a standard which we've adopted by regulation compared to a guideline.

MR. BRADSHAW: Thank you.

MR. HURIEAUX: I, too, don't want to make this a debate because we're here to listen, but I just want to say that regarding the --

MR. BRADSHAW: Name, please. Your name, please, for the court reporter.

MR. HURIEAUX: I'm sorry. Richard Hurieaux, Office of Pipeline Safety. Thank you.

Regarding the jurisdictional issues between EPA and Office of Pipeline Safety, we shouldn't blow these out of proportion. You know, we tend to get hung up on the narrow -- relatively narrow areas of disagreement.

What we're doing in adopting standards, we're going to have the best set of tank standards in the country, and I think -- well, I know it's going to be better than what EPA's adopted in detail. It will be working with the industry and the standards committee, which is also our policy.

We just had an agreement on some jurisdictional and inspection contentiousness offshore with the MMS, Minerals Management Service, and we have

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come to a very good conclusion to that, which I won't go into, but it focuses on the safety of the facilities and minimizes these jurisdictional arguments.

So, I would suggest, and I know EPA would agree with me, that we ought to focus on safety and not on our jurisdictional questions, and we'll go forward on that basis, I'm sure.

MR. BRADSHAW: We have one more comment back here.

MR. HOIDAL: I got one comment up here. With respect to 194, let's get back to planning. We're talking about breakout tanks and jurisdiction. But obviously people are going to submit comments on, you know, breakout tanks as it relates to worst case discharge, and if I could just portray what we found -- found in the plans the first time is almost always if you didn't take credit, the worst case discharge obviously is going to be at the terminal, where there's a lot of response resources, and while a lot of companies looked at other scenarios further down the line, places which would result in, as Scott said, a worst case discharge to an environmental area, a lot of

companies just stop their planning right there at the terminal where the tank is.

So, that's kind of why we're interested in getting some input on, you know, adjustments for containment, you know, because we want to push the thinking out on the pipeline.

A second thing is breakout tanks, just by their nature, typically are empty, you know. They're ready to receive surges. So, you know, unless you let the thing overflow, you know, for a long period of time, it's not going to result in your worst case discharge.

So, obviously you guys are providing comments on this, but just, you know, things to think about when you submit those comments.

MR. BRADSHAW: Final chance on breakout tanks.

(No response)

Discussion of 49 CFR 194.107 - General Response Plan Requirements, Substantial Threat Issue, Exercises

MR. BRADSHAW: Okay. We're going to move on to General Response Plan Requirement, Section 107,

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which is obviously a very important section of the regulation, and we'd like to take this because there are so many incremental provisions here on a paragraph-by-paragraph basis A through D, starting with A, if we could, and Paragraph A addresses the need for to be a substantial threat of a discharge.

Each plan -- each response plan must plan for resources for responding to the maximum extent practicable to the worst case discharge and a substantial threat of a worst case discharge.

Any comments on Paragraph A?

(No response)

MR. BRADSHAW: I think we want to mention here that really this is a section that is potentially impacted by a recent National Transportation Safety Board report on the San Jacinto spill, and, Jim, would you like to comment on that?

MR. TAYLOR: Happy to. Our colleagues at NTSB recently released a report in September 1996, their accident report on the San Jacinto spill that resulted from -- from the flooding in October 1994.

It -- the report made a variety of

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recommendations, some of which were directed at industry, others of which were directed to the National Response Team.

The recommendation in that report that is most relevant to our discussions today about Part 194 is that the NTSB suggested that the -- that the Office of Pipeline Safety put a -- a renewed emphasis on requiring operators to address in their spill plans what they will do when there is a substantial threat of a discharge.

Now, historically, our OPA 90 Program has focused our attention on what the pipeline operator does after the oil has been released, spill detection, mobilization, containment, clean-up, and -- and we've not placed a lot of emphasis on what you do when your line is threatened, but there's not been a release yet, and what we're looking for comments from industry on, and as well as our -- our fellow agencies, is the extent to which we might need to put a greater emphasis on that issue.

MR. BRADSHAW: Comments on that?

MR. STREATER: Steve Streater with Mobil.

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I'd like to address this specific question, and I believe Bill Hoff has some other comments related to the regulations.

The NTSB recommendation to RSPA specifically stated, and I quote, "require operators of liquid pipelines to address in their Oil Pollution Act of 1990 Spill Response Plans identifying and responding to the events that can pose substantial threat of worst case product release."

At present, the hazardous liquid pipeline operators have procedures in place which conform to 195 -- I'm sorry -- 49 CFR 194 as required by the OPA Act of 1990.

Additionally, hazardous liquid pipeline operators have emergency response procedures that extend beyond the scope of 49 CFR 194 in order to comply with 49 CFR 195.

Some of the specific requirements in 195.402 are as follows: receiving, identifying and classifying notice of events which need immediate response by the operator or notice to fire, police or other appropriate public officials and communicating this information to

the appropriate operator personnel for corrective action.

Prompt and effect response to notice of each type of emergency, including fire or explosion, occurring near or directly involving a pipeline facility, accidental release of hazardous liquid or carbon dioxide from a pipeline facility, operational failure causing a hazardous condition, and natural disaster affecting pipeline facilities.

Duplicate and redundant requirements between Part 194 and 195 are not warranted based upon the NTSB recommendation. Part 195 adequately addresses this particular recommendation.

MR. BRADSHAW: Anything else on the substantial threat issue? Jim?

MR. TAYLOR: Just for the good of the order, the Office of Pipeline Safety is issuing an alert notice which is a formal notice to the pipeline industry. It was just signed last Friday. We expect it to come out in the Federal Register late this week. We have copies of the sign alert notice on the table out in the lobby.

Basically it's a one-page reminder from the Office of Pipeline Safety to the regulated community of the importance of planning for not only worst case discharges but also substantial threats of a discharge, and there are copies of that available in the lobby.

MR. BRADSHAW: Okay. Paragraph B addresses English-speaking plans. Any comments on that one? Scott?

MR. BENTON: I think I'd be remiss from the State of Texas not to comment on the substantial threat.

I agree with API's comments that it's better addressed in a 195. I think our San Jacinto incident shows that there may be some laxity or some need for clarity on what that means and what actions need to be taken as many things happened that weren't reported and acted upon or at least agencies weren't knowledgeable of the actions.

And, so, I would say your -- your formal notice, Jim, that you just mentioned, the bulletin, is -- is an excellent start, but I -- for the record, I need to say that I think this point needs further

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review, however in a different section.

MR. BRADSHAW: Okay. Paragraph B, plans written in English or other appropriate languages. No comments?

(No response)

MR. BRADSHAW: Paragarph C has to do with consistency with the National Contingency Plan and area contingency plans.

MR. HOFF: My name is Bill Hoff with Teppco, speaking on behalf of Teppco and API.

Under 194.107(c), the second paragraph -- pardon me -- the second sentence, "an operator must certify that it has reviewed the NCP and each applicable ACP, that the response plan is consistent with the existing NCP and ACP."

We would suggest an insertion to have it read: an operator must certify upon completion of each response plan review indicated in 194.121(a).

The rationale for this is the additional language would be inserted as a matter of clarification and to ensure a consistent application of the regulations under 107 and 121 concerning the review

process.

Currently, there is some opportunity for ambiguity there, and we would feel this would help to clarify.

MR. BRADSHAW: Thank you.

Anything else on that paragraph?

MR. BENTON: Scott Benton, TGLO.

Recent legislation of the Coast Guard Authorization Act brought up the question about consistency with the ACP in performing your response actions.

I'd suggest that the same ACPs that are utilized by the Coast Guard are also utilized by coastal pipeline companies, and that interpretation needs to be well understood, and it's basically -- I'm going to misquote it, and I apologize. I'll look for help, but it's basically saying you have to -- you have to -- your response has to be done consistent with the ACP.

So, like for an example, if the ACP says dispersant usage is a primary candidate for use, and you don't use that, there needs to be, I guess, some --

some explanation for that, and, so, I think that's important to note here when you start linking individual FRPs with the ACPs so closely.

MR. BRADSHAW: Okay. Paragraph D gets into some very specific requirements of the plan. Let's try taking them individually and see if that works, and if not, we'll just get more global comments from you.

The first is a core plan versus an information summary. Anything on that?

(No response)

MR. BRADSHAW: Okay. Number 2 is immediate notification procedures. Anything on immediate notification procedures?

(No response)

MR. BRADSHAW: Spill detection and mitigation.

(No response)

MR. BRADSHAW: Name, address, and telephone numbers of OSROs.

(No response)

MR. BRADSHAW: Response activities and response resources. We had some discussion on that

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earlier. Anything else under response activities?

(No response)

MR. BRADSHAW: Subparagraph 6, names and telephone numbers of federal, state and local agencies.

(No response)

MR. BRADSHAW: 7, training procedures.

(No response)

MR. BRADSHAW: Equipment testing.

(No response)

MR. BRADSHAW: Drills and exercises.

(No response)

MR. BRADSHAW: Let me raise an --

MS. GERARD: This would be the time where there would be any comments on how we're conducting that.

MR. BRADSHAW: I think there are a couple of -- of probably related issues we can bring up here. One of them has to do with the relevance of prep and whether or not we reference it here.

Does anyone have any comments on that? I see Scott getting ready.

MR. BENTON: Yes, I think at least reference

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to prep, not losing the fact that it is a voluntary program. I think that's very important to remain, but referencing in this section as a -- as an option is very important.

We've seen the good benefit of the prep program and its impact on readiness. So, yeah, I think it's very important to -- to be -- to be done here, and I think it also would highlight the -- the -- the OPS run exercises as well so people understand how that relates to their own readiness potentially.

MS. GERARD: Is the level of effort that we have underway appropriate and meaningful? The 20 exercises a year, the two area exercises. I -- I note that we don't have for 1997 confirmation on the two volunteers. I didn't know whether that was a sign of lack of interest or lack of -- you know, people not thinking this was beneficial.

MR. TAYLOR: I know there are at least several companies here that have participated at the tabletop program to date, and some that are scheduled to.

Of course, the -- the reference Stacey is

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making is to the one set of tabletop exercises that's outlined in the prep in terms of unannounced spill management team tabletops.

Does anybody want to offer their experience here on whether or not that's working?

It's working? I got a nod.

MS. GERARD: I'm sort of surprised about the complete lack of interest. I don't know whether this is bad or good. You know, you're being quiet. Does that mean it's good?

MR. TAYLOR: What about operators who are better in severe area exercises? I know we've got Williams represented.

Joyce, what do you say?

MS. CHILLINGWORTH: You're picking on me.

MS. GERARD: We're not meaning to put you on the spot. We just figured that, you know, you had some thoughts.

MS. CHILLINGWORTH: Joyce Chillingworth with Williams Energy Group.

We were involved, and I'm going to say, two

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years ago with an area exercise which was a full-scale exercise. From our standpoint, the planning process took six months or better, and possibly was a bit on the ponderous side.

It -- it boiled down to that we had a lot of committee meetings, and yet because we were the lead company, we probably ended up making most of the decisions and doing it.

So, you know, the -- it took a long time to get to the exercise day, and maybe that process needs to be streamed down -- streamed -- streamed down a little bit, especially seeing near the end the Federal Government was running into budgetary crunches and was unable to participate in some of the planning meetings fully.

So, you know, the -- the planning was ponderous. The exercise day itself was, as could be expected, hectic, and some things came out of it that were valuable that we've incorporated, I'd say, at this point.

MR. TAYLOR: One of the things we're interested in getting some input on is the extent to

which our -- our current rule adequately covers the requirements for exercises.

Should we be more explicit about what we're looking for or would -- would a specific reference to the prep guidance document suffice?

Right now, we -- we literally just have a -- a few words. It says drill types, schedules, and procedures. Is -- is that sufficiently clear or does it require greater detail?

MS. BROUSSARD: I think the industry has pretty much worked very hard on the prep program. I think many of us in the industry have adopted the prep program.

It's viewed as really a success between government and industry coming together in order to try to handle a very extensive program. I think initially that might have been, as Joyce indicated, maybe really extensive in the planning phases, but again you have to recognize it's in its infancy.

We've only had prep really for a couple of years, if you actually look at it. So, we -- we still are -- are constantly looking and improving that

program, and we have the government to thank actually for forcing us into that initiative and the industry for participating.

I would like to say that I think really if you reference prep, and you give the references and the operator accessibility to the document, he can best decide whether that particular program is best for his company and his facilities or should he choose to go ahead and have his own program and submit it to you for approval.

Again, remember, we have to submit all these plans normally, even if you look at how the 194 is written for you to approve, and then in 195, of course, emergency response plans are also required. So, there is a -- a double redundancy there.

I -- I think basically we feel that the program for training is operating. Obviously it's got to stay ever green. It's got to always constantly improve.

I've seen a real effort on the part of the Office of Pipeline Safety in participating and actually helping in the design operation. We're going to

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obviously be subject to one very soon as a matter of fact that's going to be conducted by OPS, and we're looking forward to that because it challenges us. It's an unannounced exercise, and it will challenge Shell as to its preparedness.

Shell Oil Company and its subsidiaries did participate in a quite extensive area exercise involving all the agencies early on in the prep program. Again, that was a very large program. It was very successful. It had a lot of planning attached to it.

I'm sure there's other integrated companies that have gone through the exact same thing, and I think as this program develops, I think we'll get better at it. There will be maybe not so much the large grandiose exercises that we've seen that many people want to concentrate on, but much smaller dynamic exercises to really get to the more common events that you see actually in the field.

So, I guess the reason you're hearing so much silence is the fact that the program that you currently have, together with the prep initiative that was

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launched by the state and federal governments and industry, is a success, but again it's constantly being improved, and the only thing that I could think of personally would be as you've already indicated as to reference prep in your documents, so that you give assistance to those who may not be aware of it.

MR. BRADSHAW: Thank you.

Larry?

MR. MAGNI: Yeah. Larry Magni, API.

Just building on what Gwynette just said is this is really, I guess, in direct answer to what I call the OPS Question Number 9, the second part of it.

The prep is a voluntary program, should be referred to by OPS as a voluntary program. The prep guidance document may be incorporated by reference as long as it is considered guidance and not a requirement or used as a checklist for plan approval.

MS. BRANDT: Jeannie Brandt. Washington State is in the third year of their prep program right now, and it's voluntary for us. We have -- we have basically bought off on prep for our regulation, but it is -- we found that all the facilities like using it.

One of the differences in Washington State is that we need to go and evaluate the drills. So, we actually go on the scene for their -- for their equipment deployments as well as their tabletop drills.

We're encouraging -- since this is just the third year, we've encouraged the facilities to focus on fewer components within prep, and to just really drill.

This is when you really find out if the plan works. I mean the plan, until you do an exercise, is just a document, and -- and we found that it to be very effective, and I think prep is something -- I think everybody likes having a checklist, having, you know, kind of knowing what they need to do, and I know in Washington, we've taken the prep, broken it up in even smaller components, and we send the check -- the checklist out before any kind of an exercise.

They will check off the components that they plan on -- on dealing with and will send that back to me so I know, you know, what they're going to deal with, with the understanding that I'm not going to ding them for anything else. I'm only looking for these subcomponents.

MR. BRADSHAW: John?

MR. MANGANARO: Thank you. John Manganaro, Response Management.

We've -- well, I've conducted several exercises, and I've attended when I was with the Federal Government a number of area drills, and what I've seen over the last couple of years in conducting the smaller-type drills, which are not government-initiated, is 80 percent of the benefit, 90 percent of the benefit from a very elaborate government-initiated exercise with maybe six months or seven months worth of planning in advance.

So, they're very small exercises that are being conducted on the 15 core components in a three-year cycle. They seem to work very well, even with four weeks, six weeks of planning in advance.

The auditing-type of exercise where the government comes in and -- and does a government-initiated exercise appears burdensome, maybe more burdensome than the amount, more value that you might get out of that, and where we've had federal and state agencies come and monitor the smaller-type exercises

that they're doing annually, I think the benefit is -- is there because both are getting benefit from seeing the federal side as well as the industry side during the exercise. So, prep should be recommended as a guideline to use and given as a -- as an option, I think.

Secondly, on the training aspect, it just says training should be required, is there any requirement, and I'll look towards maybe NIIMS, incident command system training, because the other federal agencies are using that for their own response organizations, to suggest that as a potential ICS-type training.

MR. TAYLOR: With respect to the incident command system, the requirement that your facility response plan be consistent with the National Contingency Plan and the Area Contingency Plan, by definition, that requires the operator to use an incident command system, and, you know, by that, we -- we consider an incident command system to be something that addresses each of the five basic emergency management functions, command, operations planning,

logistics and finance, and something that delineates a clear chain of command and also allows for modular expandability, such that the command structure grows as the size of the incident grows, and it also has to allow for that kind of activity also under the new NCP, for that kind of activity with unified command, so that you can integrate the responsible party's command element with the federal on-scene coordinator and the state on-scene coordinator and also the local government, if they're a player in that as well.

Here's -- here's where I have to step out of character here. My -- my personal bias -- my personal bias is for NIIMS. I think NIIMS is fantastic. I love it. But that's my -- that's my -- background is out of the fire service. So, I think NIIMS is the greatest thing since sliced bread.

I -- I don't know that in 194, that I can impose my personal preference for that specific variety of incident command systems on the pipeline industry under the guise of consistency with the NCP. I mean they've got to have an ICS that is workable and does what an ICS should do.

I don't know if we can actually force them to adopt my favorite flavor of ICS.

MR. MANGANARO: Can I do this again? John --

MR. TAYLOR: Also, for the record, for the transcript, the acronym NIIMS, National Inter-Agency Incident Management System, developed by the U.S. Forest Service.

MR. MANGANARO: Thank you. U.S. Coast Guard in their advance notice of proposed rulemaking for hazardous substance FRPs, is considering specifically mentioning NIIMS, not a requirement but has a -- has an example of an incident command system, and that basically was my question, not to require it but to maybe follow a similar suit that another federal agency is doing and just offering it for consideration when you're developing your ICS.

MR. SMITH: Real quick. As an on-scene coordinator, I've participated in the grueling exercise of planning for a prep drill as well as one who's been the lead incident commander for the Federal Government in the drill, and also participating in the real exercise itself, but doing the incident.

Trust me when I say when I get on scene, and I can't find some kind of command and control function, that makes the day really long and hard trying to get things together. It really encourages me to want to go use my trust fund.

So, where we can go get consistency factors, whether it's through some ICS or NIIMS -- I'm like Jim, I'm from the fire background, too. I spent five years as a hazardous material responder in a fire department, and, so, I understand exactly where he's coming from.

The drawback is I know we can't require you to do this, but trust me when I say when we review a response plan, I look for command and control. If you ain't got command, you ain't got control, and if you haven't established it, I'm going to establish it for you as an on-scene coordinator, and I'll bring to bear those enforcement and responsibilities that go along with the title.

But truly in your planning function, we use prep as kind of the benchmark when we review somebody else's other standards, such as if a company's decided to develop its own ICS or develop its own drill and

exercise program, we use prep as the benchmark, just like we use NIIMS as the benchmark to compare it, to see does it provide some equivalency in terms of training purposes, response purposes, and exercising purposes?

We use it, the prep, as the benchmark, and I think when they talk about ICP, when you hear that later, if you ain't already talked about it, it's -- you'll see the term "preferred". I like the term "preferred". We prefer that you do this. We can't tell you you have to, but trust me, when you get into an incident and it's going smoothly, it's because the preferred mechanism is in place.

MS. GERARD: Every time he says trust me, you know.

MR. BRADSHAW: I can see these two guys are excited about this.

MR. TAYLOR: Perhaps something that -- that would -- would address Mr. Manganaro's concern is the addition to the definition section of what -- what is the definition of an ICS and as an example cite NIIMS.

MR. BRADSHAW: Well, and this was brought up

in the context of training, too, Jim, and correct me if I'm wrong, but when DOT reviewed the plans and the training procedures, it was a link back to the OSHA HAZWOPER requirements, and part of that is incident command training, right?

MR. TAYLOR: Right. For the record, HAZWOPER, OSHA, in 1929 -- 29 CFR 1910.120, Hazardous Waste Operations Emergency Response Standard.

MR. BRADSHAW: Excuse me. Jeannie Brandt had -- had a question a moment ago.

MS. BRANDT: I was just going to say that I know our -- the Northwest Area Contingency Plan, we're pretty close to actually putting NIIMS right in there, and I know that unofficially, the Department of Ecology has bought off on that.

The way that we generally deal with it for facilities, who have been very good about adopting NIIMS, is that we tell them that we can't force them to use NIIMS, but they have a choice. They can learn one or two, because when we come on scene, we're using NIIMS, you know. Just say it nice, and, you know, -- but -- but most of them have done that anyway.

We've also been very fortunate with EPA Region X, who we work very closely with. I'm more of an inland area in the state of Washington, where they've come out and given a lot of ICS training, you know, to -- to different facilities, to LAPCs, to combined, you know, groups, and they're teaching the NIIMS system, too.

MR. TAYLOR: And the Coast Guard has taken the same approach. When -- when the Coast Guard shows up for a spill on the coastal zone, based on last year's commandant instruction, they're going to be using NIIMS as their command system as well.

MR. BRADSHAW: So, I'm hearing comments that it's more than just a training issue; it's a response organization/response management issue, and where should that be addressed in the planning requirements or are we saying it should be addressed somewhere in the plan requirements?

I know the other place DOT has linked it is under consistency with the area contingency plan. If the area contingency plan calls for an incident command system and a unified command, then to be consistent,

the operator's plan needs to do that.

Would you agree with that? Yes. Any other comments on training, drills and exercises or NIIMS? I guess we're on all three right now.

Scott?

MR. BENTON: Scott Benton, General Land Office.

Again one caution. When you referenced the area contingency plan, there are varying states of credibility throughout the country. It's really critical if you -- if what I'm hearing is that NIIMS compatibility is incredibly important, which is what I think I'm hearing, it may be worth a statement in the regulations that highlights that -- that issue, and one track we've utilized in Texas is that you have to have the ability to interface with a NIIMS ICS. So, that means you have to -- that -- that way, you ensure the compatibility.

MR. TAYLOR: Well, then perhaps what we're hearing is that there's a need for us to clarify what we mean when we talk about consistency with the NCP and the ACPs.

MR. BRADSHAW: Okay. I think there's one final exercise-related issue that we want to get on the table here, and you have it in your books. It's a document called "Guidelines for Developing and Evaluating Oil Spill Response Exercises". I think it's in draft form, is that right, Jim? It was referenced in RSPA's Notice of Public Hearing as an issue they wanted to talk about here today.

I guess maybe one of the first things we should ask is how many were aware of this document and have seen it before?

(Show of hands)

MR. BRADSHAW: 1-2 -- just a couple. Okay. One of the questions, I guess, would be is do you think there's a need for guidance on how to -- recommendations on how to conduct an exercise program?

Any comments on that?

MR. MAGNI: Bob, Larry Magni, API.

We responded to that question. Guidance documents which provide information on the planning, implementation, evaluation and response exercises should be made generally available to the industry.

However, the guidance document should be considered guidance only, not a requirement for the development of the response exercise.

MS. GERARD: That is the official API position, make it available but it's just a guidance.

MR. TAYLOR: Just -- just to give some background on this document, it's not something that was intended to create an additional burden on industry, to conduct more exercises or different exercises; it was actually meant to complement the prep guidance that was already out there and providing some background information.

It was written for an audience of pipeline industry -- well, general oil industry folks presumably from smaller operators who did not already have sophisticated in-house oil spill drill programs. It was meant for a reader who is starting at ground zero and looking for some helpful hints on how to develop and implement an exercise program, and, so, it is intended as guidance, helpful hints, rather than a binding regulatory document.

MS. BROUSSARD: This is just a question, Jim.

Whenever you guys have to develop the government-led exercises, do you utilize this document or do you use another protocol?

MR. TAYLOR: Strictly speaking, the Office of Pipeline Safety doesn't -- doesn't develop government-led area exercises, if in fact that's the thrust of your question. Those are exclusively EPA and Coast Guard activities.

When we do our strategic tabletop exercises -- okay. That's what you're referring to? Yes, we do use that -- that document as -- as sort of a road map for our -- our exercise development process.

MR. BRADSHAW: I guess I could add that the document was originally developed in association with the Coast Guard, based on their old philosophy or continuing philosophy of conducting exercises. So, I would say it's consistent with the way the Coast Guard is conducting their area exercises as well.

Joyce?

MS. CHILLINGWORTH: When -- when -- Joyce Chillingworth, Williams Energy Group.

When we were developing and planning the area

-- industry-led area exercise for RSPA that we did, we did find a pre-print of this document very beneficial as a guideline and the steps and -- and the procedures that we did go through many of these in this document.

MR. BRADSHAW: Okay. Have we finished drills and exercises?

The next item is plan review and update procedures. Anything in plan review and update procedures? Yes, yes, yes. Gwynette is searching.

MR. TAYLOR: Did we skip all the way to 194.121?

MR. BRADSHAW: No. Plan review and update procedures is Subparagraph 10 of the plan requirement.

MR. TAYLOR: Oh, my apologies. So, we're still 194.107?

MR. BRADSHAW: We're still on 107, Subparagraph (d)(10). We can revisit it back then if we want to give Gwynette some time to find it.

The final element of that plan requirement section is an appendix for each response zone. Yes, sir?

MR. BYRD: Bill Byrd, RCP.

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Just from a semantic standpoint, to be more consistent with integrated contingency planning guidance, I'd prefer to reword Paragraph D where it talks about the response plan and the core plan and different appendices for each response zone.

I understand what the DOT, I think, is trying to achieve by saying your plan has to address each zone independently, but if, under integrated contingency plan, we're developing -- an auditor were to come in and say where is your appendix for this zone, I'd say I don't have one.

MR. TAYLOR: And we are definitely looking for -- for input on how we can make our 194 rule more consistent with the integrated contingency plan because we are -- we are definitely sold on the one plan. We think it's -- it's the shape of things to come in terms of contingency planning.

MS. FRIEDMAN: Bonnie Friedman, State of Alaska.

We've found that using the format for the response zones, although we use them slightly differently on the pipeline, that we found that to be

really an excellent way of keeping track of responsibilities in that area, and the resources in that area.

MR. BRADSHAW: That generally covers the response plan requirements. Did we miss anything? Is there any issue within the context of the response plan that we need to bring up at this point?

Steve?

MR. STREATER: I'm sorry. We jumped around there. I got a little lost. Steve Streater with Mobil.

Does this address the RSPA question on the ICP?

MR. TAYLOR: No. That's the next section.

MR. BRADSHAW: Yes, that's later.

MR. STREATER: Okay. We jumped there, and I was --

MR. BRADSHAW: Sorry. Okay. I'm going to think out loud here. Jim and gang, we've got 10 of 12 here. The next issue is state plan submittals and integrated contingency plan, which could get us, I think, into some pretty --

MR. TAYLOR: Lengthy discussions, which could not be done in the next seven minutes.

MR. BRADSHAW: Right. Let's save it for after lunch. So, let's break for lunch now. We'll start promptly at 1:00.

(Whereupon, at 11:55 a.m., the meeting was recessed, to reconvene this same day, Wednesday, January 29th, 1997, at 1:00 p.m.)

A F T E R N O O N S E S S I O N

1:00 p.m.

MR. BRADSHAW: I'd like to repeat a couple of administrative items. If there's anyone who hasn't signed up with the sheet out front, please do so, so we can get you on the attendance record.

And pagers. Let's, if we can, make sure those pagers are on silent alarm. You're clean? Okay.

We're doing pretty well schedule-wise. We thought we'd start off this afternoon by perhaps revisiting any open issues that you may have thought of from the morning session. I know there are one or two that I heard talked about over lunch, and let me start with one, Jim, that I can direct to you that I heard.

There was some not confusion but perhaps questions on the relevance of the breakout tank presentation to what we're doing under 194.

MR. TAYLOR: Sure. And I think what I can do is put our breakout tank discussion into context. It's not directly related to Part 194. It's not directly related to our efforts to finalize the Part 194 rule. It's actually a 195-related issue, and, so, if OPS goes

ahead and adopts those industry standards, there would be an incorporated by reference into 49 CFR 195, not 194.

So, the reason why we inserted that 195-related subject matter into an agenda that is entirely 194-related material is just because we knew we'd have a captive audience of industry people who have a vested interest in the outcome, and it gives us an opportunity to use you folks as a sounding board, and in terms of giving us input on that, for the next 60 days, we're going to keep the docket open, and even though, strictly speaking, the tank issue is a 195-related item, go ahead and give us comments to the docket on it, along with your comments to the OPA 90 spill plans.

What we'll do is we'll split those comments out and in effect process the comments differently, even though it's all going to the -- to the same file number there in the Dockets Unit.

I hope that clears up some of the confusion.

MR. BRADSHAW: Anything else you all would like to bring up with regard to the program this morning, open items that we need to revisit?

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(No response)

Discussion of 49 CFR 194.109 - Submission of State Response Plans, Integrated Contingency Plan

MR. BRADSHAW: Okay. Then this afternoon, we'd like to start with Section 109 on the agenda. It's the submission of state response plans, and OPS has tied the integrated contingency planning item to this section as a similar situation, where we're talking about plans of a different format than what might be prescribed by 194 right now.

Any comments on Section 109? Steve?

MR. STREATER: Steve Streater with Mobil.

I'd like to address the ICP issue. The question that RSPA originally proposed. API has no objections to incorporating the ICP by reference, provided that the ICP is not utilized as a regulatory checklist to determine compliance.

As stated within the Federal Register notice of June 5th, 1996, regarding the ICP, "this notice contains a suggested ICP outline as well as guidance on how to develop an ICP and demonstrate compliance with various regulatory requirements. The policies set out

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in this notice are intended solely as guidance."

The ICP mechanism cannot preclude regulatory compliance by the applicable standard 49 CFR 194.

MR. TAYLOR: Yeah. We concur. The reason why we wanted to get this on the agenda is that the ICP guidance document as published in June was DOT going on record in the Federal Register saying we support the integrated contingency plan initiative. We will accept and review and approve plans submitted in the ICP format.

The reason why I'm bringing it up in the context of these discussions today is that I wanted to have something in our final rule which also referenced the ICP, and basically it completed that process, and -- and had our agency go on record as saying we support the ICP. We welcome plans submitted in that format, and I -- we -- we certainly never intended to use the ICP guidance document as a regulatory hammer.

MR. BRADSHAW: Step up to the microphone, please.

MS. BRANDT: Jeannie Brandt, Department of Ecology.

From the get-go in Washington State, we've required or asked facilities to submit one OPA plan that covers everyone. We have several facilities, some of which are in the region that I cover, that have a plan that's covered -- OPA's covered by the Coast Guard, by DOT, RSPA, by EPA, and by us, and what we've done in the -- in the -- when we were reviewing plans was we would review them, and then send them to the other government agencies for a 10-day period for their comments, so that we made sure that we weren't stepping on anyone else's toes, and -- and then finally, when they got, you know, approved by us, they were approved by the other federal agencies, also, and that way, it's just kind of the worst case on everything, you know.

Whoever has the strongest, you know, on a specific issue, if you cover that, you're covered, you know, you're covered by everything else. So, we couldn't require one plan, but we'd just tell them, hey, if two of us show up for one of your drills or spill, and you got the wrong plan pulled out, you're going to get whacked by the other one.

So, this way, everybody's happy, and I think

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that the facilities have really appreciated it, too. They just have the one plan.

MR. SMITH: I'll make one quick comment about ICP, and I heard this from an industry person the other day, and it kind of shocked me. It was a meeting down in Corpus, that they felt that it was for oil only.

The ICP is for any kind of contingency planning function you can do. That might include a RCRA requirement, an NPDS requirement, or just strictly an oil plan. It's a format designed to contain all things.

Here again, it's just a preferred document we'd like for you to use. There's nothing says you have to do it. If you like what you've got, go ahead with it. Nobody wants to change the ball game on you.

Just trying to simplify the planning process somewhat, and especially in future tense, when new -- a new law might come out. At least you'll have a document that's consistent from this point forward relative to that rather than a significant number of different model plans or whatever.

MR. BRADSHAW: Other comments on state plans

or ICP? Gwynette?

MS. BROUSSARD: I guess the one thing that on the ICP issue, and I take your comments to heart pretty much, Don, is the fact that other states, sometimes state agencies state that the plans are too large. They're unmanageable. They're too thick. They encompass volumes.

I guess the ICP concept is wonderful. It certainly can be utilized, in, I think, certain types of situations with certain types of facilities, but it also presents other problems when you have an all-encompassing document, when you get state agencies that get just an OPA plan from you complaining about how big the OPA plan is.

If we start incorporating other types of planning documents that Don mentioned, at that point, what happens is that the volume grows, the papers grow, and then we get criticized by the agencies about the fact that the document is too large, unmanageable.

So, the government needs to kind of think in the ICP process, when you all are streamlining that and when you're improving it, and I know you constantly

are, you might want to think that through because a lot of times, we have -- we have received that criticism.

MR. BRADSHAW: Thank you. That's all on Section 109.

Discussion of 49 CFR 194.111 - Response Plan Retention

MR. BRADSHAW: We will move to 111, which is response plan retention. Comments on response plan retention? Yes, sir?

MR. LEWIS: My name is Brian Lewis. I'm with Texaco Trading and Transportation and speaking on behalf of API.

I would like to make some recommended changes to Part A and Part B of Section 111 to read: Part A, each operator shall maintain relevant portions of its response plan at the following locations: (1) designated office of record for the affected facilities; and (2) at designated locations where the plan will be activated.

The rationale behind this change is the current regulation requires that the plan be located at an operator's headquarters. This causes confusion since there can be many different levels of headquarter

offices for pipeline facilities. For example, a parent company headquarters, subsidiary headquarters or division headquarters.

The current regulation additionally requires that the plan be located at each pump station. Most pump stations are remotely monitored and controlled from the central control center and are not manned with response personnel.

If a leak were to occur on a pipeline with such unmanned stations, initial response would most likely begin from the control center, and the unmanned station would probably not be directly involved in the response activities. Thus maintaining a plan at unmanned locations would be unnecessary.

The current regulation further requires the plan to be located at areas where response activities may be conducted. Response activities may occur at any location along a pipeline route, such as river crossings, pump stations, terminals, tank farms, or various other pipeline-related facilities within the response zone.

Many of these locations may be unmanned and

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may not have facilities suitable for maintaining the plans.

The plan should be available at the designated office of record for the affected facilities and at designated locations where the plan will be activated, such as locations where the notifications are received, control centers, or where personnel and equipment are dispatched, such as area, region or the district office.

We'd like to suggest a change to Part B to read: each operator shall make a core plan and relevant response zone appendices available to each qualified individual.

The current regulation requires that the qualified individual be provided with a copy of the response plan. A response plan may contain multiple response zone appendices with different qualified individuals for each response zone.

It is only necessary that each qualified individual have the core plan and the response zone appendix which pertains to his or her zone.

MR. TAYLOR: Good points. Thank you.

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MR. BRADSHAW: Other comments on this section?

MR. SMITH: Jim, by -- if you -- if -- just to follow up on that, in EPA's regs right now, we say to keep the plan at the nearest field office, for instance, where the guide's going to be, but you mentioned something about not sending the entire core plan, just the sections, I guess, appropriate to that particular office.

Would the other section -- if the spill is going to go beyond that zone -- for instance, I'm thinking of a riverine environment, where the spill begins here and then goes down and gets out of that zone, gets into another.

Would it not be prudent for that individual to be aware of what's in the next zone down from him? I just use it as a kind of a caveat. Some information may be needed beyond just what would be in your core zone, I would suggest, simply for planning purposes, if nothing else. Maybe additional resources on habitat downstream from him that's out of the response zone.

I'm not familiar enough with this area, but

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just from hearing what you said in terms of response and what I needed, I needed an on-scene coordinator, maybe that's some way to look at it, too.

Not everything -- I would agree with you, you don't need everything, but something down from where that spill might go, maybe two portions of the core as opposed to all four portions of a core or something like that, relative to where the spill might -- is anticipated to occur.

MR. TAYLOR: It sounds like the principle here is the QI has to have the portions of the plan related to the area for which that QI would have to respond.

MR. SMITH: Yeah.

MR. LEWIS: We certainly don't want to be operating in a vacuum. He certainly should be aware of adjacent response zones as well. But it would be clearly unnecessary for somebody in Louisiana to have information about New Mexico.

MR. TAYLOR: Yeah. Part of this would depend on the size of the operator's response zone. Some operators divvied up the response zone by business

units or maintenance units. Others used geo-political boundaries, and the response zone might be several states wide.

Discussion of 49 CFR 194.113 - Information Summary

MR. BRADSHAW: Moving on, the next section is 113, the Information Summary, and this section of the interim final rule summarizes the requirements for the content of the information summary, which is contained in the core plan.

MR. LEWIS: Again, Brian Lewis with Texaco, speaking on behalf of API.

We'd like to make some changes to 113(b)(1) and (2), to read: the information summary for the response zone appendix required in 194.107 must include, and then strike Number 1, which reads the information summary for the core plan, replace Number 2 with a new Number 1 that would read the name and title of the qualified individual with 24-hour telephone numbers.

194.113(b)(1) requires that all response zone appendices contain the core plan's information summary.

This requires each response zone appendix to contain a

listing of other response zones, counties and states that contain line sections which pose significant and substantial harm. The usefulness of such information in each response zone appendix is questionable.

Further, maintaining such information in each response zone appendix represents an unnecessary and burdensome task, since changes which occur in one response zone, such as buying or selling assets, may be incorporated into each of the other response zones.

We're requesting that the title be added as an alternative to name, since it will lessen the burden of having to update the plan when personnel changes occur.

In many companies, qualified individuals are associated with specific titles. For such companies, it would be beneficial to list the title rather than the name, thus avoiding having to update the plan when personnel changes occur.

MR. TAYLOR: That is one of the things we're going to have to sort out with -- with our lawyers. We -- we'd had some -- some discussions earlier in the program as to whether we could let industry have the

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flexibility of just identifying folks by title because with reorganizations and consolidations and buy-outs and people retiring and getting transferred and so forth, that triggers a lot of plan revisions that might not otherwise be necessary, if in fact we -- it was just done by title.

In our earlier discussions, and again we can revisit it with our lawyers, but in our earlier discussions, we came away with the impression that the OPA 90 statute did not give us that latitude. The statute itself actually required the QI to be designated by name.

If -- if -- if we run it up the flag pole again, and we get a different interpretation, then we could certainly see if doing it by title would work. I'm not sure if -- if this statute gives us that latitude.

MR. BRADSHAW: Other comments on the information summary?

(No response)

MR. BRADSHAW: No.

Discussion of 49 CFR 194.115 - Response Resources,

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Use of NAVIC 7-92 or EPA Guidelines, High Volume
Port Tiers

MR. BRADSHAW: The next section is 115, and it talks about response resources. We have hit on some of these issues earlier in the Definitions Section, but I'm not sure we've comprehensively addressed either response resources or the high volume port issue.

Additional comments here? Gwynette? Let's take Gwynette first, and then we'll go over here.

MS. BROUSSARD: Gwynette Broussard, Shell Oil Products Company, on behalf of the American Petroleum Institute and Shell Oil Products.

It is recommended that 194.115(a) be changed as indicated. Each operator shall identify and ensure by contract or other approved means the resources necessary to remove to the maximum extent practicable, change the word "a" to "the", worst case discharge, and to mitigate or prevent a substantial threat of, change the word "a" to "the", worst case discharge within the response zone.

It is recommended that 194.115(b) be changed as indicated by the bold-faced and underlined item.

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Again, here we are simply requesting that the word "a" to "the" be changed before the words "worst case discharge", such that the text would read: an operator shall identify in a response plan the response resources which are available to respond within the time specified after discovery of the worst case discharge or to mitigate the substantial threat of such a discharge within the response zone as follows.

Our rationale in submitting these requested changes to you are really clarification points more so.

Truly shows the intent of the rule by specifying the single worst case discharge within the zone.

Right now, there was a lot of ambiguity in the industry trying to figure out exactly what you meant by this particular language when you have the word "a" without the words "within the response zone".

I think this clearly shows the intent of the agency and gets direction to the regulated community as to what to expect it to actually do.

I'm sorry. I also had -- I think there were two other -- I just remembered, two other questions that you posed which are related to this particular

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section.

Did you want to -- me to go into that or would you like the --

MR. BRADSHAW: What are they?

MS. BROUSSARD: I think one, I've already actually addressed earlier today, and that's with the NAVIC and the EPA guidance, and I pretty much have given you API's position on that, and then the other one dealt with should RSPA eliminate the high and low volume port tiers.

MR. BRADSHAW: Let's address that now.

MS. BROUSSARD: Do that now?

MR. BRADSHAW: Do it now.

MS. BROUSSARD: Okay.

MS. GERARD: Is that different than what we covered earlier in terms of the "and", where both the criteria for velocity and -- I think we got that earlier, didn't we?

MR. TAYLOR: This is the question of the relevance of those tiers, is it not?

MS. BROUSSARD: Right. That's correct.

MR. TAYLOR: Yes.

MR. BRADSHAW: Please proceed.

MS. BROUSSARD: Okay. Again, speaking on behalf of American Petroleum Institute and Shell Oil Products Company, the tiering requirements outlined in 49 CFR Part 115 are appropriate for planning purposes only.

The tiers allow an operator to study and evaluate the resources available to respond to a drill within these port areas and whether or not they can respond to a specific location within the time frames designated.

The American Petroleum Institute supports the retention of high/low port tiers for planning purposes.

MR. BRADSHAW: Thank you. Bonnie?

MR. TAYLOR: Before Bonnie goes, Paul Sanchez, our -- our DOT attorney, is going to give you the specific citation out of the OPA 90 statute that we're going to go back and take a look at to see if we can use name or title of the QI, and we're giving this to you so that in case you all want to give us comments on it, you'll know the exact sentence in the law to look at.

MR. SANCHEZ: It's in the OPA statute, Section 4301bC(ii), if you need it, and it -- it reads, "A response plan required under this paragraph shall identify the qualified individual having full authority to implement removal actions and require immediate communications between that individual and the appropriate federal official and the persons providing personnel and equipment pursuant to" the following clause, which goes on.

MR. BRADSHAW: Thank you.

Bonnie, I think we're ready for you.

MS. FRIEDMAN: I'm Bonnie Friedman with the State of Alaska, and I just wanted to make a comment that I didn't make earlier this morning again about the relevance of the high/low port tiers, and for the State of Alaska, I feel that that -- that that does not -- is not that helpful to us.

We -- in our area, there are pipelines crossing many remote rivers that have their high volume rivers, high velocity rivers, that don't have high level of navigation on those -- on those rivers, and when I look at the response -- proposed response

section -- in the proposed response section where I see this division into high/low port tiers, I think that that might not be as relevant to -- to the situation in our -- in our -- in an area that we have remote -- remote rivers.

The other comment I wanted to make on the response section is just maybe to ask a question about looking at response planning standards.

In the State of Alaska, we have set standards for the operator to try to clean up and contain the oil within a certain amount of hours, and I know that you have that in regard to the tiers, but what -- what we have done is given a -- a general figure of 72 hours as a goal.

I also wanted to make just a short statement about the use of scenarios, and people talked about that this morning.

We have certainly found that a response planning scenario has been a really valid way for us to -- to look into response planning strategies and to test their appropriateness.

In these scenarios, we also are now doing a

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calculation based on the equipment of the amount of oil that could be -- that could be contained within that amount of time.

MS. GERARD: Bonnie, question. On your concern about rivers in remote areas, in this section under response resources, are you suggesting that sort of the priority for getting resources to these areas, that it's -- that we have an oversight in not addressing the remote areas that may be valuable areas that are not adequately protected by our regulation?

I'm not -- I'm not sure if I got the sense --

MS. BROUSSARD: I think that's what I'm -- what I'm thinking of. Say an example like the Yukon River. That's a really large river, and it's, you know, high velocity. It goes at six knots or five knots, and there's not -- the resources are going to be -- are going to have to come from pre-staged equipment at that -- that stage at that area. It's not going to come from -- necessarily from whatever is navigating on the river, from the traffic at the river.

It won't be people coming into the area. It has to be pretty much what's already existing there.

MS. GERARD: So, the -- the -- the API position that was proposed would leave that area not adequately protected in your view?

MS. BROUSSARD: I think that we're looking at a different strategy for remote areas.

MR. BRADSHAW: Thank you.

Steve, you had something else?

MR. BENTON: Yeah.

MR. BRADSHAW: Okay. All right.

MR. BENTON: Scott Benton, Texas General Land Office.

My experience with the tier requirements and what they do to planning, it appears that the tier structure removes people from their scenario-based analysis and -- and -- and sets some boundaries that just aren't event-driven.

I would recommend taking the tier standards out and using that as each company needs to make sure they have a response that can address the situation.

MR. TAYLOR: If -- if we were to take the tier times out, is there some other relatively-objective standard as opposed to a subjective standard

that we could use to gauge the adequacy of the operator's response time -- excuse me -- response plan in terms of their ability to mobilize and deploy response assets in a timely fashion?

Because what the tiers do, either -- either well or poorly, depending on your point of view, is they set the boundaries for what constitutes response in a timely fashion, and if we didn't have them to define what is a timely fashion for response, what else could we use?

MS. GERARD: Or what about some sort of a combination, where that was included, and the idea of having something that was -- something additional that was scenario-driven, that showed what the operator's thinking and capability was for a difficult-to-respond to area that was important, like the State of Alaska was talking about?

MR. BENTON: Well, my -- my opinion, if -- if you're looking at the tiered standard to help assure contractor networks as they need to be placed, in other words, build that -- build that response base that you're looking for, I still think that's -- that's

better served by scenario-based than by people driving what they need, not what is -- not what is kind of arbitrarily mandated.

Boy, I even hesitate to say this, but if you're really looking for the answer to -- that I would think you would -- I think it's got to be scenario-based or else you start telling people you need a thousand foot of boom, you know, at your facility, like some other agencies have done, and then you end up with 30 agencies along the Houston ship channel with a thousand foot of boom, and it -- I think scenario-based is my -- my opinion.

MR. TAYLOR: Well, Don, correct me if I'm wrong, EPA requires a thousand feet of boom deployed in the first hour, right?

MR. SMITH: Pretty much. I was going to drive on something here. Are you using the tiered mechanism as a minimum standard as opposed to -- I mean clearly if you're looking scenario-based, you go out there, you know that you can get there quicker than say six hours or something.

Using that as a minimum, wouldn't you as a

responsible party or responder want to go find out actually how much time's going to do it in the scenario itself?

I look at the tiered thing as an element of this is our baseline. This is what the minimum we as a regulatory agency can accept and kind of as my backdrop. I would hope that as a responsible responder or an efficient responder, that I can beat that minimum, especially if I'm in the Houston-Galveston area, where I got significant resources. I can get there in an hour or 30 minutes or 15 minutes, and I would use that as my scenario.

But as a baseline, you -- I want to say that you almost have to have the baseline to do some kind of evaluation when you're reviewing any kind of plan. I mean you got to have something to compare that scenario against, and these are -- they are really -- I want to say they are really conservative, quite frankly, in some locations, and in some locations, they're not even real good, but they are some minimum standards that an agency can use when reviewing a plan to say, well, this guy, he went out and does a scenario, and he's pretty

close. He says he can do it in two hours. I love it.

He's done scenario planning, but he's also -- he's -- I've guaranteed that he's done some kind of planning using the tiered as a background statement.

That -- that would just be my call on it. I see both methods being applicable in just about every situation, not one versus the other.

MR. TAYLOR: Let me give you a little insight into how DOT uses this in the process of actually reviewing and approving spill plans.

One of the reasons why we require you to identify in your plan where your response equipment is coming from, and, by the way, that's why we don't let you just give us a P.O. Box as the address for your OSRO, we need to know where -- where the equipment is garaged, it's because we actually pull out a map, and we look at where the response equipment is coming from, and what would be a more remote and less-easily accessible portion of the line in that response zone, and we try to make an educated guess at whether you could actually get equipment there within the tier time.

So, that's how the tier times have come into play thus far, as a yardstick for the adequacy of -- of your response assets, particularly in terms of mobilization.

MR. HOIDAL: Another thing, the definitions of Tier 1, Tier 2 and Tier 3, they don't appear in our regulation. I'm sure that's occurred to you, and there, we did refer to -- I believe that came out of the NAVIC as far as what we considered Tier 1, Tier 2 and Tier 3, and, so, there's the link to the NAVIC that we were talking about earlier, because there was no definition of Tier 1, Tier 2 and Tier 3.

MS. GERARD: I think at the time, it was our way of compromising without being overly specific but trying to pick up the idea of some sort of minimum standard as Don was talking about. So, we were trying to sort of jerry-rig this to fit the pipeline situation better.

MR. MANGANARO: John Manganaro, Response Management.

Don, I endorse your idea, and we've seen it done a few times in a number of plans where we used

both the numbers as a -- six hours if you're high volume port, and then we look at a scenario and define in the scenario, well, we take this contractor for about two and a half hours to bring on the amount of equipment required for this type of spill response.

So, combining the two seems to have worked well, but we wouldn't have known what was comfortably adequate unless we had that framework of tiers to write that plan around.

MR. BRADSHAW: I think I'd like to continue along the lines of some issues that both Chris and Jim brought out here a minute ago because we've been dancing around an issue, but I don't think we've nailed it down, and that is the relationship, if any, between the interim final rule, the Coast Guard's NAVIC, and EPA's response planning methodology for calculating adequacy of resources.

Jim, let me propose something here, and you tell me if I'm off base, but if we're on, I think we'd like to get some comments from the audience here.

Is it a possibility that because of the methodology that you have in fact used in reviewing the

plans, that it's appropriate to reference the NAVIC and EPA's methodologies as acceptable means for calculating adequacy of resources?

MR. TAYLOR: You mean to incorporate the documents?

MR. BRADSHAW: Incorporate by reference into the interim final rule.

MS. GERARD: Are you suggesting the use of the NAVIC as a requirement or as a guideline?

MR. BRADSHAW: As a guideline.

MR. TAYLOR: Just as -- as a point of clarification, we keep referring to NAVIC 7-92. That has actually been superseded by the new Coast Guard OSRO Classification Guidelines, which are included in your -- in your folders here, your blue-bound folders.

So, yes, that -- that is the issue we're soliciting comment on. Should DOT adopt either into the rule itself or as guidelines the -- the new OSRO classification guidelines or the criteria that EPA uses or is there some other way that we could take some of the subjectivity out of this part of the plan review process while still giving industry some -- some

flexibility on -- on how they meet the requirement?

So, that's -- that's what we're looking for comments on.

MR. BRADSHAW: Industry, a response to that? Do you think that's covered already? Okay.

MR. BENTON: I need to use an example, please, to give you why I'm so cautious on this.

I'll refer to the Coast Guard application of a NAVIC to a vessel situation in transit, which I see very similarly to pipelines located in remote areas.

By having a tier standard, a barge transiting the gulf and coastal waterway at a non-high-volume port area has 24 hours in the non-transfer type situation to get gear on scene. Okay. That's the box you've -- you've drawn as your minimum standard -- as has been drawn as a minimum standard.

I think, unfortunately, there are some folks that still utilize that as I meet the tier standards, and to -- to consider that as an adequate backdrop for a response that mitigates damage is, I think, improper, and in reality, it does not do anything to drive resources that are provided either by contractors or

owners, which is, I think, the reason for the tier basis.

So, I'd be willing to certainly say I could support Don's concept and Steve's, everybody that said, you know, hey, this is a backdrop, but it's got to be coupled with scenario-based analysis, and the dangers there that -- and we've heard -- I've heard it 200 times, I met the tier standards.

MR. SMITH: Could you say something on the order of this, that by meeting the ACP for a given port area, for instance, they've already kind of established in some of those areas how long it actually takes to get to a location?

Now, it's a given. Let's take, for instance, Corpus down to Brownsville, and, of course, there's going to be significant number of remote locations there. Clearly, if that group is identified as areas that are extremely remote, and they've given some kind of estimate of time, I wonder what that time compares to the box of 24 hours.

In other words, is it something like 12 or six or something like that? Because the area

committee's going to have to utilize the same resources in some respects. I'm just curious as by virtue of being in compliance with the ACP and the NCP, could you not say here's the minimum, but our ACP is saying, well, really, the real world says we can probably get there in six hours, and use that kind of as a -- between 24 and six as the real world application to something.

Maybe that -- because the scenario development's taking place in your ACP development along the coast line anyhow, and I simply say that would be a good source to find out what actually would happen.

You can say -- you can do this by being consistent with the ACP. Maybe a more clearer statement needs to be made, but I think there's some leverage already in the language that says that you should do something more than the minimum.

MR. BRADSHAW: Any other comments on this section?

(No response)

MR. BRADSHAW: No. Okay.

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Discussion of 49 CFR 194.117 - Training

MR. BRADSHAW: The next section is 117 - Training, and this section of the interim final rule covers the elements of a training program.

Comments on training? All right. Sure. Let's do that. Whatever works for you.

MR. TAYLOR: Let's -- let's take it section-by-section.

MR. STREATER: Steve Streater with Mobil. I have some comments from API.

We'd like to recommend to change the first section there under 117(a)(1) to read: "All personnel know their responsibilities under the response plan".

The rationale is that Part 117(a) states each operator shall conduct training to ensure that all personnel know the name and address and the procedure for contacting the operator on a 24-hour basis.

This requirement appears redundant in that it requires of the operator to assure that his own employees know their employer.

Additionally, since contacting the appropriate operator personnel is a responsibility

under the response plan, the requirement is adequately covered under 194.117(a)(1)(i), which states all personnel know the responsibilities under the plan, and 194.117(a)(2)(iii), which requires the personnel know the notification process.

117(a)(1)(iii) requires the operator to know the name of and the procedures for contacting qualified individual on a 24-hour basis. Not all response plans may require direct contact between the first employee having knowledge of the discharge and the qualified individuals.

All plans will have procedures for assuring the qualified individual is contacted. It is therefore unnecessary for all employees to know the QI and the QI contact procedures so long as they know their responsibilities under the plan as required by 194.117(a)(1)(i).

MR. BRADSHAW: Staying with Paragraph (a), any other comments on (a)?

(No response)

MR. STREATER: Okay. Let me go to 194.117(a)(2). We'd like to propose the reporting

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personnel have access to, make that change, and let me explain why.

Under 117(a)(2), it requires all operator personnel know the content of the information summary, the toll-free number of the National Response Center, and the notification process.

It is only necessary for employees to know their responsibilities and have access to the information enumerated in 117(a)(2).

Let me go on to 117(a)(3)(IV) there. We want to change this to the appropriate fire-fighting procedures. Under 117(a)(3)(IV), it stipulates personnel engaged in response activities know the proper fire-fighting procedures and use of equipment, fire suits and breathing apparatus. Proper fire-fighting procedures will specify the type of equipment to be used, including all personnel protective equipment, and the training required to execute the procedures.

The level of fire-fighting ability will vary from company to company and is best left to an individual plan.

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MR. BRADSHAW: Thank you.

Anybody else have a comment on the same part of the rule?

(No response)

MR. STREATER: Let me go on to 117(b)(1) then. Records for the operator personnel must be maintained at the designated office of record for the affected facilities. We briefly discussed that earlier.

The rule currently states records for the operator personnel must be maintained at the operator's headquarters. An operator's designated office of record for the affected facilities are not always the same as the headquarters.

We feel it is the intent of the rule that the records be maintained at the designated office of record for the affected facilities. It is more efficient for the inspection and operation purpose for these records to be located at the designated office of record.

MR. BRADSHAW: Related comments?

(No response)

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MR. BRADSHAW: Is that all you had on training, Steve, all together?

MR. STREATER: Yes.

MR. BRADSHAW: Anything else on training?

(No response)

MR. BRADSHAW: Panel, anything else on training?

(No response)

Discussion of 49 CFR 194.119 - Submission and
Approval Procedures

MR. BRADSHAW: Okay. Moving along. Section 119 is the Submission and Approval Procedures for the plans.

MR. BENTON: This is an ignorance-based question. Earlier in the session, we spent a lot of time on significant and substantial harm. During lunch, I -- I learned that or thought maybe I learned that that's very important as to if the plan is reviewed, and does -- could somebody help me understand --

MR. TAYLOR: Let me -- let me give you some of the history behind that. The OPA 90 statute itself

says the President shall review and approve vessel and facility response plans.

The conference committee report, part of the legislative history, that's where you get a lot of the congressional intent that's not captured in the actual verbiage in the statute itself.

The conference committee report said that it was the intent of Congress that the agencies review those plans, review and approve those plans which posed the greatest threat to the environment, and the way our agency has implemented that in terms of our policy is that all on-shore transportation-related oil pipelines have to submit facility response plans to us, and we don't have two different sets of requirements for what those plans have to have in them or what constitutes minimal adequacy. They all have to meet the same basic standard for content and adequacy.

The distinction that we make between substantial harm only as opposed to significant and substantial harm is the level of detail for our review process.

For a plan that is substantial harm only, we

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accept an operator's self-certification of harm. We take that at face value, and we do a less thorough, less time-consuming review on it. We call it a completeness check, and we go through the plan. We make sure that each component part of the plan is there, all the sections are present or accounted for, but it is not a thorough, rigorous, technical review of the plan, and -- and that plan is -- is assigned a tracking number found in our library, and that's all we do for substantial harm when we plan.

Now, under the statute, the agency has the option to do a full minimal adequacy review on substantial harm plans anyway. It's our prerogative, and sometimes we've done that just because of an operator's spill history or because of interest in that operator on the part of other agencies or some other factor that would cause that -- call that operator to our attention.

But, generally, substantial harm only plans get a -- a completeness check, and then they're filed away in our library.

Significant and substantial harm plans go

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through a full minimal adequacy review process. It takes a couple of weeks for us to do this. It actually takes several steps of different reviewers looking at different portions of the plan. We do a reality check on the worst case discharge calculations. We make assessments as to the adequacy of the plan, whether they've got a workable concept of operations, whether it is in fact consistent with the NCP and the ACPs, and whether the document holds together well, and the result of that full minimal adequacy review process is about a three-dozen page checklist that goes into great detail as to the -- the extent to which the plan complies with the regs, and whatever deficiencies it has, and as an agency, we make a point of telling a pipeline operator not just that they have a deficiency but giving them specific instructions on how to correct that deficiency and how to bring that plan into compliance. We give them 90 days to get that squared away after they get our findings.

So, all of this to say whether a plan is substantial harm only or significant and substantial, it still has to be submitted to us. The only

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difference is in how rigorous our review process is.

MR. BRADSHAW: Okay. We are looking at Section 119. Submission and Approval Procedures.

Gwynette?

MS. BROUSSARD: Gwynette Broussard on behalf of the American Petroleum Institute and Shell Oil Products Company.

It is recommended that 194.119(d) be changed as follows: for those response zones of pipelines described in Section 194.103(c) that could reasonably be expected to cause significant and substantial harm, RSPA will approve the response plan if RSPA determines that the response plan meets all requirements of this part.

The deleted part of this particular section is "and the OSC raises no objection."

Our rationale for this is as follows. RSPA was delegated the authority to require review and approve response plans for on-shore pipelines. Although the EPA and Coast Guard OSC should be allowed to provide written comments to RSPA regarding whether or not an operator plan meets the Part 194 requirements

of the interim final rule, an OSC should not have ultimate authority to approve a plan.

Additionally, Paragraph (d) implies that the EPA or U.S. Coast Guard OSC would be required in all cases to review all plans for substantial harm facilities before a facility response plan could be approved by RSPA.

Considering the number of plans an OSC would be required to review, and I'm sure Don doesn't have that many hours in the day, this may result in considerable time delays in the approval process.

However, for those on-shore complexes that are composed of both transportation-related and non-transportation-related facilities, API supports the position taken by RSPA in its discussion paper entitled, "Review and Approval of Response Plans for On-Shore Complexes with Multi-Agency Jurisdiction", that only one response plan need be developed for on-shore complexes.

This plan would include separate sections that address different regulatory provisions or definitions applying to the portions of the complex

regulated by different federal agencies.

In this case, the U.S. Coast Guard and EPA, federal on-scene coordinators, delegated authority to direct federal spill response under the National Contingency Plan, may review response plans for facilities geographically located within their respective areas of resolve through inter-agency discussions.

Final approval of the response plan would remain with the EPA for facilities in the complex subject to 40 CFR Part 112, with the U.S. Coast Guard for the complex subject to 33 Part 154, and with RSPA for the facilities and the complex subject to Part 194.

With regard to 194.119(f), this gives the OSC total discretion to eliminate the exception provided for 194.101(b). Only OPS has the jurisdictional authority to determine whether or not an owner or an operator of an on-shore oil pipeline is required to submit a facility response plan pursuant to 49 CFR Part 194.

In line with this, I think all of us in the industry appreciate any comments that come from any OSC

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with regard to our response plans. Obviously all of the OSCs are well experienced in this particular field and certainly add value, but again we believe that these comments should be considered by the Office of Pipeline Safety.

MR. TAYLOR: Actually, before you go, Don, just -- just to give you some of the history of this, in the history of our OPA 90 Program, I'm not aware of any cases when input from an OSC has caused RSPA to not approve a facility response plan, and I -- I understand that you -- you're saying RSPA cannot abdicate its authority for plan review and approval and let another agency do that, and -- and we agree.

Let me ask you this. With respect to Paragraph (f) under 194.119, would it -- would it address your concerns if we rephrased the last sentence to read, let's see, if an OSC recommends that an operator not previously required to submit a plan to RSPA should submit one, RSPA may rather than will, RSPA may require the operator to prepare and submit a response plan and send a copy to the OSC?

That would keep the 194.101 determination

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under RSPA.

MR. SMITH: Excuse me. Go ahead. Okay. Just a couple comments from an OSC standpoint, not from a regulatory standpoint or a bureaucrat part, but just as a responder.

In this region, pipelines represent about 45 to 50 percent of the spill picture from our region. We receive about 3,000 to 5,000 spill reports per year within this region, and they range from sizes to just a few barrels to up to several hundred thousand gallons into the several thousand barrels criteria. So, it's like pick one, what you want.

Most of our spills unfortunately fall under size of piping that's well below the six -- I think it's six inch and five-eighths of gathering line, such as a lot of the spills emanate from them, and it is kind of a concern to OSCs that there's not a voice from the regulatory community towards those areas that are unaddressed right now.

I'm -- if I remember rightly, I don't know if 195 applies to gathering lines. There may be some restrictions there or something. So, we have a big

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spill picture area that quite frankly is not being addressed.

This is a case in point in which EPA in its efforts through some enforcement -- say one of those facilities had a small -- a spill and a bunch of those type spills, and they're reoccurring themes. They don't have good prevention practices, and for whatever reason, regulatory or statutory, DOT can't regulate it.

EPA in some enforcement -- what we call a supplemental enforcement program, rather than taking money out of your pocket, require that person to prepare a response plan, and what we would hope in that enforcement settlement case would be that that plan would go to DOT for their approval, not that -- I'm not sure that they want it at all, but from our perspective, from an on-scene coordinator's perspective, yes, I would want to see that plan developed, and definitely if I've -- if I see a facility, a pipeline, large, small, big diameter or small diameter, that has a history of problems, then definitely I want to have input to the process.

So, clearly from an on-scene coordinator's

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point of view, I'm interested in every plan, but realistic and resource-wise, I've already got 1,400 plans in my region alone already, and I probably got another 1,400 that I haven't heard from, not -- and this is before we've even got into the environment of pipelines to be quite frank.

So, there's a lot of them, and there's more than I can deal with, but I'm concerned about them, and every OSC is concerned about them. So, where we could comment, we would, and in areas where DOT currently doesn't regulate, we, through some enforcement effort, might require a facility to prepare a response plan with a proviso that DOT's looking at it, and we're also looking at it.

Whatever a judge would come up with in something of that nature, some -- sometimes we won't even have to go to a judge to get that kind of activity happening, but that's some of the things we've been bouncing around with pipes -- pipelines that aren't regulated currently.

I don't know how that plays along with you all's thoughts or anything, but trust me, I've got

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enough work right now, I don't need a whole lot more, but I know there's a lot more work that still needs to be done.

MS. BROUSSARD: Okay. I just want to address a couple things. Unless I misunderstood, 194 applies to all oil on-shore pipelines. There is not one pipeline, whether gathering or transmission, that is not subject to the OPS jurisdiction on this --

MR. SMITH: It's less than 6.5 or six and five eighths --

MS. BROUSSARD: What we're talking there is an exemption from a requirement for approval of a plan. To me, that's a distinction from what you just indicated. So, I -- I just wanted -- at least we in the industry have plans to the Office of Pipeline Safety, even for something that you described.

I just wanted to clarify that. I didn't want the audience to -- to think that --

MR. HOIDAL: You're correct. The regulated entity, the populations are much bigger for Part 194 than it is for 195. Part 195 -- 194 is all gathering lines. 195 is -- it's really low-stress lines in

navigable waters and in populated areas. So, that's where the difference lies.

The six and five-eighths only to the exemptions. Short, skinny lines, you know, stuff like that.

MR. TAYLOR: But to reiterate, if it's an on-shore transportation-related oil pipeline, it's subject to 194.

MS. BROUSSARD: That's -- that's our understanding.

MR. TAYLOR: That is correct.

MS. BROUSSARD: I just wanted to point that out to you, and if EPA has launched some effort towards pipelines, we certainly would like to get to discuss that with you and sit down as API to understand more fully the program that you discussed a little while ago.

In line with the question I think that you asked me earlier, only speaking on behalf of the American Petroleum Institute, we -- obviously I can't speak on their behalf just sitting here listening to what you offer to change the language as, I think the

-- at this point, I think our position is as the API that that paragraph is unnecessary.

You have full jurisdiction. All it does is cause confusion within the industry. As we stated, we certainly welcome an OSC's valuable input into you. We certainly aren't trying to state that they are not allowed to input into you on any particular plan or even on a response that they are addressing.

As far as Shell Oil Products Company, that might be a solution. I think we have to look at exactly how the language is framed. I think our point was, is that we don't want to have the jurisdiction and the discretion turned over to the several OSCs that are currently within the EPA and U.S. Coast Guard. That particular function or responsibility lies solely as you indicated with the Office of Pipeline Safety.

MR. TAYLOR: Well, hopefully I can -- I can put your fears to rest about RSPA shirking its responsibility in terms of approving plans that are our jurisdiction.

It sounds like we need to -- we need to get some input on how to craft 194.119 in such a way that

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it allows for the inter-agency coordination that we've been talking about between RSPA and the other federal agencies that are -- that are players in the world of OPA 90, and yet clarifies that in fact RSPA retains sole jurisdiction over on-shore transportation-related pipeline facility response plans, and -- and we welcome comments on -- on how we can craft language that clarifies both those items.

MR. HOIDAL: Well, you're primarily concerned with the fact that this looks like the OSC has ultimately veto authority? Is that --

MR. TAYLOR: Because that was certainly not the intent --

MR. HOIDAL: -- your primary concern, --

MR. TAYLOR: -- of 194?

MS. BARBER: -- is that you feel that the OSC has the ultimate veto authority?

MS. BROUSSARD: The way that the language currently reads, I think counsel pretty much has told us that it -- it pretty much gives almost discretionary complete authority to an OSC, that the real fear here is that we've gone through the analysis of preparing a

plan, and OSC, for whatever purposes, could overrule everything that's in your particular rule on Section 104 or 103 and simply say I, because I am the OSC, am going to require this facility, even though it meets all the requirements and the parameters set out in the OPS rule, I as an OSC want this particular operator to have a response plan.

Now, obviously he can -- we certainly would welcome the input of an OSC as to a particular response plan, but to say it has to be required and approved by the Office of Pipeline Safety when it already has met all of the requirements to be accepted out, I think that's pretty much giving discretionary authority to an OSC versus allowing OPS to actually have the regulatory rulemaking authority.

MR. TAYLOR: Well, if the language as it reads now in 194.119 is contrary to Executive Order 12-777, which gave RSPA jurisdiction over on-shore oil pipelines, then we need to rephrase our regs so that it is consistent with that Executive Order because clearly an executive order would -- would take precedent over that.

MR. SMITH: Just to make sure I'm not confused about it as an on-scene coordinator, you're talking clearly about when you should develop a response plan but not when the plan has been activated?

Let's say a plan has been activated, an on-scene coordinator is out there, and the conditions of the plan are not necessarily matching up to the conditions of the spill. At that time, the on-scene coordinator may make some adjustments to that plan. There's not a conflict there?

MS. BROUSSARD: Yeah. Let me -- let me just read -- maybe this will clarify it. The section that we're talking about under 194 states, "If an OSC recommends that an operator not previously required to submit a plan to RSPA should submit one, RSPA will require", will require, "an operator to prepare and submit a response plan and send a copy to the OSC."

So, that gives the OSC total discretion to require an operator who was previously exempt from submitting a response plan just based on the OSC's evaluation. We're not taking issue with what the scenario that you just sketched out --

MR. SMITH: Okay.

MS. BROUSSARD: -- because obviously if there is some problem with an existing response plan that an OSC sees, he certainly should advise RSPA and make some recommended changes or want to discuss the application of that plan and sit down with the operator to discuss his concerns and issues.

But I think the wording here with the -- with the language, the mandatory language that's utilized, gives some concern to the industry as to we could do everything that your rule states, but then in fact have an OSC overrule you and require us to do something different.

MR. TAYLOR: Well, it -- it sounds like something that we need to get some input on, but for the record, that's a problem that has never arisen.

MR. SMITH: I was going to say, I can't think of a case in point where -- I'm not speaking for all OSCs, --

MR. TAYLOR: What she's saying is it's something that could arise because the language is --

MR. SMITH: Yeah.

MR. TAYLOR: -- not clear.

MR. SMITH: Only -- only one final point I'd like to make on this, so long as it doesn't relate to when an activity happens, a spill happens, an on-scene coordinator of the National Contingency Plan has authority to make whatever changes he needs to during that response.

Of course, the plan may not have predicted that particular -- but they want to make sure we weren't conflicting between those two goals.

MR. TAYLOR: But that's completely separate from the plan review and approval process that we've been talking about here.

MR. BRADSHAW: Okay. And, Jim, in that situation, we're talking about plans that fall in the exempt category, right?

MR. TAYLOR: Yes.

MR. BRADSHAW: Those are the only ones that wouldn't be required to submit a plan?

MR. TAYLOR: Yeah. That -- that was the context of our discussion.

MR. BRADSHAW: So, would the suggestion be

that -- that what we're looking for there is that OSC suspects that the exemption is incorrect? I mean maybe we can clarify it along those terms.

MR. TAYLOR: Well, it sounds like we need a way to clarify the inter-agency coordination in such a way that it does not look like RSPA is surrendering jurisdiction over legitimate DOT facilities.

MR. BRADSHAW: Okay. Other comments on Section 119?

(No response)

Discussion of 49 CFR 119.121 - Response Plan Review and Update Procedures, Plan Review Cycle

MR. BRADSHAW: If not, then we'll move on to Section 121, which is the Response Plan Review and Update Procedures, and we can take this one by paragraph as well, and Paragraph (a) addresses the -- the three-year cycle.

Was that a subject you wanted to address?

MR. HOFF: Well, actually, the -- we -- I think there was also a question that also pertained to the three-year cycle that gets back to that as well, and we can either talk about that now or whenever we

get to the question.

MR. BRADSHAW: Let's take it.

MR. HOFF: Okay. Want the question? The question -- I'm sorry. My name is Bill Hoff with Teppco, speaking on behalf of Teppco and API.

The question was Question Number 4, should RSPA's plan review cycle be modified from the current three-year cycle under 49 CFR 194.121(a) to a five-year cycle to be consistent with the Coast Guard and EPA requirements?

Yes, the RSPA's plan review cycle should be modified to be consistent with the Coast Guard 33 CFR 154.1025(d)(4) and EPA 40 CFR 112.20(c)(4) requirement of five years.

The review cycle should begin with the date of approval of the operator's plan and not the date of submission, as the regulation now reads.

RSPA and the operator will agree to changes within the document during this review cycle. The operator's plan is a dynamic document until the final approval by RSPA.

Additionally, the regulations should allow

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operators at least a 120 days to submit any changes made to the plan related to the new or different operation conditions and information that would substantially affect the implementation of the plan.

Current guidelines require such submittals within 30 days of the change. For example, there are no dependable update mechanisms available to the operator to ensure that any change made to an NCP and/or an ACP will be communicated timely and available for review by the operator or the owner.

This 30-day time frame does not allow sufficient time for a thorough review of the changes, modifications and plans and the submittal of the revisions to RSPA.

Most of us that -- within industry who've had to work with the ACPs during the formation of our OPA 90 plans, ACPs and NCPs, realize just how large a documents these are, and how the modifications to these documents will take quite some time to really sift through and fully understand the magnitude of the changes and how they might affect our plans, and that gets into the second part of what -- our -- our

comment, and that 30 days really appears to be too short of a time.

In many cases, it would take at least that long simply to digest what has been changed within the document.

MR. BRADSHAW: Do you have more comments on the -- okay. Let's go through them all.

MR. HOFF: On (b), --

MR. TAYLOR: Actually before we move on to (b), let me -- let me ask Don and EPA a question.

Your five-year cycle, is that from the date of submission or the date of plan approval?

MR. SMITH: It started from the -- it actually started from the date of submission, when we started reviewing the plans, but the second portion -- once you got an approval letter from them, basically that's when the clock started ticking for that facility in the five-year cycle.

We try to do 20 percent of our total number of facilities each year over a five-year cycle, adding in new ones and taking out some, but bottom line is we -- we -- I think we average about 60 days turn-around

time on new -- I won't say submittals, but in answer to your question, a 120 days.

Ours comes in on the average about 60 days when there's changes to the facility or something like that. That's what's been it's been averaging. Some 30, some -- I guess they're hot to trot to get the paper work to us.

We're not going to review it that quick, I can assure you of that, but that request of a 120 days doesn't sound too unreasonable, but I would suggest from a regulatory standpoint, we'd probably want to see something more than 30, less than a 120. That would be from our side of the block. Clearly DOT deals --

MR. TAYLOR: Actually, I'm more interested in the distinction between when the five-year clock starts ticking. If it started at the time of submission, that would be 1993. If it started at the time of approval, that would be 1995.

MR. SMITH: Well, --

MR. TAYLOR: Now --

MR. SMITH: -- maybe that's why I should have said ours started at February 18th -- February 17th,

1995, quite frankly. By the year 2000, --

MR. TAYLOR: Right. So, if we got on the five-year cycle, that would give us parity with EPA and Coast Guard, but if we had our five-year clock start ticking at '93 rather than '95, we'd still be out of sync with the other agencies, even though we were all on a five-year cycle.

MR. HOFF: I guess the comment that we were making is, is industry, because of the magnitude of the plans and how the -- how the plans are reviewed, it's very distinct possibility that we may submit a plan, it may take quite some time before we hear back from the plan. We may make revisions fairly extensive to the plan, six months, a year later, during this process, and then -- or in some cases maybe longer, and then actually be reviewing them again on the five-year cycle or three-year cycle, depending which one we end up with, and in which case, we get into a mode of constantly updating the plans, and what we were looking for is a true update cycle that would be reflective of either a three-year or a five-year plan, when in fact if we start with submission, we'd have to wait until

they come up on top again, when maybe we're in the middle of that cycle, we go through, make several revisions again, maybe months later, we get to a point that it's approved, and before we know it, we're back reviewing them again.

MR. TAYLOR: So, just a point of clarification. The thing that would make industry's life easier is if we went to a five-year cycle that started at approval. So, we're starting at '95, which would mean the next cycle would come around again in 2000. Is that what you're saying would be the best?

MR. HOFF: A -- right. A five -- a five-year cycle, and then the -- going to the approval as opposed to submission.

MR. TAYLOR: Understood. Thank you.

MR. BRADSHAW: Let's just make sure we don't have any other cycle comments before we move on to -- John?

MR. MANGANARO: John Manganaro, Response Management.

Question. Is the five-year cycle for submission of the entire plan again for approval, and

then as changes come up within that five-year period, the 30- or 90-day or 120-day is the turn-around time to get those changes implemented into your existing plan, and then once every five years, we start all over from scratch? Here's our plan, but six months ago, we submitted the last set of changes to it. So, it's not that much different than that manual, but here it is again for final approval.

MR. HOIDAL: The way I interpret that is, okay, the -- apparently the three-year cycle is a top-down front-to-back review, but if there's any significant changes, something that would prompt, let's say, a change of operatorship or change of the OSRO or a significant change in the ACP, regardless of whether we used 30 days, 60 days, 90 days, for time to review, those are -- a prompt plan update somewhere in between.

MR. TAYLOR: I think the -- I think the intent here is that a facility response plan should not go more than five years without a minimal adequacy review by RSPA, and, so, if you -- if you make significant changes in your plan at the two-year mark, and you submit it to us, and we do a full plan review

on it at that two-year mark and say it's good to go, it's approved, then that should reset the five-year clock, and, theoretically, if -- if you had a response plan that actually went four years and 11 months with no significant changes, I -- I can't imagine that happening, but if it did happen, and you made no significant changes in the plan for four years and 11 months, you would need to submit that plan at the five-year mark for a minimal adequacy review.

It's -- it's -- the theory behind it is that this is part of the government's role as a regulator, and it's quality control, you know, to see that in fact the industry's response preparedness level remains constant in -- into the out years.

MR. BRADSHAW: Other cycle comments?

Gwynette?

MS. BROUSSARD: If -- if that's your intent, then you might want to consider -- if -- if you're going to require that they actually submit for minimal adequacy review, your language does not reflect that. Your language simply states, and I quote, under 194.121(b), "If a new or different operating condition

or information would substantially affect the implementation of a response plan, the operator must immediately modify its response plan to address such a change, and within 30 days of making such a change, submit the change to RSPA."

If there is no new or different operating condition or information which would substantially affect the implementation of the response plan, there is no requirement that we submit it to you.

So, if -- depending on how -- and obviously you're correct. For some systems, that may not be too difficult. I mean there -- it may be a very static system. Nothing really changes as far as operating. There's no modifications, response resources or the same. That's not too far-fetched for us in the business not to submit a plan to you because there's nothing that has changed.

In our -- in -- and again, it says substantially affecting the implementation. Obviously you might have little editorial changes, but again even those, I think a lot of operators go ahead and submit those to you anyway, just so your plans reflect the

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accurate plan that's at our offices.

So, if -- if that's really what your intent is, I don't think that we in the industry understand that, and you might want to reflect whether or not that's indeed required. If the response plan is -- unless you have a change in the protocol that you approve that plan with, there may not be even a requirement to go through that adequacy check.

If you've already approved it and nothing has changed, and you've not changed the protocol, and you haven't changed the requirements, there might be a question as to why go through the exercise of having us go back through and submit everything to you and for your staff to undertake the review just simply to say yes, nothing has changed?

MR. TAYLOR: Yeah. I -- and good point. Maybe we need to clarify that in the rule.

I think if you look at the language of the OPA 90 statute itself, where it talks about the President shall review and approve vessel and facility response plans, there's also verbiage in the statute that says and review them periodically thereafter. I

don't know if that's an exact quote or not, but that's -- that's what prompted our thinking about this, and, you know, given the statutory requirement for the President to review them periodically thereafter, it's just a matter of how can we phrase that in the reg in a way that's clear in communicating our expectations, and how can we schedule this in such a way that we choreograph it conveniently for the regulated community rather than making you all jump through one set of hoops for RSPA one year and then a different set of hoops for EPA and Coast Guard a different year?

MR. BRADSHAW: I think we're ready to move on to Paragraph (b), which is changes in the operating environment which may cause plan update.

Scott, you have a --

MR. BENTON: Pardon me. On -- on the review and update process, I -- I'd like to toss out a concept as -- that we're trying to employ in Texas.

The initial plan review is the plan review. You either have a plan that's up to speed or you don't, and then from that point on, we see that plan holder in compliance, and -- and -- and better said, in -- in the

proper state of readiness, and that should be maintained consistent across the life of that plan.

We also have issues, such as you stated, that if something special occurs that affects the conditions, notification has to go and updates are needed.

I'd like to suggest consideration of a concept that a resubmission of a plan is -- is not a necessity because that plan should be constantly in -- in readiness, and that with the other programs we have in place, training drills, actual incidents, those plans are hopefully -- and I'll turn to this section of the room over here, that -- that those are looked at and analyzed as -- as kind of been stated elsewhere in the regs and would just -- just throw that out there, that the five-year cycle, what does that mean?

We're looking at it as we issue a new certificate, but that's based on consistent readiness evaluations by both industry and quality checks and -- and audits by the government.

MR. FLAHERTY: Doug Flaherty from PTS.

Well, Scott, you kind of opened the door.

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So, I'll say it. Perhaps the RSPA and others -- other regulatory bodies should look at the concept of allowing industry to self-certify their plans every five years and maybe with the submission every 10 years.

So, since Scott opened the door, I think that's a concept that we should -- should probably visit in the near future.

MR. BENTON: That wasn't the door I thought I opened.

MR. FLAHERTY: The other item that might be considered is making as much of 194 as possible voluntary, a voluntary guideline, rather than regulatory. I think it's a bridge that sooner or later has to be crossed. That's the end of my comments.

MR. BRADSHAW: Sorry. Pick up would be the --

MR. HOFF: Paragraph (b)? Paragraph (b), Gwynette had already touched upon much of this, and I think I also touched upon this in my first question that we answered, but Paragraph (b) reads, "If a new or different operating condition or information would

substantially affect the implementation of a response plan, the operator must modify his response plan to address such a change within 30 days."

As we previously stated, we think 30 days is too short, and we suggest that that be changed to at least 120 days of making such a change and submit that change to RSPA.

Examples of changes in operating conditions -
- I'm sorry. That's -- the rationale behind this change, the regulation should allow operators at least a 120 days to submit the changes that would substantially affect the operation conditions or implementation of the plan.

Current guidelines require the submittals within 30 days, and as previously stated, this 30 days just doesn't appear to be an adequate amount of time given the size of these documents and the magnitude of what would have to be reviewed and resubmitted.

MR. TAYLOR: Just for the record again, because we're looking for comments on the question of the five-year cycle and whether or not there is in fact a need to resubmit the plans, the specific citation out

of the statute that I referred to a few minutes ago is the OPA 90 statute, Section 4301, and then inside parenthesis, little letter b as in Bravo, and then inside parenthesis, c as in Charlie, and then inside parenthesis, vi, and it talks about the President shall review each plan periodically thereafter.

MR. BRADSHAW: Other comments on Paragraph (b), operating conditions?

(No response)

MR. BRADSHAW: No. Paragraph (c), which is RSPA's notice of deficiencies?

(No response)

MR. BRADSHAW: And (d), the -- basically the appeal or petition process?

Scott?

MR. BENTON: Scott Benton, Land Office.

Back to -- to (b), sir, I think there's a big grouping of quite varying circumstances under (b). I would agree totally with the area contingency plan comment, that to review that and modify the plan in 30 days is pretty -- pretty tough, but I would, however, indicate that if you had a change in OSRO, and you

don't change your plan very quickly, that that's a very significant change to any of your responders, and, so, my comment would be truly look at the nature of 1 through 8 and see if there -- there are differing standards for those.

MR. BRADSHAW: Any other comments on Section 121?

(No response)

MR. BRADSHAW: Okay. We're a little ahead of schedule, Jim. Let me suggest a change. How about we save hazardous substances till the last item?

MR. TAYLOR: Well, except some of the folks who wanted to discuss that are going to catch earlier flights.

MR. BRADSHAW: Is that right? Okay.

MR. TAYLOR: Is it okay if we go ahead and talk about hazardous substances now?

MS. BROUSSARD: We talked about Appendix B, but we still haven't gone over Appendix A. Did you plan on reviewing Appendix A, and, if so, now or later?

MR. TAYLOR: Well, I'm open to suggestion. The -- the two most significant issues out of Appendix

A were the drill and exercise phase, which we already talked about under, I think it was, 107, and also the secondary communications systems requirement, which was scheduled for 3:30, but we're about what, about a half hour ahead of schedule right now.

If you like, we can -- we can go through each section of Appendix A as well. So, the question -- yes, we will go through Appendix A. We've certainly got the time to do it now.

The question is would you like to go through Appendix A now or talk about hazardous substances now?

(Show of hands)

MR. BRADSHAW: Appendix A now. Appendix A.

MR. TAYLOR: Hazardous substances now. Looks like it's Appendix A now.

MR. BRADSHAW: Okay.

MR. TAYLOR: And we'll do hazardous substances after Appendix A.

MR. BRADSHAW: Okay. Take a 10-minute break.

(Whereupon, a recess was taken.)

MR. TAYLOR: Al Garnett's break-out tank presentation, we have hard copies of Al Garnett's

slides available on the front table.

If -- if you've not yet signed in on the legal pad out there on the front table, you need to do that as well with name, address and phone number. Get yourself copies of Al's slides out front.

MR. BRADSHAW: Okay. The crowd is seriously dwindling here. Okay. Here's the game plan as I see it. Tell me if I'm on target here.

I think we'll cover Appendix A until about quarter after 3, which should put us close to being back on track, and with the number of people and looking at the issues involved here, I think we're going to be done before 4:30 certainly, and there's even some duplication you might have noticed on the agenda. So, we have some time savings there. I think we can move along.

All right. Let's start with Appendix A, and since we hadn't planned on specifically covering this in detail, we're going to kind of wing it a bit, but I'm going to suggest that we cover a section at a time, and that if you have comments, give me everything you have for Section 1, 2, 3, 4 as we get to it.

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Beginning at Appendix A, Section 1, --

MR. MAGNI: Bob, Larry Magni, API.

MR. BRADSHAW: Yes, Larry?

MR. MAGNI: I want to just start actually on Appendix A with a recommended change to the preface for the appendix.

Speaking for API, we recommend that the preface for Appendix A be changed as follows: this appendix provides a recommended outline for the preparation of response plans required by 49 CFR Part 194. Both the outline and its contents are optional. Operators may use another outline as long as it provides the information required by 49 CFR Part 194.

And the rationale is we believe that this change is needed to clarify that the requirements within Appendix A that are not required by Part 194 are optional.

Appendix A lists many requirements that are not required by Part 194. For instance, Section 7 of Appendix A requires emergency procedure drills. These drills are not required by Part 194.

MR. TAYLOR: The preface to Appendix A also

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might be a good time for us to refer to the integrated contingency plan as well and say that the integrated contingency plan is another acceptable format that RSPA will accept, and actually we encourage you to use the integrated contingency plan.

MR. MAGNI: If I could just go on, one -- one more comment regarding the sections, the specific sections of the Appendix A. API will submit specific comments on each section as part of our submission within the 30-day time frame rather than going through it today at this time.

MR. TAYLOR: Okay.

MR. BRADSHAW: Do we have any -- any other comments on the preamble or preface to this section?

(No response)

MR. BRADSHAW: No?

MR. BENTON: This is an information question. It's not for the record. Could somebody tell me how this is used?

MR. BRADSHAW: Microphone, please.

MR. TAYLOR: This is not for the record. This is just an information request on how Appendix A

is utilized, and, so, trying to understand the level of detail of review we should give it from my perspective.

MR. TAYLOR: We use Appendix A as -- well, for lack of a better term, a policy document. It's something that is a way for us to communicate to the regulated community what we think is important in the -- in the facility response plans.

It -- there are -- right. Like a benchmark. There -- there are things that are mentioned only in passing in the body of the rule, and Appendix A amplifies what the agency's intent was and the sort of things that we want to see in the plan, and that's why there's some things in our plan review checklist that have a cite out of the body of the rule, and also cite a section out of Appendix A as well.

Originally, Appendix A was -- was a part of the body of the rule itself, when -- when the regulation was still in draft, and it was sent to the Office of Management and Budget.

Based on -- on input from OMB, this was back in 1992, OMB suggested that we pull those details out of the body of the rule and put them in -- in the

appendix, which is what we did. But it was the agency's original intent for these to be a part of the body of the rule, and in effect to be as authoritative as the rest of the rule.

MS. GERARD: Well, I need to correct that statement because it doesn't matter what the agency's intent was until it goes to OMB. It's not an official document. So, -- so, sort of ratcheting back to your conversation, it is an amplification, more like a benchmark. It is not a requirement, but it is a --

MR. TAYLOR: It's an interpretation.

MS. GERARD: -- recommendation.

MR. BENTON: Thank you very much.

MR. BRADSHAW: Okay. We're ready to tackle Section 1, which is the information summary.

Any comments there?

(No response)

MR. BRADSHAW: Section 3, Spill Detection. You guys want to go over Appendix A.

MR. MAGNI: That's what I was referring to.

MR. BRADSHAW: Okay.

MR. MAGNI: Yeah.

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MR. BRADSHAW: Does anybody else have anything on Appendix A that they'd like to discuss?

(No response)

MR. BRADSHAW: Okay. Then we'll move on. Scott?

MR. BENTON: Okay. Scott Benton, General Land Office.

Under response, I -- I would suggest that this is -- is -- is truly a guideline recommendation for things to consider, and we do have the possibility because of the MOU between MMS and DOT, that we talk about alternative technologies under the response section.

MR. BRADSHAW: Which section number are you referring to in Appendix A?

MR. BENTON: Just under response plan, Section 4. I'm sorry. Response activities. I don't have a specific spot to put it, which I apologize, but would suggest we need to look at language talking about alternative technologies and their application.

MR. BRADSHAW: Thank you, Scott.

Hazardous Substance Response Plans

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MR. BRADSHAW: I think we're ready to move on back to the agenda, which at this point would have us discussing hazardous substance response plans, and, Jim, you want to give us some background on this?

MR. TAYLOR: Yes, indeed. The language of the OPA 90 statute requires operators of -- of vessels and facilities to prepare facility response plans for oil and for hazardous substances.

Thus far, of the four agencies that have responsibilities under OPA 90, only the Coast Guard has initiated any rulemaking under this, and the Coast Guard issued an advance notice of proposed rulemaking last summer for Coast Guard-regulated facilities to develop facility response plans for hazardous substances.

In -- in their -- in their rulemaking process, the Coast Guard -- I've been talking with Commander Hamilton, who's -- who's the action officer on that. They're very eager to roll the integrated contingency plan access, and rather than developing a whole new set of response planning requirements, the impression I've gotten from the Coast Guard is that

they'd like to integrate this with -- with the ICP.

So, the question that we want to discuss today is that for our regulated community, for on-shore transportation-related pipelines, is there a need for RSPA to -- to promulgate regulations for hazardous substance response plans? Is there in fact even a population of pipelines out there that would be subject to RSPA that is transporting hazardous substances?

MR. BRADSHAW: Gwynette?

MS. BROUSSARD: Gwynette Broussard on behalf of the American Petroleum Institute and Shell Oil Products Company.

The Oil Pollution Act of 1990 requires the President to issue regulations which require an owner or operator of a facility to prepare and submit a plan for responding to the maximum extent practicable to a worst case discharge and to a substantial threat of such a discharge of oil and hazardous substance.

Therefore, the Department of Transportation's Office of Pipeline Safety is mandated by law to proceed with issuing response plan regulations for hazardous substance pipeline facilities.

However, the OPS should align and correlate its hazardous substance rule requirements with the current oil rule requirements since much of the response planning information will be similar. For example, core summary, information summary, response resources, qualified individual, and possibly training.

The OPS should ensure that its hazardous substance rule allows for either the filing of necessary adjunct information for hazardous substance facility response plan already submitted under the oil plan or allow for a different plan.

The owner or operator should be allowed to determine which option is most cost effective and useful for its operations.

As -- on behalf of Shell Oil Products Company, I can tell you that for our company, we do indeed ship something other than oil as it's defined and utilized under the Part 194, and we are relying actually on the Office of Pipeline Safety to actually go forward with regulations in response to the mandate for hazardous substance rulemaking.

Because we are a pipeline facility, and we do

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transmit other facility substances, other than oil, as defined, we think it's within your purview and certainly your responsibility to produce those regulations.

We also would think that that would be something that you would probably want to do because you have a good model that you obviously have worked very hard on. You've seen the pluses and minuses of the oil model, and adding to it the hazardous substance model might be a much easier job than when you started back in 1992.

And for us in the industry, it would be very good as well because we could just simply have it as an adjunct to our oil plan which currently is there for -- for those of us in the industry who are integrated companies.

Did you have any other questions, Jim, on that issue?

MR. TAYLOR: Well, I guess as a follow-up question, how -- how does this tie in with the integrated contingency plan? Is this -- would this be an incentive to go with an ICP when previously an

operator might not have?

I guess I'm -- I'm curious about whether we need to -- to come up with a new set of requirements or if in fact the ICP might be a good model for us to use.

MS. BROUSSARD: The integrated contingency plan is a voluntary program. There are many of us in the industry who have not adhered to that program because we have already spent the resources and time and money to develop our oil spill response plans.

There are some of us in the industry who have in fact utilized the ICP concept for certain specific types of facilities.

I don't think the Office of Pipeline Safety should tie it directly to the ICP. I think that would be a mistake, mainly because in my personal view, I don't think that many people in the pipeline industry actually utilize the ICP concept for their entire facility range.

Hopefully in the future, that may occur, just because the process will evolve over time. The ICP process as Don Smith outlined, which includes everything from RCRA planning, air planning, you know,

the whole gamut, that's very idealistic, and you might be able to do that for a fixed facility or for some limited amount of pipeline facility, but for large integrated facilities, I'm not sure.

It's a goal to shoot for, but again at this point, we've already spent the dollars and the resources and the planning and the whole process to establish the system that we currently have.

So, I would not tie it directly to ICP. I -- I would say that the ICP process that was developed is certainly a model because as we indicated in our comments, we certainly don't want you to start from scratch on the hazardous substance rule. You certainly can use the oil rule and only utilize those parts that you have to in order to have it as an adjunct.

Now, there may be some companies out there that are not integrated companies, and the only thing they do ship are hazardous substances. For those companies, obviously they're in a different situation, and, so, you have to take them into account as well.

Again, these just my personal views on -- on that particular subject.

MS. GERARD: Gwynette, before you depart the mike, I know the Coast Guard spent -- has spent years looking into the response history related to hazardous substances, and they had a work group with chemical manufacturers five years ago, right, Glenn, and you worked on that didn't you?

MR. EPLER: That was probably three years ago, four years ago.

MS. GERARD: All right. We have not done any work at all to define the population. I assume that the definition of hazardous substance we're talking about is specified as the 3-11-J list, you know. So, is there -- is there any ambiguity at all about which hazardous substance we were talking about? Would we just take that list and say those which are transported by pipeline, you know, the rule would apply to, and about the response resources, we have no -- my -- my original point is we don't have any background on the response resources required for hazardous substance responses, and that's an entirely different type of population and behavior and so on.

I mean I'm just saying before we undertook

something like that, that we probably need to have some sort of a study group to look into how to approach that. I think it's hugely different.

MS. BROUSSARD: With regard to your first question, I don't know the population. I guess we could ask CMA as well as the American Petroleum Institute to see if they have any statistics for you in order to give you an idea of how large the population that you're dealing with.

The second part of your question dealing with response resources and the differences in response. In some locations, the answer may be yes, you may have different responders because you are dealing with usually a chemical, benzene, toluene, something along those lines, and your response may be different.

But oftentimes the response organizations that we rely on are well versed, both in oil response as well as hazardous substance response, and actually participate on our behalf to do both, and that's part of our contract.

There may be some locations where you would have to specifically look for different individuals

that have that particular expertise.

I wholeheartedly agree with you. I think a study, a task group, to -- to look at this issue probably would be something to give you all the background information that -- that's necessary, so that you can formulate and draft a well-crafted rule that does not put a burden on industry as well as on the government and has consistency hopefully with what the other agencies will be promulgating in the face of special difficulties.

HEARING REPRESENTATIVE HERRON: Okay, and who was your doctor before Dr. McCabe?

MR. NORTHRUP: Okay, the doctor before that was Dr. Pratt.

HEARING REPRESENTATIVE HERRON: Dr. Pratt?

MR. NORTHRUP: Yeah. P-r-a-t-t.

MR. HOFFMAN: George Pratt.

MR. NORTHRUP: George Pratt.

HEARING REPRESENTATIVE HERRON: And they used Dr. Pratt's report in the basis of your Decision.

MR. NORTHRUP: Well, Dr. Pratt --

HEARING REPRESENTATIVE HERRON: Let me make sure.

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They don't have Dr. Pratt's first name. I'm just seeing if --

MR. NORTHRUP: Oh, George.

HEARING REPRESENTATIVE HERRON: -- if the medical evidence submitted to the District Office -- the Notice of Proposed Termination is dated September 19th. It says -- the current medical evidence and records from Dr. Cohen and Dr. Pratt show that your current medical condition is not related.

MR. NORTHRUP: Okay, Dr. Pratt explained that to me, and he said that -- in fact, his words were -- "Roger, I was only given a certain way to answer the letter because they changed the rules. They changed the Statement of Accepted Facts. They took out the fact that you did work off the clock." And that was just one example. And he said "Based upon the Statement of Accepted Facts, he said I could answer no other way." And he apologized to me. And the part that I'd like to bring in here -- I find it extremely facetious that the Post Office can go out and they can hire -- Dr. Pratt will testify or he will testify to this effect -- when I -- for example, when I went to

see Dr. Cohen, I was appalled. I find that his office is located behind an Urgent Care Center on Grand Avenue in San Marcos. I walk up to the door. There is no name. His name is not there. I walk inside and I said -- do you have a Dr. Cohen here? Nobody knew him. I said -- well here's a letter. I said -- I have an appointment with him. They says: "Well, just a minute." They went in the back room. Someone comes out and says: "Oh, I think he's the man that rented that office over there." So, she says: "Have a seat." She comes back; she hands me a bunch of papers to fill out and questions to fill out like -- Do I want to commit suicide? Do I hate my father? Do I hate my mother? Do I hate my wife? And all this type of things. Then this man comes out and says "I'm Dr. Cohen." He takes me back into an office which is no larger than these four tables. There was nothing on the wall, no pictures. I'm sat in a wooden chair. And I said "Do you have any credentials that show me who you are?" He says "Well, I'm Dr. Cohen. I'm a psychiatrist and I'm going to evaluate you." This man talked to me for less than 40 minutes. He never asked

me any questions about the Post Office. All he asked me about was the fact that I had left home when I was 17, I got busted in the military, and basically that was all he asked me. I was so upset that I left that office and I called my wife first and I said:

"Beverly, I said I just seen a hatchet man." I said:

"I never dreamed in my life that someone would stoop so low as to hire someone like this to evaluate me." I got off the phone and my heart was probably racing about -- well I know what it was -- I took it. It was 155. I took an Xantex to calm my heart down. I called Dr. Pratt on the phone. He says: "Roger I need to talk to you. Can you get down here?" And I went down there and I just told him. I just said: "I cannot believe what I just went tur condition; then they have to determine which of these issues are considered factors of employment and which of these issues are not considered factors of employment even though they may have occurred while you were in your work environment.

MR. NORTHRUP: Uh-huh.

HEARING REPRESENTATIVE HERRON: Not all factors that occur while you're at work are considered in the

program compensable factors of employment. But I think you understand what I'm saying. That's the reason why in the Statement of Facts, if you got a copy of the Statement of Facts, the Office, the District Office had to break down what was considered factors of employment and what was considered non-factors of employment. Those Statement of Fact were sent to the doctor and the doctor has to indicate if you do have a medical condition, what factor of employment it's due to. And if it's due to an employment factor that's considered compensable, then you're claim is payable under the Act. If it is due to --

MR. NORTHRUP: I understand that.

HEARING REPRESENTATIVE HERRON: Okay. He didn't indicate what work-related issues he's talking about. He has to be more specific.

MR. NORTHRUP: He wasn't -- okay. But I think what Dr. Pratt was saying is that when he was initially made -- because I was coerced into going to Dr. Pratt, by the way. I was forced by pressure to leave my -- to leave Dr. Lightner and go to Dr. Pratt.

HEARING REPRESENTATIVE HERRON: Uh-huh.

MR. NORTHRUP: Anyway.

HEARING REPRESENTATIVE HERRON: Was Dr. Lightner a psychiatrist?

MR. NORTHRUP: Psychologist.

HEARING REPRESENTATIVE HERRON: Okay, is Dr. Pratt a psychiatrist?

MR. NORTHRUP: Psychologist.

HEARING REPRESENTATIVE HERRON: Oh, they are both psychologists?

MR. NORTHRUP: Yes.

HEARING REPRESENTATIVE HERRON: They never said why they wouldn't let you go to Dr. Lightner -- is that how you say his name?

MR. NORTHRUP: It was put to me by Rob Paine in a telephone call, and of course, this is hearsay, "You have been seeing Dr. Lightner for four years. Do you think there is any improvement?"

HEARING REPRESENTATIVE HERRON: Oh, okay.

MR. NORTHRUP: Then they sent me to this vocational rehab thing. Her name was Carol Nimitz and this is something I don't understand. They send me to Carol Nimitz, Carol Nimitz gets me in the office, she

gives me aptitude tests, she says to me -- she says:
"You're 54 years old. Who's going to hire you? You've
been out on stress disability. The first time you walk
into an office to apply for a job, you tell the
employer you've been on stress, who's going to hire
you?" She said: "They ought to retire you."

HEARING REPRESENTATIVE HERRON: And her name was
what?

MR. NORTHRUP: Carol Nimitz.

HEARING REPRESENTATIVE HERRON: She was the rehab
-- the private Rehabilitation --

MR. NORTHRUP: She was --

HEARING REPRESENTATIVE HERRON: -- Counsellor,
right?

MR. NORTHRUP: Yes. All right. And that, it is -
- that is in the records. So, then she said: "You
don't show up here anymore." So, I didn't show up.
She told me not to. The next thing I know, I get a
letter in the mail from Rob Paine telling me that I
refused to cooperate in vocational rehab. So, then I -
- that's when San Francisco had the number where you
had to call and you had to wait 19 hours or 24 hours or

something before they would call you back. So, he finally called me back, and I said -- what's the story?" I said I didn't refuse to participate. I said she said that she was going to recommend that you people retire me because she couldn't find me a job; that I was too old and I had been out on stress. So, he says: "Well, let me look at it." Well, then what he did is the next thing I knew he sent me to a woman by the name of Charlotte Rebel, who was a Registered Nurse, and she came down to my house and she interviewed me and then she says: "Well, my job is to work with you and we're going to have you re-evaluated."

They sent me to a doctor named Dr. Deck, and Dr. Deck came down from Laguna Niguel. All right. He spent and I find this extremely interesting -- he spent probably in the office a good three and a hours. This Dr. Cohen spent less than 45 minutes with me. The diagnosis of Dr. Cohen totally disagrees with Dr. Deck, with Dr. Pratt, with Dr. Lightner.

HEARING REAn, submits a report. He again reviewed the reports of Dr. Cohen and Beck."

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And there is no Dr. Beck -- it's Dr. Deck. Okay.

He notes that there is a disagreement about the diagnosis between all three of them. He specifically notes that Dr. Cohen failed to explain how his diagnosis factors off the Axis 2 from the Axis 1.

Dr. Pratt then continues:

"I believe that whatever the Axis 2 diagnosis, whether Mr. Northrup perceived all the events, accurately or not, he is, in effect, this disorder made his situation worse."

In conclusion Dr. Pratt stated that there was no question that this man remains totally, clinically impaired due to work related issues. Now, this a doctor, a psychiatrist, that had seen me clinically more than any of the other psychiatrists that I had seen. And that OWCP sends me to a man who sees me for 40 minutes and this man says -- "You're condition is not related to your job." It's impossible for any man to make that kind of a decision based upon the amount of time that he had seen me.

And I also notice that on the next page, that when I received this letter, they said that I had the right to appeal. I sent in a stack of papers that was probably half the size of this. Here's how OWCP read my file. They --

HEARING REPRESENTATIVE HERRON: They've summarized. I see what they've done. That's why I was asking you was there anything you disagree with.,

MR. NORTHRUP: They said it doesn't apply.

HEARING REPRESENTATIVE HERRON: They summarized the information that you sent, I guess.

MR. NORTHRUP: Right.

HEARING REPRESENTATIVE HERRON: Since the attachments include a variety of material, and then they talk -- not talk -- but they indicated what all this information was. And this is what you did send in, right?

MR. NORTHRUP: Yeah, well, like the statement down here. It says -- they told me, namely Rob Paine, when you get this letter, you can send in evidence.

HEARING REPRESENTATIVE HERRON: Correct.

MR. NORTHRUP: And you can repudiate, you know,

what we're saying.

HEARING REPRESENTATIVE HERRON: That is correct.

MR. NORTHRUP: Then he says down here, which to me is whacko. As such, the Claimant's arguments and analysis need not be addressed at this time. Why? If I send him a letter from a Supervisor that states that we all worked off the clock; we all worked 12/14 hours a day; we all worked under pressure; we all worked like animals, why isn't it appropo?

HEARING REPRESENTATIVE HERRON: I think -- I'm not trying to start an argument or anything.

MR. NORTHRUP: No, I know.

HEARING REPRESENTATIVE HERRON: But I think what he means is that since your doctor, Dr. Pratt, he says:

"Dr. Pratt agreed that the Claimant no longer suffers a psychiatric condition arising out of the principal factors of employment. As such, the Claimant's arguments and analysis need not be addressed at this time."

Unless you have something that is adverse to that.

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MR. NORTHRUP: Okay, I do.

HEARING REPRESENTATIVE HERRON: And there was no -
- then I guess they would have addressed it. But since
you had nothing that --

MR. NORTHRUP: But I did. I sent in a letter from
a Supervisor because one of the things they are talking
about is that one of the compensable factors of
employment was that I worked off the clock; that I
worked 12 to 14 hours at day.

HEARING REPRESENTATIVE HERRON: Okay.

MR. NORTHRUP: And I was made to do that. I sent
in documentation that proves that I did that, but
Dr. Pratt and Dr. Cohen, because of the Revised
Statement of Accepted Facts, were not allowed to judge
that. Now, how can you exclude something which you had
previously accepted? And I have further evidence that
proves that it did happen. So, it should be
compensable.

To me, it's like someone went through my case
because they had to. And they sent me to a hatchet
man, and I will not back off on that. That man is a
hatchet man. I told Mrs. Anderson, one week after I

seen Dr. Cohen, I went back to that office. And I think you know my response. He was not there. He had moved on to greener pastures. I think it is totally unprofessional.

HEARING REPRESENTATIVE HERRON: Now, the Office in this same Memorandum to the Director --

Mtached from an organization.

MS. ANDERSON: That's from another organization which is part of KNAPS stand for?

MS. ANDERSON: National Association of Postal Supervisors. Even though we are part of the Post Service, we are still trying to change the work environment through our organization so we can get people like Roger when through, which didn't get any help at that time for some reason, or some people are afraid to speak up and take that stress and that undue pressure that was given.

HEARING REPRESENTATIVE HERRON: And this Booklet is --

MS. ANDERSON: It just came out this week.

HEARING REPRESENTATIVE HERRON: A Manual?

MS. ANDERSON: It just came out this week.,

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HEARING REPRESENTATIVE HERRON: Okay. And the article you have that says -- we have a crisis here -- or is that --

MS. ANDERSON: There's an X I've marked on the underlying factor on the side there.

HEARING REPRESENTATIVE HERRON: Okay, down here where it says in May 1993 --

MS. ANDERSON: Uh-huh.

MR. NORTHRUP: If I can interject something real fast about what the Post Office did to me insofar as about one time they talked about sending me back to work. All right. I was a Supervisor, and I think I was a damned good Supervisor, because at least I still tried to take the time to listen to the people that worked for me. The Post Office their approach to me was we are going to demote you. We will bring you back as a Carrier or maybe we will put you out on the dock looking through empty mail sacks. And that was stated to me by Doug Norris who was the Injury Comp Supervisor. I went to my psychiatrist and I said -- this what -- this is what they are going to offer me? I'm sorry that was through this other rehab they sent

me to. It was a Terry Tucker. And I said if I was a Supervisor why should I have to go back to work in the Post Office and be subjected to the humiliation and embarrassment of being demoted.

HEARING REPRESENTATIVE HERRON: Okay, Mr. Hoffman do you need to make a statement too?

MS. ANDERSON: I'm here to support Roger and to inform you I'm -- there's a statement of mine in the record too.

HEARING REPRESENTATIVE HERRON: Right I saw that. I didn't read it, but --

MS. ANDERSON: Okay.

HEARING REPRESENTATIVE HERRON: But I saw it.

MS. ANDERSON: All right. It's in there. It describes the conditions of the Post Office in Carlsbad at the time I was a carrier in the Carlsbad Post Office. Roger was my Supervisor then. I know the stress that he was under then. I know that the conditions that he just described are true. They did work off the clock. I mean it was obvious that the Supervisors were in there in the morning before the carriers got there and they were there in the afternoon

after the carriers went home. And whether I put in a 10 or 11 hour day didn't matter. The Supervisors were still there. I can understand Roger's stress. I can understand his aggravation and grievance and all the conditions that he has been put through then; what he has been put through since then trying to maintain his claim; trying to get something settled by the Government. And I understand that he is still not the old Roger that he was before he got to the Post Office back in those days. I see no relief in his stress and it's real evident to me where his stress came from -- that it was work-related and it was because of a -- they way they treated people. They shouldn't treat -- nobody should treat people the way those -- they did in those days.

HEARING REPRESENTATIVE HERRON: Okays. Let me identify this information that you've given me Mr. Northrup and I'll identify again, just for the record, the information that Ms. Anderson gave me.

Mr. Northrup gave me a statement from Beverly Northrup. Is that your wife?

MR. NORTHRUP: That's my wife.

HEARING REPRESENTATIVE HERRON: Your wife. Okay.,
It's dated February 3, 1997. That will be Exhibit
No. 1.

(Whereupon, Claimant's Exhibit No. 1 Marked
For Identification.)

Also submitted is a statement from is that Noe --

MR. NORTHRUP: Noe.

HEARING REPRESENTATIVE HERRON: Noe.

MR. NORTHRUP: Noe Mercado.

HEARING REPRESENTATIVE HERRON: Okay, Noe Mercado.

MR. NORTHRUP: Right. He was a Supervisor with me
in the Carlsbad Post Office.

HEARIN