

ATTACHMENT 45 – *INTERVIEW OF PHMSA ENVIRONMENTAL PLANNING OFFICER*

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

* * * * *

Investigation of:

*

*

ENBRIDGE OIL SPILL

*

MARSHALL, MICHIGAN

* Docket No.: DCA-10-MP-007

*

*

* * * * *

Interview of: MELANIE BARBER

RPH Small Conference Room

Monday,
November 22, 2010

The above-captioned matter convened, pursuant to notice.

BEFORE: CHARLES KOVAL
Accident Investigator

APPEARANCES:

CHARLES R. KOVAL, Accident Investigator
National Transportation Safety Board
490 L'Enfant Plaza East, Southwest
Washington, DC 20594
(202) 314-6464

PAUL L. STANCIL, Accident Investigator
National Transportation Safety Board
490 L'Enfant Plaza, Southwest
Washington, DC 20594
(202) 314-6605

JAMES BUNN, General Engineer
U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration
Central Region
901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641
(816) 329-3806

JAY JOHNSON, Senior Compliance Specialist
Enbridge Energy Company, Inc.
119 North 25th Street East
Superior, Wisconsin 54880-5247
(715) 394-1512
jay.johnson@enbridge.com

DUANE KLABUNDE, Supervisor
Measurement, Audit and Compliance
Enbridge Pipelines
2505 16th Street, Southwest
Minot, North Dakota 58701-6947
(701) 857-0856

JON GULCH, On-Scene Coordinator
U.S. Environmental Protection Agency
Region 5, Emergency Response #1
9311 Groh Road
Mail Code: SE-GI
Grosse Ile, MI 48138-1697
(734) 692-7686

<u>ITEM</u>	<u>I N D E X</u>	<u>PAGE</u>
Interview of Melanie Barber:		
By Mr. Koval		5
By Mr. Stancil		17
By Mr. Gulch		35
By Mr. Koval		38
By Mr. Stancil		45
By Mr. Gulch		49
By Mr. Koval		51

I N T E R V I E W

1

MR. KOVAL: Okay. Duane, thanks for coming back to us.

2

3

MR. STANCIL: Good afternoon, Duane. Paul Stancil here.

4

MR. KLABUNDE: Hey, Paul.

5

MR. STANCIL: Did you have a good trip back home a couple weeks ago?

6

7

MR. KLABUNDE: I did. Everything went smooth.

8

MR. STANCIL: No, but I hear you guys have a pile of snow now.

9

10

MR. KLABUNDE: Yeah. It's that time of year all of a sudden. It came quick --

11

12

MR. STANCIL: I guess so.

13

14

MR. KOVAL: Duane, glad you could make it. This is Melanie Barber. She's with the -- she's the environmental planning officer with the Department Of Transportation, PHMSA. Is that correct, Melanie?

15

16

MS. BARBER: Yes.

17

18

MR. KLABUNDE: Hi, Melanie.

19

MS. BARBER: Hey, how are you?

20

MR. KLABUNDE: Good.

21

MR. JOHNSON: Well, Melanie, this is Jay Johnson. I'm also with Enbridge.

22

23

MS. BARBER: Hello.

24

MR. KOVAL: Jon, you're on, right? Jon Gulch?

25

MR. GULCH: Yep, yep. I'm on the line here.

1 MR. KOVAL: Okay.

2 INTERVIEW OF MELANIE BARBER

3 BY MR. KOVAL:

4 Q. Okay. Melanie, for the record, could you tell us your
5 exact position?

6 A. I'm an environmental planning officer for the Office of
7 Pipeline Safety in the Pipeline and Hazardous Materials Safety
8 Administration for the United States Department of Transportation.

9 Q. And you've been working there a long time. How long
10 have you been working there?

11 A. Since February of 1995.

12 Q. Wow. Okay. Since we're on that subject, how many
13 people do you have in your office -- in that office, environmental
14 planning?

15 A. I work for the Office of Pipeline Safety and that is our
16 office. That was created and approved by Congress. So there are
17 probably --

18 Q. Well, how about the smaller office, the Environmental
19 Planning Office?

20 A. That's not the designation.

21 Q. It's not that. What would be the smaller?

22 A. Our office is the Office of Pipeline Safety.

23 Q. Okay, okay.

24 A. And we have staff at headquarters and in our regions
25 around the country. So our regions are the Eastern Region,

1 Southern Region, the Southwest Region, the Central Region and the
2 Western Region.

3 Q. Okay. How many development deployment exercises do you
4 review annually?

5 A. Last year I designed, led, evaluated and wrote the
6 report for the Spills of National Significance of 2010. It was a
7 huge exercise and involved over 1,000 people. It included all of
8 the federal departments, most of the states of the United States,
9 and most of the localities of the United States, and it tested the
10 capabilities of a worst-case discharge, which was later borne out
11 in the actual event of Deep Water Horizon.

12 Q. Okay. So you were involved with Deep Water Horizon?

13 A. That's correct. And the authority for that comes under
14 Section 4202 of the Oil Pollution Act of 1990.

15 Q. Okay. That's not the Minerals Management Service then?

16 A. Well, that section, which I mentioned to you before, the
17 job I had before this was that I worked on Capitol Hill for two
18 committees: Merchant Marine Fisheries Committee and then the
19 Appropriations Committee.

20 So while I worked for the Merchant Marine Fisheries
21 Committee, I helped write the Oil Pollution Act of 1990. And that
22 section requires us, among other things -- us being Pipeline and
23 Hazardous Materials Safety Administration and the three other
24 agencies: the Coast Guard, the EPA, and what used to be called
25 the Minerals Management Service is now renamed the Bureau of Ocean

1 Enforcement, to conduct exercises and to have approved either
2 vessel response plans or facility response plans.

3 So all the 15 departments, federal agencies, are part of
4 the National Response Team and the Region Response Teams, and I
5 serve on them as well.

6 And the four agencies: The Coast Guard, the EPA, what
7 used to be called Minerals Management Service now called the
8 Bureau of Ocean Enforcement, and I serve on the National
9 Scheduling Coordinating Committee, and we set the national
10 exercise program for the country, publish it in the Federal
11 Register, and we continuously revise it based on real events.

12 Real events are emergencies of any type, you know, bad
13 weather, like hurricanes. Learn those lessons, you know, from the
14 major hurricanes, like Hurricane Katrina, Hurricane Ike, Hurricane
15 Rita, Hurricane Earl, which, remember, earlier this year the
16 forecast was that Hurricane Earl could come ashore anywhere
17 between Puerto Rico and Canada.

18 So all these entities that I work with: federal, state,
19 local, travel entities -- I mean, how long do you want to talk
20 about this? I can talk to you about all this for months.

21 Q. That's interesting. Go ahead.

22 A. So what we all do, on an hourly basis, because I'm on
23 call 24/7, 365 days a year, and so are all the -- all my partners
24 across federal, state, local, travel, governments, community
25 groups like the Red Cross, people that work for companies. So we

1 are ready all the time. You know, we're addicted to CNN, the
2 Weather Channel, other entities, you know. Get e-mails saying,
3 you know, Hurricane Earl's on its way or -- right now, you know,
4 what's going on across the United States with transportation, with
5 the environment. Like right now with these people that are
6 questioning the ability of the Federal Government to search them;
7 what impact is that going to have on the next week? So all that
8 comes into play.

9 And we learn lessons with everything that happens, with
10 all emergencies, regardless of the cause: bad people doing bad
11 things, natural disasters, health emergencies like H1N1. That was
12 another thing that I work on.

13 So that when we wake up -- we meaning people in the
14 emergency business wake up, hopefully we're better at protecting
15 people and the environment and security -- and I use all those
16 terms in the broadest of ways -- than we were yesterday.

17 MR. KOVAL: Can you imagine being on call like that,
18 guys? Hello.

19 UNIDENTIFIED SPEAKER: Not great, no.

20 MS. BARBER: It doesn't sound like an appealing job to a
21 lot of people. So that's why I'm saying that I read Section 4202
22 of the Oil Pollution Act of 1990 in the broadest possible way.
23 The purpose of that law was to make people and the environment
24 safer than they were before Captain Hazelwood had his adventures
25 with Exxon Valdez.

1 So while the Spill of National Significance 2010 is the
2 name of a drill, we do smaller drills all the time, because -- you
3 know, we worked on H1N1. We participate in drills that other
4 entities lead, you know, whether they are the Coast Guard, the
5 EPA, companies, cooperatives, fire fighters. Would I like us to
6 do a lot more? Absolutely.

7 BY MR. KOVAL:

8 Q. Do you -- are you involved with -- from PHMSA's
9 prospective, exercises, unannounced government exercises? Do you
10 check those in any way or do you have staff that does that?

11 A. We -- each of those four agencies, as part of my work as
12 PHMSA's representative to the National Scheduling Coordinating
13 Committee, we have decided instead of writing regulations we have
14 these guidelines. We have the prep guidelines. Do you all have
15 that?

16 Q. Uh-huh.

17 A. Okay. Figured you did. We have decided that each
18 agency decides what unannounced means. And so when I lead drills
19 we tell everybody that there's going to be a drill in a particular
20 place. Like we say, please come to a drill in Houston on this
21 date at this time, but we don't tell them what the scenario is.
22 So it's unannounced in that way.

23 Q. Is that regions? How many do you do a year then?

24 A. We -- it varies. Some years we have done as many as 20.
25 Some years we have done as few as one. One year we did -- we

1 extended them to natural gas companies.

2 As I say, I take a very broad interpretation of the two
3 laws that we enforce: the Pipeline Safety Act and the Oil
4 Pollution Act of 1990. Other people have a different
5 interpretation of our authority.

6 Q. So what was one of the -- can you tell me the locations
7 of the most recent ones?

8 A. Some people from our office went to an exercise with --
9 an industry led exercise with Colonial Pipeline, which is the
10 longest pipeline in the Continental United States.

11 Q. And when was that approximately?

12 A. In the last month.

13 Q. And Colonial is long, but where would that -- would that
14 be the whole company?

15 A. The scenario was based in Texas. The drill itself was
16 held in Georgia.

17 Q. And their headquarters?

18 A. Is in Georgia.

19 Q. Yes. Atlanta?

20 A. Yes. Yeah, suburb of Atlanta, which as you know is, you
21 know, about the same as a suburb of Washington, D.C. It's a huge
22 geographic area.

23 Q. When you do that -- just out of curiosity -- sorry guys,
24 I've never been in on one, what do you do? What did you do on
25 this particular one?

1 A. Well, one of the first things we did is I pulled all of
2 the reports on the drills that we've had with Colonial before.
3 And we've had -- I led a tabletop exercise.

4 And the difference -- the thing that distinguishes
5 tabletops from area exercises is equipment deployment. And I led
6 a tabletop exercise with them in Fairfax County right after they
7 had a major spill in the Washington D.C. area. And you're going
8 to have a very different series of events when you have pipeline
9 incidents in urban areas than -- urban areas that involve water
10 than you are if you have a pipeline incident in a desert.

11 So they failed that exercise. So as a result of their
12 failing it, I required them to have a huge area exercise in
13 Louisiana. So they had that one.

14 And then a couple of years ago they had a huge exercise
15 that involved the Potomac River and the potential threat to
16 drinking water. And that was about the same time that a not ready
17 for primetime state pilot lost control of a vessel in the
18 Mississippi River and could have endangered all the drinking water
19 in South Mississippi and South Louisiana.

20 So we learned all the lessons, as we were talking
21 earlier, from a real life incident, and examined all those
22 questions in a drill with the owners of -- owners and operators of
23 the longest pipeline in the United States that runs between South
24 Louisiana and New Jersey. That would have involved the residents
25 of a major metropolitan area.

1 And that involved all of our partners. The partners
2 that I was just mentioning: the Coast Guard, EPA, what was then
3 called MMS -- our office was one of the leaders of that -- all
4 these counties that -- and the District, and the water providers.
5 And that was another opportunity to test how all those people
6 interacted, because you could spend an entire drill just making
7 sure all those people were able to work effectively together.

8 Q. That accident was a long time ago in the Fairfax area?

9 A. That one was, but the one in Louisiana was not, it was
10 in the last couple years.

11 And then you have all the tensions between competing
12 public policy, you know, like the public's right to know versus
13 national security. You know, are you going to release information
14 that bad people could potentially take as maps and, you know,
15 endanger those facilities? So those are the kinds of questions
16 that come up.

17 But, as a practical matter what comes up
18 is that I, and other members of the design team, meet with all the
19 affected -- interested parties, then we decide who to invite as
20 players and participants and observers. We try to get them
21 excited about and bring resources to the exercise. We choose a
22 location and we choose dates. Let's say, we choose objectives.
23 We choose the scope. Get people to come. Write up, you know,
24 things that we want to have addressed based on real events and
25 lessons learned from real events and other training. Find out

1 what else is going on in the area and around the country. For
2 example, if you've just had Hurricane Katrina you're not going to
3 have exercises in the Gulf of Mexico because people are still
4 addressing what's going on in the real world.

5 Then once you have it, you know, you lead it in a way
6 that gets a lot of information and learning and communication
7 among all the participants. And then you write up the lessons
8 learned and you communicate those lessons learned to all the
9 interested parties.

10 And then you follow up on the lessons learned. You
11 don't just put them on the shelf and check the box that you met
12 your statutory requirement.

13 Q. Have you ever had Enbridge as a part of a drill?

14 A. Yes.

15 Q. When was that?

16 A. Well, right after September 11th, there were people
17 across the federal government that believed that the focus should
18 be national security more than -- you know, there are all these
19 public policy goals. But there was a feeling that we should shift
20 the focus, heighten the focus on national security. And so we,
21 with the Federal Bureau of Investigation as our partner, we had a
22 huge drill in Cushing, Oklahoma, and we had about 1,000 people,
23 and Enbridge was one of the industry responsible parties.

24 Q. But how about anything up in the Northern Plains area?

25 A. Yes, we had, we had a drill with the Coast Guard as our

1 co-host. We had an area exercise in Sault Ste. Marie on September
2 24th, 2003.

3 MR. KOVAL: That's your Chicago Region too, right, Jay?

4 MR. JOHNSON: No. That would be the Superior Region at
5 the -- straight to Mackinaw where that's located.

6 MS. BARBER: Right, right. And what happened is that I
7 choose these pipeline operators to conduct drills. And one of the
8 first things that I do when I meet with them is I say, "What else
9 is going on as far as training?" And they said, "Well, we've been
10 chosen to conduct an area exercise with the Coast Guard."

11 And so rather than duplicating efforts, I got in touch
12 with my Coast Guard partners and we worked with them to have a
13 more effective area exercise instead of a duplicative command post
14 exercise.

15 MR. JOHNSON: And I believe we also had the FBI in on
16 that one?

17 MS. BARBER: That's correct. That's correct. Because
18 what we found is that there are parts of the country where the FBI
19 has had a good bit of interaction with pipelines.

20 For example, when you look at pipeline maps of the
21 United States, there are states in which the pipelines look like
22 spaghetti. And then there are other states where there are fewer
23 pipelines and so the Federal Bureau of Investigation
24 representatives have had much less interaction with pipelines,
25 because there aren't many pipelines there. So, you know, there

1 are fewer people that -- working -- we have always had extensive
2 interaction with state and local law enforcement in all of our
3 drills. We started to have more interest from the FBI in pipeline
4 activities after September 11th.

5 BY MR. KOVAL:

6 Q. Uh-huh. That seems logical.

7 A. Yeah.

8 Q. So we have Cushing, Oklahoma, which is basically -- it
9 was -- you said that was the FBI law enforcement?

10 A. They were the co-host.

11 Q. Okay.

12 A. Although I think if they were here they would tell you
13 that they were the only host.

14 Q. And when was Sault Ste. Marie?

15 A. September 24th, 2003. The exercise with the FBI was
16 March 10th through the 12th, 2004.

17 Q. And were they completed successfully?

18 A. Yes.

19 Q. So have you, have you ever had an Enbridge -- have you
20 ever done an Enbridge exercise that wasn't completed successfully?

21 A. No.

22 Q. No. Of all your exercises, roughly, with large product
23 lines, what number would you say are completed successfully,
24 roughly, percentage?

25 A. The one I just told you about with Colonial was the only

1 one that was not successful. And then they completed the area
2 exercise successfully so they met the requirement.

3 Q. When you notified these parties, how much
4 notification -- how much time do you give them before the
5 accident -- or I mean, before the exercise, approximately?

6 A. At least a month.

7 Q. How do you feel about the -- has it had any effect on
8 you, the advisory bulletin regarding the need for operators to
9 have -- or the need for operators to check their resources?

10 A. I recommended that we write the advisory bulletin.

11 Q. And did you write it?

12 A. I wrote one of the drafts.

13 Q. Are you familiar with some of the tiers that are in the
14 EPA regulation?

15 A. In a general way, yes.

16 Q. Okay. What classifications do you have for pipelines at
17 risk?

18 A. I don't have that in front of me so I'm not prepared to
19 comment on them.

20 Q. And you have every operator's facility response plan in
21 your office?

22 A. We do. We have an all-electronic facility response plan
23 program, so all pipeline operators who fall within Section 4202 of
24 the Oil Pollution Act of 1990 must file facility response plans
25 before they can operate.

1 They must submit them in electronic form to protect the
2 environment and to have up-to-date plans. They must keep those
3 plans current, so they must file changes that meet the five
4 criteria in that section on the law. And if they fail to keep
5 their plans current, they have to shut down.

6 And I think you remember that after the Enbridge
7 incident I sent those plans to all the partners that needed them
8 to investigate that incident.

9 Q. Yes. John, John Hess provided those, I believe. Or did
10 you -- you e-mailed us with those?

11 A. I e-mailed them to you --

12 Q. Okay.

13 A. -- the United States Coast Guard, the EPA, the State of
14 Michigan, so that the Coast Guard could name them the responsible
15 party and proceed under the Oil Pollution Act of 1990.

16 MR. KOVAL: Paul, do you have any questions?

17 MR. STANCIL: Yeah. Do you want me to jump in for a
18 bit?

19 MR. KOVAL: Please.

20 BY MR. STANCIL:

21 Q. Let me, let me go back to when we were talking about the
22 prep exercises, Melanie.

23 A. Uh-huh.

24 Q. Has Enbridge completed the required number of drills and
25 exercises under that program?

1 A. They have to conduct one a year.

2 Q. And do they submit their results to you for approval; do
3 you maintain records of them? How does that work?

4 A. I'm not sure.

5 Q. Okay. Is that something you can find out for us,
6 whether they've completed the required number of exercises? I
7 think, according to the regulation, and correct me if I'm wrong,
8 but I believe they have to submit them to PHMSA for either
9 approval or for maintaining them on file.

10 And, if that's the case, just would like to know if
11 they've done the required number of exercises and whether PHMSA's
12 approved them.

13 A. Yep.

14 Q. Okay. So that's all on the prep drills and exercises.
15 Could you describe the process that you go through with approval
16 of the facility response plans?

17 A. Uh-huh. The first step is, does an operator have to
18 file a facility response plan, and it depends on whether they --
19 they, the operator, falls within the criteria in Section 4202 of
20 the Oil Pollution Act of 1990. And if they do, then they have to,
21 before they can start to operate, file a facility response plan
22 with my office.

23 So we run the program out of headquarters and they
24 file -- they, meaning the pipeline operators, file an electronic
25 facility response plan with our office. Then once they file it,

1 we, under the law, have to approve it or require changes to it,
2 and get back to the pipeline operator.

3 Because we believe that substance is more important than
4 form, we allow pipeline operators to file a one plan or an
5 integrated plan. So rather than writing separate plans for -- for
6 example, if they fall within the jurisdiction of more than one
7 federal agency, state agency, local agency, the Oil Pollution Act
8 of 1990 is the only major environmental law that does not preempt
9 state and local law.

10 So unlike Superfund or other laws, other major federal
11 laws -- and the reason for that is that there were many people
12 that were members of Congress and senators that believed and
13 believe that there were state laws that were more stringent than
14 what Congress could agree to, when the Oil Pollution Act of 1990
15 was enacted. So if Acme Company wants to they can write one plan
16 and adapt it so that it meets the requirement of each of the
17 agencies, federal, state, local, but it must meet the
18 requirements.

19 So they, the pipeline operator, writes a plan, or in
20 many cases they hire companies who do this for a living. So there
21 are, say, probably less than 10 companies who do this for a
22 living. And a lot of the major companies and most of the
23 pipelines are owned by major companies. Small businesses do not
24 generally own pipelines.

25 So they will write these plans, submit them in

1 electronic form, send them to me, and then I review them to see if
2 they comply with the Oil Pollution Act of 1990.

3 And then I e-mail them. I communicate with them
4 entirely by e-mail and telephone, and I send them a facility
5 response plan questionnaire. And that is about -- well, that is a
6 summary of the facility response plan.

7 And the purpose of that is so that, rather than reading
8 what can be a 600-page facility response plan, a person can read
9 the questionnaire and know the high points. They can know who the
10 qualified individual is, what the worst-case discharge is, who the
11 oil spill responders are, and know what they're dealing with when
12 there is a pipeline release of oil.

13 Then they have -- they, the pipeline operators have,
14 let's say, a month to keep that current when there is a
15 substantive change. And a substantive change is that you have
16 changed one of the five criteria in Section 4202 of the Oil
17 Pollution Act of 1990.

18 So they have to keep that current. They can't just, you
19 know, use this as -- if they have a paper copy, use it as
20 something that you put in a closet or -- with electronic analogy
21 you just can't put this on your -- you know, in your database and
22 ignore it.

23 Q. Okay. Are there any protocols that you use to determine
24 whether the plan is adequate to address a worst-case discharge?

25 A. A lot of it is frankly my judgment and my experience of

1 having done this sort of work for 30 years, you know, if something
2 doesn't make sense. You know, if they say that they could reach a
3 site in, you know, downtown traffic, or they say they could drive
4 across New Mexico in an hour. You know, based on, you know, the
5 fact that I'm a lawyer, that I wrote the Oil Pollution Act in
6 part -- you know, I was partly responsible for writing the Oil
7 Pollution Act of 1990 -- that I've led, you know, more than 100
8 command post drills and more than 12 area exercises.

9 So when I read these plans, if they don't appear to me
10 to follow the law, then I'm going to require them to be changed.
11 So, yes, based on my substantive knowledge of environmental law
12 practice, safety, that's how I review them.

13 Q. Okay.

14 A. Emergencies, what's worked before.

15 Q. Now, under -- Chuck mentioned the three-tiered process.

16 A. Uh-huh.

17 Q. I think it's referenced in 49 CFR 194.115?

18 A. Uh-huh.

19 Q. It seems to give your three-tiered response to --
20 depending on what area, the 12, 36, 60-hour --

21 A. Okay.

22 Q. -- or the 6, 30, 54. And it instructs the operator to
23 identify the resources necessary to respond to a worst-case
24 discharge. But I don't see how you determine what those amount of
25 resources are. How would you do that?

1 A. May I see that, please?

2 Q. Yeah, yeah. I apologize, my copy's all marked over
3 but --

4 A. Are you referring to the highlighted part?

5 Q. Yeah, yeah.

6 A. I think this is a reasonable person's standard.

7 Q. Okay.

8 A. What the Oil Pollution Act of 1990 tried to do is, we
9 had extensive hearings and we looked at every possible way to do
10 better than the country was doing when Exxon Valdez happened.

11 Q. Right.

12 A. You know, we didn't want people that were intoxicated to
13 be the captains of large vessels. You know, he had had a record
14 of DUI convictions but there wasn't a national registry.

15 So I think what this section of our regulations says is
16 when bad things happen, call out the cavalry, you know.

17 Q. Right.

18 A. It doesn't matter if -- what the person's day job is, if
19 they're a firefighter. You know, when you've exhausted all of
20 your company resources and your oil spill response organization
21 that's in town, call everybody else to start coming that way and
22 responding to this emergency.

23 Q. So there's really no prescriptive --

24 A. No, no.

25 Q. -- standard as to how you would calculate what's

1 necessary to contract for and their response?

2 A. No. And this is going to vary all over the country too.
3 Because what works in Texas isn't necessarily going to be the best
4 thing in upstate New York or rural Montana or wherever else. But
5 it -- I mean, that's really the answer to the question.

6 Q. Yeah.

7 A. I mean --

8 Q. Do you think that's adequate or do you think there needs
9 to be further clarification with that regulation?

10 A. I don't know.

11 Q. So when you retire is there anyone else that has the
12 expertise to make those judgments or is there anyone else doing it
13 or is it just you?

14 A. I think there are a lot of smart people where I work
15 that could probably do this.

16 Q. Probably not with as much experience as you have though,
17 but --

18 A. Well, as I say, there are all kinds of smart people that
19 could lead this program; it's just that they would do it
20 differently.

21 Q. Right. So if someone were to -- I assume that you're
22 the one who reviewed this facility response plan here for Enbridge
23 that covers the Chicago Region where this oil spill occurred?

24 A. Uh-huh.

25 Q. What was your characterization of that plan? You

1 thought that it was adequate to address a spill in that area?

2 A. I think everybody can always do better.

3 Q. Is there anything that you would liked to have seen
4 differently in the plan?

5 A. I would have liked the 800 number to have been replaced
6 by someone's phone number.

7 Q. Anything with respect to response capability?

8 A. It's hard to say now because something -- I mean that --

9 Q. Yeah, in hindsight, exactly. Well, when you reviewed
10 the plan, I assume it was a year ago or whenever, was there any
11 problem that you identified with the plan that you felt needed to
12 be addressed?

13 A. Are you asking me that if I could have -- are you asking
14 me if I could have any change to all these plans?

15 Q. No, no.

16 A. I mean --

17 Q. I'm asking when you --

18 A. I'm not being smart aleck when I ask this question.

19 Q. No, no. When you, when you reviewed the plan and
20 approved it, what -- did you identify any shortcomings that you
21 thought needed to be fixed or were they fixed, if they were, or
22 were they not fixed?

23 I'm just kind of trying to get a feel for whether this
24 plan was, you know, sailed through or whether you felt that it
25 needed more work?

1 MR. KOVAL: I mean, have you done a review since the
2 accident, first?

3 MS. BARBER: Yes.

4 BY MR. STANCIL:

5 Q. And what would you say -- what were the results of the
6 review?

7 A. I think the results are that all of the facility
8 response plans around the country need to be improved.

9 Q. Is there anything specific you can say about that?

10 A. I think after Exxon Valdez, that we as a nation were not
11 ready for huge oil spills, and I think again as a nation, we are
12 not ready for huge oil spills. And I think we are also not ready
13 for two emergencies going on at the same time.

14 So right now we're in hurricane season and we face the
15 risk of -- you know, we started off by talking about that my job
16 is I address all emergencies. So I am concerned that we as a
17 nation, and the office in particular, is grappling with lots of
18 emergencies and I'm not convinced that we are, as a country, well
19 prepared to handle these emergencies.

20 Q. And is that in terms of the amount of resources that are
21 available out there to deal with these issues?

22 A. Yes.

23 Q. Now, Chuck brought up this, this advisory. I believe it
24 was back in -- shortly after the Gulf Horizon spill.

25 A. Deep Water Horizon.

1 Q. Deep Water Horizon. Excuse me.

2 A. Yep, uh-huh.

3 Q. You had issued it or PHMSA had issued an advisory to
4 operators requesting them to review the plans and make sure that
5 they have alternate resources identified, if necessary. What sort
6 of response did you get from Enbridge to that advisory?

7 A. They wrote us that they had -- what the advisory
8 bulletin said is that every pipeline operator who met the
9 requirements in Section 4202 of the Oil Pollution Act of 1990
10 needed to review their facility response plans and determine if
11 they still met the requirements of Section 4202, and they wrote
12 and said that they did.

13 Q. Enbridge did?

14 A. Uh-huh.

15 Q. Okay. And when did you receive a response from them?
16 Was it prior to the accident? Do you have that there?

17 A. I don't.

18 Q. Do you remember when you received that?

19 A. I don't. You could ask one of the people on the phone.

20 Q. But you have a written correspondence?

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. Okay. That's something we could ask for, if we wanted
25 it?

1 A. Uh-huh.

2 Q. Okay. And does EPA do a joint --

3 A. Yes. It was all before.

4 Q. It was before?

5 A. Because after the incident I sent all this to Chuck, the
6 Coast Guard, the EPA, and the State of Michigan.

7 Q. Okay, okay. Looking through some of your literature I
8 see that there's some instances where pipeline facilities are
9 regulated by both DOT and the EPA?

10 A. Uh-huh.

11 Q. That's correct?

12 A. And the Coast Guard.

13 Q. And the Coast Guard.

14 A. And what used to be the Minerals Management Service now
15 the Bureau of Ocean Enforcement.

16 Q. So where you have multiple agencies regulating a
17 pipeline facility, do they -- EPA, Coast Guard, or Minerals
18 Management, do they review your response plans as well -- in this
19 case Enbridge response plan?

20 A. They reviewed their vessel or facility response plans.

21 Q. I'm sorry, with respect to this facility, the Enbridge
22 facilities, did some other agency besides you review that
23 particular response plan?

24 A. Okay. A facility, in this case, Enbridge may fall in
25 one of those -- one or more of those four agencies' jurisdictions

1 under the Section 4202 of the Oil Pollution Act of 1990. So is
2 your question before I approve it for PHMSA, do I ask or require
3 another of those four -- if they have -- if we share jurisdiction
4 to review it?

5 Q. Yes.

6 A. No.

7 Q. Okay. So it's just -- it would just be PHMSA doing the
8 review for the pipelines?

9 A. Right.

10 Q. Okay.

11 A. Now, at the same time -- all right, here's a
12 hypothetical. Say we shared jurisdiction over Acme Company with
13 the Coast Guard. Acme Company is going to have to submit a vessel
14 response plan or facility response plan to the Coast Guard and the
15 Coast Guard is going to have its own -- does have its own vessel
16 response plan program and facility response plan.

17 Q. Right.

18 A. So does the EPA and so does --

19 Q. Yes.

20 A. -- the agency formerly known as Minerals Management
21 Service now known Bureau of Ocean Enforcement. And so do many
22 states and so do many localities.

23 Q. Okay. But in the cases of pipeline, PHMSA has primacy
24 on the review or --

25 A. Uh-uh.

1 Q. -- sole review? I must have misunderstood something.

2 A. Equal.

3 Q. Okay.

4 A. And then probably --

5 Q. So they would have to submit it not only to you, but to
6 EPA if it was in their jurisdiction?

7 A. Before they can operate.

8 Q. Okay.

9 A. And say -- all right. Say you have these agencies. So
10 we have, all right, say Acme Company. They want to start
11 operations, and say they fall in -- fall within EPA's jurisdiction
12 and PHMSA's jurisdiction. And PHMSA says yes but EPA says no,
13 they can't start to operate or they can't continue to operate.

14 Q. All right. Now, do you communicate with EPA or the
15 Coast Guard over whether or not you approve of these plans or --

16 A. Sometimes.

17 Q. Sometimes. Was there anything like that with respect to
18 Enbridge in the Chicago Region?

19 A. The way that usually comes up is -- most of these
20 pipelines were built a long, long time ago and they were built in
21 rural areas. And a lot of construction, residential, commercial,
22 industrial has happened since then.

23 What happens now is that say someone wants to build a
24 pipeline and there are groups of people who live or work or play
25 around there and they don't want those pipelines to be built, so

1 they -- the people who are against building those pipelines, will
2 go to any government entity, at any level, and say we, the
3 residents of this area, oppose building this pipelines.

4 And so they will go to -- you know, when you look at the
5 entities who have jurisdiction. That could be the State
6 Department, the Transportation Department, EPA, Minerals
7 Management Service, Bureau of Ocean Enforcement, the Coast Guard,
8 Interior Department, any of the -- all the cabinet departments,
9 lots of agencies, lots of state entities like -- lots of local
10 entities.

11 And so the citizens, residents will be asked -- asking
12 their local, state, federal, travel entities to weigh in to
13 prohibit that pipeline fixed facility vessel, whatever, to be
14 either restarted or built.

15 And so that -- it comes up that way. It comes up in
16 area -- our area committees, which were created under the Oil
17 Pollution Act of 1990.

18 Q. Uh-huh.

19 A. It comes up in our scheduling, National Scheduling
20 Coordinating Committee and in our interagency meetings.

21 Q. Okay. Are you aware of any other agency concerns about
22 the adequacy of the facility response plan here?

23 A. Since the Deep Water Horizon incident happened and since
24 the gas pipeline incidents and tank incidents that have happened
25 in the last few years, I am aware of a lot of concerns that have

1 been raised by people who live near facilities that we regulate,
2 that the Coast Guard regulates, that the EPA regulates.

3 Q. Okay. Let's talk about this Enbridge pipeline in
4 specifics. Anything there? Any concerns from say -- from the EPA
5 that just this facility response plan was or wasn't adequate?
6 Anyone bring that up to you?

7 A. I've had calls from people who work at the EPA in
8 different capacities asking me for copies of this plan, which I
9 provided to them.

10 Q. Uh-huh.

11 A. And there has been a lot of discussion about who
12 should -- if those -- if the federal government's jurisdiction
13 should change. And there have -- and I've gotten a lot of calls
14 from members of the media and members of the public about
15 facilities all around the country as a result of those incidents,
16 largely along the line that, you know, am I safe? Am I safe as a
17 person and is my environment safe, because if this happened in the
18 Gulf coast or in the Midwest or in California?

19 So I've had a lot of those discussions. And we've had
20 lots of requests under the Open Records Act and under the Freedom
21 of Information Act for all facility response plans.

22 So I think that everybody, meaning people from neighbors
23 to people who've been heavily involved in all these issues since,
24 you know, they drove by, you know, a facility or, you know,
25 watched the sea otter drown in Exxon Valdez or whenever they were

1 first involved. Is that the answer to your question?

2 Q. Yeah. I'm looking more for -- for whether anyone had
3 any particular concerns about the quality of this plan?

4 A. I have had concerns voiced by people who work for the
5 federal government.

6 Q. And what are their concerns?

7 A. If this company and other companies are ready to respond
8 to oil spills, particularly once that -- and that started after
9 that incident with the walruses.

10 Q. With -- I know what you're talking about. And what was
11 your answer?

12 A. That I'm continuing to read these plans closely to see
13 if all these people who submit plans are trying to do everything
14 they can to keep people and the environment safe.

15 Q. Do you think it would be helpful if you had some sort of
16 a yardstick with which to measure these plans against -- some
17 standards that gave you some numerical value to say that they have
18 the capacity to deal with a spill of this magnitude or that
19 magnitude?

20 A. Do you mean is there a formula for calculating?

21 Q. Yes. Much like the Coast Guard has in 33 CFR, for
22 instance. They have that formula. I don't know if you're
23 familiar with that.

24 A. You mean for calculating worst-case discharges?

25 Q. For calculating response capability -- it's like

1 response capability standards for planning purposes.

2 A. I will tell you in general that I'm very impressed with
3 everything the Coast Guard does. That I have had -- I've been
4 working closely with the Coast Guard, you know, firstly as a
5 neighbor, you know, when I was growing up. I'm originally from
6 Mississippi.

7 Q. Uh-huh.

8 A. And I think that when the Coast Guard members wake up in
9 the morning they think what can I do to help people. I think
10 that's a great prospective and objective. So, yes, I think that
11 that's good. Now, I don't think that --

12 Q. It might make it easier on your successors someday that
13 maybe don't have the benefit of the feel for, you know --

14 A. Yeah.

15 Q. -- whether or not these plans are adequate?

16 A. I think that -- I think lawyers should work on these
17 plans mostly. I don't think they're engineering documents.

18 Q. Uh-huh.

19 A. I don't think you can just go through them and pretend
20 their checklist.

21 Q. Is there something that you --

22 A. I think there's a lot of judgment to them, is what I'm
23 saying.

24 Q. Right. They're --

25 A. And I don't think you can just take someone who -- like

1 I don't think you could put this into a computer, is what I'm
2 saying and just say, you know, it --

3 Q. Green light, red light?

4 A. Yeah, yeah, yeah.

5 Q. Yeah, yeah. Okay. All right. Is PHMSA currently
6 considering any changes to the vessel -- I mean to the facility
7 response plan program?

8 A. I think, I think that, I think we are.

9 Q. And, and --

10 A. I don't know what those are but --

11 Q. Is there any initiative underway that you could discuss
12 with us?

13 A. I'd be happy to but I don't know what those changes are.

14 Q. Okay. But something is afoot on that?

15 A. I think, I think anytime that there are, you know, major
16 events in the country then responsible public servants.

17 Q. All right. It's from a lessons learned prospective?

18 A. Exactly, exactly, exactly.

19 Q. Uh-huh.

20 A. And it's sad. I think that my office has a lot of
21 smart, you know, dedicated public servants. And so I think that,
22 you know, the people that run my office will come up with a good
23 plan to do what we do better.

24 Q. Okay.

25 MR. STANCIL: Chuck, I'll pass it back to the next

1 person. Duane, Jay, Jon, just feel free to -- I'll let Chuck
2 decide who wants to go next.

3 MR. KOVAL: Do you want to go next, Jay?

4 MR. JOHNSON: Yeah. I don't have a problem with that.
5 I was involved with the -- Maximo and the -- for the other one.
6 And it was just good to hear that. A lot of times when you do
7 something with PHMSA and you do it right, you don't get feedback.
8 Certainly if you do something wrong, you do. So it was good, from
9 my standpoint, to hear positive feedback from our exercises.

10 And it's always good to get feedback after any
11 emergency. So anything that PHMSA's looking at now in regards to
12 these. This is how we do, we look forward to getting that
13 information and incorporating it into our emergency response plan.

14 Other than that, I have no questions. I'd say you've
15 done a very good job of answering anything I have. So thank you
16 for the time.

17 MR. KOVAL: Jon, Jon Gulch?

18 MR. GULCH: Yep, this is Jon. I had a question.

19 BY MR. GULCH:

20 Q. You had mentioned earlier that when you received the FRP
21 electronically that all documentation back and forth at that point
22 is electronic. Was there any e-mail response back to Enbridge in
23 regard to the FRP, whether there was anything deficient or was it
24 electronically approved as written and submitted?

25 A. I'm sorry would you, would you repeat that?

1 MR. KOVAL: Jon.

2 BY MR. GULCH:

3 Q. Yeah. Okay. My question was you had mentioned earlier
4 that all correspondence is electronic. When this FRP was
5 submitted to PHMSA was it approved as submitted electronically and
6 is there an e-mail trail to show that or was there an e-mail that
7 went back, that said that there was a deficiency that needed to be
8 corrected? Is there anything electronic that backs up either way?

9 A. I'll have to go back and look.

10 Q. Okay. I guess a follow-up question would be then, you
11 mentioned about the common sense being when these plans are
12 reviewed and just had a question about the response time.

13 And I haven't studied the FRP in-depth but I'm told that
14 the initial response, as far as contractors responding to
15 Michigan, was coming out of Minnesota. Is that something that
16 would be considered by PHMSA to be acceptable?

17 A. Are you asking about a length of time for the first
18 responders?

19 Q. Right, yeah. Well, not so much the first responders but
20 the emergency -- the spill contractor, the spill response
21 contractors.

22 A. I would need more information on the hypothetical
23 because I would need to know if the first responders were handling
24 it adequately.

25 Q. Okay. I guess in looking at the -- not hypothetical but

1 actually looking at the spill, it's an area that is the volunteer
2 fire department. And, from what I understand, pretty limited
3 resources from the Enbridge standpoint --

4 A. Right.

5 Q. -- as far as maintenance crews, things like that.

6 A. Uh-huh.

7 Q. So if that would be assumed to be overwhelmed in a worst
8 case scenario pretty quickly, where would the backup come from,
9 and is it acceptable to have a 1-hour response time, a 2-hour
10 response time, a 10-hour response time? What -- from your
11 experience, what -- you know, what type of a time frame would
12 PHMSA be looking at for those replacements so that those -- those
13 subsequent workers to be onsite?

14 A. If the question is, is it all right with me if there is
15 a gap in response capability, that the local first responders are
16 overwhelmed and Enbridge doesn't send people to take care of it,
17 of course not.

18 Q. But according to the reg there's no set time? I think I
19 remember hearing you say that earlier, there's not -- not an exact
20 time as far as your professional opinion, once you review the
21 plan?

22 A. Right, right. What I said is it is a reasonable person
23 standard.

24 Q. Right.

25 A. And if a reasonable person requires that the responsible

1 party, which is Enbridge in this case, needs to have the
2 capabilities.

3 Under the law, the Oil Pollution Act of 1990 requires
4 the operators, which in our case we regulate pipelines. So they
5 have to have, either through their own means, the company's, or
6 the oil spill response organization has to be able to clean up oil
7 spills. So they either have to have Enbridge employees or they
8 have to have contracts to bring in people to respond to oil
9 spills.

10 So after, you know, the first responders are
11 overwhelmed, they have to bring in other people too. So, of
12 course, it's not acceptable for them to have these gaps in
13 capabilities.

14 MR. KLABUNDE: This is Duane Klabunde speaking here. I
15 guess that kind of goes back to some of the questions Paul was
16 asking with regard to the tier one, tier two, and tier three,
17 correct?

18 MS. BARBER: Uh-huh, yep.

19 MR. KOVAL: Any other questions, Jon?

20 MR. GULCH: No. I just -- if there is an e-mail trail
21 or anything with deficiencies or whether the plan was approved, I
22 would be interested in seeing that.

23 MS. BARBER: Okay. I can get that to you.

24 MR. GULCH: That's it.

25 BY MR. KOVAL:

1 Q. Do you have -- what do you look for in a good risk plan,
2 you know? You know, what's really good to have in a plan?

3 A. Pretty much if it meets the five criteria in Section
4 4202.

5 Q. I'm not an environmental person. What are those five
6 criteria?

7 A. On the first is a qualified individual; thus the person
8 from the company that has the ability to commit resources.

9 Q. And the others?

10 A. Second is if you have what we just talked about. You
11 either have the capability within your company or you have
12 contracts that one of the four agencies approves. And the four
13 agencies are: the Coast Guard, the Environmental Protection
14 Agency, what used to be Minerals Management Service now the Bureau
15 of Ocean Enforcement, and our office, to respond to worst case
16 discharges.

17 Q. And the third one?

18 A. Protect threatened and endangered species.

19 Q. And the last one?

20 A. I should have the law with me. That you have to keep
21 your plan up-to-date at all times.

22 MR. GULCH: Excuse me, Jon, if I could? What was the
23 worst-case scenario discharge associated with this pipeline?

24 MS. BARBER: One moment. I don't have that with me.
25 Does one of you people on the phone have it?

1 MR. KOVAL: Jay? Jay, do you have that worst-case
2 discharge?

3 MS. BARBER: I can tell you what page it's on in your
4 facility response plan.

5 MR. STANCIL: I think I do.

6 MS. BARBER: Do you?

7 MR. STANCIL: I just -- I'll throw it out there. If I
8 read the plan correctly, there were two figures listed and I think
9 the updated figure was 26,456 barrels, if I'm reading it
10 correctly. But I would prefer if one of you Enbridge folks know
11 the correct figure to verify that.

12 MR. KOVAL: Okay, Jay? Jay?

13 MR. KLABUNDE: I don't know where Jay's at; this is
14 Duane.

15 MR. KOVAL: Okay.

16 MR. KLABUNDE: I guess I can't speak for that. I don't
17 have Chicago's FRP, but I can get it.

18 MR. KOVAL: Okay. Duane, do you have any questions?

19 MR. KLABUNDE: I guess I have a couple general, maybe
20 more statements than questions I guess. You guys, I believe, were
21 looking for a specific submission date as to the response to that
22 advisory. Was that one of the questions you had asked, Paul?

23 MR. STANCIL: Yes.

24 MR. KLABUNDE: I believe Jason Huvaere, who's our
25 emergency response engineer, submitted that response to Melanie in

1 her office on July 21st, 2010.

2 MS. BARBER: That's right.

3 MR. STANCIL: Okay.

4 MR. KLABUNDE: I don't have any, I guess, copies of any
5 response, but that would be something Jason would probably have,
6 or he may have passed that onto one of my co-workers who isn't
7 here today. But I do have a copy of that letter, but don't have a
8 copy of it, at least not right now, of that other response from
9 the -- from the --

10 MR. KOVAL: Anything else, Duane?

11 MR. KLABUNDE: I just had a question, Paul. You were
12 talking earlier about the requirement to submit annual drill
13 information to PHMSA.

14 And I -- correct me, if I'm wrong here, Melanie, but I
15 don't see from a CFR standpoint where that is required. I think
16 the requirement is that we have to drill per the specified time
17 criteria and those have to be available for review of the
18 questions.

19 MS. BARBER: That's correct. Yeah.

20 MR. STANCIL: Yeah. I wasn't sure about that, Duane. I
21 thought I read that in somewhere. I didn't know if it was a
22 regulatory requirement or -- but let me check real quick.

23 MS. BARBER: That's correct. The law is purposely a
24 collection of broad mandates. I mean, we purposely did not put
25 specific things. For example, we did not put technological

1 requirements, which was smart because most of the technology that
2 we use every day was not invented in 1989.

3 And, as for drills, you've got to have one, but you
4 don't have to report -- file reports of your drills. Now, you
5 have to include your drill program description in your facility
6 response plans.

7 MR. KLABUNDE: Right.

8 MR. STANCIL: And, in fact, I'm thinking I may have read
9 that in the prep guidelines.

10 MS. BARBER: And you know what else too, you know,
11 guidelines are guidelines.

12 MR. STANCIL: Yeah.

13 MS. BARBER: I should have said one of the -- one of the
14 five criteria in the law is a drill program.

15 MR. KOVAL: Were you responsible for the newest
16 guidelines with the five-year plan?

17 MS. BARBER: Yes.

18 MR. STANCIL: So going back to your question, Duane, are
19 you saying that Enbridge may not have submitted the results of the
20 prep exercises, all of them to PHMSA?

21 MR. KLABUNDE: Well, I can't fully speak for that
22 without like Jason Huvaere or somebody being on the phone because
23 typically, you know, from a regional standpoint we would submit
24 them to one person and then they would submit that on the entire
25 Enbridge's behalf.

1 But, for the requirement, I don't -- I don't think -- I
2 don't think it's a regulatory requirement to do so.

3 MR. STANCIL: Okay.

4 MR. KLABUNDE: So from my standpoint I don't know that
5 that's been done because I don't think it's required to be done.

6 MR. STANCIL: Okay. Melanie, could you check to see if
7 you've -- or PHMSA's been getting copies of the report that they
8 generate on their prep exercises?

9 MS. BARBER: I haven't gotten any reports on their
10 exercises. Now, what he just said -- it is possible that -- well,
11 I haven't gotten.

12 MR. STANCIL: I had the impression it was some sort of
13 electronic transmission thing that existed but that's not the
14 case.

15 MR. KOVAL: Duane, is that why all of them have need
16 approved on them at the top? I believe it's need approved or not
17 approved or something.

18 MR. KLABUNDE: I'm not familiar with what you're asking,
19 Chuck. Do you mean that -- the drills themselves?

20 MR. STANCIL: Yeah. The drill reports have marked on
21 them need approval on several of them and some don't have them,
22 some do.

23 MR. KLABUNDE: You're looking at specific Enbridge drill
24 reports?

25 MR. STANCIL: Yes, the ones that you had submitted to us

1 have that notation on some of the pages. We don't have them right
2 here in front of us but --

3 MR. KLABUNDE: And those are for specifically Chicago
4 region ones or --

5 MR. STANCIL: I believe so.

6 MR. KLABUNDE: Because I guess, I guess I probably
7 haven't looked at those, to be honest with you. I don't know what
8 you guys have --

9 MR. STANCIL: Yeah. We wouldn't have asked for other
10 regions. I'm pretty sure they're just Chicago Region.

11 MR. KLABUNDE: Okay. I can only speak for my region, I
12 guess, to where we collect all that information in the specific
13 database, whether there's tabletops, drills, and exercises. But,
14 to my knowledge, we don't submit those exercises to PHMSA.

15 MR. STANCIL: Okay.

16 MR. KLABUNDE: And I don't, because I don't believe it's
17 regulatory required. So that's just why I wanted to comment on
18 that, because I don't see within CFR where that is an actual
19 requirement outside of operators maintaining the records and then,
20 you know, doing the drills specified in the timelines and
21 guidelines that are given.

22 MR. STANCIL: Well, thank you for clearing that up,
23 Duane. I appreciate that. Yeah. I must have read that in the
24 prep guidelines. And, like Melanie mentioned, they're just
25 guidelines and may not be current anyway so --

1 MR. KLABUNDE: Okay.

2 MS. BARBER: Well, they're current. I want to be clear
3 about that.

4 MR. STANCIL: Uh-huh.

5 MS. BARBER: And the way it works is that -- because all
6 the four agencies follow the prep guidelines. And what we say
7 is -- what we say to the regulated community is if you don't
8 follow the prep guidelines, you have to do something that's the
9 equivalent. So we, as the regulators, are not going to make you
10 follow the prep guidelines, but you have to assure us to comply
11 with the Oil Pollution Act of 1990, that you're doing something
12 that is the equivalent.

13 BY MR. STANCIL:

14 Q. Now, do you have any way to verify whether a facility
15 is -- has done the required number of prep exercises or is that
16 something that an inspector would pick up when they, when they go
17 out and visit the facility? The answer is no?

18 A. It depends on what the inspector's background and
19 experiences are.

20 Q. But --

21 A. If the inspector is -- doesn't have a background in the
22 Oil Pollution Act of 1990. If the inspector's experience is in
23 another area. If the inspector has a background in say how
24 natural gas pipelines work, then he or she may not know whether
25 that works or is sufficient.

1 Q. Uh-huh. Okay. But so what you've told us is that the
2 evidence of the prep exercise is not submitted to PHMSA and --

3 A. It's not submitted to me.

4 Q. -- not submitted to you. But it could -- it could go
5 somewhere else in PHMSA?

6 A. You'd have to ask the operator.

7 Q. Okay. Yeah. Duane doesn't seem to think so, but it
8 would be Jason Huvaere who would be the person that would handle
9 that?

10 A. He is the person for Enbridge that communicates with me
11 about the Oil Pollution Act of 1990 program. He's the person that
12 sends me facility response plans. He's the person that sends me
13 the advisory.

14 Q. Okay.

15 A. And I have not had any communication from Enbridge about
16 their drill reports.

17 Q. Okay.

18 A. But I can't speak to what communication that my
19 colleagues have had from Enbridge about drills.

20 Q. Okay.

21 A. And, as I say, we have regions around the country and
22 they may have been in touch with other people.

23 Q. Okay.

24 MR. KLABUNDE: And I guess if the prep guidelines state
25 specifically who those should be submitted to. I'm not -- I'm not

1 looking at the prep guidelines. I don't have them in front of me.
2 I'm just looking at 49 CFR, so --

3 MR. STANCIL: Let me go grab a copy real quick while you
4 talk a little bit more. Hold on a second.

5 MR. KOVAL: Duane, these prep exercise reports, I think
6 all of them say needing -- status needing approval. What is that?

7 MR. KLABUNDE: Well, again, Chuck, I can't speak for
8 those because I haven't seen them and I don't know -- you know, I
9 don't know that --

10 MR. STANCIL: Let us clear this up right now.

11 MR. KLABUNDE: -- that that region would have the same
12 format we do or not. Until I see them I can't comment on them.

13 MR. KOVAL: All these -- I think there's 19 of them, are
14 Chicago Region prep exercise reports, that's tabletop and
15 deployment, status needing approval.

16 MR. KLABUNDE: Yeah. I don't know if that would be from
17 the department manager or from emergency -- manager or if that
18 would be from --

19 MR. KOVAL: Would you, would you find out for me,
20 please?

21 MR. KLABUNDE: Sure. I guess a couple other general
22 comments I want to make and I don't, I guess, really have any
23 other questions, is just similar, similar questions with Paul with
24 regard to the tier one, tier two, and tier three. You know, they
25 are -- they're very vague and they talk about how the operator

1 shall identify it, the plan and the resources. And then it kind
2 of just gives the tier one, 6 hours; tier two, 30; and tier three,
3 54.

4 So without specifics, I guess, looking at that, it would
5 be hard to determine are you saying it has to have your own people
6 respond in 6 hours, you know, a local contractor respond within
7 30, and -- within 54? You know, those -- I don't know. Those are
8 questions I can't answer based on reading the reg.

9 And, as far as the worst-case discharge, I mean there's
10 a formula to figure it but you and I know -- we all know that
11 20,000 barrels on land, depending on I guess where it's at. I
12 mean it could be in the middle of nowhere. It could be a high
13 consequence area. Even in both of those cases on land much, much
14 different of a skill response than even putting 1,000 barrels into
15 a body of water.

16 The worst case discharge, from a formula standpoint,
17 doesn't get that deep in differentiating between a land spill and
18 water dysfunct, and they can be one -- water spill is going to
19 have much more of an impact and much more of a response than a
20 large spill on land.

21 So, I don't know, it's just -- that to me is also vague.
22 That's something that could be looked at.

23 MR. STANCIL: Yes, I agree. You know, otherwise I don't
24 understand what the purpose for calculating the worst case
25 discharge would be if there's no numerical standard to correlate

1 that with in terms of response capability.

2 MR. GULCH: This is Jon Gulch with EPA.

3 BY MR. GULCH:

4 Q. I would echo that absolutely. If this FRP is just for a
5 certain segment of the lines or a certain county or -- how is that
6 designated? I guess that's -- I'm not very familiar with the
7 PHMSA FRP?

8 A. This is Melanie. This is -- this facility response plan
9 is for the Chicago Region, which is a pretty large geographic
10 area.

11 Q. But would you at PHMSA consider worst-case discharge the
12 worst-case discharge in the worst possible area or -- I guess,
13 because being that our FRPs in EPA are facility specific --

14 A. Right, right.

15 Q. -- it's pretty easy to say what a worst-case discharge
16 is from a specific facility knowing the -- and the topography and
17 geology, you know.

18 A. Yeah.

19 Q. Well, I think the CFR's specific within -- within saying
20 if the discharge for the line section within the response zone.
21 So there could be multiple variables within that zone, within that
22 section, but I don't know how deep things are gone into with that
23 calculation with regard to water versus not water, stuff of that
24 nature?

25 MR. KOVAL: And that's your facility's response plan?

1 MR. GULCH: Well, that's the facility's in general.
2 That was just me reading out of 49 CFR what the requirement is
3 there.

4 MR. KOVAL: Paul's looking at the regulations.

5 MR. STANCIL: Well, I have a copy of the prep guidelines
6 here and it just has a statement in there that mentions that RESPO
7 or PHMSA would retain verification records for all of the prep
8 exercises. It doesn't -- I don't see where it indicates
9 specifically who you send them to. It may be in there somewhere.
10 I just --

11 But if you go to -- say I'm looking, for instance, at
12 Page 5-3 on the prep guidelines. They have it broken down by, I
13 guess, different categories of exercises here. And I'm looking at
14 the one for onshore transportation-related pipelines.

15 Let's see what type of exercise this is. I'm not quite
16 sure. But at the end where it talks about credit for the
17 exercise, it says RESPO will retain verification records.

18 And so that's why I asked the question whether or not
19 you all are submitting them to PHMSA and does PHMSA approve them
20 in some way or review them to make sure that a facility operator
21 is doing the required number of exercises and whether or not the
22 exercises are adequate?

23 MR. GULCH: I guess that would be something I'd have to
24 follow-up with Jason because I guess I'm not familiar with whom he
25 sends that to or if he does or what.

1 MR. STANCIL: I'm sure the question's going to come up
2 and that's -- you know, somewhere in the investigation. So I'm
3 anticipating this as a question, so I'd like to try to get an
4 answer for that one. Anybody else?

5 MR. KOVAL: Jim, you're kind of quiet. Are you still
6 on?

7 MR. BUNN: I'm still on.

8 MR. KOVAL: Do you have any questions?

9 MR. BUNN: I'm -- by everybody else.

10 MR. KOVAL: Do you have any questions?

11 MR. BUNN: No. I think you guys covered everything.

12 MR. KOVAL: Anybody else?

13 UNIDENTIFIED SPEAKER: No.

14 MR. KOVAL: Okay, then that will conclude our interview
15 of Melanie Barber. I really appreciate you spending time with us,
16 Melanie today. Thank you.

17 MS. BARBER: You're welcome.

18 MR. STANCIL: Thank you very much. We appreciate your
19 time.

20 BY MR. KOVAL:

21 Q. One other question. If you could improve -- if you
22 could improve transportation safety from an environmental
23 standpoint -- I think you already answered this -- what would you
24 recommend?

25 A. I would heighten the partnerships among the federal,

1 state, local governments, community groups, and regulated
2 industry. I mean I think, I think when we did the Spill of
3 National Significance 2010 and we had, you know, people around the
4 country working well together to find out, you know, if there were
5 a major oil spill, you know, where the resources are, what risk to
6 the people and the environment, and how we could all better
7 prepare and respond to them.

8 I think that's the kind of thing we need to do more of,
9 so that when things happen like Deep Water Horizon, Enbridge, San
10 Bruno, hurricanes, floods, other emergencies, that we do better
11 every time.

12 MR. KOVAL: Okay. Thank you.

13 MS. BARBER: You're welcome.

14 MR. KOVAL: Thanks everyone.

15 MR. STANCIL: Let me get you one of my cards here, hand
16 them out.

17 (Whereupon, the interview was concluded.)

18

19

20

21

22

23

24

25

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: ENBRIDGE OIL SPILL
 MARSHALL, MICHIGAN
 Interview of Melanie Barber

DOCKET NUMBER: DCA-10-MP-007

PLACE:

DATE: November 22, 2010

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

Cheryl Farner Donovan
Transcriber