

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of:

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ENBRIDGE - LINE 6B RUPTURE IN
MARSHALL, MICHIGAN

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Docket No.: DCA-10-MP-007

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Interview of: SHAUN KAVAJECZ

Crowne Plaza Hotel
10111 Bellamy Hill
Edmonton, Alberta, Canada T5J 1N7

Thursday,
November 17, 2011

The above-captioned matter convened, pursuant to notice.

BEFORE: MATTHEW NICHOLSON
Investigator-in-Charge

APPEARANCES:

MATTHEW NICHOLSON, Investigator-in-Charge
Office of Railroad, Pipeline, and
Hazardous Materials Investigations
National Transportation Safety Board

[REDACTED]

BARRY STRAUCH, Accident Investigator
National Transportation Safety Board

[REDACTED]

BRIAN PIERZINA, Accident Investigator
Pipeline and Hazardous Materials Safety
Administration (PHMSA)

[REDACTED]

KAREN BUTLER, Supervisor
Accident Investigations
PHMSA

[REDACTED]

JAY JOHNSON, Supervisor
Audits and Inspections
Enbridge Pipelines

[REDACTED]

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I N T E R V I E W

1
2 MR. NICHOLSON: Okay. We'll get started. This is NTSB
3 Pipeline case number DCA-10-MP-007, Enbridge Energy, July, 2010,
4 crude oil release in Marshall, Michigan. These are the human
5 factors group interviews being conducted at the Crowne Plaza Hotel
6 in Edmonton, Alberta, Canada. Today is Thursday, November 17th,
7 2011. This interview is being recorded for transcription at a
8 later date. Copies of the transcripts will be provided to the
9 parties and the witness for review once completed.

10 For the record, Shaun, please state your full name with
11 spelling, employer name and job title.

12 MR. KAVAJECZ: Shaun Kavajecz, Manager of Pipeline
13 Compliance. It's S-h-a-u-n, K-a-v-a-j-e-c-z.

14 MR. NICHOLSON: Okay. And also, for the record, will
15 you please provide a contact phone number and e-mail address that
16 you can be reached at?

17 MR. KAVAJECZ: [REDACTED] Email is

18 [REDACTED]

19 MR. NICHOLSON: Okay. Shaun, you're allowed to have one
20 other person of your choice present during this interview. This
21 other person can be an attorney, friend, family member, coworker
22 or nobody at all. If you would, please indicate whom you have
23 chosen to be present with you during this interview.

24 MR. KAVAJECZ: Nobody.

25 MR. NICHOLSON: Okay. All right. We'll go around the

1 room, have each person introduce themselves for the record.
2 Please include your name with spelling, your employer's name and
3 contact phone number and e-mail address. I will start.

4 Matthew Nicholson, M-a-t-t-h-e-w, N-i-c-h-o-l-s-o-n. I
5 am the NTSB IIC from Marshall, Michigan. My phone number is [REDACTED]
6 [REDACTED]. My e-mail is [REDACTED].

7 MR. PIERZINA: Brian Pierzina, B-r-i-a-n, P-i-e-r-z-i-n-
8 a, [REDACTED]. I'm with the PHMSA [REDACTED]
9 [REDACTED] and my phone number is [REDACTED]

10 MR. JOHNSON: Jay Johnson, Enbridge Pipelines, [REDACTED]
11 [REDACTED]. Cell, [REDACTED]

12 MS. BUTLER: Karen Butler, K-a-r-e-n, B-u-t-l-e-r. I am
13 PHMSA [REDACTED] Supervisor of Accident Investigations out of
14 [REDACTED]. I can be reached [REDACTED] My e-
15 mail address is [REDACTED]

16 MR. STRAUCH: I'm Barry Strauch with the NTSB, B-a-r-r-
17 y, S-t-r-a-u-c-h. My e-mail address is [REDACTED] and
18 my number is [REDACTED].

19 MR. NICHOLSON: Okay. As I stated, these are human
20 factors, mostly related interviews. So with that, Barry is our
21 human factors --

22 MR. KAVAJECZ: Okay.

23 MR. NICHOLSON: -- guru at NTSB or one of many.

24 MR. STRAUCH: Oh no, I am the guru.

25 MR. NICHOLSON: He is the guru. So I'll let him --

1 MR. KAVAJECZ: It's good to be the king.

2 MR. NICHOLSON: I'll let him start with the questioning.

3 INTERVIEW OF SHAUN KAVAJECZ

4 BY MR. STRAUCH:

5 Q. All right. Well, the reason we asked you to come here,
6 Shaun, is in -- you're in a unique position of representing the
7 company in its dealings with two different regulators from two
8 different nationalities, two different governments and I just
9 wanted to pursue that with you. What's it like dealing with PHMSA
10 and NEB?

11 A. I think, as you said, it's a unique situation because
12 NEB typically regulates more on a performance based type of
13 standard regulation whereas, PHMSA is somewhat more prescriptive,
14 but I think, as things have moved forward over the last 10 years
15 in the adoption of the empril (ph.) and things of that nature, we
16 are starting to get a little bit more risk-based, you know, from a
17 US perspective and a little bit more prescriptive from a Canadian
18 perspective. So I think, over time, they're starting to blend
19 together. I think our programs are kind of geared towards
20 reaching the common -- you know, the -- a common ground that we
21 can, you know, achieve the best possible safety in our systems and
22 deal with those regulations at the same time.

23 Q. And NEB is more prescriptive than PHMSA?

24 A. No. I would say NEB is more performance-based. PHMSA
25 has got more prescriptive regulations.

1 Q. Could you be more specific, give us, perhaps, examples
2 of how that would occur?

3 A. Well, I would say like, take the IMP rule, for example.
4 PHMSA 195452 does have specific timelines, deadlines for running
5 internal inspection tools. It has specific timelines for
6 deadlines to meet or remedy certain defects that you find from
7 those tools. The NEB prescribes -- or the NEB rules are more
8 along the line of, you must have an integrity management program
9 and ensure that's been effective and have ways to demonstrate
10 that. So it's up to the operator, to some extent, to have that in
11 place and then the NEB will come evaluate that.

12 Q. Okay. Whereas, with PHMSA, they tell you how to have an
13 integrity management role? Is that --

14 A. Yeah. They tell you, you do it every 5 years, you know,
15 whereas, NEB would look and say okay, show me how often you run an
16 ILI tool and we would say well, we look at susceptibility and this
17 line has these susceptibilities, so we look at our corrosion
18 growth rate. So we run a corrosion tool every X amount of years.
19 It's based on that. You know, so that's what I mean. That would
20 be the latitude that the NEB would allow, whereas, PHMSA just says
21 one size fits all a little bit. You know, we've determined that
22 the best option for safety and regulating the broad pipeline
23 operators that are out there are every 5 years, you must run an
24 ILI.

25 Q. Well, let's use the example of integrity management. Is

1 it possible that in meeting the PHMSA requirements, which are
2 generally more specific than NEB requirements for integrity
3 management, you will also, at the same time, meet the requirements
4 of NEB?

5 A. Certainly. Certainly. That's what our goal always is,
6 to find the right solution that's providing what's best for us
7 internally first, and managing our risks appropriately and then
8 ensuring that it meets both regulators or regulations.

9 Q. Is there any avenue of oversight where you find that
10 responding to one regulator puts you in conflict or makes it more
11 difficult to respond to the oversight of the other regulator?

12 A. I think there is an element of additional information
13 that needs to be accounted for. For reporting releases, for
14 example, we have different reporting criteria on the Canadian side
15 than we do on the US side. So we have to account for that in our
16 operating and maintenance procedures manuals appropriately so we
17 have a way to distinguish what's US type of -- in response to US
18 rulemaking versus --

19 Q. Um-hum.

20 A. -- specific requirements that are, you know, responsive
21 to Canadian rulemaking.

22 Q. And what are the reporting requirements of the US versus
23 the reporting requirements in Canada?

24 A. For?

25 Q. In just --

1 A. General?

2 Q. Yeah, in general.

3 A. Okay.

4 Q. Just --

5 A. I could go on for awhile on that one. Basically, let's
6 say minimum thresholds, so volume on the Canadian side is 1.5
7 cubic meters. And on the US side, there's a little bit of
8 discretion, what needs to be verbally reported immediately versus
9 what needs to have a 30-day accident report. So you know, those
10 are the types of differences that we account for is there's some
11 volume differences. But when you get to a significant type
12 release --

13 Q. Um-hum.

14 A. -- you know, we -- all those are typically across the
15 board, reportable. It's when you get to the less -- well, I won't
16 say less significant, but maybe the releases that involve less
17 volume out --

18 Q. Um-hum.

19 A. -- or you know, other criteria that might be on the
20 lower end of the spectrum of severity just from a rulemaking
21 standpoint.

22 Q. Okay. So the reporting requirements are at a higher
23 threshold in Canada versus the US?

24 A. I would say they're just a little bit different, right?
25 So I would say like, the volume -- volume is one difference. You

1 know, there's just, the regulating entities are just a little bit
2 different. For example, the TSB is kind of similar to the NTSB on
3 the Canadian side and they get reports of all incidents and they
4 want to see -- you know, the rules require us to report to both
5 the NEB and the TSB when we have an incident. So, you know,
6 there's those nuances that have to be accounted for within our
7 rules and our own MPs and then, also, so we're giving the
8 appropriate direction in those procedures to our operating
9 personnel.

10 Q. And what are the reporting requirements in the US? Who
11 do you report to in the U.S.?

12 A. We report -- our regional managers are responsible to
13 report releases.

14 Q. To?

15 A. So based on the type of release -- I'll give you an
16 example because that probably makes it easier. If we had a 5
17 gallon release in Minnesota, our regional manager would have to
18 notify the Minnesota State Duty Officer because it's in Minnesota
19 and they have responsibilities for environmental type of
20 compliance. So they would be looking at those sorts of issues.
21 If -- and if it's on our facility, it may not be a reportable
22 release to -- an immediately reportable release to the Federal
23 National Response Center.

24 Q. In the US?

25 A. In the US.

1 Q. Okay.

2 A. So that would be a low volume type of difference on a
3 more -- say we have 100 barrel release on both sides of the
4 border. It would be pretty consistent because, you know, the
5 threshold, it trips all the triggers on both sides of the border.

6 Q. So if this occurred in the US, you would have to notify
7 state authorities, federal authorities -- not federal
8 investigative authorities, just federal --

9 A. Correct.

10 Q. -- inspection authorities? In Canada, you reported to
11 provincial authorities, provincial and national investigative
12 authorities and national regulatory authorities?

13 A. Correct.

14 Q. Okay. What about in the frequency of inspections, what
15 difference do you see between PHMSA and --

16 A. Well, there's a significant difference in frequency
17 inspections and that's really one of the reasons that my job was
18 based in the US. I had responsibilities for -- at the time, for
19 both the Canadian and the US side of border, compliance. The
20 inspection frequency on the US side is an order of magnitude
21 greater than the inspection frequency on the Canadian side.

22 I'll give you an example. We've had one NEB inspection,
23 2004, like comprehensive inspections and they -- I guess I'll step
24 back one and say that they regulate a little bit broader mandate,
25 so they regulate related to occupational health and safety. They

1 regulate environmental pollution. They regulate pipeline
2 operations and emergency response. So they have kind of four
3 pillars, where I would say PHMSA is a little tighter to pipeline
4 compliance and pipeline operations and ensure the public safety
5 and environmental protection is met. So going back to that, the
6 -- I lost my --

7 Q. Were you talk about the last PHMSA -- or the last NEB
8 inspection was 2004?

9 A. In 2004 and then we had another in 2008.

10 Q. So in the last --

11 A. So we see some field inspections --

12 Q. Um-hum.

13 A. -- you know, but we don't see comprehensive audits on
14 the Canadian side like we do in the US.

15 Q. So you've had two audits from NEB in the last 8 years or
16 so?

17 A. Comprehensive audits.

18 Q. Okay.

19 A. Yes.

20 Q. And how many comprehensive audits have you had from
21 PHMSA in that same time period, about?

22 A. I would say, on average, maybe 10 per year.

23 Q. Okay.

24 A. I haven't --

25 Q. Okay.

1 A. -- been in that position the whole time, but I'm just
2 saying, you know, looking at the time I have been --

3 MR. JOHNSON: I think that's, you know, a safe
4 assumption, 10. And then we've had two comprehensive IMP. We've
5 had public awareness. We've had an operator qualification or two
6 for the control room management.

7 MR. KAVAJECZ: And we've had about five --

8 MR. JOHNSON: And four MP.

9 MR. KAVAJECZ: -- operating regions.

10 MR. JOHNSON: So as far as team audits were, as Karen
11 talked about, it's upcoming where all the regions get together and
12 come in and do it. We've probably had six since 2004. And then
13 we would get standard inspections of a unit. Let's just say they
14 would do a Chicago unit, which would be Line 6B and Line 5. That
15 would happen about every other year now.

16 MR. KAVAJECZ: And the reason I say 10 is, on average.
17 I think this year is a little bit of an exception rather than the
18 norm just because, you know, the response and the --

19 Q. The response?

20 A. -- need to -- well, the need to, I think, PHMSA need to
21 look at us comprehensively after the incident, right?

22 Q. Okay. As a result of the incident?

23 A. As a result of the incident. I think prior to that,
24 though, we still were on about that same pace because we've had
25 major construction going on in the last 4 years, so they were, you

1 know, a significant component of oversight of our major
2 construction that was going on, as well as their state agents are
3 also inspecting us in different units.

4 So, for example, in Minnesota, Minnesota Office of
5 Pipeline Safety is the federal inspection. They're authorized as
6 a federal agent for inspections. So we have Minnesota where they
7 have state jurisdiction to audit for the feds. We have New York.
8 We have Michigan. You know, so when you pull all those agencies
9 together, we typically see about, you know, on average, probably
10 10 per year.

11 Q. Um-hum. And are the inspections comparable in their
12 level of detail, comprehensiveness in Canada versus the US or do
13 you see -- what kinds of differences do you see between --

14 A. On the Canadian?

15 Q. Yeah.

16 A. I would say -- well, it really depends, right? On the
17 US side, like Jay was mentioning, there's several different
18 specialty type of audits that PHMSA conducts. So for new
19 construction, they'll do designing construction audits. For
20 integrity management, they'll do a focused integrity management
21 plan review for public awareness. They have a protocol that, you
22 know, it's just those types of protocols, right, that they'll come
23 out, as well as then, just do operating units. So they break us
24 down into different geographical clumps, if you will, and business
25 units and that is an inspectable unit and they come out and do --

1 you know, PHMSA will come out and do or (indiscernible) will come
2 out and do inspections there. On the NEB side, they just come in
3 and do a comprehensive, all pillar audit where they'll look at the
4 whole spectrum of what they regulate. So it's really much, I want
5 to say, longer, but it's a broader scope of an audit
6 (indiscernible).

7 Q. Because it also includes such things as occupational
8 health?

9 A. Correct. Correct.

10 Q. The -- PHMSA recently implemented rules dealing with the
11 control room management rules that are being implemented, I guess,
12 now and will be through the near future. Does Canada have similar
13 control room management rules?

14 A. Excuse me?

15 Q. Does Canada have similar control room management rules
16 that PHMSA has recently adopted?

17 A. They don't, but they do have -- like I said, they
18 prescribe -- or they don't prescribe. I'll say they mandate
19 programs, right? So they'll say you must have an effective
20 program to manage your control center operations and you must
21 train, you must -- you know, so there's elements. So they treat
22 it more as a management system type of approach.

23 Q. Okay.

24 A. And they -- you know, they will expect that we --
25 there's more cross border discussions right now and I think their

1 expectations are equivalent. You know, if we're doing something
2 on the US side of the border, the expectation, I think, from the
3 NEB would be, well, why aren't you doing it on the Canadian side.
4 Well, it just so happens that our control center is in Canada, so
5 we -- you know, whatever is in place from the US side for the
6 control room management rule, we'll apply it in Canada just to get
7 in each of the joint operation.

8 Q. Well, one of the PHMSA requirements is that if you make
9 a change in the OQ process, you -- it has to be submitted for
10 review. Does Canada even have an OQ requirement? Is there a
11 review of changes in the OQ process?

12 A. No, they don't have OQ.

13 Q. Okay. But because the US does, then Canada accepts that
14 and they work with the same kind of programs, is that what you're
15 saying?

16 A. We'll do what is -- you know, if a regulation comes out
17 in the US like OQ, we first have to address that in the US and
18 ensure that all -- you know, all our programs are implemented in a
19 timely manner and we get things up and running on the US side and
20 in the -- in parallel with that, we'll be looking at whether --
21 what needs to be adopted on the Canadian side as well.

22 So we don't necessarily call it OQ, but in our training
23 program, we'll be looking at fundamental training and then
24 competency, you know, I don't know, reevaluations. I'm not sure
25 what we're calling them, but it's basically, on the US side, it's

1 called OQ. We don't use the same terminology on the Canadian
2 side. We just require that, in our training program, these people
3 need these items and they need to be competency retested on a
4 certain frequency interval.

5 Q. Now the US, PHMSA does not require medical oversight of
6 operators. Does Canada require that?

7 A. Medical oversight of operators? No, not to my
8 knowledge.

9 Q. Okay. PHMSA requires that you have a fatigue management
10 program in place. Does Canada require that?

11 A. Well, like I said, the control center is in Canada that
12 controls our US pipelines, so yes, by virtue of a rule in the US
13 that mandates things happening in our control center, they will
14 adopt those.

15 Q. Okay. I'm going to switch gears a little bit and
16 ordinarily, we ask people just to go over their backgrounds a
17 little bit and usually that's first, but could I ask you to name a
18 couple -- after you've already discussed this. Oversight. Could
19 you just go through your background a little bit in terms of your
20 education and experience and in particular, your positions at
21 Enbridge?

22 A. Certainly. I was actually -- I'm a degreed Accountant.
23 I started in with Enbridge in '85 and I was actually a CPA.
24 Passed my CPA test and Enbridge offered me a position in DOT
25 compliance. We started our program there and the individual that

1 had been in there kind of overseeing it, was transitioning and
2 slated to retire and with my auditing background and things of
3 that nature, they thought it might be a good fit for myself.

4 So I came into the role in '88 as a Technical Services
5 Coordinator and that's really when I started getting into DOT rule
6 -- you know, regulations and compliance and things of that nature.
7 So then I was there for probably 4 years. Then we -- and it kind
8 of -- as Enbridge evolved into different needs, I kind of followed
9 along. So that emergency with Exxon Valdez occurred and you know,
10 we wanted to ensure that we had our emergency response programs in
11 place, the old Pollution Act came out, all those types of
12 regulations came out, so we had a fairly bit initiative. My -- I
13 kind of morphed into a Technical Services Coordinator and
14 Emergency Response Coordinator, so it covered both those.

15 Then I rubbed shoulders with environment enough in
16 emergency response where I got into the environment group. Well,
17 I was Safety Training Compliance Coordinator out in our region, so
18 I was in Bay City in the early 90s, Bay City, Michigan. So I had,
19 you know, operational experience and kind of saw things outfield
20 for about 4 years out there, came back to Superior, Wisconsin in
21 an environmental role.

22 We were building -- starting to build some new pipelines
23 and environmental permitting was kind of a need within the
24 company. And I had a little bit of technical/environmental, you
25 know, to be able to bring that together for permitting issues and

1 things of that nature, so I did that. Then I went up and took the
2 supervisor position in Edmonton for about 4 years, Supervisor of
3 Environment. So I supervised our environmental group up here,
4 kind of saw the Canadian side of the operations and then, when we
5 started our recent major expansion work down in the US, they -- I
6 had an opportunity to go back down and manage that. So when we
7 built what we call our southern access, southern lights in Alberta
8 clipper lines, I was basically permitting those pipelines on the
9 environmental side up until November of 2007, when I came into the
10 Manager of Compliance.

11 Q. Okay. And what are your duties in this current position?

12 A. When I came into the position or now?

13 Q. Yeah.

14 A. My duties as I came into the position were managing the
15 -- both the US and Canadian compliance groups. When we call --
16 what we refer to as compliance, it's primarily PHMSA related
17 compliance. So our responsibilities are kind of both managing
18 certain programs directly that PHMSA requires, as well as
19 indirectly, monitoring and measuring the effectiveness of what our
20 other subject matter and functional group's programs are managing,
21 as well as liaising with the regulators and you know, being --
22 trying to be responsive to things to demonstrate that we have
23 programs in place and, you know, facilitate audits, do pre-audits
24 of our facilities.

25 We also are doing -- we've implemented a program a

1 couple, 3 years ago where we're actually -- our groups are doing
2 internal audits of our facilities, you know, rather than having
3 PHMSA come out. We're -- you know, we're proactively getting out
4 there. So those are from a broad perspective, you know,
5 generally.

6 Q. PHMSA has an audit of the new control center scheduled
7 in the next few weeks. Are you involved in that at all?

8 A. Yes.

9 Q. In what capacity?

10 A. Well, Jay is my supervisor, so Jay will be --
11 supervisors our audits and inspections group which reports to me.
12 I also have a programs group which manages more of the things that
13 we directly are responsible for within our group, like OQ. We --
14 our group oversees the OQ programs, the certain aspects of our
15 high consequence area, plans, our whole operating maintenance
16 procedures manuals, maintenance of those sorts of things.

17 So the control room management audit, you know, we've
18 been involved. I've been involved with Karen pre-rule. We were
19 going to do -- be involved in the pilot program where they were
20 going to come and look at us before the rule came out or before it
21 was effective. Then we had retooled that and they're actually
22 coming in to -- or do it as a rule, you know, effective audit in
23 December. So I've been involved throughout that. I've been
24 involved with the industry on following that rulemaking as it was
25 being developed and we comment through API on the rulemaking. So

1 I was involved in that.

2 We coordinate with two of the primary people that sit on
3 an API working group, which was Ian Milligan (ph.) and Jim, I
4 think, sat on the working group that kind of jointly helped in
5 evaluating what are the needs, you know, with PHMSA as that
6 rulemaking was under development. So yeah, I've been involved.

7 Q. Okay. That's all (indiscernible) right now.

8 MR. NICHOLSON: Brian?

9 BY MR. PIERZINA:

10 Q. Is safety under the compliance part or is that separate?

11 A. Occupational health and safety is functionally separate
12 from our group.

13 Q. Okay. Then who is that manager?

14 A. Well, it's ultimately -- the director is Tom Zimmerman.

15 Q. Okay.

16 A. I don't know. He moved into -- I don't -- you remember
17 Mike Coby (ph.) probably?

18 Q. Yeah. A little bit, I do. Yeah.

19 A. He was the director prior. Tom has just taken
20 directorship now. Rick Oleschuk is actually the manager of our
21 safety group reporting to Tom.

22 Q. Okay. Can you describe what the creation of the safety
23 culture director position, the interaction between that position
24 and compliance?

25 A. Yeah. The safety culture enhancement kind of -- you

1 know, the company is always looking to improve, right, and we've
2 come at it from a few different avenues. We were looking, you
3 know, internally and we have been developing more structure from a
4 management system perspective within our group, you know, just to
5 mentor and monitor things and establish metrics, you know, just
6 generally so we can report on health checks and give ourselves
7 more confidence that, you know, from a compliance perspective --
8 from a pipeline safety compliance perspective, we are, you know,
9 where we want to be.

10 The safety culture initiative came at it from a little
11 bit different angle, but they did -- DuPont (ph.) identified some
12 process type elements that we were to -- we were going to look
13 into further and, you know, those are the type of elements that
14 bridge the gap. There are certain process that, I think, are
15 cross disciplinary in a lot of different function areas; incident
16 response, for example, documentation and information management.

17 So there are certain things that Scott's doing from a
18 safety culture perspective that, primarily, were driven from an
19 occupational health and safety driver, but they then morph into an
20 overlap into some of the initiatives that we were looking at. And
21 I think, you know, Scott and I have worked together to -- you
22 know, we sit on -- we have a representative on their elements
23 review team. Actually, Sharine, from the Canadian side, sits on
24 that committee. So that feeds and allows us to make sure we're
25 aligning with some of those objectives and things are moving

1 forward. You know, from a regulatory compliance standpoint, we're
2 also factoring in all these aspects into what we're doing from
3 that perspective.

4 Q. So changing processes being changing the procedures?

5 A. Well, evaluating processes. I won't even say we're
6 changing processes yet. I would say that, right now, the
7 initiative is to evaluate some of DuPont's recommendations and
8 understand where we believe that there's merit in implementing,
9 whether they be improvements or changes or whatever, you know,
10 just implementing recommendations or actions.

11 Q. Can you describe how the compliance department is
12 involved in the near miss program?

13 A. Can you define near miss program?

14 Q. Well, let's say from an operations perspective, so -- or
15 from -- specifically from a PLM perspective. If there is some
16 type of near miss event --

17 A. Okay.

18 Q. -- that there's a program to document near misses.

19 A. Um-hum.

20 Q. It may or may not -- you know, how well it, you know, is
21 carried out, you know, in actualities. You know, maybe -- you
22 know, but to some extent, it's carried out.

23 A. Yeah.

24 Q. So I'm curious how -- you know, how compliance sees any
25 near miss events that may come about.

1 A. Yeah. That is another one of those issues where it's
2 cross-disciplinary to me. You know, I think a near miss can be a
3 safety incident that was driven by a pipeline incident or vice
4 versa, right? So there's -- we have an alert system, you know,
5 that basically has -- the safety coordinator is responsible to
6 generate an alert when there are certain things that occur,
7 whether it's -- you know, they could be safety incidents or they
8 could be near misses.

9 So with that alert system, it's incumbent upon us, you
10 know, when we understand something going on out there that could
11 be pipeline safety related, you know, to ensure that or see
12 whether or not the incident needs to be looked at from a systemic
13 standpoint. You know, is it an isolated thing that just occurred
14 or is -- do an investigation enough to feel comfortable that we
15 understand whether it was an isolated incident or whether there
16 was any systemic type of things and any corrective actions or
17 lessons learned that need to occur.

18 Q. Okay. And that program was called an alert?

19 A. Well, it's an incident alert, I think.

20 MR. JOHNSON: Incident alert.

21 Q. Incident alert?

22 A. Yeah.

23 Q. All right. Because I don't know that we got that from
24 Scott as part of our discussions with him. So that --

25 A. So, for example, if somebody was -- came close to our

1 line or, you know, a backhoe went and slid off and there was, you
2 know, a potential for more significant things to occur, we'll see
3 those types of things.

4 Q. Okay. Would those -- in your mind, would those
5 typically originate at the region level or --

6 A. Region or project level.

7 Q. All right. Or even -- well, PLM; would you expect that
8 they might come from a PLM shop?

9 A. Through their reporting mechanism, yeah. You know, they
10 would have to bring it up to -- and there's different -- you know,
11 obviously, there's different levels of awareness. You know, if --
12 whoever becomes aware, I think, is expected to bring it forward,
13 but the actual mechanism of reporting it comes from the safety
14 coordinator.

15 Q. Okay. The safety coordinator, is that a region --

16 A. Yeah.

17 Q. Okay. So --

18 A. And it's also, there's project positions. So there's
19 safety coordinators that also are responsible for major projects.
20 If -- you know, if we have large scale projects going on, they'll
21 be a safety coordinator that has a responsibility to report those
22 types of things for the project.

23 Q. Can you think of a reason that a safety coordinator
24 would not want to bring an incident alert to light?

25 A. Would not want to? No.

1 Q. Right. Right. Can you think of a reason that an
2 employee might not want to bring an incident alert to light to the
3 safety coordinator?

4 MR. STRAUCH: Well, is Shaun --

5 MR. NICHOLSON: Well, let's go off the record for a
6 second.

7 MR. PIERZINA: Okay.

8 MR. NICHOLSON: Barry's questioning whether this is
9 really in Shaun's area or not. Is this relevant?

10 MR. KAVAJECZ: It's probably not in my area. You know,
11 I -- the comment would be, there's different levels of awareness,
12 you know, of what is.

13 MR. STRAUCH: You're trying to explore the near miss
14 program, right?

15 MR. PIERZINA: Yeah. Well, and the connection that it
16 has with compliance.

17 MR. NICHOLSON: Yeah.

18 MR. PIERZINA: Right.

19 MR. NICHOLSON: So I mean, we'll go -- what do we have
20 here now?

21 MR. JOHNSON: (Indiscernible)

22 MR. NICHOLSON: (Indiscernible) so I mean, do you have
23 follow-ups, Barry?

24 MR. STRAUCH: Not so far. I just feel uncomfortable if
25 Shaun's being asked questions outside of the area that

1 (indiscernible) --

2 MR. NICHOLSON: Well, I mean, Shaun can speak for
3 himself. Shaun, if you're not comfortable answering questions,
4 you're welcome to say this is outside my area.

5 MR. KAVAJECZ: And it is outside of my area. That's not
6 my area of responsibility to ensure that everybody understands,
7 but I guess my general comment would be --

8 MR. JOHNSON: On the record.

9 MR. NICHOLSON: Yeah. Let's -- we'll go -- at this
10 point, we'll go back on the record. Just, I mean, you've got 15,
11 you've got 15, we'll cut it off. Okay. Let's go back on the
12 record at this point. Go ahead, Brian.

13 BY MR. PIERZINA:

14 Q. All right. So -- and the question I've asked was, can
15 you think of a reason that an employee would not want to bring an
16 incident alert, it sounds like they would go -- the expectations,
17 they would be brought forward to a safety coordinator, correct?

18 A. Right.

19 Q. And I was just curious --

20 A. Or your supervisor. I think, you know, it's a program
21 where you want to encourage people to bring forward, you know,
22 potential hazards that can be -- you know, can have lessons
23 learned from that experience. So you know, there isn't always a
24 specific criteria that is listed on what the expectation is. It's
25 just, if you see something, you know, make sure we communicate it

1 so we can learn --

2 Q. Right. Yeah. Yeah. That's -- and so does compliance
3 have any responsibilities with regards to the incident alert
4 system that's in place?

5 A. No.

6 Q. Okay.

7 A. And when you say incident alert system, I mean, when
8 it's an incident alert that we don't have any processing
9 responsibilities. We have responsibility to -- our responsibility
10 is always to monitor and measure, you know, hazards to the
11 pipeline. So if we see an incident alert that comes out that, you
12 know, Joe did something and the shovel hit the line and we feel
13 that there's some risk to the line, then we're going to
14 investigate it. You know, we're -- we might see that as something
15 that we want to investigate further. Is that going to happen all
16 the time? You know, I think it's like any near miss program.
17 You're looking to encourage that, facilitate that culture within
18 your employees to feel like they're part of that whole system to
19 improve.

20 Q. Okay. How many US employees are in the compliance
21 department?

22 A. US, we have 13 including myself on the Canadian side,
23 and that's just as of now. We're still looking for -- we have a
24 few vacancies that we're looking to fill on the Canadian side.
25 Dave Hoffman just took a manager's position up there.

1 Q. Okay. So you're counter partner then?

2 A. Correct.

3 Q. How many -- do you -- are you aware of how many
4 employees --

5 A. Five, four and nine. I don't -- nine. I think one's
6 contract though, now, so --

7 Q. Okay. Is that about the same as when you had both US
8 and Canadian compliance?

9 A. Probably. I could get you an org chart. I would say
10 it's increased maybe two since then.

11 Q. All right.

12 A. But the head count for going forward, that's where the
13 vacancies are coming. We have -- we've reorganized a little bit,
14 so we've added vacancies that, both in 2011 and 2012 for both
15 sides of the border.

16 Q. For both sides, but right now, it's roughly 13 and 9 --

17 A. Correct.

18 Q. -- right? All right. Thanks, Shaun.

19 BY MS. BUTLER:

20 Q. Because he asked you some questions about the NEB and
21 PHMSA, I want to make sure that my understanding of one key
22 difference between us is actually true. So is it true that the
23 NEB does have impacts on your rates or your tariffs to move the
24 commodity where PHMSA does not?

25 A. Correct.

1 Q. Okay.

2 A. NEB is like FERC also. They serve the FERC role --

3 Q. Okay.

4 A. -- on the Canadian side.

5 Q. All right. And then, this is totally separate, but I
6 was told that I could ask you because Jay referenced your name
7 previously. And that is, on the Oil Pollution Act, worst case
8 discharge volumes --

9 A. Okay.

10 Q. -- who calculates that?

11 A. The worst case discharge volume?

12 Q. Right.

13 A. That would be -- come out of our ORM group.

14 Q. Okay. And so there is a hydraulic model that's used for
15 that volume?

16 A. Correct.

17 Q. And so, will those be changing as the result of
18 Marshall's release?

19 A. Well, it's a combination, right, of hydraulics drain up
20 and --

21 Q. Right.

22 A. -- time to close valves and time to shut down. So I
23 would anticipate that, as we understand and see the final findings
24 and results of the -- both the internal and external asset
25 investigation, there may be some influence to those.

1 Q. Okay. That's it.

2 MR. NICHOLSON: Barry?

3 BY MR. JOHNSON:

4 Q. That actually -- I had that down as one of the questions
5 that I was going to ask Shaun to pull that together for you, so
6 I've marked -- can take that one off the list. Barry had also
7 asked if we have any participation in the PHMSA inspections and
8 vice versa. I know we've had some, but maybe you can address
9 that.

10 A. In the -- in PHMSA inspections.

11 Q. Yeah. I know we've had some NEB folks down for PHMSA
12 inspections.

13 A. Yes, yes, yes. Actually, for our OQ inspection, Greg
14 Oakes (ph.) came here last year and there was a gentleman from the
15 NEB that came down for that from -- we had our IMP audit this year
16 and there was an individual. Was it Shane?

17 Q. Yeah. So we --

18 A. But there is some sharing and actually, vice versa.
19 There was -- who went up to the IMP 2008 NEB audit?

20 Q. I can't remember.

21 A. It was somebody from --

22 Q. It -- we do a courtesy invitation and it's just not
23 taken advantage of very often and I think a lot of it has to do
24 with your ability to cross borders, if you will.

25 MR. STRAUCH: A courtesy invitation to --

1 Q. So we will let the NEB -- Shaun will let the NEB know
2 that we are having this type of an inspection. Sometimes, they're
3 aware of it because PHMSA tells them we're doing an inspection
4 because we have so many shared things. Integrity is in Edmonton,
5 but they do integrity for the whole line and control center. So
6 that's why I say courtesy invitations to the regulatory bodies to
7 be on either side.

8 A. And that's more on the specialty type inspections rather
9 than just the operating unit inspections.

10 Q. And then you had asked about OQ and Shaun had asked
11 about how OQ works differently in Canada, except for -- and maybe
12 you can point out that the operators are under US regulations.

13 A. Correct.

14 Q. So control center operators have to be OQ per the US
15 regulations and have to be drug and alcohol tested per the US
16 regulation.

17 A. So anybody within our organization that's performing a
18 safety sensitive function under the PHMSA rules, which, the
19 control center is obviously one that, you know, would have that
20 same type of necessity for training in OQ.

21 MR. NICHOLSON: I didn't think I followed that. They --
22 legally, they have to follow the PHMSA rule?

23 MR. JOHNSON: They have to for operator qualification.
24 They don't have to follow drug and alcohol, but our company does
25 enforce it and makes it a requirement of employment. So when you

1 come into the control center, you're aware that you're -- even
2 though you're a Canadian citizen, then you're coming into one
3 where the company has chosen to have drug and alcohol testing.

4 MR. NICHOLSON: Why is one mandatory and the other
5 isn't?

6 MR. JOHNSON: Because of --

7 MR. KAVAJECZ: Civil rights --

8 MR. JOHNSON: -- the civil rights --

9 MR. KAVAJECZ: -- on the Canada side.

10 MR. JOHNSON: -- in Canada. They can't do drug and
11 alcohol, so -- but the company has -- like I say, it has done
12 that.

13 MR. KAVAJECZ: So it's a condition of employment, kind
14 of a thing that, you are subject to this type of testing.

15 MR. NICHOLSON: You done?

16 MR. STRAUCH: I have one.

17 MR. JOHNSON: Yeah. I was done. Yeah. I just wanted
18 some clarifications --

19 MR. NICHOLSON: No. Thanks.

20 MR. JOHNSON: -- on some of the questions.

21 BY MR. STRAUCH:

22 Q. I have one -- just two follow-ups. Is it fair to say
23 that, by following the more rigorous of the rules, be they US and
24 Canada, you will therefore comply with the West Rivers rules?

25 A. I don't -- you know, more -- I guess I'm not going to

1 comment whether one is more or less rigorous --

2 Q. Um-hum.

3 A. -- because I think they can both be effective, right,
4 and I think it's our -- it's an opportunity, really, to evaluate
5 the best of both worlds and look at things from different
6 perspectives. So that's actually a positive to some extent.

7 Q. For the rules -- in your view, do the rules compliment
8 each other, the US and Canadian rules?

9 A. I think so. You know, I think -- and just sitting in my
10 seat, I see there are basically -- you know, PHMSA is looking more
11 towards a -- the wise and the -- you know, not just the show me
12 that you did it, but show me more. You know, so the rulemaking
13 from the IMP is risk-based, you know, it's risk assessment, how
14 you do risk assessment. So it's not prescribed, so I think
15 there's general movement from a PHMSA perspective to also ensure
16 that you have everything around it, the system in place to be able
17 to effectively manage compliance and the Canadian side is looking
18 at the other.

19 You know, so that I think they're talking, the
20 expectations. They understand, you know, what the rules are on
21 both sides of the border and they look to us to -- you know, they
22 would certainly question, you know, why aren't you doing it -- if
23 you're doing it down there, why aren't you doing it up there?

24 Q. And you oversee compliance within the US and Canada?

25 A. I did. I -- we've actually reorganized, so with the

1 focus and things on the horizon, you know, from a US regulatory
2 perspective, I'm just going to focus on US now. So we hired my
3 old supervisor, Dave Hoffman, to come up to Canada and manage the
4 Canadian compliance side. So I will just be focusing on US right
5 now.

6 Q. But that split hasn't taken place yet?

7 A. It has.

8 Q. When did it take place?

9 A. Dave was put into his position September of this year.

10 Q. Okay. All right. Thank you.

11 BY MR. NICHOLSON:

12 Q. Now what does that mean based on things on the horizon?

13 A. I think, just generally, there's a lot of -- we
14 anticipate a lot of new rulemaking as a result of the
15 industry-related events that occurred in 2010, both ours and
16 others. We've seen, you know, the advanced notice of proposed
17 rulemakings that are out there. We also -- API has significant
18 initiatives that have been proposed, you know, from an industry
19 level. So the focus is going to be to, you know, proactively
20 anticipate both what we need internally, you know, and see what's
21 coming at us from a regulatory perspective and hopefully harmonize
22 that. You know, so it's -- you know, we will be commenting and
23 looking to work with the regulators to come up with good
24 solutions, you know, as new regulations come up. That's our --
25 that would be the intent.

1 Q. Okay. I don't know a whole lot about what you do,
2 Shaun. So forgive me. You're going to have to get me up speed
3 here. I'll just ask you a few. You talked a little bit about the
4 differences between NEB and PHMSA. Can you tell me -- and I know
5 I could look this up, but I'll (indiscernible). Where do you have
6 more miles of pipe, in the US or Canada?

7 A. Boy, I should know that. I don't. I would say they're
8 pretty equal.

9 MR. JOHNSON: I was just thinking, I don't know that
10 either. It's like --

11 MR. PIERZINA: Miles may actually may be different than
12 amount of product. You would probably have more miles in Canada,
13 but a lot smaller diameter or something.

14 MR. KAVAJECZ: Not so much. I think we're pretty much
15 the same.

16 MR. JOHNSON: Well, from Edmonton to the border is 773
17 miles and we've got five to six pipelines in there.

18 MR. KAVAJECZ: Up to seven, actually.

19 MR. JOHNSON: Yeah. And then, from the border to
20 Superior, which is another --

21 MR. PIERZINA: 325.

22 MR. KAVAJECZ: Yeah.

23 MR. JOHNSON: So we've got the same number of them. So
24 just there alone, that would be half. Then we go to Line 5. We
25 do Line 6A, 6B, Superior.

1 MR. JOHNSON: Yeah. It's probably --

2 MR. KAVAJECZ: I would say it's 60 --

3 MR. JOHNSON: -- pretty close.

4 MR. KAVAJECZ: Maybe 60/40 would be the most difference,
5 but we could certainly --

6 MR. NICHOLSON: 60/40 to the US --

7 MR. KAVAJECZ: To the US.

8 MR. NICHOLSON: -- being 60?

9 MR. KAVAJECZ: Yeah.

10 MS. BUTLER: What about gas operations?

11 MR. JOHNSON: That's not under Shaun's area, except for
12 vector. In gas operations, yeah, if you're just looking
13 (indiscernible) --

14 MR. NICHOLSON: Well, I was only speaking --

15 MR. JOHNSON: Unless you take out the --

16 MS. BUTLER: Didn't clarify, so that didn't --

17 MR. JOHNSON: -- distribution in Canada --

18 MS. BUTLER: There you go.

19 MR. JOHNSON: -- in eastern Canada, then they --

20 MS. BUTLER: That's --

21 MR. JOHNSON: -- would be (indiscernible) --

22 MS. BUTLER: Right. So I was wanting to --

23 MR. PIERZINA: But actually --

24 MS. BUTLER: -- clarify a --

25 MR. PIERZINA: -- you don't have vector under your

1 department?

2 MR. KAVAJECZ: Yeah, we do. But in that, maybe I should

3 --

4 MR. JOHNSON: (Indiscernible) --

5 MR. KAVAJECZ: -- clarify. Maybe I should clarify
6 because there is -- we have a North Dakota system that has
7 gathering, you know, so it's not as easy as saying miles of pipe.

8 BY MR. NICHOLSON:

9 Q. Yeah.

10 A. You know, if you're talking about transmission miles of
11 pipe, I think that's what we're talking about.

12 Q. Right. That is what I -- we're talking about. Okay.
13 And where have you had more reportable releases, on the US or
14 Canadian side? Do you know?

15 A. I don't know that one, Matt.

16 Q. Were you involved -- there's an IMP -- there was --

17 A. And reportable releases, I guess, you know, to
18 distinguish what's a reportable release.

19 Q. Well, you had already done that. You said --

20 A. Right.

21 Q. -- 1,500 per --

22 A. But that's changed over time too.

23 Q. Yeah.

24 A. It's just so you had that awareness that, you know, in
25 the 70 -- you know, when PHMSA first started, I think it was a 50

1 barrel reporting criteria to 5 barrels and then it went to 5
2 gallons. You know, so over time, that has gotten -- the incidents
3 are much --

4 Q. Would it be better if I threw out reportable and just
5 said where have you had more releases?

6 A. I can't answer either one, to tell you the truth, but
7 I'm just saying, I could get --

8 Q. Reportable --

9 A. We have a database that I could go to --

10 Q. I know.

11 A. -- and answer that for you.

12 Q. You were -- this long-term pressure reduction
13 notification that came out July 15th, 2010 --

14 A. Um-hum.

15 Q. -- was that produced by your group?

16 A. It was produced -- we facilitated and worked with
17 integrity to produce that reporting.

18 Q. Okay. So that's what I want to try and understand is
19 how your group interfaces with integrity management to, I guess --
20 I mean someone's got to read the code, especially when a
21 performance base make a judgment call or interpretation and then,
22 I guess, bring integrity management into it. How does that work?

23 A. They understand the code.

24 Q. They do?

25 A. Yeah.

1 Q. Okay.

2 A. Yeah. They are responsible to be compliant with the
3 code, so that's -- you know, we have meetings annually and we --
4 that's my peer group is integrity. So what we -- and at the time
5 of the incident, it was all under one director. So --

6 Q. Okay.

7 A. So integrity was -- the director was Steve Irving (ph).
8 I was compliance manager just located in the US, but still was US
9 and Canadian responsibilities. Scott Ironside (ph.) was the
10 pipeline integrity manager and there was a facilities integrity
11 manager. So those -- that's my peer group. They all reported to
12 Steve Irving.

13 Q. So when you get into date of discovery, when you have to
14 notify PHMSA, the integrity group is making that decision?

15 A. Correct.

16 Q. Independent of --

17 A. With -- you know, we'll work with them. So we -- you
18 know, if there's questions that they have, they'll come to us for
19 interpretations, assistance, you know, that kind of thing as we
20 work together on that type of -- that specific one, you know, we
21 had been working together for a year and a half on, you know,
22 addressing those issues.

23 Q. So were you involved in making the interpretations as to
24 when to notify PHMSA?

25 A. When we -- I was involved in the development. You know,

1 once integrity, you know, identified that they had an issue with
2 the tool run (ph.) and that we had potentially, some dates that we
3 were looking to extend because we were incorporating a pipe
4 replacement program as a remedy rather than a dig program as a
5 remedy. We then worked with them to identify what we needed to do
6 from a regulatory perspective.

7 So then we needed -- you know, we organized and decided
8 that we needed to meet with the regulators first, communicate
9 whether or not that there was -- we would have the appropriate --
10 because then, when you get into that side of the code, it's a
11 little bit more interpretation, right? You know, you've got to
12 make sure that you apply -- once you go beyond 365 days, you have
13 to make sure that you're applying the appropriate mitigation
14 factors and you're notifying the regulators and ultimately,
15 getting their approval. So we were working with the regulators,
16 you know, through that year prior, telling them what we were
17 doing, telling them what --

18 Q. You're talking about 2009?

19 A. Correct.

20 Q. Okay. And who were you working with, Central Region?

21 A. Central Region. Yeah.

22 Q. One of these two persons in the room?

23 A. Dave Barrett (ph.).

24 Q. Dave Barrett?

25 A. Yeah.

1 Q. So what about way back in like --

2 A. And Ivan Hunton (ph.) was actually in --

3 Q. Ivan.

4 A. -- (indiscernible) that, so --

5 Q. What about back -- I see April 10th -- I'm looking at
6 the document now -- 2008, you were at 180 days, date of discovery
7 deadline? At that point, are you working with PHMSA at all or --

8 A. Which date is that? I'm sorry.

9 Q. April 10th, 2008. It was the 180-day date of
10 discovery --

11 A. No.

12 Q. -- deadline after the concerns.

13 A. No.

14 Q. Okay. So you really started working with PHMSA in 2009?

15 A. Correct.

16 Q. Okay. So when they received this report in July 15th,
17 2010, it wasn't any big surprise to anybody?

18 A. No.

19 Q. Shouldn't have been.

20 A. No. And again, the reason the remedy we were proposing
21 was different and that's the reason we were asking for an
22 extension, is to allow and facilitate --

23 Q. I see that at the end, you were talking about a pipe
24 replacement project that was supposed to go through 2012, I think?

25 A. Correct.

1 Q. And what ever happened to that?

2 A. The Marshall.

3 Q. Marshall --

4 A. Marshall occurred --

5 Q. -- interrupted it?

6 A. -- prior to or just post filing that request. So then
7 it, you know, really became a corrective action order.

8 Q. Can the NEB -- I didn't hear this -- can they issue
9 corrective action orders and fines?

10 A. They can issue orders. Fines, they don't have the same
11 type of enforcement from a penalty -- civil penalty perspective.
12 It's more from an order perspective.

13 Q. And I didn't catch this. How many integrity management
14 inspections have been performed on Line 6B?

15 A. Integrity management inspections?

16 Q. I've heard overall.

17 MR. JOHNSON: You mean tool runs?

18 MR. NICHOLSON: No. I'm sorry. Audits. I should try
19 and use the PHMSA term.

20 MR. JOHNSON: We've had four.

21 MR. NICHOLSON: Integrity management?

22 MR. JOHNSON: Yeah. Because it's just 6A, if you will,
23 or 6B.

24 MR. NICHOLSON: Yeah.

25 MR. JOHNSON: They do an integrity management audit or

1 inspection of all of them and 6B was part of it.

2 MR. NICHOLSON: I thought I heard you say do it by
3 region.

4 MR. JOHNSON: No.

5 MR. NICHOLSON: Okay.

6 MR. JOHNSON: And that would be a standard inspection.
7 Sorry.

8 MR. NICHOLSON: Okay.

9 MR. JOHNSON: Which really doesn't look at the protocol
10 questions and the standard inspection doesn't look at the
11 integrity items.

12 MR. NICHOLSON: Okay.

13 MR. JOHNSON: So we would have had the quick hit audit,
14 the first comprehensive audit, the 2006 IMP and then the 2011 IMP,
15 which, each one of those would have included Line 6B.

16 MR. KAVAJECZ: And there is some questions within the
17 standard audit that deal with integrity, but not to the level of
18 detail that, you know, a true specialty IMP audit does.

19 MR. NICHOLSON: And those are conducted where? In
20 Edmonton or Chicago?

21 MR. JOHNSON: Our Superior office. Brian's been on, I
22 think, all of them.

23 MR. PIERZINA: IMPs?

24 MR. JOHNSON: Yes.

25 MR. PIERZINA: I believe so.

1 MR. JOHNSON: It's a team audit, so they bring people in
2 from the regions that we're in. So that would have been
3 southwest, central and eastern, along with a Minnesota
4 representative.

5 MR. PIERZINA: And (indiscernible) --

6 MS. BUTLER: Um-hum.

7 MR. JOHNSON: (Indiscernible)

8 MR. NICHOLSON: -- I heard you say.

9 BY MR. NICHOLSON:

10 Q. So then is the NEB audit that they perform, is it
11 conducted in the same way?

12 A. It's conducted --

13 Q. Do they bring in -- is it a group?

14 A. Yes.

15 Q. Okay.

16 A. And they have integrity management specialists. You
17 know, they kind of have a small group of technical integrity folks
18 that come in and do that audit, so you know, there was a risk guy
19 that specializes in risk management and probably three that are
20 more integrity type folks.

21 Q. And is it just a paper audit or do they interview
22 people --

23 A. Well --

24 Q. -- do spot checks?

25 A. -- they do kind of the same thing as PHMSA would do.

1 They would -- they come in first and do, you know, kind of general
2 interviews. Then they'll come in and look at our procedures.
3 Then they'll look at our field activities to see if, you know,
4 what's actually taking place in the field is supported within the
5 procedures and the programs.

6 Q. So how many enforcement actions have you been handed
7 down from NEB?

8 A. Enforcement? We have one order outstanding right now on
9 our Line 2 and then, we're -- we've responded to, you know, the
10 2008 audit and that was -- you know, just to clarify, that was not
11 just an integrity audit. That was a --

12 Q. A comprehensive?

13 A. -- total comprehensive audit where integrity is a
14 component. And, you know, we worked with them on a corrective
15 action plan, you know, for that, so that remedies the issues that
16 -- they don't have as much clarity as the US does in their
17 specific definitions for findings, you know, so it's pretty clear.
18 On the US, you get a warning letter, a notice of amendment, you
19 know, those types of --

20 Q. Right.

21 A. -- enforcement actions. You know, on the NEB side, it's
22 some recommendation -- it's a little bit more -- or less
23 prescriptive, I'll say, you know, judgment.

24 Q. Okay. So to be sure I understand it, you mean PHMSA
25 tells you what to fix or how to fix it?

1 A. Um-hum.

2 Q. Okay.

3 A. And what's your audit compliance.

4 Q. And it's left a little open-ended on the --

5 A. Um-hum.

6 Q. -- Canadian side.

7 A. And even to the point of, because it's a program, you
8 know, and they're looking at effectiveness and you can't always
9 say, is this effective or not, they'll sometimes use, you know,
10 what their experience has been on effectiveness and ask why, you
11 know, is this something that you guys do, if not, why, what do you
12 have different that meets that same type of end goal and is there
13 an opportunity to implement something. You know, and then we'll
14 look at it and we'll say yeah, you know, I think we're in
15 agreement with that.

16 Q. Have you guys run into conflicts with the Canadian
17 standards that are built around the -- is it 662 or something?

18 A. Yeah.

19 Q. And US is using the ASME standards. Is there --

20 A. ASME 314. Yeah.

21 Q. Is there --

22 A. No. There's --

23 Q. -- conflict?

24 A. -- not a real conflict. There's a little bit of
25 (indiscernible) interpretations where you can operate at some

1 different levels, but for the most part, the welding procedures
2 have to be sound. You know, just the technical side of things are
3 fairly universal.

4 Q. Okay. I've just got three more follow-ups. You
5 mentioned -- you said you have responsibilities over some portions
6 of the HCA plan. Can you elaborate on what portions those are?

7 A. We primarily work with -- because the definition of high
8 consequence areas is unique to the US, PHMSA actually defined high
9 consequence areas initially and then we're responsible to
10 continually look at those. So that's part of what our group does
11 is look at the high consequence areas.

12 MR. JOHNSON: And that's a portion of the integrity
13 management plan --

14 MR. KAVAJECZ: Right.

15 MR. JOHNSON: -- just so you're aware. So we sometimes
16 call them different things, but from your standpoint, the
17 regulations, the HCAs fall under the integrity management --

18 MR. NICHOLSON: Right.

19 MR. JOHNSON: -- plan.

20 MR. NICHOLSON: Okay. Okay.

21 MR. KAVAJECZ: And that's what I was saying is we're
22 linked very tight with integrity because that is such a
23 significant rulemaking. That has a lot of --

24 BY MR. NICHOLSON:

25 Q. Okay. How's that done? Is that third party or do you

1 guys do that in house?

2 A. We use a third party consultant to assist in the mapping
3 component of that and some of the awareness sessions. You know,
4 we'll go with them. You know, one of our staff will go with folks
5 just from a resource standpoint to go out to our regions and
6 identify what's changed in their regions and --

7 Q. Okay.

8 MR. JOHNSON: Probably one of the reasons is where we
9 are, we've got (indiscernible) we've got environment, we've got
10 operations, we've got operational risk management that all have a
11 component in the integrity management plan. So -- and they are
12 driven by regulations, so that's why we sat there and said okay,
13 we'll put -- we'll write the rule, but you are all the SMEs that
14 pull your -- so we've got the index to all these parts.

15 MR. NICHOLSON: Okay. I see.

16 MR. KAVAJECZ: Right.

17 MR. JOHNSON: So hopefully that maybe explains a little
18 better.

19 MR. KAVAJECZ: That's better.

20 MR. NICHOLSON: You've got the index, but then you --

21 MR. JOHNSON: But they're -- yeah.

22 MR. NICHOLSON: -- each of those groups, they've got to
23 write it and develop a contact --

24 MR. JOHNSON: Exactly.

25 BY MR. NICHOLSON:

1 Q. Okay. And you just manage the plan. Okay. So that --
2 and you might have hit on my next question. The emergency
3 response plan that has to be followed with PHMSA, is that --
4 that's not something you directly own, that goes to environmental?

5 A. It's actually under the safety. There is -- but now,
6 that -- it was at the time of the incident. Now it's -- it
7 created a manager position for emergency response as well,
8 recently, and it just kind of broke up. It was in our operation
9 services group, but now it's a specific --

10 Q. There's an emergency response --

11 A. Manager.

12 Q. -- manager?

13 A. Is it emergency response in training, I believe?

14 MR. JOHNSON: Yeah, Steven White (ph.).

15 MR. KAVAJECZ: Yeah.

16 MR. NICHOLSON: I saw his name. Okay.

17 MR. JOHNSON: And he reports now to Tom Zimmerman, who
18 is the director of that group.

19 MR. NICHOLSON: Is that the same Tom Zimmerman?

20 MR. JOHNSON: Yes, it is. I saw you kind of do the eye
21 roll. Same Tom.

22 BY MR. NICHOLSON:

23 Q. And then, just lastly, you mentioned there are API work
24 groups that you guys participate in. Can you tell me which groups
25 those are?

1 A. We participate in -- like my boss is on the operational
2 technical group. I'm on --

3 Q. what is that, Technical -- operational technical --

4 A. They call it TG. It deals a lot with PHMSA related
5 issues; research --

6 Q. Okay.

7 A. -- and development. We're on PRCI, which is a very, you
8 know, forward-looking research and development wing. We're on the
9 leadership team, so Leon and Rich Adams, they're on the leadership
10 committee. I'm on the performance excellence team.

11 Q. Briefly, what is that?

12 A. It's --

13 Q. Benchmarking?

14 A. It's looking at -- there's a data mine team subgroup,
15 which, they look at releases and understand all the releases. And
16 then, that is a component that's brought to our committee and then
17 we look at broad initiatives from a pipeline safety perspective
18 that can improve both regulatory in nature and just industry
19 nature, looking for excellence. You know, we're looking for ways
20 to better our release performance -- you know, industry's release
21 performance, industry's -- for example, there's a lot of things
22 that have evolved out of that third party damage. You know,
23 there's a dirt and a common ground alliance --

24 Q. Right.

25 A. -- that have evolved out of those types of committees.

1 So they're looking at developing initiatives, communicating, you
2 know, getting just more awareness out there on those types of
3 issues, as well as trying to identify risks to the pipeline and
4 mitigate those risks.

5 Q. Okay. So you go through previous accident reports as
6 well?

7 A. The data mine team really looks at all incidents from
8 about 85 percent of the miles of pipe in the US are represented by
9 that committee. So that's the baseline for the incident
10 generation --

11 Q. Okay. Right.

12 A. -- numbers and statistics.

13 MR. NICHOLSON: Numbers. Okay. I think I am finished.
14 If no one else has anything, I guess we'll cut --

15 MR. STRAUCH: I have one --

16 MR. NICHOLSON: -- Shaun loose.

17 MR. STRAUCH: One question.

18 MR. NICHOLSON: Go ahead, Barry.

19 BY MR. STRAUCH:

20 Q. What about labor rules, just for example, someone
21 follows a charge of discrimination or sexual harassment? Under US
22 rules, would that fall into your category?

23 A. No.

24 Q. Okay. All right. Thank you.

25 MR. JOHNSON: Right on time.

1 MR. NICHOLSON: I know, I was looking at it. All right.

2 And with that, we'll conclude --

3 MR. KAVAJECZ: Okay --

4 MR. NICHOLSON: -- this interview.

5 (Whereupon, the interview was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: ENBRIDGE OIL SPILL
 MARSHALL, MICHIGAN
 JULY, 2010
 Interview of Shaun Kavajecz

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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.

Tiffany Meeker
Transcriber