

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of: *

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MIDDLESEX RAILROAD EMPLOYEE *

FATALITY IN GREAT BARRINGTON, *

Accident No.: RRD23FR015

MASSACHUSETTS ON AUGUST 4, 2023 *

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Interview of: P.J. BAILLY, Trainmaster
Housatonic Railroad

via Microsoft Teams

Thursday,
September 7, 2023

APPEARANCES:

DAVID CASACELI, Track Investigator
National Transportation Safety Board

RICHARD SKOLNEKOVICH, Operations Investigator
National Transportation Safety Board

TROY LLOYD, Railroad Accident Investigator
National Transportation Safety Board

OWEN SMITH, Railroad Safety Inspector
Federal Railroad Administration

JOSHUA WERNIG, Senior Vice President/Chief Legal Officer
Middlesex Corporation

ERIC BOARDMAN, Superintendent of Operations
Housatonic Railroad

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I N T E R V I E W

(2:23 p.m.)

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3 MR. CASACELI: My name is David Casaceli. I am an NTSB track
4 investigator for this accident. We are here today on September
5 7th, 2023 at 2:23 p.m. East in a virtual Microsoft Teams meeting
6 to conduct an interview with P.J. Bailly, who works for the
7 Housatonic railway. This interview is in conjunction with NTSB's
8 investigation of the contractor fatality near Great Barrington,
9 Massachusetts on August 4th. The NTSB reference number for this
10 accident is RRD23FR015. The purpose of this investigation is to
11 increase safety, not to assign, fault, blame, or liability.

12 Before we begin, let's introduce ourselves, spelling our last
13 name, and your title and the company you're representing. I am
14 again, David Casaceli, NTSB track investigator, last name is
15 spelled C-a-s-a-c-e-l-i.

16 Owen?

17 MR. SMITH: Owen Smith, I'm a railroad safety inspector with
18 the Federal Railroad Administration. S-m-i-t-h.

19 MR. SKOLNEKOVICH: Richard Skolnekovich, NTSB operations.
20 S-k-o-l-n-e-k-o-v-i-c-h.

21 MR. WERNIG: Joshua Wernig from the Middlesex Corporation.
22 Last name is W-e-r-n-i-g, Senior Vice President/Chief Legal
23 Officer. I am not here in my legal capacity. Thank you.

24 MR. CASACELI: Thank you. I guess we'll go to the Housatonic
25 folks.

1 MR. BOARDMAN: Eric Boardman, Housatonic Railroad,
2 B-o-a-r-d-m-a-n. Superintendent of Operations.

3 MR. BAILLY: It's P.J. Bailly, B-a-i-l-l-y. Housatonic
4 Railroad.

5 MR. LLOYD: Good afternoon, my name is Troy Lloyd with the
6 National Transportation Safety Board. Spelling of my last name is
7 L-l-o-y-d.

8 MR. CASACELI: All right, thank you very much. We'll all
9 announce our names and organization before each line of
10 questioning and we'll go from there.

11 INTERVIEW OF P.J. BAILLY

12 BY MR. CASACELI:

13 Q. So P.J., to kick us off, can you please give us an overview
14 of your work experience, taking you up to our -- excuse me, taking
15 us up to your present job, how long you've been in that position
16 and outline your railroad experience (indiscernible).

17 A. Yeah, so I started railroading in 1996. I started off as a
18 conductor, went to engineer school, became an engineer. I spent 6
19 years on that railroad, moved on to the Housatonic in 2002,
20 started off doing track work, made my way through the track, track
21 department stuff, and was also a conductor/engineer here also,
22 filling in. At that time they needed me to go more in the
23 transportation, so I sort of all went to more transportation as a
24 conductor/engineer and then roughly, I believe it was somewhere in
25 2012, I became a trainmaster until now and -- currently. And was

1 just like there, as I said before, it was a short line and it's
2 many roles, hats, there wasn't --

3 Q. Okay, can you go a little bit into detail what the duties and
4 responsibilities are of your current position as trainmaster?

5 A. Yeah, so I went to Trainmaster DSLE, so I was, you know -- so
6 I do all the training of the engineers, performance testing. Same
7 with conductors. And a few years back, after our last fatality, I
8 sort of stepped into doing most of the 214 or all of the 214 in-
9 house training, RWP, and our amount, along with the track forces,
10 there's an Ethan Boardman and Matt Boardman, and yeah, so basic
11 operation of -- the operation part of the transportation side is
12 the main part, but obviously, you know, this role as a 214 has
13 become a large part of it, you know, especially in the last few
14 years.

15 Q. Okay. Would you consider yourself, you know, a senior
16 manager responsible for railway worker protection things?

17 A. I would say so, yes.

18 Q. All right. I'm just going to move ahead a little bit and
19 like, from my prior lines of questionings and talk about this
20 contract with Middlesex, with MassDOT, working on the railroads
21 you guys operate. Can you talk to me a little bit about how that
22 project has gone, your experience with Middlesex as a contractor,
23 and things, you know, prior to the date of the accident?

24 A. Well, so the whole contract basically comes down to -- it's
25 between MassDOT, HDR. We are, you know, basically here as -- you

1 know, to provide protection, track time. And you know, obviously,
2 this is a building of, rebuilding of all Massachusetts property.
3 So we've had other contractors on, we've had Middlesex here, you
4 know, from the get-go. There's been, you know, minor -- I would
5 say, from the very get-go, there were minor expectations on, you
6 know, Middlesex and, you know, the size of -- nobody really knew
7 them, we knew they weren't really into rail, but once again, the
8 contract, you know, and all the stuff that goes through, we -- you
9 know, we're expecting, obviously, to be provided with a qualified
10 -- you know, a qualified contractor to do the work.

11 And then we just, you know -- obviously, when -- I think it
12 was November of last year was one of the only meetings I really
13 met with them prior to the start of work and it was discussed, you
14 know, it was MassDOT, it was, you know, obviously, that they meet,
15 you know, all of our RWP, RMM and, you know, all the other stuff
16 was up to -- you know, the C.F.R. stuff was up to MassDOT, HDR,
17 you know, Mass Rail, to make sure they were compliant and stuff
18 like that.

19 Q. There's Middlesex as a -- sorry, I didn't mean to interrupt
20 you.

21 A. No, that's all right. I mean, other than that, you know, my
22 dealings with Middlesex, I've done some RWIC work with -- you
23 know, throughout the project, not as much as -- ordinarily as much
24 as some of the other guys, but the small stuff, you know, come up
25 to the table, you know, beacons on machines, you know, blowing

1 horns, just safety conditions on the track, you know, watching
2 guys, you know -- you know, swinging certain hammers or just the
3 whole -- using hammers for jacking, you know, just -- there's
4 probably a number of verbal, you know, communications between
5 myself or Eric or Matt or -- Matt Boardman or Ethan Boardman on
6 site just to say hey, listen, you know, we try, you know, big
7 brother stuff sometimes, too, you know.

8 "Hey, we see this," you know, there hasn't been -- up until
9 the end of May when we had the safety shutdown for the work out of
10 limits, or not out of limits, but it was, you know, a second work
11 group in the limits that was not allowed to be in the limits. And
12 then obviously, one in the very beginning things was the excavator
13 into the high-tension lines. I've had, I'd say, I want to say
14 maybe two or three visits from our local FRA inspector for track
15 safety come out.

16 I think the very first one, the guy, he stopped the group and
17 there was -- they were just laying out old TM (ph.) or something
18 like that and the guy, you know, he didn't find any real exception
19 other than they didn't have something written down. So I think
20 after that, we -- Middlesex went with the books to make sure they
21 were writing stuff down so they would remember stuff. And then
22 after that was, I think, you know, the horn, horn issues that he
23 brought up, it wasn't written in a report, it was more "hey, you
24 know, discuss with these guys," which we went with and right away,
25 plus the next day in the job briefing, he'd tell you on every one

1 of those. I was present and, you know, made sure that the -- it
2 was relayed correctly and properly.

3 Q. Thank you. How many roadway workers -- you know, I know it's
4 a short line, so people wear different hats, but how many like
5 full-time or equivalent roadway workers are working on the
6 Housatonic in a given day, not including these contractors to
7 MassDOT?

8 A. Yeah, right now we're down to, I believe, it's five right
9 now, to be honest with you.

10 Q. Okay.

11 A. And that includes, you know, the managers or foremen, so --

12 Q. Yeah, but you do have roadway workers, you're not all
13 contract on roadway work --

14 A. That is correct, we have -- that is correct. We have our own
15 force.

16 Q. Yeah, for the day-to-day things.

17 A. That is correct.

18 Q. How does Housatonic monitor the effectiveness and compliance
19 with their roadway worker protection program?

20 A. So all contractors, you know, especially what we did is we
21 went back, stepping back to when this -- you know, the basically
22 MassDOT thing, it was going to be large scale, you know -- you
23 know, between -- now, this contract with other contracts, you
24 know, throughout the railroad that, you know, we did not have the
25 time to sit and train in house every contractor employee that came

1 in here, so we -- starting, we went with RailPros, you know, I
2 can't -- to be honest with you, I can't think of the name before,
3 it was before they -- RailPros bought into this company that we
4 had in Florida and every year, so what we do is -- monitoring-
5 wise, you know, either every 30 days I get an e-mail from RailPros
6 stating who has complied and -- or who's in it, who's taken what.
7 I'll get -- you know, I can get right down to right where we done
8 before or ask, you know, so-and-so says they're qualified.

9 And just prior to when RailWorks was here, there was just a
10 card with a name, you know, he did this and that, but we found out
11 that there was a thousand of those, 10 McGills (ph.), you know,
12 two Dons, you know, and we thought -- you know, we found out that,
13 you know, there was no way to police it without having a photo ID,
14 basically, so we started making them put photo IDs on the cards
15 and so that we could police it better.

16 And like I said, I could tell you right up to date, you know,
17 minute for minute where they are in the class, where they -- what
18 they got wrong, stuff like that, if I had to. Other than that, I
19 could ask any time, any minute, you know, I'd call -- I deal
20 directly with the vice president, Erika Bruhnke, she sends me
21 whatever I need.

22 Q. Okay. For your roadway workers that work -- that are
23 Housatonic employees, do you guys audit them for compliance with
24 roadway worker protection rules?

25 A. Absolutely.

1 Q. Are there records of those activities?

2 A. Yes. I believe I sent some in the -- I uploaded it. If I
3 had it, I'll upload them, but right -- yeah, we've had -- we've
4 had compliance checks right along, for years.

5 Q. On your folks. Now, does that include contract employees, do
6 you do the same thing for contractors that are either contractors
7 to the Housatonic and/or to MassDOT?

8 A. So normally, yeah. So what we do normally is, you know,
9 obviously, we have an employee out there, so we're -- so as that
10 employee is out there, the RWIC, whether it's an RWIC or if he had
11 a flagman with him or two flag, whatever, we get out there and we
12 do compliance checks on them, you know, so it really goes to them.

13 You know, if there's somebody working right there with them,
14 we'll -- you know, we've had, in the past, 217 audits where
15 they've come here and checked to make sure that we're doing audits
16 correctly and they've instructed us just to add like if we have a
17 job briefing thing because our thing only lists a couple people
18 so, you know, we -- you know, so we now include, what we do is we
19 include the 217 with a job briefing or something like that, so it
20 includes whoever was on the -- you know, at the site at the time.

21 Q. Okay. Do you have a -- for your employees, do you -- for as
22 far as testing compliance with RWP programs, do you have like a
23 formal program like 217 where you test for certain things and
24 compliance with certain rules or how do you decide what and who to
25 test and audit? And I know we're only talking about a handful of

1 employees here, but --

2 A. Yeah. So in our OT Mass (ph.) book, you know, there is --
3 obviously, it's per the C.F.R., we have to conduct, you know, at
4 least so many a year, so we -- you know, I mean, obviously -- you
5 know, there's times that certain people get more than other
6 people, you know, but we stay compliant with the minimum, the bare
7 minimum, at least. But most of the time it's a lot more than
8 that.

9 And we just go by -- you know, we have a list, 217, you know,
10 which I think -- I thought I sent to you, but -- and it's got RWP
11 rules, it's not just -- it's not just specific to operating rules
12 but, you know -- and then it's got spots on the bottom to fill in
13 for whatever else you did whether or not it was listed, any other
14 additional testing.

15 Q. Yeah, I haven't reviewed everything you've uploaded yet,
16 P.J., or probably most of it, so if it's there, I'm sure we'll
17 find it when we get in there, so thank you. Would you ever be --
18 and again, you can just tell me it's there already in the record,
19 if that's the case -- whether one of these audits or internal
20 monitoring for RWP compliance ever be on just a group of
21 contractors or would you only grab a contractor when you happen to
22 be out auditing one of your own people?

23 A. No, I mean -- you know, obviously, you know, if we're out
24 there, I mean yeah, we would audit them if we had -- you know.
25 Especially, you know, this -- these groups are, you know, this

1 group here, like you say, since it's Middlesex, you know, most of
2 the contractors, you know, they're not here long term, they're
3 here for in and out, you know, sometimes you might not ever see
4 them, you know, to get an audit, you know. Obviously, Middlesex,
5 I mean, I think I've gotten two on them with the RWP employee or
6 with our -- you know. I might have more, I want to say I believe
7 there's at least two that I did this year but, you know -- yeah,
8 you know, there's no reason why not to.

9 Q. Okay. So I guess in a roundabout way I'm asking detailed
10 questions to get to kind of a general answer. Do you guys, do you
11 feel it's -- you know, part of your program includes monitoring of
12 contract employees?

13 A. In my personal opinion, I don't -- I feel that, you know, the
14 contractor has to come in with it, you know. I mean, it's, you
15 know, obviously contracted through the railroad or the rail and
16 it's got 243 training in it and that's part of the 217, their
17 managers should be doing most of the stuff. I feel that yeah, the
18 safer, the better.

19 I mean, if you can get -- if you go out there and do -- the
20 217 isn't going to stop somebody from, you know, just monitoring,
21 it just shows that I was there, you know. You know, it's getting
22 a hands-on in the field and explaining to them, like I said,
23 during job briefings like, you know, I prefer to do, is where
24 you're going to get, you know, the one on one, you know, training
25 which I've gone out many days, you know, on a job briefing whether

1 or not I was the RWIC or not and explained plenty of -- plenty of
2 things that -- you know, rules stuff, and if it was dark or if it
3 was raining, and explaining stuff that they should know, you know.

4 Q. Good deal. So what is an RWIC's duty on this project, what
5 does that look like, responsibilities, job duties?

6 A. RWIC, like any other job, you know, it's -- you know, he's
7 there to perform the on-track, you know, protection with the
8 content applicable to the operating rules and, you know,
9 pertaining to the working limits, whether it be foul time,
10 Housatonic track or wherever it is, you know, he's got to have,
11 obviously, physical characteristics, all that kind of stuff.

12 The job is with good faith challenge and, you know, conduct,
13 you know -- you know, he's got the -- you know, he or she has to,
14 you know, I'm going out to do periodic initial -- periodic
15 training, you know, and proficiency checks on them.

16 Q. After a job briefing and given a work crew or a contractor in
17 this case, contract work crew, the on-track safety briefing and
18 the limits for the day, does the contractor or work crew have free
19 reign to do whatever they want within those limits or is there any
20 restrictions on that and how would that be laid out?

21 A. So in the job briefing, it should be the scope of work to be
22 conducted. The scope of work that should be conducted, obviously,
23 if they're doing CWR work, you know, for instance, if they're
24 doing culvert repair where, you know, it comes down to -- you
25 know, they will not -- you know, just like, you know, if there's a

1 second, if there is a need for a second, whether it be, you know,
2 a flagman, another flagman to go with the RWIC, it has to be
3 brought up at that point in time because obviously, if it's not
4 brought up prior to the job briefing, we're not going to have
5 somebody there and if it's not -- you know, if there's not
6 somebody there, it's not going to be awarded, you know, it's not
7 free, free reign. I mean, they can go from Point A to Point B to
8 get to the job site, yeah, you know, there's nothing at all -- you
9 know.

10 We're going to administer it and we're going to start, you
11 know, physical characteristics because we can see this coming down
12 the road, you know, and we've never been opposed to it but, you
13 know, if the person demonstrates, you know, that they can -- you
14 know, in the past, if they were able to go from Point A to Point
15 B, the RWIC has been, you know, given that permission, then
16 obviously, let them go from Point A to Point B. And he usually
17 travels, you know, most of the time Route 7 or the highways or
18 whatever, there's enough crossings in this area that they're right
19 there with them.

20 Q. You were part of our interviews on site, P.J., so if -- you
21 know, I think we heard a couple different versions of -- for sake
22 of argument, let's say the only thing discussed was the bridge
23 work. If Middlesex wanted to do some work elsewhere, let's say
24 some drilling and lagging to the north, would they be required to
25 talk to the RWIC to do that?

1 A. Absolutely. You know, we have -- I personally, in the past,
2 have gone out. We've had second work groups in the past where the
3 RWIC was not going to be able to be -- you know, there was going
4 to be a second work group but extended on in the middle of the day
5 and I've had to come out of my office and go up to flag for that
6 second work group.

7 But absolutely, we'll -- you know, we do not -- you know,
8 it's been -- in, you know, RailWorks, we had two, three, you know,
9 it's -- to be honest with you, it's a money maker for the
10 railroad, I mean, we're not going to turn it down, I mean, we're
11 getting paid, you know, for a flagman and it's the safest way out.
12 I don't care if it is 7 miles away or 8 miles away, if it's not
13 the same task, the same -- you know, the same group, then the
14 rules state you're going to have to find one. And we use --

15 Q. Okay.

16 A. -- you know, we call them flagmen, you know, trained as an
17 RWIC.

18 Q. Copy. So another kind of hypothetical. So let's say, for
19 the sake of argument, an RWIC was aware of a work group out
20 somewhere, let's just say they're working at that bridge, and for
21 some reason a piece of equipment broke down at the bridge they
22 were working on, on August 4th, and they needed to take that piece
23 of equipment back up to the Middlesex yard, is that movement
24 something that would need to be communicated to the RWIC?

25 A. Absolutely. After the May incident, one of the strongest

1 things we hit on -- and obviously, there were many, many, many
2 other things -- was communication and we instructed that there was
3 nowhere near the amount of radios, they call them radios, they're
4 almost like a cellular thing, that were out in the field. So we
5 instructed them that, you know -- you know, because part of the --
6 you know, if you're going to be taking one machine is all or
7 whatever, like in this incident, and you're like you're -- you
8 know, if it's a machine that's got to travel so far, yeah.

9 I mean it's not -- if the siding was within, you know,
10 eyesight or something like that, no, but -- you know. So we
11 instructed them that at any time they occupy track, and I don't
12 care if it was right there, right after the job briefing, and that
13 they call all right, so-and-so truck, you know, occupying it, you
14 know, so-and-so, you know -- you know, because it's not just rail
15 bond equipment.

16 You got Pettibones, you got -- you got all that stuff that's
17 out there and they're setting on, you know, in a certain location
18 and we told them, you know, that you need to communicate that with
19 the RWIC and get permission before, you know, it occupies. And
20 I'll be honest with you, it was -- after that, it was much better
21 communication with Middlesex, they did do a real nice job the
22 times that I was out there to listen or even when I was an RWIC
23 communicating with such, you know, that the -- it was much better.

24 Q. And when you said that, to the May incident, was that the
25 time that the folks were found on track without having notified

1 the RWIC, is that correct?

2 A. That is correct.

3 MR. CASACELI: I just wanted to make sure that was clear. I
4 think I'm okay for now, P.J., I'm going to pass it to Owen. Thank
5 you much, buddy.

6 MR. BAILLY: Hey, no problem.

7 BY MR. SMITH:

8 Q. Yeah, Owen Smith, FRA. Good afternoon, P.J.

9 A. Good afternoon, Owen.

10 Q. Been a long day.

11 A. Yeah. Been a long month.

12 Q. Yeah. It's only the seventh day of September.

13 A. Okay. Well, I'm talking 30 -- I'm talking 30 days
14 increments.

15 Q. Yeah. You know, talking with Mr. Boardman, sounds like you
16 are the 243 person.

17 A. Yeah, thank you very much.

18 Q. Yeah. I just have a few questions about your program.

19 A. Yeah.

20 Q. I did see some document submissions in Kiteworks. My first
21 question would be -- well, first, could you just describe your
22 take on the 243 regulations and, you know, what they are, what
23 they are about, what they do?

24 A. Well, yeah. So you know, obviously, the 243 regs has been,
25 prior to 2020 was talked about for a long time. I mean, a lot of

1 railroads -- I attend the NORAC committee meetings and it was a
2 bit -- you know, Class I, regionals, there was a lot of --
3 obviously, the federal -- you know, we were talking, you know --
4 there's a lot of your colleagues that attend, you know, so there
5 was a need for minimum requirements and that's basically what 243
6 states is you got to get, you know -- whether it be a railroad,
7 contractors, you know, whatever, obviously there's a difference
8 between Class I's and Class -- regionals and Class -- you know.

9 But it was needed to be a minimum amount of training or
10 training map, you know, both classroom and OJT. Obviously, ours
11 started in 2020, after May so, you know, we submitted our program,
12 we went with the ASLR and, you know, submitted -- adopted their
13 program, submitted it to the FRA and have, you know, gone through
14 that.

15 And basically, from there on it's basically policing it, you
16 know, when we got a contractor in, if the contractor, like we have
17 other contractors that for -- directly to us, that they're
18 obviously compliant, where Middlesex is more towards contracting,
19 obviously, to the state.

20 Q. Okay, so did Housatonic verify that Middlesex had a compliant
21 243 plan?

22 A. No. So the Middlesex thing, like I said, is through HDR and
23 Mass Rail, so according to their -- you know, their regulations,
24 we were supposed to be provided a qualified and, you know,
25 trained, you know, contractor and it was -- you know. Obviously,

1 what we took as, you know, the bare minimum from them, you know,
2 meeting, obviously, all of our stuff, too, which was the RMM and
3 the RWP, CWR, if needed.

4 Q. So you were under the impression that Middlesex had their own
5 243 program, 243 training and periodic oversight?

6 A. That is correct. From everything that I was expecting that
7 they had it, you know, coming into the project.

8 Q. And any document submittals, would Housatonic have been
9 copied on these types of document submittals or no?

10 A. No, we -- anything else would have been done through HDR and
11 Mass Rail. We were very little with anything other than, you
12 know, once it came down to logistics and how to perform, you know,
13 the day-to-day operations once it was awarded and they came to us
14 looking for, you know, the actual track times and stuff like that
15 and obviously, then Eric handles, you know, the scheduling of
16 RWICs and stuff like that.

17 Q. So for your own employees with your own 243 program, how do
18 you designate them by category?

19 A. Yeah, so -- you know, so we have, obviously, conductors,
20 engineers, we have the dispatchers for roadway workers, we have
21 just a regular roadway worker and then you got RWICs, foremen, and
22 then, you know, track inspectors.

23 Q. And I'm assuming, since you're a short line, a lot of people
24 check all those boxes, I imagine, right?

25 A. Well, yeah. I mean, I have -- right now, currently I have

1 one person that was doing -- still in 243 training, he's -- you
2 know, so he's obviously not -- he's out doing OJT, but he's -- you
3 know, he hasn't met all those other boxes because he's not
4 actually qualified in RWIC or anything like that, nor track
5 inspection or anything, you know. But for most of -- for the most
6 part, you know, the rest of the guys are -- you know, are fully
7 qualified because they're all guys that have been here, you know,
8 for numerous years.

9 Q. Do you have any employees on staff that started after that
10 May 2020 date?

11 A. I just have one right now.

12 Q. Okay.

13 A. Like I said, he's not through, he's not through -- he's
14 currently still in it.

15 Q. Now, I did look in Kiteworks at some of the stuff you
16 uploaded, I didn't see anything that shows these category
17 designations. Do you have those types of -- a record that would
18 show these categorizations or --

19 A. Yeah, I would've thought -- I thought, you know -- I thought
20 I sent them through to you, but if I hadn't, I'll go back through
21 and see what I uploaded to Kite make sure that you got, you know,
22 whatever's in there, you know. Yeah, absolutely.

23 Q. Now, we did talk a little bit about OJT. How about your
24 periodic oversight program, did you modify the 217 testing program
25 to comply with 205 or are you doing it a different way?

1 A. So no, we didn't modify, we basically took our 217 program
2 and just added -- I mean, we've always done RWP employees, you
3 know, way back, I mean, we're talking for years, so we just made
4 sure that we were compliant, obviously, with -- you know, was
5 prior, you know, with it. And obviously, coming up, you know,
6 retraining and doing periodic training of the grandfather, if you
7 want to say, and you know, people like myself, stuff like that,
8 you know, that's obviously, you know, in the works and ongoing,
9 you know, regularly.

10 Q. Is this periodic oversight program written?

11 A. It's written in a book that's basically, you know -- you
12 know, it's an older book, yeah. I can get it to you, if you need
13 it, you know.

14 Q. Yes, please.

15 A. I mean, it started off, it started off originally as, you
16 know -- you know, we had some other people look at, you know, that
17 we were okay with what we had, so we just left it at that and
18 basically, we just needed to make some changes, you know, add like
19 RWP, you know, the person, here are the tasks, you know, or --
20 that was it.

21 Q. I did see some of your 217 tests in there, it looked -- it
22 appeared to me they were just efficiency test records completed by
23 you. Are there other managers that are required to do these tests
24 at Housatonic?

25 A. Yeah, so -- yeah. So Eric and Matt Boardman, and we had

1 another qualified person that had left recently due to retirement,
2 so we're in the process, you know, we trained Ethan to do that and
3 that's still in the process, so obviously haven't completed our,
4 you know -- per the, you know, stuff to do the training, even
5 though he's well versed in it. So right now we have three people,
6 basically, doing them.

7 Q. Okay. I would say please check Kiteworks just for
8 completeness because we were looking for basically all those types
9 of testing records, especially any that would've been done on the
10 Middlesex contractors.

11 A. Well, whatever -- I believe -- like I said, the 217s,
12 whatever's in there, I have to -- we'll have to double check if
13 Eric or Matt did any but, like I said, I'll double check what's in
14 there a hundred percent here while you talk, but I believe I
15 uploaded what I had in a couple months that, you know, I've been
16 able to do them.

17 Q. Okay.

18 A. And like I said, it's probably -- you know, we were expecting
19 this project to be done, you know, by now, so I mean, it's already
20 been extended, so -- and to be honest with you, you know, if we
21 certainly had to do any more, I would've expected it to be done.

22 Q. You sort of answered this already, but just to ask another
23 way, does the Housatonic provide oversight for their contractors
24 in the context of a 243 program? Middlesex, it sounds like --

25 A. No. So no, I don't have anything written, you know, we're

1 going to provide periodic on a contractor. Now, like I said, we
2 -- I don't -- nothing says that -- obviously, you can see my --
3 you know, that I had gone out. It doesn't say that I won't go out
4 and do a banner (ph.) test or anything like that, it just -- we
5 don't have anything in place on Middlesex.

6 Q. Okay.

7 A. You know, most contractors we have are, you know, contractors
8 that are, you know, like line work or something like that, you
9 know, this is -- you know, we don't do much rail other -- you
10 know, so 99 percent of the contractors that are still up on the
11 scene are getting 217 tests.

12 Q. So I reviewed the training slides and training content from
13 the RailPros training and there's a reference in one of the slides
14 that says, "an employee will not be considered qualified to
15 operate on-track equipment without having been trained to be
16 competent in the operation of that RMM," and it goes on further to
17 say, "they must be deemed competent by the proper authority." Who
18 is that proper authority?

19 A. Whoever such contractor would be deemed as their training
20 officer and they're competent, you know, pure trained through --
21 you know, it's in my OTMS book that I was just saying as such, you
22 know, same thing, that -- you know. But I'm not going to deem or,
23 you know -- you know, deem any one of them competent, we're not
24 going to go out, you know, and it's not part of the contract, you
25 know. They're supposed to come in qualified per, you know, the

1 C.F.R., with 243, you know, and that goes for anything, that's
2 RMM, too.

3 Q. So basically --

4 A. We're just -- with RMM and the RWP for us, it's just like any
5 other area in the United States that are required -- you know, I
6 can't go to Amtrak and walk on there with my card, Amtrak's going
7 to say take their class. So it's just like -- so our classes, and
8 G&W (ph.) is in there, SECA (ph.) -- it's even on there, so who
9 RailPros does. It's equivalent or just as good as anybody else's.

10 So when it comes out in the training, you know, obviously,
11 you know, you're taking a course to join the railroad, the Pacific
12 Railroad, the training involves, prior to -- well, prior to, you
13 know, obviously setting foot on a railroad with some sort of a --
14 you know, whoever, whoever it is, whether it's Middlesex or any
15 other contractor, prior to setting foot on the railroad, it's
16 their -- it's sort of -- you know.

17 I mean, obviously, this -- if it was some other railroad or
18 some other contractor that we had deemed direct, you know, to
19 contract with, then I would know, obviously, I would put it in --
20 you know, it would be in the contract, you know, I have it right
21 in my hands. But through this contract, you know, it's Mass Rail
22 and HDR to deem that they're qualified.

23 MR. SMITH: All right. That's all I got for questions, thank
24 you.

25 MR. BAILLY: No problem, thank you.

1 BY MR. SKOLNEKOVICH:

2 Q. Hey, good afternoon, P.J. Richard Skolnekovich, NTSB. How
3 are you doing today?

4 A. Hey, I'm doing good, Richard, how are you?

5 Q. I'm doing good, P.J. You doing okay with everything?

6 A. Oh, yeah. I mean, it would be nice if we weren't going
7 through all this, you know --

8 Q. Yeah.

9 A. -- in a perfect world, you know.

10 Q. No, that's --

11 (Crosstalk)

12 MR. BAILLY: Yeah. Yeah.

13 BY MR. SKOLNEKOVICH:

14 Q. Okay. Well, I'm going to start just asking you a few
15 questions now. I know you talked about being on the NORAC
16 committee and some stuff like that. So who qualifies the
17 Housatonic Railroad employees in the operating rules?

18 A. I do. I do all the NORAC qualifying testing, you know, so
19 all the -- you know, prior to even setting foot on the -- or out
20 in the field, whoever it is that comes in does all the operational
21 testing, it depends on whatever field that they're going to,
22 whether it be operations, T&E or RWP, whatever, you know, there's
23 a strict rule, obviously, that we follow.

24 Q. Okay, so you -- you provide the rules training and then you
25 provide the testing, as well?

1 A. That is correct, sir.

2 Q. Okay. Now, are you rules qualified?

3 A. I am.

4 Q. Okay, who certifies you?

5 A. So I get a test, you know, obviously from, you know, my
6 superior, whether Eric or somebody like that. We change the
7 tests, you know, up and down. You know, he tests me. Obviously,
8 when we go to NORAC, you know, stuff like that, you know, NORAC,
9 you know, basically requires -- you know, they came out with a
10 thing a few years ago that says certain -- certain railroads you
11 got to hit, you know, you got to hit certain things, you know.

12 Obviously, I'm not operating in DCS territory, so I'm not
13 tested 563, you know, all that kind of stuff, signal territory,
14 but we have to hit, you know, a certain percentage of the book and
15 we -- you know, I go over and above because I came from, you know,
16 a larger railroad and we -- you know, it's just that way, you
17 know, safety is -- you know, obviously. We take it serious here.

18 Q. I understand.

19 A. And I take my job serious.

20 Q. No, I thoroughly understand. I know Housatonic Railroad has
21 its own rail safety plans. Do you use NORAC operating rules for
22 normal operations and then you just had an additional track manual
23 that just kind of adds to that?

24 A. Yeah, so that is correct. So obviously, we have -- we use
25 NORAC and we have our own air brake training, I mean, we got

1 everything, you know, from T&E down and the OTMS book is -- the
2 one that's current was just put out there the first of this year.
3 I spent probably -- well, since the last accident, I spent the
4 last year and a half directly, you know, month to month talking
5 with the safety team because we adopted the ASLR, basically,
6 format of the -- their 214, but their 214 was written, you know,
7 for general code, they didn't have a NORAC one.

8 So we basically -- we went back and forth probably for a year
9 and a half on this stuff and I bounced stuff off of them and they
10 learned a whole bunch of stuff. They had a safety team here, the
11 FRA did, for workplace compliance and I think I was the guinea
12 pig, and we went back and forth for about a year and a half and I
13 want to say that our book, you know, was very scrutinized and
14 should be very compliant. And they were just here, oh, probably
15 just before the incident, a couple weeks before the incident and
16 went through my book again and our inspection stuff, you know,
17 they did -- you know, and found no issues once again.

18 Q. Okay, so let me ask you this, so you made comment earlier
19 about the contractors. So under --- you know, under NORAC rules,
20 is a contractor considered a roadway worker if they're conducting
21 work on the tracks, under NORAC rules?

22 A. I guess I'm just making sure I get the question right, but
23 you said is a contractor supposed to be NORAC or did you --

24 Q. Yeah. So okay, so you abide by NORAC rules --

25 A. Yeah.

1 Q. -- and so under NORAC, when it comes to roadway workers, are
2 contractors considered roadway workers --

3 A. No.

4 Q. -- when they're operating on the track?

5 A. So no, not according to NORAC. So you -- you know, NORAC
6 basically states employees and stuff like that, so NORAC doesn't
7 say anything about a contractor. You guys will refer back to --
8 you refer back to a -- you know, the C.F.R. or, you know,
9 everything's contractor, you know, related.

10 And in my opinion, yeah, I believe conducting such a large
11 project like this or anything that's, you know, deemed large scale
12 like this project, yeah, I think they -- but unfortunately, in the
13 realm of things, you get the fight back, you know, there's stuff
14 that, you know, any contractor is going to come in and tell you
15 they don't do -- they don't do, you know, operating rules,
16 typically, anywhere.

17 Q. Yeah. No, I'm tracking that, I was just -- but under the
18 rules, are they, like I said, roadway workers?

19 A. Yeah, under -- so yeah, I mean, under -- you know, if you go
20 into NORAC, NORAC rules, they are roadway workers, you know -- you
21 know, the NORAC is written basically to the C.F.R., you know, so I
22 mean, really, they are. Yeah, I guess, depending on how you're
23 looking at it, yes, you know.

24 Q. Okay. So now let's talk about some more NORAC stuff. So
25 when an EIC is going to establish working limits, like in this

1 case, so maybe that's a good way to explain it. So the day of the
2 accident, the EIC had established some working limits. Can you
3 kind of describe the kind of protection he was using?

4 A. Yeah, so he was using --

5 (Crosstalk)

6 MR. BAILLY: -- the exclusive track, obviously, you know,
7 NORAC line 4, out-of-service track, you know. So you know,
8 basically, you know, any time you got to disturb track structure,
9 anything like that, you got to use exclusive track occupancy and
10 so you can't use, you know, obviously, foul time or -- you know.

11 And it's a controlled track, so it's not an inaccessible
12 track, so -- you know. So yeah, we were using, you know, all --
13 the whole project was, you know, to use exclusive track occupancy.

14 Q. Okay, so knowing that the EIC or whoever establishes the
15 exclusive track occupancy, can you tell me some of the protections
16 he put in place to make an exclusive track occupancy?

17 A. According to the rule, on main track territory, I get the
18 Form B, you know, which establishes the limits and that's
19 basically it, you know, EIC's got limits, and then he's got the
20 criteria, obviously, for -- you know. If you look at -- if you
21 look at 133 (ph.), you know, if you're familiar with the rules,
22 you know, any time additional equipment after clear, we have --
23 you know, we -- you know, it's always, you know, we go strictly by
24 that, by that rule.

25 Q. Okay, so along those lines for equipment to enter in and out

1 of that exclusive track occupancy, what's got to happen?

2 A. Well, you have to notify, get permission from, an EIC to
3 enter and clear. We have a form that's in -- you know, that's
4 kept for 7 days and, you know, they have to -- any time that the
5 guys have somebody enter or clear or something like that, in the
6 time cleared, but it's for additional -- additional equipment.

7 Obviously, if you're entering at a switch within the limits,
8 it's the same way, you know, you can't -- you can't occupy without
9 the permission of the EIC or RWIC.

10 Q. Okay, so now in this particular case, was there -- was there
11 a switch between the end of the working limits?

12 A. Is there a switch between them?

13 Q. Yeah, so inside the -- okay, so inside the working limits,
14 was there any other way -- so other than both ends of the -- the
15 parts that were taken out of service, was there any other way for
16 equipment to get on that track?

17 A. Yeah, you know, there's multiple ways, I mean, there's
18 switches, there's crossings. You don't even need a crossing if
19 you're on a Pettibone or, you know -- you know, obviously, if you
20 got to get out, you're going to get out, it all depends on the
21 equipment, you know, Rich.

22 Q. Yeah, I'm tracking. All right, so with the switches, so
23 we'll skip the -- you know, the hi-rails and the Pettibones for
24 right now, but for the --

25 A. Yeah.

1 Q. -- for the switches, how does the EIC -- what does the EIC do
2 with switches to protect, protect his workers from equipment
3 coming onto the tracks?

4 A. It all depends on where -- if he's got to open the switch,
5 they come in to the track, he's got to lock it, it's got a high
6 security lock on it, you know. Obviously, we're not going to open
7 -- we're not going to open any switch, you know, to allow somebody
8 out unless there's -- you know, unless they ask us for -- and it's
9 noted in the job briefing or a job briefing's been conducted with
10 the EIC that's -- to open where the equipment is.

11 Q. Okay, so now to operate that switch, does it -- can a
12 contractor do that or does it have to be somebody that's rules
13 qualified?

14 A. Well, we put -- it's a -- I guess it was a gray area that we
15 approached and since that, we've said that nobody will operate a
16 switch other than -- because if you -- if you look at the CWR, the
17 thing, it says when an exclusive track occupancy railway worker in
18 charge can let another railway worker operate the switch.

19 So, you know, if it's -- obviously, if it's not an exclusive
20 track occupancy, you can't open a switch, you can't operate unless
21 you've been qualified in the rules which, obviously, in this, you
22 know -- you know, we're talking the day of, if you want -- if
23 you're saying, you know, the switch was operated by an employee,
24 their supervisor, and the RWIC deemed that it was okay for him,
25 you know, to -- you know, as a supervisor qualified supposedly on

1 213, that he could -- he can operate the switch. Now, obviously,
2 you know, going forward, it's never going to ever, ever happen
3 again, I mean, in my opinion, it has nothing to do with the
4 incident at hand because you still got to get permission whether
5 the switch is unlocked or not. But yes, in the -- you know,
6 obviously, I -- you know.

7 In that, you know, in that -- you know, in this whole thing
8 we see, you know, there's a gray area, I think, where it says in
9 the exclusive occupancy where he was allowed to and other people
10 have sort of argued that they weren't, so going forward,
11 obviously, it's not going to happen again.

12 Q. Do you know if any of the contractors had switch keys?

13 A. Absolutely not. If they did, they were stolen from somebody
14 else.

15 Q. Okay, but Housatonic's never issued them out switch keys?

16 A. We never issue switch keys. We don't issue -- some of my own
17 guys don't get switch keys unless they're qualified.

18 Q. Okay. Okay, now with kind of going back to the EIC a little
19 bit, so there's a requirement for them to notify the EIC, so now
20 if they were -- I know you had bridge work to the south and they
21 want to do some work to the north, would that require an
22 additional EIC or another railroad employee to be on site to
23 supervise them or --

24 A. Yes.

25 Q. Go ahead.

1 A. Absolutely, it's another -- it was not part of the -- not
2 part of the work group, you know, if they're not doing bridge
3 work, if they're not in that area, that immediate area, yeah, but
4 -- you know.

5 Q. Now, if they had decided before the job brief that that was
6 something they were going to do, would you have had the ability to
7 provide another EIC?

8 A. That day? Possibly. We had -- Ethan was there for -- I
9 mean, was there, I was going to be joining the work group because
10 they were just working on the bridge. We had some reservations
11 about a bridge job that they done just prior to this, so there was
12 going to be a number of us like scrutinizing, I guess, you know,
13 to make sure this one was done correctly. It was originally
14 supposed to be a larger scope, that -- you know, that day, we or
15 they downsized it knowing that they probably shouldn't be doing
16 what they were -- you know, the large scope part of it.

17 And so basically, yeah, if that day we -- they probably
18 would've been awarded another one, if notified. The only issue
19 with that is they would've had, per the contract, they would've
20 had to have supplied another foreman that was deemed, you know,
21 they can't -- you know, as the contract says, anywhere they're out
22 there doing it, they're supposed to ask a qualified person with
23 them, as I asked in the other interviews if the person was
24 qualified to be a team leader, whoever or however they want to
25 call it, you know.

1 Q. Okay. Now, let's just kind of migrate over to the Middlesex
2 foremen. So the Middlesex foremen that are out there, do you get
3 to review their qualifications as far as what they're qualified on
4 or do they just hand you a card? Or the EIC, whoever it is.

5 A. No, you know, once again, just like a roadway worker, we're
6 under the assumption that, specifically, with this contract, that
7 they're deemed qualified to do what they're supposed to do and
8 obviously, you know, the roadway worker, you know, in charge, you
9 know, he's not going to ask for a card every day, if you know the
10 guy's been -- he's been working with them for 3 -- you know, 3
11 months or something like that.

12 But, you know, unless he knows his card's -- he saw his card
13 was getting close to being current or something like that, which
14 sometimes I'll tell the guys if I know there's somebody, if
15 they've been around a long time, hey, look for so-and-so's card,
16 make sure they re-upped it.

17 But all these -- most everybody there, you know, had redone,
18 redone their training after the May incident, but first -- and
19 your question about their foremen, no, I wouldn't expect any one
20 of them, any one of my guys -- you got to remember, I'm not -- I'm
21 just a guy that -- in my role, I'm just out there making sure that
22 the guys, you know, my guys are compliant, make sure -- they are
23 to be compliant versus, you know, they didn't go through my -- I
24 didn't train them, you know, I don't have -- we don't have to, we
25 just have -- you know, it's up to somebody else to make sure that

1 that whole thing is done, you know.

2 Q. So if you do see some noncompliance from Middlesex, what do
3 you and your EICs or other railroad workers -- told to do, I mean,
4 what are you supposed to do if you see some noncompliance?

5 A. Yeah. Well, any time. I mean, whether it be my guys, any
6 contractor, when you see something, you say something. We -- you
7 know. Like I said, there's been small things, there's been, you
8 know, like -- you know, like I said, the beacons on machines, you
9 know, certain -- you know, the hammer and, you know, we suggested,
10 we suggested a lot of things, I mean, you go down -- it's been met
11 with, you know, a lot of rejection because, you know -- you know,
12 whether or not they want to hear it or not, you know.

13 But once again, unfortunately, when you look at it, you know,
14 we've expressed our -- we've expressed ourselves to ESR (ph.),
15 AECOM, state of Mass, whoever you want, you know, they go up the
16 ladder, but -- you know. Ultimately, it's up to them to -- you
17 know, they're contracted through them.

18 Obviously, if we see something to the point where they need
19 to be thrown off the track, like it was in May, we're going to
20 take that, we're not -- you know, if it's a serious safety
21 violation or anything, I mean, anything, we're going to talk about
22 it, just to the extent of where you're going to take it.

23 Q. Okay. And that kind of leads to that kind of question, so
24 what were these things? If you see, you know, a safety violation,
25 do you have the ability to stop that act and remove, you know,

1 the --

2 A. Yeah, we can take them, we can say all right, their RWP,
3 we'll pull their card, we'll just say hey, give me your card,
4 you're not allowed here and tell the RWIC, you know, we'll make it
5 noted, you know. You know, after this last one, we called
6 RailPros, told them that everybody here, until further notice,
7 isn't allowed, you know, to take an RWP thing and, you know, like
8 I said, if it comes -- if it's something that needs to be that, to
9 either be thrown off the property or suspended, whatever way that
10 they deem, you know, we're going to allow them, you know, we're
11 obviously going to take them off the track, you know.

12 Discipline wise, you know, I guess it would be up to them and
13 we honestly issued discipline in the last one, tell them until
14 they, you know, they redid some training and stuff like that, we
15 weren't going to allow them back on, you know, and meet -- it was
16 up to the state, ultimately, to say hey, you're coming back after
17 that May incident, you know. Same with this one. And we're going
18 to -- you know, after this one, I mean, we're still -- you know,
19 we're still on the -- you know. They got to show me some stuff,
20 you know.

21 Q. Okay, so once you remove somebody from the property for a
22 safety thing, you said the state can bring them back?

23 A. Well, not per se, you know, they might -- I'm not talking
24 individual, but I'm talking like, you know, as a company as a
25 whole, like for instance, the May incident, you know, we said all

1 right, the whole group of them are off, you know. You know, we
2 want bare minimum, you know, in-house training, you know, stuff
3 like that and then we're going to have, you know, a safety
4 briefing, which we conducted, and then it was up to the state, you
5 know, the state came out and said that, you know, after such a
6 thing, you know -- which I wasn't a direct part of, but I believe
7 that they were the ones that ultimately said okay, you know -- you
8 know, you met this and you're okay to go back to work, you know,
9 as long as we were -- as long as we were okay with it.

10 Q. Okay, so let me ask you this. So did you set the -- or did
11 Housatonic set the standards of how these folks that were pulled
12 off the property, how they came back or did the state set the
13 standards for how they could return to work?

14 A. We basically said what we wanted, it was up -- I don't know
15 if the -- I can't -- I can't remark whether or not the state added
16 any, I can't remember, to be honest with you, if there was any
17 other added stuff to it, but bare minimum, we stated what we
18 wanted done, you know, whether or not.

19 I don't know if the -- because like I said, there was a
20 letter sent out on June 8th, I know, afterwards, you know, to meet
21 certain things, also. Obviously, you know, once again, I'm -- I'm
22 not all the way up on the top of the totem pole, so where that
23 went, obviously, they're still going, so I'm assuming they met
24 those with, you know -- or were still trying to comply.

25 Q. No, I understand. So speaking of that June 8th letter, did

1 you help draft that or did you just report it and somebody else
2 drafted it?

3 A. I reported it, I did not -- you know, a lot -- I mean, I'm
4 assuming other stuff was reported other than me, but I was asked,
5 you know, to give a preliminary, you know, some of my up-front,
6 you know. I was the RWIC that day so obviously, I was directly
7 involved, I had to explain what happened and then it went from
8 there.

9 Q. Okay, so to your knowledge, did they -- you know, did
10 Middlesex correct those problems before them came back? Like when
11 they came back, did they actually correct the problems or did the
12 state just say yeah, they're good?

13 A. No, yeah, I mean, we -- like I said earlier, we talked about
14 having better communication, you know, obviously, we knew that
15 they went through the -- I got a list from RailPros, I went to the
16 Holiday Inn and saw that they were there, I got a list of who was
17 there. We went over -- you know, we went over certain things that
18 we wanted to approach, you know.

19 I left it up to RailPros to make sure that, you know, it was
20 -- it was up to, you know, what they -- you know, their curriculum
21 meets, you know, in our OTMS book and then basically, after that,
22 I don't know, I just know, like I said, they came back to work.
23 Since then I've gone out, you know, they said that the
24 communication level, I thought, was greatly improved, you know,
25 there was nonstop chatter, we're getting on or off, we're getting

1 this, you know, doing that, you know, going on, going back and
2 forth. Obviously, there was -- you know, I don't know what the
3 rest of it was because I wasn't directly involved with, you know,
4 allowing them back, but one of the issues I have, obviously, is
5 the operator was directly involved in that incident, too, so
6 obviously paying attention and not being out where he was supposed
7 to be, you know, I was just -- it is an issue, in my opinion, you
8 know, and probably anybody's opinion, but -- you know.

9 Q. Was this the occupying track without authorization issue?

10 A. Yeah, correct. Yeah. And then, I mean, like -- you know, I
11 have a lot -- I mean, there's a lot to it, I mean, you know,
12 whether or not -- whether or not we had an RWIC with him or not,
13 would that have stopped running somebody over?

14 Does a violation -- I mean, the violations are incredible, in
15 my opinion, you know, and -- you know, and obviously, should never
16 have happened. I mean, there's so many things to stop this, you
17 know. And like I said, I -- you know. Yeah, you know.

18 Q. Well, I'm just -- I guess the reason for the question is I'm
19 just kind of curious because you had one incident before where you
20 had Middlesex employees occupy track without authority and then
21 the day of the fatality, you technically had the same thing, so
22 that's why I'm just trying to get a gist of --

23 A. Well, if I caught them before, if I caught them before the
24 accident, there wouldn't have been an accident.

25 Q. Yeah.

1 A. Very, you know, unfortunate. You know, unfortunately, I'm
2 sitting in my office and I get a call that says there was an
3 accident someplace and we had no idea where it was and it's
4 obvious, just because of the communication level between me and
5 the first responders and everybody else, that we had no clue what
6 the hell was going on out there with this apparent -- you know,
7 obviously, what turned out to be a second work group, you know.

8 If we had known that they were there, it would've been very
9 obvious where to send somebody to look for somebody or anybody
10 else, you know. And I've been in public service for 30 years and
11 on top of my role here, it severely upsets me with -- on how, you
12 know -- you know, because time is a huge factor, as anybody might
13 know when it comes to an incident, you know.

14 Q. Yeah, no, I definitely understand. So I guess -- I guess
15 with the -- you know, with that in mind, with the EICs, so
16 Middlesex basically has -- they have site safety supervisors and
17 you're familiar with them, correct?

18 A. Yes, if that's what you want to call them, you know, I have
19 -- you know, yeah. I mean, we've had issues with, you know,
20 obviously, in the past it's been noted, you know, either the --
21 you know, somebody not there, contractually and stuff like that,
22 but yeah, I guess they're site safety guys, you know, or whatever
23 you want to call them or they're foremen or they're supervisors or
24 whatever, you know. Every other day I want to say that somebody
25 says they're a different role, so --

1 Q. I guess my question, then, is so Middlesex provides foremen
2 on scene, at least according to your testimony, and then they also
3 have site safety supervisors that are required by the state. So
4 what is the requirement at Housatonic, you know, at the job
5 briefs, to interact with the site safety supervisor or the foremen
6 of the Middlesex employees, is there a Housatonic requirement to
7 coordinate work or to -- or do they, you know, do one job brief or
8 do they do separate job briefs?

9 A. No, it's -- it's all, you know -- the only thing that --
10 there's only one job brief that's conducted in the morning, then
11 it's conducted any time the tasks change, you know. I mean,
12 everybody knows the job brief, I mean, the -- you know, your job
13 might changed, you might have to do something, there could be a
14 hundred job briefs in a day. The initial job brief should be with
15 everybody involved and it was always that way.

16 We looked around and me, myself, I can speak for the times I
17 had to do it, if they weren't in the circle or somewhere
18 thereabouts or somebody was standing out, I waited until somebody
19 was -- they were all there focusing or writing in their pad what
20 they were doing.

21 Now, you know, there might've been -- you know, if the day
22 before it wasn't exactly noted that hey, we're going to be doing
23 this because, I'll tell you, their schedule might be a schedule,
24 but the schedule is never followed, hardly, I mean, they might be
25 saying they're doing CWR and the guy doesn't show up to do it, so

1 then it's only a civil group that goes out there or something like
2 that, you know, they change it up. So that might be brought up
3 first thing in the morning when you show up and hey, there's a
4 certain guy, which has happened, you know -- you know, their guy,
5 their foreman, which is the only guy that really has any kind of
6 track experience is not there, so you're not going out doing track
7 and stuff, you know, okay, we're only doing civil stuff or
8 something, you know.

9 It's just -- that's the way it is, you know, which might be
10 brought up prior to the job briefing, but that's not a job
11 briefing, that's just, you know -- you know, basically function
12 specific to what we're going to be doing and then they get into
13 their job briefing afterwards so that the EIC can obviously, you
14 know -- you know, in a job briefing talk about the work scope, you
15 know.

16 MR. SKOLNEKOVICH: Okay. All right, P.J., that is all the
17 questions I have for now. Thank you so much.

18 MR. BAILLY: Hey, thank you, Richard.

19 BY MR. WERNIG:

20 Q. Hi, P.J., this is Joshua Wernig from the Middlesex
21 Corporation, how are you doing?

22 A. Good, Josh.

23 Q. Good. Hey, just one quick clarification. I heard earlier
24 something about doing audits of Middlesex. I'm just wondering,
25 were those audits in writing? You said you might have done two

1 audits of Middlesex?

2 A. Yeah, so I believe -- I believe one was on the day of the May
3 incident, you know, we included -- I got to go back and look, I
4 don't have them right here in front of me, but you know -- so the
5 217, basically, is not an audit, it's a proficiency check,
6 basically check, you know, it's required, you know, so I was
7 meeting, you know -- you know, I believe the two in question that
8 were, I believe the person listed was my RWIC or something like
9 that.

10 And since there might've been somebody there, it might have
11 included, I think I wrote down, you know, included so-and-so or
12 whatever, you know, of Middlesex, you know, but that's -- you
13 know, because it was a direct function of whatever was going on,
14 you know.

15 Q. And didn't you say you wrote it down, would that have been in
16 the field book, would that have been in the work --

17 A. No, it's in the -- it's on our 217, it's an operational
18 testing form.

19 Q. Were there any other written audits done?

20 A. You guys all got it, it was all included in -- you should've
21 had -- you should have those, they were included, I believe, in
22 the June 9th thing, when -- and I don't know if the second one was
23 after that, I'm not really sure, I'd have to look them up, look at
24 the dates in there.

25 MR. WERNIG: Okay, yeah. Great. That's all I have and

1 everyone, I do have to sign off, I have an emergent childcare
2 issue conflict that I need to go resolve, so I apologize, but I'm
3 going to sign off.

4 MR. BAILLY: Have a good day, Josh.

5 MR. WERNIG: You, too, P.J. Thank you.

6 MR. CASACELI: All right, so I guess Eric Boardman, do you
7 have any questions of P.J. Bailly?

8 MR. BOARDMAN: I have no questions at this time. Thank you,
9 David.

10 MR. CASACELI: Thank you.

11 MR. BAILLY: Yeah.

12 MR. CASACELI: Troy?

13 MR. LLOYD: I don't have any questions, Dave, thanks.

14 MR. CASACELI: Good deal.

15 BY MR. CASACELI:

16 Q. P.J., David Casaceli, NTSB. You know, it's kind of -- I'm
17 going to get a little less formal, I guess, and so from where I
18 sit as an outside person here, P.J., there's a little bit of an
19 elephant in the room in our conversations and there was a prior
20 fatality on the Housatonic Railroad in 2020, one of your own
21 employees. I'm not really familiar with all the details on that
22 and I guess I don't really need you to recount it here for the
23 record because those things are part of the public docket. But,
24 you know, as an outsider, a couple fatalities in 3 years on a 60-,
25 75-mile line in rural Massachusetts and Connecticut raises a lot

1 of just immediate alarm bells in my eyes. And I'm sure you've
2 reflected on this, as well, being way more closely involved in
3 them than I have. Do you have any voluntary on what -- are they
4 related, is it pure happenstance, what can we do to make sure that
5 that number is never three, something like that?

6 A. Yeah, neither one of those were, at all, any kind of -- you
7 know, any -- you know, could be related in any way. And
8 personally, you know, I stepped into this role, I don't know if
9 you know, Lloyd might know, stuff like that, I was -- I was, you
10 know, doing track work stuff, you know, with the Housatonic
11 Railroad, that would be prior to the first one.

12 I came in, you know, we spent years now trying to make this
13 the safest place around, I don't care -- you know. And I'm going
14 to tell you, this is -- this incident has got me completely sick
15 because the first one was involved with an employee that I worked
16 with for many, many years, I can never get over that, all right,
17 and to see, especially myself as a rules guy, and to see what
18 happened at this one.

19 And, you know, I -- I'm here, you know, part of my job is the
20 safety part of this thing, as everybody on the railroad, you know,
21 safety involves everybody and I'm talking contractor, anybody, all
22 right. And I am completely, completely and utterly upset with
23 this, the way this went down. I had, you know -- had I had, you
24 know, any recollection of, you know, that -- you know, that this
25 could've happened, I wish I could've -- you know, like I said, if

1 I -- if I had known that day, I would've thrown them off that day,
2 too, you know. You know, I'm beside myself. You know, I've lost
3 a lot of sleep, you know, and then there's a lot of things. I sat
4 here for many, many months, years now, directly involved with
5 everybody I can think of with the FRA trying to make this place,
6 you know, the safest place that I can think of and make -- you
7 know.

8 That's all the way around, whether it's transportation, you
9 know, anybody, the 214, everywhere, you know. We spent money, we
10 went into this, as a company, to -- you know, not just to -- you
11 know, to do the ESR stuff, you know, make sure everything is
12 right. Like I said, I spent at least the last year and a half
13 back and forth, you know, making this book and --

14 Q. Is there --

15 A. -- you know, the EICs, everybody out there, I would -- you
16 know, my guys, I would -- you know, I would trust them to do
17 anything, you know, I'd put my kid out on the track, all right,
18 and trust them with it. Now, you know, human factor's a problem
19 because that's what we do and, you know, I don't care if it was
20 the -- you know, right there on the bridge.

21 This could've happened right there, in my opinion, because I
22 believe the lack of RMM training that was done, you know, I could
23 be just about -- you know, I could go around and around, which I
24 don't want to upset a bunch of people, but you know, there's --
25 you know, there's a lot that I've learned, you know, going

1 forward, you know, even the railroad has learned, I believe, and I
2 am not going to speak, you know -- you know, this is never going
3 to happen. If we could do anything in our power, this is never
4 going to happen again, you know.

5 Q. Thanks. Yeah, and I'm not trying to -- I'm not trying to be
6 too adversarial, but you know, you know that's something --

7 A. That's all right.

8 Q. -- that's sticking in our heads, you know.

9 A. No, I know, like I said, don't get me wrong. Hey, you think
10 I want to -- you know, I know it's -- you know, you say it or I
11 say intention, but you know, it raises a lot -- I mean, don't get
12 me wrong, I mean, you know, I've had -- you know, I've had a lot
13 of visits, you know, and those visits I don't look at as, you
14 know, anything wrong, I look at them as a way to learn from it. A
15 lot of times, hey, I'll tell the guy I don't have anything to
16 hide, you know, neither does the railroad, you know.

17 Q. So --

18 A. So we --

19 Q. Sorry, go ahead.

20 A. Like I said, these two incidences, you know, have -- they're
21 so far apart from what actually, you know -- you know, yeah. You
22 know, unfortunately, it was -- you know. You know, I wouldn't be
23 doing -- I'd give up my job if I didn't think I could stop
24 something, but you know, it just -- you know.

25 Q. I understand. Yeah. Is there something contractually, you

1 know, we heard a lot today and yesterday with MassDOT and yourself
2 and Middlesex on this arrangement between the three parties and at
3 least, at first glance to me, it seems that like the arrangement
4 is maybe, let's just say, less than ideal and it leaves -- maybe
5 that's part of the opportunity for failure, I don't know if you
6 share that assessment or if you have any thoughts on a change in
7 arrangement between the parties that empowers one or another,
8 another way, that could be beneficial somehow.

9 A. Well, yeah. I mean, it'll probably get me -- it'll probably
10 get a lot of MassDOT people very upset with me, but you know, I
11 can't hold Middlesex completely -- completely at fault for
12 something that if there's somebody that was contractually, you
13 know, I think, obligated to make sure that these people are
14 qualified, you know.

15 And you know, I can't speak for, you know, I can only speak
16 for myself, but you know, if I have anything to say, contracts
17 going forward, you know, it's not going to be the way it is now,
18 you know.

19 Q. Yeah. We've had some lines of questioning, some answers, you
20 know, on RWICs checking the qualification cards and whatnot, but
21 that's generally not within the scope of an RWIC's duties --

22 A. No.

23 Q. -- in my experience, to know the individual qualifications of
24 everybody on the railroad, you know, there are requirements in 214
25 specifically put on employee errors and employees and then

1 railroads, everybody's got their own piece of the pie, it just --
2 it seems like there's some piece lacking here in the arrangement
3 to -- to make this go, you know, a little bit safer.

4 A. Like I said, I'll probably get very many people upset with
5 me, but you know -- you know, it's the fact that if you're going
6 to make -- in this incident, you know, having a third party,
7 fourth party, whatever you want to call it, you know, as an
8 operator of the railroad, if you're going to put them out, if
9 you're going to put somebody out there, you know, whether it's the
10 Acme Construction Company, you know -- you know, you got to make
11 sure that they're qualified, you know.

12 And -- and that's all parts of whether it's state
13 qualifications or is it C.F.R. qualifications and everything else,
14 it's -- you know. And that's where this comes, in my opinion,
15 where it comes down to is that there needs to be a direct, direct
16 order that, you know, all parties are involved, you know, in
17 making contract or something, or at least viewing the contract to
18 make sure that the -- it's all met, you know, instead of just
19 issuing it, you know, somebody -- a contract that, you know -- you
20 know, the one party has no clue whether or not, you know.

21 You know, to be honest with you, people at MassDOT, yeah, we
22 all know Scott, Scott, you know -- you know, credentials, you
23 know. People at HDR, I don't know, they might not be, neither one
24 of them, you know, if they're subway guys, they're not out here
25 doing the real-world stuff, you know. You know, you might be able

1 to tell me in a real world that, you know, you're book smart and
2 stuff like that, but it comes down to common sense to
3 (indiscernible) doing, you know, and I think that these parties
4 need -- you know, there needs to be a better -- you know, going
5 forward, you know, to avoid incidences like this, specifically,
6 this one.

7 Q. If there is a direction or two you'd like us to see you take
8 or a potential, you know, change that could, you know, aid the
9 industry, do you have anything there to share before we go around
10 the horn one more time?

11 A. Well, I think, in my opinion, as a rules guy, stuff like
12 that, for large scale, you know, if you're going to talk, you
13 know, miles and miles of track like this or anything like that,
14 there should be some sort of operational, you know, awareness, you
15 know, and more -- you know, more, more than just what's required
16 in the 243 or anything else, or RWP, you know.

17 Once again, you know, our RWP program and our RMM program, I
18 believe, suffices greatly. I go, you know, a great deal to make
19 sure that they -- and they are reputable, you know, as in
20 RailPros, a reputable trainer, so I don't doubt that, you know,
21 ours is just as good as anybody else's in the industry. And at
22 that point, you know, after that, like you say, you know, when you
23 come on the scene, you know -- you know, under penalty of the
24 C.F.R., you know, once they take that 243 training, you know, it
25 says that they're supposed to be training, you know, and

1 conducting training. Who am I, I can't put -- I can't put a gun
2 to somebody's head and say hey, do it, do this, you know, and in
3 the future, I just -- you know, I think that between the FRA and
4 everybody else, there are certain things, and I'm going to go to
5 -- there's a committee meeting, you know, I want to push a few
6 different rules around and if they don't happen overnight, but --
7 you know.

8 Q. Sure.

9 A. You know, there's -- you know, there are a few things that
10 need to be tightened up, you know, and I don't think that at any
11 point that we, as a railroad, you know, regulation wise have
12 anything that we could've done to prevent this one, you know.

13 MR. CASACELI: Yeah. Thank you. I know that's a little bit
14 of a provocative question, but I wanted to get real for a minute
15 and hear it from you.

16 MR. BAILLY: Yeah.

17 MR. CASACELI: And my involvement with it actually doesn't
18 end today.

19 So Troy, I had seen your hand up at one point to share
20 something, did you still have something?

21 MR. LLOYD: Yeah, thanks, Dave, and it was -- you were going
22 down the right -- the right questioning with P.J. there.

23 BY MR. LLOYD:

24 Q. But you know, P.J., I asked Eric Boardman the same question,
25 when a contractor comes and works on HRRC property, who's -- who

1 is responsible for the overall safety?

2 A. Well, obviously, the site safety guys, whoever the
3 contractor, whether it be, you know -- and you know, it's a vague
4 -- in my opinion, Lloyd, it's hard to -- you know, hard to say
5 that, you know, it's -- once again, it's contractual, you know, I
6 think. You know, I mean, we're out there providing track
7 protection, track time, you know.

8 Obviously, our guys are trained, you know, safety rules, you
9 know, with the OTMS and meet the -- we meet our RWIC requirements,
10 it's just they can't have eyes all over the place, if something's
11 going to happen somewhere else. But you know, safety wise, you
12 know, it comes down to -- you know, it comes down, in my opinion,
13 that, you know, when you accept, you know, part of that 243
14 training, you know, any contractor, you know, that's going to do a
15 scope of work, especially like this, needs to have some sort of
16 safety, you know.

17 Q. So does it seem like HRRC's hands are tied when it comes to
18 the overall safety of the railroads that you guys operate but
19 railroads owned by MassDOT, when MassDOT does a contract, and they
20 send in ABC Contractor, that it's sort of HRRC's, you guys are
21 just getting the track out and the contractors are doing
22 everything else, does it seem like HRRC's hands are tied where you
23 really can't go in there and sort of say "no, it's going to be
24 this way"?

25 A. Well, no, I mean, I don't believe that completely that way,

1 but you know, when it comes down to, you know, obviously, you
2 know, once again, if we know it's not compliant, it's not going to
3 happen, you know, it's just -- you know. I mean, obviously, we
4 have to go by, you know -- you know, we're going by the
5 regulation, you know what I mean? So if they come out there and
6 they're going to just, you know, like I said, take a machine out
7 of there without any lights or anything like that, safety wise, we
8 stop them and we did, you know, we have.

9 You know, if we don't have -- we've had guys show up without
10 RWP cards. Guess what? You're not coming, you know, you go back,
11 go back, go back to the drawing board with that one, you know what
12 I mean? It hasn't been, you know, like safety wise that we can't
13 say -- and I'm just talking, this is just 214. I mean, obviously,
14 we got -- we're running a railroad, too, I mean, operational-wise,
15 we have our own, you know. They don't come to us and tell me how
16 to operate the railroad, you know?

17 But when it comes to this contractor, you know, the
18 contractor's required to, you know, be trained and qualified, and
19 obviously, he does the safety rules. But when it comes -- you
20 know, we -- yeah, I think there's a certain point that, you know,
21 obviously, if we see it, we're going to stop it, you know. But
22 when you say our hands are tied, yeah, we weren't part of the
23 contract, you know. If we were part of the contract, maybe we --
24 you know. I don't know, I have some reservations about what went
25 on, you know, I don't know, you know, but just because their -- I

1 heard this from MBTA, that doesn't mean -- that doesn't tell me
2 everything.

3 Q. I got you, P.J. Thanks.

4 A. We're getting paid, we're getting paid to flag for them and
5 that's -- yeah, I mean, we're -- you know what I mean, you know
6 that's it, you know.

7 Q. Yeah.

8 A. You know. Unfortunately, like I said, obviously, the
9 flagger, he's qualified to, you know -- or myself, when we go out
10 there, we see something, yeah, we're going to -- we've done it,
11 you know. Yeah, other than that, I don't know, to be honest with
12 you, Lloyd, how to answer, you know, that one, you know, to be
13 honest with you.

14 MR. LLOYD: That's all I got. Thanks, Dave.

15 MR. CASACELI: All right, thank you, Troy.

16 Owen Smith, do you have anything else?

17 MR. SMITH: No further questions, thank you.

18 MR. BAILLY: I mean, just to go back, I mean --

19 MR. CASACELI: Yeah.

20 MR. BAILLY: Just for say, you know, in a contract they said
21 all right, we're going to do safety, then obviously, yeah, you
22 know. That's a whole other ball game, you know, we're going to --
23 you know. You know, it's the same thing as anywhere else, you
24 know, you read -- you know, it's whatever game you're playing, you
25 know what I mean? We weren't instructed, in this particular

1 stuff, we were contracted basically as providing flaggers, you
2 know. And unfortunately, like I said, you know, before, that's
3 where -- you know, I don't know. Like I said, that's the only way
4 I know how to answer Lloyd's question, you know. If the contract
5 was different where it says, you know, yeah, okay, you know,
6 you're going to provide safety stuff, you know, we'd have our own
7 safety people out there probably for that. I don't know, there'd
8 be a lot -- you know. It's hearsay now because it's not -- or
9 it's, you know --

10 (Crosstalk)

11 MR. CASACELI: Yeah. It's hard to even imagine, you know,
12 what that would look like that, but I --

13 MR. BAILLY: Right.

14 MR. CASACELI: -- appreciate you taking us down that avenue,
15 so -- Mr. Skolnekovich.

16 MR. SKOLNEKOVICH: Richard Skolnekovich, I have no further
17 questions.

18 MR. CASACELI: All right, Eric Boardman.

19 MR. BOARDMAN: No further questions, David, thank you.

20 MR. CASACELI: Okay. I don't have any, either, but P.J.,
21 thank you for your time and your efforts in this investigation.
22 You, I'm sure, put your life into it, as you said, and I have no
23 reason to doubt that and I hope we can learn some lessons from
24 each other to make the industry a safer place and perhaps other
25 railroads can learn from the Housatonic, you know, from their

1 experiences with both of these, so thank you for your time and
2 we'll sign off the record here at 3:57 p.m.

3 (Whereupon, at 3:57 p.m., the interview concluded.)
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CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: MIDDLESEX RAILROAD EMPLOYEE
FATALITY IN GREAT BARRINGTON,
MASSACHUSETTS ON AUGUST 4, 2023
Interview of P.J. Bailly

ACCIDENT NO.: RRD23FR015

PLACE: via Microsoft Teams

DATE: September 7, 2023

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been transcribed
to the best of my skill and ability.



Karen D. Martini
Transcriber

National Transportation Safety Board

Office of Railroad, Pipeline and Hazardous Materials
Washington, DC 20594



INTERVIEW TRANSCRIPT ERRATA SHEET

I, Philip Bailly (PJ), have read the transcript of my interview that was held on September 7, 2023. This transcript constitutes a true and accurate transcription of same except for the following amendments, additions, deletions, or corrections:

| PAGE NUM. | LINE NUM. | CHANGE AND REASON FOR CHANGE |
|-----------|-----------|---|
| 45 | 17-20 | I stated to the RWIC on a earlier date that specific Middlesex employees who were in view of him (RWIC) could throw the switch. |
| | | The reason is because not I or the Railroad would allow just anyone to throw the switch. |
| | | Only Specific Middlesex employees that I knew their qualifications were OK to throw the switch within view of the RWIC. |
| | | |
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| | | |
| | | |

I declare that I have read my statements and that it is true and correct subject to any changes in the form or substance entered here.

Date: 3/29/2024

Signature: _____

