

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: DARREN HOHN, HSE Operations Director
Middlesex Corporation

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
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Housatonic Railroad

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I N T E R V I E W

(10:02 a.m.)

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2
3 MR. CASACELI: All right, we're on record. So for the
4 record, my name is David Casaceli and I am an NTSB track
5 investigator for this accident. We're here today, September 7th
6 at 10:02 a.m., in a virtual Teams meeting to conduct an interview
7 with Darren Hohn, who works for the Middlesex Corporation. This
8 interview is in conjunction with NTSB's investigation of the Great
9 Barrington contractor fatality. The NTSB reference number for
10 this accident is RRD23FR015. The purpose of this investigation is
11 to increase safety, not to assign fault, blame, or liability.

12 Before we begin our interview and questions, let's go around
13 and introduce ourselves. Please spell your last name, mention who
14 you're representing and your title. And I'd like to remind
15 everyone to speak clearly so we can get an accurate recording and
16 transcription. I'll start off and then pass it around. Again, my
17 name is David Casaceli, spelling of my last name, C-a-s-a-c-e-l-i,
18 and I'm an NTSB track investigator for this accident.

19 Owen, go ahead.

20 MR. SMITH: Yes, Owen Smith, S-m-i-t-h. I'm with the Federal
21 Railroad Administration and I am a railroad safety inspector.

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

24 MR. CASACELI: Josh.

25 MR. WERNIG: Joshua Wernig, W-e-r-n-i-g, with the Middlesex

1 Corporation. I'm the senior vice president and chief legal
2 officer, I'm not here in my legal capacity today.

3 MR. CASACELI: Mr. Bailly.

4 MR. BAILLY: Yeah, P.J. Bailly, Housatonic Railroad. The
5 spelling is B-a-i-l-l-y.

6 MR. CASACELI: Mr. Lloyd.

7 MR. LLOYD: Yeah, good morning, everyone. My name is
8 Troy Lloyd, I'm with the National Transportation Safety Board.
9 Spelling of my last name is L-l-o-y-d.

10 MR. CASACELI: And Darren.

11 MR. HOHN: Darren Hohn, last name, H-o-h-n. I'm the HSE
12 Operations Director for Middlesex Corporation.

13 MR. CASACELI: And I'll add, the first name is D-a-r-r-e-n,
14 for the record --

15 MR. HOHN: Correct, yes.

16 MR. CASACELI: -- or the transcriptionist will make my
17 mistake. All right. So Darren, do we have your permission to
18 record this discussion today?

19 MR. HOHN: Yes, you do.

20 MR. CASACELI: All right. And you understand that the
21 transcription of this interview will be part of the public docket
22 and as such we cannot guarantee any confidentiality?

23 MR. HOHN: Yes, I do.

24 MR. CASACELI: And as we discussed, you do not have a
25 representative here with you today, is that correct?

1 MR. HOHN: That is correct.

2 MR. CASACELI: Okay. So as we go around, again, everybody,
3 please clearly announce your name and organization before each
4 line of questioning. We'll also turn our cameras and microphones
5 on and off as we go around to keep it as personal as we can.

6 INTERVIEW OF DARREN HOHN

7 BY MR. CASACELI:

8 Q. And to start us off, Darren, can you give us a synopsis of
9 your work experience and history leading up to your present job
10 and how long you've been in that position and detailing any, you
11 know, railroad and construction experience along the way?

12 A. Yeah, no problem. I've been in safety for just about 25
13 years, I started in 1997, worked on the Big Dig project in Boston.
14 My background was -- is basically heavy civil, marine, cut-and-
15 cover tunnels, highway, heavy highway, asphalt production,
16 concrete production. You know, that carried on through probably
17 about, you know, 17 years.

18 I started getting into rail about 7 years ago, lightly, on
19 certain projects down in Florida. Not directly, but we had rail
20 projects down there that we were just the contractor, but we
21 subbed most of it out, so that's where I started getting my
22 experience. That continued up here in New England with the MBTA
23 work, we do a lot of light rail maintenance-of-way contracts with
24 the MBTA. That's where I got more involved in the construction of
25 rail, the replacement of rail ties, et cetera. And then over the

1 course of about the past year, we started doing more rail
2 maintenance work outside of the MBTA, I consider that the light
3 rail, but more in the heavy rail of construction. So that's
4 basically my background.

5 Q. Okay. And then this HSE --

6 A. Yeah.

7 Q. Sorry, what was your job title again?

8 A. I'm sorry.

9 Q. HSE Operations Director?

10 A. I originally started as a site safety manager. I've been
11 with Middlesex for -- I'm going on 21 years. While I've been here
12 with Middlesex Corporation, I've held the position of a site
13 safety manager on multiple projects. I don't know the exact year,
14 but then I became the site safety director for a period of time.
15 At that time, the company was getting larger.

16 We decided to divide our HSE department, which was a great
17 thing, so my background is more hands-on experience with heavy
18 civil, so I took the position of the HSE Operations Director and
19 then we hired an HSE Director. So basically, I manage all the
20 projects through New England, as well as Florida, where the safety
21 managers report up to me on an operation side of things.

22 Q. Okay. And I think you might have gone there, but on the high
23 level, can you describe some of your, you know, duties and
24 responsibilities on a day-to-day level with the types of projects
25 like the one on the Housatonic?

1 A. For particular, out on the Housatonic, yes, I help manage
2 that project from operations as well as safety. We have a full-
3 time safety person out there. I, myself, am also considered a
4 full-time person just in case somebody does go on vacation or
5 there's a lapse in coverage and stuff. So I have been involved in
6 this project off and on for a period of time since probably May of
7 this year.

8 As far as my regular duties as the HSE Operations Director on
9 multiple projects, basically, I work with projects and depending
10 on what is going on for that particular week or month, you know, I
11 get involved in certain things like crane picks or critical work
12 activities that may be taking place. I work in conjunction with
13 operations to ensure that we are, you know, crossing the t's,
14 dotting our i's, making sure that, you know, we're ready to go to
15 do any type of big critical work. Other than that, the HSE
16 department or the site safety managers report up to me.

17 The other things I actually take part in is running safety
18 meetings, you know, one thing that we are -- have been doing for a
19 period of time, and making sure that we all are operating on the
20 same level across the company, regardless if it's rail or civil,
21 in the New England or southeast region, so I am that person to
22 make sure that everything is running smoothly across the board.

23 Q. Thank you. Darren, what's your role in -- in training,
24 roadway worker protection, RMM or maintenance machine safety,
25 on-track machine safety, and operator qualifications? How do you

1 fit into there and what fits, what doesn't, what is under your
2 purview?

3 A. There, I just -- you know, when we get going on a particular
4 project and stuff, I just make sure that we have, you know, what's
5 required for the contract. I necessarily do not schedule those,
6 you know, those classes and stuff, but again working with
7 operations, I'm the person that says okay, if you've got 20
8 people, you know, coming into this project, we have to make sure
9 that this has been addressed and this training takes place before
10 we go out there.

11 Again, I don't schedule that but, you know, I'm very mindful
12 sometimes that some projects actually cross over with one another,
13 you know, where we may have some people that are going over there,
14 so I try to recognize that with operations to make sure that we're
15 looking outside of the particular projects, as well, so there's
16 no, you know, hiccups if there's a need for more people on
17 particular projects.

18 Q. Okay. At a high level, and you kind of heard me ask this
19 same question yesterday, but what is your understanding of the
20 responsibilities of the different parties involved on the
21 Housatonic project regarding worksite safety and compliance with
22 federal regulations, specifically rail ones? You know, we have
23 MassDOT, we have the Housatonic Railroad, we've got Middlesex and
24 others. If you could just kind of lay it out for me as you see it
25 in your experience on scene.

1 A. Yeah, so obviously, the owner of the railroad has the
2 responsibility, which is MassDOT. Obviously, we are, you know, a
3 contractor to them, you know, and I know that Housatonic is kind
4 of the overseer for Mass Highway to ensure that, you know, there's
5 on-site track safety, et cetera. So we basically take direction
6 from Housatonic while we're out there to make sure that, you know,
7 when we are out there, we have adequate track protection, you
8 know, that we're coordinated with Housatonic on the type of work
9 that we are going to be performing that day or for the week.

10 I know there's a component where we also have to report back
11 up to MassDOT because there's a whole entire, you know, format
12 that operations has to abide by, making sure that MassDOT, as the
13 owner, is aware of what's going on. Obviously, there's weekly
14 meetings with MassDOT and operations and management takes care of
15 that. And then for us on the contract side, making sure that
16 we're, you know, adhering to the rules and regulations of not only
17 Middlesex Corporation rules and policies and stuff, but also the
18 host railroads.

19 Q. Thank you. What is the Housatonic's level of control and
20 ability to oversee Middlesex and their employees with regards to
21 safety and compliance with the regulations?

22 A. They're basically going to have to -- you know, again, I'm
23 going to use this word, the "liaison" to the owner, so obviously,
24 MassDOT's the owner, so they're the liaison. So their
25 responsibility is to ensure that, you know -- I'm sorry, my

1 phone's going off on the other side. But their responsibility is
2 to ensure that, you know, the contractor working under direction
3 is adhering to safety rules, you know, of the rail, you know,
4 ensuring that they're providing us the adequate track protection,
5 you know, if there's anything that comes up throughout the day or
6 throughout the week, to make note of those. You know, if there's
7 deficiencies, regardless if it's safety or maybe there's quality,
8 things like that, you know, their responsibility is to bring that
9 forward to us as the contractor.

10 Q. Good deal. So I want to pivot back to some of the training
11 and qualification space. So who actually qualifies operators on a
12 piece of on-track maintenance equipment, so you know, a logger, a
13 driller, a tamper, a tie inserter, who is -- who does those
14 qualifications or how is that qualification gained if it's not
15 like an individual?

16 A. So we have people that are on projects that have, you know, a
17 high level of understanding of the actual particular pieces of
18 equipment on the projects, you know, and -- you know, those people
19 are to kind of, you know, take people under their wings to ensure
20 that, you know, people that we feel have the ability, you know, to
21 maintain safety, you know, that, you know, understands safety and
22 operate at a high level of safety, just with our internal
23 programs, you know, we feel that, you know -- you know, if it's
24 Darren Hohn, you know -- hey, Darren Hohn seems like he's the guy
25 that we could start, you know, moving into, you know, maintenance

1 equipment or hi-rail equipment and stuff. So you know, we do have
2 a process out there where we, you know, first notify -- are aware
3 of these people and then, you know, there's a process that we go
4 through, you know, as far as understanding track travel. You
5 know, obviously, we don't just put people out on the rail, you
6 know, we make sure that we're mindful of that, but we do go
7 through a process of ensuring that we are comfortable, one, you
8 know, we go through how to inspect equipment.

9 And this, in particular, one thing that I have been pushed on
10 for many years is even if Darren Hohn's going to be the person
11 operating that piece of hi-rail equipment, when it comes to the
12 inspection part of things, you know, it's like everybody needs to
13 understand that. So even if there's a ground guy that would never
14 be in a piece of equipment but he'll be riding on a piece of
15 equipment, we always try to be mindful of making sure those people
16 are aware of what the inspection process is, just in case they
17 ever see something that isn't right.

18 You know, so it is a slow process, you know, I guess we just
19 don't dump people in the equipment and then, you know, we utilize
20 experienced people that have been in rail for a period of time,
21 you know, to start mentoring those high potentials and we bring
22 them through a process, so again, inspection, we may use spurs,
23 you know, where there's no other equipment, just to kind of
24 understand that hey, these are the controls, this is kind of how
25 we track travel.

1 Q. Um-hum.

2 A. You know, no operating a piece of equipment, but just
3 starting at the basis.

4 (Crosstalk)

5 MR. HOHN: Yeah. And then moving on up from there.

6 BY MR. CASACELI:

7 Q. Is there a formal process outlined on how to qualify somebody
8 on a specific piece of equipment or is it are we relying on that,
9 you know, the experienced operator to, you know, share the
10 relevant details with the -- let's say the new -- the new person?

11 A. Yeah, we rely on the people that have the experience in the
12 pieces of equipment.

13 Q. Okay. How would an operator know they're qualified on a
14 specific machine or in general as a machine operator?

15 A. Like how -- like if I was the one being picked, when would I
16 be the one to say that I feel I'm qualified to be out there?

17 Q. Yeah, so you know, we start this process with, you know,
18 somebody's going to -- looks like we're going to make them a
19 spiker operator, how do they know when they're qualified on that
20 machine?

21 A. Okay. You know, after they possess the skills that we feel
22 that they're comfortable to operate, you know what I mean?

23 Q. But is there a record, do they get a letter, is it just "all
24 right, you're good to go on the spiker now"? And I don't mean to
25 degrade that because, you know, there was a training process.

1 A. Yeah.

2 Q. But is that recorded in any way or do they get a -- is there
3 a celebration ceremony, "congratulations, you're qualified"? How
4 does that kind of work?

5 A. No. I mean, obviously, none of that, but you know, it's
6 basically they understand that hey, listen, we feel that you're --
7 we're comfortable with you being out there. You know, we do have
8 proficiency cards that we do fill out for people, that
9 demonstrates that they are -- you know, understand for the
10 knowledge base, the track travel base, the functionality of the
11 equipment and stuff, we have a proficiency card portion of that,
12 as well.

13 So basically, after that's been established, that's kind of
14 our okay, you know, for this time and purpose for understanding
15 this, we feel comfortable releasing you to be out on the main
16 line, you know, minus, you know, the obvious periodic inspections
17 or oversight.

18 Q. Talk to me a little bit more about the proficiency card, I'm
19 just not familiar with it. Is it, you know, a general "you're a
20 qualified machine operator" or is it "you're qualified on Spiker
21 Number 1-2-3"? Or just give me some kind of feeling for the scope
22 of what a proficiency card is and what it means.

23 A. Yeah, so the proficiency card is basically, you know, an
24 acknowledgement, so it goes over -- and again, I don't know every
25 single thing that's on the proficiency card, but it definitely

1 goes over the functionality of the equipment, the inspection
2 process of what we expect a person to understand. You know,
3 depending on what piece of equipment it is, there's other "check
4 the box" type things that they know how to, you know, operate the
5 equipment. Some of the other things that are on these proficiency
6 cards that we put on there, internally, is certain things of like
7 wet rail, you know, because, you know, obviously traveling on wet
8 rail is completely different than turning on dry rail.

9 If it's a hi-rail piece of equipment, you know, do they
10 possess the ability or the understanding to get from a truck pad
11 onto the rail, use the hi-rail gear, do the braking tests, you
12 know, travel forward, travel reverse 10 feet to make sure that the
13 brakes are good. And then, obviously, if it's hi-rail equipment,
14 then the functionality, you know, if it's a hi-rail excavator, how
15 to operate the excavator on the rail. So that's basically our,
16 you know, process on there.

17 Q. So is a proficiency card something that, you know, remains
18 with the person or goes in a record that says "Bob's qualified on
19 this machine" or is it just like a guide used in the qualification
20 process? I'm just trying to feel it out.

21 A. What did you say? I'm sorry, Dave, I --

22 Q. Is a proficiency card like a qualification card, it goes in a
23 box somewhere and says, "Bob's qualified on a spiker," or is it
24 more like a checklist used in qualifying somebody? I'm just
25 trying to get -- like, does this card exist somewhere for

1 operators?

2 A. Uh-huh. Yeah, it's a guide, you know.

3 Q. Okay, so it's something that an experienced operator would
4 use as a guide while training a new operator, is that correct?

5 A. Yeah. Yeah. And to use your term, it will go in the box,
6 you know, type thing. More or less, check the box.

7 Q. So is there a -- is there a record somewhere for every
8 operator that says we went through this proficiency card or is it
9 just -- is it used on site and then as a guide only?

10 A. No, it goes into our project files under training.

11 Q. Okay, okay. I just wanted to see if it was a tangible thing
12 per operator or not.

13 A. Yeah.

14 Q. So I appreciate that.

15 A. Yeah, yeah.

16 Q. We talked past each other there for a minute.

17 A. No, no, that's fine.

18 Q. Can you share with me a bit of your knowledge on the
19 Housatonic Railroad's roadway worker protection program or
20 on-track safety manual, depending on how they refer to it?

21 A. You know, as far as RWP and RMM?

22 Q. Yeah, yes.

23 A. So before we all go out there, depending on, you know, the
24 person's position and title, obviously, we go through RWP
25 training, that's Housatonic through RailPros, you know, that's

1 their -- that's their system that they use, so we go through that,
2 you know, so we go through the RWP, which obviously goes over the
3 on-track safety, you know, things like adjacent track safety,
4 roadway work groups, working around roadway maintenance machines,
5 you know, general safety rules, things like that.

6 And then if there's a person that's going to be the
7 maintenance machine operator, a hi-rail operator, you know, that's
8 when we jump into the -- what's it called, roadway maintenance
9 machine, again, that's through -- that's through RailPros, as
10 well, so that would be the part of saying if Darren's the guy that
11 we want, you know, we would push them over into the roadway
12 machine maintenance classes.

13 Then there's the CWR. Obviously, there's certain people that
14 have to possess that designation or that training, you know,
15 mostly those people are -- usually, I believe, are operators. I
16 took it just to get a better understanding of what I'm seeing out
17 there, as well, and then obviously, our quality people would do
18 that. And you know, with us being on bridges, you know, there's a
19 component there, as well, to meet the requirement to understand
20 the -- I forgot what it is -- 237, maybe, 238, for the bridge work
21 certification.

22 Q. Correct, yeah. Yeah.

23 A. Sorry.

24 Q. I want to pivot back to my last line of questioning a little
25 bit on the qualifications. So if I'm a superintendent or a

1 foreman on a job and I need somebody to run a specific piece of
2 equipment, how do I know who's qualified on that piece of
3 equipment, as a Middlesex foreman or superintendent or if I need
4 somebody to run a machine?

5 A. That's the understanding for the superintendent and foreman.
6 I mean, obviously, if they question it, they would have to go back
7 to the project team to say hey, you know, can this person run this
8 particular piece of equipment, you know. So I mean, that's
9 basically their understanding, you know, if, I guess --

10 Q. They'll have a database somewhere, is there a database
11 somewhere or no?

12 A. Yeah, yeah, yeah. Yeah, in the project files there should be
13 a database that says, you know, who possesses what.

14 Q. Okay. Thank you. I'm going to pivot back to the line of
15 questioning I just left, but have you ever had a need to reference
16 Housatonic's roadway worker protection manual over the course of
17 this project? I guess you've been involved in it kind of more
18 closely since May to August, so it's a short time period, but --

19 A. Personally, me, yeah, I've been through it, yeah, on certain
20 things and for me, personally, the reason why is because each --
21 again, here, the liaison to the railroad, they all -- everybody
22 has a different way of looking at things, so I've gone through the
23 program, obviously.

24 Q. Okay.

25 A. You know, I don't particularly, you know, remember why I had

1 to go in there, but I read it at the beginning, you know,
2 obviously, but --

3 Q. Okay.

4 A. -- I had to reference it prior to. And to be honest with
5 you, I think it had to do with the radio communication.

6 Q. Okay. What oversight activities do you have that relate to
7 on-site safety? So of individuals -- as I read the question, I
8 don't think it's all that clear, so as far as like day-to-day
9 oversight of the workers, auditing safety and things of that
10 nature, what are your responsibilities in that space?

11 A. So if I am out there personally, myself?

12 Q. Well, I guess what's -- I'm interested more in what's your,
13 you know, formal duties and responsibilities when it comes to
14 oversight as opposed to what might happen if you happen on scene,
15 if that makes sense.

16 A. Okay, so if I'm not on site, you know, obviously, I rely on
17 our site safety manager, you know, the person that's out there,
18 you know. Obviously, if there's something that's not right or,
19 you know, regardless -- and again, I'm just talking fluently here.
20 If there's an injury or an incident or an accident or a near miss
21 or something like that, you know, they notify me right away,
22 obviously. You know, I manage it. If I'm not on the job site,
23 I'll manage it with the site safety manager as well as the
24 operation people, you know, depending on severity and stuff. You
25 know, if it's, you know, something that we need to address, you

1 know, I may send out an e-mail to the group and say hey, I'm aware
2 of this incident or aware of this near miss or aware of this
3 potential mishap, you know, tomorrow I'd like to have you guys
4 discuss this at the daily huddle, you know, a briefing daily
5 huddle.

6 If there is another course of action and I feel that there's
7 a need to do additional things to it, depending on the severity,
8 you know, I use my chain of command if I feel hey, listen, we need
9 to do retraining or, you know, listen, let's take this policy from
10 Middlesex and let's just revisit this, or let's get the job hazard
11 analysis that was written on this particular operation, it seems
12 like we need to add a little bit more information on it or revise
13 it, let's do that.

14 And then, you know, depending on the severity level, you
15 know, 99.5 percent of the time, you know, it's to me and below.
16 Obviously, if there's noncompliance and this hardly ever, rarely
17 ever happens, you know, I go up the chain and, you know, obviously
18 I'll get Joshua involved, he's my direct report and stuff. So
19 that's me being outside of the project.

20 If there's a need for me to be out there through vacation or
21 people taking time off or someone was sick, I would step in the
22 role as the site safety manager and follow the same process, you
23 know, be on site, you know, use my observation forms, we're
24 required to do safety observation forms, it's an automated system
25 that we have, you know, and we basically audit ourselves more or

1 less, you know, we audit the daily huddle, we audit, you know,
2 what we see, both positive and negative. You know, our program's
3 built on satisfactory and unsatisfactory conditions, as well as
4 imminent danger, you know, so if there's an imminent danger and
5 that's been triggered, that would automatically go to myself and
6 Joshua, you know, to higher-level people, and those have to be
7 addressed right away.

8 If it's just a positive observation, those would be noted.
9 If it's an unsatisfactory observation, those would be noted. And
10 our purpose of this is to make sure that we're communicating
11 everything, not leaving any stone unturned, you know, and making
12 sure that we're maximizing on safety, you know, every single day.

13 Q. So --

14 A. Go ahead.

15 Q. So could you, if you were on scene in that site safety
16 manager role or in your role as ops director and you got a notice
17 that a given employee had, you know, a negative safety
18 observation, can you go back and see the history of that
19 individual, whether positive or negative, on those site safety
20 observations?

21 A. Yeah. I mean, the way they are is, you know, not necessarily
22 you won't see a person's name in there, it's not like hey, Dave
23 did this, Dave did that, you know, we try to -- we try to
24 discourage putting people's names in particular things. I mean,
25 obviously, we know because it's -- you know, most of our projects

1 are small and we know what's going on as far -- you know, but it's
2 one of those things where if there's an unsafe act, you know, and
3 I see the unsafe act, it's direct, it would be like me to you,
4 Dave, you know.

5 Q. Um-hum.

6 A. Like hey, I noticed you stepped on the head of the rail
7 today, you know, we talked about it this morning, hey, don't step
8 on the head of the rail, make sure you step over the rail. We
9 would note those things and the reason why we note them, and even
10 the smallest things, is because that may happen 20 times that we
11 don't see, but if we're capturing them, that makes me go back to
12 my matrix, when I look at all these SOR reports coming in, safety
13 observation reports, I could say hey, guys, you know, nine things
14 were related to people stepping on the head of the rail. And I'm
15 just using these as an example.

16 Q. Sure.

17 A. That's when I would trigger and say hey, guys, listen, this
18 needs to be discussed at the Monday morning safety meeting. I
19 know we discussed it, but people aren't getting to it.

20 Q. Um-hum.

21 A. So that's basically our process. So when I'm there, I'm
22 basically filling the role of a site safety manager on the mere
23 fact that I have to be out there full time, you know, I'm -- yes,
24 I have other obligations, but I'm out there with the guys acting
25 as a site safety manager.

1 Q. Who monitors Middlesex employees' compliance with roadway
2 worker protection rules? And so roadway worker protection rules
3 include things like, you know, communications with an RWIC or safe
4 traveling speeds, working safely around on-track equipment, these
5 types of things, who monitors Middlesex employees' compliance with
6 those rules?

7 A. Well, that's everybody on the project and that's our
8 supervision, that's our management team, that's the safety
9 department, it's me when I'm out there, as well as Housatonic. I
10 mean, I look at -- this type of work we're doing out there is a
11 joint effort to say hey, let's make sure that everybody's looking
12 out for safety, it's just not one particular person.

13 You know, obviously, you know, are we trying to be mindful of
14 everything that we learned in, you know, 214 and you know, 213
15 safety standards and stuff like that? Absolutely. Are we trying
16 to capture when people are adhering to those? Absolutely. I
17 mean, so --

18 Q. Good deal.

19 A. I mean, the question is it's everybody.

20 Q. I want to ask you a few questions and it will sound like I'm
21 quizzing you, but maybe I am.

22 A. That's fine.

23 Q. So what does the term "right to challenge" mean to you in the
24 space of roadway worker protection, a worker's right to challenge?

25 A. Yeah. So if a roadway worker or anybody of a work group

1 feels that they don't have, you know, maybe an understanding of
2 what is expected of them or on-track safety, they have the right
3 to challenge that, to say hey, listen, either I don't understand
4 or I feel that the information that's being provided to me is
5 inaccurate, can you please re-explain it? So you know, it's more
6 or less challenging, you know, before we go to work, to ensure
7 that everybody's comfortable, you know -- you know, and understand
8 what their duties are for that particular day or for those
9 particular tasks.

10 Q. Good, good. How fast can a machine operator travel on the
11 track? On the Housatonic Railroad.

12 A. On the Housatonic itself?

13 Q. Yeah.

14 A. I don't know, off the top of my head.

15 Q. Okay.

16 A. I mean, as far as, you know, the physical characteristics and
17 things like that, I mean, I'm not going to give you a number, but
18 you know, depending on what the track conditions are and track
19 speeds are.

20 Q. Are you familiar with the term "restricted speed"?

21 A. Yes, yes. Restricted --

22 Q. Can you talk me through what restricted speed means?

23 A. So restricted speed is basically a speed that is -- I don't
24 want to use the word "assigned," but a speed that is used to
25 determine safe track travel and there could be components such as

1 visual components, you know, line-of-sight distance, you know,
2 depending on some of the other physical characteristics, it's --
3 there's a lot, there's a lot to it.

4 Q. Okay. I think we talked a little bit about this when we were
5 on scene. Are you familiar with a practice built on machine
6 operators or on crane crews, for that matter, called a stop test?

7 A. So in talking with you, I didn't understand that term --

8 Q. Um-hum.

9 A. -- at that time and I want to be honest with you, but after
10 talking to you, you know, I do understand that, yeah.

11 Q. But stop tests aren't something that -- over-stops (ph.),
12 that's something you were aware being performed on operators prior
13 to the incident.

14 A. I'm sorry, Dave, what's that?

15 Q. Did anybody perform stop tests on machine operators prior to
16 the incident, Middlesex machine operators?

17 A. I can't answer that, I don't know.

18 Q. Okay. Have you ever performed a stop test on a machine
19 operator?

20 A. No.

21 Q. Okay. And was a stop test something --

22 A. Can I just go back to that? So you mean --

23 Q. Of course.

24 A. So the stop test, meaning --

25 Q. Stop, meaning --

1 A. -- ensuring that if they're traveling, that they could stop
2 in a correct distance.

3 Q. Yeah, so by stop test, I would mean placing something on the
4 tracks or giving a stop signal to an operator and seeing if they
5 stop in the appropriate distance. So in the instance of a red
6 flag on the track --

7 A. Yeah.

8 Q. -- that they don't hit the red flag.

9 A. No. So yes, we did have that conversation when we were out
10 there. So physical barriers, things like that, no. Have I had to
11 wave an operator down to talk to him about certain things? Yes.

12 Q. I understand, I understand. All righty, I'm about done with
13 my line of questioning, I've got one more kind of angle I want to
14 go on and that is the responsibilities of a roadway worker in
15 charge. Can you talk to me a little bit about what the RWIC's
16 role is on a project like this?

17 A. Yeah. Obviously, they're the individual that is going to be
18 granting us, you know, Middlesex, the -- basically the Form D, you
19 know, going over track rules, you know, anything that -- you know,
20 as far as giving us limits, any other safety issues that they may
21 feel may impact the work, you know, they're supposed to be with
22 us, you know, when we're actually out there physically doing the
23 work to ensure that we're not going outside -- you know, if
24 there's track limits and you're from here to here, that we're not
25 traveling outside of those limits. You know, basically the way I

1 look at those people is they're kind of our eyes and ears for
2 while we're out there, as being the -- you know, the roadway work
3 group.

4 Q. Okay. What about in relation to -- we talked about
5 movements, keeping us within our limits of the day, of our Form D
6 or a track out of service. What about the RWIC's role in
7 movements within those limits, machine movements?

8 A. So they have to have an understanding that, you know, if --
9 and again, I'm just -- I'm -- I think hard when these questions
10 come by because I'm trying to imagine, you know, what we do out
11 there. But you know, after we're granted access to get onto the
12 main line and stuff, you know, that the switches are thrown and
13 that we're out there, you know, that they're, you know, one, going
14 in the right direction, you know, obviously, to the work areas.

15 Track speed is important, as well, you know, there's a lot of
16 bridges, there's a lot of street crossings and stuff like that, so
17 to ensure that, you know, we're operating our hi-rail equipment,
18 our maintenance machine equipment, you know, to the -- you know,
19 I'll call it the standard of the track, you know, what's required
20 for the track.

21 Q. So if a machine operator in this incident was at a worksite
22 and then they -- you know, their machine broke down and they
23 needed to travel a mile or so back south to the yard, is that
24 something that that operator is required to inform the roadway
25 worker in charge about, or is it they're within the limits of the

1 project, so it's reasonable, he knows no one else is out there,
2 they can make that movement on their own? What kind of rules or
3 practices apply in that situation?

4 A. I mean, I can't particularly, you know, give you an answer
5 for that particular day, but if there are people in the work group
6 and a piece of equipment has to leave that work group, if they're
7 within the limits, I feel that they could travel within those
8 limits and give, you know, the EIC, you know, an acknowledgement
9 just because they may be traveling back over street crossings or
10 bridges or maybe there may be an area that, you know, there is
11 other work groups and stuff like that involved, but they should be
12 calling the EIC, for sure.

13 Q. Good deal. And in your experience with this project, are you
14 aware of there ever being more than one roadway worker in charge
15 from the Housatonic or has it always been a single roadway worker
16 in charge?

17 A. For the times that I've been out there, there's always been
18 one.

19 MR. CASACELI: Okay. In your experience is a good -- a
20 better way for me to have phrased the question, so thanks for the
21 clarification.

22 MR. HOHN: Yeah.

23 MR. CASACELI: Because obviously, you're not going to know
24 what you don't know. So okay, I think I'm okay for now on my line
25 of questioning. I want to pass it to Owen Smith with the FRA.

1 Thank you, Darren, thank you.

2 MR. HOHN: Yeah.

3 BY MR. SMITH:

4 Q. Owen Smith, FRA. Good morning, Darren.

5 A. Good morning.

6 Q. So I'm going to start my questioning, I'm going to be naming
7 a bunch of C.F.R. sections, so we'll start out with Part 217. Are
8 you aware or do you know any requirements that would fall under
9 Part 217?

10 A. So I think 217 is operating rules.

11 Q. Correct.

12 A. Okay.

13 Q. The reason I ask, going back to some of Dave's questioning --

14 A. Yeah.

15 Q. -- you know, he mentioned the stop test, you know, there's a
16 lot of industry window, but those tests basically exist because of
17 the requirements at 217.

18 A. Yeah.

19 Q. Are you aware of any type of efficiency testing program being
20 conducted on your employees by the Housatonic?

21 A. Well, again, I'm going to revert back to our safety
22 observations, you know, if there are things that are coming up
23 that are concerning, you know, for instance, people being too
24 close to a piece of equipment while they're traveling, you know,
25 we do use our safety observation program to note those. Again,

1 that could be the negative one. You know, a positive on some of
2 our safety observation reports would be okay, you know -- you
3 know, the work group was working behind a tamper and, you know,
4 the tamper operator got out to make sure that he was moving and
5 noted that everybody else is supposed to be 30 feet away from it.

6 So you know, we do have -- we do have that type of program in
7 place to ensure that, you know, we are -- again, safety, because
8 there is a construction aspect part of this project, obviously, so
9 safety, general safety for construction, like kind of the OSHA
10 stuff, but also the regulations for FRA and stuff, so we do make
11 notes of those things, as well.

12 Q. Would you agree that Middlesex employees working on the
13 Housatonic would be subject to the railroad's operating rules?

14 A. Yes.

15 Q. What kind of training is provided to them on the specific
16 operating rules that would affect their duties there?

17 A. So we basically would base a lot of the stuff that we've
18 learned in our, you know, 214, you know, RWP and under what's
19 going on, I think the track safety standards and stuff, you know,
20 we would do a lot of that, discussion points to things like that,
21 you know.

22 Q. Okay. The next one would be Part 218, specifically Subpart
23 (f), are you familiar with the requirements of that C.F.R. part?

24 A. Two eighteen I don't know off the top of my head, Owen.

25 Q. Okay. That would have to do with handling main line or

1 handling turnouts, fix derails with piling (ph.) equipment.

2 A. Okay.

3 Q. Does Middlesex qualify their employees to handle such
4 devices?

5 A. I mean, none of the projects that we've been on, you know,
6 including outside of Housatonic, have we been authorized to throw
7 switches or anything, no.

8 Q. So Housatonic authorized Middlesex employees to operate
9 switches on their property?

10 A. Again, I would assume that only Housatonic throw switches,
11 not Middlesex. You know, we're the contractor, so I mean, I would
12 have assumed that we would not touch switches out there.

13 Q. Okay. Are you aware that Middlesex employees were handling
14 switches?

15 A. I was not.

16 Q. Okay. So we talked -- okay, so we'll move on a little bit
17 now to Part 225, are you familiar with those requirements?

18 A. Not off the top of my head, Owen, no.

19 Q. Okay. So this is going to be about accident reporting and
20 incident reporting.

21 A. Oh, I'm sorry. Yes, I -- yes. Yeah, yeah, yeah, yeah.
22 Yeah, yeah, I'm -- yes. Yeah.

23 Q. And I know you're very well versed in the OSHA reporting
24 world.

25 A. Yeah.

1 Q. This accident that occurred, what's Middlesex's reporting
2 responsibility? What federal or state agencies are you required
3 to report that to?

4 A. Well, I mean, under -- I mean, so if there's any collisions,
5 fatalities, casualties, property damage on whatever the threshold
6 is and stuff, I mean, that particular day, I mean, yes, the host
7 railroad and the owner should be contacting government agencies.

8 You know, I took it upon myself, and this is something that
9 I've always done throughout my career and I hate to use this term,
10 but over-report, and I did notify people in the FRA that day
11 before I actually left another project and stuff and started
12 making the contacts, because at that time I did not know who was
13 doing what or who was calling what, so I felt I had an obligation,
14 as the director of safety, knowing that one of our team members
15 was injured at that time and that was my knowledge, to contact the
16 FRA, you know, to get the ball rolling. So --

17 Q. Yeah. And I appreciate that. You know, this line of
18 questioning is really just to kind of establish how we can make
19 sure that we accurately draw (ph.) statistics.

20 A. Yeah.

21 Q. Has or will Middlesex be reporting this fatality under, you
22 know, the OSHA reporting requirements?

23 A. Yes, I did. In fact, I met those requirements within 24
24 hours.

25 Q. Um-hum.

1 A. You know, so not only did I contact you guys and I believe,
2 Owen, and just I think you realize this, I did get the phone
3 number for the NTSB, I believe his name was Mack and I was in
4 contact with him, but I also notified OSHA after knowing that, you
5 know, our team member passed away and they did reach out to me and
6 we did send a response letter.

7 Q. Okay. Did OSHA give any -- what was the scope of OSHA's
8 response back to Middlesex?

9 A. As soon as they heard that the NTSB was involved and the FRA,
10 they kind of just, you know, said okay, we'll follow up with you.

11 Q. Okay.

12 A. Yeah.

13 Q. And did they make any statements like they just declined
14 jurisdiction or stated, you know, a different federal agency had
15 jurisdiction?

16 A. Yeah, to some -- to that degree, yes. Yeah.

17 Q. Okay.

18 A. So at that point that's, you know -- again, I know Josh is
19 on, but that's when, you know, we -- I discussed that with the
20 legal team on that one, to make sure that I provided them the
21 information that was coming from OSHA that we could respond
22 appropriately.

23 Q. All right. So now we'll move up to C.F.R. Part 243, how
24 familiar are you with those regulations?

25 A. I'm familiar.

1 Q. Okay.

2 A. I'm not an expert, obviously, but I --

3 Q. Do you know the title and the scope of what the -- can you
4 basically summarize or briefly describe what those regulations
5 are?

6 A. Yeah, it's -- what's the best way to explain it on my end?
7 So 243 is a program to ensure that people that are working on the
8 rail have the qualifications for the scope of work, you know,
9 there's training mechanisms on there, again going back to RWP,
10 RMM, you know, and then obviously for hi-rail maintenance
11 equipment, to ensure that they are qualified to be on the track as
12 a particular operator for a particular piece of equipment.

13 Q. Okay, great. Thanks. And what are the components of the 243
14 program to assure the proper qualification?

15 A. So obviously, required training that would be, you know, from
16 the host railroad and then, obviously, there's testing for those
17 components, as well, on-the-job training, on-the-job
18 acknowledgement that those people possess those skills to operate.
19 And then there's a -- I guess I'll call it a maintenance component
20 to ensure that there's like periodic follow-ups to ensure that
21 those who possess those skills are continuing to be -- you know,
22 continuing to be operating in a safe manner.

23 Q. Okay. Yeah, you said periodic follow-ups, periodic
24 oversight?

25 A. Yeah.

1 Q. Okay. How does Middlesex administer the OJT portion, you
2 know, from an RMM operator? Is there a document and process in
3 place? Are there records kept of the OJT portion?

4 A. Yeah. So we use, you know, Spark's model program under 243
5 and, you know, like I mentioned earlier, that the person that is
6 qualified to, you know, assist in the training and the
7 qualification process, there's a component of them understanding,
8 you know, it's like -- again, like I said, they just don't throw
9 the person into the fire, you know.

10 The proficiency card, we use that. The write-up, we -- on-
11 the-job training, again, we'll start at a lower scale and then
12 work their way up until, again, the person that is doing the
13 qualifying is satisfied with their understanding of the equipment.

14 Q. Was the OJT portion and, you know, the recordkeeping part
15 done for Mr. Brady Holt?

16 A. No.

17 Q. Okay, thank you, thank you. So going back to the various
18 categories of employees, you know, you mentioned the safety
19 sensitive employees and their training, how do you designate
20 employees by category?

21 A. Owen, let me just go back on the Brady thing. So --

22 Q. Yeah.

23 A. -- was there on-the-job training? Yes. Was there a
24 possession of acknowledgement on there, like the proficiency card?
25 No.

1 Q. Okay. Yeah, I know that you've pretty well described kind of
2 what the -- you know, the mentoring process and things, you know,
3 I was --

4 A. Yeah.

5 Q. -- kind of asking for the documentation part, too --

6 A. Yeah.

7 Q. -- under the scope of 243, so thanks for the clarification.

8 A. Yeah.

9 Q. So Mr. Brady Holt, what category was he designated as for
10 employees? Do you have specific functions that he was qualified
11 under, that you're aware of?

12 A. I'm not aware, no, Owen.

13 Q. Okay. Does Middlesex have a periodic oversight program for
14 these employees under Part 243?

15 A. Not a written program, but we use, again, our stop cards --
16 I'm sorry, our safety observation programs to ensure that, you
17 know, people are operating in a safe manner and I will take part
18 in those as well, sometimes.

19 Q. So you said you don't have a written program there, but the
20 stop program you're using --

21 A. No, the safety observation program.

22 Q. Safety observation, I'm sorry, yes.

23 A. Yeah, yeah. Yeah.

24 Q. The safety observation program. How do you qualify managers
25 to administer those?

1 A. Repeat that, I'm sorry.

2 Q. For your safety observation program --

3 A. Yeah.

4 Q. -- how do you qualify managers or personnel to administer
5 those tests?

6 A. Well, they're not physically physical tests, they're just
7 basically -- it's a -- well, again, the stop card is the manager,
8 one, to ensure that, you know, we're looking at safety as a whole.
9 So you know, our managers or supervisors and foremen are required
10 to do a manager stop card and that stop card is the observational
11 program for managers' operations. And then on our end, as I
12 discussed, the safety observation program, we utilize that in the
13 safety department to, again, full circle, from construction
14 aspects all the way into rail aspects, we capture, you know, the
15 good and the bad.

16 Q. Okay. So you know, some of the safety sensitive tasks that
17 your employees perform, for example, making a reverse move on
18 track, is there a standard way of testing for compliance with
19 that?

20 A. Can you repeat that question?

21 Q. So various safety critical tasks that employees perform on
22 the track, for example, making a reverse move in a roadway
23 maintenance machine --

24 A. Yeah.

25 Q. -- is there a specific test or procedure that Middlesex

1 follows to assure compliance of the rules pertaining to that?

2 A. Yeah, there's no written test for that, I mean, it's more or
3 less observation. I mean, for that particular thing, obviously,
4 we have backing programs in place and stuff and that applies to
5 everything that we do, you know, to ensure that -- you know, at
6 the end of the day, that, you know, no one's backing over anybody,
7 you know, obviously. You know, so we do have a program in place
8 there, but no testing on that, no.

9 We utilize that, we utilize our job hazard analysis to weed
10 out those hazards, our work plans to weed out those hazards and
11 bring information to the roadway work groups or, you know, team
12 members to ensure that hey, listen, this program is our backing
13 program, our circle for safety program or our spotter program, you
14 know, these are the things that we want you to utilize out in the
15 field. But again, it's mostly just the observational program to
16 -- you know, that's where we make sure that we're complying.

17 Q. Okay. And then I don't know if you can answer this, but
18 obviously a lot of documents have been submitted into Kiteworks.
19 Has Middlesex uploaded basically all the documents pertaining to
20 their periodic oversight program?

21 A. To be honest with you, I was not part of the upload of that
22 stuff, so I would have to refer that to Joshua, to be honest with
23 you.

24 Q. Okay.

25 A. He's the gatherer of that information because we agreed that

1 during the NTSB meeting that everything would channel through him.

2 Q. Okay. I did look through some of the document uploads and I
3 saw a letter which is adopting a 243 program.

4 A. Yeah.

5 Q. Was the 243 program in effect on August 4th?

6 A. Yes. Yeah, we had that model program prior to August 4th.

7 Q. Okay. Is there, you know, any type of documentation for
8 that, because all I saw online was something dated August 24th, I
9 believe.

10 A. Yeah, I mean, I know we've had model programs probably dating
11 back to 2018.

12 Q. And who was involved with developing those model programs
13 back during the rule implementation period?

14 A. For Housatonic or --

15 Q. For you, for Middlesex.

16 A. Oh, god, Owen, that dates back a couple years back, I mean, I
17 think it was operations and safety, obviously, you know, we -- it
18 was probably when we first started getting into one of our first
19 rail projects that there was the need for it, so I can't recall
20 what project it was. I'd like to say it's South Coast Rail, but I
21 -- there may have been one before that.

22 Q. Yeah. Well, South Coast Rail. I think the other one I can
23 think of offhand would've been Mekan (ph.) River. South Coast
24 Rail is the older one, though.

25 A. Yeah, South Coast Rail definitely had a 243 program right

1 before, because, you know, obviously -- you know, all that was
2 submitted, you know, and obviously, on that particular project
3 Delta did, Delta did the rail work, obviously, but BFU obviously,
4 you know, the hi-rail equipment on there, themselves.

5 Q. Yeah. But Delta -- okay, yeah, that's not relevant to this,
6 so we'll keep moving us through.

7 A. Yeah.

8 Q. All right. Darren, are you an approved site safety person
9 for the Housatonic project? Did MassDOT approve you as one of the
10 site safety supervisors?

11 A. Yes, I am.

12 Q. Okay. And how involved were you with the bid proposal for
13 the Housatonic project?

14 A. The bid proposal, I was not involved in the bid.

15 Q. How about demonstrating pre-qualifications with the MBTA?
16 They spoke yesterday about how Middlesex is a pre-qualified
17 contractor. Is safety part of that process?

18 A. I am. It's MassDOT, obviously, but -- I mean, if -- that
19 would be estimating to get pre-bid and stuff, you know, and during
20 the pre-bid, regardless if it's a rail project or a construction
21 project, there are set things that estimating has to get over to
22 them and if they don't have -- and a lot of the information they
23 already have in queue, ready to go. But if there's things that
24 are outside or there's maybe a different scope of work or
25 something like that, you know, they would refer back to me or

1 Joshua, for this matter, you know, but I can't talk particularly
2 on this particular bid here.

3 Q. Okay. Yeah, I was asking kind of about to be a preapproved
4 bidder on a project, part of that would be getting on a
5 preapproved list with the MBTA so you would be qualified to bid on
6 these projects, I was just curious if you're involved with the
7 preapproval process.

8 A. No. Like I said, if there's any questions, they would reach
9 out to me. If there's anything that they need interpretation on
10 or something like that, that's where Joshua and I become involved,
11 get involved.

12 Q. Okay. So the incident, the accident there with track
13 traveling, does Middlesex deem employees qualified to travel
14 distances like that unaccompanied by a railroad employee?

15 A. You mean an EIC involved on that?

16 Q. Yeah, so does Middlesex allow their employees basically to
17 travel, you know, 2 miles unaccompanied by the railroad, like in
18 the instance that occurred on August 4th?

19 A. I mean, to be honest with you, Owen, we don't control the
20 EICs, so I mean, I just -- I don't -- you know, I'd say no.

21 Q. Okay.

22 A. It's up to the EICs to have an understanding of, you know,
23 where people are, where people are located.

24 Q. Thank you. Does Middlesex qualify their employees to handle
25 switches?

1 A. I know you answered that earlier or asked that earlier, but
2 the answer to that is no, I mean, I have no knowledge that we were
3 throwing switches out there.

4 Q. Okay. And then, you know, multiple machines, if you have a
5 group of multiple on-track roadway maintenance machines, how do
6 the machines have the ability to communicate with other?

7 A. So we purchased, prior to this, we purchased -- and again, I
8 don't know the correct name of the radios, but earlier on the job
9 we decided that we were going to purchase radios to communicate
10 with the EIC and one of the things -- I was a big part of this and
11 again, I don't know what time it was, you know, it was definitely
12 earlier in the project, maybe May.

13 Just from past experience from other projects, you know, a
14 lot of the radio communication was done by other means and I says
15 no, we need to make sure that we're communicating with ourselves
16 as well as the EICs so, you know, we understand track travel
17 location, if there's anything that came up and stuff. So we
18 purchased our own radios that were two-signal radios that had a
19 bandwidth and stuff and that was put into place earlier in this
20 project. So the communication part was established through there.

21 Q. And with this incident, were the employees equipped with such
22 devices?

23 A. Yeah, yeah. Any roadway maintenance machine or hi-rail
24 person and even as well as ground people, you know, would have
25 radios out there. I mean, I don't know the exact number, it was

1 definitely more than a dozen radios and the EIC got a radio every
2 day and everybody's required to bring them back in at the end of
3 the day, put them on charge so they're ready for the next day.

4 MR. SMITH: Okay. I think that's it, thank you.

5 MR. HOHN: Thanks, Owen.

6 (Crosstalk)

7 MR. CASACELI: -- Richard, thank you.

8 MR. SKOLNEKOVICH: Richard Skolnekovich.

9 (Crosstalk)

10 MR. SKOLNEKOVICH: I'm doing well. How about yourself?

11 MR. HOHN: Doing all right.

12 BY MR. SKOLNEKOVICH:

13 Q. All right. I'll try not to barrage so much with a whole lot
14 of federal regulations, but I am going to ask you a few questions
15 regarding some of the regulations, but I kind of want to go back
16 to your background. So you said you spent about 7 years working
17 on the railroad. Have you ever had any railroad rule
18 qualifications with any railroads or any rail work you did?

19 A. Me, personal qualifications from --

20 Q. Yes.

21 A. -- outside? No, because we were always just a -- what's the
22 best way to describe this? You know, we were a contractor working
23 for multiple entities at the time, so you know, we weren't really
24 considered the host company to do that type of work.

25 Q. I understand, okay. As far as -- I'd like to go back to like

1 with the contract. I know you weren't part of developing the
2 specifications, but did you see any portion of the contract after
3 it was awarded or before it was awarded?

4 A. I would get, not the full contract, but if there's -- again,
5 if the -- when the contract was awarded, I'd get stuff from --
6 usually from estimating saying that hey, we won this award, we
7 need to get a safety program, you know, developed for this
8 particular project. So --

9 Q. Okay. And then --

10 A. You know, so I'll get, you know, different -- what's the word
11 I'm looking for? If there's requirements to get out there to
12 start work and to get the notice to proceed, they would get in
13 touch with me.

14 Q. Okay, so they give you kind of like the operations and safety
15 requirements that the state wants from Middlesex?

16 A. Yeah, yeah, for the most part, yeah. And usually it's, you
17 know, the safety programs and -- and any other thing that may be
18 above and beyond that.

19 Q. Can you kind of characterize, I mean, if you can recall, what
20 those requirements were for the Housatonic project?

21 A. I can't say specifically, I mean, it's been a while. I mean,
22 I know I had to get a HASP, I know I had to be involved in --
23 because I had knowledge that we were going to go with Spark's
24 training at that time, so I remember pushing that, saying hey, get
25 the people, like I mentioned earlier before with Dave, let's

1 assemble the people who are going to be out there, let's get the
2 training and this is the training requirements currently right
3 now, from what I see, and I remember being told no, no, you can't
4 use Spark's training, you know, Housatonic has their own, so
5 that's why we had to go to RailPros. So I made sure that was, you
6 know, up and running and off the ground.

7 Q. Okay. Now, as far as that training goes with the Housatonic,
8 did they direct you to go to RailPros or was that just something
9 that, you know, met the requirements they were asking?

10 A. Met the requirements. Listen, I'm not going to -- I mean,
11 everybody has their own programs, Spark's and RailPros', I've been
12 on both, they're almost virtually the same. Why not just go with
13 the one that's stamped Housatonic rail and it's -- we're trying to
14 fall in line with what was required there.

15 Q. Okay. And that training was just what, the OSHA 10 and the
16 RWP and the RMM?

17 A. So yeah, the state of Massachusetts requires that people
18 possess the OSHA 10 and the RMM, the roadway worker protection,
19 CWR, and bridge, 237 bridge.

20 Q. All right. Now, for the state, there were some requirements
21 for qualifications of the site supervisor. Do you know offhand
22 what those qualifications were?

23 A. For the site supervisor?

24 Q. Right.

25 A. I don't, no.

1 Q. Okay. Okay, for selecting the site supervisors for this
2 particular project, how did you select them? Were they already
3 employees that you knew or did you hire additional employees?

4 A. These, the people that were out there, came from other rail
5 projects.

6 Q. Okay. Did they apply for the positions or were they just
7 assigned those positions?

8 A. That's outside of my department, but they're assigned through
9 operations and management.

10 Q. Okay, who assigns them?

11 A. That would be the construction operations managers.

12 Q. Okay. So for a particular project, you have a construction
13 -- what is it, like a project manager, construction project
14 manager and he selects the site safety supervisors?

15 A. No, no. I would be the one to select the site safety
16 manager, you know, if we have someone internally or if we feel
17 that there's a need to go outside externally, then you know,
18 that's my department, on my end, that's where I would adjust
19 things. As far as the operation selection and stuff and who's the
20 PM (ph.) and superintendent, foremen, who the work groups are,
21 again, that's outside of me and the department.

22 Q. Yeah, right now I'm more interested in the site safety
23 supervisor.

24 A. Okay.

25 Q. So for this particular project, how many do you have, how

1 many site safety supervisors do you have?

2 A. On this particular project, there's --

3 Q. Yeah.

4 A. -- two that are approved as full time and then I have two
5 that are alternates.

6 Q. Now, like an extra board where they fill in when somebody's
7 sick or something like that?

8 A. That's usually how I -- regardless if it's a rail or
9 construction project, I get as many people qualified because we
10 do, you know -- I mean, back in COVID, you remember what happened
11 there, I mean, that's where I learned my lesson to say let's get
12 almost everybody approved to be out there.

13 Q. Got you.

14 A. So that continued on.

15 Q. Okay, so what are the requirements you have for them to
16 become a site safety supervisor of a rail project?

17 A. There was a specific requirement that MassDOT possessed X
18 amount of years, I don't know off the top of my head what that
19 was. Obviously, I would submit the person's resume and then
20 MassDOT would be the approver of that person.

21 Q. So was it just the resume submitted or did they have any
22 other qualification documentation that had to be submitted with
23 the resume to MassDOT?

24 A. Well, on a resumes, when we submit them, we do put our
25 certifications on there, as well, you know, so when MassDOT gets

1 those they could see, you know -- and if there's any questions,
2 you know, they would call the project manager who's in charge of
3 communicating between MassDOT and Middlesex, if there's any
4 questions, you know, for the approval. Basically, it was this,
5 Richard, either approved or you're not approved at the end of the
6 day.

7 Q. Okay. Now, did they just list the --

8 (Audio malfunction.)

9 BY MR. SKOLNEKOVICH:

10 Q. -- providing like the certificate, you know, the actual, you
11 know, certificate of completion for the particular training? What
12 was going on, what was getting submitted to MassDOT?

13 A. Richard, I'm sorry, you broke up a little bit there.

14 Q. Oh, I apologize. Okay, we'll try again. Can you hear me
15 okay now?

16 A. Yeah, yeah, go ahead.

17 Q. Okay. So with the resume, was it the certification was a
18 list of just the certifications or was it the actual copy of
19 their, you know, certificates of completion for whatever training
20 they were qualified in?

21 A. No, just again, if you had your resume here, we have like a
22 certification list on the banner of the resume that said that
23 their -- you know, and some of the things that I know we have on
24 there, you know, this individual is certified in, you know -- you
25 know, MBTA, Mass Bay Commuter Rail, you know, all of the

1 certifications that we would have that would fall under other
2 projects that they worked on in the past, Amtrak, Metro-North, you
3 know, it would be listed on there.

4 Q. Okay. Who verifies the certifications, is it just the
5 employee puts it on the resume or does Middlesex actually verify
6 they've completed the training?

7 A. Well, any training that gets done internally, so if I'm
8 starting somebody that's new, they got to go through the whole
9 entire process. So if they're going to be on Amtrak or Metro-
10 North, they're going to have to go through their training
11 processes there and then obviously, that gets uploaded into their
12 personnel file and tracked and then -- so everybody that is in the
13 safety department right now has been trained and certified through
14 internally, you know, with all the other entities that we work
15 with.

16 Q. And then the MassDOT requirements for this project.

17 A. Correct, correct. Like I said, you know, we'll send them to
18 the resume and again, it's either a yes or no. And that's all
19 through an approval process through submittals.

20 Q. Okay. I want to go back for just the regular employees.
21 Well, even for your site supervisors. So when they're hiring, can
22 you walk me through the process of how they hire? Like with
23 physicals, do they require physicals to work for Middlesex?

24 A. No.

25 Q. Okay. Do they require any, like, drug and alcohol testing or

1 anything like that prior to work for Middlesex?

2 A. Yes, we do. Yeah.

3 Q. Okay.

4 A. We have pre-employment drug testing, yes.

5 Q. Okay. And so is that pretty much it as far as medical, just
6 a pre-employment drug test?

7 A. Pre-employment, yes.

8 Q. Okay. All right, so now is there -- besides RailPros, is
9 there any type of additional railroad training employees get from,
10 you know, besides RailPros, either internal or external to
11 Middlesex?

12 A. Yes. Obviously, we use NCR, you know, videos and stuff as
13 part of some of the processes, again, depending on where they're
14 working and stuff. You know, we have some of our own internal,
15 not on this particular project, I mean a lot of stuff is through
16 our safety orientation, site-specific orientation, we do a lot of
17 understanding of operating rules and things like that, you know,
18 so that's basically discussed then.

19 Other contractors require us to do other training. Like, for
20 instance, the MBTA, we have a whole host of things that we have to
21 do internally for everybody that goes on that project, you know,
22 and -- you know, we try to build upon that. So whatever is
23 discussed at these trainings, we try to incorporate them into more
24 or less our site-specific -- because I'm of the mindset, you could
25 train for 5 hours and, you know, 50 percent of that information

1 will be lost, so we try to incorporate some of that stuff into our
2 site-specific orientation as reminders and we carry on with that
3 through -- at our daily huddles on, you know, certain things that
4 we've learned.

5 Q. Okay. So talk about the safety huddles for a minute. So can
6 you walk me through what's supposed to -- what's supposed to occur
7 during a safety huddle? So specific --

8 A. Out there, for the ones --

9 Q. Yeah.

10 A. -- that I've experienced? Okay.

11 Q. Yeah.

12 A. Yeah. We get together in the morning, you know, the EIC or
13 whoever is in charge from Housatonic, they come out there, they
14 get an understanding of what work is going to take place, you
15 know, they usually have prior knowledge before that. They come
16 out there, they do their briefing, they talk about their Form D.

17 Us, ourselves, we have a briefings book ourselves, and I know
18 it's not a requirement, but we have individual books to ensure
19 that everybody that's going to be out there has knowledge of Form
20 D. So we actually transfer what's being discussed from the EIC
21 onto these books to ensure that -- you know, it takes the
22 guesswork out of things, so we do that. The EIC will probably
23 have a couple safety moments and that's it. You know, so the
24 whole briefing itself for Housatonic would probably be about, you
25 know, 3 to 5 minutes. And then Middlesex, you know, we go from

1 the briefing to our daily huddles, that's a company requirement.
2 That is supposed to talk about, in general, what the day's work
3 is, what everybody's expected to do, make sure everybody's on the
4 same page and make sure everybody has the right safety gear. We
5 talk about things that may have occurred the day before, you know,
6 company things that may relate to rail that happened on another
7 job or in the news or something.

8 We'll have, more or less, an overview of our job hazard
9 analysis, you know, so our JHAs are written and, you know, the
10 foreman will go over, you know, what the hazards are, you know,
11 with the work that we're about to perform and again, construction
12 related, rail related, they'll bring those hazards, bring the
13 corrective actions. We're very big on talking about, you know,
14 spacing. We're big on making sure that we sound the horns before
15 we're leaving and moving, things like that.

16 We have an internal thing saying two forward, three
17 reverse in any -- you know, for direction to travel and stuff.
18 And at that time, you know, we do bring back things that we've
19 learned in the RWP and RMM and stuff, you know, it may not be a
20 full-fledged thing, but we do, you know, capture a few of those
21 components. The other thing we do, too, is if there's a stop
22 card, again, the observational program for managers, we are
23 expected to read those and saying hey, so-and-so captured this the
24 other day, let's talk about it, or this is the site safety report
25 that came out on Sunday for this particular project, or Darren

1 sent us an e-mail last night, he noticed that this occurred out
2 here, you know, this is what we want to address and this is how
3 we're going to address it going forward. And then, you know, our
4 site safety manager -- most of that is run by the superintendent.
5 The other site safety manager actually puts his two cents in. If
6 I'm out there, I will continue the conversations, you know, as
7 well, to ensure that, you know, safety is at the forefront and
8 that promotion of safety is, you know, everybody's responsibility.

9 I know that the rail has, you know, the stop work and stuff
10 like that, but we have stop work responsibility internally.
11 That's one of my go-to's. So if I'm out there, everybody has the
12 -- you know, the right and the authority to stop any work at any
13 time, regardless of what's going on and what the impact could be
14 at that time. So that's basically my messaging on that.

15 So you know, in the grand scheme of things, from start to
16 finish, the average briefing with our daily huddle could be
17 anywhere between, you know, 10 minutes -- we will go further in
18 detail, usually on Mondays, because there's corporate things that
19 are discussed, like our weekly communicators, so some of those,
20 especially on Mondays, that daily huddle briefing could take up to
21 25 minutes.

22 Q. Good. A quick question on the JHAs. So the JHAs, who builds
23 the JHAs for the different worksites?

24 A. So our process for that is the superintendents are to get the
25 things off and running, you know, we look at a 2-, 3-week schedule

1 and we see what the work is going to be going forward. The
2 supervisor will start initiating it. Then it comes over to the
3 safety department, you know, usually it goes over to the site
4 safety manager, the site safety manager and the superintendent
5 work on that together. The site safety manager is responsible for
6 ensuring that all the potential hazards and making sure the
7 corrective actions are accurate, even though some of it may get
8 back into some OSHA standards that, you know, the superintendent
9 may not know in depth, so they would add that component to it.

10 And then the project manager gets involved, you know, when
11 the work is about to be performed. You know, so there's a three-
12 step process of that. New JHAs, if it's written, we consider them
13 working documents, live documents.

14 You know, a JHA may not be a hundred percent on day one, you
15 know, so we may have to go back to the drawing board and say hey,
16 we forgot to add this hazard or this potential hazard and these
17 safety components and recommendations, so we'll go back to the
18 drawing board, you know, discussion of the daily -- I'm sorry, the
19 job hazard analysis again is typically for new work and then
20 obviously, if the work is becoming repetitive, we do take
21 components from our JHA and discuss those as reminders, you know,
22 to keep everybody fresh on things.

23 Q. Okay. Now let me ask you this, with the JHAs, so identifying
24 the hazards, is it just the site safety supervisors and so forth
25 that are identifying those hazards or is there a means for the

1 employees to identify hazards to Middlesex?

2 A. Yeah, that's a good question and again, I promote this. This
3 job hazard analysis is for everybody. There have been times, not
4 on this particular project, but there have been times where we
5 were doing pretty extensive work, big, huge concrete pours, things
6 like that where we've actually got team members, craft-level
7 people, involved in building the JHAs because, you know, they're
8 the firsthand, you know, people that are going to be doing this
9 work and stuff.

10 Out in western -- or Sheffield, you know, after we reviewed a
11 JHA, there have been times where people have spoken up to say hey,
12 you know, maybe we need to talk about this because, you know --
13 and I could -- I could go back to one particular time, just on
14 line of sight with vegetation getting on a private crossing, I
15 remember. One of the things was a team member said hey, when we
16 got out there, obviously there's no trains coming through, but you
17 know, trying to get out there, it's tough to get off with -- you
18 know, unless you have a spotter, so we added that component to
19 that particular JHA.

20 Q. Okay. So with the JHAs, when you're -- when they're building
21 them and identifying the hazards, is it -- are you doing it like
22 in a column format, like, you know, identify the hazard, mitigate,
23 that kind of stuff? Can you walk me through what it looks like --

24 A. Yeah.

25 Q. -- each component?

1 A. Yeah. On the first column, left-hand columns, the task at
2 hand, so that's where we're supposed to say hey, we're going to be
3 doing X, Y, and Z. The middle column is the hazards, so you know,
4 obviously, I can tell you right off the top of my head, you know,
5 the ones that we see there all the time, struck by, caught
6 between, you know, backing safety, you know, fall protection, you
7 know, it could be chemical hazards, it could be burns, like
8 creosol burns, things like that, all those are identified, to the
9 best our ability, to things that could potentially hurt us.

10 And then the last column is recommended corrective actions
11 and that's kind where we say hey, you know, kind of say this task,
12 you know, A matches A. So if it's burns, guys, we could have
13 creosol burns. And a particular one out there, we had a lot of
14 poison ivy, so hey, there's poison ivy out there. First off, stay
15 away from, you know, the thing. Don't take OTM and throw it all
16 over the place, keep it as close to the track as possible.

17 If you do have to venture off and go pick things up, we do
18 have barrier cream, we do have -- you know, we want you to wear
19 long-sleeve shirts, things like that. Creosol ties, the same
20 thing like that, you know, we will suggest that hey, we have
21 barrier cream for that. Obviously, if you have -- if your gloves
22 are saturated or you're getting it on your clothes, let's make
23 sure that we're looking at that, you know. So you got to guide
24 people towards certain things because not everybody, you know,
25 gets it sometimes. And they're great reminders, they're great

1 reminders.

2 Q. So that leads me to the next question. So how is it -- how
3 are the JHAs disseminated, are they just disseminated during the
4 huddle or is it something that they have a book? How are JHAs
5 disseminated to employees?

6 A. So they're written format because they're live documents and
7 they're always changing, so we do have them in file and they're
8 usually, nine times out of 10, printed out. Some guys will just
9 put it on their tablet and use their tablet, but nine times out of
10 10, it's a written document that's brought out there and reviewed.

11 Q. So it's brought out during the huddle for -- you know, for
12 expectation of whatever work you're doing that particular day?

13 A. Yeah, yeah. Like, I mean, I just -- sorry, I'll just turn my
14 phone off there. Yeah, exactly. And you know, our JHA program
15 and the way it works is it's for -- we do save it for the
16 non-routine tasks, stuff that we typically need to go in there. I
17 mean, we go above and beyond that, I mean, we have -- we have JHAs
18 for a simple thing, just, you know, setting up a project, you
19 know. You know, it could be light cleanup and stuff because, you
20 know, I think we all understand that usually our injuries are
21 related to the routine work, you know, the simple things, just
22 housekeeping.

23 Q. Got you. Now, are the JHAs numbered or how are they
24 identified? Are they identified to a site-specific location or
25 are they just in general? You know, how do they keep track of

1 those JHAs?

2 A. So we have a JHA library that everybody in the company has
3 access to and, you know, if you're working on Job A and I'm
4 working on Job B and say that it's bridge work and now you're
5 about to do a bridge, you could go back into the JHA library, see
6 mine, but then take, you know, say 70 percent of the information
7 that's in there that would apply to your particular job, but then
8 alter it to your specific operations or specific tasks.

9 After those are completed, they live on the project, you
10 know. And then after they're done with them, they get them back
11 over to us and then put them back on the JHA library for others,
12 other projects, to use. You know, we have an abundance of JHAs,
13 you know, that range from various types of work, so -- but they're
14 not numbered as like a category, they're defined as the event, the
15 task, you know, like you know, pouring concrete deck, you know,
16 installing CWR, you know, things like that.

17 Q. Okay. Do site safety supervisors or employees have like an
18 index of all those JHAs or do they have to go to the site to find
19 a specific task and then start hunting for the particular JHAs
20 they might need?

21 A. So we have every project set up as their own team files and
22 stuff, one of them safety. We have a bunch of safety files in
23 there and one of them is JHAs, so they live in that JHA folder.
24 So if you and I have to work on it together, I'm not going hey,
25 what changes did you make, you could make those changes live while

1 I'm making those changes as well, so you know, there is -- we're
2 working off one JHA, not multiple locations.

3 Q. I want to switch now to the -- are you familiar with the
4 corporate safety policy for Middlesex?

5 A. Yes.

6 Q. Okay. Now, I know it has some specific rules, as well. Does
7 the corporate safety policy have any specific rules relating to
8 the railroad or railroad work?

9 A. No, that usually would just fall back into the site-specific.

10 Q. Okay. All right. And then the next question I got for you
11 is, is critical incident plans. So does Middlesex have critical
12 incident plans for, you know, events that might occur like this or
13 anything else?

14 A. Yes. Yes, we do. Yeah.

15 Q. Can you give me kind of a rundown of what that looks like,
16 like what kind of topics it discusses?

17 A. Yeah. So obviously, it's -- depending on the severity and
18 stuff like that, there's basically a chain of events, you know, if
19 it's -- if we have to initiate it, you know, there's a whole
20 series of events where -- and again, let me use this one as an
21 example, okay, I was very mindful -- and we call it the crisis
22 management plan, that's what we call it. Sorry. In this
23 particular case, we used the crisis management plan. We know that
24 there could've been a lot of exposure, not only for ourselves and
25 Housatonic, you know, everybody at the time. So it got to the

1 point where I'm like okay, this is a little bit more than what we
2 -- is norm and, you know, I initiated that through Joshua. Joshua
3 is the overseer of the crisis management plan, he's the one that
4 manages it, he's the one that keeps tabs with the project, with
5 you folks, I know at one particular time he got involved with the
6 FRA and NTSB right away. You know, Housatonic obviously, you
7 know, news media, things like that. So we were all trying to
8 orchestrate it to the point where we want to be mindful and
9 forthcoming amongst ourselves, but make sure that it stays within,
10 you know, that bubble, more or less. So you know, we do use a
11 crisis management plan and again, this is a high level one, this
12 is the first time we ever had to use something like this at a high
13 level.

14 But you know, I remember we had to use a crisis management
15 plan down in Florida because a school bus, nothing related to our
16 work, just happened to come into our worksite, you know, pushed
17 off by a semi trailer and the school bus tipped over, you know.
18 So of course, you see Middlesex everywhere, so we used the crisis
19 management plan because school bus, construction site, you know,
20 how that would be perceived on the news. So --

21 Q. I got you. So let me ask you this, the crisis management
22 plan, is that more just like a phone tree or is that an actual
23 plan that says okay, do these things if an event occurs?

24 A. No, it's an actual plan. Yeah.

25 Q. Okay. Is it site specific or is it just general in nature?

1 A. General, for everybody to use corporate-wide.

2 MR. SKOLNEKOVICH: Okay, I think -- I think that ends my
3 questions for now. Darren, I appreciate your time and your
4 candor.

5 MR. HOHN: Thanks. Thanks, Richard.

6 MR. CASACELI: Mr. Wernig.

7 BY MR. WERNIG:

8 Q. Hello, Darren. Joshua Wernig for the Middlesex Corporation.
9 I've got a number of things just to clarify here. Just picking up
10 on the topic of the critical incident plan, can you just describe
11 the interplay between the site-specific HASP, the accident
12 incident reporting policy as in the crisis management plan?

13 A. Sorry, Josh, you blurped out of there for a second. Going
14 back to the crisis management plan?

15 Q. Yeah, talking about the crisis -- critical incident plan
16 questioning you got, just can you talk about any emergency
17 procedures for site-specific? Where would those be?

18 A. Oh, for the -- yeah. So we talk about -- on the job level,
19 that is discussed. You know, obviously, in our safety orientation
20 we discuss about what happens if there's an incident that occurs,
21 obviously. We manage that out in the field every single day to
22 ensure that if there is an issue or an event that occurs, who do
23 we call, who do we talk to. You know, in this particular
24 situation, you know, we knew where our local hospital was, who to
25 call, 9-1-1 calling area, things like that. And then obviously,

1 you know, the EIC would be the person to also incorporate that as
2 far as emergency response would be concerned, of where we're
3 located out on the job site. So we do talk about that. Our site
4 safety managers are well aware of the crisis management plan, so
5 again, you know, if it needs to be initiated, they're the ones to
6 actually start the process of making sure that the phone calls are
7 made. Hopefully, that answers your question, Josh.

8 Q. Well, where -- I mean, is there any emergency information
9 documented in the site-specific health and safety plan, the HASP?

10 A. Yes. Yeah, yeah, yeah. There's a section in there of point
11 of contacts and, you know, nearest hospital, nearest location, our
12 clinics that we possibly use and things like that, yeah, we have
13 that in there.

14 Q. Okay. And is that reviewed ever at the daily huddles?

15 A. Oh, yeah, yeah.

16 Q. Okay.

17 A. Yeah.

18 Q. And let me just ask -- I'm going to skip around a little bit,
19 so I apologize, but the radios, let's go back to the radios, the
20 two-way radios.

21 A. Yeah.

22 Q. Is that a contract requirement to have two-way radios?

23 A. I don't recall the contract. Again, going back to what I
24 said earlier, I was doing that, kind of looked at that and says,
25 you know, we need radios out here. I've been on two other jobs

1 where we were the -- or one of the contractors and, you know, the
2 host railroad was trying to operate with phones and text messages
3 and I knew that wasn't right, so you know, I remembered that from
4 the past. Not saying that that was what was happening out here,
5 but I just felt that, from experience, knowing that that happened
6 in the past and some of the issues that occurred with not using
7 radio communications, that we needed to do something. So it may
8 have been a contract thing, I'm not sure, Joshua, but we put it
9 into play.

10 Q. Okay, got you. I appreciate that. And just to clarify on
11 the pre-qualifications, I think you said that you would be asked
12 questions for clarification but you wouldn't see the final
13 pre-qualification submittal, would you?

14 A. No, no.

15 Q. Okay. And talk to me a little bit about our observational
16 programs. What kind of observational programs do we have? What
17 different forms do we have?

18 A. All right, we have our stop card program. The stop card
19 program is for craft level as well as managers. There's a
20 separation there, there's manager questions, which is a little bit
21 more higher-level questions to observe what's going on, on a
22 project, you know, it gets more into like policies, things like
23 that, if we're adhering to policies. And then craft level, which
24 are lesser questions, but it gives them an opportunity to see
25 what's good and bad. That whole program is an observational-based

1 program, it's highly encouraged. There are requirements for that
2 program based on job hours, so you know, you have to get X amount
3 of stop cards in per job hours, it's a requirement to have both,
4 again, craft-level and manager stop cards. And, you know, when
5 those do get submitted, it is the responsibility of the project
6 itself to talk about those stop card observations, good or bad.
7 If there's things that need to have a plan in place, the plan is
8 in place.

9 If it's something that there is a need for retraining, we
10 could retrain. If there's a need to look back at a JHA, you know,
11 we have that option to do that. So it's highly encouraged. Our
12 stop card program is also based on our retaliation policy, that's
13 something that ownership put into place about 4 years ago, 5 years
14 ago, where nobody would be frowned upon or threatened in any way
15 if they put any unsafe observation in there.

16 You know, again, that -- a lot of that gravitated towards
17 what -- how OSHA was operating on as far as incentive programs, so
18 we wanted to make sure that we were getting the best of the best
19 from everybody out there. So it's something that -- it's a
20 positive program. The other one --

21 Q. Well, let me just stop there for one second, Darren. You
22 said there's a minimum requirement for submission, but is there a
23 maximum requirement, you know, you can't exceed?

24 A. No.

25 Q. And so anybody can submit a stop card?

1 A. Absolutely.

2 Q. How would they submit a stop card?

3 A. They submit two ways. You know, our main way is through
4 Beekeeper, our Middlesex app that we currently have right now,
5 there's a whole entire section that everybody has their hands on
6 and they could submit the stop card through that app. And then
7 there's a few people out there that don't have the app and they
8 could still do a written form and bring that written form to the
9 site safety manager on the job site so they could actually upload
10 that information from that particular person.

11 Q. Okay. And was this program utilized on this project?

12 A. Yes.

13 Q. Just moving on to other observational programs, so what else
14 Middlesex has.

15 A. Yeah. Our site safety managers are a part of the safety
16 observation program. Basically, that's for the safety department.
17 Again, more, you know, safety related items and stuff like that,
18 what we're trying to capture there, again, good and bad. It's an
19 observational program, you know, and it's based on many categories
20 from, you know, fall protection, trucking, there's a rail
21 component in there that talks about, you know, just the subject
22 rail, confined space entry, you know, trenching excavation, public
23 protection, things like that. The whole purpose of that program
24 is to capture the good and bad in all those categories and then in
25 the background we're able to look at these things and start

1 looking for trends. You know, the same thing with the stop card
2 program, we're always trying to look for trends. If there's any
3 trends that are being, you know, of any concern and stuff like
4 that, that's when myself or the site safety manager will, you
5 know, take action on things. We're required to do that either as
6 a report that comes out daily -- or I'm sorry, I get the
7 observations daily, as they come in, but then I get a -- Sunday, I
8 get a look at a report for the entire safety department, both
9 northeast and southeast, that way I'm capturing, you know, what's
10 going on around the company.

11 And then finally, we have a near-miss program that we added 6
12 years ago, I would say, maybe a little bit longer and, you know,
13 we're capturing the -- you know, the close calls. Yes, you know,
14 it could be captured on a stop card, but we have another platform
15 and our near-miss program is basically the same thing, anybody
16 could report a near miss. I could report a near miss, a craft-
17 level person could report a near miss, a superintendent could
18 report a near miss, a project manager could report a near miss.
19 So the same thing, we're trying to find out hey, that almost
20 happened, why did it almost happen and what do we need to do in
21 order to prevent it from reoccurring. You know, I feel that's a
22 great program, I utilize that a lot just, again, looking at trends
23 globally and specific projects or --

24 (Crosstalk)

25 BY MR. WERNIG:

1 Q. Is that also available to be submitted on the mobile app as
2 well as paper?

3 A. Yes. So again, going back to Beekeeper, you know, we have
4 our near miss at the fingertips of everybody in the company. The
5 same thing with our stop cards, the same thing with our -- yeah,
6 those two things are at the fingertips of everybody.

7 Q. And what other forms are on that, that mobile app?

8 A. We have our accident incident forms, we have our -- you know,
9 you can get it, go to Adwardco for our internal thing. We have
10 our policies programs available to people on this, on the app.

11 Q. Daily huddle forms available?

12 A. Yeah, I was going -- daily huddle on that, as well, and of
13 course you had to question me on that, but yeah, everything's at
14 people's fingertips. So resource pages, as well.

15 Q. And just turning the conversation a little bit to just modes
16 of communication, you had talked a little bit about the daily
17 huddles and what's communicated in the daily huddles, but you
18 specifically mentioned Mondays. Could you expound upon that a
19 little bit, of what the communicator is and explain that?

20 A. Yeah. So the communicator is a -- I'll call it a newsletter
21 for this particular purpose, but it's an internal newsletter that
22 is sent out globally through the entire company. There are topics
23 that are in queue or if there's a topic of concern or an item of
24 concern that may have come from near misses or stop cards or the
25 safety department, that we need to pivot, you know, they will

1 become, you know, first choice and stuff. The topics could range
2 anywhere between fall protection, you know, backing safety policy,
3 you know, you name it. Any topic related to safety, our projects
4 are expected to read that, you know, educate people on that and,
5 you know, get the word out, open discussion thereafter, you know,
6 on any concerns that people may have after the daily huddle
7 itself. I'm sorry, the communicator itself.

8 Also on the communicator, we are supposed to -- the second
9 and third page talks about our metrics, you know, it's our guide
10 to say hey, near misses are coming in, where our severity levels
11 are, you know, what -- you know, what projects are doing well,
12 what projects are hitting our internal metrics and stuff. It's
13 kind of -- you know, on a side note, the stop cards is kind of
14 like a competition, more or less, that we want all our companies
15 to be, or all our divisions to be in agreement to meet that
16 requirement and stuff like that.

17 And then, also, it furthers into any accidents or incidents
18 that may have occurred, you know, in the company or sometimes
19 outside the company. You know, if there's news out there where
20 we've been able to capture things that may have -- or can impact
21 us, that happened elsewhere outside of Middlesex, that is
22 discussed at the communicator, as well.

23 Q. Okay. And those are read every Monday at every project
24 company-wide?

25 A. Yes.

1 Q. Okay. And just to underscore, and all the policies and
2 procedures and communicators are all available at any time for
3 anybody that has the Middlesex downloaded app?

4 A. That's correct. Or they could go to the site safety manager.

5 Q. And that would include the library for JHAs?

6 A. Yes.

7 Q. Okay. Turning back to daily huddles a little bit, can you
8 talk to me a bit about that? Is that a 360 conversation or how
9 does that conversation happen?

10 A. Three sixty and that's where the safety department kind of
11 comes into play, we do audit our daily huddles, you know, we want
12 to make sure that there's clear communication out there that, you
13 know, the person that's doing the talking isn't the one just
14 directing, you know, we want to make sure that it's an open
15 conversation.

16 You know, we encourage everybody to end their daily huddles,
17 does anybody -- does everybody understand what's expected of them
18 today, is everybody aware of what they're doing. You know, we
19 talk about if there's any questions throughout the day, come,
20 please, either see the site safety manager or the supervisor in
21 charge. But our intent and our goal across the company is to
22 ensure that that's an open conversation, not just one way.

23 Q. And turning specifically to your -- when you were serving in
24 the role as a site safety manager on this particular project, the
25 subject project, can you walk through any particular recollections

1 of your own participation in daily huddles, topics discussed?

2 A. Yeah, I mean, I -- you know, they're -- I felt that they were
3 good. You know, sometimes a particular individual that was
4 running them, I've known him for years, you know, I had to tell
5 him to slow down a few times, you know, but his messaging was
6 clear and concise. Sometimes it was repetitive, but sometimes it
7 has to be repetitive for the type of work that we're doing. You
8 know, it's again, full circle.

9 I will say that the daily huddles that I have been on, you
10 know, even Housatonic has added some components to our daily
11 huddles as well as reminders and stuff, but again, specific to the
12 job of what's going on and again, utilizing the resources that we
13 have internally to make sure that we're sending that message of
14 safety out there.

15 Q. And is the daily huddle just for Middlesex employees or
16 others, you know, are welcome to attend, as well?

17 A. There are projects where we have subcontractors that are
18 sometimes required due to the nature of the work, because of the
19 severity of work, that they have to be part of our daily huddles.
20 We even sometimes and just in general, roadway work, if we're
21 doing roadway work, we get the police department involved or state
22 police involved in our daily huddles, as well, because they're
23 part of that group.

24 Q. And if the ownership was on -- the owner of the project might
25 be on site, would we invite them in?

1 A. Oh, yeah, everybody's in. Yeah.

2 Q. Project engineers, third-party project engineers?

3 A. I don't care who it is. And for instance, yeah, a lot of our
4 third parties are encouraged to be out there, you know, especially
5 QC people, you know, and again, that's just not on any project --
6 state inspectors and the reason why I want them there, I -- and
7 I'll be the first one to tell you, if they're not informed of
8 what's going on out there, they're usually our worst hazards out
9 there, people that are uninformed. So everybody that's in there,
10 that has potential of being in there, has to go through the daily
11 huddle or at least to the point of contact, which is usually the
12 foreman.

13 Q. And talk to me a little bit about what we have done since the
14 incident, what Middlesex has done since the incident, to ensure
15 the 243 program is up to par and compliant.

16 A. All right. So we had the model program, obviously. You
17 know, we're -- we have that already in place, you know, we reached
18 out to Spark and we made a conscious effort to ensure that -- you
19 know, there's some loopholes there and we realize that and
20 recognize that, but we are involved with Spark currently right now
21 to help them manage all of this stuff, to ensure that there's --
22 you know, everything's in line, that we're compliant a hundred
23 percent. You know, we do realize that there is something that we
24 needed to do after the fact. You know, we've made an obligation
25 to the state that, you know X, Y, and Z will be looked at again,

1 you know, again revising the HASP, the health and safety plan,
2 site specific, revising our orientation slide deck. We're
3 committed to going back and getting RWP, some people getting RMM,
4 you know, and other additional trainings, even though that we did
5 it, you know, 4 months ago. What else would be done? We're in
6 the process of getting different radios, which I'm a fan of, that
7 are recorded radios. They haven't landed yet, but those are in
8 the works.

9 One other thing that we did was to ensure that we do -- even
10 though that we did it prior to, across the company, any rail work
11 that we had going on, we usually do our annual recertification of
12 our rail equipment in March-April. Regardless if they are done in
13 March and April, we had our mechanics go out and do a full circle
14 on all projects to ensure that, you know, the functionality and
15 everything was there.

16 We installed cameras, I believe there's a total of 18 or 19
17 cameras that we're installing or have installed already. Rail
18 equipment. That also includes rental, too. You know, we want to
19 make sure that it's just not our company-owned equipment, but if
20 it's rented equipment, that we're installing cameras on that.
21 We've updated our JHAs, so this is something that the safety
22 department's looked at and, you know, again across the company,
23 it's just not this particular project, but there is a task of
24 going back to our JHAs to make sure that the backing component is
25 more robust, you know, very defined. With that, we created our

1 own just specific JHA to backing and after that was completed and
2 approved by multiple people in the company, we had to -- you know,
3 it was everybody across the company, site safety managers enacted
4 that and that was a discussion, a particular -- a couple weeks
5 ago, right after the daily huddle and stuff, that hey, this is the
6 JHA specific on backing, using spotters, tight locations, things
7 like that, and the rail component was added to that.

8 What else? I mean, off the top of my head, that's -- that's
9 it. And I know that when we go out there, you know, we're
10 continuing to do additional training. I did a lot of NRC
11 training, as well, for people that are out there. Those are good
12 resources. We've taken tests to make sure that there's
13 compliance, that people understand what these NRC movies were
14 about.

15 We are doing a stand-down, we've done stand-downs on multiple
16 projects, which I basically took the lead with project management
17 on any rail-specific project. Obviously, we were shut down for a
18 period of time on some job sites and that was an obligation that
19 we gave to the MBTA as well as MassDOT in order for us to start
20 the process of getting back on our job site. So that focus for
21 those stand-downs was related to backing, again, using our
22 policies that we already had in place, backing policies, spotter
23 programs, you know, the effectiveness of a daily huddle, even
24 though I feel daily huddles are very, very good, you know, why
25 it's important to have a real clear message when we're out there,

1 regardless if it's us or whoever else is leading the charge to
2 make sure that we're all on the same page. So I mean, that's
3 basically it. We do have an obligation to fulfill to Mass Highway
4 and I know some of it's being filled currently out there right
5 now, but we are going to have a stand-down specific to Sheffield
6 when we get going. I don't know when that date is. And
7 Housatonic is actually going to be part of that training, as well,
8 and I believe they're going to have a component with like talking
9 about physical characteristics and things like that. So I'm sure
10 there's more out there that we have done or done, but that's it.

11 MR. WERNIG: Appreciate it, Darren. That's all I have at
12 this time, thank you.

13 MR. CASACELI: Thank you. Mr. Lloyd. Oh, excuse me, I'm
14 skipping somebody, aren't I? Mr. Bailly.

15 MR. BAILLY: Yeah.

16 MR. HOHN: Dave, can I take a 2-minute break? I just have to
17 go relieve myself.

18 MR. CASACELI: Yeah, let's take a break here. Go ahead.
19 Yes, appreciate it.

20 MR. HOHN: All right, I'll be right back. Thanks.

21 MR. CASACELI: We're on break here, but we'll just let the
22 recording run, it shouldn't take long.

23 MR. SKOLNEKOVICH: Okay, that's what I was about to ask you.

24 MR. CASACELI: Yeah.

25 MR. SKOLNEKOVICH: Just be mindful of what you say because

1 it's still on.

2 MR. CASACELI: Correct.

3 (Pause.)

4 MR. CASACELI: All right, are we all back?

5 MR. HOHN: I'm back.

6 MR. CASACELI: All right. Mr. Bailly, are you ready?

7 MR. BAILLY: I am ready. Can you hear me? I'm having a
8 problem with my camera here.

9 MR. CASACELI: Yeah, we do have you on audio.

10 Thanks, everyone, for their patience, as I know we're a
11 little longer than expected, but we'll power through. Appreciate
12 it. Go ahead, continue.

13 BY MR. BAILLY:

14 Q. All right, P.J. Bailly, it's B-a-i-l-l-y, Housatonic
15 Railroad. It's almost good afternoon, Darren, how you doing?

16 A. Good, P.J. How are you, man?

17 Q. All right. I'm going to try to keep it really short here
18 because we're going, but who on the HRC project was in charge of
19 qualifying the RMM operators, at least prior to this incident on
20 the 4th of August?

21 A. That would be Nick Rende and Jason Menard.

22 Q. Okay. Do you have a copy of the HRC OTMS book?

23 A. I actually do, yes.

24 Q. Okay.

25 A. It's actually behind me.

1 Q. All right. And you're familiar with it?

2 A. I don't know it verbatim, P.J., but yeah, I think I mentioned
3 earlier when we -- being that you guys are a new host railroad to
4 us, I did go through it, yes.

5 Q. All right. Middlesex hired a temporary on-site safety guy
6 prior to the incident there. Have you seen his reviews and was
7 there any concerns?

8 A. So you're talking about the person that we hired from the --
9 that rail consulting group?

10 Q. Yeah, to be honest with you, Darren, I can't remember the
11 gentleman's name or the consultant, but --

12 A. Yeah.

13 Q. -- I know you and me weren't on site, so you had a -- you had
14 an outside perm in there and I was just wondering, I mean, I know
15 he obviously, I'm assuming, sent, you know, reviews or something
16 back to you daily.

17 A. Yeah, yeah. He would do those safety observations or --
18 actually, I apologize. He would be a consultant, so he would send
19 either a text message or an e-mail of what's going on. I mean,
20 obviously, that was a short period of time that he was out there,
21 but yeah, he would have observations, yes.

22 Q. Are you aware if he had any concerns or anything that, you
23 know, you were made aware of, either violations or anything like
24 that?

25 A. Nothing, nothing alarming, no. I mean, it was like more or

1 less, you know -- I guess the best way to describe it, P.J., is
2 like run-of-the-mill things, you know, a guy, you know --

3 Q. Yeah.

4 A. And I'm not saying this is it, but a typical thing like "a
5 guy using a rail saw didn't have his face shield down while he was
6 using a rail saw, had to remind him" type thing.

7 Q. Yeah. All right, I was just asking. Did you have a policy
8 of riders on the RMMs, anything that they should be aware of or
9 anything like that prior to this incident? Say if you had a rider
10 or another employee, you know, not operating but riding on the
11 machine.

12 A. We don't have any policy, I mean, we would refer back to, you
13 know, the RWP and RMM training, I know there's a component in
14 there saying what a passenger's responsibilities are.

15 Q. All right. Do you know how many stop cards were completed on
16 the HRC project prior to this? And if not, that's all right,
17 then.

18 A. P.J., I couldn't tell you, but I know it's -- there was quite
19 a few.

20 Q. Okay. Was there a normal or was there an amount that was
21 like a quota that was due like weekly or monthly or anything like
22 that?

23 A. Like I said before, it's based on -- it's based on the job
24 hours. You know, on this particular project, there would be one
25 or two submitted per week -- yeah, one or two per week.

1 Q. Okay. And I just want to clarify, I think earlier you said
2 that Middlesex had a 243 program prior to this incident on the 4th
3 of August, is that correct?

4 A. That is correct, yeah.

5 Q. And do you know when that was approved by the FRA?

6 A. I don't know, no. I mean, it's an approved program, model
7 program.

8 Q. Okay. Do you have a copy, do you have a copy of that?

9 A. I do, yeah. I mean, not in front of me, but I do have a copy
10 of that program, yes.

11 MR. BAILLY: All right, I believe that's it for now. I'll
12 pass it to Lloyd. Thank you for your time.

13 MR. HOHN: Yeah, P.J., thanks.

14 MR. CASACELI: Mr. Troy Lloyd.

15 BY MR. LLOYD:

16 Q. Hey, Darren, how you doing so far, bud? It's been a long
17 morning, right?

18 A. Yeah. That's all right, no problems.

19 Q. Yeah.

20 A. Throw them at me.

21 Q. Yeah. Sorry to keep you this long. Yeah, I'm going to be
22 short here and real quick, you wasn't on site when the accident
23 occurred, right?

24 A. I was not, no.

25 Q. Okay. So how was the accident -- I'm sure you heard what

1 happened, so how was the accident described to you?

2 A. So I was 3 hours away, I got the phone call, I got two phone
3 calls and at the time all I knew was that hey, something serious,
4 somebody got hit by a piece of equipment out there, we're en route
5 and I said okay. And just hearing it in the person's voice, that
6 triggered me to say pick up what you're doing and get the hell out
7 there. You know, so probably within, you know, 10 minutes, if not
8 longer than just leaving there, because I was en route there, I
9 found out that it was a little bit more than someone, you know,
10 getting hit and falling on their ass, you know, type thing. So
11 that's where I was -- you know, the severity level caused -- made
12 me go out there, obviously, right away. But I probably didn't
13 know for an hour and an half, en route.

14 I knew -- well, put it this way, I was getting enough phone
15 calls and then I was making my own phone calls to the appropriate
16 people that I needed to inform and then we kind of made sure that
17 that group was smaller, you know, I was communicating with the
18 FRA, I was communicating with the NTSB at the time en route and,
19 you know, I remember -- I think his name is Darius, Darius Mack, I
20 think his name is. He made it clear to me, I appreciate you
21 calling me, but if this becomes a fatality, I need to be the
22 person for them to call and en route, I found out that he did pass
23 away, so I made that phone call to him because again, I just
24 wanted to be forthcoming with everything.

25 Q. Does Middlesex do their own accident -- did you guys do like

1 your own little accident investigation, like a little walk-
2 through? What was your thoughts on -- your initial thoughts on
3 what happened here?

4 A. We did. This is the first fatality in 26 years that --

5 Q. Sure.

6 A. -- I had to deal with it and, you know, obviously, you got to
7 -- for me, I mean, I've been involved in accident investigations
8 and, I mean, I realized what you guys were doing out there and I
9 was very pleased with the process and stuff and open-minded to
10 everything, but I always went back to when we're doing accident
11 investigations, you know, why -- how, why, and what could we have
12 done to prevent this and, you know, I kind of -- I kind of beat
13 myself up on this one because, you know, I -- there's a component
14 that there's either multiple failures and again, the root causes
15 could be a multitude of things and stuff.

16 Q. Um-hum.

17 A. I still can't believe this happened with what we've promoted
18 out there, what we've pushed out there, you know, what we've
19 discussed out there, things like that and it's -- it bothers me,
20 it still bothers me today that a simple act of backing down the
21 rail could have, you know, caused this. And it's not like that
22 there was 20 people in a work group and people were just moving
23 equipment haphazardly in a small, tight area.

24 Q. Right.

25 A. You know, I hate to say it, but I would have been a little

1 bit more comfortable knowing that something that extreme happened
2 versus that something -- such a small tasking component.

3 Q. Right, right.

4 A. But yes, we did -- we did in our investigation and it
5 actually still continues.

6 Q. And what were your findings when you first -- it took us a
7 while to get there, so what were your initial findings, you know,
8 that you got into, that you started digging into that, I hate to
9 say, but should've, could've, would've kind of --

10 A. Yeah, yeah. No, I use those terms, too.

11 Q. Yeah.

12 A. I don't like to, but --

13 Q. I don't like them, either, but it's --

14 A. Initially, I -- my first thing was operator not paying
15 attention, period. You know, as I got more involved in it, you
16 know, and found out that there was a passenger; I questioned well,
17 what was he doing at that time. You know, that's a long way to
18 travel in reverse with really -- I mean, it's a clear line of
19 sight and that's the other thing, it's not like you're on a curve,
20 it's not like it was a foggy morning, it's not like there was
21 vegetation all over the place, I mean, we were all out there and
22 it was -- I mean --

23 Q. Um-hum.

24 A. -- you could see as far as you can. Again, to me, operator
25 error. I mean, I just --

1 Q. And do you look at it maybe as a -- maybe a training aspect,
2 maybe, you know, because I'm thinking this guy started operating
3 equipment in May, now it's August, I mean, can you really -- can
4 we look at it maybe as a training scenario, where are these -- are
5 the operators really proficient with the safe operation of a
6 train, do they really know how to safely back up, you know,
7 looking back, maybe it's better to maybe -- I'm sure this machine
8 has a turntable on it, where it can be spun around fairly quickly,
9 maybe moving forward. I don't know, maybe a lookout --

10 A. Yeah.

11 Q. Yeah, I'm just throwing some things out there.

12 A. No, I understand your question. I mean, listen, I -- we rely
13 a lot on the people that are qualifying operators and --

14 Q. Sure.

15 A. -- I've known -- I'm known one of them for a period of time,
16 you know, he's not going to be a guy that's just going to say get
17 the hell out there and get things done. You know, I -- I didn't
18 know the process of what Brady went through, obviously, but I
19 would be certain to say that I don't think they would've allowed
20 him out there if they didn't know for him how to operate that
21 piece of equipment.

22 Q. Of course.

23 A. You know, after the fact, you know, we did look into this.
24 There was a stop card observation done on him by the project
25 manager, he wanted to do a ride-along with him, you know, and in

1 his stop card it did say that, you know, Brady knew, you know,
2 track travel, how to, you know, move and he actually knew the
3 operation of the equipment. To that particular project manager,
4 you know, that told him that hey, you know, he's doing the right
5 thing, so yes. But you know, at the same time, it's -- again, I
6 don't know how else to explain this simpler, it's like anybody --

7 (Crosstalk)

8 MR. HOHN: -- putting a seatbelt on, you know, it's locked.

9 MR. LLOYD: Yeah. Yeah.

10 MR. HOHN: I put my seatbelt on every day, you know.

11 MR. LLOYD: Right.

12 MR. HOHN: I don't rely on backup cameras, I really don't, I
13 still put my hand on that seat to look back, you know.

14 MR. LLOYD: Yeah, this is not -- and it's a shame, this is
15 not our first, what you called a simple backing accident. I've
16 gotten way too many under my belt, being with the NTSB and with
17 the FTA and all that stuff.

18 MR. HOHN: Yeah, yeah.

19 MR. LLOYD: You know, I like to ask the questions to the
20 people that were first out there, the ones that's going to make
21 the differences through training, through lessons learned.

22 MR. HOHN: Yeah.

23 MR. LLOYD: You're just going out there and just talking
24 about the accident, you know, that's how we fix this kind of
25 stuff.

1 MR. HOHN: Yeah, yeah.

2 BY MR. LLOYD:

3 Q. It's going out there and learning, you know, your initial
4 findings and putting together a plan and thinking about it and
5 your initial thoughts. You know, it's probably happening
6 somewhere right now, I mean, there's a machine backing up in an
7 out-of-service track and there's a roadway worker there, so what
8 would Middlesex -- I mean, initial thoughts on, you know, what you
9 guys maybe put in place so you never see my face again.

10 A. Yeah.

11 Q. And that's how I like to put it, I never want to see people
12 like this.

13 A. No. And again, I think that's -- so let me back up. I mean,
14 I think you guys heard enough about how we try to operate safely,
15 you know, and --

16 Q. Yes, absolutely.

17 A. -- you know, we have all those things. Yeah, we're not
18 taking this thing lightly and --

19 Q. Uh-huh.

20 A. -- you know, I -- one thing, I did messaging to our safety
21 department, to management, upper management, and I'm like this
22 happened on the rail, this could have happened down at our plant,
23 this could have happened on a street doing work and to be honest
24 with you, in the construction industry, I don't know if you guys
25 have been seeing what's going on in the news, but people are

1 getting run over left and right.

2 Q. Oh, yeah.

3 A. More so now than the past 5, 6 years. This just happened to
4 be on the rail. So we doubled down on everything and we do have
5 programs in place which, again, I'm confident of, we did have a
6 spotter program well before this, we train on that, we do have a
7 backing program, we had videos on backing prior to all this.
8 Everybody goes through all of that, regardless if you're in your
9 personal car or a truck or a piece of rail equipment, or out here
10 behind me right now, we have three loaders, they've all gone
11 through it.

12 Q. Yeah.

13 A. So it's like all right, we're in this situation. I wish
14 there was more meat behind the cause than anything else, but what
15 we've done is we've doubled down on it, we do -- we have a thing
16 called Middlesex safety week, so we take care of -- and it's the
17 same week as rail safety week. That's coming up, I believe, the
18 18th through the 22nd.

19 So you know, we participated in rail safety week last year
20 and again, a lot of it has to do with crossings and things like
21 that, so we try to tie that in. But this year's safety week,
22 company-wide, is focused on backing, you know, as much as we
23 promote it, backing, backing, backing. We've looked at near
24 misses, you know, we've looked at everything else. So we have a
25 3-day schedule and again, this has nothing to do with this

1 accident, we do it, this is our sixth year. Our focus and primary
2 focus is backing, working around equipment, and struck by and
3 caught between hazards.

4 Q. Yeah.

5 A. And you know, these were documents that were already
6 prewritten. We added to it, you know, more components, but these
7 are things that we utilize. We got to get that message out
8 because again, there's that human, you know, machine interface
9 that I don't think any of us could prevent and the only way we
10 could really prevent any of that from happening is just education
11 and constant, constant, constant. So no, I don't want to see your
12 face again.

13 Q. Exactly.

14 A. I think this whole thing --

15 Q. Yeah.

16 A. I'm very grateful about what has transpired here with the
17 help, you know, with the help from the FRA and stuff, but I don't
18 want to see you guys. I want to use you guys --

19 Q. Yeah.

20 A. -- as a resource.

21 Q. Yeah.

22 A. You know, bottom line. I'm starting to get emotional, but --

23 Q. No, I understand.

24 A. -- it's tough for me to put one of these under my belt.

25 Q. Yeah. You have been on site out there at that job before,

1 that particular job before, correct?

2 A. Yes, yes.

3 Q. So how did you feel about -- you know, I'm a big job safety
4 briefing advocate, quality job safety briefings, having everybody
5 discuss what their roles and responsibilities are. How did you
6 feel how the initial job safety briefings went from HRC's side of
7 the house, who was actually taking the track out of service, who
8 was --

9 A. Yeah.

10 Q. -- truthfully the in-charge person, they'd say yea or nay --

11 A. Yeah.

12 Q. -- and on your side of the house, as well, how did you feel
13 how these -- do you think they were quality briefings?

14 A. I mean, for -- again, I've been in hundreds of different
15 types of briefings with --

16 Q. Um-hum.

17 A. -- a hundred trains going through a day, you know, versus
18 track outage and stuff.

19 Q. Of course.

20 A. So I mean, on this particular one, I mean, I think the level
21 of limits and level of track protection, I mean, was always
22 established. And again, going back to us putting these RWP books
23 into people's hands, I don't trust things that I've seen on the
24 rail before and to be honest with you, I don't have a lot of trust
25 in some host railroads sometimes, because they put us in bad

1 situations.

2 Q. Of course.

3 A. So having this, having this failsafe for us and putting this
4 book on everybody's hands when the EIC from Housatonic is
5 delivering that message, it's a protection for Housatonic, as
6 well, to say hey, this is what was discussed on this particular
7 day. So do I feel that the EICs, when they gave us the level of
8 track protection, did I personally feel that I understood what was
9 my level of safety and track limits? Yes.

10 I mean, I -- you know, I know Middlesex has provided them
11 information and again, I don't get involved in that. Sometimes I
12 hear it, saying hey, we're going to work from this limit to this
13 limit or we're just going to be working on the bridge. You know,
14 I've been in -- I've been in briefings where I -- and again, I'm
15 going to call it the train day, where there is a train that's
16 coming through there and they said hey, by -- you know, this train
17 is going to be over here and he's coming north to south. Yeah, I
18 mean, I've heard all that, the dispatcher's name was mentioned,
19 you know, the limits, the dates, the time effective, all that was
20 discussed.

21 MR. LLOYD: I got you. Well, that's all I have. Darren, I
22 appreciate your -- I appreciate your giving us all your knowledge
23 and skills, man, you just hang in there, brother.

24 MR. HOHN: Thank you, appreciate it, Lloyd.

25 MR. LLOYD: Yeah. That's all I got, Dave. Thank you.

1 MR. CASACELI: All right. Thank you, Troy.

2 I don't have any other follow-ups, I don't believe, so we'll
3 go around the room again and hopefully, that's the last time.

4 Mr. Owen Smith, FRA.

5 BY MR. SMITH:

6 Q. Good afternoon, Darren. Owen Smith, FRA. Just two
7 questions. The first one, I just want to confirm something from
8 my notes. We talked about observation programs and you listed the
9 stop card program, the safety observation program, and the near-
10 miss program, am I missing one or is that the three you listed?

11 A. We do have that proficiency card. I keep that as the
12 observation for equipment.

13 Q. Okay. And speaking of cards, I took the RailPros training
14 and at the end, they had a proof of a card --

15 A. Um-hum.

16 Q. -- that they issue. What do those cards mean to you? For
17 example, does that mean that they're qualified as railway workers
18 or does that just mean that they took the training and did it?

19 A. Well, anytime -- and this goes for everybody, I think, Owen,
20 and this just me, being a safety -- that just tells me that you've
21 been qualified at that moment, at that time, and it's -- you know,
22 it's for that given moment. It doesn't mean that you're approved
23 because it's an annual thing, you know, there's whole components
24 that we do to ensure that that knowledge base stuff is met
25 throughout the year and stuff. And again, I think I beat that

1 here, but that, to me, is just saying hey, you've gone through the
2 training, you should have been listening, you took the test and
3 that card's in there and no matter if it's an OSHA 10 or the RWP
4 card from Housatonic or rolled from the MBTA, that's just an
5 acknowledgement saying -- and I don't want to use the word
6 "qualified," it's just saying that you've been there and done
7 that, it's -- that's the way I look at it. And then --

8 Q. Okay, so it's a piece of the puzzle to the overall, you know,
9 qualifications.

10 A. Yeah, yeah, yeah. It's one small component to say hey, I
11 have some awareness of what is expected of me and what my
12 responsibility is while on the track.

13 MR. SMITH: All right, thank you. Sorry for the long day.
14 That's it for me.

15 MR. HOHN: No, I appreciate it and again, I appreciate your
16 help, too, Owen, when this whole thing transpired, too.

17 BY MR. SKOLNEKOVICH:

18 Q. Hey, good afternoon, Darren. Richard Skolnekovich, NTSB, I
19 just got a couple follow-on questions, I know it's been a long day
20 for you. Real quick, I want to kind of go back to the Spark
21 training you guys mentioned. Is that an online training program,
22 the Spark training?

23 A. Yes.

24 Q. Is it all online or is there any in-class stuff?

25 A. Well, the online stuff is like the online classroom setting

1 and then, you know, you got the on-the-job training for the
2 additional part of the Spark's.

3 Q. Who provides the on-the-job training portion of it?

4 A. So that would be the superintendents.

5 Q. Okay, so Housatonic or Middlesex superintendents?

6 A. Well, for the equipment part of it, it would be Middlesex.
7 For the other components it would be Housatonic, I would believe.

8 Q. Okay. Do they know that, I mean, have you discussed that
9 with Housatonic before?

10 A. I was not part of those conversations, no.

11 Q. Okay, no worries. Okay, so it's an online course and do you
12 know -- you know, I know -- if it's the same Spark's I'm thinking
13 of, it has multiple modules. Do you know what modules, if that's
14 the case, which modules you're looking to doing the training in or
15 you are conducting the training in?

16 A. So obviously, 243, there's the -- oh, god, you're killing me
17 with these questions. I don't know the numbers, but track safety
18 standards --

19 Q. Yeah, you don't to know the numbers, just tell me what the
20 content is. Yeah, track safety standards.

21 A. Well, operating rules, drug testing, 219 drug testing,
22 communication.

23 Q. Okay.

24 A. Again, I don't know the number. What else? And then,
25 obviously, the track safety standards. Well, I said that already.

1 Q. Okay, so pretty much all the rail-oriented modules that they
2 provide.

3 A. Yeah. And to be honest with you, I just went through it
4 again, not personally in the thing, but there is that switch thing
5 that's coming up that you guys mentioned earlier and stuff like
6 that, that's a component, operating switches. Again, I don't know
7 the FRA number on that one.

8 Q. Okay, so in the case they're going to go through these
9 courses and then they will meet, like, for the equipment
10 operators, they'll meet the Middlesex superintendent and then
11 they'll get qualified on the equipment or OJT-ed on the equipment
12 and OJT-ed on the track, is that the plan?

13 A. That is the plan, and like I mentioned before, like from
14 Joshua's question, what have we done. You know, listen, we're
15 moving forward, we always want to make sure that we're maximizing
16 on safety. I mean, it's beneficial to us to have someone manage
17 all of that, you know, ensure that there's compliance and stuff,
18 you know, and I've reached out to a lot of other, you know, peers
19 and stuff, you know, throughout the industry and stuff and I want
20 to be the best of the best on that. So that's why we're taking
21 that extra step to move forward and let it manage that way and
22 then that way, there could be more people involved to ensure that,
23 you know, the compliance is met.

24 Q. Okay. So now, this training, is it just geared for the
25 equipment operators or is it for all employees that are working on

1 the rails?

2 A. It's by title, position, and stuff like that, so there's --
3 I've dug into it and, in fact, there's a couple more meetings,
4 Richard, coming up to ensure that we're -- we classify the
5 classification of people versus where they need to be and fall in
6 line when the training is performed. So I know we're almost there
7 on that.

8 Q. Okay. And then just a couple other questions, I kind of want
9 to go back to the JHAs and just some of the stuff that you were
10 doing previously. Is there a JHA about -- for employees when
11 they're operating inside of the gauge, is there any kind of JHA
12 that discusses or describes that? That you know of.

13 A. Yeah, I mean, we have one on CWR, you know, working in gauge,
14 operating in gauges, stuff like that. Again, I don't know what
15 the title of it is, but there are components in there that talk
16 about that, yes.

17 Q. Okay. Do you know anything specific about any requirements
18 that they're supposed to do before they operate inside of the
19 gauge of the track?

20 A. Yeah, I mean --

21 Q. If you know.

22 A. I don't know the exact language and stuff, but it does say
23 that, you know, make sure that there's no one in the area, you
24 know, make sure you're honking your horns. We do have a component
25 for that safety, I know it's not rail terminology and stuff, but I

1 mean, we all know that rail equipment has probably got to be the
2 most -- the biggest equipment with some blind spots, you know, so
3 it does talk about -- not specific, but that type of general
4 information, yes.

5 Q. Okay, so I got it for the equipment operators, but what about
6 just employees in the gauge, that are in between the tracks on
7 foot? Is there a requirement?

8 A. Oh, yeah. I mean, there's stuff in there that talks about
9 making sure that, you know, when you're walking, you know, that
10 you -- I mean, obviously, phone usage is on there that says don't
11 ever be on the phone, you know, get outside the gauge of the track
12 if -- you know, if it's -- if you're not in a work zone and stuff
13 like that where you physically have to be, to be outside the gauge
14 of track, always keep a line of sight and not be distracted.
15 Yeah, there's language like that.

16 Q. Okay.

17 A. And there's been language in there prior, prior to this
18 incident.

19 Q. Okay. Another question, have you ever -- does Middlesex ever
20 use watchmen for folks that are inside the gauge, do you know?
21 Have you ever heard the term "watchman" before?

22 A. I have not, no.

23 Q. Okay. All right, the next question I got, I'm trying to make
24 this quick.

25 MR. CASACELI: Rick.

1 MR. SKOLNEKOVICH: Go ahead.

2 MR. CASACELI: Hey, Richard, David Casaceli --

3 MR. SKOLNEKOVICH: Yeah.

4 MR. CASACELI: -- NTSB. Another term sometimes used for
5 watchman is a lookout. I don't know if maybe you're familiar with
6 that term, just to kind of --

7 MR. HOHN: Oh, lookout. Yeah, yeah, yeah.

8 BY MR. SKOLNEKOVICH:

9 Q. Okay, you have heard that term?

10 A. Oh, yeah, yeah. Yeah. Watchman or lookout.

11 Q. Do you ever use it?

12 A. Yes.

13 Q. Yeah.

14 A. Yeah.

15 Q. Do you ever use them?

16 A. So what, me, personally? I've been in the situation where
17 I'm not designated as the person, but if I see a piece of rail
18 equipment coming up to get close to a track, there's an all clear
19 or rail up and then, you know, that person would be the person
20 that looked down the track to see where they're stopping,
21 regardless if they have a clear line of sight or not, but we do
22 act on that, yes.

23 Q. Okay. Are these lookouts ever designated or is it just
24 wherever you happen to be, you look out for everybody else?

25 A. Wherever you have to be. And again, I -- not in this

1 particular project, but you know, we do work in the tunnels a lot,
2 of the MBTA, we do designate a spotter sometimes because they have
3 to get into stations and somebody will walk all the way up to the
4 station to make sure that they don't, you know, go. So yeah,
5 that, to me, is another form of a watch-out, lookout, we call it a
6 spotter and stuff, but --

7 Q. Spotter, okay.

8 A. -- we do authorize that, we do have a spotter program.

9 Q. Okay. The next question I got, and it's just the last couple
10 of questions, have you had any state inspectors come out and look
11 at your sites for safety, you know, safety for, you know, roadway
12 worker operations? Anybody from the state?

13 A. For me, when I was out there, the answer to that was no.
14 Actually, I back up, I did have one person that came out to look
15 at a bridge, she was part of the project management team from the
16 state. Never said anything. I went up to her and introduced
17 myself, I actually gave her the runaround to say hey, this is what
18 we're doing and I asked her if she had any questions or concerns
19 and she said no, but that's when we were doing a culvert.

20 Q. Okay. And then nothing safety related?

21 A. I have never received anything in return, personally, and
22 I've never received anything in return through either conversation
23 or an e-mail from our operations people stating that the state
24 feels that there was unsafe acts going on there, no.

25 Q. Okay. What about the FRA, has the FRA been on site and

1 talked to your employees or to you?

2 A. Yes, yes. I happened to be out there one day when an FRA
3 inspector was there. In fact, they were out there multiple days
4 doing track inspections, but they did come up to us. Again, there
5 was no findings, you know, there was one guy without a safety -- I
6 never got a report on this one, particularly, but there was a --
7 and I'll be honest, there was a piece of hi-rail equipment that
8 came in and, you know, he saw us, he was moving slightly and stuff
9 and, you know, I said hey, rail up, let's go, and everybody turned
10 around and, you know, unfortunately he didn't honk the horn, you
11 know, just to make us aware and stuff.

12 And myself and Chris -- or Greg Depietro talked about that
13 and he says no, you did the right thing on that, and I ensured him
14 right then and there that that would be addressed, I addressed it
15 with the operator and that was again, just going back into
16 reiterating safety at the following day's safety meeting and stuff
17 like that. He was helpful because we were getting set up for the
18 bridge work on there. Again, that's like my strong point, fall
19 protection and, you know, I had him come out there and take a look
20 at what we had set up and he said everything looked okay. So I
21 mean, he was satisfied for that particular time.

22 Q. So is it just that one incident or have there been any more?

23 A. The only time that someone came out there to actually
24 physically look at us, as far as a safety inspection, that was the
25 only time that I am aware of. I know they've been out there other

1 times, mostly doing track inspection for Housatonic, they're
2 looking at track.

3 Q. All right. And then the last question I got, have you had
4 any -- anything from Housatonic about job briefings, as far as
5 safety or your method of operations while you're out using the
6 track equipment or anything else?

7 A. No. I mean, I -- unless it was one on one with Housatonic
8 and operators. You know, I don't ask the question all the time
9 when I'm out there, but if I do see people from Housatonic, like
10 is there any concerns, and I, you know, never really had a
11 conversation to say yeah, this is not going well or anything like
12 that or, you know, I have a particular problem with this
13 particular person. You know, like no, that's -- you know, that's
14 it. So I mean -- and I believe if they did have a concern, they
15 would mention it.

16 MR. SKOLNEKOVICH: Well, Darren, I appreciate your time and
17 your candor and that is all the questions I have, thank you.

18 MR. HOHN: Richard, thank you.

19 MR. CASACELI: Mr. Wernig.

20 MR. WERNIG: Thank you.

21 BY MR. WERNIG:

22 Q. Darren, Joshua Wernig from Middlesex. Just to clarify here,
23 that FRA visit when they discussed the horn, how -- how close to
24 the incident did that occur?

25 A. Oh, god.

1 Q. A couple weeks, months?

2 A. Probably six. Six, seven weeks prior.

3 Q. Okay. And then you reviewed the use of horns with the entire
4 crew or, you know, how did you handle that at the next daily
5 huddle?

6 A. I'm going to be honest with you, I was the one that took the
7 lead on that and I said if you do not use what we've talked about,
8 two forward, three reverse and stuff, you'll be going home.

9 Q. Okay.

10 A. And that was at the following day.

11 MR. WERNIG: Okay, that's all I have, thank you.

12 MR. BAILLY: Is it my turn, Dave?

13 MR. CASACELI: Correct, sorry.

14 BY MR. BAILLY:

15 Q. P.J. Bailly, Housatonic, B-a-i-l-l-y. Darren, did you
16 receive a letter on June 8th, 2023, from Matt Whitney stating a
17 number of concerns and safety violations?

18 A. Yeah, that was related to the -- oh, god, the foul of the
19 track, yes.

20 Q. Yeah. And I believe the power lines. And so you did receive
21 something from the Housatonic Railroad --

22 (Crosstalk)

23 MR. HOHN: Yeah, yeah. I correct my earlier -- I correct my
24 earlier statement, yes, I did. Yes.

25 MR. BAILLY: That's all I have for now. I appreciate your

1 time, Darren.

2 MR. HOHN: Yeah, likewise. And just for the record, you
3 know, Middlesex did respond appropriately to that and took care of
4 those actions and responded in a letter back in return to
5 Mr. Whitney.

6 MR. BAILLY: Okay, thank you, Darren.

7 MR. HOHN: Thanks, P.J.

8 MR. CASACELI: Great. Troy Lloyd.

9 MR. LLOYD: No, I'm good, Dave. We've had Darren on here for
10 over 2 hours.

11 MR. CASACELI: All right. Then, before we go off the record,
12 does anybody have anything to add or any points of order?

13 Go ahead, Joshua.

14 MR. WERNIG: Yeah. If I could, I'd just like to clarify kind
15 of the same way Pat Lavin came in and talked last time, if I could
16 clarify just a couple points on behalf of --

17 MR. CASACELI: Yeah, I think that's good to get it on the
18 record, it saves us from another submission. So go ahead, Josh.

19 MR. WERNIG: And I know there was a question relative to the
20 OSHA process and I can speak to that to some degree because I
21 ended up handling that OSHA response. So Darren had reached out
22 to OSHA to, you know, in his terms, over-report. We're not
23 convinced we had reporting requirements for the FRA, NTSB, or
24 OSHA, but we did so on all, with all three agencies. But you
25 know, that process, they ended up sending us a letter and that

1 letter was a form letter that just asked for a certain -- certain
2 information. I did consult with Mr. Payan because I didn't want
3 to run afoul of any of the conversations that we had had, you
4 know, a gag order or whatnot with OSHA, so I was -- I ran my
5 response to OSHA by Mr. Payan and I believe I did copy him on my
6 response, as well. So NTSB should have our response, which was a
7 fairly vanilla response as far as, you know, hey, we had an
8 incident, here it is, and we only had the information cleared by
9 the NTSB that we were allowed to share provided to OSHA and OSHA
10 has not reached out since.

11 MR. CASACELI: Okay, thank you.

12 MR. WERNIG: So I wanted to clarify that and the fact that I
13 just don't think that we had any reporting responsibilities, but
14 we did so, anyways. And I also wanted to clarify, on the critical
15 incident plan question, we kind of handle that here at Middlesex
16 in three ways. We have site-specific information that is in our
17 site-specific health and safety plan, which we provided copies of.
18 That will have nearest hospitals and evacuation plans and other
19 pieces to that.

20 We go over that information daily depending on, you know, the
21 work at the daily huddles, and that's a documented process, as
22 well. The daily huddle form is actually on our Beekeeper app, as
23 well and, you know, the intent is that every day it will be filled
24 out and we do record that information and we go over that
25 information in there. And then we do have an accident/incident

1 procedure and process, we provided that policy, as well, and the
2 crisis management plan we've only triggered once here at the
3 Middlesex Corporation and it's been in response to this. This
4 plan is something that we put into place a number of years ago,
5 certainly have taken notes, and we look to improve our crisis
6 management response in the future and -- but I will say that we're
7 gratified that our crisis management plan worked fairly well in
8 response to the incident.

9 Unfortunately, we had an incident to respond to, this has
10 just been tragic for us. And then the other piece is, just to
11 clarify on the Spark, we have always relied on Spark for that 243
12 compliance through their model program. On this present project,
13 we obviously used RailPros, you know, for those RWP, RMM, and CWR
14 components. But also, we have since -- as part of our remedial
15 actions, we've separately contracted with Spark now to do a full
16 and total rip-apart review, make sure every little piece is going
17 to be, you know, looked at to ensure that we have perfect
18 documentation and perfect compliance going forward.

19 And we're looking for them to help manage that process, going
20 forward. In addition, we've also just recently hired a rail
21 safety manager, we created a new position specific for rail safety
22 manager. That individual is going to be starting on September
23 18th and we're going to be looking for that individual to
24 specifically manage our rail safety, oversee all our rail
25 operations from the safety perspective, they'll be mentoring our

1 site safety professionals as well as overseeing the compliance,
2 you know, aspects of the program and ensuring that we have
3 appropriate documentation as well as appropriate periodic testing
4 and monitoring.

5 MR. CASACELI: Excellent. Okay, anything else to add before
6 we go off the record?

7 (No response.)

8 MR. CASACELI: All right, going off at 12:38 Eastern time.

9 (Whereupon, at 12:38 p.m., the interview concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

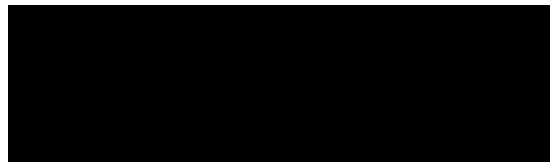
IN THE MATTER OF: MIDDLESEX RAILROAD EMPLOYEE
FATALITY IN GREAT BARRINGTON,
MASSACHUSETTS ON AUGUST 4, 2023
Interview of Darren Hohn

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.



David A. Martini
Transcriber