

EXHIBIT 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: EAST PALESTINE) CASE NO.
TRAIN DERAILMENT) 4:23-CV-00242-BYP
) JUDGE BENITA Y. PEARSON

TUESDAY, JANUARY 16, 2024

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

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Videotaped deposition of Charles
Day, held at the offices of Wilmer Cutler
Pickering Hale and Dorr LLP, 2100 Pennsylvania
Avenue NW, Washington, DC, commencing at
9:03 a.m. Eastern, on the above date, before
Carrie A. Campbell, Registered Diplomat
Reporter, Certified Realtime Reporter,
Illinois, California & Texas Certified
Shorthand Reporter, Missouri, Kansas,
Louisiana & New Jersey Certified Court
Reporter.

- - -

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<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 GRANT & EISENHOFER P.A.</p> <p>4 BY: ADAM J. GOMEZ</p> <p>5 agomez@gelaw.com</p> <p>6 ADAM STOLTZ</p> <p>7 astoltz@gelaw.com</p> <p>8 123 South Justison Street, 6th Floor</p> <p>9 Wilmington, Delaware 19801</p> <p>10 (303) 622-7000</p> <p>11</p> <p>12 and</p> <p>13</p> <p>14 BURG SIMPSON ELDREDGE HERSH &</p> <p>15 JARDINE, P.C.</p> <p>16 BY: SETH A. KATZ</p> <p>17 skatz@burgsimpson.com</p> <p>18 40 Inverness Drive East</p> <p>19 Englewood, Colorado 80112</p> <p>20 (303) 792-5595</p> <p>21 Counsel for Plaintiffs</p> <p>22</p> <p>23 WILMER CUTLER PICKERING HALE AND DORR LLP</p> <p>24 BY: NOAH LEVINE</p> <p>25 noah.levine@wilmerhale.com</p> <p>7 World Trade Center</p> <p>250 Greenwich Street</p> <p>New York, New York 10007</p> <p>(212) 230-8800</p> <p>and</p> <p>WILMER CUTLER PICKERING HALE AND DORR LLP</p> <p>BY: WILLIAM CHORBA</p> <p>william.chorba@wilmerhale.com</p> <p>2100 Pennsylvania Avenue NW</p> <p>Washington, DC 20037</p> <p>(202) 663-6000</p> <p>Counsel for Norfolk Southern</p> <p>Corporation and Norfolk Southern</p> <p>Railway Company</p>	<p>Page 4</p> <p>1 ALSO PRESENT:</p> <p>2 GINA VELDMAN, trial technician,</p> <p>3 Precision Trial Solutions (VIA ZOOM)</p> <p>4 VIDEOGRAPHER:</p> <p>5 DANIEL HOLMSTOCK,</p> <p>6 Golkow Litigation Services</p> <p>7 ---</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 3</p> <p>1 BRACEWELL</p> <p>2 BY: STEPHEN L. BRAGA</p> <p>3 stephen.braga@bracewell.com</p> <p>4 JASON B. HUTT</p> <p>5 jason.hutt@bracewell.com</p> <p>6 STEPHEN WALD</p> <p>7 stephen.wald@bracewell.com</p> <p>8 2001 M Street NW, Suite 900</p> <p>9 Washington, DC 20036-3310</p> <p>10 (202) 828-5800</p> <p>11 Counsel for the Specialized Response</p> <p>12 Solutions</p> <p>13</p> <p>14 BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP</p> <p>15 BY: JOHN D. BYARS</p> <p>16 john.byars@bartlit-beck.com</p> <p>17 54 West Hubbard, Suite 300</p> <p>18 Chicago, Illinois 60654</p> <p>19 (312) 494-4400</p> <p>20 Counsel for Trinity Industries</p> <p>21 Leasing Company</p> <p>22</p> <p>23 VORYS, SATER, SEYMOUR AND PEASE LLP</p> <p>24 BY: ALYCIA N. BROZ</p> <p>25 anbroz@vorys.com</p> <p>SARA INGRAM</p> <p>saingram@vorys.com</p> <p>52 East Gay Street</p> <p>Columbus, Ohio 43215</p> <p>(614) 464-6400</p> <p>Counsel for Oxy Vinyls</p> <p>KIRKLAND & ELLIS LLP</p> <p>BY: ROBERT B. ELLIS</p> <p>robert.ellis@kirkland.com</p> <p>SYDNE K. COLLIER</p> <p>sydne.collier@kirkland.com</p> <p>300 North LaSalle</p> <p>Chicago, Illinois 60654</p> <p>(312) 862-2000</p> <p>Counsel for GATX and General</p> <p>American Marks Company</p>	<p>Page 5</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 APPEARANCES..... 2</p> <p>4 EXAMINATIONS</p> <p>5 BY MR. GOMEZ..... 9</p> <p>6 BY MR. BYARS..... 267</p> <p>7 BY MS. BROZ..... 309</p> <p>8 BY MR. ELLIS..... 363</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 No. Description Page</p> <p>12 1 Group D, Exhibit 26, Vinyl 57</p> <p>13 Chloride Monomer Safety Data</p> <p>14 Sheet,</p> <p>15 NO BATES</p> <p>16</p> <p>17 2 Group C, Exhibit 3, Emergency 75</p> <p>18 Response Guide (ERG) 2020 Guide</p> <p>19 116 Vinyl Chloride,</p> <p>20 NO BATES</p> <p>21 3 September 27, 2016 Fall Meeting, 84</p> <p>22 Orlando, FL, Transportation Issue</p> <p>23 Team, The Chlorine Institute,</p> <p>24 NO BATES</p> <p>25</p> <p>4 Pamphlet 171 Vinyl Chloride 87</p> <p>Monomer (VCM) Tank Car & Cargo</p> <p>Tank Handling Manual Edition 1,</p> <p>NO BATES</p> <p>5 Group H, Exhibit 56, NJ Department 105</p> <p>of Health and Senior Services</p> <p>Hazardous Substance Fact Sheet</p> <p>Vinyl Chloride (June 2001),</p> <p>NO BATES</p>

<p>Page 6</p> <p>1 6 Group H, Exhibit 57, New Jersey 110 Department of Health - Right to 2 Know Hazardous Substance Fact Sheet (October 2015), 3 NO BATES 4 7 Text message(s) between Bob Gold 117 and Chip Day, February 5, 2023, 5 NO BATES 6 8 Text message(s) between Drew 190 McCarty and Chip Day, 7 SPSI TEXTS 000512 - SPSI TEXTS 000513 8 9 E-mail(s), 224 9 NS-CA-000017188 - NS-CA-000017189 10 10 Group D, Exhibit 54, Figure 62, 243 Hazardous Materials Group Chair's 11 Factual Report. Screenshot from NS contractor video taken from E. 12 Taggart Street near N. Pleasant Drive looking north. Vent-and burn 13 of 5 vinyl chloride tank cars showing two material plumes 14 visible about 2-seconds following detonation of explosive charges, 15 February 6, 2022, 4:37 p.m., NO BATES 16 11 E-mail(s), 249 17 SRS-0000213 18 12 Text message(s) between Drew 254 McCarty and Chip Day, 19 SPSI TEXTS 000285 - SPSI TEXTS 000292 20 13 Composite exhibit from pictures in 268 the Hazardous Materials Group Chair's Factual Report, Exhibit B 22 10 to the NTSB hearing 23 14 Printout from the website "Feels 336 Like Home Realty," Agent Details 24 25</p>	<p>Page 8</p> <p>1 VIDEOGRAPHER: We are now on 2 the record. My name is Daniel 3 Holmstock. I am the videographer for 4 Golkow Litigation Services. 5 Today's date is January 16, 6 2024. The time on the video screen is 7 9:03 a.m. 8 This deposition is being held 9 at the address of 2100 Pennsylvania 10 Avenue Northwest in Washington, DC, in 11 the matter of In Re: East Palestine 12 Train Derailment, pending before the 13 United States District Court for the 14 Northern District of Ohio, Eastern 15 Division. 16 Our deponent today is 17 Mr. Charles Day. 18 Counsel, your appearances will 19 be noted on the stenographic record. 20 Our court reporter is Carrie 21 Campbell, who will now administer the 22 oath to the witness. 23 24 CHARLES DAY, 25 of lawful age, having been first duly sworn</p>
<p>Page 7</p> <p>1 15 Group G, Exhibit 3, Interview 355 Transcript - Charles Day, Senior 2 Project Manager, Specialized Response Solutions, March 1, 2023, 3 NS-CA-000004153 - NS-CA-000004195 4 16 Group B, Exhibit 10, Hazardous 377 Materials Group Chair's Factual 5 Report, NS-CA-000002467 - NS-CA-000002625 6 7 17 Indemnity and Hold Harmless 411 Agreement, NS-CA-003807064 - NS-CA-003807065 8 9 18 Table 12. Vinyl chloride tank car 435 temperature trends as measured by SPSI, February 5, 2023, 16:00 to 10 February 6, 2023, 14:30 11 19 Video of vent and burn 447 12 20 Photos of vent and burn, 451 SRS-0000589 - SRS-0000590 13 21 Video of vent and burn 460 14 15 (Exhibits attached to the deposition.) 16 17 CERTIFICATE.....472 18 ACKNOWLEDGMENT OF DEPONENT.....474 19 ERRATA.....475 20 LAWYER'S NOTES.....476 21 22 23 24 25</p>	<p>Page 9</p> <p>1 to tell the truth, the whole truth and 2 nothing but the truth, deposes and says on 3 behalf of the Plaintiffs, as follows: 4 5 DIRECT EXAMINATION 6 QUESTIONS BY MR. GOMEZ: 7 Q. Good morning, sir. 8 A. Good morning. 9 Q. Can you please state and spell 10 your name for the record? 11 A. Charles Day, D-a-y. 12 Q. And, Mr. Day, you're currently 13 employed by Specialized Response Solutions. 14 Correct? 15 A. Yes, sir. 16 Q. And you are a senior project 17 manager? 18 A. Yes, sir. 19 Q. Were you a senior project 20 manager in February of 2023 at Specialized 21 Response Solutions? 22 A. Yes, sir. 23 Q. Shorthand for Specialized 24 Response Solutions is SRS. 25 Right?</p>

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1 A. Yes. Yes.
 2 Q. So I'm going to use SRS
 3 throughout the remainder of the day.
 4 Okay?
 5 A. I want you to use the whole
 6 thing.
 7 Q. That'll be too much for me.
 8 I'm sorry.
 9 But we can agree SRS means
 10 Specialized Response Solutions.
 11 Right?
 12 A. Yes, sir.
 13 Q. Okay. Am I correct that you
 14 have a bachelor's of science in occupational
 15 health and safety?
 16 A. Yes, sir.
 17 Q. And from what institution did
 18 you receive that degree?
 19 A. Columbia Southern University.
 20 Q. In what year?
 21 A. 2015? '16? One of those two.
 22 Q. And as part of obtaining that
 23 degree in occupational health and safety,
 24 what, if any, courses in chemistry did you
 25 take?

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1 A. I didn't take any chemistry
 2 classes in that class.
 3 Q. Okay. So no chemistry classes
 4 while at -- was it Columbia?
 5 A. Southern.
 6 Q. Columbia Southern.
 7 Correct?
 8 A. Yes, sir.
 9 Q. You also attended at some point
 10 in your career firefighter academy.
 11 Correct?
 12 A. Several, yes, sir.
 13 Q. Okay. What was the first
 14 firefighter academy that you attended?
 15 A. Tarrant County Junior College,
 16 right after I graduated in 1981.
 17 Q. Okay. And thereafter, what's
 18 the next firefighter academy you had?
 19 A. City of Arlington fire
 20 department recruit class of 1983.
 21 Q. Okay. Other than those two
 22 academies, were there additional firefighting
 23 academies?
 24 A. There's a lot of firefighting
 25 classes, yes, sir.

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1 Q. Okay. I'm just talking about
 2 like academies or schools specifically.
 3 Any others?
 4 A. Texas A&M. Illinois State fire
 5 college. There's a lot of them over
 6 41 years.
 7 Q. Understood.
 8 Just focusing on the first two
 9 institutions that you mentioned --
 10 A. Yes, sir.
 11 Q. -- did you receive HAZMAT
 12 training?
 13 A. Yes, sir.
 14 Q. And as part of that HAZMAT
 15 training, did you receive education in
 16 chemistry?
 17 A. It was discussed. It was --
 18 there were classes about chemistry, yes.
 19 Q. Those chemistry classes, did
 20 they include specific instruction on vinyl
 21 chloride monomer?
 22 A. In the fire classes, no.
 23 Q. I'm going to be using the
 24 phrase, as I'm sure you can guess, "vinyl
 25 chloride monomer" a lot today.

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1 A. Yes.
 2 Q. Can we agree that that's
 3 abbreviated to VCM?
 4 A. VCM, yes, sir.
 5 Q. Okay. Other than the bachelor
 6 of science that we discussed, do you have any
 7 other formal, post-high school education?
 8 A. No, sir.
 9 Q. Other than what we've
 10 discussed, do you have any other formal
 11 education in chemistry?
 12 A. No, sir.
 13 Q. Other than what we've
 14 discussed, do you have any formal instruction
 15 in chemistry?
 16 A. No, sir.
 17 Q. You do not consider yourself to
 18 be a chemist.
 19 Correct?
 20 A. That is correct.
 21 Q. You do not consider yourself to
 22 be a chemical engineer.
 23 Correct?
 24 A. That is correct.
 25 Q. And you don't consider yourself

1 to be a material scientist.
 2 Right?
 3 A. That is correct.
 4 Q. So you would agree with me that
 5 you are not an expert in VCM.
 6 Correct?
 7 MR. LEVINE: Objection.
 8 THE WITNESS: I have a lot of
 9 experience dealing with vinyl chloride
 10 in containers and in plants and in
 11 transportation.
 12 QUESTIONS BY MR. GOMEZ:
 13 Q. Let me ask the question a
 14 little differently.
 15 You'd agree with me that you're
 16 not an expert in the chemical properties of
 17 VCM.
 18 Correct?
 19 A. Correct.
 20 Q. You'd agree with me that you're
 21 not an expert in the reactivity of VCM?
 22 A. That's correct.
 23 Q. You'd agree with me that you're
 24 not an expert in the polymerization of VCM?
 25 A. That's correct.

1 Q. You mentioned a number of
 2 schools beyond the two -- and forgive me,
 3 I've forgotten them already -- that you've
 4 attended for firefighting and HAZMAT
 5 training.
 6 Right?
 7 A. Yes, sir.
 8 Q. And I believe you actually
 9 produced in response to a subpoena a large
 10 number of certificates and other
 11 documentation reflecting that you've done
 12 training at these establishments.
 13 Do you recall producing those?
 14 A. Yes, sir.
 15 Q. I think there were over 200
 16 different certificates. I'm just going to
 17 call them certificates.
 18 Does that sound about right?
 19 A. Yes, sir.
 20 Q. And those spanned, if I recall
 21 correctly, from 1997 up through pretty much
 22 the present.
 23 A. I don't remember when they
 24 started. I had a lot of certificates.
 25 Q. Fair enough.

1 But I think 1997 sounds about
 2 when you started firefighter academy.
 3 Is that right?
 4 A. No, sir.
 5 Q. When was that again?
 6 A. 1981.
 7 MR. LEVINE: Can we take one
 8 break? I realized I'm not mic'ed up
 9 to be able to make my objections.
 10 VIDEOGRAPHER: Stand by. The
 11 time is 9:09 a.m. we're going off the
 12 record.
 13 (Off the record at 9:09 a.m.)
 14 VIDEOGRAPHER: The time is
 15 9:11 a.m., and we're back on the
 16 record.
 17 QUESTIONS BY MR. GOMEZ:
 18 Q. Mr. Day, before we took a quick
 19 break, you corrected me that your firefighter
 20 training began in 1981.
 21 A. My firefighter training began
 22 in actually -- probably in the '70s.
 23 Q. Okay.
 24 A. But I graduated in '81 and went
 25 to recruit class at TCJC.

1 Q. Okay. Understood.
 2 From 1981 to the present,
 3 you've attended a number of continuing
 4 education and refresher courses in
 5 firefighting.
 6 Right?
 7 A. Yes, sir.
 8 Q. And some of those classes also
 9 entailed HAZMAT.
 10 Right?
 11 A. Most classes did, yes, sir.
 12 Q. Some of the institutions that
 13 provided those refreshers and training
 14 include OSHA.
 15 Right?
 16 A. Yes, sir.
 17 Q. Another one is CHLOREP.
 18 Is that correct?
 19 A. Yes, sir.
 20 Q. What does CHLOREP stand for?
 21 A. It's the -- it's a division of
 22 The Chlorine Institute. It's the -- a trade
 23 organization for chlorine manufacturers, and
 24 they cover all things that -- mission
 25 chemicals of chlorine production.

1 Q. Is SRS a member of CHLOREP?
 2 A. We're an associate member.
 3 Q. And just briefly, what's an
 4 associate member?
 5 A. We're not a voting member, but
 6 we attend training. We attend conferences
 7 and such.
 8 Q. So you participate in CHLOREP
 9 trainings and meetings, things of that
 10 nature?
 11 A. Yes, sir.
 12 Q. You also attended refreshers
 13 and education that was put on by a group with
 14 the abbreviation is SERTC.
 15 Is that correct?
 16 A. Yes, sir.
 17 Q. And what does SERTC stand for?
 18 A. SERTC is the -- basically it's
 19 the old Transportation Technology Center at
 20 Pueblo, Colorado, that teaches emergency
 21 response for rail and highway accidents and
 22 incidents.
 23 Q. Is that sometimes in shorthand
 24 referred to as "going out to Pueblo" or
 25 "training in Pueblo"?

1 A. Pueblo, yes, sir.
 2 Q. Okay. I also saw in some of
 3 those certificates and other documents
 4 references to tank car specialist.
 5 Are you familiar with that
 6 phrase?
 7 A. Yes, sir.
 8 Q. Can you just describe for me
 9 what that means?
 10 A. Basically it's somebody that
 11 knows containers, that knows the construction
 12 of them and how to handle them when they're
 13 involved in incidents and accidents and have
 14 leaks.
 15 Q. And you've since -- certainly
 16 since 1981 have attended a number of
 17 refreshers and continuing education specific
 18 to tank cars.
 19 Correct?
 20 A. Yes, sir.
 21 Q. Throughout that period, let's
 22 say from 1981 to the present, which of these
 23 various trainings and refreshers do you
 24 recall providing specific instruction on
 25 vinyl chloride monomer polymerization?

1 A. The classes that we put on are
 2 not -- don't focus solely on polymerization
 3 of VCM. It's more of how to deal with
 4 compressed flammable gases in emergency
 5 response situations.
 6 Q. Do you recall from any of the
 7 trainings and refreshers during that period,
 8 1981 to the present, any of them providing
 9 specific instruction on the polymerization of
 10 VCM?
 11 A. Yes, sir.
 12 MR. BRAGA: Object to the form
 13 of the question.
 14 QUESTIONS BY MR. GOMEZ:
 15 Q. Which trainings are those or
 16 were those?
 17 A. A lot of the classes briefly
 18 touch on polymerization of VCM and other
 19 polymer material.
 20 Q. And you said that they briefly
 21 touch upon it.
 22 What kind of areas do they
 23 cover with respect to VCM polymerization?
 24 A. What happens to inhibitors when
 25 exposed to elevated heat, high pressure and

1 such.
 2 Q. Okay. And when you're
 3 referencing inhibitors, that's in connection
 4 with the transportation of stabilized VCM in
 5 a railcar, for example.
 6 Right?
 7 A. All materials, yes, sir.
 8 Q. And again, you mentioned
 9 inhibitors. That's a method for stabilizing
 10 VCM for transportation.
 11 Right?
 12 A. That is correct.
 13 Q. Oxygen purging is another way
 14 of stabilizing VCM for transportation.
 15 Correct?
 16 A. That is correct.
 17 Q. Those are distinct methods for
 18 stabilizing VCM for transportation.
 19 Correct?
 20 A. That's correct.
 21 Q. Would you agree with me, based
 22 off of your training, that both of those
 23 methods neutralize the initiators needed to
 24 start the polymerization reaction in VCM?
 25 MR. BRAGA: Objection to the

1 form of the question.
 2 MR. LEVINE: And same
 3 objection.
 4 THE WITNESS: Yes, sir.
 5 QUESTIONS BY MR. GOMEZ:
 6 Q. An inhibitor is actually added
 7 to the VCM to stop the reaction from
 8 occurring.
 9 Right?
 10 A. Stabilizes the materials, yes,
 11 sir.
 12 Q. And an inhibitor can include a
 13 variety of chemicals. One of them, I think,
 14 is phenol?
 15 A. Yes, sir.
 16 Q. Whereas oxygen purging removes
 17 oxygen from the vessel so that there is not a
 18 catalyst or initiator for the VCM to start
 19 polymerizing.
 20 Right?
 21 MR. LEVINE: Objection.
 22 MR. BRAGA: Same objection.
 23 THE WITNESS: Yes, sir.
 24 MR. GOMEZ: Just before we go
 25 any further, in past depositions we've

1 agreed that one objection is an
 2 objection for all.
 3 MR. BRAGA: Okay.
 4 MR. GOMEZ: I'm happy to agree
 5 to that as well.
 6 MR. LEVINE: Let's do that.
 7 QUESTIONS BY MR. GOMEZ:
 8 Q. You mentioned in connection
 9 with inhibitors that you received training, I
 10 think, specifically about how heat interacts
 11 with those inhibitors?
 12 A. Yes, sir.
 13 Q. Do I remember that correctly?
 14 A. Yes, sir.
 15 Q. When VCM is -- when stabilized
 16 VCM is shipped with an inhibitor, is it your
 17 understanding that heating can lead to the
 18 loss of the inhibitor?
 19 A. Yes, sir.
 20 Q. And correct me if I'm wrong,
 21 it's not well-understood exactly how those
 22 inhibitors get lost, but experience shows
 23 that when there's heating and VCM, the
 24 inhibitors tend to go away over time.
 25 Right?

1 MR. BRAGA: Object.
 2 THE WITNESS: Yes, sir.
 3 QUESTIONS BY MR. GOMEZ:
 4 Q. That's not the case when there
 5 is stabilization of VCM via oxygen purging.
 6 Right?
 7 MR. LEVINE: Objection.
 8 THE WITNESS: It can be, yes,
 9 sir.
 10 QUESTIONS BY MR. GOMEZ:
 11 Q. How can it be?
 12 MR. LEVINE: Same objection.
 13 THE WITNESS: Anytime that you
 14 stabilize something, inhibit
 15 something, elevated heat and extreme
 16 pressure can change things at a
 17 molecular level.
 18 QUESTIONS BY MR. GOMEZ:
 19 Q. So is it your understanding
 20 that when we're talking about oxygen purged,
 21 stabilization for VCM, the application of
 22 heat changes something within the vessel that
 23 detracts from the ability to stop the
 24 polymerization reaction?
 25 A. It has the ability, it's my

1 understanding, yes, sir.
 2 Q. And which of your trainings or
 3 educations or refreshers from 1981
 4 specifically gave you that information with
 5 respect to oxygen stabilized VCM?
 6 MR. BRAGA: Object to the form
 7 of the question.
 8 THE WITNESS: There's -- there
 9 was a lot of training between 1981 and
 10 the present, and I can't specifically
 11 tell you which class said that. But
 12 basically in emergency response,
 13 stabilized mat -- we have a book of
 14 experience that tells us we need to --
 15 that we need to deal with certain
 16 materials certain ways.
 17 And VCM is a stabilized
 18 product, and you have the ability to
 19 generate polymer during that -- during
 20 heating, elevated heating.
 21 QUESTIONS BY MR. GOMEZ:
 22 Q. So I appreciate that, but my
 23 question is specific to trainings that you
 24 recall about the polymerization of
 25 oxygen-stabilized VCM and the loss of

<p style="text-align: right;">Page 26</p> <p>1 inhibiting properties. 2 Do you recall any specific 3 trainings from 1981 to the present that 4 discussed that topic? 5 A. No, sir. 6 Q. From 1981 to the present, do 7 you remember any instructors who provided 8 information or education or training about 9 the loss of inhibitors in oxygen-stabilized 10 VCM? 11 A. No, sir. 12 MR. BRAGA: Object to the form 13 of the question. 14 But go ahead, you can answer. 15 THE WITNESS: No, sir. 16 QUESTIONS BY MR. GOMEZ: 17 Q. You mentioned a book of 18 experience. I take it that's not a literal 19 book of experiences. 20 Right? 21 A. That's correct. 22 Q. It's the collective memory and 23 experience of those in the HAZMAT industry. 24 Fair? 25 A. That's correct.</p>	<p style="text-align: right;">Page 28</p> <p>1 stopping the reaction. 2 Correct? 3 MR. LEVINE: Objection. 4 THE WITNESS: Yes, sir. 5 QUESTIONS BY MR. GOMEZ: 6 Q. And you'd agree with me that 7 it's important to understand which way VCM is 8 being stabilized when dealing with a HAZMAT 9 situation involving that chemical. 10 Correct? 11 MR. BRAGA: Object to the form 12 of the question. 13 THE WITNESS: Yes, sir. 14 QUESTIONS BY MR. GOMEZ: 15 Q. In your experience in the field 16 responding to HAZMAT situations, can you 17 describe for me the instances where you 18 personally have dealt with a derailed railcar 19 containing VCM? 20 A. I have dozens of incidents 21 involving vinyl chloride. 22 Q. Okay. 23 A. So you have to be specific on 24 what -- which one you want. 25 Q. Fair enough.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. And based off of that 2 collective experience, various instructors 3 provide information and insight at, among 4 other things, these trainings that we're 5 talking about. 6 Right? 7 A. Yes, sir. 8 Q. Do you recall any discussion 9 from any trainings from 1981 to the present 10 about specific experiences involving the 11 polymerization of oxygen-stabilized VCM? 12 A. Can you restate the question? 13 Q. Sure. 14 From 1981 to the present, do 15 you recall any of the trainings or refresher 16 courses discussing real-life experiences 17 where oxygen-stabilized VCM polymerized? 18 MR. LEVINE: Objection. 19 THE WITNESS: The training 20 classes, we don't break down VCM into 21 oxygen-stabilized or inhibited VCM. 22 We deal with it as all stabilized VCM. 23 QUESTIONS BY MR. GOMEZ: 24 Q. But you agree with me that 25 those are chemically different ways of</p>	<p style="text-align: right;">Page 29</p> <p>1 Let's start with the number. 2 You said dozens. 3 Would you say more or less than 4 50? 5 A. Less than 50. 6 Q. More or less than 25? 7 A. Probably more. 8 Q. So somewhere between 25 and 50. 9 Fair? 10 A. Sure. 11 Q. Of those 25 to 50 situations 12 involving derailed VCM cars, how many of 13 those presented a concern for polymerization 14 of VCM? 15 A. It's always a concern because 16 it is a stabilizer-inhibited product, so 17 there's always a heightened level of concern 18 when we're dealing with vinyl chloride. 19 Q. Let me ask the question 20 differently. 21 Of those 25 to 50 incidents 22 involving VCM, how many of those -- in how 23 many of those was the polymerization and 24 potential explosion of the VCM-containing 25 vessel the primary concern?</p>

<p style="text-align: right;">Page 30</p> <p>1 MR. BRAGA: Object to the form</p> <p>2 of the question.</p> <p>3 THE WITNESS: There was one in</p> <p>4 1982.</p> <p>5 QUESTIONS BY MR. GOMEZ:</p> <p>6 Q. 1982. That would be the</p> <p>7 Livingston, Louisiana, incident.</p> <p>8 Right?</p> <p>9 A. Correct.</p> <p>10 Q. In the Livingston, Louisiana,</p> <p>11 incident in 1982, was the VCM in the railcars</p> <p>12 stabilized?</p> <p>13 A. I was a technician in 1982, so</p> <p>14 I do not know.</p> <p>15 Q. You didn't come to learn at any</p> <p>16 point after that whether it was stabilized or</p> <p>17 not?</p> <p>18 A. I don't recall.</p> <p>19 Q. When you say you were a</p> <p>20 technician in 1982, just can you describe for</p> <p>21 me what that means, what those duties were?</p> <p>22 A. I was a laborer.</p> <p>23 Q. Okay. Doing what specifically</p> <p>24 in connection with the -- that derailment, if</p> <p>25 anything?</p>	<p style="text-align: right;">Page 32</p> <p>1 looking to see if the level of oxygen within</p> <p>2 the railcar is less than 200 parts per</p> <p>3 billion.</p> <p>4 Right?</p> <p>5 MR. BRAGA: Object.</p> <p>6 THE WITNESS: Okay.</p> <p>7 QUESTIONS BY MR. GOMEZ:</p> <p>8 Q. And depending on that reading,</p> <p>9 they either begin loading the VCM or pump</p> <p>10 nitrogen into the railcar to purge the oxygen</p> <p>11 from the railcar.</p> <p>12 Right?</p> <p>13 A. Yes, sir.</p> <p>14 MR. LEVINE: Objection.</p> <p>15 QUESTIONS BY MR. GOMEZ:</p> <p>16 Q. And once they've achieved the</p> <p>17 desired threshold of oxygen, they then go</p> <p>18 ahead and they load the VCM into the railcar.</p> <p>19 Right?</p> <p>20 MR. BRAGA: Objection.</p> <p>21 THE WITNESS: Okay.</p> <p>22 QUESTIONS BY MR. GOMEZ:</p> <p>23 Q. I'm asking.</p> <p>24 Do you know?</p> <p>25 A. I'm guessing they do.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Working as directed.</p> <p>2 Q. And who were you working for?</p> <p>3 A. Western Emergency Service.</p> <p>4 Q. And as far as the Livingston</p> <p>5 derailment, what services -- what specific</p> <p>6 emergency services was Western Emergency</p> <p>7 Services providing in connection with that</p> <p>8 incident?</p> <p>9 A. We were a response team that</p> <p>10 assisted in cleanup operations.</p> <p>11 Q. Transitioning from our</p> <p>12 discussion of inhibitors to a little bit more</p> <p>13 detail on oxygen-stabilized VCM, are you</p> <p>14 familiar with the process that shippers</p> <p>15 employ to achieve oxygen stabilization of</p> <p>16 VCM?</p> <p>17 MR. LEVINE: Objection.</p> <p>18 THE WITNESS: Yes, sir.</p> <p>19 QUESTIONS BY MR. GOMEZ:</p> <p>20 Q. And in that process, one of the</p> <p>21 first things that they do is they take in the</p> <p>22 railcar and they take an oxygen reading.</p> <p>23 Right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And specifically they're</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And they then check it again</p> <p>2 for oxygen concentration.</p> <p>3 Right?</p> <p>4 MR. LEVINE: Objection.</p> <p>5 THE WITNESS: Okay.</p> <p>6 QUESTIONS BY MR. GOMEZ:</p> <p>7 Q. Have you ever seen a VCM</p> <p>8 railcar loaded?</p> <p>9 A. Yes, sir.</p> <p>10 Q. It's a closed system.</p> <p>11 Correct?</p> <p>12 A. That's correct.</p> <p>13 Q. So if oxygen is purged from the</p> <p>14 railcar, VCM is then loaded, there's no way</p> <p>15 for anything to get into the railcar</p> <p>16 unintentionally, assuming the system stays</p> <p>17 closed.</p> <p>18 Right?</p> <p>19 MR. BRAGA: Object.</p> <p>20 THE WITNESS: That is correct.</p> <p>21 QUESTIONS BY MR. GOMEZ:</p> <p>22 Q. So if they've done it</p> <p>23 correctly, the end result of this whole</p> <p>24 closed loading system is that you have</p> <p>25 99.9 percent pure VCM.</p>

1 Right?
 2 A. As long as --
 3 MR. LEVINE: Objection.
 4 THE WITNESS: As long as the
 5 system is purged, yes.
 6 QUESTIONS BY MR. GOMEZ:
 7 Q. As long as the system is purged
 8 and as long as there's no breaches in the
 9 closed system.
 10 Right?
 11 A. That is correct.
 12 Q. We talked a little bit about
 13 training, and you mentioned, I think, at one
 14 point that some of the discussions involve
 15 monomers and the polymerization of monomers,
 16 at least generally or as a class of
 17 chemicals.
 18 Is that right?
 19 A. Yes, sir.
 20 Q. Another chemical that is
 21 discussed in these trainings and refreshers
 22 is styrene.
 23 Right?
 24 A. Yes, sir.
 25 Q. Do you have personal experience

1 responding to derailments where styrene is a
 2 chemical of concern?
 3 A. Yes, sir.
 4 Q. Styrene is a polymerizable
 5 monomer.
 6 Right?
 7 A. That is correct.
 8 Q. Styrene is capable of
 9 polymerizing just by the application of heat.
 10 Right?
 11 MR. BRAGA: Objection.
 12 THE WITNESS: It can.
 13 QUESTIONS BY MR. GOMEZ:
 14 Q. And that's something that you
 15 were taught or instructed on in the trainings
 16 we discussed earlier?
 17 A. Yes, sir.
 18 MR. BRAGA: Objection.
 19 QUESTIONS BY MR. GOMEZ:
 20 Q. Another chemical that I think
 21 I've seen mentioned in some of the documents
 22 is butadiene?
 23 A. Excuse me?
 24 Q. Butadiene?
 25 A. Butadiene, yes, sir.

1 Q. And do you have any personal
 2 experience responding to derailments where
 3 butadiene was the chemical of concern?
 4 A. Butadiene, yes, sir.
 5 Q. I neglected to ask.
 6 In connection with styrene, can
 7 you estimate again for me how many incidents
 8 you've been involved in personally where
 9 styrene was the chemical of concern?
 10 MR. LEVINE: Objection.
 11 THE WITNESS: I can't recall.
 12 A lot.
 13 QUESTIONS BY MR. GOMEZ:
 14 Q. Roughly the same amount as VCM?
 15 More or less?
 16 A. Over 42 years, a lot.
 17 Q. Fair enough.
 18 Same answer for butadiene?
 19 A. Butadiene, yes, sir.
 20 Q. Okay. Butadiene is also a
 21 polymerizable chemical.
 22 Right?
 23 A. That is correct.
 24 Q. And butadiene also can
 25 polymerize on the application of heat alone.

1 Right?
 2 A. That is correct.
 3 Q. In fact, butadiene has a
 4 relatively low temperature threshold for
 5 polymerization.
 6 Right?
 7 MR. BRAGA: Objection.
 8 THE WITNESS: You'll have to
 9 clarify what fairly low is.
 10 QUESTIONS BY MR. GOMEZ:
 11 Q. Sure.
 12 Specifically, it can start to
 13 polymerize at about 175 degrees Fahrenheit?
 14 A. That sounds about right, yes,
 15 sir.
 16 Q. Now, when we talk about
 17 polymerization through your training and the
 18 refreshers, you understand that that's a
 19 process whereby the bonds of these various
 20 chemicals are broken and then form solids.
 21 It's a crude way of kind of
 22 explaining the process.
 23 Right?
 24 A. Fairly well done, yes, sir.
 25 Q. Okay. And it's these

<p style="text-align: right;">Page 38</p> <p>1 initiators or these catalysts that actually 2 break the bonds and start that process. 3 Right? 4 A. Yes, sir. 5 Q. So in the case of VCM, these 6 initiators or catalysts, they break one of 7 the chlorine bonds, leading to a reaction 8 that ultimately forms PVC. 9 Right? 10 MR. BRAGA: Objection. 11 THE WITNESS: Yes, sir. 12 QUESTIONS BY MR. GOMEZ: 13 Q. Through your educations, your 14 trainings, your refreshers, have you come to 15 understand that unlike styrene and butadiene, 16 VCM does not polymerize on the application of 17 heat alone? 18 MR. BRAGA: Object. 19 THE WITNESS: Rephrase the 20 question. 21 QUESTIONS BY MR. GOMEZ: 22 Q. Sure. 23 Through these -- through 24 education, your refreshers, your training 25 from, let's say, 1981 to the present, have</p>	<p style="text-align: right;">Page 40</p> <p>1 a polymerizable material because based 2 on the SDS, it shows that a 3 polymerization can occur, is 4 potential. 5 QUESTIONS BY MR. GOMEZ: 6 Q. So if I understood what you 7 said just now correctly, the training, the 8 refreshers, the education, they focus on the 9 polymerization of VCM in connection with heat 10 because in a derailment situation, there can 11 be a loss of containment that allows oxygen 12 to get in. 13 Is that right? 14 A. That's correct. 15 MR. LEVINE: Objection. 16 QUESTIONS BY MR. GOMEZ: 17 Q. But if there's not a loss of 18 containment, and assuming that the tank was 19 purged properly before loading, oxygen 20 doesn't get in. 21 Right? 22 MR. LEVINE: Objection. 23 THE WITNESS: Possibly, yes, 24 sir. 25</p>
<p style="text-align: right;">Page 39</p> <p>1 you come to understand that unlike styrene 2 and butadiene, VCM does not polymerize on the 3 application of heat alone? 4 MR. BRAGA: Same objection. 5 THE WITNESS: Heat alone can 6 initiate -- my understanding, heat 7 alone can initiate polymerization in 8 VCM. 9 QUESTIONS BY MR. GOMEZ: 10 Q. And which training, refresher 11 or education from 1981 to the present do you 12 specifically recall discussing that concept? 13 MR. BRAGA: Object. 14 THE WITNESS: The VCM is a 15 polymerizable material. 16 And although oxygen is -- it's 17 oxygen purge -- the tank is oxygen 18 purged, that's when the car is running 19 down the tracks in normal operation, 20 going to and from a plant. 21 In a derailment situation, 22 things happen to cars. Fires start 23 and heat is applied, and oxygen can 24 get into the tanks. 25 We deal with vinyl chloride as</p>	<p style="text-align: right;">Page 41</p> <p>1 QUESTIONS BY MR. GOMEZ: 2 Q. And assuming that oxygen does 3 not infiltrate a derailed VCM tank car, heat 4 alone will not polymerize that VCM. 5 Correct? 6 A. Correct. 7 MR. LEVINE: Objection. 8 QUESTIONS BY MR. GOMEZ: 9 Q. In fact, in terms of the 10 application of heat alone, you've been 11 educated or trained from 1981 to the present 12 that VCM is stable up to at least 500 degrees 13 Fahrenheit. 14 Right? 15 MR. LEVINE: Objection. 16 MR. BRAGA: Objection. 17 MR. LEVINE: Sorry. 18 THE WITNESS: We don't go to 19 the highest temperature. We don't 20 discuss what the maximum temperature 21 would be. 22 We discuss heat in general 23 terms. You apply heat to the product 24 itself, and bad things can happen. 25</p>

1 QUESTIONS BY MR. GOMEZ:
 2 Q. So there's a discussion of heat
 3 generally, but not in terms of any one
 4 particular chemical at this particular
 5 temperature will lead to polymerization?
 6 A. Correct.
 7 Q. So fair to say that from 1981
 8 to the present, you've never received any
 9 education or training specific to the
 10 temperatures that may trigger VCM
 11 polymerization?
 12 A. It's basically discussed in
 13 low, medium and high temperatures.
 14 Q. What's a temperature range for
 15 low?
 16 A. Ambient.
 17 Q. And what's a temperature range
 18 when you say medium heat?
 19 A. A couple hundred, 300 degrees.
 20 Upwards, it would be high.
 21 Q. So anything above 300 would be
 22 high heat?
 23 A. Low, medium and high.
 24 Q. Understood.
 25 I'm trying to get a sense of --

1 A. I understand what you want.
 2 I'm just telling you we don't talk about
 3 specific temperature ranges. It's low heat,
 4 ambient, medium heat-ish, small fires, and
 5 then large fires, lots of heat.
 6 Q. So there's no assignment of
 7 specific temperatures to these three kind of
 8 ranges?
 9 A. Correct.
 10 Q. In your training and education
 11 from 1981 to the present, what heat category
 12 does VCM fall into in connection with
 13 polymerization?
 14 MR. BRAGA: Object.
 15 THE WITNESS: Medium to high.
 16 QUESTIONS BY MR. GOMEZ:
 17 Q. From 1981 to the present,
 18 throughout these trainings and education
 19 courses and the like, what training have you
 20 received about the signals that show VCM
 21 polymerization in a railcar?
 22 MR. BRAGA: Object.
 23 THE WITNESS: Ask that question
 24 again.
 25

1 QUESTIONS BY MR. GOMEZ:
 2 Q. Sure.
 3 Throughout these trainings,
 4 from 1981 to the present, what instruction,
 5 if at all, have you received about the types
 6 of observations or the data that you can
 7 gather to assess whether polymerization is
 8 occurring in a derailed VCM car?
 9 MR. BRAGA: Same objection.
 10 THE WITNESS: When you have --
 11 when you have heat, lots of heat,
 12 applied, when your cars are involved
 13 in pool fires and such, pressure
 14 release devices begin to operate
 15 around 247 and a half PSI,
 16 approximately.
 17 When PRDs, or pressure relief
 18 devices, are going off, that means
 19 it's absorbing heat from the outside,
 20 reducing liquid volume, increasing
 21 vapor space in the cars.
 22 QUESTIONS BY MR. GOMEZ:
 23 Q. So in order to determine
 24 whether VCM is polymerizing in a derailed
 25 railcar, you're looking for, among other

1 things, PRD activation?
 2 A. PRD activation.
 3 One of the keys that we use and
 4 teach first responders is if PRDs are going
 5 off, and they stop going off and there's no
 6 major change in operations, you haven't
 7 applied large volumes of water, extinguished
 8 fires around the cars and the PRDs go off,
 9 that's a sign, that's a signal, that
 10 something potentially could be going wrong
 11 inside that car.
 12 Q. So I want to focus just on the
 13 activation rather than the activation and
 14 then the sudden stopping.
 15 Are you trained that the
 16 activation of the PRDs alone is a sign or a
 17 signal that polymerization is occurring in a
 18 derailed VCM car?
 19 A. No, sir.
 20 Q. There are other explanations
 21 for why the PRD in a derailed VCM car could
 22 be activating.
 23 Right?
 24 A. Yes, sir.
 25 Q. One of those explanations could

<p style="text-align: right;">Page 46</p> <p>1 be heating resulting in an increase in 2 pressure without polymerization occurring. 3 Right? 4 A. Yes, sir. 5 Q. And to put a fine point on it, 6 there could be exposure to fires, for 7 example, that are increasing the heat and 8 therefore increasing the pressure in a 9 derailed VCM car without polymerization 10 occurring. 11 Right? 12 A. Yes, sir. 13 Q. In the trainings that you've 14 undergone since 1981 where -- what 15 instruction, if any, have you received about 16 the connection between PRD activation and 17 oxygen infiltration in a derailed railcar? 18 MR. BRAGA: Object. 19 THE WITNESS: We get a lot of 20 training about PRD activation and 21 things that can happen, that have been 22 seen to happen. 23 QUESTIONS BY MR. GOMEZ: 24 Q. And what training do you recall 25 specific to the concept of oxygen</p>	<p style="text-align: right;">Page 48</p> <p>1 QUESTIONS BY MR. GOMEZ: 2 Q. Sure, let's start there. 3 A. There's -- we go to a lot of 4 training classes. The Chlorine Institute 5 has -- VCM is a mission chemical in 6 transportation, so every other year, every 7 third year, we have VCM-specific training. 8 We talk to manufacturers. We 9 deal with manufacturers across the country, 10 across North America, that handle VCM. And 11 their emergency response teams and us train 12 together. We talk together. 13 When we have an incident, we 14 discuss specifics of what they've seen, what 15 we've seen, to get better in the industry. 16 Q. But you don't recall anyone 17 specifically who you can testify to now 18 giving training or instruction about 19 atmospheric conditions allowing oxygen 20 infiltration via the PRD on the derailed VCM 21 car? 22 MR. LEVINE: Objection. 23 THE WITNESS: Correct. 24 QUESTIONS BY MR. GOMEZ: 25 Q. You're aware that the VCM in</p>
<p style="text-align: right;">Page 47</p> <p>1 infiltration as a result of PRD activation? 2 A. It's the discussion a lot, in a 3 lot of the classes. 4 Q. Can you give me some examples 5 of what's discussed in that respect? 6 A. When pressure is relieved from 7 a -- through a PRD, there is a time when 8 oxygen, depending on the atmosphere, 9 atmospheric conditions, locations, that 10 oxygen can be drawn back into the car. 11 Q. Okay. What are those 12 atmospheric conditions? 13 A. High elevation, low elevation, 14 different conditions, high atmospheric 15 pressure, oxygen can migrate its way back 16 into the cars even during the PRD activation. 17 Q. And who is it that has provided 18 the information or the data that leads to 19 that specific training about atmospheric 20 conditions allowing oxygen to infiltrate the 21 cars? 22 MR. LEVINE: Objection. 23 MR. BRAGA: Objection. 24 THE WITNESS: Are you looking 25 for an instructor's name?</p>	<p style="text-align: right;">Page 49</p> <p>1 the derailed railcars in the East Palestine 2 incident were -- contained stabilized VCM. 3 Right? 4 A. Correct. 5 Q. Did you know that at the time 6 you first arrived on-scene? 7 A. When I first arrived on-scene, 8 no, sir. 9 Q. Did you learn that at any point 10 between when you first arrived on-scene and 11 the vent and burn on February 6 -- 12 A. Yes. 13 Q. -- 2023? 14 Can you estimate for me when 15 you first learned? 16 A. Sunday -- Sunday morning, 17 probably. 18 Q. So not too long after you first 19 arrived on-scene. 20 Right? 21 A. Correct. 22 Q. And when you learned that the 23 VCM in the derailed railcars was stabilized, 24 did you learn specifically how it had been 25 stabilized?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. No, sir.</p> <p>2 Q. And am I correct that at least</p> <p>3 as far as your training and experience goes,</p> <p>4 it didn't really matter how it was stabilized</p> <p>5 for purposes of your work at the site?</p> <p>6 MR. BRAGA: Object.</p> <p>7 THE WITNESS: That's correct.</p> <p>8 QUESTIONS BY MR. GOMEZ:</p> <p>9 Q. So is it fair to say that when</p> <p>10 you're responding to a derailment involving</p> <p>11 VCM, you treat all the VCM cars the same?</p> <p>12 MR. BRAGA: Object.</p> <p>13 MR. LEVINE: Objection.</p> <p>14 THE WITNESS: Pretty much, yes,</p> <p>15 sir.</p> <p>16 QUESTIONS BY MR. GOMEZ:</p> <p>17 Q. And certainly for purposes of</p> <p>18 determining whether polymerization is a</p> <p>19 concern?</p> <p>20 A. Correct.</p> <p>21 Q. And that treatment really boils</p> <p>22 down to whether there's a significant amount</p> <p>23 of heat being introduced to the cars.</p> <p>24 Right?</p> <p>25 MR. LEVINE: Objection.</p>	<p style="text-align: right;">Page 52</p> <p>1 Right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Pressure curves are certainly</p> <p>4 something that you're aware of in a</p> <p>5 derailment situation.</p> <p>6 Right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And if all monomers are not the</p> <p>9 same, it's important to understand the</p> <p>10 specific chemical properties of the monomer</p> <p>11 you're dealing with in any given derailment</p> <p>12 situation.</p> <p>13 Right?</p> <p>14 MR. LEVINE: Objection.</p> <p>15 THE WITNESS: Correct.</p> <p>16 QUESTIONS BY MR. GOMEZ:</p> <p>17 Q. So in the case of East</p> <p>18 Palestine, it was important to understand the</p> <p>19 specific properties of the VCM contained in</p> <p>20 the cars that derailed.</p> <p>21 Right?</p> <p>22 MR. LEVINE: Objection.</p> <p>23 THE WITNESS: VCM in East</p> <p>24 Palestine was dealt with as it was</p> <p>25 potentially polymerizing due to the</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. BRAGA: Objection.</p> <p>2 THE WITNESS: That's correct.</p> <p>3 QUESTIONS BY MR. GOMEZ:</p> <p>4 Q. And while you treat all</p> <p>5 derailed VCM cars the same for purposes of</p> <p>6 responding to concerns of polymerization, you</p> <p>7 agree with me that you can't treat cars</p> <p>8 containing VCM the same as cars containing</p> <p>9 other monomers.</p> <p>10 Right?</p> <p>11 A. That's correct.</p> <p>12 Q. Because not all monomers are</p> <p>13 the same.</p> <p>14 Right?</p> <p>15 A. Correct.</p> <p>16 Q. They have different properties.</p> <p>17 Right?</p> <p>18 A. They do.</p> <p>19 Q. Different reactivity?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Different polymerization</p> <p>22 characteristics.</p> <p>23 Right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Different pressure curves.</p>	<p style="text-align: right;">Page 53</p> <p>1 heat.</p> <p>2 QUESTIONS BY MR. GOMEZ:</p> <p>3 Q. My question is just a little</p> <p>4 bit different.</p> <p>5 It's important to understand in</p> <p>6 connection with the East Palestine derailment</p> <p>7 the specific properties of the VCM contained</p> <p>8 in those cars.</p> <p>9 Correct?</p> <p>10 MR. LEVINE: Objection.</p> <p>11 THE WITNESS: Based on the SDS,</p> <p>12 we dealt with it as designed, yes,</p> <p>13 sir.</p> <p>14 QUESTIONS BY MR. GOMEZ:</p> <p>15 Q. You mentioned just now,</p> <p>16 actually, the SDS.</p> <p>17 Fair to say that that was a</p> <p>18 reliance document for the HAZMAT response in</p> <p>19 East Palestine derailment?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Was it the primary reliance</p> <p>22 document?</p> <p>23 MR. BRAGA: Object.</p> <p>24 THE WITNESS: It was one of the</p> <p>25 documents used.</p>

<p style="text-align: right;">Page 54</p> <p>1 QUESTIONS BY MR. GOMEZ:</p> <p>2 Q. Okay. Can you name the other</p> <p>3 ones for me that you recall?</p> <p>4 A. Condensed Chemical Dictionary.</p> <p>5 OxyChem. Oxy Vinyls' SDS. DOT guidebook.</p> <p>6 WISER. It's a program.</p> <p>7 There were probably some other</p> <p>8 ones, but those are the ones that come to</p> <p>9 mind.</p> <p>10 Q. Okay. In your line of work,</p> <p>11 you deal with SDS's frequently.</p> <p>12 Fair statement?</p> <p>13 A. Yes.</p> <p>14 Q. SDS, by the way, stands for</p> <p>15 safety data sheet?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And the safety data sheet is</p> <p>18 actually a standardized document.</p> <p>19 Right?</p> <p>20 A. That it is.</p> <p>21 Q. It's an OSHA requirement, I</p> <p>22 believe?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And it's designed to provide</p> <p>25 the same type of information in a uniform</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Correct.</p> <p>2 Q. And that's used across a</p> <p>3 variety of industries.</p> <p>4 Right?</p> <p>5 MR. LEVINE: Objection.</p> <p>6 THE WITNESS: Yes, sir.</p> <p>7 QUESTIONS BY MR. GOMEZ:</p> <p>8 Q. Across a variety of HAZMAT</p> <p>9 incidents.</p> <p>10 Right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. It's always the same document?</p> <p>13 MR. LEVINE: Objection.</p> <p>14 THE WITNESS: It's -- yes, it's</p> <p>15 a 16-section document.</p> <p>16 QUESTIONS BY MR. GOMEZ:</p> <p>17 Q. And you mentioned that it's</p> <p>18 a -- one of the reliance documents.</p> <p>19 In the East Palestine</p> <p>20 derailment, were there particular sections</p> <p>21 that were relied on in the East Palestine</p> <p>22 derailment?</p> <p>23 MR. LEVINE: Objection.</p> <p>24 THE WITNESS: Yes, sir.</p> <p>25</p>
<p style="text-align: right;">Page 55</p> <p>1 manner for any type of hazardous chemical.</p> <p>2 Right?</p> <p>3 MR. LEVINE: Objection.</p> <p>4 MR. BRAGA: Objection.</p> <p>5 THE WITNESS: Yes, sir.</p> <p>6 QUESTIONS BY MR. GOMEZ:</p> <p>7 Q. The SDS is also a document that</p> <p>8 applies to a wide variety of scenarios.</p> <p>9 Right?</p> <p>10 MR. LEVINE: Objection.</p> <p>11 THE WITNESS: I don't</p> <p>12 understand your question.</p> <p>13 QUESTIONS BY MR. GOMEZ:</p> <p>14 Q. Sure.</p> <p>15 An SDS isn't specific to a</p> <p>16 derailment.</p> <p>17 Right?</p> <p>18 A. That's correct.</p> <p>19 Q. An SDS isn't created</p> <p>20 specifically for rail transportation?</p> <p>21 A. An SDS is created for</p> <p>22 information.</p> <p>23 Q. There's one SDS created for one</p> <p>24 type of chemical.</p> <p>25 Right?</p>	<p style="text-align: right;">Page 57</p> <p>1 QUESTIONS BY MR. GOMEZ:</p> <p>2 Q. Which sections were those?</p> <p>3 A. 1 through 16.</p> <p>4 Q. So the whole document?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Right?</p> <p>7 So if you were relying on the</p> <p>8 whole document, you agree with me it's</p> <p>9 important to read the whole document.</p> <p>10 Right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And to understand the document</p> <p>13 as a whole.</p> <p>14 Right?</p> <p>15 A. Yes, sir.</p> <p>16 (Day Exhibit 1 marked for</p> <p>17 identification.)</p> <p>18 QUESTIONS BY MR. GOMEZ:</p> <p>19 Q. Let's pull up Document</p> <p>20 Number 30, which we'll mark as Exhibit 1 to</p> <p>21 Mr. Day's deposition.</p> <p>22 Mr. Day, our court reporter is</p> <p>23 going to put a sticker on it, and then you'll</p> <p>24 have a copy.</p> <p>25 Mr. Day, when I -- just as a</p>

<p style="text-align: right;">Page 58</p> <p>1 general instruction, when I show you 2 documents today, feel free to take a look at 3 them before I ask you questions. I'm not 4 going to repeat that over and over again. 5 Let me know when you're ready 6 for me to ask some questions about that 7 document in front of you. 8 MR. BRAGA: While he's doing 9 that, can somebody tell me again what 10 the exhibit number was? 11 MR. GOMEZ: This is 1. 12 MR. BRAGA: It's a good place 13 to start. 14 MR. GOMEZ: Got to start 15 somewhere. 16 QUESTIONS BY MR. GOMEZ: 17 Q. Mr. Day, if you want to spend 18 some time with the document, just let me 19 know. We'll go off the record while you do 20 that. 21 A. No, that's okay. 22 Q. Are you ready for me to ask 23 questions? 24 A. No, not yet. 25 Okay.</p>	<p style="text-align: right;">Page 60</p> <p>1 chloride monomer. 2 Q. And vinyl chloride monomer can 3 exist in an unstable form and a stable form. 4 Right? 5 A. Sure. 6 Q. And this SDS applies equally to 7 both. 8 Right? 9 A. Correct. 10 Q. If we look -- 11 A. Let me rephrase that. I 12 believe so. 13 Q. You believe so? Okay. 14 A. I believe so. 15 Q. Let's take a look at some of 16 the statements made in the -- in the 17 document. 18 On page 2 -- it's at the 19 bottom. That's what I'll be referring to, 2 20 of 18. 21 A. Yes, sir. 22 Q. There's a -- there's a 23 statement towards the middle of the page. It 24 says, "Physical hazards." 25 Do you see that?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. The document that we've marked 2 as Exhibit 1 to your deposition, on the cover 3 page, it's actually the Group D, Exhibit 26 4 to the NTSB investigative hearings. 5 Do you see that? 6 A. Yes, sir. 7 Q. And the title provided, at 8 least by the NTSB, is "Vinyl Chloride Monomer 9 Safety Data Sheet." 10 Right? 11 A. Yes, sir. 12 Q. As we get into the substance of 13 the document itself, the document is the Oxy 14 Vinyls safety data sheet for vinyl chloride 15 monomer. 16 Right? 17 A. Yes, sir. 18 Q. Looking just at the title, it 19 says, "Vinyl Chloride, parentheses, Monomer." 20 Right? 21 A. Yes, sir. 22 Q. This SDS is not specific to VCM 23 in a stabilized form. 24 Right? 25 A. This is an SDS for vinyl</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Yes, sir. 2 Q. And it reads, "May mass explode 3 in fire. Extremely flammable gas. Contains 4 gas under pressure. May explode if heated. 5 Polymerization can occur." 6 Did I read that correctly? 7 A. Yes, sir. 8 Q. When you testified that this 9 document, the Oxy Vinyls SDS, is one that you 10 relied on in responding to the derailment, is 11 that statement one of the statements in the 12 SDS you relied on? 13 A. Yes, sir. 14 Q. Let's go to the, let's see, the 15 fourth page. And I'll direct you -- just a 16 little bit below the top, there's a section 17 that says, "Physical Hazards Not Otherwise 18 Classified." 19 Do you see that? 20 A. Yes, sir. 21 Q. And it says, "Polymerization 22 can occur." 23 Right? 24 A. Yes, sir. 25 Q. Is that also a statement from</p>

<p style="text-align: right;">Page 62</p> <p>1 the SDS that you relied on in responding to 2 the East Palestine derailment? 3 A. That is a statement in the SDS, 4 yes, sir. 5 Q. Okay. But is it a statement 6 that you relied on in responding to the East 7 Palestine derailment? 8 A. It's a statement that's in the 9 SDS. 10 Q. So because you relied on the 11 SDS, you relied on that statement. 12 Is that fair? 13 A. Fair enough. 14 Q. And a similar statement appears 15 on page 6, right above the section header for 16 Section 6. 17 Let me know if you see that. 18 A. Page 6, yes, sir. 19 Q. Page 6, right above where it 20 says, "Section 6, Accidental Release 21 Measures," there's a section that says, 22 "Physical Hazards Not Otherwise Classified." 23 Right? 24 A. Yes, sir. 25 Q. And that's the same one that we</p>	<p style="text-align: right;">Page 64</p> <p>1 catalytic metals such as copper, aluminum and 2 their alloys and certain catalytic 3 impurities. Avoid elevated temperatures, 4 oxidizing agents, oxides of nitrogen, oxygen, 5 peroxides, other polymerization 6 catalysts/initiators, air and sunlight." 7 Did I read that correctly? 8 A. Yes, sir, you did. 9 Q. That section that we just read, 10 Hazardous Polymerization within Section 10 of 11 the Oxy Vinyls SDS, is that specifically a 12 part of the SDS that you relied on in 13 responding to the derailment? 14 A. Yes, sir. 15 Q. Okay. If we go back to the 16 beginning of the document, you testified a 17 moment ago that you relied on the whole SDS. 18 Right? 19 A. Yes, sir. 20 Q. Sections 1 through 16. 21 A. Yes, sir. 22 Q. Right? 23 And that in order to rely on 24 that whole document, you have to read the 25 document as a whole.</p>
<p style="text-align: right;">Page 63</p> <p>1 just read, polymerization can occur. 2 Right? 3 A. It's a different page, but it's 4 the same statement. 5 Q. Sure. 6 And we see that statement again 7 on page 8, right towards the top. Let me 8 know if you see that. 9 A. Yes, sir. 10 Q. And lastly, on page 10 there's 11 a section titled "Hazardous Polymerization." 12 Can you see -- tell me if you 13 see that. 14 A. Yes, sir. 15 Q. And that section is actually 16 under a larger section called Section 10, 17 Stability and Reactivity. 18 Right? 19 A. Yes, sir. 20 Q. And if we read it, it says, 21 "Polymerization can occur. Exposure to the 22 following conditions or mixtures with the 23 following elements and materials can cause 24 explosive or violent polymerization of VCM: 25 air, sunlight, excessive heat, oxidizers,</p>	<p style="text-align: right;">Page 65</p> <p>1 Right? 2 A. That's correct. 3 Q. So let's look at some other 4 statements about polymerization. 5 A. No problem. 6 Q. There is a section there, 7 precautionary statement, on page 2. 8 Do you see that? 9 A. Yes, sir. 10 Q. It says -- second sentence 11 says, "Requires stabilizer to prevent 12 potential dangerous polymerization." 13 Do you see that? 14 A. Yes, sir. 15 Q. Is that a statement that you 16 relied on in connection with the response to 17 the East Palestine derailment? 18 A. The stable -- yes, sir. Stick 19 with that. 20 Q. Page 3. There's a section 21 entitled "GHS - Precautionary Statement(s) - 22 Prevention." 23 Do you see that, toward the 24 middle of the page? 25 A. Yes, sir.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. And the second bullet point 2 reads, "Stabilize with a polymerization 3 inhibitor," parentheses, chemical name which 4 I will omit, "or purging to remove oxygen." 5 With the exception of the 6 omission, did I read that correctly? 7 A. Yes, sir. 8 Q. Is that a statement that you 9 also relied on in this SDS in the course of 10 responding to the East Palestine derailment? 11 A. I couldn't say that I was -- it 12 was used. 13 Q. But it's in one of the 16 14 sections of the SDS. 15 Right? 16 A. That is correct. 17 Q. And you relied on the whole 18 SDS. 19 Right? 20 A. Yes, sir. 21 Q. Let's skip down to page 10, 22 that section we were just discussing, 23 Section 10, Stability and Reactivity. 24 A. Yes, sir. 25 Q. Very top section reads,</p>	<p style="text-align: right;">Page 68</p> <p>1 long day, so my question is simply: If this 2 statement is in the document and you relied 3 on the whole document, can you confirm, yes 4 or no, that you relied on the statement under 5 the Chemical Stability heading on page 10? 6 MR. LEVINE: Objection. 7 MR. BRAGA: Objection. 8 THE WITNESS: I don't know that 9 we used that specific document -- or 10 documentation, the statements, the 11 wording. I don't know that we read 12 that specific spot. Yes, we used the 13 document. 14 QUESTIONS BY MR. GOMEZ: 15 Q. Okay. Would that be the same 16 answer for the next section, Reactivity? 17 A. Yes, sir. 18 Q. And that reads, "Explosive or 19 violent polymerization can occur when exposed 20 to air, sunlight or excessive heat if not 21 properly stabilized." 22 Right? 23 A. Yes, sir. 24 Q. And you'll agree with me that 25 that's a statement in the SDS.</p>
<p style="text-align: right;">Page 67</p> <p>1 "Chemical Stability: Generally stable at 2 normal temperatures and pressures; however, 3 may violently polymerize or generate other 4 hazardous conditions when not stabilized 5 and/or stored correctly." 6 Did I read that correctly? 7 A. Yes, sir. 8 Q. Is this a section that you 9 relied on in the course of responding to the 10 East Palestine derailment? 11 A. It's in the document, yes, sir. 12 Q. So the answer is, yes, you did 13 rely on it? 14 A. The document, yes, sir. 15 Q. And this is a statement in the 16 document. 17 Right? 18 A. Okay. This is going to be a 19 long, long day if we're going to keep going 20 back to this exact same discussion. 21 We used the entire document. 22 We had different people reading this 23 document. We used different sections of it, 24 yes, sir. 25 Q. Okay. I agree it'll be a long,</p>	<p style="text-align: right;">Page 69</p> <p>1 Right? 2 A. Yes, sir. 3 Q. Now, at any point in time when 4 you were responding to the East Palestine 5 derailment, do you recall any HAZMAT 6 responders expressing confusion about the 7 SDS? 8 MR. BRAGA: I'm sorry, can you 9 read that back or restate it? 10 MR. GOMEZ: Sure. 11 Why don't I just ask it again. 12 MR. BRAGA: Whatever. 13 QUESTIONS BY MR. GOMEZ: 14 Q. At any point in time while you 15 were responding to the derailment, do you 16 recall discussion amongst the HAZMAT 17 responders about confusion generated by this 18 SDS? 19 A. There was a lot of discussion. 20 You have to define what responding to. Are 21 we responding mobilizing to the site? Are we 22 working on the site? What part are you 23 talking about? 24 Q. Sure. 25 At any point in time between</p>

<p style="text-align: right;">Page 70</p> <p>1 when you first arrived on-site the morning of 2 February 5th to the time of the vent and 3 burn, that's what I'm referring to. 4 A. Yes, there was a lot of 5 confusion. 6 Q. Okay. Specifically confusion 7 about the document. 8 Right? 9 A. And statements from folks about 10 the stabilization of the material, yes, sir. 11 Q. And this document, as you 12 understand it, was written by Oxy Vinyls. 13 Right? 14 A. That's correct. 15 Q. And this document actually 16 provides contact information so that you can 17 discuss the SDS with Oxy Vinyls. 18 Right? 19 A. That is correct. 20 MR. LEVINE: Objection. 21 QUESTIONS BY MR. GOMEZ: 22 Q. And you, in fact, were in 23 communication with Oxy Vinyls between when 24 you arrived on-site and the vent and burn. 25 Right?</p>	<p style="text-align: right;">Page 72</p> <p>1 folks from Dallas, and later on during the 2 day, the time I don't know, some people 3 were -- a specific person said that 4 polymerization cannot occur. Made us scratch 5 our heads. 6 And reverting back to previous 7 training, polymerization could occur. And 8 when the Oxy folks showed up on-site, they 9 were confused with the discuss -- with that 10 statement as well. 11 Q. When you refer to the Oxy 12 folks, you're referring to the three 13 gentlemen who were on-site? 14 A. Yes, sir. 15 Q. And I want to make sure I 16 understand what you testified to. 17 They also expressed confusion 18 about the SDS? 19 A. They expressed confusion about 20 the statement about the material would not 21 polymerize. 22 Q. But regardless of who had that 23 confusion, whether it was the three 24 representatives in the field or the first 25 responders, you were in communication with</p>
<p style="text-align: right;">Page 71</p> <p>1 A. That is correct. 2 Q. In fact, there were 3 representatives of Oxy Vinyls on the site 4 physically. 5 Right? 6 A. There were. 7 Q. Did you ever express to the 8 folks at Oxy Vinyls, whether physically in 9 East Palestine or otherwise, that you were 10 confused about the statements made in the 11 SDS? 12 A. Yes, sir. 13 Q. When? 14 A. The first day. Sunday. 15 Q. Sunday morning? Sunday 16 afternoon? 17 A. Sunday morning. 18 Q. Who did you express that to? 19 A. The three folks that were there 20 from Oxy. 21 Q. Do you recall roughly what 22 time? 23 A. I don't remember what time they 24 showed up. I know we had a conversation in a 25 conference call early that morning with the</p>	<p style="text-align: right;">Page 73</p> <p>1 experts at Oxy about this document. 2 Right? 3 MR. LEVINE: Objection. 4 MR. BRAGA: Object to the form. 5 THE WITNESS: That's correct. 6 QUESTIONS BY MR. GOMEZ: 7 Q. And do you recall anyone asking 8 those folks pointedly how to reconcile any 9 confusion or inconsistencies about 10 polymerization in this document? 11 MR. LEVINE: Objection. 12 MR. BRAGA: Objection. 13 THE WITNESS: I don't recall. 14 QUESTIONS BY MR. GOMEZ: 15 Q. But you do recall that on 16 several occasions, the experts in VCM and 17 this document stated polymerization was not 18 occurring. 19 Right? 20 MR. LEVINE: Objection. 21 THE WITNESS: I heard several 22 people say that, yes, sir. 23 QUESTIONS BY MR. GOMEZ: 24 Q. And that would be the folks in 25 Dallas, Texas.</p>

<p style="text-align: right;">Page 74</p> <p>1 Right?</p> <p>2 A. That's correct.</p> <p>3 Q. Who are experts in VCM?</p> <p>4 MR. BRAGA: Objection.</p> <p>5 MR. LEVINE: Objection.</p> <p>6 THE WITNESS: I don't know if</p> <p>7 they're experts in VCM or not.</p> <p>8 QUESTIONS BY MR. GOMEZ:</p> <p>9 Q. Fair enough.</p> <p>10 They're certainly the</p> <p>11 manufacturers of the product in the railcars.</p> <p>12 Right?</p> <p>13 A. That, they are.</p> <p>14 MR. LEVINE: Objection.</p> <p>15 QUESTIONS BY MR. GOMEZ:</p> <p>16 Q. And the authors of this SDS?</p> <p>17 MR. LEVINE: Objection.</p> <p>18 THE WITNESS: Someone within</p> <p>19 Oxy is the author, yes, sir.</p> <p>20 QUESTIONS BY MR. GOMEZ:</p> <p>21 Q. Let's put that one aside. And</p> <p>22 I think you mentioned also relying on, I</p> <p>23 think you called it, the DOT guide.</p> <p>24 Is that right?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 76</p> <p>1 break.</p> <p>2 Am I correct that none of your</p> <p>3 training from 1981 to the present has</p> <p>4 indicated that if oxygen infiltrates a</p> <p>5 derailed VCM car, it's the oxygen that can</p> <p>6 cause the polymerization reaction to occur?</p> <p>7 MR. LEVINE: Objection.</p> <p>8 THE WITNESS: You need to ask</p> <p>9 that question again. I'm --</p> <p>10 QUESTIONS BY MR. GOMEZ:</p> <p>11 Q. Sure.</p> <p>12 A. -- lost.</p> <p>13 Q. We talked about oxygen</p> <p>14 infiltration.</p> <p>15 Remember that? Right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. In any of your training, HAZMAT</p> <p>18 training, from 1981 to the present, have you</p> <p>19 been told or learned that the oxygen is</p> <p>20 itself what initiates the polymerization</p> <p>21 reaction with VCM?</p> <p>22 A. I've learned that oxygen can</p> <p>23 enter the car, yes, sir.</p> <p>24 Q. Okay. Enter the car.</p> <p>25 I'm just specific to whether</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Is that also known as the</p> <p>2 Emergency Response Guide?</p> <p>3 A. Yes, sir.</p> <p>4 (Day Exhibit 2 marked for</p> <p>5 identification.)</p> <p>6 QUESTIONS BY MR. GOMEZ:</p> <p>7 Q. Let's pull up Document</p> <p>8 Number 119, and we'll mark that as Exhibit 2.</p> <p>9 MR. GOMEZ: Why don't we</p> <p>10 actually go off record and we'll take</p> <p>11 a ten-minute break.</p> <p>12 VIDEOGRAPHER: The time is</p> <p>13 10:02 a.m., and we're going off the</p> <p>14 record.</p> <p>15 (Off the record at 10:02 a.m.)</p> <p>16 VIDEOGRAPHER: The time is</p> <p>17 10:13 a.m., and we're back on the</p> <p>18 record.</p> <p>19 QUESTIONS BY MR. GOMEZ:</p> <p>20 Q. Mr. Day, we marked Exhibit 2 to</p> <p>21 your deposition before we took a break, but I</p> <p>22 do to want to revisit one topic very briefly</p> <p>23 before we discuss this exhibit.</p> <p>24 We talked about your training</p> <p>25 regarding oxygen infiltration before the</p>	<p style="text-align: right;">Page 77</p> <p>1 it's the oxygen that starts the</p> <p>2 polymerization reaction in a VCM car.</p> <p>3 A. I don't know.</p> <p>4 Q. You were a panelist on the NTSB</p> <p>5 hearings in East Palestine in June of 2023.</p> <p>6 Right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. One of your fellow panelists</p> <p>9 was Dr. William Carol.</p> <p>10 Do you remember that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Dr. Carol is a chemist?</p> <p>13 A. I believe so, yes, sir.</p> <p>14 Q. And he made several statements</p> <p>15 about the chemistry and -- chemistry and the</p> <p>16 properties of VCM.</p> <p>17 My question to you is, do you</p> <p>18 recall disagreeing with any of the statements</p> <p>19 he made about the chemistry of VCM?</p> <p>20 MR. LEVINE: Objection.</p> <p>21 MR. BRAGA: Objection.</p> <p>22 THE WITNESS: Formally</p> <p>23 disagreeing, no, sir.</p> <p>24 QUESTIONS BY MR. GOMEZ:</p> <p>25 Q. How about informally</p>

<p style="text-align: right;">Page 78</p> <p>1 disagreeing?</p> <p>2 A. Yes, because several times he</p> <p>3 stated that he didn't know why the statement</p> <p>4 of polymerization potential was on the SDS.</p> <p>5 Q. Okay. So if you took issue, it</p> <p>6 was with his statements about some of the</p> <p>7 comments that are in the SDS?</p> <p>8 A. Correct.</p> <p>9 MR. LEVINE: Objection.</p> <p>10 QUESTIONS BY MR. GOMEZ:</p> <p>11 Q. Was there anything else that</p> <p>12 you recall taking exception to or disagreeing</p> <p>13 with in what Dr. Carol said about the</p> <p>14 chemistry of VCM?</p> <p>15 MR. LEVINE: Objection.</p> <p>16 THE WITNESS: I'd have to refer</p> <p>17 back to read his document -- or his</p> <p>18 testimony.</p> <p>19 QUESTIONS BY MR. GOMEZ:</p> <p>20 Q. But fair to say nothing stands</p> <p>21 out right now?</p> <p>22 A. Right now --</p> <p>23 MR. LEVINE: Objection.</p> <p>24 THE WITNESS: -- no, sir.</p> <p>25</p>	<p style="text-align: right;">Page 80</p> <p>1 QUESTIONS BY MR. GOMEZ:</p> <p>2 Q. Okay. You don't know that 116P</p> <p>3 is the designation for VCM?</p> <p>4 A. Correct.</p> <p>5 Q. I'll represent to you that 116P</p> <p>6 is the -- is the designation for VCM.</p> <p>7 So if you can assume that for</p> <p>8 purposes of my questions, I've just got a</p> <p>9 couple for you on this document.</p> <p>10 MR. LEVINE: Objection.</p> <p>11 QUESTIONS BY MR. GOMEZ:</p> <p>12 Q. Looking at this ERG --</p> <p>13 A. Hang on just one second. I</p> <p>14 need to see the book. I don't know that 116</p> <p>15 is -- this -- you got to understand, DOT</p> <p>16 guidebook is -- it's a book that first</p> <p>17 responders use for information. You get a --</p> <p>18 you look at the chemical, whether the name of</p> <p>19 the chemical or the UM number, and it takes</p> <p>20 you to a guide.</p> <p>21 The guides are -- these guides</p> <p>22 are set up lumping several chemicals as one,</p> <p>23 into one guide. Like this one is for</p> <p>24 acetylene as well.</p> <p>25 Q. Okay. That's actually my</p>
<p style="text-align: right;">Page 79</p> <p>1 QUESTIONS BY MR. GOMEZ:</p> <p>2 Q. Let's look at document -- well,</p> <p>3 Exhibit Number 2.</p> <p>4 Mr. Day, this is the Group C,</p> <p>5 Exhibit 3 to the NTSB hearings.</p> <p>6 Right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And the title is "Emergency</p> <p>9 Response Guide, parentheses, ERG, 2020, Guide</p> <p>10 116, Vinyl Chloride."</p> <p>11 Right?</p> <p>12 A. Flammable gas unstable.</p> <p>13 Q. This document, specifically</p> <p>14 Guide 116 from the 2020 ERG, is this another</p> <p>15 reliance document in the course of responding</p> <p>16 to the derailment?</p> <p>17 A. This is a couple pages from</p> <p>18 that, yes, sir.</p> <p>19 Q. And these are the pages that</p> <p>20 are specific to VCM.</p> <p>21 Right?</p> <p>22 MR. BRAGA: Objection.</p> <p>23 THE WITNESS: I need to see the</p> <p>24 book.</p> <p>25</p>	<p style="text-align: right;">Page 81</p> <p>1 question. Right?</p> <p>2 These guides, including looking</p> <p>3 this one we're looking at, 116, they just</p> <p>4 don't apply to just one particular chemical.</p> <p>5 Right?</p> <p>6 MR. BRAGA: Objection.</p> <p>7 THE WITNESS: That is correct.</p> <p>8 QUESTIONS BY MR. GOMEZ:</p> <p>9 Q. Right.</p> <p>10 They apply to several that fall</p> <p>11 within a particular categorization or</p> <p>12 classification.</p> <p>13 Right?</p> <p>14 MR. BRAGA: Object.</p> <p>15 THE WITNESS: Yes, sir.</p> <p>16 QUESTIONS BY MR. GOMEZ:</p> <p>17 Q. In this case, the guide we're</p> <p>18 looking at, Guide 116, applies to Gases -</p> <p>19 Flammable (Unstable).</p> <p>20 Right?</p> <p>21 A. I'm going to have to take your</p> <p>22 word for it, yes, sir.</p> <p>23 Q. Well, I'm just reading the top</p> <p>24 of the guide.</p> <p>25 Do you agree with me that</p>

<p style="text-align: right;">Page 82</p> <p>1 that's what it says?</p> <p>2 MR. LEVINE: Objection.</p> <p>3 THE WITNESS: I agree that</p> <p>4 that's what it says.</p> <p>5 QUESTIONS BY MR. GOMEZ:</p> <p>6 Q. Okay. That's my only question.</p> <p>7 And it also says, if we look</p> <p>8 underneath fire or explosion, there's a</p> <p>9 bullet point that reads, "Those substances</p> <p>10 designated with a P may polymerize</p> <p>11 explosively when heated or involved in a</p> <p>12 fire."</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes, sir.</p> <p>15 Q. My question is, is there</p> <p>16 anything in these two pages of the ERG that</p> <p>17 we're looking at that specifically identifies</p> <p>18 vinyl chloride monomer?</p> <p>19 A. No, sir.</p> <p>20 Q. And is there anything in these</p> <p>21 two pages that we're looking at of the 2020</p> <p>22 ERG that specifically discusses stabilized</p> <p>23 vinyl chloride monomer?</p> <p>24 A. Not that I know of, no, sir.</p> <p>25 Q. Okay. And in these two pages</p>	<p style="text-align: right;">Page 84</p> <p>1 Chlorine Institute. Or a group within The</p> <p>2 Chlorine Institute.</p> <p>3 Q. And SRS is an associate member</p> <p>4 of The Chlorine Institute.</p> <p>5 Right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. As an associate member of The</p> <p>8 Chlorine Institute, or SRS as an associate</p> <p>9 member of The Chlorine Institute, are you</p> <p>10 familiar with the Pamphlet 171 on vinyl</p> <p>11 chloride monomer?</p> <p>12 A. There is a pamphlet about VCM,</p> <p>13 yes, sir.</p> <p>14 (Day Exhibit 3 marked for</p> <p>15 identification.)</p> <p>16 QUESTIONS BY MR. GOMEZ:</p> <p>17 Q. Okay. Let's bring up</p> <p>18 Document 112. We'll mark that as Exhibit 3.</p> <p>19 And, Mr. Day, I will tell you</p> <p>20 that I'm going to direct your attention to</p> <p>21 just a handful of pages that start roughly</p> <p>22 halfway through the packet.</p> <p>23 The first slide is titled "VCM</p> <p>24 Workshop."</p> <p>25 MR. LEVINE: There's no page</p>
<p style="text-align: right;">Page 83</p> <p>1 of Guide 116 to the 2020 ERG, do you see any</p> <p>2 statements that talk about how stabilization</p> <p>3 affects the ability of flammable gases to</p> <p>4 polymerize?</p> <p>5 MR. BRAGA: Object.</p> <p>6 THE WITNESS: I'll refer back</p> <p>7 to the very beginning. I don't know</p> <p>8 that 116 is the guidebook guide for</p> <p>9 vinyl chloride in the DOT guidebook.</p> <p>10 QUESTIONS BY MR. GOMEZ:</p> <p>11 Q. My question is not about vinyl</p> <p>12 chloride. I'm going to ask it generally.</p> <p>13 Do you see any statements in</p> <p>14 the two pages of Guide 116 to the 2020 ERG</p> <p>15 that talk about how stabilization interacts</p> <p>16 with the potential for polymerization?</p> <p>17 A. I'll need to read this.</p> <p>18 No, sir.</p> <p>19 Q. We can put that one aside.</p> <p>20 We discussed CHLOREP earlier.</p> <p>21 Do you remember that?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And that's part of The Chlorine</p> <p>24 Institute?</p> <p>25 A. It's a division within The</p>	<p style="text-align: right;">Page 85</p> <p>1 numbers?</p> <p>2 MR. GOMEZ: Unfortunately, no.</p> <p>3 It's 58 of the PDF, but that's not</p> <p>4 going to help you much.</p> <p>5 Yep, you found it.</p> <p>6 QUESTIONS BY MR. GOMEZ:</p> <p>7 Q. My question to you, Mr. Day,</p> <p>8 is, the page that you're looking at</p> <p>9 references the Transportation & Emergency</p> <p>10 Workshop held July 13, 2016, in Calvert City,</p> <p>11 Kentucky, Westlake host.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Is this a workshop that you</p> <p>15 attended?</p> <p>16 A. Obviously, yes, sir.</p> <p>17 Q. Right?</p> <p>18 Your name is listed there, and</p> <p>19 next to it is USES.</p> <p>20 Right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What's USES?</p> <p>23 A. United States Environmental</p> <p>24 Services.</p> <p>25 Q. Is that at the time your</p>

<p style="text-align: right;">Page 86</p> <p>1 employer?</p> <p>2 A. That is.</p> <p>3 Q. And there's also a reference to</p> <p>4 a Drew McCarty.</p> <p>5 Do you see that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And next to his name is SPSI.</p> <p>8 Right?</p> <p>9 A. That's correct.</p> <p>10 Q. SPSI is one of the contractors</p> <p>11 that responded to the derailment in East</p> <p>12 Palestine.</p> <p>13 Right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And specifically Mr. McCarty</p> <p>16 responded to the derailment.</p> <p>17 Right?</p> <p>18 A. That's correct.</p> <p>19 Q. The next page of this</p> <p>20 presentation references the VCM workshop at</p> <p>21 the top and notes a "Detailed discussion of:</p> <p>22 Physical & Chemical Properties."</p> <p>23 Do you see that?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Do you recall participating in</p>	<p style="text-align: right;">Page 88</p> <p>1 Gina.</p> <p>2 Can you bring up Document</p> <p>3 Number 137, which we'll mark as Exhibit 4?</p> <p>4 Mr. Day, this Exhibit 4 that</p> <p>5 we've just handed to you is Pamphlet 171 from</p> <p>6 The Chlorine Institute titled "Vinyl Chloride</p> <p>7 Monomer VCM Tank Car & Cargo Tank Handling</p> <p>8 Manual."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. It appears to be roughly a</p> <p>12 63-paged document.</p> <p>13 My question to you is, is this</p> <p>14 document that we've marked as Exhibit 4 one</p> <p>15 of the documents that you relied on in the</p> <p>16 East Palestine -- in responding to the East</p> <p>17 Palestinederailment?</p> <p>18 A. Information in it, yes, sir.</p> <p>19 Q. I want to go through some of</p> <p>20 that information to understand what it was</p> <p>21 exactly that you relied on.</p> <p>22 On page -- the page numbers are</p> <p>23 marked on the top right corner, just for your</p> <p>24 information.</p> <p>25 On page 3, there's a section</p>
<p style="text-align: right;">Page 87</p> <p>1 a Chlorine Institute workshop in or around</p> <p>2 2016 where you discussed VCM physical and</p> <p>3 chemical properties?</p> <p>4 A. I remember the class,</p> <p>5 basically, yes.</p> <p>6 Q. The last bullet point of that</p> <p>7 page notes, "Discussion will be used as a</p> <p>8 baseline for pamphlet development."</p> <p>9 Do you see that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did you participate in The</p> <p>12 Chlorine Institute's preparation of any</p> <p>13 pamphlets regarding vinyl chloride monomer?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. We can put that one</p> <p>16 aside.</p> <p>17 MR. BRAGA: The whole exhibit?</p> <p>18 MR. GOMEZ: Yes.</p> <p>19 MR. BRAGA: Okay.</p> <p>20 (Day Exhibit 4 marked for</p> <p>21 identification.)</p> <p>22 QUESTIONS BY MR. GOMEZ:</p> <p>23 Q. Let's bring up Document</p> <p>24 Number 32, which we'll mark as Exhibit 4.</p> <p>25 Let's actually scratch that,</p>	<p style="text-align: right;">Page 89</p> <p>1 that says -- that's 1.5, Disclaimer.</p> <p>2 Do you see that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And there's a sentence that</p> <p>5 begins with the word "moreover" and reads,</p> <p>6 "Moreover, it should not be assumed that</p> <p>7 every acceptable procedure is included or</p> <p>8 that special circumstances may not warrant</p> <p>9 modified or additional procedure. The user</p> <p>10 should be aware that changing technology or</p> <p>11 regulations may require a change in the</p> <p>12 recommendations herein."</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes, sir.</p> <p>15 Q. When you were relying on</p> <p>16 certain information in this document,</p> <p>17 Pamphlet 171, were you aware of this</p> <p>18 disclaimer?</p> <p>19 A. I don't pay that much attention</p> <p>20 to the disclaimers, no, sir.</p> <p>21 Q. Okay. Let's look at page 4.</p> <p>22 There's Section 2.2, VCM and</p> <p>23 Transportation.</p> <p>24 Do you see that?</p> <p>25 A. Yes, sir.</p>

1 Q. And the last sentence of that
2 section reads, "VCM is shipped as a
3 compressed liquified gas and must be
4 stabilized by appropriate means, such as the
5 addition of a chemical inhibitor or purging
6 to remove oxygen, to prevent dangerous
7 polymerization," parentheses, several
8 regulations.

9 Did I read that right?

10 A. Yes, sir.

11 Q. Is this statement in
12 Section 2.2 a statement that you relied on in
13 the course of responding to the East
14 Palestine derailment?

15 A. It's a statement in this
16 document, yes, sir. I don't know that we
17 used that specific statement or concerned
18 about it.

19 Q. Section 2.3, right below that,
20 Polymerization and Other Reaction
21 Considerations.

22 Do you see that section?

23 A. Yes, sir.

24 Q. It reads, "VCM is shipped in a
25 stabilized state and is generally stable at

1 normal temperatures and pressures."

2 Right?

3 A. Yes, sir.

4 Q. It goes on to say, "However,
5 certain conditions or mixtures with certain
6 materials can cause VCM to violently
7 polymerize or other hazardous conditions."

8 Right?

9 A. It does.

10 Q. The next sentence, "Exposure to
11 the following conditions or mixtures with the
12 following elements and materials can cause
13 explosive or violent polymerization of VCM."

14 Right?

15 A. That's correct.

16 Q. And one of the bullet points is
17 excessive heat.

18 Do you see that?

19 A. That's correct.

20 Q. Are these statements statements
21 that you relied on in the course of
22 responding to the East Palestine derailment?

23 A. We -- yes, sir.

24 Q. The document doesn't define
25 what excessive heat is.

1 Do you agree with me on that?

2 A. Yes, sir.

3 Q. What did you take excessive
4 heat to mean in this context?

5 A. Excessive heat.

6 Q. How do you define "excessive
7 heat"?

8 A. Excessive heat.

9 Q. What makes heat more or less
10 excessive?

11 A. Can you stand it or not.

12 Q. Can you stand it, like standing
13 next to it?

14 A. Yes, sir.

15 Q. So if you can stand next to it,
16 it's not excessive heat.

17 Right?

18 A. Correct.

19 Q. If you can't stand next to it,
20 it's excessive heat?

21 A. If you're exposed to it and you
22 get burned, it's probably excessive heat.

23 Q. Okay. There's no more granular
24 kind of definition of what excessive heat is
25 to you?

1 A. No, sir.

2 Q. If we go on to the next page of
3 the document, this Pamphlet 171 provides some
4 specific comments about heat ranges and vinyl
5 chloride monomer.

6 Do you see that in the section
7 that starts with "In addition to violent
8 polymerization"?

9 A. I do.

10 Q. Okay. And I'll read that into
11 the record. It says, "In addition to violent
12 polymerization, VCM may also react with
13 organic peroxides, strong bases and oxidizing
14 agents, resulting in potential heat
15 generation, fire and/or explosion."

16 Did I read that right?

17 A. Yes, sir.

18 Q. The next sentence says, "In
19 particular, at 59 degrees to 406.4 degrees
20 Fahrenheit, 15 degrees Celsius to 208 degrees
21 Celsius, ultraviolet, UV, can initiate a
22 reaction between VCM with excessive oxygen to
23 produce peroxides; it's also commonly
24 referred to as polyperoxides, polyvinyl
25 peroxides."

<p style="text-align: right;">Page 94</p> <p>1 Did I read that right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. "These reactants can</p> <p>4 automatically ignite on their own to create</p> <p>5 an explosive condition under extreme heat or</p> <p>6 impact."</p> <p>7 Right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. So just focusing on this</p> <p>10 statement about what can happen to VCM</p> <p>11 between heat ranges of 59 degrees and</p> <p>12 406.4 degrees Fahrenheit, is this a statement</p> <p>13 that you relied on in the course of</p> <p>14 responding to the East Palestine derailment?</p> <p>15 A. Yes, sir.</p> <p>16 Q. The next sentence talks about</p> <p>17 what happens at a different heat range.</p> <p>18 It says, "Further heating to</p> <p>19 676.4 degrees Fahrenheit, 358 degrees</p> <p>20 Celsius, causes peroxides to decompose to</p> <p>21 formaldehyde, carbon monoxide and hydrogen</p> <p>22 chloride. Peroxides may also cause</p> <p>23 uncontrollable polymerization reactions at</p> <p>24 high concentrations or temperatures."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 96</p> <p>1 cars.</p> <p>2 QUESTIONS BY MR. GOMEZ:</p> <p>3 Q. Were you aware of the</p> <p>4 temperature ranges that Pamphlet 171 talks</p> <p>5 about in connection with polymerization on</p> <p>6 page 5 of this exhibit during the derailment?</p> <p>7 A. I did not.</p> <p>8 Q. The next page, page 6, there's</p> <p>9 a Section 2.6, Temperatures Considerations.</p> <p>10 Do you see that?</p> <p>11 A. Yes, sir, I do.</p> <p>12 Q. And it says, "In typical VCM</p> <p>13 plant operations, VCM process temperatures</p> <p>14 range between ambient temperature 68 degrees</p> <p>15 Fahrenheit, 20 degrees Celsius, and</p> <p>16 300 degrees Fahrenheit, 148.9 degrees</p> <p>17 Celsius, while contained under pressure."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Is that a statement that was</p> <p>21 relied on in the course of responding to the</p> <p>22 East Palestine derailment from this</p> <p>23 Pamphlet 171?</p> <p>24 MR. LEVINE: Objection.</p> <p>25 THE WITNESS: I can't say that</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Yes, sir, I do.</p> <p>2 Q. Is this statement one that you</p> <p>3 relied on in the course of responding to the</p> <p>4 East Palestine derailment?</p> <p>5 A. The operative words that were</p> <p>6 used is "high" -- "excessive heat," "high</p> <p>7 concentrations and temperatures."</p> <p>8 Excessive heat is one of the</p> <p>9 main statements that's used to call that</p> <p>10 polymerization could be occurring.</p> <p>11 Q. So the reference to heating to</p> <p>12 676.4 degrees Fahrenheit, 358 degrees Celsius,</p> <p>13 was not something that was considered?</p> <p>14 MR. LEVINE: Objection.</p> <p>15 THE WITNESS: Excessive heat.</p> <p>16 QUESTIONS BY MR. GOMEZ:</p> <p>17 Q. Understood. My question is</p> <p>18 specific.</p> <p>19 Did you consider that the</p> <p>20 document talks about heating specifically to</p> <p>21 676.4 degrees Fahrenheit, 358 degrees</p> <p>22 Celsius?</p> <p>23 MR. LEVINE: Objection.</p> <p>24 THE WITNESS: All I can say is</p> <p>25 excessive heat was applied to these</p>	<p style="text-align: right;">Page 97</p> <p>1 we actually used that statement in our</p> <p>2 response considerations.</p> <p>3 QUESTIONS BY MR. GOMEZ:</p> <p>4 Q. Did you use any information</p> <p>5 about the temperatures at which VCM is</p> <p>6 processed while contained under pressure when</p> <p>7 determining your response activities in East</p> <p>8 Palestine derailment?</p> <p>9 MR. LEVINE: Objection.</p> <p>10 THE WITNESS: There were a lot</p> <p>11 of -- there was a lot of information</p> <p>12 being fed into the technical group</p> <p>13 about what was going on in the cars.</p> <p>14 The one thing about this</p> <p>15 document is, this is in normal</p> <p>16 conditions. This is in a plant</p> <p>17 operation. It's not on the side of a</p> <p>18 derailed -- or in a city where a</p> <p>19 derailment has occurred and excessive</p> <p>20 heat has been applied to tank cars.</p> <p>21 QUESTIONS BY MR. GOMEZ:</p> <p>22 Q. Well, actually, if we look at</p> <p>23 the cover page for this document, it says</p> <p>24 that it applies specifically to tank car and</p> <p>25 cargo tank handling.</p>

<p style="text-align: right;">Page 98</p> <p>1 Right?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And the VCM involved in</p> <p>4 the East Palestine derailment was in a tank</p> <p>5 car.</p> <p>6 Right?</p> <p>7 A. It was, but it was also exposed</p> <p>8 to excessive heat in a derailment.</p> <p>9 Q. Okay. So your testimony is</p> <p>10 that this Pamphlet 171 doesn't apply to the</p> <p>11 conditions that a VCM-containing railcar are</p> <p>12 exposed to in a derailment?</p> <p>13 A. Things change from normal</p> <p>14 conditions in a derailment.</p> <p>15 Q. So does this document apply to</p> <p>16 a derailment or not?</p> <p>17 A. It could.</p> <p>18 MR. BRAGA: Objection.</p> <p>19 THE WITNESS: But -- excuse me.</p> <p>20 It could.</p> <p>21 QUESTIONS BY MR. GOMEZ:</p> <p>22 Q. And it could not, I guess?</p> <p>23 A. It could not.</p> <p>24 Q. So how do you determine what</p> <p>25 parts apply and don't apply in a derailment</p>	<p style="text-align: right;">Page 100</p> <p>1 QUESTIONS BY MR. GOMEZ:</p> <p>2 Q. Let's skip down to page 49.</p> <p>3 This page 49 of Pamphlet 171,</p> <p>4 which we've marked as an exhibit to your</p> <p>5 deposition, is titled "Appendix C. Vapor</p> <p>6 Pressure for Vinyl Chloride."</p> <p>7 Right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. The vapor pressure of a</p> <p>10 chemical contained in a derailed tank car is</p> <p>11 a data point that you're paying attention to</p> <p>12 in responding to a derailment.</p> <p>13 Right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And in this case with respect</p> <p>16 to VCM in East Palestine, you were paying</p> <p>17 attention to the vapor pressure curve for VCM</p> <p>18 in those derailed railcars.</p> <p>19 Right?</p> <p>20 A. We wanted to, yes, sir.</p> <p>21 Q. Looking at what this chart</p> <p>22 represents, would you agree with me that it</p> <p>23 shows that for VCM generally, as temperature</p> <p>24 increases, so does pressure?</p> <p>25 MR. BRAGA: Object.</p>
<p style="text-align: right;">Page 99</p> <p>1 situation?</p> <p>2 MR. LEVINE: Objection.</p> <p>3 MR. BRAGA: Objection.</p> <p>4 THE WITNESS: We base it on</p> <p>5 visual observations, gathering as much</p> <p>6 data as we can about the cars,</p> <p>7 speaking to the manufacturers, coming</p> <p>8 up with conclusions, developing a</p> <p>9 response plan and implementing such</p> <p>10 response plan.</p> <p>11 QUESTIONS BY MR. GOMEZ:</p> <p>12 Q. You mentioned observations and</p> <p>13 data.</p> <p>14 Does that include temperature</p> <p>15 data?</p> <p>16 A. At times, yes, sir, when you</p> <p>17 can get it correctly.</p> <p>18 Q. And then you take those data</p> <p>19 and observations and discussions with the</p> <p>20 product manufacturers to understand what</p> <p>21 parts of this document might apply to a</p> <p>22 derailment scenario.</p> <p>23 Is that fair?</p> <p>24 MR. LEVINE: Objection.</p> <p>25 THE WITNESS: That is fair.</p>	<p style="text-align: right;">Page 101</p> <p>1 THE WITNESS: That is correct.</p> <p>2 QUESTIONS BY MR. GOMEZ:</p> <p>3 Q. And would you agree with me</p> <p>4 that it also shows that as temperature</p> <p>5 decreases, pressure decreases?</p> <p>6 A. That is correct.</p> <p>7 Q. Would you also agree with me</p> <p>8 that in connection with vinyl chloride</p> <p>9 monomer, pressure cannot increase without a</p> <p>10 corresponding increase in temperature?</p> <p>11 A. Ask the question again.</p> <p>12 Q. Sure.</p> <p>13 Would you agree with me that</p> <p>14 with respect to vinyl chloride monomer, VCM,</p> <p>15 its temperature in a contained vessel cannot</p> <p>16 increase without a corresponding increase in</p> <p>17 pressure?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And the opposite is</p> <p>20 true; there cannot be a corresponding</p> <p>21 increase in pressure without also an increase</p> <p>22 in temperature.</p> <p>23 Right?</p> <p>24 A. Correct.</p> <p>25 Q. You see that there's a</p>

<p style="text-align: right;">Page 102</p> <p>1 reference in this chart to a PRD start to 2 discharge setting 247.5 PSI? 3 A. Yes, sir. 4 Q. I think you discussed that 5 earlier. That's the start to discharge 6 pressure for a pressure relief device. 7 A. Correct. 8 Q. Right? 9 A. In normal conditions. 10 Q. And here, according to the 11 vapor pressure curve for vinyl chloride 12 monomer, that pressure of 247.5 corresponds 13 with a temperature of roughly 180 and 14 190 degrees. 15 Is that fair? 16 A. Fair. 17 Q. Okay. 247.5 PSI, that was the 18 start to discharge pressure for the PRDs that 19 were equipped on the railcars that derailed 20 in East Palestine. 21 Right? 22 MR. LEVINE: Objection. 23 THE WITNESS: For the class of 24 car that the vinyl chloride is 25 transported in, they have</p>	<p style="text-align: right;">Page 104</p> <p>1 Right? 2 MR. BRAGA: Object. 3 THE WITNESS: On a 105J, what 4 car? 5 QUESTIONS BY MR. GOMEZ: 6 Q. On the 105 cars that were 7 involved in the derailment. 8 A. What's the whole classification 9 of the car? 10 Q. I think you got me there. 11 A. I believe -- 12 Q. Let me ask you this. Let me 13 ask you this. 14 What did you understand the 15 design pressure of the five derailed VCM cars 16 in East Palestine to be? 17 A. 105J300W cars. 18 Q. And the design pressure for 19 that specific car is? 20 A. The tank test pressure is 300. 21 The burst pressure is about three times that. 22 Q. Three times that, so roughly 23 900 PSIG? 24 A. Correct. 25 Q. The data that's provided by</p>
<p style="text-align: right;">Page 103</p> <p>1 begin-to-operate pressures of 247.5. 2 I can't say that every one of those 3 PRDs, without looking at the 4 documentation, were set for 247.5. 5 QUESTIONS BY MR. GOMEZ: 6 Q. Okay. That's fair. 7 But we can agree that when 8 there's pressure equal to the start to 9 discharge for the PRDs that are equipped on 10 vinyl chloride monomer cars, the temperature 11 is at least 180 to 190 degrees? 12 A. That's what the graph says, 13 yes, sir. 14 Q. There's also, if we look at 15 this chart, a temperature reference 200. 16 Do you see that on the bottom 17 right? 18 A. Yes, sir. 19 Q. And again, just using the 20 chart, that corresponds to roughly 300 PSI in 21 pressure. 22 Right? 23 A. Yes, sir. 24 Q. The design pressure of a DOT 25 105 is 300 PSIG.</p>	<p style="text-align: right;">Page 105</p> <p>1 this Appendix C, page 49 to the -- to 2 Pamphlet 171, is this data that was relied on 3 in the course of responding to the East 4 Palestine derailment? 5 A. This was reviewed, yes. 6 Q. This was data and information 7 that would have been available to first 8 responders on-site at the East Palestine 9 derailment. 10 Right? 11 MR. LEVINE: Objection. 12 THE WITNESS: This document -- 13 this -- the pressure curve was 14 considered and looked at, yes, sir. 15 QUESTIONS BY MR. GOMEZ: 16 Q. We can put that one aside, sir. 17 You also -- you mentioned a 18 couple of other reliance documents. 19 Do you recall whether there 20 were any reliance documents authored by the 21 New Jersey Department of Health and Human 22 Services that were used in the derailment? 23 A. Yes, sir. 24 (Day Exhibit 5 marked for 25 identification.)</p>

<p style="text-align: right;">Page 106</p> <p>1 QUESTIONS BY MR. GOMEZ:</p> <p>2 Q. Let me show you my Document</p> <p>3 Number 42, which we will mark as Exhibit 5.</p> <p>4 Mr. Day, this Exhibit 5 to your</p> <p>5 deposition. On the cover page it notes it's</p> <p>6 the Group H, Exhibit 56 to the NTSB hearing.</p> <p>7 Is that right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And the title, at least given</p> <p>10 by the NTSB, is "NJ Department of Health and</p> <p>11 Senior Services, Hazardous Substance Fact</p> <p>12 Sheet, Vinyl Chloride, June 2001."</p> <p>13 Do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Taking a look at the document,</p> <p>16 is this one of the documents that first</p> <p>17 responders and HAZMAT responders relied on in</p> <p>18 the course of responding to the derailment?</p> <p>19 MR. LEVINE: Objection.</p> <p>20 THE WITNESS: It was reviewed,</p> <p>21 yes, sir.</p> <p>22 QUESTIONS BY MR. GOMEZ:</p> <p>23 Q. Okay. Do you recall how this</p> <p>24 document came to be involved in the</p> <p>25 discussion amongst HAZMAT responders?</p>	<p style="text-align: right;">Page 108</p> <p>1 Health and Senior Services.</p> <p>2 Right?</p> <p>3 A. Yes.</p> <p>4 Q. And it's the fact sheet for</p> <p>5 vinyl chloride, according to the document.</p> <p>6 Right?</p> <p>7 A. That is correct.</p> <p>8 Q. And the date of the document is</p> <p>9 December 1994.</p> <p>10 Do you see that top right</p> <p>11 corner?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And then with a revision in</p> <p>14 June of 2001.</p> <p>15 Right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. You agree with me that this</p> <p>18 document is not specific to stabilized vinyl</p> <p>19 chloride monomer.</p> <p>20 Correct?</p> <p>21 A. This document is for vinyl</p> <p>22 chloride.</p> <p>23 Q. Which can be stable or</p> <p>24 unstable.</p> <p>25 Correct?</p>
<p style="text-align: right;">Page 107</p> <p>1 MR. BRAGA: Objection.</p> <p>2 THE WITNESS: There was -- due</p> <p>3 to the confusion of will it</p> <p>4 polymerize, will it not polymerize,</p> <p>5 there were additional requests made,</p> <p>6 searches done, to find other documents</p> <p>7 to review during the mounting of the</p> <p>8 response and preparing for operations</p> <p>9 at the site.</p> <p>10 QUESTIONS BY MR. GOMEZ:</p> <p>11 Q. And do you recall whether this</p> <p>12 specific document, Exhibit 5, was one of</p> <p>13 those that was requested or found via a</p> <p>14 search to supplement the discussions?</p> <p>15 A. It was.</p> <p>16 Q. Who was it that found it or</p> <p>17 provided it, if you know?</p> <p>18 A. I do not know.</p> <p>19 Q. But nevertheless, you can</p> <p>20 confirm that it was one that was reviewed?</p> <p>21 A. It was.</p> <p>22 Q. Again, this is -- if we look at</p> <p>23 the first substantive page of the document,</p> <p>24 it's a hazardous substance fact sheet</p> <p>25 provided by the New Jersey Department of</p>	<p style="text-align: right;">Page 109</p> <p>1 A. That is correct.</p> <p>2 Q. And if we look at page 3 of 6</p> <p>3 noted in the top right-hand corner, there's a</p> <p>4 section that says, "Handling and Storage."</p> <p>5 Do you see that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And the fourth bullet point</p> <p>8 reads, "Store in tightly closed containers in</p> <p>9 a cool, well-ventilated area away from heat,</p> <p>10 air and sunlight, as hazardous polymerization</p> <p>11 may occur."</p> <p>12 Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. The statement that I just read,</p> <p>15 is that one that you relied on from this</p> <p>16 document in the course of responding to the</p> <p>17 East Palestine derailment?</p> <p>18 A. This is a document that was</p> <p>19 used, reviewed and discussed, and</p> <p>20 polymerization potential was pointed out.</p> <p>21 Q. Pointed out specifically from</p> <p>22 this document?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. As we look at this</p> <p>25 document, do you see any reference to the</p>

<p style="text-align: right;">Page 110</p> <p>1 stabilization of vinyl chloride monomer?</p> <p>2 A. No, sir.</p> <p>3 Q. At the time of your response to</p> <p>4 the derailment, between February 5th and</p> <p>5 February 6, 2023, were you aware of the fact</p> <p>6 that this document conflicts with other vinyl</p> <p>7 chloride guidance given by the State of New</p> <p>8 Jersey?</p> <p>9 MR. LEVINE: Objection.</p> <p>10 MR. BRAGA: Objection.</p> <p>11 THE WITNESS: No, I was not.</p> <p>12 (Day Exhibit 6 marked for</p> <p>13 identification.)</p> <p>14 QUESTIONS BY MR. GOMEZ:</p> <p>15 Q. Let's look at Document 126,</p> <p>16 which we'll mark as Exhibit 6 to your</p> <p>17 deposition.</p> <p>18 Mr. Day, this document that</p> <p>19 we've marked as Exhibit 6 is also the</p> <p>20 Group H, Exhibit 57 to the NTSB hearings.</p> <p>21 Right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And the title provided by the</p> <p>24 NTSB is "New Jersey Department of Health -</p> <p>25 Right to Know Hazardous Substance Fact Sheet,</p>	<p style="text-align: right;">Page 112</p> <p>1 I can't tell you which one was used.</p> <p>2 Q. Okay.</p> <p>3 A. I do not recall.</p> <p>4 Q. But focusing just on this</p> <p>5 document, there's --</p> <p>6 A. Excuse me.</p> <p>7 Q. -- statements regarding</p> <p>8 polymerization that I want to direct your</p> <p>9 attention to.</p> <p>10 The first is on that first</p> <p>11 page, right above the section that's entitled</p> <p>12 "Workplace Exposure Limits."</p> <p>13 A. Yes, sir.</p> <p>14 Q. There's a bullet point that</p> <p>15 reads, "Explosive polymerization may occur at</p> <p>16 elevated temperatures if vinyl chloride is</p> <p>17 not inhibited."</p> <p>18 A. Correct.</p> <p>19 Q. Right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Do I understand correctly from</p> <p>22 your prior testimony that you can't confirm</p> <p>23 whether this was a statement that was relied</p> <p>24 on by first responders in connection with the</p> <p>25 East Palestine derailment?</p>
<p style="text-align: right;">Page 111</p> <p>1 October 2015."</p> <p>2 Right?</p> <p>3 A. That it is.</p> <p>4 Q. And according to the first</p> <p>5 page, it's another New Jersey hazardous</p> <p>6 substance fact sheet for vinyl chloride.</p> <p>7 Right?</p> <p>8 A. That it is.</p> <p>9 Q. The date of the original</p> <p>10 document is November 2010, with a revision in</p> <p>11 October 2015.</p> <p>12 Right?</p> <p>13 A. That is correct.</p> <p>14 Q. Looking at this document, can</p> <p>15 you tell me whether this is one that was</p> <p>16 relied on by first responders and HAZMAT</p> <p>17 responders in connection with the East</p> <p>18 Palestine derailment?</p> <p>19 A. I do not know.</p> <p>20 Q. Okay. Fair to say you don't</p> <p>21 recall any specific discussions about this</p> <p>22 document at the time of the derailment?</p> <p>23 A. I know that a document from the</p> <p>24 New Jersey -- from New Jersey was referenced</p> <p>25 and discussed, and which of these documents,</p>	<p style="text-align: right;">Page 113</p> <p>1 MR. BRAGA: Objection.</p> <p>2 THE WITNESS: There -- you</p> <p>3 showed me two documents, and I</p> <p>4 remember we used a document from New</p> <p>5 Jersey Health.</p> <p>6 QUESTIONS BY MR. GOMEZ:</p> <p>7 Q. Okay.</p> <p>8 A. Which one, I can't tell you.</p> <p>9 Q. But you can't confirm whether</p> <p>10 it was Exhibit 5 or now Exhibit 6.</p> <p>11 Right?</p> <p>12 A. You are correct.</p> <p>13 Q. Okay. Let's look at some of</p> <p>14 the other statements in this document.</p> <p>15 On page 3 of 6, there is a</p> <p>16 section entitled "Fire Hazards."</p> <p>17 Do you see that?</p> <p>18 A. 3 of 6.</p> <p>19 Yes, sir.</p> <p>20 Q. The first bullet point reads,</p> <p>21 "Vinyl chloride is a flammable and reactive</p> <p>22 gas that can explosively polymerize if not</p> <p>23 inhibited."</p> <p>24 Did I read that right?</p> <p>25 A. That, you did.</p>

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1 Q. And at least according to this
2 document, that's guidance given by the State
3 of New Jersey.
4 Right?
5 MR. BRAGA: Object.
6 THE WITNESS: That is correct.
7 QUESTIONS BY MR. GOMEZ:
8 Q. We can put that document aside,
9 sir. Thank you.
10 You mentioned in connection
11 with whichever one of the New Jersey
12 documents was used that it was either found
13 or provided in an effort to get more
14 information about VCM.
15 Fair?
16 A. Correct.
17 Q. As part of your efforts -- and
18 when I say "your," I mean HAZMAT responders
19 on the scene in East Palestine -- were there
20 any consultations with outside VCM experts
21 other than the manufacturer of the product?
22 A. Yes, sir.
23 Q. Who were those experts?
24 A. One retired VCM emergency
25 response and production manager from Westlake

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1 Polymers, and one degreed chemist, retired
2 HAZMAT director, for another Class I
3 railroad.
4 Q. Okay. Let's go with the first
5 one that you mentioned.
6 Was that Bob Gold?
7 A. That was.
8 Q. And Bob Gold was previously
9 employed by Westlake.
10 Right?
11 A. That's correct.
12 Q. Westlake manufactures VCM?
13 A. Yes, sir.
14 Q. Westlake is a competitor of Oxy
15 Vinyls?
16 A. Yes, sir.
17 Q. What role, if you know, did Bob
18 Gold have at -- when he was last employed by
19 Westlake?
20 A. He was an emergency response
21 person, and he worked in the plant.
22 Q. Do you know if at any point
23 during Bob Gold's tenure at Westlake he was
24 responsible for the production of VCM?
25 A. He worked in a VCM plant.

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1 Q. Did he work as like a process
2 engineer?
3 A. I do not know.
4 Q. Do you understand his roles to
5 be limited to emergency response?
6 A. We knew him through the
7 emergency response, but he knew VCM very
8 well.
9 Q. Do you know if he was a chemist
10 at Westlake?
11 A. I don't know. He was an
12 emergency response person.
13 Q. Do you know if he was a
14 chemical engineer at Westlake?
15 A. I don't -- he was an emergency
16 response person. That's how we knew him.
17 Q. What do you know about Bob
18 Gold's educational background, if anything?
19 A. I do not.
20 Q. So you don't know if he has any
21 chemical training?
22 A. I do not.
23 Q. When did you first reach out to
24 Bob Gold in connection with the East
25 Palestine derailment?

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1 A. I'd have to look back at my
2 records.
3 (Day Exhibit 7 marked for
4 identification.)
5 QUESTIONS BY MR. GOMEZ:
6 Q. Okay. Let's bring up
7 Document 143, which we'll mark as Exhibit 7
8 to the deposition.
9 And I will represent for the
10 record that this was produced as SRS 338, but
11 for technical reasons, we can't get it to
12 print out with the Bates number.
13 MR. BRAGA: I'll confirm that
14 we produced it, and I'm sorry about
15 that.
16 MR. GOMEZ: I think it's on our
17 end, actually, but thank you.
18 QUESTIONS BY MR. GOMEZ:
19 Q. Mr. Day, what we're looking at
20 is Exhibit 7 to your deposition.
21 Do you recognize this document?
22 A. I don't recognize the document,
23 no, sir.
24 Q. No?
25 A. I know what it is.

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1 Q. And it appears to be a text
2 message that you sent to Bob Gold.
3 Fair?
4 A. That's correct.
5 Q. And this printout of the text
6 message was generated from your mobile
7 device.
8 Is that also fair?
9 A. Yes, sir.
10 Q. If we look specifically at the
11 text message, it appears that the time was
12 9:04:18 when you texted Bob Gold.
13 Right?
14 A. That is correct.
15 Q. Do you know if that's Eastern
16 Time or Central Time?
17 A. It's 9:04:18. That's all I can
18 tell you.
19 Q. Fair enough.
20 At the time that you sent this
21 text message to Bob Gold on Sunday,
22 February 5, 2023, you were already on the
23 ground in East Palestine.
24 Right?
25 A. Yes, sir.

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1 Q. Whether it was 9:04 or 8:04 --
2 A. Yeah, that doesn't matter. I'm
3 looking at the date.
4 Q. Okay. And the text message you
5 sent to Bob Gold is -- says, "Bob, this is
6 Chip Day. I really need to talk about VCM
7 involved in fire in Ohio."
8 Did I read that correctly?
9 A. That, you did.
10 Q. Did you send this message to
11 Bob Gold before or after you directly
12 consulted with anyone from Oxy?
13 A. After.
14 Q. And what, if anything, about
15 the conversation you had with Oxy prompted
16 you to send this message?
17 A. So you have to understand a lot
18 about the emergency response business,
19 especially when you have hazardous chemicals
20 involved in pretty major incidents.
21 We -- it's almost phone a
22 friend. We are a very tight-knit community.
23 We communicate a lot, bouncing ideas off each
24 other, confirming or denying information that
25 we've received.

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1 After the conference call in
2 the Suburban, we got conflicting information
3 and wanted to bounce it off somebody else.
4 Bob is somebody that I regard highly as a
5 professional, and he has been exposed to
6 incidents involving vinyl chloride incidents,
7 spills, fires, and wanted to get his take on
8 some of the information we were receiving.
9 Q. Did you specifically want to
10 get his take on the conclusion that Oxy
11 shared with you that morning, February 5th,
12 that polymerization was not occurring in the
13 cars?
14 A. Correct.
15 Q. We don't see a response, at
16 least in text, from Bob Gold here.
17 Right?
18 A. That's correct.
19 Q. Did Bob Gold respond in any way
20 to this text message?
21 A. Later on in the day he called.
22 Q. Later on Sunday, February 5th?
23 A. Correct.
24 Q. Can you estimate for me roughly
25 what time that would have been?

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1 A. No. I could look back at my
2 phone and try to figure it out, but not here
3 right now.
4 Q. Can you tell me whether it was
5 early afternoon, mid-afternoon, late
6 afternoon?
7 A. It was -- I can tell you it was
8 on Sunday, but I can't tell you early -- the
9 time when an incident like this is going on,
10 time goes by that quick.
11 Q. Can you describe for me the
12 conversation that you had with Bob Gold when
13 you called you back on February 5, 2023?
14 A. The basics of it were, VCM is
15 normally shipped unstabilized in pipelines.
16 Normally it's shipped in a stabilized or
17 inhibited form in transportation.
18 The material that was involved
19 in the fire, he'd seen it on the video -- on
20 TV.
21 I asked him point-blank, do you
22 think polymerization could be occurring, and
23 he confirmed, yes, in his opinion, yes,
24 polymerization could be occurring.
25 Q. What temperature data did you

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1 give Bob Gold to allow him to reach that
2 conclusion?
3 A. Zero.
4 Q. What pressure data did you give
5 Bob Gold to allow him to reach that
6 conclusion?
7 A. Zero.
8 Q. What specific data or
9 observations did you give Bob Gold that
10 allowed him to reach that conclusion?
11 MR. BRAGA: Object.
12 THE WITNESS: The incident
13 occurred on Friday evening. There was
14 massive fire. Cars were in pool fires
15 for extended periods of time. PRDs
16 were operating. PRDs settled out for
17 a period of time. I don't remember
18 what -- exactly how long that was.
19 And then one PRD went off for
20 70 minutes.
21 QUESTIONS BY MR. GOMEZ:
22 Q. Were there any other
23 observations or data you specifically recall
24 giving Bob Gold during that conversation?
25 A. Just what we were seeing, the

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1 damage we were seeing on the cars.
2 Q. And Bob Gold told you
3 polymerization could be occurring.
4 Right?
5 A. He felt like it could be
6 occurring, yes, sir.
7 Q. He did not say it is occurring.
8 Right?
9 A. Correct.
10 Q. He did not say that it
11 definitely had already occurred.
12 Right?
13 A. Polymerization could be
14 occurring.
15 Q. As in it was a possibility.
16 Right?
17 A. Correct.
18 Q. Not a certainty?
19 A. Yes, sir.
20 Q. Between this telephone
21 conversation that we just discussed and the
22 vent and burn on February 6th, did you have
23 any other conversations with Bob Gold
24 regarding the VCM in the derailed tank cars?
25 A. No, sir.

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1 Q. And that includes conversations
2 over the phone, e-mail, text. None -- no
3 others?
4 A. No, sir.
5 Q. Do you recall whether, when you
6 had the conversation with Bob Gold, you had
7 access to temperature and pressure data from
8 any of the cars?
9 A. We only had pressure on one
10 car. We couldn't get up to get accurate
11 temperature and pressure on four of the five
12 cars.
13 Q. And this is at the time of the
14 Bob Gold conversation.
15 Right?
16 A. Pretty much throughout the
17 entire incident, yes, sir.
18 Q. And to confirm, you didn't
19 share that one pressure data that you had
20 with him.
21 Right?
22 A. I don't remember.
23 Q. When Bob Gold worked at
24 Westlake, do you know how Westlake would
25 stabilize VCM for shipment?

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1 A. Bob was an emergency responder
2 for Westlake, and that's pretty much all I
3 know about Bob's time with Westlake.
4 Q. But fair to say it didn't come
5 up in the course of this conversation we've
6 been referring to, how Westlake would
7 stabilize its VCM for transportation?
8 A. No, sir.
9 MR. LEVINE: Objection.
10 QUESTIONS BY MR. GOMEZ:
11 Q. And there was also no
12 conversation with Bob Gold during this
13 telephone call about the different methods
14 for stabilization.
15 Right?
16 A. That's correct.
17 Q. And there was no conversation
18 about the significance, if any, of the
19 different methods for stabilization in terms
20 of the potential for polymerization.
21 Right?
22 A. Correct.
23 Q. You also mentioned another
24 conversation with, I think it was, a chemist
25 from a Class I railroad.

<p style="text-align: right;">Page 126</p> <p>1 Is that correct?</p> <p>2 A. Retired, yes, sir.</p> <p>3 Q. And what was the name of that</p> <p>4 person?</p> <p>5 A. Pat Student.</p> <p>6 Q. Can you spell that last name,</p> <p>7 please?</p> <p>8 A. S-t-u-d-e-n-t.</p> <p>9 Q. Pat Student.</p> <p>10 And just briefly, how do you</p> <p>11 know Pat Student?</p> <p>12 A. He's a mentor of mine. He</p> <p>13 worked for the Missouri Pacific Railroad, and</p> <p>14 he was a customer of mine since 1981.</p> <p>15 Q. Is Pat Student currently</p> <p>16 employed by any railroad?</p> <p>17 A. He's retired.</p> <p>18 Q. How long has he been retired?</p> <p>19 A. I don't remember. A long time.</p> <p>20 Q. And what was this -- you said</p> <p>21 he was a chemist, but do you know what his</p> <p>22 job role was at Missouri Pacific Railroad?</p> <p>23 A. He was a HAZMAT responder when</p> <p>24 I first got to know him.</p> <p>25 Q. When you say that he is -- "he"</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Sunday night --</p> <p>2 Q. -- derailment?</p> <p>3 A. Late --</p> <p>4 MR. BRAGA: Let him finish his</p> <p>5 question first.</p> <p>6 THE WITNESS: Sorry.</p> <p>7 Ask the question again.</p> <p>8 QUESTIONS BY MR. GOMEZ:</p> <p>9 Q. Sure.</p> <p>10 The conversation that you</p> <p>11 referenced with Mr. Student, when did it</p> <p>12 occur in the course of your response to the</p> <p>13 East Palestine derailment?</p> <p>14 A. Late Sunday night.</p> <p>15 Q. And can you describe for me</p> <p>16 what you remember of that conversation?</p> <p>17 A. It was a discussion about the</p> <p>18 decision made to vent and burn these cars.</p> <p>19 Q. And what did you tell</p> <p>20 Mr. Student about that decision?</p> <p>21 A. We talked about the damage</p> <p>22 assessment. We talked about the events that</p> <p>23 led up to the decision to be made -- that was</p> <p>24 made to vent and burn the cars, what we were</p> <p>25 seeing, and needed his opinion on were we</p>
<p style="text-align: right;">Page 127</p> <p>1 being Mr. Student, was a chemist, was he a</p> <p>2 formally educated chemist?</p> <p>3 A. I do not know.</p> <p>4 Q. So what leads you to believe he</p> <p>5 was a chemist?</p> <p>6 A. He told me.</p> <p>7 Q. He --</p> <p>8 A. Told me.</p> <p>9 Q. He told you that he was a</p> <p>10 chemist?</p> <p>11 A. (Witness nods head.)</p> <p>12 Q. And when did this conversation</p> <p>13 with Mr. Student occur?</p> <p>14 A. I met him in 1981. I got to</p> <p>15 know him. He was a mentor of mine in the</p> <p>16 emergency response business. I can't tell</p> <p>17 you what day, what time, anything about --</p> <p>18 other than he is a resource of mine that I</p> <p>19 bounce ideas off of if I have a problem.</p> <p>20 Q. That was a bad question. I</p> <p>21 meant in terms of the East Palestine</p> <p>22 derailment.</p> <p>23 When was the conversation that</p> <p>24 you had with Mr. Student about the East</p> <p>25 Palestine --</p>	<p style="text-align: right;">Page 129</p> <p>1 making the right decision.</p> <p>2 Q. And what was the opinion that</p> <p>3 he ultimately expressed to you?</p> <p>4 A. That he agreed.</p> <p>5 Q. You said this conversation was</p> <p>6 late in the evening on Sunday.</p> <p>7 Are you able to estimate a</p> <p>8 time?</p> <p>9 A. You can go back to my phone.</p> <p>10 It was somewhere around ten o'clock.</p> <p>11 Q. By that point in time, ten</p> <p>12 o'clock on Sunday, February 5th, responders</p> <p>13 were monitoring the temperature on the</p> <p>14 derailed railcars.</p> <p>15 Right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did you provide Mr. Student</p> <p>18 with those temperature readings?</p> <p>19 A. There's a lot of discussion</p> <p>20 about temperature and temperature readings</p> <p>21 that were being taken. My concern was the</p> <p>22 temperatures, because we were not getting</p> <p>23 accurate readings of the core temperature of</p> <p>24 the product. I was suspect that they were</p> <p>25 getting -- they weren't accurate.</p>

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1 Q. Whether you believe them to be
2 accurate or not, did you share the readings
3 that you had with Mr. Student during this
4 conversation on Sunday, February 5th?
5 A. In general terms, yes.
6 Q. Did you give him the specific
7 numbers?
8 A. I gave him general numbers.
9 Q. When you say "general numbers,"
10 what does that mean?
11 A. 150s to 160s to 180s.
12 Q. So you did not give him the
13 specific temperature readings at each hour
14 that they were taken.
15 Right?
16 A. That is correct.
17 Q. You did not give him the trend
18 of the temperatures?
19 A. That is correct.
20 Q. Did you give Mr. Student any
21 pressure readings that you might have had?
22 A. Yes.
23 Q. And what pressure readings were
24 those?
25 A. 60. Pressure reading. Single.

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1 Individual.
2 Q. Single reading.
3 You didn't give Mr. Student any
4 corresponding pressure reading based off of
5 the vapor pressure curve that we discussed
6 earlier.
7 Right?
8 A. I had a pretty good indication
9 that Mr. Student knew exactly where the
10 pressures would be. Should be.
11 Q. You understood that if you gave
12 Mr. Student general temperatures, he would
13 understand what the corresponding pressure
14 for VCM would be?
15 A. He's a pretty smart guy, yes,
16 sir.
17 Q. Did you tell Mr. Student that
18 at the time of that conversation, the evening
19 of Sunday, February 5th, the product
20 manufacturer, Oxy Vinyls, had concluded
21 polymerization was not occurring?
22 MR. LEVINE: Objection.
23 THE WITNESS: We had a
24 discussion about the conflicting
25 information we were receiving from Oxy

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1 personnel in Dallas.
2 QUESTIONS BY MR. GOMEZ:
3 Q. And did that information
4 include the conclusion that polymerization
5 was not occurring?
6 A. That was some of the
7 information that we were conflicted with.
8 Q. Okay. And what was
9 Mr. Student's response to that specific piece
10 of information?
11 A. He didn't understand why
12 somebody in Dallas would say that
13 polymerization was not occurring.
14 Q. Did he explain that any
15 further?
16 A. No, sir.
17 Q. Did you ask him to explain that
18 any further?
19 A. No, sir.
20 Q. So he told you that he was
21 surprised by that statement?
22 Is that fair?
23 A. That's correct.
24 Q. And you didn't inquire any
25 further as to why that might be the case?

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1 A. He was inquisitive as I was.
2 We didn't know why somebody would say based
3 on the conditions that we were seeing that
4 polymerization was not occurring.
5 Q. If Mr. Student was a chemist,
6 could you have asked him for the chemical
7 explanation of what was likely going on in
8 those railcars?
9 MR. BRAGA: Objection.
10 THE WITNESS: You're asking me
11 to speculate, and I can't. I don't
12 know Pat was thinking. We were having
13 a conversation about the decision that
14 was made to vent and burn these cars.
15 QUESTIONS BY MR. GOMEZ:
16 Q. And I don't want you to
17 speculate about what Mr. Student was
18 thinking. But if he is a chemist, you could
19 have asked him for a chemical explanation of
20 what's happening in the cars.
21 Right?
22 MR. LEVINE: Objection.
23 THE WITNESS: I could.
24 QUESTIONS BY MR. GOMEZ:
25 Q. And you didn't do that?

1 A. I did not.
 2 Q. These two conversations that
 3 we've been discussing, the first with Bob
 4 Gold and the second with Pat Student, at any
 5 time did you share that -- share the -- those
 6 discussions with NS personnel?
 7 A. It most likely came up in
 8 discussions, yes.
 9 Q. These two conversations, the
 10 one with Bob Gold and the one with Pat
 11 Student, did you discuss the contents of
 12 those discussions with anyone at incident
 13 command?
 14 A. You have to understand the
 15 hierarchy of control command, how an incident
 16 command structure works.
 17 We were a support structure to
 18 the NS. The NS communicated directly with
 19 incident command.
 20 Q. Okay. So you yourself did not
 21 communicate directly with the folks in
 22 incident command?
 23 A. Only during the vent and burn
 24 operation.
 25 Q. During the vent and burn

1 operation, did you happen to mention anything
 2 about the conversation with Bob Gold or Pat
 3 Student?
 4 A. During the vent -- the
 5 communications with incident command during
 6 the vent and burn operation, it was strictly
 7 to request permission to initiate and feed
 8 information once the vent and burn was done.
 9 Q. So other than that conversation
 10 to get permission to initiate the vent and
 11 burn, you did not have direct communication
 12 with incident command?
 13 A. That is correct.
 14 Q. So to the extent that incident
 15 command was aware of the discussions you had
 16 with Bob Gold and Pat Student, that would
 17 have had to come from someone at NS?
 18 A. It would have had --
 19 MR. LEVINE: Objection. Sorry.
 20 THE WITNESS: That
 21 communication would have had to come
 22 through NS, yes, sir.
 23 QUESTIONS BY MR. GOMEZ:
 24 Q. NS having learned it from you
 25 at some point, obviously?

1 A. Correct.
 2 MR. LEVINE: Objection.
 3 QUESTIONS BY MR. GOMEZ:
 4 Q. How about Oxy? At any point in
 5 time did you discuss the information that you
 6 received from Bob Gold or Pat Student with
 7 any employee of Oxy?
 8 A. It was brought up in
 9 conversations, trying to determine if
 10 polymerization was occurring. We have to --
 11 we have -- in this business, we have to rely
 12 on a lot of information from a lot of
 13 different people when you start getting
 14 conflicting information.
 15 Q. What do you recall specifically
 16 about sharing the statements made by Bob Gold
 17 or Pat Student with employees of Oxy?
 18 A. We've spoken to other former
 19 manufacturers of VCM, and they don't feel
 20 that -- or they feel that polymerization
 21 could be occurring in these cars.
 22 Q. And what was the response from
 23 Oxy?
 24 A. I don't remember.
 25 Q. But Oxy never changed its

1 opinion about polymerization not occurring.
 2 Right?
 3 MR. LEVINE: Objection.
 4 THE WITNESS: They -- there was
 5 three folks on-site, and at least two
 6 of those folks, Oxy folks, on-site
 7 felt that there was a possibility of
 8 polymerization occurring.
 9 QUESTIONS BY MR. GOMEZ:
 10 Q. And they expressed that to you?
 11 A. Yes.
 12 Q. Do you remember their names?
 13 A. Justin and, I believe, Steve.
 14 Q. Justin Cox.
 15 Right?
 16 A. Correct.
 17 Q. Steve Smith.
 18 Right?
 19 A. Correct.
 20 Q. And if you recall, let's say,
 21 Steve Smith expressing to you that
 22 polymerization could be occurring, do you
 23 also recall him saying that he's not an
 24 expert in polymerization?
 25 A. That's correct.

<p style="text-align: right;">Page 138</p> <p>1 Q. And you recall him saying that 2 he would have to check with the experts on 3 polymerization back in Dallas? 4 A. He said things along those 5 lines, yes, sir. 6 Q. And he in fact did check with 7 the experts back in Dallas about 8 polymerization. 9 Right? 10 MR. LEVINE: Objection. 11 MR. BRAGA: Objection. 12 THE WITNESS: I guess. 13 QUESTIONS BY MR. GOMEZ: 14 Q. He told you that he did. 15 Right? 16 MR. LEVINE: Objection. 17 THE WITNESS: We had several 18 discussions, multiple times during 19 those days, that there was conflicting 20 information. 21 QUESTIONS BY MR. GOMEZ: 22 Q. And each time that you brought 23 that up to him, he reiterated the conclusion 24 from the product manufacturers that 25 polymerization was not occurring.</p>	<p style="text-align: right;">Page 140</p> <p>1 relationship with Mr. Schoendorfer? 2 A. Yes, sir. 3 Q. Can you describe that for me? 4 A. We were friends. 5 Q. Personal friends? 6 A. I believe so. 7 Q. Did you have any professional 8 relationship with Mr. Schoendorfer? 9 A. We worked for the Norfolk 10 Southern. 11 Q. And on those jobs, was Dave 12 Schoendorfer one of your points of contact? 13 A. Yes, sir. 14 Q. Did any of the jobs you worked 15 for NS including Dave Schoendorfer involve 16 VCM? 17 A. I don't remember specifically 18 VCM. We've done quite a bit of work for the 19 Norfolk Southern. 20 Q. And what prompted you to 21 proactively reach out to Mr. Schoendorfer? 22 A. As I said before, this 23 community is very, very small. When one 24 person has an issue, a big problem, as East 25 Palestine was, it kind of affects us all. We</p>
<p style="text-align: right;">Page 139</p> <p>1 Right? 2 MR. BRAGA: Objection. 3 MR. LEVINE: Objection. 4 THE WITNESS: That's correct. 5 QUESTIONS BY MR. GOMEZ: 6 Q. Mr. Day, we can take down this 7 document. 8 We've taken for granted a 9 little bit of the timeline of your 10 involvement in the derailment, so I kind of 11 want to go back to the beginning there. 12 Am I correct that you were not 13 contacted by Norfolk Southern to respond to 14 the derailment; rather, you first reached out 15 to Norfolk Southern? 16 A. Correct. 17 Q. And that would have been the 18 night of February 4th. 19 Right? 20 A. Saturday the 4th, yes. 21 Q. And I think you read -- you 22 reached out specifically to David 23 Schoendorfer? 24 A. Dave Schoendorfer, yes, sir. 25 Q. Did you have a preexisting</p>	<p style="text-align: right;">Page 141</p> <p>1 all watch, listen and try to gather 2 additional information. 3 I was mowing my pasture and 4 heard a news report that the fire was still 5 going on Saturday afternoon, and that's why I 6 sent the text to Dave asking what -- besides 7 plastic pellets and vinyl liquid, what else 8 was on fire. 9 Q. At the time you reached out to 10 Mr. Schoendorfer via text, did you know that 11 SPSI was on-site? 12 A. Yes, sir. 13 Q. Did you know that Mr. McCarty 14 was on-site? 15 A. If SPSI was on-site and -- yes. 16 Q. If SPSI is there, Mr. McCarty 17 is there? 18 A. Most likely. 19 Q. And in the past, has 20 Mr. McCarty reached out to you for 21 assistance? 22 A. Yes, sir. 23 Q. But he didn't reach out to you 24 for assistance on this derailment. 25 Right?</p>

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1 A. Hadn't yet, no, sir.
 2 Q. Instead, it was you that
 3 reached out not to Mr. McCarty but to NS?
 4 A. Correct.
 5 Q. And that text message that you
 6 sent to Mr. Schoendorfer, I think you just
 7 said, was with respect to what was -- what
 8 was on fire.
 9 Right?
 10 A. That's correct.
 11 Q. In East Palestine?
 12 And he responded that vinyl
 13 chloride was on fire.
 14 Right?
 15 A. VCM, yes, sir.
 16 Q. And take me through kind of
 17 what happened that ultimately transitioned
 18 that conversation from talking about what was
 19 on fire to you getting asked to come up
 20 on-scene.
 21 A. I sent the text. He replied
 22 back and within -- I replied back, I believe,
 23 one more time with something. And within a
 24 few minutes, he called and said, just getting
 25 ready to call you. We got VCM cars on fire,

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1 and we need additional assistance -- we need
 2 more eyes on it. I need Terry, Bobby and
 3 Chip to fly up here and put equipment on the
 4 road.
 5 Q. Terry is Terry Rockwell?
 6 A. Correct.
 7 Q. Right?
 8 Chip is Charles Day, you.
 9 A. Correct.
 10 Q. Right.
 11 And you mentioned Bobby?
 12 A. Bobby Breed.
 13 Q. Bobby Breed. Okay.
 14 Also employed by SRS?
 15 A. Yes, sir.
 16 Q. In the course of that
 17 conversation with Mr. Schoendorfer, was there
 18 any discussion about you or SRS's experience
 19 with polymerizing VCM?
 20 A. Specifically he wanted
 21 additional help with compressed gas cars on
 22 fire, with VCM cars on fire. We didn't
 23 really discuss polymerization potential that
 24 I remember. But in a subsequent
 25 conversation, there was.

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1 Q. There was discussion about
 2 polymerization?
 3 A. There was discussion about
 4 polymerization.
 5 Q. Did Mr. Schoendorfer mention
 6 during that phone call the evening of
 7 February 4th the potential for a vent and
 8 burn?
 9 A. The discussion that -- there
 10 was discussion some -- something around the
 11 line of potential for a vent and burn.
 12 Q. Okay. And that would have been
 13 the evening of Sunday -- or I'm sorry,
 14 Saturday, February 4th.
 15 Right?
 16 A. Correct.
 17 Q. Before there was any
 18 temperature readings of the car.
 19 Right?
 20 A. Correct.
 21 Q. And before there were pressure
 22 readings of the car as well?
 23 A. I don't know.
 24 Q. And I shouldn't say "readings."
 25 Reading, right? Single

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1 reading.
 2 A. Correct.
 3 Q. So you and SRS eventually
 4 mobilized and got to East Palestine.
 5 Right?
 6 A. That's correct.
 7 Q. I think you got to -- you got
 8 to the Pittsburgh area around midnight?
 9 A. Correct.
 10 Q. But didn't actually arrive
 11 on-scene until early the following morning.
 12 Right?
 13 A. That's correct.
 14 Q. So roughly 6 a.m.,
 15 February 5th?
 16 A. Correct.
 17 Q. Can you tell me a little bit
 18 about the preparations that you undertook to
 19 get ready to get on-scene?
 20 MR. LEVINE: Objection.
 21 THE WITNESS: We gathered up
 22 the personnel, the equipment, got the
 23 equipment on the road. Got on a
 24 plane. Flew up there.
 25

1 QUESTIONS BY MR. GOMEZ:
 2 Q. What equipment did you bring
 3 with you?
 4 A. We have a 48-foot response
 5 truck that -- filled with pumps and hoses and
 6 compressors and protective clothing,
 7 monitoring equipment. And that's pretty much
 8 it. Just a lot of stuff.
 9 Q. So it's like the standard
 10 load-out that you have?
 11 A. Yes, sir.
 12 Q. Okay. Did you bring any
 13 equipment based specifically on what you
 14 understood to be occurring at the scene?
 15 MR. LEVINE: Objection.
 16 THE WITNESS: I don't
 17 understand the question.
 18 QUESTIONS BY MR. GOMEZ:
 19 Q. Sure.
 20 Did you bring, for example, any
 21 tools or equipment specific to flammable gas
 22 tank cars that are derailed for either
 23 monitoring or testing or anything along those
 24 lines?
 25 MR. LEVINE: Objection.

1 THE WITNESS: We brought
 2 response equipment.
 3 QUESTIONS BY MR. GOMEZ:
 4 Q. Did you speak to anybody other
 5 than Mr. Schoendorfer to get information
 6 about what happened at the derailment site
 7 before you arrived on-scene that following
 8 morning?
 9 A. Robert Wood.
 10 Q. When did the conversation with
 11 Mr. Wood occur?
 12 A. Around the time with
 13 Mr. Schoendorfer.
 14 Q. And can you describe for me the
 15 nature of that conversation?
 16 MR. LEVINE: Objection.
 17 THE WITNESS: From what I can
 18 remember, it was, we need some WS-27,
 19 which is an Acronel -- acrylate
 20 killer, odor control material that's
 21 manufactured by a company in south
 22 Texas.
 23 What he was seeing, fires that
 24 were going on and that the PRD on one
 25 of the three VCM cars had been going

1 off for the last -- a period of time.
 2 QUESTIONS BY MR. GOMEZ:
 3 Q. Was there any discussion at
 4 that point in time with Mr. Wood about vent
 5 and burn?
 6 A. No, sir, not that I remember.
 7 Q. When you eventually arrived
 8 on-site, SRS was working as a subcontractor
 9 for SPSI.
 10 Is that correct?
 11 A. That's correct.
 12 Q. And if I recall correctly, that
 13 was because of some contract issues with the
 14 acquisition of SRS?
 15 A. That's -- that -- very good,
 16 yes, sir.
 17 Q. Right?
 18 SRS had been acquired by
 19 US Ecology?
 20 A. So SRS was acquired by NRC.
 21 NRC was acquired by US Ecology. US Ecology
 22 was acquired by Republic Services.
 23 Q. And maybe I'm oversimplifying
 24 it, but the issue was that there wasn't a
 25 contract between NS and Republic Services in

1 place at the time.
 2 Right?
 3 A. It may have expired. There was
 4 some kind of contractual issue.
 5 Q. But regardless, you agreed to
 6 be on-site as a sub for SPSI.
 7 Correct?
 8 A. Yes.
 9 MR. BRAGA: When you get to a
 10 good breaking point.
 11 MR. GOMEZ: Yeah. Maybe five
 12 minutes?
 13 MR. BRAGA: Sure.
 14 QUESTIONS BY MR. GOMEZ:
 15 Q. As a subcontractor for SPSI,
 16 can you describe for me kind of the hierarchy
 17 of decision-making between the two entities,
 18 SRS and SPSI?
 19 A. So SRS and SPSI are fierce
 20 competitors. We -- the customer base is
 21 fairly limited, but -- we're fierce
 22 competitors when we're trying to get work,
 23 but once one lands work and needs assistance,
 24 we work -- you never know where one stops and
 25 the other one starts. We work very much

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1 hand-in-glove.
 2 Q. So would you characterize it as
 3 once you arrived on-site, joint
 4 decision-making between SPSI and SRS?
 5 MR. LEVINE: Objection.
 6 THE WITNESS: SPSI took care of
 7 their folks; we took care of our
 8 folks. And when decisions needed to
 9 be made, obviously we were both
 10 supporting the Norfolk Southern.
 11 QUESTIONS BY MR. GOMEZ:
 12 Q. So you were both -- "you" being
 13 SPSI and SRS -- were both supporting
 14 decisions ultimately made by Norfolk
 15 Southern.
 16 Right?
 17 A. Correct.
 18 MR. LEVINE: Objection.
 19 QUESTIONS BY MR. GOMEZ:
 20 Q. So the two entities are working
 21 together, but as far as decision-making in
 22 East Palestine responding to the derailment,
 23 it is your understanding that Norfolk
 24 Southern was making those decisions?
 25 A. Anything -- any decisions that

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1 needed to be made or work that needed to be
 2 done, it would come down, and it would be
 3 split out whoever had folks available.
 4 Q. And would that include the
 5 decision to conduct the vent and burn?
 6 A. The decision to make -- to do
 7 the -- perform the vent and burn was from the
 8 technical group to the Norfolk Southern to
 9 the incident commander.
 10 Q. When you say -- you've used
 11 "technical group" a couple of times.
 12 Is that just SPSI and SRS?
 13 A. So the -- in these kinds of
 14 incidents when Mr. Schoendorfer and I spoke,
 15 they wanted SRS and SPSI to focus on the VCM
 16 cars and the isobutylene car, compressed gas
 17 cars, and the other contractors to focus on
 18 the general service cars and the spill
 19 cleanup.
 20 Within that -- when SPSI and
 21 SRS came together, we formed somewhat of a
 22 technical group that were focused strictly on
 23 the VCM.
 24 Drew had a lot of other
 25 operations going on. He had folks handling

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1 other parts.
 2 So the technical group was
 3 SPSI, SRS, the Norfolk Southern, OxyChem --
 4 Oxy Vinyls, excuse me, to discuss a path
 5 forward for the VCM cars.
 6 Q. So with respect specifically to
 7 the vent and burn, the technical group that
 8 you just described made the recommendation to
 9 Norfolk Southern to conduct the vent and
 10 burn.
 11 Right?
 12 A. That's correct.
 13 Q. And then Norfolk Southern
 14 decided to take that recommendation to the
 15 incident command for approval?
 16 MR. LEVINE: Objection.
 17 THE WITNESS: That's correct.
 18 That's correct.
 19 MR. GOMEZ: We can stop here.
 20 Take a break.
 21 MR. BRAGA: Okay.
 22 VIDEOGRAPHER: All right. The
 23 time is 11:23 a.m., and we're going
 24 off the record.
 25 (Off the record at 11:23 a.m.)

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1 VIDEOGRAPHER: The time is
 2 11:37 a.m., and we're back on the
 3 record.
 4 QUESTIONS BY MR. GOMEZ:
 5 Q. Mr. Day, we were talking before
 6 the break about when you first arrived
 7 on-scene. That was the morning of
 8 February 5th.
 9 Right?
 10 A. Yes, sir.
 11 Q. At approximately 6 a.m.
 12 Does that sound fair?
 13 A. Somewhere around there, yes,
 14 sir.
 15 Q. At the time you arrived
 16 on-scene, am I correct that there were no
 17 more active pool fires?
 18 A. No, sir.
 19 Q. Okay. How many pool fires were
 20 there? Or where were the pool fires, I
 21 should say?
 22 A. The pool fires were to the west
 23 of four VCM cars, coming up on the fifth
 24 toward the Leake Oil side of the incident.
 25 Q. Okay. Were any of the five VCM

1 railcars, at the time you arrived on-scene,
 2 impinged by the pool fires?
 3 MR. BRAGA: Object to the form.
 4 THE WITNESS: The pile of four
 5 VCM cars, the three that were -- had
 6 active -- two of the three that had
 7 active fires from the protective
 8 housings were up against cars that
 9 were blocking them -- some portion of
 10 them were getting blocked by another
 11 car.
 12 QUESTIONS BY MR. GOMEZ:
 13 Q. Okay. When you say "blocked by
 14 another car," what -- blocked from the fire?
 15 A. I think it was a plastic pellet
 16 car that was between the majority of the pool
 17 fire and the VCM cars.
 18 Q. Okay. At the time you arrived
 19 on-scene at -- the early morning of
 20 February 5th, was there no longer concern for
 21 a BLEVE in the five vinyl chloride-containing
 22 cars?
 23 MR. BRAGA: Objection.
 24 THE WITNESS: There's always
 25 still a concern for BLEVE.

1 QUESTIONS BY MR. GOMEZ:
 2 Q. Okay. Why is there always
 3 still a concern for BLEVE?
 4 A. Because the nature of the
 5 product and the heat that's already been
 6 applied to the cars.
 7 Q. So between when you arrived the
 8 morning of February 5th to the time of the
 9 vent and burn, there was always a concern for
 10 a BLEVE?
 11 A. Correct.
 12 Q. Did you communicate that
 13 concern to anyone at Oxy Vinyls?
 14 A. It's one of those assumed
 15 things. When you have cars in pool fires, in
 16 close proximity to pool fires, exposed to
 17 elevated heat, that a potential for a BLEVE
 18 is there.
 19 Q. So you may not have
 20 specifically discussed it with them, but
 21 given the conditions, you felt they would
 22 know it was an issue --
 23 A. Yes.
 24 Q. -- to be aware of?
 25 A. Yes, sir.

1 Q. A BLEVE is different from a
 2 failure because of polymerization of VCM.
 3 Right?
 4 MR. LEVINE: Objection.
 5 THE WITNESS: A BLEVE is a
 6 Boiling Liquid Expanding Vapor
 7 Explosion.
 8 Basically the car comes apart
 9 in three pieces. You have a rocket,
 10 you have a dance floor, and you have
 11 the end of the car.
 12 A polymerization can create
 13 a -- an explosion due to
 14 overpressuring building up and
 15 basically the car coming apart with
 16 lots of shrapnel.
 17 QUESTIONS BY MR. GOMEZ:
 18 Q. They're both explosions, but
 19 they happen for different reasons.
 20 Is that fair?
 21 MR. LEVINE: Objection.
 22 THE WITNESS: Potato, potato.
 23 QUESTIONS BY MR. GOMEZ:
 24 Q. I'll take that.
 25 MR. BRAGA: Hakuna Matata, too.

1 QUESTIONS BY MR. GOMEZ:
 2 Q. When you arrived on-scene, were
 3 any of the PRDs on the vinyl chloride cars
 4 still activating?
 5 A. We had active fires in the
 6 protective housing of three cars.
 7 Q. Okay. And does that mean that
 8 the PRDs were activating? Cycling?
 9 A. We had three cars with active
 10 fires inside the protective housings.
 11 Q. Okay. I'm not trying to be
 12 obtuse. I want to make sure I understand
 13 this.
 14 Your testimony is that there
 15 were fires in the protective housings.
 16 My question is, were the PRDs,
 17 the pressure relief devices, were they
 18 cycling? Were they actually letting out
 19 product?
 20 A. I'll say it one more time this
 21 way. We had active fires in the protective
 22 housings of three of the VCM cars. I
 23 can't -- couldn't tell you where those fires
 24 were coming from, but I couldn't {sic} tell
 25 you that we had fire in three protective

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1 housings.

2 Q. Okay. So you couldn't tell if
3 the PRDs were activating because of fire?

4 A. There were three cars with
5 protective housings on fire, yes, sir.

6 Q. What did you learn about, when
7 you arrived on-scene, the -- what I'll call
8 the extended activation of the PRD on one of
9 the vinyl chloride cars the evening before?

10 Let me ask you this way. When
11 you arrived on-scene, were you told that the
12 night before there was an extended activation
13 of one of the PRDs on the vinyl chloride
14 cars?

15 A. Yes, sir.

16 Q. And was that the third vinyl
17 chloride car?

18 A. I believe that was the third --
19 yes, the third VCM car.

20 Q. And that -- well, the PRDs had
21 been cycling from the late evening, early
22 morning of February 4th, through the morning
23 of February 4th {sic} before eventually
24 stopping.

25 Right?

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1 MR. LEVINE: Objection.

2 THE WITNESS: I'm trying to get
3 my days correct.

4 So the fires started on the
5 night of the 4th, and the PRDs
6 operated as designed through that
7 night, the 5th, and into the morning
8 of the 5th, yes.

9 QUESTIONS BY MR. GOMEZ:

10 Q. Into the morning of the 5th?

11 A. Correct.

12 Q. Okay. The derailment occurred
13 on the 3rd.

14 A. So the derailment occurred on
15 the 3rd.

16 Q. Yeah.

17 A. The fires were burning all day
18 the 4th. When we got on-site on the 5th, we
19 had protective housings on fire on three of
20 the five VCM cars.

21 Q. Okay. Tell me what was
22 described to you about the extended
23 activation of the PRD on that third vinyl
24 chloride car February 4th before you arrived
25 on-site.

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1 A. There was a -- they were
2 planning on doing some offensive operations,
3 and the PRD on one of the VCM cars operated
4 for 70 minutes.

5 Q. And it was the activation of
6 that PRD, followed by it stopping working,
7 that led SPSI to believe that the
8 polymerization was occurring.

9 Is that correct?

10 MR. BRAGA: Object to the form.

11 THE WITNESS: That PRD -- the
12 PRD -- all the PRDs were operating as
13 designed throughout the 4th -- for
14 several hours on the 4th, and
15 everything settled down. And then
16 this one -- this one car went off for
17 70 minutes, which is uncharacteristic
18 of what everybody's been observing
19 before that time.

20 QUESTIONS BY MR. GOMEZ:

21 Q. So I want to make sure I
22 understand this correctly.

23 Was it the extended activation
24 of the PRD on this one car compared to the
25 other PRDs calming down or slowing down that

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1 you understood led SPSI to believe
2 polymerization was occurring?

3 MR. BRAGA: Objection.

4 MR. LEVINE: Objection.

5 THE WITNESS: The belief that
6 polymerization was occurring takes us
7 back to the training that we get in
8 polymerizable materials that if your
9 PRD operates and there is no
10 aggressive changes made, large volumes
11 of water pumped onto cars, the cooling
12 effect of the cars, and a PRD were to
13 go off and then stop suddenly, that is
14 a telltale indicator that you have --
15 you could have polymerization
16 occurring.

17 QUESTIONS BY MR. GOMEZ:

18 Q. Did you ultimately concur, when
19 you arrived on-scene, with SPSI in their
20 determination that polymerization could be
21 occurring in the cars based off the behavior
22 of the PRDs?

23 A. Absolutely.

24 Q. And at that point in time, when
25 you arrived on-scene the morning of

<p style="text-align: right;">Page 162</p> <p>1 February 5th, had SPSI already concluded that 2 there was a need for a vent and burn based on 3 the cars' condition? 4 MR. BRAGA: Objection. 5 THE WITNESS: There's a 6 hierarchy. There's a decision-making 7 process that leads us to all different 8 things before you ever get to vent and 9 burn. 10 QUESTIONS BY MR. GOMEZ: 11 Q. Okay. And I appreciate that. 12 My question is, by the time you 13 arrived on-scene that morning, Sunday, 14 February 5th, had SPSI already gone through 15 that decision-making tree and reached the 16 conclusion that there was a need for a vent 17 and burn? 18 MR. BRAGA: Objection. 19 THE WITNESS: I can't answer 20 that question because I wasn't there. 21 QUESTIONS BY MR. GOMEZ: 22 Q. When was it that anyone from 23 SPSI first communicated to you their belief 24 that there was a need for a vent and burn? 25 A. There was concurrence during</p>	<p style="text-align: right;">Page 164</p> <p>1 members of this technical group? 2 A. They attended some of the 3 meetings. 4 Q. Okay. But were they told that 5 they were part of the technical group? 6 A. They attended some of the 7 meetings. 8 Q. Were they told that they had 9 input into the decision to vent and burn? 10 A. They were part of the technical 11 group. They were -- they attended the 12 meetings. 13 Q. So -- 14 A. Some of the meetings. 15 Q. So if I understand your answer 16 correctly, by virtue of being in those 17 meetings, they had a voice in the decision to 18 vent and burn. 19 Is that your testimony? 20 A. They were members of that 21 group, yes, sir. 22 Q. Is there a reason why you can't 23 say whether they were a member of the 24 technical group? 25 MR. BRAGA: Objection.</p>
<p style="text-align: right;">Page 163</p> <p>1 several of the technical group committee 2 meetings, group meetings, in their trailer 3 after we were already on-scene. 4 Q. And the technical group, again, 5 was members of SRS. 6 Right? Yes? 7 A. Yes. 8 Q. Members of SPSI. 9 Right? 10 A. Yes. 11 Q. And who were the other members? 12 I'm sorry. 13 A. Norfolk Southern. 14 Q. Norfolk Southern? 15 A. And once OxyChem -- Oxy Vinyls 16 showed up, Oxy. 17 Q. So it's your testimony that 18 Oxy, through its representatives, were 19 members of that technical group? 20 A. That is correct. 21 Q. Was that ever communicated to 22 them? 23 A. "To them." Define -- 24 Q. Were the three individuals from 25 Oxy who were on-scene told that they were</p>	<p style="text-align: right;">Page 165</p> <p>1 THE WITNESS: They were in the 2 meetings. Why would you -- if you 3 weren't a member of the group, why 4 would you be attending the meetings. 5 QUESTIONS BY MR. GOMEZ: 6 Q. So they had as much say in what 7 happened once they arrived on-site as SPSI, 8 SRS and Norfolk Southern. 9 Is that your testimony? 10 MR. BRAGA: Objection. 11 THE WITNESS: You're absolutely 12 correct. 13 QUESTIONS BY MR. GOMEZ: 14 Q. And who communicated that to 15 these folks from Oxy who were on-site? 16 MR. FUKUMURA: Objection. 17 THE WITNESS: Several people 18 invited them every time -- hey, we're 19 having a meeting, or, hey, we're 20 having a meeting. 21 QUESTIONS BY MR. GOMEZ: 22 Q. If the folks from Oxy were 23 members of this technical group and had as 24 much say as SPSI, SRS and Norfolk Southern, 25 then why weren't they invited to all the</p>

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1 meetings that you had?
 2 MR. BRAGA: Objection.
 3 THE WITNESS: They were invited
 4 to all the meetings.
 5 QUESTIONS BY MR. GOMEZ:
 6 Q. They were invited to every
 7 meeting?
 8 A. You are absolutely correct.
 9 Q. They were invited to the
 10 meeting that was had with the governor of
 11 Ohio?
 12 A. There were only two members --
 13 three members of the technical group that
 14 were told to be at the meeting with the
 15 governor.
 16 Q. Okay. So they weren't at that
 17 meeting.
 18 Right?
 19 A. I don't know where they were.
 20 Q. Were you at that meeting?
 21 A. I was.
 22 Q. Do you remember them being at
 23 that meeting?
 24 A. There were 70-some people in
 25 this IT room or library or something.

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1 Q. What meetings do you recall the
 2 folks from Oxy being invited to that they
 3 didn't attend?
 4 MR. LEVINE: Objection.
 5 MR. BRAGA: Objection.
 6 THE WITNESS: We had meetings.
 7 We would -- NS would be there. Drew,
 8 myself, Terry, the SRS, SPSI folks
 9 were there. Where is OxyChem.
 10 Somebody call OxyChem.
 11 And they would finally show up.
 12 They were doing other things.
 13 QUESTIONS BY MR. GOMEZ:
 14 Q. And who would be tasked with
 15 getting in contact with them?
 16 A. Whoever was closest to the
 17 door, because we couldn't get telephone
 18 communications inside the trailer.
 19 Q. Okay. Just generally speaking,
 20 between February 5th and February 6th, how
 21 did any of the other members of the technical
 22 group, SPSI, SRS and Norfolk Southern, let
 23 the folks from Oxy know that they were about
 24 to have a meeting?
 25 A. Phone calls.

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1 Q. So --
 2 A. Or we were in close proximity.
 3 Hey, we're going to meet.
 4 Q. Going back to the PRDs and the
 5 behavior of the PRDs, it's the training that
 6 tells you and others in the industry that if
 7 they're activating and suddenly stop, despite
 8 circumstances remaining largely the same,
 9 that's an indicator that polymerization could
 10 be occurring.
 11 Right?
 12 A. I lost track what you were
 13 saying. Say that one more time.
 14 Q. No problem.
 15 The training that you receive
 16 and others in your industry receive tells you
 17 that if a PRD is activating and then suddenly
 18 stops, but otherwise the conditions of the
 19 railcars remain the same, there's not an
 20 addition of large amounts of water, pool
 21 fires haven't stopped, it's that -- it's that
 22 sudden stopping that indicates polymerization
 23 might be occurring?
 24 MR. BRAGA: Objection.
 25 THE WITNESS: There is a --

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1 there is a possibility, yes, sir.
 2 QUESTIONS BY MR. GOMEZ:
 3 Q. There are other explanations
 4 for a PRD ceasing activation.
 5 Right?
 6 A. There are several reasons, yes,
 7 sir.
 8 Q. Right.
 9 It can be that the product has
 10 auto-refrigerated.
 11 Right?
 12 A. Correct.
 13 Q. It could be that the pressure
 14 has decreased within the vessel.
 15 Right?
 16 A. That's correct.
 17 Q. It could be that the
 18 pressure -- or that the product has been
 19 exhausted.
 20 Right?
 21 A. Correct.
 22 Q. It could be a mechanical
 23 failure of the pressure relief device.
 24 Right?
 25 A. Correct.

1 Q. So what is it about the
2 behavior of the PRD in the five vinyl
3 chloride cars derailed in East Palestine that
4 led you and SPSI to rule out these other
5 explanations for their behavior in favor of a
6 conclusion that it may be polymerizing?

7 A. The PRDs, everything settled
8 down. They operated during the fire, the
9 biggest majority of the fire. They calmed
10 down. They calmed down for an extended
11 period of time.

12 Then one of them went off for
13 70 minutes, uncharacteristic of all the rest
14 of the data -- all the information that was
15 being gathered at the site visually. The PRD
16 went off for 70 minutes and then stopped.

17 Un -- it had not done it
18 before; therefore, there's a high probability
19 that polymerization was occurring.

20 Q. Okay. For that specific car,
21 when it -- when the PRD cycled for 70 minutes
22 and then suddenly stopped, what data points
23 allowed you to rule out that it wasn't
24 because of product exhaustion or a decrease
25 in pressure within the -- within the tank car

1 as opposed to polymerization?

2 MR. BRAGA: Objection.

3 THE WITNESS: So now we're
4 getting into the part of the job that
5 we've got to base a lot of our
6 decisions on how we're feeling based
7 on training and communications with a
8 lot of folks on site and off site.

9 When a PRD goes off for
10 70 minutes, nothing has changed, we
11 didn't apply a lot of water to the
12 car, and it stops going off, with a
13 material that has the potential for
14 polymerization, we could be sitting
15 here and talking about an explosion
16 that took out half of East Palestine.

17 We can Monday morning
18 quarterback all we want, but we don't
19 know. At that point, we do not know.
20 So we've got to err on the side of
21 safety of personnel, life safety,
22 figure out how to stabilize that
23 incident and get this incident, this
24 part of the incident, over with.
25

1 QUESTIONS BY MR. GOMEZ:

2 Q. And that's what your training
3 tells you?

4 A. That's what our training tells
5 us.

6 Q. And what part of your training
7 tells you that a PRD can activate and
8 suddenly stop as a result of polymerization?

9 A. Because it can get plugged with
10 polymer.

11 Q. What training specifically
12 imparted that information on you?

13 MR. LEVINE: Objection.

14 THE WITNESS: When you're
15 dealing with polymerizable materials,
16 if polymer is formed, it can bring
17 up -- it can plug the PRD. There's
18 documented evidence where a material
19 has polymerized, the polymer material
20 has plugged the PRD, and the car has
21 blown apart.

22 QUESTIONS BY MR. GOMEZ:

23 Q. Where can I find that
24 documented evidence?

25 A. Rohm and Haas, Houston, Texas,

1 early '90s. BASF Corporation, Freeport,
2 Texas, late '90s, early 2000s, on a
3 caprolactam car.

4 Q. You said Freeport was in the
5 late '90s, early 2000s?

6 A. Late '90s, early 2000s.

7 Q. In the Rohm and Haas incident,
8 what was the chemical involved there?

9 A. Crude wash glacial acrylic
10 acid.

11 Q. And that specific form of
12 acrylic acid, is that a polymerizable
13 chemical?

14 A. Yes, sir.

15 Q. Do you know if it shares
16 chemical properties with vinyl chloride
17 monomer?

18 A. I do not know.

19 Q. Okay. So you don't know if it
20 polymerizes in the same way as vinyl chloride
21 monomer.

22 Right?

23 A. Not a chemist, no, sir.

24 Q. If you're comparing past
25 incidents to what happened in East Palestine,

1 isn't it important to compare the chemical
 2 properties of the different chemicals at
 3 issue?
 4 MR. LEVINE: Objection.
 5 MR. BRAGA: Objection.
 6 THE WITNESS: The PRDs on those
 7 cars plugged. For some reason, the
 8 PRDs operated very well on four of the
 9 five cars, or at least three of the
 10 five cars, and then settled down,
 11 which is a good indicator that, hey,
 12 things are kind of getting under
 13 control. And then it goes off for
 14 70 minutes straight, wide open.
 15 The PRD relief pressure -- or
 16 relief volume is around 37,000
 17 standard cubic feet per minute, and it
 18 went off for 70 minutes, which is
 19 unlike anything that had occurred
 20 previous. They were going off for --
 21 every two minutes for approximately
 22 30 seconds --
 23 QUESTIONS BY MR. GOMEZ:
 24 Q. Okay.
 25 A. -- relieving pressure.

1 Q. If you're using your experience
 2 from past situations involving PRDs getting
 3 plugged up or gummed up from polymerizable
 4 material --
 5 A. Yes, sir.
 6 Q. -- can you agree with me that
 7 it is important to understand the chemical
 8 differences between the chemicals in East
 9 Palestine and the chemicals involved in those
 10 past incidents?
 11 MR. BRAGA: Objection.
 12 MR. LEVINE: Objection.
 13 THE WITNESS: The fact that
 14 polymer is -- was formed, was being
 15 formed, is a potential for the vinyl
 16 chloride, because it is a
 17 polymerizable material, and the other
 18 materials that I've spoke of. So the
 19 conditions are very right for polymer
 20 to be plugging the PRD.
 21 QUESTIONS BY MR. GOMEZ:
 22 Q. The conditions are very right
 23 for VCM to polymerize and plug the PRD.
 24 Is that what you're saying?
 25 A. That's exactly what I'm saying.

1 Q. Okay. So you'll agree with me
 2 that then it's important to understand the
 3 conditions that VCM requires to polymerize.
 4 Right?
 5 MR. LEVINE: Objection.
 6 THE WITNESS: If polymer is
 7 being formed inside the car, that
 8 material can plug the PRD.
 9 QUESTIONS BY MR. GOMEZ:
 10 Q. Yeah. I understand that.
 11 My question is, if you're
 12 thinking that the VCM is polymerizing and
 13 leading the PRDs to gum up, isn't it
 14 important to understand exactly what has to
 15 happen for VCM to polymerize?
 16 A. Yes, sir. It's a bit of a
 17 fact, yes, sir.
 18 Q. And you're not a chemist.
 19 Right?
 20 A. I am not.
 21 Q. Drew McCarty is not a chemist.
 22 A. That is correct.
 23 Q. Right?
 24 The chemists were in Dallas.
 25 Right?

1 MR. LEVINE: Objection.
 2 THE WITNESS: I don't know.
 3 QUESTIONS BY MR. GOMEZ:
 4 Q. You don't know that the team in
 5 Dallas for Oxy Vinyls had chemists on it?
 6 A. I did not.
 7 Q. Where did you think that they
 8 were coming up with all this information for
 9 the chemical that they manufactured?
 10 MR. BRAGA: Objection.
 11 THE WITNESS: I have no idea.
 12 QUESTIONS BY MR. GOMEZ:
 13 Q. Aren't they your customer?
 14 A. They -- certain parts of them
 15 are, yes.
 16 Q. Yeah.
 17 You know that Oxy Vinyls
 18 employs chemists.
 19 Right?
 20 A. Yes, sir.
 21 Q. Isn't it a fair assumption that
 22 if they're providing you chemical -- or
 23 advice and technical information about a
 24 chemical, that they have chemists involved in
 25 that?

<p style="text-align: right;">Page 178</p> <p>1 MR. BRAGA: Objection. 2 MR. LEVINE: Objection. 3 THE WITNESS: They have 4 chemists within the organization. I 5 don't know that they were in the 6 conference room or the emergency 7 operations center in Dallas. 8 QUESTIONS BY MR. GOMEZ: 9 Q. If there was no chemist 10 involved in any of these conversations, did 11 it occur to you to ask whether anyone in 12 Dallas was a chemist? 13 MR. BRAGA: Objection. 14 THE WITNESS: No, because I -- 15 I was trusting what they were saying, 16 but I was conflicted with the 17 information I was receiving. 18 QUESTIONS BY MR. GOMEZ: 19 Q. Receiving from who? 20 A. From the folks in Dallas. 21 Q. So you were trusting what they 22 were saying, but conflicted with the 23 information from Dallas. 24 Aren't they the same people? 25 A. So Dallas has -- I don't know</p>	<p style="text-align: right;">Page 180</p> <p>1 we don't believe polymerization is 2 occurring. No. 3 QUESTIONS BY MR. GOMEZ: 4 Q. My question was different. 5 My question was, between 6 February 5th and February 6th, all these 7 conversations that you were having with the 8 folks in Dallas, you didn't understand any of 9 those folks to be experts in the chemical 10 that you were discussing? 11 MR. BRAGA: Objection. 12 MR. LEVINE: Objection. 13 THE WITNESS: They have 14 experience with the product. I don't 15 know that they're considered experts 16 in the product or polymerization. 17 QUESTIONS BY MR. GOMEZ: 18 Q. They make the product. 19 Right? 20 A. Okay. 21 Q. They've been making it for 22 decades. 23 A. Okay. Is there a question? 24 Q. If not them -- if not them, who 25 else is an expert in VCM manufactured and</p>
<p style="text-align: right;">Page 179</p> <p>1 who was on the telephone. There were a lot 2 of people on the conference call. 3 When the three folks from Oxy 4 showed up, they were wondering why we were 5 getting conflicting information. 6 Q. And they told you they're not 7 experts. 8 Right? 9 MR. BRAGA: Objection. 10 THE WITNESS: Exactly. 11 QUESTIONS BY MR. GOMEZ: 12 Q. That the people in Dallas were 13 the experts. 14 Right? 15 A. They said -- no. No. They 16 were not -- they did not indicate that they 17 were the experts, that Dallas was the 18 experts. 19 Q. So you had no idea between 20 February 5th and February 6th that the people 21 from Oxy Vinyls in Dallas providing you all 22 this information about polymerization were 23 experts in the product? 24 MR. BRAGA: Objection. 25 THE WITNESS: They were saying,</p>	<p style="text-align: right;">Page 181</p> <p>1 shipped by Oxy Vinyls? 2 MR. LEVINE: Objection. 3 MR. BRAGA: Objection. 4 THE WITNESS: I don't know how 5 you want me to answer the question, 6 sir. 7 QUESTIONS BY MR. GOMEZ: 8 Q. Do you believe, sitting here 9 today, that the folks in Dallas from Oxy 10 Vinyls, providing technical assistance and 11 information over the course of 48 to 12 72 hours, were experts in their own product? 13 MR. LEVINE: Objection. 14 THE WITNESS: I was receiving 15 conflicting information, so it put a 16 question in my mind. 17 QUESTIONS BY MR. GOMEZ: 18 Q. Okay. I'll ask it one more 19 time. 20 As you sit here today, do you 21 believe that the people from Oxy Vinyls who 22 were providing technical information and 23 advice from Dallas were experts in their own 24 product? 25 MR. BRAGA: Objection.</p>

<p style="text-align: right;">Page 182</p> <p>1 THE WITNESS: They know the 2 product. 3 QUESTIONS BY MR. GOMEZ: 4 Q. Okay. You're not willing to 5 say that they're experts in the product? 6 A. I don't know who was on the 7 phone, no, sir. 8 Q. Okay. So if you didn't consult 9 with experts at Oxy Vinyls about the vinyl 10 chloride monomer in the railcars, what 11 experts did you consult with? 12 A. I spoke to a lot of people 13 about vinyl chloride. 14 Q. Okay. Which of those people do 15 you consider experts in vinyl chloride? 16 A. The manufacturer is -- they 17 make the product. They understand the 18 product. They know the product. 19 The gentlemen that sat beside 20 me at the NTSB hearing, he was a degreed 21 chemist. Is he an expert in polymerization? 22 I don't know. He's a chemist. 23 He doesn't -- did not -- he 24 specifically said he didn't know why the 25 statements were in the SDS, so that's</p>	<p style="text-align: right;">Page 184</p> <p>1 vinyl chloride monomer. 2 Yes or no? 3 MR. LEVINE: Objection. 4 THE WITNESS: OxyChem makes 5 VCM. They understand VCM. They sent 6 folks to the scene that understand VCM 7 in emergency conditions. 8 So hanging a tag of expert on 9 any one person, I'm not going to do it 10 because we were getting so much 11 conflicting information. 12 It is -- could it potentially 13 polymerize; yes or no? 14 Well, we're not experts in 15 polymerization. We really don't know. 16 I guess we're going to have to go to 17 Dallas to explain why there's a P in 18 the DOT guidebook behind vinyl 19 chloride. The potential was there. 20 QUESTIONS BY MR. GOMEZ: 21 Q. Did it occur to you at any 22 point in time while you were on-scene before 23 the vent and burn occurred on February 6th 24 that it would make sense to talk to the most 25 knowledgeable experts in vinyl chloride</p>
<p style="text-align: right;">Page 183</p> <p>1 conflicting information. 2 We read all these different 3 documents, and you get conflicting 4 information. So you have to reach out to a 5 lot of people and form decisions. 6 Q. And those people that you 7 reached out to, which of them do you consider 8 to be experts in vinyl chloride monomer? 9 MR. LEVINE: Objection. 10 THE WITNESS: I don't. None of 11 them. None of them were experts in 12 vinyl chloride monomer. 13 QUESTIONS BY MR. GOMEZ: 14 Q. So as far as you're concerned, 15 no one consulted with any experts about vinyl 16 chloride monomer before conducting the vent 17 and burn on February 6th? 18 A. There were a lot of discussions 19 about vinyl chloride, the potential for 20 polymerization of material. 21 Q. My question is specific to 22 experts, so I'll ask it again. 23 As far as you're concerned, 24 between February 5th and February 6th, there 25 was never a consultation with any expert in</p>	<p style="text-align: right;">Page 185</p> <p>1 monomer before conducting that operation? 2 MR. LEVINE: Objection. 3 THE WITNESS: We spoke to a lot 4 of people. None of them, I'm going to 5 say, are experts in vinyl chloride 6 monomer. 7 We talked to professionals in 8 tank car manage -- or tank car 9 derailment assessment after the 10 recommendation to vent and burn the 11 cars were made. 12 QUESTIONS BY MR. GOMEZ: 13 Q. So no one decided that they 14 should reach out to the most knowledgeable 15 person available on VCM polymerization before 16 conducting a vent and burn? 17 MR. LEVINE: Objection. 18 MR. BRAGA: Objection. 19 THE WITNESS: There's a lot of 20 people in the technical group that had 21 the ability. You're asking me the 22 question. I was one of several 23 people. 24 QUESTIONS BY MR. GOMEZ: 25 Q. But none of them were experts.</p>

<p style="text-align: right;">Page 186</p> <p>1 Right? We've established that?</p> <p>2 MR. LEVINE: Objection.</p> <p>3 QUESTIONS BY MR. GOMEZ:</p> <p>4 Q. Is that yes?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. None of them were</p> <p>7 chemists.</p> <p>8 Right?</p> <p>9 A. Correct.</p> <p>10 Q. Wouldn't it make sense to at</p> <p>11 least get a chemist involved before</p> <p>12 conducting the vent and burn if you believe</p> <p>13 that there was polymerization occurring?</p> <p>14 A. I had folks that I spoke to.</p> <p>15 Drew had folks that he spoke to. The Oxy</p> <p>16 Vinyls folks had folks that they spoke to.</p> <p>17 Everybody in the group was able to speak to</p> <p>18 different people to gather additional</p> <p>19 information.</p> <p>20 Q. But you can't say whether any</p> <p>21 of those people across all of those different</p> <p>22 conversations were experts in vinyl chloride</p> <p>23 monomer polymerization?</p> <p>24 A. I cannot.</p> <p>25 Q. Between the activation of that</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Correct.</p> <p>2 Q. And that that polymerization</p> <p>3 could lead to an increase in pressure in the</p> <p>4 cars.</p> <p>5 Right?</p> <p>6 A. Correct.</p> <p>7 Q. And there was an imminent</p> <p>8 danger that those cars would then break apart</p> <p>9 and explode, sending shrapnel throughout East</p> <p>10 Palestine.</p> <p>11 Right?</p> <p>12 A. Correct.</p> <p>13 Q. So if that decision was made,</p> <p>14 or if that conclusion was made, 48 hours</p> <p>15 before the vent and burn occurred, why did it</p> <p>16 take so long to conduct the operation?</p> <p>17 MR. LEVINE: Objection.</p> <p>18 THE WITNESS: There was a lot</p> <p>19 of setup. There was a lot of</p> <p>20 communications that needed to take</p> <p>21 place. There was a lot of planning,</p> <p>22 and we had to bring a lot of stuff to</p> <p>23 the site.</p> <p>24 QUESTIONS BY MR. GOMEZ:</p> <p>25 Q. And in addition to all those</p>
<p style="text-align: right;">Page 187</p> <p>1 PRD on the third car for 70 minutes and the</p> <p>2 vent and burn on February 6, 2023, it was</p> <p>3 roughly 48 hours.</p> <p>4 Right?</p> <p>5 A. Give me that time one more</p> <p>6 time?</p> <p>7 Q. Sure.</p> <p>8 The PRD activated for</p> <p>9 70 minutes. I'm going to refer to that as</p> <p>10 extended PRD activation.</p> <p>11 Okay?</p> <p>12 A. Okay.</p> <p>13 Q. Just for shorthand.</p> <p>14 Between the time that the PRD</p> <p>15 activated for an extended period of time on</p> <p>16 that vinyl chloride monomer car and the time</p> <p>17 of the vent and burn on February 6, 2023, was</p> <p>18 roughly 48 hours.</p> <p>19 Wasn't it?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And the reason ultimately to</p> <p>22 decide to do the vent and burn was because of</p> <p>23 the possibility that polymerization was</p> <p>24 occurring.</p> <p>25 Right?</p>	<p style="text-align: right;">Page 189</p> <p>1 preparations and planning and staging that</p> <p>2 you needed to do, you wanted to get as much</p> <p>3 information as possible about whether</p> <p>4 polymerization was actually occurring in</p> <p>5 those cars before deciding to blow them up.</p> <p>6 Right?</p> <p>7 MR. LEVINE: Objection.</p> <p>8 THE WITNESS: We did not blow</p> <p>9 the cars up.</p> <p>10 QUESTIONS BY MR. GOMEZ:</p> <p>11 Q. Okay. Let me rephrase it.</p> <p>12 Putting aside all the staging</p> <p>13 and getting equipment to the site and the</p> <p>14 like, you also wanted to use that 48-hour</p> <p>15 period to generate as much information about</p> <p>16 whether or not polymerization was actually</p> <p>17 occurring in the vinyl chloride cars before</p> <p>18 you conducted the vent and burn.</p> <p>19 Right?</p> <p>20 A. There was a concern that</p> <p>21 polymerization was occurring, yes. So, yes.</p> <p>22 Q. Okay. Let me -- let me just</p> <p>23 make it a simpler question.</p> <p>24 During the 48 hours that you</p> <p>25 were staging the vent and burn, did you also</p>

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1 try and get more information to con -- to
2 confirm whether or not polymerization was
3 actually occurring?

4 MR. LEVINE: Objection.

5 MR. BRAGA: Objection.

6 THE WITNESS: There was --
7 there were a lot of temperatures taken
8 on the cars. The unfortunate part is
9 with polymerization, you -- it forms
10 on the inside of the car. And we were
11 using contact thermometers and
12 infrared thermometers to take the
13 temperature readings. We were not
14 able to get up on top of the cars and
15 take a core temperature of the
16 product.

17 (Day Exhibit 8 marked for
18 identification.)

19 QUESTIONS BY MR. GOMEZ:

20 Q. Can we pull up Document 107
21 which we will mark as Exhibit 8, please?

22 Mr. Day, this document that
23 we've marked as Exhibit 8 is a text message
24 exchange between you and Drew McCarty.
25 Is that correct?

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1 A. This appears to be it, yes,
2 sir.

3 Q. Okay. And if we look at the
4 dates of the conversations, it looks like
5 this particular thread begins March 26, 2023.

6 Right?

7 A. Yes, sir.

8 Q. And the time is actually in
9 GMT, so it's five hours ahead of the actual
10 time. So 2:20 a.m. would have been roughly
11 9:20 p.m. the night before.

12 Is that fair?

13 A. Sure.

14 Q. I just kind of want to orient
15 us because the time doesn't quite line up
16 with the time zone that we're currently in.

17 And if we look through this
18 thread, it looks like there's two
19 conversations going on.

20 The second begins with Drew
21 McCarty texting on March 26, 2023, at
22 10:08 p.m., or what says 10:08 p.m.

23 "Do you recall roughly when NS
24 called you guys on February 4th and when you
25 got to EP?"

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1 Do you see that?

2 A. Yes, sir.

3 Q. And then you respond, laying
4 out the timeline of your involvement.

5 Right?

6 A. Yes, sir.

7 Q. Drew thanks you for that
8 information.

9 And you respond, "What's up
10 now?"

11 Right?

12 A. Uh-huh. Yes, sir.

13 Q. Mr. McCarty then says, "I have
14 to do a presentation tomorrow," and continues
15 by saying, quote, "Basically I want to get
16 ahead of a question that could pop up. If
17 you were already at V&B Saturday afternoon
18 after the sudden and violent PRD 70-minute
19 release, why wait till Sunday afternoon to
20 present to fire chief? My response would be
21 such a significant decision, NS wanted to get
22 more folks like you and Terry here for your
23 opinions as well before deciding that. I
24 just wanted to make sure I recalled the
25 timeline correctly, and I believe I have it.

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1 All good."

2 Did I read that correctly?

3 A. Yes, sir.

4 Q. The reference to V&B in this
5 text message from Drew McCarty, did you take
6 that to mean vent and burn?

7 A. Yes, sir.

8 Q. And according to his text
9 message, he's saying that his explanation of
10 why there was a delay between when the
11 decision was made to conduct a vent and burn
12 to the presentation to incident command was
13 to get more eyes on the cars and more
14 opinions about whether polymerization was
15 occurring.

16 Right?

17 MR. LEVINE: Objection.

18 MR. BRAGA: Objection.

19 THE WITNESS: That's basically
20 what it looks like it's saying, yes,
21 sir.

22 QUESTIONS BY MR. GOMEZ:

23 Q. And he mentions specific people
24 whose opinions he wanted.

25 Right?

<p style="text-align: right;">Page 194</p> <p>1 A. Yes, sir.</p> <p>2 Q. There's a reference to you.</p> <p>3 Right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. There's a reference to Terry.</p> <p>6 Right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. That's Terry Rockwell.</p> <p>9 Right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And they wanted your opinions</p> <p>12 about whether polymerization was occurring</p> <p>13 before actually making the recommendation and</p> <p>14 carrying out the operation.</p> <p>15 Right?</p> <p>16 MR. LEVINE: Objection.</p> <p>17 THE WITNESS: That appears what</p> <p>18 it says.</p> <p>19 QUESTIONS BY MR. GOMEZ:</p> <p>20 Q. Nothing in this text message</p> <p>21 suggests that Mr. McCarty wanted information</p> <p>22 from the product manufacturer before making</p> <p>23 that presentation to incident command.</p> <p>24 Right?</p> <p>25 MR. BRAGA: Objection.</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Correct.</p> <p>2 MR. LEVINE: Objection.</p> <p>3 QUESTIONS BY MR. GOMEZ:</p> <p>4 Q. -- on the cars.</p> <p>5 Right?</p> <p>6 A. That's what it says. Norfolk</p> <p>7 Southern wants more eyes -- more folks like</p> <p>8 you and Terry here for your opinion as well</p> <p>9 before deciding that.</p> <p>10 Q. And at least according to this</p> <p>11 text message, Mr. McCarty doesn't identify</p> <p>12 that Norfolk Southern wanted the product</p> <p>13 manufacturer's eyes on the cars before</p> <p>14 deciding on the vent and burn.</p> <p>15 Right?</p> <p>16 A. That's -- it doesn't say</p> <p>17 anything about the product manufacturer.</p> <p>18 Q. They're nowhere to be found.</p> <p>19 Right?</p> <p>20 MR. LEVINE: Objection.</p> <p>21 THE WITNESS: I have no idea</p> <p>22 where they're at.</p> <p>23 QUESTIONS BY MR. GOMEZ:</p> <p>24 Q. And --</p> <p>25 A. This is on March 26th, well</p>
<p style="text-align: right;">Page 195</p> <p>1 THE WITNESS: I'm not sure what</p> <p>2 the -- the presentation he's talking</p> <p>3 about. I don't know if this is to</p> <p>4 incident command. I don't know</p> <p>5 anything.</p> <p>6 And the 26th, it's after the</p> <p>7 incident is over.</p> <p>8 QUESTIONS BY MR. GOMEZ:</p> <p>9 Q. Understood.</p> <p>10 I'm focusing just on his</p> <p>11 explanation that he wants to get ahead of a</p> <p>12 question about being at vent and burn on</p> <p>13 Saturday afternoon and waiting until Sunday</p> <p>14 to present to the fire chief.</p> <p>15 You agree with me that his</p> <p>16 explanation, at least according to this text</p> <p>17 message, was he wanted more eyes on the</p> <p>18 railcars, yours included.</p> <p>19 Right?</p> <p>20 MR. LEVINE: Objection.</p> <p>21 THE WITNESS: The Norfolk</p> <p>22 Southern.</p> <p>23 QUESTIONS BY MR. GOMEZ:</p> <p>24 Q. That Norfolk Southern wanted</p> <p>25 more eyes --</p>	<p style="text-align: right;">Page 197</p> <p>1 after the incident.</p> <p>2 Q. Yeah.</p> <p>3 Mr. McCarty's, after the fact,</p> <p>4 trying to come up with an explanation for why</p> <p>5 he waited to make a presentation on vent and</p> <p>6 burn after the PRD activated for 70 straight</p> <p>7 minutes on Saturday, February 4th.</p> <p>8 Right?</p> <p>9 MR. BRAGA: Objection.</p> <p>10 MR. LEVINE: Objection.</p> <p>11 THE WITNESS: I'm not sure</p> <p>12 what you're asking me.</p> <p>13 QUESTIONS BY MR. GOMEZ:</p> <p>14 Q. Well, I'm asking you if what</p> <p>15 you took this text message to mean, the one</p> <p>16 that he sent you on March 26, 2023, was</p> <p>17 Mr. McCarty trying to come up with an</p> <p>18 explanation for if polymerization was an</p> <p>19 imminent danger, why it took so long for him</p> <p>20 to make that presentation to incident</p> <p>21 command?</p> <p>22 MR. BRAGA: Objection.</p> <p>23 MR. LEVINE: Objection.</p> <p>24 THE WITNESS: I don't know what</p> <p>25 presentation he's making this --</p>

<p style="text-align: right;">Page 198</p> <p>1 making. This is on the 26th, so this</p> <p>2 is after the incident.</p> <p>3 QUESTIONS BY MR. GOMEZ:</p> <p>4 Q. He says, "Present to fire chief</p> <p>5 staff."</p> <p>6 He's referring to Sunday</p> <p>7 afternoon. He's talking about making the</p> <p>8 presentation of the vent and burn option.</p> <p>9 Right?</p> <p>10 MR. LEVINE: Objection.</p> <p>11 THE WITNESS: He has a</p> <p>12 presentation to do -- to make</p> <p>13 tomorrow, and this is on 3/26.</p> <p>14 I'm confused what your question</p> <p>15 is.</p> <p>16 QUESTIONS BY MR. GOMEZ:</p> <p>17 Q. Yeah. I'm not asking about the</p> <p>18 presentation he made in March of 2023.</p> <p>19 A. Okay.</p> <p>20 Q. What I'm asking is about his</p> <p>21 explanation to you in the subsequent text</p> <p>22 that he wants to come up with an explanation</p> <p>23 for why so much time elapsed between when the</p> <p>24 PRD went off for 70 minutes and he first</p> <p>25 decided to bring up vent and burn to the</p>	<p style="text-align: right;">Page 200</p> <p>1 MR. LEVINE: Objection.</p> <p>2 THE WITNESS: That's correct.</p> <p>3 QUESTIONS BY MR. GOMEZ:</p> <p>4 Q. According to this text message,</p> <p>5 outside experts were not some of those</p> <p>6 people.</p> <p>7 MR. LEVINE: Objection.</p> <p>8 THE WITNESS: It identifies</p> <p>9 myself and Terry.</p> <p>10 QUESTIONS BY MR. GOMEZ:</p> <p>11 Q. And you're --</p> <p>12 A. Wants "more folks like."</p> <p>13 And it says, "NS wanted to get</p> <p>14 more folks like you and Terry," not, NS</p> <p>15 wanted you and Terry. More folks.</p> <p>16 Q. So you took that to mean that</p> <p>17 there were other people that they wanted as</p> <p>18 well --</p> <p>19 A. Correct.</p> <p>20 Q. -- right?</p> <p>21 He just neglected to identify</p> <p>22 them here.</p> <p>23 A. He didn't identify them, yes,</p> <p>24 sir.</p> <p>25 Q. Right?</p>
<p style="text-align: right;">Page 199</p> <p>1 incident command structure.</p> <p>2 MR. BRAGA: Objection.</p> <p>3 MR. LEVINE: Objection.</p> <p>4 QUESTIONS BY MR. GOMEZ:</p> <p>5 Q. Did you take that statement --</p> <p>6 did you take that text message to be</p> <p>7 providing an explanation for why he waited so</p> <p>8 long?</p> <p>9 MR. LEVINE: Objection.</p> <p>10 THE WITNESS: Generally you</p> <p>11 could come to that, yes.</p> <p>12 QUESTIONS BY MR. GOMEZ:</p> <p>13 Q. And the reason was, NS wanted</p> <p>14 other folks' input on the condition of the</p> <p>15 railcars.</p> <p>16 Right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. You were one of those people?</p> <p>19 A. I was.</p> <p>20 Q. Terry Rockwell was one of those</p> <p>21 people?</p> <p>22 A. He was.</p> <p>23 Q. According to this text message,</p> <p>24 the product manufacturer was not one of those</p> <p>25 people.</p>	<p style="text-align: right;">Page 201</p> <p>1 And you agree with this</p> <p>2 explanation.</p> <p>3 Right?</p> <p>4 MR. LEVINE: Objection.</p> <p>5 THE WITNESS: I agree that the</p> <p>6 NS wanted to get more folks like</p> <p>7 myself and Terry to get their opinions</p> <p>8 on the car.</p> <p>9 QUESTIONS BY MR. GOMEZ:</p> <p>10 Q. Okay. That's why you said that</p> <p>11 you're on the same sheet of music on the</p> <p>12 next -- in the next text message.</p> <p>13 Right?</p> <p>14 A. That's correct.</p> <p>15 Q. But as you sit here today, you</p> <p>16 can't say whether those more folks included</p> <p>17 Oxy Vinyls as the product manufacturer.</p> <p>18 Right?</p> <p>19 MR. LEVINE: Objection.</p> <p>20 THE WITNESS: You're asking me</p> <p>21 about the definition of "NS wanted to</p> <p>22 get more folks like you and Terry for</p> <p>23 your opinions as well as -- as well</p> <p>24 before deciding that."</p> <p>25 And I understand. I'm on the</p>

<p style="text-align: right;">Page 202</p> <p>1 same sheet of music. We want to get 2 more people involved. 3 QUESTIONS BY MR. GOMEZ: 4 Q. Okay. And I'm asking you, do 5 those more people, those more folks who you 6 agreed with by saying "same sheet of music," 7 include the product manufacturer? 8 MR. LEVINE: Objection. 9 MR. BRAGA: Objection. 10 THE WITNESS: That would be -- 11 theoretically, that would be the 12 product manufacturer as well -- 13 QUESTIONS BY MR. GOMEZ: 14 Q. No, not theoretically. You 15 were in the East Palestine. 16 A. With OxyChem. 17 Q. Did you want insight from 18 OxyChem before recommending the vent and 19 burn? 20 A. Yes. 21 Q. And they told you no 22 polymerization was happening. 23 Right? 24 MR. LEVINE: Objection. 25 THE WITNESS: But were not</p>	<p style="text-align: right;">Page 204</p> <p>1 THE WITNESS: And the reference 2 manuals that we were using indicated 3 that polymerization was a potential. 4 QUESTIONS BY MR. GOMEZ: 5 Q. So between your reading of the 6 reference manuals and the conclusions of the 7 experts that wrote it, you choose your 8 reading of the materials? 9 MR. LEVINE: Objection. 10 MR. BRAGA: Objection. 11 THE WITNESS: An SDS is 12 provided to emergency responders in 13 case of an incident involving that 14 product. They say seven different 15 times, or six different times, that 16 polymerization is a potential. 17 Now we're getting conflicting 18 information. Well, it could occur, 19 won't occur, won't occur. What is it? 20 The SDS says it could occur. 21 QUESTIONS BY MR. GOMEZ: 22 Q. If that information in the SDS 23 is conflicting, and you're speaking to the 24 people that wrote it, and they are clarifying 25 it for you, it's no longer conflicting?</p>
<p style="text-align: right;">Page 203</p> <p>1 polymerization experts. 2 QUESTIONS BY MR. GOMEZ: 3 Q. That's the guys in the field. 4 Right? 5 A. Correct. 6 Q. Who told you, we're not 7 experts, but we can get you the answers from 8 the experts. 9 A. So we're getting conflicting 10 information from the people -- from the 11 manufacturer. Polymerization can occur. It 12 could occur, but we're not experts in it. 13 It's an emergency response. 14 We've got to make decisions pretty rapidly to 15 get the things moving because the clock is 16 ticking. We've got to get things done to 17 protect life safety and the City of East 18 Palestine. 19 Q. But you were told in no 20 uncertain terms from the experts in Dallas, 21 at least 48 hours before the vent and burn 22 occurred, that no polymerization was 23 occurring. 24 MR. LEVINE: Objection. 25 MR. BRAGA: Objection.</p>	<p style="text-align: right;">Page 205</p> <p>1 A. Even -- 2 MR. LEVINE: Objection. 3 MR. BRAGA: Objection. 4 THE WITNESS: Even the chemist 5 sitting next to me at the NTSB hearing 6 said he's not sure why it's in there. 7 Okay? 8 But it's a document. It's 9 seven different times. It's hard to 10 say -- if it was once, I can 11 understand it. Twice, eh. Seven -- 12 six or seven times, polymerization is 13 potential? You got to believe 14 something -- somebody, and we believed 15 the SDS. 16 QUESTIONS BY MR. GOMEZ: 17 Q. Over the people that wrote it? 18 MR. LEVINE: Objection. 19 THE WITNESS: I don't know who 20 wrote the SDS. 21 QUESTIONS BY MR. GOMEZ: 22 Q. Oxy wrote it. 23 Right? 24 A. Oxy wrote it. 25 Q. Yeah.</p>

<p style="text-align: right;">Page 206</p> <p>1 MR. LEVINE: Objection.</p> <p>2 QUESTIONS BY MR. GOMEZ:</p> <p>3 Q. And you were talking to Oxy?</p> <p>4 A. Oxy is great group of people.</p> <p>5 A great group of people. They have a lot of</p> <p>6 people that are really, really good at what</p> <p>7 they do.</p> <p>8 All I can say tell you is we</p> <p>9 were getting conflicting information. We</p> <p>10 needed to come up with a solution and a</p> <p>11 recommendation.</p> <p>12 What they didn't provide was</p> <p>13 other options.</p> <p>14 Q. Other options for what?</p> <p>15 A. What to do with that product.</p> <p>16 Could we tran -- there's a list of options</p> <p>17 they have to emergency responders. I can go</p> <p>18 through each one of them. None of those</p> <p>19 could be done.</p> <p>20 They were getting ready to</p> <p>21 hot-tap the car when that PRD went off. But</p> <p>22 there's so many hazards, there's so much risk</p> <p>23 involved in that.</p> <p>24 The outcome is exactly the</p> <p>25 same. It's just over a much, much longer</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Okay. And you thought</p> <p>2 polymerization was occurring because of</p> <p>3 statements in the SDS.</p> <p>4 Right?</p> <p>5 A. And the way the cars were --</p> <p>6 the cars were acting, yes.</p> <p>7 Q. And when the experts who wrote</p> <p>8 the SDS told you polymerization is not</p> <p>9 occurring, you believed your interpretation</p> <p>10 of the SDS over what they told you?</p> <p>11 MR. LEVINE: Objection.</p> <p>12 MR. BRAGA: Objection.</p> <p>13 THE WITNESS: And other</p> <p>14 industry folks.</p> <p>15 QUESTIONS BY MR. GOMEZ:</p> <p>16 Q. None of whom are chemists.</p> <p>17 Right?</p> <p>18 A. Correct.</p> <p>19 Q. None of whom are experts in VCM</p> <p>20 polymerization.</p> <p>21 Right?</p> <p>22 A. Correct.</p> <p>23 MR. LEVINE: Lunch?</p> <p>24 MR. GOMEZ: Yeah. It's a good</p> <p>25 time.</p>
<p style="text-align: right;">Page 207</p> <p>1 period of time.</p> <p>2 Q. And all of those other options</p> <p>3 that you just referenced, they were ruled out</p> <p>4 because of polymerization.</p> <p>5 Right?</p> <p>6 MR. BRAGA: Objection.</p> <p>7 THE WITNESS: The other</p> <p>8 options. We have to go individually.</p> <p>9 You want to go to individually? I can</p> <p>10 start right now. I'll tell you</p> <p>11 individually each one and the problems</p> <p>12 with that option.</p> <p>13 QUESTIONS BY MR. GOMEZ:</p> <p>14 Q. Actually, let's just go to</p> <p>15 hot-tap.</p> <p>16 Hot-tap was ruled out because</p> <p>17 of polymerization.</p> <p>18 Right?</p> <p>19 A. Polymerization potential, yes,</p> <p>20 sir.</p> <p>21 Q. Okay. If polymerization wasn't</p> <p>22 occurring, you would have hot-tapped the</p> <p>23 cars?</p> <p>24 A. We were -- they were preparing</p> <p>25 to hot-tap the cars when that PRD went off.</p>	<p style="text-align: right;">Page 209</p> <p>1 VIDEOGRAPHER: Okay. Stand by.</p> <p>2 The time is 12:24 p.m., and</p> <p>3 we're going off the record.</p> <p>4 (Off the record at 12:24 p.m.)</p> <p>5 VIDEOGRAPHER: The time is</p> <p>6 1:02 p.m., and we're back on the</p> <p>7 record.</p> <p>8 QUESTIONS BY MR. GOMEZ:</p> <p>9 Q. Mr. Day, are you familiar with</p> <p>10 the concept of super-cooling derailed tank</p> <p>11 cars?</p> <p>12 A. I've never heard that term, no.</p> <p>13 Q. Did you discuss at any point in</p> <p>14 time with Bob Gold in connection with the</p> <p>15 East Palestine derailment the need to keep</p> <p>16 VCM cars cool?</p> <p>17 A. Are you talking about</p> <p>18 auto-refrigeration?</p> <p>19 Q. No, I'm talking about actual</p> <p>20 activities that responders can take to</p> <p>21 actively cool VCM tank cars that are</p> <p>22 derailed.</p> <p>23 A. That are on fire?</p> <p>24 Q. Yes.</p> <p>25 A. Yes.</p>

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1 Q. Okay.
 2 A. "Super-cooling," I've never
 3 heard that term, but cooling of cars, yes.
 4 Q. And the idea there is to keep
 5 the temperature down so that you don't have a
 6 BLEVE.
 7 Right?
 8 A. Correct.
 9 Q. And if there's a concern about
 10 heat causing polymerization of a
 11 polymerizable chemical like VCM, the cooling
 12 helps with that as well.
 13 Right?
 14 A. If you're getting it to the
 15 product, yes, sir.
 16 Q. From the time that you arrived
 17 on-scene the morning of February 5th to the
 18 time of the vent and burn, there were no
 19 operations to cool the derailed VCM cars.
 20 Correct?
 21 A. There was no operation for
 22 cooling the VCM cars when we were there, yes.
 23 However, very important part to
 24 know is, these are jacketed tank cars. They
 25 have an inner shell, is where the product is.

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1 There's four inches of insulation. There's a
 2 half-inch thermal protection, and there's an
 3 eight-inch outer jacket.
 4 In order to get cooling water
 5 to the shell of the car, you have to take all
 6 that jacket off.
 7 Q. So is it your testimony that
 8 but for the jackets being on the cars, there
 9 would have been efforts to cool the VCM
 10 railcars?
 11 MR. BRAGA: Objection.
 12 THE WITNESS: I -- at the time
 13 I was there, had I been there and we
 14 had jacket removed, the jackets were
 15 not there, we probably would have put
 16 cooling water on the cars.
 17 QUESTIONS BY MR. GOMEZ:
 18 Q. During your time on the scene
 19 between February 5th and February 6th, did
 20 you ever become aware of discussions about
 21 using foam to cool the VCM cars?
 22 A. Foam does nothing for cooling.
 23 And again, you still have to get it on the
 24 shell of the car, not the jacket.
 25 Q. Okay. So putting that aside,

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1 my question is, were there any conversations
 2 about using foam to cool the cars that you
 3 are aware of between February 5th and
 4 February 6th?
 5 A. There are no -- no use of foam
 6 for cooling because you're not getting the
 7 foam to the shell of the car.
 8 Q. So if there were conversations
 9 about using foam that were ruled out because
 10 foam is fluorinated, you weren't aware of
 11 those.
 12 Right?
 13 A. Correct.
 14 Q. Are you familiar with a product
 15 called F-500?
 16 A. I am.
 17 Q. F-500 is a thermal
 18 encapsulator.
 19 Right?
 20 MR. BRAGA: Object to the form
 21 of the question.
 22 THE WITNESS: F-500 is a
 23 material that is available to the fire
 24 service.
 25

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1 QUESTIONS BY MR. GOMEZ:
 2 Q. It's a super-cooling material.
 3 Isn't it?
 4 A. F-500 is a material that is
 5 available to the fire service. That's as far
 6 as I know about F-500.
 7 Q. Okay. You've been a
 8 firefighter since 19 --
 9 A. In the '70s.
 10 Q. -- '81?
 11 A. In the '70s.
 12 Q. So over 40 years.
 13 Fair?
 14 A. Fair.
 15 Q. And all you know about F-500 is
 16 that it's a material that's available to the
 17 firefighting industry?
 18 A. You are absolutely correct.
 19 Q. Were there any conversations
 20 that you can recall from February 5th to
 21 February 6th in East Palestine about whether
 22 F-500 was an option to cool the VCM cars?
 23 A. No, sir.
 24 Q. Is it fair to say that you
 25 don't recall any conversations between

<p style="text-align: right;">Page 214</p> <p>1 February 5th and February 6th about the 2 availability of F-500 product in the area to 3 support the East Palestine derailment 4 response? 5 MR. LEVINE: Objection. 6 THE WITNESS: F-500 is a 7 material that's available to fire 8 service across the nation. 9 QUESTIONS BY MR. GOMEZ: 10 Q. It's a product that's been 11 around for over a decade. 12 Right? 13 A. It's available to the fire 14 service. 15 Q. Fair to say you don't know 16 anything about the application of F-500 or 17 potential application of F-500 to the VCM 18 cars in the East Palestine derailment? 19 MR. BRAGA: Objection. 20 MR. LEVINE: Objection. 21 THE WITNESS: In order to cool 22 the cars, whether you're using F-500, 23 AR-AFFF, the new Green foam or water, 24 the jackets must be removed. You must 25 apply cooling water to the shell of</p>	<p style="text-align: right;">Page 216</p> <p>1 available. I am not an expert in F-500. I 2 have an opinion of F-500 that I'd rather not 3 divulge. 4 Q. I'm just trying to understand 5 how you know nothing about F-500 except that 6 it's available, but at the same time can say 7 that it wouldn't work to cool the VCM cars. 8 A. The construction of a tank car, 9 a 105J300W tank car, there is a shell where 10 the product is. There is four inches of 11 insulation. There is a half-inch thermal 12 protection. There is an eighth-inch outer 13 jacket. On the heads, there's an additional 14 half-inch of head shield. May be full, may 15 be half. 16 In order to cool the car, you 17 must apply a cooling solution. Whether it's 18 F-500, AR-AFFF, Green foam or water, it's got 19 to be on the shell, not on the jacket. 20 Q. Have you received any training 21 specific to the application of F-500 in 22 railcars? 23 A. No, sir. 24 Q. I want to fast-forward to the 25 vent and burn preparations and the actual</p>
<p style="text-align: right;">Page 215</p> <p>1 the car, not the jacket. 2 QUESTIONS BY MR. GOMEZ: 3 Q. And you can say that even 4 though you don't know anything about F-500 5 except that it's available to the 6 firefighting service? 7 MR. BRAGA: Objection. 8 THE WITNESS: I'll say it one 9 more time. F-500 is a material 10 available to the fire service, just 11 like AR-AFFF, just like the new Green 12 foam, just like water. 13 The material, in order to -- 14 for it to cool, must be applied to the 15 shell of the car, not to the jacket. 16 Otherwise, you're wasting it. 17 QUESTIONS BY MR. GOMEZ: 18 Q. And you know that for a fact in 19 the case of F-500? 20 A. I know that for a fact for 21 water, foam, Green foam -- AR-AFFF, Green 22 foam or F-500. 23 Q. Okay. Can you tell me how 24 F-500 works? 25 A. It's a material that's</p>	<p style="text-align: right;">Page 217</p> <p>1 procedure itself. 2 As far as implementing the vent 3 and burn, there was outsourcing of work to 4 Explosive Services International. 5 Is that fair? 6 A. Correct. 7 Q. And the head of Explosive 8 Services International in February of 2023 9 was Jason Poe? 10 A. Yes, sir. 11 Q. Okay. I believe his father, 12 Billy Poe, founded the company. 13 Right? 14 A. That's correct. 15 Q. And Billy Poe was the 16 contractor who placed the explosives for the 17 vent and burn in Livingston, Louisiana. 18 Right? 19 A. I don't think he was the 20 contractor. I think he was still with the 21 state police. 22 Q. Okay. "Contractor" is a bad 23 word. 24 He was the person? 25 A. That's offensive.</p>

<p style="text-align: right;">Page 218</p> <p>1 Q. I don't mean it like that, sir. 2 Rather, it was not the proper 3 word to use in that question. 4 Is it fair to say that Billy 5 Poe -- or do you recall Billy Poe being the 6 person who placed and implemented the 7 explosives for the Livingston vent and burn? 8 A. Billy Poe was the explosives 9 person for Livingston, yes, sir. 10 Q. Is it understood within your 11 industry that Billy Poe developed or invented 12 the vent and burn procedure? 13 MR. BRAGA: Objection. 14 THE WITNESS: Refined it, I'll 15 say, yes. 16 QUESTIONS BY MR. GOMEZ: 17 Q. Okay. So it had been around 18 before Billy Poe, but Billy Poe fine-tuned it 19 to what we understand it to be today. 20 Is that fair? 21 A. That's a good surmise, yes, 22 sir. 23 Q. And his son, Jason Poe, the now 24 current head of ESI, has a background in law 25 enforcement, if I'm not mistaken.</p>	<p style="text-align: right;">Page 220</p> <p>1 QUESTIONS BY MR. GOMEZ: 2 Q. Sure. 3 If they are the best in 4 carrying out a vent and burn, would you agree 5 with me that they also know when the right 6 conditions are to actually implement the 7 procedure? 8 A. Yes, sir. 9 MR. LEVINE: Objection. 10 QUESTIONS BY MR. GOMEZ: 11 Q. When Jason Poe and his company, 12 ESI, are brought in to, let's say, a 13 derailment, for example, they're not 14 performing their own assessment of the 15 railcars. 16 Right? 17 MR. BRAGA: Objection. 18 THE WITNESS: That's correct. 19 They are not performing the 20 assessment. 21 QUESTIONS BY MR. GOMEZ: 22 Q. They're taking in information 23 about the railcars that's provided to them by 24 the railroad. 25 Right?</p>
<p style="text-align: right;">Page 219</p> <p>1 Right? 2 A. That's correct. 3 Q. Specifically with explosive 4 ordnance. 5 Right? 6 A. He's on the state police. He 7 was on the SWAT team, several other groups. 8 Q. Okay. In your opinion, is ESI 9 the best contractor for using explosives in a 10 vent and burn procedure? 11 MR. LEVINE: Objection. 12 THE WITNESS: Yes. 13 QUESTIONS BY MR. GOMEZ: 14 Q. And would that include Jason 15 Poe specifically? 16 A. Yes, sir. 17 Q. And as the best folks available 18 to implement and carry out a vent and burn, 19 they know the best conditions under which to 20 do it. 21 Right? 22 MR. BRAGA: Objection. 23 THE WITNESS: I'm not -- I'm 24 not following your question. 25</p>	<p style="text-align: right;">Page 221</p> <p>1 A. By multiple sources. 2 Q. The railroad included? 3 A. Included. 4 Q. Emergency -- other emergency 5 contractors. 6 Right? 7 A. Yes, sir. 8 Q. Okay. And that information can 9 include the condition of the railcars. 10 Right? 11 A. Yes, sir. 12 Q. The volume of the lading 13 remaining in the railcars. 14 Right? 15 A. The volume remaining, we don't 16 have access to thermometer -- or not 17 thermometers, but gauging rods, to determine 18 how much liquid is left in those cars because 19 of the fires. 20 Q. How about the effects, the air 21 effects, of any vent and burn procedure? Are 22 they relying on the railroad and contractors 23 to provide them information about that? 24 MR. BRAGA: Objection. 25 MR. LEVINE: Objection.</p>

<p style="text-align: right;">Page 222</p> <p>1 THE WITNESS: To understand how 2 an incident like this occurs, 3 everybody is brought in for mostly 4 specific functions. There are air 5 folks, and there are ground folks, and 6 there are contractors that transfer 7 products. So the environmental 8 conditions, that is handled by other 9 folks. 10 QUESTIONS BY MR. GOMEZ: 11 Q. Okay. So if, let's say, air 12 conditions are important to someone like 13 Jason Poe, he's relying on the air folks to 14 give him that information. 15 Right? 16 A. Correct. 17 Q. He's not capable of doing it 18 himself. 19 Right? 20 MR. BRAGA: Objection. 21 THE WITNESS: That's correct. 22 QUESTIONS BY MR. GOMEZ: 23 Q. So the outcome of what Jason 24 Poe does in a vent and burn is only as good 25 as the information he's getting.</p>	<p style="text-align: right;">Page 224</p> <p>1 was very easy while he was setting up -- 2 working with his explosives guys for me to do 3 it. 4 Q. And he told you he needed it 5 signed so that he was protected from 6 intentionally releasing product into the 7 environment. 8 Right? 9 MR. LEVINE: Objection. 10 THE WITNESS: I need this 11 paperwork signed. 12 (Day Exhibit 9 marked for 13 identification.) 14 QUESTIONS BY MR. GOMEZ: 15 Q. Can we pull up Document 16 Number 92, which is Exhibit Number 9? 17 Mr. Day, this Exhibit 9 that 18 we've marked to your deposition. It's an 19 e-mail exchange that starts on the second 20 page from February 5, 2023. 21 Is that right? 22 A. It is February 5, 2023. 23 Q. And you'll agree with me these 24 are e-mails. 25 Right?</p>
<p style="text-align: right;">Page 223</p> <p>1 Right? 2 MR. LEVINE: Objection. 3 THE WITNESS: Yes. 4 QUESTIONS BY MR. GOMEZ: 5 Q. Part of getting Jason Poe to 6 the site and eventually conducting the vent 7 and burn was having Norfolk Southern complete 8 some paperwork with him. 9 Correct? 10 A. That's correct. 11 Q. Specifically an indemnity 12 agreement. 13 Right? 14 A. There was some documentation 15 that needed to be signed. 16 Q. And that information, or 17 documentation, flowed to Norfolk Southern 18 from Jason Poe through you. 19 Right? 20 A. That's correct. 21 Q. And do you recall that one of 22 those -- two of those documents were 23 indemnity or hold harmless agreements? 24 A. They were documents. Jason 25 told me, I need these signed, and the conduit</p>	<p style="text-align: right;">Page 225</p> <p>1 A. These are copies of e-mails, 2 yes, sir. 3 Q. Okay. That e-mail that's on 4 the -- that starts on the second page, the 5 bottom of the second page of the exhibit, 6 that's an e-mail from Jason Poe to you. 7 Correct? 8 A. That is from him to me, yes, 9 sir. 10 Q. And the e-mail says, "Chip, 11 here's my hold harmless. I will need NF to 12 sign before I make any shots." 13 Did I read that correctly? 14 A. That, you did. 15 Q. NF, do you understand that to 16 actually be a typo? It should be NS? 17 A. Sure. I can agree to that. 18 Q. The e-mail then goes on to say, 19 "Please give this to whomever will make that 20 decision." 21 Right? 22 A. That's what it says. 23 Q. And the e-mail concludes, "This 24 covers cover me for intentionally, 25 parentheses, as directed by them, from</p>

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1 putting the product in the air and on the
 2 ground when I make the shots."
 3 Did I read that correctly?
 4 A. You did.
 5 Q. Okay. So this is -- this
 6 e-mail is Mr. Poe sending you a hold harmless
 7 agreement for NS to sign so that he is
 8 protected in the event that he implements the
 9 explosives and product is released into the
 10 environment.
 11 Right?
 12 A. That is correct.
 13 Q. And there is a reference to --
 14 where it says, "Please give this to whomever
 15 will make that decision."
 16 My question is, Mr. Poe's
 17 reference to a decision there, did you
 18 understand that to mean the vent and burn
 19 decision?
 20 A. Since it's coming from Jason,
 21 I'm going to say it probably has to do with
 22 that.
 23 Q. So because Norfolk Southern was
 24 the ones making the decision about the vent
 25 and burn, you gave this agreement to folks at

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1 Norfolk Southern.
 2 Right?
 3 MR. LEVINE: Objection.
 4 MR. BRAGA: Objection.
 5 THE WITNESS: So the document,
 6 the e-mail, is a hold harmless
 7 agreement he asked me to send to the
 8 Norfolk Southern.
 9 The signature must -- since
 10 he's working for the Norfolk Southern,
 11 the signature for the decision to sign
 12 the -- sign the document would be
 13 coming from the Norfolk Southern.
 14 QUESTIONS BY MR. GOMEZ:
 15 Q. Okay. And you in fact did send
 16 it to Norfolk Southern.
 17 Right?
 18 A. According to this e-mail,
 19 February 5th at 5:09 p.m. is when I sent it
 20 to Mr. Schoendorfer and Mr. Wood.
 21 Q. And when Mr. Poe says in his
 22 original e-mail, "This covers me for
 23 intentionally, as directed by them, from
 24 putting the product in the air and on the
 25 ground when I make the shots," by forwarding

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1 this e-mail to Norfolk Southern, you
 2 understood that it was Norfolk Southern who
 3 he was referring to there.
 4 Right?
 5 MR. BRAGA: Objection.
 6 MR. LEVINE: Objection.
 7 THE WITNESS: I sent this
 8 document to the Norfolk Southern.
 9 QUESTIONS BY MR. GOMEZ:
 10 Q. Because they're the ones that
 11 were hiring him to do the vent and burn.
 12 Right?
 13 A. That's correct.
 14 Q. Before the East -- we can put
 15 that aside, sir.
 16 A. Oh.
 17 Q. Before the East Palestine
 18 derailment, when was the last opportunity
 19 that you had to work directly with Jason Poe
 20 or ESI?
 21 A. On an offshore project a few
 22 months before that.
 23 Q. In your past experience with
 24 either Jason Poe or ESI, have any of those
 25 involved vinyl chloride monomer?

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1 A. No.
 2 Q. Have you -- before being
 3 involved in the East Palestine derailment,
 4 did you ever have the occasion to discuss
 5 Mr. Poe or ESI's background with venting and
 6 burning materials undergoing polymerization?
 7 MR. LEVINE: Objection.
 8 THE WITNESS: I don't
 9 understand your question.
 10 QUESTIONS BY MR. GOMEZ:
 11 Q. Sure.
 12 Before the East Palestine
 13 derailment, had you ever discussed with
 14 Mr. Poe or anyone else at ESI the company's
 15 experience with carrying out a vent and burn
 16 on materials that were considered to be
 17 polymerizing?
 18 A. We've talked about materials
 19 that have the potential for polymerization,
 20 yes.
 21 Q. Did you ever, before the East
 22 Palestine derailment, discuss with Jason Poe
 23 or anyone else at ESI what kind of training
 24 they had specifically to conducting a vent
 25 and burn on material that was undergoing

<p style="text-align: right;">Page 230</p> <p>1 polymerization?</p> <p>2 MR. BRAGA: Objection.</p> <p>3 THE WITNESS: ESI provides a</p> <p>4 unique service. They basically have</p> <p>5 supported all Class I railroads in</p> <p>6 incidents involving cars that needed</p> <p>7 to be vent and burned.</p> <p>8 QUESTIONS BY MR. GOMEZ:</p> <p>9 Q. Whose idea was it in connection</p> <p>10 with East Palestine derailment to select</p> <p>11 Jason Poe and ESI for the vent and burn</p> <p>12 operation?</p> <p>13 A. There were several people. ESI</p> <p>14 is the Coca-Cola of folks that do this.</p> <p>15 Q. Can you name the people who</p> <p>16 were involved in that decision?</p> <p>17 A. In the decision --</p> <p>18 Q. Yeah.</p> <p>19 A. -- to bring ESI in?</p> <p>20 Q. Yeah, to bring Jason Poe in.</p> <p>21 A. There were conversations with</p> <p>22 Mr. Schoendorfer, myself, Drew, Terry</p> <p>23 Rockwell, Robert Wood, Scott Deutsch, Scott</p> <p>24 Gould. A plethora of folks.</p> <p>25 Q. And to your knowledge, did any</p>	<p style="text-align: right;">Page 232</p> <p>1 company for vent and burn operations.</p> <p>2 Their expertise is in vent and burn</p> <p>3 operations, not polymerizable</p> <p>4 materials.</p> <p>5 QUESTIONS BY MR. GOMEZ:</p> <p>6 Q. Same question for yourself, at</p> <p>7 least.</p> <p>8 Did you know at the time that</p> <p>9 you were discussing the East Palestine vent</p> <p>10 and burn operation with Mr. Poe that neither</p> <p>11 he nor ESI had any training with venting and</p> <p>12 burning materials undergoing polymerization?</p> <p>13 MR. LEVINE: Objection.</p> <p>14 THE WITNESS: As I said before,</p> <p>15 that part doesn't matter. They're</p> <p>16 bringing a specific skill set to the</p> <p>17 site.</p> <p>18 QUESTIONS BY MR. GOMEZ:</p> <p>19 Q. If Mr. Poe said that it</p> <p>20 mattered, would you disagree with him?</p> <p>21 MR. LEVINE: Objection.</p> <p>22 THE WITNESS: We would talk to</p> <p>23 him and understand what his concern</p> <p>24 is, yes.</p> <p>25</p>
<p style="text-align: right;">Page 231</p> <p>1 of those folks understand that neither</p> <p>2 Mr. Poe nor ESI had experience with</p> <p>3 venting and burning materials that were</p> <p>4 actively undergoing polymerization?</p> <p>5 MR. BRAGA: Objection.</p> <p>6 MR. LEVINE: Objection.</p> <p>7 THE WITNESS: ESI is the</p> <p>8 company that the Class Is go to when</p> <p>9 vent and burn operations have to be --</p> <p>10 take place on a car. It's not just</p> <p>11 specific to polymerizable material.</p> <p>12 QUESTIONS BY MR. GOMEZ:</p> <p>13 Q. But my question is, did any of</p> <p>14 those folks know that Mr. Poe and ESI had no</p> <p>15 experience before East Palestine with venting</p> <p>16 and burning materials that were undergoing</p> <p>17 active polymerization?</p> <p>18 MR. LEVINE: Same objection.</p> <p>19 THE WITNESS: That would --</p> <p>20 that would be a question for all those</p> <p>21 folks that I named.</p> <p>22 QUESTIONS BY MR. GOMEZ:</p> <p>23 Q. How about yourself?</p> <p>24 MR. LEVINE: Same objection.</p> <p>25 THE WITNESS: ESI is the go-to</p>	<p style="text-align: right;">Page 233</p> <p>1 QUESTIONS BY MR. GOMEZ:</p> <p>2 Q. Are you aware that Mr. Poe gave</p> <p>3 an interview to the NTSB in connection with</p> <p>4 the East Palestine derailment?</p> <p>5 A. We all talked to the NTSB, yes,</p> <p>6 sir.</p> <p>7 Q. As you sit here today, are</p> <p>8 you -- are you aware of the fact that Mr. Poe</p> <p>9 said that ESI and he have no training on how</p> <p>10 to conduct a vent and burn when materials are</p> <p>11 undergoing active polymerization?</p> <p>12 MR. BRAGA: Objection.</p> <p>13 THE WITNESS: I don't -- didn't</p> <p>14 hear that Mr. Poe said that.</p> <p>15 We're not bringing Mr. Poe in</p> <p>16 for his chemical expertise. We're</p> <p>17 bringing Mr. Poe in for the specific</p> <p>18 operation of applying explosives to</p> <p>19 tank cars.</p> <p>20 QUESTIONS BY MR. GOMEZ:</p> <p>21 Q. But you are bringing him in to</p> <p>22 conduct the explosive operation.</p> <p>23 Right?</p> <p>24 A. We bring him in to perform that</p> <p>25 function of setting up and performing the</p>

<p style="text-align: right;">Page 234</p> <p>1 vent and burn operation. 2 Q. And Mr. Poe has a right to 3 accept or decline the assignment. 4 Right? 5 MR. LEVINE: Objection. 6 MR. BRAGA: Objection. 7 THE WITNESS: You're absolutely 8 right. 9 QUESTIONS BY MR. GOMEZ: 10 Q. Right. 11 So if Mr. Poe said that he 12 would not conduct a vent and burn on 13 materials that he knew were actively 14 polymerizing, you wouldn't take any issue 15 with that. 16 Right? 17 MR. LEVINE: Objection. 18 MR. BRAGA: Objection. 19 THE WITNESS: I would not ask 20 him -- if he was uncomfortable doing 21 it, yes, we would not ask him to do 22 the job. 23 QUESTIONS BY MR. GOMEZ: 24 Q. Do you know that that's what he 25 told the NTSB?</p>	<p style="text-align: right;">Page 236</p> <p>1 with him on that? 2 MR. LEVINE: Objection. 3 MR. BRAGA: Objection. 4 THE WITNESS: You're asking me 5 to make an opinion of something that 6 Mr. Poe said. I would have to read 7 his document in order to form an 8 opinion. 9 QUESTIONS BY MR. GOMEZ: 10 Q. And if that is his opinion, 11 he's entitled to it. 12 Right? 13 A. That's correct. 14 Q. Okay. And you wouldn't 15 disagree with him as the expert actually 16 doing the explosive parts of the project. 17 Right? 18 MR. LEVINE: Objection. 19 THE WITNESS: One more time. 20 Mr. Poe and ESI are brought in to 21 perform a certain function. If 22 they're uncomfortable, they don't have 23 to do the job. 24 QUESTIONS BY MR. GOMEZ: 25 Q. That assumes they're given all</p>
<p style="text-align: right;">Page 235</p> <p>1 MR. LEVINE: Objection. 2 MR. BRAGA: Objection. 3 THE WITNESS: How would I know 4 that? I didn't know it. How was I 5 supposed to know that? You're telling 6 me now. 7 QUESTIONS BY MR. GOMEZ: 8 Q. Well, you were a panelist on 9 the investigative hearings. 10 Right? 11 A. I was, but Mr. Poe was not. 12 Q. Okay. Did you read any of the 13 materials that were posted by the NTSB in 14 preparation for your panel testimony? 15 A. I listened to -- I read mine, 16 and that was pretty much it for the NTSB. 17 I read -- reread and studied my testimony. 18 Q. So let me just ask it this way. 19 If Mr. Poe gave a statement to 20 the NTSB where he said that he and his 21 company had no training on venting and 22 burning materials that were actively 23 undergoing polymerization, and he would not 24 have vented and burned materials actively 25 undergoing polymerization, would you disagree</p>	<p style="text-align: right;">Page 237</p> <p>1 the facts. 2 Right? 3 MR. BRAGA: Objection. 4 QUESTIONS BY MR. GOMEZ: 5 Q. Let me withdraw the question. 6 I'll ask a different question. 7 How could Mr. Poe have 8 determined whether he was comfortable or not 9 with venting and burning in East Palestine if 10 he didn't know polymerization was actively 11 underway in the cars? 12 MR. LEVINE: Objection. 13 THE WITNESS: You're asking -- 14 I don't know. How should I know? I 15 don't know what he's thinking. 16 QUESTIONS BY MR. GOMEZ: 17 Q. And because you didn't tell him 18 that the cars were polymerizing. 19 Right? 20 MR. BRAGA: Objection. 21 THE WITNESS: The reason the 22 cars were vent and burned was because 23 we believed the cars were undergoing 24 polymerization. 25</p>

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1 QUESTIONS BY MR. GOMEZ:

2 Q. But you didn't tell that to
3 Mr. Poe?

4 A. Mr. Poe knew that the cars were
5 in dire straits and that we needed to vent --
6 we just don't vent and burn cars just for the
7 heck of it.

8 Q. So if Mr. Poe testified or
9 stated to the NTSB that he didn't know the
10 cars were polymerizing and wouldn't have
11 vented and burned them if they weren't -- if
12 they were polymerizing, he would be lying?

13 MR. BRAGA: Objection.

14 MR. LEVINE: Objection.

15 THE WITNESS: I would have to
16 read Mr. Poe's testimony.

17 QUESTIONS BY MR. GOMEZ:

18 Q. Okay. You didn't tell him that
19 the cars were polymerizing. You told him
20 that the pressure was building in the cars.
21 Right?

22 A. I don't remember the
23 conversation that Jason and I have had over
24 the course of the events leading up to him
25 arriving on-site.

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1 Q. So you don't remember whether
2 you told him specifically the cars are
3 polymerizing or there's pressure building in
4 the cars?

5 A. That's correct, I do not
6 remember.

7 Q. We just touched upon the
8 investigative hearings a little bit.

9 You were on a panel with, among
10 others, Drew McCarty.

11 Right?

12 A. That's correct.

13 Q. And do you recall that there
14 were questions that were asked of you by the
15 NTSB and others regarding visual observations
16 of the vent and burn that you and Mr. McCarty
17 had made?

18 A. It's been a while since I read
19 it, but, vaguely, yes.

20 Q. Where were you located at the
21 time that the vent and burn was initiated?

22 A. On the Brave Industry side,
23 towards the tank farm -- or what became the
24 tank farm, protected by the Brave Industries
25 building where I could walk backwards from

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1 the building and see the cars to the left.

2 Q. When you say "the cars," do you
3 mean the VCM cars?

4 A. The derailment, yes, sir.

5 Q. And you used a term, phrase,
6 there I'm not familiar with.

7 Was it tank farm?

8 A. It wound up being a tank farm
9 where frac tanks were parked toward the
10 parking lot of the Brave Industries.

11 Q. Is that like a staging point or
12 something like that?

13 A. It's the other end of the Brave
14 Industries building.

15 Q. Yeah, I just don't know what a
16 tank farm is, if you would explain --

17 A. It's where a lot of tanks are.

18 Q. Okay.

19 A. Storage tanks.

20 Q. And who was with you in that
21 location when the vent and burn was
22 initiated?

23 A. The ESI folks, some CTH {sic}
24 folks, the commissioner with a drone, and
25 some of the SRS folks.

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1 Q. You mentioned ESI folks.
2 Was Jason Poe there?

3 A. Yes, sir.

4 Q. And you said that you could see
5 the derailment, but can you estimate for me
6 just generally what your distance was?

7 A. Sir, I had a problem on-site.
8 I didn't know which direction was east and
9 which direction was west. I was turned
10 around because we flew in.

11 The building -- let's just say
12 200 yards from the front of the structure --
13 100 yards from the front of the structure to
14 the back of the structure. A quarter mile
15 away. Probably 2,000, 2,500 feet.

16 Q. And from that distance when the
17 vent and burn was initiated, you believe that
18 you saw polymers ejected from the railcars.

19 Is that correct?

20 A. When we got permission to
21 initiate the vent and burn, we had the first
22 shot, which lit up the fuses. The next shot,
23 I backed up, and I saw what I thought were
24 sparklers coming out of the top of the
25 western-most car.

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1 Q. Can you describe for me what
2 you mean by sparklers?
3 A. When the explosive charge, the
4 high shot, the one that relieves the vapor,
5 goes through and we precisionally drill a
6 hole, gas pressure is released. Material
7 comes up, and typically it just -- the fire
8 goes up. Within a few seconds, the bottom
9 shot is hit, and the liquid flows out and
10 everything is consumed in fire. Just like it
11 was in East Palestine.
12 When it hit the top shot, I
13 wanted to make sure we had ignition. I
14 backed away from the Brave Industries
15 building, and I saw materials coming out and
16 going toward the ground.
17 Q. Okay. Those -- I'm sorry. I
18 didn't mean to interrupt you.
19 A. I theorized that as -- I called
20 them sparklers. I theorized that was
21 polymer.
22 Q. The materials that you've
23 called sparklers and that you theorized were
24 polymers, was it solid material?
25 A. It seemed to be, yes, sir.

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1 (Day Exhibit 10 marked for
2 identification.)
3 QUESTIONS BY MR. GOMEZ:
4 Q. Let's pull up Document
5 Number 44, which we'll mark as Exhibit 10 to
6 Mr. Day's deposition.
7 And, Mr. Day, this Exhibit 10
8 is also the exhibit -- or the Group D,
9 Exhibit 54 to the NTSB hearings.
10 Right?
11 A. That's what it says, yes, sir.
12 Q. And according to the cover page
13 prepared by the NTSB, it's "Figure 62,
14 Hazardous Materials Group Chair's Factual
15 Report, screenshot from NS contractor video
16 taken from East Taggart Street near North
17 Pleasant Drive looking north. Vent and burn
18 of five vinyl chloride tank cars showing two
19 material plumes visible about two seconds
20 following detonation of explosive charges,
21 February 6, 2022, 4:37 p.m."
22 Did I read that correctly?
23 A. Yes, sir.
24 Q. The date that's noted there,
25 February 6, 2022, could we agree that

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1 that's -- should be February 6, 2023?
2 A. Yes, you can.
3 Q. Okay. The photo that appears
4 on the next page, that's a photo that the
5 NTSB questioned you about at your panel
6 hearing.
7 Right?
8 A. No, sir.
9 Q. Was there -- I don't know what
10 that was. Sorry.
11 Was there a photo similar to
12 this photo that you were questioned about by
13 the NTSB?
14 A. No, sir.
15 Q. So it's your testimony that the
16 NTSB never asked you any questions about
17 these photos?
18 A. This photo, no, sir.
19 MR. BRAGA: Objection.
20 QUESTIONS BY MR. GOMEZ:
21 Q. Okay. Does this photo that
22 we're looking at here show what you observed
23 to be the sparklers or solid material being
24 ejected from the first shot of the vent and
25 burn?

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1 A. Sir, all I see is a couple
2 buildings, a truck, some black smoke and some
3 white smoke.
4 Q. So you don't know what's
5 depicted in this photo at all?
6 A. You are absolutely correct.
7 Q. Again, Jason Poe was with you
8 at the time of the operation.
9 Right?
10 A. Yes, sir.
11 Q. We can put that aside, sir.
12 And Jason Poe's the best there
13 is at doing this operation.
14 Right?
15 A. That's correct.
16 Q. And do you have a sense of how
17 many vent and burns he personally has
18 conducted before?
19 A. A lot. That's all I can say.
20 Q. Okay. Press you a little bit
21 on that.
22 Dozens?
23 A. Let's just say I've been on 30,
24 and he's been on all those, plus.
25 Q. Plus the ones that you're not

<p style="text-align: right;">Page 246</p> <p>1 on?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So in excess of 30.</p> <p>4 Right?</p> <p>5 A. Sure.</p> <p>6 Q. You don't have any reason to</p> <p>7 disagree with his observations of the vent</p> <p>8 and burn.</p> <p>9 Right?</p> <p>10 MR. LEVINE: Objection.</p> <p>11 THE WITNESS: As I said before,</p> <p>12 ESI is -- they are really, really good</p> <p>13 at what they do. Their task is vent</p> <p>14 and burn cars.</p> <p>15 They're not chemists. They're</p> <p>16 not emergency responders when it comes</p> <p>17 to derailments. That's why we team</p> <p>18 folks together with them. They set</p> <p>19 the explosives. Our guys suggest</p> <p>20 locations because of -- for the</p> <p>21 setting of explosives.</p> <p>22 QUESTIONS BY MR. GOMEZ:</p> <p>23 Q. But if they're the best at</p> <p>24 conducting vent and burns, they know what to</p> <p>25 expect once they hit those shots off.</p>	<p style="text-align: right;">Page 248</p> <p>1 read his testimony, no.</p> <p>2 Q. So you don't know that he said</p> <p>3 there was no solid material ejected from the</p> <p>4 vinyl chloride cars upon initial ignition.</p> <p>5 Right?</p> <p>6 MR. LEVINE: Objection.</p> <p>7 MR. BRAGA: Objection.</p> <p>8 THE WITNESS: I would have to</p> <p>9 read it, and I have not spoke to him.</p> <p>10 QUESTIONS BY MR. GOMEZ:</p> <p>11 Q. If that's -- if that is what</p> <p>12 Mr. Poe experienced, that there was no solids</p> <p>13 or polymers ejected upon the initial shot of</p> <p>14 the vent and burn, would you have any reason</p> <p>15 to disagree with that?</p> <p>16 MR. LEVINE: Objection.</p> <p>17 MR. BRAGA: Objection.</p> <p>18 THE WITNESS: I saw what I saw.</p> <p>19 He saw what he saw.</p> <p>20 QUESTIONS BY MR. GOMEZ:</p> <p>21 Q. And do you think it's within</p> <p>22 his expertise conducting explosive operations</p> <p>23 for vent and burns to understand whether</p> <p>24 solid materials were or were not coming out</p> <p>25 of that first shot?</p>
<p style="text-align: right;">Page 247</p> <p>1 Right?</p> <p>2 MR. LEVINE: Objection.</p> <p>3 MR. BRAGA: Objection.</p> <p>4 THE WITNESS: They're the best</p> <p>5 at what they do, setting off explosive</p> <p>6 charges and venting and burning cars,</p> <p>7 yes.</p> <p>8 QUESTIONS BY MR. GOMEZ:</p> <p>9 Q. Okay. Do you ever speak to</p> <p>10 Mr. Poe about what he observed when he set</p> <p>11 off the first shot of the vent and burn?</p> <p>12 A. I was sitting right beside --</p> <p>13 or standing right beside him.</p> <p>14 Q. And what did Mr. Poe tell you,</p> <p>15 if anything?</p> <p>16 A. We have ignition.</p> <p>17 Q. Did he say anything about</p> <p>18 solids or polymers being ejected?</p> <p>19 A. He did not.</p> <p>20 Q. Okay. Are you aware that in</p> <p>21 the wake of the East Palestine derailment, he</p> <p>22 gave statements to the NTSB about what he</p> <p>23 observed being expelled or ejected from the</p> <p>24 tank cars once they were vented and burned?</p> <p>25 A. As I said before, I haven't</p>	<p style="text-align: right;">Page 249</p> <p>1 MR. BRAGA: Objection.</p> <p>2 MR. LEVINE: Objection.</p> <p>3 THE WITNESS: ESI is the best</p> <p>4 at what they do, setting explosives,</p> <p>5 operating explosives.</p> <p>6 After that, no.</p> <p>7 QUESTIONS BY MR. GOMEZ:</p> <p>8 Q. So once he hits the -- once he</p> <p>9 hits the detonator on that shot, that's the</p> <p>10 end of his expertise?</p> <p>11 A. When we have ex -- ignition,</p> <p>12 correct.</p> <p>13 Q. After the vent and burn had</p> <p>14 been conducted, it's my understanding that</p> <p>15 SRS provided a number of services, including</p> <p>16 forensic documentation of the site.</p> <p>17 Is that correct?</p> <p>18 A. No, sir.</p> <p>19 (Day Exhibit 11 marked for</p> <p>20 identification.)</p> <p>21 QUESTIONS BY MR. GOMEZ:</p> <p>22 Q. Let's pull up Document 11 C,</p> <p>23 which we'll mark as Exhibit 11 to the</p> <p>24 deposition.</p> <p>25 Sorry, Gina, 111 C.</p>

<p style="text-align: right;">Page 250</p> <p>1 Mr. Day, this Exhibit 11 is a 2 document produced by SRS. It's document SRS 3 213. 4 Do you see that in the bottom 5 right-hand corner? 6 A. Yes, sir. 7 Q. And it appears to be an e-mail 8 exchange. 9 Right? 10 A. That's correct. 11 Q. Okay. The first e-mail appears 12 at the bottom of the page. It's dated 13 February 15, 2023, from Andy Shipe? 14 A. Shipe. 15 Q. Is that correct? 16 A. That's correct. 17 Q. Who is Andy Shipe? 18 A. That is my boss's boss. 19 Q. And who is your boss? 20 A. Bobby Breed. 21 Q. Bobby Breed. Okay. 22 Mr. Shipe writes in this 23 e-mail, "Can you give me an update on the 24 train derailment? Who do we have there, and 25 what are we doing?"</p>	<p style="text-align: right;">Page 252</p> <p>1 A. I have no idea. I'm just 2 saying it's 4:08 versus 4:03, so I do not 3 know. 4 Q. Yeah. You don't know if what 5 was produced by SRS is in UTC time or not. 6 Right? 7 A. I'm just telling you that it 8 says 4:03 on Bobby's response to a 4:08 Andy 9 Shipe question. 10 Q. And I'm just telling you that 11 this is what was produced by your company. 12 So do you have any reason to 13 believe or think that this e-mail that we see 14 at the top of the page from Bobby Breed to 15 Andy Shipe providing the exact information 16 that Andy Shipe requests at the bottom of the 17 page is not a response? 18 A. I don't know. 19 Q. Okay. 20 A. There's a time difference. 21 Q. Let's talk about what the 22 e-mail says, putting aside the time. 23 Bobby Breed writes in this 24 e-mail to Andy Shipe, "I'm addition." 25 Can we agree that should be "in</p>
<p style="text-align: right;">Page 251</p> <p>1 Is that correct? 2 A. That's what it says. 3 Q. And that e-mail, by looks of 4 the response, was to Bobby Breed. 5 Right? 6 A. That is correct. 7 Q. And Bobby Breed responds also 8 on February 15, 2023. 9 Right? 10 A. Yes, sir. 11 Q. And he says, "We are still 12 on-site. Chip Day is running the operations 13 and has three other special ops guys with him 14 managing product transfers and railcar 15 de-inventory." 16 Did I read that correctly? 17 A. There's a time with -- Andy 18 Shipe's e-mail says February 15, 2023, at 19 4:08, Shipe, Andy. And Bobby's response was 20 Wednesday, 2/15/2023, at 4:03:55 UTC. 21 So Bobby's response is, what, 22 five minutes before the -- Andy's e-mail. 23 Q. Well, that assumes that Andy 24 Shipe's e-mail was also in UTC time. 25 Right?</p>	<p style="text-align: right;">Page 253</p> <p>1 addition"? 2 It's the last -- second to last 3 e-mail of the e-mail. 4 A. Yes. 5 Q. "In addition, our crews are 6 assisting with forensic documentation on the 7 VCM cars and the damage done during the 8 derailment." 9 Did I read that correctly? 10 A. That's what it says. 11 Q. Having read this e-mail from 12 Bobby Breed, your boss, does that refresh 13 your recollection as to whether you were 14 doing -- or SRS was doing forensic 15 documentation on the VCM cars after the vent 16 and burn? 17 A. Wordsmithing? It could 18 probably be done if you used a different 19 word. Forensic documentation. 20 We wound up doing some air 21 monitoring. We did some -- took parts off 22 the car for the NTSB. 23 Q. You also documented the cars 24 with pictures. 25 Right?</p>

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1 A. We took some pictures, yes.
 2 We didn't document them.
 3 I have pictures of the cars,
 4 but -- and they were produced to you guys.
 5 But for -- a report or anything like that was
 6 not produced.
 7 (Day Exhibit 12 marked for
 8 identification.)
 9 QUESTIONS BY MR. GOMEZ:
 10 Q. We can put this one aside, sir,
 11 and we'll pull up Document 142, which we'll
 12 mark as Exhibit 12 to the deposition.
 13 Mr. Day, the exhibit that we
 14 just marked, it's a text message exchange
 15 between you and Drew McCarty containing
 16 certain photographs.
 17 Is that a fair
 18 characterization?
 19 A. Fair characterization.
 20 Q. And the dates on these messages
 21 are all February 9, 2023.
 22 Right?
 23 A. Uh-huh. Yes, sir.
 24 Q. Now, the photos themselves are
 25 tough to see within the e-mail exchange, but

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1 we've included them at the end, and they are
 2 SPSI TEXTS 289 through 292.
 3 Do you see those, what looks
 4 like four enlarged images?
 5 A. Yes, sir.
 6 Q. And my question to you is, do
 7 you know who took these images?
 8 A. Yes, sir, I should do.
 9 Q. Who was it?
 10 A. Me.
 11 Q. And can you describe for me
 12 where you were when you took these photos?
 13 A. These were taken while we were
 14 doing the air monitoring of the inside space
 15 of the car to allow us to escort NTSB
 16 into or -- and around the cars. Up to and
 17 around the cars.
 18 Q. And were you physically within
 19 the tank?
 20 A. No, I was taking high air
 21 monitoring from the top shot hole, holding
 22 the air monitor in, looking inside.
 23 Q. Okay. So in terms of
 24 positioning the camera and actually taking
 25 the photographs, can you explain to me how

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1 you -- how you did that?
 2 A. Climbed up on top of the car.
 3 Q. Uh-huh.
 4 A. Went to the hole. Dropped the
 5 air monitor in. Got the readings that we
 6 needed. Provided them to CTH {sic}. Looked
 7 in, saw what I thought was polymer, and took
 8 pictures.
 9 Q. And these images, were they
 10 taken from a personal camera or device or an
 11 SRS camera or device?
 12 A. On my phone.
 13 Q. Okay. And once you took those
 14 photos, you sent them off to Drew McCarty.
 15 Right?
 16 A. Correct.
 17 Q. About how long after you took
 18 them do you recall sending them?
 19 A. We'd have to pull it up from my
 20 phone.
 21 Q. Fair enough.
 22 But the reason you sent those
 23 pictures to Drew McCarty is because you
 24 thought that it showed polymer.
 25 Right?

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1 A. Correct.
 2 Q. And that's, in fact, why you
 3 say on the page that's marked 286 on the
 4 bottom right-hand corner, "Justice" --
 5 A. Correct.
 6 Q. -- with three exclamation
 7 points.
 8 Correct?
 9 A. Correct.
 10 Q. And the conversation continues
 11 with a message from Mr. McCarty following the
 12 images, saying, "Inside of VC cars, question
 13 mark?"
 14 Right?
 15 A. That's what it says.
 16 Q. Mr. McCarty is asking you, did
 17 you take these photos from inside the VCM
 18 cars.
 19 Right?
 20 A. Correct.
 21 Q. And your response is, all
 22 capitals, "Inside," with two exclamations.
 23 Right?
 24 A. Yes, sir.
 25 Q. He then follows up, "Hard to

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1 tell from photos. Polymers, question mark?"
 2 A. Correct.
 3 Q. And you confirm, "Yes, sir."
 4 Right?
 5 A. That's correct, sir.
 6 Q. Other than documenting what you
 7 believe to be polymer inside of the VCM cars
 8 with these photographs, did you do anything
 9 else to document what you found?
 10 A. No, sir.
 11 Q. You did not collect any of the
 12 polymer.
 13 Right?
 14 A. OxyChem -- Oxy Vinyls did.
 15 Q. It's your understanding that
 16 OxyChem took samples what of we see in these
 17 photos?
 18 A. No, sir. They took samples.
 19 Q. Okay. So putting aside the
 20 separate samples that OxyChem took, I want to
 21 focus just on what we're looking at in these
 22 photos.
 23 A. Okay.
 24 Q. Did you do anything to take
 25 samples from the areas that are photographed

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1 in this Exhibit 12?
 2 A. No, sir.
 3 Q. Did you do anything to preserve
 4 the condition of what you've documented in
 5 these photographs supposedly showing polymer?
 6 A. No, sir.
 7 Q. Instead of collecting -- let me
 8 withdraw that.
 9 Did you alert anyone at NTSB
 10 about what you had observed and documented in
 11 these photos?
 12 A. I believe I did, yes, sir.
 13 Q. And who do you recall telling?
 14 A. Some of the NTSB investigators
 15 when they were on the scene.
 16 Q. Do you recall having any
 17 conversations with anyone at OxyChem about
 18 what you had seen and documented in these
 19 photos?
 20 A. The three folks that were
 21 on-scene.
 22 Q. So it's your understanding that
 23 they were still there on February 9, 2023?
 24 A. There were folks there, or at
 25 least they were either there or they came

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1 back when they pulled the samples. I think
 2 they came back.
 3 Q. After these photos were taken,
 4 the VCM cars were decontaminated.
 5 Right?
 6 A. No, sir.
 7 Q. The VCM cars were not pressure
 8 washed?
 9 A. No, sir.
 10 Q. If the NTSB has stated that
 11 they were pressure washed, do you disagree
 12 with that?
 13 A. I do.
 14 Q. Okay.
 15 A. From when these pictures were
 16 taken, yes.
 17 Q. What do you mean by that?
 18 A. So the cars were clean. They
 19 were clear. We have air monitoring data
 20 through CTH {sic} that showed what the air
 21 monitoring data inside was, and there was no
 22 need to add additional water to an already
 23 muddy situation.
 24 Q. Understood.
 25 Okay. These cars that you

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1 documented with these photographs were
 2 eventually wrecked.
 3 Right?
 4 A. Oh, they were wrecked, yes,
 5 sir.
 6 Q. And --
 7 A. In the derailment they were
 8 wrecked.
 9 Q. They were wrecked in the
 10 derailment, and they were also broken apart
 11 to move them off-site.
 12 Right?
 13 A. I don't know. When I left,
 14 they were still whole.
 15 Q. So you don't know what the fate
 16 was of what was left of the cars after you
 17 left the site.
 18 Right?
 19 A. I know the fate of the
 20 protective housings, and that's all -- that's
 21 all I know about the cars.
 22 Q. Who would be the best person to
 23 ask about when, if at all, these cars were
 24 broken up and moved off of site?
 25 A. Somebody that knows about the

<p style="text-align: right;">Page 262</p> <p>1 decontamination or demolition of those cars, 2 scrapping of those cars. 3 Q. Other than you personally, did 4 anyone else from SRS collect samples of 5 what's supposedly polymer in these 6 photographs? 7 MR. BRAGA: Object to the form 8 of the question. 9 THE WITNESS: There was no 10 samples for SRS because we don't pull 11 samples. There's no reason for it. 12 QUESTIONS BY MR. GOMEZ: 13 Q. Well, you did know that one of 14 the central questions about the East 15 Palestine derailment was whether or not these 16 cars were polymerizing. 17 Right? 18 MR. BRAGA: Objection. 19 MR. LEVINE: Objection. 20 THE WITNESS: I knew one of the 21 issues was if it was polymerizing, but 22 at this point, the VCM is gone, the 23 cars are clear, and we're continuing 24 on with the operations. 25</p>	<p style="text-align: right;">Page 264</p> <p>1 Monday morning quarterback what we 2 should -- would have, should have, 3 could have done. But you're 4 absolutely right, we could have pulled 5 samples. We could have had them 6 analyzed. We had a whole a lot other 7 operations that needed to take place. 8 QUESTIONS BY MR. GOMEZ: 9 Q. So is it your testimony that 10 you just didn't have the time? 11 MR. LEVINE: Objection. 12 THE WITNESS: We had other 13 things on our mind than taking samples 14 of these cars. We believed it was 15 polymer. The OxyChem representative 16 that came back, that pulled the 17 samples of where they wanted to take 18 samples, pulled samples. Never heard 19 what the analysis was. 20 The only joking thing they said 21 was, don't drop any PVC resin in the 22 car to make it look like polymer. 23 QUESTIONS BY MR. GOMEZ: 24 Q. You took these photos because 25 you thought that what we were looking at is</p>
<p style="text-align: right;">Page 263</p> <p>1 QUESTIONS BY MR. GOMEZ: 2 Q. Do you think it's important for 3 future rail incidents to understand whether 4 or not the VCM in the cars in East Palestine 5 were actually undergoing polymerization? 6 MR. BRAGA: Objection. 7 THE WITNESS: It would be nice 8 to know, yes, sir. 9 QUESTIONS BY MR. GOMEZ: 10 Q. And one of the ways we could 11 know that is if we had samples from inside 12 the car. 13 Right? 14 A. Yes, sir. 15 MR. LEVINE: Objection. 16 QUESTIONS BY MR. GOMEZ: 17 Q. And we could certainly know 18 that if we had samples of what you believe 19 was polymer and decided to photograph but not 20 collect. 21 Right? 22 MR. LEVINE: Objection to the 23 form. 24 THE WITNESS: It's really 25 simple for us all to sit here and</p>	<p style="text-align: right;">Page 265</p> <p>1 polymer. 2 Right? 3 A. That's correct. 4 Q. Didn't Terry Rockwell want to 5 send polymer to one of the executives at Oxy 6 Vinyls to prove that polymerization was 7 occurring in those cars? 8 A. I don't know. You'll have to 9 talk to Terry about that. 10 Q. He never said that in front of 11 you? 12 A. I don't recall. 13 Q. You don't recall him telling 14 the folks from Oxy Vinyls who were there 15 on-site that once they confirmed 16 polymerization was occurring, they were going 17 to collect all the PVC and send a care 18 package to him? 19 A. That does not sound like Terry 20 Rockwell. 21 Q. So if we have text messages 22 where Terry Rockwell is asking you to collect 23 PVC resin, it would be for some other 24 purpose? 25 MR. BRAGA: Objection.</p>

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1 THE WITNESS: I'd have to see a
2 text message from Terry asking to
3 collect.
4 QUESTIONS BY MR. GOMEZ:
5 Q. Did you tell anyone from
6 Norfolk Southern, by the way, that you had
7 found what you believed to be polymer inside
8 the cars?
9 A. I believe so.
10 Q. Who'd you tell?
11 A. I believe I told the Norfolk
12 Southern, some of the folks, either Scott
13 Gould -- or the people that we reported to, I
14 believe we found some polymer. That's why I
15 photo-documented it.
16 Q. And what was their response to
17 that?
18 A. I don't remember.
19 Q. They didn't tell you to collect
20 anything.
21 Right?
22 A. No, sir.
23 Q. They didn't tell you to take
24 samples.
25 Right?

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1 A. I've already established that,
2 yes, sir.
3 Q. Right. You established that
4 you didn't take samples.
5 My question is, they didn't
6 instruct you to take samples.
7 Right?
8 A. You are absolutely correct.
9 MR. GOMEZ: Okay. Sir, I'm
10 going to reserve what little time I
11 have left and invite some of the other
12 attorneys to ask you their questions.
13 VIDEOGRAPHER: Off the record?
14 MR. GOMEZ: Yes.
15 VIDEOGRAPHER: The time is
16 1:53 p.m., and we are going off the
17 record.
18 (Off the record at 1:53 p.m.)
19 VIDEOGRAPHER: The time is
20 2:03 p.m., and we're back on the
21 record.
22 DIRECT EXAMINATION
23 QUESTIONS BY MR. BYARS:
24 Q. Good afternoon, Mr. Day. My
25 name is John Byars. I'm with the law firm

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1 Bartlit Beck, and I represent Trinity
2 Industries in this lawsuit.
3 You've heard of Trinity
4 Industries before.
5 Right?
6 A. Yes, sir.
7 (Day Exhibit 13 marked for
8 identification.)
9 QUESTIONS BY MR. BYARS:
10 Q. Okay. I'm going to introduce
11 another exhibit. This will be Exhibit 13.
12 And this is to help orient us on what this
13 derailment looked like.
14 And I'll just represent to you,
15 Mr. Day, that this is a composite that's put
16 together from pictures that were in the
17 Hazardous Materials Group Chair's Factual
18 Report, which was Exhibit B 10 to the NTSB
19 hearing that you attended.
20 Have you seen these pictures
21 before?
22 A. I've seen some -- a lot of
23 overflight pictures of East Palestine.
24 Q. Does this look like a fair
25 representation of the derailment site between

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1 February 3rd and the time of the vent and
2 burn?
3 A. Yes, sir.
4 Q. Okay. Now, I want to draw your
5 attention to the box at the left-hand corner
6 of the picture -- at the left-hand side of
7 this document. And you'll see that it has
8 car numbers, car types, and then line
9 numbers.
10 A. Yes, sir.
11 Q. Do you see that?
12 A. Yes, sir.
13 Q. And the lines numbers that are
14 in red in that box are the VCM cars.
15 Do you understand that?
16 A. Yes, sir.
17 Q. I want to draw your attention
18 now to line number 28, which is TILX402025.
19 Do you see that in that box?
20 A. Line -- yeah, TILX402025, yes,
21 sir.
22 Q. Right.
23 And if you look at it on the
24 picture, it's the car -- you'll see Car 28
25 almost at the end of the right side of this

<p style="text-align: right;">Page 270</p> <p>1 picture.</p> <p>2 Do you see it?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. And do you understand</p> <p>5 that to be the VCM car that was owned by</p> <p>6 Trinity?</p> <p>7 A. Yes, because of the reporting</p> <p>8 marks.</p> <p>9 Q. Okay. And if I refer to that</p> <p>10 as the "Trinity VCM car," will you understand</p> <p>11 that means TILX402025, which is line</p> <p>12 number 28?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Thank you.</p> <p>15 So are you aware that Norfolk</p> <p>16 Southern has sued Trinity in this lawsuit?</p> <p>17 A. I found out yesterday.</p> <p>18 Q. Have you ever seen the</p> <p>19 complaint that Norfolk Southern filed against</p> <p>20 Trinity?</p> <p>21 A. No, sir.</p> <p>22 Q. One of the things that Norfolk</p> <p>23 Southern says in the complaint is that</p> <p>24 discrepancies between the Trinity VCM car's</p> <p>25 AAR 42 Certificate of Construction and the</p>	<p style="text-align: right;">Page 272</p> <p>1 THE WITNESS: Sorry.</p> <p>2 QUESTIONS BY MR. BYARS:</p> <p>3 Q. To your knowledge, did the</p> <p>4 supposed presence of aluminum in any of the</p> <p>5 VCM cars, including the Trinity VCM car, have</p> <p>6 anything to do with the vent and burn</p> <p>7 decision?</p> <p>8 A. No, sir.</p> <p>9 Q. Now, Trinity had nothing to do</p> <p>10 with the derailment.</p> <p>11 Can we agree on that?</p> <p>12 A. Sure.</p> <p>13 Q. And Trinity had nothing to do</p> <p>14 with the vent and burn decision.</p> <p>15 Correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Would you say that the cars --</p> <p>18 the VCM cars operated as designed?</p> <p>19 MR. LEVINE: Objection.</p> <p>20 MR. BRAGA: Objection.</p> <p>21 THE WITNESS: They were</p> <p>22 involved in a derailment, and they did</p> <p>23 not blow up.</p> <p>24 QUESTIONS BY MR. BYARS:</p> <p>25 Q. So is it fair to say that they</p>
<p style="text-align: right;">Page 271</p> <p>1 Trinity VCM car's actual characteristics</p> <p>2 existed.</p> <p>3 Okay?</p> <p>4 So they're saying that there</p> <p>5 were discrepancies between the Certificate of</p> <p>6 Construction of the Trinity's VCM car and the</p> <p>7 tank car's actual characteristics.</p> <p>8 Do you know anything about that</p> <p>9 allegation?</p> <p>10 A. No, sir.</p> <p>11 Q. To your knowledge, did any</p> <p>12 supposed discrepancies between the Trinity</p> <p>13 VCM car's Certificate of Construction and its</p> <p>14 actual physical characteristics have anything</p> <p>15 to do with the vent and burn decision?</p> <p>16 MR. LEVINE: Objection.</p> <p>17 THE WITNESS: No, sir.</p> <p>18 QUESTIONS BY MR. BYARS:</p> <p>19 Q. To your knowledge, did any</p> <p>20 supposed discrepancies between any of the</p> <p>21 other VCM cars' Certificates of Construction</p> <p>22 have anything to do with a vent and burn</p> <p>23 decision?</p> <p>24 A. No, sir.</p> <p>25 MR. LEVINE: Objection.</p>	<p style="text-align: right;">Page 273</p> <p>1 operated as designed?</p> <p>2 MR. LEVINE: Objection.</p> <p>3 THE WITNESS: Loosely, yes.</p> <p>4 QUESTIONS BY MR. BYARS:</p> <p>5 Q. In fact, that's something that</p> <p>6 you said not long after the derailment.</p> <p>7 Right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And you believed that</p> <p>10 the Trinity VCM car was stable prior to the</p> <p>11 vent and burn.</p> <p>12 Correct?</p> <p>13 A. The Trinity VCM car was the</p> <p>14 first VCM car in line, and it's the one that</p> <p>15 we were able to put a pressure gauge on and</p> <p>16 wanted to possibly get it slid out of the</p> <p>17 way, into the clear, before the vent and burn</p> <p>18 operation took place.</p> <p>19 Q. And you were willing to try and</p> <p>20 do that because you believed it was stable.</p> <p>21 Is that right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you knew that because of</p> <p>24 the pressure gauge.</p> <p>25 Right?</p>

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1 A. The pressure gauge and the lack
2 of extremely deep burn, heat, scorching on
3 that car, yes, sir.

4 Q. Okay. And when you arrived at
5 the derailment site on the morning of
6 February 5th, were there any pool fires that
7 the Trinity VCM car was in?

8 A. There were some fires burning
9 backwards and flashing back and forth in the
10 ballast rock underneath the Trinity car, but
11 nothing sustained.

12 Q. Okay. Anything that would keep
13 you from entering the area in order to
14 inspect the Trinity rail -- the Trinity VCM
15 car?

16 A. We performed --

17 MR. BRAGA: On the same day?

18 MR. BYARS: Yeah, talking
19 about -- sorry. Let me ask the
20 question so it's clear.

21 QUESTIONS BY MR. BYARS:

22 Q. The morning of February 5th
23 when you get there, any pool fires under the
24 Trinity VCM car that would have kept you from
25 inspecting the Trinity VCM car?

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1 A. There were some fires flashing
2 back and forth in the ballast rock, like I
3 said. And we walked up to the car on that
4 day, I can't tell you exactly when, to
5 perform a damage assessment on that car.

6 Q. Okay. So the fires that were
7 flashing back and forth on the ballast rock
8 didn't keep you from performing your
9 inspection?

10 A. That's correct.

11 Q. And when you say "on the
12 ballast rock," can you identify on Exhibit 13
13 what you -- what you're referring to?

14 A. So to understand railroad
15 tracks, there's the rail, there's the ties,
16 and then there's ballast rock.

17 There was a lot of water flowed
18 on the derailment site trying to extinguish
19 fires, so there was a layer of water. There
20 was a layer of flammable liquids, very thin
21 layer of flammable liquids, moving around on
22 the site. And just the nature of flammable
23 liquids, ground heated begins to off-gas
24 flammable vapors, finds an ignition source
25 and flashes.

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1 And we have -- it's a common
2 phenomenon in derailments. We have ballast
3 rock flash fires moving up and down the
4 ballast rock.

5 Q. And will you just identify on
6 the picture the ballast rock so that I'm
7 clear?

8 A. It's the rock that the railroad
9 track was sitting on.

10 Q. So if I'm looking at Car 28 in
11 the label 28 --

12 A. It's laying on the track, on
13 the ties, on the rock. The ballast rock is
14 what the ties, the train track, sits on.

15 Q. Okay. Thank you.

16 So after the morning -- well,
17 strike that.

18 We established -- or you
19 testified earlier today that there was about
20 48 hours between the extended PRD release on
21 February 4th and the vent and burn on
22 February 6th.

23 Do you recall that?

24 A. There's a discussion on time.
25 I've not sat down and looked at a clock and

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1 figured out exactly how far it was. But to
2 make this thing move along, somewhere around
3 24 to 48 hours, yes.

4 Q. So during -- and within that
5 time period is when you arrived on Sunday --
6 on Sunday morning, February 5th.

7 Correct?

8 A. Correct.

9 Q. All right. Was there ever any
10 time between the time that you arrived at the
11 derailment site on the morning of
12 February 5th and the vent and burn where
13 conditions ever deteriorated so that you had
14 to withdraw everyone from the derailment
15 site?

16 A. I -- when I was there, I don't
17 remember any.

18 Q. Now, we touched briefly on the
19 fact that there was an attempt to move the
20 Trinity VCM car.

21 Correct?

22 A. There was discussion, yes, sir.

23 Q. There was discussion.

24 And can you tell me why it was
25 ultimately decided not to move the Trinity

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1 VCM car?

2 A. So on the night of

3 February 5th, Cranemasters and Hulcher were

4 sitting up equipment in front of Leake Oil in

5 preparation for train wrecking operations.

6 We needed to move several cars

7 to the east of the derailment in order to

8 build a containment for the pending vent and

9 burn operation.

10 Due to the limited damage to

11 the TILX car, which we call it the white car,

12 the train wreckers came in, they looked at

13 all the cars, they knew they could move

14 the covered hopper cars. They came up and

15 performed a wrecking operation/damage

16 assessment on the Trinity car.

17 And I'm not sure how long that

18 took, but they -- late that night, they

19 surmised that they could not move that car

20 due to bolster damage and -- just bolster

21 damage. They couldn't get it rolled up and

22 picked up without impacting the other cars,

23 the other VCM cars.

24 Q. Can you explain that a little

25 bit more, how this bolster damage would have

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1 possibly impacted the other VCM cars?

2 A. The couplers were -- I believe

3 the couplers were still attached between the

4 28 car and the 29 car. That's the way the

5 train was set up. In a derailment, cars pass

6 each other.

7 The wrecking contractors were

8 not comfortable hooking on to that car and

9 sliding it out of the way.

10 I personally was not on-site.

11 I was just advised that they could not move

12 that car.

13 Q. And when you say "wrecking

14 contractors," will you tell me who again that

15 was?

16 A. That was Crane -- on that end

17 of the derailment, Cranemasters and Hulcher,

18 H-u-l-c-h-e-r, and the opposite end was

19 Corman. Opposite end of the derailment was

20 Corman.

21 Q. And can you tell me who gave

22 you this information regarding TILX402025?

23 A. I do not remember who called

24 me.

25 Q. All right. So you don't recall

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1 who called from you Hulcher or Cranemasters?

2 A. I don't know if it was them.

3 It may have been the nighttime SPSI manager.

4 Somebody told me that they were not

5 comfortable moving that car.

6 Q. So probably best for me to talk

7 to somebody from Hulcher or Cranemasters

8 about that.

9 Fair to say?

10 A. Most likely.

11 Q. Okay. And you don't have any

12 pictures showing that bolster damage, by any

13 chance?

14 A. I presented everything -- all

15 the pictures that I have.

16 Q. Okay. Thank you.

17 The next thing I wanted to ask

18 you about real quick. You had mentioned that

19 you didn't -- that water was not applied to

20 the VCM cars on February 5th and 6th because

21 they still had their jackets on.

22 Is that correct?

23 A. That's correct.

24 Q. And the idea there is that

25 because they had their jackets on, the water

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1 wouldn't cool the cars.

2 Is that correct?

3 A. It wouldn't be able to get to

4 the shell.

5 Q. Okay. And is there a basis for

6 you believing or testifying that you have to

7 have water on the shell in order for the car

8 to be cooled?

9 MR. LEVINE: Objection.

10 THE WITNESS: That basically

11 just goes back to firefighting 101.

12 If you're trying to cool a product

13 that's inside, under four inches of

14 insulation, under an eighth-inch

15 jacket, under a half-inch of thermal

16 protection, you must get the cooling

17 material to the shell, not on the

18 jacket.

19 QUESTIONS BY MR. BYARS:

20 Q. And is that something that

21 you're taught in firefighting school?

22 A. Firefighting school and the

23 Pueblo classes.

24 Q. The Pueblo classes.

25 Okay. And what's the most

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1 recent Pueblo class that you had where that
2 particular concept was taught?

3 A. Any of the fire training
4 classes at Pueblo, any fire training classes
5 involving tank cars, crude by rail, ethanol
6 by rail. It's a -- it's a common theme.

7 Q. The only thing, Mr. Day, I'll
8 tell you that I'm struggling with a little
9 bit is that there seems to be a consensus
10 that heat can be transferred from a pool
11 fire, through a jacket, into the material
12 inside the car. So I'm having trouble
13 understanding why a car can't be cooled by
14 applying water to the jacket and trying to
15 move heat off of it that way.

16 A. I'm not a thermal dynamics
17 expert, but basically in a pool fire, heat is
18 absorbed in the steel, deteriorates
19 insulation. The jacket and the insulation
20 protect the shell, the product, from the
21 outside environment.

22 Once the insulation is
23 compressed, once the insulation is destroyed,
24 damaged, due to fire, then you start getting
25 heat transfer through.

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1 Heat transfer is a lot easier
2 than water transfer.

3 Q. Okay.

4 A. We can rip the jackets off but
5 also take -- it's also a very risky business
6 to put folks up on cars with active fires.

7 Q. So is it possible that the
8 jackets were deteriorated to the point where
9 if there had been water applied to the cars,
10 there could have been some cooling effect?

11 A. You're asking me to speculate,
12 and I try not to. I've been advised not to
13 speculate. It is what it is or it isn't.

14 Q. Sitting here today, though, you
15 can't tell me with certainty that there
16 couldn't have been some cooling effect to
17 applying water to the cars?

18 A. That's your opinion. I have my
19 own opinion.

20 Q. Now, you also said that there
21 were some fires that were burning in the
22 protective housings of two of the VCM cars?

23 A. Three of the VCM cars.

24 Q. Three of the VCM cars.

25 Now, they weren't burning in

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1 the TILX402025 car.

2 Right?

3 A. You are absolutely correct.

4 Q. Did you -- was there ever any
5 consideration given to putting out those
6 fires?

7 A. Consideration, yes. However,
8 if you go back to the SDS and firefighting
9 101, if you extinguish fires, you must be
10 able to control the release.

11 Q. Okay. I don't understand that.

12 What do you mean -- what does
13 extinguishing fires and protective housings
14 have to do with controlling the release?

15 A. Didn't you just say, if you --
16 can you -- could you have gone in and put out
17 the fire?

18 Q. Yeah. Yes. I was asking could
19 you put out the fire on the protective
20 housings of the three cars.

21 A. Most definitely, yes, sir.

22 Q. Okay. How would you have done
23 that?

24 A. Fire extinguisher.

25 Q. And why didn't you do that?

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1 A. Because you have -- if you go
2 to the SDS and you go to the New Jersey
3 document that we spoke of earlier, you must
4 be able to control the release.

5 For some reason, those
6 protective housings are on fire. That means
7 it's releasing material. Something from
8 inside the car is leaking through, and you
9 have fire.

10 Now, if you go up there and
11 extinguish it, you must be able to control
12 those vapors that are coming out that used to
13 be on fire. Now you have an uncontrolled
14 flammable gas release.

15 Flammable gas -- VCM is heavier
16 than air. It flows off the side of the car,
17 gets to the ground, reaches out in fingers
18 and finds pockets. Once those pockets get
19 accumulated enough, it finds an ignition
20 source and flashes back.

21 Q. So your concern was -- I think
22 I understand what you're saying now.

23 My understanding is that your
24 concern was that if you put out those fires
25 that were in those protective housings, then

1 you would just have gas that would pour over
2 the top, go down the side of the -- of the
3 cars.

4 Is that right?

5 A. And find an ignition source.

6 Q. Find an ignition source. Okay.

7 Which of the three cars had
8 protective housings -- well, sorry, had fires
9 still burning in the protective housings, if
10 you refer to Exhibit 13?

11 A. 55, 31 and 30.

12 Q. Okay.

13 A. I believe those are the ones.

14 Q. Thank you.

15 Now, you also said that there
16 were these fires that were in the -- what did
17 you call it, the ballast rocks?

18 A. Yes, sir.

19 Q. Was there any attempt made to
20 put those fires out?

21 A. Those fires flashed, and it
22 went away. They flash. They went away. It
23 wasn't a constant fire. It was fed by the
24 fire underneath the biggest pile of cars.

25 Q. Okay. And when you say "the

1 fire underneath the biggest pile of cars,"
2 can you identify that for me on Exhibit 13?

3 A. From 31 going toward 44, 45.

4 Q. Okay. Was there ever any
5 attempt made to put the fire out underneath
6 those cars?

7 A. Multiple times.

8 Q. And can you describe those
9 attempts to me?

10 A. This might sound like a smart
11 ass. Laid a fire hose out, hooked up -- put
12 a nozzle on it, pressurized it with water,
13 opened the nozzle, sprayed foam, put out
14 fire. Fire flashed back.

15 The problem we have is, these
16 kind of fires, with all this equipment on
17 top, all these cars, all this material,
18 there's spot fires everywhere. As those spot
19 fires continue to burn, it's heating other
20 things, some of the stuff that you wouldn't
21 expect to burn, some of the lube oils and
22 stuff like that.

23 So you go in, you put the fire
24 out, then it would flash back.

25 Q. When were those attempts made

1 to put the fire out that was under the pile
2 with water?

3 A. Several times during the entire
4 operation, leading up to and after the vent
5 and burn.

6 Q. Okay. So while you were there
7 from the time that you arrived at the
8 derailment site on the morning of
9 February 5th until the vent and burn on
10 February 6th, did you personally witness the
11 attempts to put out that fire?

12 A. I don't recall.

13 Q. What about the use of foam to
14 put out that fire? Was that ever tried? Do
15 you know?

16 A. That would be for the fire
17 service and for SPSI. I know foam was used
18 at times.

19 Q. Do you know when it was used?

20 A. During the wrecking operation.

21 Q. Did you ever personally observe
22 it being used?

23 A. I saw -- I flowed a lot of
24 water, but not a lot of foam.

25 Q. Was there any time where you

1 ever saw unmanned hoses, water hoses, set up
2 to train water on the derailment?

3 A. There's a lot of pictures from
4 the night -- the night of the incident, and
5 there were times during the vent and burn
6 operation where unmanned monitors were set
7 up, and then during the wrecking operations
8 after the vent and burn.

9 Q. And that's actually the term I
10 was looking for, "unmanned monitors." I
11 couldn't remember that.

12 Those are the unmanned water
13 hoses.

14 Right?

15 A. Correct.

16 Q. Were there any unmanned water
17 hoses set up between the time that you
18 arrived on the morning of February 5th and
19 the vent and burn?

20 A. There were.

21 Q. And where were those set up?

22 A. To protect Leake Oil and I
23 believe Brave Industries and the blue
24 building.

25 Q. Were there any that were set up

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1 so that the water was being aimed at the
2 derailment site?

3 A. The water was used to protect
4 the structures.

5 Q. So there was no water that was
6 being put onto the derailed cars from these
7 unmanned monitors.

8 Is that correct?

9 A. Correct.

10 Q. And do you know why there was
11 no water being aimed at the derailed cars
12 from these unmanned monitors during that
13 time?

14 A. Some of it may have been trying
15 to reduce the flow of water downstream. It
16 was washing contamination away from the site.

17 Q. Did anybody ever tell you that?

18 A. It was obvious.

19 Q. Did you ever discuss that with
20 anybody?

21 A. I wasn't there for an
22 environment -- for environmental issues. I
23 was there for compressed gas cars.

24 Q. Did you ever hear anyone
25 discussing that?

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1 A. There's -- the cleanup is still
2 going on, so obviously there's been a lot of
3 discussion about it.

4 Q. Okay. When you were there from
5 the morning of February 5th until the vent
6 and burn, did you ever hear anyone discussing
7 not putting water on the derailment site
8 because of the flow of water downstream that
9 would result?

10 A. Is that a question?

11 Q. Yes.

12 A. Could you restate it?

13 Q. I sure can.

14 When you were at the derailment
15 site from the morning of February 5th until
16 the vent and burn, did you ever hear anyone
17 discussing not putting water on the
18 derailment site because of the flow of water
19 downstream that would result?

20 A. No.

21 Q. Do you think that if there had
22 been water -- strike that.

23 Do you think if there had
24 been -- if the unmanned monitors had been
25 used to put water on the derailment site from

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1 the morning of February 5th until the vent
2 and burn, that that could have had a cooling
3 effect on the VCM cars?

4 MR. BRAGA: Objection.

5 THE WITNESS: As I previously
6 stated, applying water to jackets does
7 nothing to cool product.

8 QUESTIONS BY MR. BYARS:

9 Q. What if you're -- what if the
10 water is being applied to the -- to the
11 ballast rock or to the fire that was
12 underneath cars from, I think you said, 31 --
13 Car 31 to Car 45? Would there have been a
14 cooling effect on the VCM cars then?

15 MR. LEVINE: Objection.

16 THE WITNESS: You can't apply
17 water to a jacketed car and expect
18 cooling to take place.

19 QUESTIONS BY MR. BYARS:

20 Q. I guess I'm asking, what if you
21 weren't applying the water to the jacketed
22 car but instead were applying it to what the
23 car was sitting on?

24 A. You're asking me for
25 speculation. I'm not going to speculate.

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1 Q. So -- all right. If you had to
2 guess, and I know you don't like to do this,
3 but what would be your guess as to whether
4 that would have had any cooling effect on the
5 VCM cars?

6 MR. BRAGA: Objection.

7 You can go ahead and guess.

8 THE WITNESS: I hate to guess.
9 It possibly could. It possibly could
10 not.

11 QUESTIONS BY MR. BYARS:

12 Q. Sitting here today, you can't
13 tell me that there would not have been a
14 cooling effect had water been applied to the
15 areas underneath the VCM cars?

16 MR. LEVINE: Objection.

17 THE WITNESS: Pumping water on
18 a jacketed car does virtually no help
19 to cool -- the cooling. It's been
20 proven dozens of times in incidents
21 across the country involving jacketed
22 cars.

23 QUESTIONS BY MR. BYARS:

24 Q. What about pumping water to the
25 area that the cars are sitting on?

<p style="text-align: right;">Page 294</p> <p>1 MR. LEVINE: Same objection. 2 QUESTIONS BY MR. BYARS: 3 Q. Would that have a cooling 4 effect? 5 A. It would possibly put out fire, 6 possibly wash contamination downstream. 7 Q. Were there any -- let's look at 8 Car 55 real quick. 9 You see Car 55 on Exhibit 13? 10 A. Yes, sir. 11 Q. And do you see Car 54, which is 12 right up against Car 55? 13 A. I do see that. 14 Q. Do you recall if Car 54 was on 15 fire? 16 A. It was a smoldering fire, yes, 17 sir. 18 Q. Was any water ever applied to 19 Car 54? 20 A. No, there was not. Not until 21 the end. 22 Q. When you say "until the end," 23 when was that? 24 A. When the wrecking operation got 25 up to that car.</p>	<p style="text-align: right;">Page 296</p> <p>1 to put water on that car because of possible 2 runoff? 3 A. I -- sir, I was there for the 4 compressed gas cars, the five VCM cars and 5 the one isobutylene car. 6 Q. If water had been put on 7 Car 54, would it have cooled Car 54 down? 8 MR. LEVINE: Objection. 9 THE WITNESS: It's possible. 10 QUESTIONS BY MR. BYARS: 11 Q. And if water had put -- if 12 Car 54 had been cooled down, is it possible 13 that Car 55 would have cooled down as well? 14 MR. LEVINE: Objection. 15 THE WITNESS: It's very 16 possible. 17 QUESTIONS BY MR. BYARS: 18 Q. What about foam? Was foam ever 19 considered to be put on Car 54? 20 A. I don't remember what was in 21 Car 54 that was burning. 22 Q. So do you not recall whether it 23 was ever considered to put foam on Car 54? 24 A. I don't know what was in 25 Car 54, so I wouldn't ever know what was</p>
<p style="text-align: right;">Page 295</p> <p>1 Q. So that was after the vent and 2 burn? 3 A. That was after the vent and 4 burn. 5 Q. So before -- or from the 6 morning of February 5th when you arrived at 7 the derailment scene until the vent and burn, 8 there was no water that was put on Car 54. 9 Is that right? 10 A. That is correct. 11 Q. And why is that? 12 A. We were -- I mean, 13 environmentally, any water you flow on that 14 car is going to go to the ground, and it's 15 going to wash more contamination downstream. 16 And the environmental folks had a heck of 17 problem going on with contamination getting 18 off-site. 19 Q. So were you instructed not to 20 put water on that car because of the possible 21 runoff? 22 A. I was not. 23 MR. LEVINE: Objection. 24 QUESTIONS BY MR. BYARS: 25 Q. Did you make the decision not</p>	<p style="text-align: right;">Page 297</p> <p>1 going to be -- could be used to extinguish 2 the fire. 3 Q. Do you know what the condition 4 of the valves were on the Car 28? That's the 5 Trinity VCM car. 6 A. They must have been in really 7 good shape, because they were able to hook up 8 to the -- either the vapor valve or the 9 sample port and get a gauge pressure on it. 10 Q. Would it have been possible to 11 transfer the VCM inside of Car 28 through one 12 of those valves? 13 MR. BRAGA: Objection. 14 THE WITNESS: Anything is 15 possible. 16 QUESTIONS BY MR. BYARS: 17 Q. Did you con -- did you consider 18 doing that? 19 A. We had to have a place to go 20 with the material, which means we either had 21 to have tank cars or tank trucks, and then we 22 had to have a place to go with that material 23 that was going to accept it. 24 And there's still the potential 25 for it to be a reactive material, which means</p>

<p style="text-align: right;">Page 298</p> <p>1 we would have to put it on a road or put it 2 on railroad tracks and taken it -- let's just 3 say OxyChem -- Oxy Vinyls accepted that 4 material back to Houston. We would have had 5 to road that stuff all the way back. 6 Q. Do you know if anyone tried to 7 obtain a tank car that the VCM from Car 28 8 could have been transferred to? 9 A. I have no idea. 10 Q. Do you know if anyone tried 11 to -- or tried to find someone who would 12 transport a tank car filled with VCM that had 13 been transferred from Car 28? 14 A. The transfer to a receiving car 15 or truck is one part of the puzzle, but 16 there's several other steps that's got -- 17 that have to be made in order to get that 18 done, yes, sir. 19 I don't -- I don't know of 20 anyone that looked for transportation 21 services. 22 Q. Okay. And did you ever talk to 23 OxyChem about the possibility of transferring 24 VCM from Car 28 into a tank car? 25 A. The plan was to -- the initial</p>	<p style="text-align: right;">Page 300</p> <p>1 Q. Aside from Car 54, were there 2 any other non-VCM cars that were on fire 3 between February 5th when you arrived at the 4 derailment and the time of the vent and burn? 5 A. You see the smoke in the pile? 6 Q. I do see that. 7 A. There you go. 8 Q. Do you know which cars those 9 were, by any chance? 10 A. Jokingly, all of them. 11 Q. Okay. 12 A. There's stuff on fire, and 13 basically all of those cars are -- 14 Q. Were those jacketed cars? 15 A. The general service cars, I 16 don't believe were. I'd have to go each 17 individual car and look at it. There's not 18 jackets on every car. 19 Q. So we can actually look at 20 Exhibit 13 here and look at the table on the 21 left side, and that may help us. 22 So as we've talked about 23 already, the VCM cars are denoted in red on 24 their line numbers. 25 And then I think that you had</p>
<p style="text-align: right;">Page 299</p> <p>1 plan when wrecking operations started 2 Saturday night were to move that car out and 3 get it into the clear and perform the vent 4 and burn operation on the other four cars. 5 Q. Do you recall how far you were 6 planning to move Car 28 into the clear, 7 assuming you had been able to do so? 8 A. Down yonder. We were -- we 9 were moving it across the tracks toward the 10 Leake Oil side and down the way to get it 11 away from the fire from the vent and burn. 12 Q. Can you give me an estimate 13 just in terms of yards? 14 A. Several hundred. 15 Q. I like the down yonder, by the 16 way. That sounds like a technical term from 17 Texas. 18 All right. So several -- you 19 were looking to move it several hundred yards 20 down towards Leake Oil. All right. 21 A. No, it was across from Leake 22 Oil -- 23 Q. Sorry. 24 A. -- so away from Leake Oil, on 25 the Leake Oil side.</p>	<p style="text-align: right;">Page 301</p> <p>1 mentioned Cars 32 to 45 having fire around 2 them. That's the general area of that smoke. 3 So from Cars 32 to 45, can you 4 look at Exhibit 13 and tell me if any of 5 those cars are jacketed cars? 6 A. Okay. So Car 49 is a DOT 7 105J300W car. That's an isobutylene car. 8 Q. Okay. 9 A. That's a jacketed car. Because 10 that J means it's jacketed. 11 The unfortunate part when it 12 gets to general service cars, 111A100W1 cars, 13 could or could not have jackets. There's 14 no differentiation. It doesn't put a J in 15 there to tell us, so you have to look at each 16 individual car. 17 Q. The hop -- 18 A. The 117J100W is a jacketed car 19 because it's got a J in that. However, the J 20 does not always mean it's got a jacketed -- 21 or excuse me. J means it has a jacket. The 22 A does not always dictate that it has a 23 jacket. 24 Q. And then what about Car 42, 25 which was AAR 211? I'll omit the rest of the</p>

<p style="text-align: right;">Page 302</p> <p>1 numbers and letters. Was that a jacketed 2 car?</p> <p>3 A. A 111A is the same as a DOT 4 211A. It could have a jacket. It could not 5 have a jacket.</p> <p>6 Q. Okay. And the hopper cars 7 weren't jacketed.</p> <p>8 Is that right?</p> <p>9 A. The hopper cars are hopper 10 cars.</p> <p>11 Q. Okay. So if any of the hopper 12 cars were the sources of those fires, could 13 have applied water to those, and those fires 14 might have gone out.</p> <p>15 Is that right?</p> <p>16 A. And the risk of another PRD 17 going off, now you have firefighters, first 18 responders, in, setting up unmanned monitors 19 and streams, pumping water to it, washing 20 contamination down the stream. And the setup 21 is -- it's a risk-based determination that 22 we're not going to apply water.</p> <p>23 Q. Well, how long does it take to 24 set up an unmanned monitor?</p> <p>25 A. Depends on how far we have to</p>	<p style="text-align: right;">Page 304</p> <p>1 Q. And were there -- was there 2 ever anyone who was there for a period of, 3 say, 30 minutes?</p> <p>4 A. Possibly.</p> <p>5 Q. How about an hour?</p> <p>6 A. Possibly.</p> <p>7 Q. Two hours?</p> <p>8 A. Oh, my God. Okay. We can -- 9 we can go down this road as far as you want 10 to go. An hour, two hours, three hours.</p> <p>11 We -- there was a lot of work going in, being 12 done and coming back out, gathering data, 13 gathering information, making plans.</p> <p>14 Q. So just -- I understand, 15 Mr. Day, that this can be frustrating, and 16 for that I apologize. I'm not trying to 17 frustrate you.</p> <p>18 But is it possible that there 19 were people who were there for a span of two 20 hours at the derailment site?</p> <p>21 MR. LEVINE: Objection.</p> <p>22 THE WITNESS: There was -- 23 there was a very delicate balance 24 between risk management and getting 25 information and us planning what we</p>
<p style="text-align: right;">Page 303</p> <p>1 lay and the wind effect on the monitors we 2 can set up.</p> <p>3 In one side, we could be 4 flowing 10,000 gallons a minute on the car 5 from a long distance away. But the City of 6 East Palestine doesn't have the water supply 7 for a 10,000 GPM operation.</p> <p>8 Q. How long would it have taken to 9 set up unmanned monitors on this pile of cars 10 from Car 32 to Car 45?</p> <p>11 A. Most likely several hours.</p> <p>12 Q. Was there any point in time 13 from the time that you arrived on the morning 14 of February 5th until the vent and burn when 15 personnel were absent from the derailment 16 site for several hours?</p> <p>17 A. There were a lot of times.</p> <p>18 Q. So there were times when nobody 19 was at the derailment site?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. Were there times when 22 people were present at the derailment site 23 for several hours?</p> <p>24 A. There were a lot of operations 25 going on, so people were in and out.</p>	<p style="text-align: right;">Page 305</p> <p>1 can do next, what is safe for the 2 folks to do.</p> <p>3 So crews would go in, they 4 would take some air monitoring 5 readings. There were crews that would 6 go in, take temperatures. There were 7 crews that would go in to try to do an 8 assessment from a different angle.</p> <p>9 There's a lot of operations 10 going on simultaneously. Crews are 11 going in and out.</p> <p>12 QUESTIONS BY MR. BYARS:</p> <p>13 Q. So can you tell me, sitting 14 here today, that from the time that you 15 arrived at the derailment site on the morning 16 of February 5th until the vent and burn, that 17 there was never anyone who was at the 18 derailment site for two hours?</p> <p>19 MR. LEVINE: Objection.</p> <p>20 THE WITNESS: The longest time 21 that I personally know folks were on 22 scene is when we were setting up the 23 explosives.</p> <p>24 QUESTIONS BY MR. BYARS:</p> <p>25 Q. Okay. And how long did that</p>

<p style="text-align: right;">Page 306</p> <p>1 take?</p> <p>2 A. About three and a half hours.</p> <p>3 Q. So you were setting up the</p> <p>4 explosives for about three and a half hours.</p> <p>5 Were there also pits being dug</p> <p>6 at that point?</p> <p>7 A. The previous night, yes, sir.</p> <p>8 Q. The previous night.</p> <p>9 Can you identify for me on</p> <p>10 Exhibit 13 where pits were being dug?</p> <p>11 A. Car 27 was moved to the east,</p> <p>12 and there was a pit -- or a containment built</p> <p>13 that would hold around 158 to 160,000 gallons</p> <p>14 of fluid, using natural ground curvature to</p> <p>15 build a containment area around the pile of</p> <p>16 four VCM cars and a channel to the Brave</p> <p>17 Industries side of the tracks to funnel the</p> <p>18 liquid from Car 55 away and prevent it from</p> <p>19 getting toward the isobutylene car to the</p> <p>20 east.</p> <p>21 Q. And so the pit, if I'm</p> <p>22 understanding correctly, that was around</p> <p>23 where Car 27 appears on Exhibit 13?</p> <p>24 A. It incorporated -- 27 was out</p> <p>25 of the way. It incorporated 28, 29, 30 and</p>	<p style="text-align: right;">Page 308</p> <p>1 QUESTIONS BY MR. BYARS:</p> <p>2 Q. And let's say for a moment that</p> <p>3 it had been determined that there was no</p> <p>4 polymerization occurring in the VCM cars.</p> <p>5 What would you have done with</p> <p>6 the VCM cars?</p> <p>7 MR. LEVINE: Objection.</p> <p>8 THE WITNESS: Had there not</p> <p>9 been any polymerization going on, had</p> <p>10 the cars just been derailed, we would</p> <p>11 have transferred them.</p> <p>12 QUESTIONS BY MR. BYARS:</p> <p>13 Q. And by "transferred them," can</p> <p>14 you just explain for the jury what that</p> <p>15 means?</p> <p>16 A. We would take the product out</p> <p>17 of one tank and put it in the other.</p> <p>18 MR. BYARS: So, Mr. Day, I'm</p> <p>19 going to reserve the balance of my</p> <p>20 time. I don't have any further</p> <p>21 questions for you right now.</p> <p>22 Thank you for your patience. I</p> <p>23 do appreciate it.</p> <p>24 THE WITNESS: Yes, sir.</p> <p>25 VIDEOGRAPHER: All right. The</p>
<p style="text-align: right;">Page 307</p> <p>1 31.</p> <p>2 Q. Do you know about how long it</p> <p>3 took to construct that pit and the</p> <p>4 containment area around the pile of the four</p> <p>5 VCM cars?</p> <p>6 A. I was in bed. No, sir.</p> <p>7 Q. Probably something I should</p> <p>8 ask. Was it Hulcher and -- well, strike</p> <p>9 that.</p> <p>10 Well, do you know who was</p> <p>11 responsible for doing that work?</p> <p>12 A. I do not.</p> <p>13 Q. Would it have been Hulcher's?</p> <p>14 A. It could have been Hulcher. It</p> <p>15 could have been Cranemasters. It could have</p> <p>16 been SPSI.</p> <p>17 Q. What would it have taken -- so</p> <p>18 strike that.</p> <p>19 Prior to the vent and burn</p> <p>20 being executed, what would it have taken to</p> <p>21 convince you that there was no polymerization</p> <p>22 occurring in the VCM cars?</p> <p>23 MR. BRAGA: Objection.</p> <p>24 THE WITNESS: I don't know that</p> <p>25 you could have convinced me.</p>	<p style="text-align: right;">Page 309</p> <p>1 time is 2:47 p.m. We're going off the</p> <p>2 record.</p> <p>3 (Off the record at 2:47 p.m.)</p> <p>4 VIDEOGRAPHER: The time is</p> <p>5 2:56 p.m., and we're back on the</p> <p>6 record.</p> <p>7 DIRECT EXAMINATION</p> <p>8 QUESTIONS BY MS. BROZ:</p> <p>9 Q. Good afternoon, Mr. Day. My</p> <p>10 name is Alycia Broz, and I'm from the law</p> <p>11 firm of Vorys, Sater, Seymour and Pease, and</p> <p>12 I represent Oxy Vinyls in this litigation.</p> <p>13 I believe we met earlier today.</p> <p>14 A. I think so.</p> <p>15 Q. Okay. Thank you for coming to</p> <p>16 talk to us today and to answer some questions</p> <p>17 for us.</p> <p>18 Could you let us know what you</p> <p>19 did to prepare for today's deposition?</p> <p>20 A. I flew from Boston to</p> <p>21 Washington, DC.</p> <p>22 Q. Do you currently reside in</p> <p>23 Boston?</p> <p>24 A. No, sir -- ma'am. Sorry.</p> <p>25 Q. It's okay. All right.</p>

<p style="text-align: right;">Page 310</p> <p>1 A. No, ma'am. I live in Fort 2 Worth, Texas. 3 Q. Okay. And did you meet with 4 anyone prior to your deposition? 5 A. With my attorneys and the 6 Norfolk Southern attorney. 7 Q. So you met with Mr. Braga. 8 Is that correct? 9 A. That's correct. 10 Q. And you also met with Norfolk 11 Southern's attorneys? 12 A. Correct. 13 Q. Okay. And which Norfolk 14 Southern attorneys did you meet with? 15 A. Noah, who is the lead guy. 16 Pretty much everybody on this side. 17 Q. Everybody on the side of your 18 table you met with. 19 Did you meet with anybody else 20 other than your counsel, which I assume 21 Mr. Braga to be, and Norfolk Southern counsel 22 in preparation for today's deposition? 23 A. Mr. Braga is mine, along with 24 Mr. Hutt and Mr. Wald. 25 Q. And did you meet with anyone</p>	<p style="text-align: right;">Page 312</p> <p>1 to prepare for your deposition today? 2 A. I read the dep -- the 3 transcript from the NTSB hearing and the 4 interview -- the NTSB interview. 5 Q. Your NTSB interview? 6 A. Excuse me? 7 Q. Your NTSB interview? 8 A. Yes, ma'am. 9 Q. And did you read the entire 10 transcript from June 22, 2023, NTSB hearing? 11 A. My portion. 12 Q. So just the afternoon? 13 A. Just my portion, yes, ma'am. 14 Q. Are you paying for Mr. Braga to 15 be your attorney? 16 A. Somebody is paying him. 17 Q. But it's not you? 18 A. Personally? 19 Q. Yes. 20 A. Not out of my checking account, 21 no. 22 Q. Is SRS paying for Mr. Braga to 23 be your attorney? 24 A. I think our parent company is. 25 Q. Your parent company is.</p>
<p style="text-align: right;">Page 311</p> <p>1 else? 2 A. My boss was with us. 3 Q. Okay. And who is your boss? 4 A. Bobby Breed. 5 Q. And he participated in all the 6 meetings you had in preparation for your 7 deposition today? 8 A. Yes, ma'am. 9 Q. Did you discuss your testimony 10 with Mr. Breed? 11 A. He was in the room when we were 12 talking about all things that we're talking 13 about now. 14 Q. Okay. Did you meet with anyone 15 else? 16 A. No, ma'am. 17 Q. And how long did you meet with, 18 you know, counsel for Norfolk Southern, your 19 own counsel and Mr. Breed in preparation for 20 your deposition? 21 A. Several hours on Sunday and 22 several hours yesterday. 23 Q. Yesterday being Monday? 24 A. Monday the 15th. 25 Q. Okay. Did you do anything else</p>	<p style="text-align: right;">Page 313</p> <p>1 And who is your parent company? 2 A. SRS was acquired by NRC, that 3 was acquired US Ecology, that was acquired by 4 Republic Services. 5 Q. And you believe Republic 6 Services is paying for Mr. Braga to be your 7 counsel here today? 8 A. Yes, ma'am. 9 Q. Did you talk to anyone in 10 preparation for your deposition today, other 11 than the folks we've already mentioned? 12 A. No, ma'am. 13 I guess I must clarify. One 14 moment. 15 I said I was going to say to DC 16 for a deposition. 17 Q. And who did you say that to? 18 A. The folks I was working with up 19 in Boston. 20 Q. Are those fellow coworkers? 21 A. They were coworkers and my 22 customer. 23 Q. Did you talk to anyone else 24 about your deposition or the fact that you 25 would have to testify here today?</p>

1 A. No, ma'am.
 2 Q. And you also testified in East
 3 Palestine at a hearing before the NTSB on
 4 June 22, 2023.
 5 Is that correct?
 6 A. Yes, ma'am.
 7 Q. And what did you do to prepare
 8 for that testimony?
 9 A. I met with Mr. Braga, Mr. Hutt,
 10 and some folks with WilmerHale. I don't
 11 remember they were.
 12 Q. So counsel for Norfolk Southern
 13 you also met with prior to your testimony in
 14 the NTSB hearing on June 22, 2023?
 15 A. Yes, ma'am.
 16 Q. Did you meet with anyone else
 17 prior to that hearing?
 18 A. No, ma'am.
 19 Q. Did you talk to anyone else
 20 prior to that hearing about your testimony?
 21 A. Just the crew that I was
 22 working with in St. Croix.
 23 Q. Who was the crew in St. Croix?
 24 A. My crew that I was working with
 25 in St. Croix, I said I had to leave to go to

1 Miami for a meeting.
 2 Q. Did you talk to anyone else?
 3 A. The folks that I was working
 4 for, my customer.
 5 Q. In preparation for your
 6 testimony at the East Palestine NTSB hearing
 7 on June 22, 2023, did you review any
 8 documents?
 9 A. I don't remember.
 10 Q. How about in preparation for
 11 your testimony here today? Did you review
 12 any documents?
 13 A. I think I said it was my -- the
 14 NTSB interview, the NTSB hearing, my portion
 15 of it, and some other documents about the
 16 incident.
 17 Q. Okay. Did you review the text
 18 messages that were produced?
 19 A. Oh, yes, ma'am.
 20 Q. Okay. Did you review any
 21 e-mails that were produced?
 22 A. I don't remember seeing
 23 e-mails. I don't remember.
 24 Q. Okay. Anything else that you
 25 recall reviewing in preparation for your

1 deposition here today?
 2 A. Pictures.
 3 Q. Which pictures?
 4 A. The pictures that I had on my
 5 phone that were exhibit -- provided.
 6 Q. And you're confident that all
 7 those pictures were provided to your counsel
 8 to produce today in this litigation?
 9 A. Yes, ma'am. They had my phone.
 10 Q. Anything else that you
 11 reviewed?
 12 A. Not that I know of.
 13 Q. Am I correct that you report to
 14 Bobby Breed?
 15 A. That is correct.
 16 Q. And who does Terry Rockwell
 17 report to?
 18 A. I believe he reports to Bobby
 19 Breed as well.
 20 Q. Are you, like, coworkers or
 21 does Terry Rockwell report to you?
 22 A. No. It's a unique situation.
 23 I report to Bobby and Terry reports to Bobby,
 24 but we don't -- neither Terry nor I report to
 25 each other.

1 Q. Understood.
 2 Was Mr. Breed on-scene at East
 3 Palestine --
 4 A. No, ma'am.
 5 Q. -- after the derailment?
 6 A. No, ma'am.
 7 Q. But Mr. Rockwell was on-scene
 8 after the derailment?
 9 A. Yes, ma'am.
 10 Q. Did he arrive at the same time
 11 in East Palestine as you did?
 12 A. We were in the same vehicle,
 13 yes, ma'am.
 14 Q. So that would have been the
 15 morning of Sunday, February 5, 2023?
 16 A. Yes, ma'am.
 17 Q. Around 6 a.m.?
 18 A. Yes, ma'am.
 19 Q. Okay. Who else was in that
 20 vehicle with you?
 21 A. Kent Farquhar.
 22 Q. Anyone else?
 23 A. No, ma'am.
 24 Q. Does Kent Farquhar report to
 25 you?

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1 A. No, ma'am.
 2 Q. Who does he report to?
 3 A. Terry Rockwell.
 4 Q. What is Mr. Rockwell's title?
 5 A. I really do not know. We
 6 changed positions a lot.
 7 Q. Okay. But he's also an
 8 employee of SRS?
 9 A. Yes, ma'am.
 10 Q. All right. Prior to the
 11 derailment on February 3, 2023, were you
 12 familiar with Oxy Vinyls or Occidental
 13 Chemical or OxyChem?
 14 A. Very much.
 15 Q. Okay. And can you explain to
 16 me how you're familiar with -- well, can we
 17 just call them Oxy Vinyls for short?
 18 A. Or Oxy, yeah.
 19 Q. Sure.
 20 A. I worked with Oxy since the --
 21 I would say since the very early '90s, maybe
 22 late '80s.
 23 Q. And what do you mean by "worked
 24 with"?
 25 A. We were an emergency response

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1 contractor, and Oxy hired -- would hire us to
 2 perform emergency response operations.
 3 Q. Does SRS have a contract with
 4 Oxy?
 5 A. That's a contract department
 6 question.
 7 Q. But you did respond -- you were
 8 an emergency response contractor for them?
 9 A. Yes, ma'am.
 10 Q. Were there any particular
 11 people at Oxy that you knew?
 12 A. Oh, there's a lot of people I
 13 know.
 14 Q. Okay. Who would you -- who do
 15 you know at Oxy?
 16 A. Diane Larson. Butch Polasek.
 17 Last name is Wood -- I don't remember Woods.
 18 John Makazlik {phonetic}. I'm terrible with
 19 names.
 20 There's a lot of people from
 21 the corporate office and from the Houston
 22 chemical complexes in general.
 23 Q. And do you have any of those
 24 individuals' telephone numbers saved to your
 25 contact list on your cell phone?

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1 A. Yes, ma'am.
 2 Q. And how did you become familiar
 3 with people like Diane or, let's see --
 4 A. Butch Polasek?
 5 Q. -- Butch or John?
 6 A. John was the head of the
 7 emergency response group in the early '90s,
 8 early, mid-'90s.
 9 Butch Polasek and Diane Larson,
 10 they work together at the corporate office,
 11 or the tower in Dallas, and they were the
 12 lead of emergency services, something along
 13 those lines.
 14 Q. Before they arrived on the
 15 scene on February 5th, were you familiar with
 16 Alex Torres, Steve Smith or Justin Cox?
 17 A. I know Justin Cox from the
 18 emergency response group and a CHLOREP
 19 response team member.
 20 Steve Smith, we've met at
 21 something having to do with CHLOREP or at
 22 incidents.
 23 Q. And do you have Justin Cox's
 24 contact information saved on your cell phone?
 25 A. It's possible.

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1 Q. How about Mr. Smith's?
 2 A. It's possible.
 3 Q. At any time after -- and I
 4 assume you didn't know who Alex Torres was?
 5 A. No, ma'am.
 6 Q. Okay. Have you met -- and you
 7 had not met him before February 3, 2023?
 8 A. Not that I can recall.
 9 Q. At any time between February 3,
 10 2023, and the date of the vent and burn,
 11 February 6, 2023, did you attempt to call or
 12 text either Mr. Smith or Mr. Cox while they
 13 were on the scene?
 14 A. You've got my text logs. I
 15 don't remember.
 16 Q. So if they're not on any
 17 texts -- if there are no texts on those logs
 18 to either Mr. Smith or Mr. Cox, they didn't
 19 happen?
 20 A. That would be my assumption.
 21 Q. So we don't have your call
 22 logs. We have your text logs, but we don't
 23 have your calls logs.
 24 Did you try to call Mr. Cox or
 25 Mr. Smith between February 3rd and

<p style="text-align: right;">Page 322</p> <p>1 February 6, 2023?</p> <p>2 A. I don't remember.</p> <p>3 Q. And did you try to call any of</p> <p>4 the other Oxy employees that you're familiar</p> <p>5 with between February 3rd and February 6,</p> <p>6 2023, including Diane, Butch or John?</p> <p>7 A. All those people have retired.</p> <p>8 No.</p> <p>9 Q. You didn't try to text them</p> <p>10 either?</p> <p>11 A. No, ma'am.</p> <p>12 Q. And I understand Mr. Gold was</p> <p>13 also retired, who you reached out via text?</p> <p>14 A. Correct.</p> <p>15 Q. And it was okay to text him</p> <p>16 even though he had retired?</p> <p>17 A. Correct.</p> <p>18 Q. Is there a reason why you</p> <p>19 didn't reach out to Diane or John or Butch or</p> <p>20 John after the derailment on February 3,</p> <p>21 2023?</p> <p>22 A. I can't think of a reason why I</p> <p>23 did -- I would have and wouldn't have.</p> <p>24 Q. What does that mean?</p> <p>25 A. They worked for Oxy. They've</p>	<p style="text-align: right;">Page 324</p> <p>1 what you're saying.</p> <p>2 They were already people that</p> <p>3 you were talking to from corporate office of</p> <p>4 Oxy while on the derailment site in East</p> <p>5 Palestine?</p> <p>6 A. Because they stood up the</p> <p>7 emergency operations center, and everybody</p> <p>8 was in that room.</p> <p>9 Q. Okay. What do you mean by</p> <p>10 "stood up the emergency operations center"?</p> <p>11 A. They opened it up. They</p> <p>12 basically had people come in and manned,</p> <p>13 stationed, the emergency operations center at</p> <p>14 the corporate office.</p> <p>15 Q. In Dallas?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. And that's who you're having</p> <p>18 conversations with?</p> <p>19 A. That was where the conference</p> <p>20 call -- that's -- I understood that's where</p> <p>21 the conference call was initiated from.</p> <p>22 Q. So let's talk about when you</p> <p>23 first arrived at East Palestine on</p> <p>24 February 5, 2023, around 6 a.m.</p> <p>25 Where did you go first?</p>
<p style="text-align: right;">Page 323</p> <p>1 retired, or at least two of them retired.</p> <p>2 They weren't chemical handlers or emergency</p> <p>3 response. They managed the groups. They</p> <p>4 were corporate office folks.</p> <p>5 Q. But if had you known an</p> <p>6 emergency response person from Oxy, you would</p> <p>7 have called them?</p> <p>8 A. It's possible.</p> <p>9 MR. LEVINE: Objection.</p> <p>10 QUESTIONS BY MS. BROZ:</p> <p>11 Q. But you're not willing to call</p> <p>12 somebody who would be from a corporate office</p> <p>13 form Oxy to get their opinion about the</p> <p>14 derailment on February 3, 2023.</p> <p>15 Correct?</p> <p>16 MR. LEVINE: Objection.</p> <p>17 MR. BRAGA: Objection.</p> <p>18 THE WITNESS: We already had</p> <p>19 several people. The EOC was stood up,</p> <p>20 and there were several people in the</p> <p>21 corporate office on -- in</p> <p>22 communication with the site. I was</p> <p>23 listening to conference calls.</p> <p>24 QUESTIONS BY MS. BROZ:</p> <p>25 Q. Let me make sure I understand</p>	<p style="text-align: right;">Page 325</p> <p>1 A. We drove by the Leake Oil</p> <p>2 site -- side of the site and went to the</p> <p>3 command center.</p> <p>4 Q. Did you say legal, l-e-g-a-l?</p> <p>5 A. Leake, L-e-a-k-e. Leake Oil</p> <p>6 site.</p> <p>7 Q. Okay. That's a lawyer talking</p> <p>8 to somebody who doesn't do emergency</p> <p>9 response.</p> <p>10 And who did you meet up with?</p> <p>11 A. Where?</p> <p>12 Q. On the Leake Oil side of this</p> <p>13 derailment.</p> <p>14 A. We drove past the Leake Oil</p> <p>15 side of the response.</p> <p>16 Q. Okay. And where did you go?</p> <p>17 A. To the command center.</p> <p>18 Q. And where was the command</p> <p>19 center at that time?</p> <p>20 A. In town.</p> <p>21 Q. Was it at the fire station, the</p> <p>22 school, a trailer? Where was it?</p> <p>23 A. There -- I didn't know how it</p> <p>24 was all set up.</p> <p>25 Q. Uh-huh.</p>

1 A. There's a fire station, there's
 2 another fire station across the parking lot,
 3 so I'm not sure what they called it. It's a
 4 building that everybody was at.
 5 Q. Okay. But you didn't go to the
 6 trailer?
 7 A. To a trailer?
 8 Q. Yes.
 9 A. No.
 10 Q. The command center, was that
 11 also where incident command was or was that
 12 someplace different?
 13 A. That is where the incident
 14 commander, I believe, was.
 15 Q. And you believe it was in a
 16 fire station.
 17 Is that right? You believe it
 18 was in a fire station?
 19 A. It was at a building. I can't
 20 tell you. They had two buildings. One
 21 looked like a fire station. The other looked
 22 like another building that looked kind of
 23 like maybe an old fire station. Who knows.
 24 Q. Okay. Somewhere in town in a
 25 building that might have been the fire

1 station?
 2 A. That's absolutely correct.
 3 Q. Okay. Great.
 4 And what did you do when you
 5 arrived?
 6 A. Walked inside. Saw that there
 7 was a lot of commotion going on. Sought out
 8 some NS folks. I met Mr. Williams, may have
 9 been Mr. Schoendorfer and Mr. -- Scott
 10 Deutsch.
 11 There were several NS folks in
 12 the -- in that room that they are --
 13 Q. I'm sorry. I didn't mean to
 14 cut you off.
 15 A. Bay. In the bay.
 16 Q. In the fire station bay?
 17 A. Yes, ma'am.
 18 Q. Okay. And how soon after you
 19 arrived did you participate in the conference
 20 call with the Oxy folks in Dallas?
 21 A. It would have been sometime
 22 after that. Before we did the drone
 23 overflight.
 24 Q. Where did the conference call
 25 on your end happen with the Oxy corporate

1 folks in Dallas?
 2 A. In a Suburban outside of the
 3 SPSI trailer east of the Leake Oil side of
 4 the derailment.
 5 Q. And when you're saying
 6 "Suburban," you mean a car?
 7 A. Suburban. Truck. SUV.
 8 Q. An SUV. Okay. Just want to
 9 make sure we're talking about the same thing.
 10 How many people were in the
 11 Suburban with you?
 12 A. I believe there were a total of
 13 four.
 14 Q. Who was there?
 15 A. I'm going to guess it was
 16 myself, Mr. Rockwell, Mr. McCarty and
 17 possibly Mr. Farquhar, but I don't know that
 18 for a fact.
 19 Q. So nobody from NS?
 20 A. No. Yeah. That may have been
 21 the fourth person. I don't know who the
 22 fourth person was.
 23 Q. Was anybody else on that call
 24 who was at the derailment site other than the
 25 four of you?

1 A. Not that I know of.
 2 Q. Do you know who was on the call
 3 from Oxy in Dallas?
 4 A. Oxy people.
 5 Q. Do you have any names?
 6 A. No.
 7 Q. Did anyone identify themselves
 8 during the call?
 9 A. Several people identified
 10 themselves, but I don't remember who they
 11 were.
 12 Q. You don't remember any of the
 13 names?
 14 A. No, ma'am.
 15 Q. Do you remember how many people
 16 spoke on the call?
 17 A. I didn't pay that much
 18 attention to that part of it, no.
 19 Q. Did more than one person speak
 20 on the call for Oxy?
 21 A. I'm going to guess yes.
 22 Q. And who spoke as between -- or
 23 among you, Mr. Rockwell, Mr. McCarty and
 24 Mr. Farquhar?
 25 A. We basically listened, if my

<p style="text-align: right;">Page 330</p> <p>1 memory serves me correct.</p> <p>2 Q. Did you guys say anything at</p> <p>3 all on the call?</p> <p>4 A. Not on the call, no.</p> <p>5 Q. Did Mr. McCarty or Mr. Rockwell</p> <p>6 say anything on the call?</p> <p>7 A. That would be a question for</p> <p>8 them. I don't recall.</p> <p>9 Q. You don't remember them saying</p> <p>10 anything?</p> <p>11 A. I don't recall, no, ma'am.</p> <p>12 Q. And what did Oxy Dallas say to</p> <p>13 you on that call?</p> <p>14 A. We talked about the incident.</p> <p>15 Obviously we were on a call, so somebody in</p> <p>16 that Suburban probably said something. I</p> <p>17 don't remember what or who.</p> <p>18 The only takeaway from that was</p> <p>19 a -- someone that I don't know, that Terry</p> <p>20 knows -- Terry Rockwell knows very well, said</p> <p>21 he didn't believe polymerization could occur.</p> <p>22 Or -- yes, could occur.</p> <p>23 And at the end of that</p> <p>24 conversation, at the end of it completely,</p> <p>25 nobody challenged this person. When he was</p>	<p style="text-align: right;">Page 332</p> <p>1 You didn't ask anyone from Oxy</p> <p>2 to explain the basis for their conclusion?</p> <p>3 A. I did not.</p> <p>4 Q. And no one else in the truck</p> <p>5 asked anybody from Oxy to explain the basis</p> <p>6 for their conclusion?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Okay. And after you hung up,</p> <p>9 the four of you were talking then?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. Okay. And what did you -- the</p> <p>12 four of you say?</p> <p>13 A. Did they really just say that?</p> <p>14 And we were trying to wrap our</p> <p>15 heads around our training and what he just</p> <p>16 said.</p> <p>17 Q. Did you think it might be a</p> <p>18 good idea at that point in time to call them</p> <p>19 back to ask any questions that you had since</p> <p>20 you all drew the same conclusion that you</p> <p>21 were surprised with what they said on the</p> <p>22 call?</p> <p>23 A. The unfortunate --</p> <p>24 MR. BRAGA: Objection.</p> <p>25 THE WITNESS: The unfortunate</p>
<p style="text-align: right;">Page 331</p> <p>1 either put on mute or hung up, the four of us</p> <p>2 that were in the truck looked at each other,</p> <p>3 like, I can't believe he actually said that.</p> <p>4 Because based on our training, that's</p> <p>5 potentially what was going on.</p> <p>6 Q. Okay. When the Oxy</p> <p>7 representative said that he didn't believe</p> <p>8 polymerization could occur or was occurring,</p> <p>9 did you ask him why he believed that or said</p> <p>10 that?</p> <p>11 A. No, ma'am.</p> <p>12 Q. Did you ask him any questions</p> <p>13 about how he drew those conclusions?</p> <p>14 A. Ma'am, I just said that I did</p> <p>15 not make any -- I was not talking in that</p> <p>16 truck. I was listening.</p> <p>17 Q. Okay. Did anybody else in that</p> <p>18 truck ask the Oxy representative any</p> <p>19 questions about the statement he made about</p> <p>20 the possibility of the poly -- of the VCM</p> <p>21 polymerizing?</p> <p>22 A. Not until after the call had</p> <p>23 ended.</p> <p>24 Q. So let me make sure I have this</p> <p>25 absolutely clear.</p>	<p style="text-align: right;">Page 333</p> <p>1 part is, we're contractors. When</p> <p>2 somebody says something like that, if</p> <p>3 he was wrong, we're going to call them</p> <p>4 out in front of superiors and</p> <p>5 underlings. Not really good for a</p> <p>6 contractor to do.</p> <p>7 So there's a lot of</p> <p>8 communications that probably took</p> <p>9 place, that did take place afterwards,</p> <p>10 going, you got to show some respect.</p> <p>11 The incident was, at the point,</p> <p>12 pretty -- getting pretty critical.</p> <p>13 QUESTIONS BY MS. BROZ:</p> <p>14 Q. Uh-huh.</p> <p>15 A. We could not, at the time, take</p> <p>16 all his information at face value. We needed</p> <p>17 to check other sources, which is the exact</p> <p>18 reason I called Bob Gold, the exact reason we</p> <p>19 talked amongst ourselves.</p> <p>20 When the OxyChem folks showed</p> <p>21 up, one of the first things Mr. Cox said was,</p> <p>22 I guess I'm going to have to go to Dallas and</p> <p>23 explain what the P on the DOT guidebook</p> <p>24 means.</p> <p>25 Q. Okay. We'll get to that. I</p>

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1 want to know about the conversation you had
 2 in the car after you hung up with Oxy.
 3 A. We've got to find -- we've got
 4 to get additional information.
 5 Q. Did you tell Norfolk Southern
 6 or any representatives of Norfolk Southern
 7 what Oxy said on that telephone call that you
 8 had in the Suburban?
 9 A. I believe we did.
 10 Q. Who did you tell?
 11 A. Either Scott Deutsch, Scott
 12 Gould, Robert Wood, and possibly -- or
 13 David -- Dave Schoendorfer. I know we said
 14 it.
 15 Q. Are you certain you said it to
 16 one of them?
 17 A. I'm positive.
 18 Q. And it was you personally who
 19 said it to one of them?
 20 A. Multiple people said it to
 21 them.
 22 Q. But I'm asking about you, Chip
 23 Day.
 24 Did you say that to any of
 25 them?

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1 A. I believe I did.
 2 Q. Do you know for certain whether
 3 you did?
 4 A. No, ma'am.
 5 Q. Do you recall Norfolk Southern
 6 reacting to the conversation that you had
 7 with Oxy Vinyls on the morning of
 8 February 5th?
 9 A. No, ma'am.
 10 Q. Do you recall them saying
 11 anything about Oxy Vinyls' conclusion that
 12 polymerization was not happening?
 13 A. No, ma'am.
 14 Q. So your next step was to take
 15 it upon yourself to do some independent
 16 research to figure out if Oxy Vinyls'
 17 statements were true?
 18 MR. BRAGA: Objection.
 19 THE WITNESS: Yes, ma'am.
 20 QUESTIONS BY MS. BROZ:
 21 Q. And I believe earlier today we
 22 talked about who you reached out to to have
 23 those conversations with, so I don't want to
 24 retread that ground, but I do want to mark a
 25 document as an exhibit.

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1 MS. BROZ: Did you say we're on
 2 14?
 3 VIDEOGRAPHER: 14.
 4 (Day Exhibit 14 marked for
 5 identification.)
 6 QUESTIONS BY MS. BROZ:
 7 Q. Mr. Day, I'm handing you what
 8 we've marked as Deposition Exhibit 14, and I
 9 will represent to you that I printed this off
 10 on January 4, 2024. And the HTTP website is
 11 on the bottom left-hand corner of the
 12 document.
 13 Let me know when you have time
 14 to look through that.
 15 A. Okay.
 16 Q. If you would turn -- the
 17 Internet labeled these for me, so if you
 18 would turn to page 4 of 9 and 5 of 9.
 19 A. Yes, ma'am.
 20 Q. And it says this is Bob Gold,
 21 sales associate with Feels Like Home Realty.
 22 Is that correct?
 23 A. Yes, ma'am.
 24 Q. Okay. Is that the Mr. Gold
 25 that you reached out to after the derailment

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1 to ask his opinion about the possibility that
 2 the vinyl chloride was polymerizing?
 3 A. That's the guy.
 4 Q. Set that aside.
 5 MR. BRAGA: All done with that?
 6 MS. BROZ: Yep. Just wanted to
 7 make sure we had the right person.
 8 QUESTIONS BY MS. BROZ:
 9 Q. And what was the next
 10 conversation you had with anyone from Oxy
 11 Vinyls after that morning call in the
 12 Suburban?
 13 A. I don't remember when they --
 14 when Oxy showed up.
 15 Q. Okay. So was it that same day?
 16 A. I believe so.
 17 Q. So on February 5th, somebody
 18 from Oxy showed up, and you had an in-person
 19 conversation with those individuals?
 20 A. Three somebodies.
 21 Q. Three somebodies.
 22 And I think we've already
 23 established that one of those somebodies was
 24 Justin Cox. The other one was Steve Smith?
 25 A. Yes, ma'am, and one other guy.

<p style="text-align: right;">Page 338</p> <p>1 Q. And then one other guy. 2 I'll just -- for the record, 3 we'll say it's Alex Torres. 4 A. There you go. 5 Q. Okay. And where did you meet 6 with Mr. Torres, Smith and Cox? 7 A. At the SPSI trailer. I believe 8 that's where it was. Either there or at the 9 command center. 10 Q. And do you know if it was in 11 the morning or the afternoon of the 5th? 12 A. I don't remember. The time was 13 going by very, very fast, so I don't know. 14 Q. So, soon after they arrived? 15 A. On-site, I'm going to guess, 16 yes, ma'am. 17 Q. Who else was in the trailer 18 with you? 19 A. Folks from SPSI, SRS, maybe the 20 NS. 21 Q. Do you remember any names of 22 individuals who were there? 23 A. No, ma'am. 24 Q. You just know it was somebody 25 from SPSI, somebody from SRS and somebody</p>	<p style="text-align: right;">Page 340</p> <p>1 seen on the site. 2 Q. And who did most of the talking 3 for Oxy Vinyls? 4 A. I don't know. 5 Q. You don't know. 6 Do you remember any comments or 7 statements that Oxy Vinyls made in the 8 trailer on February 5, 2023? 9 A. There were comments made -- 10 there were discussions made in the trailer, 11 outside of the trailer, in driving from 12 point A to point B, walking around the site, 13 going back to the trailer. There's -- there 14 was a lot of discussion with a lot of 15 different people. 16 Q. Do you have any notes of any of 17 those conversations? 18 A. No, ma'am. 19 Q. Did you take any notes at all 20 between February 3rd and February 6, 2023? 21 A. I did. 22 Q. Okay. Where are your notes? 23 A. Produced. 24 Q. Produced. 25 How many notes did you take?</p>
<p style="text-align: right;">Page 339</p> <p>1 from NS? 2 A. Most likely NS, yes, ma'am. 3 Q. Mr. McCarty there? 4 A. Possibly. 5 Q. Who else from SRS was there? 6 A. Could have been Terry Rockwell 7 or Kent Farquhar or both of them. 8 Q. But you have no specific 9 recollection as to who was in the trailer at 10 the time? 11 A. No, ma'am. 12 Q. And who from NS was there? 13 A. Either Mr. Gould, Mr. Deutsch. 14 Most likely one of those two guys. 15 Q. But you don't have any specific 16 recollection of either of them being there? 17 A. No, ma'am. 18 Q. Okay. Can you tell me how the 19 conversation started between you and the 20 individuals on the ground from Oxy Vinyls? 21 A. Well, most likely we probably 22 hugged each other because we are friends. 23 Q. Uh-huh. 24 A. Hey, what's going on. What's 25 happening here, and we described what we've</p>	<p style="text-align: right;">Page 341</p> <p>1 A. Very few. 2 Q. And what did you take them on? 3 A. A notepad. 4 Q. A regular old 8-and-a-half-by- 5 11-inch notepad? 6 A. No, ma'am. 7 Q. What was it? What did it look 8 like? 9 A. A notebook like you slide in 10 your back pocket. It's got a picture -- you 11 guys have a copy of it, of all the pages and 12 the front and the back. 13 Q. You handed those over to your 14 counsel? 15 A. I did. 16 MR. BRAGA: They've been 17 produced. 18 QUESTIONS BY MS. BROZ: 19 Q. Okay. So you had a 20 conversation. 21 What I want to focus on is the 22 conversation that you had with Steve Smith 23 and Justin Cox -- we'll put Alex to the 24 side -- in the trailer when they first 25 arrived on February 5, 2023.</p>

<p style="text-align: right;">Page 342</p> <p>1 Do you remember statements that</p> <p>2 they made during that conversation?</p> <p>3 A. I can make this real easy. No.</p> <p>4 Q. Do you remember any statements</p> <p>5 that you made during that conversation?</p> <p>6 A. We talked about what we were</p> <p>7 seeing and what had occurred, the reason that</p> <p>8 we got pulled into the incident.</p> <p>9 Q. During that conversation, do</p> <p>10 you remember anything that anyone else said</p> <p>11 from SPSI or SRS or Norfolk Southern during</p> <p>12 that conversation?</p> <p>13 A. We were basically discussing</p> <p>14 what we have been seeing since the beginning.</p> <p>15 Obviously the NS and SPSI were</p> <p>16 able to provide, very soon after the</p> <p>17 derailment, information up to the point that</p> <p>18 SRS got on-scene and what the conditions --</p> <p>19 the current conditions were.</p> <p>20 Q. Did you discuss polymerization</p> <p>21 during that conversation?</p> <p>22 A. I don't remember.</p> <p>23 Q. Were there any -- was there any</p> <p>24 information that the individuals from Oxy</p> <p>25 Vinyls were supposed to gather and return to</p>	<p style="text-align: right;">Page 344</p> <p>1 that we've already discussed.</p> <p>2 Q. And that was the only comment</p> <p>3 you remember from that conversation?</p> <p>4 A. That's a pretty pointed</p> <p>5 conversation.</p> <p>6 Q. I understand that.</p> <p>7 But is that the only comment</p> <p>8 you remember from that conversation from</p> <p>9 somebody from Oxy Vinyls?</p> <p>10 A. From that one, yes.</p> <p>11 Q. Okay. How long did that</p> <p>12 meeting in the trailer or outside the trailer</p> <p>13 last?</p> <p>14 A. I'd say probably maybe</p> <p>15 30 minutes, 45 minutes-ish.</p> <p>16 Q. And then where did the</p> <p>17 individuals from Oxy Vinyls go?</p> <p>18 A. I do not know.</p> <p>19 Q. Okay. When was the next time</p> <p>20 that you met with either Mr. Smith or</p> <p>21 Mr. Cox?</p> <p>22 A. I'm thinking it may have been</p> <p>23 when we did the drone -- or not the drone</p> <p>24 flight, but the next time -- it would have</p> <p>25 been on the Leake Oil side. They were</p>
<p style="text-align: right;">Page 343</p> <p>1 you?</p> <p>2 A. That would be a question for</p> <p>3 the Oxy Vinyls folks.</p> <p>4 Q. No, I'm asking you if you asked</p> <p>5 them for any information that they were</p> <p>6 supposed to gather and return back to you.</p> <p>7 It's a bad question. Let me</p> <p>8 restate it.</p> <p>9 Did you ask Oxy Vinyls for any</p> <p>10 information, or did you ask them any</p> <p>11 questions that they couldn't answer and they</p> <p>12 said they would get back to you?</p> <p>13 MR. BRAGA: Objection.</p> <p>14 THE WITNESS: There was</p> <p>15 obviously a discussion, and we've</p> <p>16 already touched on it, about the</p> <p>17 polymerization potential and the</p> <p>18 comment that the gentleman made on the</p> <p>19 conference call. And I believe --</p> <p>20 QUESTIONS BY MS. BROZ:</p> <p>21 Q. You talked --</p> <p>22 A. -- that's sometime in the</p> <p>23 trailer, outside of the trailer, in the</p> <p>24 Suburban, outside of the Suburban, when</p> <p>25 Mr. Cox said, I guess I need to go to Dallas,</p>	<p style="text-align: right;">Page 345</p> <p>1 getting -- trying to get the lay of the land</p> <p>2 and getting as close as they can. They've</p> <p>3 got, you know, particular requirements.</p> <p>4 They're not allowed to go different places.</p> <p>5 So I think they were with us in</p> <p>6 the exclusion -- or at the edge of the</p> <p>7 exclusion zone looking at the derailment.</p> <p>8 Q. Do you remember any</p> <p>9 conversations that you had during that</p> <p>10 meeting?</p> <p>11 A. We talked about the -- I</p> <p>12 remember we talked outside about -- so I'm</p> <p>13 thinking it's possibly at Leake Oil -- about</p> <p>14 potential for polymerization, what we were</p> <p>15 thinking. And that's when Mr. Smith said</p> <p>16 emphatically, several times, that he's not a</p> <p>17 polymerization expert, and he doesn't know.</p> <p>18 Q. Did Mr. Smith, during that</p> <p>19 conversation, also tell you that he would go</p> <p>20 and ask Dallas about it and let you know what</p> <p>21 the folks at Dallas said about the</p> <p>22 possibility of polymerization?</p> <p>23 A. I don't remember.</p> <p>24 Q. Did he -- Mr. Smith ever come</p> <p>25 back to you between February 3rd and</p>

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1 February 6, 2023, and tell you, I've spoken
2 to our folks in Dallas, and they don't
3 believe that polymerization is happening?

4 A. Yes, ma'am.

5 Q. Okay. And when did he tell you
6 that?

7 A. Sometime after that.

8 Q. Okay. And then after Mr. Smith
9 told you that, how did you respond?

10 A. In -- I was -- I was -- I was
11 surprised. I know that Oxy has a lot of
12 really, really, really good people, both at
13 the EOC and at their beck and call, to give
14 input on incidents involving vinyl chloride.

15 As the -- one of the other
16 lawyers pointed out, experts. Don't like the
17 word "expert." They're experts in the
18 operation of a chemical plant. They're
19 experts in the product. They're
20 professionals in all of these rights.

21 But when they -- when we ask
22 questions -- when we provide data -- or
23 information. Forget the data. When we
24 provide information of what we're seeing at
25 the site, we're kind of the experts of

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1 derailments and cars on fire and incidents
2 that are potentially occurring.

3 So it's really difficult for a
4 chemist, sitting in a pristine condition,
5 dealing with moles and grams and liters of
6 materials, to look at a derailment where we
7 have thousands of gallons of this material
8 and different things being -- affecting the
9 product.

10 I know I'm going off, but you
11 got -- the OxyChem were providing
12 information. I don't believe they were
13 accepting the information we were feeding
14 back to them on why we believed that
15 polymerization was occurring.

16 Q. Okay. And what information do
17 you believe that they weren't accepting?

18 A. They were saying that
19 polymerization could not occur --

20 Q. Okay. And what --

21 A. -- when other folks --

22 Q. I apologize, go ahead.

23 A. -- when other folks, other
24 industry professionals, retired or current,
25 were saying it's possible.

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1 Q. And what information do you
2 think that they weren't hearing that you were
3 providing to them about what you were seeing
4 on the scene, resulting in your conclusion
5 that polymerization was occurring?

6 A. That the PRDs were operating as
7 designed for extended periods of time. They
8 stop. Several hours later, one goes off for
9 70 minutes.

10 Q. And if they had heard that, you
11 believe they would have drawn the same
12 conclusion that you did?

13 A. It's possible.

14 Q. But they didn't?

15 A. No, ma'am, because they keep
16 saying that polymerization is not occurring.

17 Q. Okay. Okay. We are at the
18 Leake Oil side, and you're talking to Steve
19 Smith and Alex Torres.

20 When was the next conversation
21 you had with --

22 A. I don't know that Alex was
23 there.

24 Q. Okay. I'm sorry, I misspoke.
25 Let me try that again.

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1 You're on Leake Oil side, and
2 you're talking to Steve Smith and Justin Cox.
3 I misspoke.

4 When was the next conversation
5 you had with either of them?

6 A. There were conversations kind
7 of all -- all the -- a lot, moving around the
8 site. I can't give you exact times. I can't
9 give you exact locations.

10 There were conversations when
11 we would gather up, we would be walking by,
12 excuse me, bumping into each other at the
13 high school, at the command center.

14 Q. And were Mr. Smith and Mr. Cox
15 always together when you were speaking with
16 them?

17 A. If I remember right, they only
18 had one vehicle, so they either left somebody
19 or they were all together.

20 Q. Do you remember any specifics
21 of any of those additional conversations you
22 had with Mr. Smith or Mr. Cox?

23 A. No, ma'am.

24 Q. And you mentioned being at the
25 high school.

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1 At some point in time did --
2 not incident command, but did all the
3 individuals who were on the scene gather at
4 the high school?

5 A. After the Ohio IMT team was
6 stood up, the incident management team, I
7 think command actually moved to the high
8 school.

9 Q. And did you have a room in the
10 high school?

11 A. Everybody had a room in the
12 high school.

13 Q. All right. Which room was
14 yours?

15 A. The lunchroom.

16 Q. Smart.

17 Do you remember where Oxy was
18 set up in the high school?

19 A. No, ma'am.

20 Q. Do you remember meeting with
21 anyone from Oxy inside the high school after
22 command was moved over there?

23 A. I do not recall.

24 Q. Do you remember having any
25 further conversations, other than the ones

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1 we've discussed, with anyone from Oxy about
2 the possibility of the vinyl chloride cars
3 polymerizing?

4 A. Like I said a little while ago,
5 there were a lot of conversations. I can't
6 tell you it was on Thursday at two o'clock in
7 the afternoon at the intersection of X and Y.

8 There were conversations going
9 on. I was having them. Terry Rockwell was
10 having them. Drew McCarty may have been
11 having them. The incident commander may have
12 had them. NS may have had them.

13 Q. Sure. I was talking about
14 conversations that you personally had. I'm
15 not asking you to testify for anyone else.

16 So are there other
17 conversations that you recall, other than the
18 ones we've discussed, between February 3rd
19 and February 6th between you and anyone from
20 Oxy?

21 A. I thought we established that.

22 Q. What have we established?

23 A. That there were conversations
24 taking place. I can't tell you it was at the
25 intersection of X and Y on Tuesday afternoon.

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1 Q. I don't want the intersection
2 of X and Y on Tuesday afternoon. I just
3 remem -- and I don't want you to tell me the
4 date or the time, but I just want you to
5 testify -- tell me if there are any other
6 conversations that you recall having.

7 A. There were conversations. I
8 can't tell you where or what was -- what was
9 the subject of the discussion.

10 Q. Okay. There you go. That's
11 what I was getting at. I apologize for my
12 poor question.

13 Do you remember ever speaking
14 to anyone from Oxy Dallas, other than the
15 conversation we've discussed?

16 A. No, ma'am.

17 Q. So you had one call with
18 individuals from Oxy Dallas between
19 February 3rd and February 6, 2023?

20 A. The conference call, yes,
21 ma'am.

22 Q. Did you listen in on any other
23 calls between anyone else and individuals
24 from Oxy Vinyls Dallas between February 3rd
25 and February 6, 2023?

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1 A. I do not recall.

2 Q. Okay.

3 A. Let's take a break.

4 MS. BROZ: Want a break? Okay.

5 VIDEOGRAPHER: The time is
6 3:37 p.m., and we're going off the
7 record.

8 (Off the record at 3:37 p.m.)

9 VIDEOGRAPHER: The time is
10 3:46 p.m. We're back on the record.

11 QUESTIONS BY MS. BROZ:

12 Q. Mr. Day, before we took a
13 break, we were talking about your
14 conversations that you had with Oxy Vinyls'
15 representatives while at East Palestine. And
16 I believe we talked about all the
17 conversations you had with anybody from Oxy
18 Vinyls who was on the ground at East
19 Palestine.

20 Is that correct?

21 A. I believe so.

22 Q. And we talked about all the
23 conversations that you had with anyone from
24 Oxy in Dallas between February 3rd and
25 February 6, 2023.

<p style="text-align: right;">Page 354</p> <p>1 Is that correct?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Okay. Just a quick -- when you</p> <p>4 get to go second or third, you get to do a</p> <p>5 little cleanup and jump around a little bit,</p> <p>6 so I apologize for that.</p> <p>7 Who paid SRS's invoices for the</p> <p>8 work they did at East Palestine?</p> <p>9 MR. BRAGA: You can answer that</p> <p>10 question if you know.</p> <p>11 THE WITNESS: SPSI -- SPSI.</p> <p>12 QUESTIONS BY MS. BROZ:</p> <p>13 Q. SPSI paid your invoices?</p> <p>14 And that was because you were</p> <p>15 subcontracting for them?</p> <p>16 A. I believe so, yes, ma'am.</p> <p>17 Q. And since the derailment in</p> <p>18 East Palestine, do you have a new contract</p> <p>19 between Norfolk Southern and Republic?</p> <p>20 A. I do not know.</p> <p>21 Q. Do not know as Chip Day, or do</p> <p>22 you also not know as the 30(b)(6)</p> <p>23 representative for SRS?</p> <p>24 And if you --</p> <p>25 MR. BRAGA: Wait till tomorrow</p>	<p style="text-align: right;">Page 356</p> <p>1 guessing it is.</p> <p>2 Q. Okay. If you want to look</p> <p>3 through it to confirm that that's what it is,</p> <p>4 you're more than welcome to do that.</p> <p>5 A. Okay. Yes, ma'am.</p> <p>6 Q. This occurred March 1, 2023, so</p> <p>7 less than a month after the derailment?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And you answered questions that</p> <p>10 were put to you by NTSB and its</p> <p>11 representatives.</p> <p>12 Is that correct?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. And you attempted to answer</p> <p>15 these questions truthfully?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. And after the question -- and</p> <p>18 you were able to answer the questions fully</p> <p>19 and completely. You weren't cut off or</p> <p>20 anybody stopped you from testifying?</p> <p>21 A. Correct.</p> <p>22 Q. And did anybody prepare you for</p> <p>23 this interview that happened on March 1,</p> <p>24 2023?</p> <p>25 A. No, ma'am.</p>
<p style="text-align: right;">Page 355</p> <p>1 for that one.</p> <p>2 QUESTIONS BY MS. BROZ:</p> <p>3 Q. Well, I just want to know,</p> <p>4 because I want to know if I should ask it for</p> <p>5 you tomorrow.</p> <p>6 A. I don't know.</p> <p>7 Q. You don't know. Okay.</p> <p>8 MR. BRAGA: I don't know</p> <p>9 either.</p> <p>10 THE WITNESS: I may know</p> <p>11 tomorrow.</p> <p>12 (Day Exhibit 15 marked for</p> <p>13 identification.)</p> <p>14 QUESTIONS BY MS. BROZ:</p> <p>15 Q. Okay. Mr. Day, I've handed you</p> <p>16 what we've marked as Deposition Exhibit 15.</p> <p>17 Do you recognize this document?</p> <p>18 A. It says, "Interview Transcript,</p> <p>19 Charles Day, Senior Project Manager,</p> <p>20 Specialized Response Solutions, March 1,</p> <p>21 2023."</p> <p>22 Yes, ma'am, I recognize it.</p> <p>23 Q. And that is what this document</p> <p>24 is?</p> <p>25 A. You handed it to me. I'm</p>	<p style="text-align: right;">Page 357</p> <p>1 Q. And after the interview was</p> <p>2 completed, you had an opportunity to review</p> <p>3 the transcript.</p> <p>4 Is that right?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. And if you turn to the very</p> <p>7 last page, which is marked NS-CA-4195, do you</p> <p>8 see that?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. And that's your signature on</p> <p>11 the transcript?</p> <p>12 A. That is.</p> <p>13 Q. And it's dated April 20, 2023?</p> <p>14 A. It's March 20, 2023. April,</p> <p>15 yes. March. Or April. I'm sorry.</p> <p>16 Q. That's okay.</p> <p>17 And you were able to make any</p> <p>18 corrections that you wanted to on the</p> <p>19 transcript on that same piece of paper?</p> <p>20 A. It was my understanding if I</p> <p>21 found things spelled wrong, that was what I</p> <p>22 was allowed to correct.</p> <p>23 Q. And just things that were</p> <p>24 spelled wrong?</p> <p>25 A. Correct.</p>

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1 Q. Okay. And is everything -- you
2 testified to me earlier today that you
3 reviewed this in preparation for your
4 deposition.
5 Is that right?
6 A. Yes, ma'am.
7 Q. Is there anything upon your
8 review that you believe is inaccurate or
9 incorrect that is contained in this
10 transcript?
11 A. I don't believe so.
12 Q. Okay.
13 A. But I'll bet you'll show me
14 something.
15 Q. You've been around lawyers too
16 long. You have no trust in us.
17 Turn your page. Could you turn
18 to page 13 of the transcript?
19 A. Yes, ma'am.
20 Q. Okay. And you see the last
21 paragraph that starts on line 21?
22 A. Yes, ma'am.
23 Q. And it says, "I guess if you
24 want to call us a technical group, myself,
25 Drew McCarty, Robert Wood and several others

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1 agreed to then burn what was going to be the
2 chosen method for taking care of these VCM
3 cars."
4 I don't want to ask you about
5 the chosen method for taking care of the VCM
6 cars, but I do want to ask you about the
7 technical group.
8 Who else were the others in the
9 technical group, the other folks mentioned in
10 there?
11 A. So the technical group was
12 basically made up of myself, Mr. Rockwell,
13 Mr. McCarty, a few other folks from SPSI,
14 representatives of the NS.
15 OxyChem -- Oxy Vinyls was --
16 was part of our group. They would come to
17 these meetings when we discussed things. I
18 don't know exactly what this exact time was,
19 whether they were there or somewhere else.
20 So it was pretty much everybody
21 that was on-scene and assigned to the
22 compressed gas cars.
23 Q. Okay. Did Oxy Vinyls just come
24 to the meetings of the technical group, or is
25 it your testimony that they were members of

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1 the technical group?
2 A. They attended the meetings.
3 Q. Did Oxy Vinyls attend any
4 meetings in which the technical group decided
5 to vent and burn the five vinyl chloride
6 railcars?
7 A. I believe they did.
8 MR. BRAGA: Object to the form
9 of the question.
10 THE WITNESS: I believe they
11 did.
12 QUESTIONS BY MS. BROZ:
13 Q. Okay. Which meeting was that?
14 A. I -- the one that we decided
15 that we needed to recommend vent and burn of
16 the -- to the incident commander.
17 Q. And you believe Oxy Vinyls was
18 at that meeting?
19 A. I believe they were.
20 Q. And did they say, yes, our only
21 option is to vent and burn the five railcars?
22 MR. BRAGA: Object.
23 THE WITNESS: I do not recall.
24 QUESTIONS BY MS. BROZ:
25 Q. Do you recall what they said at

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1 that meeting?
2 A. They towed the Oxy Vinyls line
3 that polymerization -- multiple times in
4 meetings, they said that Dallas doesn't
5 believe that the cars were polymerizing.
6 Q. Did they offer an opinion as to
7 whether it was appropriate to vent and burn
8 the five vinyl chloride railcars?
9 A. I'm not going to throw at least
10 two of those three guys under the bus and
11 say, yeah, they said they weren't really
12 sure.
13 Q. Let me make sure.
14 What is your testimony about
15 what they said at those meetings where the
16 decision was made to vent and burn the five
17 vinyl chloride railcars?
18 A. There was --
19 MR. BRAGA: Object to the form
20 of the question.
21 Go ahead.
22 THE WITNESS: There was
23 discussion multiple times, it wasn't
24 just one meeting, where vent and burn
25 was discussed by the technical group.

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1 Sometimes Oxy was there. Sometimes
2 Oxy wasn't there. They had another
3 agenda.

4 But I'm not going to throw two
5 of the three people under the bus that
6 said -- might have said, we don't know
7 if it's polymerizing. Dallas says
8 it's not.

9 QUESTIONS BY MS. BROZ:

10 Q. Okay. My question is a little
11 bit different.

12 Did anyone from Oxy Vinyls make
13 the decision to vent and burn the five vinyl
14 chloride railcars?

15 A. That's a totally different
16 question, ma'am.

17 Q. It is not. You're just
18 answering the question you want to answer
19 that I have not been asking you.

20 So could you please answer my
21 question?

22 Did anyone from Oxy Vinyls make
23 the decision to vent and burn the five vinyl
24 chloride railcars?

25 A. No, ma'am.

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1 MR. BRAGA: Are we all done
2 with the interview transcript?

3 MS. BROZ: For now I am.

4 I think I only have six minutes
5 left, so I'm going to reserve my time.

6 Okay.

7 VIDEOGRAPHER: Off the record
8 again?

9 MS. BROZ: Yes, thank you.

10 VIDEOGRAPHER: The time is
11 3:55 p.m., and we're going off the
12 record.

13 (Off the record at 3:55 p.m.)

14 VIDEOGRAPHER: The time is
15 3:58 p.m., and we're back on the
16 record.

17 DIRECT EXAMINATION

18 QUESTIONS BY MR. ELLIS:

19 Q. Mr. Day, my name is Rob Ellis.
20 I represent GATX.

21 I have some questions for you
22 about Exhibit Number 13, which we're also
23 showing to the jury.

24 Before I get to those, when you
25 first arrived in East Palestine on Saturday,

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1 February 5th, did you go right to the
2 derailment site?

3 A. We drove by the derailment
4 site.

5 Q. Okay. How long did you spend
6 at -- and what time did you get to the
7 derailment site the morning of February 5th?

8 A. Somewhere around six o'clock.

9 Q. Okay. How long did you spend
10 there?

11 A. Almost a month.

12 Q. How long did you spend at the
13 derailment site that morning before you left
14 to go to the incident command center?

15 A. We passed by the derailment
16 site.

17 Q. Did you stop?

18 A. No, sir.

19 Q. Okay. And then you went to the
20 incident command center.

21 How long were you there?

22 A. Some period of time.

23 Q. Do you have any more specific
24 answer other than "some period of time"? An
25 hour? Two hours? Five hours? All morning?

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1 A. We were there for a period of
2 time. We met some people. We were provided
3 an assignment, and we left the command
4 center.

5 Q. Okay. Did you do the call with
6 Oxy before you left the command center?

7 A. The call with Oxy was after the
8 command center.

9 Q. Okay. And where were you when
10 you did the call with Oxy?

11 A. The SPSI trailer on the Leake
12 Oil side east of the derailment site.

13 Q. Other than driving past, when
14 you drove past at 6 a.m., it was dark.

15 Correct?

16 A. It was -- there were light
17 towers up, and you could see the derailment.

18 Q. Oh.

19 Did you make any observations
20 about the site when you drove by on your way
21 to the incident command center on
22 February 5th?

23 A. Wow, that's the derailment.

24 Q. Other than, wow, it's a
25 derailment, did you make any other specific

<p style="text-align: right;">Page 366</p> <p>1 observations about the site when you drove by 2 on your way to the command center on the 3 morning of February 5th? 4 A. Things were still on fire. 5 Q. Okay. And what specifically, 6 when you were driving by, did you see on fire 7 on your way to the incident command center 8 that morning? 9 A. Some tank cars, hopper cars and 10 black smoke. 11 Q. Did you identify any specific 12 tank cars that were on fire that morning when 13 you drove by? 14 A. No, sir. 15 Q. What time did you arrive on the 16 scene after you left -- on the derailment 17 scene when you left the incident command 18 center? 19 A. We went -- we left the command 20 center. We went back to the SPSI trailer. 21 We had a meeting, meetings, and then went to 22 the Leake Oil side of the derailment to 23 start -- to meet the commissioner to do the 24 drone overflight. 25 Q. Okay. When you were at the</p>	<p style="text-align: right;">Page 368</p> <p>1 QUESTIONS BY MR. ELLIS: 2 Q. Yes. 3 A. -- and I'll say the exact same 4 thing. I was not provided the drawing, 5 knowing which direction the train was going 6 and what the order of the cars were. 7 There were cars on fire. 8 Q. Okay. And so is it fair to say 9 then that you didn't identify any specific 10 housing fires when you drove by that morning? 11 MR. LEVINE: Objection. 12 THE WITNESS: One more time. 13 There were cars on fire. 14 QUESTIONS BY MR. ELLIS: 15 Q. Yes, I understand that. My 16 question is a little different. 17 My question is, did you see 18 specifically housings on fire when you drove 19 by? 20 MR. LEVINE: Objection. 21 THE WITNESS: I'm going to say 22 it one more time. 23 When we drove by, going to the 24 command center, I did not know which 25 direction the train was going. There</p>
<p style="text-align: right;">Page 367</p> <p>1 SPSI sailor -- trailer, could you see the 2 derailment site? 3 A. No, sir. 4 Q. In the morning when you drove 5 by, did you witness housing fires on any of 6 the VCM cars? 7 A. Sir, when I drove to the site, 8 I had not been given a map. I knew there -- 9 the cars were involved. I didn't know what 10 direction the train was going. We saw cars 11 on fire. We went to the command center. 12 Q. Okay. And my question simply 13 was, when you drove by, did you specifically 14 witness any housing fires on any of the VCM 15 cars? 16 MR. LEVINE: Objection. 17 THE WITNESS: There were cars 18 on fire. 19 QUESTIONS BY MR. ELLIS: 20 Q. My question was, did you 21 witness any VCM car housings on fire when you 22 drove by that morning? 23 MR. LEVINE: Objection. 24 THE WITNESS: We can go down 25 this road a long time --</p>	<p style="text-align: right;">Page 369</p> <p>1 were cars on fire. 2 QUESTIONS BY MR. ELLIS: 3 Q. Yes. 4 A. Fire high. Fire low. Fire to 5 the left. Fire to the right. 6 Q. Did you -- 7 A. I did not know what cars were 8 on fire. 9 Q. Okay. Did you know what cars 10 had housings when you drove by? 11 A. No, I did not. 12 Q. Okay. And you therefore didn't 13 identify specifically, when you drove by in 14 the morning, any specific housings on fire. 15 Correct? 16 MR. LEVINE: Objection. 17 THE WITNESS: There were cars 18 on fire. 19 QUESTIONS BY MR. ELLIS: 20 Q. Yes, I understand that. 21 My question is, did you 22 specifically, when you drove by in the 23 morning, identify tank car, VCM tank car, 24 housings on fire? 25 MR. LEVINE: Objection.</p>

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1 THE WITNESS: I'm going to stop
2 answering the question, Counsel.
3 MR. BRAGA: Listen to the
4 question. Do your best to answer it,
5 and we'll move on.
6 Can you ask the question again?
7 MR. ELLIS: Would you read him
8 the question back, please?
9 (Court Reporter read back
10 question.)
11 THE WITNESS: There were tank
12 cars on fire. There are multiple cars
13 that have protective housings, some
14 general service, some pressure cars.
15 I didn't know where in the
16 train the VCM cars were; that simply
17 there were cars on fire.
18 QUESTIONS BY MR. ELLIS:
19 Q. Okay. And because you didn't
20 know where the VCM cars were -- and I'm just
21 asking when you drove by. We'll get to other
22 times of the day.
23 When you drove by, you didn't
24 know whether you were looking at a VCM car or
25 a different car when you saw cars on fire.

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1 Right?
2 A. That's correct.
3 Q. Okay. Now, later you did
4 identify the VCM cars.
5 Correct?
6 A. Yes, sir.
7 Q. Okay. And you did later that
8 morning identify the VCM cars.
9 Correct?
10 A. As soon as I got to the command
11 center and got to see the overflight pictures
12 that we had, knowing the direction the train
13 was going -- granted, I was spun around on
14 direction, we knew -- I found out where the
15 VCM car pile was and where the other
16 compressed gas car was.
17 Q. Okay. So when you were at the
18 command center, someone showed you
19 photographs of the cars that allowed you to
20 identify the VCM cars and the one isobutylene
21 car.
22 Correct?
23 A. Correct.
24 Q. Okay. And was it this photo
25 that you were shown? Exhibit 13?

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1 A. I don't remember if it was this
2 one or some other still photos.
3 Q. Do you know -- once you left
4 the SPSI trailer and got to the derailment
5 site later that morning, do you know what
6 time you arrived at the site?
7 A. No, sir.
8 Q. Was it before noon?
9 A. May have been.
10 Q. Was it before 9 a.m.?
11 A. I do not remember.
12 Q. Okay. Using Exhibit 13, would
13 you indicate when you first arrived on the
14 scene the morning of February 5th which VCM
15 car housings were on fire?
16 A. Car 31, Car 30 and Car 55.
17 Q. Okay. During the time that you
18 were on-scene, were any housings extinguished
19 and then reignited?
20 A. No, sir.
21 Q. So during the entire time you
22 were on-scene, exhibit -- VCM Cars 30, 31 and
23 55, were they always -- those housings always
24 burning?
25 A. What day are we talking about?

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1 Q. February 5th.
2 A. February 5th, 31 and 30 were
3 burning. Sometime on the 5th, 55 went out.
4 Q. 30 and 31 were burning sometime
5 on the 5th.
6 Is that correct?
7 A. Burning the whole time. 55 is
8 the one that went out later in the day.
9 Q. Okay. So 55, do you know what
10 time the housing on 55 went out?
11 A. No, sir.
12 Q. Was it after noon?
13 A. It could be.
14 Q. Was it before dark?
15 A. It was probably -- it was
16 confirmed that it was out probably around
17 dark.
18 Q. Around dark, it was confirmed
19 that the housing on the VCM car labeled 55 on
20 Exhibit 13 was extinguished.
21 Is that correct?
22 A. That's correct.
23 Q. Okay. Did that --
24 A. Time out. Extinguished.
25 Identify what you're saying -- what you

<p style="text-align: right;">Page 374</p> <p>1 define as extinguished.</p> <p>2 Was it put out, or did it burn</p> <p>3 out?</p> <p>4 Q. Well, I was about to ask you</p> <p>5 that question.</p> <p>6 A. Well, ask it.</p> <p>7 Q. So do you know whether the</p> <p>8 car -- the housing on Car 55 was put out or</p> <p>9 whether it went out on its own?</p> <p>10 A. Car 55 went out on its own.</p> <p>11 Q. Did you witness that?</p> <p>12 A. No, sir.</p> <p>13 Q. How did you come to learn that</p> <p>14 Car 55 went out on its own?</p> <p>15 A. Because the crew went up to</p> <p>16 perform some damage assessment on Car 55 and</p> <p>17 were able to climb up on Car 54, walk down</p> <p>18 and get within a few feet of the protective</p> <p>19 housing before they started getting elevated</p> <p>20 readings of VOCs.</p> <p>21 Q. Okay. My question was, how did</p> <p>22 you learn that Car 55's housing went out on</p> <p>23 its own?</p> <p>24 A. Because the crew went up and</p> <p>25 were able to get in close proximity to the</p>	<p style="text-align: right;">Page 376</p> <p>1 A. Didn't I just answer that?</p> <p>2 Q. No. I asked you if anybody on</p> <p>3 the crew asked -- told you that.</p> <p>4 Now I'm asking you if anyone</p> <p>5 told you that they saw the housing fire on</p> <p>6 Car 55 go out on its own.</p> <p>7 A. No, sir.</p> <p>8 Q. Car 30, you said it was burning</p> <p>9 the entire day of February 5th.</p> <p>10 Is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. Was there anytime where you</p> <p>13 witnessed Car 30 having been out and then</p> <p>14 restart the housing fire?</p> <p>15 A. I don't recall.</p> <p>16 Q. Did anybody report to you that</p> <p>17 the fire in the housing of Car 30 was out and</p> <p>18 then restarted on February 5th?</p> <p>19 A. I don't recall.</p> <p>20 Q. The car -- the housing fire on</p> <p>21 Car 29, that was not -- the housing was not</p> <p>22 burning on Car 29 when you got to the scene.</p> <p>23 Correct?</p> <p>24 A. The housing on Car 29 was not</p> <p>25 burning, no, sir.</p>
<p style="text-align: right;">Page 375</p> <p>1 car and confirm the fire was not burning in</p> <p>2 Car 55.</p> <p>3 Q. Did somebody tell you that that</p> <p>4 car went out on its own?</p> <p>5 A. I don't remember.</p> <p>6 Q. That the housing fire on that</p> <p>7 car went out on its own? Did somebody tell</p> <p>8 you that on the crew?</p> <p>9 A. We would not have -- nobody on</p> <p>10 that crew, whether it's SPSI or SRS, would</p> <p>11 have put that fire out, so it would have had</p> <p>12 to have burned out.</p> <p>13 Q. My question was different. My</p> <p>14 question was, did somebody on the crew tell</p> <p>15 you that they saw the fire go out on its own?</p> <p>16 A. They saw the fire -- they --</p> <p>17 they saw that there was no more fire in</p> <p>18 Car 55.</p> <p>19 Q. My question was, did somebody</p> <p>20 on that crew tell you that they saw the fire</p> <p>21 go out on its own?</p> <p>22 A. No.</p> <p>23 Q. Okay. Did anybody tell you</p> <p>24 that they witnessed the housing fire on</p> <p>25 Car 55 go out on its own?</p>	<p style="text-align: right;">Page 377</p> <p>1 Q. And you never witnessed the</p> <p>2 housing on Car 29 burn.</p> <p>3 Correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And the same is true for Car 28</p> <p>6 on Exhibit 13; you never witnessed that</p> <p>7 housing burn.</p> <p>8 Correct?</p> <p>9 A. The protective housing did not</p> <p>10 burn on Car 28.</p> <p>11 Q. Did the protective housing on</p> <p>12 Car 29 burn at some time?</p> <p>13 A. I do not recall.</p> <p>14 (Day Exhibit 16 marked for</p> <p>15 identification.)</p> <p>16 QUESTIONS BY MR. ELLIS:</p> <p>17 Q. Would you do Tab 25?</p> <p>18 Exhibit 16.</p> <p>19 Mr. Day, you've been handed</p> <p>20 what's been marked as Day Exhibit Number 16.</p> <p>21 Is this a document you've seen</p> <p>22 before?</p> <p>23 A. I've seen portions of it.</p> <p>24 Q. When is the last time you saw</p> <p>25 portions of it?</p>

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1 A. I don't remember. It's been a
2 while.
3 Q. Okay. Directing your attention
4 to the page on the bottom right that's
5 numbered 2513, and let me know when you're
6 there, please.
7 A. Okay.
8 Q. Figure 15 in this document,
9 which is entitled "Hazardous Material Group
10 Chair's Factual Report," and it's Group B,
11 Exhibit 10 to the NTSB investigative hearing.
12 Figure 15 is entitled, "Lead
13 four vinyl chloride tank cars in situ,
14 February 5, 2023, 8:44."
15 Do you see that?
16 A. Yes, sir. Oh --
17 Q. Now, in this photograph -- have
18 you ever seen this photograph before?
19 A. No, sir.
20 Q. Now, in this photograph, do
21 you -- can you identify the VCM cars or car
22 with a housing fire?
23 A. That would be Car 31.
24 Q. And that's the GATX95098 car.
25 Right?

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1 A. That's correct.
2 Q. Do you see any other housing
3 fires in this photograph at 8:44 in the
4 morning?
5 A. Not that I can see, no. No,
6 sir.
7 Q. You mentioned before that --
8 but it was your understanding, was it not,
9 that OCPX80179 and OCPX80235, at some point
10 those housings burned.
11 Was that your understanding?
12 A. Yes, sir.
13 Q. And how did you get that
14 understanding? Who told you that?
15 A. You could see it.
16 Q. When could you see it?
17 A. When we were on-scene. And
18 there's pictures of it.
19 Q. Do you think -- have you seen
20 pictures of the 80179 car with the housing
21 fire on February 5th?
22 A. I don't know what day. I've
23 seen pictures where both protective housings
24 are going, and I believe that 30 is the one
25 that went off on the 4th.

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1 Q. 30 is the one that went --
2 80179, Car 30, is the VCM car that had the
3 PRD venting for what was claimed to be
4 70 minutes on February 4th.
5 That was your understanding,
6 correct?
7 A. Yes, sir.
8 Q. You were not there then, and
9 you did not witness that.
10 Correct?
11 A. That is correct.
12 Q. Someone sent you a video of
13 that, and you circulated it among your team
14 members on the 4th, though.
15 Correct?
16 A. Correct.
17 Q. You still have that video.
18 Right?
19 A. I believe so.
20 Q. And then at some point that
21 housing fire extinguished, as did the one on
22 80235.
23 Correct?
24 A. The fire -- there's no fires
25 right here, right now, no, sir.

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1 Q. And at some point, even you
2 witnessed their -- those two housings not to
3 have a housing fire.
4 Correct?
5 A. Correct.
6 Q. Okay. And the same with the
7 housing --
8 A. Time out.
9 I've never seen the fire not in
10 the number 30 car, OCPX80179. I've always
11 seen that protective housing on fire.
12 Q. Oh.
13 A. I don't remember seeing it not
14 on fire.
15 Q. Okay. So you don't remember
16 seeing it in its condition that's depicted
17 here in Figure 15?
18 A. That's correct.
19 Q. All right. And what about on
20 the 6th? It was burning on the 6th as well?
21 A. I'd have to go back to other
22 photographs to see if it was burning.
23 Q. As you sit here right now, do
24 you know whether or not that housing fire was
25 burning on the 6th?

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1 A. I do not.
 2 Q. Now, I think you testified
 3 earlier that you made the affirmative
 4 decision not to extinguish any housing fires
 5 because it would result in an uncontrolled
 6 flammable gas release.
 7 Correct?
 8 A. That's correct.
 9 Q. Okay. And did you make that
 10 decision on your own, or were there other
 11 people, first responders, on-scene who also
 12 made the affirmative decision not to
 13 extinguish housing fires because it would
 14 result in an uncontrolled flammable gas
 15 release?
 16 A. That is basic HAZMAT 101. You
 17 don't extinguish fires on -- that are
 18 preventing uncontrolled releases of flammable
 19 gases unless you can block them in.
 20 Q. Okay. My question was, I
 21 know -- I heard you say you made the
 22 decision.
 23 Did anybody else on-scene make
 24 the same decision you did to affirmatively
 25 not put housing fires out because it would

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1 result in an uncontrolled flammable gas
 2 release?
 3 A. You're going to have to speak
 4 to the other people that were on the scene.
 5 Q. Okay. So as far as you know,
 6 nobody told you that they made a decision
 7 like you did.
 8 Is that right?
 9 A. That's correct.
 10 Q. In this photograph, is the
 11 80179 car experiencing an uncontrolled
 12 flammable gas release?
 13 A. I do not know.
 14 Q. Did you do anything to
 15 determine that?
 16 A. The only way to do it is put
 17 people in harm's way to go up with air
 18 monitors to identify if there was leaks.
 19 Q. Did you do that?
 20 A. We did not.
 21 Q. What about 80235? Is that
 22 housing undergoing an uncontrolled flammable
 23 gas release in this photograph?
 24 A. Without air monitoring, I can't
 25 tell you.

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1 Q. Okay. And you never did that,
 2 did you?
 3 A. No, sir.
 4 Q. Okay. What about for your crew
 5 that saw the housing on Car 55 extinguished?
 6 Did they witness an uncontrolled flammable
 7 gas release?
 8 A. They got --
 9 MR. LEVINE: Objection.
 10 Go ahead.
 11 THE WITNESS: The crew
 12 received -- was -- were picking up the
 13 uncontrolled VOCs coming from the
 14 protective housing.
 15 QUESTIONS BY MR. ELLIS:
 16 Q. And we'll talk about that in a
 17 minute.
 18 Was that -- what that crew
 19 reported, was that in your view an
 20 uncontrolled flammable gas release?
 21 A. There was a flammable gas
 22 release, yes.
 23 Q. My question was, was that in
 24 your view an uncontrolled flammable gas
 25 release?

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1 A. Yes, sir.
 2 Q. What did you do to stop that
 3 uncontrolled flammable gas release?
 4 A. Pulled the crews back.
 5 Q. Did you do anything else other
 6 than pulling the crews back?
 7 A. No, sir.
 8 Q. And did you ever do anything
 9 about any uncontrolled flammable gas release
 10 on any other -- on any of the other VCM cars?
 11 A. No, sir.
 12 Q. On Exhibit 13, you describe the
 13 biggest fire, pool fire, being between
 14 Cars 31 and 45.
 15 Did I understand that
 16 correctly?
 17 A. There was a lot of fire in that
 18 area, yes, sir.
 19 Q. Okay. Was there fire in any
 20 other areas on February 5th that you
 21 witnessed?
 22 A. Over the course of the
 23 derailment, there was fire in a lot of
 24 different areas across the derailment site.
 25 Q. Okay. Right now I'm just on

<p style="text-align: right;">Page 386</p> <p>1 Feb 5. 2 On February 5th, did you 3 witness any fires other than the area you 4 indicated between 31 -- Car 31 and 45? 5 A. 31 and 45, that area was -- 6 they had fire, and the 54 was on fire. There 7 was smoldering in boxcars. So there was 8 fire -- specific -- sporadic fire throughout 9 the site. 10 Q. Okay. So between 31 and 45, 11 you witnessed fire on February 5th, and you 12 also witnessed fire on Car 54. 13 Was there any fire between 14 Car 45 and Car 54? 15 A. Not that I saw. 16 Q. And is that the same -- is the 17 same the case on February 6th? 18 A. There was more fire in the 19 piles around 45, 44, 43, the plastic pellets, 20 where a lot of smoke is coming from right 21 now. There was more active fires on the 6th. 22 Q. Okay. Were there active fires 23 still on the 6th between 31 and 45? 24 A. There was -- where that black 25 smoke is, there was fire.</p>	<p style="text-align: right;">Page 388</p> <p>1 A. I don't remember. 2 Q. Let me finish my question, and 3 then you can answer it. 4 What about Car 50? Was that 5 ever on fire? 6 A. I don't remember. 7 Q. What about Car 52? Was that 8 car ever on fire? 9 A. Obviously it was at one time. 10 Q. Did you witness Car 52 on fire 11 on February 5th or February 6th? 12 A. No. 13 Q. You were asked some questions 14 about placing monitors, unmanned water 15 streams. 16 Did you ever make the 17 affirmative decision not to place monitors at 18 the scene? 19 A. I did not. 20 Q. To your knowledge, did anybody 21 ever make the affirmative decision not to use 22 fire monitors at the scene? 23 A. Fire monitors were used at the 24 scene. 25 Q. On the wreck, on the</p>
<p style="text-align: right;">Page 387</p> <p>1 Q. In between 31 and 45? 2 A. Yes, sir. 3 Q. Okay. And that happened on the 4 5th and the 6th. 5 Is that correct? 6 A. It occurred -- is still going. 7 Q. Okay. And the Car 54, that car 8 was burning on the 5th and the 6th. 9 Is that correct? 10 A. That's correct. 11 Q. What about the areas of 44, 45, 12 47, was that burning on just the 6th? 13 A. There was fires throughout the 14 site pretty much the entire time until after 15 we wrecked the train -- after the vent and 16 burn. 17 Q. Okay. And would that include 18 the area of Cars 44, 45 and 47? 19 A. Most of the fire was on the 20 Leake Oil side. It was more on the 41, 40, 21 37, 39, 35 area. 22 Q. Okay. Was there any fire in 23 the 44, 45, 47 area? 24 A. I don't remember. 25 Q. What about Car 50, was that --</p>	<p style="text-align: right;">Page 389</p> <p>1 derailment, were fire monitors used? 2 A. All the fire departments 3 responded and pumped lots of water on the 4 site. 5 Q. Okay. 6 A. Yes, sir. 7 Q. On February 5th? 8 A. Not on February -- they pulled 9 back. 10 Q. On February 5th, did you make 11 the affirmative decision not to use monitors 12 to spray water on the derailment site? 13 A. No, sir. 14 Q. What about on February 6th, did 15 you make the affirmative decision not to use 16 fire monitors to spray water on the 17 derailment site? 18 A. Fire monitors were used to 19 protect the structures around the vent and 20 burn site. 21 Q. I'm asking about the 22 derailment, the actual cars. 23 Did you make a decision on 24 February 6th not to use monitors to spray the 25 cars?</p>

<p style="text-align: right;">Page 390</p> <p>1 A. No, sir.</p> <p>2 Q. At any time did you make the</p> <p>3 affirmative decision not to spray waters</p> <p>4 using fire monitors on the cars?</p> <p>5 A. No, sir.</p> <p>6 Q. To your knowledge, did anybody</p> <p>7 make the decision to affirmatively not use</p> <p>8 monitors to spray the cars?</p> <p>9 A. You'd have to talk to anybody.</p> <p>10 Q. My question is what you know.</p> <p>11 To your knowledge, did anybody</p> <p>12 make that decision?</p> <p>13 A. I do not know.</p> <p>14 Q. Did you ever consider using</p> <p>15 monitors to spray water on the cars?</p> <p>16 A. Consider, yes.</p> <p>17 Q. When did you first consider</p> <p>18 using water to spray the cars?</p> <p>19 A. Obviously in firefighting 101,</p> <p>20 you want to put cooling streams on the car.</p> <p>21 The unfortunate part is these</p> <p>22 are jacketed cars, and the majority of that</p> <p>23 water would have washed more contaminants</p> <p>24 downstream, and we'd be having a totally</p> <p>25 different conversation.</p>	<p style="text-align: right;">Page 392</p> <p>1 contaminants downstream and have a different</p> <p>2 conversation, you decided not to do that?</p> <p>3 A. That's correct.</p> <p>4 Q. Did you discuss that decision</p> <p>5 with anybody else on-scene?</p> <p>6 MR. LEVINE: Objection.</p> <p>7 THE WITNESS: The discussion</p> <p>8 about using unmanned fire monitors</p> <p>9 on derailments, it's always a very</p> <p>10 ticklish situation. It is considered.</p> <p>11 It is discussed. If it's needed,</p> <p>12 we're going to -- we're going to apply</p> <p>13 water.</p> <p>14 QUESTIONS BY MR. ELLIS:</p> <p>15 Q. My question was different.</p> <p>16 Did you discuss it with anyone</p> <p>17 else on the scene?</p> <p>18 A. Break.</p> <p>19 MR. LEVINE: Objection.</p> <p>20 MR. ELLIS: We're not off the</p> <p>21 record, so...</p> <p>22 THE WITNESS: I need a break.</p> <p>23 MR. BRAGA: Okay. We'll be</p> <p>24 back.</p> <p>25 MR. ELLIS: Okay.</p>
<p style="text-align: right;">Page 391</p> <p>1 Q. My question was, when did you</p> <p>2 first make -- consider spraying water using</p> <p>3 monitors on the cars at the derailment site?</p> <p>4 MR. LEVINE: Objection.</p> <p>5 THE WITNESS: Sometime -- I</p> <p>6 would have thought about it sometime</p> <p>7 while I was on-scene.</p> <p>8 QUESTIONS BY MR. ELLIS:</p> <p>9 Q. Okay. Was that on February 5th</p> <p>10 that you thought about it?</p> <p>11 A. Most likely.</p> <p>12 Q. Do you remember thinking about</p> <p>13 it?</p> <p>14 A. No, sir.</p> <p>15 Q. Okay. So you think you might</p> <p>16 have thought about it?</p> <p>17 MR. BRAGA: Object to the form.</p> <p>18 THE WITNESS: That's -- it's</p> <p>19 based on firefighting experience. Put</p> <p>20 the wet stuff on the red stuff. It's</p> <p>21 how we're taught.</p> <p>22 QUESTIONS BY MR. ELLIS:</p> <p>23 Q. Okay. And did I hear you</p> <p>24 correct that because the cars were jacketed</p> <p>25 and because you didn't want to wash more</p>	<p style="text-align: right;">Page 393</p> <p>1 VIDEOGRAPHER: All right. The</p> <p>2 time is 4:27 p.m. We're going off the</p> <p>3 record.</p> <p>4 (Off the record at 4:27 p.m.)</p> <p>5 VIDEOGRAPHER: The time is</p> <p>6 4:32 p.m., and we're back on the</p> <p>7 record.</p> <p>8 QUESTIONS BY MR. ELLIS:</p> <p>9 Q. Okay. Before you called the</p> <p>10 break, Mr. Day, we were discussing your</p> <p>11 discussion about using unmanned fire monitors</p> <p>12 on the derailment scene.</p> <p>13 And my question was, did you</p> <p>14 discuss that with anybody else on-scene on</p> <p>15 February 5th?</p> <p>16 A. No, sir.</p> <p>17 MR. LEVINE: Objection.</p> <p>18 QUESTIONS BY MR. ELLIS:</p> <p>19 Q. Did you discuss that with</p> <p>20 anyone on-scene on February 6th?</p> <p>21 A. No, sir.</p> <p>22 Q. Did anybody discuss that</p> <p>23 subject on February 5th or 6th with you?</p> <p>24 MR. BRAGA: Objection.</p> <p>25 THE WITNESS: No, sir.</p>

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1 QUESTIONS BY MR. ELLIS:
 2 Q. Now, before you said that
 3 Car 55, you had a crew that climbed up on
 4 Car 54, the hopper car, to get a look at the
 5 housing, and that housing was not burning.
 6 Correct?
 7 A. Yes, sir.
 8 Q. You said, I believe, that your
 9 crew -- who was on that crew?
 10 A. I believe that was Drew McCarty
 11 and a technician.
 12 Q. Do you know the name of the
 13 technician?
 14 A. No, sir.
 15 Q. Was that a technician that
 16 worked for SRS or SPSI?
 17 A. Could have been either.
 18 Q. And you, I think, testified
 19 that that crew got a reading from a device
 20 that indicated to you that there was an
 21 uncontrolled flammable gas release occurring
 22 from Car 55.
 23 Is that correct?
 24 A. There was elevated VOC reading
 25 in close proximity -- in somewhat close

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1 proximity to the protective housing.
 2 Q. Was there an uncontrolled
 3 flammable gas release?
 4 A. There was a VOC reading.
 5 Q. My question was, was there an
 6 uncontrolled flammable gas release occurring
 7 from Car 55 when the crew was taking the
 8 reading?
 9 A. There was an elevated VOC
 10 reading from the protective housing.
 11 Q. Okay. Do you know whether
 12 there was an uncontrolled flammable gas
 13 release occurring from that car when the crew
 14 was taking the measurement?
 15 A. There was an elevated VOC
 16 reading coming from the protective housing.
 17 Q. Does an elevated VOC reading
 18 indicate to you that there is an uncontrolled
 19 flammable gas release occurring from that
 20 car?
 21 A. It is possible.
 22 Q. My question was, does that
 23 indicate to you that it is occurring?
 24 A. We had an elevated reading of
 25 VOCs coming from the protective housing.

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1 Q. Okay. Did that indicate to you
 2 that there was an uncontrolled flammable gas
 3 release occurring from that housing?
 4 A. It told me that there was an
 5 elevated reading of VOCs in that -- from that
 6 protective housing.
 7 Q. Did it tell you anything other
 8 than that there was an elevated VOC reading
 9 coming from that area?
 10 A. That's exactly what it told me,
 11 yes, sir.
 12 Q. And anything else?
 13 A. That there was an uncontrolled
 14 release of VOCs at an elevated level.
 15 Q. Okay. So you determined that
 16 there was an uncontrolled release at an
 17 elevated level from Car 55.
 18 Right?
 19 A. Yes, sir.
 20 Q. And as a result, you ordered
 21 the crew to withdraw.
 22 Is that correct?
 23 A. The crew withdrew, yes, sir.
 24 Q. But did you order the crew to
 25 withdraw, or did the crew withdraw on its

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1 own?
 2 A. Restate the question.
 3 Q. Did you order the crew to
 4 withdraw, or did the crew withdraw on its
 5 own?
 6 MR. LEVINE: Objection.
 7 THE WITNESS: The crew came
 8 out.
 9 QUESTIONS BY MR. ELLIS:
 10 Q. Did it come out because of the
 11 elevated VOC reading?
 12 A. You'd have to take it up with
 13 the crew.
 14 Q. Okay. Do you know why the crew
 15 withdrew that morning after it took the
 16 reading?
 17 A. I do not.
 18 Q. Did you ever do anything with
 19 respect to Car 55 and the VOCs that you
 20 believed were being released from the car?
 21 MR. LEVINE: Objection.
 22 MR. BRAGA: Objection.
 23 THE WITNESS: We monitored the
 24 area sporadically, and that's about
 25 it.

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1 QUESTIONS BY MR. ELLIS:

2 Q. Okay. And what did you do --
3 when you say "monitored sporadically," what
4 do you mean?

5 A. We would go in and take
6 temperatures and run air monitoring readings.

7 Q. What equipment did you use to
8 run the air monitoring readings?

9 A. PID.

10 Q. How many times did you take PID
11 readings from Car 55?

12 A. Every time we went in and got
13 temperatures.

14 Q. Did you do the PID readings
15 yourself?

16 A. No, sir.

17 Q. Did you do any of the
18 temperature readings yourself?

19 A. Some.

20 Q. Okay. Which temperature
21 readings did you do?

22 A. Ones that were relayed back to
23 the SPSI folks.

24 Q. Okay. Were they on Car 55?

25 A. No, sir. I was down on the big

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1 pile.

2 Q. So you never did PID readings
3 of Car 55, and you never did temperature
4 readings of Car 55.

5 Is that correct?

6 A. That's correct.

7 Q. Looking at Exhibit 13, can you
8 identify, please, the VCM cars for which you
9 did do, yourself, temperature readings.

10 A. 30 and 31.

11 Q. 30 and 31.

12 31 is GATX95098.

13 Correct?

14 A. 30 is OCPX80179.

15 Q. Yeah, I think I mentioned 31.

16 31 is 95098, and 30 is the Oxy
17 car you just identified.

18 Correct?

19 A. 31 is GATX95098.

20 Q. And you knew at some point when
21 you arrived on the scene that there was one
22 VCM car owned by GATX.

23 Right?

24 A. I -- when I arrived on-scene,
25 no, sir, I did not.

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1 Q. When is the first time that you
2 learned that one of the cars was a GATX-owned
3 car?

4 A. When I saw the consist.

5 Q. When did you see the consist?

6 A. I don't remember. It would
7 have been on the first day when we were
8 getting our assignments.

9 Q. Okay. So sometime on
10 February 5th, you learned that GATX had one
11 of the VCM cars, owned one of the VCM cars.

12 Correct?

13 A. Yes, sir.

14 Q. Did you review any information
15 regarding specifically the GATX95098 car?

16 MR. BRAGA: Object to the form.

17 MR. LEVINE: Objection.

18 THE WITNESS: So GATX95098 is
19 basically a 105J300W tank car, which
20 is identical to the TILX and the OCPX
21 cars.

22 QUESTIONS BY MR. ELLIS:

23 Q. Okay.

24 A. So once you realize that you
25 have five VCM cars, you pretty much know what

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1 the classification of the cars are.

2 Q. Did you review any information
3 specifically about GATX95098 on February 5th?

4 A. No, sir.

5 Q. Did you review any information
6 specifically about GATX95098 on February 6th?

7 A. No, sir.

8 Q. Did you receive any drawings
9 for 95098 at any time while you were on-scene
10 February 5th or February 6th?

11 MR. BRAGA: Object to the form.

12 THE WITNESS: There was some
13 discussions sometime. I don't know --
14 I can't put my finger on the exact
15 time, but there was some discussion
16 about getting the engineer drawings of
17 the cars. But since they were all
18 105J300W tank cars, you have one, you
19 have them all.

20 QUESTIONS BY MR. ELLIS:

21 Q. Okay. And because they were
22 all the same, you never looked at anything
23 specific to 95098.

24 Right?

25 A. That is correct.

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1 Q. Okay. And between February 3rd
2 and February 6th, you had no communications
3 with GATX, anyone at GATX.
4 Correct?
5 A. No, sir.
6 Q. That was little ships passing
7 in the night.
8 Am I correct that you had no
9 communications with anyone from GATX between
10 February 3rd and February 6th?
11 MR. BRAGA: Object to the form.
12 THE WITNESS: Are you asking a
13 question?
14 QUESTIONS BY MR. ELLIS:
15 Q. Yes. I'm asking you, isn't it
16 true you had no communications with GATX
17 between February 3rd and February 6th?
18 A. Correct.
19 Q. You didn't ask any information
20 from GATX between the 3rd and the 5th -- or
21 the 6th of February.
22 Correct?
23 MR. BRAGA: Object to the form.
24 THE WITNESS: There was no
25 communications between myself and GATX

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1 on any of those days.
2 QUESTIONS BY MR. ELLIS:
3 Q. I take it then that you never
4 advised GATX that you were going to vent and
5 burn its 95098 tank car.
6 Correct?
7 MR. LEVINE: Objection.
8 MR. BRAGA: Object to the form.
9 THE WITNESS: That would have
10 had to come from the Norfolk Southern.
11 QUESTIONS BY MR. ELLIS:
12 Q. My question simply was, you
13 never made the call.
14 Correct?
15 A. That's not in my -- that's not
16 what I was brought to the scene to do.
17 Q. And because it wasn't what you
18 brought to the scene to do, you never talked
19 to anyone about venting and burning 95098 at
20 GATX.
21 Right?
22 A. Never spoke to them.
23 MR. LEVINE: Objection.
24 THE WITNESS: I never spoke to
25 anybody from GATX about this car.

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1 QUESTIONS BY MR. ELLIS:
2 Q. Did you ever speak with anybody
3 at GATX about the derailment?
4 A. Over the course of the next
5 several months after the incident, I talked
6 to a lot people about the incident.
7 Q. At GATX?
8 A. I spoke to a lot of people. I
9 don't remember all the people I spoke to.
10 Q. Okay. Can you identify
11 specifically as you sit here today anybody at
12 GATX with whom you had a conversation about
13 the East Palestine derailment?
14 A. Not about East Palestine.
15 Q. Have you ever -- since you
16 qualified it "not about East Palestine," as
17 you sit here today, do you recall
18 conversations with GATX, anybody at GATX,
19 about a vent and burn?
20 A. No, sir.
21 Q. What about VCM railcars? Have
22 you had conversations with anybody at GATX
23 about VCM railcars since the derailment?
24 A. No, sir.
25 Q. You agree that the decision to

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1 vent and burn a railcar is a very serious
2 decision.
3 Right?
4 MR. BRAGA: Object to the form.
5 THE WITNESS: That's a very
6 serious decision, yes, sir.
7 QUESTIONS BY MR. ELLIS:
8 Q. You knew that you'd be
9 releasing hazardous substances into the
10 environment when you vent and burned those
11 five VCM cars.
12 Right?
13 A. When the vent and burn
14 operation occurred, yes, sir.
15 Q. And you knew that that was
16 going to occur.
17 Right?
18 A. Yes, sir.
19 Q. You also knew that people could
20 get hurt either from the explosion or from
21 the release of hazardous substances when you
22 did the vent and burn.
23 Right?
24 A. Yes, sir.
25 Q. And given that it was five cars

<p style="text-align: right;">Page 406</p> <p>1 and not just one VCM car, it made it all the 2 more important. 3 Correct? 4 MR. BRAGA: Object to the form. 5 THE WITNESS: You're not quite 6 understanding the gravity of what it 7 takes to decide to do this and how 8 it's done. 9 It's not like we can go in and 10 grab, for example, TILX and say, we're 11 going to vent and burn that one. 12 Because of the size of the fire, you 13 have to either move cars out of the 14 way or take them all out at the same 15 time. 16 QUESTIONS BY MR. ELLIS: 17 Q. Okay. My question was simply 18 because it was five, it's all the more 19 significant. 20 Correct? 21 MR. LEVINE: Objection. 22 THE WITNESS: It was a 23 significant incident, yes, sir. 24 QUESTIONS BY MR. ELLIS: 25 Q. And because it can have such</p>	<p style="text-align: right;">Page 408</p> <p>1 MR. BRAGA: Object to the form. 2 THE WITNESS: Which is exactly 3 what we did. 4 QUESTIONS BY MR. ELLIS: 5 Q. And you want to have good, 6 accurate information, including scientific 7 information, before you make a decision as 8 significant as a vent and burn decision. 9 Correct? 10 MR. BRAGA: Objection. 11 THE WITNESS: Yes, sir. 12 QUESTIONS BY MR. ELLIS: 13 Q. You want to bring the best 14 scientific minds available and as much 15 scientific expertise as you can before you 16 make that decision. 17 Correct? 18 MR. BRAGA: Objection. 19 MR. LEVINE: Objection. 20 THE WITNESS: The gravity of 21 making the decision to vent and burn 22 these cars was not taken lightly 23 whatsoever. We had people helping us 24 make this recommendation. 25 Reviewing what we were seeing,</p>
<p style="text-align: right;">Page 407</p> <p>1 catastrophic consequences, that's something 2 you want to carefully weigh before you make 3 the decision to vent and burn. 4 Correct? 5 MR. BRAGA: Object to the form. 6 MR. LEVINE: Objection. 7 THE WITNESS: The 8 recommendation to the NS to perform 9 the vent and burn operation was very 10 heavy on everybody that was making the 11 recommendation to them to take it to 12 the incident commander. 13 QUESTIONS BY MR. ELLIS: 14 Q. The decision to vent and burn 15 was a decision of last resort. 16 Right? 17 A. It's the final option. 18 Q. A decision of last resort. 19 Right? 20 A. It's the final option. 21 Q. Okay. And because it's the 22 final option, you want to exhaust all other 23 alternatives before you make that very 24 important decision. 25 True?</p>	<p style="text-align: right;">Page 409</p> <p>1 talking about what we were seeing, 2 coming up with are there other 3 solutions, going through our checklist 4 of transfer, clear, hot-tap, cold-tap, 5 before we got to vent and burn. Each 6 one of those was weighed very, very 7 heavily, multiple times, before the 8 decision was made, the recommendation 9 was made, for the incident commander 10 to decide vent and burn or not. 11 QUESTIONS BY MR. ELLIS: 12 Q. Okay. And it was a group of 13 you making that decision that you all knew 14 was a very, very serious decision. 15 Correct? 16 MR. LEVINE: Objection. 17 THE WITNESS: Yes, sir. 18 QUESTIONS BY MR. ELLIS: 19 Q. Okay. And -- 20 A. Excuse me. 21 Q. -- you knew that people might 22 have questions after the fact about why you 23 made that decision. 24 Right? 25 MR. BRAGA: Object to the form.</p>

<p style="text-align: right;">Page 410</p> <p>1 THE WITNESS: Every decision 2 that's made is usually Monday morning 3 quarterbacked, yes. 4 QUESTIONS BY MR. ELLIS: 5 Q. Okay. So when you made the 6 decision to do the vent and burn, you knew 7 that people later might have questions about 8 why you did it or what decision-making you 9 went through. 10 Right? 11 MR. BRAGA: Objection. 12 THE WITNESS: Yes, sir. 13 QUESTIONS BY MR. ELLIS: 14 Q. And in fact, I think you said 15 that this vent and burn decision was the 16 toughest decision you've ever made. 17 Right? 18 A. One of the toughest decisions, 19 yes, sir. 20 Q. It was the toughest decision 21 you ever made. You told someone that. 22 Didn't you? 23 A. It's one of the toughest 24 decisions I've ever made. 25 Q. And in fact your company</p>	<p style="text-align: right;">Page 412</p> <p>1 was -- the paperwork that I was involved in 2 was for ESI. 3 Q. Because you knew that the vent 4 and burn decision was so significant, and 5 because you knew that people would be looking 6 afterwards and wanting to know why you made 7 the decision you wanted to make, you 8 ultimately made, you wanted to keep good and 9 accurate records of your decision-making. 10 Didn't you? 11 MR. LEVINE: Objection. 12 THE WITNESS: I'm not sure how 13 to answer that question. 14 QUESTIONS BY MR. ELLIS: 15 Q. Well, don't you think it would 16 have been a good idea to make a clear, 17 written record of such a significant decision 18 as making -- as venting and burning five VCM 19 cars? 20 MR. LEVINE: Objection. 21 MR. BRAGA: Objection. 22 THE WITNESS: Had I taken 23 copious amounts of notes, they would 24 have all been discovered, and we'd be 25 going line item for line item through</p>
<p style="text-align: right;">Page 411</p> <p>1 wouldn't make that decision until it had a 2 complete indemnity from Norfolk Southern. 3 Correct? 4 A. Negative. 5 MR. BRAGA: Object to the form. 6 QUESTIONS BY MR. ELLIS: 7 Q. Well, your company does have an 8 indemnity from Norfolk Southern. 9 Doesn't it? 10 A. That's nice to know. No, I did 11 not know that. 12 MS. COLLIER: Tab 11. 13 VIDEOGRAPHER: Exhibit 17. 14 (Day Exhibit 17 marked for 15 identification.) 16 QUESTIONS BY MR. ELLIS: 17 Q. 17. 18 Mr. Day, you've been handed 19 what's been marked as Exhibit 17. Have you 20 ever seen this before? 21 A. No, sir. 22 Q. Were you ever involved in 23 discussions with Bobby Breed about SRS 24 needing an indemnity? 25 A. The only indemnity that I</p>	<p style="text-align: right;">Page 413</p> <p>1 this entire thing. 2 QUESTIONS BY MR. ELLIS: 3 Q. And that's why you didn't keep 4 the notes? 5 A. Pretty much. 6 MR. BRAGA: Object to the form. 7 QUESTIONS BY MR. ELLIS: 8 Q. At the time the vent and burn 9 was executed, are you aware of anybody making 10 a written record of the reasons for the vent 11 and burn? 12 A. No, sir. 13 Q. Do you know why nobody made a 14 written record of the reasons for the vent 15 and burn? 16 MR. LEVINE: Objection. 17 MR. BRAGA: Object to the form. 18 THE WITNESS: You'd have to ask 19 anybody. 20 QUESTIONS BY MR. ELLIS: 21 Q. At the time the vent and burn 22 was executed, the temperatures in all the VCM 23 cars were stable or decreasing. 24 Right? 25 A. Okay.</p>

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1 Q. Are you aware of that?
 2 A. No, sir.
 3 Q. Are you -- let's talk about the
 4 temperatures you took then.
 5 A. Okay.
 6 Q. We were looking at Exhibit 13.
 7 Which cars on Exhibit 13 did
 8 you personally take temperature measurements
 9 for?
 10 A. 30 and 31.
 11 Q. When did you take temperature
 12 measurements for 30 and 31?
 13 A. The evening of the 5th.
 14 Q. How many temperature readings
 15 did you take for 30 and 31?
 16 A. I don't remember.
 17 Q. Did you do it hourly?
 18 A. No, sir. Just one time.
 19 Q. Just once.
 20 So you took one temperature
 21 reading for Car 30 and one temperature
 22 reading for Car 31.
 23 Is that correct?
 24 A. I didn't say that.
 25 Q. Okay. What did you say?

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1 How many readings did you take
 2 for Car 30?
 3 A. Several.
 4 Q. When did you do those?
 5 A. The evening of February 5th.
 6 Q. Do you know the time?
 7 A. No, sir. Dark.
 8 Q. Did you make a written record?
 9 A. Radio communications back to
 10 SPSI, who was taking records -- keeping
 11 records.
 12 Q. Did you do it hourly?
 13 A. I only did it one time.
 14 Q. And you took multiple readings
 15 on Car 30 that one time.
 16 Is that correct?
 17 A. That's correct.
 18 Q. What equipment were you using?
 19 A. A laser pointer IR gun.
 20 Q. Where were you pointing the
 21 laser?
 22 A. Through holes in the jacket at
 23 the shell and around the bolsters.
 24 Q. So you took some through the
 25 jacket at the actual shell and some at the

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1 bolster.
 2 Is that correct?
 3 A. That's correct.
 4 Q. Were all the readings the same?
 5 A. No, sir.
 6 Q. And did you radio back each of
 7 those readings and identify where the
 8 specific reading came from?
 9 A. I radioed back that Car 30,
 10 which we would give the car number itself, A
 11 end, B end, right side, left side, top,
 12 bottom, bolster.
 13 Q. Okay. So you identified for
 14 the person at SPSI on the other end of the
 15 radio where specifically you were pointing
 16 the laser and what the reading was.
 17 Is that correct?
 18 A. Correct.
 19 Q. Have you ever seen a written
 20 recording of that?
 21 A. I've seen several bits of
 22 information.
 23 Q. My question is, have you ever
 24 seen a written recording of what you radioed
 25 back, the multiple readings at different

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1 parts of the tank at the same time?
 2 A. No, sir.
 3 Q. Did you ever ask to see that?
 4 A. No, sir.
 5 Q. You were mentioning that you
 6 didn't want to cool the tanks with water
 7 because they were jacketed, and it makes --
 8 it doesn't help to cool jacketed tanks with
 9 water.
 10 Is that -- is that your
 11 testimony?
 12 A. Yes, sir.
 13 Q. Going back to Exhibit 4. Would
 14 you get Exhibit 4?
 15 MR. BRAGA: He has it.
 16 QUESTIONS BY MR. ELLIS:
 17 Q. Exhibit 4 is The Chlorine
 18 Institute Pamphlet 171 that specifically
 19 addresses VCM tank cars, including those
 20 engulfed by fire.
 21 Correct?
 22 A. Vinyl Chloride Monomer Tank Car
 23 & Cargo Tank Handling Manual, yes, sir.
 24 Q. And there's a specific section,
 25 is there not -- are you familiar with this?

<p style="text-align: right;">Page 418</p> <p>1 A. I have seen it, and I've been 2 involved in it, yes, sir.</p> <p>3 Q. And when you say "involved in 4 it," you mean you wrote some of it?</p> <p>5 A. I was involved in some of the 6 meetings leading up to it.</p> <p>7 Q. Okay. So this is a document 8 you're very familiar with?</p> <p>9 MR. LEVINE: Objection.</p> <p>10 THE WITNESS: Define "very."</p> <p>11 QUESTIONS BY MR. ELLIS:</p> <p>12 Q. Well, I want to know. I'm 13 asking you. Is this a document that you're 14 very familiar with?</p> <p>15 MR. LEVINE: Objection.</p> <p>16 MR. BRAGA: Objection.</p> <p>17 THE WITNESS: This is a 18 document that I use, I reference, 19 to -- for VCM incidents.</p> <p>20 QUESTIONS BY MR. ELLIS:</p> <p>21 Q. Did you reference it for this 22 specific VCM incident in East Palestine?</p> <p>23 A. I do not recall.</p> <p>24 Q. Was it available -- did you 25 have it in writing with you when you were in</p>	<p style="text-align: right;">Page 420</p> <p>1 Right?</p> <p>2 A. There were -- they still -- I 3 believe they -- I believe they still have 4 112s in service.</p> <p>5 Q. Okay.</p> <p>6 A. In VCM service.</p> <p>7 Q. Would you say the majority of 8 the tank incidents you've been involved with 9 involving VCM have been 105J cars?</p> <p>10 A. No, sir.</p> <p>11 Q. They've been the other kind?</p> <p>12 A. They've been both kinds.</p> <p>13 Q. Okay. Are the older kinds 14 jacketed?</p> <p>15 A. They're -- pretty much 16 everything that's in flammable gas service 17 now is required to be jacketed.</p> <p>18 Q. Okay. And this particular 19 pamphlet is from 2018.</p> <p>20 Correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So it would apply to tanks in 23 use in 2018 and through the present.</p> <p>24 Right?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 419</p> <p>1 East Palestine?</p> <p>2 A. When I was there, no, sir.</p> <p>3 Q. You didn't bring it with you?</p> <p>4 A. I did not.</p> <p>5 Q. Why not?</p> <p>6 A. I don't know.</p> <p>7 Q. Directing your attention to 8 page 40 --</p> <p>9 A. 40.</p> <p>10 Q. -- there's a Section 10.4.8 11 entitled "Tank in a Fire."</p> <p>12 Do you see that?</p> <p>13 A. Not yet.</p> <p>14 Q. And incidentally, how many 15 times have you dealt with a derailment where 16 a VCM car was involved?</p> <p>17 A. A lot.</p> <p>18 Q. Were those incidents all 19 involving the same type of tank? 105J?</p> <p>20 A. I believe many years ago, VCM 21 was carried in a 112J.</p> <p>22 Q. Okay. But all the current, 23 more recent situations you've been involved 24 with where a tank car involving VCM was 25 involved, it was a 105J.</p>	<p style="text-align: right;">Page 421</p> <p>1 Q. Including those that carry VCM.</p> <p>2 Correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And in Section 10.4.8, 5 Tank in a Fire, it says, "If a tank is 6 engulfed by fire," third bullet point.</p> <p>7 Would you read into the record 8 what that says?</p> <p>9 A. No, go ahead.</p> <p>10 Q. Would you read into the record 11 what that says?</p> <p>12 A. "A water spray on the tank in 13 the fire may help reduce temperature and 14 pressure rise."</p> <p>15 Q. And that doesn't say anything 16 about needing to take the jacket off.</p> <p>17 Does it?</p> <p>18 A. Nope.</p> <p>19 Q. And then the next bullet point, 20 would you read that one into the record?</p> <p>21 A. "VCM tanks not directly in 22 fire, but in line of sight of fire, will 23 typically heat up due to radiant heat. These 24 tanks should be sprayed with water fog, as it 25 will help reduce rate of pressure increase</p>

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1 within the tank."
 2 Q. And that doesn't say anything
 3 about taking the jacket off either.
 4 Does it?
 5 A. No, sir.
 6 Q. Would you get Exhibit 2 out,
 7 please?
 8 A. Okay.
 9 Q. Exhibit 2 is the Emergency
 10 Response Guide that you talked about earlier
 11 today that you use in responding to incidents
 12 like the one in East Palestine.
 13 Correct?
 14 A. Yes, sir.
 15 Q. Okay. And on page 169 of this
 16 exhibit -- it's the third page in if you
 17 count the cover page -- there's a section in
 18 here that discusses fire involving tanks.
 19 Correct?
 20 A. Yes, sir.
 21 Q. The second bullet point, would
 22 you read that into the record, please?
 23 A. "Water fog or spray."
 24 Q. I'm sorry, "Fire Involving
 25 Tanks."

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1 Do you see that section?
 2 A. Oh, yes.
 3 Q. Okay. And now that we're on
 4 the same area, in Fire Involving Tanks,
 5 there's a second bullet point.
 6 Would you read that into the
 7 record?
 8 A. "Fight fire from a maximum
 9 distance or use unmanned master stream
 10 devices or monitor nozzles."
 11 Q. Okay. That's the first bullet.
 12 And then right underneath, what
 13 does it say?
 14 A. This is not a reading
 15 comprehension deal, sir. If you want to read
 16 it, knock yourself out.
 17 Q. Answer my question, please.
 18 What does the second bullet
 19 point in Exhibit 2 say?
 20 MR. BRAGA: Just read it into
 21 the record.
 22 THE WITNESS: "Cool containers
 23 with flooding quantities of water
 24 until well after fire is out."
 25

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1 QUESTIONS BY MR. ELLIS:
 2 Q. Okay. And that doesn't say
 3 anything about taking the jacket off.
 4 Does it?
 5 A. No, sir.
 6 Q. And the fifth bullet point?
 7 A. "Do not direct water at source
 8 or leak or safety devices; icing may occur."
 9 Q. I'm sorry. The one, two,
 10 three, four, five, sixth bullet point.
 11 MR. BRAGA: The one that begins
 12 with --
 13 THE WITNESS: "For massive
 14 fire, use unmanned master stream
 15 devices or monitor nozzles. If this
 16 is impossible, withdraw and let the
 17 area -- from area and let fire burn."
 18 QUESTIONS BY MR. ELLIS:
 19 Q. Okay. And that doesn't say
 20 anything about taking jackets off.
 21 Does it?
 22 A. No, sir.
 23 Q. Now going back to your
 24 temperature reading taking -- your
 25 temperature readings that you took on the

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1 various VCM cars. And if we get Exhibit 13
 2 back up so the jury can have an
 3 understanding.
 4 We talked about the one
 5 instance where you took temperature
 6 measurements on Car 30, and you got several
 7 measurements in one instance, and you radioed
 8 those back to someone at SPSI.
 9 Correct?
 10 A. Correct.
 11 Q. And then did you do the same at
 12 the same time with respect to Car 31?
 13 A. After it, yes, sir.
 14 Q. Okay. So you did Car 30 first,
 15 and then you did Car 31.
 16 Is that correct?
 17 A. I don't remember which
 18 direction -- which one I did first.
 19 Q. Okay. And you do those two,
 20 and if -- I think I remember those are the
 21 only two you did.
 22 Correct?
 23 A. That's correct.
 24 Q. And where, when you were taking
 25 the measurements on Car 31, did you point the

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1 laser?
 2 A. A end, B end, any cracks in
 3 the -- or holes in the jacket, and up against
 4 the bolsters.
 5 Q. The A end?
 6 A. And B end.
 7 Q. The B end, where there were
 8 cracks in the jacket where you could see the
 9 actual tank.
 10 Is that correct?
 11 A. The shell.
 12 Q. The shell?
 13 A. Yes, sir.
 14 Q. Okay. And on the bolster. So
 15 those four locations.
 16 Is that correct?
 17 A. Correct.
 18 Q. And I take it that you yourself
 19 did not record any of the temperatures that
 20 you were measuring.
 21 Correct?
 22 A. You're absolutely correct.
 23 Q. You radioed those back to
 24 someone. You don't remember who.
 25 Correct?

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1 A. Correct.
 2 Q. Where specifically on the A end
 3 were you pointing the laser?
 4 A. Where there was a hole in the
 5 jacket.
 6 Q. So there was a hole in the
 7 jacket in the A end of Car 31, and you were
 8 pointing the laser through the jacket onto
 9 the shell?
 10 A. Correct.
 11 Q. Where were you pointing the
 12 B -- the laser when you were measuring the
 13 temperature on the B end?
 14 A. If we found holes in the
 15 jacket.
 16 Q. Okay. So you, on the evening
 17 of the 5th, found holes in the jacket on
 18 Car 31, and you pointed your laser through
 19 those holes onto the shell.
 20 Is that correct?
 21 A. Yes, sir.
 22 Q. And then you took the bolster.
 23 Where on the bolster did you
 24 point the laser?
 25 A. On the bolster, as close to the

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1 shell as possible. The oil pads.
 2 Q. And I take it you didn't make
 3 any recording of specifically where -- either
 4 by photograph or written description of
 5 specifically where you were pointing the
 6 laser.
 7 Correct?
 8 A. Correct.
 9 Q. And then the last place you
 10 said you were doing it is where? A end, B
 11 end, bolster as close to the shell as
 12 possible.
 13 And where was the fourth?
 14 A. On the right and on the left.
 15 Q. On the right and the left?
 16 A. On the right and the left.
 17 Q. Okay. So six places on Car 31.
 18 Correct?
 19 A. Where there were holes in the
 20 jacket.
 21 Q. Okay. So there was a hole in
 22 the jacket on the right side and a hole in
 23 the jacket on the left side, and you pointed
 24 your laser through those holes and got a
 25 reading on the shell.

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1 Correct?
 2 MR. LEVINE: Objection.
 3 THE WITNESS: Anywhere that we
 4 could get a -- get readings against
 5 the shell of the car is where we
 6 pointed the lasers.
 7 QUESTIONS BY MR. ELLIS:
 8 Q. Okay. But what I want to know
 9 is, on the evening of the 5th when you were
 10 doing Car 31, was there a hole on the left
 11 side of the shell of the tank where you were
 12 able to get the shell temperature?
 13 A. Must have been.
 14 Q. Do you remember that?
 15 A. There had to have been if I
 16 said it.
 17 Q. Okay. And same on the right
 18 side, there must have been a hole on the
 19 right side that you could get the laser
 20 through and get the shell?
 21 A. Yes, sir.
 22 Q. Okay. So six readings overall.
 23 Were they all the same?
 24 A. No, sir.
 25 Q. What were -- what was the

<p style="text-align: right;">Page 430</p> <p>1 difference?</p> <p>2 MR. BRAGA: Object to the form.</p> <p>3 THE WITNESS: They were</p> <p>4 different.</p> <p>5 QUESTIONS BY MR. ELLIS:</p> <p>6 Q. How different?</p> <p>7 A. I don't remember.</p> <p>8 Q. Do you remember any of the</p> <p>9 readings at all?</p> <p>10 A. No, sir.</p> <p>11 Q. Going back to Car 30, do you</p> <p>12 remember any of the readings at all?</p> <p>13 A. No, sir.</p> <p>14 Q. Do you remember at all the</p> <p>15 range of differences that you got?</p> <p>16 A. No, sir.</p> <p>17 Q. Other than those two times, did</p> <p>18 you take any other temperature measurements</p> <p>19 on any of the VCM cars on February 5th or</p> <p>20 February 6th?</p> <p>21 A. No.</p> <p>22 Q. Did you take any measurements</p> <p>23 of any kind on any of the VCM cars other than</p> <p>24 the two we've just discussed?</p> <p>25 A. Me personally, no.</p>	<p style="text-align: right;">Page 432</p> <p>1 Q. What is a wreck bag?</p> <p>2 A. A bag that has wreck -- wreck</p> <p>3 equipment, clothes, monitor.</p> <p>4 Q. Do you have a bag that you keep</p> <p>5 packed or you have available for when you</p> <p>6 need to go to a train derailment or a wreck?</p> <p>7 A. In an emergency, yes, sir.</p> <p>8 Q. Okay. And that's what you</p> <p>9 called your wreck bag?</p> <p>10 A. Yes.</p> <p>11 Q. And your IR gun is in there?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Is it in there now?</p> <p>14 A. Yes, sir. No, it's not. It's</p> <p>15 in Boston.</p> <p>16 Q. Okay. Your IR gun is in</p> <p>17 Boston?</p> <p>18 A. On a job.</p> <p>19 Q. Okay. Does it store readings?</p> <p>20 A. No, sir.</p> <p>21 Q. When's the last time -- let me</p> <p>22 ask you this.</p> <p>23 Does it require calibration?</p> <p>24 A. No, sir.</p> <p>25 Q. How far away were you when you</p>
<p style="text-align: right;">Page 431</p> <p>1 MR. ELLIS: Can we just take a</p> <p>2 five-minute break here?</p> <p>3 MR. BRAGA: Sure.</p> <p>4 VIDEOGRAPHER: The time is</p> <p>5 5:04 p.m., and we're going off the</p> <p>6 record.</p> <p>7 (Off the record at 5:04 p.m.)</p> <p>8 VIDEOGRAPHER: The time is</p> <p>9 5:15 p.m., and we're back on the</p> <p>10 record.</p> <p>11 QUESTIONS BY MR. ELLIS:</p> <p>12 Q. Mr. Day, you were talking</p> <p>13 about -- or we were discussing your</p> <p>14 temperature measurements that you took on</p> <p>15 February 5th on two of the VCM cars.</p> <p>16 And you, I think, said you were</p> <p>17 using an IR laser-pointed gun.</p> <p>18 Right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Do you know what model?</p> <p>21 A. No, sir.</p> <p>22 Q. Where did you get it?</p> <p>23 A. Out of my wreck bag.</p> <p>24 Q. Out of your wreck bag?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 433</p> <p>1 were taking your temperature readings? How</p> <p>2 far away from the VCM cars were you?</p> <p>3 MR. BRAGA: Object to the form.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: My distance was</p> <p>6 somewhere between six and zero inches.</p> <p>7 QUESTIONS BY MR. ELLIS:</p> <p>8 Q. Did you ever make contact with</p> <p>9 the tanks with your gun?</p> <p>10 A. It was not a contact</p> <p>11 thermometer.</p> <p>12 Q. Okay. My question was, did you</p> <p>13 ever make contact?</p> <p>14 A. It's not a contact thermometer.</p> <p>15 It's an IR gun.</p> <p>16 Q. I understand that. I</p> <p>17 understand. But you said somewhere between</p> <p>18 zero and six, and zero to me is contact.</p> <p>19 So was it zero? Did you make</p> <p>20 contact with your gun?</p> <p>21 A. I do not remember.</p> <p>22 Q. Okay. You don't recall one way</p> <p>23 or the other.</p> <p>24 Is that right?</p> <p>25 A. Zero to six inches with a gun,</p>

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1 that's where I was reading from.
 2 Q. Okay. And you don't recall one
 3 way or another whether you made contact with
 4 the tank.
 5 Right?
 6 A. That's correct.
 7 Q. Were you using the same
 8 distance for every reading?
 9 MR. BRAGA: Object to the form.
 10 THE WITNESS: So the -- a tank
 11 car -- the way the tank cars are
 12 built, you have the inner shell, you
 13 have four inches of insulation, you
 14 have a half-inch of thermal
 15 protection, and you have an
 16 eighth-inch outer jacket. Sometimes
 17 it was compressed right up against the
 18 shell; other times it was ripped away.
 19 So it was anywhere from zero to
 20 six inches.
 21 QUESTIONS BY MR. ELLIS:
 22 Q. Okay. Not the same distance
 23 every time. It depended on the circumstances
 24 of the particular measurement you were
 25 taking.

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1 Is that correct?
 2 A. It depended on what access
 3 point I had to get to the shell of the car.
 4 Q. Okay. Could we get Tab 31 up,
 5 please?
 6 And this is Exhibit 16 {sic}.
 7 This is the page ending 2559 of Exhibit 6 --
 8 VIDEOGRAPHER: 18.
 9 MR. ELLIS: This was 18?
 10 VIDEOGRAPHER: No. If you're
 11 marking one now --
 12 MR. ELLIS: No. No, this is an
 13 exhibit -- this is a previously marked
 14 exhibit. It is Exhibit 16.
 15 VIDEOGRAPHER: Okay.
 16 MR. ELLIS: And it is the
 17 HAZMAT Group Chair's Factual Report,
 18 and specifically this is page 2559.
 19 (Day Exhibit 18 marked for
 20 identification.)
 21 QUESTIONS BY MR. ELLIS:
 22 Q. Oh, this is Exhibit 19. 18.
 23 Thank you. 18.
 24 You've been handed what's been
 25 marked as Exhibit 18, which I'll represent to

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1 you is just on the second page an enlarged
 2 version so folks can see the chart a little
 3 easier.
 4 Do you have Exhibit 18 in front
 5 of you and the second page with the chart
 6 that is 2559 from Exhibit 16?
 7 A. Say it one more time.
 8 Q. Do you have Exhibit 18 in front
 9 of you? It's the same as page 2559 on
 10 Exhibit 16.
 11 Right?
 12 A. Yes, sir.
 13 Q. Okay. Do you see on the box on
 14 the left is a series of temperatures that
 15 were taken on the five VCM cars on
 16 February 5th and 6th.
 17 Right?
 18 A. Okay.
 19 Q. Have you ever seen this before?
 20 A. No, sir.
 21 Q. Okay. Do --
 22 A. Or let me rephrase that.
 23 Excuse me. I saw it yesterday.
 24 Q. Okay. Yesterday was the first
 25 time you saw it?

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1 A. That I remember seeing this.
 2 MR. BRAGA: Object to the form.
 3 QUESTIONS BY MR. ELLIS:
 4 Q. Okay. Do any of these
 5 temperature readings look familiar to you?
 6 MR. BRAGA: Object to the form.
 7 THE WITNESS: They're
 8 temperatures.
 9 QUESTIONS BY MR. ELLIS:
 10 Q. Do any of them look like the
 11 ones you took on February 5th of Cars 31 and
 12 30?
 13 A. I do not remember.
 14 Q. Did you ever see, either on
 15 February 5th or February 6th, temperature
 16 measurements other than the ones that you
 17 took?
 18 A. Temperatures were discussed a
 19 few times in passing conversations.
 20 I didn't put a lot of credence
 21 into these temperature readings because they
 22 were taken with IR guns, unknown accuracy.
 23 They might give you a positive. They might
 24 give you a negative. It might -- I don't --
 25 I don't trust the readings we were getting.

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1 The way to get a temperature is
 2 to go through the protective housing and get
 3 a core temperature of the product using the
 4 thermometer well.
 5 Q. Okay. My question was, either
 6 on February 5th or February 6th, did you see
 7 temperature readings for any or all of the
 8 five VCM cars?
 9 A. We discussed them.
 10 Q. Did you see any readings?
 11 MR. LEVINE: Objection.
 12 THE WITNESS: We discussed
 13 them.
 14 QUESTIONS BY MR. ELLIS:
 15 Q. Okay. My question was, did you
 16 see in writing any readings, either on
 17 February 5th or February 6th?
 18 A. You didn't say that. In
 19 writing, no.
 20 Q. And who did you discuss the
 21 temperature readings with?
 22 A. Drew, Terry, the NS folks.
 23 Drew was concerned, I was
 24 concerned, with the accuracy of the
 25 temperature readings and the inability to get

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1 core temperatures.
 2 Q. Okay. Why were you taking
 3 readings of Cars 30 and 31?
 4 MR. BRAGA: Object to the form.
 5 THE WITNESS: It's part of my
 6 job.
 7 QUESTIONS BY MR. ELLIS:
 8 Q. And specifically what part of
 9 your job is taking temperature readings?
 10 MR. LEVINE: Objection.
 11 THE WITNESS: We, as in SRS,
 12 only had three folks on-scene at the
 13 time. We had people responding, but
 14 they weren't on-scene yet, so we were
 15 filling in. We were doing all kinds
 16 of things, things that a senior
 17 project manager would do, things that
 18 a senior project manager doesn't
 19 usually do.
 20 I'm a hazmat technician -- I'm a
 21 HAZMAT technician, HAZMAT operations,
 22 HAZMAT sector chief. I can be all of
 23 these different things. This is what
 24 I do for a living.
 25

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1 QUESTIONS BY MR. ELLIS:
 2 Q. Okay. And one of the things
 3 that you do when you're doing an emergency
 4 response is take temperatures of tanks that
 5 are involved in a fire.
 6 Is that right?
 7 A. Perform damage assessment.
 8 Q. Okay. Part of performing
 9 damage assessment is taking temperature
 10 readings of a tank car?
 11 A. Yes, sir.
 12 Q. Okay. And you have the IR gun
 13 in your wreck bag because that's the tool you
 14 use to take temperature readings.
 15 Right?
 16 A. One of them.
 17 Q. Okay. It's definitely a tool
 18 that you've used in other wrecks.
 19 Right?
 20 A. That's correct.
 21 Q. And you used it in this wreck.
 22 Right?
 23 A. Yes, sir.
 24 Q. Okay. Did you ever express to
 25 anybody that you thought the temperature

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1 readings were unreliable?
 2 A. Many times.
 3 Q. To who?
 4 A. Drew, Terry, the NS folks.
 5 Q. Who at NS did you tell
 6 temperature readings were unreliable?
 7 A. Scott Gould, Scott Deutsch,
 8 possibly Chris Burch, and possibly Robert
 9 Wood and Dave Schoendorfer.
 10 Q. Did you tell Mr. Schoendorfer
 11 that you thought the temperature readings
 12 that they were getting on the five VCM cars
 13 were unreliable?
 14 A. I did.
 15 Q. When did you tell him that?
 16 A. I do not remember.
 17 Q. Did you tell him that on the
 18 5th?
 19 A. I do not remember.
 20 Q. Do you remember -- did you tell
 21 him that before the vent and burn?
 22 A. Yes.
 23 Q. Tell me everything you recall
 24 about your conversation with Mr. Schoendorfer
 25 about temperatures being unreliable,

<p style="text-align: right;">Page 442</p> <p>1 temperature readings being unreliable. 2 MR. LEVINE: Objection. 3 THE WITNESS: I'm not -- I'm 4 not sure the temperatures are 5 reliable. 6 QUESTIONS BY MR. ELLIS: 7 Q. You said you weren't sure the 8 temperatures were reliable. 9 What else did you say? 10 A. I'm not sure that the 11 temperatures are reliable. 12 Q. What else did you say? 13 A. I'm not sure the temperatures 14 are reliable. 15 Q. Did you say anything else? 16 A. I do not recall. 17 Q. Okay. What did 18 Mr. Schoendorfer say to you? 19 A. Please take more temperature 20 readings. 21 Q. Did you? 22 A. I personally did not. 23 Q. Other than please take more 24 temperature readings, did he say anything 25 else about -- after you told him that</p>	<p style="text-align: right;">Page 444</p> <p>1 MR. LEVINE: Objection. 2 THE WITNESS: I can't do that. 3 QUESTIONS BY MR. ELLIS: 4 Q. What do you remember about that 5 conversation? 6 A. That specifically they were -- 7 they, as in NS, wanted more data, more 8 temperature readings. And I said I -- I'm 9 unsure that the temperatures are reliable. 10 Q. Okay. And what did he say in 11 response? 12 A. I do not remember. 13 Q. Did you ever send any written 14 communication to anybody stating your view 15 that the temperature readings that were being 16 taken of the five VCM cars on February 5th 17 and February 6th were unreliable? 18 MR. BRAGA: Object to the form. 19 THE WITNESS: I did not 20 generate any data, no, sir. 21 QUESTIONS BY MR. ELLIS: 22 Q. And you didn't text anybody 23 that? 24 A. No, sir. 25 Q. You didn't e-mail anybody that?</p>
<p style="text-align: right;">Page 443</p> <p>1 temperature readings were unreliable? 2 A. No. 3 Q. What about Mr. Wood? Did you 4 tell Mr. Wood that you thought the 5 temperature readings you were getting were 6 unreliable? 7 A. I do not remember. 8 Q. What about Mr. Gould? Did you 9 tell him that the temperature readings you 10 were getting were unreliable? 11 A. I believe so. 12 Q. When did you tell him that? 13 A. I do not remember. 14 Q. Do you remember if it was on 15 February 5th or February 6th? 16 A. It would have been on 17 February 5th. 18 Q. Do you remember where you were 19 when you were having that conversation with 20 Mr. Gould? 21 A. Either in the fire station, 22 walking across the parking lot going towards 23 city hall or on-site. 24 Q. And tell me everything that you 25 said to him and he said to you.</p>	<p style="text-align: right;">Page 445</p> <p>1 A. No, sir. 2 Q. Did you ever try to get more 3 reliable temperature readings? 4 A. The problem you have with a 5 material that is potentially polymerizing is 6 you get a buildup of polymer on the inside of 7 the car. So you could be taking an erroneous 8 reading because it could almost insulate that 9 spot or those spots that you're hitting. You 10 don't know where the polymer is. The polymer 11 could be all over the inside of the tank. 12 Q. So was the reason you thought 13 the temperature readings were unreliable 14 because you thought polymer was inside the 15 tank and blocking the readings? 16 A. It was possible. 17 Q. Was there any other reason you 18 thought the readings were unreliable? 19 A. I was concerned that the 20 reliability of the instruments, contact 21 thermometers, polymer buildup on the inside 22 of the car and such. 23 Q. You said contact thermometers. 24 You weren't using a contact thermometer, were 25 you?</p>

1 A. There were contact thermometers
2 used, and I was concerned with the accuracy
3 of those, along with the IR guns.

4 Q. Okay. The IR gun, were you
5 concerned about the inaccuracy of those
6 readings, other than the fact that you
7 thought polymer might be blocking the
8 reading?

9 A. That's the reason.

10 Q. That's the sole reason for the
11 IR gun.

12 Is that right?

13 A. That is a reason, yes.

14 Q. Were there any other reasons
15 you were worried about the IR readings?

16 A. If they were -- if they were --
17 weren't giving us a true reading.

18 Q. What about the IR gun made you
19 concerned about a true reading other than
20 polymer?

21 A. Age is part of it. The
22 accuracy is not spot-on. We needed really
23 good data and couldn't get it.

24 Q. The --

25 A. The only way to get good data

1 is to put a thermometer into the thermometer
2 well to get a temperature of the core of the
3 product.

4 Q. Did you ever try to get a
5 temperature in the well?

6 A. I could not get into the
7 thermometer well.

8 Q. Did you try?

9 A. No.

10 Q. Could we move on to the next --
11 I have a video that we're going to show you.
12 It's tab -- what tab is it?

13 MS. COLLIER: 51.

14 (Day Exhibit 19 marked for
15 identification.)

16 QUESTIONS BY MR. ELLIS:

17 Q. 51. And we'll mark this video
18 Exhibit 19.

19 Before we show the video, you
20 gave some testimony about seeing what you
21 thought were sparklers after the vent and
22 burn was initiated that you believed to be
23 polymer.

24 Correct?

25 A. Yes, sir.

1 Q. Did you tell other people --
2 let me ask you this.

3 Did you tell anybody at Norfolk
4 Southern that you saw material that you
5 believed to be polymer?

6 A. Yes, sir.

7 Q. Who did you tell?

8 A. Pretty much everybody that we
9 met with after the vent and burn was done.

10 Q. And when you say "pretty much
11 everyone," who do you mean?

12 A. Mr. Wood, Mr. Deutsch,
13 Mr. Gould, my crew.

14 Q. Did they ask you whether you
15 saw polymer, or did you volunteer it?

16 A. I volunteered it.

17 Q. Other than people at Norfolk
18 Southern, who else did you tell?

19 A. We had discussions with the Oxy
20 Vinyl folks.

21 Q. On February 6th?

22 A. I don't remember when we talked
23 to them.

24 Q. On February 6th, did you have
25 any discussions with anybody other than

1 Norfolk Southern about your views that you
2 saw polymer when the vent and burn was
3 initiated?

4 A. There was a lot going on after
5 the vent and burn operation, so I talked to a
6 lot of people in the heat of the moment, so I
7 don't remember.

8 Q. You don't remember one way or
9 the other.

10 Is that right?

11 A. I don't remember.

12 Q. Could we play the video?
13 (Video played.)

14 Q. When you -- when you see, if
15 you see -- can we just stop for a second?

16 Sorry, this is not super...

17 My question for you is, if you
18 see in this video what you believed was
19 polymer ejecting from the tanks, let us know
20 and we'll stop.

21 Okay?

22 A. Sure.

23 Q. Okay?

24 A. Okay.

25 Q. Okay. Go ahead and play the

<p style="text-align: right;">Page 450</p> <p>1 video. 2 (Video played.) 3 Q. So far in the video, do you see 4 anything that you thought was polymer? 5 A. No, sir. 6 Q. You do not? 7 A. No, sir. 8 Q. Okay. You can stop the video 9 now. 10 MR. BRAGA: Can we put on the 11 record what timestamp we stopped it 12 at? 13 MR. ELLIS: Well, let's let it 14 play all the way through. Apologies. 15 MR. BRAGA: Thank you. 16 (Video played.) 17 QUESTIONS BY MR. ELLIS: 18 Q. While you're looking, when you 19 saw the polymer, was it at the beginning of 20 the initiation or at the end? 21 A. The beginning. 22 Q. It was at the beginning. 23 So we would have already passed 24 it if you had seen it in this video. 25 Is that right?</p>	<p style="text-align: right;">Page 452</p> <p>1 QUESTIONS BY MR. ELLIS: 2 Q. Mr. Day, you've been handed 3 what's been marked as Day Exhibit Number 20. 4 It's two photographs. One is SRS 000589, and 5 the other one is 590. These came from 6 production from your company. 7 Do you recognize those two 8 photos? 9 A. I do. 10 Q. Were these taken from your 11 point of view, from where you were standing 12 when the vent and burn was executed? 13 A. No, sir. 14 Q. Is this -- do you know what 15 point of view this is? 16 A. Pretty poor pictures. 17 MR. BRAGA: Object to the form. 18 QUESTIONS BY MR. ELLIS: 19 Q. Are these stills from the 20 drone? 21 A. I can't tell you. I do not 22 know. 23 Q. Okay. Do you know where these 24 two -- 25 A. These are going to --</p>
<p style="text-align: right;">Page 451</p> <p>1 A. This is on the opposite side 2 from where I was. 3 Q. This is on the opposite side 4 from where you were? 5 A. Yes, sir. 6 Q. Okay. But you didn't see it in 7 this video. 8 Is that correct? 9 A. That's correct. 10 Q. And Tab 49. 11 VIDEOGRAPHER: It's going to be 12 Exhibit 20. 13 MR. ELLIS: Okay. Let's -- we 14 need to organize exhibits. Can we go 15 off the record for a minute? 16 VIDEOGRAPHER: All right. The 17 time is 5:34 p.m. We're going off the 18 record. 19 (Off the record at 5:34 p.m.) 20 VIDEOGRAPHER: The time is 21 5:42 p.m., and we're back on the 22 record. 23 (Day Exhibit 20 marked for 24 identification.) 25</p>	<p style="text-align: right;">Page 453</p> <p>1 Q. -- photographs came from? 2 A. These are going to have to be 3 screenshots from a video. 4 Q. Okay. Do you -- my question 5 was simply -- they came out of an SRS 6 production, so my question is, do you know 7 where they came from? 8 A. No, sir. 9 Q. Okay. Do either of these 10 pictures depict what you believed were the 11 sparklers evidencing polymerization at the 12 time the vent and burn was executed? 13 A. No, sir. 14 Q. Since that day, have you ever 15 seen any photo or video of the sparklers that 16 you believed you saw showing polymerization 17 when the vent and burn was executed? 18 A. No, sir. 19 Q. After the vent and burn, did 20 you go to the scene to see if there was any 21 physical evidence of polymerization? 22 A. The fires burned for several -- 23 several hours afterwards, and once it -- I 24 didn't go back until the next day. 25 Q. Okay. And the next day, did</p>

<p style="text-align: right;">Page 454</p> <p>1 you look for pieces of polymer or any 2 physical evidence of polymerization? 3 A. Everything was burned up. 4 Q. My question simply was, did you 5 look for physical evidence of polymerization, 6 including any of the sparklers that you saw? 7 A. There was no need because 8 everything was burned up. 9 Q. Okay. Did anybody tell you 10 that they saw any physical evidence of 11 polymerization from any of the VCM cars? 12 A. No, sir. 13 Q. And to this day, other than the 14 time you thought you saw it at the time of 15 the vent and burn, have you ever seen 16 evidence of polymerization? 17 A. Just what's in the bottom of 18 the cars. 19 Q. I'm sorry? 20 A. Just what is in the bottom of 21 the cars that was photo-documented. 22 Q. Okay. You saw it in your 23 photographs. 24 Have you seen any other 25 evidence that you believed is evidence of</p>	<p style="text-align: right;">Page 456</p> <p>1 temperature measurements that you and others 2 were taking. Other than it being something 3 that you do when you respond to an emergency, 4 i.e., take tank temperatures, did you have an 5 understanding as to any other reason why you 6 were doing it? 7 MR. BRAGA: Object to the form. 8 THE WITNESS: During the damage 9 assessment phase of -- during the 10 damage assessment of the response to 11 tank cars, there's multiple things 12 that we do. One is take temperatures. 13 One is take pressures. One is to 14 inspect as much of the visible shell 15 of the car. 16 QUESTIONS BY MR. ELLIS: 17 Q. Okay. So part of the standard 18 response is to take VCM tank car temperatures 19 or any flammable gas, pressurized flammable 20 gas, tank car. 21 Right? 22 MR. BRAGA: Objection. 23 THE WITNESS: Any car that's 24 involved in fire, we'll take 25 temperatures.</p>
<p style="text-align: right;">Page 455</p> <p>1 polymerization? 2 A. No, sir. 3 MR. BRAGA: Object to the form. 4 QUESTIONS BY MR. ELLIS: 5 Q. You kind of stepped on your 6 lawyer. 7 Is the answer no? 8 A. No, sir. 9 MR. BRAGA: He's been stepping 10 on me all day. 11 QUESTIONS BY MR. ELLIS: 12 Q. We have one more video. We'll 13 mark this as Exhibit 21. 14 And again, same for this one. 15 If you see while we're playing this video 16 what you believe to be the evidence of 17 polymerization or indication of sparklers 18 that you've said you saw, let us know and 19 we'll stop. 20 Okay? 21 Oh, we need to tell Gina? 22 Let's -- let's scrub this. 23 We'll do this one later. We will not mark 24 Exhibit 21. 25 We were discussing the</p>	<p style="text-align: right;">Page 457</p> <p>1 QUESTIONS BY MR. ELLIS: 2 Q. Okay. And when you take 3 temperatures -- well, let me ask you this. 4 Did you also have an 5 understanding that Oxy Vinyls wanted 6 temperatures taken? 7 MR. BRAGA: Object to the form. 8 THE WITNESS: Ask the question 9 again. 10 QUESTIONS BY MR. ELLIS: 11 Q. Did you have an understanding 12 either on February 5th or February 6th that 13 Oxy Vinyls suggested taking temperatures of 14 the tank cars? 15 A. I believe that is why a 16 concerted effort was made to take 17 temperatures. 18 Q. Okay. And did that include 19 your concerted effort? 20 A. I was one of them that took 21 temperatures, yes, sir. 22 Q. So one of the reasons you were 23 taking your temperatures on Cars 30 and 31 24 was because Oxy Vinyls had said that that was 25 a way you could determine whether</p>

<p style="text-align: right;">Page 458</p> <p>1 polymerization was occurring. 2 Right? 3 MR. BRAGA: Object to the form. 4 THE WITNESS: The NS asked us 5 to take temperatures at as many places 6 as we could on all of the cars. 7 QUESTIONS BY MR. ELLIS: 8 Q. And the NS asked you to take 9 those temperatures, in part, because Oxy 10 Vinyls wanted them. 11 Right? 12 MR. LEVINE: Objection. 13 MR. BRAGA: Object to the form. 14 THE WITNESS: That would be a 15 question for NS folks. 16 QUESTIONS BY MR. ELLIS: 17 Q. My question is, did you have an 18 understanding as to why you were doing it? 19 A. My understanding -- 20 MR. LEVINE: Objection. 21 THE WITNESS: -- was my 22 customer asked for temperatures to be 23 taken, and that was done. 24 QUESTIONS BY MR. ELLIS: 25 Q. Did you have any understanding</p>	<p style="text-align: right;">Page 460</p> <p>1 excuse me, temperature of the cars. 2 (Day Exhibit 21 marked for 3 identification.) 4 QUESTIONS BY MR. ELLIS: 5 Q. We now have that video, so we 6 will mark that as Exhibit 21. Excuse me. 7 Same instructions. If you see what you 8 believed are the sparklers or evidence of 9 polymerization, let us know. 10 (Video played.) 11 Q. And I think as we discussed 12 before, what you saw was at the beginning, so 13 if you would have seen it, you would have 14 seen it by now. 15 Right? 16 A. So these two pictures are a 17 screenshot of that video, and I was on the 18 opposite side of the derailment. 19 Q. Okay. This video, this was a 20 video you sent around to colleagues and other 21 folks you knew right after the vent and burn. 22 Right? 23 A. If this is the Channel 8 News 24 video, yes. 25 Q. Okay. Did you take any video</p>
<p style="text-align: right;">Page 459</p> <p>1 that that was at Oxy Vinyls' request? 2 MR. LEVINE: Objection. 3 THE WITNESS: We were working 4 for the Norfolk Southern, and they 5 asked us to take temperatures. 6 QUESTIONS BY MR. ELLIS: 7 Q. My question was different. 8 My question was, excuse me, did 9 you have an understanding that Norfolk 10 Southern wanted it because Oxy Vinyls had 11 asked? 12 A. That would be -- 13 MR. LEVINE: Objection. 14 MR. BRAGA: Objection. 15 THE WITNESS: That would be a 16 question for the Norfolk Southern. 17 QUESTIONS BY MR. ELLIS: 18 Q. I understand. 19 My question was your 20 understanding. Did you have that 21 understanding? 22 MR. LEVINE: Objection. 23 THE WITNESS: My customer asked 24 me to perform -- or asked us as a 25 group to perform air monitoring -- or,</p>	<p style="text-align: right;">Page 461</p> <p>1 yourself of the vent and burn? 2 A. I did not. 3 Q. Okay. And I think you answered 4 this, but nobody told you that they saw 5 physical evidence of polymerization at the 6 time of the vent and burn. 7 Right? 8 MR. BRAGA: Object. 9 THE WITNESS: Ask that question 10 again. 11 QUESTIONS BY MR. ELLIS: 12 Q. Nobody told you that they saw 13 physical evidence of polymerization at the 14 time of the vent and burn? 15 A. No, sir. 16 Q. The temperatures that were 17 being taken, did you -- the temperature 18 readings on the VCM cars that were being 19 taken, did you ever learn the results of 20 those on the 5th or 6th of February? 21 A. Excuse me? I don't -- I don't 22 understand your question. 23 Q. Well, you took two temperature 24 measurements, and then other folks at either 25 SRS or SPSI took temperature measurements on</p>

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1 the five VCM cars.
 2 Right?
 3 A. Correct.
 4 Q. Okay. And did you, on the 5th
 5 or 6th of February, learn the results of
 6 those measurements?
 7 A. It's -- all the measurements
 8 are in these documents.
 9 Q. I get that.
 10 Some of the documents you only
 11 saw for the first time yesterday.
 12 Right?
 13 A. Correct.
 14 Q. Okay. My question was, on the
 15 5th or the 6th, did you personally learn the
 16 results of those temperature readings?
 17 A. I heard temperatures --
 18 MR. BRAGA: What's that noise?
 19 THE WITNESS: Somebody is
 20 outside yelling.
 21 MR. LEVINE: It's outside.
 22 MR. BRAGA: Oh, okay. Future
 23 client.
 24 Sorry, go ahead.
 25 MR. ELLIS: They're protesting

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1 you, is what I was going to say.
 2 MR. BRAGA: Yeah.
 3 QUESTIONS BY MR. ELLIS:
 4 Q. Did you learn the results of
 5 those temperature readings?
 6 A. I heard some numbers, yes.
 7 Q. What numbers did you hear?
 8 A. 130s.
 9 Q. You heard 130s.
 10 Was it with respect to a
 11 specific VCM car?
 12 A. No, sir.
 13 Q. Did you have an understanding
 14 as to which VCM car was getting 130
 15 temperature readings?
 16 A. There was discussion, and I'd
 17 learned afterwards during the NTSB hearing
 18 that they were the Car 55. I'd have to refer
 19 back to one of these exhibits where the cars
 20 are. 54, 55.
 21 MR. BRAGA: You want to look
 22 back at 13?
 23 THE WITNESS: 55.
 24 QUESTIONS BY MR. ELLIS:
 25 Q. Okay. But that's something you

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1 learned after the fact.
 2 Is that right?
 3 A. Correct. Correct.
 4 Q. You yourself never learned
 5 which specific VCM car was getting a 130
 6 reading.
 7 Is that correct?
 8 A. I believe so, yes.
 9 Q. And you never learned when that
 10 reading occurred or whether it was higher or
 11 lower.
 12 Is that correct?
 13 A. Correct.
 14 Q. What about -- did you learn
 15 whether it was all five VCM cars that had 130
 16 or whether it was just one at the time,
 17 either on the 5th or the 6th of February?
 18 A. I didn't put a lot of emphasis
 19 on the temperatures that they were -- that
 20 people were getting, receiving. I heard on
 21 the radio 60s, 70s. I heard that
 22 information.
 23 I didn't put a lot of credence
 24 in it because of the concern that we had
 25 polymerization going on, and it -- the

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1 readings could be wrong.
 2 Q. Okay. So am I right then that
 3 your decision to execute a vent and burn on
 4 all five VCM cars didn't involve the
 5 temperature readings at all?
 6 MR. LEVINE: Objection.
 7 MR. BRAGA: Objection to the
 8 form.
 9 THE WITNESS: A, I didn't make
 10 the decision to vent and burn. I was
 11 part of a group that recommended to
 12 the NS to take to the incident
 13 commander to vent and burn those five
 14 cars.
 15 QUESTIONS BY MR. ELLIS:
 16 Q. You told folks it was the
 17 toughest decision you ever made.
 18 Didn't you?
 19 A. I did.
 20 Q. Okay. And when you were making
 21 a decision, did you consider temperatures or
 22 not?
 23 A. I considered a lot of things.
 24 Q. Did you consider temperatures?
 25 A. I didn't put a lot of credence

<p style="text-align: right;">Page 466</p> <p>1 in the temperatures, no.</p> <p>2 Q. Did you consider the</p> <p>3 temperatures at all?</p> <p>4 A. I don't remember.</p> <p>5 Q. You don't remember whether you</p> <p>6 considered temperatures at all.</p> <p>7 Is that your testimony?</p> <p>8 A. That is my testimony.</p> <p>9 Q. In your training, in the</p> <p>10 seminars that you've been in, when you're</p> <p>11 measuring a VCM tank car temperature as part</p> <p>12 of your damage assessment, is there a</p> <p>13 recommendation as to where on the car you</p> <p>14 should shoot the temperature?</p> <p>15 MR. BRAGA: Objection.</p> <p>16 THE WITNESS: The shell.</p> <p>17 QUESTIONS BY MR. ELLIS:</p> <p>18 Q. On the shell.</p> <p>19 Any particular place of the</p> <p>20 shell?</p> <p>21 A. The shell.</p> <p>22 Q. My question was, in your</p> <p>23 trainings, in the manuals you rely on, is</p> <p>24 there any recommendation as to where on the</p> <p>25 shell you should shoot the temperature?</p>	<p style="text-align: right;">Page 468</p> <p>1 IR camera or an IR gun, is there any specific</p> <p>2 recommended place to shoot that temperature?</p> <p>3 A. On the shell.</p> <p>4 Q. Just anywhere on the shell?</p> <p>5 A. On the shell.</p> <p>6 Q. Anywhere on the shell?</p> <p>7 A. On the shell.</p> <p>8 Q. My question was, is it</p> <p>9 anywhere? Is anywhere on the shell an</p> <p>10 acceptable place in your view?</p> <p>11 A. As long as it's on the shell.</p> <p>12 Q. Okay. Is there any specific</p> <p>13 manner of IR temperature measurement device,</p> <p>14 either a camera or a gun, that is the</p> <p>15 preferred way if you can't measure in the</p> <p>16 well?</p> <p>17 MR. BRAGA: Objection.</p> <p>18 THE WITNESS: The more</p> <p>19 sophisticated the equipment, obviously</p> <p>20 the better the readings are. There</p> <p>21 are some -- there are some equipment</p> <p>22 out there that can read through</p> <p>23 jacket, but they're few and far</p> <p>24 between. They're not readily</p> <p>25 available.</p>
<p style="text-align: right;">Page 467</p> <p>1 MR. BRAGA: Objection.</p> <p>2 THE WITNESS: On the shell, in</p> <p>3 the liquid phase.</p> <p>4 QUESTIONS BY MR. ELLIS:</p> <p>5 Q. On the shell, in the liquid</p> <p>6 phase.</p> <p>7 How do you make that</p> <p>8 determination?</p> <p>9 A. Hope and prayer.</p> <p>10 Q. Okay. Other than on the shell,</p> <p>11 in the liquid phase, in your trainings, in</p> <p>12 the literature that you rely on as part of</p> <p>13 your damage assessment in a VCM tank car</p> <p>14 emergency response, is there any more</p> <p>15 specific place that you're instructed to take</p> <p>16 the temp -- shoot the temperature?</p> <p>17 MR. BRAGA: Objection.</p> <p>18 THE WITNESS: Shoot the</p> <p>19 temperature, no.</p> <p>20 The easy -- the best way to get</p> <p>21 a core temperature is to put</p> <p>22 thermometer -- the thermometer into</p> <p>23 the thermometer well.</p> <p>24 QUESTIONS BY MR. ELLIS:</p> <p>25 Q. Okay. And if you're using an</p>	<p style="text-align: right;">Page 469</p> <p>1 QUESTIONS BY MR. ELLIS:</p> <p>2 Q. And --</p> <p>3 A. It takes --</p> <p>4 Q. -- does SRS have any of those?</p> <p>5 A. -- to be able to operate that</p> <p>6 gun. And a lot of times the folks that come</p> <p>7 in to operate those guns are not qualified to</p> <p>8 be on a hazardous waste site, even under</p> <p>9 emergency conditions.</p> <p>10 Q. Does SRS have access to that</p> <p>11 sophisticated equipment?</p> <p>12 A. We have access through</p> <p>13 subcontractors.</p> <p>14 Q. Okay. Did you use it here?</p> <p>15 A. No, sir.</p> <p>16 Q. Why not?</p> <p>17 A. Didn't -- it was not available.</p> <p>18 Q. Did you try and check to see if</p> <p>19 it was available?</p> <p>20 A. I personally did not.</p> <p>21 Q. Who did?</p> <p>22 A. I can't tell you that.</p> <p>23 Q. Do you know of anybody checking</p> <p>24 to see if the sophisticated measuring</p> <p>25 equipment that's available to SRS was</p>

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1 available for this particular incident?
 2 A. I did not ask.
 3 MR. BRAGA: Objection.
 4 QUESTIONS BY MR. ELLIS:
 5 Q. Did you personally witness all
 6 five tank car PRDs actuate?
 7 A. I -- no, I saw video of one.
 8 Q. Okay. Did you personally
 9 witness any of the PRDs actuate on any of the
 10 VCM cars?
 11 A. No, sir.
 12 Q. And you saw video of one. That
 13 was the video that you were sent when you
 14 were first called in after you reached out to
 15 Mr. Schoendorfer.
 16 Right?
 17 A. That's correct.
 18 Q. And you sent that to your
 19 colleagues, and that was the PRD that
 20 actuated for what folks on-scene estimated to
 21 be 70 minutes.
 22 Correct?
 23 A. That's correct.
 24 Q. While you were on-scene, none
 25 of the PRDs activated.

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1 Right? Actuated?
 2 A. That is correct.
 3 MR. BRAGA: Object to the form.
 4 MR. ELLIS: I think we're at a
 5 good stopping point. I think we've
 6 used almost all of our time, so that's
 7 all I have for you right now.
 8 VIDEOGRAPHER: Any other
 9 statements for the record?
 10 Okay. The time is 5:58 p.m. on
 11 January 16, 2024. We're going off the
 12 record, completing today's
 13 video-recorded session.
 14 (Deposition concluded at 5:58 p.m.)
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1 CERTIFICATE
 2 I, CARRIE A. CAMPBELL, Registered
 3 Diplomat Reporter, Certified Realtime
 4 Reporter and Certified Shorthand Reporter, do
 5 hereby certify that prior to the commencement
 6 of the examination, Charles Day, was duly
 7 sworn by me to testify to the truth, the
 8 whole truth and nothing but the truth.
 9 I DO FURTHER CERTIFY that the
 10 foregoing is a verbatim transcript of the
 11 testimony as taken stenographically by and
 12 before me at the time, place and on the date
 13 hereinbefore set forth, to the best of my
 14 ability.
 15
 16 I DO FURTHER CERTIFY that I am
 17 neither a relative nor employee nor attorney
 18 nor counsel of any of the parties to this
 19 action, and that I am neither a relative nor
 20 employee of such attorney or counsel, and
 21 that I am not financially interested in the
 22 action.
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ACKNOWLEDGMENT OF DEPONENT

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4 I, _____, do
hereby certify that I have read the foregoing
5 pages and that the same is a correct
transcription of the answers given by me to
6 the questions therein propounded, except for
the corrections or changes in form or
7 substance, if any, noted in the attached
Errata Sheet.

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Charles Day DATE

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15 Subscribed and sworn to before me this
16 _____ day of _____, 20 _____.
17 My commission expires: _____

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19 Notary Public

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LAWYER'S NOTES

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