COMBINED PUBLIC MEETING AND EXECUTIVE SESSION
OF THE
MARICOPA COUNTY AIR POLLUTION HEARING BOARD

In Re:	)
	)
	)
Hickman's Egg Farm,	)
Permit No. 140062	)
	)
	)
	)
	)

Phoenix, Arizona
November 7, 2016
1:05 p.m.

REPORTED BY:
LAURA A. ASHBROOK, RMR
Certified Reporter
Certificate No. 50360
PREPARED FOR:
Maricopa County Air Pollution
Hearing Board
(Certified Copy)

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4 DANIEL E. BLACKSON 15

5

6 KATHY JEAN MARTIN

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9 RICHARD ALAN SUMNER

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25 Meeting of the Maricopa County Air Poll

1 Hearing Board was taken on November 7, 2016, commenci
2 1:05 p.m. at the offices of the Maricopa County Air
3 Quality Department, 1001 North Central Aveune, Suite
4 Phoenix, Arizona, before LAURA A. ASHBROOK, a Certifi
5 Reporter in the State of Arizona.
6
7 MARICOPA COUNTY AIR POLLUTION HEARING BOARD:
8 SHANE LEONARD, Chairperson
District 1
9
LUCAS NARDUCCI,
10 District 2
11 KIM McEACHERN,
District 3
12
SINE KERR,
13 District 4
14 BRIAN DAVIDSON, Vice Chair
District 5
15
ERIC HISER,
16 Board Attorney
17
For the Petitioner Appellant:
18
DANIEL E. BLACKSON
19 42211 W. Salome Highway
Tonopah, Arizona 85354
20
21 For the Department of Air Quality:
22 ROBERT SWAN
Deputy County Attorney
23 222 North Central Avenue
Suite 1100
24 Phoenix, Arizona
25 P R O C E E D I N G S

1
2 CHAIRMAN LEONARD: Folks, I'd like to c
3 this meeting of the Maricopa County Air Pollution Hea
4 Board together. I'll note the start time as 1:05. A
5 mentioned earlier, the first agenda item will be to m
6 into executive session so we can get a little instruc
7 from our folks. I appreciate your deference. Don't
8 too far because we'll try and get back right about 1:
9 With that, I will entertain a motion t
10 into executive session, please.
11 MR. NARDUCCI: Move to go into executiv
12 session.
13 MS. KERR: Second.
14 CHAIRMAN LEONARD: All in favor?
15 (All members responded in the affirmati
16 CHAIRMAN LEONARD: Any opposed?
17 (There was no response.)
18 CHAIRMAN LEONARD: All right, folks. W
19 going into executive session. Stay where you're at a
20 we'll kick over into the other room.
21 (Recess taken, 1:07 p.m. to 1:41 p.m.)
22 CHAIRMAN LEONARD: Thank you very much
23 your patience, folks. I'll entertain a motion to go
24 into open session, please.
25 MR. NARDUCCI: So moved.

1 CHAIRMAN LEONARD: Second?
2 MR. DAVIDSON: Second.
3 CHAIRMAN LEONARD: All those in favor?
4 (All members responded in the affirmati
5 CHAIRMAN LEONARD: Any opposed?
6 (There was no response.)
7 CHAIRMAN LEONARD: All right. We are b
8 in open session. Okay. Folks, again, thanks for you
9 patience. We appreciate you giving the board an
10 opportunity to kind of run through what we think our
11 process rules are supposed to be today.
12 For purposes, however, of clarification
13 know some folks in the audience may not have ever don
14 this before. So what I'd like to do is have Mr. Hise
15 kind of run you through the process we're going to go
16 through today.
17 One of the things that I want to make s
18 point out is that the majority of today's hearing is
19 to be between Mr. Blackson and the Department. We ha
20 at the end of the hearing, a place for public comment
21 which is where I think some folks are going to want t
22 talk, understanding though that that won't take place
23 matter of the hearing.
24 So if you do have something you'd like
25 say, certainly stay so we can get those comments. Th

1 won't be a part of the actual hearing. That doesn't
2 it won't be put into the meeting minutes, so it will
3 there. I just want to make sure folks understand.
4 So for purposes of Mr. Blackson and pur
5 of Mr. Swan and the Department, if Mr. Hiser you go a
6 and walk us through what the process is going to be.
7 way, everybody is on the same page, please.
8 MR. HISER: Thank you, Mr. Chairman. T
9 is the second hearing in this matter. In the previou
10 hearing, the Board had decided that the issues that w
11 would be investigating today are the propriety of the
12 procedures that were used in issuance of the minor pe
13 revision and any issue going to the minor permit revi
14 itself.
15 At this hearing, we will start with fiv
16 minutes per side for opening arguments, that you can
17 sort of a preview of your case you will be putting on
18 We'll start with Mr. Blackson as the petitioner appel
19 who will be followed by Mr. Swan responding on behalf
20 the Department.
21 We will then go to the petitioner
22 appellant's case which will be Mr. Blackson. He will
23 be able to put on the testimony. We understand that
24 will be testimony from himself as a witness and also
25 an expert. Following each witness' testimony, there

1 be an opportunity for cross-examination by the other
2 party.
3 After Mr. Blackson is finished with his
4 case-in-chief and if he feels he wants to reserve tim
5 rebuttal, we may come back to rebuttal. Then we'll g
6 Mr. Swan. Mr. Swan will be able to put on any witnes
7 that he chooses to do so. Mr. Blackson will have an
8 opportunity to cross-examine those witnesses.
9 If there is a request for rebuttal, we'
10 then handle any rebuttal witness testimony that we ne
11 do so and then we will close with, say, ten minutes p
12 party for the closing arguments, because you'll have
13 little bit more to talk about because there will be
14 evidence and stuff in the record at that point.
15 We would like to hold this hearing to
16 close -- somewhere between the -- 4:30, around that t
17 So that's roughly about an hour and 20 minutes per pa
18 We will also take a break in the middle of the day to
19 allow people to go out and use the restroom or whatev
20 If you do need to break during the day, just please g
21 and try not to make too much noise going through the
22 doors.
23 I believe that is most of the informati
24 that we need to have. Just to clarify for the partie
25 the Board has, once again, asked me to serve in the

1 capacity of the hearing examiner, so I may be asking
2 questions for the purpose of expanding the record for
3 Board's consideration as well.
4 Are there any questions from the partie
5 With that then, Mr. Chairman, I will turn it back ove
6 you to start the hearing.
7 CHAIRMAN LEONARD: Thank you very much.
8 Just one reminder: We do have a court reporter in th
9 room today so I would ask, as best you can, to kind o
10 look over every once in a while; I will too, in case
11 gets behind or her fingers start cramping or whatever
12 be the case, just as a reminder, and then again, if
13 something happens and you need some assistance, just
14 me know.
15 So with that, Mr. Blackson, the floor i
16 yours for opening statement, please.
17 MR. BLACKSON: Thank you. Chairman Leo
18 and members of the Board, Maricopa County Air Quality
19 Department alleges that the Department has not develo
20 regulations addressing animal feeding operations emis
21 from the units covered in the EPA study for two main
22 reasons: one the absence of reliable emissions factor
23 and, two, the federal and state law limit the Departm
24 authority to promulgate regulations regarding animal
25 feeding operations emissions from units in the EPA st

1 They also note that the Arizona Department of
2 Environmental Quality has not adopted relevant
3 regulations, and their second reason for not addressi
4 is that emissions from the Tonopah Egg Ranch poultry
5 operation are fugitive.
6 My pre-hearing disclosure refutes the
7 Department's position that a new source review was no
8 necessary to determine whether or not a Title V or
9 non-Title V permit is appropriate for the Tonopah Egg
10 Ranch operation from this day forward. I understand
11 the underlying permit is not at issue, and what is at
12 issue is whether a non-Title V permit is still approp
13 or whether from this day forward, it should be a Titl
14 permit.
15 Our arguments demonstrate that the
16 Department's decision was arbitrary, unreasonable,
17 unlawful and the technical judgment was invalid, and
18 that's what I need to demonstrate to you, according t
19 your procedures, and I believe that I can do that. T
20 Department's position on this permit action is at odd
21 with their obligation under their EPA delegated autho
22 and Clean Act responsibilities with respect to the To
23 Egg Ranch permit action that we are here to discuss t
24 The Department is intentionally limitin
25 scope of the minor permit modification review by igno

1 stationary sources that are at the facility which wou
2 demonstrate to have the potential to emit more than
3 100 tons per year of new source review pollutants.
4 We will lay the regulatory foundation
5 through the Department's rule showing that the Depart
6 has the ability to and the obligation to conduct a ne
7 source review. We will show that there are published
8 emission factors that can be used to calculate estima
9 emissions from poultry operations. We will show that
10 is no longer -- that there are no longer reasons to i
11 stationary sources of the Tonopah Egg Ranch.
12 We are also going to show today that th
13 Department did not follow rules performing a new sour
14 review during the minor permit modification process.
15 Department intentionally limited their review process
16 ignoring stationary sources that have the potential t
17 emit more than 100 tons per year of new source review
18 pollutants. Department continues to ignore these
19 stationary sources in an arbitrary, capricious way.
20 In August, the Board ruled on the
21 jurisdiction of this hearing. As recent as Friday la
22 week, the Department again made an effort to limit th
23 scope of this hearing to emissions only from the dies
24 for the emergency generators and the boiler operation
25 intend to provide testimony, including myself and exp

1 witness, to demonstrate that a new source review with
2 minor permit modification should have been done and t
3 new source review pollutants quantified.
4 Expert witness Miss Martin will testify
5 about emissions calculations permitting major station
6 sources at the facility. We intend to challenge the
7 Department's position on fugitive emissions and
8 demonstrate that the emissions are non-fugitive.
9 I can only use the plain language of th
10 Clean Air Act of Maricopa County state implementation
11 air quality rules and that will be the basis of my
12 argument. Although I've been able to find some legal
13 cases on the internet that support my appeal, I don't
14 the skills or the ability to find, cite or weave cour
15 cases into the legal argument.
16 However, I would like to make a stateme
17 about the Chevron USA, Incorporated versus Natural
18 Resources Defense Council. That was a Supreme Court
19 It seems to me that the laws, regulations and rules a
20 clear, and interpretation is not necessary. Therefor
21 the Chevron decision would not apply.
22 I hope by the end of the day you will a
23 with us that a new source review should have been
24 triggered during the minor permit modification proces
25 Thank you.

1 CHAIRMAN LEONARD: Thank you. Mr. Blac
2 Mr. Swan.
3 MR. SWAN: Mr. Chairman, members of the
4 Board, in the Department's view -- in the Department'
5 view, this is a very simple case that involves an
6 application for a minor permit revision to add boiler
7 generators to an existing operation that already had
8 granted an air quality permit. So, again, we're look
9 at an application for a minor permit revision to an
10 existing permit.
11 The Board's own manual at Section 3.22
12 states that under these circumstances, the petitioner
13 certainly has the right to challenge the Department
14 directors' action in approving that minor permit revi
15 but the petitioner has the high burden to prove that
16 doing so, the Department's decision to issue the revi
17 falls into at least one of the following four categor
18 It was arbitrary; it was unreasonable; it was unlawfu
19 it was based upon a technical judgment that was clear
20 invalid, and the petitioner must -- you must find tha
21 of those four categories of omissions is applicable h
22 It's our argument that you must find that in order to
23 overturn and not confirm the Department directors'
24 decision to issue the permit.
25 Here, the Department's decision to issu

1 minor permit revision should be confirmed under all c
2 those. We met all of those standards and others. Th
3 evidence we will present will confirm that the Depart
4 applied all proper permitting standards and processes
5 At the conclusion of the evidence, the
6 Department will ask the Board to approve the Departme
7 decision to issue the minor permit modification. Tha
8 you.
9 CHAIRMAN LEONARD: Thank you, Mr. Swan.
10 right. Mr. Blackson, however, you would like to proc
11 whether it's you first or you'd like your expert witn
12 to proceed.
13 MR. BLACKSON: What I would like to do
14 is Mr. Swan and I agreed that all of the exhibits tha
15 have been provided in both of our pre-hearing disclos
16 be accepted by the Board as exhibits. So I would lik
17 make that motion.
18 CHAIRMAN LEONARD: Mr. Swan, are you ok
19 with that?
20 MR. SWAN: The Department agrees, yes.
21 CHAIRMAN LEONARD: Thank you, gentlemen
22 doing that. We appreciate that. So we'll note that
23 the record, and thank you.
24 Mr. Hiser, I apologize. Sometimes I ca
25 a little too informal. We need to admit those as par

1 the hearing. We will admit those.
2 MR. BLACKSON: With that, I would also
3 to make a motion to submit some regulatory rules for
4 board to consider also. We've talked -- and it's the
5 understanding that the old version of the county rule
6 have been used to review this permit. So with that,
7 would move that Maricopa County Rules 100, 200, 220,
8 and if, Mr. Swan would agree, also 41 CFR 165 which I
9 believe the county has referenced as a legal citation
10 MR. SWAN: We have no problem with any
11 those being admitted.
12 MR. HISER: I'd just like to clarify wh
13 these are the current rules or these are historic rul
14 MR. BLACKSON: My understanding -- I ha
15 both, but my understanding is they are the historic r
16 MR. HISER: Historic begs the question
17 effective as of what date, just so I know what rules
18 talking about?
19 MR. SWAN: I understand from my colleag
20 Mr. Sumner, who is head of the permitting division, t
21 all four of those rules were updated effectively --
22 effective as of February 2016.
23 MR. HISER: Okay. So these would be th
24 rules in effect in the 2014 time fame as previewed pr
25 to the revision of Rule 16. Thank you.

1 MR. BLACKSON: I do have copies.
2 MR. HISER: Copies would be appreciated
3 Most certainly that was going to be my next question,
4 if you had copies. And just for the record, the CFR
5 reference would be 40 CFR part 51.165.
6 MR. SWAN: In lieu of the citation he g
7 MR. HISER: That's the one I think he
8 intended but he transposed a couple of numbers.
9 MR. BLACKSON: I did. I apologize.
10 CHAIRMAN LEONARD: Okay. If both parti
11 are in agreement, I will accept those as submitted.
12 MR. BLACKSON: Okay. I haven't done th
13 before, but I would like to be able to present the ca
14 So I would call myself as a witness. Is that proper?
15 MR. HISER: So, Mr. Blackson, if you wi
16 raise your right arm.
17 DANIEL E. BLACKSON,
18 a witness herein, having been first duly sworn by the
19 Certified Reporter to speak the truth and nothing but
20 truth, was examined and testified as follows:
21 MR. HISER: Thank you. You may proceed
22 CHAIRMAN LEONARD: Also, so that we hav
23 point of focus, if you need to get back up and get yo
24 information, that's fine, but, again, because of the
25 reporter, if you can make sure every once in a while

1 take a breath. You and I will be doing this together
2 just let me know if something comes up that seems a l
3 funny, all right? Thank you, sir.
4 MR. HISER: And for the benefit of the
5 reporter, if you could start by stating your name and
6 spelling it and your address.
7 MR. BLACKSON: My name is Daniel E.
8 Blackson. D-A-N-I-E-L, E. B-L-A-C-K-S-O-N. My addr
9 is 42211 West Salome Highway, Tonopah, Arizona, 85354
10 So I have some new information that I w
11 like to add, and I have not done this before, so if I
12 drift out of the bounds, please let me know, but I wo
13 like to talk about about the rule process some and al
14 the core of this, our fugitive, non-fugitive emission
15 and I would like to be able to state a position on th
16 So if we could start with Rule 100, I
17 believe there's some important definitions in Rule 10
18 So we'll have the whole version and I would first lik
19 point out the definition of a building and I'm turnin
20 the -- it's in alphabetical order and it can be found
21 page 12, and I think this definition will be importan
22 we talk about fugitive and non-fugitive emissions.
23 So 200.26, ,"Building, Structure, Facil
24 and Installation. All the pollutant emitting equipme
25 and activities that belong to the same industry group

1 that are located on one or more contiguous or adjacen
2 properties and that are under the control of the same
3 person or persons under common control except the
4 activities of any vessel. Pollutant-emitting activiti
5 shall be considered as part of the industrial groupin
6 they belong to the same major group as described in t
7 Standard Industrial Classification Manual, 1987."
8 I would also like to read the fugitive
9 emissions definition. Again, it's alphabetical and i
10 would be found on page 17.
11 "Fugitive emission. Any emission which
12 could not reasonably pass through a stack, chimney, v
13 or other functionally equivalent opening."
14 And then there's also a definition for
15 source, and that's number 60 on page 19. "A major so
16 as defined in Rule 240, permits for new major sources
17 modifications to existing major sources of these rule
18 B talks about hazards, air pollutants w
19 be relevant to this, but C goes on to say at the bott
20 the page, "A major stationary source, as defined in
21 Section 302, definitions of the act, that directly em
22 or has the potential to emit 100 tons per year or mor
23 any air pollutant, including any major source of fugi
24 emissions of any such pollutant."
25 And I would like to stop at this point

1 make a statement that that's fugitive emissions here
2 have to be quantified, so somewhere in the process, e
3 if the emissions from the hen houses are fugitive, th
4 should have at least been calculated to determine whe
5 this is a major source or major stationary source.
6 "The fugitive emissions of a stationary
7 source shall not be considered in determining whether
8 a major stationary source for the purpose of
9 Section 302(j) of the act unless the source belongs t
10 of the following categories," and then this is the li
11 categorical stationary sources that are found in the
12 I don't think there is a need to read through those.
13 There's an important definition
14 on quantifiable at the bottom of page 24. "Quantifia
15 With respect to emissions, including the emissions
16 involved in equivalent emission limits and emission
17 trades, capable of being measured or otherwise determ
18 in terms of quantity and assessed in terms of charact
19 Quantification may be based on emission factors, stac
20 tests, monitored values, operating rates and averagin
21 times, materials used in a process or production, mod
22 or other reasonable measurement practices."
23 So I believe what this is saying is tha
24 emissions can be quantified and you're not limited to
25 using AP-42 in order to quantify those emissions.

1 I believe we'll be talking about source
2 that definition is worth going through. Source is on
3 page 28 at the very bottom. "Source: Any building,
4 structure, facility or installation that may cause or
5 contribute to air pollution."
6 And then with that, there's also a
7 definition of a stationary source. This is on page 2
8 "Any source that operates at a fixed location and tha
9 emits or generates regulated air pollutants."
10 So I would like to say that the Clean A
11 Act does not have an exemption for animal feeding
12 operations, and also, when you look at the county rul
13 rules 200, 210, 220, 240, 241, they describe the
14 permitting process of all sources. Those rules do no
15 have an exemption for animal feeding operations. In
16 if you look at Rule 100, it does not even have a
17 definition of an animal feeding operation.
18 Part of my appeal was issues with the p
19 application for boilers and the source of fuel from
20 boilers. That got sorted out eventually through an e
21 note from Robert Palin to the Department on May 10th,
22 and I would like to motion to enter that record -- to
23 that record an exhibit.
24 CHAIRMAN LEONARD: Mr. Swan?
25 MR. SWAN: I think it's already deemed

1 admitted so --
2 MR. BLACKSON: Oh, it was?
3 MR. SWAN: Was it in the disclosure? I
4 assuming it was.
5 CHAIRMAN LEONARD: Actually, I was goin
6 to -- I'm pretty sure we saw that as a part of your
7 submittal. If it was something different than that,
8 then --
9 MR. BLACKSON: No, it's not. I apologi
10 I just didn't know everything would be accepted.
11 CHAIRMAN LEONARD: No apologies necessa
12 You're good. Thank you.
13 MR. BLACKSON: Do we have a copy of tha
14 that I can read from?
15 It's Exhibit 33. So in this e-mail the
16 a question asked about boilers and the source of fuel
17 I'm sorry -- about the boilers and the existence of a
18 propane tank, and Mr. Fallon or Falin, maybe is how h
19 said his name, came back and responded that there are
20 propane tanks on-site, each of them a thousand gallon
21 that fuel the boilers themselves. That resolved that
22 issue and the tanks were declared to be insignificant
23 that resolved the issue.
24 But as I looked through the records, wh
25 saw is that on the technical support document, it

1 actually -- the final one was actually dated as prepa
2 November 30th, electronically signed on February 17th
3 I am puzzled here how you can receive information in
4 and it get recorded in a document that you have consi
5 to be final in February. So I'm a little bit -- I gu
6 question how the county can do that, and that goes ba
7 is this type of thing arbitrary? Maybe there's no TS
8 there that's not been provided that's dated different
9 is that an illegal type thing?
10 I know as environmental manager and
11 operations manager, if we were to do records required
12 permit or a regulation, if this activity happened, if
13 truly is what happened, that would be pretty egregiou
14 that person might even get terminated back-dating som
15 information into an official record. So I -- so I
16 would -- if there's something more current than that,
17 would really appreciate if the county would volunteer
18 up, and it does go back to the processing of the
19 application and how that's being handled.
20 And then I also came across another con
21 regarding the processing of the permit and -- well, l
22 back up. I kind of got ahead of myself.
23 So the hen houses, I believe, from what
24 read here are definitely stationary sources and they
25 emit regulated air pollutants that would be PM-10, PM

1 and VOC's. The process waste water surface impoundme
2 ponds are stationary sources also, and in the TSD, th
3 Department called them structural. I'll mention now
4 I believe that there's also VOC emissions from that,
5 we will talk about that in a little bit.
6 I would also mention that the definitio
7 stationary sources also found in 40 CFR 51.165, it re
8 reads the same as what the county has but it's a litt
9 bit updated. "Stationary source means any building,
10 structure, facility, installation which emits or may
11 a regulated pollutant, and the regulated -- the PM-10
12 PM-2.5 and the volatile organic compounds are resourc
13 review pollutants."
14 Also in the Code of Federal Regulation,
15 does give a definition of building structure -- of a
16 building, structure, facility and installation, and t
17 definition reads, "Building, structure, facility,
18 installation means all of the pollutant-emitting
19 activities as it belongs to the same industrial group
20 are located at one or more contiguous or adjacent
21 properties and are under the control of the same pers
22 persons under common control, except the activities c
23 vessel pollutant emitting activities, shall be consid
24 as part of the same industrial grouping; they belong
25 the same major group, for example, which have the sam

1 digit codes as described in the standard industrial
2 classification manual," and then it goes on to kind o
3 how that was amended. So, again, the hen houses are
4 buildings and the process waste water surface impound
5 are structures and the TSD does recognize them as
6 structures.
7 The regulated air pollutants from these
8 sources have not been quantified. If you look at the
9 permit application, that applicant left section Z-M p
10 of the minor permit modification application blank bu
11 they do appear on the TSD calculations, and I guess I
12 could stop at this point if we want to actually look
13 those documents.
14 CHAIRMAN LEONARD: Mr. Blackson, if you
15 like us to, we can review that if you want. If not,
16 just, as a reminder, we have all the information as y
17 submitted and we've accepted it into record. If you'
18 saying you'd like to point that out, that's just fine
19 MR. BLACKSON: Thank you. Regarding th
20 waste water ponds, in the TSD, the ponds are mentione
21 that's on page seven in the comments and it states no
22 the chemicals containing VOC or HAPs but there's evid
23 in the ADAQ determination of applicability of other
24 chemicals used in that building, and those chemicals,
25 other than egg washing, do contain VOC's such as chem

1 to clean the floor and probably the walls, and, also,
2 TSD was not comprehensive in its analysis and it didn
3 look at feces and urine, broken egg matter that would
4 on those eggs. That's why they're being washed. So
5 of that matter then would be carried with it through
6 wash water into these ponds and, of course, the biolo
7 activity still continues in those ponds.
8 There's also a matter with the actual p
9 application itself, and there actually may be a third
10 application that predates the two that we have, and I
11 would like to try and clear that up if possible. And
12 going through my records request, there was an e-mail
13 between the permitting supervisor and I believe the
14 permitting engineer that indicated that the original
15 permit application did not have the boilers. So I wo
16 move to include -- and you have not seen this -- incl
17 that e-mail and the attachment into the record as an
18 exhibit.
19 MR. HISER: Mr. Swan, was that included
20 what you were knowing you were admitting?
21 MR. SWAN: Did Mr. Blackson disclose it
22 MR. BLACKSON: I did not because I did
23 find it until Saturday night.
24 MR. HISER: Then Mr. Blackson you will
25 to present a copy of that to Mr. Swan.

1 MR. SWAN: We'll need to review it. I
2 assuming it was part of your disclosure statement. Th
3 Department does not object to the admission of this
4 document. It's a little unclear. There's green, red
5 blue.
6 CHAIRMAN LEONARD: For the court report
7 benefit, Mr. Swan was asking if Mr. Blackson might
8 describe what the different colors in the proposed e-
9 exhibit mean.
10 MR. BLACKSON: Yes. If you look at the
11 e-mail, the cover e-mail on the document, that explai
12 what the colors are. So there could be an explanatio
13 It just looks like there was another application.
14 MR. SWAN: Again, the Department does n
15 object to introduction of this piece of evidence, alt
16 we want to make it clear that the various colors were
17 applied by the Department. I assume they were applie
18 Mr. Blackson or somebody on his team. You found them
19 way?
20 MR. BLACKSON: Yes. If you look at the
21 e-mail, embedded in the e-mail it says, "Todd, the
22 attached document has been revised per your
23 input/suggestion (in red)."
24 MR. SWAN: Okay.
25 MR. BLACKSON: Revised sections --

1 MR. SWAN: Okay. We're satisfied.
2 CHAIRMAN LEONARD: Okay. We'll introdu
3 that. Sorry. I'm used to being on your side of the
4 table. My apologies. We'll admit that, please.
5 MR. BLACKSON: And I would like to make
6 point then that goes back to the Department's actions
7 you know, was that arbitrary? What about the technic
8 decision on that? Where is that other -- that other
9 application? And hopefully, it has not been swept aw
10 somewhere where it can't be found, because I think an
11 important point on that is that a similar facility
12 received the notice of violation, but the Department
13 not to issue a violation to the Tonopah Egg Ranch for
14 same issue of operating boilers without permits.
15 What I would like to do now is just bri
16 mention the non-Title V permit -- minor permit
17 modification process. So if you look at Rule 220, th
18 is a section in this rule -- and I apologize. I real
19 had gone through the revised rules to do this testimo
20 and not so much the older rules. I believe it will b
21 section 405, permit revision procedures and then if y
22 on to 405.3, non-minor permit revisions is kind of wh
23 we're talking about and that's on page 21. So I
24 apologize. This was not a non-minor; this was a minc
25 permit revision.

1 On page 20 and the section 405.2, minor
2 permit revisions. "Minor permit revision procedures
3 used for a change that triggers a new applicable
4 requirement", and then it has steps one, two, three a
5 then, "Minor permit revision procedures shall be used
6 a change that increases operating hours or rates of
7 production", and, "The minor permit revision procedur
8 shall be used for a change in fuel."
9 So on to the next page then, it continu
10 explain the procedures that will be used for a change
11 results in emissions subject to monitoring, record
12 keeping. "E. Minor permit revision procedures shall
13 used for a change that decreases emissions. Minor pe
14 revision procedures shall be used for a change that
15 replaces an item -- " but also complementing this is
16 Rule 200, permit requirements. So Rule 220 has some
17 specifics and Rule 200 also talks about the change.
18 I believe actually I got a little confu
19 with the different rules so the numbering is -- cause
20 a little bit of a problem here, but I think I want to
21 back to Rule 220, section 300 and if you look on
22 page four, it's got the permit application processing
23 procedures, and in these procedures, there is a stand
24 application form and required information, 301.1. Se
25 step, permit application, and a compliance plan; that

1 would be on page five, a timely permit application al
2 and duty to supplement or correct application, action
3 application and then that's the process the agency
4 follows.
5 I would like to point out a couple of
6 particular steps, and on page six, on 301.4, step C,
7 kind of towards the top, "To be complete, an applicat
8 for a new permit or a notification of a permit revisi
9 shall contain an assessment of the applicability of t
10 requirements established under rule --" let's go to E
11 right above it, very top page. "To be complete, an
12 application for a new permit or a notification of a p
13 revision shall contain an assessment of the applicabi
14 of the requirements of Rule 241, permits for new sour
15 and modifications to existing sources of these rules
16 shall comply with all applicable requirements of Rule
17 permits for new sources and modifications to existing
18 sources of these rules."
19 Now, through my records request, that
20 assessment has not been provided. However, if you lo
21 down, the control officer has a lot of leeway on minc
22 permit modifications, and if we go on down to F, "The
23 completeness determination shall not apply to revisic
24 processed through the minor permit revision process."
25 So it would be, I think, pretty arbitra

1 not to require the assessment of Rule 241 and weigh t
2 requirement and allow the minor permit modification t
3 processed. Maybe, maybe not the control officer has
4 ability to do that. I would hope no; it's pretty
5 important, but if we look at the -- there's a checkli
6 that is done on minor permit modifications, and that
7 actually is part of the exhibit that the county has
8 provided at the end of the TSD, and on that checklist
9 does not talk about an assessment of the applicabilit
10 the requirements of Rule 241, permits for new sources
11 modifications to existing sources. So as near as I c
12 determine from trying to follow this process, that
13 assessment has not been done.
14 If we then go to Rule 200, it talks abo
15 standards for applications, and this is on page nine.
16 "All permit applications shall be filed in the manner
17 form prescribed by the control officer. The applicat
18 shall contain all the information necessary to enable
19 control officer to make the determination to grant or
20 deny a permit or permit revision which shall contain
21 terms and conditions as the control officer deems
22 necessary to assure a source's compliance with the
23 requirements of these rules. The issuance of any per
24 or permit revision shall not relieve the owner or ope
25 from compliance with any federal laws, Arizona laws c

1 these rules, nor does any other law, regulation or pe
2 relieve the owner or operator from obtaining a permit
3 permit revision required under these rules."
4 Again, it does not -- there is no exemp
5 for animal feeding operations. So the rules are very
6 specific, and hopefully the county would have followe
7 these rules that the hen houses are stationary source
8 should be permitted as such or at least appear on the
9 application as a stationary source for the county's
10 valuation.
11 MR. HISER: Although, Mr. Blackson, if
12 look at the paragraph above that, you will see that t
13 is a section entitled exemptions that says,
14 "Notwithstanding these rules, the following sources s
15 not require a permit unless the source is a major sou
16 or unless operation without a permit would result in
17 violation of the act", and then under Section 308.3,
18 says, "Agricultural equipment used in normal farm
19 operations, for the purposes of this rule, does not
20 include equipment that will be classified as a source
21 would require a permit under Title V of the act or wo
22 be subject to a standard under 40 CFR parts 60 or 61.
23 Do you agree?
24 MR. BLACKSON: It does say that; I agre
25 but --

1 MR. HISER: So is it then -- are you go
2 to be demonstrating to the Board then this is a facil
3 that you believe should be classified as a major sour
4 under Title V of the act?
5 MR. BLACKSON: I believe I'm restricted
6 talk about the minor permit modification.
7 MR. HISER: But the minor permit revisi
8 at a source that would or would not be subject to Tit
9 I guess that's my question.
10 MR. BLACKSON: I believe in my pre-hear
11 disclosure with my calculations, I demonstrated that,
12 I believe that our expert will also demonstrate that,
13 I would like to point out that this says agricultural
14 equipment, not agricultural stationary sources.
15 MR. HISER: So your testimony is there
16 difference between equipment and stationary sources?
17 MR. BLACKSON: Yes, there is a differen
18 For example, agricultural equipment could be a tracto
19 and I believe there's some references in Arizona Revi
20 Statutes that do talk about that.
21 MR. HISER: Just in the interest of your
22 management, you're about halfway through your allotte
23 hour and a half.
24 MR. BLACKSON: Then I think what I'll d
25 I will skip ahead, and I do have more to say, but I w

1 like to talk about the fugitive, non-fugitive. And I
2 would also ask for the Board's indulgence. This is a
3 pretty important issue and setting a time element on
4 may be difficult. You may not get all the informatic
5 that you really need to make a decision at the end of
6 day.
7 So fugitive, non-fugitive does seem to
8 the heart of this and there is a definition that we w
9 find in the 40 CFR or the county rules. "Fugitive
10 emissions means those emissions which could not reasc
11 pass through a stack, chimney vent or other functiona
12 equivalent opening."
13 Well, the hen houses which are stationa
14 sources does have an opening. It is a building. It'
15 a roof; it's got three sides and one side to the east
16 open and they have actually reduced that opening a li
17 bit by putting some fabric up there, so that opening
18 vent. So all of the emissions coming out of that bui
19 are passing through a vent or if you think maybe that
20 opening is too large for some reason to call it a ven
21 but it's a vent, how much would you shrink it down to
22 arbitrary definition of what a vent is or what a vent
23 isn't? But, of course, you can always go back and sa
24 that that opening in that building, large or small, i
25 functionally equivalent opening and it exhausts new s

1 review regulated pollutants from that building.
2 So since NSR pollutants pass through a
3 into the ambient atmosphere, that causes those emissi
4 to be non-fugitive, and I believe that the EPA has
5 actually even taken a position on that.
6 If we look at the Buckeye Farms egg-lay
7 poultry operations, the EPA clearly considered those
8 houses to be a building and a vent when they issued t
9 consent agreement to Buckeye Farms.
10 I would also like to touch base quickly
11 about ARS 49.457 and this talks about best management
12 practices, and there is a definition of a regulated a
13 in there at the very bottom of the statute and it doe
14 talk about a regulated area has to be an area A or it
15 to be in a non-attainment area, and I would like to
16 introduce an e-mail that the permitting supervisor al
17 agreed that the Tonopah facility is not in the regula
18 area and he had a map on that e-mail note. It may no
19 attached, but for the sake of time, I think I'll just
20 forward, and if you're not in a regulated area, then
21 don't have a regulated agriculture activity.
22 MR. SWAN: Is that document included as
23 attachment to your disclosure statement or are we rea
24 it for the first time? What is the answer?
25 MR. BLACKSON: The answer is the map be

1 showing PM-10 non-attainment area. Tonopah facility
2 outside these areas and therefore does not appear to
3 qualify for coverage under Ag BMP. I've been support
4 that position. I believe it's very clear in the
5 regulations if the legislature wanted the BMP's to be
6 statewide, they would not have defined the area as su
7 the regulated area.
8 CHAIRMAN LEONARD: Mr. Blackson, I'm so
9 to interrupt. It won't detract from your time. The
10 question I think was whether the e-mail you're discus
11 was something that was included in the initial submit
12 or if this is new, like the previous e-mail was?
13 MR. BLACKSON: I'm sorry. It is new an
14 would like to motion to -- oh, I'm sorry it was. It
15 but just to make sure, I would like to pass it out.
16 MR. SWAN: We have no objection to the
17 introduction of that evidence.
18 CHAIRMAN LEONARD: The e-mail will be
19 admitted then.
20 MR. BLACKSON: With that, I think it wo
21 be best to conclude my testimony.
22 CHAIRMAN LEONARD: Mr. Swan, do you hav
23 questions of Mr. Blackson?
24 MR. SWAN: I have none, sir.
25 CHAIRMAN LEONARD: All right.

1 MR. BLACKSON: Thank you.
2 CHAIRMAN LEONARD: Mr. Blackson, are yo
3 calling another witness?
4 MR. BLACKSON: Yes, I would like to, ye
5 would like to call a witness, Kathy Martin, to be a
6 technical witness. I would -- there's some informati
7 have about her previous testimony and deposition hist
8 and a resume type of information to validate that she
9 expert witness.
10 MR. HISER: Mr. Swan, do you have any
11 objection if this witness is an expert?
12 MR. SWAN: No, I do not.
13 MR. HISER: Miss Martin, if you'll take
14 witness stand.
15 MR. HISER: Miss Martin, I'd ask you st
16 your name, please, for the record.
17 THE WITNESS: My name is Kathy Jean Mar
18 K-A-T-H-Y, J-E-A-N, M-A-R-T-I-N.
19 MR. HISER: Miss Martin
20 KATHY JEAN MARTIN,
21 a witness herein, having been first duly sworn by the
22 Certified Reporter to speak the truth and nothing but
23 truth, was examined and testified as follows:
24
25

1 EXAMINATION
2 BY MR. BLACKSON:
3 Q. Miss Martin, are you familiar with the matte
4 before the Board today?
5 A. Yes.
6 Q. And could you describe how you prepared toda
7 testify?
8 A. Clearly, you have almost a half a foot of
9 information in front of you. I have been working wit
10 Blackson off and on getting prepared for this hearing
11 today, and so I have read the Maricopa County regulat
12 the rules, right, 100, 200, such that you've been loo
13 at already, some of the applicable Clean Air Act
14 requirements under the 40 CFR, as you have incorporat
15 them by reference in your own rules.
16 I have looked at some filings by the
17 Maricopa County Board with respect to non-attainment
18 ozone, some of the history of whether or not you've h
19 attainment for eight-hour ozone, how you lost it and
20 you're in a moderate attainment zone, for kind of get
21 a feel for what's going on in this particular part of
22 country.
23 I have read the materials and e-mails a
24 copies of permits, permit application, management pla
25 the aquifer protection plan, et cetera, all related t

1 Hickman Tonopah egg laying facility that Mr. Blackson
2 acquired through a public information request, and he
3 forwarded a lot of those documents on to me for revie
4 I've looked at the pre-hearing disclosu
5 statements by both Mr. Blackson and by the county and
6 exhibits in the books. I have looked at some of the
7 preliminary jurisdiction things and stuff like that,
8 hopefully, almost that entire stack that you have in
9 of you as well, in order to be here today, that relat
10 this particular place, and then, of course, I did som
11 outside research just on air quality and egg laying
12 facilities that is the -- a lot of the research that
13 been done through the EPA, the National Ambient Air
14 Quality Emission Compliance Program, the NAEMS progra
15 I also -- because I've been working on
16 issues since 1997, I have actually been following
17 emissions and studies for I think it's almost 20 year
18 21 years in all parts of the country. I've worked in
19 states in the United States with respect to CAFO issu
20 So I'm also familiar with quality issues with respect
21 CAFO's, including egg layers, and I've been involved
22 some litigation on egg-laying facilities in Californi
23 So I am aware of what some of your
24 neighboring air quality divisions are doing with resp
25 to air permits for egg-laying facilities and looking

1 the peer-reviewed or at least the published research
2 has come out on various egg-laying facilities in Indi
3 Iowa, Ohio.
4 Q. And have you visited the Tonopah Egg Ranch?
5 A. Yes, I have. I've been around it twice.
6 Q. And did you identify any -- what stationary
7 sources have you identified from that visit, from you
8 review?
9 A. Right. Just to be clear when -- even though
10 have my CV, very quickly, I worked for the State of
11 Oklahoma in the small business assistance program rel
12 to the Clean Air Act amendments, and so in my tenure
13 the Oklahoma Department of Environmental Quality, I
14 received training on the Clean Air Act Title V permit
15 writers training program. Also, they have a -- had
16 various training programs through the University of T
17 at Arlington on identifying stationary sources, and t
18 also, on each type of best available control technolo
19 such as bag houses, wet scrubbers, dry scrubbers, how
20 do stack testing, et cetera, and that was all part of
21 job working in the small business assistance program,
22 helping both small business and larger companies in
23 Oklahoma understanding the requirements under the Cle
24 Air Act amendment of 1990. So that was actually my j
25 for three years in Oklahoma.

1 And so from that, I'm going to say that
2 identified some stationary sources. I just wanted to
3 you know it just didn't come out of nowhere. It came
4 some background and work knowledge.
5 So when you're looking at a facility, y
6 going to identify all the sources, and then once you'
7 identified the sources, try to see what their potenti
8 emit is, whether they're operating 24/7, whether they
9 some sort of synthetic bottleneck where you only have
10 shift versus three shifts, et cetera, and you get all
11 that lined out and start trying to estimate emissions
12 whatever actual data or emission factors or whatever.
13 then you have a full picture of what we're calling an
14 assessment or now it's going to be called a new sourc
15 review.
16 So the stationary sources that I identi
17 of course, would be all of the barns associated with
18 egg-laying operation, all of the lagoons associated w
19 the manure or waste water storage, and then, of cours
20 you have your feed delivery system, your generators a
21 the boilers that the county has identified. Of cours
22 had to identify these from the street but if, you kno
23 had a site inspection, we may find something else,
24 correct.
25 Q. What are the types of air pollutants that wo

1 be emitted from the poultry operation at the Tonopah
2 Ranch?
3 A. Right, and I believe Dan provided some exhib
4 on -- some research on typical air pollutants from po
5 operations and from egg-laying operations and, of cou
6 I have done similar reading and research in the last
7 15 years but you're looking at basic categories.
8 For today's hearing, we're going to be
9 looking at particulates and volatile organic compound
10 The particulates are from feed dust, dander, feathers
11 animals just in their movement producing particulate
12 matter, and the particulate matter that we're concern
13 about is PM-10 which is actually very, very small, no
14 really visible to the naked eye but it's respirable a
15 PM-2.5, which is even more respirable; then the volat
16 organic compounds which those come from the degradati
17 from the manure, the feces and urine which all comes
18 the same place in a bird, but that fecal material, as
19 degrades, it's going to release volatile organic
20 compounds, right?
21 As proteins degrade, that's the natural
22 course and then there is also, of course, ammonia and
23 is from the degradation of the urease part of fecal
24 material. It is a very, very large amount from poult
25 That's a big part of their emissions, and then other

1 things that are normal like carbon monoxide from thei
2 breathing, methanes and other things that are not goi
3 be spoken of here today. So we're looking at particu
4 and VOC's today.
5 Q. Is there anything else you would like to com
6 about the stationary sources and pollutants?
7 A. No.
8 Q. So let's talk about emissions. What is an
9 emission factor?
10 A. Okay. An emission factor is some kind of a
11 number you can multiply by, like, in this case, with
12 animal feeding operation, the number of birds at the
13 facility. So the emission factor that we're looking
14 here today would be pounds of that pollutant per bird
15 day or per year. There's other kinds of emission fac
16 that could be a function of ventilation rate, et cete
17 but we are just looking at some simple emission facto
18 show that there's definitely many ways at the facilit
19 trigger 110 per year criteria pollutant in order to h
20 further investigation.
21 Q. How can emission factors be derived? And pe
22 as part of that, you'd like to talk about the potenti
23 emit, a guide for small business which should have be
24 provided in everybody's packet and this would be 13 -
25 page 13 to maybe 16?

1 A. And this is the SBAP the EPA published in
2 October 1998 and what this Small Business Assistance
3 Program was supposed to do is provide an interpretati
4 the Clean Air Act for small business people, right.
5 is not a policy wonk document. This is supposed to b
6 you know, putting it into regular people's terms so s
7 business owners can understand whether or not they ne
8 get a permit, and one of the great things about it is
9 this document on page 13 it says how do I determine i
10 have a potential to emit? How do I figure out, you k
11 what my emissions are? And so the EPA gives the hier
12 of data, which is basically a science or engineering
13 function, the hierarchy of data in any permitting pro
14 Also, the air quality permitting program would be to
15 at measured data from the existing site, correct, or
16 measured data from a similar site, emission factors b
17 on actual sites, okay, that isn't in a book; that's j
18 applied, whatever, then some modeling and then, of co
19 there's always lesser guesses, okay.
20 So what we are trying to say today is t
21 the county was claiming that there was -- there was n
22 defined emission factors by the EPA. They were doing
23 large nationwide study. It was very extensive. They
24 to great pains through the National Compliance Order
25 get people to sign up and to get some sort of amnesty

1 during the study in order to determine a final emissi
2 factor for animal feeding operations. There would be
3 several different factors, one for each type of speci
4 that once that number was determined, then every sing
5 CAFO or animal feeding operation in United States, ev
6 last one of them had to look at that number and calcu
7 the emissions. There would be no exceptions. Okay.
8 that's when the study is finally done and the emissio
9 factors are published.
10 Where we're at right now, the study has
11 done. There are publications of the emission factors
12 developed by Dr. Heber out of Purdue with respect to
13 poultry emissions. It was a robust study. I believe
14 you look at the exhibit provided by the county, there
15 nearly 400 pages that shows how robust Dr. Heber's st
16 was looking at emissions from poultry facilities, and
17 we are saying and also the EPA says that, yes, you ma
18 have fantastic beautiful data in the future, but you
19 the dance with the girl you got. You go with the dat
20 have at hand. We're not going to wait indefinitely f
21 perfect information, so -- and I think we have some
22 documents in the exhibits that say that by the EPA wi
23 respect to the Buckeye egg facility or with the Calif
24 dairy study. I don't remember the exhibit numbers ri
25 off the bat, but they're in there.

1 So the EPA has been pretty clear all al
2 even though they know they have the study going on on
3 side, that they still expect people to use -- to gene
4 emission numbers using the best available numbers tha
5 they have at hand, contrary to what the county would
6 to do which is wait forever, right.
7 So what we're saying is there is a beau
8 study out there with these beautiful numbers and ther
9 also consent orders by EPA for poultry egg-laying
10 facilities that have estimated emissions from 2005.
11 these are emissions that went through a legal process
12 a consent order and so, you know, they've been tested
13 certain extent way more than just a graduate student'
14 thesis, for example, and that those numbers were avai
15 to generate a range of emissions from the Tonopah fac
16 which Mr. Blackson had calculated and shown in quite
17 laborious detail in his pre-hearing disclosure.
18 And so my purpose here today is -- as a
19 professional engineer is to say that I've reviewed th
20 emissions calculations. I have reviewed his source
21 material and his methodology of how he presented the
22 information to you, and I believe that he has been fa
23 accurate in what he has presented to you, and he's sh
24 time and time again, no matter whether you went to th
25 NAEMS study emission factor, whether you went to the

1 Buckeye factor, whether you went to the -- was it the
2 factor, I think, whether you were in particulate mate
3 or whether you were at VOC's, hitting over a hundred
4 per year, sometimes in the 200, 300 tons per year, us
5 existing emission factors, some of which have been
6 available for 11 years now, right.
7 So there's absolutely no reason from th
8 day forward to ignore the fact that you have major
9 stationary sources at the facility that generate more
10 100 tons per year and that there needs to be a decisi
11 made now whether you continue to provide a non-Title
12 permit by basically ignoring this information, you kn
13 forever, I guess, or you take a stand at the procedur
14 are in, the permitting process, which is creating a n
15 permit, a modified permit that at that point, you tak
16 that opportunity to remedy and go forward under whate
17 permit program is required after you do the new sourc
18 review, correct, which is what we're asking to have d
19 okay?
20 MR. BLACKSON: Also, sometimes a visual
21 be very helpful and there's an EPA document that I
22 recently found that talks about AP-42 and it has a ch
23 on it that kind of shows a hierarchy of emission fact
24 and I would like to be able to enter it in as an exhi
25 I did quite a bit of research over the weekend. In

1 particular, if you would look at page four --
2 MR. SWAN: The county has no objection
3 this document.
4 CHAIRMAN LEONARD: Okay. We'll admit t
5 BY MR. BLACKSON:
6 Q. So, Miss Martin, if you could share a little
7 more information about emission factors and how some
8 perhaps more accurate than others?
9 A. Right. I believe we got this from the publi
10 AP-42, okay, right, and what's nice about Figure 1 is
11 includes that engineering judgment I was speaking of
12 we like to look at, you know, actual emission values
13 obviously, then going to source category emissions mo
14 and then the reliability gets better as you get close
15 your facility. And there is additional cost, but wha
16 have access to is unique because we have a national
17 emission study which was paid for, you know, several
18 million dollars was paid for by the participating
19 producers. So we have access to great data without h
20 to make one particular applicant do some testing, rig
21 Q. Okay. Thank you. So you talked about the
22 calculations that I prepared during the pre-hearing
23 disclosure and you found those to be understandable a
24 acceptable calculations; is that correct?
25 A. Correct. I reviewed the calculations. Ther

1 several in this disclosure, three or four different p
2 and I've looked at all of them. So unless we want to
3 through them one by one, I think if you read the
4 disclosure, you know what I'm talking about. I have
5 looked at his source materials that are also exhibits
6 as an engineer, I believe he made good solid decision
7 how to transfer some of the emission factors to apply
8 Tonopah.
9 Q. Do you believe that it would have been prude
10 for the county, as part of the minor permit modificat
11 process, to actually conduct sampling of the existing
12 houses at the Tonopah Egg Ranch?
13 A. Well, you're in a unique position. Once tha
14 facility's constructed and in operation, no matter wh
15 it's an egg-laying facility, to a power plant or anyt
16 else, once the facility is in operation, everyone has
17 access to taking samples, right? And that is built i
18 the Clean Air Act, right?
19 So, yes, and the fact that Hickman's is
20 constructed, the Tonopah facility is in operation, so
21 types of measurements could have been made and you co
22 have followed some of the more complex methods listed
23 the national emission study or you could have come up
24 some lesser cost measures, but it can be done, of cou
25 Q. So you're saying that there is a variety of

1 to estimate the emissions from all the sources used i
2 new source review process for this minor permit
3 modification at the Tonopah Egg Ranch? The county wo
4 not be limited to one particular emissions factor; th
5 could have measured -- AP-42 doesn't have a particula
6 emission factor, but they could have measured -- they
7 could have used industry; they could have used the sm
8 business approach. There's a variety of ways that
9 emissions factor could be selected?
10 A. Correct. And let me tell you it is the same
11 thing that happens during evaluation of a nutrient
12 management plan. There's like three different ways t
13 calculate the amount of nitrogen in the manure from t
14 different well-known peer review sources, and you can
15 calculate a range from low to medium and just say
16 somewhere in between is where this facility lies or y
17 can be conservative and prepare a nutrient management
18 according to the maximum nutrient value.
19 So similarly, you can look at a variety
20 emission factors that were available, find a range an
21 then either pick an average or somewhere closer to th
22 higher end to be conservative, meaning you're making
23 you're not underestimating emissions; you might be a
24 little bit overestimating emissions and see if that
25 triggers a different permitting program. If it doesn

1 it doesn't. But if you've never done the calculation
2 all, which is what we have determined through the e-m
3 that Mr. Blackson collected during his public informa
4 requests and reading through what he got back from th
5 county, there is no proof of any calculations. And,
6 fact, I think he got an e-mail response back from
7 Jacqueline or something that just said no calculation
8 calculations, no calculations. So there was no doubt
9 it was not done. We wanted to make sure we didn't mi
10 something.
11 Q. Would you like to discuss the flaws in the
12 county's arguments that they need to wait for officia
13 emissions factors from the EPA in order to determine
14 new source review pollutant emissions from the Tonopa
15 Ranch?
16 A. Right. And this kind of goes to the county'
17 pre-hearing disclosure where they are pointing to Ind
18 and saying, well, Indiana did -- in fact, in one of t
19 e-mails from the county, Mr. Sumner said, well, India
20 did this study on air emissions and they didn't chang
21 Indiana air quality rules to require permits. Howeve
22 that Indiana study which was done at Purdue by Dr. He
23 was not a study for Indiana. It was a study for the
24 national compliance program, first of all.
25 Second of all, I've been working in Ind

1 since 2004, and I know a lot of people in the water
2 quality division of IDEM and I know if they have some
3 called a non-regulatory policy statement, that that's
4 enforceable in the State of Indiana, okay. So that's
5 which is the document that I believe the county provi
6 as saying, look, they're saying right there in this
7 brochure that the EPA doesn't have a final emission
8 factor, so we're just going to permit boilers and
9 generators, so I think we'll do the same thing that
10 Indiana does, which is an interesting idea to go all
11 way across the country to Indiana when you can just g
12 right next door to California who has 30 some odd air
13 quality county boards such as yourself that are deleg
14 authority that do have large-scale animal feeding
15 operations that were involved and are involved in iss
16 permits for animal feeding operations that were under
17 stern compliance eyes of EPA by creating an ag exempt
18 from the Clean Air Act.
19 That's who you need to look for as the
20 your future because that's where somebody is actually
21 doing the permitting they're required to do. The sta
22 attempted to provide a statewide exemption for
23 agricultural facilities and EPA came back and say, uh
24 you can't do. That's in violation of your SIP.
25 So that's who you need to go to for

1 guidance, the people who are being out there issuing
2 permits and at least being set straight on how these
3 permits need to be operated versus another state who
4 just threw up their hands and said we're not going to
5 it until somebody makes us do it. So I find that to b
6 fatal flaw in that particular part of the argument.
7 I think you have plenty of information
8 the research out of the national compliance. I think
9 have resources in the EPA itself, not only in region
10 but in other regions such as where Ohio is and how th
11 handle the Buckeye Egg that you could reach out and y
12 could get access to their emission factors and unders
13 how barns are stationary sources and how you estimate
14 emissions from not only poultry facilities but other
15 housed animal feeding operations in the state.
16 Q. Does the Clean Air Act have an exemption for
17 animal feeding operations?
18 A. No, it does not, and that's been stated over
19 over again by EPA in the federal register and other l
20 documents such as Buckeye Egg and the dairy in Califo
21 So it's not just my opinion. This is by reading EPA'
22 words.
23 Q. Are there any other observations, comments t
24 you'd like to make about the stationary sources emiss
25 calculations or county's application or regulations

1 related to the facility?
2 A. Let me just look real quickly at my notes he
3 I did just want to give a short chronology of events
4 the record because we didn't really provide anything
5 that in the -- it might help.
6 You know, the original permit was issue
7 November 2014, and I believe in December of 2014 ther
8 a new ozone standard that EPA came out with in Decemb
9 In the following year, the application for the minor
10 permit modification was submitted, also November of 2
11 so don't mix those dates up.
12 Then meanwhile, this Board made the rul
13 changes to incorporate TSD and that was official in
14 February 2016; maybe not this board but Maricopa Cour
15 sorry, and then in May of this year EPA changed the s
16 of Maricopa County from marginal to moderate for the
17 eight-hour ozone. So that's going on in the backgrou
18 this permit, this minor modification permit being iss
19 which was then issued June 10th of 2016 this year wit
20 responsiveness summary. And then of course Maricopa
21 County is required to have their moderate ozone plan
22 the EPA by January 2017 which is just a couple of mon
23 from today. That includes your reasonably attainable
24 control technology, your RACT, for the eight-hour ozo
25 So while this Hickman facility permit w

1 going on, we know that you had attained -- ozone, you
2 know, attainment, it was like getting within reach.
3 you had a bump in Central Phoenix so now you're in
4 moderate so you have some other issues going on. The
5 issue related to ozone of course is VOC's. Here is a
6 permit, an air permit that completely ignores hundred
7 tons of VOC's. So when you look at the documents tha
8 were presented to EPA in your state implementation pl
9 where you have your pie charts that show what are the
10 sources of VOC's in Maricopa County non-attainment ar
11 those -- that pie chart is based on invalid, you know
12 accurate data, right. So maybe you're not seeing the
13 impact of some of the animal feeding operations aroun
14 Phoenix area.
15 You know, of course, we have a lot of
16 dairies down in cowtown, but I just wanted to bring t
17 up; that under the -- underneath this permit issue th
18 we're talking about today, you also in this county ha
19 some pretty serious issues with the ozone and it's al
20 related to VOC's.
21 So I am not sure I am going to give you
22 recommendations, but I believe that there's an -- it'
23 possible to estimate PM-10 and VOC emissions. It's
24 possible that this facility could be considered from
25 on to be a Title V facility and therefore start

1 incorporating, but you need to do a new source review
2 You need to do that. The applicant and the county ne
3 to do that and make sure that there's some interactio
4 right. We can't do that for you. We're just showing
5 that there's definitely signs that it's what you shou
6 have done in the past, right.
7 Q. What's your opinion on fugitive and non-fugi
8 The county has taken a position that the emissions ar
9 non-fugitive.
10 A. Oh, sure, yes, and I wanted to add on to
11 something that Mr. Blackson said in his testimony whe
12 was just talking about the opening of the barns. And
13 you have ever been out by Hickman's, the typical
14 egg-laying barn is a very long barn, and one end is w
15 they have manure storage and they have an opening the
16 that's permanently opened so trucks can come in and c
17 get manure, but also so that the ventilation fans ins
18 the barn are blowing the air pollution from inside th
19 barn out of the barn through the ventilation fans acr
20 the manure to dry them; thereafter creating more emis
21 from the drying of the manure, okay.
22 This is fine. Nobody is saying you can
23 cannot do that, but the actual vents for these barns
24 those ventilation fans. There is movement from where
25 animals are laying the eggs, the birds are laying the

1 where there's -- manure is deposited where it's initi
2 volatilized. The particulate matter is also generate
3 there from the bird movement, their feathers, et cete
4 the feed. Especially when they do feeding, there's a
5 definite rise in particulate material.
6 If you want to look at some of the diag
7 in Dr. Heber's report on the Indiana poultry faciliti
8 all of those pollutants have to be removed from the
9 presence of the birds or it will harm them. It's bad
10 their health. It could kill them. So the vents take
11 air out and blow it out of the barn, and in this
12 particular design, it's blown out of the barn across
13 manure pile.
14 So I believe as a stationary source, th
15 vent that you're looking for starts at the ventilatio
16 fans and then it's combined into one, and then there'
17 many ventilation fans, and it's combined into one ven
18 the opening of the barn, and those are not fugitive
19 emissions coming out of the fans; those are non-fugit
20 emissions and should be treated as such.
21 MR. HISER: For the benefit of the Boar
22 because we have not been there to see it, like you ha
23 been, so the barn is a long structure. One end of it
24 sort of quasi open and has the manure storage, manure
25 handling in that, and then is it your testimony that

1 are fans at the end of this long barn which are blowi
2 the air from the laying areas across the manure pile
3 out the end of the building? Is that what you're say
4 THE WITNESS: Let me answer your questi
5 Two things. There's actually an exhibit that has som
6 photographs of the barns and that was -- and we also
7 some photographs that the citizens took, but the coun
8 has some inspection reports that have the pictures of
9 outside of the barns, but let's look at these two
10 exhibits.
11 CHAIRMAN LEONARD: While you're passing
12 off, Mr. Blackman, do you have an estimate how much l
13 you may be? The only reason is if we're getting clos
14 can finish and then take our break or if you think yo
15 going to go a little bit longer --
16 MR. BLACKSON: I don't expect to be muc
17 longer. I have a couple estimates on the other feder
18 register I would like for Miss Martin to respond to a
19 we'll be done.
20 CHAIRMAN LEONARD: Not a problem. I am
21 taking into account the fact our court reporter hasn'
22 a break.
23 THE WITNESS: Okay. So we're looking a
24 Exhibit 34 -- 33 and 34 which are color photographs t
25 were taken by the citizens from the road, and let me

1 sure I'm --
2 MR. HISER: Why don't you just hold the
3 so we can see?
4 THE WITNESS: I wanted to make sure I h
5 mixed them all together. So that was my first concer
6 What we're looking at here is at the corner of, oh, g
7 415th Avenue and Indian School Road. That is photo n
8 one, so that would be Exhibit 34, and then the other
9 is -- and what you're going to see here is -- this is
10 probably taken at the same time and these are extras.
11 These -- and according to an e-mail by Kelly Reed, th
12 photographs were taken October 20th, 2016, both of th
13 were.
14 So that we're standing north and east o
15 facility probably, something like that, because these
16 openings that you see, with the -- like a gray shadin
17 the top, that's actually a fabric awning. It would l
18 flat if the ventilation fans were not blowing, but wh
19 the ventilation fans are blowing from inside the barn
20 they push this fabric out. It kind of billows out li
21 balloon. And you see at the bottom of each barn a wi
22 opening and that's where the trucks can come in and o
23 pick up the manure to take to the Arlington facility.
24 In one of the exhibits -- in both exhib
25 you can see some opacity just from like fugitive emis

1 from trucks going on a dirt or gravel road.
2 BY MR. BLACKSON:
3 Q. Actually, this is -- this photograph -- both
4 these photographs are from the operation of loading t
5 manure that's piled inside the building with a front-
6 loader into a truck to be hauled off.
7 A. Sorry about that.
8 MR. SWAN: Mr. Chairman, I believe Mr.
9 Blackson is testifying at this time.
10 MR. BLACKSON: I apologize.
11 THE WITNESS: If we had longer to prepa
12 to provide this case to you properly, then there coul
13 have been someone come up and talk to you about the
14 photographs, et cetera. We were there yesterday, and
15 saw truck traffic on the other side of the barns whic
16 not where the opening is. So I apologize but, yes, s
17 he's correct. This is during manure load-out. I
18 apologize. We're both a little frazzled trying to ge
19 this all in a couple of --
20 CHAIRMAN LEONARD: Just so we can come
21 I want to make sure that the question that was asked
22 lost. We were talking about the venting and how the
23 venting might come across, and then when we get to th
24 point, I think the next point is something along thos
25 lines. It was a question of making clarification for

1 Board as to what your thoughts were on that.
2 THE WITNESS: And I believe the attorne
3 asked if the ventilation fans were at the end of the
4 barns. They are inside internally in the barns. The
5 on the other side of the manure storage so that they
6 internally in the barns. They're not at the end. Ot
7 types of laying barns, they are actually like on the
8 of the barns.
9 BY MR. BLACKSON:
10 Q. Miss Martin, to conclude, do you believe the
11 fugitives from the hen houses -- or the emissions fro
12 hen houses are fugitive or non-fugitive?
13 A. From the hen houses coming through the
14 ventilation fans, they are non-fugitive. Items like
15 trucks going on the gravel roads, those would be
16 traditional fugitive.
17 Q. Okay. Thank you. There is an exhibit that
18 have for the federal register. It's volume 70 and I
19 believe it might be Exhibit 13, and what this exhibit
20 is the animal feeding operations consent agreement an
21 final order and on page 4950 -- or page 4959, in the
22 left-hand column about in the middle I'll go ahead an
23 read this and then I will ask Miss Martin a question.
24 The EPA says, "To the extent that certa
25 pollutants from AFO's are regulated under the Clean A

1 Act and are emitted in quantities that exceed regulat
2 thresholds, EPA can and will require AFO's to comply
3 all applicable Clean Air Act requirements including
4 limiting those emissions where appropriate."
5 So, Miss Martin, do you believe that th
6 is intending to continue enforcement and has the auth
7 to enforce permitting for poultry operations?
8 A. They have the authority to do permitting and
9 also have the authority to do enforcement.
10 Q. Thank you. And also --
11 A. Maybe I should clarify. The enforcement --
12 enforcement restriction would be given to the people
13 signed up for the national compliance agreement. The
14 some restriction on what the EPA will do to sue them
15 folks that had not signed up or dropped out of the pr
16 lost that privilege of amnesty.
17 Q. Also in the same document on page 4961 on th
18 right-hand column kind of towards the upper middle, "
19 recognizes state and local agencies are undertaking
20 efforts to improve emissions estimation methodology f
21 animal feeding operations. EPA supports continuing a
22 to improve emissions information for all sorts of sou
23 categories and will use the best information availabl
24 we implement our programs. EPA also supports state a
25 local efforts to demonstrate improved emission redire

1 strategies and recognizes the value of state and loca
2 control requirements tailored to the needs of specifi
3 geographical areas."
4 Do you believe that this is a message t
5 encourage state and local agencies to continue to dev
6 emission factors and regulate AFO's?
7 A. Yes.
8 Q. Would you like to add anything else to your
9 testimony?
10 A. Let me check my notes one more time. I thin
11 that will be fine.
12 MR. BLACKSON: We're done, whatever the
13 official term is.
14 CHAIRMAN LEONARD: Well, if I might say
15 understanding that this is somewhat a new process, we
16 done. At this point, what I'd like to entertain is t
17 a ten-minute break so everybody can get up, stretch t
18 legs, use the restroom.
19 When we come back, there will be an
20 opportunity to the Department to proceed, and dependi
21 how long that takes, we will move into the next phase
22 let's adjourn for approximately ten minutes and then
23 go from there.
24 (Recess taken, 3:24 p.m. to 3:37 p.m.)
25 CHAIRMAN LEONARD: All right, folks. M

1 Martin, I hate to be officious for you, but I remind
2 you're still under oath.
3 If the Department would like to go ahea
4 cross at this point, this would be your opportunity.
5 MR. SWAN: The Department has no questi
6 to ask this witness.
7 CHAIRMAN LEONARD: Okay. Well, you're
8 to sit down.
9 Mr. Swan, you're up.
10 MR. SWAN: I would call as our witness,
11 Richard Sumner.
12 MR. HISER: Mr. Sumner, if you could st
13 your name and address for the record.
14 THE WITNESS: My name is Richard Alan
15 Sumner. My address is 1156 East Grandview Road, in
16 Phoenix, Arizona.
17 RICHARD ALAN SUMNER,
18 a witness herein, having been first duly sworn by the
19 Certified Reporter to speak the truth and nothing but
20 truth, was examined and testified as follows:
21 CHAIRMAN LEONARD: Mr. Swan.
22
23 EXAMINATION
24 BY MR. SWAN:
25 Q. What is your current position at the Departm

1 A. I am currently the air quality permitting
2 manager.
3 Q. Can you give the Board a summary of your
4 educational and licensure background, please?
5 CHAIRMAN LEONARD: Mr. Swan, get pretty
6 close to the mike.
7 A. Education-wise, I received my Bachelor's Deg
8 in civil engineering from the University of Missouri,
9 Raleigh in 1977 and subsequently received my Master's
10 Degree in civil engineering from the same university
11 1981 with an emphasis in environmental engineering.
12 So when I left college after the Bachel
13 Degree in 1977 and began work in the refining and che
14 industry, I began addressing air quality issues there
15 Even when I was in college, I had the opportunity to
16 doing some air quality work. One of the papers that
17 wrote was -- my junior year in 1976 was one addressin
18 ozone depletion, the hole in the stratospheric ozone.
19 I have seen a few air issues come and go along throug
20 years.
21 After about ten years in chemical refin
22 we got here to Arizona, went to work in the printing
23 industry, as an environmental engineer for a printing
24 company, and the primary issue we dealt with there wa
25 quality issues.

1 From there, I moved on to a phone makin
2 company; again, additional air issues, particularly V
3 and how to address those, from making phone cups, and
4 moved to consulting. We did a myriad of types of pro
5 here in companies that we dealt with. One of the mor
6 interesting ones was how to address emissions from
7 companies that make rocket fuel for jet ejection seat
8 So I have seen some interesting things from all diffe
9 types of air quality issues.
10 And I moved on to El Paso, Texas to wor
11 with what was known as El Paso Corp. which is now a p
12 of Kinder Morgan, and there I initially started as a
13 engineer working primarily with air quality Title V i
14 for compressor stations, promoted to the manager over
15 environmental manager and then I was promoted to the
16 director of environmental health and safety at the
17 corporate level.
18 And so that in about 2003, left El Paso
19 which was then located in Houston, moved to Californi
20 a slight career diversion and spent five years as a p
21 at a church in California up until 2008, and then I c
22 back to Arizona, resumed my environmental engineering
23 career, started with the county as a staff engineer,
24 promoted to supervisor over the Title V large source
25 program and then promoted in 2013 to the position I

1 currently hold which is the permitting division manag
2 Q. Thank you. Today the focus of our hearing i
3 Hickman Egg Ranch facility in Tonopah located --
4 MR. HISER: Mr. Swan, before you get an
5 further, is the Department's wish to qualify Mr. Sumn
6 an expert witness?
7 MR. SWAN: Yes, it is.
8 MR. HISER: Is there any objection from
9 Mr. Blackson?
10 MR. BLACKSON: Well, I guess I do. He
11 started off as a -- requested to be a lay witness, no
12 expert witness and now it's changed. So I guess I wo
13 like to maybe question a little bit more about his
14 expertise when it comes to permitting.
15 MR. HISER: Mr. Swan.
16 MR. SWAN: Okay.
17 BY MR. SWAN:
18 Q. Richard, your permitting experience, we've h
19 about it here with the county. We can come back to i
20 necessary. In your earlier positions, was there
21 permitting experience that you gained in those?
22 A. Yes, there was. All along, whether it's bee
23 starting with the time in the refinery, whether worki
24 with the initiation of the Title V program in the lat
25 nineties, I worked on probably, I would guess, 40 to

1 Title V permits with El Paso Corp. during that tenure
2 then we went through probably 4- to 500 permitting ac
3 a year here in the county. So that that total would
4 probably be somewhere over a thousand during my time
5 at the county.
6 Also, I would like to mention I am a
7 registered professional engineer in the State of Ariz
8 MR. SWAN: Is there any need for furthe
9 questioning?
10 MR. BLACKSON: I have no further questi
11 CHAIRMAN LEONARD: Are you maintaining
12 objection or are you prepared to allow him in as an
13 expert?
14 MR. BLACKSON: I'm prepared to allow hi
15 an expert witness. Thank you.
16 MR. HISER: Thank you. Just to clarify
17 record. Thank you. Mr. Swan, back to you.
18 BY MR. SWAN:
19 Q. What type of business is the Hickman Egg Ran
20 involved in?
21 A. Yeah, they are in the -- in the business of
22 poultry egg producing.
23 Q. Can you walk us through the permitting histo
24 the Hickman Tonopah operation as it concerns Maricopa
25 County Department of Air Quality?

1 A. Yes. Okay. I believe you heard a little ab
2 that earlier. Just to reiterate some of those points
3 that in 2014, we received the initial permit for the
4 Hickman facility. That permit was granted, I believe
5 November of 2014 and it was subsequently requested to
6 modified, revised in 2015 with a minor permit revisio
7 that was submitted, I believe, also in November of '1
8 That permit was then issued in June of 2016.
9 Q. The first air quality permit issued to Hickm
10 what classification was that? Was it Title V or
11 non-Title V?
12 A. That permit was a non-Title V permit. You k
13 we've had a significant amount of discussion about wh
14 types of emissions that are to be considered and not
15 considered here so far today, and so when we looked a
16 that initial permit, you know, we looked at the equip
17 that was being there, and there was 12 emergency engi
18 for part of that original permit and also looked at o
19 pieces to the facility that were -- that were present
20 animal feeding operations which includes the manure p
21 includes the hen houses, includes the lagoons, and as
22 been communicated, we considered those to be fugitive
23 emissions for various reasons.
24 Number one, the type of opening that's
25 the building, we believe those couldn't be reasonably

1 captured as a point source and should be considered a
2 fugitive. You've seen pictures of the front of the
3 building and the pictures that were taken there, and
4 look through some of the documents on the nutrient
5 management plan, there are dimensions for the buildin
6 there that you have in the record that was provided b
7 Blackson that I believe the width of the opening of t
8 buildings is 84 feet. So it's not exactly a small
9 opening. The height of the building at its peak is a
10 40 feet before the springs were added to help to redu
11 the emissions that might be coming out.
12 So this is not a small -- I tried to pu
13 84 feet into perspective, and since it is the middle
14 football season, I figure that's about a 28-yard
15 completion from Carson Palmer to Larry Fitzgerald. S
16 it's a pretty good gain. So that it's not a small
17 opening. So from that aspect of it, we looked at tho
18 being fugitive.
19 You know, we also considered some of th
20 work that had been done as part of the hen house stud
21 and EPA and this is -- we relied on this. We looked
22 the permits was -- that EPA had said these were open
23 issues, whether these were fugitive or non-fugitive,
24 they would look at those at a later date and begin to
25 provide some emission factors with those and that tha

1 a national issue that would really require a national
2 solution. So we relied on that when we put the permi
3 together originally.
4 Therefore, the main things that we look
5 were the engines that were part of that permit and th
6 with the minor mod, we added eight more emergency eng
7 that are diesel fired; in addition to that, two boile
8 So, again, there's some discussion about the boilers,
9 those were there at the beginning but were only picke
10 in the minor modification. So those were added into
11 permit as part of the minor modification at that time
12 Q. Can you tell us, beginning with the receipt
13 the application for the minor permit revision, what
14 processes did you go through, you and your staff go
15 through to evaluate that application?
16 A. Whenever a permit application comes in, our
17 step is to run it through an administrative review to
18 determine whether everything from the administrative
19 perspective is in place: the name is there; is it sig
20 addresses, contact, just very, very basic information
21 Once that is complete, we are satisfied
22 have sufficient information from which to be able to
23 the permit to the next step, it goes on to the -- ass
24 to a permit engineer. That permit engineer then begi
25 the technical review process to see if we have the

1 technical information with which to process the permi
2 determine, you know, whether it is non-Title V, Title
3 permit, what rules apply, whether things like NSR app
4 what national maximum standards might apply, all thos
5 types of things. We -- you know, we look at, wheneve
6 permit comes in, to be able to determine what rules t
7 apply, which of our local rules and what standards to
8 apply once the emissions are determined.
9 So a permit engineer goes through, eval
10 all of those types of things. We go through several
11 iterations internally to look at the draft permit. T
12 permit engineer would develop -- and in that draft
13 process, you know, there may be several moves back an
14 forth, and you've seen some of the internal e-mails t
15 were part of that sausage-making process where the pe
16 engineer may put something down and someone else will
17 at it and say you missed that or why isn't this in th
18 or why is that in there? And so you've seen some of
19 pieces that we will look at until -- our objective is
20 get it right, get the permit to be complete as to wha
21 information should be in there, what should not be in
22 there and how we are then able to issue that final pe
23 Before we get to that step, in the inte
24 review process, we look at it among the engineering s
25 The supervisor can be -- can be in on this one and th

1 also will have compliance look at it. We'll have the
2 compliance staff take a look because they look at thi
3 maybe a little differently than the engineers would
4 because they're boots on the ground, in the field mor
5 than us.
6 Then once we have a draft permit that w
7 satisfied with internally that we feel meets all the
8 requirements, that meets all the rule requirements, m
9 all the technical requirements, then we will forward
10 on to the source to give them an opportunity to look
11 it, because whenever -- you know, they are obviously
12 knowledgeable of the source than we are. So if there
13 something that we miss or misinterpreted, we want the
14 source to be able to have the opportunity to identify
15 so that we can correct it. So once all that is done,
16 we will issue the permit.
17 Now, in the case of this minor modifica
18 there is a step that is not normal for us, and I'm no
19 sure I've ever seen a minor modification have a publi
20 hearing. But because of the elevated public interest
21 also because of Mr. Blackson, we posted it for a form
22 30-day public notice time which would not be normal f
23 our rules would not require this for a minor modifica
24 but we did in this case and so -- to have opportunity
25 people to provide input, to comment on the permit and

1 give us -- give us their thoughts or inputs as to wha
2 should be there.
3 And so in that process, we not only did
4 public -- or posting for public notice, we also then
5 a public hearing to give, again, additional oral
6 opportunity for people to -- opportunity for oral com
7 on the permit, not just what is submitted in writing.
8 So after all those were completed, we
9 addressed the comments that were made and put those
10 together in response to comments and that puts us in
11 position then to issue the permit.
12 Q. You mentioned that you were the head of the
13 permitting department and quarterback of a staff of p
14 that work for you. But with regard to this particula
15 minor permit revision, how actively involved were you
16 the process of evaluating it and the analysis that go
17 on?
18 A. Yeah, I had more involvement in this one tha
19 would typically because of the elevated interest that
20 there, and so we wanted to make sure that we had as m
21 people look at it and make sure we got it right. So
22 probably more involved in this than I would be typica
23 Q. In particular, you were involved in the
24 calculations that were made by the Department?
25 A. Yeah. So when the calculations -- the staff

1 engineer would do that, and then all those calculatio
2 would then be reviewed by both the permitting supervi
3 and by me also to make sure that those were correct.
4 Q. Let me step back to one thing that I meant t
5 you which was the -- you said one of the steps you lo
6 on a routine basis -- and I assume what you described
7 both what the Department or your staff does in a typi
8 evaluation as well as what you did for the Hickman
9 evaluation; is that correct?
10 A. Right.
11 Q. What about -- one of the steps would be assu
12 that the application is complete. Was there anything
13 special or anything particular about the Hickman
14 application in that regard?
15 A. Yes. With the -- with regard to the complet
16 of the application, it's been noted earlier that ther
17 section known as Z-M that was missing information, an
18 that's a section where the applicant has the opportun
19 to be able to describe and calculate what the emissio
20 would be from the source, and in this case, it was no
21 filled out by Hickman's in their initial application,
22 the minor modification application, and that's not
23 unusual. As a matter of fact, it probably happens mo
24 that it's not filled out than it is because many sour
25 do not have the sophistication or tools to accurately

1 able to calculate and predict what those emissions wo
2 be, and so -- but on the other hand, if we have suffi
3 information to be able to calculate that, we will do
4 And where we had the information on the
5 engines and on the boilers, as to what size they were
6 what types they were -- for instance, the engines wer
7 tier three engines. So with those, there are certifi
8 EPA emission factors that come with those. So even t
9 the specific emission calculations weren't filled out
10 had the opportunity then from the description of the
11 equipment to be able to know what the emissions were.
12 even if someone does fill that out, we will always re
13 those anyway because we're really -- we're not going
14 take the applicant's word for what those emission
15 calculations are. We're always going to confirm thos
16 even if they were provided by the applicant.
17 Q. Earlier there was testimony about the emissi
18 boilers in the minor permit revision. Were the emiss
19 of the boilers ultimately included? Were they includ
20 the final emissions calculations?
21 A. Yes, the boilers were included in there and,
22 again, part of that sausage-making process, when draf
23 are moving back and forth among staff and supervisors
24 different ones, we may have pieces that are missing.
25 those were probably missing at one step of the drafti

1 the TSD when that passed through, and we tried to get
2 information and understand what -- once we understood
3 the boilers were there and be able to appropriately a
4 those to the emissions for the facility.
5 Q. Let's get back to emissions calculations. W
6 emissions were calculated?
7 A. So the emissions that we calculated were fro
8 point sources, from the non-fugitive emissions which
9 be from the boilers and from the generators. We
10 characterized the emissions from the CAFO, from the a
11 feeding operations, again, the lagoons, the hen house
12 the manure piles, and we captured those as being fugi
13 emissions. And even if they had been -- so fugitive
14 emissions, whether there's a determination whether th
15 part of a Title V determination or not, was pointed o
16 earlier from Rule 100, I believe 200.60, if I remembe
17 correctly, of the determination of a major source.
18 When you have fugitive emissions, you
19 include those only if the major source is one of thos
20 categorical sources listed there in 200.60. So we we
21 through the first part of that where it talked about
22 fugitive emissions and calculations that go into the
23 source determination, but fugitives for sources that
24 not listed as categorical in that group, and you see
25 28 of them that are there, all other fugitive emissio

1 are not included for major source purposes for operat
2 that are not on that list. In this case, hen houses
3 not on that list, so therefore, fugitive emissions we
4 not considered to be part of that.
5 Q. So in conclusion, it is your opinion that al
6 the emissions pertaining to the minor permit modifica
7 were properly calculated?
8 A. Yes, we do believe those were properly
9 calculated, and we had plenty of reason to not includ
10 those. We've talked a little bit about what other st
11 are doing. You heard about that. When we look at th
12 State of Arizona, basically farm operations are exemp
13 from Arizona, whether -- that is the law today. Rece
14 as last year, the NSR rules for the State of Arizona
15 revised. That was not deleted from any NSR rules at
16 time, and so we believe that what the prevailing rule
17 that we would not include those here; that even thoug
18 they may be included in other jurisdictions, as we lo
19 the data that's out there and see that, we just see i
20 as not reliable enough for us to run out ahead of whe
21 EPA is.
22 We look at how EPA regulates things. W
23 there are a number of ways they do that. They may do
24 on the basis of different types of rules or new sourc
25 performance standards of which there's probably maybe

1 or a hundred new source performance standards out the
2 none of which pertain to this type of operation. The
3 are max standards, maximum available control technolo
4 standards, maybe another 150 of those, none of which
5 pertain to this operation.
6 There are control technique guidance
7 documents that whenever EPA wants to regulate somethi
8 they will provide that as a means for sources to be a
9 to determine what the emissions are and how to handle
10 those. There's been no CTG's or control technique
11 guidance documents provided for this. There are a nu
12 of ways that EPA will regulate these different type o
13 sources, and we did not see that that had occurred in
14 of those.
15 We also looked at the State of Indiana
16 has been mentioned and whether the tests were run by
17 state or not. They were run by Purdue University whi
18 in the State of Indiana, chose a facility there, and
19 they looked at that, we looked at, yeah, this is a si
20 type situation to what we have, and it seemed reasona
21 at that time to say, you know, if they're looking at
22 they are disregarding -- they are not going to regula
23 the animal feeding operation, the emissions only that
24 from the point source equipment, it seemed like a
25 reasonable conclusion for us to reach in doing likewi

1 here with this facility.
2 Q. I'd like to dwell for a minute on NSR. Mr.
3 Blackson mentioned surprise that it didn't appear tha
4 had considered NSR, new source review. Can you tell
5 again how -- or tell us for the first time what your
6 review was and what consideration was given to the
7 potential applicability of NSR to this facility under
8 permit modification application?
9 A. Sure. NSR is new source review, and it appl
10 in non-attainment areas. Where the facility is locat
11 it is located in the non-attainment area for ozone.
12 ozone -- the precursor for ozone are NOx, nitrogen ox
13 and VOC, volatile organic compound, is a precursor fo
14 ozone. So those are the pollutants that you would lo
15 primarily under NSR.
16 So the threshold for that would be -- f
17 major source in our current attainment status which i
18 moderate, non-attainment of where we are, and so the
19 threshold for that would be 100 tons per year. And
20 looking at the point sources, the total NOx emissions
21 under the minor modification are a total of just unde
22 25 tons of NOx, so it is well below the NSR threshold
23 NOx.
24 The VOC emissions from the engines and
25 boilers are like 1.2 tons. They are relatively small

1 So, you know, we concluded that they were well below
2 NSR thresholds. As we previously mentioned, we did n
3 look at the -- any fugitive emissions as part of the
4 source determination under NSR because it is not a
5 categorical source, and not being a categorical sourc
6 did not look at the fugitive emissions.
7 Q. Did the Department perform a Rule 241 assess
8 and could you explain what that is?
9 A. Yeah. Rule 241 is -- we affectionately refe
10 it as our local BACT rule, best available control
11 technology, and that -- and so when looking at this
12 facility, the total emissions for BACT would be -- or
13 threshold for BACT, for NOx would be 25 tons at the t
14 because we were dealing under the old rules. That ha
15 since been moved up to 40 tons per year. At that tim
16 was 25 tons per year. From the original permit, the
17 emissions of NOx from the original permit was about
18 60 tons so BACT did not apply, and so Rule 241 would
19 be triggered.
20 With the minor modification, about anot
21 additional eight tons of NOx was added and so we were
22 still below 25 tons total which is really not even
23 relevant because we'd only be looking at the modifica
24 anyway. The modification was only eight tons of NOx.
25 therefore, under Rule 241 -- and even though it's not

1 spelled out explicitly in the TSD, as Mr. Blackson no
2 you know, there's a fair amount of latitude with that
3 we did look at those total amount of emissions and fo
4 that the BACT would not apply which would be the esse
5 and the substance of Rule 241.
6 Q. Would an NSR normally apply to a minor permi
7 modification?
8 A. No. You could not have NSR apply to minor p
9 modification because the definitions we looked at ear
10 would preclude that from occurring.
11 Q. Mr. Blackson used emission factors to calcul
12 the emissions from the Hickman process. Are those
13 emission factors credible in your mind and based your
14 analysis and expertise?
15 A. You know, there are a myriad of emission fac
16 out there that we have seen. I know, looking through
17 of the documents that was provided by Mr. Blackson in
18 their disclosure of the 2006 study from Iowa State
19 University, that showed just ammonia emissions, for
20 instance, that are there. The EPA had estimated in t
21 that the emission factors for ammonia should be like
22 435 --
23 MR. BLACKSON: I object to this because
24 ammonia is not permitted. It's not an -- I object be
25 ammonia is not a permitted pollutant; it's not an NSR

1 pollutant. You don't have to have a permit to releas
2 ammonia, but when you get into EPCRA and that sort of
3 thing, then ammonia is in play.
4 CHAIRMAN LEONARD: I'm going to overrul
5 that objection only from the standpoint that there's
6 we're talking about credibility. If you have other
7 concerns, again, you'll have the opportunity, as I
8 mentioned, for cross so --
9 THE WITNESS: But in those -- determina
10 of those emissions, EPA would have a factor of 435 gr
11 of ammonia per year per each hen and which I would th
12 that European numbers in the Netherlands would be pre
13 credible. That range was ten to 83 grams per hen per
14 year. So you can just see the massive variation that
15 occurs in different emission factors that are out the
16 depending under what circumstances that they were run
17 They range all the way from ten to 435 for the same t
18 of emission factor. And so with that absence, we fel
19 like that the emissions factors just really weren't t
20 to do that.
21 There's also a General Accounting Offic
22 report that was done, that was completed, and I belie
23 this is also in our record. I don't know the page nu
24 right off. Do you guys have that over there handy th
25 you can point these folks to, where the page number i

1 that? I believe it's somewhere probably page AQ600
2 something. I can't remember what the final exact num
3 is.
4 Q. Can you identify the document again? I'm no
5 sure I heard that.
6 A. It's a document for the General Accounting O
7 where they evaluated concentrated animal feeding
8 operations in looking at the studies that had been do
9 and their conclusion was that EPA -- or the title of
10 document was EPA needs more information and clearer
11 defined strategies to protect air and water from
12 pollutants of concern, and this was on the -- on the
13 side of the main study, the national air emission
14 monitoring study that had already been done.
15 So they had some conclusions about that
16 report, if I may read those here. I have the page nu
17 It is AQ0683, if that will help you find that in your
18 documents, in our pre-disclosure documents that were
19 provided.
20 It says, "However, questions about the
21 efficiency of the sites selected for the air emission
22 study and the quality and quantity of the data being
23 collected could undermine EPA's efforts to develop ai
24 emission protocol by 2011, and finally, while the stu
25 and resulting protocols are important first steps, th

1 process-based model that more accurately predicts the
2 total air emissions from an animal feeding operation
3 still needed. While EPA has indicated it intends to
4 develop such a model, it has not yet established a
5 strategy and timeline for this activity."
6 And so, again, we're trying to look at
7 body of evidence that's out there. Are we running to
8 ahead to be able to come up -- use emission factors t
9 may or may not have quality? And, again, our conclus
10 was the science just wasn't there yet. And when the
11 science is there, we are -- we'll very actively and
12 vigorously be able to enforce those and put those in
13 permit and apply those to the appropriate sources, bu
14 believe at this time that those are not there yet.
15 Q. The minor permit revision was to authorize t
16 addition of boilers and eight emergency, small emerge
17 generators as I recall, and both of those were
18 characterized by the Department as point sources. Ca
19 explain the determination in that regard briefly?
20 A. Sure, because the emissions from those types
21 operations come through a defined stack, through a de
22 point in the equipment rather than some large amorpho
23 opening that really has no opportunity to be captured
24 controlled or really even accurately measured. Some
25 the other literature that we have looked at, you know

1 talked about how difficult it is to measure just, in
2 general, emissions from hen houses and those types of
3 operations, that it's one of the great encumbrances t
4 able to quantify emissions that were out there, and
5 whenever you're dealing with this type of operation,
6 difficult to do.
7 Again, we think that the science will g
8 there, but we just don't believe that it's there yet
9 this type of point source that -- these are the point
10 sources and the other -- all the rest from the animal
11 feeding operation are fugitive emissions.
12 Q. I'm getting close to the end of my questions
13 The Department has not promulgated rules addressing
14 emissions from hen houses, manure piles and lagoons.
15 you tell us why that is the case?
16 A. At this time, that is not a source category
17 that -- you know, that we have looked at, and so thos
18 emissions are not yet ones that we've elected to be a
19 to quantify as we begin to work through different typ
20 emissions that are out there.
21 Q. Okay. This is my final question: Based upo
22 cumulative information you provided, based on calcula
23 characterization and legal requirements, did the
24 Department apply proper permitting standards and
25 procedures when analyzing and evaluating the minor pe

1 revision?
2 A. Yes, we did.
3 MR. SWAN: I have no further questions.
4 CHAIRMAN LEONARD: Mr. Blackson, if you
5 like to cross.
6 MR. BLACKSON: Yes, I would.
7
8 EXAMINATION
9 BY MR. BLACKSON:
10 Q. Thank you, and, I apologize, I may skip arou
11 lot and kind of --
12 A. I do too, so that's all right.
13 Q. I think we're going to get through it.
14 Mr. Sumner, you've had training, right,
15 the permitting process? EPA offers some training tha
16 talked about?
17 A. Yes.
18 Q. And how recent was that?
19 A. Probably the last one was about probably two
20 years ago where we went through NSR training and BFP
21 training that's offered nationally by EPA.
22 Q. Thank you. Can you show us in the Clean Air
23 is there an exemption for animal feeding operations?
24 A. No, there is not an exemption in the Federal
25 Clean Air Act for animal feeding operations.

1 Q. Now, you said there was an exemption, if I h
2 correctly, an agricultural exemption. Can you cite w
3 that exemption is?
4 A. Yeah. The agricultural operations for poult
5 for cattle, for pigs, for different types of animals,
6 those are under the agricultural exemption under ag B
7 for the state, and so we did not regulate those.
8 Q. So you must be talking about ARS 49-457, cor
9 A. Yes.
10 Q. That exemption for all NSR pollutants?
11 A. It's primarily for PM-10 and so the PM-10
12 emissions then are ones that --
13 Q. But not for BFP's?
14 A. Under that exemption, no.
15 Q. Now, you're saying it's an exemption. Perha
16 you can read the definition of a regulated area. Tha
17 definition will be at the very bottom. It's page six
18 A. I'm looking on the front page.
19 Q. They change how it appears now.
20 A. Regulated means Maricopa PM-10 particulate
21 non-attainment area, any portion of area A that's loc
22 in the county with a population of two million or mor
23 persons and any PM-10 particulate non-attainment area
24 established in this state on or after June 1st, 2009.
25 Q. Does the word state or statewide appear in t

1 definition of a regulated area?
2 A. It does not.
3 Q. Does the word county or countywide appear in
4 A. County does.
5 Q. Is it countywide, entire county?
6 A. Area A or PM-10 particulate non-attainment a
7 Q. Is the Tonopah Egg Ranch in a regulated area
8 A. It is not.
9 Q. Yet you apply BFP to the Tonopah Egg Ranch?
10 A. That is correct, because we have received
11 guidance from the state that PM emissions are of a
12 statewide concern, and that even though this may
13 specifically list deregulated area here, that they ha
14 taken the interpretation that this is a statewide con
15 and therefore they are going to apply BMP's to all ar
16 Given the county rules that exempt normal farm cultur
17 operations from PM-10 regulations, then neither us no
18 state would be able to have any activity and so the s
19 has taken that activity there.
20 Q. And all of this came from a SIP process wher
21 EPA was going to come in and issue a SIP on agricultu
22 activities and things?
23 Q. The EPA was interested in implementing a fed
24 implementation plan because there was a gap in these
25 regulations.

1 Now, the statewide concern does appear
2 that statute, if I'm not mistaken. They make a
3 philosophical statement about statewide concern about
4 particulate matter; is that correct?
5 A. That's correct.
6 Q. But yet the legislature decided that's not h
7 regulated area is defined, correct?
8 A. I can't address what the legislature might h
9 said.
10 Q. Well, the legislature passed a statute, corr
11 A. That's correct.
12 Q. Did the legislature include a statewide BMP
13 policy for a regulated area?
14 A. That -- I don't know what the legislature
15 included. I knew ADAQ has, so we are kind of subserv
16 to them.
17 Q. Did the legislature in the definition of
18 regulated area give ADAQ authority to make it statewi
19 A. No.
20 Q. Did they give authority to Maricopa County t
21 make it statewide?
22 A. No.
23 Q. Or countywide?
24 A. Countywide, no.
25 Q. Yeah. So the county is overreaching in this

applying a regulated area to the Tonopah Egg Ranch be
it does not typically reside in a regulated area?
A. Can you rephrase the question, please?
Q. The Tonopah Egg Ranch does not reside in a
regulated area, correct?
A. It does not reside in a regulated area.
Q. Physically located. So, Mr. Sumner, have yo
ever considered the emissions from the Tonopah Egg Ra
to be normal farm cultural activity?
A. Yes.
Q. And what is a normal farm cultural activity?
you define that?
A. I'd have to refer back to the rules to get t
exact definitions, so it's probably there pretty clos
Q. I can help you.
A. Bet you could.
Q. Can you read for us what this is?
A. All agricultural activity by the owner, leas
agent, independent contractor --
CHAIRMAN LEONARD: Mr. Sumner, just rem
to slow down.
A. "Normal farm cultural practice. All activit
by the owner, lessee, agent, independent contractor a
supplier conducted on any facility or production of c
or in nursery plants, disturbances of field surface c

1 by turning stalks, tilling, fertilizing or harvesting
2 included in this definition."
3 Q. So as part of the property, there are fields
4 the Tonopah Egg Ranch, so the fields would meet that
5 definition?
6 A. Correct.
7 Q. Now, would the hen houses?
8 A. Not in this particular definition.
9 Q. So even though you stated that the normal fa
10 cultural activity would apply, it doesn't meet the
11 definition?
12 A. Not in this particular area. I'm trying to
13 of the other -- it's defined in other places in the r
14 I don't know if those are more expansive, so not off
15 top of my head.
16 Q. This is an important point, so if you want t
17 take some time to tell us what that is, I would appre
18 it.
19 A. We may have to come back to that. I know we
20 it defined other places other than this. What you ha
21 provided me, just for the record, is Rule 310.
22 Q. Now, the permitting supervisor actually stat
23 that he believed that the Tonopah Egg Ranch was not i
24 regulated area and the BMP's would not apply?
25 A. Yes, and the context of that --

1 Q. A yes or no, thank you.
2 A. Yes.
3 Q. Thank you. You made a statement about ammon
4 emissions. Can you also talk about, in the same vein
5 PM-10 and the PM-2.5 and the VOC emission factors?
6 A. Right. I just know that those were -- one o
7 them that showed a rate variation. I know there is a
8 large variation on the other factors that have been
9 developed also. I don't have the exact numbers on th
10 but I know they have ranges on them in what is provid
11 Q. So that it is very possible that there might
12 some difficulty in measuring ammonia but they might o
13 over to measuring PM-10, PM-2.5 or VOC's?
14 A. Yes. If I remember correctly from some of t
15 ranges that are there, the PM numbers have a substant
16 range on those.
17 Q. Now, you also talked about the -- this India
18 policy. You reached out and found this and that's no
19 rule, right? I think it says right on there it's not
20 rule?
21 A. Yep.
22 Q. Yeah. Did you research any other states?
23 A. We looked -- I am trying to think of other s
24 we looked at recently. Even since this started, we l
25 at a few more, looking at any of them that had specif

1 rules, and I did not see any that gave specific emiss
2 factors for those.
3 Q. Did you find any states that actually are
4 regulating animal feeding operations air-quality-wise
5 A. I think I saw one report where there are abo
6 six states and most of those are regulating the H2 S1
7 table that I saw.
8 Q. What about California?
9 A. I'm not sure what California is regulating.
10 Q. But could you have reached out to California
11 you reached out to Indiana to find out?
12 A. Yes.
13 Q. Or Texas? Texas regulates issues of air qua
14 permits for animal feeding operations. Did you talk
15 Texas?
16 A. No.
17 Q. Idaho?
18 A. No.
19 Q. Ohio?
20 A. No.
21 Q. The interesting thing about Ohio is the Buck
22 Farms, and I think you probably prepared by looking a
23 that consent order and the news release.
24 A. Mm-hmm.
25 Q. Would you agree that in order for the EPA to

1 issued that consent order, they must have determined
2 emissions factors are from those hen houses?
3 A. Yes, and I know that there are places where
4 has been -- where that has been done but, again, our
5 posture was that we're not there yet with the overall
6 science and so we said those would continue to be loo
7 at as fugitive emissions.
8 Q. But based on the EPA activity, they're ready
9 act, right?
10 A. They don't seem like it, because I mentioned
11 earlier they haven't provided any control technique
12 guidances and documents; they haven't provided any ne
13 source performance standards; haven't provided any MA
14 standards. They haven't provided anything that they
15 typically do to underwrite the regulation of differen
16 types of industries.
17 Q. However, you're not limited to issuing permi
18 just to those facilities? A source doesn't have to b
19 categorized to receive a permit?
20 A. That is correct.
21 Q. All right. And if we go back to the Buckeye
22 Farms, the EPA very clearly demonstrated that you can
23 proceed and permit those facilities, and somehow, did
24 reach out to the EPA for emission factors?
25 A. Yes, I believe we did talk to region nine on

so --
Q. And could you share that conversation?
A. Yeah, there was -- they didn't provide any additional guidance to us, and we provided informatio Hickman's. I believe that's in some of the records t that we have provided to Hickman's.
Q. And when did you do that?
A. I don't remember the date off the top of my
Q. When the initial permit or the minor permit
A. I think it was probably the minor permit pro
Q. I'd like to talk about fugitive emissions, a think both of us have cited to the Federal Register w the consent agreement for animal feeding operations, in that agreement, and I'll paraphrase, the EPA had s that we're not going to make decisions on fugitive emissions at this time; we'll do that later.
So there's a range of fugitive emission isn't there? For instance, you can have a dust devil going across a vacant lot versus a power plant that h stack, fugitive emissions versus non-fugitive emissio would you agree with that?
A. I am not sure what I would be agreeing to.
Q. Give us an example of non-fugitive emissions
A. Anything that goes -- you know, in this case we were looking at would be the engines that would go

1 through a stack so --
2 Q. The engines, the diesels go through a stack?
3 A. The diesel engines, yeah, they have a stack
4 those.
5 Q. Oh, okay. And what would be -- not citing t
6 hen houses, what would be a non-fugitive example, an
7 extreme non-fugitive example?
8 A. Extreme?
9 Q. Sure.
10 A. I'm not sure I want to define what extreme -
11 Q. What about a wind blowing across a vacant lo
12 that fugitive or non-fugitive.
13 A. It would be fugitive; that would be fugitive
14 Q. Okay. So we have a wind blowing across a va
15 lot is fugitive and a stack from a diesel is non-fugi
16 Now, when we start to move to the middle, does it get
17 easier or harder to differentiate between fugitive an
18 non-fugitive?
19 MR. SWAN: Before you answer that quest
20 I'm questioning whether this line of questioning isn'
21 beyond the scope of my direct examination of Mr. Sumn
22 so I ask the Board to consider that.
23 CHAIRMAN LEONARD: Mr. Blackson, I don'
24 want to put words in your mouth. You're asking the
25 Department to provide examples of fugitive versus

1 non-fugitive events in relation to how they may or ma
2 have applied that to the minor permit revision?
3 MR. BLACKSON: No, I'm not. I guess I'
4 trying to lay the groundwork that there's a range fro
5 fugitive to non-fugitive, and as you get to the middl
6 ground, it's more difficult to sort out which is fugi
7 and non-fugitive. And I believe that's where the EPA
8 right now and that's why they have not given guidance
9 They have a very clear opinion of a hen house by the
10 consent order at Buckeye.
11 CHAIRMAN LEONARD: With respect then to
12 Department's objection, I'll overrule that. I believ
13 that Mr. Sumner has already discussed this, and so ag
14 understanding that we're talking about cross, just tr
15 make the point.
16 Mr. Sumner, answer as you deem appropri
17 Please proceed.
18 You can ask the question just as you di
19 before.
20 MR. BLACKSON: I'd like to gather mysel
21 a second. And it might help if the court reporter co
22 help me out.
23 (The record was read by the reporter.)
24 BY MR. BLACKSON:
25 Q. So is it more difficult, as you get to the m

1 of non-fugitive and fugitive, to differentiate which
2 which?
3 A. Yes.
4 Q. So would you say, yes or no, that it's possi
5 that EPA hasn't issued guidance because that middle
6 ground, perhaps where you have an animal in a covered
7 corral, that you don't know whether that's fugitive o
8 non-fugitive yet?
9 A. Correct. It can be difficult to define.
10 Q. It can, but if we look at the EPA actions su
11 the Buckeye Farms, it's clear that the EPA, since the
12 issued a consent order believe that the emissions fro
13 those hen houses were non-fugitive?
14 A. Yeah, it was clear in that situation.
15 Q. All right. Thank you. I would like to talk
16 about vents then, and we've both cited the statute ab
17 buildings and vents and functional openings, and you
18 a very good point that the opening at the Hickman hen
19 house is very large, right?
20 A. Mm-hmm.
21 Q. So if you start to shrink it down, when does
22 opening become a vent?
23 A. That would just be part of the judgment that
24 would employ in making that determination. There's n
25 hard-and-fast number which is why some are regulated

1 some places and some are not regulated in others beca
2 there is -- there is a spectrum there.
3 Q. Is there any regulatory basis for saying wha
4 size of the vent is or is not?
5 A. I think the modifier at the beginning of the
6 definitions is reasonable, what is reasonable.
7 Q. What about a functional opening? How large
8 functional opening be?
9 A. That's also a term of art to be determined c
10 what that would be.
11 Q. So it's just as reasonable to say that that
12 opening is a vent as it's not a vent, versus one pers
13 and another?
14 A. Correct.
15 Q. And so I'm not sure if I'll be allowed to do
16 this, but a comparison of another facility that you
17 permitted that doesn't have an opening like that, so
18 are vents? If the design was different, there could
19 vent in that building then, in your opinion?
20 A. Yeah. We're going to look at every situatic
21 individually.
22 Q. But again, when we look at the EPA and their
23 actions with Buckeye Farms, they clearly decided that
24 whatever opening is in a hen house is a vent and they
25 issued that consent order according to that. Would y

1 agree with that?
2 A. Yes.
3 Q. So somehow there has to be some ultimate
4 determination of the size of the vent in a functional
5 opening?
6 A. I think we would both agree on that one.
7 Q. Actually not. An opening is an opening; a
8 functional opening is a functional opening, so we pro
9 would not agree, no matter how large or how small. S
10 if I'm testifying. I don't mean to do that so I'll s
11 So, Mr. Sumner, you said you got pretty
12 involved with this minor permit modification. So can
13 describe where these fans are in the building and wha
14 they do and maybe how big they are?
15 A. As I understand, the fans are probably, what
16 about three quarters of the way through the building,
17 toward the east end and they're there to blow through
18 manure piles as they come off of the -- when the manu
19 comes off of the conveyer belts, be able to dry those
20 and to reduce the moisture in those.
21 Q. Are the fans pulling air across the hens the
22 A. Right. They are blowing from west to east.
23 Q. And where are the hens?
24 A. They're behind those on the east side on the
25 various levels, on the west of the fans.

1 Q. And then the manure piles are on the east si
2 A. East side of the fans.
3 Q. And the fans are blowing across that. Is th
4 particulate matter being picked up by that ventilatio
5 blown out of the building?
6 A. Yes, there is.
7 Q. And what is the purpose of those fans? Can
8 say?
9 A. Yeah, my understanding is to dry the manure
10 to make those really -- as I understand, to reduce an
11 the emissions from those.
12 Q. Do they serve a purpose for the birds?
13 A. The fans?
14 Q. The fans, yes, sir.
15 A. Yes. They're also to keep the birds cool wh
16 is the purpose of the emergency generators that they
17 there as part of the process, so in case the power go
18 down, the emergency generators are there to make sure
19 the birds will stay cool.
20 Q. Do those fans also remove pollutants, NSR
21 pollutants?
22 A. Yes, they would move pollutants across there
23 Q. So the fans would bring in fresh air and thr
24 forced ventilation remove the pollutants?
25 A. They would bring in fresh air through the we

1 open end of the building out through the -- for the m
2 part, opened east end of the building.
3 Q. Are the hen houses stationary sources?
4 A. We would not consider those to be stationary
5 sources.
6 Q. And why would they not be stationary sources
7 A. Because of the fugitive emissions from those
8 Q. Fugitive emissions in the definition of a
9 stationary source?
10 A. I'd have to go back and look again.
11 Q. Let's do that. I think that would be in
12 Rule 100.
13 A. Yeah, let's go ahead and look at it. I'm no
14 seeing the definition of stationary source in what yo
15 handed me there. I see a major source but I don't s
16 the stationary source.
17 Q. Actually, we might have to go to the CFR 51.
18 CHAIRMAN LEONARD: For the interest of
19 expediting this, I believe you're looking for Rule 10
20 section 200.105, page 29.
21 MR. BLACKSON: All right. Thank you.
22 in Rule 100.
23 THE WITNESS: All right. So Rule 100,
24 200.105, "Stationary source. Any source that operate
25 a fixed location and that emits or generates regulate

1 pollutants."
2 BY MR. BLACKSON:
3 Q. Are the hen houses in Tonopah Egg Ranch
4 stationary sources?
5 A. Yes, they would be stationary sources.
6 Q. Thank you. You had commented earlier that t
7 actually was an assessment of the applicability of th
8 requirements of Rule 241 as part of the process. Is
9 documented?
10 A. We did not document that, as we just looked
11 saw that the emissions were below the thresholds that
12 looked at with regard to the point sources; that they
13 below the thresholds so therefore it was obvious that
14 didn't document that in the TSD.
15 Q. Is that a normal practice?
16 A. Pretty much.
17 Q. So how would you show compliance with your
18 permitting process through your rule if you don't doc
19 it? For example, you have a checklist for completene
20 Why would you not document an assessment of applicabi
21 A. We would just be looking at the emissions.
22 are below 25 tons so that, again, it's one of those t
23 where it's obvious that it would not require any furt
24 discussion so they would be below any of the threshol
25 Q. But how would you ever demonstrate it?

1 A. By the amount of emissions that are listed i
2 tables in the TSD.
3 MR. BLACKSON: I'm done. Thank you.
4 CHAIRMAN LEONARD: All right.
5 MR. SWAN: I have a couple questions on
6 redirect.
7 CHAIRMAN LEONARD: Mr. Swan, you're up
8 redirect.
9
10 EXAMINATION
11 BY MR. SWAN:
12 Q. Okay. Mr. Sumner, EPA is the governing body
13 this type of activity, so why would you have reached
14 to other states to see what they are doing in this ar
15 A. Right. EPA is where we take our ultimate
16 guidance from and look for ultimate guidance. Someti
17 it's valuable to see what other states may or may not
18 doing.
19 Q. Okay. But it's -- is it for precedent? Is
20 establish what regulations would govern the activity
21 it just to see what others are doing in the area, giv
22 the fact that EPA has not nailed down its opinion and
23 issued regulations in this area?
24 A. Yeah, whenever it's an area like this that i
25 flux. I think it's well established here today that

1 is a developing area, so we're trying to see kind of
2 what's out there, what are other people doing.
3 Q. But it's not required looking at other state
4 It's informative, but not required?
5 A. Right, that's correct.
6 Q. I'm looking at ARS -- two sections of ARS 49
7 the first is P5(a) and if I can just read that small
8 paragraph to you. I have a question for you about it
9 5(a) says "Commercial farming practices that may prod
10 PM-10 particulate emissions within the regulated area
11 including activities of a dairy, a beef cattle feed l
12 poultry facility and a swine facility." I forgot to r
13 above it. "Regulated agricultural activities means",
14 then it leads into commercial farming practices. It
15 specifically mentions poultry facilities. Is that wh
16 the Department found the exemption for hen houses?
17 A. Correct, yeah, when we looked at all the
18 different farm type operations and that is the basis
19 that; that would be in that definition.
20 Q. The other provision of 49-457 is subsection
21 which reads as follows: "The regulation of PM-10
22 particulate emissions produced by regulated agricultu
23 activities is a matter of statewide concern. Accordi
24 this section preempts further regulation of regulated
25 agricultural activities by a county, city, town or ot

1 political subdivision of this state."
2 Does this not mean the county is expres
3 prohibited from regulating emissions from hen houses
4 is an agricultural activity? Is that your interpreta
5 of that?
6 A. That was my interpretation when I talked abo
7 statewide concern earlier, yes.
8 MR. SWAN: We have no further questions
9 MR. BLACKSON: May I follow up?
10 CHAIRMAN LEONARD: Let's go ahead with
11 questions and then we'll take a break.
12
13 EXAMINATION
14 BY MR. BLACKSON:
15 Q. Again, is the Tonopah Egg Ranch physically
16 located in a regulated area?
17 A. No.
18 Q. The regulated activity includes the definiti
19 a regulated area? Let me borrow --
20 MR. SWAN: Mr. Chairman, I am questioni
21 whether these questions have already been asked and
22 answered. I don't know what your recollection is but
23 seems to me that's the case.
24 CHAIRMAN LEONARD: I don't necessarily
25 disagree, but given the limited number of questions I

1 think Mr. Blackson has, we're going to go ahead and a
2 him to ask those questions.
3 BY MR. BLACKSON:
4 Q. The definition of regulated cultural --
5 agricultural activity. In order to perform a regulat
6 agricultural activity, you must be in a regulated are
7 that correct? And I will give this back to you.
8 A. Correct, that's the definition of a regulate
9 area, yes.
10 Q. Now, you talked about an exemption from the
11 agricultural process. Are you familiar with, in my
12 pre-hearing disclosure, where the EPA sued California
13 because they exempted animal feeding operations?
14 A. I am familiar with that.
15 Q. Do you believe that could happen here becaus
16 the exemption that you're saying exists statewide and
17 countywide for animal feeding operations?
18 A. I believe that could exist here. It would b
19 speculative but by the same token it hasn't so --
20 Q. So --
21 MR. SWAN: It seems to me to be beyond
22 scope of direct.
23 CHAIRMAN LEONARD: Remember on redirect
24 Blackson, it's got to be about questions that you may
25 already asked or things that you may have learned fro

1 Swan. So I understand where you're trying to go, but
2 got to bring it back to where we're at.
3 MR. BLACKSON: One more question.
4 BY MR. BLACKSON:
5 Q. You said that you did not go to the EPA but
6 went to Indiana. So why would you go to Indiana and
7 the EPA?
8 A. We -- I think you had said -- I don't know h
9 you define going to Indiana. We just looked at
10 literature. We didn't talk to anyone directly. In t
11 end, we just looked at literature available. We did
12 speak to anyone directly.
13 Q. And you did not speak to anybody directly at
14 EPA?
15 A. Yeah, I believe we did.
16 Q. Can you share the conversations?
17 A. Yeah. You know, again, I don't remember the
18 details of it and I don't have any particular notes o
19 anything from that conversation, but we just discusse
20 what -- with the EPA what was going on with that site
21 you know, any guidance that they have and they had no
22 guidance for us so --
23 Q. Can you say who you talked to?
24 A. Eugene Shin (phonetic).
25 MR. BLACKSON: We've seen e-mails on th

1 Thank you.
2 CHAIRMAN LEONARD: All right. Given th
3 interest of time, we do have some closing discussions
4 potentially as well as then there might be some quest
5 but --
6 MR. BLACKSON: I will be short.
7 CHAIRMAN LEONARD: Mr. Swan?
8 MR. SWAN: I just have a short paragrap
9 CHAIRMAN LEONARD: All right. Mr. Blac
10 if you'd like to go ahead and give your closing.
11 Hold on just a second. I can guarantee
12 I think we're going to have questions that we'll ask
13 ourselves as we go through, but at this point, we don
14 have questions for Mr. Blackson or Mr. Swan.
15 So, Mr. Blackson, if you'd go ahead and
16 proceed with your closing and then we'll allow Mr. Sw
17 MR. BLACKSON: Yes. I'd just like to s
18 that somebody has to decide if the county, Maricopa C
19 Air Quality Department, will be allowed to continue t
20 mischaracterize animal feeding operations as a major
21 source for non-fugitive emissions. I believe you hav
22 authority to stop this arbitrary behavior, and I ask
23 you decide in our favor. Thank you.
24 CHAIRMAN LEONARD: Thank you.
25 MR. SWAN: The Department has shown tha

1 have a very narrow scope of authority with regard to
2 type of an action, and Mr. Blackson's appeal is wheth
3 not the director's action in approving the minor perm
4 revision was inappropriate. That's all we're looking
5 so it is really very narrow.
6 Our evidence has shown that we properly
7 calculated and characterized the emissions. The deci
8 we made were not arbitrary. We acted reasonably and
9 lawfully in performing the analysis of the minor perm
10 revision application and the Department's decisions w
11 based upon clear technical judgment.
12 Two other points. Whether other states
13 chosen to regulate these operations without credible
14 evidence from the EPA does not mean that we must foll
15 their lead, and the Department's decision to wait for
16 EPA to issue regulation is evidence of a consistent
17 reasonable analysis. For all of the foregoing reason
18 the Board should confirm the director's decision to i
19 the minor permit modification. Thank you.
20 CHAIRMAN LEONARD: Thank you, gentlemen
21 very much. I'll conclude this portion of the hearing
22 have a sneaking suspicion that the Board is going to
23 some additional time, so I would propose setting anot
24 meeting date to discuss in executive session some of
25 we've heard together, and hopefully at that same hear

1 potentially come out with at least what we believe ou
2 decision is. So at this point, I'd like to stop the
3 hearing now. I would like to take a five-minute brea
4 then we'll come back for public comment.
5 So at this point, the court reporter ca
6 done at the conclusion of my statements and, Mr. Blac
7 and Mr. Swan, your group are free to stay. Obviously
8 you're free to go but we will coordinate our schedule
9 your schedules to get that scheduled up.
10 MR. SWAN: Would we be involved -- if i
11 executive session, would we be involved in your next
12 meeting? It sounds like deliberations without us but
13 asking for clarification.
14 MR. HISER: It's a complex question, Mr
15 Swan. Under the Arizona open meetings law, while we
16 discuss in executive session certain aspects and ques
17 that they may have for counsel for guidance, the actu
18 deliberations of the Board are public activity. So t
19 deliberation portion would be open to the public and
20 that's why we will coordinate to make sure, as a cour
21 to the two parties and anybody else who sat through t
22 hearing that would like to hear when that would be.
23 MR. SWAN: Okay. I appreciate the
24 explanation. Thank you.
25 CHAIRMAN LEONARD: Again, it goes witho

1 stating that one of the things this hearing Board is
2 tasked with doing is making sure that the public has
3 opportunity to understand where we're coming from, bo
4 individually and as a Board; if for no other reason,
5 Blackson has put in a tremendous amount of effort, as
6 as has the Department. At that point, we will be
7 scheduling another hearing or another meeting date.
8 At this point, our court reporter, you
9 officially done.
10 (The hearing concluded at 4:55 p.m.)
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25

1 STATE OF ARIZONA) SS.
) 2 COUNTY OF MARICOPA)
3 BE IT KNOWN that the foregoing proceedings
taken before me; that the witness before testifying w
4 duly sworn by me to testify to the whole truth; that
foregoing pages are a full, true and accurate record
5 the proceedings, all done to the best of my skill and
ability; that the proceedings were taken down by me i
6 shorthand and thereafter reduced to print under my
direction.
7
I CERTIFY that I am in no way related to an
8 the parties hereto nor am I in any way interested in
outcome hereof.
9
10 [ ] Review and signature was requested.
[ ] Review and signature was waived.
11 [X] Review and signature not required.
12
I CERTIFY that I have complied with the eth
13 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-
J(1)(g)(1) and (2).
14 Dated at Phoenix, Arizona, this 22nd day of
November, 2016.
15
16
17 LAURA A. ASHBROOK, RMR
Certified Reporter
18 Arizona CR No. 50360
19
* * *
20
21 I CERTIFY that GRIFFIN & ASSOCIATES, LLC, h
complied with the ethical obligations set forth in AC
22 7-206 (J)(1)(g)(1) through (6).
23
24
GRIFFIN & ASSOCIATES, LLC
25 Arizona RRF No. R1005