

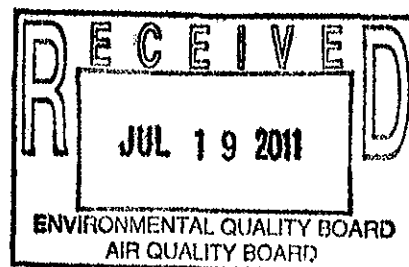
BEFORE THE ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

IN RE:
ALLEGHENY ENERGY,
APPELLANT,

V.

APPEAL NO: 11-21-EQB, 11-22-EQB

SCOTT MANDIROLA, DIRECTOR,
DIVISION OF WATER AND WASTE MANAGEMENT,
DEPARTEMTN OF ENVIRONMENTAL PROTECTION,
APPELLEES.



ORIGINAL

HEARING

JUNE 16, 2011
10:00 AM

DEPARTMENT OF ENVIRONMENTAL PROTECTION
CHARLESTON, WEST VIRGINIA

Denys Snodgrass
Certified Curt Reporter

GARRETT REPORTING SERVICE
"PROFESSIONAL STENOMASK FOR THE RECORD"

A P P E A R A N C E S

ON BEHALF OF THE EQB BOARD:

ED SNYDER (VIA PHONE)
WILLIAM GILLESPIE (IN PERSON)
TED ARBRECHT (VIA PHONE)
SCOTT SIMONTON (VIA PHONE)

WENDY RADCLIFF (VIA PHONE)
JACKIE SCHULTZ (IN PERSON)

ON BEHALF OF THE APPELLANT:

ANN BRADLEY, ESQUIRE
CATHERINE CROCKETT, ESQUIRE

ON BEHALF OF APPELLEE:
SARAH SURBER, ESQUIRE

GARRETT R E P O R T I N G S E R V I C E
"PROFESSIONAL STENOMASK FOR THE RECORD"

1 P R O C E E D I N G S

2 DR. SNYDER: We'll get started with our
3 hearing this morning. It's going to be 11-21-EQB, 11-
4 22-EQB, Allegheny Energy Supply Company, LLC,
5 Appellants, versus, Scott G. Mandirola, Director,
6 Division of Water and Waste Management West Virginia
7 Department of Environmental Protection and this is
8 regarding a motion for stay.

9 And we have all board members -- Ted,
10 are you there?

11 MR. ARMBRECHT: Yeah, I'm here.

12 DR. SNYDER: We have Bill, and Scott is
13 on the phone, correct?

14 DR. SIMONTON: Yes.

15 DR. SNYDER: We do not have Dr. Van
16 Gundy. I'm Ed Snyder. I will be chairing the hearing
17 from a distance. And Wendy is on the phone as well
18 and Jackie is in the room.

19 What I would like to do at this point is
20 have the attorneys introduce themselves for the
21 record, starting with the Appellant, and then we'll
22 have the Appellant proceed with their case.

23 MS. BRADLEY: Thank you, Dr. Snyder. Ann
24 Bradley on behalf of Allegheny Energy Supply. Company.

1 MS. CROCKETT: And Catherine Crockett on
2 behalf of Allegheny Energy Supply Company.

3 MS. SURBER: Sarah Surber on behalf of
4 DEP.

5 DR. SNYDER: And you were just up here
6 for the hearing in Martinsburg, weren't you, Ms.
7 Surber?

8 MS. SURBER: Yes. Long time no see.

9 DR. SNYDER: I remembered the first
10 name, but I always like to put names with faces.

11 So at this point, unless there's
12 anything else to bring before we get started from
13 either side, I'll have Ms. Bradley get started.

14 MS. BRADLEY: Thank you, Dr. Snyder. We
15 appreciate the Board scheduling this hearing as
16 promptly as you have. We understand and sympathize
17 with your busy schedule. I know you spent several
18 days in hearings last week, I believe, and so we
19 apologize for the imposition on your time and we
20 certainly appreciate your willingness to accommodate
21 us with this hearing today.

22 The purpose of the hearing is to address
23 motions for stay certain conditions of the NPDES
24 permit and an order that was issued to Allegheny

1 Energy Supply Company for its Harrison Power Station.

2 This is a major coal fired power plant
3 that has 360 MW generating and it's located in
4 Harrison County on the West Fork. The permit that is
5 the subject of this appeal is a renewal of the prior
6 permit, but it has major changes, including new more
7 stringent permit limits and a significant increase in
8 monitoring requirements. By our estimate, the
9 monitoring requirements in this permit have increased
10 by 340 percent.

11 This appeal challenges many of these new
12 requirements, but the motions for the stay are focused
13 on a very limited number of issues. We have prepared
14 a summary just to help the board follow through these
15 issues as we discuss them that we provided to Ms.
16 Surber. What we provided is simply an outline of the
17 stay issues. If you have that document, I think it
18 was included in what Ms. Schultz sent out. It's
19 entitled "Motions for stay of 11-21 and 11-22 EQB."

20 DR. SNYDER: The most recent one is a
21 single page, correct?

22 MS. BRADLEY: Correct.

23 DR SNYDER: Thank you. Yes. I have it.
24 Does everyone have a copy of this?

1 MR. GILLESPIE: Yes.

2 DR. SNYDER: Okay. Good.

3 MS. BRADLEY: All right. With respect
4 to the permit itself, the motion for stay addresses
5 the new discharge limitations for iron and effluent
6 temperature at Outlet 001, which are effective
7 immediately. It addresses the new aluminum limits at
8 outlet 002 and the new temperature limits at outlet
9 002, again, which are effective immediately.

10 It addresses the iron limits at outlet
11 002, which has a 24-month compliance schedule and it
12 addresses new discharge limits for the metals I am
13 seeing and aluminum on six stormwater outfalls. These
14 new limits have a 24-month compliance schedule in the
15 permit. The permit also addresses the requirement to
16 install two end stream temperature monitors a 10th of
17 the mile downstream of outlet 002. Those are the
18 permit issues that are the subject of this motion for
19 stay.

20 With respect to the order that
21 accompanied the permit, we've asked to stay a
22 requirement in the order that the company submit a
23 corrective plan regarding exceedances of benchmark

1 value for the stormwater outlets by November 4, 2011.
2 That paragraph 2 of the order.

3 Upon further review, the company has
4 concluded that this condition of the order is
5 essentially a repetition of the condition in the
6 permit and we believe that we're going to have to
7 comply with the permit in any event and therefore we
8 are withdrawing our request to stay that condition in
9 paragraph 2 of the order for compliance. We will move
10 forward to submit that corrective plan as required by
11 the order and essentially we believe required by the
12 permit.

13 There's a second condition of the order
14 addressed in our motion for stay and it relates to the
15 submission of quarterly progress reports identifying
16 the revisions that have been made to the stormwater
17 plan. With the clarification we received from DEP
18 that those quarterly reports will not be due until
19 after that corrective plan has been submitted, though
20 we're withdrawing our request for stay as to that
21 condition.

22 The final condition of the order that is
23 the subject of the stay is a requirement that the
24 company initiate compliance with all terms and

1 conditions of the permit immediately. We are pursuing
2 your request to stay that condition really as a
3 technical issue because to the extent any of the
4 issues that we've requested a stay for in the permit
5 are granted, then we would need relief from that
6 condition of the order which requires you to
7 immediately comply with the terms and conditions of
8 the permit. They would be inconsistent at that point.
9 So it's really more of the technical objection to that
10 provision of the order.

11 That's an overview of the stay issues we
12 intend to address today. We do have a preliminary
13 motion that we would like to make before we get into
14 that. Ms. Crockett will address that.

15 MS. CROCKETT: Good morning. As a
16 preliminary procedural matter, we would like to note
17 that Allegheny Energy filed its motions for stay along
18 with its notices of appeal on June 3, 2011. Those were
19 hand delivered to the agency and an electronic copy
20 was provided as a courtesy as well.

21 We received DEP's responses at 5:15 PM
22 yesterday evening June 15. Under the procedural
23 rules, the parties are required to respond to a motion
24 within 10 days of receipt of that motion. So in

1 accordance with those rules, the response here was
2 required by June 13, which was Monday. We believe
3 that this is a reasonable and appropriate time
4 requirement that should be respected and moreover,
5 believe that the Board has historically required the
6 parties to comply with these timing requirements.

7 Accordingly, we would like to move to
8 strike DEP's responses on the grounds that they were
9 not timely filed.

10 DR. SNYDER: Very good. We'll allow Ms.
11 Surber to respond to Ms. Crockett's motion, and then
12 we'll have to make a decision.

13 MS. SURBER: DEP responds that its
14 responses were filed in a timely manner. We received
15 the notice for the stay and the notice of appeal on
16 Friday. I guess that would've been -- I think it was
17 the third. On Monday through Wednesday of last week,
18 I was involved in both S&B and the EQB hearings on the
19 North Mountain shale quarry. We tried to contact
20 attorneys for Appellant to stay to find out if we
21 wanted at the hearing on Wednesday. DEP was prepared
22 to go forward with the hearing on Wednesday before EQB
23 reconvened for the North Mountain shale matter. We
24 did not hear back until late on Tuesday evening that

1 Appellant did not want to have a hearing on Wednesday.
2 They would prefer to have it at a later date. That
3 date was set -- I think was set on Wednesday morning.
4 I didn't get back in town until Friday. I met with my
5 client. I filed the motion as timely as I can -- as I
6 could.

7 I would also note that nothing in
8 Appellant's motion for stay was particular I used to
9 the issues that they're prepared to discuss today.
10 DEP offered to clarify its position specifically on
11 each one of the issues and filed lengthy briefs or
12 responses for both motions for stay. DEP provided
13 this as a courtesy to the board, so that the board was
14 clear on the positions when it goes into review on the
15 issues of the motions for stay. DEP's position is
16 that it was timely, considering that motions for stay
17 are supposed to be mostly heard within five days.
18 Obviously the 10-day rule can apply to that. DEP asks
19 that the board considered its motion -- or its
20 response.

21 DR. SNYDER: Okay. Response, Ms.
22 Crockett, and then I'm going to try to see how we can
23 have a brief discussion with the board members.

1 MS. CROCKETT: Yes. Our response to
2 that would be as an initial matter, yes, there were
3 discussions regarding holding the hearing last week,
4 but the hearing was never formally scheduled for last
5 week. Discussions were held to determine the parties'
6 schedules.

7 We did not receive from the DEP a
8 request for an extension of the 10 day deadline that
9 sent the board's procedural rules for responses, which
10 is not particularized to exempt stay motions.
11 Obviously if we received a request to extend the
12 deadline, we would've consented that given that
13 consideration, but we were not contacted in any way
14 requesting an extension of the 10 day deadline.

15 DR. SNYDER: Okay. Thank you. How are
16 we going to logistically do this because I would like
17 to hear from other board members? I guess we could
18 clear the room and ask you to come back in.

19 (WHEREUPON, the Board held discussions off the
20 record.)

21 DR. SNYDER: Okay. Very good. After
22 discussion, we are going to deny the motion to strike.
23 The argument that the 10 day response time doesn't
24 contemplate stays which require a five day response

1 basically means that there is room for some
2 flexibility here. Because appellant is going to have
3 the opportunity to respond directly, we don't feel
4 there's prejudice, and in truth, if -- if we did this,
5 Ms. Surber if she so desired could read the entire
6 document into the record and that would just take a
7 lot of time when we have something that we can work
8 from. So we're going to do that this and Ms. Bradley,
9 allow you to go ahead.

10 MS. BRADLEY: Thank you, Dr. Snyder. We
11 would call our first witness and that would be Bill
12 Canon.

13 (WHEREUPON,
14 WILLIAM CANON,
15 was called as a witness, duly sworn
16 and testified as follows:)

17 E X A M I N A T I O N

18 BY MS. BRADLEY:

19 Q. Would you state your name for the
20 record, please?

21 A. William Earnest Canon.

22 Q. And, Mr. Canon, are you employed?

23 A. I am.

24 Q. Where are you employed?

1 A. I am employed by First Energy
2 Corporation that is now the owner of the Harrison
3 Power Station. First Energy acquired Allegheny Energy
4 recently.

5 Q. And were you formerly an employee of
6 Allegheny Energy?

7 A. I was.

8 Q. How long were you employed by them?

9 A. Approximately 19 years.

10 Q. Mr. Canon, what's your formal education?

11 A. I have a Bachelor of Science in
12 Environmental Science.

13 Q. And with Allegheny Energy and now First
14 Energy, what is your title and what are your job
15 responsibilities?

16 A. My title is Senior Scientist. My job
17 responsibilities have changed a bit over the years.
18 They have always been related to regulatory
19 compliance. They have been pretty much exclusively
20 focused on NPDES compliance for the last seven years.

21 Q. And what particular experience do you
22 have in identify technologies or wastewater treatment
23 systems for achieving pollutant reductions in
24 discharges from power stations?

1 A. Well, I am not an engineer, however, I
2 play a facilitating role with the engineers in our
3 company. I act as an interface, if you will, between
4 the agency and the engineers and assist in evaluating
5 and selecting technologies and the permitting and
6 seeing them to completion.

7 Q. You heard the description of the issues
8 that are before the board in this motion, these
9 motions for stay. If the current limits in the permit
10 that have been challenged were upheld by the board,
11 what would be your role in the implementation of those
12 requirements?

13 A. Well, I would play, essentially, the
14 role that I have just described. It would be in
15 assisting and facilitating examination of the
16 available technologies, technology selection,
17 permitting and bringing the projects to completion.

18 MS. BRADLEY: We have an exhibit to
19 offer at this time that I think has been delivered to
20 the board electronically. We have a copy of a drawing
21 up on an easel here and Mr. Canon has a smaller
22 version of that copy at hand.

1 BY MS. BRADLEY:

2 Q. Would you identify that drawing for us,
3 please?

4 A. Yes. This is the spill prevention
5 control and counter measures diagram for the Harrison
6 Power Station. The fact that it is SPCC diagram is
7 really only incidental. We're using it because it is
8 very illustrative of what we need to talk about.

9 MS. BRADLEY: I'd like to move the
10 admission of this drawing at this time.

11 MS. SURBER: No objection.

12 MS. BRADLEY: That will be Appellant's
13 Exhibit 1; is that right? Do we need a ruling, Dr.
14 Snyder, on the admission of that? There was no
15 objection by DEP.

16 DR. SNYDER: If there's no objection,
17 then let's go forward and admit that.

18 (WHEREUPON, Appellant's Exhibit No. 1 was marked
19 and is hereto attached.)

20 BY MS. BRADLEY:

21 Q. Okay. Mr. Canon, would you describe for
22 the board what that drawing illustrates?

23 A. All right. This drawing illustrates the
24 site layout plan, view, if you will, of the Harrison

1 Power Station property. In the lower left-hand corner
2 of the drawing is a complete overview which shows the
3 power station itself labeled, the scrubber system or I
4 should say the scrubber waste treatment system to the
5 left of the power station, cooling towers, coal pile,
6 shows the location of the two lagoons.

7 The major portion of the drawing, the
8 upper portion shows a little more detail. It does --
9 you know, it cuts off the lagoons. That's why we have
10 the lower left portion. The upper portion details
11 the stormwater outlets and their location along
12 approximately one-and-a-quarter miles of riverfront.

13 Q. The two lagoons that are identified in
14 the lower left-hand corner of the drawing, what is the
15 function of those lagoons?

16 A. They provide wastewater treatment for
17 the power station proper and they do that by means of
18 sedimentation and pH adjustment.

19 Q. Now, with respect to the wastewaters
20 that enter those lagoons, what wastewaters would those
21 be?

22 A. Well, it is essentially all of the
23 wastewater from the power station, the overwhelming
24 majority of which is cooling tower blowdown; however,

1 the configuration is such that the cooling tower
2 blowdown is used for ash transport water before being
3 sent to the lagoons, and then there are a variety of
4 low-volume wastewaters that also mix with these
5 waters.

6 Q. The permit itself describes the
7 wastewater -- well, let me back up. Each of these
8 lagoons has an outlet to the west Fork; is that
9 correct?

10 A. That is correct.

11 Q. One being outlet 001, the other being
12 outlet 002?

13 A. That is correct.

14 Q. And is it fair to describe the
15 corresponding lagoon, just for shorthand purposes here
16 as Lagoon Number One going to outlet 001, Lagoon
17 Number Two going to outlet 002?

18 A. Yes.

19 Q. The permit describes the wastewater that
20 is authorized to be discharged through outlet 001 as
21 sanitary cooling water, stormwater runoff and process
22 water. Do you agree with that description?

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1 conditions of the permit immediately. We are pursuing
2 your request to stay that condition really as a
3 technical issue because to the extent any of the
4 issues that we've requested a stay for in the permit
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10 the lower left portion. The upper portion details
11 the stormwater outlets and their location along
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14 the lower left-hand corner of the drawing, what is the
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19 Q. Now, with respect to the wastewaters
20 that enter those lagoons, what wastewaters would those
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22 A. Well, it is essentially all of the
23 wastewater from the power station, the overwhelming
24 majority of which is cooling tower blowdown; however,

1 the configuration is such that the cooling tower
2 blowdown is used for ash transport water before being
3 sent to the lagoons, and then there are a variety of
4 low-volume wastewaters that also mix with these
5 waters.

6 Q. The permit itself describes the
7 wastewater -- well, let me back up. Each of these
8 lagoons has an outlet to the west Fork; is that
9 correct?

10 A. That is correct.

11 Q. One being outlet 001, the other being
12 outlet 002?

13 A. That is correct.

14 Q. And is it fair to describe the
15 corresponding lagoon, just for shorthand purposes here
16 as Lagoon Number One going to outlet 001, Lagoon
17 Number Two going to outlet 002?

18 A. Yes.

19 Q. The permit describes the wastewater that
20 is authorized to be discharged through outlet 001 as
21 sanitary cooling water, stormwater runoff and process
22 water. Do you agree with that description?

23 A. Yes

1 Q. With respect to Outlet 002, the permit
2 describes the discharge in exactly the same terms, and
3 let me pull that page of the permit up. I'm looking
4 at Page 12 of 56 of the permit. Again, it describes
5 Outlet 002 as receiving sanitary cooling water,
6 stormwater runoff and process water, the same
7 description as I read for Outlet 001.

8 Are in fact the same wastewaters being
9 discharged to each of these outlets?

10 A. Yes.

11 Q And tell us how that works. What's the
12 procedure for using them?

13 A. Okay. There are two lagoons. If you
14 look on the drawing, you'll see that they have
15 slightly different shapes shown; however, in terms of
16 volume, they are within several hundred cubic feet of
17 each other. They are essentially identical volume and
18 they are used interchangeably if you will.

19 The way the process works is that one
20 lagoon is used and as you know, these lagoons
21 accumulate sediments over their operating time. When
22 the lagoon that is currently in service accumulates
23 sediments to an amount less than 60 percent of its
24 capacity, it is then taken out of service and the

1 water diverted to the then out-of-service lagoon. The
2 lagoon which has been taken out of service is left
3 inactive, allowed to dewater, then the ash is
4 excavated and the lagoon is placed in a, we'll call it
5 a holding pattern until the other lagoon accumulates
6 sediments, and then the wastewater is shifted, and
7 they go back and forth based on sediment accumulation.

8 Q. AS to the stormwater outlets, could you
9 describe their location and generally the area of
10 drainage for the stormwater outlets?

11 A. Okay. Referring to the drawing and
12 starting at the upper left-hand corner, we have
13 stormwater outfalls six through 11. In the upper
14 left-hand corner, we have outfall six. Six has a
15 drainage area of slightly under ten acres.

16 And I might add that on the drawing, the
17 drainage channels that lead to the piping, which is
18 essentially all buried is shown for each of these
19 outfalls on the drawing.

20 The next one is outfall 007. It drains
21 a bit more than 26 acres and is a very long run that
22 comes the whole way back, essentially, to the station
23 switch yard. At pretty much the center of the

1 drawing, we have outfall 008 at just a little under
2 five acres of drainage area.

3 Moving again to the right, we have
4 outlet 009, which is just a bit over two acres of
5 drainage area, Outlet 010, which is two-and-a-half
6 acres of drainage area, and then at the bottom and not
7 very clearly shown on the drawing is Outfall 011. 011
8 drains 60-and-a-half acres of drainage, however, much
9 of that area is vegetated; whereas the overwhelming
10 majority of the other stormwater outfalls are in areas
11 that are gravel or pavement.

12 Q. Is it fair to say that with such a large
13 drainage area that in the significant rainfall event,
14 there would be an enormous amount of flow going
15 through these outlets?

16 A. That is accurate.

17 Q. Turning to the conditions of the permit
18 that are the subject of this stay, let me ask you, the
19 current treatment systems that are in place at
20 Harrison, were they designed to meet the new limits
21 for temperature and metals on the stormwater outlets
22 and the cooling water outlets?

23 A. They were not.

1 Q. Based upon your review of past DMR data,
2 can the current treatment systems achieve consistent
3 compliance with the new limits for metals in
4 temperature?

5 A. Not consistent.

6 Q. I've just handed you a document titled
7 "Comparison of DMR Data Under Prior Permit with New
8 Permit Limits." Do you have that document?

9 A. I do.

10 Q. Can you describe what that document
11 says?

12 A. Well, it has the dates of -- it has a
13 listing of results, which these are historical DMR
14 monitoring results, and in subsequent columns, they
15 are compared, if you will, to the new permit limits
16 and the columns are checked to indicate whether all of
17 them would have resulted in violations under the new
18 limits. The columns are checked to indicate whether
19 they would be monthly average or daily maximum
20 violations.

21 Q. On the second page of the chart, which
22 contains -- appears to contain data related to
23 effluent temperature, there are not checks in every
24 column there, are there?

1 A. No, there are not.

2 Q. Is this information on this exhibit
3 derived from the database that Allegheny Energy has
4 for DMR data that's been submitted to DEP?

5 A. It is.

6 MS. BRADLEY: I'd like to move the
7 admission of this document as Appellant's Exhibit
8 Number 2.

9 DR. SNYDER: Any objections?

10 MS. BRADLEY: No objection.

11 DR. SNYDER: So moved.

12 (WHEREUPON, Appellant's Exhibit No. 2
13 was marked and is hereto attached.)

14 BY MS. BRADLEY:

15 Q. I want to go back to your conclusion
16 that in your opinion Allegheny Energy would not be
17 able to achieve consistent compliance with the new
18 metals and temperature limits in the permit in light
19 of this chart.

20 Let's look at, for example, the aluminum
21 data at Outlet 002 that's summarized on the chart.
22 What does that show in terms of exertions under the
23 prior permit?

1 A. There are three exertions listed under
2 the prior permit that would have exceeded monthly
3 average violations, one of which would have exceeded
4 the daily maximum.

5 Q. Are you familiar with how exceedances of
6 monthly average limits are treated in enforcement
7 actions?

8 A. I am.

9 Q. And what is that treatment?

10 A. If you have an exceedance of a monthly
11 average violation, obviously, it depends on the number
12 of samples that have been collected, assuming only one
13 sample was collected during a month, it would -- every
14 day of the month would be considered to be a separate
15 permit limit violation.

16 If you have multiple samples collected
17 in a month, it becomes more complicated based on the
18 individual results.

19 Q. But for a single monthly average
20 violation, it could be deemed to be 30, for example,
21 in a month with 30 days, 30 violations of the permit?

22 A. That's correct.

23 Q. I note on the chart and recalling the
24 issues of the stay, one of the issues is the effluent

1 limitation for iron at outlet 001. This chart doesn't
2 show any information or excursions for outlet 001 for
3 iron. why is that?

4 A. It's based on the amount of time that
5 outlet 001 was in service during the last permit
6 cycle. During the last permit cycle, outlet 001 was
7 only used for about nine months. There is no real
8 reason for that. It's sort of serendipitous based on
9 the, as I said earlier in my testimony, the decision
10 if you will to discharge via outlet 001 or outlet 002
11 is really based on accumulation sediment within the
12 lagoons and their need to be dewatered and excavated.

13 Q. And that period that you're addressing
14 will last five years, basically, and we're talking
15 about July of '06 through June of 2011, a total of 60
16 months. Your testimony is that of those 60 months in
17 only nine months were discharges occurring through
18 outlet 001?

19 A. Yes.

20 Q. During the other 51 months, would it be
21 fair to say that the discharges would all be going out
22 outlet 002?

23 A. That is correct.

1 Q. With respect to Outlet 002, what does
2 the chart show for iron discharges?

3 A. It shows all of the occurrences within
4 the last permit period where our DMR results would
5 have resulted in violations based on the new permit
6 limits.

7 Q. Now, you've testified, Mr. Canon, that
8 the wastewater coming into these two lagoons is
9 essentially the same, essentially the same influent
10 wastewater, essentially the same treatments occurring,
11 essentially the same size for these lagoons.

12 If we have the same discharge going into
13 each lagoon, why is that we don't have any excursions
14 in Outlet 001?

15 A. Well, there would be a couple of
16 reasons. One would be just the probability that
17 excursions would occur based on the ratio of time in
18 service between the nine months versus the 51 months,
19 and other than that, it would simply be a matter of
20 circumstances that just happened to exist during the
21 time that Outlet 002 or Outlet 001 were in service on
22 any given day. There is really nothing that would
23 make it more or less likely that an excursion would

1 occur at either of the two other than the mere fact
2 that it was in service that day.

3 Q. All right. Thank you. I'd like to
4 discuss the issue of how the company would actually
5 achieve compliance with the limits that are proposed,
6 the new limits that are proposed for outlet 001 and
7 outlet 002.

8 In the limited time that the company's
9 had since you received this permit -- and I think the
10 record will demonstrate the permit was issued on May
11 the 5th. It was received by the company on May 18 over
12 two weeks -- almost 2 weeks later, and became
13 effective on June 4th. In the limited time you took to
14 review this permit, have you undertaken a preliminary
15 assessment of the treatment systems that you think
16 might be utilized to achieve compliance with the new
17 permit limits at 001 and 002?

18 A. We have within the constraints of the
19 available time.

20 Q. And what was the nature of that
21 assessment?

22 A. Well, what we did was we, again, based
23 on the available time, we have recently installed a
24 cooling tower blowdown wastewater treatment at our

1 Pleasants power station. Since that work is actually
2 not completed at this point, we used it as a very good
3 guide for estimating the cost of treating the volume
4 of the 001 and 002 discharges at Harrison. The metals
5 that we would need to treat in order to achieve
6 compliance would be the same metals and so what we did
7 was we looked at our costs for the Pleasants system.
8 We then use that to come up with millions of dollars
9 per thousand gallons of treatment system capacity and
10 we then, assuming that the treatment system that would
11 be necessary at Harrison would be the same technology,
12 just scaled up to meet Harrison's size, and I might
13 add that that the volume necessary for treatment at
14 Harrison -- well, let me say that the volume treated
15 at Pleasants is only about 19 percent of the volume
16 that we would need to treat at Harrison.

17 So, anyway, once we had the cost factor,
18 we then scaled it up to Harrison's to achieve an
19 estimate.

20 Q. And what estimate did you make as a
21 result of that process?

22 A. A total of 92.5 million

23 Q. 92.5 million being the estimated cost to
24 install a treatment system at Harrison power station

1 to achieve the new permit limits at outlet 001 and
2 outlet 002; is that correct?

3 A. That is correct.

4 Q. That's a preliminary estimate. You're
5 not representing that's an engineering estimate, but
6 based upon the limited time that you had to prepare an
7 estimate based upon your best judgment at this time;
8 is that correct?

9 A. That is correct. At this time, it's
10 entirely preliminary and based on the development of
11 the cost factor using Pleasants as the guide, which we
12 believe to be quite a reasonable approach, but of
13 course more engineering work would be necessary to
14 have a firm estimate.

15 Q. Mr. Canon, what work in terms of the
16 types of activities would be necessary to put a new
17 treatment system in place to meet these new limits at
18 outlet 001 and 002, what are the activities that would
19 be involved?

20 A. Well, okay, this is a summary, but
21 basically we would have to hire an engineering
22 consultant, we would have to define the scope of the
23 work, we would have to do work to select from a small
24 number of technologies and we would then have to

1 develop a budget and a schedule and go through the
2 detailed engineering, and then the construction,
3 startup and engineering process. Also included in
4 that would be the permitting.

5 Q. Now, the permit as written allows the
6 company 24 months to complete the work necessary to
7 have a new treatment system in place. What's your
8 view of whether that's an adequate amount of time to
9 do that work?

10 A. It is an inadequate amount of time.

11 Q. Recognizing again that these are just
12 preliminary estimates on your part, but do you have an
13 opinion as to how long it would take to do all of
14 those activities and others that you described to put
15 that new system in place?

16 A. Yes. Based on our preliminary work, I
17 would say that it would take us 52 months.

18 Q. It could be more, could be less?

19 A. Could be. Again, this is a preliminary
20 estimate. Fifty-two months is our best estimate given
21 the available time to develop it.

22 Q. But it would definitely take more than
23 24 months?

24 A. Absolutely.

1 Q. Let's turn to the stormwater outfalls.
2 You've also indicated that in your opinion, the
3 company would be unable to meet the new metals limits
4 in the discharge at the stormwater outfall. It's fair
5 to say DEP agrees with that opinion since they've
6 provided the compliance schedule of 24 months to
7 achieve compliance with those limits.

8 Again, in the limited time available,
9 have you had an opportunity to undertake an assessment
10 of what treatment system would be necessary to achieve
11 those stormwater outfall limits?

12 A. We have.

13 Q. And what have you determined?

14 A. Well, we have determined that the metals
15 iron, aluminum and zinc that we would have compliance
16 issues with are the same metals that are being treated
17 at Pleasants and that would be treated by the lagoon
18 discharge treatment system at Harrison and so
19 therefore, the most likely technology that we would
20 apply would be the same technology and we therefore
21 used the same cost estimate that I alluded to before
22 coming based on the work that we're doing at Pleasants
23 and we then scaled it to match the stormwater flow
24 needs at Harrison, however, I need to add in here that

1 there are a couple of additional factors that need to
2 come into play with a stormwater treatment system at
3 Harrison, that being that the Harrison circumstance is
4 that the station is on a plateau, which is as much as
5 45 feet higher than the outlets, so the entry points
6 up on the plateau, you'll have a 45 foot drop to the
7 final outlet point.

8 In order to construct a stormwater
9 treatment system in at Harrison would involve the
10 construction of a pipeline along the one and a quarter
11 miles of the station waterfront, and then because
12 there is a constructed, a high constructed wall all
13 along the frontage of the station -- again, it would
14 help to refer to the drawing, but the wall drops to
15 the railroad tracks, beyond the railroad tracks, it
16 drops to the river, therefore, there is no room down
17 on the lower level for installation of anything like a
18 treatment system.

19 We would be forced to install a
20 pipeline, install significant pumping capacity. We
21 would then have to pump it back up onto the plateau.
22 We would then need to construct a large lined
23 stormwater pond to retain this water until it could be
24 run through the treatment system.

1 so we also estimated the cost, the
2 pumping and the installation of the holding pond. The
3 cost estimate that we did for the holding pond was
4 based on work that we have recently done at another of
5 our power stations, and then adjusted for acreage.

6 Q. And what estimated cost did you come up
7 with?

8 A. The estimated cost for the total
9 stormwater treatment that I just described would be
10 88.8 million.

11 Q. And we're talking about a separate
12 treatment system from the treatment system that would
13 be installed to comply with the new limits at Outlet
14 001 and outlet 002; is that correct?

15 A. Yes. The two cost estimates that I gave
16 are separate, however, you know, this is preliminary
17 and following a full evaluation, it may be the case
18 that we would want to combine these into one very
19 large system, however, I believe it would be more
20 likely that given the site layout, that we would end
21 up, also, and the need to install a large holding
22 pond, it is most likely that we would end up with two
23 separate treatment systems, one at either end of the
24 property.

1 Q. And in your opinion -- well, let me ask,
2 I assume the same types of activities would have to
3 occur as you described with the treatment system for
4 outlets 001 and 02 in order to have this treatment
5 system for stormwater?

6 DR. SNYDER: Ms. Bradley, I hate to
7 interrupt, but for some reason I lost you after the
8 first couple of words, and then I just got the last
9 couple words. Could you get to your question again
10 please?

11 MS. BRADLEY: I think someone sneezed.

12 BY MS. BRADLEY:

13 Q. I was asking the question of whether the
14 types of activities that would have to take place in
15 order to put a new treatment system in place for
16 stormwater are similar to the types of activities you
17 described, Mr. Canon, in putting in place the
18 treatment system for outlet 001 and outlet 002
19 discharge?

20 A. They would be very similar with the
21 addition of the need to install pipeline to collect
22 the stormwater, and then to install a holding pond.

1 Q. And in your opinion, would the 24 months
2 allowed by DEP in the permit for installing such a
3 treatment system be adequate?

4 A. Absolutely not.

5 Q. What's your estimate at this point
6 regarding the amount of time that would be necessary?

7 A. Our estimate would be that it would be
8 52 months, the same as what would be a very similar
9 treatment system at the lagoon outfalls, and I might
10 also add that during the engineering and evaluation
11 processes, as I alluded to before, while the initial
12 examination would tend to lead us to the need to
13 install two separate and physically isolated, if you
14 will, treatment systems, that evaluation might lead us
15 to one much larger system with, you know, the
16 additional piping et cetera, and since these things
17 would be occurring concurrently, of course, you would
18 need the same time period to accomplish both.

19 So essentially -- I would add that,
20 essentially, the engineering evaluation for one would
21 be the engineering evaluation for both.

22 Q. All right. Thank you. Let's return to
23 the chart of the comparison of the DMR data, which I
24 believe is Exhibit Number 2 and direct your attention

1 to the effluent temperature data that's on the second
2 page of that chart. The temperature limits for outlet
3 001 as shown on the chart 104.9°F, for outlet 002,
4 107.3°F, that chart does show some historic excursions
5 of those numbers, does it not?

6 A. It does.

7 Q. And the sample points that do not have a
8 number for excursion, are they fairly close to the
9 limit that's being imposed in this new permit?

10 A. I would say perilously is a good term to
11 apply.

12 Q. What is the treatment system that's in
13 place to address temperature in the discharge from
14 outlets 001 and 002?

15 A. Well, the overwhelming majority of the
16 flow that goes to the lagoons is cooling tower
17 blowdown, so the treatment system that is in effect to
18 control the temperature of water that is ultimately
19 discharged from the lagoons would be two parabolic
20 cooling towers that the station operates.

21 Q. Are these cooling towers consider to be
22 state of the art for addressing temperature and
23 discharges from electric power generating facilities?

1 A. I believe them to be. They are
2 certainly the industry standard.

3 Q. Are you aware of any power plant that
4 has cooling towers that uses additional treatment to
5 address the temperature and its discharges?

6 A. By that, you would be inferring use of
7 something like a chiller or a secondary tower?

8 Q. Correct.

9 A. No.

10 Q. In the short period of time that you've
11 had to assess the additional treatment systems that
12 might be installed at Harrison to address these
13 discharges, have you been able to make any assessment
14 of what that would be and what it might cost?

15 A. We have not.

16 Q. I'm going --

17 A. I might add, basically, you know we're
18 not sure where you would go with that. We have the
19 parabolic cooling towers.

20 Q. I'm going to read a statement from the
21 comments that were filed on the draft permit that were
22 filed by Allegheny previously in this matter. I'm
23 reading from Page 12 of that record then let me see if
24 you agree with this statement. It says, "While AESC,

1 Allegheny Energy Supply Company, has never faced the
2 specter of having to further cool discharges from
3 state-of-the-art cooling towers, we are confident that
4 the design and construction of additional treatment
5 systems to assure compliance with the proposed limits
6 would involve extensive engineering challenges and
7 major permit revisions and would be cost prohibitive."
8 would you agree with that statement?

9 A. I do.

10 Q. When we look at the chart of the DMR
11 data, I think we acknowledged that there aren't as
12 many protected violations of these limits for some
13 parameters as there are for others. I'm interested in
14 knowing your you of whether a few excursions for
15 permit limits would be a basis for granting
16 compliance. Or issuing a motion, a stay of permit
17 limits while an appeal is being pursued and
18 specifically what's been companies experience with
19 exposure it faces from only a view excursion limits?

20 A. Well, that risk is third-party lawsuit.
21 And if I may add a brief explanation of the current
22 issue that the company is dealing with, in February of
23 2010, we received a new -- or and in PTS renewal
24 permit for solid waste disposal site our Albright

1 Power Station. In that permit, the agency applied
2 human health criteria to discharges to which human
3 health criteria had not previously applied and we
4 received in arsenic limit, which was an order of
5 magnitude lower than the previous limit and we
6 received no interim compliance for that parameter.

7 As a result of that in the very dry late
8 summer and fall of last year, we had -- and I might
9 add that there are three ponds at this disposal site
10 each of which has an independent disposal discharge.
11 In the late fall and summer last year, we had some
12 excursions, violations of both monthly average or
13 daily maximum's and as a result of that -- I guess I
14 need to also add that we appealed that permit when it
15 was issued, we negotiated a compliance path if you
16 will with the agency that involves preparation and
17 submission of applications reclassifications to remove
18 the human health criteria on its discharges for site
19 specific criteria and also metals translators and we
20 agreed that we would have our applications in by the
21 end of October last year and also agreed that the
22 agency would move on them in time to get them on the
23 legislative agenda for 2012. Okay.

1 As a result of that, we have been sued
2 by the Appalachian Center for Economy and the
3 Environment and to the dollar amount of approximately
4 9,000,000.

5 Q. Do you know how many excursions were the
6 basis for that \$9 million figure?

7 A. Yes. That was a total of 14, I believe.

8 Q. And were some of those monthly average
9 excursions?

10 A. They were monthly averages.

11 Q. So I assume to get to \$9 million, you're
12 multiplying those monthly average excursions by some
13 number like 30 or 31 depending on the month?

14 A. Yes.

15 Q. Okay. Thank you. Finally, Mr. Cannon,
16 one of the issues and our motion for stay is a
17 requirement to install temperature devices downstream
18 from the discharge at outlets 001 and 002, actually a
19 10th of a mile downstream from those discharges.

20 Are there any practical concerns with
21 respect to implementing this requirement?

22 A. Yes. There are practical concerns and
23 based on the stream that they would be mounted on the
24 West Fork is a fairly small stream. It is not dam

1 controlled or anything, so there's a fairly swift flow
2 past the power station, particularly in the area
3 that's downstream from the outlets and the West Fork
4 is also subject to fairly extreme variation in stage
5 based on flow. And so our prior experience in
6 gathering temperature data relative to 316(a) and (b)
7 rule was that we had a very difficult time keeping
8 probes in place and we lost numerous ones.

9 Q. Has the company had experience with this
10 type of a monitoring requirement at other facilities?

11 A. We have.

12 Q. And what's been your experience with
13 that?

14 A. Well, we have had this experience at our
15 Willow Island Power Station. I cannot say that the
16 Willow Island station's circumstance relative to being
17 on a small stream with high flow fluctuations is quite
18 the same, but our experience in terms of the value of
19 the data has been that it has essentially been without
20 value.

21 We have had incidents of what would be
22 noted as excursions whenever the power station is off-
23 line and cold, you know, the data collected downstream
24 is really not of much value.

1 Q. And we're talking about data measuring
2 temperature downstream at the time the facility is not
3 operating showing higher temperature readings than the
4 upstream?

5 A. Yes.

6 Q. So, basically, you think the data is
7 useless?

8 A. Yes.

9 Q. I assume that's why you've objected to
10 this permit condition?

11 A. Yes. Well --

12 Q. This is not --

13 A. -- two reasons, that and the difficulty
14 of keeping probes in a stream like the West Fork.

15 Q. I assume this is not the kind of major
16 expense issue that we're talking about when we talk
17 about the tens of millions of dollars involved with
18 the new treatment systems?

19 A. That's correct. It pales by comparison.

20 Q. I assume the issue here is if we don't
21 have a stay of this condition, we don't get the
22 opportunity to express our objections about the
23 futility of collecting this information because we'll

1 have to go forward and install the devices; is that
2 correct?

3 A. That's correct.

4 MS. BRADLEY: That's all I have. Thank
5 you, Mr. Canon.

6 DR. SNYDER: Ms. Surber?

7 MS. SURBER: Yes.

8 BY MS. SURBER:

9 Q. Yes. Hi, Mr. Canon, I want to first
10 address the DMR data that was prepared in Exhibit 2 in
11 the form of the chart.

12 A. Okay.

13 Q. Are you familiar with the DMR data that
14 has been reported to DEP over the period of the entire
15 permit?

16 A. I am. I prepare that data.

17 Q. And so taking Outlet 002 for aluminum,
18 you would agree that these three data points are not
19 the entirety of what's been reported to DEP over the
20 life of the previous permit?

21 A. Yes.

22 Q. And as to Outlet 002 for iron, would you
23 also agree that these numbers are not the entirety of
24 the numbers reported to DEP?

1 A. Yes. This data set was selected to
2 illustrate those months where we would have had
3 violations had the new limits applied at the time.
4 Those where there would not have been a problem are
5 not shown.

6 Q. And do you have maybe a rough estimate
7 of how many more data points are not included on this
8 chart?

9 A. In a five-year time span, you would have
10 60 data points.

11 Q. For each aluminum and iron, correct?

12 A. Correct.

13 Q. Okay. Let's go back to outlet 002 for
14 aluminum. In the previous permit, what type of
15 monitoring -- because you did not have limits,
16 correct?

17 A. That's correct. If I might add one
18 point here. I believe I misspoke from the standpoint
19 I said you would have 60 data points, you would have
20 60 data points, but for the time period where one or
21 the other of these lagoons would not have been in
22 service.

23 Q. But as you discussed previously, outlet
24 002 is used much more frequently than outlet 001?

1 A. It has been during the last permit
2 cycle.

3 Q. Okay. So your estimation would be that
4 there are a significant number of data points not
5 represented by these two charts for outlet 002?

6 A. Yes.

7 Q. Let's talk about aluminum. You stated
8 that you did not have limits in the previous permit.
9 Do you know what your monitoring frequency was for
10 outlet 002 for aluminum?

11 A. It was monthly.

12 Q. So one time per month, correct?

13 A. Uh-huh.

14 Q. So when you look at the DMR data as you
15 have represented here, your daily max will also be
16 your monthly average because if you report monthly,
17 you have nothing to average, correct?

18 A. That is correct. I may have misspoken
19 either once or twice a month.

20 Q. If I showed you the previous permit,
21 would that refresh your recollection?

22 A. Absolutely.

23 Q. There's Outlet 001.

24 A. It is once a month.

1 Q. So as to aluminum, do you know what your
2 monitoring limits are in the new permit?

3 A. I do not know off the top of my head.

4 Q. Let me dig for another one. If I showed
5 you the current permit, would that refresh your
6 recollection on that requirement?

7 A. Of course. I suppose I should've
8 brought a copy of this.

9 Q. Okay.

10 A. And the question was aluminum?

11 Q. Yeah, aluminum and what's your
12 monitoring frequency?

13 A. The monitoring frequency is twice a
14 month, so that doubles and the interim monthly average
15 is .459 mg/L and the daily maximum is .83.

16 MS. BRADLEY: Could we clarify what
17 outlet he was looking at?

18 MS. SURBER: Yeah. It was Outlet 002
19 and we were discussing aluminum.

20 BY MS. SURBER:

21 Q. Okay.

22 A. And, actually, it's right on there, so
23 it is shown on Exhibit 2.

1 Q. As your current limits for outlet 002
2 for aluminum. All right. Let's discuss iron at 002.
3 In the previous permit, do you remember what the
4 reporting frequencies were for outlet 001 -- I mean
5 002?

6 A. Yes. I believe they were also once a
7 month.

8 Q. And do you recall what the new
9 frequencies are in the current permit for iron at 002?

10 A. Yes. I believe it's twice a month.

11 Q. So the information represented in this
12 chart represents once a month monitoring which makes
13 the daily max also the monthly average, correct?

14 A. That is correct.

15 Q. And now you're measuring more
16 frequently, so your monthly average probably will not
17 be your max daily unless your max daily is always the
18 same, correct?

19 A. It is unlikely that the two would be the
20 same.

21 Q. And if you take the max daily number and
22 you add it to a number, that would be your second
23 reported value, which would be usually lower since the

1 max daily is the maximum number, the average should be
2 lower than your max daily, correct?

3 A. Yes. That amount could be significant
4 or it could be very insignificant. It would depend on
5 the sample results.

6 Q. And that's true for aluminum and iron,
7 correct?

8 A. Yes.

9 Q. Okay. Moving to temperature
10 requirements, do you recall in the previous permit at
11 outlet 001 and 002 the temperature monitoring
12 frequency?

13 A. Yes. I believe that it's daily.

14 Q. Daily. Do you recall what the
15 monitoring frequency at 001 and 002 for temperature is
16 in the current permit?

17 A. I do not. I would like to add a
18 statement here at the present. While I am familiar
19 with the Harrison Power Station and generally familiar
20 with the issues regarding its NPDES permit and the
21 issuance of the new permit and the current appeal, I
22 have not been working directly with Harrison. I am
23 sort of filling in for my counterpart who is presently

1 off for a medical reason, and so on some of these
2 details, I'm a little bit sketchy.

3 Q. Okay. We'll just work with what we have
4 here.

5 A. Yes.

6 Q. As to Outlet 001 and temperature, the
7 data points that you represent on the chart do not
8 represent all of the data for temperature reported to
9 DEP during the previous permit cycle; is that correct?

10 A. That is correct.

11 Q. And you've listed this as summer because
12 the stay is on the summer temperatures, correct?

13 A. Uh-huh.

14 Q. The data on your chart reflects data
15 from August of 2005 to July of 2006, and then there's
16 no data after July 2006 for summer temperature?

17 A. That is correct.

18 Q. Now, you spoke previously and said that
19 you had a daily monitoring requirement.

20 A. Well, only whenever the outlet is in
21 service and the reason that you have the data from
22 2005 through July of 2006 is because that Outlet 001,
23 that lagoon was taken out of service, and then it was
24 put back in service for a while.

1 Later, during the permit period, but
2 that was not during summer period, so we would not
3 have data then.

4 Q. So you do not have any data and you have
5 not given DEP any data on summer temperature in that
6 outlet because it was not discharging during that
7 period of the permit?

8 A. Correct. That applies to all
9 parameters. If we don't discharge, we don't report.

10 Q. Okay. Sticking with temperature, I want
11 to show you the current permit. You said that you
12 weren't sure what the monitoring frequency was for the
13 current permit on 001 and 002.

14 What is the monitoring frequency for
15 temperature at outlet 001 in the current permit?

16 A. Continuous, in situ.

17 Q. And then for outlet 002 in the current
18 permit, what is the monitoring frequency for
19 temperature?

20 A. It is the same, continuous and in situ.

21 Q. And you would agree that because the
22 previous permit had daily monitoring when discharging
23 that a continuous requirement would result in more
24 data points?

1 A. Yes.

2 Q. Before we move to temperature, I'd
3 like to talk a little bit about West Fork River. That
4 is the stream that all of your outlets discharge to,
5 correct?

6 A. Correct.

7 Q. Are you familiar with West Fork River?

8 A. Yes.

9 Q. You spoke earlier and said that it was a
10 relatively small stream; is that correct

11 A. That is correct.

12 Q. And then you said something about the
13 flow being affected, I think you said by extreme --

14 A. It has high variations in flow and stage
15 and what I was trying to elude to is the circumstance
16 is different than, say, a power station or other
17 station that is located on one of the navigable
18 waterways where, you know, the variations in stage are
19 generally much less.

20 MR. GILLESPIE: By navigable, do you
21 mean control?

22 THE WITNESS: Yes, controlled with the
23 Corps of Engineers type project.

1 BY MS. SURBER:

2 Q. Okay. Does the flow in the river vary
3 in the summer?

4 A. Yes, it does.

5 Q. So are there periods of time in the
6 summer where flow is low in that river?

7 A. Yes.

8 Q. Do you know about how often the flow is
9 low in the summer?

10 A. Only in qualitative terms. I know
11 you're looking for a little more answer.

12 Q. I mean is it more often than not, is it
13 sporadic?

14 A. It is similar to most all streams in
15 this area of the country where you do have a fair
16 amount of low flow periods throughout the summer and
17 fall, but you also have high flow periods as a result
18 of rainstorms, et cetera.

19 Q. Let's talk about Allegheny's use of the
20 West Fork River. Do you have intake structures from
21 the West Fork River into your facility?

22 A. We do.

23 Q. Do you know what the volume of those
24 intakes are into Allegheny from the West Fork River?

1 A. Uh-huh.

2 Q. Can you give us maybe a little
3 information of how much water you withdraw from the
4 stream?

5 A. Yes. I'm referencing my flow diagram so
6 as not to give you a wrong number here. Approximately
7 a little more than 38 million gallons a day.

8 Q. Would you say that Allegheny's intake of
9 the West Fork River is a significant portion of the
10 West Fork River because you said it was a very small
11 stream?

12 MS. BRADLEY: I think I'm going to
13 object to that as being nonspecific and calling for
14 some speculation on his part. What is meant by
15 "significant" here?

16 DR. SNYDER: Ms. Surber, do you want to
17 respond?

18 MS. SURBER: Yeah. I can rephrase.

19 DR. SNYDER: Okay. Please rephrase.

20 BY MS. SURBER:

21 Q. Okay. Do you know -- and I know you
22 said the flow varies in the river, but do you know
23 what the ratio of intake to the river would be?

24 A. I certainly have that number in

1 reference material in my office, but I don't know it
2 off the top of my head.

3 Q. Okay. Given the 38 million gallons that
4 Allegheny withdraws from the river, would you say that
5 is roughly half of the river?

6 A. No.

7 Q. would you say that it's more than 30
8 percent of the river?

9 A. No. I believe it to be a much smaller
10 amount, but I really can't tell you the number off the
11 top of my head.

12 Q. So once you've taken in the water from
13 the West Fork River, once Allegheny has taken that
14 water in and used it into your facilities, what
15 happens after that? How is that water discharged?

16 A. well, the water is taken in. The
17 overwhelming majority of that water goes to the
18 cooling towers and a significant portion is evaporated
19 as you would imagine and the cooling towers are them
20 blown down for ash transport water.

21 Now, there are other uses within the
22 plant, but, you know, we'll call those all low-volume
23 uses. The overwhelming majority of the water that is
24 discharged via the lagoons is cooling tower blowdown

1 water or cooling tower blowdown water that has been
2 used for another purpose, and then sent to the lagoon.

3 Q. Okay. So once the cool down water -- it
4 goes into one the lagoons, correct?

5 A. Yes.

6 Q. And that would be outlet 001 or outlet
7 002, normally?

8 A. I wouldn't say normally. I would say
9 that it goes to outlet 001 or outlet 002. It just
10 depends on which lagoon is in service at the time.

11 Q. Okay. Once it goes into outlet 001 or
12 outlet 002, where is it discharged after that?

13 A. To the West Fork River.

14 Q. And how often does the intake of water
15 occur at the facility?

16 A. Continuous.

17 Q. Continuous meaning throughout the day
18 every day unless you have a shutdown?

19 A. Even during shutdown periods, the
20 station is essentially never cold, if you will. You
21 have unit shutdowns, you know, unit outages, but with
22 extremely rare occurrence that the station would be
23 completely cold and at that time, it would be off-line
24 for a short enough period of time that water intake

1 occurs, the water intake can vary, but it occurs
2 continuously.

3 Q. Okay. Do you know how often the plant
4 discharges water from either one of the lagoons?

5 A. Continuously.

6 Q. Subject to the same explanation that you
7 just said that -- is there water discharging when you
8 have a shutdown?

9 A. There will be variation in the flow rate
10 based on station operations, but it is continuous
11 discharge.

12 Q. Okay. I would like to talk about the
13 stormwater outlet 006 through 0011. You spoke about
14 the type of upgrades that would have to be -- are
15 anticipated to be taken at the facility to comply with
16 the current permit, correct?

17 A. Yes.

18 Q. Are you familiar with the stormwater
19 pollution prevention plan contained in both the
20 previous permit and the current permit?

21 A. Yes.

22 Q. In both -- well, I'll stick -- in the
23 current permit is aluminum a pollutant in the
24 stormwater pollution prevention plan?

1 A. It is.

2 Q. Is zinc a pollutant listed in the
3 stormwater pollution prevention plan?

4 A. As a point of clarification, are we
5 talking about the previous permit or this permit?

6 Q. The current permit. I'm talking about
7 the benchmark values.

8 A. Which includes zinc.

9 Q. Zinc is included. And is -- I said
10 iron, temperature, iron, zinc, aluminum is also
11 included as well, correct?

12 A. Yes.

13 Q. So even -- the stormwater pollution
14 prevention plan requires Allegheny to prevent those
15 pollutants in the stormwater, correct?

16 A. Yes, or I should say it sets the goals
17 of achieving the benchmarks.

18 Q. And it requires a plan to achieve those
19 benchmarks, correct?

20 A. That is correct.

21 Q. DEP issued an order Number 7004
22 concurrent with this permit regarding the storm water
23 pollution prevention plan, correct?

24 A. Yeah.

1 Q. And that order addressed issues of
2 exceedances of benchmark values at the facility during
3 the previous, correct?

4 A. Yes.

5 Q. The previous permit also identified
6 aluminum and iron as requiring the plant to monitor
7 the benchmark values and revise the stormwater
8 pollution prevention plan should those benchmark
9 values be exceeded, correct?

10 A. Correct.

11 Q. And these requirements are separate and
12 apart from the new effluent limits placed at 006
13 through 011, correct?

14 A. If I am interpreting your question to be
15 that under the old permit, we had benchmark values.
16 Under the new permit, we will have permit limits; is
17 that the question?

18 Q. And benchmark values.

19 A. Yes.

20 Q. You have benchmark values for those
21 pollutants, you have effluent limits for those same
22 pollutants, some of those same pollutants, correct?

23 A. Yes.

24 Q. And would you agree that any upgrades to

1 your facility to address 001 and 002, iron and
2 aluminum, would also address the stormwater pollution
3 prevention plan as well, correct, because it's the
4 same outlet?

5 A. No.

6 Q. Oh, no, sorry. I said that exactly
7 wrong. The effluent limits placed on 006 through 011,
8 any upgrades to address those that you spoke about
9 would also address the requirements of the stormwater
10 pollution prevention plan with regards to those
11 pollutants iron, zinc and aluminum, correct, because
12 they're the same outlet

13 A. Yes. To me in my mind, it's a little
14 bit of a subtle distinction, but yes. What you're
15 saying is that -- if I may infer, what you're saying
16 is that in order to comply with the effluent limits,
17 we would need to provide treatment, and in so
18 providing treatment, we would, if you will, be
19 providing the ultimate BMP to address our requirements
20 under the storm water pollution prevention plan?

21 Q. Yes. That's the question I asked or was
22 attempting to ask. So you would agree that those
23 upgrades would be interrelated and address both
24 effluent limits and benchmark values?

1 A. Yes.

2 Q. Okay. Are you familiar with reasonable
3 potential analysis that DEP conducts?

4 A. In a general sense. I don't have to
5 conduct them, but --

6 Q. Do you know what that is DEP basis its
7 reasonable potential analysis on?

8 A. Yes, your DMR data.

9 Q. So do you agree that a reasonable
10 potential analysis was performed for iron, aluminum,
11 temperature and zinc for each of the outlets that now
12 have effluent limits?

13 A. Yes.

14 Q. And you would agree that those -- the
15 reasonable potential was based upon the data that you
16 had previously submitted to DEP through DMR data,
17 correct?

18 A. That is correct.

19 MR. SURBER: I have no further
20 questions.

21 DR. SNYDER: Very good. Thank you. Any
22 questions from board members at this time?

23 MR. ARMBRECHT: Yes, this is Ted. Mr.
24 Bradley, how old is the Pleasants plant and how old is

1 Harrison's plant?

2 MS. BRADLEY: I think you meant Mr.
3 Canon.

4 MS. RADCLIFF: You mean the witness or
5 are you asking Ms. Bradley?

6 MR. ARMBRECHT: I'm sorry, I'm sorry.
7 Yes, I'm asking Mr. Canon. Yes, excuse me, Ms.
8 Bradley.

9 Mr. Canon?

10 THE WITNESS: Yes. The Harrison plant
11 was constructed in 1970, '71 and '72 and Pleasants was
12 constructed in 1979.

13 MR. ARMBRECHT: And what is the megawatt
14 size of each of them?

15 THE WITNESS: The Harrison station is
16 our biggest station. It's 1984 MW. Pleasants is
17 smaller than that, Pleasants is according to my
18 memory, which may not be absolutely correct, the
19 Pleasants station is approximately 1410 MW.

20 MR. ARMBRECHT: What prompted the
21 upgrades that are currently being done at Pleasants?

22 THE WITNESS: Permit limits.

23 MR. ARMBRECHT: Was the permit changed,
24 you're saying?

1 THE WITNESS: It was renewed with
2 differing limits.

3 MR. ARMBRECHT: And how long ago did
4 that work begin?

5 THE WITNESS: It began following
6 issuance of order. That permit was also appealed and
7 that work began in -- I actually believe I have a note
8 that I actually jotted down for that so as not to --
9 if you'll bear with me a second, I think I can give
10 you an exact date. It began in 2008.

11 MR. ARMBRECHT: And when do you expect
12 it to be finished?

13 THE WITNESS: It is required to be
14 operational by May of 2012, however, we are at the
15 point where the large capital expenditures have been
16 made and we're able to estimate the total final
17 project cost with accuracy at this point.

18 MR. ARMBRECHT: When do you expect it to
19 be finished, the work finished?

20 THE WITNESS: Well, that is the question
21 wherein the actual physical work is done, and then you
22 run through your startup process prior to
23 commissioning, so that can sort of be a matter of
24 point of clarification.

1 MR. ARMBRECHT: Well, I mean is it two
2 years away or months away?

3 THE WITNESS: Months away. It must be
4 fully operational by next May.

5 MR. ARMBRECHT: So you're saying that
6 there had been an appeal on the part of the company on
7 that permit?

8 THE WITNESS: That's correct.

9 MR. ARMBRECHT: Which presumably you
10 lost, is that what I infer from your comment?

11 THE WITNESS: Yes, if we are going to
12 apply a single word, yes.

13 MR. ARMBRECHT: And was there an
14 estimate of costs made during that appeal by the
15 company?

16 THE WITNESS: There was.

17 MR. ARMBRECHT: Do you recall what that
18 was?

19 THE WITNESS: I cannot specifically with
20 accuracy recall what the estimate that was provided at
21 the time of the appeal was. I can tell you that our
22 experience is coming in a bit under our initial
23 estimate, however, the estimates that we developed for
24 the treatment systems that we would install at

1 Harrison are based on the actual experience at
2 Pleasants as opposed to any estimates.

3 MR. ARMBRECHT: But your estimate on the
4 Pleasants was higher during the appeal than now and
5 you're telling me that you feel that you have more
6 data this time to be more accurate; is that what
7 you're saying?

8 THE WITNESS: Yes. I believe that is an
9 accurate analysis on your part.

10 MR. ARMBRECHT: Finally, you're aware of
11 a recent AEP discussion in the papers regarding plant
12 closures and that they plan to phase out certain of
13 their plants.

14 Do either the Pleasants or the Harrison
15 -- well, let me ask, does First Energy have any plans
16 to phase out, any announced plans to phase out any
17 plants, any coal fired plants?

18 THE WITNESS: They do not have announced
19 plans to phase out any coal fired plants. To address
20 your question, if it relates to Harrison and Pleasants
21 and I'm going to address only from the standpoint of
22 the plants which were within the Allegheny Energy
23 System, Harrison and Pleasants are two of our largest
24 most modern supercritical plants and they would be

1 highly unlikely to be phased out anytime in the near
2 future.

3 MR. ARMBRECHT: The upgrades that this
4 permit is requiring, will they have the limits that
5 are being upgraded then -- could the company have
6 anticipated that when this permit was going to be
7 renewed, these permits would be a part of the renewal,
8 the renewed contract or, excuse me, the renewed permit
9 limits? In other words, could you have anticipated
10 the need to upgrade that are currently in the
11 contested permit? Am I clear?

12 THE WITNESS: Yes.

13 MR. ARMBRECHT: Yes, I'm clear or yes --

14 THE WITNESS: Yes, you're clear and I'm
15 trying to think about how I want to answer your
16 question or how best to address your question. As a
17 discharger, any company can reasonably assume that its
18 limits will become tighter over time. That's a
19 process that has occurred now for decades, however,
20 companies must react to changes in their permits and
21 it is not a reasonable business decision to try to
22 anticipate actions that the agency may impose at a
23 future date.

24 MR. ARMBRECHT: I am think I understand.

1 well, I'll just leave it at that. Thank you.

2 DR. SNYDER: Any other questions from
3 board members?

4 DR. SIMONTON: None from me.

5 MR. GILLESPIE: You mentioned 92 and a
6 half million dollars --

7 DR. SNYDER: Wendy, any questions?

8 MS. RADCLIFF: No questions.

9 DR. SNYDER: No further questions.

10 Thank you, Mr. Canon.

11 MS. RADCLIFF: We actually should hear
12 from Ms. Bradley on rebuttal.

13 MS. ADKINS: Wait a minute, Mr.
14 Gillespie has some questions. Just where we had to
15 move the microphones around, you all couldn't hear
16 him.

17 DR. SNYDER: Okay.

18 MR. GILLESPIE: Now you can hear, can't
19 you?

20 DR. SNYDER: Very well.

21 MR. GILLESPIE: You mentioned \$92 and a
22 half million as your estimated cost to meet the new
23 limits, and then you threw another figure in there of
24 88 million for the stormwater treatment?

1 THE WITNESS: That's correct.

2 MR. GILLESPIE: So you've got \$180 and a
3 half million roughly?

4 THE WITNESS: Actually 181.3.

5 MR. GILLESPIE: So what does that amount
6 to proportionately to your normal costs, in other
7 words, what would your rate increase have to be to
8 compensate for that?

9 THE WITNESS: The answer to that
10 question is a little bit more complicated. The
11 Harrison Power Station is not a fully regulated
12 station under the West Virginia rules. We do have --
13 in the former Allegheny system, we do have fully
14 regulated power stations in the state, however,
15 Harrison is owned by an exempt wholesale generating
16 company.

17 We do sell power into the market. Much
18 of that power is purchased by the Monongahela Power
19 Company for use by assistance of the state, however,
20 there is not the direct connection there that there is
21 at a regulated station; for instance, we installed FGD
22 scrubbers at our Ft. Martin station recently and those
23 costs are ultimately passed on to the ratepayers
24 within the state.

1 At the Harrison Power Station, it is not
2 that clear. The costs are basically absorbed by the
3 company. They increase the power production cost our
4 per-megawatt cost. We bid into a competitive market,
5 the higher your cost is, the less your plant is
6 utilized.

7 MR. GILLESPIE: One last question on the
8 statement in one of the papers mentioned that the West
9 Fork was impaired for iron regardless.

10 THE WITNESS: That's correct.

11 MR. GILLESPIE: That's the way I
12 interpreted that. The water you use, the 38 million
13 gallons comes from the West Fork. Do you concentrate
14 the iron during the process or do you just pick up
15 more from your heating source?

16 THE WITNESS: Well, whenever you run
17 water through cooling towers, you know, you evaporate
18 so you obviously increase the solids content to some
19 extent, however, typically you operate with cycles of
20 concentration, which are low enough to avoid cycling,
21 what we call cycling up your metals concentrations in
22 the process. Does that answer your question?

23 MR. GILLESPIE: Somewhat. Let me just
24 phrase it this way, if your addition of iron at the

1 plant without considering the dilution and so forth is
2 that going to pull the west Fork and that area from
3 being impaired based on these amounts and the total
4 gallonage of water? Maybe I should have asked DEP
5 that.

6 THE WITNESS: I can't answer that
7 question.

8 MR. GILLESPIE: I would've been
9 surprised if you could have.

10 THE WITNESS: Yes. I do not know the
11 answer to that.

12 MR. GILLESPIE: Thank you very much.
13 That's enough.

14 DR. SNYDER: Thank you. Ms. Bradley?

15 MS. BRADLEY: I have no further
16 questions.

17 DR. SNYDER: Okay. I thank the witness.

18 (WHEREUPON, the witness stands aside.)

19 DR. SNYDER: Ms. Bradley, do you have
20 any other witnesses?

21 MS. BRADLEY: I do. I'd like to call
22 Christina Moore Parsons.

23 (WHEREUPON,
24 Christina Moore Parsons,

1 was called as a witness and
2 testified as follows:)

3 E X A M I N A T I O N

4 BY MS. BRADLEY:

5 Q. Would you state your name for the
6 record, please?

7 A. Christina Moore Parsons.

8 Q. And, Christina, where do you live?

9 A. I live in Belle, West Virginia.

10 Q. Are you employed?

11 A. I am, at Potesta and Associates.

12 Q. And how long have you worked at Potesta?

13 A. I've worked at Potesta since February of
14 2000, about 11 years and for DEP three years prior to
15 that.

16 Q. Could you please describe your formal
17 educational background?

18 A. I have my Bachelor of science in biology
19 with a minor in chemistry from the University of
20 Charleston, and then a Master's of science from
21 Marshall University in environmental science.

22 Q. And what's your title or position at
23 Potesta and Associates?

24 A. I'm a senior scientist.

1 Q. And what are your job responsibilities
2 as a senior scientist?

3 A. I work with NPDES permitting compliance
4 issues.

5 Q. Have you reviewed the NPDES permit that
6 was issued to the Harrison Power Station that's the
7 subject of this appeal?

8 A. I have reviewed parts of it. I've
9 reviewed the limits as well as the fact sheet and the
10 WQBL spreadsheets from DEP for that.

11 Q. And what have you been asked to review
12 specifically with regard to this permit?

13 A. The calculations for the permit limits
14 in the new permit.

15 Q. Is that something that you've done
16 before in your work at Potesta?

17 A. Yes. That's often what we do with
18 review of draft permits and permits issued.

19 Q. As a result of your review, do you have
20 any general conclusions regarding the limits, the new
21 limits that have been imposed in this permit?

22 A. I found a few technical errors with the
23 permit limits.

24 Q. With respect to the issues in this stay

1 motion, you heard me describe them, with respect to
2 Outlet 001 where we've asked for a stay of the
3 immediately effective temperature limits there, what
4 have you found in the fact sheet relative to the
5 calculation of those limits?

6 A. With the permit limits on temperature,
7 DEP allowed a dilution, a default dilution to be
8 included into the permit limit calculation. That
9 dilution it appears as though was calculated based on
10 the maximum flow of the effluent, which resulted in a
11 certain end-stream waste concentration. And this is
12 all on the WQBL spreadsheet from DEP. It resulted
13 into an end-stream waste concentration which then
14 translated to a maximum dilution allowed.

15 That maximum dilution allowed goes into
16 the effluent limits for temperature, allows those to
17 be developed. What I found on the spreadsheets is
18 that the spreadsheets that were provided to me, the
19 effluent flow matched that that was in the fact sheet
20 for description of discharges, that effluent flow, the
21 maximum effluent flow resulted in a calculation of 30
22 percent end-stream waste concentration. That end-
23 stream waste concentration then went through
24 calculations to develop the maximum allowed dilution,

1 which is presented on the spreadsheet as 3.28 I
2 believe. That 3.28 should've been hand entered into
3 the spot beside of it on the spreadsheet. There was a
4 2.28 entered there, and then the 2.28 went through the
5 calculations for the permit limits.

6 so therefore with the temperature if the
7 3.28 would've been used as calculated on the
8 spreadsheet, the limits would've been higher.

9 Q. So you're saying that the spreadsheet on
10 its face shows that the wrong dilution factor was
11 inputted for the calculation of the temperature limits
12 at outlet 001?

13 A. It appears as though.

14 Q. Okay. And, again, had the proper
15 dilution factor been used, what would've been the
16 impact -- and now we're focused on the summer max
17 daily temperature limit for outlet 001?

18 A. The summer max daily temperature limit
19 for outlet 001 is currently listed in the permit as
20 104.9. If that dilution factor of 3.28 were used, it
21 would come up to a permit limit of 118.9, so an
22 increase in temperature limitations.

23 Q. With respect to Outlet 002, I assume you
24 did a similar analysis of calculations that were

1 performed in coming up with those limits?

2 A. Yes. The same type of issue appears to
3 have occurred. The flow, maximum flow as presented in
4 the fact sheet for description of discharges in 002
5 was entered into that WQBL spreadsheet. It calculated
6 a percent, end-stream waste concentration percentage,
7 and then resulted into a maximum allowed dilution.

8 The maximum allowed dilution for 002, I
9 believe was around 3.03 possibly, but DEP then hand
10 entered the calculated number as a 2.0-something and
11 the dilution of two was then used to calculate the
12 permit limits.

13 Q. And with respect to the limits that are
14 the subject of this stay, which of those limits
15 would've been affected by this error in the
16 calculation?

17 A. For 002, the limits that really would
18 have been affected would be the temperature and the
19 aluminum. Temperature as calculated in the permit has
20 a max daily limitation of 107.3. If the dilution were
21 corrected to three, as presented on the spreadsheet,
22 they would have report-only limitations.

23 Aluminum also increases as existing in
24 the permit an average monthly limit of .459 mg/L and a

1 max daily limit of .83 mg/L are present. If that
2 dilution factor were corrected to three, the limits
3 would increase to .51 average monthly and .91 max
4 daily.

5 Q. Okay. Thank you. Moving to the
6 stormwater outlets, I assume, again, you conducted the
7 same review of the fact sheet, the spreadsheet and the
8 calculation made by DEP in coming up with the limits
9 that are in the permit; is that correct?

10 A. Not exactly. The permit was reviewed
11 for the limits, however, a spreadsheet was not
12 supplied, I assume was not completed for the
13 stormwater outlets. I did review the fact sheet.

14 Q. And what was the result of your review?
15 What did you find?

16 A. For the stormwater outlets, limitations
17 were placed on the outlets according to the fact sheet
18 as water quality-based effluent limitations, however,
19 when you look at the zinc limit, the zinc limit that
20 was applied to the outlets, it is a .12 mg/L. I'm not
21 for sure if that's max or average, but a .12.

22 That limit appears to be a stormwater
23 benchmark limit, not necessarily a water quality based
24 effluent limit.

1 Q. What does the permit or the fact sheet
2 say about the origin of that limit?

3 A. The fact sheet says that it's a water
4 quality based effluent limit.

5 Q. What is the water quality criteria for
6 zinc in the West Fork, do you know?

7 A. It's hardness--depending in this area. I
8 believe it's around .25.

9 Q. And the limit that was imposed in the
10 permit, again, was what?

11 A. .12 milligrams per liter.

12 Q. So approximately half of that?

13 A. Correct.

14 Q. And that number, you were saying, is in
15 fact a benchmark value for zinc?

16 A. The stormwater benchmark for zinc is
17 .117 mg/L.

18 Q. So around .12?

19 A. Yes.

20 Q. Okay. What about other, your review of
21 other issues related to the stormwater discharges?

22 A. The stormwater discharges, they are also
23 -- if there was a water quality based effluent limit
24 applied, there could be the potential for adding od

1 translators, metals translators or site-specific
2 mixing zones or dilutions and those were not applied.

3 Q. On the mixing zone issue first, could
4 you give us more detail of what your review entailed
5 there and the basis for your conclusion?

6 A. Similar to what was completed for outlet
7 001 and outlet 002, running through the spreadsheet
8 will allow some dilutions added -- incorporated into
9 the permit limit calculations. Those dilutions were
10 not added to the stormwater outlets. They're
11 basically end of pipe limits.

12 Q. And were the end of pipe limits in the
13 case of aluminum and iron the water quality criteria
14 numbers?

15 A. Yes. Yes, I believe they were water
16 quality criteria.

17 Q. You mentioned a translator, what is a
18 translator?

19 A. A translator is a -- we typically put
20 permit limits onto outlets using a default translator
21 or a difference between as the dissolved portion is
22 considered to be the portion harmful to aquatic life.
23 Permit limits are on a total portion.

24 They apply a translator to convert

1 dissolved to total. The default translators are
2 generally much higher than what is present in the
3 field, so using data developed use of site-specific
4 translators often gives you higher permit limitations.

5 Q. Was a translator used by DEP in
6 developing these permit limits?

7 A. No.

8 Q. Have you reviewed the data that was
9 submitted under the prior permit related to total
10 metals versus dissolved metals?

11 A. I have reviewed the data as far as the
12 effluent data that was submitted and the end stream
13 data submitted.

14 Q. And in your opinion based upon that
15 review, would the application of a site-specific
16 translator result in less stringent limits for metals
17 at these stormwater outfalls?

18 A. If the end stream data and the effluent
19 data were considered, were combined to form a
20 translator for the stream, that translator would be
21 much less than the default translator, giving you
22 higher limitations. I have not determined that exact
23 translator.

24 Q. And which metals would this translator

1 apply to?

2 A. Aluminum and zinc.

3 Q. Have you had experience in doing these
4 translator studies on West Virginia streams?

5 A. Yes.

6 Q. Have you done more than one?

7 A. Many more than one, likely more than 20.

8 I don't recall exactly how many.

9 Q. Based upon your experience in doing
10 these translator studies, is it your opinion then that
11 if a translator were properly applied on a site-
12 specific basis for these stormwater discharges, we
13 would have higher limits in this permit for zinc and
14 aluminum?

15 A. a translator, yes, if a translator were
16 developed and applied, you would have higher permit
17 limitations.

18 Q. And the data that you've reviewed
19 suggests that that would be an appropriate thing to
20 do?

21 A. Yes.

22 MS. BRADLEY: That's all the questions I
23 have.

24 DR. SNYDER: Thank you, Ms. Bradley.

1 Ms. Surber?

2 MS. SURBER: I don't have any questions.

3 DR. SNYDER: Any questions from board
4 members?

5 DR. SIMONTON: Not from me.

6 MR. ARMBRECHT: None from me.

7 MR. GILLESPIE: Not from me.

8 DR. SNYDER: Okay. Ms. Bradley,
9 anything else for this witness?

10 MS. BRADLEY: No further witnesses.

11 DR. SNYDER: Okay. Thank you.

12 MS. BRADLEY: Thank you.

13 DR. SYDER: Okay. At this point then,
14 Ms. Surber, if you would go forward with the DEP's
15 case.

16 MS. SURBER: I would like to request a
17 break of five minutes or so, so I can talk to my
18 witness, please.

19 DR. SNYDER: I have no problem with a
20 five or ten-minute break.

21 MS. SURBER: Ten would be even better.

22 DR. SNYDER: So in ten minutes, we'll
23 resume.

24 (WHEREUPON, a recess was taken.)

1 MS. SURBER: DEP would like to call
2 Matthew Sweeney to the stand.

3 (WHEREUPON,
4 MATTHEW SWEENEY,
5 was called as a witness,
6 duly sworn and testified as follows:)

7 MR. ARMBRECHT: I'm sorry. I didn't
8 hear the witness's name.

9 THE WITNESS: Matt Sweeney.

10 BY MR. SURBER:

11 Q. Well, since you just stated your name
12 for the record, what is your position at DEP?

13 A. I'm NPDES individual permitting
14 supervisor.

15 Q. And do you have experience with that
16 particular NPDES permit at issue in this state hearing
17 for Allegheny Energy?

18 A. Yes. I'm familiar with that.

19 Q. Have you reviewed the permit?

20 A. Yes, I have.

21 Q. What is your educational background?

22 A. I have a Bachelor's of Science in
23 chemical engineering from West Virginia Tech.

24 Q. And in your room that DEP, what types of

1 duties do you perform with NPDES permits?

2 A. I essentially facilitate the issuance of
3 NPDES permits, the reissuance of permits,
4 modifications, new permits, conduct the reviews about
5 this permits and in my spare time, I write some as
6 well.

7 Q. Are you familiar with the calculation of
8 effluent limits from water quality-based standards?

9 A. Yes.

10 Q. Are you familiar with mixing zones and
11 the dilutions involved in mixing zones?

12 A. Yes.

13 Q. Have you performed mixing zone analysis
14 before?

15 A. Yes.

16 Q. I hate to ask this, but do you have any
17 idea maybe of how many mixing zone analyses you've
18 performed?

19 A. You know, we had do mixing zones on kind
20 of a twofold approach. we look at them from the
21 perspective of you know default dilutions, which we
22 may grant in cases where we have not received a site-
23 specific mixing zone request. So with respect to
24 that, that's you know numerous. I mean I guess that

1 every permit, we do that on a case-by-case basis for
2 every permit, and then with respect to site-specific
3 mixing zone studies, I couldn't tell you, 20 to 30
4 that I've been involved with.

5 Q. Were you present for Ms. Moore's
6 testimony earlier?

7 A. Yes.

8 Q. Did you hear her testimony regarding the
9 calculations of limits based on dilution factors?

10 A. Yes.

11 Q. Do you agree with her assessment that
12 the calculations for dilutions was performed
13 incorrectly?

14 A. No, I do not. Typically, whenever we
15 are assessing a mixing seven, the first thing we look
16 at is as she suggested, you know, the end stream waste
17 concentration. The end stream waste concentration
18 basically is what percentage does the discharge makeup
19 of the stream at low flow conditions? And typically
20 in this case as we were looking at that, you're
21 looking at it from sort of the mass balance
22 perspective. You know with the low flow condition of
23 the stream is upstream and the discharger looking at
24 his typically -- is most often an additive type source

1 of water in the stream, meaning that it's coming from
2 another source. And if you follow the end stream
3 waste concentration approach using that mass balance
4 the total flow downstream, it would be the low flow
5 condition of the stream plus the source of flow from
6 the discharge that makes up the downstream condition,
7 and then the discharge except what percentage of that
8 total downstream condition. That's the typical
9 approach that we do for determining end stream waste
10 concentration.

11 The inverse of that end stream waste
12 concentration is the essentially complete mix or the
13 absolute most dilutions that are conceivably available
14 in that receiving stream. The little caveat with this
15 specific mixing zone in determining the end stream
16 waste concentration is that it's not that additive
17 approach as I described because they're actually
18 taking the water from the stream, and then essentially
19 putting it back.

20 So, you know, they discharge -- from Outlet
21 001 or Outlet 002, you know, we look at the maximum
22 discharge from each, but they were somewhere in the
23 range of 15 million gallons per day, but that's not an
24 additive flow that's being added to the stream. It's

1 being taken from the stream and put back.

2 So the 15 million gallons per day was
3 compared to the 7Q10 low flow condition of the stream,
4 which is 55 CFF for the West Fork River. And 15
5 million gallons per day, approximately 15 million
6 gallons per day -- I don't remember the exact number,
7 but 15 million gallons per day out of the title 55
8 CFF's of the low flow condition of the stream results
9 in approximately 40 to 50 percent of the total stream
10 as an end stream waste concentration.

11 Q. So the dilution that Ms. Moore testified
12 to was based on additive type of dilution factor,
13 correct?

14 A. I believe so, yes. I think she was
15 treating it from the perspective of the source of the
16 discharge flow was, you know, you weren't pulling it
17 from the stream to begin with. You were adding this
18 additional flow to the stream.

19 Q. But dilution factor that DEP employed
20 took into account the fact that Allegheny Energy
21 consumes water from the stream through intake, then
22 discharges simultaneously -- you know, continuously,
23 this process is continuing and discharges that 15
24 million gallons per day which I think you stated was

1 roughly half of the stream?

2 A. Approximately, yes.

3 Q. Let's talk about the West Fork River
4 since we talked about the low conditions. Were you
5 here with Mr. Canon testified about the variation in
6 flow of the West Fork River?

7 A. Yes.

8 Q. Are you personally aware of flow
9 conditions at the West Fork River?

10 A. I'm not specifically aware of how they
11 vary and things of that nature, but you know I am
12 familiar with what the 7Q10 and what the low flow
13 condition of the stream is.

14 Q. So would you agree that in assessing the
15 effluent limitations for these issues on stay, DEP
16 took into account low flow data in the West Fork
17 River?

18 A. Yes, that's correct.

19 Q. As to temperatures specifically, given
20 the variability of the stream and the size of the
21 discharge from Allegheny Energy, what concerns for
22 water quality did DEP take into account?

23 A. Well, you know, in looking at
24 temperature and any other pollutant for that matter in

1 any mix etc. and that we grant, you know, we have to
2 consider what that mixing zone is that we would grant
3 and, you know, we have to, you know, ensure that we're
4 not going to cause or contribute to a violation of
5 water quality standards in the stream. Water quality
6 criteria apply down to the 7Q10 low flow condition and
7 so when we do analysis, we do it -- we conduct our
8 analysis at the low flow condition to the stream to
9 ensure that we're protected down to that condition.
10 And at the low flow condition, you know, either
11 discharge 001 or 002 or whatever is active at the time
12 essentially makes up, you know, fairly makes up a
13 portion of the receiving stream. So I mean that's how
14 we determine what the dilution factors that we would
15 grant where we did grant a dilution.

16 So with the fact that either discharge
17 001 or 002 makes up a portion of the receiving stream
18 at low flow conditions, you know, there is a -- you
19 know, the agency has -- I guess we have as much
20 concern as, you know, a small discharge into a larger
21 stream, however, I think, you know, the likelihood of
22 impact is potentially greater when you're looking at a
23 higher end stream waste concentration.

24 Q. And what exactly do the water quality

1 standards aim to protect with these temperature
2 effluent limits?

3 A. The temperature limits were developed to
4 be protective of the aquatic life water quality
5 criteria for temperature and they -- the limits when
6 we -- at first when we did our analysis for
7 temperature, we looked at what the water quality base
8 effluent limits would be. The facility previously had
9 a 316(a) thermal variance and we first looked at the
10 limits, what they would calculate to be to see whether
11 there was a need for the variance from those actual
12 numbers.

13 In doing that, we made a determination
14 that from the perspective of the maximum daily
15 effluent limitations, that they could achieve those,
16 so we did not give any variance at least with respect
17 to the maximum daily limits because they appeared that
18 they could achieve those.

19 However, the average monthly
20 limitations, we determined that it did not appear that
21 they could achieve those, so we granted the 316(a)
22 variance with respect to the average monthly as well
23 as for the five-degree temperature rise criteria that
24 we have for temperature, which basically, can't cause

1 the stream to -- well, I guess increase or decrease by
2 five degrees from the ambient condition. We also
3 granted a variance from that part as well.

4 Q. And you said that the variance was based
5 upon DEP's assessment of Allegheny's ability to comply
6 with effluent limits. How exactly did DEP go about
7 assessing that?

8 A. Well, typically, when we look at
9 compliance and this isn't just for temperature, but
10 for essentially anything, you know, we take a look at
11 the data. You know, we pretty much are data-driven.
12 Compliance schedules, you know, within the agency,
13 especially recently, have been a fairly hot topic and
14 so, you know, compliance is required as soon as
15 possible essentially. It's a very subjective term, so
16 permit writers would challenge or try to determine,
17 you know, what is as soon as possible and if
18 compliance is able to be achieved.

19 when we look at the data, you know, we
20 look at -- you know, if we have, say, 60 data points,
21 we look at the data and we see, you know, there is no
22 specific method behind the madness, if you will, but
23 if we see, you know, 60 out of 60 that are compliant,
24 obviously, we do not see a need for a compliance

1 schedule there. If we see 55 out of 60, we may still
2 make that same conclusion.

3 You know, it can be argued either way.
4 People can say five -- there's five violations, so we
5 couldn't comply, but at the same time, you can also
6 say there's 55 times of compliance where you could
7 comply. So, you know, we take everything into account
8 as best we can. Obviously, in a situation where, you
9 know, if you have something -- you know, half the data
10 are compliant and half are not compliant, that's
11 probably a situation where we're definitely going to
12 grant a compliance schedule, but to say there's a
13 specific determination on how we do that, you know,
14 I'm not aware of any specific guidance or any rule
15 over how you make that determination.

16 But generally, like I said, we look at
17 the compliance schedule, we look at the data and, you
18 know, we try to come to the conclusion of whether or
19 not, you know, compliance is attainable because we
20 have to stem from the concept that compliance is
21 required as soon as possible.

22 Q. The compliance as soon as possible
23 requirement, is that in state law, federal law?

24 A. I believe it's in both.

1 Q. Both?

2 A. Yeah.

3 Q. I would like to direct you to
4 Appellant's Exhibit Number 2 and let you take a minute
5 to review it.

6 A. Okay.

7 Q. Okay. As to each of these effluent
8 limitations and the data that's presented, which Mr.
9 Canon testified earlier that this does not represent
10 the entirety of the DMR data reported to DEP, would
11 you say that Outlet 001, the numbers on the chart, do
12 they reflect the entirety of the data that DEP
13 reviewed when assessing whether Allegheny should have
14 a compliance schedule?

15 A. No. I think these are the places where
16 the data over the last permit term would've exceeded
17 the new limitations that are in the permit at this
18 time. These are only those points where an exceedance
19 would've occurred.

20 Q. What about Outlet 002, does this
21 represent what DEP took into consideration when
22 assessing a compliance schedule for iron?

23 A. Again, it's the exact same thing. I
24 think this is only limited to the data where an

1 exceedance would've occurred, and then there's all the
2 remaining data that was provided would've essentially
3 been compliant.

4 Q. And DEP did grant a compliance schedule
5 for outlet 002 for iron --

6 A. That is correct.

7 Q. -- when taking into account the entirety
8 of the data represented?

9 A. That is correct.

10 Q. Okay. Moving onto temperature on this
11 Exhibit Number 2, you know, the data for summer
12 temperature on outlet 001 is limited to 2005 and 2006,
13 correct?

14 A. Yes, on this sheet it is.

15 Q. And the data on the sheet from outlet
16 002 for summer temperature is limited to the years of
17 2007 and 2010, correct?

18 A. Yes.

19 Q. When granting a variance, a 316(a)
20 variance for temperature, what does DEP take into
21 consideration regarding aquatic life?

22 A. Well, I think the first thing we need to
23 look at is the need for the variance. We need to
24 calculate water quality based effluent limits based

1 off of our existing water quality criteria for
2 temperature and make a determination if a variance is
3 actually needed from those, and then we have to
4 evaluate through that variance whether the variance
5 can be granted. And with respect to a 316(a)
6 variance, you can only grant the variance so long as
7 you can ensure that there will be a balanced,
8 indigenous population of fish and shellfish in the
9 receiving stream.

10 So in determining the limits, we
11 calculate what the water quality based effluent limits
12 would be, determine if they can be achieved, if they
13 can, then we see no need for the variance. If they
14 cannot be achieved, then we have to look at and ensure
15 that we're -- if we grant that variance, that we will
16 still be protective of the aquatic life.

17 Q. When DEP is evaluating a variance and
18 the granting of a variance, what information data from
19 the stream would DEP need to evaluate whether the
20 balanced, indigenous population of aquatic life is
21 being affected?

22 A. Well, in making a determination on a
23 316(a) variance, obviously, the agency needs lots of
24 information and data to ensure that they're going to

1 be protective of that balanced, indigenous population
2 and, you know, that can include numerous things. Many
3 facilities can conduct fish surveys within the stream
4 itself, but, you know, at the same time, we're talking
5 about a thermal variance, so temperature to us, also,
6 is very important. Knowing the impacts on the stream
7 and from the discharge and from the ambient condition
8 can also play a role in trying to make determinations
9 on whether you grant the 316(a) variance.

10 They can help -- they can do one of two
11 things, they can help support it or they can help --
12 they might show that some red flags or something, you
13 know, I'm purely speculating what data will tell you
14 before you have it here, but I mean that's the purpose
15 of it, though, is to collect it to see what it is and
16 make determinations from it.

17 Sometimes when you get data, no news is
18 good news sometimes as well, so -- but, you know,
19 that's kind of one of the other aspects that, you
20 know, we believe is necessary to determine impacts.

21 Q. In taking into account West Fork River
22 in particular, especially considering the size of the
23 discharge relative to the size of the river, is
24 downstream monitoring of temperature necessary to

1 evaluate the impact on aquatic life?

2 A. Yeah, I believe so. Like I said, I
3 think it's beneficial to have that kind of
4 information. You know, it provides the agency with
5 information to be able to reassess the variance in the
6 future and to even evaluate as, you know, as the
7 permit goes on. It can let you know if a potential
8 change is occurring in the stream that may or may not
9 be attributed to the discharge itself.

10 But, you know, even if the discharge
11 would not be attributed to any changes in the stream,
12 changes in the stream are still something we have to
13 account for. You know, the possibility exists if
14 ambient conditions in the stream, temperature values
15 increase, then that could mean that, you know, even if
16 the discharge is discharging the same as it always has
17 been, the impact of that could increase because the
18 condition was different.

19 Q. And in receiving information about
20 downstream temperature, does continuous monitoring
21 provide more information to DEP than maybe a once-
22 daily temperature grab?

23 A. Certainly, absolutely, not that, you
24 know, daily monitoring is terrible by any means, but

1 obviously you have -- you know, temperature is a
2 little more unique than, you know, other pollutants in
3 that, you know, with all things being equal and you
4 take a stream with no discharge in it at all, you
5 expect to see changes in temperature just over the
6 course of a day, just from the nature of the beast.

7 So knowing temperatures at all times and
8 the impacts occurring are kind of more essential for
9 comparison purposes to be able to determine, you know,
10 what's going on at different times.

11 Q. Would you say that's true especially
12 when you have a discharger who discharges on a
13 continuous basis?

14 A. Sure.

15 Q. Let's move to the translator study that
16 Ms. Moore talked about earlier. Did Allegheny -- to
17 your knowledge, did Allegheny conduct a translator
18 study?

19 A. As far as I know, no translator study
20 has been conducted.

21 Q. Did Allegheny provide any study to DEP
22 during the permit process or after?

23 A. No. No translator study was provided or
24 requested, to my knowledge.

1 Q. Going back to West Fork River, are you
2 aware of if West Fork River is on any 303(d) impaired
3 list?

4 A. Yes. The West Fork River is on the
5 303(d) list for zinc and there is a completed TMDL for
6 iron on the West Fork River, and there was previously
7 a TMDL for aluminum, but for intents and purposes, I'm
8 not going to get into the full details of that right
9 now. Basically, that TMDL is obsolete and there is no
10 impairment for aluminum.

11 The TMDL was based off of total
12 recoverable and the criteria is now dissolved and
13 there is no dissolved criteria for aluminum, so for
14 all intents and purposes that TMDL is obsolete.

15 MS. SURBER: That's all I have for you
16 right now.

17 MS. BAILEY: Dr. Snyder, may I proceed?

18 DR. SNYDER: Oh, yes, I'm sorry. I
19 didn't quite hear Ms. Surber. Ms. Bradley?

20 BY MS. BRADLEY:

21 Q. Good afternoon, Mr. Sweeney. I'm a
22 little confused about this -- what percentage of the
23 flow comprises -- the discharge from the Allegheny
24 station comprises the West Fork River.

1 You indicated that you disagreed with
2 Ms. Moore's conclusion that DEP had not used the
3 proper dilution factor and I believe your conclusion
4 was that in fact the stream, the discharge makes up 40
5 to 50 percent of the West Fork; is that right?

6 A. At low flow conditions, yes.

7 Q. And low flow being worst case
8 assumptions?

9 A. 7Q10 conditions.

10 Q. Could you explain -- and I'm looking at
11 the fact sheet now -- do you have a copy of the
12 permit? I'll show you my copy.

13 I've just picked several pages, not
14 totally at random from the fact sheet, but they
15 represent presumably the assumptions that DEP made
16 when it ran these figures through its formula, I'll
17 call it.

18 A. Uh-huh.

19 Q. On this page, for example, which is not
20 numbered, and I apologize for that for the board
21 members, but it describes the water quality based
22 limitations for Outlet 002 and it lists on here
23 various stream criteria including the 7Q10, the
24 effluent flow from the facility. I assume that would

1 be a maximum number?

2 A. I believe so, yes.

3 Q. But it also lists an end stream waste
4 concentration of 33.04 percent.

5 A. The spreadsheets are set up in a manner
6 to do the -- if I can call it a single word, the
7 additive approach that I discussed previously. By
8 default, they're just standards set up that way, but
9 the actual dilutions that we input are manually
10 entered, so, you know, we didn't bother changing the
11 formula for it. We just adjusted for it when we
12 entered the actual dilution.

13 Q. So the end stream waste concentration
14 that appears on these pages in the fact sheet is not
15 the end stream waste concentration that you actually
16 used in calculating the permit limits?

17 A. That's correct. That's correct.

18 Q. How is the permittee supposed to know
19 that or a member of the public who is reviewing these?

20 A. I don't know if we talked about it in
21 the fact sheet or not.

22 Q. Here's another example, 001 end stream
23 waste concentration of 30.50.

24 A. Yeah. We may have discussed it in the

1 fact sheet.

2 Q. But nevertheless, this is what's being
3 provided as representing the end stream waste
4 concentration that is being used by the agency?

5 A. At the same time the dilutions granted
6 are also provided on there, too.

7 Q. Are those the single numbers here?

8 A. Yeah. On those ones you were showing
9 me, there was no dilution granted.

10 Q. Is there any description in the fact
11 sheet that you can point to that talks about the non-
12 additive versus the additive approach?

13 A. I don't know. If I had the fact sheet,
14 I could tell you.

15 MS. BAILEY: Sarah, do you have the fact
16 sheet?

17 MS. SURBER: I don't have a copy of the
18 fact sheet.

19 MS. BAILEY: We're getting a copy of the
20 certified fact sheet.

21 THE WITNESS: Yeah, on Page Six of the
22 fact sheet, there's a section that's called Mixing
23 Zones that indicates a default mixing zone was granted
24 for a pollutant where background data was available at

1 Outlets one and two. No mixing zones were granted for
2 iron and zinc due to impairments based off of observed
3 discharge flows from Outlet 001, the discharge from
4 Outlet 001 could potentially make up 43.9 percent of
5 the West Fork River at low flow conditions, which
6 yields a maximum possible dilution factor of 2.28
7 dilutions. Similarly, observed discharge flows from
8 Outlet 002 could potentially make up to 52 percent of
9 the West Fork River at low flow conditions, which
10 yields a maximum possible dilution factor of two
11 dilutions.

12 BY MS. BAILEY:

13 Q. But that says nothing about intake
14 impact, correct?

15 A. No.

16 Q. It's only talking about the discharge
17 from Outlet 001.

18 A. Right.

19 Q. So why would you read into that that
20 you're concluding that the discharge takes up 43.9
21 percent of the river?

22 A. That is what we're concluding.

23 Q. It doesn't say that. There's no
24 discussion of this additive versus non-additive

1 approach in that paragraph, correct?

2 A. No. It doesn't say specifically the
3 additive approach versus the non-additive approach.

4 Q. I'm providing you with a copy of a
5 document titled -- excerpts from a document entitled
6 "Metals and pH TMDL's for the West Fork River
7 Watershed, West Virginia USEPA September 2002." Is
8 that the cover of what the TMDL for the West Fork
9 would look like for --

10 A. I believe so.

11 Q. -- the metals and pH? Within the
12 documents I provided you are some excerpt pages and I
13 direct your attention to the discussion on Page 4-8,
14 which is the second page in the document I have, I'm
15 sorry, the third page.

16 This next paragraph to the bottom
17 describes the average flow in the West Fork River.
18 Can you read what that says about it, average daily
19 flow?

20 A. Are you talking here?

21 Q. Uh-huh.

22 A. "The average daily flow from 1990 to
23 2000 at USGS 03061000 located approximately four miles
24 downstream is approximately 800 million gallons per

1 day.”

2 Q. And could you continue?

3 A. “Since the total flow from the eight
4 outlets is significantly smaller than the average
5 daily mainstream flow, the loading from the
6 Monongahela Power Station was included as background
7 conditions during water quality calibration.”

8 MS. BAILEY: I'd like to move the
9 admission of this document as 3.

10 DR. SNYDER: Any objection, MS. Surber?

11 MS. SURBER: No objection.

12 DR. SNYDER: So moved, Appellant's 3.

13 BY MS. BAILEY:

14 Q. When the agency is doing a TMDL and
15 looking at flows and pollutant concentrations in these
16 streams, are they looking at flows over long periods
17 of time?

18 A. I really can't answer that. I'm not
19 involved with the development of TMDL's, so I really
20 don't know how they evaluate those.

21 Q. On its face, this statement says they're
22 looking at a ten-year period; is that right?

23 A. I don't know. On this the only thing I
24 can conclude is they just stated that the average

1 daily flow at USGS from 1990 to 2000 was approximately
2 800 MGD. I don't know if that was used in the actual
3 development of the TMDL-type conditions or if that was
4 just used to make the conclusions they make about this
5 facility. I don't know.

6 Q. On the basis of that conclusion and what
7 you know about this -- well, I assume you're familiar
8 with this TMDL for the West Fork since you relied on
9 it in developing these permit conditions, did the
10 agency conclude that the Harrison plant was a
11 negligible contributor of metals to the West Fork?

12 A. Well, what we did was develop --

13 Q. I'm asking what the agency concluded in
14 the TMDL.

15 A. Well, actually, the agency didn't do
16 this TMDL. This was an EPA TMDL.

17 Q. So what did EPA conclude in the TMDL?

18 A. I don't know. I can't speak for what
19 they really concluded

20 Q. I'm just asking you to look at the
21 report. Again, I assume you relied on this report in
22 developing the permit limit because you've indicated
23 that it was an impaired stream and you presumably knew
24 that from this TMDL?

1 A. Right. What we did is, you know, we did
2 a reasonable potential discharge when looking
3 specifically for iron and developed water quality
4 based effluent limits for iron because due to the
5 impairment, we granted no mixing zone in that
6 assessment. We came up with those limitations. We
7 then referred to the TMDL itself to see if there were
8 any specific allocations to this facility or any other
9 type of further reductions required and there was
10 nothing listed for this facility in the TMDL.

11 Now, as part of all of that, so we went
12 with -- because a TMDL does not -- if someone is not
13 mentioned in the TMDL, that doesn't mean that they
14 don't have to still comply with water quality
15 criteria. So the limitations that we imposed were
16 just water quality based effluent limitations.

17 As part of the review process, when we
18 sent this to public notice, we also have to send it to
19 EPA for review. EPA actually argued with DEP that
20 because the facility was not provided any specific
21 allocation in the TMDL that we couldn't grant them any
22 allocation whatsoever, that we essentially had to
23 grant them a zero allocation. We were able to through
24 numerous exchanges with EPA, you know, come to the

1 conclusion that we could still grant limitations, you
2 know, as long as you're protected with water quality
3 criteria.

4 Q. This conclusion by EPA as we've
5 indicated here, an average flow of 800 million gallons
6 per day in the West Fork, how does that compare with
7 the average flow or the maximum flow that's been seen
8 from the Harrison Power Station?

9 A. Approximately 15 million gallons out of
10 800 million gallons.

11 Q. And that would be, roughly, what
12 percent?

13 A. Small.

14 Q. Less than two percent?

15 A. A small percent.

16 Q. And that's based upon the overall
17 average and not a critical low flow assumption,
18 correct?

19 A. That's correct.

20 Q. So on an average basis, the Harrison
21 Plant would be comprising one to two percent of the
22 flow in the West Fork based on this data?

23 A. Approximately.

24 Q. Yes. The exchanges you've had with EPA

1 regarding the issue of these permit limits, will it be
2 reflected in the certified record?

3 A. Yes, it would be.

4 Q. By way of e-mail exchanges, I assume?

5 A. Yeah, e-mail.

6 Q. I'm also confused about temperature. I
7 appreciate your guidance on it. What's the purpose of
8 the 316(a) variance?

9 A. A 316(a) variance may be granted to
10 essentially allow for alternate thermal limitations so
11 long as you ensure that you will still maintain a
12 balanced, indigenous population -- and forgive that
13 term, I keep repeating it, but that's straight out of
14 the limitation -- balanced, indigenous population of
15 fish and shellfish in the receiving stream.

16 Q. So when you get a 316(a) variance, the
17 thing you're getting a variance from is what?

18 A. The standard water quality criteria for
19 --

20 Q. The otherwise applicable criteria for
21 temperature at that outfall --

22 A. Correct.

23 Q. -- at that discharge?

24 A. Right.

1 Q. And in the case of the Harrison Power
2 Station, DEP has in fact granted a 316(a) variance,
3 has it not?

4 A. We have granted in part, yeah, a partial
5 316(a) variance and granted some alternate
6 limitations.

7 Q. I'm reading in Paragraph D1 on Page 34
8 of the permit. It says "The permittee has
9 successfully demonstrated that the thermal impacts of
10 the discharges from outlets 001 and 002 are not having
11 an adverse impact on the balanced, indigenous
12 population of shellfish and wildlife in and on the
13 West Fork River, therefore, the permittee has been
14 granted a thermal variance for the discharges from
15 outlet 001 and 002."

16 so the agency has concluded that the
17 facility is not having an adverse impact from its
18 thermal discharges?

19 A. That's correct.

20 Q. And yet you found the need to impose
21 thermal limits on the discharges?

22 A. The requirement doesn't say you don't
23 have any limits. It says you can grant alternate
24 limitations.

1 Q. On what basis did you adopt the
2 limitations that you imposed for thermal on Outlet
3 001?

4 A. The limitations imposed are actually
5 what the water quality based effluent limits with the
6 benefit of the default dilutions, what those
7 limitations that are necessary to be protective of the
8 actual water quality criteria and maximum daily
9 limitations were imposed for that because they could
10 be achieved. The average monthly limitations were not
11 imposed because the variance was granted for those and
12 report-only was granted for the average. I mean
13 report only is fine for the average monthly simply
14 because we knew we had the maximum daily there,
15 limitation there, and we also knowing that we had the
16 maximum daily limitation there that is imposed, the
17 average monthly we concluded report only was okay as
18 well as a variance for the temperature change of five
19 degrees of report only as well.

20 Q. Okay. So now here's what I understand
21 you to say, they're getting a 316(a) variance because
22 they're not adversely affecting balanced, indigenous
23 population with their thermal discharge. You're also
24 saying you're imposing a permit limit, thermal permit

1 limit to assure that they're not adversely impacting
2 the balanced, indigenous population, and then finally,
3 you're saying you're imposing a permit limit that you
4 believe they can meet which suggests that they're not
5 creating an impact -- again, not creating an impact on
6 the balanced, indigenous population.

7 why do we need a thermal discharge limit
8 in this permit if we're not creating an adverse impact
9 on aquatic life at the current discharge levels?

10 A. well, the water quality based effluent
11 limit is determined, the imposition of such a limit is
12 determined not just based off of -- it's not a
13 reactive concept. You don't impose it after there's a
14 big fish kill or something. You impose them to
15 prevent such a thing from occurring and so, I mean
16 it's not -- you know, we don't make a determination on
17 whether to impose limits based off of the fact that
18 there may be no current problem in a stream. Those
19 limits are imposed to essentially prevent that, but
20 the limitations that were granted were based off of
21 the criteria and when you take a water quality
22 criteria and you develop -- you have to translate
23 those into limitations and it's the imposition of both
24 of those effluent limitations that are protective of

1 the water quality criteria, so it's the average
2 monthly in conjunction with the maximum daily effluent
3 limitation that are essentially protective of the
4 criteria.

5 So imposition of the maximum daily
6 limitation in and of itself may or may not be
7 completely protective of the specific water quality
8 criterion of 87 degrees in the summertime in the
9 receiving stream. The potential exists, you know, wit
10 considering effluent variability and numerous things
11 that occur that, you know, that's the whole point
12 behind the average monthly limitation, it's basically
13 on any single day it could be below this, but on the
14 average, most of the times, the average is lower than
15 the maximum daily and on average, it needs to be lower
16 to ensure that the criterion is protected at all
17 times.

18 Q. Referring you to Exhibit 2, which was
19 the DNR effluent data, do we still have that?

20 A. Yes.

21 Q. And the data on the second page for
22 effluent temperature in the summer, various data
23 points, there are data points represented on there
24 where the new permit limits would be exceeded; is that

1 correct?

2 A. Yes. That looks to be probably outside
3 the spectrum of data we evaluated, but there's two
4 listed. I think we looked at 2006 to present.

5 Q. And in fact, in 2000, I believe the
6 testimony of Mr. Canon was for outlet 001, there were
7 only nine months when there was a discharge from
8 outlet 001 in the last five years?

9 A. Yeah. I don't contend that.

10 Q. Looking at the data at Outlet 002,
11 again, there is an excursion from that discharge
12 limit; is that correct?

13 A. For which -- oh, I'm sorry, still for
14 temperature?

15 Q. Yeah, for temperature.

16 A. Yes.

17 Q. And in each case at both of those
18 outfalls, there are other data points that are very
19 close to the permit limit; is that correct?

20 A. There's numbers approaching it.

21 Q. Do you have any idea what the
22 variability is in the temperature measurement, plus or
23 minus?

24 A. No, but I will say that, I mean,

1 obviously, these are -- this is a limited data set
2 here for 002. Obviously, there's numerous other data
3 points and I believe that they have been -- well, I
4 think the previous permit required daily monitoring.
5 I believe they previously had continuous monitoring in
6 place, which I don't know how frequently that actually
7 occurs, but in many places, people take a reading in a
8 continuous situation every, I don't know, 15 minutes,
9 maybe an hour, something like that, so we're
10 potentially talking about numerous data points over
11 the permit cycle here with only one single value being
12 above.

13 Q. Has there been a temperature limit on
14 either of these outfalls in the history of this plant,
15 do you know?

16 A. I don't know if there ever has been, but
17 I'm not familiar. I have not seen one.

18 Q. Was there any in the last permit?

19 A. I don't believe so, no.

20 Q. And, again, in light of the agency's
21 conclusion that there's no adverse impact on aquatic
22 life from the thermal discharge, what causes you to
23 impose a thermal limit in this permit now?

24 A. Well, upon our evaluation, the previous

1 permit only had a simple statement regarding the
2 316(a) variance. It basically just said that the
3 316(a) variance was continued and that was the only
4 essential requirement in the entire permit regarding
5 the variance. Holistically and not just with this
6 permit, but maybe, I don't know, four years or so ago,
7 we started looking at all these 316(a) variance as a
8 whole simply because this previous condition that I
9 just mentioned, we also saw that in many other permits
10 that had 316(a) variances as well and, you know, we
11 kind of determined that, hey, we need to have some
12 more type of information here, you know, for two
13 things. One to make determinations, we need to
14 determine whether there's a need, we need to determine
15 what type of limitation should be imposed. We don't
16 believe that there should be no requirements, and then
17 we also need to ensure that we collect the appropriate
18 types of information going forward that we are able to
19 better evaluate continued -- or to have appropriate
20 information in order to conduct appropriate
21 evaluations for continued or for the continued
22 granting of a 316(a) variance in the future.

23 Q. And, in fact, in this permit, the
24 permittee is required to do additional study prior to

1 the expiration of this permit to support the 316(a)
2 variance; is that correct?

3 A. Yes.

4 Q. Are you suggesting that there was reason
5 to question whether there was true eligibility for
6 this plant, for the 316(a) discharge regarding the
7 316(a) variance?

8 A. Not necessarily. It's simply to have
9 that information. I mean everything doesn't stay the
10 same all the time, so we need to continue to evaluate
11 it. I mean in part, that's the reason permits are
12 reissued is to, you know, reassess everything and
13 determine if there's any new requirements that are
14 needed.

15 Q. And, in fact, didn't the agency do its
16 own study in 2010 to determine whether there was an
17 impact of a thermal discharge on the West Fork?

18 A. That's correct. We had some of our
19 watershed assessment people went up to the area and
20 did some fish survey information or collected some
21 fish survey information.

22 Q. And I'm reading from Page 17 of the fact
23 sheet if you want to look at that referencing this
24 2010 study conducted by DEP, not by the company.

1 The result of the study found that the
2 thermal impact of the cooling water discharge was not
3 having an adverse impact on the fish population in the
4 West Fork River. Is that in fact the conclusion that
5 was reached?

6 A. Yes.

7 Q. So again we reaffirm that the agency
8 finds there was no adverse impact on aquatic life from
9 this thermal discharge and yet we have permit limits
10 that potentially could be violated by this facility?

11 A. Well, that's the case -- I guess I'll
12 come back and say that's the case with anything. We
13 have effluent limitations imposed on numerous
14 discharges throughout the state where there is no
15 problem occurring in the stream. That doesn't mean
16 that we still don't impose them.

17 Q. But the purpose of the 316(a) variance
18 is to create a variance from having a permit limit
19 based on the water quality standard. Isn't that what
20 you testified?

21 A. I don't believe it means that you don't
22 have to have anything.

23 Q. It's a variance from what?

24 A. You can have alternate thermal

1 limitations.

2 Q. It's a variance from the water quality
3 criteria for temperature, isn't it?

4 A. By the imposition of alternate thermal
5 limitations, then water quality criteria would require
6 you are inherently getting a water quality variance
7 from the water quality criteria.

8 Q. I think we're going in circles here, so
9 let me move on. You've discussed compliance schedules
10 and the requirement that compliance schedules require
11 achievement of the limits as soon as what was your
12 phrase reasonable?

13 A. Possible, I believe.

14 Q. As soon as possible?

15 A. Yeah.

16 Q. This permit has two compliance schedules
17 of 24 months each, one for iron at Outlet 002, and
18 then 24 months compliance schedules for achieving the
19 stormwater limits on the discharges. What was your
20 basis for concluding that a 24-month compliance
21 schedule was appropriate?

22 A. Twenty-four months is essentially a
23 standardized compliance schedule that the agency
24 believes is appropriate in the absence of any other

1 kind of information that would specifically, you know,
2 spell out exactly what was going to occur that would
3 result in compliance.

4 You know, following the as soon as
5 possible concept, we believe that, you know, two years
6 is enough time to determine what needs to be done.
7 There's numerous things that can be pursued by
8 facilities and I say -- I'm meaning this in general, I
9 mean source evaluations of pollutants and reductions
10 that may be able to be incurred as a result. They can
11 pursue mixing zones. They can pursue translators and
12 after that, there's potentially changes in operations
13 do not achieve compliance, then determination has to
14 be made at some point whether additional treatment or
15 something else may need to be constructed or put in
16 place in order to achieve compliance.

17 Q. So your testimony is that 24 months is a
18 standard compliance schedule the agency would give?

19 A. Yeah.

20 Q. It doesn't take into account the fact
21 that you may have a 500-gallon-a-day discharge versus
22 a 15-million-gallon-a-day discharge?

23 A. Not necessarily, no.

24 Q. And you don't think that might impact

1 how long it's going to take to design and construct an
2 appropriate treatment system?

3 A. Well, I don't know. That's just the
4 thing. It's not necessarily that a treatment system
5 has to even be put in place. It may be resolved
6 through a mixing zone or a translator or some other
7 means, some other source identification and reduction.
8 We don't know.

9 Q. You heard Mr. Canon's testimony about
10 the nature of the effort that would be required to
11 develop a treatment system for both outlet 002
12 discharges and the storm water discharges?

13 A. Yes.

14 Q. Do you have any basis for disagreeing
15 with what he said about what that would require?

16 A. I can't speak to it. I mean I can't
17 speak to it either way. I don't know.

18 Q. But you have no basis for disagreeing
19 with what he's saying?

20 A. No, but at the same time, I have no
21 basis for agreeing with it either.

22 Q. But you've indicated you didn't take
23 into account the specific factors at a facility such
24 as Harrison Power Station when you determined that 24

1 months was the appropriate compliance period here?

2 A. We don't know what will ultimately be
3 done in order to comply and when that will be.

4 Q. So you used the standard 24 months here?

5 A. That's correct. There's nothing that
6 prevents a facility if at some point in the future if
7 they determine that additional time is going to be
8 needed based off of conclusions and findings of what
9 they're going to do that they can't request a permit
10 modification to extend that compliance schedule based
11 off what they then know it will take for them to
12 comply.

13 Q. How long does it take to get a major
14 permit modification through the agency?

15 A. It can -- it's supposed to be 180 days,
16 but sometimes, they take longer.

17 Q. With respect to the issue of whether
18 they would have to install treatment for these storm
19 water discharges, you've identified the fact that no
20 mixing zone would be allowed, correct?

21 A. At this point, that is correct. It's --
22 in determining, well, obviously, in some of the
23 pollutants, we have the impairments if there is no
24 mixing zone, but the -- you know, in the majority of

1 cases during storm events, the conditions of the
2 receiving stream with respect to solids or sediments
3 and metals are typically pretty high, so the amount of
4 dilution available is probably not there, most likely.

5 Q. Have you looked at the data that has
6 been on the DMR's here relative to the total
7 recoverable versus the dissolved portions of the, for
8 example, in the aluminum here?

9 A. No, I have not.

10 Q. You haven't made any judgment about
11 whether a translator should be appropriate for this
12 site?

13 A. No.

14 Q. Do you not deem that to be the agency's
15 obligation when they're issuing permits?

16 A. Well, translators aren't determined from
17 just effluent data unless you have a straight
18 effluent-dominated receiving stream, you know, where
19 it makes up 100 percent of the stream, then you could
20 use effluent data from the discharge to make that
21 determination, but translator studies are typically
22 conducted in the receiving stream itself.

23 Q. And we do have end stream data here, at
24 least intake data that would show what the

1 concentrations are in the stream of these metals,
2 don't we?

3 A. I don't know.

4 Q. You just didn't give any consideration
5 at all as to whether this qualified for a site-
6 specific translator, correct?

7 A. No. Typically if a facility, if they
8 wanted a translator, they specifically have conducted
9 a study and requested one.

10 Q. I suspect that's if they know they're
11 going to get a metals limit on their discharge?

12 A. Most times --

13 Q. Otherwise, why would they ask for one?

14 A. Most of the times, they're reactive,
15 they do that after they're determined to have a limit,
16 but I'd also like to point out that typically we like
17 to look at the downstream condition because -- to
18 account for how the impacts of the discharge in the
19 receiving stream when you're doing a translator study
20 that certain conditions of the discharge can have an
21 effect on the levels in the receiving stream, so the
22 levels can be different than what they would be
23 upstream, so typically, we want that kind of
24 information collected downstream of the discharge.

1 Q. But there was no communication with the
2 permittee to the effect that you might be able to
3 qualify for a translator, otherwise, we're going to
4 impose a pipe metals limits on you here, I assume
5 there was no communication like that that occurred
6 during the life of the prior permit?

7 A. I can speak for myself, I never
8 communicated with them. I mean that's not our
9 standard practice either. Translators are -- we have
10 a translator guidance document that's out there that
11 anybody can look at. I mean the agency typically
12 doesn't make a practice of contacting facilities to
13 let them know that they may want to pursue a mixing
14 zone or they may want to pursue a translator study.

15 Q. Let me ask you about this end stream
16 temperature monitor that you indicated was required
17 downstream. You indicated you want to get that
18 continuous temperature data to help you decide whether
19 or not to continue this 316(a) variance, that would be
20 one of the reasons to collect the data; is that right?

21 A. Yes.

22 Q. Have you required that condition in
23 other permits?

24 A. Yes.

1 Q. And what trends have you been able to
2 see from the information that's collected?

3 A. I couldn't tell you at this point. I
4 haven't actually looked at any of that type of
5 information at this point.

6 Q. So have you identified any site where
7 the information collected from that monitoring has
8 been helpful in determining whether a 316(a) variance
9 should be extended?

10 A. I haven't evaluated any.

11 MS. BAILEY: That's all I have. Thank
12 you, Mr. Sweeney.

13 DR. SNYDER: Thank you. Ms. Surber?

14 BY MS. SURBER:

15 Q. All right. Mr. Sweeney, in regards to
16 variances and particularly the temperature variance,
17 the 316(a) variance, in your role in permitting, do
18 you evaluate variances, 316 variances?

19 A. Yes. Typically in the standard concept
20 of variances, permit writers are not involved in
21 determining whether a variance can be granted. That's
22 typically done through water quality standards,
23 however, in this case for 316(a) of the Clean Water
24 Act, essentially gives the permit writer the ability

1 to assess and grant a 316(a) variance.

2 Q. In your experience with these 316(a)
3 variances, have you granted variances where the agency
4 has determined that a variance is not necessary
5 because the facility has the ability to comply with
6 the water quality standards?

7 A. In ones that I have looked at, we have
8 not. I mean where we've only granted wherever it was
9 needed, but again, we started looking at these
10 holistically, I think approximately four years ago.

11 Q. And in considering the variance, if DEP
12 had not granted a 316(a) variance to Allegheny, do you
13 know what the temperature limits would've been at
14 outlet 001 or outlet 002?

15 A. Not off the top of my head. I mean the
16 maximum daily limitations that we've imposed, those
17 would be the same, but there would also be an average
18 monthly effluent limitation. What that would be, I
19 don't know. It would be some number lower, and there
20 would've also been another limitation imposed to be
21 protective of the temperature difference between the
22 upstream and downstream as well and I don't know what
23 that would've exactly been either.

24 Q. Okay. Going back to the West Fork River

1 and the flow conditions at the West Fork River when
2 establishing water quality based effluent limits, is
3 DEP required to protect aquatic life at low flow
4 conditions?

5 A. Yes.

6 Q. Does DEP base the number on just the
7 average flow in the river over, say, a ten-year period
8 as the TMDL pointed out?

9 A. No. What we do is we protect criteria
10 down to the 7Q10 condition, which that's our water
11 quality standards require that we be protective down
12 to that specific condition.

13 Q. And are you aware of the reason why DEP
14 protects the 7Q10 flow conditions?

15 A. I can't give the actual rationale as to
16 why 7Q10 was selected. By definition, 7Q10 is
17 essentially the lowest seven-day average in a ten-year
18 span for flow and my guess is that, you know, with
19 that being an infrequent occurrence, by protecting
20 down to that, you're protecting a majority of the
21 conditions.

22 MS. SURBER: I don't have any further
23 questions.

24 DR. SNYDER: Questions from board

1 members?

2 DR. SIMONTON: Not for me.

3 MR. ARMBRECHT: None from me.

4 DR. SNYDER: Bill?

5 MR. GILLESPIE: Not at this time.

6 DR. SNYDER: I don't have any either.

7 Thank you, Mr. Sweeney. Ms. Surber, anymore
8 witnesses?

9 MS. SURBER: No more witnesses for DEP.

10 Thank you.

11 DR. SNYDER: Okay. This has gone on
12 long enough. Wendy, I think this might be helpful,
13 just a very brief conclusion, then the board will
14 proceed to do what they need to do. Ms. Bradley?

15 MS. BRADLEY: Thank you, Dr. Snyder, and
16 I will be brief. I think our testimony today does
17 justify the granting of a stay. We've got new permit
18 limits that are effective immediately that will
19 require the company to make enormous expenditures over
20 some period of time to come into compliance. You've
21 heard testimony of figures of approximately 92.5
22 million to install the treatment system to meet the
23 limits at outlets 001 and 002. Again, a cost,
24 estimate, we're not claiming, but it's the best we can

1 do, given the short amount of time that we have.

2 We think these are the kinds of
3 expenditures that require a full airing before the
4 permittee is required to move forward and the bottom
5 line is given the time compliance period that's been
6 required, Allegheny would have to start now to do the
7 work to design, construct and operate these major new
8 treatment systems.

9 DEP in the response that the board has
10 allowed them to make suggested this is an
11 insignificant issue, that really by the first
12 compliance section of this compliance schedule, all
13 the company has to do is file a plan for adopting and
14 installing a treatment system by November of 2011.

15 November of 2011 is six months from now
16 and that's 25 percent of the compliance schedule. You
17 heard Mr. Canon testify that it would be an enormous
18 effort in the millions of dollars to do that initial
19 work if we're not granted a stay while this appeal is
20 being considered.

21 With respect to the issue of potential
22 for violations, at Outlets 001 and 002, DEP would have
23 the board put on blinders to the fact that you've got
24 the same waste streams going into each lagoon, you

1 have the same treatment occurring, you have the same
2 volume of material being handled and the fact that we
3 may have more excursions when we look at past data
4 under these new limits at one outfall versus another
5 is simply happenstance. We heard no response from DEP
6 that addressed why that shouldn't be considered, the
7 concentrations in both of those lagoons in determining
8 the risk of actually violating both of these permit
9 limits.

10 With respect to the stormwater outlets,
11 there's no dispute here. DEP agrees that there is a
12 significant risk of exceeding these new limits.
13 Something is going to have to be done here. You heard
14 Allegheny's testimony about the treatment system that
15 would be required there.

16 So what's unfair and what's unjust and I
17 submit also meets the standard of irreparable harm,
18 which we do not concede applies here, it's not the
19 statutory standard, but nevertheless, what's not fair
20 is to force the company to begin these efforts to come
21 into compliance before we have an opportunity to be
22 heard on whether these permit limits are correct,
23 whether they've been derived correctly, whether the
24 compliance time that's been allotted is appropriate.

1 We're only asking for a stay here. We're prepared to
2 move forward to hearing on the merits of these issues
3 with all appropriate dispatch and consistent with the
4 Environmental Quality Board's docket.

5 I submit I apologize for the time this
6 has taken today. I know you all are very busy and I
7 appreciate your consideration of this issue, but we
8 respectfully request that our motions for stay be
9 granted.

10 DR. SNYDER: Thank you. Ms. Surber?

11 MS. SURBER: DEP opposes the stay after
12 hearing the data and the information received here at
13 the hearing because when you look at the totality of
14 the pollutants and the effluent limits and the
15 requirements imposed upon Allegheny, we believe that
16 DEP has acted reasonably in calculating the limits, in
17 imposing deadlines and timelines in meeting those
18 limitations and when you look at the pollutants that
19 have immediate limitations, DEP has only imposed
20 immediate limitations where Allegheny has established
21 through five years of DNR data that Allegheny has an
22 ability to comply with the limits that are established
23 by DEP.

24 The effluent limitations are crucial to

1 the stream, particularly because of the size of the
2 stream and the size of the discharge, therefore, DEP
3 believes that public interest is high in continuing
4 these limitations to be high during the appeal period.

5 Speaking specifically to the compliance
6 schedule, the compliance schedule deadline is in
7 November 2011 to submit a plan of action. The plan of
8 action is a living document that begins with what
9 Allegheny believes at first it needs to do to address
10 the issues with the pollutants of iron and iron, zinc
11 and aluminum at the various outlets.

12 DEP believes that this information is
13 crucial particularly considering that West Fork River
14 is impaired for both zinc and iron and those are the
15 pollutants that the effluent limits in the compliance
16 schedule will come into place.

17 You know, going back to the compliance
18 schedule deadline, what counsel just said that if
19 there is no stay, then by November 2011, 25% of the
20 compliance schedule is gone. DEP's position is that
21 it Allegheny loses the appeal and a stay has been put
22 into place, 25% of the compliance schedule has already
23 been taken up, no plan of action has been put into
24 place, you're moving toward a quarterly report that's

1 due in February of next year. That almost necessarily
2 will require an extension the compliance schedule,
3 which means Allegheny wins, even though they didn't
4 win for the appeal.

5 So I correct board to look at DMR's that
6 are contained in Exhibit A, Attachment A in both of
7 the responses that DEP filed and look at Outlets 001
8 and 002. The argument that these are the same
9 discharges they should be treated the same, if you
10 look at the data, that that is not the same that that
11 is very different they vary at different rates.
12 Obviously, when you are discharging at different
13 rates, at different levels, I don't see how you can
14 say it's the exact same discharge.

15 Finally, I would like to conclude --
16 well, before I conclude, I question the need for the
17 stay at Outlet 001 because as Mr. Canon testify,
18 outlet 01 was only used nine months out of the prior
19 60 or more months of the previous permit. I don't see
20 that there's an immediate need for stay when the nine
21 months have been used out of the last five years.

22 So finally, I would like to conclude
23 that DEP's position is the likelihood of success that
24 is low in this case for Allegheny to plan on its

1 appeal issues is because it doubly cannot meet the
2 unreasonable, capricious and arbitrary standards based
3 upon the decisions that DEP made, that data is used
4 and the fact that some of the decisions that it made
5 for example the 316(a) variance is a discretionary
6 grant of to begin with, so when you add the
7 discretionary nature of the variance with the high
8 standard to succeed on the appeal, DEP feels that
9 Allegheny does not have a likelihood of success on the
10 merits. Thank you.

11 DR. SNYDER: Thank you, Ms. Surber, and
12 I want to thank all the parties and the witnesses.
13 Here, you could be very good perspective of both sides
14 of the case before us. What we will do now is ruled
15 on the matter and we will with then -- Wendy, what
16 kind of timeframe can we get something back?

17 MS. RADCLIFF: Within the next couple
18 days I would say.

19 DR. SNYDER: That sounds reasonable. So
20 within the next couple of days or as quick as we can.
21 I again thank everyone and if the board members would
22 please stay on the phone or wherever we are. Let's
23 take about a 10 minute break, we'll come back and
24 start.