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STATEMENT UNDER OATH
OF

[REDACTED]

AUGUST 25, 2012

The following is the Statement Under Oath of
[REDACTED] taken before Darla Mustar, RPR,
Notary Public, at the Sawmill Inn Red Room,
2301 Pokegama Avenue South, Grand Rapids, Minnesota,
commencing at 1:02 p.m., August 25, 2012.

APPEARANCES:

Fredric A. Bremseth
Attorney at Law
Bremseth Law Firm, P.C.
601 Carlson Parkway, Suite 995
Minnetonka, Minnesota 55305

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PROCEEDINGS
(Whereupon, the Statement Under Oath of
[REDACTED] was commenced at 1:02 p.m.,
August 25, 2012, as follows:)

[REDACTED]
being first duly sworn, was examined
and testified as follows:
* * *

EXAMINATION

BY MR. BREMSETH:

Q. Would you please state your full name?

A. My name is [REDACTED]

Q. And how do you spell your last name?

A. [REDACTED]

Q. And do you mind if I ask you a couple of
personal questions --

A. I do not.

Q. -- date of birth ...

A. [REDACTED]

Q. And where were you born?

A. [REDACTED]

Q. And just tell me a little bit about where you
were, you know, raised and where you grew up --

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[redacted]

13 **Q.** You heard about -- if I can interrupt you.

14 **A. Sure.**

15 **Q.** You heard about the death of Dustin Bergsing,

16 apparently, by reading it in -- well, you heard about

17 my law firm being involved with the death of

18 Dustin Bergsing by reading it in the paper?

19 **A. Yep.**

20 **Q.** And you contacted my law firm?

21 **A. I contacted a young lady that worked for you.**

22 **Q.** Yes, right. We'll get to that in a minute.

23 But why don't you tell me a little bit, if

24 you would, about the employment and your position with

25 Marathon Oil before Dustin Bergsing's death.

1 Let's just kind of go over -- tell me about

2 your position, what your job duties were, things like

3 that.

4 **A. My position was primary air emissions ...**

5 **Q.** Okay.

6 **A. ... and permitting. I was strictly**

7 **permitting the wells for ... so they could operate.**

8 **Q.** And what does that mean, "permitting the

9 wells"?

10 **A. Permitting them means to have a ... an**

11 **operating permit from either the State or the EPA in**

12 **regards to ... what your control devices are, what --**

13 **what type of emission controls that you have**

14 **established on the site.**

15 **Q.** Gotcha.

16 And would you have to be preparing and

17 completing and filing and filling out appropriate

18 paperwork?

19 **A. Correct.**

20 **Q.** And would you work with others in that same

21 capacity?

22 **A. Ah, no, I -- the only person that I was**

23 **working with on a regular basis was a lawyer at**

24 **Marathon corporate.**

25 **Q.** And do you know the name of that lawyer?

1 **A. I do. Ah, Rebecca Sebik (sic.)**

2 **Q.** Okay.

3 **A. Don't ask me to spell it.**

4 **Q.** With an S or a C, do you think?

5 **A. S.**

6 **Q.** S, okay. And where would she be out of?

7 **A. Excuse me?**

8 **Q.** Where would she be out of? Is she located --

9 **A. Houston. She's out of Houston.**

10 **Q.** All right. Okay.

11 And so can you tell us, you know, what you

12 observed and -- particularly as it relates to what

13 we're going to talk about in terms of --

14 **A. Okay.**

15 **Q.** -- Mr. Bergsing's death.

16 **A. Well, let me ... let me walk you through a**

17 **permit application --**

18 **Q.** All right.

19 **A. -- a little bit, so you understand how ...**

20 **how -- what my job was.**

21 I ... basically, I would take the -- the

22 amount of oil produced, the amount of emissions, and

23 calculate the emissions ... no controls and with

24 controls, okay?

25 So you would have an understanding of what

17

1 those controls ... how they controlled the amount of
2 contaminants in the air. So -- we were only allowed a
3 certain amount per site to stay a Synthetic Minor to
4 Title V ... okay?

5 Fugitive emissions from the sites in the
6 permit applications really was not a part of the
7 permit application, but as we ... "fugitive emissions"
8 being emissions escaping from the tanks and from
9 anything else -- auxiliary equipment wasn't really a
10 part of the permit application, per se.

11 **Q.** Is the phrase "fugitive emissions" something
12 that's known in the industry?

13 **A.** It is known in the industry.

14 **Q.** Okay.

15 **A.** Fugitive -- a fugitive emission is something
16 that is not captured.

17 **Q.** All right.

18 **A.** And --

19 **Q.** And what does that generally consist of?

20 **A.** That ... as far as the oil and petroleum
21 industry?

22 **Q.** Yes.

23 **A.** Okay. As far as the oil and petroleum
24 industry, that would be a VOC ... a volatile organic
25 compound emission from a leaking gasket to an open

18

1 vent ... basically, a tank lid.

2 **Q.** Why is that important in Dustin Bergsing's
3 case?

4 **A.** That is very important. Basically, the --
5 the ... these -- these wells are not oil wells. They
6 are an oil-and-gas well, okay? They're a combination
7 of both. The ... the amount of gas produced out of
8 these wells are significant, ah, based on the
9 gas-to-oil ratio that's ... that's in the formation.

10 So we're drilling down 10,000 feet, and then
11 we're fracking ... we're -- we're perforating the
12 bedrock where these, um, compounds are in. So,
13 basically, all of that 10,000 feet of dirt is
14 pushing -- pushing all the gas and oil out of that --
15 that ... that formation at a very high pressure,
16 especially during the flowback, okay?

17 So you're -- the ... one thing that Marathon
18 does is they flowback those wells very hard, and -- so
19 they can ... to get their initial production up. So
20 if you're ... you're at ... if they can get it at --
21 up at ... between 14 and 2,000 barrels a day or
22 greater ... some -- in some cases greater than that,
23 then -- then you're -- you're -- the oil-to-gas ratio
24 sometimes is into the 1,400 gas-to-oil. So you're
25 producing more ... just as much gas as you are oil out

19

1 of that well.

2 **Q.** And when you say "1,400 gas-to-oil" --

3 **A.** Oil ratio. So you're -- 1,400 cubic feet per
4 barrel ... up to 14 -- 1,400, even greater than that.
5 Sometimes all the way up to 1,900 barrels -- ah, cubic
6 feet per barrel.

7 **Q.** Of gas ...

8 **A.** Per barrel --

9 **Q.** ... per barrel. And that's a lot?

10 **A.** That is a lot. That is a lot of gas. If
11 you -- if you take a thousand barrels a day, or 2,000
12 barrels a day from a well ... so you multiply that
13 1,400 times 2,000, that's a lot of standard cubic
14 feet. So the ...

15 **Q.** Go ahead.

16 **A.** The ... when I first came, they were putting
17 two flare stacks per tank -- or putting a flare stack
18 per tank battery.

19 And I -- I questioned some of the engineers,
20 why they were converting it only to one flare stack
21 per tank battery, because -- and there's some e-mails
22 to that effect, why there's only one -- one flare
23 stack per two tank batteries. Because that's --
24 there's not enough area for that gas to escape out of
25 both of those, ah, tank batteries.

20

1 So the -- the units, basically, during that
2 first initial production, or during that flowback --
3 and they're flowin' 'em back so hard so they can
4 inflate their numbers and look really good so they can
5 sell more stock ... more stock is what they -- what
6 they're after. I mean, it -- it's an Enron scenario.

7 **Q.** It's a business.

8 **A.** It's a business.

9 **Q.** And they want those numbers to --

10 **A.** -- look very good. Very good.

11 The ... so if they -- if they can flow 'em
12 back ... it doesn't matter what the production is
13 in -- 200 days from then. They just want that high
14 initial production so they -- so it'll float that
15 average way out, so ...

16 **Q.** Right.

17 **A.** So during those initial production -- I mean,
18 if you look at the NDIC, which is North Dakota ... ah
19 ... North Dakota ... the ... basically, where they --
20 they have to file all the wells. Um ...

21 **Q.** Okay.

22 **A.** My brain is ...

23 **Q.** You'll think of it.

24 **A.** Okay. All right. The -- but NDIC, where
25 they're -- they're -- they have to publish all this

1 **data for those wells.**

2 **Q.** The 1,400 cubic feet of gas per 100
3 barrels --

4 **A. No, for one barrel.**

5 **Q.** ... one barrel of oil --

6 **A. One barrel.**

7 **Q.** Has the 1,400 cubic feet of gas been known as
8 a fugitive ...

9 **A. No.**

10 **Q.** ... emission or not?

11 **A. No, it is not.**

12 **Q.** Oh.

13 **A. So -- it is not known as a fugitive emission.**

14 **Q.** Oh, okay.

15 **A. So let -- let's -- so part of that goes ...**
16 **in cases that they have sales ... it will -- part of**
17 **that will go to a sales line, and part of it goes to**
18 **the tank ... from a sale line to -- to, basically,**
19 **bare pause ... and from the ... and part of that will**
20 **go to the tanks. So there's a residual amount of gas**
21 **that goes to the tanks.**

22 And you're looking somewhere in the
23 neighborhood -- depending on ... it's all dependent on
24 the pressure of the line, okay? There's only so much
25 gas that line can accept. There's only so much gas

1 that the treater can take out during that -- that
2 period.

3 So the -- the ... the -- the treaters ... the
4 heater treaters that they have, basically, are
5 oil/water separators that separate the oil, water and
6 gas. Part of it will go to the sales line, part of
7 the oil goes to the tanks, and ... but the -- the
8 pressure in those -- those heater treaters, they're at
9 70 -- they're maxed out at 70 PSI.

10 So we're looking, in some cases, that
11 those -- those heater treaters are -- are a lot higher
12 pressure than -- than the ... than what the sales line
13 can accept, okay? So the sales line can only accept a
14 very small portion of that 1,000 ... 1,400 ... 1,000
15 to 1,400 cubic feet.

16 **Q.** So there's just too much gas.

17 **A. Too much gas.**

18 **Q.** And not enough capacity.

19 **A. Not enough capacity. So what happens is, it**
20 **ends up into the -- the fuel tanks.**

21 So we -- an engineer and I calculated it.
22 And this gentleman's name is Tom Nelson. He's a
23 British employee of ... of Marathon. We calculated it
24 at a -- at a thousand cubic feet when a ... when
25 someone goes and opens up the ... the -- the thief

1 hatch. The initial rush is a thousand feet, and then
2 it could be up to about 300 feet of cubic gas a
3 minute.

4 **Q.** Now, if I can interrupt you ... what do you
5 mean you "calculated it"? You and --

6 **A. Basically --**

7 **Q.** -- Mr. Nelson --

8 **A. Basically built -- sorry. Basically built a**
9 **spreadsheet that calculates the amount of gas that's**
10 **entrained in the ... entrained, using HYSYS, which is**
11 **a -- an engineering program that -- and we modeled it,**
12 **and we could show that the amount of gas going into**
13 **the tanks was very large.**

14 You know, during flowback ... not even -- not
15 even that, it ... not even that they go and open up
16 these lids, but even just takin' the -- the -- the IR
17 camera out and looking at it, you could see the gas
18 coming out of the lids, lifting ... because they're
19 under so much pressure -- back pressure, because the
20 Enardo valve will not allow enough gas out of the --
21 the tanks.

22 **Q.** Did you do that with an IR camera?

23 **A. I did. And you can see -- during flowback,**
24 **you can see every one of the tank lids ... gas**
25 **escaping out of 'em.**

1 **Q.** So if I understand, this would be an Infrared
2 camera --

3 **A. And this is -- this is after Dustin's death.**
4 **They -- they were still doing the -- sorry.**

5 **Q.** No, go ahead.

6 **A. They were still doing this ... carrying on**
7 **this practice to beef up their numbers, to make**
8 **themselves look good ... after his death.**

9 **Q.** Really.

10 **A. They -- they did not change any practices.**

11 **Q.** And you -- with that special IR camera, you'd
12 actually be able to see the gasses flowing out of the
13 lid.

14 **A. Out -- out of the lid ... without it --**
15 **without it lifting.**

16 **Q.** Without anyone even opening it up.

17 **A. Without anybody opening it up --**

18 **Q.** And then if somebody would open it up, there
19 would be a blast up to a thousand cubic ...

20 **A. Up to a thousand cubic feet.**

21 **Q.** And what --

22 **A. You know, that's a -- sorry.**

23 **Q.** Go ahead.

24 **A. That's a modeled number -- okay, that's a**
25 **modeled number. I mean, it -- you know, it -- it has**

1 **some ... ah, fudge in there. I mean, there's some**
 2 **practicality of -- of, you know, how the well is**
 3 **flowing, what the oil -- you have to assume --**
 4 **Q. Sure.**
 5 **A. -- some water-to-oil and gas ratios and**
 6 **things as constant. And it -- we're talking about**
 7 **something that you'd have to have a meter on to know**
 8 **what the constant is, but it could range from 700 to**
 9 **1,500 cubic feet when they open that lid.**
 10 **Q. If I was to ask Marathon Oil then whether or**
 11 **not they ever have Infrared photograph or cam -- video**
 12 **of this, they should have it.**
 13 **A. They should.**
 14 **Q. And on how many different occasions do you**
 15 **think it was videoed?**
 16 **A. Oh, several.**
 17 **Q. Okay.**
 18 **A. There's several times that people have gone**
 19 **out --**
 20 **Q. You did it yourself?**
 21 **A. I did it myself.**
 22 **Q. And what about --**
 23 **A. And I had three witnesses with me;**
 24 **Jenar Jasso, ah ... Jenar Jasso and Patrick Whalen,**
 25 **that's currently still employed with Marathon Oil.**

1 **Q. Whalen, would that be like W-h-a-l-e-n --**
 2 **A. Correct.**
 3 **Q. And what about this Tom Nelson? Is he still**
 4 **employed with Marathon?**
 5 **A. I assume he is. I -- I have no contact with**
 6 **any Marathon employees.**
 7 **Q. Now, you mentioned that you did some of these**
 8 **studies, and you sent e-mails before --**
 9 **A. I did.**
 10 **Q. -- before Dustin Bergsing's death?**
 11 **A. I did.**
 12 **Q. Can you tell us --**
 13 **A. I, basically, asked why they had reduced the**
 14 **number of flares from two to one. I asked why the**
 15 **pipng was undersized during the flowback. They**
 16 **needed to increase those. I also asked why the flares**
 17 **weren't operating ... you know, if they ... if the**
 18 **flare is not going, then the gas is ... is not being**
 19 **burnt. Ah, there -- there's numerous e-mails to**
 20 **Luke Franklin, ah, and ... and Curtis Ryland and**
 21 **Rebecca Sebik (sic) of Marathon Oil.**
 22 **Q. And you told --**
 23 **A. And they -- they actually punished me because**
 24 **I wrote e-mails like that to them stating that there**
 25 **was compliance issues that they needed to address.**

1 **Q. What do you mean they punished you?**
 2 **A. Basically, they told me I couldn't write any**
 3 **more e-mails. I was supposed to pick up a phone and**
 4 **not -- not call on -- or not write any more things**
 5 **like that, because they -- lawyers could discover it.**
 6 **Q. Really?**
 7 **A. That was their exact words.**
 8 **Q. Who told you that?**
 9 **A. Ah, Luke Franklin.**
 10 **Q. Told you that you should not --**
 11 **A. He --**
 12 **Q. Wait, let me -- let me -- told you that you**
 13 **should not write e-mails and put this stuff in writing**
 14 **because lawyers could discover it ...**
 15 **A. Yes.**
 16 **Q. ... if there was an incident, like a death,**
 17 **or something like what happened to Dustin Bergsing.**
 18 **A. Exactly.**
 19 **Q. And --**
 20 **A. I was in ... go ahead.**
 21 **Q. Mr. Franklin; what was his position with the**
 22 **company --**
 23 **A. He was the, ah, environmental supervisor.**
 24 **Q. Was he your boss?**
 25 **A. Ah, yes.**

1 **Q. And who were the other individuals that you**
 2 **mentioned?**
 3 **A. Curtis Ryland, which is the operations**
 4 **manager.**
 5 **Q. And there was another one.**
 6 **A. Ah, Rebecca Sebik (sic.)**
 7 **Q. She was the lawyer?**
 8 **A. Correct.**
 9 **Q. How many e-mails do you think that you**
 10 **authored that were on this particular subject relating**
 11 **to Dustin's death?**
 12 **A. Not -- nothing directly related to his death,**
 13 **because they wouldn't involve me in that.**
 14 **Q. Oh, okay. But before he died, with respect**
 15 **to the issue of the capacity and the lack of**
 16 **capacity --**
 17 **A. Oh, there's 15, 20 e-mails in regards to, ah,**
 18 **poor design.**
 19 **Q. And so that's how we would refer to it,**
 20 **e-mails from you regarding poor design of the**
 21 **system --**
 22 **A. Correct.**
 23 **Q. -- lack of capacity ...**
 24 **A. Compliance issues.**
 25 **Q. ... compliance issues.**

1 And why were you writing those, because
2 they --

3 **A. Because --**

4
5 (The proceedings were interrupted by the
6 court reporter.)

7
8 **Q.**(By Mr. Bremseth) Why were you writing
9 those, because they were not in compliance, or what?

10 **A. Correct.**

11 **Q.**And what was the thrust of the complaint that
12 you were making?

13 **A. Because we ... the ... the fugitive emissions**
14 **would bite us later ... it wasn't really a permit**
15 **issue; more or less that it wasn't ... it wasn't ...**
16 **during recordkeeping or reporting later on in the**
17 **year, once you have to report on these, then you're**
18 **... you have to -- to divulge that you -- you have all**
19 **of this emission, then you could be fined.**

20 I -- I take great pride in my work, so I
21 didn't want to be fined. I didn't want any EPA, State
22 ... State regulatory agencies or Federal regulatory
23 agencies coming and saying, hey, look, you're not --
24 y'all are out of compliance with the -- the
25 regulations and the 40 CFR or the State -- State

1 regulations ... North Dakota State regulations.

2 There's several e-mails in there where
3 they're -- where they're stating that they're not --
4 they're not following the right ... and you'll see
5 where it tapers off, because I ... I was afraid that I
6 was gonna lose my job. **He said, "If you write any**
7 **more of those, I'm gonna have to fire you."**

8 **Q.**About what period of time would that have
9 been?

10 **A. That was right before Christmas.**

11 **Q.**Of 2011?

12 **A. 2011.**

13 **Q.**But in terms of writing the e-mails and
14 producing this information, weren't you just trying to
15 do your job?

16 **A. That's exactly it.**

17 **Q.**And you thought you were doing your job as
18 you were supposed to do it.

19 **A. Exactly.**

20 **Q.**And you were pointing out the issues that
21 needed to be addressed.

22 **A. Exactly.**

23 **Q.**But, apparently, they didn't want to hear
24 what you were telling them.

25 **A. Ah, that's 100 percent -- or they didn't ...**

1 **they didn't ... ah ... they -- I -- I wrote an e-mail**
2 **that said, "Well, you're not living up to Marathon**
3 **standards," you know, and ... and it -- it kind of**
4 **pissed 'em off a little bit. But, yeah, I -- I -- you**
5 **know, they -- they wanted to talk the talk but not**
6 **walk the walk.**

7 **Q.**But, I mean, Luke Franklin, in his
8 capacity --

9 **A. He -- he wasn't -- sorry.**

10 **Q.**Go ahead.

11 **A. He ... he was there to get the project done,**
12 **to get the -- the wells in the ground. He -- he**
13 **wasn't an environmental guy. He was an oil man.**

14 **Q.**Mmm.

15 **A. He was an oil man. And he -- him -- I hold**
16 **him and Curtis Ryland directly related to this young**
17 **man's death.**

18 **Q.**And why do you say that?

19 **A. Because they ... they ... **they knew that****
20 ****there was an issue, and they did not do their job,****
21 ****once the flag was raised that -- hey, look, we have an****
22 ****issue with these flowbacks, but they allowed the****
23 ****production to come first over people's health.****

24 So I -- I think Luke Franklin and Curtis
25 Ryland are directly related to this man's death ...

1 with their decisions not to -- not to enforce proper
2 procedures or proper controls of these VOC emissions.

3 **Q.**So they knew about this excessive exposure,
4 they knew about the excessive VOCs coming out of the
5 wells right at the lid that Dustin Bergsing would be
6 having to go to and lift as part of his job.

7 **A. That's exactly it.**

8 **Q.**And then he died as a result of these
9 emissions.

10 **A. And they did not enforce proper PPE ... **they****
11 ****gave him an H2S monitor, but the H2S is not going to****
12 ****register a volatile organic compound; it's only going****
13 ****to register a hydrogen sulfide compound.****

14 **Q.**All right.

15 **A. All right. It's not going to tell the kid**
16 **what -- what the LEL is, or what the -- the oxygen**
17 **percent is.**

18 They didn't do anything until we went out --
19 myself, Jenar Jasso and Patrick Whalen went out to
20 a -- a rig and made a big stink about a flowback, and
21 this was in May. In May, we -- we -- we get -- this
22 map line comes in, and this kid gets dizzy in the same
23 scenario of ... of this young man. And we said, yep,
24 that's what got him.

25 So we -- we went out and -- went out to

1 the -- the rig, and we -- we did the IR camera. We
2 took some LEL measurements. We took some VOCs. We're
3 talking the -- the oxygen content was below
4 breathable -- breathable. It had displaced the oxygen
5 around the tanks. It was almost deadly. It was -- it
6 was deadly ... a deadly scenario, not only from the --
7 the gas content, but it had displaced the oxygen
8 around the tanks and was pretty significant.

9 Q. So this was a complaint, or an event, or a
10 near -- a near fatal event with some other kid that
11 occurred in May that precipitated you guys going out,
12 doing the IR cameras and the tests.

13 A. Exactly.

14 Q. Do you know the name of the kid or any
15 information about that --

16 A. I -- you know, I -- I don't know.

17 Q. This would have been 2012 then, May of --

18 A. 2012. Sorry.

19 Q. Okay. And where would that well have been
20 located with this incident in May?

21 A. It was at the Ernest Charchenko ...
22 Ernest Charchenko. It -- it was in those ... it was
23 one of those wells. And don't ask me how to spell
24 that.

25 Q. Sure, okay, we can get it.

1 And when you went out there and did this in
2 May then, was there documents and stuff that would
3 have been produced by you all to --

4 A. Yes.

5 Q. -- to management?

6 A. To management, yes.

7 Q. And can you remember what kind of information
8 would be available from that incident in May of
9 2012 --

10 A. Ah ... actually, I ... I was asked to -- to
11 not do anything about it. They -- the -- safety was
12 going to take over. But there were several people
13 informed, verbally. And that's kind of how Marathon
14 handled a lot of this.

15 But there was some e-mails generated, there
16 was some comments generated, and there was a map line
17 generated over this incident. A map line is a ...
18 there's several of these map lines where there's VOC
19 excursions.

20 Q. Tell us what a map line is.

21 A. It's, basically, a ... a notification of an
22 emergency at a site, whether it be an injury, whether
23 it be a fire, or ... in most of the cases, it's
24 injuries.

25 But these -- these map lines are sent out to

1 all the HES personnel and all the supervisors, given
2 them on their e-mail. So everybody -- almost
3 everybody gets these.

4 Q. And what would it say? What's the point of a
5 map line?

6 A. So we notify everybody that something is
7 happening.

8 Q. That there's an issue and a problem, and it
9 might be dangerous?

10 A. Exactly.

11 Q. So getting back to these e-mails then, if I
12 can ...

13 A. Okay.

14 Q. ... is it your testimony here, under oath,
15 that the ... people like Mr. Franklin, Mr. Ryland
16 specifically instructed you not to put this kind of
17 stuff into writing?

18 A. One hundred percent, sir.

19 Q. And --

20 A. You can find e-mails where I've sent an
21 e-mail, and somebody sends me back an e-mail "Call me
22 now" ... and not respond to the e-mail, but ...

23 Q. Wanted you to call them verbally.

24 A. Verbally to discuss it.

25 Q. And would -- did they give you any training

1 or anything like that with respect --

2 A. Absolutely -- absolutely --

3
4 (The proceedings were interrupted by the
5 court reporter.)

6
7 Q. (By Mr. Bremseth) ... training with respect
8 to what to say and what not to say in e-mails?

9 A. Yes, there was actually a PowerPoint
10 presentation. Two lawyers came down and presented ...
11 actually, one lawyer on the phone, and one lawyer came
12 down and presented how to write e-mails, what to say
13 and what not to say ... to keep us out of -- out of
14 criminal and litigation issues. Ah, it was a ...
15 about a four- or five-hour class.

16 Q. And there was actually a PowerPoint?

17 A. Yes, there was.

18 Q. With like examples and stuff --

19 A. Examples.

20 Q. And who was the lawyer that was involved in
21 that? Was that the same --

22 A. Ah, one was Rebecca, and there was another
23 ... lawyer. Um ... you give me a minute, and I'll
24 think of her name.

25 Q. Sure, sure, take your time. Or if you think

1 of it, let us know --

2 **A. Okay. There's -- there was another lawyer**

3 **that was present.**

4 **Q.** And would it be your testimony that the point

5 of that was telling you not to put certain things in

6 writing that could get them in trouble even if it was

7 the truth?

8 **A. Exactly.**

9 **Q.** Basically, telling you to bury information

10 and not to memorialize it in --

11 **A. Not to memorialize it in an e-mail.**

12 **Q.** Wow.

13 **A. Yeah.**

14 **Q.** Okay. So -- now, we're ... we had kind of

15 talked about this incident with this other "kid", you

16 called him. And what was -- what had happened to him

17 in May of 2008 that precipitated ...

18 **A. He got dizzy, and he -- he almost passed out**

19 **from the fumes.**

20 **Q.** Was he doing a job similar to

21 Dustin Bergsing then?

22 **A. Exactly. So what we decided then was to**

23 **start bringing in supplied air for these guys, so they**

24 **could go up on the tanks, and when they do their**

25 **measurements.**

1 **Q.** A portable ...

2 **A. A full supplied air.**

3 **Q.** I see.

4 **A. Yep.**

5 **Q.** Was that the recommendation then at the time

6 from that incident in May?

7 **A. That -- that was the recommendation.**

8 **Q.** Did you have anything to do with following up

9 on that, whether it was actually imple --

10 **A. It was implemented.**

11 **Q.** ... implemented?

12 **A. It was implemented.**

13 **Q.** Apparently not in Dustin's case.

14 **A. It was not ... it took 'em five months to**

15 **implement it, until we made a stink out of it.**

16 **Q.** I see.

17 What do you mean by making "a stink out of

18 it?" How did you do that?

19 **A. It --**

20 **Q.** Was this after Dustin's death then?

21 **A. Exactly. It was way after Dustin's death.**

22 **Q.** So after Dustin died -- actually was overcome

23 by the gasses and -- and died, then later on, finally,

24 that was implemented?

25 **A. Exactly.**

1 **Q.** And that was done by Marathon Oil.

2 **A. That was done by Marathon Oil.**

3 **Q.** After Dustin's death.

4 **A. After Dustin's death.**

5 **Q.** Hmm.

6 **A. Five months.**

7 **Q.** Hmm. Wow.

8 So what about after May then, were there more

9 e-mails that you wrote?

10 **A. There was --**

11 **Q.** Let's get back to your career a little bit

12 and -- and kind of follow through that.

13 **A. Okay.**

14 **Q.** Yeah. More e-mails?

15 **A. More e-mails. Um, I had sent out a -- you**

16 **know, several -- several e-mails. And I guess the**

17 **last e-mail that I sent out, it was in response to ...**

18 **ah ... I tell you, the pressures that build up in**

19 **these tanks that -- it will actually force the liquid**

20 **through and out the -- the tank flare.**

21 And I sent an e-mail ... I -- I told my boss,

22 and I told engineering, and I told Curtis Ryland, and

23 I finally sent an e-mail to my boss's boss in regards

24 to these flares being inadequate, the wrong height,

25 the wrong -- wrong sizing, the wrong -- things like

1 that. I -- I don't disagree that they're, you

2 know ...

3 **Q.** Can you kind of tell me what the substance or

4 what the -- as best you can recall, what you said in

5 that e-mail that --

6 **A. Yes.**

7 **Q.** -- you sent to your boss's boss?

8 **A. I said that they were dangerous, and that**

9 **they could ... you know, due to the stack height, that**

10 **they could ... and it's so dry -- we haven't had any**

11 **rain in several months -- that it -- due to those**

12 **pressures in those ... I actually said, this is like**

13 **the seventh incident since I've been here where these**

14 **... these -- these flares have had an upset, and it --**

15 **the -- the fluid is coming out the stack, spewing**

16 **fumes and vapors all over the place and -- and**

17 **catching the -- the field on fire.**

18 **Q.** Hmm.

19 **A. And -- and I said that it -- it was so dry,**

20 **it -- it would just take a good, windy day, and then**

21 **we would have a major incident on our hands.**

22 And -- and, ah ... so my boss, Luke Franklin,

23 didn't like that e-mail, and --

24 **Q.** Approximately when was this?

25 **A. Ah, this was April.**

1 Q.Okay. Of 2012, obviously.
 2 A. In 2012, yes.
 3 Q. What did he do?
 4 A. Um, he came into my office, and I guess he
 5 started the -- the firing process then.
 6 Q. The firing process of you?
 7 A. Yes. It took a -- I guess it took a long
 8 time. He told me he could not trust me. He didn't
 9 wanna talk to me. Um ... on several occasions, he
 10 told me he couldn't trust me. Not -- not that I
 11 wasn't doing my job right, he just -- that I -- he
 12 couldn't trust me, as far as Marathon was going, that
 13 I wouldn't -- I would ... wouldn't do the -- do what
 14 Marathon wanted ... or what he needed me to do.
 15 Um ... I ... you know, I said, "Well, Luke,
 16 I -- I'm doing my job like I'm supposed to" ... you
 17 know. So it was ... one of those things where he
 18 fired me over -- over e-mails that I sent that could
 19 get him in trouble.
 20 Q. When were you fired?
 21 A. I was fired in -- ah, the 6th of June.
 22 Q. Did they give you -- and who fired you?
 23 Mr. Franklin?
 24 A. Mr. Franklin.
 25 Q. Luke Franklin.

1 And did he give you any reason?
 2 A. He couldn't trust me. There was no reason
 3 ... no reason of my work quality. And I'll give you a
 4 for instance. In January, they gave me an incentive
 5 bonus of \$36,000 stock options because I was doin'
 6 such a good job.
 7 Q. But by June, you were fired.
 8 A. By June, I was fired.
 9 Q. When he -- what did he say to you when he
 10 fired you?
 11 A. Ah, he couldn't trust me.
 12 Q. He actually said those words.
 13 A. He could not trust me.
 14 Q. And that was the reason that he gave you for
 15 why he fired you.
 16 A. Exactly.
 17 Q. And that meant because you were putting the
 18 truth down in e-mails, and he didn't like it.
 19 A. He didn't like it. Him and Terry Kovacevich
 20 didn't like it.
 21 Q. Had you done anything else wrong?
 22 A. Ah, no. I ... I had calls from other
 23 operators here recently that work for QEP, um ...
 24 various other, ah -- Whiting said ... said, you know,
 25 um -- Williams, they -- they called me and said, man,

1 you did a -- you did a really good job on our forms.
 2 You helped us get these permits. You've done the
 3 right thing. We -- you know, we sure miss you in our
 4 group, you -- and they thanked me for their help (sic)
 5 ... and ... they thanked me for my help to them.
 6 Q. What's QEP?
 7 A. Ah, I don't know what the acronym --
 8 Q. Oh, okay.
 9 A. -- stands for. But, basically, it's another
 10 oil company.
 11 Q. Oh, I see.
 12 A. Another oil company that ... who I had worked
 13 with in a -- in a group, ah, working on the
 14 Federal Implementation Plan for Fort Berthold. So
 15 it -- it was apparent that I did my job well. It
 16 was -- it wasn't that I wasn't doing my job well; it
 17 was that Luke Franklin was afraid that I would get him
 18 in trouble.
 19 Q. Okay. According to the medical examiner ...
 20 A. Okay.
 21 Q. ... the cause of Dustin Bergsing's death was
 22 hydrocarbon poisoning due to inhalation of
 23 petrochemical vapors.
 24 So ... I mean, it -- that's what the ... it
 25 was nothing else. That was the cause of death,

1 according to the medical examiner.
 2 A. Sure.
 3 Q. Is that, precisely, what you were talking
 4 about in these e-mails?
 5 A. Absolutely. I'm talking about hydrocarbon
 6 vapors, exactly. I -- I may not be talking about his
 7 death, but I am talking about vapors and -- and
 8 emissions from tanks and fugitives, yes.
 9 Q. Are you familiar with the process that he was
 10 involved with with his job, where he would go up onto
 11 the catwalk --
 12 A. You know, I'm not an operations guy.
 13 Q. Oh, okay.
 14 A. I -- I am not. I'm a ... technical air guy,
 15 permitting environmental regulations. I understand he
 16 measured the ... the pressures in the well. He also
 17 measured the -- the volumes in the tank. During that
 18 process, I would not want to do his job without
 19 supplied air. I would -- I would never send anybody
 20 up there in that capacity without ... without supplied
 21 air.
 22 Q. And those wells are owned by Marathon Oil.
 23 A. They are owned by Marathon Oil.
 24 Q. The process and the extraction and the
 25 materials and the setup, that's all Marathon Oil.

1 **A. It's all Marathon designed and operated.**
 2 **Q.** Hmm.
 3 And these e-mails, and the information that
 4 you were providing them, and the knowledge that they
 5 had about the excess capacity and the excess gasses,
 6 they knew that before Dustin's death?
 7 **A. The inadequate capacity and -- and the**
 8 **excessive gas, yes, they did.**
 9 **Q.** And --
 10 **A. But they were inflating their numbers.**
 11 Let me tell you how those wells work.
 12 **Q.** Mm-hmm.
 13 **A. So the initial production is tremendous, but**
 14 **in a month's timeframe, it will drop almost 700**
 15 **percent, okay?**
 16 **Q.** Okay.
 17 **A. So the higher they can make it in that**
 18 **beginning period, that first 60 ... 30 to 60 days ...**
 19 **Q.** Mm-hmm.
 20 **A. ... the higher they can make it look, the**
 21 **better they ... it looks like that well is really**
 22 **producing. So they're -- they're trying to capitalize**
 23 **on that initial production. Whether it really makes**
 24 **that kind of money or not over the lifetime, it's a**
 25 **fallacy, and they're trying to inflate it.**

1 Do you understand?
 2 **Q.** I -- I do.
 3 And would -- would -- would these particular
 4 individuals, like Luke Franklin, would they have stock
 5 or ownership? Would they have an interest in that --
 6 **A. Absolutely.**
 7 **Q.** They would.
 8 **A. Absolutely. They have stock in ...**
 9 Curtis Ryland has worked for Marathon for five --
 10 fifteen to twenty years, I imagine. And Luke Franklin
 11 is definitely a ... one of those guys.
 12 **Q.** Hmm.
 13 So, obviously, it's to their best financial
 14 interest then to maximize the production, as you say,
 15 and to get those numbers up as high as they possibly
 16 can.
 17 **A. To -- to inflate the numbers, yes, by flowing**
 18 **those back.**
 19 They -- it could be the same over a longer
 20 period if they didn't flow it back. They could --
 21 they ... look at ... they used to not flow 'em back
 22 that hard. They -- they would -- there's two chokes
 23 on the well that -- they could choke the well down way
 24 down low, which would allow ... wouldn't allow the
 25 excessive gas to come through, okay?

1 So they -- they could -- they could keep the
 2 flow rate below 1,000 BOP and -- and not do any harm.
 3 Um, but ... but with opening the chokes the way they
 4 are, they are ... they are just looking for a
 5 disaster.
 6 **Q.** So they're really putting profit ahead of
 7 safety?
 8 **A. Ahead of safety and ahead of the environment,**
 9 **absolutely.**
 10 **Q.** Who else would be ... well, before -- yeah,
 11 who else would be knowledgeable insiders, like
 12 yourself, at Marathon Oil who would know the kind of
 13 information that you're telling us today? Can you
 14 give me --
 15 **A. Not too many.**
 16 **Q.** Can you give me some names --
 17 **A. There is ...**
 18 **Q.** Go ahead.
 19 **A. Okay. The -- sorry.**
 20 **Q.** Yeah.
 21 **A. There is not too many. But, ah, I've given**
 22 **you Jenar Jasso ...**
 23 **Q.** Yes.
 24 **A. ... ah ... Tom Nelson ...**
 25 **Q.** Yes.

1 **A. ... ah ... you know, Luke Franklin,**
 2 Curtis Ryland. There's a gentleman called
 3 Kelly Triplett. He is the production manager.
 4 Ah ... they -- they like to keep people
 5 ignorant, and ... there's a ... there wasn't too many
 6 people, but Jenar Jasso, Patrick Whalen, um ...
 7 Jeremy Olson, um ... and, um ... you know,
 8 Luke Franklin -- or, you know, those -- those
 9 gentlemen.
 10 **Q.** Those are the main ones?
 11 **A. Those are the main ones.**
 12 **Q.** Who would be the recipients of the e-mails
 13 that you would send? Would you just send an e-mail to
 14 Luke Franklin, or would you cc a number of people?
 15 **A. Ah, Curtis Ryland and Rebecca.**
 16 **Q.** Those three, mainly?
 17 **A. Yep.**
 18 When Curtis Ryland came into my office and
 19 cussed me out, ah, one day for, um ... for putting too
 20 many controls on -- in my permit application, or
 21 allowing, ah, the permit application, I quit putting
 22 any -- copying him on any e-mails. Um, because he --
 23 he cussed me out ... used God's name in vain, and ...
 24 in my -- in my office one day for me doin' my -- my
 25 job correctly, I'm -- I -- I'm not going to ... not

1 going to share my wisdom with him. And I just copied
 2 Rebecca, and ... and I also copied Luke Franklin's
 3 boss, as well, on a lot of e-mails.
 4 **Q.** And who was -- what's that name again?
 5 **A.** Oh, he had just taken over for Paul Peacock.
 6 **Um, I can't think of the guy's name off the hand**
 7 **(sic.) Um ... Paul is a good guy. Actually,**
 8 Paul Peacock is the one that hired me.
 9 **Q.** Is Paul still with Marathon Oil?
 10 **A.** He works over in the desert.
 11 **Q.** With Marathon Oil still?
 12 **A.** With Marathon Oil.
 13 **Q.** And when you say "over in the desert" --
 14 **A.** He's workin' in ... in Iraq.
 15 **Q.** Oh, over ...
 16 **A.** Kurdistan.
 17 **Q.** Gotcha. That's what you meant by "over in
 18 the desert."
 19 **A.** Yeah.
 20 **Q.** What other internal documents or ...
 21 **A.** You know, there's ...
 22 **Q.** ... pictures or videos or things that the
 23 company would have to support what you've -- you're
 24 telling us here --
 25 **A.** Oh, there ... you know, P&ID drawings,

1 drawings of the current systems, pictures ... there's
 2 pictures everywhere documenting -- there's various
 3 e-mails where ... between myself and a couple
 4 engineers were showing that the ... the flare ...
 5 flare stacks were too ... too low, the -- the -- the
 6 piping was too -- needed to be increased from two to
 7 three. Um ... there is various e-mails, various ...
 8 even feasibility studies on the cost of increasing
 9 these.
 10 So, I mean ... you know, we -- we -- we're
 11 engineers. We do our job. We -- we calculate it. We
 12 make sure we get the -- the pricing out there. We
 13 know what it's gonna cost, so if somebody asks us, we
 14 can tell 'em.
 15 **Q.** Do you remember the names of any of the other
 16 engineers?
 17 **A.** Tom Nelson.
 18 **Q.** Oh, okay.
 19 **A.** Tom Nelson. There was another gentleman
 20 named Jacob Riemer. He works for Oxy now.
 21 **Q.** Riemer?
 22 **A.** Riemer. Jacob Riemer.
 23 **Q.** He works for Oxy? What's Oxy?
 24 **A.** It's another oil company.
 25 **Q.** Another oil company? Up there in --

1 **A.** No, he's in Houston.
 2 **Q.** Oh, okay.
 3 I wrote down -- or I've heard the name
 4 Britt Cotter.
 5 **A.** Britt Cotter ...
 6 **Q.** Do you know who Britt Cotter is, or somebody
 7 like that in HR?
 8 **A.** Oh, yep. Britt Cotter was a ... the HR guy
 9 that ... that was there to -- when I was let go.
 10 **Q.** In person?
 11 **A.** In person, yes.
 12 **Q.** So he would have heard Franklin tell you that
 13 the reason you were being fired was -- or not?
 14 **A.** No, Luke Franklin is too sharp for that.
 15 **Q.** I see. Okay.
 16 **A.** He -- he came in my ... in my office and said
 17 he couldn't trust me. I'm sure ... Luke's got a loose
 18 mouth, so I'm sure that he told several other people
 19 that he couldn't trust me, too, so ...
 20 **Q.** How did you come to -- how did you first
 21 learn about Dustin Bergsing's death?
 22 **A.** Um, Jeremy Olson gave me a call in the middle
 23 of the night.
 24 **Q.** And what do you recall --
 25 **A.** And he said, "[REDACTED] did you hear what

1 happened?" And I was like, "No." And he said -- I
 2 said, "I did see a map line come out." And he said,
 3 "Yeah, we had a death." And he said, "I walked up,
 4 and the guy was leaning up against the post up on
 5 the -- on the tank battery. And, you know, he -- it
 6 looks like he suffocated."
 7 **Q.** Did he say that?
 8 **A.** Yep.
 9 **Q.** Hmm-mm. Which is exactly what would
 10 happen --
 11 **A.** Yes.
 12 **Q.** -- with that excessive gas?
 13 **A.** With that excessive gas. You get
 14 light-headed. You get ... it would be just like
 15 carbon monoxide. You may even get some sort of
 16 euphoria from like ... you get high or somethin', you
 17 know, like drinkin' a couple beers or somethin', you
 18 know. And then if you're tired in the middle of the
 19 night -- nightshift, you're gonna doze off, and ...
 20 Katy bar the doors, man. You're dead.
 21 **Q.** Mmm.
 22 **A.** It wouldn't take -- I don't mean to make
 23 light of it --
 24 **Q.** Right.
 25 **A.** -- but it's ... yeah.

1 Q. You, basically, do suffocate to death then,
 2 and --
 3 **A. Exactly.**
 4 Q. Okay.
 5 **A. The displaced oxygen, and then you're ...**
 6 **you know, you're not gonna wake up. You can go to**
 7 **sleep, and you're not gonna wake up.**
 8 Q. And what's Jeremy Olson's position?
 9 **A. He's the health and safety, as well.**
 10 Q. Okay. And was there any -- after Justin
 11 died, were there any meetings that you were in or any
 12 other e-mails where --
 13 **A. They --**
 14 Q. -- anybody -- wait, where anybody else
 15 stepped forward and said, hey, this young man died
 16 because of the lack of capacity in the pipelines, the
 17 excessive gas?
 18 **A. No.**
 19 Q. Nobody?
 20 **A. Nobody. They -- they didn't even tell us --**
 21 **give us a reason how he died or why he died or**
 22 **anything. They're covering it up. They -- they just**
 23 **... they -- they're the type -- they think they have**
 24 **it won. I ...**
 25 Q. There was an article in the paper like the

1 next day where the sheriff said -- he just came right
 2 out and said -- before there was an autopsy or
 3 anything, he came right out and said, "Oh, it must
 4 have been due to something else."
 5 **A. Right.**
 6 Q. Do you remember that?
 7 **A. Yep.**
 8 Q. I don't know if you saw it --
 9 **A. We -- we -- we all laughed about that in**
 10 **our -- because, you know, how can you ... how can you**
 11 **immediately make that decision without knowing what --**
 12 **how the kid died, right?**
 13 Q. Right. It was like the next couple of days.
 14 **A. Right.**
 15 Q. There hadn't even been an autopsy yet.
 16 **A. Right.**
 17 Q. And when you say "we all laughed," who is
 18 "we"?
 19 **A. The guys in our office. We were like, how**
 20 **can that guy say that, you know.**
 21 Q. Can you give me any names?
 22 **A. Ah, I can. Ah, Patrick Whalen ...**
 23 Q. Okay.
 24 **A. There was actually Doug Kinnett. He was an**
 25 **engineer there, as well.**

1 Q. I think that's a new name that you have not
 2 given me before --
 3 **A. K-i-n-n-e-t. (Sic.)**
 4 Q. Okay.
 5 **A. He is out of Missouri.**
 6 Q. Okay.
 7 **A. He's retired now.**
 8 Q. Oh. So would he -- to your knowledge, he'd
 9 be back in Missouri?
 10 **A. He is. He is back in Missouri.**
 11 Q. K-i-n-n-e-t-t, something --
 12 **A. Yes.**
 13 Q. -- like that?
 14 Do you know if anybody would have gone to
 15 Franklin or -- or one of the supervisors and
 16 confronted them?
 17 **A. Um, I'm sure that ... that the, um ... that**
 18 **somebody had confronted them and asked 'em. But, you**
 19 **know, everybody is so afraid. I mean, they're so well**
 20 **paid. You know, you're -- you've got the golden**
 21 **handcuffs by the amount of money you make, ah, the**
 22 **stock options that you own, and ... you know ... it's**
 23 **... it's all about, you know, keepin' the ... keepin'**
 24 **your family alive and everything like that. Everybody**
 25 **is afraid to say anything.**

1 Q. Sure. Hmm.
 2 **A. I mean, when you make \$150,000 a year in ...**
 3 **in Dickinson, North Dakota, that's some good money.**
 4 **You know, that's extremely good money. And not too**
 5 **many people will give that up to joust a windmill.**
 6 Q. Well, there's an awful lot of oil and gas
 7 production going on up there in that Bakken Field
 8 right now, and ... it's just boomtown, right?
 9 **A. Exactly.**
 10 Q. Hmm.
 11 If the kind of ... well, in addition to just
 12 being right at the lid of the tank, if the gas and the
 13 pressure is that much, would those vapors ... how far,
 14 I guess is what I'm asking, from -- from your
 15 knowledge, would that zone of danger extend?
 16 **A. You know, and I modeled it using several**
 17 **programs; one called Aloha, and one called**
 18 **Screen View. Screen View is done -- is produced by**
 19 **Lakes Environmental. The other one is produced from,**
 20 **um ... it's from the Emergency Management Office of**
 21 **the EPA.**
 22 And there are, on the computer -- my
 23 computer, there was -- and there's, in several
 24 e-mails, the Aloha program from the tank vapors, I
 25 mapped those. I -- I modeled those. And I modeled

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1 the -- the vapor fumes, and it could go out as far as
2 500 feet, you know, with -- in still conditions.

3 You know, if you had the -- you know, in the
4 right conditions, you could go 500 feet, and -- and
5 there could be -- there's some sweet spots outside of
6 500 feet where it would be so rich, okay, that you
7 couldn't sustain a flame, okay? It wouldn't sustain
8 combustion. But on the outer edges of it, it will
9 sustain combustion.

10 So ... it would be so rich, so oxygen
11 deprived -- deprived area that the ... the -- the
12 plume, or vapor cloud, would be, um ... too rich ...
13 so that what that's telling me is that there's not
14 enough oxygen to ... to breathe, okay? So -- but out
15 to 500 feet is where, you know, the ignition points
16 are.

17 So, I mean, even static electricity out there
18 could kill somebody, you know, and the whole thing go
19 up. So, I mean, it's ... it's pretty scary, you know.
20 And it's a pretty scary scenario with not just one
21 man, you could have ten men die.

22 Q. My understanding was that Dustin was kind of
23 living right at that tank in a ... a trailer or
24 something 24 hours a day. Basically, that was his
25 job, to go monitor the levels in the tank --

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1 **A. Correct.**

2 Q. So depending on how close he was to those
3 tanks, even on a sort of daily basis, there would be
4 the risk that he'd be overexposed to VOCs?

5 **A. Oh, absolutely. I ... I'm more under the ...**
6 **yeah, I would think that it was probably on a daily**
7 **basis that he was exposed, I mean, you would breathe**
8 **those fumes in.**

9 But I really believe that, you know, you ...
10 you know, you leave that tank -- tank open ... that
11 tank lid open even for a short period and not have
12 that -- not have some sort of oxygen or LEL3 gas
13 monitor on is very foolish.

14 Q. So if he would go -- if the pressure would
15 build up in those tanks, and he would go up there and
16 open the lid, would the gas actually come rushing
17 out --

18 **A. Oh, absolutely, yeah.**

19 But they don't -- they don't educate these
20 men on -- on what the hazards are. They want somebody
21 that's dumb ... that can go out and ... and I'm not
22 saying the young man was dumb. I'm just saying, they
23 don't -- they want somebody that's ignorant of -- of
24 what's actually happening.

25 Q. But would there actually be like a blast of

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1 gas?

2 **A. Absolutely. Absolutely. A thousand feet**
3 **(indicating) just like that comes out of those tanks.**

4 Q. Wow. And by -- you snapped your fingers,
5 just like --

6 **A. Just like (indicating) --**

7 Q. -- in an instant.

8 **A. In some case -- in some cases ... I've heard**
9 **guys tell me that it -- it'll blow your hat back --**
10 **blow your hair back.**

11 Q. Hmm. So it could actually overcome a person
12 if you were completely surrounded by that gas.

13 **A. Absolutely.**

14 Q. And you could get dizzy, like the other kid
15 that you were telling us about, or you could be
16 overcome.

17 **A. Absolutely.**

18 Q. Hmm.

19 Now, let me ask you this, Mr. [REDACTED] you
20 had -- did you have your own computer at Marathon?

21 **A. I did.**

22 Q. And do you have that with you?

23 **A. No.**

24 Q. Did you get to take that with you?

25 **A. No, I did not.**

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1 Q. So they have that still.

2 **A. They have that.**

3 Q. And is there a way that you'd be able to
4 describe it? Or do you know, if I asked for it,
5 how --

6 **A. It's a ... it's a Dell computer, a typical**
7 **office laptop.**

8 Q. Laptop, okay.

9 And where was your office located?

10 **A. (No response.)**

11 Q. If you had one.

12 **A. It was ... yeah, I had an office. It was a**
13 **center ... the south hallway, south side of the**
14 **building, um, center way down.**

15 Q. And were there other people that were right
16 around you, next to you in --

17 **A. All ... ah, Doug Kinnet was across the hall,**
18 **and Patrick Whalen was on the -- just on the other**
19 **side of the hall.**

20 Q. So were you --

21 **A. Ah ...**

22 Q. Okay.

23 **A. So it ... you know, there was all those**
24 **people there.**

25 Q. On your computer, would there be these

1 e-mails?
 2 **A. Absolutely. Every e-mail -- I kept every**
 3 **e-mail, every ... every ... everything that's sent and**
 4 **received.**

5 **Q.** And when you said you did some --
 6 **A. I even archived 'em and backed 'em up on**
 7 **my -- on the C drive.**

8 **Q.** Okay. So in addition to the people who you
 9 sent them to, they should have them on their
 10 computers, but you would also have them on your
 11 computer.

12 **A. Absolutely.**
 13 **Q.** And what about the programmings and the
 14 mappings and the modeling that you did --
 15 **A. I -- I PDF'd everything and would send those**
 16 **things out to all the engineers and to all the people.**

17 **Q.** And would those also be on your computer?
 18 **A. They would also be, so ... but everybody**
 19 **should have a copy, as well. If you can't find my**
 20 **computer, it's ... I sent those out to plenty of**
 21 **people.**

22 **Q.** Were you escorted off the property?
 23 **A. I was.**

24 **Q.** And did you get to bring any of your private
 25 files or anything with you?

1 **A. I -- I did bring a couple private files, but**
 2 **they looked through the stuff that I was takin' out.**
 3 **They did not want me to take anything that would**
 4 **incriminate them.**

5 **Q.** And who was "they"?
 6 **A. It was Luke Franklin and, um, the HR.**

7 **Q.** That HR guy.
 8 **A. Ah ...**

9 **Q.** Hmm.
 10 **A. I can't think of his name.**

11 **Q.** Britt --
 12 **A. Yeah, Britt Cotter.**

13 **Q.** To your knowledge, what would be the
 14 solutions to the thing -- the problem that killed
 15 Dustin Bergsing --

16 **A. Automatic tank gauging, and the OCE melded to**
 17 **that effect, too -- automatic tanks. Total closed**
 18 **systems, automatic tank gauging, um, larger pipes, ah,**
 19 **and more ... ah, and ... larger pipe during the**
 20 **initial flowback. And --**

21 **Q.** To handle the gas?

22 **A. To handle the gas, larger pipes.**

23 **Q.** And what about the flaming --

24 **A. And --**

25 **Q.** ... the flames, the burning?

1 **A. The burning?**

2 **Q.** Burning off of the gasses?

3 **A. Sure.**

4 **Q.** You had mentioned that there was only one?

5 **A. Yeah, there was only one. Another -- an**
 6 **extra flare.**

7 **Q.** Flare, that's the word you used, yeah.

8 What's the automatic tank gauging?

9 **A. Automatic tank gauging is where the ... the,**
 10 **um ... where the, um ... the operator could just read**
 11 **a tank gauge, instead of being ... having to measure**
 12 **the tank.**

13 **Q.** Okay. Now, I'm -- I remember that maybe you
 14 used this earlier, or maybe this was just my
 15 understanding. But, basically, you were saying that
 16 these tanks in the storage facilities were, quote
 17 unquote, underdesigned.

18 **A. Under -- under -- under capacity for the**
 19 **flowback. The ... the ... the ... the gas mitigation**
 20 **system, ah, was too -- is too small. The piping is**
 21 **too small to carry the vapors away from the tank fast**
 22 **enough.**

23 **Q.** But if they know that they're going to really
 24 want to crunch those numbers up real high and get lots
 25 and lots of production early on, why wouldn't they

1 just design it to handle and to capture all that gas
 2 in the --

3 **A. Because, later on, then they would have to**
 4 **replace it again.**

5 **Q.** Oh.

6 **A. So ...**

7 **Q.** Saving money.

8 **A. Saving money. It's all about the bottom**
 9 **dollar.**

10 **Q.** Mmm.

11 **A. They don't wanna -- they don't wanna go back**
 12 **and retrofit any sites.**

13 **Q.** Hmm.

14 **A. Sorry, I didn't mean to talk over you.**

15 **Q.** Let's see -- do you want to take a
 16 five-minute break?

17 **A. I'm good. I'd like to push through this --**

18 **Q.** Okay, right.

19 So is there anything else then, in terms of
 20 documents, that I should be requesting at the company,
 21 e-mails ...

22 **A. Ah --**

23 **Q.** ... that we haven't talked about so far?

24 **A. Okay, the e-mails; the -- the map lines; the**
 25 **... the map lines from the -- it has all that**

1 information on it; all -- there's some health and
2 safety reports that they do to corporate. I forget
3 who -- I was never involved in those, so -- I never
4 did one. So they ... there's a bunch of risk
5 assessments that they did, okay? Risk assessments --
6 there are some designs for large ... larger designs
7 information and ... out there that ... that was
8 refused by management.

9 Q. What do you mean "refused"?

10 A. Um --

11 Q. How can they refuse --

12 A. They just didn't wanna spend the money on it.
13 They wanted to go with the status quo.

14 Q. So there would be some documentary evidence
15 of that refusal?

16 A. Yes. Maybe not documentary, but there --
17 there is the -- the designs where it would ... where
18 the units would be ... ah ... better or safer for
19 individuals on the tanks.

20 Q. If they're -- knowing what they know, I mean,
21 why don't they just design these facilities in the
22 first place to handle the capacity that they're going
23 to be pulling out of it? Is that just all --

24 A. Well, they're -- they're designing it for
25 that -- that next period. They're not designing it

1 for the initial flowback.

2 Q. And the only reason to push for such high
3 initial flowback is for the numbers.

4 A. For the numbers, to make 'em look good. Not
5 to -- it -- it doesn't ...

6 Q. There's only so much oil and gas under the
7 ground anyhow, so --

8 A. Exactly, but they can ... they can inflate
9 their numbers for a short period to make themselves
10 look good.

11 Q. And this is decisions that are being made by
12 management of Marathon Oil.

13 A. This is local management making the decisions
14 to ... for Marathon Oil.

15 Q. Like Mr. Franklin.

16 A. Ah, it would be Curtis Ryland and
17 Terry Kovacevich.

18 Q. Who is Terry Kovacevich?

19 A. He is the operation -- or the ... the --
20 the -- I guess you'd call him the general manager.

21 Q. Did you ever have any meetings with Terry?

22 A. One meeting. He asked me if I could keep my
23 mouth shut.

24 Q. Serious?

25 A. That's -- that was his whole comment, "Can

1 you keep your mouth shut"?

2 Q. About what? This?

3 A. I don't know. It was -- and during my ...
4 interview, that was his only question to me.

5 Q. When he hired you?

6 A. When he hired me.

7 Q. Really.

8 A. Yep, "Can you keep your mouth shut?"

9 But, I mean, I dealt with everything. You
10 know, not like ... engineers only deal with the piping
11 and the design and the things like that. I -- I dealt
12 with the piping, the design, the air emissions and
13 that -- the environmental compliance, right? So I --
14 I covered a wider breadth than the engineers did.

15 Q. Hmm.

16 A. So it ... the knowledge and -- the public
17 knowledge that I have is ... is ... of their
18 operations is -- is great.

19 Q. Hmm.

20 Are there any other individuals that you can
21 think of that you've not given me their names of
22 who --

23 A. Well, anybody that would help you or --

24 Q. Well --

25 A. -- talk to you ... or -- or try to -- you

1 know, there's --

2 Q. To get the truth.

3 A. There's -- Jake Stroupe is another -- he's
4 the engineering manager. Um ...

5 Q. He's a Marathon employee?

6 A. He is a Marathon employee, Jake Stroupe.

7 Um ... you know, ah ... Luke Franklin, um ...
8 those gentlemen that I worked with every day, that's
9 about it. And ... really, Kelly Triplett has a lot of
10 information, but you'll never get anything out of him.
11 He's Marathon ... he -- you know, he bleeds oil. Um
12 ... I mean, there's not too many people out there that
13 you can ...

14 Q. What about -- were there any State, local or
15 Federal inspectors that knew or were privy to the
16 capacity issues that you talked --

17 A. Sure. At U.S. EPA, um ...

18 Q. I don't know if --

19 A. ... Kathleen Passer.

20 Q. P-a-s-s-e-r, Passer?

21 A. Correct, Kathleen Passer.

22 Q. And who is she employed with?

23 A. U.S. EPA. Um ...

24 Q. Would she have any knowledge about ...

25 A. Absolutely. She knows the volumes of gas ...

1 Q. Okay.

2 A. In a year's period, and during the first

3 year, we're talking about, you know, 10,000 tons of

4 VOCs comin' out of these wells. That's a significant

5 amount.

6 Q. Right.

7 A. That's a significant amount of gas.

8 Q. Hmm.

9 A. You know, so ... sure, they know the volumes.

10 Ah, there's ... you know, there's a lot of, um ... you

11 know, talk to Lew Dendy at the State of North Dakota.

12 Q. Dendy?

13 A. Dendy. Ah, you know ... you know, it's ...

14 there's a lot of ... a lot of State people there, and

15 you can talk to 'em.

16 Q. Okay.

17 A. They know the volumes.

18 Q. Did you tell me that Mr. Jasso has now

19 retired or left?

20 A. He, ah -- he quit.

21 Q. He quit?

22 A. He quit.

23 Q. And do you know -- when was the last time

24 that you spoke with him?

25 A. Oh, the ... a week before I was fired ... or

1 a couple -- the week I was fired or somethin'.

2 Q. And do you know why he quit Marathon Oil?

3 A. I have -- I -- I have my speculations. But

4 he -- that -- the -- the real reason is because, you

5 know, they weren't wanting to implement anything

6 safely.

7 Q. Hmm.

8 And do you know where Mr. Jasso is now?

9 Maybe I asked you that before --

10 A. Montana. He's in Montana. I don't know

11 exactly where he is in Montana. It's up in the

12 mountains. It's a Marathon site in Montana where he

13 used to work, and he moved here. Now he doesn't work

14 for Marathon any longer. So it's -- I mean, if you

15 Google Marathon Montana, you'll know where the wells

16 are, and that's the general area that he'll be in.

17 Q. Okay. Since you were fired from

18 Marathon Oil, has anybody contacted you?

19 A. From Marathon Oil?

20 Q. Yeah.

21 A. No one, and I have not contacted anybody from

22 Marathon Oil.

23 [REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 A. That's correct.

3 Q. So you're going to be out of the country?

4 [REDACTED]

[REDACTED]

6 Q. And do you mind -- can you give me any

7 contact information --

8 [REDACTED]

[REDACTED]

11 Q. And your e-mail is what?

12 [REDACTED]

[REDACTED]

14 Q. Okay, [REDACTED]

15 A. Yep. Send me an e-mail, and I'll ...

16 actually, I will -- I'll text you mine, or send you an

17 e-mail with my number on it.

18 Q. Okay.

19 A. I have your card.

20 Q. Great, great.

21 Let's see here now ... is there anything that

22 you think I've, you know, omitted or not covered --

23 A. No, I think --

24 Q. I mean, there's a lot to this --

25 A. There is -- I mean, it's a very big

1 picture --

2 Q. Right.

3 A. I mean, I -- I just ...

4 Q. Why are you coming forward here and giving us

5 this testimony?

6 A. You know, the -- the kid ... what really

7 bothers me is that we ... we -- you know, I'm very

8 well taken care of from the -- the U.S. Government,

9 okay? I ... I have plenty of money. I'm not too

10 worried about myself. I ... it really bothers me

11 that, you know, Marathon doesn't own up to their

12 liability of what's happened to this young man.

13 Q. They knew about it ahead of time --

14 A. They knew about it. They knew that their

15 systems were underdesigned, and they know -- and

16 they -- the thing about it that really bothers me,

17 that sticks in my craw, is that they still ... still

18 are overproducing those wells to inflate numbers. It

19 kinda reminds me of Enron.

20 Q. Hmm.

21 A. And just not ... you know? You know, damn

22 everybody else. Let's produce oil.

23 Q. Dustin Bergsing's death was clearly

24 preventable, in your opinion? The knowledge was

25 there, the ...

1 A. One hundred percent.

2 Q. Hmm.

3 A. One hundred percent. **There's not a shadow of**

4 **a doubt in my mind that if they were doing things**

5 **right, they ... and correctly and safely, that they**

6 **would -- they could have prevented his death.**

7 MR. BREMSETH: All right. Well, thank you
8 very much for giving us this statement today. We
9 truly appreciate it.

10 THE WITNESS: Okay.

11 MR. BREMSETH: Go off the record then.

12
13 (The statement under oath concluded at
14 2:27 p.m.)

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1 REPORTER'S CERTIFICATE

2 Be it known that Darla Mustar took the foregoing
3 State Under Oath of [REDACTED] [REDACTED] [REDACTED]

4 That I was then and there a notary public in and
5 for the County of Itasca, State of Minnesota;

6 That by virtue thereof, I was duly authorized to
7 administer an oath;

8 That the witness was, before testifying, sworn
9 to testify the truth and nothing but the truth
10 relative to said cause;

11 That the testimony of said witness was recorded
12 in shorthand by me and was reduced to typewriting
13 under my direction, and that the foregoing statement
14 is a true record of the testimony given by said
15 witness;

16 That I am not related to any of the parties
17 hereto, nor an employee of them, nor interested in the
18 outcome of this action;

19 That the cost of the original has been charged
20 to the party who took the statement, and that all
21 parties who ordered copies have been charged at the
22 same rate for such copies;

23 WITNESS my hand and seal this 10th day of
24 September, 2012.

25 _____
Darla Mustar, RPR

My commission expires
January 31, 2015