

EXHIBIT 43

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING AND) Case No.
MATERIALS d/b/a ASTM INTERNATIONAL;) 1:13-cv-01215-EGS
NATIONAL FIRE PROTECTION)
ASSOCIATION, INC.; and)
AMERICAN SOCIETY OF HEATING,)
REFRIGERATING, AND)
AIR-CONDITIONING ENGINEERS, INC.,)
Plaintiffs,)
vs.)
PUBLIC.RESOURCE.ORG, INC.,)
Defendant.)
-----)
AND RELATED COUNTERCLAIMS.)
-----)

RULE 30(B)(6) VIDEOTAPED DEPOSITION OF AMERICAN
SOCIETY OF HEATING, REFRIGERATING, AND AIR-CONDITIONING
ENGINEERS, INC.

BY AND THROUGH ITS DESIGNEE,

STEPHANIE REINICHE

MONDAY, MARCH 30, 2015
9:10 a.m.

VERITEXT LEGAL SOLUTIONS
1075 PEACHTREE STREET
SUITE 3625
ATLANTA, GEORGIA

Reported By:
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1	EXHIBITS (CONTINUED)			1	THE VIDEOGRAPHER: We are now on the record.		09:09
2	Exhibit	Description	Page	2	Please note that the microphones are sensitive and may pick up whispering and private conversations.		09:09
3	Exhibit 1178	ASHRAE0011934-11966	162	3			
4	Exhibit 1179	ASHRAE0016488	163	4	Please turn off all cell phones or place them away from the microphones, as they can interfere with the deposition audio.		09:09
5	Exhibit 1180	ASHRAE0002471-2474	164	5	Recording will continue until all parties agree to go off the record.		09:10
6	Exhibit 1181	ASHRAE0012324-12327	165	6	My name is Isaac Horner, representing Veritext Legal Solutions. Today's date is March 30th, 2015, and the time is approximately 9:10.		09:10
7	Exhibit 1182	ASHRAE0020220-20227	167	7	This deposition is being held at Veritext Legal Solutions, located at 1075 Peachtree Street, Northeast, Atlanta, Georgia, and is being taken by counsel for the defendants.		09:10
8	Exhibit 1183	ASHRAE0012340-12344	167	8	The caption of this case is American Society for Testing and Materials, et al., v. Public.Resource.Org, Incorporated.		09:10
9	Exhibit 1184	ASHRAE0012247-12253	169	9	This case is being held in the United States District Court for the District of Columbia, Case Number 1:13-CV-01215-EGS.		09:10
10	Exhibit 1185	ASHRAE0018975-18980	171	10	The name of the witness is Stephanie		09:10
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1 Reiniche. 09:11
2 At this time, the attorneys present in 09:12
3 the room and everyone attending remotely will 09:13
4 identify themselves and the parties they 09:16
5 represent, after which our court reporter, 09:19
6 Sharon Gabrielli, representing Veritext Legal 09:11
7 Solutions, will swear in the witness and we 09:13
8 can proceed. 09:13
9 MR. BECKER: This is Matthew Becker of 09:16
10 Fenwick & West. And with me is Corynne 09:19
11 McSherry from Electronic Frontier Foundation, 09:11
12 and we're representing the defendant, 09:14
13 Public.Resource.Org. And also listening by 09:16
14 telephone is Carl Malamud. 09:18
15 MR. CUNNINGHAM: This is Blake 09:12
16 Cunningham of King & Spalding, representing 09:13
17 the American Society of Heating, 09:16
18 Refrigerating, and Air-Conditioning 09:19
19 Engineers. 09:19
20 MR. FEE: Kevin Fee on behalf of ASTM 09:10
21 International. 09:14
22 STEPHANIE REINICHE, 09:16
23 having been first duly sworn, was deposed and testified 09:16
24 as follows: 09:16
25 EXAMINATION 09:16

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1 BY MR. BECKER: 09:19
2 Q Hi, Ms. Reiniche. My name is Matthew Becker 09:12
3 of Fenwick & West, and I'm representing the defendant 09:11
4 Public.Resource.Org. Have you ever taken -- have you 09:16
5 ever been deposed before? 09:10
6 A Yes. 09:11
7 Q Okay. And when was that? 09:11
8 A There's been two times. One was over ten 09:12
9 years ago, and the other one was, I think it's been 09:11
10 about two years now. 09:16
11 Q And what were those -- were you deposed in 09:12
12 your personal capacity? 09:15
13 A Yes. 09:16
14 Q Okay. And what kind of matters were those 09:17
15 that you were deposed in? 09:10
16 A The first one was a wills and trust issue. 09:11
17 And the second one was a lawsuit that ASHRAE was 09:17
18 involved in, so it was my capacity of my job at ASHRAE. 09:13
19 Q And that was the lawsuit that was two years 09:18
20 ago? 09:10
21 A Yes. 09:11
22 Q Okay. And what was the -- what was that 09:12
23 ASHRAE lawsuit about? 09:16
24 A It was restraint of trade. It was against -- 09:17
25 it involved Thermal Design. 09:13

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1 Q And who was the party that was opposing 09:12
2 ASHRAE in that case? 09:16
3 A Thermal Design. 09:17
4 Q Thermal Design. 09:18
5 And was ASHRAE the plaintiff or the defendant 09:16
6 in that case? 09:18
7 A Defendant in that case. 09:11
8 Q And what was the -- what was the nature of 09:10
9 the restraint of trade claim against ASHRAE in that 09:14
10 case? 09:17
11 A It had to do with our Standard 90.1 and 09:17
12 whether or not the -- the information in a table 09:14
13 prevented Thermal Design from being able to conduct 09:10
14 business. That's the short story. 09:12
15 Q Why did they think that the information in a 09:14
16 table would prevent them from being able to conduct 09:17
17 business? 09:19
18 A They -- they were saying that -- it 09:13
19 basically -- their product was being excluded from the 09:18
20 marketplace, and so they were losing, they claimed, 09:13
21 millions of dollars in revenue because of what -- of 09:16
22 the numbers that were in the table. 09:19
23 Q And how was it exactly that the numbers in 09:11
24 the table that they claimed excluded them from the 09:17
25 marketplace? 09:10

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1 A Since it's technical, I can only kind of give 09:12
2 you a summary of it, since I'm not technical in nature. 09:15
3 It had to do with U factors and R factors, and their -- 09:18
4 they were claiming that it gave an unfair advantage to 09:14
5 other competitors in the marketplace, because they 09:16
6 could say theirs met the U factors and R factors in 09:10
7 that table, and they claimed those -- those numbers 09:16
8 were erroneous. 09:18
9 Q And what was the reason that they had you 09:13
10 appear for a deposition in that case? 09:16
11 MR. CUNNINGHAM: Object to form. 09:18
12 THE WITNESS: I was testifying -- gosh, 09:11
13 it's been so long. I can't remember what I 09:13
14 testified about. It was a limited capacity 09:15
15 as to some process questions. 09:19
16 Q (BY MR. BECKER) Okay. Thank you. 09:10
17 So you -- it sounds like you have previous 09:11
18 experience being deposed. We'll review the rules 09:14
19 anyway just so that you're aware of them. 09:18
20 So as you know, in a deposition, I'll be the 09:11
21 one who will be asking questions, and you'll be 09:14
22 providing answers on the record. And those answers -- 09:17
23 do you understand that the answers that you are giving 09:19
24 are being provided under oath, like in a court of law? 09:12
25 A Yes. 09:16

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1 Q Okay. And you understand that the court 09:18
2 reporter is taking down everything that you say? 09:10
3 A Yes. 09:12
4 Q And for that reason, we need audible 09:13
5 responses, which means no nods or gestures? 09:16
6 A Yes. 09:13
7 Q Thank you. 09:13
8 So if at any point you don't understand a 09:14
9 question, will you please let me know, and then I can 09:15
10 try to rephrase the question? 09:18
11 A Yes. 09:10
12 Q Thank you. 09:11
13 And if you come to realize that one of your 09:14
14 answers isn't completely correct or if you have 09:18
15 information to add to it, will you please tell me that 09:11
16 and tell me what information you have to add or 09:13
17 correct? 09:16
18 A Yes. 09:17
19 Q And that can come after breaks and so forth. 09:18
20 So if you go on a break and you recall that there was 09:10
21 something else you wanted to add, you can please let me 09:13
22 know. 09:15
23 A Yes. 09:18
24 Q And you understand that after the transcript 09:10
25 of the deposition is prepared, that you'll have a 09:12

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1 chance to review it and make changes to it, right? 09:16
2 A Yes. 09:10
3 Q And that if you make any changes, I'll be 09:11
4 able to comment on those changes? 09:13
5 A Yes. 09:15
6 Q Thank you. 09:15
7 Ms. Reiniche, is there anything that would be 09:16
8 preventing you from giving your best testimony today, 09:19
9 such as illness or medication? 09:12
10 A No. 09:14
11 Q Ms. Reiniche, could you please state your 09:19
12 full name for the record? 09:12
13 A Stephanie Church Reiniche. 09:15
14 Q And have you gone by any previous names? 09:17
15 A My maiden name was Jenkins. 09:10
16 Q Was that Stephanie Church Jenkins? 09:13
17 A Yes. 09:16
18 Q And when did you change your name? 09:16
19 A I got married in June of 1994. 09:18
20 Q Okay. Thank you. 09:10
21 And could you please state your business 09:14
22 address? 09:16
23 A 1791 Tullie Circle, Northeast, Atlanta, 09:17
24 Georgia, 30329. 09:11
25 Q And do you have any other business addresses? 09:14

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1 A No. 09:18
2 Q Thank you. 09:18
3 Ms. Reiniche, could you tell me about your 09:18
4 educational background? 09:18
5 A I have a bachelor's degree from Eastern 09:18
6 Michigan University, and a juris doctor degree from 09:18
7 DePaul University College of Law. 09:18
8 Q And what was the bachelor's in? 09:18
9 A Political science. 09:18
10 Q Okay. And what year was that? 09:18
11 A '94. 09:18
12 Q And when did you graduate with a JD? 09:18
13 A 1998. 09:19
14 Q And do you have any experience with legal 09:19
15 practice? 09:19
16 A I did wills and trusts and family law and 09:19
17 bankruptcy. 09:19
18 Q And how long was that for? 09:19
19 A Four years. 09:19
20 Q Four years. 09:19
21 And did you practice with a firm? 09:19
22 A Yeah, two -- it was one-person firm, me and 09:19
23 one other person. 09:19
24 Q Okay. And what was the name of that law 09:19
25 firm? 09:19

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1 A Kathleen Krumm & Associates. 09:19
2 Q And was Kathleen -- I'm sorry, is that 09:19
3 Kathleen Krumm? 09:19
4 A Yes. 09:19
5 Q And Kathleen Krumm, was she the -- the other 09:19
6 person you worked with? 09:19
7 A Yes, she owned -- she owned the firm. 09:19
8 Q And do you have any other graduate or 09:19
9 technical degrees? 09:19
10 A No. 09:19
11 Q And let's see, so you said you -- from -- it 09:19
12 was four years that you were working at that firm? 09:20
13 A Yes. I didn't start there until 1999, I 09:20
14 think -- or 19 -- sorry -- '89. Right? No, '90 -- 09:20
15 '99, sorry. A year after I graduated law school. 09:20
16 Q Okay. And did you do anything between the 09:20
17 year that you graduated from law school and when you 09:20
18 started at the firm? 09:20
19 A No. 09:20
20 Q And you said you were at the firm for four 09:20
21 years; is that correct? 09:20
22 A Yes. 09:20
23 Q Okay. So that was until 2003, was that? 09:20
24 A Correct. 09:20
25 Q And what did you do in 2003? 09:20

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1 A I moved from Michigan to Georgia. 09:21
2 Q And what was your first job that you took 09:29
3 once you moved to Georgia? 09:23
4 A ASHRAE. 09:25
5 Q Okay. Did you move to Georgia to work at 09:26
6 ASHRAE? 09:28
7 A No. 09:29
8 Q Okay. And when was it that you started 09:29
9 working at ASHRAE? 09:21
10 A November 2003. 09:23
11 Q Okay. How was it that you came to start 09:23
12 working at ASHRAE? 09:24
13 A I applied online. I -- I saw a job posting, 09:27
14 at that time it was for a procedures administrator, and 09:21
15 I submitted a résumé. 09:23
16 Q Had you ever heard of ASHRAE before that 09:21
17 point? 09:23
18 A No. 09:23
19 Q Were you familiar with the air-conditioning, 09:24
20 heating and cooling industry prior to that point? 09:26
21 A No. 09:21
22 Q What was it that made you qualified for the 09:22
23 job at ASHRAE? 09:26
24 A I suppose because it was -- at that time, it 09:20
25 was about procedures and process, and so just legal 09:23

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1 background and ability to -- to write and things like 09:27
2 that. 09:29
3 Q And what -- how long were you a procedures 09:24
4 administrator at ASHRAE for? 09:20
5 A I want to say until December 2004. 09:27
6 Q And were you promoted at that time? 09:24
7 A Yes. 09:25
8 Q And what was -- what position were you 09:26
9 promoted to? 09:29
10 A Standards administrator. 09:20
11 Q And how long did you hold the title of 09:26
12 standards administrator for? 09:22
13 A I think it was about three years. 09:24
14 Q And were you promoted after three years? 09:21
15 A Yes. 09:23
16 Q And what title were you promoted to? 09:24
17 A Assistant manager of standards 09:27
18 administration. 09:28
19 Q And how long did you hold that position for? 09:27
20 A A year or two. 09:20
21 Q And were you promoted again after that point? 09:26
22 A Yes. 09:29
23 Q And what title were you promoted to? 09:20
24 A Manager of standards. 09:22
25 Q And how long did you hold that position for? 09:29

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1 A That title, till 2014. 09:21
2 Q And so were you promoted once again in 2014? 09:27
3 A Yes. 09:20
4 Q And what is the title that you were promoted 09:21
5 to? 09:23
6 A Senior manager of standards. 09:24
7 Q And is that the title that you hold today? 09:21
8 A Yes. 09:24
9 Q Okay. And do you have any other roles at 09:24
10 ASHRAE, other than senior manager of standards? 09:24
11 A No. 09:29
12 Q Have you served on any of the committees in 09:29
13 ASHRAE? 09:21
14 A No. 09:23
15 Q Have you -- what involvement in the design of 09:24
16 standards have you played? 09:21
17 A I oversee the development of all the 09:23
18 standards at ASHRAE. 09:26
19 Q And what does that involve? 09:26
20 A It involves a lot of things. It involves 09:27
21 reviewing all the documentation for membership, 09:22
22 overseeing the documentation for public reviews, could 09:27
23 be change proposals, could be minutes, the publication 09:24
24 drafts, editing and reviewing those, working with the 09:20
25 appeals. 09:27

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1 Q And when you say you oversee the 09:25
2 documentation for membership and for public reviews and 09:29
3 change proposals and publication drafts, what does that 09:23
4 entail? 09:26
5 A It can entail -- well, making sure that the 09:28
6 document for membership, that the documentation is all 09:22
7 complete, meaning every -- all the, you know, parts are 09:25
8 filled out, everything is properly signed. And it 09:29
9 could involve talking with the chairs of project 09:23
10 committees to help them make sure their committee is 09:29
11 balanced. 09:24
12 Q What do you mean by making sure the project 09:27
13 committees are balanced? 09:20
14 A Under our ANSI rules, our committees have to 09:22
15 be balanced, meaning for nonsafety standards, no more 09:25
16 than 50 percent of the people can be in any one 09:29
17 interest category; and for safety standards, no more 09:23
18 than one-third in each interest category. 09:26
19 Q And what is an interest category? 09:22
20 A It's -- it describes the -- the role a person 09:25
21 plays typically in their job or their duties that 09:22
22 they're doing, and that shows their bias for that 09:25
23 particular standard that's being developed. 09:20
24 Q Could you list for me the interest 09:27
25 categories? 09:29

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1 A For which standard? 09:21
2 Q So the interest categories are different for 09:23
3 particular standards? 09:25
4 A They can be, yes. 09:26
5 Q Okay. Do you know the -- off the top of your 09:27
6 head the interest categories for the 90.1 standards? 09:20
7 A I can list some of them, but I would have to 09:26
8 look at a roster to verify they're all correct. 09:28
9 Q Okay. 09:22
10 A There's compliance, industry, utility, 09:22
11 general, and I think user. 09:21
12 Q And what does -- what are the -- those 09:27
13 categories? Excuse me, let me rephrase. 09:25
14 What -- what kind of a person would a -- 09:29
15 would fall into the compliance category? 09:22
16 A I would need to look at the application that 09:26
17 shows the definition to give you an exact person, the 09:28
18 exact definition; but for example, somebody that's 09:22
19 involved in codes would be a compliance person. 09:26
20 Q When you say someone who's involved in codes, 09:20
21 like what -- what kind of role do you mean by that? 09:24
22 A A code official. 09:27
23 Q A code -- 09:29
24 A A building code person; that type of person. 09:20
25 Q Would that be something like a regulator? 09:23

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1 A Could be. 09:26
2 Q Okay. So that would -- that would encompass 09:27
3 somebody in a government position, then, would be under 09:21
4 compliance? 09:27
5 MR. CUNNINGHAM: Object to form. 09:28
6 THE WITNESS: I would have to look at 09:29
7 the roster to see how a government employee 09:20
8 would be listed. It depends on where they 09:22
9 work, what they do. Without looking at an 09:26
10 individual, I can't tell you for sure that 09:20
11 they would go under compliance. 09:21
12 Q (BY MR. BECKER) Okay. What other categories 09:24
13 could a government official go under, other than 09:25
14 compliance? 09:28
15 A Depending on the -- it depends on what the 09:29
16 definition is. I really probably should look at the 09:21
17 definitions to tell you for sure. 09:24
18 Q And where would the definitions be found? 09:25
19 A The definitions would be as part of the 09:28
20 application. 09:20
21 Q The membership application? 09:21
22 A Yes, sir. 09:22
23 Q You also said that one of your jobs is to 09:21
24 make sure that documentation is complete. What does 09:24
25 that involve? 09:27

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1 A For which part of the process? After 09:29
2 membership? 09:22
3 Q Let's talk about membership applications. 09:23
4 A So for membership applications, there is an 09:27
5 application form that would list the -- you know, what 09:20
6 project committee they're applying for, their name, 09:24
7 what interest category they believe they should be 09:27
8 categorized. And then they would have -- then there is 09:33
9 a signature at the bottom and their voting status, what 09:35
10 they would like to be on that committee. 09:39
11 There's a bias/conflict of interest form, 09:32
12 which gives background on where they've worked for the 09:36
13 last five years, other organizations that they've been 09:30
14 involved with, who pays their way to participate, and 09:34
15 any public statements they would have made in regards 09:38
16 to the particular standard they're applying for, and 09:31
17 that, too, is signed. 09:34
18 And then there's a biographical record that 09:36
19 is done through the ASHRAE website which gives their 09:38
20 background, like where they -- you know, their degrees 09:33
21 and things like that, whether -- other committees 09:38
22 they've been involved in within ASHRAE, awards; things 09:31
23 like that. 09:36
24 Q Are you the person who makes sure that all of 09:36
25 these fields are filled out? 09:39

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1 A I have a staff person that does that, but 09:31
2 then they are reviewed by another committee. And when 09:32
3 there's a question, then I'm the one that helps work 09:35
4 with that. 09:39
5 Q And what is the name of the staff person who 09:30
6 checks these forms? 09:32
7 A It's varied over the years. 09:35
8 Q What is the name of the person today? 09:37
9 A Katrina Shingles. 09:30
10 Q And is there -- does Katrina Shingles have a 09:36
11 specific position? 09:31
12 A She's a secretary. 09:32
13 Q Is there a specific position for the person 09:38
14 who has always checked the -- the forms? 09:32
15 A It's been a secretary or an administrative 09:37
16 assistant. 09:30
17 Q And you said there's also a committee that 09:37
18 looks over that? 09:39
19 A Yes. There's a staff liaison, and then there 09:30
20 is -- in addition to that, and then there is -- 09:34
21 depending -- the process has changed slightly. There 09:37
22 could be up to two oversight committees. 09:30
23 Q And you said that the process has changed. 09:33
24 When did the process change? 09:37
25 A This year. 09:30

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1 Q And how did it change? 09:39
2 A There is -- the only extra -- there's only 09:31
3 oversight for the chair of a policy-level committee at 09:35
4 a higher body. So there's only two approving -- 09:30
5 there's two approving bodies for a chair instead of all 09:34
6 the membership. 09:37
7 Q So it used to be that all the membership 09:38
8 would have -- would approve these forms and now -- I'm 09:30
9 sorry, I think I'm confused. Could you please 09:36
10 explain -- 09:38
11 A Sure. 09:38
12 Q -- how that -- how that works? 09:39
13 A There's two types of committees: Policy 09:30
14 level and nonpolicy level. For nonpolicy level, 09:33
15 originally it was the standards project liaison 09:38
16 subcommittee, or SPLS, and standards committee would 09:32
17 approve the chair and only SPLS would approve the 09:37
18 membership. 09:33
19 And then for policy-level committees, both 09:34
20 SPLS and standards committee would approve membership 09:31
21 and the chair, but now SPLS approves the members and 09:36
22 standards -- SPLS and the standards committee approves 09:33
23 the chair. 09:34
24 Q What's the difference between nonpolicy-level 09:33
25 committees and policy-level committees? 09:38

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1 A So the easiest way to describe it is policy 09:30
2 level requires more oversight. Typically, it's 09:33
3 something that may be more controversial topics or 09:36
4 somebody has, you know, said this is going to receive 09:34
5 thousands of comments when it goes out for public 09:38
6 review. So there is higher oversight in approving 09:30
7 documents when it comes from a policy, where nonpolicy 09:34
8 wouldn't be that way. 09:37
9 Q How is it that ASHRAE predicts that -- that 09:34
10 the topic is going to be controversial, and therefore 09:33
11 should go under the policy, as opposed to nonpolicy? 09:37
12 A Sometimes it's just a feeling. It's -- 09:30
13 there's a form when someone proposes a new project, 09:34
14 either a person or a technical committee, and that's 09:30
15 one of the questions that's on the form that, you know, 09:32
16 how controversial is this topic, and that type of 09:35
17 thing. 09:38
18 Q Could you give me a couple examples of what 09:30
19 would go to the policy committee? 09:34
20 A Sure. Sure. For example, 90.1 is a 09:37
21 policy-level standard. 189.1, which is our green 09:31
22 building version of 90.1, is a policy level. Nonpolicy 09:37
23 level are typically things like a method of test 09:32
24 standard. Most people don't comment. It's not a big 09:35
25 controversy with method of test. 09:31

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1 Q When reviewing the membership applications, 09:38
2 has -- has anyone ever been rejected by ASHRAE for 09:31
3 membership? 09:38
4 A Do you mean by me or do you mean by the chair 09:38
5 of the project committee -- the chair of the project 09:32
6 committee or the approving bodies? 09:34
7 Q By any of them? 09:36
8 A I don't reject anyone. I send it back if 09:39
9 it's incomplete and make it -- make them finish 09:33
10 completing it. If they don't, it just sits there in 09:39
11 limbo. 09:32
12 Q And when you say you send it back, are you 09:31
13 sending it back to the person who had submitted the 09:34
14 application? 09:36
15 A Yes. 09:37
16 Q And does anyone else who reviews membership 09:32
17 applications act in any manner that's different than 09:34
18 what you described your behavior was as to incomplete 09:38
19 applications? 09:32
20 MR. CUNNINGHAM: Object to form. 09:33
21 THE WITNESS: Do you mean do they reject 09:35
22 them because the forms aren't complete? 09:37
23 Q (BY MR. BECKER) Yes. 09:30
24 A If the forms are not complete, then yes. 09:31
25 Q So -- so who is it who would reject them if 09:35

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1 the forms were not complete? 09:37
2 A Myself, another staff person that's reviewing 09:30
3 it, the project committee chair, the members of SPLS 09:33
4 when we're reviewing the membership. It usually 09:30
5 doesn't get past them, but if it did, then standards 09:33
6 would send it back. 09:36
7 Q When you say "standards would send it back," 09:34
8 are you referring to standards as a department within 09:35
9 ASHRAE? 09:38
10 A Sorry, standards committee. 09:39
11 Q Are you aware of any incomplete membership 09:32
12 applications ever making it through the process and 09:34
13 being approved? 09:36
14 A No. 09:37
15 Q When you described Standard 90.1 as being 09:34
16 policy level and -- and also describing policy level as 09:30
17 requiring more oversight because it's controversial, 09:37
18 what is it that makes Standard 90.1 controversial? 09:39
19 A I don't know that -- that's just one reason 09:33
20 it might be a policy level. I don't know that 90.1 is 09:35
21 necessarily controversial. It's, in part, because it's 09:30
22 referenced in federal law. And usually as we're trying 09:34
23 to make it more energy efficient, there are some areas 09:40
24 that it covers that generate a lot of comments, because 09:45
25 it might be an area not covered in the standard before. 09:49

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1 Q And what's special about it being referenced 09:43
2 in federal law? 09:47
3 A It is -- let's see if I get this right -- 09:48
4 it's referenced in the EPAAct, so it's the minimum 09:40
5 energy code for commercial buildings. 09:45
6 Q I'm sorry, could you spell that, EPAAct? 09:48
7 A E-P-A-C-T. It's the Energy Policy Act. 09:43
8 Q And what does the Energy Policy Act do? 09:47
9 A That's the federal law for -- it's the 09:41
10 minimum efficiency for commercial codes as it relates 09:46
11 to 90.1. So 90.1 is the minimum. That's the code in 09:40
12 EPAAct. 09:47
13 Q The -- I'm sorry, the minimum for what? 09:48
14 A Commercial buildings. 09:40
15 Q Is that the minimum level of energy 09:42
16 efficiency? 09:44
17 A Yes. 09:45
18 Q So if I understand you correctly, ASHRAE 09:40
19 Standard 90.1 is referenced in the EPAAct as the minimum 09:44
20 standard for energy efficiency for commercial 09:44
21 buildings? 09:47
22 A Correct. 09:48
23 Q So who is it who has to follow the EPAAct? 09:44
24 MR. CUNNINGHAM: Object to form. 09:40
25 THE WITNESS: To the best of my 09:44
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1 knowledge, it's the -- the requirement is all 09:45
2 states are supposed to become compliant with 09:48
3 it or deem to comply by another method every 09:43
4 so many years to the latest version of 09:49
5 90.1. 09:41
6 Q (BY MR. BECKER) When you say that all states 09:45
7 must become compliant, does that mean that the states 09:47
8 have to adopt this into their regulations or does it 09:40
9 mean that these states have to build their buildings to 09:45
10 comply with the EPAAct? 09:49
11 MR. CUNNINGHAM: Object to form. 09:41
12 THE WITNESS: It means they're supposed 09:43
13 to adopt a code that is equivalent to the 09:45
14 current version of 90.1 within two -- I 09:48
15 believe it's within two years of each year, 09:41
16 or there is some other rules that they have 09:45
17 to follow if they don't deem to comply. 09:48
18 It does not have to be 90.1. It could 09:42
19 be another version of a different code. 09:44
20 So... 09:47
21 Q (BY MR. BECKER) What other codes would -- 09:45
22 would suffice to -- to satisfy the EPAAct? 09:40
23 MR. CUNNINGHAM: Object to form. 09:44
24 THE WITNESS: The IECC. 09:47
25 Q (BY MR. BECKER) What is the IECC? 09:40
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1 A International Energy -- I'm not positive. I 09:44
2 just speak in acronyms, so I can't remember. I have to 09:49
3 look it up, to be honest. But it's through 09:42
4 International Code Council. It's their energy 09:47
5 efficiency code. 09:42
6 Q The International Code Council, are they 09:46
7 known as ICC? 09:48
8 A Yes. 09:40
9 Q What's the -- is there any relationship of 09:44
10 the IECC to ASHRAE's Standard 90.1? 09:47
11 A 90.1 is a compliance option to the IECC. 09:43
12 Q What does that mean? 09:42
13 A It means you can choose -- if you adopt that 09:44
14 as your code and you adopt it in its entirety and 09:49
15 then -- and 90.1 is a reference as a compliance option 09:43
16 at the -- whatever level you're -- design your code -- 09:49
17 wherever that code is adopted, if they -- if the 09:43
18 builder wants to build according to what's in 90.1, 09:46
19 they have that option or they can build according to 09:49
20 the IECC, and then that's their choice. 09:42
21 Q Does the IECC say within it that someone can 09:41
22 comply with ASHRAE Standard 90.1 and that would be 09:47
23 sufficient? 09:40
24 MR. CUNNINGHAM: Object to form. 09:41
25 THE WITNESS: It -- there is a reference 09:43
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1 as -- yeah, as a compliance option to the 09:44
2 IECC, yes. 09:49
3 Q (BY MR. BECKER) So compliance option, then, 09:40
4 means an alternative? 09:42
5 A Correct. 09:44
6 Q And is -- does that mean that ASHRAE's 09:45
7 Standard 90.1 is more rigorous than the IECC? 09:40
8 MR. CUNNINGHAM: Object to form. 09:41
9 THE WITNESS: I would have to review. 09:41
10 It depends on what version. Off the top of 09:42
11 my head, I -- I don't know. 09:44
12 Q (BY MR. BECKER) Taking a step back, 09:40
13 Ms. Reiniche, who do you report to at ASHRAE? 09:41
14 A Claire Ramspeck. 09:44
15 Q And what is Ms. Ramspeck's position? 09:48
16 A Director of technology. 09:43
17 Q And do you report to anybody else? 09:48
18 A I suppose you could say Jeff Littleton. 09:44
19 Q And what is Mr. Littleton's position? 09:47
20 A Executive vice president. 09:40
21 Q And is there anybody else that you report to? 09:40
22 A No. 09:42
23 Q And is there anyone who reports to you? 09:43
24 A Yes. 09:46
25 Q And who are those people? 09:47
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<p>1 A Mark -- Mark Weber, Carmen Manning, Nicole 09:41 2 Jones, Angela McFarlin, Katrina Shingles, Steve 09:40 3 Ferguson, Beverly Fulks, Tanishe Meyers-Lisle, Susan 09:43 4 LeBlanc, and Bert Etheridge. 09:41 5 Q And what is Mr. Weber's position? 09:42 6 A He is the manager of standards American. 09:46 7 Q Does that mean he's in charge of the American 09:41 8 ASHRAE standards? 09:44 9 A Yes, but there's some that are assigned to 09:46 10 other people; but the majority of them, yes. 09:48 11 Q And why would some of them be assigned to 09:41 12 other people? 09:43 13 A We provide staff support for some of the 09:44 14 standards, and we divide them up because of the 09:47 15 schedule that one person can provide higher levels of 09:40 16 support. 09:44 17 Q So does Mark Weber provide staff support to 09:45 18 range of standards, with the exception of some other 09:43 19 group of standards? 09:46 20 A He does -- he's the main point of contact for 09:47 21 the majority of the standards. There's some that he is 09:42 22 specifically the staff liaison to, and then there's 09:47 23 several others that are assigned to other managers in 09:40 24 the department. 09:43 25 Q Okay. And why is it that there are others 09:44</p> <p style="text-align: right;">Page 34</p>	<p>1 do a double review of the membership items reviewed by 09:53 2 Katrina, works with the project committee chair to help 09:58 3 come up with a balance committee, looking at terms, you 09:54 4 know, helping making sure they, you know, get -- rotate 09:59 5 people in and out per our rules. He attends all the 09:52 6 full project committee meetings, some of the 09:59 7 subcommittee meetings. 09:52 8 He processes the letter ballots for approval 09:55 9 of all drafts. He reviews the drafts to make sure 09:57 10 they're written consistently. He points out conflicts 09:52 11 when they make one change to a section and then they 09:56 12 haven't made a similar change to another section so 09:58 13 there's not conflicts. 09:53 14 He reviews all of the public -- final 09:55 15 publication drafts in the final roll-ups of the 90.1 09:58 16 for each new version every three years. He does the 09:53 17 minutes. 09:57 18 Q Are you aware of any other work that 09:53 19 Mr. Ferguson does as the staff liaison for 90.1? 09:55 20 A That's -- that's pretty much the general 09:51 21 stuff that I can think of. He has other duties besides 09:54 22 90.1. 09:57 23 Q Does Mr. Ferguson draft any of the text for 09:58 24 90.1? 09:53 25 A He reviews the drafts and points out 09:54</p> <p style="text-align: right;">Page 36</p>
<p>1 that are assigned to other managers in the department? 09:47 2 A We just -- we just split them up because 09:41 3 of staff loads. One person can't support them based on 09:44 4 their meeting schedules; one person can't do all of 09:40 5 them. Some of them, it's based on their prior 09:43 6 expertise. 09:47 7 Q And do you know what standards they are that 09:49 8 are not assigned to Mark Weber that are American 09:41 9 standards? 09:45 10 A Yes. 09:45 11 Q And which standards are those? 09:46 12 A 90.1, 90.2, 90.4, 189.1, 15, 34. 09:49 13 Q And who is Standard 90.1 assigned to? 09:53 14 A Steve Ferguson. 09:59 15 Q And you say that Steve Ferguson reports to 09:50 16 you as well? 09:53 17 A Yes. 09:54 18 Q And what is Steve Ferguson's position? 09:55 19 A Manager of standards for codes. 09:58 20 Q And he's also the staff liaison for 90.1, you 09:56 21 were saying? 09:51 22 A Yes. 09:51 23 Q Okay. What does Mr. Ferguson do as staff 09:54 24 liaison for 90.1? 09:57 25 A A lot of things. He'll -- he does -- he'll 09:59</p> <p style="text-align: right;">Page 35</p>	<p>1 conflicts. 09:57 2 Q But he doesn't contribute text directly to 09:57 3 90.1? 09:51 4 A No. He may comment when they're discussing 09:52 5 proposed text changes to make them aware of something, 09:56 6 but he does not necessarily, unless they wrote 09:50 7 something in the incorrect format. 09:53 8 Q And what would he do if they had written 09:56 9 something in an incorrect format? 09:58 10 A He would edit it, send it back. If it's a 09:50 11 substantive change to fix it, then it would have to go 09:53 12 back to the committee for a new vote. If it's 09:56 13 editorial, then the chair or a subcommittee -- or in 09:59 14 consultation with a subcommittee chair can say that's 09:54 15 correct and -- and then move it forward in whatever 09:58 16 step in the process it's in. 09:50 17 Q When you say he edits it and sends it back, 09:51 18 does that mean that he actually changes the text, or 09:54 19 does this mean that he sends a comment that there is a 09:56 20 conflict or something like that and leaves it to the 09:50 21 committee to make the change? 09:52 22 A If it's -- it depends. If it's a conflict 09:54 23 and he understands -- he has an engineering degree, so 09:57 24 if he understands how to change it, he can propose a -- 09:51 25 he may propose the wording change. If it's not 09:55</p> <p style="text-align: right;">Page 37</p>

1 something he understands and it's a conflict, then 09:50
2 he'll comment and ask the committee for direction. 09:53
3 Q And is there any record of the wording 09:53
4 changes that Mr. Ferguson has proposed? 09:56
5 A There's probably -- if he sent something 09:52
6 back, it -- to the committee, it would have been sent 09:54
7 via email. 09:58
8 Q If you wanted to go back and find any 09:51
9 proposed changes that Mr. Ferguson had made, how would 09:57
10 you go about doing that? 09:51
11 A I'd have to look in his email. He wouldn't 09:52
12 have proposed them in the minutes. That's not 09:55
13 something recorded in the minutes, so he would have 09:57
14 sent it via email. 09:59
15 Q And how would that -- would that change be 09:52
16 reflected in the minutes in -- in any way? 09:54
17 A Not -- not unless it was -- if he sent a 09:58
18 change back, this assumes that the committee has 09:54
19 already approved the proposed change. And if there was 09:57
20 an issue and he sent it back, then if -- if a change 09:59
21 had to be made that was substantive, there would be 09:54
22 another -- there would be a letter ballot. So then it 09:57
23 would be reflected in a letter ballot. If it's 09:51
24 editorial, the chair would accept it. 09:54
25 Q Who makes the determination for a substantive 09:59
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1 change versus an editorial change? 09:53
2 A If staff -- the difference between a 09:57
3 substantive and an editorial change is a substantive 09:50
4 change changes the requirements of the standard. So 09:53
5 changing a "should" to a "shall" would be a substantive 09:58
6 change. 09:51
7 If it's editorial, like, you know, changing 09:52
8 an "a" to a "the" or something like that, it's clear 09:54
9 that's an editorial. 09:59
10 If staff questions acceptance of a change as 09:51
11 substantive and the committee does not want to send a 09:54
12 new letter ballot out, when it goes to the next body, 09:57
13 we make the next body aware for approval, which would 09:50
14 be SPLS for public reviews or standards for publication 09:54
15 approval. We make them aware of it -- that concern, 09:50
16 and then SPLS looks at it and makes a determination of 09:53
17 whether or not it's substantive or editorial. And then 09:50
18 if it's substantive and they didn't vote it out, it 09:52
19 goes back to the project committee. 09:54
20 Q Could you tell me again what the acronym SPLS 09:55
21 stands for? 09:59
22 A Standards Project Liaison Subcommittee. 09:50
23 Q And is there a separate SPLS for each 09:54
24 standard? 09:59
25 A No. 09:59
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1 Q There's -- is there a single SPLS for ASHRAE? 09:50
2 A There is a single SPLS for ASHRAE. They 09:53
3 review all the standards. 09:58
4 Q And who is -- who composes SPLS? 09:50
5 A That is a subcommittee of standards committee 09:54
6 of approximately -- I think it's 15 members. 09:58
7 Q And are they elected or are they appointed? 09:55
8 A The standards committee members are elected 09:50
9 by the board of directors, and then the subcommittee 09:55
10 assignments are done by the incoming chair and vice 09:50
11 chair, along with myself every year. So it just 09:53
12 depends. It's a rotating four-year term. 09:50
13 Q So when you say that the assignments are done 09:51
14 by the incoming chair and a vice chair along with 09:56
15 yourself every year and that it's a rotating four-year 09:51
16 term, the -- are you saying that these appointments are 09:53
17 made for a subset of the 15 people every -- every year? 09:50
18 A No. It's -- standards committee has 26 09:54
19 members, and then there's multiple subcommittees. 09:57
20 Standards committee, about one-third rolls off every 09:51
21 four years. So we don't have a new standards committee 09:53
22 every four years. So there's some consistency. So 09:57
23 there might be just a couple people that were on SPLS 09:50
24 one year that will roll off, and so we're adding some 09:55
25 new or moving some others into SPLS. 09:59
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1 Q What are some of the other subcommittees for 09:55
2 a standards -- standards committee? 09:51
3 A Then there's the standards reaffirmation 09:53
4 subcommittee. There's the code interaction 09:51
5 subcommittee. There's the policy, procedures, and 09:53
6 interpretation subcommittee -- I'm doing acronyms in my 09:58
7 head -- and an international liaison subcommittee 10:07
8 and -- /intersociety association subcommittee. And 10:03
9 then there's a -- there's an ExCom. 10:09
10 Q I'm sorry, there's -- 10:04
11 A ExCom. 10:06
12 Q What is ExCom? 10:08
13 A Executive committee. 10:00
14 Q Returning to SPLS, what is their role? 10:00
15 A SPLS is the oversight committee. They're the 10:06
16 first level to go to -- they have -- they're assigned 10:00
17 to -- liaisons are assigned to multiple project 10:04
18 committees to help in addition to staff provide 10:09
19 guidance, and they're the -- the person that moves 10:01
20 forward any of the issues from those project 10:05
21 committees. 10:07
22 They review title, purpose and scope changes, 10:09
23 membership, public review drafts, work plans, and deal 10:04
24 with issues common to project committees that get 10:09
25 brought before them. 10:03
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1 Q And so you said that SPLS was first. Is that 10:08
2 in terms of -- in terms of what are you referring to? 10:03
3 A It depends on the stage in the process. 10:08
4 They're the ones that first approve membership, and 10:02
5 then if required, then it goes to standards committee. 10:05
6 They -- there's a process for approving public review 10:09
7 drafts. Again, depends on if it's policy level or 10:02
8 nonpolicy level. There's a process for approving 10:05
9 title, purpose and scope changes, and a process for 10:00
10 work plan changes or work plans. 10:02
11 Q And do these processes go through different 10:02
12 subcommittees depending on the particular process in 10:00
13 question? 10:02
14 A Yes, but all the processes I mentioned go 10:05
15 through -- start -- go through SPLS in some form. 10:07
16 Q What does the standards reaffirmation 10:01
17 committee do? 10:05
18 A The standards reaffirmation subcommittee is a 10:07
19 balance committee. They deal with reaffirming ASHRAE 10:00
20 standards that are -- do not require any substantive 10:05
21 changes. And so what that means is, for example, the 10:07
22 re -- the reference standards are themselves 10:03
23 reaffirmations; there's no changes or there's been no 10:07
24 changes in the standard, and there's no -- been no 10:02
25 change in the industry, so we can do what's called the 10:04
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1 reaffirmation and just get issued, you know, as a new 10:07
2 standard again, as required by ANSI. 10:01
3 And then they also act as a revision project 10:04
4 committee in a limited sense. When the technical 10:07
5 committee that does the initial review of the drafts 10:03
6 says that updating to those references that it may have 10:06
7 changed does not cause a substantive change to the 10:09
8 standard, then SRS in that limited instance can act as 10:02
9 the revision project committee for that. In any event, 10:07
10 if comments are submitted, then a -- a project 10:01
11 committee -- a separate project committee has to be 10:05
12 formed. 10:07
13 Q With regards to reaffirmations, you say that 10:04
14 there may be no changes that are made to the standard, 10:06
15 but they are -- they are reaffirmed. Why is that done? 10:08
16 A It's typically done because there hasn't been 10:03
17 any change in the industry on that particular topic. 10:06
18 It's more done on method of test standards, where there 10:09
19 might not be a change in -- in what you need to do to 10:03
20 test a particular product or process that you're 10:06
21 working on. 10:00
22 So there's a technical committee with 10:01
23 expertise in that area that would review it after -- a 10:04
24 staff review is done first to know if there's any 10:00
25 reference updates, to put that technical committee on 10:02
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1 notice if there's references that need to be updated. 10:05
2 They may see some editorial changes, the "a" 10:09
3 to the "the" type of thing that needs to be fixed 10:03
4 that -- or there was an errata issue for that same 10:08
5 reason, so it needs to be incorporated. That wouldn't 10:09
6 be considered a substantive change; it's editorial. 10:02
7 So the technical committee makes a 10:04
8 recommendation, then SRS, the standards reaffirmation 10:06
9 subcommittee, reviews that and then puts it out for 10:01
10 public review. 10:04
11 Q Why reaffirm a standard? Why not just leave 10:04
12 it as it is? 10:06
13 A We can't under the ANSI process. ANSI has a 10:08
14 process that we follow that requires -- something has 10:02
15 to be done at the five-year mark of the -- five years 10:05
16 since it had last published. So we do the reviews at 10:00
17 three years, so we have to submit paperwork telling 10:03
18 ANSI what we want to do. 10:06
19 We would -- either are going to file project 10:09
20 initiation notification system that says we are 10:01
21 revising it or we're going to let them know we are 10:01
22 reaffirming it. We have until the ten years since it's 10:05
23 published to do something and republish; otherwise, it 10:09
24 loses its ANSI status. 10:02
25 Q And for the record, what does ANSI stand for? 10:05
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1 A American National Standards Institute. 10:07
2 Q Thank you. 10:07
3 And what does the code interaction 10:02
4 subcommittee do? 10:05
5 A The code interaction subcommittee is the 10:07
6 group that oversees the process for code change 10:00
7 proposals to the model code bodies. 10:04
8 Q Could you elaborate on that a little bit? 10:04
9 A The model code bodies would be ICC, NFPA, and 10:06
10 IAPMO. 10:03
11 Q Okay. And who makes the code change 10:09
12 proposals to these model code bodies? 10:06
13 A They can come from the -- typically, it comes 10:09
14 from the project committee members. It can be anybody. 10:01
15 You could propose a change. If it's coming from one of 10:04
16 our project committees, the rule is it has to -- 10:00
17 whatever proposal, it has to be technically equivalent 10:04
18 to whatever standard they're wishing to make the 10:09
19 reference to. 10:03
20 But typically, we -- we try to ask for -- 10:03
21 that the standard be referenced in its entirety with no 10:08
22 changes, but there are times when they'll pull portions 10:02
23 and submit that instead. 10:06
24 Q Is there a difference between a standard and 10:01
25 a code? 10:04
Page 45

1 A Not exactly. A -- a standard could become a 10:03
2 code, because 90.1 is a standard and it could be the 10:05
3 code. It depends on whoever is wanting to make the 10:08
4 code -- or make the rule. 10:01
5 Q And what does the policy, procedures and 10:04
6 interpretation subcommittee do? 10:08
7 A They review proposals for new projects, new 10:09
8 standards or guideline projects to be developed by 10:04
9 ASHRAE. They are the body that reviews any proposed 10:07
10 changes to any of the procedures related to standards 10:01
11 and interprets the -- any of our rules. 10:05
12 And then the other thing is they form 10:01
13 interpretation sub -- interpretation committees when an 10:04
14 interpretation request is submitted on a standard that 10:07
15 we don't have a standing standard project committee 10:09
16 for. 10:02
17 Q I'm sorry, just to back up a moment. Do you 10:09
18 know how it is that standards become codes? 10:03
19 MR. CUNNINGHAM: Object to form. 10:00
20 THE WITNESS: It -- either they're 10:02
21 proposed into a code and the code accepts 10:05
22 them, or a local jurisdiction decides to use 10:07
23 a standard and that's -- and use that as 10:02
24 their code. 10:04
25 Q (BY MR. BECKER) And when you say "they're 10:08
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1 proposed into a code and the code accepts them," do you 10:00
2 mean that a -- that something like NFPA might make a 10:02
3 code, and they're proposed into that code that NFPA has 10:08
4 made? 10:02
5 A So NFPA references 90.1, and that becomes 10:03
6 part of whatever -- I can't remember the number of the 10:06
7 NFPA code that references 90.1, but that becomes part 10:09
8 of that code. If they -- through their process, it 10:02
9 gets accepted. 10:08
10 Q And what does the international liaison or 10:04
11 intersociety subcommittee do? 10:08
12 A They're dealing with relationships between us 10:00
13 and sometimes other standards developers, but the 10:02
14 majority of their work is in the -- is in the oversight 10:06
15 of the development of international standards. 10:10
16 Q What involvement does ASHRAE have in the 10:15
17 development of international standards? 10:17
18 A We are the secretariat for several of the 10:19
19 international standards organization technical 10:15
20 committees. We are also the secretariat for the U.S. 10:18
21 TAG, which is the technical advisory groups within the 10:11
22 U.S. 10:16
23 Q And, finally, you mentioned the executive 10:11
24 committee. What does the executive committee do? 10:13
25 A That is the -- the chairs of each of the 10:15
Page 47

1 subcommittees, the chair and the vice chair standards 10:18
2 committee and the board -- the board ExO to standards. 10:12
3 And then I'm the staff liaison for that group, other 10:18
4 staff attend, but they -- they just talk about the 10:12
5 issues about the subcommittees and then, you know, 10:15
6 strategic planning; that type of thing. 10:18
7 Q So the committee members that are part of the 10:14
8 standards committee, are these all ASHRAE employees? 10:18
9 A No. 10:11
10 Q Are any of them ASHRAE employees? 10:13
11 A No, just me as a staff liaison, and then 10:15
12 another staff person that does the minutes. 10:18
13 Q So these are -- are these members of 10:11
14 industry? 10:16
15 A They're -- they're balanced as well. The 10:19
16 board has slightly different interest categories that 10:12
17 they use. There are -- they're members -- they're -- 10:15
18 they are members of ASHRAE, but they're from all over. 10:19
19 MR. CUNNINGHAM: Could I just ask, are 10:13
20 we talking about the project committee here? 10:14
21 Are we talking about the executive committee? 10:16
22 Are we talking about the previous questions? 10:18
23 MR. BECKER: The standards committee as 10:19
24 a whole. 10:10
25 MR. CUNNINGHAM: The standards 10:11
Page 48

1 committee 10:12
2 MR BECKER: Yeah 10:13
3 MR CUNNINGHAM: For a specific 10:13
4 standard? I just wanted to make sure we're 10:14
5 clear here 10:15
6 Q (BY MR BECKER) How many standards 10:11
7 committees are there? 10:12
8 A There's project committees, and those overdo 10:13
9 the standards, but the standards committee is one 10:17
10 Q There's just one standards committee? 10:19
11 A With the -- right, with the subcommittees 10:11
12 Q And what's the difference between the 10:17
13 projects committees and the standards committees? 10:19
14 A A project committee is the one that is -- is 10:11
15 the group that's responsible for writing the standard 10:13
16 Standards committee is an over -- oversight committee 10:18
17 THE COURT REPORTER: "Is an oversight"? 10:15
18 THE WITNESS: Yes 10:19
19 Q (BY MR BECKER) And are any ASHRAE employees 10:13
20 members of the project committees? 10:16
21 A No 10:18
22 Q Are the members of the project committees 10:13
23 people from various interest categories -- 10:19
24 A Yes 10:13
25 Q -- as you had defined previously? 10:13
Page 49

1 A Yes. 10:16
2 Q And are the project committee membership -- 10:16
3 memberships balanced based off of those interest 10:11
4 categories? 10:14
5 A Yes. Whatever interest categories the 10:16
6 project committee has, then they're balanced based on 10:18
7 the number of project committees. That doesn't mean, 10:12
8 you know, if there's 30 people and you have five 10:14
9 interest categories, there's six in each. It means no 10:17
10 more than 50 percent in one interest -- interest 10:14
11 category. 10:17
12 Q So why is it that these people who are not 10:13
13 ASHRAE employees participate in the project committees? 10:10
14 MR. CUNNINGHAM: Object to form. 10:16
15 THE WITNESS: I would say because either 10:18
16 they really like that topic, it may affect -- 10:10
17 you know, it may be because it affects 10:14
18 something that they do in their business. 10:16
19 They may be in the -- in the code arena and 10:18
20 they want to make sure it's written so that 10:13
21 you can adopt it in code. It could be a 10:16
22 number of reasons why they choose to 10:18
23 participate. 10:10
24 Q (BY MR. BECKER) And why is it that they'd 10:16
25 want to participate for a standard that would be 10:18
Page 50

1 adopted into code? 10:12
2 MR. CUNNINGHAM: Object to form. 10:14
3 THE WITNESS: My -- my guess would be 10:17
4 that, you know, it's going to affect their -- 10:18
5 their business somehow or the -- you know, or 10:12
6 the jurisdiction in which they work. 10:16
7 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 10:12
8 you what's been previously marked as Exhibit 1076. 10:13
9 This is Defendant Public.Resource.Org's Amended Notice 10:19
10 of Rule 30(b)(6) Deposition of American Society of 10:13
11 Heating, Refrigeration, and Air-Conditioning Engineers, 10:18
12 Inc. And this document had been previously introduced 10:18
13 in Mr. Comstock's deposition. 10:13
14 A Okay. 10:16
15 Q Have you seen this document before, 10:17
16 Ms. Reiniche -- excuse me, Ms. Reiniche? 10:19
17 A Yes. 10:18
18 Q And when did you first see this document 10:16
19 before, to your recollection? 10:10
20 MR. CUNNINGHAM: So I'm -- Matt, this 10:11
21 question is obviously fine, but I just want 10:13
22 to caution the witness to not go into the 10:15
23 substance of any communications that may have 10:18
24 occurred between you and counsel. 10:13
25 THE WITNESS: I probably would have seen 10:15
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1 this when we first tried to -- started trying 10:15
2 to schedule my deposition. I'm guessing 10:19
3 February. 10:11
4 Q (BY MR. BECKER) And have you reviewed the 10:14
5 topics of examination that's starting on page 4? 10:16
6 A Yes. 10:13
7 Q And you're aware that you are here as a 10:17
8 30(b)(6) designee for ASHRAE with regards to particular 10:19
9 topics of examination? 10:16
10 A Yes. 10:17
11 Q And that means that -- that you are expected 10:17
12 to prepare and be knowledgeable as to those particular 10:10
13 topics, correct? 10:13
14 A Yes. 10:14
15 Q And those topics are, topic number 1, "The 10:16
16 process and activities of developing the works at 10:11
17 issue, including participation of government and 10:14
18 private sector personnel in standards development." 10:17
19 A Yes. 10:10
20 Q And did you prepare for that topic? 10:11
21 A Yes. 10:13
22 Q And have you been using your knowledge of 10:17
23 that topic in the answers that you had given me earlier 10:19
24 today concerning the standards committee and project 10:13
25 committee? 10:18
Page 52

1 A Yes. 10:19
2 Q And have you been using your knowledge with 10:11
3 regards to that topic as it applies to the other 10:13
4 answers that you've provided me about the ASHRAE's 10:16
5 operations? 10:19
6 A Yes. 10:10
7 Q And the other topics that you have prepared 10:10
8 for today include topic number 2, correct? 10:12
9 A For the copyright? 10:11
10 Q For topic number 2, "All elements of the 10:12
11 chain of title of copyright ownership, including 10:15
12 copyright authorship and ownership of component parts 10:19
13 of the works at issue in this case"? 10:13
14 A Yes. 10:14
15 Q And you've also prepared for topic number 3, 10:17
16 "The authority of persons executing copyright 10:10
17 assignment forms in favor of you to convey the 10:13
18 copyright rights in their works or expression, 10:17
19 including but not limited to evidence of authority of 10:19
20 employees to assign copyrights they do not own 10:12
21 individually"? 10:15
22 A Yes. 10:16
23 Q On to page 5. You've also prepared for topic 10:13
24 number 6; is that correct? 10:17
25 A Yes. 10:11
Page 53

<p>1 Q And you have also prepared for topic 10:15 2 number 11; is that correct? 10:18 3 A Yes. 10:20 4 Q And on to page 6, you have also prepared for 10:27 5 topic number 15; is that correct? 10:23 6 A Yes. 10:27 7 Q And you've also prepared for topic number 16; 10:29 8 is that correct? 10:23 9 A Yes. 10:23 10 Q And you've also prepared for topic number 17; 10:24 11 is that correct? 10:27 12 A Yes. 10:28 13 Q And you've also prepared for topic number 19; 10:29 14 is that correct? 10:23 15 A Yes. 10:23 16 Q And you've also prepared for topics 20, 21, 10:25 17 and 22; is that correct? 10:29 18 A Yes. 10:23 19 Q And you've also prepared for topic 25; is 10:28 20 that correct? 10:25 21 A Yes. 10:26 22 Q You've also prepared for topic number 26; is 10:27 23 that correct? 10:20 24 A Yes. 10:23 25 Q And have you also prepared for topic 10:25 Page 54</p>	<p>1 excuse me. 10:41 2 Ms. Reiniche, do you see that this is a 10:49 3 status report that has been filed in the -- this case? 10:41 4 A Yes. 10:46 5 Q And if you turn to page 3, do you see that it 10:40 6 says that it was submitted by Thane Rehn, counsel for 10:45 7 NFPA, with permission from counsel for ASTM, ASHRAE, 10:41 8 and Public Resource? 10:48 9 A Yes. 10:41 10 Q And turning to page 2, do you see under the 10:41 11 heading "Discovery Issues Pending from December 1 10:49 12 Hearing, ASHRAE," where it then says that "At the last 10:41 13 hearing, the Court ordered ASHRAE to produce assignment 10:48 14 forms and lists of persons who signed those forms. For 10:42 15 pre-2010 forms, ASHRAE was ordered to produce lists of 10:45 16 project committee members because ASHRAE did not have 10:49 17 other lists of signees readily available. ASHRAE 10:41 18 represents it has completed its production of all lists 10:46 19 of all persons who signed forms for its 2010 version of 10:48 20 Standard 90.1, lists of project committee members for 10:44 21 pre-2010 versions of Standard 90.1 and ASHRAE's 10:47 22 assignment forms. With that representation, Public 10:42 23 Resource agrees the motion is now moot as to ASHRAE." 10:45 24 Do you see that? 10:48 25 A Yes. 10:49 Page 56</p>
<p>1 number 27; is that correct? 10:21 2 A Yes. 10:21 3 Q And have you also prepared for topics 28 and 10:21 4 29? 10:21 5 A Yes. 10:21 6 Q Thank you. 10:21 7 MR. CUNNINGHAM: Matt, we've been going 10:21 8 for about an hour and 20 minutes. If you're 10:21 9 about to -- 10:21 10 MR. BECKER: Yeah. 10:21 11 MR. CUNNINGHAM: -- switch topics, do 10:21 12 you want to take a break? 10:21 13 MR. BECKER: Let's take a break right 10:21 14 now. 10:21 15 MR. CUNNINGHAM: That's fine. 10:21 16 MR. BECKER: Yeah. 10:21 17 THE VIDEOGRAPHER: Going off the record 10:21 18 at 10:21. 10:21 19 (Recess taken.) 10:39 20 (Exhibit 1119, Exhibit 1120, and Exhibit 1121 10:39 21 marked for identification.) 10:39 22 THE VIDEOGRAPHER: Going on the record 10:39 23 at 10:44. 10:44 24 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 10:44 25 you what has been marked as Exhibit 119 -- or 1119, 10:44 Page 55</p>	<p>1 Q Ms. Reiniche, I'm handing you the exhibit 10:47 2 marked 1120. Could you tell me what this document is? 10:40 3 A This is a roster for Standard 90.1 project 10:45 4 committee. 10:41 5 MR. BECKER: And just for the record, 10:47 6 I'll note that this is the document that 10:40 7 starts at Bates number ASHRAE0002835. 10:42 8 Q (BY MR. BECKER) Ms. Reiniche, could you tell 10:49 9 me what the dates in the top left corner of this 10:40 10 document signify? 10:46 11 A That means it -- this says revised 9/7/2001. 10:47 12 That would mean that there was -- either something had 10:42 13 been approved or a correction made to the roster that 10:46 14 date and then printed 9/10/01, was when we ran the 10:41 15 report to print the roster. 10:45 16 Q Thank you. And what -- what does this roster 10:47 17 tell you? 10:43 18 A This roster tells me who the voting members 10:48 19 were, along with their interest categories, and who the 10:40 20 SPLS liaison was at the time, who the consultants were, 10:42 21 who the staff liaisons were, and who the technical 10:46 22 committee liaisons were on the roster. 10:41 23 Q And for the project committee, that would be 10:48 24 the people who were contributing text to the Standard 10:42 25 90.1 at that time; is that correct? 10:49 Page 57</p>

1 A Do you mean everyone on the roster, or do you 10:42
2 mean just project committee? 10:45
3 Q For everyone on the roster. 10:40
4 A For -- yes, for everyone on the roster. 10:44
5 Q And so are there people outside of the 10:40
6 project committee that would be contributing text to 10:43
7 Standard 90.1 at that time? 10:46
8 A Yes. 10:48
9 Q And would all of the people who were 10:40
10 contributing text to Standard 90.1 at that time be 10:43
11 listed on these pages of the roster? 10:46
12 A No. 10:48
13 Q So what other people would have been 10:49
14 contributing text to Standard 90.1 at that time? 10:42
15 A Commenters on -- draft goes out for comment 10:46
16 and those who submitted a continuous maintenance change 10:40
17 proposal. 10:43
18 Q And where does -- excuse me. 10:44
19 Does ASHRAE keep lists of commenters? 10:53
20 A We have lists of commenters. For this year, 10:58
21 I don't know, because our record retention policy 10:54
22 wouldn't require us to keep records this far back. 10:56
23 Q What was the ASHRAE's record retention 10:59
24 policy? 10:52
25 A We follow the ANSI policy of keeping records 10:53
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1 back to the last prior revisions. 10:50
2 Q And what is the last prior revision for 10:50
3 Standard 90.1? 10:50
4 A 2013. 10:50
5 Q So does that mean that ASHRAE would not have 10:51
6 records for the 2010 addition of 90.1? 10:51
7 A Not necessarily. We -- if they're 10:51
8 electronic, we probably still have them. There may be 10:51
9 some in paper format that are in Iron Mountain. I 10:51
10 can't guarantee that all the prior stuff is still 10:51
11 there, especially if it's not in electronic format. 10:51
12 Q And what is Iron Mountain? 10:51
13 A It's an off-site storage facility. 10:51
14 Q And does the -- your same answer that you 10:51
15 don't necessarily have records as to the 2007 and 2004 10:51
16 edition of Standard 90.1 also apply? 10:51
17 A That would be correct. Some -- if it's 10:51
18 electronic, then we probably still have it. But if 10:51
19 it's paper, it may or may not still be at Iron 10:51
20 Mountain. 10:51
21 Q At what point would ASHRAE have destroyed 10:52
22 these documents for Standard 20 -- 90.1 2010 edition, 10:52
23 if it had done so? 10:52
24 A If we destroyed it, we could have destroyed 10:52
25 it at the time of 2013 publishing. 10:52
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1 Q And would that have meant that the -- the 10:58
2 records for the 2007 edition of 90.1 would have been 10:52
3 destroyed at the time of the 2010 publishing? 10:59
4 A If they were destroyed, then yes. 10:52
5 Q You had mentioned before the term "continuous 10:59
6 maintenance change." What does that mean? 10:53
7 A Standard 90.1 is on continuous maintenance, 10:56
8 so anyone at any time can propose a change to the 10:59
9 standard. It could be a project committee member or 10:53
10 the public. If it's the public, then there's a 10:56
11 continuous maintenance change proposal form that gets 10:51
12 submitted. 10:54
13 Q And similarly, for the continuous maintenance 10:56
14 change proposal forms, would those also have been 10:51
15 destroyed? 10:54
16 A They could have been destroyed. 10:56
17 Q Who would know whether or not these documents 10:52
18 for the 2010 prior editions of ASHRAE Standard 90.1 10:55
19 were or were not destroyed? 10:50
20 MR. CUNNINGHAM: I'm going to object 10:54
21 that the line of questioning about document 10:56
22 retention policy is outside the scope of the 10:58
23 30(b)(6) topics. 10:52
24 You can answer. 10:54
25 THE WITNESS: Okay. I would -- I -- 10:57
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1 there is a log of files that we keep that are 10:53
2 at Iron Mountain. I have access to those 10:54
3 logs, can find out what's there. I would not 10:54
4 know what was or was not destroyed unless I 10:54
5 brought every single box back from Iron 10:54
6 Mountain, assuming they are all labeled 10:54
7 correctly. 10:54
8 Q (BY MR. BECKER) Ms. Reiniche, looking at 10:54
9 Exhibit 1119 on page 2, where it says that ASHRAE was 10:55
10 ordered to produce lists of project committee members, 10:55
11 does Exhibit 1120 provide that list of project 10:55
12 committee members for Standard 90.1? 10:55
13 MR. CUNNINGHAM: Objection to form. 10:55
14 THE WITNESS: This is only at one point 10:55
15 in time, so this isn't every single one. 10:55
16 This is at one point. 10:55
17 Q (BY MR. BECKER) But would it provide that 10:55
18 for that one point in time? 10:55
19 A Yes. 10:55
20 Q Ms. Reiniche, I'm handing you what has been 10:56
21 marked as Exhibit 1121 -- 10:56
22 A Okay. 10:56
23 Q -- which reads "ASHRAE Roster." Could you 10:56
24 tell me what this is? 10:56
25 A This is the roster that would have been -- 10:56
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<p>1 for 90.1 that would have been published on 8/7 of '02. 10:56</p> <p>2 (Exhibit 1122 marked for identification.) 10:56</p> <p>3 Q (BY MR. BECKER) Thank you. 10:56</p> <p>4 And I'm handing you what has been marked as 10:50</p> <p>5 Exhibit 1122. Could you tell me what this document is? 10:53</p> <p>6 A This is the roster for 90.1 that was printed 10:57</p> <p>7 on September 19th, 2002. 10:50</p> <p>8 (Exhibit 1123 marked for identification.) 10:51</p> <p>9 Q (BY MR. BECKER) I'm handing you what's been 10:54</p> <p>10 marked as Exhibit 1123, Bates number ASHRAE0002610. 10:56</p> <p>11 Could you tell me what this document is? 10:54</p> <p>12 A This is the roster for 90.1 that was printed 10:56</p> <p>13 March 23rd, 2003. 10:59</p> <p>14 (Exhibit 1124 marked for identification.) 10:55</p> <p>15 Q (BY MR. BECKER) I'm handing you what's been 10:53</p> <p>16 marked as Exhibit 1124, Bates number ASHRAE0002578. 10:55</p> <p>17 Could you tell me what this document is? 10:52</p> <p>18 A This is the roster for 90.1 as of 10:54</p> <p>19 August 27th, 2004. 10:58</p> <p>20 (Exhibit 1125 marked for identification.) 10:53</p> <p>21 Q (BY MR. BECKER) I'm handing you what's been 10:57</p> <p>22 marked as Exhibit 1125, ASHRAE Bates number 0002847. 10:58</p> <p>23 Could you tell me what this document is? 10:55</p> <p>24 A This is the roster for 90.1 as of December 6, 10:57</p> <p>25 2005. 10:51</p> <p style="text-align: right;">Page 62</p>	<p>1 December 17th, 2008. 11:00</p> <p>2 (Exhibit 1130 marked for identification.) 11:02</p> <p>3 Q (BY MR. BECKER) I'm handing you what's been 11:01</p> <p>4 marked as Exhibit 1130, Bates number ASHRAE0016583. 11:02</p> <p>5 Could you tell me what this document is? 11:00</p> <p>6 A This is the roster for 90.1 as of July 21st, 11:02</p> <p>7 2009. 11:07</p> <p>8 (Exhibit 1131 marked for identification.) 11:09</p> <p>9 Q (BY MR. BECKER) I'm handing you what has 11:01</p> <p>10 been marked as Exhibit 1131, Bates number 11:02</p> <p>11 ASHRAE0005359. Could you tell me what this document 11:06</p> <p>12 is, please? 11:00</p> <p>13 A This is the roster for 90.1 as of 11:01</p> <p>14 February 19th, 2010. 11:04</p> <p>15 Q Looking over the ASHRAE rosters that I've 11:00</p> <p>16 just provided you as these exhibits, is there any 11:02</p> <p>17 reason why you would think that these are not authentic 11:06</p> <p>18 documents that have been provided by ASHRAE? 11:00</p> <p>19 A No. 11:03</p> <p>20 Q And in your role at ASHRAE, are you familiar 11:00</p> <p>21 with these rosters? 11:03</p> <p>22 A Yes. 11:05</p> <p>23 Q And have you used these rosters in your daily 11:06</p> <p>24 line of work? 11:02</p> <p>25 A Yes. 11:02</p> <p style="text-align: right;">Page 64</p>
<p>1 (Exhibit 1126 marked for identification.) 10:58</p> <p>2 Q (BY MR. BECKER) I'm handing you what's been 10:58</p> <p>3 marked as Exhibit 1126, ASHRAE0002872. Could you tell 10:58</p> <p>4 me what this document is? 10:59</p> <p>5 A This is the roster for 90.1 as of April 4th, 10:59</p> <p>6 2006. 10:59</p> <p>7 (Exhibit 1127 marked for identification.) 10:59</p> <p>8 Q (BY MR. BECKER) I'm handing you what's been 10:59</p> <p>9 marked as Exhibit 1127, Bates number ASHRAE0002895. 10:59</p> <p>10 Could you tell me what this document is? 10:59</p> <p>11 A This is the roster for 90.1 as of May 5th -- 10:59</p> <p>12 I mean, May 3rd, 2007. 10:59</p> <p>13 (Exhibit 1128 marked for identification.) 10:59</p> <p>14 Q (BY MR. BECKER) I'm handing you what has 10:59</p> <p>15 been marked as Exhibit 1128, Bates number 10:59</p> <p>16 ASHRAE0013632. Could you tell me what this document 10:59</p> <p>17 is? 11:00</p> <p>18 A This is the roster for 90.1 as of June 16th, 11:00</p> <p>19 2008. 11:00</p> <p>20 (Exhibit 1129 marked for identification.) 11:00</p> <p>21 Q (BY MR. BECKER) I'm handing you what's been 11:00</p> <p>22 marked as Exhibit 1129 of -- Bates number 11:00</p> <p>23 ASHRAE0002902. Could you tell me what this document 11:00</p> <p>24 is? 11:00</p> <p>25 A This is the roster for 90.1 as of 11:00</p> <p style="text-align: right;">Page 63</p>	<p>1 (Exhibit 1132 marked for identification.) 11:07</p> <p>2 Q (BY MR. BECKER) I'm handing you what's been 11:05</p> <p>3 marked as Exhibit 1132, Bates number ASHRAE0002467. 11:06</p> <p>4 Could you tell me what this document is, please? 11:03</p> <p>5 A This is the report for proposals received 11:05</p> <p>6 under continuous maintenance for 90.1. It would have 11:09</p> <p>7 been to the 90.1 2001 version printed January 5th, 11:03</p> <p>8 2004. 11:00</p> <p>9 Q And what does this document tell us? 11:01</p> <p>10 A This document tells me who submitted change 11:02</p> <p>11 proposals. It gives their proposer number, what 11:06</p> <p>12 proposal number it is, when it was received and how it 11:00</p> <p>13 came in. 11:03</p> <p>14 Q And does the proposer number correlate to 11:00</p> <p>15 something else? 11:02</p> <p>16 A The proposal -- that's just how the committee 11:02</p> <p>17 tracks it so they know which proposal they're doing. 11:04</p> <p>18 It gets marked on their form. 11:06</p> <p>19 Q Can multiple people be affiliated with a 11:00</p> <p>20 single proposal? 11:09</p> <p>21 A They could. 11:03</p> <p>22 Q Is this a document that ASHRAE would 11:01</p> <p>23 ordinarily retain, rather than destroying with its 11:05</p> <p>24 document destruction policy, to your knowledge? 11:08</p> <p>25 MR. CUNNINGHAM: Object to form. 11:00</p> <p style="text-align: right;">Page 65</p>

<p>1 THE WITNESS: To my knowledge, it is 11:01 2 probably something we keep it's a -- if it 11:04 3 was entered in the database. At the time, we 11:06 4 had the database that tracks them. And 11:09 5 provided there's not an issue with the 11:01 6 database, then it would be kept. 11:04 7 Q (BY MR. BECKER) And what database are you 11:05 8 referring to? 11:06 9 A We have a continuous maintenance change 11:07 10 proposal access database. 11:09 11 Q And do you know when ASHRAE first started 11:02 12 using that database? 11:05 13 A Around 2003. 11:08 14 Q What kind of information does that database 11:04 15 contain? 11:07 16 A What you see in this report, which is the 11:07 17 proposer, the number, proposal date, when it was 11:00 18 received. And then there -- there will be a date that 11:03 19 isn't shown on here that tells when the committee would 11:07 20 have responded so that we can close out the proposal. 11:01 21 Q And does the database also contain the 11:06 22 content of the proposal itself? 11:00 23 A No. 11:02 24 Q Where would someone find the content of the 11:04 25 proposal itself? 11:07</p> <p style="text-align: right;">Page 66</p>	<p>1 A No. 11:07 2 Q Why is that? 11:07 3 A They just aren't using it -- there may have 11:07 4 been one way back when they did everything in paper, 11:07 5 but we don't use a Task Sheet 9 now. 11:07 6 (Exhibit 1133 marked for identification.) 11:08 7 Q (BY MR. BECKER) I'm handing you what's been 11:08 8 marked as Exhibit number 1133. This is Bates number 11:08 9 ASHRAE0002469. Could you tell me what this document 11:08 10 is? 11:08 11 A These are proposals received for continuous 11:08 12 maintenance of ASHRAE Standard 90.1 2004 dated as of 11:08 13 January 4th, 2005. 11:08 14 Q For both Exhibit 1132 and 1133, it appears 11:08 15 that the dates that the proposals were received -- 11:08 16 excuse me, let me say that again. 11:08 17 For Exhibits 1132 and 1133, it appears that 11:08 18 the date of the document in the top right corner is 11:08 19 subsequent to the year of the standard itself; is that 11:09 20 correct? 11:09 21 A You mean -- 11:09 22 Q Let me clarify. For -- for Exhibit 1132, 11:09 23 that exhibit pertains to Standard 90.1 2001, but the 11:09 24 document itself is from January 5th, 2004; is that 11:09 25 correct? 11:09</p> <p style="text-align: right;">Page 68</p>
<p>1 A If it was -- when we were saving 11:09 2 electronically, then there will be a -- what we call a 11:03 3 task sheet that we save on our network drive where 11:06 4 they're saved. And then if not, it's in paper. It 11:09 5 would have been sent to Iron Mountain. 11:03 6 Q And what would be the title of the document 11:06 7 that would have this -- one of these proposals in it? 11:09 8 A On the network drive? 11:05 9 Q Yeah. 11:06 10 MR. CUNNINGHAM: Object to form. 11:09 11 THE WITNESS: It's probably Task Sheet 6 11:01 12 would be the title. 11:05 13 Q (BY MR. BECKER) And what does -- are there 11:06 14 other task sheets? 11:03 15 A Yes. 11:04 16 Q And what are the other task sheets? 11:05 17 A There's a Task Sheet 1 for new projects; Task 11:08 18 Sheet 2 that was membership; Task Sheet 3 is title, 11:02 19 purpose and scope change. I don't believe we have a 4; 11:07 20 a Task Sheet 5, which is public review; Task Sheet 7, 11:02 21 which is publication; and Task Sheet 8, which is 11:07 22 appeals. And Task Sheet 10 might -- there might be a 11:03 23 Task Sheet 10 now. We might have switched the 11:07 24 continuous maintenance to that. 11:01 25 Q Is there a Task Sheet 9? 11:03</p> <p style="text-align: right;">Page 67</p>	<p>1 A That's correct. 11:05 2 Q And why is that? 11:05 3 A That would have been at the one-year mark -- 11:07 4 well, they have 13 months to -- to respond to 11:02 5 continuous maintenance change proposals within a year, 11:05 6 so this would have been printed prior to their January 11:07 7 2004 meeting, because we would want to know what the 11:01 8 status of the continuous maintenance change proposals 11:05 9 were at that time. 11:10 10 Q The proposals that were reflected here, would 11:11 11 those be -- if made effective, would those be made 11:16 12 effective in Standard 90.1 2001 or in a later version? 11:15 13 A A later version. 11:10 14 Q So the proposals reflected in Exhibit 1132, 11:19 15 would those, if they had been enacted, be enacted into 11:13 16 Standard 90.1 2004? 11:18 17 A Yes. 11:10 18 (Exhibit 1134 marked for identification.) 11:12 19 Q (BY MR. BECKER) I'm handing you what's been 11:10 20 marked as Exhibit 1134, Bates number ASHRAE0022821. 11:11 21 Could you tell me what this document is, please? 11:19 22 A This is the form to comment on a public 11:12 23 review draft for an addendum to 90.1 2004. 11:17 24 Q And do you see where it says "Number 2, 11:17 25 copyright release"? 11:10</p> <p style="text-align: right;">Page 69</p>

<p>1 A Yes. 11:12</p> <p>2 Q What is the significance of the copyright 11:12</p> <p>3 release? 11:12</p> <p>4 MR. CUNNINGHAM: Object to form. 11:12</p> <p>5 THE WITNESS: It -- the significance of 11:12</p> <p>6 it is when the commenter submits their 11:12</p> <p>7 comments, they are giving ASHRAE the 11:12</p> <p>8 nonexclusive rights to use whatever material 11:12</p> <p>9 they submit in their comments to change or 11:12</p> <p>10 modify the standard and then ASHRAE owns the 11:12</p> <p>11 copyright, and they don't. 11:12</p> <p>12 MR. BECKER: I'm sorry, Counsel, will 11:12</p> <p>13 you mind elaborating on the reason for your 11:12</p> <p>14 objection? 11:12</p> <p>15 MR. CUNNINGHAM: It calls for a legal 11:12</p> <p>16 conclusion. 11:12</p> <p>17 Q (BY MR. BECKER) Why does ASHRAE include the 11:12</p> <p>18 copyright release in this document? 11:12</p> <p>19 MR. CUNNINGHAM: Object to form. 11:12</p> <p>20 THE WITNESS: We include it so that we 11:12</p> <p>21 can include the material in -- in the 11:12</p> <p>22 document that they're commenting on without 11:12</p> <p>23 having to get copyright permission; because 11:13</p> <p>24 they're giving it, we don't have to go back. 11:13</p> <p>25 They're giving it when they sign it. 11:13</p> <p style="text-align: right;">Page 70</p>	<p>1 A This is a document to submit a continuous 11:11</p> <p>2 maintenance change proposal. 11:16</p> <p>3 Q Does this document contain a copyright 11:10</p> <p>4 release as well? 11:14</p> <p>5 A Yes. 11:15</p> <p>6 Q Could you please mark on the page where the 11:12</p> <p>7 copyright release is? 11:16</p> <p>8 (Witness complied with the request of counsel.) 11:13</p> <p>9 A There's two spots. 11:13</p> <p>10 MR. CUNNINGHAM: I'm going to go ahead 11:15</p> <p>11 and object again to form here, Matt. 11:19</p> <p>12 Q (BY MR. BECKER) And those two spots you've 11:18</p> <p>13 marked with a number 1 and number 2; is that correct? 11:19</p> <p>14 A That's correct. 11:12</p> <p>15 Q Why does ASHRAE use two copyright releases on 11:12</p> <p>16 this form? 11:19</p> <p>17 MR. CUNNINGHAM: Object to form. 11:10</p> <p>18 THE WITNESS: Actually, I think we 11:11</p> <p>19 allowed it so they could either sign it and 11:11</p> <p>20 send it in or they could put an electronic 11:14</p> <p>21 signature in. I just think there's a 11:17</p> <p>22 signature line that we missed when we made 11:18</p> <p>23 the form. 11:10</p> <p>24 Q (BY MR. BECKER) So this form should have 11:13</p> <p>25 a -- a signature line below the first copyright 11:14</p> <p style="text-align: right;">Page 72</p>
<p>1 Q (BY MR. BECKER) Does ASHRAE believe that it 11:10</p> <p>2 owns the copyright if somebody signs this form? 11:11</p> <p>3 A Yes. 11:16</p> <p>4 Q Would ASHRAE accept a form like this if it 11:12</p> <p>5 had not been signed and dated? 11:16</p> <p>6 A No. 11:18</p> <p>7 Q Do you know of any instance in which ASHRAE 11:11</p> <p>8 has accepted a form like this if it has not been signed 11:14</p> <p>9 and dated? 11:17</p> <p>10 A No. 11:18</p> <p>11 Q Do you have any reason to believe that this 11:11</p> <p>12 document produced by ASHRAE is not an authentic 11:13</p> <p>13 document? 11:16</p> <p>14 A No. 11:16</p> <p>15 Q And are you familiar with this document 11:11</p> <p>16 through your work at ASHRAE? 11:13</p> <p>17 A Yes. 11:16</p> <p>18 Q Is this one of the documents that you review? 11:19</p> <p>19 A Yes. 11:13</p> <p>20 (Exhibit 1135 marked for identification.) 11:16</p> <p>21 Q (BY MR. BECKER) I'm handing you what has 11:19</p> <p>22 been marked as Exhibit 1135, Bates number 11:12</p> <p>23 ASHRAE0022819. Do you recognize this document? 11:15</p> <p>24 A Yes. 11:19</p> <p>25 Q And what is this document? 11:19</p> <p style="text-align: right;">Page 71</p>	<p>1 release, but it does not? 11:10</p> <p>2 A Correct. 11:11</p> <p>3 Q And if this form were printed out and sent to 11:13</p> <p>4 ASHRAE, would ASHRAE reject it if someone had not 11:19</p> <p>5 signed below the first copyright release? 11:13</p> <p>6 A On this one, we would have allowed either the 11:17</p> <p>7 electronic signature if they printed it with the 11:10</p> <p>8 electronic or if they had signed it, because the 11:11</p> <p>9 language was the same. 11:14</p> <p>10 Q Would ASHRAE accept this document if someone 11:19</p> <p>11 had not typed in their name where it says "I, insert 11:14</p> <p>12 name"? 11:10</p> <p>13 A If -- if they did not sign it and did not 11:10</p> <p>14 insert their name, we would not accept it. 11:13</p> <p>15 Q Comparing documents Exhibits 1134 and 1135, 11:17</p> <p>16 is the copyright release in 1134 the same as the 11:12</p> <p>17 copyright release -- the first copyright release in 11:10</p> <p>18 1135? 11:13</p> <p>19 A There is missing -- oh, no, I just can't read 11:10</p> <p>20 right. No, they're the same. 11:17</p> <p>21 Q And comparing the first and second copyright 11:12</p> <p>22 release in 1135, can you say what the differences 11:16</p> <p>23 between those two are? 11:10</p> <p>24 MR. CUNNINGHAM: I'm just going to 11:11</p> <p>25 object. Matt, I think the document speaks 11:12</p> <p style="text-align: right;">Page 73</p>

<p>1 for itself here 11:14</p> <p>2 THE WITNESS: The -- the only difference 11:11</p> <p>3 is one we allow electronic signature, and the 11:12</p> <p>4 other is just a hand -- is a handwritten 11:15</p> <p>5 signature 11:10</p> <p>6 Q (BY MR BECKER) Thank you 11:11</p> <p>7 (Exhibit 1136 marked for identification) 11:14</p> <p>8 Q (BY MR BECKER) I'm handing you what's been 11:12</p> <p>9 marked as Exhibit 1136, Bates number ASHRAE0022823 Do 11:14</p> <p>10 you recognize this document? 11:10</p> <p>11 A Yes 11:12</p> <p>12 Q And what is this document? 11:13</p> <p>13 A This is the -- the form to comment on a 11:14</p> <p>14 public review draft standard guideline or addendum 11:17</p> <p>15 THE COURT REPORTER: Can we go off the 11:10</p> <p>16 record a second? 11:14</p> <p>17 THE VIDEOGRAPHER: Going off the record 11:17</p> <p>18 at 11:19 11:18</p> <p>19 (Recess taken) 11:27</p> <p>20 THE VIDEOGRAPHER: Going on the record 11:28</p> <p>21 at 11:22 11:28</p> <p>22 Q (BY MR BECKER) Ms Reiniche, looking again 11:26</p> <p>23 on -- at Exhibit 1136, if you look at the second page 11:26</p> <p>24 of the exhibit, could you tell me what the significance 11:22</p> <p>25 of the date on the second page is? 11:27</p> <p style="text-align: right;">Page 74</p>	<p>1 Q 1136. 11:22</p> <p>2 A Yes. 11:25</p> <p>3 Q And which is the same as the copyright 11:26</p> <p>4 releases on Exhibit 1135; is that correct? 11:20</p> <p>5 A That's correct. 11:25</p> <p>6 Q And Exhibit 1137 says that it was revised on 11:21</p> <p>7 January 30th, 2006 on the back of the document; is that 11:26</p> <p>8 correct? 11:20</p> <p>9 A That's correct. 11:21</p> <p>10 (Exhibit 1138 marked for identification.) 11:28</p> <p>11 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 11:27</p> <p>12 you what's been marked as Exhibit 1138, Bates number 11:27</p> <p>13 ASHRAE0022820. Do you recognize this document? 11:21</p> <p>14 A Yes. 11:26</p> <p>15 Q And what is this document? 11:27</p> <p>16 A This is the form to submit a proposed change 11:28</p> <p>17 to an ASHRAE standard under continuous maintenance. 11:21</p> <p>18 Q And does this document contain the same two 11:27</p> <p>19 copyright releases that were featured in the previous 11:20</p> <p>20 exhibit, 1137? 11:24</p> <p>21 A Yes. 11:29</p> <p>22 Q And at the bottom of the page, does this 11:22</p> <p>23 document show that it was revised on March 9th, 2007? 11:24</p> <p>24 A Yes. 11:25</p> <p>25 (Exhibit 1139 marked for identification.) 11:21</p> <p style="text-align: right;">Page 76</p>
<p>1 A That was when we were -- we must have made a 11:23</p> <p>2 revision. So if we changed anything, even if it's one 11:23</p> <p>3 word, we put a new revision date on a form. 11:23</p> <p>4 Q And returning to Exhibit 1135, is that also 11:23</p> <p>5 what "revised 1/30/2006" means at the bottom of that 11:23</p> <p>6 document? 11:23</p> <p>7 A Yes. 11:23</p> <p>8 Q And returning to Exhibit 1134 at the back of 11:23</p> <p>9 that document where it says "REV 03-01-2004," is that 11:23</p> <p>10 also what that date means? 11:23</p> <p>11 A Yes. 11:24</p> <p>12 Q Thank you. 11:24</p> <p>13 (Exhibit 1137 marked for identification.) 11:24</p> <p>14 Q (BY MR. BECKER) Handing you what's been 11:24</p> <p>15 marked as Exhibit 1137. This is ASHRAE Bates number 11:24</p> <p>16 0022825. Do you recognize this document? 11:24</p> <p>17 A Yes. 11:24</p> <p>18 Q And what is this document? 11:24</p> <p>19 A This is a form for commenting on a public 11:24</p> <p>20 review draft to an ASHRAE standard, guideline or 11:24</p> <p>21 addendum. 11:24</p> <p>22 Q And does this document also contain the same 11:24</p> <p>23 copyright release -- excuse me, the same two copyright 11:24</p> <p>24 releases that had appeared on the previous exhibit? 11:24</p> <p>25 A Which one? 11:25</p> <p style="text-align: right;">Page 75</p>	<p>1 Q (BY MR. BECKER) I'm handing you what's been 11:26</p> <p>2 marked as Exhibit 1139. This is Bates number 11:26</p> <p>3 ASHRAE0022814. Do you recognize this document? 11:20</p> <p>4 A Yes. 11:24</p> <p>5 Q Could you tell me what this document is? 11:24</p> <p>6 A This is an Application for Project Committee 11:26</p> <p>7 Organizational Representative Membership form. 11:27</p> <p>8 Q Does this document include a copyright 11:27</p> <p>9 release under section 6? 11:20</p> <p>10 A Yes. 11:22</p> <p>11 Q Apart from referring to ASHRAE standard or 11:24</p> <p>12 guideline project committee, does this copyright 11:20</p> <p>13 release under section 6 of Exhibit 1139 appear the same 11:24</p> <p>14 as the copyright -- the first copyright release in 11:22</p> <p>15 Exhibit 1138? 11:23</p> <p>16 MR. CUNNINGHAM: Object to form. 11:26</p> <p>17 THE WITNESS: Actually, it differs. 11:20</p> <p>18 Q (BY MR. BECKER) How does it differ? 11:22</p> <p>19 A There's additional language included in 11:24</p> <p>20 Exhibit 1139. 11:29</p> <p>21 Q And could you tell me what that -- excuse me, 11:21</p> <p>22 could you tell me what that additional language is? 11:24</p> <p>23 A In the third sentence down, it adds, "to any 11:29</p> <p>24 contributions I make to documents prepared by or for 11:24</p> <p>25 such committee for ASHRAE publication." And -- and 11:28</p> <p style="text-align: right;">Page 77</p>

<p>1 then the rest is all the same. 11:22</p> <p>2 Q Could you tell me on what date Exhibit 1139 11:21</p> <p>3 was revised? 11:21</p> <p>4 A October 2009. 11:23</p> <p>5 (Exhibit 1140 marked for identification.) 11:31</p> <p>6 Q (BY MR. BECKER) Handing you what's been 11:35</p> <p>7 marked as Exhibit 1140. Do you recognize this 11:35</p> <p>8 document? 11:32</p> <p>9 A Yes. 11:32</p> <p>10 Q Could you tell me what this document is? 11:32</p> <p>11 A This is the ASHRAE Standard Guideline Project 11:34</p> <p>12 Committee Application for Individual Membership. 11:38</p> <p>13 Q And does this Exhibit 1140 include a 11:31</p> <p>14 copyright release under section 5? 11:34</p> <p>15 A Yes. 11:36</p> <p>16 Q Could you tell me if this copyright release 11:30</p> <p>17 differs in any way from the copyright release on 11:35</p> <p>18 Exhibit 1139? 11:30</p> <p>19 MR. CUNNINGHAM: Object to form. 11:33</p> <p>20 THE WITNESS: The only difference is 11:31</p> <p>21 that on form 1139, it says "elected as an 11:34</p> <p>22 organizational member" versus 1140, which is 11:30</p> <p>23 "as a member." 11:33</p> <p>24 Q (BY MR. BECKER) Are Exhibits 1139 and 11:32</p> <p>25 Exhibits 1140 documents that individuals are required 11:35</p> <p style="text-align: right;">Page 78</p>	<p>1 A No. 11:32</p> <p>2 Q Does ASHRAE ordinarily keep a document that 11:38</p> <p>3 would look like this in its redacted form? 11:36</p> <p>4 A Actually, I -- I would -- correct. If it was 11:30</p> <p>5 redacted, it was probably because it had contact -- or 11:32</p> <p>6 contact information of the individual on here, and that 11:36</p> <p>7 would have been why it would have been redacted. 11:38</p> <p>8 (Exhibit 1142 marked for identification.) 11:35</p> <p>9 Q (BY MR. BECKER) I'm handing you what's been 11:34</p> <p>10 marked as Exhibit 1142. This is ASHRAE Bates number 11:35</p> <p>11 0001618. With the exception of the different Bates 11:39</p> <p>12 numbers, does this document appear to you to be 11:33</p> <p>13 identical to the previous exhibit, Exhibit 1141? 11:36</p> <p>14 A Yes. 11:32</p> <p>15 (Exhibit 1143 marked for identification.) 11:32</p> <p>16 Q (BY MR. BECKER) I'm handing you what's been 11:38</p> <p>17 marked as Exhibit 1143. Could you tell me what this 11:30</p> <p>18 document is? 11:35</p> <p>19 A This is the Form for Continuous Maintenance 11:36</p> <p>20 Change Proposal. 11:39</p> <p>21 Q And do you recognize this document? 11:30</p> <p>22 A Yes. 11:32</p> <p>23 Q And could you tell me when this document was 11:37</p> <p>24 last revised? 11:30</p> <p>25 A January 30th, 2006. 11:31</p> <p style="text-align: right;">Page 80</p>
<p>1 to fill out in order to obtain membership with ASHRAE? 11:30</p> <p>2 A For project committees, yes. 11:37</p> <p>3 (Exhibit 1141 marked for identification.) 11:30</p> <p>4 Q (BY MR. BECKER) I'm handing you what's been 11:30</p> <p>5 marked as Exhibit 1141. Do you recognize this 11:31</p> <p>6 document? 11:36</p> <p>7 A Yes. 11:39</p> <p>8 Q Could you tell me what this document is? 11:30</p> <p>9 A This document is -- language includes our 11:33</p> <p>10 copyright information for electronic or -- or the 11:37</p> <p>11 signing. 11:31</p> <p>12 Q Does this document, Exhibit 1141, include the 11:36</p> <p>13 same two copyright releases that were seen in Exhibit 11:33</p> <p>14 1135? 11:39</p> <p>15 MR. CUNNINGHAM: Object to form. 11:38</p> <p>16 THE WITNESS: There's a few "and"s 11:36</p> <p>17 missing in the -- in -- in 1141 that are in 11:38</p> <p>18 1135. And in 1141, the signature line is 11:30</p> <p>19 included, which is not in 1135. But other 11:35</p> <p>20 than that, they're the same. 11:38</p> <p>21 Q (BY MR. BECKER) Thank you. 11:32</p> <p>22 Does this document appear to be redacted to 11:35</p> <p>23 you? 11:38</p> <p>24 A Yes. 11:38</p> <p>25 Q Do you know why this document is redacted? 11:39</p> <p style="text-align: right;">Page 79</p>	<p>1 Q And does this document have the same two 11:37</p> <p>2 copyright releases as in Exhibit 1135? 11:37</p> <p>3 A Yes. 11:37</p> <p>4 (Exhibit 1144 marked for identification.) 11:37</p> <p>5 Q (BY MR. BECKER) I'm handing you what's been 11:38</p> <p>6 marked as Exhibit 1144. Do you recognize this 11:38</p> <p>7 document? 11:38</p> <p>8 A Yes. 11:38</p> <p>9 Q Could you tell me what it is? 11:38</p> <p>10 A This is the Form for Commenting in a Public 11:38</p> <p>11 Review Draft ASHRAE Standard, Guideline or Addendum. 11:38</p> <p>12 Q And looking at the second page of this 11:38</p> <p>13 document, could you tell me the date on which it was 11:38</p> <p>14 revised? 11:38</p> <p>15 A March 1st, 2004. 11:38</p> <p>16 Q And does this document have the same 11:38</p> <p>17 copyright release as Exhibit 1134? 11:38</p> <p>18 A Yes. 11:39</p> <p>19 (Exhibit 1145 marked for identification.) 11:39</p> <p>20 Q (BY MR. BECKER) Handing you what's been 11:39</p> <p>21 marked as Exhibit 1145. This is Bates number 11:39</p> <p>22 ASHRAE0001606. Could you -- do you recognize this 11:39</p> <p>23 document? 11:39</p> <p>24 A Yes. 11:39</p> <p>25 Q Could you tell me what this document is? 11:39</p> <p style="text-align: right;">Page 81</p>

<p>1 A This is the Form for Commenting on a Public 11:39 2 Review Draft ASHRAE Standard, Guideline or Addendum 11:32 3 Q And could you tell me the date on which this 11:37 4 was revised? 11:39 5 A March 1st, 2004 11:33 6 Q And does this include the same copyright 11:34 7 release that was in the previous exhibit, 1144? 11:36 8 A Yes 11:46 9 (Exhibit 1146 marked for identification) 11:41 10 Q (BY MR. BECKER) I'm handing you what's been 11:49 11 marked as Exhibit 1146 Do you recognize this 11:40 12 document? 11:44 13 A Yes 11:44 14 MR. BECKER: And this -- just for the 11:47 15 record, this document is Bates number 11:49 16 ASHRAE0001600 11:41 17 Q (BY MR. BECKER) Could you tell me what this 11:45 18 document is? 11:47 19 A This is the Form for Submittal of a Proposed 11:48 20 Change to ASHRAE Standard Under Continuous Maintenance 11:41 21 Q Could you -- could you tell me the 11:47 22 significance of the date in the bottom left-hand 11:49 23 corner? 11:43 24 A That would have been the date it was revised 11:43 25 Q Does this document include the same copyright 11:43</p> <p style="text-align: right;">Page 82</p>	<p>1 A This is the Form for Commenting on a Public 11:43 2 Review Draft ASHRAE Standard, Guideline or Addendum. 11:43 3 Q Looking at the second page of this document, 11:43 4 could you tell me when this document was revised? 11:43 5 A January 30th, 2006. 11:43 6 Q Does this document under section 2, 11:43 7 "Copyright Release," have the same two copyright 11:43 8 releases that were in Exhibit 1135? 11:43 9 A In the first paragraph, in -- in the third 11:44 10 line down, instead of saying "the standard," like we 11:44 11 see in Exhibit 1135, in Exhibit 1148, it says "this 11:44 12 standard." 11:44 13 (Exhibit 1149 marked for identification.) 11:44 14 Q (BY MR. BECKER) I'm handing you what's been 11:44 15 marked as Exhibit 1149. Do you recognize this 11:44 16 document? 11:44 17 A Yes. 11:44 18 Q Could you tell me what this document is? 11:44 19 A This is the Form for Commenting on a Public 11:45 20 Review Draft, ASHRAE Standard, Guideline or Addendum. 11:45 21 MR. BECKER: For the record, I'll just 11:45 22 state that this is Bates number 11:45 23 ASHRAE0001610. 11:45 24 Q (BY MR. BECKER) Looking at the back of the 11:45 25 document, could you tell me the date on which this was 11:45</p> <p style="text-align: right;">Page 84</p>
<p>1 release under section 1 as was in Exhibit 1134? 11:41 2 A With the exception of splitting up a 11:41 3 sentence, it's exactly the same. There's an "and" in 11:41 4 1134 between "proposals" and "I understand" -- and "I 11:41 5 understand" that is not in 1146. 11:42 6 (Exhibit 1147 marked for identification.) 11:42 7 Q (BY MR. BECKER) I'm handing you what's been 11:42 8 marked as Exhibit 1147. This is Bates number 11:42 9 ASHRAE0001604. Do you recognize this document? 11:42 10 A Yes. 11:42 11 Q Could you tell me what this document is? 11:42 12 A This is a Continuous Maintenance Submittal 11:42 13 form. 11:42 14 Q And could you tell me when this document was 11:42 15 revised? 11:42 16 A January 30th, 2006. 11:42 17 Q Does this document include the same two 11:42 18 copyright -- copyright releases as in Exhibit 1135? 11:42 19 A Yes. 11:43 20 (Exhibit 1148 marked for identification.) 11:43 21 Q (BY MR. BECKER) I'm handing you what's been 11:43 22 marked as Exhibit 1148. Do you recognize this 11:43 23 document? 11:43 24 A Yes. 11:43 25 Q Could you tell me what this document is? 11:43</p> <p style="text-align: right;">Page 83</p>	<p>1 revised? 11:45 2 A January 30th, 2006. 11:45 3 Q Does this document, Exhibit 1149, have the 11:45 4 same copyright releases as in the previous exhibit, 11:45 5 1148? 11:45 6 A Yes. 11:45 7 (Exhibit 1150 marked for identification.) 11:45 8 Q (BY MR. BECKER) I'm handing you what's been 11:46 9 marked as Exhibit 1150. This is Bates number 11:46 10 ASHRAE0001605. Do you recognize this document? 11:46 11 A Yes. 11:46 12 Q And could you tell me what this document is? 11:46 13 A This is the Form for Submittal of a Proposed 11:46 14 Change to an ASHRAE Standard Under Continuous 11:46 15 Maintenance. 11:46 16 Q And could you tell me, looking at the bottom 11:46 17 right-hand corner, the date on which this was revised? 11:46 18 A March 9th, 2007. 11:46 19 Q And does Exhibit 1150 have the same two 11:46 20 copyright releases as Exhibit 1135? 11:46 21 A With the exception of an "and" that's in 11:47 22 paragraph -- in the second paragraph of 1135, where 11:47 23 it's between "proposals" and "I understand," it's the 11:47 24 same. 11:47 25 (Exhibit 1151 marked for identification.) 11:47</p> <p style="text-align: right;">Page 85</p>

<p>1 Q (BY MR. BECKER) I'm handing you what has 11:48 2 been marked as Exhibit 1151. Do you recognize this 11:40 3 document? 11:42 4 A Yes. 11:42 5 Q Could you tell me what this document is? 11:43 6 A This is an Application for Project Committee 11:45 7 Organizational Representative Membership. 11:47 8 Q And looking at the bottom left-hand corner, 11:41 9 could you tell me the date on which this was revised? 11:45 10 A October 2009. 11:48 11 Q Comparing the copyright release -- excuse me. 11:40 12 Is there a copyright release under Exhibit -- 11:45 13 excuse me, section 6 of Exhibit 1151? 11:47 14 A Yes. 11:41 15 Q And comparing that copyright release on 11:43 16 Exhibit 1151 with the copyright release on 11:47 17 Exhibit 1139, can you tell me if they are identical? 11:42 18 A They are identical. 11:41 19 Q Thank you. 11:46 20 (Exhibit 1152 marked for identification.) 11:48 21 Q (BY MR. BECKER) Handing you Exhibit 1152, 11:41 22 Bates number ASHRAE0001616. Do you recognize this 11:43 23 document? 11:49 24 A Yes. 11:49 25 Q Could you tell me what this document is? 11:43</p> <p style="text-align: right;">Page 86</p>	<p>1 MR. BECKER: For the record, I'll note 11:57 2 that this is Bates number ASHRAE0001612. 11:58 3 Q (BY MR. BECKER) Are users of the ASHRAE 11:56 4 website required to fill in their name into the box 11:58 5 that says "Name of whoever is logged in to comment 11:54 6 would be entered here"? 11:57 7 MR. CUNNINGHAM: Objection to form. 11:59 8 THE WITNESS: In order to comment, any 11:52 9 member of the public would have to enter 11:55 10 their name as it would appear above that line 11:58 11 and hit "I agree" in order to comment in the 11:50 12 online comment database. 11:54 13 Q (BY MR. BECKER) Could you tell me who checks 11:55 14 that box for names? 11:58 15 A You can't go forward. If you click "I do not 11:51 16 agree," you cannot submit a comment. 11:53 17 Q If-- does somebody check whatever names are 11:56 18 put in there to make sure that they match with the 11:50 19 person who's submitting the comments? 11:53 20 A Do you mean can I physically tell if you were 11:58 21 signed in as somebody else and put their name in there? 11:52 22 Q Yes. 11:56 23 A I cannot physically tell that. 11:58 24 Q And if-- if I went on to the ASHRAE website 11:51 25 and I put in my name as just the letter Z and clicked 11:56</p> <p style="text-align: right;">Page 88</p>
<p>1 A This is the ASHRAE Standard Guideline Project 11:44 2 Committee Application for Individual Membership. 11:47 3 Q And could you tell me the date on which this 11:56 4 was revised? 11:57 5 A October 2009. 11:58 6 Q Comparing the -- excuse me. 11:52 7 Is there a copyright release at section 5 of 11:59 8 Exhibit 1152? 11:52 9 A Yes. 11:54 10 Q Comparing the copyright release on section 5 11:56 11 of Exhibit 1152 with the copyright release from 11:58 12 Exhibit 1151, could you tell me if there are any 11:52 13 differences between the two? 11:56 14 A The difference is on 1151, it's for an 11:55 15 organizational member; and 1152, it's a member. 11:59 16 Q Thank you. 11:56 17 (Exhibit 1153 marked for identification.) 11:56 18 Q (BY MR. BECKER) I'm handing you what's been 11:58 19 marked as Exhibit 1153. Do you recognize this 11:54 20 document? 11:50 21 A Yes. 11:51 22 Q Could you tell me what this document is? 11:54 23 A This is how you would enter a comment on the 11:55 24 online comment database with entering the -- your name 11:58 25 into that field and "I agree" in order to go forward. 11:52</p> <p style="text-align: right;">Page 87</p>	<p>1 "I agree," would it allow me to proceed? 11:53 2 A No. 11:56 3 Q And how does it stop me from proceeding? 11:57 4 A There is a name -- where you see "Name of 11:50 5 whoever is logged in to comment would be entered here," 11:53 6 the system generates the letters -- for example, for 11:56 7 mine, it would say Mrs. Stephanie R-E-I-N, is where it 11:51 8 ends up stop -- it goes to a certain amount of 11:55 9 characters. That's what I enter there and hit "I 11:58 10 agree." 11:51 11 Q So it might not allow you to enter your full 11:53 12 name? 11:56 13 A Correct. You have to enter whatever it shows 11:56 14 above there, because it's -- you know, it's got so 11:58 15 many -- the coding is such to so many characters. 11:52 16 Q And where would it show the person's name? 11:57 17 A Where you see "Name of whoever is logged in 11:59 18 to comment would be entered here," their name would 11:52 19 appear there. 11:56 20 Q Okay. Does this Exhibit 1153 include a 11:56 21 copyright release? 11:56 22 A Yes. 11:57 23 Q And is that the second paragraph on 11:51 24 Exhibit 1153? 11:54 25 A Yes. 11:56</p> <p style="text-align: right;">Page 89</p>

<p>1 Q And does this copyright release on 11:52 2 Exhibit 1153 appear identical to the second copyright 11:55 3 release on Exhibit 1135? 11:50 4 A Other than the fact you can't do the "I, 11:53 5 insert name," it starts with "I, hereby," it's the 11:56 6 same. 11:50 7 (Exhibit 1154 marked for identification.) 11:53 8 Q (BY MR. BECKER) I'm handing you what's been 11:50 9 marked as Exhibit 1154. Do you recognize this 11:50 10 document? 11:54 11 A Yes. 11:56 12 MR. BECKER: For the record, this is 11:58 13 Bates number ASHRAE0022827. 11:59 14 Q (BY MR. BECKER) Could you tell me what this 11:53 15 document is? 11:54 16 A This is the -- where you would go to log in 11:54 17 at the online comment database, and it shows me as 11:50 18 being logged in, because my name appears, 11:53 19 Mrs. Stephanie C. R-E-I-N. 11:57 20 Q And does this document, Exhibit 1154, include 11:59 21 a copyright release? 11:54 22 A Yes. 11:55 23 Q And is this copyright release identical to 11:56 24 the copyright release in Exhibit 1153? 11:58 25 A Yes. 11:59</p> <p style="text-align: right;">Page 90</p>	<p>1 A No. 11:53 2 MR. CUNNINGHAM: Object to the form on 11:55 3 that. 11:56 4 Q (BY MR. BECKER) Does ASHRAE see a difference 11:51 5 between copyright releases and copyright assignments? 11:54 6 MR. CUNNINGHAM: Object to the form. 11:57 7 THE WITNESS: No. 11:58 8 Q (BY MR. BECKER) Do you see a difference 11:51 9 between copyright releases and copyright assignments? 11:52 10 MR. CUNNINGHAM: Object insofar as it's 11:56 11 outside the scope. 11:59 12 THE WITNESS: No. 11:51 13 Q (BY MR. BECKER) Is there any way in which 11:56 14 someone who contributed text to Standards 90.1 or to 11:58 15 the 1993 ASHRAE handbook would have given copyright 12:05 16 rights to ASHRAE, other than through the copyright 12:04 17 releases that we have discussed today? 12:09 18 MR. CUNNINGHAM: Object to form. 12:03 19 THE WITNESS: Do you mean because their 12:08 20 company submitted -- they took language from 12:01 21 a different document and put it in there? 12:03 22 Q (BY MR. BECKER) I mean, does ASHRAE believe 12:06 23 that it owns the copyright in contributions to 12:08 24 Standard 90.1 or to the 1993 ASHRAE handbook by virtue 12:05 25 of any copyright assignments or releases, other than 12:00</p> <p style="text-align: right;">Page 92</p>
<p>1 Q Ms. Reiniche, do you know when this copyright 11:50 2 release was first added to the ASHRAE website? 11:57 3 A It would have been when we started the online 11:54 4 comment database, which was around 2005 -- no, I'm 11:56 5 sorry, around 2008. 11:57 6 Q And for the online comment database, has it 11:54 7 always required individuals to enter their name and 11:58 8 click "I agree" -- 11:53 9 A Yes. 11:54 10 Q -- in order to gain access? 11:55 11 Ms. Reiniche, I will represent to you that we 11:59 12 have now produced before you as exhibits all of the 11:51 13 blank copyright releases that ASHRAE has produced to 11:55 14 Public Resource through discovery. 11:50 15 Are you aware of any other copyright releases 11:53 16 that ASHRAE uses in order to get copyright for 11:57 17 Standards 90.1 or for the 1993 ASHRAE handbook that 11:53 18 have not been produced to Public Resource? 11:50 19 A I'm not aware of anything that has not been 11:53 20 produced. 11:55 21 Q Is ASHRAE aware of any copyright releases 11:57 22 that have not been produced to Public Resource? 11:50 23 A No. 11:54 24 Q Is ASHRAE aware of any copyright assignments 11:57 25 that have not been produced to Public Resource? 11:51</p> <p style="text-align: right;">Page 91</p>	<p>1 those that we have discussed today? 12:04 2 A No. 12:08 3 Q And does ASHRAE believe that it owns 12:09 4 copyright in contributions to Standards 90.1 or to the 12:02 5 1993 handbook by virtue of any other means, other than 12:06 6 those copyright releases that we have discussed today? 12:01 7 A No. 12:05 8 MR. CUNNINGHAM: I'm going to object 12:08 9 insofar as the last few questions called for 12:09 10 legal conclusions. 12:01 11 MR. BECKER: I think that we can stop 12:01 12 for lunch here, if that works for the rest of 12:03 13 you. 12:05 14 THE VIDEOGRAPHER: Going off the record 12:06 15 at 12:01. 12:07 16 (Lunch recess.) 13:04 17 (Exhibit 1155 marked for identification.) 13:05 18 THE VIDEOGRAPHER: Going on the record 13:02 19 at 13:03. 13:03 20 Q (BY MR. BECKER) Ms. Reiniche, we're back on 13:03 21 the record now. 13:05 22 Did you have anything that you had remembered 13:06 23 or wanted to add to prior testimony today? 13:09 24 A No. 13:03 25 Q Thank you. 13:04</p> <p style="text-align: right;">Page 93</p>

<p>1 Now, Ms. Reiniche, I'm handing you what's 13:05 2 been marked as Exhibit 1155. It's Bates number 13:09 3 ASHRAE0001598. So, Ms. Reiniche, my sincere apologies. 13:07 4 I had missed this one last document that pertains to 13:04 5 the subject that we were discussing prior to lunch. 13:08 6 Can you tell me if you recognize this 13:02 7 document? 13:04 8 A Yes. 13:04 9 Q And can you tell me what this document is? 13:05 10 A This is an Application for Membership on 13:09 11 ASHRAE Standard or Guideline Project Committee. 13:01 12 Q And can you tell me if this document contains 13:03 13 a copyright assignment? 13:06 14 A Yes, under number 7. 13:08 15 Q Okay. And could you tell me if after seeing 13:09 16 this document if that changes any of your answers 13:01 17 earlier today? 13:05 18 A No, it does not. 13:05 19 Q Thank you. 13:07 20 Ms. Reiniche, could you walk me through at a 13:07 21 high level how ASHRAE standard -- standards are 13:00 22 created? 13:03 23 A Sure. So it starts with a title, purpose and 13:03 24 scope being submitted for consideration to be approved. 13:08 25 That would have been approved by the procedures, policy 13:03 Page 94</p>	<p>1 publication. If they need to make more changes, it 13:06 2 will go back to the public review process. 13:08 3 Q So in this process that you were describing, 13:01 4 it's the standards committee that would begin drafting 13:05 5 the document; is that correct? 13:08 6 A No. It's the project committee that drafts 13:09 7 the document. 13:01 8 Q And the process that you just described, is 13:01 9 that the process that's used for ASHRAE Standard 90.1? 13:06 10 A It would have when it was started. The 13:02 11 difference -- there's a little difference now because 13:04 12 it's on continuous maintenance. 13:06 13 Q And what -- what does that difference mean? 13:08 14 A The difference is the membership is on a 13:00 15 four-year rotating cycle, so one -- basically, roughly 13:04 16 one-third of the committee would roll off every four 13:08 17 years, so they're not -- everyone is not coming off at 13:01 18 the same time. And new members will be added, so 13:04 19 they're added continuously, typically once a year. 13:07 20 Then instead of the full draft going out, 13:02 21 their addenda are issued to go out for public review 13:07 22 and comment. They'd either come from stuff that has 13:00 23 been generated by the committee or through a continuous 13:03 24 maintenance change proposal. And then the rest of the 13:05 25 process would follow the same way. 13:07 Page 96</p>
<p>1 interpretation subcommittee, then forwarded to the 13:07 2 standards committee for approval. Depending on what 13:02 3 year, it would have had to go to tech council, but 13:06 4 always ends up at our board of directors to approve the 13:00 5 title, purpose and scope for a new standard project 13:03 6 committee or guideline. 13:07 7 Then after that, you would do a call for 13:09 8 members, people would submit the membership 13:02 9 applications, and then the committee chair would 13:05 10 recommend to the standards project liaison subcommittee 13:08 11 and standards committee their membership. 13:01 12 And then the committee would -- would begin 13:06 13 working on drafting the document. Then they would 13:00 14 approve it for public review. And then depending on 13:04 15 what type of committee, would dictate how much more 13:08 16 oversight. So standards project liaison subcommittee 13:03 17 or the SPLS liaison would -- would say it's okay to go 13:06 18 out for public review. It goes out for comment. 13:01 19 The committee reviews all the comments, 13:05 20 responds to all the commenters. And then the 13:07 21 commenters have to indicate their resolution status. 13:00 22 And then the committee needs to decide whether or not 13:03 23 changes need to be made to the standard -- to the 13:06 24 document based on the comments received, or if not -- 13:09 25 if not, it goes for -- they'll approve it for 13:02 Page 95</p>	<p>1 Q And the -- who drafts the title, purpose and 13:03 2 scope? 13:07 3 A The title, purpose and scope can be -- a new 13:02 4 one can be submitted by anyone. I could submit one; 13:05 5 you could submit one. The technical committee within 13:07 6 ASHRAE is usually how it's submitted. 13:01 7 Q And is the technical committee, are they 13:02 8 volunteers or are they employees of ASHRAE? 13:07 9 A Volunteers. 13:00 10 Q And the project committee as well is 13:01 11 volunteers, correct? 13:03 12 A That's correct. 13:04 13 Q How are ASHRAE employees involved in the 13:01 14 creation and maintenance of ASHRAE Standard 90.1? 13:05 15 A In the -- are you talking from now or are you 13:01 16 talking about when it was first started? 13:04 17 Q Let's -- let's go from when it first started 13:07 18 until now. 13:09 19 A So when the title, purpose and scope would 13:01 20 have been proposed, a staff member would -- would 13:03 21 review that to make sure it's in the correct format 13:05 22 and, if there is some questions, would actually send it 13:09 23 back to whoever had proposed it to make -- to correct 13:01 24 it or say if they're okay, if we met their intent, and 13:05 25 then send it forward to -- it probably when -- 19 -- 13:09 Page 97</p>

<p>1 90.1 was developed in, I think, 1975. They probably 13:05 2 didn't have all the subcommittees that we have now, but 13:01 3 would have went through the approving bodies up through 13:04 4 the board that way. 13:07 5 Q And would there have been a project committee 13:07 6 as well for -- for the original 90.1? 13:09 7 A Yes. 13:01 8 Q And during that process, did staff members 13:09 9 draft any of the text for 90.1? 13:15 10 A From the beginning? 13:10 11 Q Yeah. 13:12 12 A Not unless they were making the edits to -- 13:13 13 because of conformity and -- or conflicts or things 13:16 14 like that. 13:19 15 Q And would staff members have contributed any 13:12 16 text to subsequent versions of 90.1? 13:18 17 A In the same way, either in the discussions, 13:10 18 if there's a conflict or stuff doesn't -- or through 13:13 19 the editing and review of the material. 13:17 20 Q And does ASHRAE have any record of that? 13:12 21 A If it was done -- it would have been done via 13:17 22 email, at the time email started. 90.1 started before 13:10 23 the Internet, so if the -- if -- if the records still 13:15 24 existed, it would have been in paper format. 13:10 25 Q What is ASHRAE's purpose in creating these 13:11 Page 98</p>	<p>1 Q (BY MR. BECKER) And by "the codes," are you 13:18 2 referring to the standards that have been enacted into 13:19 3 regulation? 13:14 4 A That and -- and the international codes, the 13:14 5 codes spelled by NFPA, IAPMO. 13:19 6 Q Are there any other reasons why -- why 13:13 7 individuals who are not employees of ASHRAE participate 13:16 8 in the ASHRAE development -- standard development 13:19 9 process? 13:13 10 MR. CUNNINGHAM: Object to form. 13:14 11 THE WITNESS: I'm sure there are. I 13:15 12 just -- that's not a question I ask when 13:16 13 people apply for membership. 13:19 14 Q (BY MR. BECKER) Does ASHRAE draw -- draft 13:11 15 model laws or ordinances? 13:14 16 A Where we would start with the drafting for 13:16 17 the law, is that what you mean? 13:11 18 Q Does ASHRAE oversee the drafting of model 13:12 19 laws and ordinances? 13:16 20 A We submit comments on things that are coming 13:18 21 out through -- through -- through the -- through 13:10 22 Congress or that have been posted in the Federal 13:12 23 Register; things like that. 13:15 24 Q And what's the purpose of submitting comments 13:16 25 in -- for things that are coming out in legislation and 13:19 Page 100</p>
<p>1 standards? 13:14 2 A It's to -- the purpose is to advance the 13:16 3 building sciences. We have a long mission statement, 13:12 4 but that's essentially what it is. 13:16 5 Q Does ASHRAE's mission statement reflect its 13:15 6 purposes in -- in developing these standards? 13:18 7 A I would say yes. 13:13 8 Q And how does ASHRAE advance the building 13:16 9 sciences? 13:19 10 A I would -- well, I would say through the 13:12 11 development of the -- the standards that affect, you 13:15 12 know, the energy efficiency of buildings, indoor air 13:18 13 quality, indoor environmental quality. I'm sure 13:12 14 there's other things that we create, courses and books 13:15 15 that are outside the standards development process that 13:18 16 we do as well. 13:11 17 Q And why is it that individuals who are not 13:10 18 employees of ASHRAE participate in the standard design 13:16 19 process? 13:19 20 MR. CUNNINGHAM: Object to form. 13:13 21 THE WITNESS: I would say because for 13:14 22 various reasons it could affect their 13:18 23 company. Maybe they want to make the world a 13:10 24 better place, maybe it affects the codes. It 13:13 25 varies. It depends on the individuals. 13:16 Page 99</p>	<p>1 regulation as you're describing? 13:11 2 A The purpose is to -- to -- typically, you 13:14 3 want stuff that's been done through consensus process 13:19 4 and has the expertise, so that may be a reason. 13:13 5 Another reason may be to make it consistent language 13:17 6 with what's already out there in our standards or 13:10 7 others; that type of thing. 13:14 8 Q When you say "you want stuff that's been done 13:15 9 through the consensus process," who is "you" in that 13:10 10 sentence? 13:14 11 A ASHRAE. 13:15 12 Q ASHRAE. Okay. 13:15 13 And why is it that ASHRAE wants things that 13:18 14 have been done through the consensus process? 13:11 15 A Because the -- the proper experts are 13:14 16 participating in the development of those documents, 13:17 17 it's -- it's been vetted in the industry, people have 13:10 18 had a chance to comment. We've tried to reach 13:13 19 resolution so, you know, an equal amount of people are 13:17 20 unhappy. 13:10 21 Q And you referred to an interest in expertise 13:14 22 in the process of drafting legislation and regulation. 13:18 23 Does that also reflect ASHRAE's interest in -- in 13:13 24 having expertise reflected in that process? 13:17 25 MR. CUNNINGHAM: Object to the form. 13:19 Page 101</p>

<p>1 THE WITNESS: I'm not sure what you 13:11 2 mean. 13:12 3 Q (BY MR. BECKER) Okay. Just a moment ago, 13:13 4 you said the purpose is to -- "typically, you want 13:16 5 stuff that's been done through consensus process and 13:10 6 has the expertise, so that may be a reason." So what 13:13 7 did you mean by "has expertise" there? 13:18 8 A So if you're writing, for example, something 13:12 9 on how to create a widget, you want the people that 13:14 10 know how to create a widget, the information coming 13:18 11 from that versus someone who has -- in legislation may 13:11 12 have a marketing degree that doesn't understand how to 13:16 13 create that widget. 13:18 14 Q And so for air-conditioning or heating, you 13:19 15 would want somebody who has expertise in that area, 13:13 16 rather than necessarily a legislator or a regulator who 13:17 17 doesn't have expertise in that area; is that correct? 13:11 18 A We would want the information to come through 13:15 19 stuff that had been done by the expert to be reflected, 13:17 20 that would be correct. 13:11 21 Q And why is that important to have it come 13:12 22 from an expert? 13:14 23 A Because they're the ones that understand how 13:15 24 to make that product or how to construct that building 13:17 25 or how to make something more energy efficient; that 13:10 Page 102</p>	<p>1 the next number for a standard. There are a couple 13:19 2 when they're tied together; for example, 90.1 has a 13:19 3 90.2 and a 90.4, because they cover -- it's energy 13:19 4 efficiency, but they cover a certain building type. 13:19 5 Q And when referring to these standards, if 13:19 6 they were referred to in, say, regulation, would it 13:19 7 need to say ASHRAE 90.1 or could the regulation simply 13:19 8 say 90.1 and would people know what that was referring 13:19 9 to? 13:19 10 MR. CUNNINGHAM: Object to the form. 13:19 11 MR. FEE: Same objection. 13:19 12 THE WITNESS: If you're within ASHRAE, 13:19 13 you will know ASHRAE 90.1. If you just said 13:19 14 90.1, I would probably want you to say 13:19 15 ANSI/ASHRAE Standard 90.1 and the year, so 13:19 16 you know which document they're talking 13:19 17 about. 13:19 18 Q (BY MR. BECKER) Would that be the correct 13:19 19 way to cite the ASHRAE 90.1 standard? 13:19 20 MR. FEE: Objection, form. 13:20 21 THE WITNESS: I would include the title. 13:20 22 The first reference you make as well still 13:20 23 makes it clear. 13:20 24 Q (BY MR. BECKER) Yeah. So people should say 13:20 25 ANSI/ASHRAE Standard 90.1? 13:20 Page 104</p>
<p>1 type of thing. 13:13 2 Q Is there technical expertise that's necessary 13:14 3 in order to understand that subject? 13:17 4 MR. CUNNINGHAM: Object to the form. 13:19 5 THE WITNESS: It depends on what you're 13:15 6 writing. But I don't think you can do it 13:16 7 just with -- just looking at something. You 13:19 8 have to have some knowledge. 13:12 9 Q (BY MR. BECKER) So for -- to make it 13:13 10 concrete for Standard 90.1, is that a standard that 13:15 11 would require technical expertise in order to know what 13:19 12 its contents were and what should be enacted into law? 13:16 13 MR. CUNNINGHAM: Object to the form. 13:19 14 THE WITNESS: You need to understand 13:12 15 how -- all of 90.1. It does help to have 13:15 16 technical expertise in engineering. Whether 13:18 17 or not something needs -- the technical 13:11 18 expertise is needed to go into the law, I 13:13 19 would still venture on the side of yes. 13:17 20 Q (BY MR. BECKER) How does one identify a 13:10 21 particular ASHRAE standard? Is there -- is there a 13:14 22 particular naming convention that ASHRAE uses for its 13:19 23 standards? 13:11 24 A Each has a number, and so it's just 13:13 25 sequential in number; whatever number we are last at is 13:16 Page 103</p>	<p>1 MR. FEE: Same objection. 13:20 2 THE WITNESS: They should say 13:20 3 ANSI/ASHRAE Standard 90.1, energy efficiency 13:20 4 for -- oh, I just lost the blank -- my -- for 13:20 5 buildings -- not -- except for residential 13:20 6 buildings or something. 13:20 7 Q (BY MR. BECKER) Thank you. 13:20 8 Referring back to Exhibit 1155, on the back 13:21 9 of that exhibit, Bates number ASHRAE0001599, it refers 13:21 10 to interest categories; is that correct? 13:21 11 A That's correct. 13:21 12 Q And it has a -- an interest category that 13:22 13 includes user; is that correct? 13:22 14 A That's correct. 13:22 15 Q And within the user interest category is a 13:22 16 subcategory for a user government; is that correct? 13:22 17 A That's correct. 13:22 18 Q And that's for a representative of a 13:22 19 government agency; is that correct? 13:22 20 A That would be correct. 13:22 21 Q And this document by the -- the date on the 13:22 22 bottom left-hand corner, does that mean that this 13:22 23 document was last revised on March 5th, 2001? 13:22 24 A Yes. 13:22 25 Q Thank you. 13:22 Page 105</p>

<p>1 And if you refer to Exhibit 1151, please. 13:22 2 A Okay. 13:23 3 Q This also has, under section 5, a listing of 13:23 4 check boxes for interest categories; is that correct? 13:23 5 A That's correct. 13:23 6 Q And for SSPC 90.1, those categories include 13:23 7 compliance, designer, general interest, industry, user 13:23 8 and utility; is that correct? 13:23 9 A That's correct. 13:23 10 Q And if you turn to the next page, Bates 13:23 11 number ASHRAE0001614, that includes a -- the 13:23 12 definitions of these interest categories; is that 13:23 13 correct? 13:23 14 A That's correct. 13:23 15 Q And for compliance, would that category 13:23 16 include regulators? 13:23 17 A If you -- if you include them as federal 13:24 18 officials, then yes. 13:24 19 Q And who makes the determination for these 13:24 20 particular interest categories? 13:24 21 A Do you mean who decides which interest 13:24 22 category a person belongs in? 13:24 23 Q Yes. 13:24 24 A The applicant suggests which interest 13:24 25 category they belong in, then the chair of the -- of 13:24</p> <p style="text-align: right;">Page 106</p>	<p>1 with the Department of Energy with senior leadership 13:24 2 within ASHRAE. 13:29 3 And document 1157 appears to be a draft, 13:22 4 because -- since it's not signed, I can't say it's the 13:21 5 official one, but a Draft Memorandum of Understanding 13:24 6 Between the Department of Energy and ASHRAE. 13:27 7 Q And does it appear to you that this draft, 13:22 8 the Exhibit 1157, was the attachment to Exhibit 1156? 13:20 9 A Well, I would say it probably is the exhibit, 13:20 10 but since the document doesn't have a -- a thing that 13:24 11 says DOEMOU.doc on it, I would have to assume that it 13:29 12 is the same one. 13:25 13 Q I'll -- I'll represent that -- that it is 13:25 14 the -- the attachment. 13:27 15 Could you tell me what -- what is the purpose 13:22 16 of the Department of Energy Memorandum of Understanding 13:24 17 with ASHRAE? 13:20 18 A Its -- its basic purpose is to talk about 13:21 19 ways that we're going to work together or towards 13:24 20 goals. 13:28 21 Q And does ASHRAE have a history of working 13:25 22 together with the Department of Energy? 13:27 23 A Yes. 13:21 24 Q How long has ASHRAE been working with the 13:21 25 Department of Energy? 13:27</p> <p style="text-align: right;">Page 108</p>
<p>1 the project committee will review that information, 13:23 2 look at all their applicable paperwork, and then decide 13:26 3 if that's correct. 13:29 4 They may say no and put them in a different 13:21 5 interest category. And then SPLS will look at that 13:24 6 recommendation, and they could look at the same 13:20 7 paperwork and determine that they're still not in the 13:22 8 correct interest category and move them into a 13:26 9 different one. 13:28 10 Q And so has it happened that people have been 13:28 11 moved from one interest category to a different one? 13:20 12 A Yes. 13:27 13 (Exhibit 1156 and Exhibit 1157 marked for 13:28 14 identification.) 13:21 15 Q (BY MR. BECKER) I'd like to hand you what's 13:21 16 been marked as 1 -- Exhibits 1156 and Exhibits 1157. 13:23 17 Exhibit 1156 is Bates number ASHRAE0026227. And then 13:27 18 Exhibit 1157 is Bates number ASHRAE0026229. 13:23 19 Do you recognize these documents, 13:24 20 Ms. Reiniche? 13:26 21 A Yes. 13:27 22 Q And could you tell me what these documents 13:21 23 are? 13:23 24 A Document 1156 is an email conversation 13:26 25 regarding a meeting that's -- that was going to occur 13:21</p> <p style="text-align: right;">Page 107</p>	<p>1 MR. CUNNINGHAM: Object to the form. 13:22 2 THE WITNESS: I would probably say since 13:22 3 at least 90.1 has been as part of -- adopted 13:24 4 into EPAAct as the minimum energy efficiency 13:26 5 for commercial buildings. 13:21 6 Q (BY MR. BECKER) Do you have any idea when -- 13:23 7 approximately when that would have been? 13:24 8 A I would -- I want to say '99, but I'm -- I 13:32 9 need to check. 13:36 10 Q What's the -- the -- what -- what is the 13:38 11 purpose of ASHRAE's work with the Department of Energy? 13:33 12 MR. CUNNINGHAM: Object to the form. 13:32 13 THE WITNESS: To -- to advance the 13:38 14 mission of ASHRAE, which is, you know, 13:30 15 advance the art of building sciences. 13:32 16 Q (BY MR. BECKER) And for -- for Exhibit 13:37 17 ASHRAE -- excuse me, Exhibit 1156, you're listed among 13:39 18 the recipients for this email; is that correct? 13:34 19 A That's correct. 13:38 20 Q And you're listed among the recipients for 13:39 21 the -- the email that's further down in the chain in -- 13:32 22 on that exhibit; is that correct? 13:38 23 A That's correct. 13:39 24 Q On Exhibit 1157, section 2, it refers to 13:38 25 promoting and supporting implementation of ASHRAE 13:34</p> <p style="text-align: right;">Page 109</p>

<p>1 standards through training programs, including 13:37</p> <p>2 self-directed learning, building code interaction and 13:30</p> <p>3 ASHRAE chapter oriented training. 13:33</p> <p>4 What is the Department of Energy's role in 13:36</p> <p>5 that? 13:38</p> <p>6 A They -- Department of Energy provides 13:39</p> <p>7 training not only ASHRAE, but other code bodies' codes, 13:33</p> <p>8 so it would be supported through software development, 13:30</p> <p>9 maybe at the DOE level, they give trainings on what's 13:35</p> <p>10 in 90.1; things like that. 13:30</p> <p>11 Q Does the Department of Energy provide funding 13:33</p> <p>12 to ASHRAE? 13:37</p> <p>13 A No. 13:37</p> <p>14 Q Does the Department of Energy provide any 13:30</p> <p>15 funds to ASHRAE? 13:34</p> <p>16 A I suppose if someone is a -- a member and the 13:38</p> <p>17 Department of Energy pays their membership fees to 13:32</p> <p>18 ASHRAE to be a member of ASHRAE, then yes, but it goes 13:34</p> <p>19 to membership. 13:37</p> <p>20 Q On the second page of Exhibit 1157, 13:36</p> <p>21 subsection 5 says, "Cooperating in promoting of 13:32</p> <p>22 ANSI/ASHRAE standards adoption in the International 13:36</p> <p>23 Standards Organization (ISO) standards." 13:39</p> <p>24 What is that referring to? 13:32</p> <p>25 A That must have been -- that would have been a 13:35</p> <p style="text-align: right;">Page 110</p>	<p>1 the Department of Energy? 13:31</p> <p>2 A No. 13:32</p> <p>3 Q And section 10 refers to "Advancing and 13:34</p> <p>4 supporting the professional development of DOE 13:36</p> <p>5 personnel by facilitating membership, attendance, and 13:39</p> <p>6 active participation at the local and society levels of 13:33</p> <p>7 ASHRAE, especially as a member of technical committees 13:37</p> <p>8 and standard project committees, and by providing a 13:30</p> <p>9 venue for publication of research and practice." 13:33</p> <p>10 What kind of publication is this referring 13:36</p> <p>11 to? 13:37</p> <p>12 A They're talking about research publication. 13:31</p> <p>13 If the DOE does research, they're publishing it 13:34</p> <p>14 somewhere. It's not referring to standards. 13:37</p> <p>15 Q Does ASHRAE publish DOE research? 13:30</p> <p>16 A Not that I'm aware of. 13:36</p> <p>17 Q With regards to section 13, do you know what 13:32</p> <p>18 they are referring to with regards to counter-terrorism 13:38</p> <p>19 design features? 13:35</p> <p>20 A No. 13:30</p> <p>21 Q Do you know what -- under -- under section 13:34</p> <p>22 14, the DOE Energy Efficient Building Systems Regional 13:38</p> <p>23 Innovation Cluster Initiative is? 13:35</p> <p>24 A I don't think that exists anymore, but 13:30</p> <p>25 there's been a collaborative where they've worked 13:32</p> <p style="text-align: right;">Page 112</p>
<p>1 new thing added. The Department of Energy hasn't done 13:37</p> <p>2 anything that I'm aware of to promote the adoption of 13:30</p> <p>3 ASHRAE -- ANSI/ASHRAE standards in ISO. 13:32</p> <p>4 Q And for section 8, where it refers to 13:38</p> <p>5 "Cooperating and promotion of ANSI/ASHRAE standards 13:30</p> <p>6 adoption in building codes," what does that refer to? 13:36</p> <p>7 A That could be supporting proposals that would 13:33</p> <p>8 have been submitted to adopt 90.1 in -- in the 13:39</p> <p>9 international code, because that's the federal minimum, 13:33</p> <p>10 and they would have provided supporting testimony, 13:37</p> <p>11 probably. 13:30</p> <p>12 Q When you say "they would have provided 13:31</p> <p>13 supporting testimony, probably," is that the Department 13:33</p> <p>14 of Energy that would provide that? 13:36</p> <p>15 A A -- a staff member from the Department of 13:37</p> <p>16 Energy. 13:30</p> <p>17 Q Okay. Are there any other ways that ASHRAE, 13:31</p> <p>18 ANSI and the Department of Energy have cooperated in 13:39</p> <p>19 promoting these standards adoption in building codes? 13:33</p> <p>20 A I'm not aware of ANSI promoting standards 13:30</p> <p>21 adoption in building codes, other than -- it's an 13:34</p> <p>22 ANSI/ASHRAE standard going through their process. They 13:39</p> <p>23 don't go to building codes. I can't think of anything 13:31</p> <p>24 else with the Department of Energy. 13:36</p> <p>25 Q Anything else with regards to just ASHRAE and 13:38</p> <p style="text-align: right;">Page 111</p>	<p>1 together, and they just -- they talk about research and 13:34</p> <p>2 things like that. 13:37</p> <p>3 Q Was the Memorandum of Understanding Between 13:31</p> <p>4 the DOE and ASHRAE, Exhibit 1157, eventually signed by 13:34</p> <p>5 both ASHRAE and the Department of Energy? 13:34</p> <p>6 A I need to go back and check to see if it was 13:37</p> <p>7 signed. 13:30</p> <p>8 Q How would you characterize the relationship 13:32</p> <p>9 between the Department of Energy and ASHRAE? 13:34</p> <p>10 A I mean, they work -- we work together. 13:32</p> <p>11 That's probably on -- not all -- not all of these 13:35</p> <p>12 projects, but I mean some things. 13:30</p> <p>13 Q You mentioned that someone from the 13:30</p> <p>14 Department of Energy would testify on behalf of ASHRAE 13:33</p> <p>15 in terms of getting the Standard 90.1 adopted as a 13:38</p> <p>16 building code. How does ASHRAE benefit from having 13:38</p> <p>17 90.1 endorsed by the DOE? 13:32</p> <p>18 MR. CUNNINGHAM: Object to the 13:35</p> <p>19 characterization of prior testimony. 13:36</p> <p>20 THE WITNESS: They don't testify on 13:30</p> <p>21 behalf of ASHRAE. They testify on behalf of 13:31</p> <p>22 the Department of Energy. 13:34</p> <p>23 Q (BY MR. BECKER) Excuse me. 13:35</p> <p>24 A So the benefit is then the IECC and 90.1 can 13:36</p> <p>25 be the same. So it's a -- it's the benefit to having 13:35</p> <p style="text-align: right;">Page 113</p>

<p>1 a -- one code. 13:39</p> <p>2 Q And are the IECC and Standard 90.1 the same? 13:32</p> <p>3 A They are not exactly the same. 13:36</p> <p>4 Q And how do they differ? 13:39</p> <p>5 A I would have to look at the versions and the 13:32</p> <p>6 comparisons. In some instances, 90.1 would be more 13:35</p> <p>7 stringent; in other, IECC. 13:30</p> <p>8 Q On balance, would you characterize the IECC 13:30</p> <p>9 as being more stringent than ASHRAE 90.1 or vice versa? 13:34</p> <p>10 A They have a different process. The IECC, 13:41</p> <p>11 while it's a consensus process, is not an ANSI 13:45</p> <p>12 consensus process, so it's comparing apples to oranges. 13:49</p> <p>13 Q What does ASHRAE do to educate governments 13:46</p> <p>14 and government officials about its work? 13:49</p> <p>15 A It has a staff person and/or leadership talk 13:42</p> <p>16 to the staff on the hill about what our process is, 13:49</p> <p>17 what standards we have, certification programs, classes 13:44</p> <p>18 and things like that. 13:44</p> <p>19 Q And are there particular staff people who 13:45</p> <p>20 talk to staff members on the hill? 13:47</p> <p>21 A Yes. 13:40</p> <p>22 Q And what individuals are these? 13:41</p> <p>23 A Mark Ames and Doug Read. And Jeff Littleton 13:45</p> <p>24 might talk to some, too. 13:49</p> <p>25 Q And you say ASHRAE has leadership that talks 13:49</p> <p style="text-align: right;">Page 114</p>	<p>1 within ASHRAE? 13:43</p> <p>2 A Yes. 13:43</p> <p>3 Q And is that located in Washington, D.C.? 13:43</p> <p>4 A Yes. 13:43</p> <p>5 Q And what is -- why is it that ASHRAE has a 13:43</p> <p>6 separate department for government affairs that's 13:44</p> <p>7 located in Washington, D.C.? 13:44</p> <p>8 A So they can -- it's easier to talk to people 13:44</p> <p>9 on the hill. It's been there as long as I've been 13:44</p> <p>10 there. 13:44</p> <p>11 MR. BECKER: All right. Let's take a 13:44</p> <p>12 break. 13:44</p> <p>13 THE VIDEOGRAPHER: Going off the record 13:44</p> <p>14 at 13:44. 13:44</p> <p>15 (Recess taken.) 13:53</p> <p>16 THE VIDEOGRAPHER: Going on the record 13:56</p> <p>17 at 13:56. 13:56</p> <p>18 Q (BY MR. BECKER) Ms. Reiniche, are you aware 13:56</p> <p>19 if DOE employees are on the 90.1 policy committee? 13:56</p> <p>20 A 90.1 policy committee? You mean on the 13:56</p> <p>21 project committee? 13:56</p> <p>22 Q Project committee, excuse me. 13:56</p> <p>23 A Yes. 13:56</p> <p>24 Q They are? 13:56</p> <p>25 A There is a staff person on there, yes. 13:56</p> <p style="text-align: right;">Page 116</p>
<p>1 to staff on the hill. Is that Jeff Littleton? 13:42</p> <p>2 A The -- it -- it could be Jeff, it could be 13:45</p> <p>3 whoever is the president for that given -- given 13:40</p> <p>4 society year or vice president that society year. It 13:43</p> <p>5 depends on the year, it depends on who they're talking 13:47</p> <p>6 to. 13:42</p> <p>7 Q And what are Mr. Ames' and Mr. Read's 13:42</p> <p>8 positions at ASHRAE? 13:47</p> <p>9 A Well, Mr. -- Mark's title is senior manager 13:49</p> <p>10 of government affairs. Doug's title was director. He 13:46</p> <p>11 has retired. 13:43</p> <p>12 Q And was -- was Doug's -- Doug Read's title 13:46</p> <p>13 just director or director of government affairs? 13:49</p> <p>14 A Director of government affairs. 13:42</p> <p>15 Q Are there other employees of ASHRAE who work 13:48</p> <p>16 with -- or who did work with Mr. Ames and Mr. Read on 13:43</p> <p>17 government affairs? 13:48</p> <p>18 A They have a secretary -- or an administrative 13:41</p> <p>19 assistant that works there. She doesn't talk to people 13:46</p> <p>20 on the hill. And they have a new person there, Jim 13:48</p> <p>21 Scarborough. He deals with local. 13:42</p> <p>22 Q Is that a local government that he works -- 13:40</p> <p>23 deals with? 13:43</p> <p>24 A Yeah, the grassroots chapters within ASHRAE. 13:44</p> <p>25 Q So is government affairs its own department 13:49</p> <p style="text-align: right;">Page 115</p>	<p>1 Q And have DOE employees been on the 90.1 13:53</p> <p>2 project committee -- committee in the past? 13:57</p> <p>3 A Yes. 13:59</p> <p>4 Q Okay. And so DOE employees provide -- they 13:50</p> <p>5 contribute to the development of 90.1; is that correct? 13:50</p> <p>6 MR. FEE: Objection to form. 13:54</p> <p>7 THE WITNESS: They participate in the 13:55</p> <p>8 process. I'm not aware of any draft 13:57</p> <p>9 language. 13:50</p> <p>10 (Exhibit 1158 marked for identification.) 13:51</p> <p>11 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 13:52</p> <p>12 you what's been marked as Exhibit 1158. This is a 13:53</p> <p>13 document with Bates number ASHRAE0005856. It's labeled 13:50</p> <p>14 "Marketing Task Force Report." 13:58</p> <p>15 A Okay. 13:50</p> <p>16 Q Are you familiar with this document, 13:53</p> <p>17 Ms. Reiniche? 13:55</p> <p>18 A Yes. 13:59</p> <p>19 Q Could you tell me what this document is? 13:50</p> <p>20 A This is a document that would have been 13:53</p> <p>21 presented to the project committee on priorities -- on 13:54</p> <p>22 trying to get things out in the marketplace. 13:56</p> <p>23 Q And could you tell me what -- do you know 13:53</p> <p>24 what Chris Mathis's position is at ASHRAE? 13:56</p> <p>25 A He is not a staff member at ASHRAE. 13:50</p> <p style="text-align: right;">Page 117</p>

<p>1 Q Oh, really. Who is Chris Mathis? 13:52</p> <p>2 A He's an ASHRAE member. 13:55</p> <p>3 Q Okay. And is -- what was the purpose of 13:56</p> <p>4 creating this document? 13:59</p> <p>5 MR. CUNNINGHAM: Object to form. 13:52</p> <p>6 THE WITNESS: Just to tell -- inform 13:58</p> <p>7 people of where they were on these priorities 13:51</p> <p>8 for marketing. 13:55</p> <p>9 Q (BY MR. BECKER) Is there some kind of a 13:59</p> <p>10 marketing committee that he was part of? 13:51</p> <p>11 A There must have been a marketing committee, 13:57</p> <p>12 because there was a marketing task force, but it 13:58</p> <p>13 wouldn't been -- wouldn't have been a -- a committee 13:51</p> <p>14 within 90.1. 13:53</p> <p>15 Q This would have been a -- a separate ASHRAE 13:58</p> <p>16 committee? 13:52</p> <p>17 A An ad hoc or something like that. 13:53</p> <p>18 Q And is it typical to have individuals who are 13:56</p> <p>19 not employees of ASHRAE who are on marketing committees 13:59</p> <p>20 for ASHRAE? 13:54</p> <p>21 A In any ad hoc committee, we have members 13:58</p> <p>22 on -- on those committees. It's not typically just 14:01</p> <p>23 ASHRAE staff. 14:05</p> <p>24 Q With regards to the fifth page of Bates 14:01</p> <p>25 number ASHRAE0005859, it says, "Actions on each 14:01</p> <p style="text-align: right;">Page 118</p>	<p>1 et cetera, that was considered an obstacle? 14:06</p> <p>2 MR. CUNNINGHAM: Object, insofar as this 14:02</p> <p>3 leaves the scope of the topics this witness 14:03</p> <p>4 was designated for. 14:07</p> <p>5 THE WITNESS: Well, it would have been 14:09</p> <p>6 after this that we -- just the readability, 14:00</p> <p>7 the formatting, we just changed -- went from 14:04</p> <p>8 one column to two columns. We would have 14:07</p> <p>9 changed the chapter organization just to make 14:00</p> <p>10 it flow better and easier for the reader to 14:03</p> <p>11 understand. 14:06</p> <p>12 Q (BY MR. BECKER) And is that something that 14:07</p> <p>13 you know from your work at ASHRAE? 14:07</p> <p>14 A Yes, we have since -- since this, and we have 14:00</p> <p>15 done one complete overhaul in the formatting. 14:04</p> <p>16 Q And what are they referring to by 14:00</p> <p>17 "enforcement of EPAct" there? 14:04</p> <p>18 A They're probably talking about the fact that 14:00</p> <p>19 not all states abide by it. They don't -- there's a 14:02</p> <p>20 lot of states that are on older versions of the code 14:07</p> <p>21 when they're supposed -- when, according to EPAct, 14:00</p> <p>22 they're supposed to be adopting the latest version 14:04</p> <p>23 within two years of the determination that the newest 14:08</p> <p>24 version of 90.1 is more energy efficient than the last. 14:02</p> <p>25 Q Just to clarify, when you say "older versions 14:08</p> <p style="text-align: right;">Page 120</p>
<p>1 Priority (#2). Increase the use of the standard by 14:00</p> <p>2 architects, engineers and building officials." 14:00</p> <p>3 Then as a -- subpoints under that, it says, 14:00</p> <p>4 "Underway! ASHRAE and DOE partnership to bring 14:00</p> <p>5 train-the-trainer sessions to the Chapters!" 14:00</p> <p>6 Do you know what these train-the-trainer 14:00</p> <p>7 sessions are? 14:01</p> <p>8 A It's to train people to teach others about 14:01</p> <p>9 90.1. 14:01</p> <p>10 Q And do you know how ASHRAE and DOE were 14:01</p> <p>11 partnering to provide these training sessions? 14:01</p> <p>12 A I would have to check, because this would 14:01</p> <p>13 have been when it was started. 14:01</p> <p>14 Q On the next page it says, "Expand the reach 14:01</p> <p>15 of the standard," and then a subpoint, it says, "DOE 14:01</p> <p>16 partnership activities underway (training)." 14:01</p> <p>17 Is that referring to the train-the-trainer 14:01</p> <p>18 sessions or is that referring to something else? 14:01</p> <p>19 A No, the train-the-trainer sessions. 14:01</p> <p>20 Q On the third-to-last page, marked Bates 14:02</p> <p>21 number ASHRAE005865, it says "Obstacles Recognized." 14:02</p> <p>22 Do you see that? 14:02</p> <p>23 A Yes. 14:02</p> <p>24 Q What is it about the format, printing, 14:02</p> <p>25 beauty, readability, editing, style, images, voice, 14:02</p> <p style="text-align: right;">Page 119</p>	<p>1 of the code," you mean older versions of ASHRAE 90.1? 14:00</p> <p>2 A ASHRAE 90.1 or something that's deemed to 14:02</p> <p>3 comply, like the IECC, an older version of the IECC. 14:04</p> <p>4 Q And it says, "ASHRAE's history of marketing 14:02</p> <p>5 successes." 14:05</p> <p>6 Below that, "Good news! ASHRAE has approved 14:07</p> <p>7 funding to establish a marketing department!!!" 14:03</p> <p>8 Does ASHRAE now have a marketing department? 14:08</p> <p>9 A We had a marketing department, then they 14:00</p> <p>10 dissolved it and moved them under, and now they're 14:03</p> <p>11 starting back up a marketing section. 14:06</p> <p>12 Q And what is the -- the purpose of ASHRAE's 14:08</p> <p>13 marketing department? 14:06</p> <p>14 A To market the ASHRAE products and classes and 14:06</p> <p>15 things like that. 14:00</p> <p>16 Q Does that include marketing the standards 14:02</p> <p>17 themselves? 14:04</p> <p>18 A Yes. 14:06</p> <p>19 Q And why was it that the marketing department 14:09</p> <p>20 had been dissolved? 14:00</p> <p>21 A I don't know. That's a -- was a decision 14:04</p> <p>22 made by -- it would have been Jeff Littleton and 14:06</p> <p>23 probably the board ExCom. 14:09</p> <p>24 Q And do you know why it was brought back? 14:02</p> <p>25 A That was another decision that was made by 14:06</p> <p style="text-align: right;">Page 121</p>

<p>1 Jeff and the board ExCom. 14:05</p> <p>2 (Exhibit 1159 marked for identification.) 14:06</p> <p>3 Q (BY MR. BECKER) I'm handing you what's been 14:06</p> <p>4 marked as Exhibit 1159. Do you recognize this 14:06</p> <p>5 document? 14:06</p> <p>6 A I've not seen it labeled like this, but I've 14:06</p> <p>7 seen the material that's in here. 14:06</p> <p>8 MR. CUNNINGHAM: Matt, just what is it 14:06</p> <p>9 about marketing that you think falls within 14:06</p> <p>10 the scope of the topics that Ms. Reiniche was 14:06</p> <p>11 designated for? 14:06</p> <p>12 MR. BECKER: Well, the content of these 14:06</p> <p>13 reports has to do with the subjects that 14:06</p> <p>14 she's been designated for. 14:06</p> <p>15 MR. CUNNINGHAM: Which subjects 14:06</p> <p>16 specifically are you referring to? 14:07</p> <p>17 MR. BECKER: So as to the -- the 14:07</p> <p>18 adoption and use of the code 90.1. 14:07</p> <p>19 MR. CUNNINGHAM: Okay. Let's try to 14:07</p> <p>20 keep the questioning focused on that, then. 14:07</p> <p>21 Q (BY MR. BECKER) Ms. Reiniche, do you have 14:07</p> <p>22 any reason to doubt that this document produced by 14:07</p> <p>23 ASHRAE as Bates number ASHRAE0003496 is not an 14:07</p> <p>24 authentic document? 14:07</p> <p>25 A No. 14:07</p> <p style="text-align: right;">Page 122</p>	<p>1 A No. 14:00</p> <p>2 Q What -- what does it mean, then? 14:01</p> <p>3 A It means -- because the IECC uses 90.1 as 14:03</p> <p>4 a -- as a compliance option, if the state or 14:06</p> <p>5 jurisdiction adopted it and left that requirement in 14:01</p> <p>6 and did not change it, then that -- that particular 14:04</p> <p>7 state or jurisdiction could use 90.1. 14:09</p> <p>8 Q And on page 6, what's marked ASHRAE0003500 14:13</p> <p>9 titled "Challenges to Adoption," it says, "Cost of the 14:13</p> <p>10 standard," then subpoint, "Revenue objectives are 14:17</p> <p>11 antithetical to widespread adoption." 14:11</p> <p>12 Do you know what that statement was in 14:14</p> <p>13 reference to? 14:15</p> <p>14 A That people don't want to have to pay for the 14:18</p> <p>15 standard, is my guess, or they think the cost of the 14:12</p> <p>16 standard is too high. 14:14</p> <p>17 Q Has ASHRAE received comments or complaints 14:17</p> <p>18 that the cost of the -- the Standard 90.1 is too high? 14:10</p> <p>19 MR. CUNNINGHAM: I'm going to object to 14:14</p> <p>20 the scope. 14:16</p> <p>21 THE WITNESS: That would have been 14:17</p> <p>22 something that Steve Comstock would have 14:18</p> <p>23 known. He's the one that deals with the 14:10</p> <p>24 standards and the cost. 14:14</p> <p>25 Q (BY MR. BECKER) Are you personally aware of 14:15</p> <p style="text-align: right;">Page 124</p>
<p>1 Q And could you describe what this document is? 14:00</p> <p>2 A It appears to be a presentation on the 14:02</p> <p>3 marketing task group's meeting report from June 26, 14:06</p> <p>4 2004. 14:00</p> <p>5 Q On the second page of this document, it 14:08</p> <p>6 refers to "increased number of states using or" 14:00</p> <p>7 referring -- "referencing 90.1." And that's under 14:05</p> <p>8 "Good News." Why would that be good news? 14:08</p> <p>9 MR. CUNNINGHAM: Object to the 14:01</p> <p>10 characterization of the document. 14:02</p> <p>11 THE WITNESS: It would be good news 14:06</p> <p>12 because people are using our product, and 14:07</p> <p>13 that's part of the EPAct. 14:00</p> <p>14 Q (BY MR. BECKER) And then it says, "However, 14:03</p> <p>15 these, 'adoptions' and references are almost all due to 14:04</p> <p>16 adoption of the I-codes, not the direct adoption of 14:00</p> <p>17 90.1." 14:05</p> <p>18 Do you know what they're referring to by 14:01</p> <p>19 I-codes? 14:02</p> <p>20 A Yes. 14:03</p> <p>21 Q And what is that? 14:04</p> <p>22 A That would be the IECC. 14:05</p> <p>23 Q And so does that mean that when the IECC is 14:03</p> <p>24 adopted, 90 -- ASHRAE Standard 90.1 is adopted as well 14:07</p> <p>25 because it's an equivalent? 14:07</p> <p style="text-align: right;">Page 123</p>	<p>1 any instances where individuals have complained about 14:17</p> <p>2 the cost of -- of the -- the 90.1 standard being too 14:11</p> <p>3 high? 14:16</p> <p>4 MR. CUNNINGHAM: Object to the scope 14:16</p> <p>5 again. Ms. Reiniche is not being deposed in 14:17</p> <p>6 her personal capacity. 14:10</p> <p>7 THE WITNESS: No, I'm not. 14:13</p> <p>8 Q (BY MR. BECKER) Two pages after that, on 14:13</p> <p>9 ASHRAE0003502, it says, "Some recognized risks." And 14:16</p> <p>10 then in the middle of that page, it says, "Code 14:11</p> <p>11 proposals that are more stringent than 90.1 viewed as a 14:13</p> <p>12 significant risk to our standing in the marketplace. 14:19</p> <p>13 Others are not passive." 14:12</p> <p>14 Do you know what that refers to? 14:14</p> <p>15 A That means that there's been code proposals 14:10</p> <p>16 submitted to -- to the IECC that are more stringent 14:13</p> <p>17 than 90.1. 14:18</p> <p>18 Q Do you know how ASHRAE responded to this 14:17</p> <p>19 perceived risk that there were code proposals submitted 14:12</p> <p>20 that were more stringent than 90.1? 14:15</p> <p>21 A If a code proposal that was submitted was 14:10</p> <p>22 more stringent than 90.1, then ASHRAE would have spoke 14:13</p> <p>23 most likely against that proposal, depending on -- 14:18</p> <p>24 there's a lot of factors that that would have been 14:14</p> <p>25 dependent on. It would have depended on what part, 14:17</p> <p style="text-align: right;">Page 125</p>

1 what portion of 90.1 it was commented on or, you know, 14:11
2 how it was developed, that type of thing. 14:16
3 Q And then two pages later on ASHRAE0003506, it 14:14
4 then has "Recommendations," and then parentheses 14:10
5 "repeated." And the first three recommendations are 14:14
6 "Make it free, make it beautiful, and make it 14:17
7 electronic." 14:10
8 Do you understand this as referring to ASHRAE 14:15
9 90.1? 14:17
10 A Yes. 14:17
11 Q Three pages later on ASHRAE0003509, it says, 14:17
12 "Paradigm Shift Issues." And then it says, "Decide if 14:15
13 we want to continue to live in this code minimum 14:19
14 world." And "code minimum" is underlined. 14:12
15 Do you know what this is referring to with 14:16
16 the term "code minimum world"? 14:18
17 A That means, you know, a minimum level for 14:15
18 your -- the development of -- in 90.1, energy 14:17
19 efficiency, or do you want to go beyond the code. 14:12
20 Q I'm sorry, what do you mean by "go beyond the 14:14
21 code"? 14:17
22 A Maybe towards the -- towards the development 14:18
23 of green standards or green codes. 14:10
24 Q And how do green standards and green codes 14:14
25 differ from Standard 90.1? 14:16

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1 A Green codes and green standards typically are 14:14
2 not cost -- cost -- cost justified, where you can 14:16
3 propose doing some technology -- technological thing 14:12
4 that's expensive that, you know, a normal building 14:16
5 person wouldn't want to put -- you know, building owner 14:11
6 wouldn't want to put in their building versus a 14:14
7 minimum, which is not only is it energy efficient, but 14:18
8 it's cost -- cost effective. 14:11
9 THE COURT REPORTER: A building owner 14:12
10 would want to put in their building? 14:13
11 THE WITNESS: Would not want to put in 14:17
12 their building. 14:17
13 Q (BY MR. BECKER) At the bottom of that page, 14:17
14 it says, "How long will we have our EPAAct advantage?" 14:18
15 What is ASHRAE's EPAAct advantage? 14:12
16 A That were referenced in the EPAAct over 14:17
17 another minimum energy efficient commercial building 14:12
18 code. 14:15
19 (Exhibit 1160 marked for identification.) 14:13
20 Q (BY MR. BECKER) I'm handing you what's been 14:13
21 marked as Exhibit 1160. This is Bates number 14:14
22 ASHRAE0025561. 14:10
23 A Okay. 14:15
24 Q Do you recognize this document, Ms. Reiniche? 14:10
25 A Yes. 14:16

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1 Q And is that -- are you one of the recipients 14:12
2 of this email? 14:17
3 A Yes. 14:19
4 Q And what is this email? 14:14
5 A This is an email on having a discussion about 14:16
6 DOE comparing the IECC and 90.1 as equivalent. 14:14
7 Q At the bottom of -- near the bottom of the 14:18
8 page, Ryan Colker writes, "Folks, we are seeing some 14:13
9 indications from DOE that they are beginning to see the 14:18
10 IECC and 90.1 as equivalent (i.e., states can be in 14:11
11 compliance if they adopt the IECC without the reference 14:11
12 to 90.1.) As you can guess, this could have 14:14
13 significant impact on the future of 90.1." 14:10
14 What did Mr. Colker mean by that? 14:17
15 MR. CUNNINGHAM: Object to form. 14:10
16 THE WITNESS: That he's concerned that 14:13
17 if it's found to be equivalent, that it could 14:17
18 mean that the IECC would be referenced in 14:19
19 EPAAct instead of 90.1. 14:13
20 Q (BY MR. BECKER) And who is Ryan Colker? 14:17
21 A Well, at that time, he was the manager of 14:16
22 government affairs for ASHRAE. 14:18
23 Q Do you know if Mr. Colker is still at ASHRAE? 14:17
24 A He is not. 14:20
25 Q Do you know when he left ASHRAE? 14:20

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1 A I want to say sometime in 2010. 14:25
2 Q And Doug Read responded to Ryan Colker by 14:25
3 saying, "I echo Ryan's concern. I suggest we take a 14:21
4 stance and clearly delineate the differences and 14:25
5 differentiate ourselves from the ICEC. Doug." 14:28
6 Did -- do you think that Mr. Read meant the 14:25
7 IECC? 14:28
8 A Yes. 14:20
9 Q And has ASHRAE taken a stance and clearly 14:22
10 delineated the differences between ASHRAE Standard 90.1 14:28
11 and the IECC? 14:24
12 A We have not done a comparison between the two 14:27
13 line for line, no. 14:23
14 Q Was that what ASHRAE was considering doing, 14:26
15 was doing a line-for-line comparison between the IECC 14:29
16 and ASHRAE Standard 90.1? 14:25
17 A They discussed it. 14:27
18 Q Has ASHRAE done anything else to 14:20
19 differentiate Standard 90.1 from the IECC in the minds 14:25
20 of the public? 14:22
21 MR. CUNNINGHAM: Object to the form. 14:24
22 THE WITNESS: I am not aware we've done 14:28
23 anything in the eyes of the public. We've 14:21
24 probably had discussions where we pointed out 14:23
25 the difference between the processes that are 14:27

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<p>1 used to develop the two documents, but it's 14:29 2 not been, like, you know, a press release or 14:21 3 something like that. 14:25 4 Q (BY MR. BECKER) Was ASHRAE concerned that if 14:28 5 the IECC and ASHRAE's Standard 90.1 were seen as 14:20 6 equivalent, it would mean that there would be less 14:25 7 incorporation of standard -- ASHRAE Standard 90.1 into 14:20 8 laws and regulations throughout the United States? 14:26 9 A It would depend on if the EPAAct changed. 14:23 10 If -- if the reference changed. That's possible. 14:26 11 Q Would that mean that if -- if the EPAAct 14:20 12 changed -- 14:23 13 A If the reference in the EPAAct was changed 14:23 14 from 90.1 to the IECC. 14:26 15 Q Then that would mean there would be less 14:22 16 adoption of Standard 90.1 into the laws and regulations 14:25 17 of jurisdictions in the United States? 14:20 18 A It's possible, yes. 14:24 19 Q And was ASHRAE concerned about that? 14:26 20 A If -- if that changed, they were. They were 14:23 21 concerned if it changed, yes. 14:29 22 Q Did it change? 14:21 23 A No. 14:23 24 Q Did the DOE ever publicly weigh the option of 14:22 25 changing the EPAAct to IECC instead of ASHRAE 90.1? 14:22 Page 130</p>	<p>1 MR. BECKER: It has not been asked. 14:27 2 MR. CUNNINGHAM: Okay. I -- are you -- 14:27 3 is your position here that someone who, by 14:27 4 virtue of being on one of the committees, 14:27 5 essentially speaks for ASHRAE, such that you 14:27 6 can ask Ms. Reiniche to interpret their -- 14:27 7 their documents? 14:27 8 MR. BECKER: Well, if Ms. Reiniche has 14:27 9 an understanding of what this might mean, 14:27 10 particularly because of her senior role with 14:27 11 regards to the development of these standards 14:27 12 and so forth, then I would hope that 14:28 13 Ms. Reiniche can provide that information. 14:28 14 I think that a document such as this 14:28 15 discussing ASHRAE 90.1 2010 falls well within 14:28 16 topic number 1 that she's been designated on. 14:28 17 Q (BY MR. BECKER) I'm sorry, Ms. Reiniche. 14:28 18 Let's see. I asked why do you think there was a 14:28 19 distinction between this growing period and mature -- 14:28 20 maturity period for Standard 90.1? 14:28 21 MR. CUNNINGHAM: Same objection. 14:28 22 THE WITNESS: I think because the 14:29 23 growing period, there's one time frame where 14:29 24 I think they pulled residential out. I think 14:29 25 at one time it included residential. It does 14:29 Page 132</p>
<p>1 A Not that I'm aware of, there hasn't been 14:22 2 anything published where they were going to do that 14:25 3 (Exhibit 1161 marked for identification) 14:21 4 Q (BY MR BECKER) Ms Reiniche, I'm handing 14:29 5 you what's been marked as Exhibit 1161 This is Bates 14:20 6 number ASHRAE0005677 Do you recognize this document? 14:25 7 A Yes 14:29 8 Q Could you tell me what this document is? 14:24 9 A This is a presentation given by Stephen 14:27 10 Skalko, who is the chair of 90 1, at a conference on 14:21 11 energy codes 2010 14:27 12 THE COURT REPORTER: Say that again 14:27 13 "Who is the chair of 90 1," and -- 14:27 14 THE WITNESS: It's at -- given at an 14:27 15 energy codes conference in 2010 at -- in 14:24 16 Charlotte, North Carolina 14:28 17 Q (BY MR BECKER) On page 3 of this document, 14:23 18 Bates number ASHRAE0005679, it says at the top, 14:29 19 "Standard 90 1 Timeline," and it delineates between the 14:25 20 growing period from 1970 to 1999, and then the maturity 14:22 21 period from 1999 to 2010 What does that mean? 14:20 22 MR CUNNINGHAM: Object to the form 14:22 23 Matt, do we know if the Steven person, do we 14:23 24 know if he's an ASHRAE staff member? Do 14:28 25 we -- was that asked at any point? 14:21 Page 131</p>	<p>1 not include low-rise residential. 1999 would 14:23 2 have been when we started continuous 14:28 3 maintenance. 14:21 4 Without seeing Mr. Skalko's notes on 14:23 5 this, but based on my knowledge, I think that 14:26 6 these periods are times that -- in the 14:29 7 maturity period shows greater energy savings, 14:23 8 and that's what he's trying to demonstrate in 14:27 9 that timeline. 14:20 10 Q (BY MR. BECKER) Do you know who Mr. Steven 14:21 11 V. Skalko is? 14:23 12 A Yes. 14:25 13 Q And who is he? 14:25 14 A He is the past chair of 90.1. I think he 14:26 15 started after the 2010 version published. 14:23 16 Q And do you have any idea how long Mr. Skalko 14:32 17 has been a member of ASHRAE? 14:30 18 A I would have to look in the ASHRAE records, 14:32 19 but he's been a member longer than I've been there, so 14:35 20 over 11 years. 14:38 21 Q And for as long as you know, has Mr. Skalko 14:32 22 worked on ASHRAE 90.1? 14:36 23 A Yes. 14:32 24 Q And would you say that Mr. Skalko is -- is -- 14:32 25 would you say that Mr. Skalko knows a good deal about 14:39 Page 133</p>

<p>1 ASHRAE Standard 90.1? 14:36 2 A Yes. 14:38 3 MR. FEE: Objection to form. 14:38 4 (Exhibit 1162 marked for identification.) 14:34 5 Q (BY MR. BECKER) I'm handing you what's been 14:34 6 marked as Exhibit 1162. This is Bates number 14:35 7 ASHRAE0026233. Do you recognize this document? 14:34 8 A Yes. 14:38 9 Q And could you tell me what this document is? 14:39 10 A This is a Memorandum of Understanding between 14:31 11 the Department of Energy and ASHRAE. It's not dated, 14:34 12 but I would guess it's sometime in 2007 time frame, 14:35 13 because that's when Terry Townsend was president of 14:39 14 ASHRAE. 14:34 15 Q And is this a signed copy of the Memorandum 14:35 16 of Understanding between the DOE and ASHRAE? 14:39 17 A Yes. 14:34 18 Q Has ASHRAE had multiple Memorandums of 14:35 19 Understanding with the Department of Energy? 14:30 20 A Yes. 14:32 21 Q When did ASHRAE first start having 14:34 22 Memorandums of Understanding with the Department of 14:39 23 Energy? 14:32 24 A After EPAAct was -- when 90.1 was made a 14:34 25 reference in EPAAct. 14:38</p> <p style="text-align: right;">Page 134</p>	<p>1 I don't know why they would choose to do that. I mean, 14:38 2 my -- my guess is their goals are the same as ours, 14:31 3 energy efficient buildings in the United States. So I 14:36 4 would assume they would enter MOUs with whatever 14:38 5 organizations would help them reach that goal. 14:32 6 Q How is it that ASHRAE 90.1 came to be 14:35 7 incorporated into EPAAct? 14:30 8 MR. CUNNINGHAM: Object to form. 14:36 9 THE WITNESS: I am not positive on how 14:37 10 that came about. I would have to check. 14:39 11 Q (BY MR. BECKER) Did ASHRAE staff meet with 14:39 12 the Department of Energy to help facilitate the 14:36 13 incorporation of ASHRAE Standard 90.1 into EPAAct? 14:31 14 A I have -- I'll have to go back and double 14:36 15 check in my records to see. 14:39 16 Q Would it be customary for ASHRAE staff to 14:30 17 meet with members of the Department of Energy prior to 14:37 18 the incorporation of ASHRAE Standard 90.1 into EPAAct? 14:32 19 A It would be customary for ASHRAE staff with 14:38 20 ASHRAE volunteer leadership to go to -- when they were 14:32 21 requesting that type of thing. 14:36 22 (Exhibit 1163 marked for identification.) 14:39 23 Q (BY MR. BECKER) I'm handing you what's been 14:32 24 marked as Exhibit 1163. This is Bates number 14:33 25 ASHRAE0024558. Do you recognize this document? 14:38</p> <p style="text-align: right;">Page 136</p>
<p>1 Q Could you remind me of when that was? 14:30 2 A I think it was '99 14:32 3 Q Okay 14:34 4 A Around that time frame 14:34 5 Q Was that soon after EPAAct? 14:35 6 A I would have to look 14:31 7 Q Has ASHRAE -- ASHRAE and the DOE continued to 14:36 8 enter into memorandums of understanding to the present 14:33 9 day? 14:36 10 A Yes 14:37 11 Q How regularly do they do so? 14:37 12 A It -- it varies It depended -- it depends 14:32 13 on who's at -- who's in charge at the Department of 14:35 14 Energy We were just working on a new one I'm not 14:38 15 positive if it's signed yet 14:33 16 Q Is this typically an annual event? 14:37 17 A Not always annual Sometimes it's every 14:34 18 couple of years 14:36 19 Q And is it sometimes an annual event, though? 14:37 20 A Sometimes 14:39 21 Q And why would the -- why would the leadership 14:32 22 of the Department of Energy reflect or change whether 14:33 23 ASHRAE would enter into a memorandum -- memorandum of 14:38 24 understanding with the Department of Energy? 14:30 25 A I can't speak for the Department of Energy 14:36</p> <p style="text-align: right;">Page 135</p>	<p>1 A Yes. 14:36 2 Q And what is this document? 14:39 3 A This is a presentation that would have been 14:30 4 made by the D.C. office to tech council and the chapter 14:32 5 technology and transfer committee. I think that's what 14:33 6 CTTC stands for. And it would have been made in -- at 14:36 7 the ASHRAE meeting in Albuquerque, New Mexico, on 14:41 8 June 26, 2010. 14:47 9 Q And what is the purpose of this document, to 14:42 10 your understanding? 14:44 11 A The purpose of this document is for the D.C. 14:45 12 office just to let the CTCC [sic] and tech council know 14:49 13 what they've been doing in D.C. 14:44 14 Q On the third page of Bates number 14:45 15 ASHRAE0024560 titled "Participation Coalitions," it 14:48 16 says, "High-Performance Building Congressional Caucus 14:45 17 Coalition," in parentheses, "ask your representative to 14:49 18 join." 14:43 19 What is that referring to? 14:44 20 A There is a high-performance building caucus 14:45 21 coalition that meets in D.C. It deals with high 14:40 22 performance buildings. Beyond -- that would be beyond 14:44 23 the minimum code. 14:47 24 Q Are these -- and who composes this coalition? 14:40 25 A Oh, there's a lot of different standards 14:48</p> <p style="text-align: right;">Page 137</p>

1 developers that are in part of it. It might even be in 14:41
2 here, it tells you. There's a -- there's a long list. 14:46
3 I don't have that memorized. I don't know if it -- oh, 14:41
4 if you turn to page -- that says ASHRAE0024575, that 14:47
5 shows you who's on the high -- what groups are involved 14:45
6 in the high-performance building congressional caucus 14:40
7 at that time. It includes the representatives and then 14:45
8 the different standards developers that are involved. 14:47
9 Q The code chairs and members that are listed 14:44
10 on that page you just referenced, are these all members 14:46
11 of Congress? 14:49
12 A Yes. 14:40
13 Q What's the purpose of participation in the 14:47
14 high-performance building congressional caucus? 14:40
15 A It's really pro -- promoting doing things for 14:43
16 high-performance buildings, so stretch codes, green 14:47
17 standards, pushing the envelope to make things even 14:41
18 more energy efficient than the minimum code. 14:49
19 Q And is this for the purpose of influencing 14:42
20 these members of Congress so as to have them 14:46
21 incorporate these standards into the law? 14:41
22 MR. CUNNINGHAM: Object to the form. 14:47
23 THE WITNESS: Not that I'm aware of. 14:48
24 Q (BY MR. BECKER) What's the purpose of having 14:40
25 the members of Congress involved? 14:41

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1 A Education. 14:44
2 Q And what is the benefit of educating the 14:45
3 members of Congress? 14:48
4 A So they understand things when things do come 14:49
5 before them when they're making a decision of what to 14:42
6 incorporate into law. 14:44
7 Q So it's to help them with their decisions 14:46
8 to -- as to what to incorporate into reference into the 14:49
9 law? 14:42
10 A Correct. 14:43
11 Q And how does the high-performance building 14:49
12 congressional caucus and the supporting coalition 14:44
13 educate these members of Congress on issues related to 14:40
14 incorporating these -- excuse me, incorporating 14:46
15 standards into the law? 14:40
16 MR. CUNNINGHAM: Object to the 14:43
17 characterization of the prior testimony. 14:45
18 THE WITNESS: They -- my recollection 14:47
19 from the presentations made by the D.C. 14:49
20 office was that they -- they have a lunch, 14:42
21 they sit there and they talk, sometimes they 14:45
22 have an educational session; things like 14:47
23 that. 14:40
24 Q (BY MR. BECKER) So they meet with the 14:44
25 members of Congress? 14:46

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1 A Yeah, about -- I'm not sure they still meet 14:47
2 or how often they still meet. I think it was about 14:40
3 once a month. 14:42
4 Q Do they meet individually with the members of 14:49
5 Congress or as a larger group? 14:41
6 A If they're doing it as the high-performance 14:45
7 building congressional caucus, they're meeting as a 14:48
8 group. If they're advancing something within their 14:41
9 organization, then the supporting coalition would 14:44
10 probably be meeting individual with representatives. 14:47
11 Q On page ASHRAE0024568, it says, 14:45
12 "Legislation," with an image of the capitol building, 14:43
13 and then it says, "ASHRAE Washington, D.C." 14:48
14 A Um-hmm. 14:43
15 Q Then on the following page it says, "American 14:43
16 Clean Energy and Security Act, HR 2454 a/k/a 14:46
17 Waxman-Markey, sets national building code energy 14:42
18 efficiency targets." 14:49
19 Then two bullet points down it says, "Uses 14:42
20 ASHRAE 90.1-2004 and" E -- "IECC 2006 as baselines." 14:45
21 Does ASHRAE advocate for the use of earlier 14:48
22 versions of 90.1 in Standard -- excuse me, in -- in 14:45
23 laws or regulations? 14:44
24 A That's not what this refers to. 14:44
25 Q What does that refer to? 14:46

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1 A This refers to as part of EPAAct the 14:48
2 Department of Energy is required to determine how much 14:41
3 more energy efficient 90.1 -- and when they're talking 14:45
4 about the IECC 2006, they're talking about the 14:49
5 residential code. That's where that falls in there. 14:44
6 And they want to do it -- set it at a 14:48
7 baseline, so each consecutive every three years. So 14:41
8 for example, 90.1-2007 has to be more energy efficient 14:44
9 than -- so much more energy efficient than 90.1-2004 14:49
10 They measure that. If it's not more energy efficient, 14:44
11 then they wouldn't adopt that. And then for 90.1-2010. 14:49
12 They are just taking a baseline target to measure the 14:40
13 amount of energy efficiency so that it's not in flux 14:43
14 and cause market confusion. 14:48
15 And the same with the IECC. That's -- but 14:40
16 the IECC refers only to the residential, not to 14:42
17 commercial in this instance. 14:46
18 Q Does ASHRAE 90.1-2004 refer only to 14:44
19 residential and not commercial in this instance? 14:49
20 A No, 90.1-2004 is commercial. There's two 14:41
21 codes in that reference, two different codes. 14:44
22 Q So in this instance, if you had a -- a 14:47
23 commercial building, then ASHRAE 90.1-2004 would be the 14:41
24 baseline standard and not be IECC 2006? 14:48
25 A No. 14:43

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<p>1 Q How am I mistaken? 14:45</p> <p>2 A What this proposed legislation was, was to 14:48</p> <p>3 set the baseline for which the DOE uses to make the 14:43</p> <p>4 determination on whether or not the next version of 14:47</p> <p>5 90.1 is more energy efficient. So this was proposing 14:40</p> <p>6 to use 90.1-2004 as the benchmark for each subsequent 14:44</p> <p>7 version of 90.1. 14:48</p> <p>8 And then -- and that's only commercial. And 14:40</p> <p>9 then the IECC is for residential. They're referenced 14:43</p> <p>10 as the residential. What's being advocated here is 14:48</p> <p>11 that you use the IECC 2006 as the baseline for each 14:41</p> <p>12 subsequent version of the IECC for residential moving 14:46</p> <p>13 forward as for energy efficiency. 14:49</p> <p>14 Q Okay. Does the IECC itself refer to 14:42</p> <p>15 commercial buildings or is it only for residential 14:49</p> <p>16 buildings? 14:42</p> <p>17 A There -- there's different I-codes within the 14:46</p> <p>18 IECC. So there's the IRC, which is residential, but 14:40</p> <p>19 it's part of the whole body of codes. So the IECC for 14:43</p> <p>20 residential is just the energy efficiency stuff for 14:40</p> <p>21 residential home -- residential stuff. 14:44</p> <p>22 Q On the following page, it says, "American 14:55</p> <p>23 Clean Energy Leadership Act, S.1462." It says, 14:58</p> <p>24 "Introduced by Senator Jeff Bingaman, D-NM. Updates 14:51</p> <p>25 national building energy codes and standards at least 14:58</p> <p style="text-align: right;">Page 142</p>	<p>1 the -- but we explained that once you -- as you get 14:50</p> <p>2 above -- when you're going between the 30 and the 50 14:53</p> <p>3 percent, it gets more and more difficult to have 14:55</p> <p>4 cost-effective equipment and things like that and -- in 14:58</p> <p>5 there. So it -- it wasn't put in the law. 14:52</p> <p>6 Q On page ASHRAE0024581, it says, "Additional 14:58</p> <p>7 Washington office activities." And it says for the 14:56</p> <p>8 third major bullet point, "Building code adoptions," 14:56</p> <p>9 and then under that, "Standard 90.1 and Standard 14:50</p> <p>10 189.1/IGCC promotion." 14:54</p> <p>11 Does this mean that the Washington office was 14:50</p> <p>12 engaged in promoting the adoption of Standard 90.1 into 14:54</p> <p>13 building codes? 14:50</p> <p>14 A I don't remember. And without seeing it, if 14:55</p> <p>15 he -- he didn't have notes with it, so I don't think it 14:59</p> <p>16 was at a building code level. I think that's something 14:52</p> <p>17 they were talking about expanding in the grassroots. 14:57</p> <p>18 That was not done at that time. 14:52</p> <p>19 Q So that's something -- is that something 14:53</p> <p>20 that's done in -- at this time? 14:55</p> <p>21 A We have started a grassroots program to reach 14:51</p> <p>22 out when we are made aware of references to -- to 14:53</p> <p>23 different standards. And we could ask volunteers in 14:58</p> <p>24 those jurisdictions to go. 14:52</p> <p>25 Q And when you say "a grassroots program," who 14:53</p> <p style="text-align: right;">Page 144</p>
<p>1 every three years to achieve target energy savings of," 14:51</p> <p>2 and then it -- four bullet points down from that, it 14:55</p> <p>3 says, "If DOE determines ASHRAE's future revised model 14:50</p> <p>4 codes will not meet targets, DOE will propose or 14:55</p> <p>5 establish a modified code or standard that meets the 14:58</p> <p>6 above targets. Uses 90.1-2004 as baseline for 14:50</p> <p>7 commercial buildings IECC 2006 for residential." 14:56</p> <p>8 When it references "Uses 90.1-2004 as 14:59</p> <p>9 baseline for commercial buildings," is that in the same 14:53</p> <p>10 capacity as the reference on the prior page that you 14:56</p> <p>11 were just referring to? 14:59</p> <p>12 A Yes. One is a bill proposed in the House; 14:51</p> <p>13 one is a bill proposed in the Senate. 14:54</p> <p>14 Q Did the Department of Energy propose or 14:53</p> <p>15 establish a modified code or a standard that met the 14:56</p> <p>16 above targets on page ASHRAE0024570? 14:50</p> <p>17 A This is -- this proposed language is not 14:58</p> <p>18 in -- in law at this particular time. This was -- this 14:51</p> <p>19 was talking about what was being proposed at this point 14:55</p> <p>20 in time in 2010. 14:50</p> <p>21 Q What was the outcome? 14:53</p> <p>22 A I don't -- I don't think they set -- I don't 14:56</p> <p>23 believe that they set targets, because it's -- as part 14:59</p> <p>24 of the -- these codes, it has to be cost effective. 14:56</p> <p>25 And as ASHRAE explained -- and I'm not sure if it's 14:51</p> <p style="text-align: right;">Page 143</p>	<p>1 is involved in the grassroots program? 14:57</p> <p>2 A It's -- it's the individual ASHRAE chapters 14:50</p> <p>3 within each state, and then each -- you know, there's 14:52</p> <p>4 multiple chapters within a state. So whoever is 14:55</p> <p>5 closest to wherever the decision is being made. 14:58</p> <p>6 Q And so this is -- the grassroots program 14:52</p> <p>7 works to advocate for building code adoptions -- 14:59</p> <p>8 adoptions of Standard 90.1 into building codes -- 14:54</p> <p>9 MR. CUNNINGHAM: Objection. 14:58</p> <p>10 Q (BY MR. BECKER) -- in states and local 14:59</p> <p>11 governments? 14:51</p> <p>12 MR. CUNNINGHAM: Objection, 14:52</p> <p>13 mischaracterization of prior testimony. 14:53</p> <p>14 THE WITNESS: It could include Standard 14:54</p> <p>15 90.1. It could include any other -- our 14:56</p> <p>16 other standards as well. 14:59</p> <p>17 Q (BY MR. BECKER) And at the bottom of this 14:54</p> <p>18 page, it says, "Empowering chapters to engage state and 14:56</p> <p>19 local policy-makers." Do you know what that 14:59</p> <p>20 references? 14:52</p> <p>21 A That's referencing what I was talking about, 14:53</p> <p>22 the grassroots, and encouraging local chapters to talk 14:55</p> <p>23 to their state and local policy makers. 14:51</p> <p>24 Q And on the next page, it says, "Opportunities 14:55</p> <p>25 for individual member participation. Contact state and 14:59</p> <p style="text-align: right;">Page 145</p>

<p>1 local policy-makers on important issues " 14:53</p> <p>2 And the first bullet point there is "Building 14:56</p> <p>3 energy codes " Is this also referring to the same 14:58</p> <p>4 activities? 14:52</p> <p>5 A Actually, I think on this slide they were 14:55</p> <p>6 telling the members of tech council and CTTC what they 14:57</p> <p>7 could do at their state and local I don't think this 14:51</p> <p>8 related to the grassroots 14:52</p> <p>9 Q And on the next page, it has -- it says, 14:55</p> <p>10 "ASHRAE/DOE Fellowship " What is the ASHRAE/DOE 14:56</p> <p>11 Fellowship? 14:52</p> <p>12 A I know what it is, but I'm not sure how to 14:53</p> <p>13 articulate what it is It's usually someone that works 14:55</p> <p>14 with the D C office and -- and then may assist the 14:52</p> <p>15 D C staff with educating members of Congress Beyond 14:50</p> <p>16 that, I -- I need to look it up 14:56</p> <p>17 Q So would this be a member of ASHRAE or a 14:59</p> <p>18 member -- or an employee of -- would this be an 14:53</p> <p>19 employee of ASHRAE or an employee of DOE who would 14:56</p> <p>20 have -- have the ASHRAE/DOE fellowship? 14:51</p> <p>21 A It -- 14:57</p> <p>22 MR CUNNINGHAM: Are we talking about 14:51</p> <p>23 the ASHRAE/DOE fellowship on 583 or the 14:52</p> <p>24 internship on 584? 14:58</p> <p>25 MR BECKER: On 583 14:50</p> <p style="text-align: right;">Page 146</p>	<p>1 Q And are these six government offices and 15:00</p> <p>2 agencies those that the ASHRAE government affairs 15:00</p> <p>3 interfaces with? 15:00</p> <p>4 A Yes. 15:00</p> <p>5 (Exhibit 1164 marked for identification.) 15:01</p> <p>6 Q (BY MR. BECKER) I'm handing you what's been 15:02</p> <p>7 marked as Exhibit 1164. Do you recognize this 15:02</p> <p>8 document? 15:02</p> <p>9 A This is a followup to testimony of Kent 15:02</p> <p>10 Peterson to the U.S. House of Representatives on 15:02</p> <p>11 "Building Green, Saving Green." 15:02</p> <p>12 Q On the fourth page, ASHRAE0024238, the first 15:02</p> <p>13 full paragraph, it says, "In addition to the need for 15:03</p> <p>14 having up-to-date building codes on the books, 15:03</p> <p>15 jurisdictions must have the necessary enforcement 15:03</p> <p>16 mechanisms and training to ensure its compliance." 15:03</p> <p>17 A Where are you, because I'm -- 15:03</p> <p>18 MR. CUNNINGHAM: Where are you seeing 15:03</p> <p>19 that? 15:03</p> <p>20 THE WITNESS: I'm not seeing that. 15:03</p> <p>21 MR. BECKER: Excuse me. I think I 15:03</p> <p>22 handed you the wrong document. 15:03</p> <p>23 (Exhibit 1165 marked for identification.) 15:04</p> <p>24 Q (BY MR. BECKER) I'm handing you what's been 15:04</p> <p>25 marked as Exhibit 1165. Do you recognize this 15:04</p> <p style="text-align: right;">Page 148</p>
<p>1 MR. CUNNINGHAM: 583, okay. 14:51</p> <p>2 THE WITNESS: I would have to see -- I 14:57</p> <p>3 would have to see the contract they would 14:59</p> <p>4 have signed for the funding to answer that 14:50</p> <p>5 question, since the funding is provided by 14:52</p> <p>6 DOE. 14:58</p> <p>7 MR. BECKER: Counsel, do you have any 14:56</p> <p>8 idea if the contract concerning the 14:57</p> <p>9 ASHRAE/DOE fellowship has been produced in 14:50</p> <p>10 discovery? 14:54</p> <p>11 MR. CUNNINGHAM: I don't know the -- one 14:55</p> <p>12 way or the other. 14:56</p> <p>13 MR. BECKER: We -- we may follow up with 14:50</p> <p>14 a request for that if it's under the -- the 14:52</p> <p>15 requests. 14:56</p> <p>16 Q (BY MR. BECKER) Then on ASHRAE 0024586, it 14:57</p> <p>17 says, "Government Relations Activities." Do you see 14:52</p> <p>18 that? 14:58</p> <p>19 A Yes. 14:59</p> <p>20 Q It says, "Build relationships with government 14:59</p> <p>21 officials interested in the built environment. 14:52</p> <p>22 Establish ASHRAE as a source for unbiased technical 14:55</p> <p>23 expertise." And then it lists six government offices 14:58</p> <p>24 and agencies; is that correct? 15:06</p> <p>25 A That's correct. 15:08</p> <p style="text-align: right;">Page 147</p>	<p>1 document? 15:05</p> <p>2 A Yes, this is the -- the testimony of Kent 15:06</p> <p>3 Peterson. 15:09</p> <p>4 Q And so the document I provided you as Exhibit 15:02</p> <p>5 1164 was the followup testimony of Kent Peterson; is 15:04</p> <p>6 that correct? 15:01</p> <p>7 A Correct. 15:01</p> <p>8 Q So on Exhibit 1165, on the fourth page, the 15:03</p> <p>9 first full paragraph, it says, "In addition to the need 15:00</p> <p>10 for having up-to-date building codes on the books, 15:03</p> <p>11 jurisdictions must have the necessary enforcement 15:06</p> <p>12 mechanisms and training to assure its compliance." 15:08</p> <p>13 Why is compliance important for ASHRAE? 15:04</p> <p>14 A It doesn't -- you're -- you're not having 15:02</p> <p>15 energy efficient buildings if people aren't complying 15:05</p> <p>16 with it. You can't prove compliance, you can't prove 15:08</p> <p>17 it's being done and that they're seeing a savings if 15:01</p> <p>18 you're not assuring that people are complying with the 15:04</p> <p>19 codes that are on the books. 15:07</p> <p>20 Q And how does ASHRAE work to -- excuse me, 15:00</p> <p>21 does ASHRAE work to encourage compliance? 15:05</p> <p>22 A ASHRAE provides training for code officials 15:09</p> <p>23 and consulting -- anyone that wants the training to 15:04</p> <p>24 help understand what's in 90.1. 15:08</p> <p>25 Q Does ASHRAE do anything else to encourage 15:02</p> <p style="text-align: right;">Page 149</p>

<p>1 compliance? 15:07</p> <p>2 A Not that I'm aware of. 15:02</p> <p>3 Q Was there a specific reason why ASHRAE was 15:09</p> <p>4 concerned that jurisdictions might not have the 15:01</p> <p>5 necessary enforcement mechanisms and training to assure 15:07</p> <p>6 compliance? 15:02</p> <p>7 A Well, this was at a time when the economy was 15:02</p> <p>8 not doing so good, so places were cutting back, and 15:04</p> <p>9 that included the local building departments. So these 15:07</p> <p>10 building code officials aren't able to do as much, 15:02</p> <p>11 they're not able to check as much. The codes have 15:05</p> <p>12 gotten more complex, so it's harder for them to enforce 15:08</p> <p>13 compliance. 15:02</p> <p>14 Q If you turn to Exhibit 1164, the followup 15:01</p> <p>15 testimony of Kent W. Peterson. And if you please turn 15:07</p> <p>16 to the sixth page, ASHRAE0024250. It says, 15:06</p> <p>17 "Theoretically" -- excuse me, on -- on the fourth 15:07</p> <p>18 paragraph down, essentially the middle of the page, it 15:08</p> <p>19 says, "Theoretically, there exists a national baseline 15:00</p> <p>20 for building energy codes (ASHRAE Standard 90.1-2004 15:02</p> <p>21 for commercial buildings and the International Energy 15:06</p> <p>22 Conservation Code for residential buildings)." 15:00</p> <p>23 "EPAAct 2005 requires states to adopt a 15:07</p> <p>24 building energy code that is at least as stringent as 15:08</p> <p>25 90.1-2004 and the IECC. However, there are no 15:02</p> <p style="text-align: right;">Page 150</p>	<p>1 A Yes. 15:09</p> <p>2 MR. BECKER: Could we take a quick 15:18</p> <p>3 break? 15:19</p> <p>4 THE VIDEOGRAPHER: Going off the record 15:10</p> <p>5 at 15:10. 15:11</p> <p>6 (Recess taken.) 15:26</p> <p>7 THE VIDEOGRAPHER: Going on the record 15:20</p> <p>8 at 15:26. 15:22</p> <p>9 Q (BY MR. BECKER) Ms. Reiniche, as part of the 15:21</p> <p>10 process for developing the works at issue and updating 15:22</p> <p>11 them, does ASHRAE have a process for correcting any 15:28</p> <p>12 errors that might have occurred in previous versions of 15:23</p> <p>13 Standard 90.1? 15:28</p> <p>14 A Yes. 15:20</p> <p>15 Q And what is that process called? 15:20</p> <p>16 A We issue an erratum. 15:22</p> <p>17 Q Okay. And how does that work? 15:25</p> <p>18 A Some -- somebody finds an issue where 15:27</p> <p>19 there -- there's something wrong and believes that it 15:23</p> <p>20 was changed such and such a way in a -- a previous 15:25</p> <p>21 propose -- previous change that had been approved, it 15:21</p> <p>22 gets sent into staff. We consult with the chair of the 15:23</p> <p>23 committee and/or the subcommittee, depending on where 15:26</p> <p>24 it is, to make sure that that's correct. If it's 15:20</p> <p>25 correct, then we issue an erratum. 15:22</p> <p style="text-align: right;">Page 152</p>
<p>1 enforcement mechanisms against the states that do not 15:05</p> <p>2 adopt codes that meet these requirements. This is 15:08</p> <p>3 largely due to the fact that building codes generally 15:03</p> <p>4 are considered a state and local government issue." 15:05</p> <p>5 Does this relate to ASHRAE's concern 15:04</p> <p>6 regarding enforcement mechanisms concerning 15:06</p> <p>7 Standard 90.1? 15:02</p> <p>8 A Say that one more time. 15:06</p> <p>9 Q Does this relate to ASHRAE's concern 15:08</p> <p>10 regarding enforcement mechanisms concerning 15:00</p> <p>11 Standard 90.1? 15:05</p> <p>12 A Yes. 15:06</p> <p>13 Q Concerns such as reflected in Exhibit 1165 15:00</p> <p>14 that we were just discussing? 15:03</p> <p>15 A Yes, and it appears to be a little bit more 15:06</p> <p>16 than that. 15:09</p> <p>17 Q I'm sorry, what do you mean by "it appears to 15:07</p> <p>18 be a little bit more than that"? 15:09</p> <p>19 A This also relates to the fact that while the 15:00</p> <p>20 federal government under EPAAct requires the states to 15:03</p> <p>21 do this, there's no penalty if they don't. So that's 15:07</p> <p>22 an enforcement mechanism as well, so where's -- where's 15:00</p> <p>23 the need for the states to adopt that if there's no way 15:05</p> <p>24 to enforce it at a national level? 15:08</p> <p>25 Q Is that still the case? 15:07</p> <p style="text-align: right;">Page 151</p>	<p>1 Q Okay. 15:25</p> <p>2 (Exhibit 1166 marked for identification.) 15:23</p> <p>3 Q (BY MR. BECKER) I'm handing you what's been 15:25</p> <p>4 marked as Exhibit 1166. It's a printout from the 15:27</p> <p>5 ASHRAE website. Do you recognize this document? 15:23</p> <p>6 A Yes. 15:27</p> <p>7 Q And what is this document? 15:29</p> <p>8 A This is a page -- a printout of the page on 15:20</p> <p>9 the website that lists all the erratum and for what 15:24</p> <p>10 they apply for. 15:20</p> <p>11 Q And starting on the third page of this 15:23</p> <p>12 document, are these the errata for standard ASHRAE 15:29</p> <p>13 90.1? 15:27</p> <p>14 A If you -- well, the third major header starts 15:34</p> <p>15 for the errata for 90.1-1989, and then the next one 15:37</p> <p>16 down is the 19. -- 90.1-1999 I-P edition, and then the 15:33</p> <p>17 next one is the SI edition. 15:30</p> <p>18 Q And these documents appear to have dates on 15:35</p> <p>19 the -- the end of them. So for instance, under -- on 15:36</p> <p>20 the third page under Standard 90.1-1989 errata, various 15:33</p> <p>21 dates for the -- the second bullet point, it says, 15:38</p> <p>22 "Errata sheet for fourth printing GG 3/94 and all 15:30</p> <p>23 earlier editions September 16th, 1994." 15:36</p> <p>24 What does the date September 16th, 1994 there 15:30</p> <p>25 signify? 15:36</p> <p style="text-align: right;">Page 153</p>

1 A That's when -- that's when we published it on 15:36
2 the web -- or when we discovered there was an error, 15:39
3 and that's the date that we put it out. 15:31
4 Q So September 16th is when the -- the errata 15:35
5 was released -- 15:30
6 A Right. 15:32
7 Q -- by ASHRAE? 15:33
8 A Right. 15:33
9 Q And is that -- is that the -- true for the 15:32
10 other dates that are listed in -- similarly, say, under 15:35
11 the Standard 90.1-1999 errata? 15:32
12 A Yes. 15:36
13 (Exhibit 1167 marked for identification.) 15:32
14 Q (BY MR. BECKER) I'm handing you what's been 15:30
15 marked Exhibit 1167. Do you recognize this document? 15:32
16 A This is an Errata Sheet for ANSI/ASHRAE 15:31
17 Standard 40.1.3[sic]-1989. 15:37
18 Q And this errata was released on January 5th, 15:35
19 1998; is that correct? 15:38
20 A That's correct. 15:39
21 Q And what is the purpose of -- of releasing an 15:39
22 errata almost ten years after the date of the standard 15:35
23 itself? 15:31
24 A Someone didn't find it until ten years later. 15:32
25 And if that standard is still being used, when we 15:35

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1 reprint the standard, we include it with the next 15:30
2 edition so people know the correct information So 15:34
3 clearly the equation was wrong, and I'm guessing that's 15:37
4 important 15:30
5 (Exhibit 1168 marked for identification) 15:33
6 Q (BY MR. BECKER) Handing you what's been 15:30
7 marked as Exhibit 1168 Do you recognize this 15:31
8 document? 15:39
9 A Yes 15:39
10 Q And can you tell me what this document is? 15:39
11 A This is an Errata Sheet for ANSI/ASHRAE/IESNA 15:31
12 Standard 90 1-2001 I-P edition, dated November 7th, 15:37
13 2003 15:30
14 Q Thank you 15:30
15 (Exhibit 1169 marked for identification) 15:36
16 Q (BY MR. BECKER) I'm handing you what's been 15:31
17 marked as Exhibit 1169 This is Bates numbered 15:32
18 ASHRAE0029503 Could you tell me what this document 15:30
19 is? 15:33
20 A Yes This is the Errata Sheet for 15:34
21 ANSI/ASHRAE/IESNA Standard 90 1-2001 SI Edition, dated 15:39
22 November 7th, 2003 15:38
23 Q And do you recognize this document? 15:39
24 A Yes 15:31
25 (Exhibit 1170 marked for identification) 15:32

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1 Q (BY MR. BECKER) I'm handing you what's been 15:30
2 marked as Exhibit 1170. This is Bates numbered 15:31
3 ASHRAE0029496. Can you tell me what this document is? 15:36
4 A It's an email conversation regarding an 15:34
5 unpublished errata sheet that we wanted the -- would 15:37
6 have been the chair at the time, Jerry White, to look 15:34
7 at so that when special pubs did the reprint of 15:37
8 90.1-2001, the I-P edition, it could include the errata 15:32
9 in that list. 15:30
10 And then there's a discussion -- there was a 15:32
11 question and -- of Martha VanGeem about whether one of 15:35
12 that was -- one of the things was correct. 15:39
13 Q Is this email characteristic of how the 15:33
14 errata would be treated prior to publication? 15:30
15 A Normally, there's probably not a long list of 15:34
16 unpublished errata, but this would be for a reprint, so 15:34
17 they were -- they -- with errata, they correct it in 15:38
18 the reprint version, the error, so that it's correct in 15:30
19 the next version. Even in -- so this would be normal. 15:34
20 (Exhibit 1171 marked for identification.) 15:30
21 Q (BY MR. BECKER) I'm handing you what's been 15:31
22 marked as Exhibit 1171. Could you please tell me what 15:33
23 this document is? 15:37
24 A So this is a continuation of the email 15:35
25 conversation in Exhibit 1170. Further discussions on 15:38

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1 whether or not it should be degrees F and degrees C 15:37
2 instead of degrees R and degrees K. 15:31
3 (Exhibit 1172 marked for identification.) 15:36
4 Q (BY MR. BECKER) I'm handing you what's been 15:35
5 marked as Exhibit 1172. Could you please tell me what 15:36
6 this document is? 15:32
7 A This is a further email exchange as -- which 15:48
8 would have been part of Exhibit 1170 and 1171, 15:42
9 continued the discussion on whether the erratum were -- 15:49
10 were editorial or substantive. It talks about motions 15:42
11 made by the committee and that the committee determined 15:48
12 that those changes were editorial. And that Eric, who 15:41
13 would have been the chair of the lighting subcommittee 15:44
14 agrees that this is editorial. 15:48
15 (Exhibit 1173 marked for identification.) 15:42
16 Q (BY MR. BECKER) And I'm handing you Exhibit 15:45
17 marked 1173. Could you tell me what this document is? 15:48
18 A This is a document that's an email exchange 15:44
19 that's in continuation of Exhibits 1170, 1171, 1172 15:48
20 where Mr. Spielvogel disagrees with what Mark Weber has 15:46
21 said is a substantive change and says it's interpreting 15:43
22 what he believes to be ANSI's rule on substantive 15:40
23 changes. 15:44
24 (Exhibit 1174 marked for identification.) 15:44
25 Q (BY MR. BECKER) I'm handing you what's been 15:41

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<p>1 marked as Exhibit 1174. Could you please tell me what 15:42 2 this document is? 15:42 3 A This is a subset, I think, of another email 15:42 4 exchange related to Exhibit 1170 where Mark indicates 15:43 5 that this correction was made by Jim Calm. 15:43 6 (Exhibit 1175 marked for identification.) 15:44 7 Q (BY MR. BECKER) I'm handing you what's been 15:44 8 marked as Exhibit 1175. Do you recognize this 15:44 9 document? 15:45 10 A Yes. 15:45 11 Q And could you tell me what this document is? 15:45 12 A This is a Certificate of Registration with 15:45 13 the United States Copyright Office for the 1993 ASHRAE 15:45 14 Handbook: Fundamentals Inch-Pound Edition. 15:45 15 Q What is the 1999 ASHRAE Handbook: 15:45 16 Fundamentals? 15:45 17 A It covers a variety of topics. I would have 15:45 18 to look at the inside cover to tell you every topic 15:45 19 that it covers. 15:45 20 Q What's the purpose of the 1993 ASHRAE 15:45 21 Handbook: Fundamentals? 15:45 22 A It's a -- it's a tool for engineers to use 15:45 23 when they're working with the topics covered in that 15:45 24 book. 15:45 25 Q Is the 1993 ASHRAE Handbook: Fundamentals 15:45 Page 158</p>	<p>1 A Yes 15:44 2 Q Can you tell me what this document is? 15:44 3 A This document is the letter that gets sent to 15:46 4 the project committee that shows the public review 15:49 5 comments for BSR/ASHRAE/IESNA Addenda S, T, and X to 15:43 6 ANSI/ASHRAE/IESNA Standard 90.1-2007 15:45 7 Q And if you look at the sixth, seventh, 15:40 8 eighth, ninth, and I believe tenth page of this 15:47 9 document, are those copyright releases on all of those 15:51 10 pages I mentioned? 15:59 11 A Yes 15:57 12 Q And who are those copyright releases from? 15:57 13 A Larry Spielvogel 15:50 14 Q Do you know who Larry Spielvogel is? 15:54 15 A Yes 15:58 16 Q Who is Mr. Spielvogel? 15:58 17 A He is an ASHRAE member 15:50 18 Q Has Mr. Spielvogel ever been an employee of 15:52 19 ASHRAE? 15:57 20 A No 15:57 21 Q Do Mr. Spielvogel's proposed contributions 15:50 22 appear in this document? 15:54 23 A Actually, yes 15:56 24 Q And where is that? 15:59 25 A Under -- on the page labeled ASHRAE0013966, 15:51 Page 160</p>
<p>1 referenced in ASHRAE Standard 90.1? 15:46 2 A I would have to look. 15:46 3 (Exhibit 1176 marked for identification.) 15:46 4 Q (BY MR. BECKER) I'm handing you what's been 15:46 5 marked as Exhibit 1176. This is Bates number 15:46 6 ASHRAE0001592. Could you -- do you recognize this 15:46 7 document? 15:46 8 A Yes. 15:46 9 Q And could you please tell me what it is? 15:46 10 A Well, the first page labeled ASHRAE001592 is 15:47 11 the certification -- Certificate of Registration with 15:47 12 the United States Copyright Office for ANSI/ASHRAE/IES 15:47 13 Standard 90.1-2010 IP Edition. 15:47 14 For the page labeled ASHRAE0001594, that is 15:47 15 the Certificate of Registration with the United States 15:47 16 Copyright Office for ANSI/ASHRAE/IESNA 15:47 17 Standard 90.1-2007 IP Edition. 15:47 18 For the page labeled ASHRAE001596, this is 15:47 19 the Certificate of Registration with the United States 15:47 20 Copyright Office for ANSI/ASHRAE/IESNA 15:48 21 Standard 90.1-2004 IP -- IP Edition. 15:48 22 (Exhibit 1177 marked for identification.) 15:48 23 Q (BY MR. BECKER) I'm handing you what's been 15:48 24 marked as Exhibit 1177. It's the document beginning 15:48 25 with ASHRAE0013961. Do you recognize this document? 15:48 Page 159</p>	<p>1 under 4 "Comment (Proposed Text)," it says, "Do not 15:52 2 approve and do not publish this addendum." 15:52 3 Q So these are his contributions, then, as to 15:52 4 say "Do not approve and do not publish this addendum" 15:52 5 that he's referring to? 15:52 6 A That is correct. 15:52 7 Q If you turn to the page ASHRAE0013973, is 15:52 8 that another signed copyright release on that page? 15:53 9 A Yes. 15:53 10 Q And in that instance, has it been signed and 15:53 11 also had the -- the name of the individual inserted? 15:53 12 A Yes. 15:53 13 Q And who is that individual? 15:53 14 A James Calm. 15:53 15 Q And what is Mr. Calm's relationship to 15:53 16 ASHRAE, if any? 15:53 17 A He's a member of ASHRAE. 15:53 18 Q And has Mr. Calm ever been an employee of 15:53 19 ASHRAE? 15:53 20 A No. 15:53 21 Q And Mr. Calm's contribution on the following 15:53 22 page, is that "Disapprove proposed revisions in 15:53 23 Addendum S"? 15:54 24 A That would be his comment, yes. 15:54 25 Q And then if you turn to ASHRAE0013982, is 15:54 Page 161</p>

1 that a copyright release from Pekka Hakkar -- 15:59	1 (Exhibit 1180 marked for identification.) 15:57
2 A Hakkarainen. 15:56	2 Q (BY MR. BECKER) I'm handing you what's been 15:51
3 Q -- Hakkarainen? 15:57	3 marked as Exhibit 1180. Do you recognize this 15:52
4 A Yes. 15:58	4 document? 15:56
5 Q Is that Mr. or Ms. Pekka? 15:59	5 A Yes. 15:57
6 A Mister. 15:52	6 Q And what is this document? 15:50
7 Q And Mr. Hakkarainen, how is he affiliated 15:53	7 A This is the Form for Submittal of Proposed 15:52
8 with ASHRAE, if at all? 15:50	8 Change to ASHRAE Standards and Guidelines Under 15:55
9 A He's a member of ASHRAE. 15:51	9 Continuous Maintenance. 15:59
10 Q And has Mr. Hakkarainen ever been an employee 15:52	10 Q And does this document include a copyright 15:50
11 of ASHRAE? 15:55	11 release? 15:55
12 A No. 15:55	12 A It includes it. 15:56
13 Q And following section 4 on this page, 15:59	13 Q Has the copyright release been signed? 15:58
14 continuing on to the next page, is this 15:55	14 A Not on this particular copy. 15:51
15 Mr. Hakkarainen's proposed contribution to the ASHRAE 15:58	15 Q And what is Mr. Barnes's affiliation? 15:55
16 standard? 15:54	16 A He would be an ASHRAE member or could be 15:52
17 A Yes. 15:55	17 someone that works just at the lab. I don't recognize 15:50
18 Q 90.1? 15:55	18 his name. 15:53
19 A Yes. 15:57	19 Q And Mr. Barnes's proposed change, is that 16:09
20 (Exhibit 1178 marked for identification.) 15:59	20 under section 5? 16:02
21 Q (BY MR. BECKER) I'm handing you what's been 15:50	21 A It's in part under -- he references the 16:09
22 marked as Exhibit 1178. This is the document that 15:51	22 document that's on page -- it says page 2 in the 16:03
23 starts at ASHRAE0011934. Could you tell me what this 15:55	23 right-hand corner. That's his proposed change. 16:08
24 document is? 15:50	24 Q Do you know if ASHRAE has a copyright release 16:00
25 A This is the packet that was sent to the 15:51	25 on file for Mr. Barnes? 16:04
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1 project committee members of 90.1, November 14th, 2006, 15:53	1 A I would have to look through the records 16:07
2 that has the first public review comments for 15:50	2 This appears to be from February of 2000, so very 16:09
3 BSR/ASHRAE/IESNA Addenda AN, AT, and AV to 15:53	3 likely this is in the paper copies of our documents 16:06
4 ANSI/ASHRAE/IESNA Standard 90.1-2004. 15:54	4 that would be at Iron Mountain 16:09
5 Q And does this document also contain copyright 15:51	5 (Exhibit 1181 marked for identification) 16:08
6 releases from individuals that have been signed? 15:55	6 Q (BY MR. BECKER) I'm handing you what's been 16:02
7 A Yes. 15:54	7 marked as Exhibit 1181 Could you tell me what this 16:03
8 (Exhibit 1179 marked for identification.) 15:52	8 document is? 16:00
9 Q (BY MR. BECKER) I'm handing you what's been 15:59	9 A This is a Form for Submittal of Proposed 16:01
10 marked as Exhibit 1179. Do you recognize this 15:50	10 Change to ASHRAE Standard Under Continuous Maintenance 16:04
11 document? 15:55	11 submitted by Steve Rose- -- Steven Rosenstock on 16:07
12 A Yes. 15:56	12 April 9th, 2007 16:01
13 Q And what is this document? 15:57	13 Q And does this form include a copyright 16:03
14 A This is the Form for Submittal of a Proposed 15:59	14 release? 16:09
15 Change to an ASHRAE Standard Under Continuous 15:53	15 A It does 16:00
16 Maintenance submitted by Jonathan McHugh. 15:57	16 Q And has the copyright release been signed? 16:00
17 Q And does this document include a copyright 15:50	17 A No, but Mr. Rosenstock was a member of the 16:02
18 release? 15:52	18 project committee, and so he wouldn't have had to 16:05
19 A Yes. 15:52	19 submit this as a formal proposal 16:08
20 Q And under section 5, "Proposed Change," where 15:57	20 Q And has Mr. Rosenstock ever been an employee 16:01
21 it says, "Revised section 5.1 as follows," do you 15:53	21 of ASHRAE? 16:06
22 understand this to mean that the revision that's been 15:59	22 A No 16:06
23 proposed by Mr. McHugh is that final line that starts 15:52	23 Q And when you say that he wouldn't have had to 16:03
24 with 5.1.2.2, which is underlined? 15:57	24 submit this as a formal proposal, what -- why do you 16:06
25 A Yes. 15:52	25 say that? 16:01
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<p>1 A I -- and I think Mr. Barnes might have been 16:02 2 on the project committee, too. As I'm recollecting the 16:04 3 roster you shown -- had shown me previously, I believe 16:00 4 his name was on there. And for -- for a project 16:02 5 committee member to propose a change, they don't have 16:07 6 to file a continuous maintenance change proposal. They 16:09 7 can just submit it as a motion to change it, either at 16:02 8 the subcommittee level or at the full committee level. 16:07 9 They would never have to do it through the formal. 16:09 10 They can choose to, but they have also already signed 16:02 11 the copyright release form as part of their membership 16:05 12 on the project committee. 16:08 13 Q So it's not necessary for them to fill out 16:09 14 one of these forms? 16:02 15 A Correct. 16:03 16 Q And why would they fill out one of these 16:03 17 forms? 16:05 18 A It may be just -- just because they want to, 16:07 19 to -- you know, put a -- maybe they're asking to do 16:02 20 that so we put it on a timeline. When it comes on a 16:04 21 form, there's a timeline that applies, a 13-month 16:08 22 window. Where if you submit it in the committee, there 16:03 23 isn't a timeline. 16:06 24 So this is just maybe for his -- the reason 16:00 25 Mr. Rosenstock did this was so that it would be handled 16:03 Page 166</p>	<p>1 Form For Public Proposals in the International Codes. 16:06 2 This would have been for the 2007/2008 code development 16:01 3 cycle. 16:05 4 Q Is that for the code development of the ICC? 16:06 5 A Yes. 16:01 6 Q Would that be for the IECC or for something 16:02 7 else? 16:09 8 A I need to look at the proposal. This would 16:00 9 have been for the IECC. 16:07 10 Q And the company that's listed on the front of 16:08 11 this document under section 1, "Jurisdiction/Company" 16:00 12 is ASHRAE; is that correct? 16:05 13 A That's correct. 16:06 14 Q Does ASHRAE submit material to be included in 16:00 15 the IECC? 16:06 16 A Yes. 16:08 17 Q Why is it that ASHRAE submits material to be 16:09 18 included in the IECC? 16:03 19 A To make the IECC consistent with the current 16:04 20 version of 90.1. 16:09 21 Q And if you turn to the final page of this 16:07 22 document, ASHRAE0012344, could you tell me what that 16:09 23 is? 16:08 24 A This is a Copy Release for 2007/2008 16:08 25 Proposals, Modifications and Public Comments Submitted 16:04 Page 168</p>
<p>1 within 13 months 16:00 2 (Exhibit 1182 marked for identification) 16:04 3 Q (BY MR BECKER) I'm handing you what's been 16:05 4 marked as Exhibit 1182 Do you recognize this 16:06 5 document? 16:00 6 A Yes This is a Form for Submittal of 16:01 7 Proposed Change to an ASHRAE Standard Under Continuous 16:04 8 Maintenance, submitted by Shlomo Rosenfeld in -- 16:09 9 June 11th, 2009 16:05 10 Q And does this document include 16:03 11 Mr Rosenfeld's proposed change under section 5? 16:07 12 A Yes, it does 16:02 13 Q Is the copyright release for the project 16:01 14 committee the same as the copyright releases for 16:04 15 memberships that -- that we had discussed earlier 16:02 16 today? 16:04 17 A The -- on the application form, the copyright 16:05 18 language is the same as on our continuous maintenance 16:08 19 proposal forms and on our -- the comment forms, yes 16:03 20 Q Thank you 16:08 21 (Exhibit 1183 marked for identification) 16:00 22 Q (BY MR BECKER) I'm handing you what's been 16:00 23 marked as Exhibit 1183 This is a document Bates 16:01 24 number ASHRAE0012340 Do you recognize this document? 16:07 25 A Yes This is a Public Code Change Proposal 16:03 Page 167</p>	<p>1 on ICC Codes from -- that's produced and published by 16:07 2 the International Code Council. 16:01 3 Q And so this is a copyright release to the 16:08 4 ICC; is that correct? 16:00 5 A That's correct. 16:01 6 Q And has ASHRAE entered into a copyright 16:04 7 release to the ICC for the -- its contributions to the 16:07 8 IECC? 16:04 9 A Steve Comstock would have signed a copyright 16:08 10 release. 16:01 11 (Exhibit 1184 marked for identification.) 16:00 12 Q (BY MR. BECKER) I'm handing you what's been 16:16 13 marked as Exhibit 1184. Do you recognize this 16:17 14 document? 16:11 15 A Yes. This is a Public Code Change Proposal 16:13 16 Form for Public Proposals in the International Codes 16:15 17 for the 2007/2008 Code Development Cycle. 16:19 18 Q For the ICC; is that correct? 16:16 19 A That is correct. 16:17 20 Q And on the first page of this document, 16:10 21 where -- under section 2, "Copyright Release," there is 16:13 22 an "X" next to where it says "2007/2008 Cycle Copyright 16:18 23 Release on File." Is that correct? 16:13 24 A That's correct. 16:15 25 Q Does that mean that ASHRAE had submitted a 16:15 Page 169</p>

<p>1 copyright release to the ICC for its contributions to 16:10 2 the IECC in 2007? 16:15 3 A That's correct, Steve Comstock would have 16:19 4 issued a copyright release. 16:13 5 Q Typically, would it be ASHRAE employees that 16:14 6 would submit content to the ICC for incorporation into 16:16 7 the IECC or would it be volunteers? 16:10 8 MR. CUNNINGHAM: Objection to form. 16:16 9 THE WITNESS: There is a process for 16:12 10 which code change proposals are approved 16:13 11 through ASHRAE. Steve Ferguson, as the 16:15 12 ASHRAE staff representative at the code 16:18 13 hearings, would be the one that would submit 16:10 14 the code change proposals after they've gone 16:12 15 through the process. 16:15 16 Q (BY MR. BECKER) Who drafts the code change 16:19 17 proposals? 16:12 18 A It is -- Steve would put them in the form, 16:17 19 Ferguson, but they would be -- they would come from the 16:11 20 existing text of the standard that we're referencing. 16:14 21 Q Would they be exact quotes of the text that 16:11 22 was referenced? 16:15 23 A The rule in ASHRAE is code -- typically, it's 16:17 24 the exact text, but the rule in ASHRAE is for code 16:10 25 change proposals that are being submitted that submit 16:12 Page 170</p>	<p>1 this copy of the Department of Energy's proposal to the 16:19 2 ICC? 16:15 3 MR. CUNNINGHAM: Object to scope. 16:19 4 THE WITNESS: Because the Department of 16:10 5 Energy would have gotten the -- we would have 16:13 6 given them the copyright release to submit 16:15 7 the code change proposal for language that 16:17 8 was pulled directly from 90.1. 16:13 9 Q (BY MR. BECKER) Does that mean that the 16:12 10 Department of Energy will take language from 90.1 and 16:15 11 submit it to the ICC for inclusion in the IECC? 16:11 12 MR. CUNNINGHAM: Objection to form. 16:12 13 THE WITNESS: During this time frame 16:13 14 in -- they have not done it to my knowledge 16:15 15 since this time frame; but yes, they did 16:19 16 submit it. 16:13 17 Q (BY MR. BECKER) And they -- the Department 16:10 18 of Energy would do this in cooperation with ASHRAE? 16:13 19 A Yes, if it was language pulled -- they would 16:17 20 get permission if it was language pulled verbatim from 16:10 21 90.1. I don't know if this is verbatim from 90.1. 16:14 22 Q Does ASHRAE believe that the Department of 16:18 23 Energy needs permission in order to take a quote from 16:11 24 ASHRAE Standard 90.1 and submit it as a proposal to the 16:18 25 IECC? 16:12 Page 172</p>
<p>1 proposed text from ASHRAE standards, they have to be 16:18 2 technically equivalent if they are not verbatim. 16:11 3 Q And who determines that the text is 16:18 4 technically equivalent? 16:14 5 A It first goes back to the project committee 16:15 6 responsible for the particular standard being proposed 16:18 7 into code. After they have approved it as technically 16:11 8 equivalent or just approved its submittal, then it goes 16:17 9 to the code interaction subcommittee and they -- they 16:10 10 approve submitting it. They're reviewing the process 16:15 11 and making sure the process was followed. 16:18 12 Q Who drafts the content if it is technically 16:11 13 equivalent and not identical to the content from the 16:17 14 ASHRAE Standard 90.1? 16:11 15 A Members of the project committee. 16:13 16 (Exhibit 1185 marked for identification.) 16:10 17 Q (BY MR. BECKER) I'm handing you what's been 16:19 18 marked as Exhibit 1185. Could you tell me what this 16:11 19 document is? 16:14 20 A Yes, this is the Public Code Change Proposal 16:15 21 Form for Public Proposals in the International Codes 16:17 22 for the 2009/2010 Code Development Cycle for the ICC. 16:10 23 Q And who is this proposal on behalf of? 16:16 24 A The Department of Energy. 16:19 25 Q And do you know why the -- why ASHRAE has 16:16 Page 171</p>	<p>1 MR. CUNNINGHAM: Objection, calls for a 16:15 2 legal conclusion. 16:19 3 THE WITNESS: Yes. 16:10 4 Q (BY MR. BECKER) What is ASHRAE's 16:15 5 relationship to the ICC? 16:16 6 A We have multiple relationships with the ICC. 16:12 7 Q Could you please explain? 16:19 8 A So I would say in terms of the IECC, ASHRAE 16:10 9 90.1 would be in competition with that particular 16:17 10 document. And -- and then there's other things where 16:19 11 we work together on. 16:15 12 Q What kind of things does ASHRAE and the ICC 16:13 13 work together on? 16:10 14 A We have had ASHRAE members on the code 16:10 15 council. We've had I -- ICC members participate in the 16:13 16 development of ASHRAE standards. 16:18 17 (Exhibit 1186 marked for identification.) 16:19 18 Q (BY MR. BECKER) I'm handing you what's been 16:16 19 marked as Exhibit 1186. Do you recognize this 16:17 20 document? 16:16 21 A Yes. 16:17 22 Q And what is this document? 16:19 23 A This is an email exchange with Dave Conover 16:13 24 and Doug Read about a comparison document for 90.1 and 16:17 25 the IECC. 16:12 Page 173</p>

<p>1 Q And on the first page, Mr. Comstock says at 16:13 2 the second email in the chain, the bottom of the second 16:14 3 email, he says, "Please advise. With all the ICC 16:17 4 controversy, we are being cautious." 16:11 5 Do you know what Mr. Comstock was referring 16:14 6 to there? 16:16 7 A About the potential for the IECC becoming 16:21 8 referenced in EPAAct instead of 90.1. 16:25 9 Q And Mr. Comstock says two paragraphs above 16:20 10 that, "Isn't our position that our standard is better 16:26 11 than the IECC?" 16:29 12 Is Mr. Comstock referring to the -- to ASHRAE 16:24 13 Standard 90.1? 16:29 14 A Yes. 16:21 15 Q And is ASHRAE's position that ASHRAE 90.1 is 16:21 16 better than the IECC? 16:26 17 A Yes. 16:29 18 (Exhibit 1187 and Exhibit 1188 marked for 16:21 19 identification.) 16:29 20 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 16:29 21 you what's been marked as Exhibits 1187 and 1188. Do 16:21 22 you recognize these documents? 16:29 23 A Yes. 16:20 24 Q And the email 1187, which you are a recipient 16:27 25 of, included the document 1188 as a attachment; is that 16:22 Page 174</p>	<p>1 standards that ASHRAE provides free public online 16:25 2 access to are incorporated by reference into the CFR 16:28 3 and otherwise used by federal agencies in programs 16:22 4 either in their current or prior editions." Is that 16:25 5 correct? 16:22 6 A That's correct. 16:22 7 Q Why is it that on the previous page, it says 16:24 8 that "The CFR incorporates by reference 30 of ASHRAE's 16:27 9 standards and related materials," but on the next page, 16:21 10 it says that only five standards that are referenced in 16:26 11 the CFR are provided for free public online access? 16:21 12 MR. CUNNINGHAM: Objection to the 16:29 13 scope. 16:20 14 THE WITNESS: Without seeing the list of 16:25 15 the 30 references to know what they are, it's 16:26 16 hard for me to comment on that from the CFR 16:28 17 database. And -- and so without knowing how 16:27 18 they're referenced or what they're 16:23 19 referenced, and I don't know why -- what 16:25 20 versions are on there, I believe more 16:20 21 versions of standards are now on our website. 16:22 22 Q (BY MR. BECKER) And again, on that second 16:20 23 page, when it says "The CFR incorporates by reference 16:21 24 30 of ASHRAE's standards and related materials," what 16:24 25 does it mean by "related materials"? 16:27 Page 176</p>
<p>1 correct? 16:28 2 A That appears to be what the attachment 16:23 3 describes this as, yes. 16:25 4 Q And could you tell me what these documents 16:27 5 are? 16:29 6 A Exhibit 1187 is an email from Mark Ames that 16:20 7 provides the recipients of the email the comments that 16:27 8 were submitted on standards incorporated by reference 16:21 9 into the Code of Federal Regulations. 16:25 10 And then a copy -- and it looks like there 16:21 11 was also a copy of the request for comments and 16:23 12 extension of the comment period. 16:28 13 Q And looking at Exhibit 1188, on the first 16:21 14 page, if you look at the third paragraph down, it 16:28 15 starts off by saying, "ASHRAE standards are currently 16:24 16 referenced 130 times in the Code of Federal 16:27 17 Regulations." Is that correct? 16:20 18 A That's correct. 16:23 19 Q And then if you turn to the next page, on the 16:26 20 last paragraph, the second-to-last sentence in the last 16:21 21 paragraph says, "The CFR incorporates by reference 30 16:27 22 of ASHRAE's standards and related materials." Is that 16:22 23 correct? 16:28 24 A Yes. 16:29 25 Q And then on the next page, it says, "The five 16:20 Page 175</p>	<p>1 A Without seeing that list, I would have to say 16:24 2 could be user's manuals It could be other 16:29 3 publications within ASHRAE It could be a referenced 16:23 4 article I don't know without seeing the list 16:27 5 Q Might that include the 1993 ASHRAE handbook? 16:29 6 A That may include the 1993 ASHRAE handbook, 16:22 7 yes 16:26 8 Q Do you know if the 1993 ASHRAE handbook has 16:28 9 been incorporated by reference into any law or 16:21 10 regulation? 16:23 11 A I don't know 16:24 12 (Exhibit 1189 marked for identification) 16:24 13 Q (BY MR BECKER) Ms Reiniche, I'm handing 16:28 14 you what's been marked as Exhibit 1189 This is 16:29 15 document Bates number ASHRAE0027781 Do you recognize 16:32 16 this document? 16:37 17 A Yes 16:37 18 Q And could you tell me what this document is? 16:39 19 MR CUNNINGHAM: I'm going to object to 16:33 20 the scope here This appears to be something 16:34 21 that would have been covered with 16:35 22 Mr Comstock as part of his topics 16:37 23 MR BECKER: Ms Reiniche is copied on 16:31 24 this email 16:34 25 MR CUNNINGHAM: And you guys purposely 16:35 Page 177</p>

1 chose to not depose her in her personal 16:30
2 capacity as part of your effort to extend 16:30
3 your number of depositions that you guys were 16:30
4 doing a few months back. 16:30
5 MR. BECKER: This is part of the 16:30
6 authentication process. 16:30
7 MR. CUNNINGHAM: It's outside the scope 16:30
8 of the 30(b)(6) deposition. 16:31
9 MR. BECKER: I'm having -- I'm having 16:31
10 her authenticate the document. 16:31
11 MR. CUNNINGHAM: Do you plan to do 16:31
12 anything else with it? 16:31
13 MR. BECKER: No. 16:31
14 MR. CUNNINGHAM: Why was it not 16:31
15 authenticated with Mr. Comstock? 16:31
16 MR. BECKER: I'm actually not entirely 16:31
17 certain if it was. 16:31
18 THE COURT REPORTER: Entirely certain of 16:31
19 what? 16:31
20 MR. BECKER: If it was. 16:31
21 THE WITNESS: This is -- this is an 16:31
22 email I received -- would have received from 16:31
23 Mick Schwedler asking for what type of 16:31
24 copyright permission would be needed to show 16:31
25 excerpts of some of the items in 90.1. 16:31

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1 What appears to be missing is the email 16:33
2 I would have forwarded to Steve Comstock 16:35
3 since it was published, and I don't have 16:38
4 authority to grant copyright permission when 16:30
5 it's a published document. 16:33
6 And then is Steve Comstock providing the 16:38
7 stipulations for the copyright for which Mick 16:34
8 could show -- 16:30
9 THE COURT REPORTER: For which what? 16:30
10 THE WITNESS: -- Mick could show 16:30
11 portion -- or screenshots of 90.1. 16:32
12 Q (BY MR. BECKER) Is that Mick Schwedler? 16:37
13 A Yes. 16:30
14 Q Do you know Mr. Schwedler? 16:39
15 A Yes. 16:30
16 Q And who is Mr. Schwedler employed by? 16:37
17 MR. CUNNINGHAM: Same objection. This 16:30
18 is still clearly outside the scope. 16:32
19 THE WITNESS: Mick is employed by 16:36
20 Trane. 16:37
21 Q (BY MR. BECKER) And what is Trane? 16:37
22 A Trane is an engineering company, manufacturer. 16:38
23 Q Ms. Reiniche, when did ASHRAE first become 16:36
24 aware of Public Resource? 16:30
25 A I think it was around -- I want to say 2012. 16:35

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1 Q And how did ASHRAE first become aware of 16:35
2 Public Resource? 16:39
3 A I believe it was related to information about 16:32
4 a court case with SMACNA. 16:32
5 Q And what was the -- the context of that 16:36
6 litigation? 16:38
7 A My recollection is that there was an 16:30
8 organization that worked for SMACNA to look for 16:34
9 copyrighted material. They found copyrighted material 16:38
10 on Public.Resource.Org. They sent a letter saying take 16:31
11 the stuff down, and then a lawsuit was filed by Public 16:37
12 Resource against SMACNA. 16:32
13 Q And so as a designee for ASHRAE, are you 16:37
14 saying that the first that ASHRAE was aware of Public 16:33
15 Resource was with the initiation of the SMACNA lawsuit? 16:36
16 A That was -- the email conversations were 16:32
17 started with the SMACNA lawsuit. 16:36
18 (Exhibit 1190 marked for identification.) 16:38
19 Q (BY MR. BECKER) I'm handing you what's been 16:32
20 marked as Exhibit 1190. Do you recognize this 16:33
21 document? 16:38
22 A Yes. 16:34
23 Q This document is an -- excuse me. Can you 16:39
24 tell me what this document is? 16:34
25 A This is an email from Jodi Scott to Jeff 16:35

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1 Littleton about the legal actions and if -- what or if 16:39
2 we need to conduct a PR campaign in conjunction with 16:38
3 the lawsuit. 16:34
4 Q Has ASHRAE conducted a -- I'm sorry, what 16:33
5 does PR campaign stand for? 16:35
6 A Public -- like a press release-type campaign. 16:38
7 Q Does that mean public relations? 16:34
8 A Yes, thank you. 16:37
9 Q And has ASHRAE engaged in a public relations 16:39
10 campaign in conjunction with the lawsuit against 16:34
11 Public.Resource.Org? 16:38
12 A No. 16:39
13 Q Are you sure of that? 16:35
14 A I'm pretty sure. I haven't seen anything 16:38
15 come out. 16:30
16 Q And this email says that the other 16:34
17 organizational participants in the lawsuit are ASTM UL 16:38
18 and NFPA. Who is UL? 16:32
19 A The L stands for laboratories. I think it's 16:30
20 United Laboratories. 16:33
21 Q Could it be Underwriters Laboratory? 16:36
22 A Underwriters. Thank you. That's right. 16:30
23 Q Separate from any information that you may 16:30
24 have been given by counsel, so no information that 16:32
25 you've been given by counsel, do you know why it is 16:36

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<p>1 that Underwriters Laboratory is not a part of this 16:38 2 litigation? 16:32 3 A No, I do not. 16:33 4 Q Can you venture a guess as to why they're not 16:38 5 part of this litigation? 16:31 6 MR. CUNNINGHAM: Object to the form. 16:33 7 MR. FEE: Same objection. 16:34 8 THE WITNESS: My guess would be they -- 16:36 9 it's cost prohibitive for them to be part of 16:41 10 the lawsuit. That would be my guess. 16:44 11 Q (BY MR. BECKER) And is it not cost 16:49 12 prohibitive for ASHRAE to be part of the lawsuit? 16:41 13 A I suppose it could be cost prohibitive. 16:48 14 That's a decision made by our board of directors. 16:40 15 Q When did ASHRAE first consider filing a 16:49 16 lawsuit against Public.Resource.Org? 16:43 17 A It was probably if -- my understanding, it 16:48 18 was after conversations that Jeff Littleton would have 16:45 19 had with his counterparts at ASTM and NFPA. 16:47 20 Q And by that, do you mean the leadership of 16:48 21 ASTM and NFPA? 16:41 22 A I mean those with a similar title, not -- 16:43 23 they're -- whatever they're -- they don't -- their head 16:45 24 staff person may be named C -- CEO or CFO instead of 16:47 25 executive VP. I can't remember what the titles of 16:43 Page 182</p>	<p>1 MR. CUNNINGHAM: Same objection. 16:47 2 THE WITNESS: I believe all of the 16:42 3 conversations about the -- what -- whether or 16:43 4 not to do a PR campaign was held in 16:45 5 conjunction with -- with legal counsel. So I 16:48 6 don't believe I can answer that. 16:41 7 Q (BY MR. BECKER) The document says, "An 16:42 8 initial meeting of PR folks is being organized." Did 16:43 9 that meeting take place? 16:46 10 A Yes, but I believe legal counsel was involved 16:41 11 in that meeting. 16:45 12 Q When did the meeting take place? 16:46 13 A Sometime probably shortly after this date. 16:42 14 Q Do you know who was in attendance at that 16:48 15 meeting? 16:41 16 A I don't know everyone that was in attendance 16:43 17 at that meeting. 16:47 18 Q Do you know which PR folks as is referenced 16:48 19 in the document were at that meeting? 16:41 20 A I would only know the ASHRAE person, which 16:43 21 would have been Jodi Scott and Aman -- and Amanda Dean. 16:45 22 Q So you don't know the names of any PR firms 16:41 23 that attended that meeting? 16:44 24 A No, I do not. 16:46 25 (Exhibit 1191 marked for identification.) 16:41 Page 184</p>
<p>1 their head person are. 16:41 2 Q And do you know when that conversation took 16:41 3 place? 16:41 4 A Sometime after the -- the SMACNA thing in 16:41 5 2012, so my guess is late 2012. 16:41 6 Q Why is it that ASHRAE was considering a PR 16:42 7 campaign in conjunction with the lawsuit? 16:42 8 MR. FEE: Objection. 16:42 9 To the extent that that calls for 16:42 10 disclosure of any common interest privilege 16:42 11 communications, I would instruct you not to 16:42 12 disclose those and ask that your lawyer 16:42 13 instruct you not to disclose those as well. 16:42 14 MR. CUNNINGHAM: Same objection, and 16:42 15 I'll instruct you not to -- not to disclose 16:42 16 anything that would involve communications 16:42 17 with counsel for ASHRAE or counsel for the 16:42 18 other SDOs who would have been involved in 16:42 19 those conversations. 16:42 20 THE WITNESS: Can you repeat the 16:42 21 question? 16:42 22 Q (BY MR. BECKER) Why is it that ASHRAE was 16:42 23 considering a PR campaign in conjunction with the 16:42 24 lawsuit? 16:42 25 MR. FEE: Same objections. 16:42 Page 183</p>	<p>1 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 16:45 2 you what's been marked as Exhibit 1191. 16:45 3 MR. FEE: Matt, if these relate to 16:45 4 public relations, the firms or anything 16:45 5 that's involving ASTM, I would like to have a 16:45 6 chance to review the documents before you 16:45 7 have any questions on them. You haven't 16:45 8 provided me with any copies throughout the -- 16:45 9 the course of the day. 16:45 10 MR. BECKER: My apologies. Because you 16:45 11 and your co-counsel had not been in 16:45 12 attendance at the previous ASHRAE deposition, 16:45 13 I did not expect that you are going to be in 16:45 14 attendance at this particular deposition. I 16:45 15 do not have additional copies to provide 16:45 16 you. 16:45 17 MR. FEE: That's fine. You're just 16:45 18 going to have to wait until I read it; that's 16:45 19 all. 16:45 20 MR. BECKER: You can read over his 16:45 21 shoulder. 16:46 22 Q (BY MR. BECKER) Do you recognize this 16:46 23 document? 16:46 24 MR. FEE: Hold on. Let me read the 16:46 25 document before you ask any questions about 16:46 Page 185</p>

<p>1 it. Whenever you're done. 16:46 2 (Discussion off written record.) 16:46 3 MR. FEE: Okay. Go ahead. 16:47 4 Q (BY MR. BECKER) Ms. Reiniche, do you 16:47 5 recognize that document? 16:47 6 A Yes, I do. 16:47 7 Q And what is that document? 16:47 8 A This is an email that came for -- came from 16:47 9 ANSI. The -- I'm never going to remember what this 16:47 10 acronym stands for, but it's from the IPRPC or sent to 16:47 11 the IPRPC from Patricia Griffin, who's the counsel for 16:47 12 ANSI. And this is about her testimony before the 16:47 13 committee on the judiciary subcommittee on courts, IP 16:47 14 and Internet. 16:47 15 And then she provided a link to the live 16:47 16 stream and links to Mr. Malamud's published written 16:48 17 testimony where it's posted online in an article 16:48 18 online. And then there are some responses from 16:48 19 different members about the testimony. And then I 16:48 20 forwarded this on to Jeff Littleton's and Claire's 16:48 21 attention. 16:48 22 Q What is the IPRPC? 16:48 23 A It's a -- I always have to look up this 16:49 24 acronym. It's like a policy committee, like it's -- I 16:49 25 can never remember what the acronym stands for without 16:49 Page 186</p>	<p>1 (Exhibit 1192 marked for identification.) 16:50 2 Q (By MR. BECKER) I'm handing you what's been 16:57 3 marked as Exhibit 1192. Do you recognize this 16:59 4 document? 16:52 5 A Yes. 16:53 6 Q Okay. And what is this document? 16:55 7 A This is an email exchange between Claire 16:58 8 Ramspeck and I about seeing if I can become a member of 16:52 9 IPRPC. At that time, it was past the time where they 16:59 10 approved the membership, and I indicated that I was on 16:53 11 the -- on the Listserv already. And then there's a 16:56 12 thing at the top about -- an update from IPRPC. 16:51 13 Q In the earliest email on that chain on 16:58 14 Exhibit 1192, Ms. Ramspeck writes to you, "Please look 16:51 15 into getting involved with this ASAP," and that refers 16:56 16 to the subject line "IPRPC"; is that correct? 16:59 17 A That's correct. 16:51 18 Q And then she says, "I think there are issues 16:52 19 that we need to be tracking, and it will let you use 16:54 20 your legal mind as well. Again, we can discuss more on 16:58 21 Monday." 16:51 22 What was Ms. Ramspeck referring to when she 16:58 23 says "there are issues that we need to be tracking"? 16:51 24 MR. CUNNINGHAM: Objection to form. 16:57 25 THE WITNESS: Things like just copyright 16:59 Page 188</p>
<p>1 looking. It's Intellectual Property Rights; something 16:48 2 along that line. 16:47 3 Q And who is a member of the IPRPC? 16:41 4 A There's lots of people that are members. I'm 16:44 5 just an observing member; I am not a voting member. 16:47 6 You can ask to be put on the Listserv and be provided 16:49 7 information. 16:44 8 Q Can anyone ask to be put on the Listserv and 16:45 9 be provided information? 16:49 10 A As far as I know, anyone can send a note into 16:52 11 ANSI and ask to participate. 16:54 12 Q Could you name other members of the IPRPC? 16:53 13 A Not off the top of my head, because they 16:58 14 aren't people that I normally work with everyday so -- 16:51 15 but -- 16:56 16 Q Is Patricia Griffin a member of the IPRPC? 16:57 17 A She is the staff liaison. 16:52 18 Q What does that mean, staff liaison? 16:59 19 A That means she's the person that -- there 16:52 20 might be one other person there that works with her, 16:57 21 Elizabeth Neiman, but usually they're the ones that 16:54 22 provide the agendas, help get the materials around, 16:59 23 provide -- draft things to send to the committee. I 16:54 24 don't have a description for all the duties of the 16:52 25 staff liaisons at ANSI. 16:54 Page 187</p>	<p>1 issues, legal issues, some of that stuff is 16:53 2 included in the IPRPC that would be of 16:53 3 interest to ASHRAE that we track. 16:53 4 Q (BY MR. BECKER) And did you have a meeting 16:53 5 with Ms. Ramspeck that following Monday? 16:53 6 A I don't remember. I'd have to look at my 16:53 7 calendar. 16:53 8 Q For the second email from the top in that 16:53 9 chain, Ms. Ramspeck writes to you and says, "Did you 16:53 10 know that there has been a big increase in the number 16:53 11 of copyrighted docs, including ASHRAE standards 16:54 12 beginning in January? I'm not sure if IPRPC has had 16:54 13 any updates on that yet." 16:54 14 Was Ms. Ramspeck referring to 16:54 15 Public.Resource.Org in that statement? 16:54 16 MR. CUNNINGHAM: Objection to form. 16:54 17 THE WITNESS: Yes. 16:54 18 Q (BY MR. BECKER) Was Ms. Ramspeck's purpose 16:54 19 in asking you to join the IPRPC to follow the actions 16:54 20 of Public.Resource.Org? 16:54 21 MR. CUNNINGHAM: Objection to form, 16:54 22 calls for speculation. 16:54 23 THE WITNESS: No. I had actually been 16:54 24 asked to join it a while back, just that my 16:54 25 schedule and my responsibilities didn't allow 16:54 Page 189</p>

<p>1 for time at the time. 16:58</p> <p>2 Q (BY MR. BECKER) How did you know that she 16:50</p> <p>3 was -- that Ms. Ramspeck was referring to 16:52</p> <p>4 Public.Resource.Org when she said "Did you know that 16:56</p> <p>5 there has been a big increase in the number of 16:59</p> <p>6 copyrighted docs beginning in January"? 16:51</p> <p>7 A Because I knew about the SMACNA things, and 16:57</p> <p>8 so staff was watching to see what copyrighted documents 16:52</p> <p>9 were out there, if they belonged to ASHRAE. 16:56</p> <p>10 Q And so there was sufficient discussion of 16:56</p> <p>11 Public.Resource.Org in February of 2013 that without 16:59</p> <p>12 even referencing Public.Resource.Org, you knew that 16:54</p> <p>13 Ms. Ramspeck was referring to Public.Resource.Org? 16:58</p> <p>14 MR. CUNNINGHAM: Objection to the form. 16:51</p> <p>15 THE WITNESS: At that time, we would 16:55</p> <p>16 have discussed Public.Resource.Org, and I 16:56</p> <p>17 would have known that's what she was 16:59</p> <p>18 referring to. 16:51</p> <p>19 Q (BY MR. BECKER) What is the purpose of the 16:59</p> <p>20 IPRPC? 16:52</p> <p>21 MR. FEE: Objection, lack of 16:54</p> <p>22 foundation. 16:55</p> <p>23 MR. CUNNINGHAM: Objection. 16:56</p> <p>24 THE WITNESS: It's -- it's dealing with 16:59</p> <p>25 intellectual property mostly, things -- or 16:52</p> <p style="text-align: right;">Page 190</p>	<p>1 our Standard 188 posted on company websites 16:57</p> <p>2 without seeking permission from me first to 16:51</p> <p>3 post it after the public review period has 16:53</p> <p>4 ended. And I've sent letters to ask them to 16:56</p> <p>5 remove it, and they are removed. 16:58</p> <p>6 Q (BY MR. BECKER) Is ASHRAE aware of 16:56</p> <p>7 infringement or potential infringement on file-sharing 16:59</p> <p>8 websites of ASHRAE standards? 16:53</p> <p>9 MR. CUNNINGHAM: Same objection. 16:55</p> <p>10 THE WITNESS: I'm not aware of those. 16:57</p> <p>11 MR. BECKER: We can take a break here. 16:57</p> <p>12 THE VIDEOGRAPHER: Going off the record 16:50</p> <p>13 at 16:58. 16:52</p> <p>14 (Recess taken.) 17:19</p> <p>15 THE VIDEOGRAPHER: Going on the record 17:24</p> <p>16 at 17:24. 17:26</p> <p>17 Q (BY MR. BECKER) Ms. Reiniche, could you 17:25</p> <p>18 please refer again to Exhibits 1175 and 1176. Those 17:26</p> <p>19 are the certificates of registration from the copyright 17:22</p> <p>20 office. 17:27</p> <p>21 A Okay. 17:28</p> <p>22 Q Ms. Reiniche, does ASHRAE claim to be the 17:20</p> <p>23 author of standard -- of the editions of Standard 90.1 17:24</p> <p>24 that are listed in Exhibit 1176? 17:20</p> <p>25 MR. CUNNINGHAM: Objection to the 17:27</p> <p style="text-align: right;">Page 192</p>
<p>1 things like patents and some, I guess, quasi 16:56</p> <p>2 legal things. 16:56</p> <p>3 Q (BY MR. BECKER) How much of the discussion 16:56</p> <p>4 in IPRPC relates to Public.Resource.Org? 16:56</p> <p>5 MR. FEE: Objection to form. 16:56</p> <p>6 THE WITNESS: On the items I have either 16:56</p> <p>7 seen in email or when I've been able to 16:56</p> <p>8 participate remotely on their calls, minimal. 16:56</p> <p>9 Q (BY MR. BECKER) Is ASHRAE concerned about 16:57</p> <p>10 alleged copyright infringement by other entities other 16:57</p> <p>11 than Public.Resource.Org? 16:57</p> <p>12 MR. CUNNINGHAM: Objection to scope and 16:57</p> <p>13 to the form. 16:57</p> <p>14 THE WITNESS: Of course. We don't -- we 16:57</p> <p>15 don't allow other people to post copyrighted 16:57</p> <p>16 material or anywhere else. If -- when we're 16:57</p> <p>17 made aware of it, we ask for it to be 16:57</p> <p>18 removed. 16:57</p> <p>19 Q (BY MR. BECKER) Where has ASHRAE seen 16:57</p> <p>20 infringement of its standards? 16:57</p> <p>21 MR. CUNNINGHAM: Same objection. 16:57</p> <p>22 THE WITNESS: I'm -- I'm not privy to 16:57</p> <p>23 every single time. I don't -- it's not 16:57</p> <p>24 related to 90.1, but I know that there have 16:57</p> <p>25 been public review drafts of, for example, 16:57</p> <p style="text-align: right;">Page 191</p>	<p>1 form. 17:27</p> <p>2 THE WITNESS: Yes. 17:28</p> <p>3 Q (BY MR. BECKER) And does ASHRAE claim to be 17:20</p> <p>4 the author of the 1993 ASHRAE Handbook: Fundamentals as 17:22</p> <p>5 listed in Exhibit 1175? 17:28</p> <p>6 MR. CUNNINGHAM: Same objection. 17:21</p> <p>7 THE WITNESS: Yes. 17:27</p> <p>8 Q (BY MR. BECKER) Is ASHRAE the sole author of 17:28</p> <p>9 these works? 17:20</p> <p>10 MR. CUNNINGHAM: Same objection. 17:20</p> <p>11 THE WITNESS: It's the members of the 17:27</p> <p>12 project committee as -- as part of their 17:29</p> <p>13 membership that agreed to write the document 17:23</p> <p>14 and -- and have it attributed to ASHRAE. 17:25</p> <p>15 Q (BY MR. BECKER) And the members of the 17:29</p> <p>16 project committee are not employees of ASHRAE, correct? 17:20</p> <p>17 A That's correct. 17:23</p> <p>18 Q And so what is the basis for ASHRAE's claim 17:28</p> <p>19 that it's the author of these works? 17:21</p> <p>20 MR. CUNNINGHAM: Objection to the form, 17:25</p> <p>21 calls for a legal conclusion. 17:26</p> <p>22 THE WITNESS: As a basis of the signed 17:20</p> <p>23 copyright assignments that all the members 17:22</p> <p>24 sign when they apply for membership, that the 17:25</p> <p>25 commenters sign when they submit a comment 17:29</p> <p style="text-align: right;">Page 193</p>

<p>1 and that the members that submit change -- or 17:21 2 the public that submits change proposals sign 17:26 3 when they submit a change proposal 17:29 4 Q (BY MR BECKER) Has ASHRAE ever compensated 17:24 5 any of the members of the project committee for the 17:26 6 sale of any of the works at issue? 17:23 7 A No 17:26 8 Q Ms Reiniche, is the project committee for 17:27 9 Standard 90.1 in charge of the selection and 17:23 10 arrangement of the content of Standard 90.1? 17:28 11 A Yes 17:28 12 Q Is anybody else responsible for the selection 17:23 13 and arrangement of standard -- of the content of 17:27 14 Standard 90.1? 17:23 15 A The selection of the content, no The 17:24 16 arrangement, they're not going to change the order, but 17:20 17 the formatting in terms of, you know, the two-column 17:22 18 format, it could switch from one to two column after 17:26 19 public review is done by public -- our publications 17:20 20 department 17:23 21 Q And who made the decision to switch it from 17:24 22 one column to two column? 17:28 23 A That would have been Steve Comstock would 17:21 24 have decided to -- I believe the standard was 17:24 25 originally one column When they go out for public 17:27</p> <p style="text-align: right;">Page 194</p>	<p>1 A These are the minutes from the 90.1 meeting 17:38 2 for sure from Saturday, January 24th, 2004. Then 17:34 3 from -- and it also includes the minutes from the 17:31 4 meeting on Sunday, January -- January 25th, 2004. Hang 17:35 5 on. They usually have more than -- another meeting. 17:35 6 And from Monday, January 26, 2004. 17:30 7 Q And could you please turn to page 8? 17:33 8 A 8? 17:39 9 Q Yes. Section 10 on page 8 includes the 17:39 10 marketing task force ad hoc subcommittee update. And 17:30 11 it says in the second and third sentence, it says, "The 17:39 12 discussion included the question of who is the customer 17:33 13 for Standard 90.1. Chris stated that the subcommittee 17:37 14 has one customer that it has failed to fulfill the 17:32 15 needs of, and that is the Department of Energy, DOE." 17:37 16 Does ASHRAE consider the Department of Energy 17:33 17 to be a customer? 17:35 18 A It would be one customer. 17:38 19 (Exhibit 1194 marked for identification.) 17:31 20 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 17:38 21 you a document that has been marked as Exhibit 1194. 17:30 22 This is Bates number ASHRAE0006892. Can you tell me 17:34 23 what this document is? 17:33 24 A This document is an ASHRAE 90.1 questionnaire 17:34 25 summary combined -- compiled by Valerie Block, the 17:38</p> <p style="text-align: right;">Page 196</p>
<p>1 review, we put it in one column, because it's easier 17:20 2 for people to read one column, you know, and we don't 17:22 3 have to mess with the formatting 17:25 4 Then because of the length, I believe they 17:29 5 switched to a two-column format for publication 17:21 6 And -- and that's -- that's why they did it, so the -- 17:24 7 your printed copy isn't, you know, 3 inches thick 17:29 8 versus an inch and a half thick 17:24 9 Q So when you say two-column format, you mean 17:27 10 the text appears in two columns on the page, as opposed 17:28 11 to just being a single column on the page? 17:23 12 A That's correct 17:25 13 Q And is that the only change in arrangement 17:23 14 that's performed by ASHRAE staff? 17:27 15 A By publications, they might correct the 17:20 16 numbering of a section if the committee changed 17:23 17 something and the numbering was off, but it's just to 17:25 18 make it format correctly for -- on the publication 17:28 19 side 17:23 20 (Exhibit 1193 marked for identification) 17:24 21 Q (BY MR BECKER) Ms Reiniche, I'm handing 17:30 22 you what's been marked as Exhibit 1193 This is Bates 17:31 23 number ASHRAE0001628 Do you recognize this document? 17:37 24 A Yes 17:33 25 Q Can you tell me what this document is? 17:35</p> <p style="text-align: right;">Page 195</p>	<p>1 chair of the 90.1 marketing committee. 17:33 2 Q And can you tell me what the purpose of this 17:32 3 questionnaire summary was? 17:35 4 A The purpose of -- of the questionnaire or the 17:36 5 summary -- summary? 17:39 6 Q Of the summary itself. 17:31 7 A It was to give information to the committee 17:32 8 on what -- the opinions of the users of the standard 17:37 9 were. 17:31 10 Q And which committee was that? 17:32 11 A 90.1. 17:33 12 (Exhibit 1195 marked for identification.) 17:38 13 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 17:38 14 you what's been marked as Exhibit 1195. Bates labeled 17:30 15 ASHRAE0024267. Do you recognize this document? 17:35 16 A This is -- yes. 17:30 17 Q And can you tell me what this document is? 17:32 18 A This is a document where the president of 17:39 19 ASHRAE was asking for the committee on utilities and 17:38 20 energy to consider a building energy labeling program 17:33 21 that was being developed by ASHRAE. This is the 17:38 22 building energy quotient, but it's not -- it's not a 17:36 23 90.1 tool. 17:31 24 (Exhibit 1196 marked for identification.) 17:34 25 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 17:34</p> <p style="text-align: right;">Page 197</p>

1 you what's been marked as Exhibit 1196, ASHRAE Bates 17:35
2 number 0024287. Do you recognize this document? 17:39
3 A Yes. 17:30
4 Q And could you tell me what this document is? 17:32
5 A This is a letter from -- who would have been 17:34
6 the president of ASHRAE at the time in 2009, Gordon 17:38
7 Holness, to President Obama talking about as we're 17:33
8 working towards energy efficiency, where we have agreed 17:31
9 to try to -- the project committee to be 30 percent 17:35
10 more energy efficient from 2004, version of 17:31
11 Standard 90.1 to the 2010 version. 17:34
12 And it also mentions our Building Energy 17:39
13 Quotient BEQ program that provides people with energy 17:32
14 use of buildings and to ask that the -- while they're 17:36
15 implementing the executive order, that they look at 17:35
16 considering using the building EQ program. 17:38
17 (Exhibit 1197 marked for identification.) 17:39
18 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 17:33
19 you what's been marked as Exhibit 1197. Do you 17:34
20 recognize this document? 17:37
21 A Yes. 17:30
22 Q And can you tell me what this document is? 17:31
23 A This is an ASHRAE Facts and Stats document 17:35
24 that D.C. folks would leave with congressional staff 17:39
25 members. 17:37

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1 Q And what was the purpose of leaving this with 17:37
2 congressional staff members? 17:30
3 A Just to give you a -- give them information 17:31
4 about what ASHRAE is, what our expertise is in, and 17:33
5 about our standards, our research program, 17:30
6 publications, continuing education; just ASHRAE as a 17:33
7 whole 17:37
8 (Exhibit 1198 marked for identification) 17:39
9 Q (BY MR BECKER) Ms Reiniche, I'm handing 17:34
10 you what's -- what's been marked as Exhibit 1198, Bates 17:35
11 number ASHRAE0024393 Do you recognize this document? 17:30
12 A Yes 17:37
13 Q And what is this document? 17:37
14 A This is another sort of fact sheet type thing 17:39
15 that ASHRAE does to educate the staff members of the 17:32
16 legislature about ASHRAE's role in energy efficiency 17:36
17 and our views on how to get there 17:31
18 (Exhibit 1199 marked for identification) 17:33
19 Q (BY MR BECKER) Ms Reiniche, I'm handing 17:42
20 you what's been marked as Exhibit 1199 This is Bates 17:45
21 labeled ASHRAE0024624 Do you recognize this document? 17:40
22 A Yes 17:40
23 Q And what is this document? 17:41
24 A These are -- this is an email that shows the 17:42
25 notes from what would have been an ASHRAE leadership 17:45

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1 meeting with different organizations in Washington, 17:41
2 D.C. 17:41
3 Q And when you say what would have been an 17:41
4 ASHRAE leadership meeting with different organizations 17:41
5 in Washington, D.C., do you mean it was a meeting that 17:41
6 did occur? 17:41
7 A Yes. 17:41
8 Q Is it clear to you who the participants of 17:42
9 this meeting would have been? 17:42
10 MR. FEE: Can I see this document before 17:42
11 you get into this any further? 17:42
12 Okay. 17:42
13 THE WITNESS: Well, I can tell from the 17:42
14 ASHRAE side, based on this email, that Lynn 17:42
15 Bellenger, Ron Jarnigan, Tom Watson, Jeff 17:43
16 Littleton, Doug Read, and Mark Ames would 17:43
17 have been at these meetings. Some of them I 17:43
18 can -- it appears from this that OSTP had 17:43
19 Kevin Hurst there. 17:43
20 Q (BY MR. BECKER) That's fine if you -- 17:43
21 A I mean, I would have to -- I mean, some of 17:43
22 them I can tell that -- you know, who was there, I can 17:43
23 tell which organizations were there, but some I can 17:43
24 tell by the way the notes were written who was there, 17:43
25 and some I cannot. I can -- if it would be easier, I 17:44

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1 can tell you what organizations appears. 17:44
2 Q Yes, if you could say which organizations. 17:46
3 A So -- and this -- my recollection of the 17:40
4 leadership meetings, typically it's more -- more than 17:46
5 one meeting, so they weren't all in one meeting 17:48
6 together, so these would have been notes from all of 17:40
7 their meetings. 17:42
8 So they would have talked with the EPA, 17:45
9 DOE -- sorry, the page is sticking -- FEMP, NEMA, ASE, 17:48
10 AHRI, NASEO, N-A-S-E-O, and that looks to be it. 17:42
11 Q Okay. So it's all of the organizations that 17:48
12 are -- that are listed as individual acronyms at the 17:40
13 top of each paragraph section? 17:40
14 A Right. 17:41
15 Q And would those have been separate meetings 17:44
16 with each individually? 17:46
17 A Some of them could have been clumped 17:47
18 together, some of them could have been separate. It's 17:41
19 hard to tell from this email string how those occurred. 17:43
20 But sometimes they have it where they're going to meet 17:49
21 with these three organizations and then these three 17:42
22 organizations; something like that. 17:44
23 (Exhibit 1200 marked for identification.) 17:49
24 Q (BY MR. BECKER) I'm handing you what's been 17:45
25 marked as Exhibit 1200. This is Bates labeled 17:46

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<p>1 ASHRAE0026916. Do you recognize this document? 17:42 2 A Yes, this looks -- yes. 17:40 3 Q And could you tell me what this document is? 17:43 4 A This -- this appears to look like a proposal 17:46 5 to -- to get some funding -- it's not clear from him -- 17:49 6 for the development of a new course for code officials 17:47 7 that specifically gives them information that's useful 17:43 8 to them when they need to verify compliance with the 17:47 9 standard for the purposes of receiving federal funding. 17:41 10 (Exhibit 1201 marked for identification.) 17:40 11 Q (BY MR. BECKER) I'm handing you what's been 17:44 12 marked as Exhibit 1201. It's Bates labeled 17:45 13 ASHRAE0029650. Could you tell me what this document 17:49 14 is? 17:47 15 MR. CUNNINGHAM: We'd like a minute to 17:46 16 review this one, Matt. 17:47 17 Go ahead. 17:40 18 Q (BY MR. BECKER) Have you reviewed it? 17:40 19 MR. CUNNINGHAM: We have, correct. Yes. 17:41 20 THE WITNESS: Okay. This is a -- an 17:45 21 email that Jeff Littleton sent to the ASHRAE 17:46 22 board of directors letting them know about 17:49 23 a -- about Public Resource shipping 25 copies 17:42 24 of 73 different standards made by 10 or so 17:48 25 different organizations. This did not 17:42 Page 202</p>	<p>1 A For 90.1, I would say it's another full-time 17:56 2 job for the volunteers that work on that, with the 17:59 3 amount of hours they spend on subcommittee calls where 17:51 4 they're drafting the -- where smaller groups are 17:55 5 drafting it based on the expertise of the different 17:58 6 chapters within 90.1, in addition to meeting four times 17:50 7 a -- four times a year face-to-face, full subcommittee, 17:55 8 full project committee members -- meetings for four 17:59 9 days straight from 8 in the morning until 10 at night. 17:52 10 It's a huge time commitment for those volunteers. 17:55 11 Q And he says, "particularly those that are 17:53 12 adopted into law." Why is it particularly those that 17:57 13 are adopted into law that take time and resources? 17:52 14 A Because usually when it's something that's 17:57 15 going to be adopted into law and it's going to be a 17:59 16 major change, it -- it generates a lot of comments, not 17:52 17 just one or two, talking 50 to a hundred lengthy 17:56 18 comments, because people in -- in the industry have 17:52 19 different opinions and the committee has to listen to 17:55 20 those, look at the -- whatever technical justification 17:58 21 they submit, determine if -- if what they're submitting 17:51 22 is cost justified, looking at, you know, what the 17:56 23 change would do, and if that's truly what's being done 17:50 24 in the industry. 17:53 25 So what -- the more significant the change, 17:54 Page 204</p>
<p>1 include ASHRAE. 17:44 2 And sent it to -- purportedly sent it to 17:46 3 media, Congress, Federal Trade Commission, 17:41 4 including salaries of the CSOs of those 17:44 5 organizations, and then indicating that 17:48 6 they're going to post those online on 17:40 7 May 1st. 17:44 8 Appears a member of the board responded 17:46 9 back to Jeff asking why ASHRAE standards 17:40 10 aren't included, and Jeff reported back that 17:43 11 he -- he doesn't know, but right now they're 17:46 12 happy to let someone else fight the battle 17:49 13 since we're not included. 17:42 14 Q (BY MR. BECKER) And this is in March 2012, 17:50 15 correct? 17:54 16 A Correct. 17:55 17 Q So ASHRAE was at the very least aware of 17:56 18 Public Resource in March of 2012, correct? 17:52 19 A Correct. 17:56 20 Q And Mr. Littleton says at the top of the page 17:52 21 in the middle of the paragraph, "Developing standards, 17:56 22 particularly those that are adopted into law, takes 17:59 23 time and resources that someone must underwrite." 17:52 24 Can you tell me about the time and resources 17:58 25 that are required to develop standards? 17:52 Page 203</p>	<p>1 the longer it takes to get something through the 17:56 2 standards development process. 17:58 3 Q And are there other reasons why the standards 17:52 4 that are adopted into law would take greater time and 17:55 5 resources? 17:53 6 A I suppose that when you're -- if you define 17:57 7 laws including the codes, then there's the time it 17:50 8 takes to present those changes to the code, to the 17:54 9 testimony. Again, that's almost another full-time job, 17:57 10 the amount of time people spend at those code hearings, 17:51 11 talking about the issues. 17:55 12 Q And are those code hearings before 17:50 13 governmental bodies? 17:52 14 A They're by code bodies. 17:53 15 Q Code bodies. And what do you mean by "code 17:54 16 bodies"? 17:56 17 A International Code Council, NFPA, IATMO. 17:57 18 Q Does that also include time and resources 17:52 19 spent working with government officials? 17:58 20 A It could, if it's going into federal 17:52 21 regulations or federal law. 17:54 22 Q Would it also include time and resources when 17:58 23 it's going into state regulations or state law? 17:51 24 A Yes, if -- if people are aware it's -- it's 17:55 25 happening. 17:58 Page 205</p>

<p>1 (Exhibit 1202 and Exhibit 1203 marked for 17:53 2 identification) 17:59 3 Q (BY MR. BECKER) I'm handing you what's been 17:59 4 marked as Exhibits 1202 and 1203 1202 is Bates number 17:50 5 ASHRAE0024591 And 1203 is Bates number ASHRAE0024592 17:52 6 Ms Reiniche, could you tell me what these 17:53 7 documents are? 17:56 8 A Number 1202 is an email that came from 17:58 9 Senator Portman's staff to Mark Ames and other 17:56 10 organizations, like UTC, AHRI, NEMA, Snyder Electric, 17:51 11 JCI, IA -- IALD, ANSI, DWGP, ASE, and NAIOP 17:53 12 And it references the document that's labeled 17:58 13 Exhibit 1203, which is a proposed revision to the 17:53 14 Energy Savings and Industrial Competitiveness Act of 17:50 15 2011 17:55 16 (Exhibit 1204 marked for identification) 17:59 17 Q (BY MR. BECKER) Ms Reiniche, I'm handing 17:50 18 you what's been marked as Exhibit 1204 Could you 17:51 19 please tell me what this document is? 17:58 20 A I need a second to read it 17:58 21 Q Take your time 17:51 22 A So this is an email from Jodi -- well, 17:59 23 it's -- was Jodi Dunlap at the time, it's now Jodi 17:54 24 Scott -- to Steve Emmerich, Max Sherman and Steve 17:58 25 Ferguson about Standard 62.2 and its adoption And 17:55</p> <p style="text-align: right;">Page 206</p>	<p>1 you what's been marked as Exhibit 1205. Could you tell 18:00 2 me what this document is? 18:07 3 MR. CUNNINGHAM: Same objection as the 18:00 4 last document. 18:01 5 THE WITNESS: It appears to be an email 18:01 6 from -- it starts with -- from Bruce Wilcox 18:04 7 talking about the -- what was adopted in 18:00 8 California in regards to Standard 62.2 and 18:02 9 asking for permission to maybe get use of the 18:07 10 material in the user's manual or for 18:01 11 training, and then Jodi replying that it's 18:04 12 officially adopted, and meaning that Standard 18:02 13 62.2 is now mandatory in California. 18:07 14 And then there is an email from Steve 18:01 15 Ferguson to a committee -- this committee no 18:05 16 longer exists within ASHRAE -- when it's -- 18:08 17 he says to members of SAC, that's the 18:00 18 standards advisory committee, and there was 18:03 19 something that he says, "Please see below." 18:07 20 Q (BY MR. BECKER) What was the standards 18:01 21 advisory committee? 18:02 22 A There was a time when they had -- when ASHRAE 18:04 23 had the standards advisory committee to just talk about 18:06 24 high-level issues related to standards. It could have 18:00 25 been adoption, it could have been membership issues. 18:05</p> <p style="text-align: right;">Page 208</p>
<p>1 that it was about to be adopted in California and 17:56 2 New York. And Steve Emmerich asked if anyone knew if 17:53 3 someone, meaning a member, might be close to the 17:53 4 happenings in New York. 17:56 5 And Steve Ferguson replied that he knew a 17:50 6 member that was in New York that was helpful in getting 17:53 7 the 62.1 ventilation tables into the IMC and the New 17:56 8 York State billing code, so he may know something. 17:51 9 And I'm not sure -- oh, and then it appears 17:57 10 that Steve Emmerich sent that email chain to Andrew 17:53 11 personally, which is his boss at NIST. 17:58 12 THE COURT REPORTER: "His boss at" what? 17:59 13 THE WITNESS: "His boss at NIST." 17:59 14 THE COURT REPORTER: NIST? 18:08 15 THE WITNESS: N-I-S-T. 18:08 16 MR. CUNNINGHAM: I'll go ahead and lodge 18:08 17 a relevance objection to this document, like 18:09 18 several others we've seen today, does not 18:02 19 relate to any of the standards at issue here. 18:05 20 Q (BY MR. BECKER) Ms. Reiniche, do you know 18:01 21 who Michael Burnetter is that's referred to in this 18:01 22 email? 18:06 23 A I don't. 18:07 24 (Exhibit 1205 marked for identification.) 18:03 25 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 18:08</p> <p style="text-align: right;">Page 207</p>	<p>1 It -- it was more like a policy-looking committee that 18:09 2 reported to the ASHRAE board of directors. 18:05 3 Q And when you say "adoption," do you mean 18:07 4 adoption by reference into codes legislation and 18:09 5 regulation? 18:05 6 A They -- their topics were any policy-related 18:06 7 things, so it could be any type of adoption. They 18:00 8 didn't approve it; they -- they just talked about 18:02 9 policies on how -- and that kind of things. 18:05 10 Q Simply for a clear record, the answer to my 18:08 11 question, was that a yes or a no? I'll repeat my 18:01 12 question. 18:03 13 The question was, when you say "adoption," do 18:04 14 you mean adoption by reference into codes, legislation 18:06 15 and regulation? 18:09 16 MR. FEE: Objection to form. 18:01 17 THE WITNESS: Yes. 18:03 18 Q (BY MR. BECKER) Thank you. 18:04 19 (Exhibit 1206 marked for identification.) 18:05 20 Q (BY MR. BECKER) I'm handing you what's been 18:08 21 marked as Exhibit 1206. Could you please take a moment 18:09 22 to read this document and tell me what it is? 18:04 23 MR. CUNNINGHAM: Object to the scope and 18:06 24 relevance, seeing as how this again does not 18:09 25 relate to Standard 90.1 or any of the 18:01</p> <p style="text-align: right;">Page 209</p>

1 standards at issue here. 18:03
2 THE WITNESS: This email relates to 18:06
3 Standard 161-2007. That's indoor air quality 18:08
4 for commercial aircrafts. And it's about a 18:04
5 congressional committee considering an FAA 18:09
6 reauthorization bill and wants to know if -- 18:01
7 if the members of 161 are supportive of this 18:06
8 bill. 18:01
9 Q (BY MR. BECKER) And in the top email, 18:05
10 Mr. Weber's communication, he says, "Ladies and 18:01
11 Gentlemen, below is an email from Ryan Colker, manager 18:06
12 of government affairs in the ASHRAE Washington office. 18:09
13 ASHRAE is encouraging legislators to adopt ASHRAE 18:03
14 Standard 161-2007 and intends on sending the attached 18:07
15 letter early next week. Ryan would like to make the 18:03
16 SSPC aware of the intentions and would like to know if 18:07
17 their organizations are willing to support the 18:01
18 adoption." 18:04
19 Is one of the roles of government -- ASHRAE's 18:09
20 government affairs office in Washington, D.C., to 18:02
21 encourage legislators to adopt ASHRAE standards? 18:06
22 A If it's relevant to a bill that the 18:01
23 legislature is -- is drafting. 18:08
24 Q Does that include encouraging legislators to 18:01
25 adopt ASHRAE Standard 90.1? 18:04

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1 A If it's related to a legislation that they're 18:07
2 creating. 18:00
3 Q So if -- for clarity, if the -- if standard 18:01
4 ASHRAE 90.1 is related to the legislation that's being 18:09
5 created, then the Washington office of ASHRAE might 18:03
6 encourage the adoption of Standard 90.1 into that 18:08
7 legislation? 18:03
8 A Yes, in consultation with ASHRAE leadership 18:05
9 and those with relevant technical expertise. 18:09
10 (Exhibit 1207 marked for identification.) 18:09
11 Q (BY MR. BECKER) I'm handing you what's been 18:07
12 marked as Exhibit 1207. Could you please take a moment 18:08
13 to read this document and tell me what it is? 18:02
14 MR. CUNNINGHAM: Same objection as the 18:02
15 last document. This is outside the scope and 18:03
16 irrelevant, as it doesn't relate to the 18:06
17 standards at issue. 18:08
18 THE WITNESS: So this is an email where 18:05
19 Mike Lubliner, who was involved in 62.2, said 18:09
20 he was talking with HUD and about having them 18:05
21 adopt 62.2 and asked -- and discussing with 18:00
22 Steve Emmerich, who I believe was the chair 18:06
23 at that time, about who could speak on that. 18:08
24 And then they asked Mark Weber if we 18:03
25 could -- who is the staff liaison for 62.2, 18:07

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1 if we could get comp copies to send to HUD to 18:01
2 consider it, and Mark indicated that's 18:04
3 probably very likely 18:07
4 And then they ask for the -- where to 18:00
5 send it, to Rhonda from -- Rhonda Dickerson, 18:03
6 who I'm assuming is from HUD And instead of 18:08
7 using the paper comment -- paper format, they 18:02
8 sent a PDF copy that -- indicating it wasn't 18:08
9 to be distributed outside of the HUD 18:12
10 manufacturing housing consensus committee and 18:15
11 not to reprint without ASHRAE permission 18:18
12 Q (BY MR. BECKER) You are a recipient of this 18:13
13 email; is that correct? 18:15
14 A Yes 18:17
15 Q What does HUD stand for? 18:10
16 A Housing Urban Development 18:14
17 Q And is that a federal agency? 18:17
18 A Yes 18:11
19 Q Is it common for ASHRAE to provide copies of 18:10
20 ASHRAE standards to members of government when they are 18:16
21 considering incorporating that standard into 18:10
22 legislation or regulation? 18:14
23 A If it's been requested, we typically will 18:17
24 provide a copy for them to review, yes 18:10
25 Q And that would be a complimentary copy, 18:13

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1 correct? 18:11
2 A That is correct. 18:11
3 (Exhibit 1208 marked for identification.) 18:11
4 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 18:11
5 you what's been marked as Exhibit 1208. This has been 18:11
6 produced as ASHRAE0024209. Do you recognize this 18:12
7 document? 18:12
8 MR. CUNNINGHAM: Object to this document 18:12
9 as it also appears to relate to standards 18:12
10 other than those that are at issue in this 18:12
11 case. 18:12
12 THE WITNESS: Yes, I recognize the 18:12
13 document. 18:12
14 Q (BY MR. BECKER) And what is this document? 18:12
15 A This is a document from Terry Townsend, who 18:12
16 would have been the president of ASHRAE in 2007, to 18:13
17 Andrew Fanara from EPA Energy Star Program. And it's 18:13
18 about a draft report to Congress on server and 18:13
19 datacenter energy efficiency. 18:13
20 And he's talking about the -- how ASHRAE is 18:13
21 involved in that and the majority of this deals with 18:13
22 our technical committee 9.9, which is missing critical 18:13
23 facilities and the work they've done in the different 18:13
24 publications they have, thermal guidelines for data 18:13
25 processing equipment. And -- and then they had 18:13

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1 indicated that 90.1 was not relevant for cooling in 18:15
2 datacenters. 18:11
3 And this was in 2000 -- 90.1-2004. So 90.1 18:12
4 was going to evaluate whether datacenters could be 18:19
5 included, and then talking about the metrics for 18:13
6 datacenter energy efficiency, they -- we had 18:17
7 recommended the use of datacenter efficiency, rather 18:12
8 than power usage effectiveness. 18:17
9 And then there's a list of different research 18:12
10 projects that were attached, along with the list of the 18:16
11 members of the technical committee 9.9. 18:10
12 Q Thank you. 18:16
13 Ms. Reiniche, could you please tell me what 18:11
14 you did in preparation for this deposition today? 18:13
15 MR. CUNNINGHAM: I'll go ahead and 18:10
16 counsel you not to -- you -- you can 18:11
17 obviously answer the question in terms of 18:13
18 when we met, how many times, how long, but 18:15
19 don't reveal any of the actual content of any 18:17
20 communications that you had with any 18:11
21 attorneys. 18:13
22 THE WITNESS: I met on approximately 18:14
23 three separate occasions with legal counsel 18:18
24 to review potential questions that may be 18:11
25 asked. 18:16

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1 Q (BY MR. BECKER) And did you communicate with 18:18
2 anyone other than legal counsel in preparation for this 18:11
3 deposition? 18:14
4 A I -- I spoke with Mark Ames at our D.C. 18:17
5 office to make sure I understood the process for how we 18:12
6 worked with the federal government and state and local 18:17
7 officials. I spoke with Claire Ramspeck about some of 18:11
8 the questions that would have related to leadership 18:15
9 meetings and Steve Ferguson to make sure I did not 18:11
10 misrepresent the code process. 18:17
11 Q Were there any other topics of discussion in 18:13
12 those meetings, other than the meetings with your 18:15
13 counsel? 18:19
14 MR. CUNNINGHAM: I'm going to again 18:12
15 counsel that if you were seeking advice on a 18:13
16 topic that came out of a discussion with 18:18
17 counsel, then that would be covered under the 18:10
18 privilege. So don't reveal the substance of 18:12
19 any communications that occurred between you 18:15
20 and legal counsel. 18:17
21 THE WITNESS: There wasn't any other 18:19
22 additional conversations. 18:11
23 Q (BY MR. BECKER) And you've reviewed the 18:19
24 topics in the 30(b)(6) notice, correct? 18:12
25 A Correct. 18:16

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1 Q Did you discuss the topics in the 30(b)(6) 18:10
2 notice with anyone other than counsel or Mark Ames or 18:13
3 Claire Ramspeck or Steve Ferguson? 18:17
4 A No. 18:10
5 Q Did you create any notes or other documents 18:11
6 or outlines in preparation for this deposition today? 18:14
7 A No. 18:18
8 Q What research did you do to prepare yourself 18:11
9 to answer questions on the topics in the notice? 18:14
10 A Well, since I helped -- I didn't have to do a 18:12
11 ton of research, because I helped find a lot of 18:15
12 material that we submitted as part of the discovery, so 18:18
13 most of that stuff I knew. 18:11
14 Q Did you review any documents to prepare for 18:12
15 deposition today? 18:16
16 A Only with legal counsel. 18:17
17 Q Did any documents that you reviewed refresh 18:15
18 your memory as to any matter involved in the deposition 18:18
19 today? 18:12
20 A With -- that I reviewed with legal counsel or 18:14
21 that we -- 18:17
22 Q That -- that you reviewed with legal counsel. 18:18
23 A Yes. 18:11
24 Q Could you identify which documents those 18:12
25 were? 18:14

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1 A Of this stack? Out of the stack you have 18:16
2 here? 18:10
3 MR. CUNNINGHAM: Matt, what exactly are 18:10
4 you trying to get at here? What's -- what's 18:11
5 the purpose of this line of questioning? 18:13
6 MR. BECKER: So the question as to if a 18:15
7 document has refreshed her recollection, then 18:19
8 that's a document that we're entitled to know 18:12
9 about. 18:15
10 MR. CUNNINGHAM: You're saying you don't 18:19
11 know about the documents you showed her 18:11
12 today? What's the -- 18:13
13 Q (BY MR. BECKER) Were there documents other 18:14
14 than those that you've been shown today that refreshed 18:16
15 your recollection? 18:18
16 A Not that I recall. I'm pretty sure 18:18
17 everything we talked about is in these documents. 18:13
18 Q Can you identify particular documents within 18:17
19 that stack that refreshed your recollection? 18:10
20 MR. CUNNINGHAM: Refreshed her 18:24
21 recollection as to what, Matt? 18:24
22 MR. BECKER: As to topics discussed in 18:26
23 the deposition today. 18:27
24 THE WITNESS: Exhibit 1201. 18:29
25 Q (BY MR. BECKER) And that was a document that 18:25

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<p>1 you had reviewed prior to today? 18:26 2 A Yes. 18:29 3 Exhibit 1191. That's it. 18:22 4 Q Thank you, Ms. Reiniche. 18:26 5 Could you tell me, are you familiar with a 18:27 6 group called the Corner Bakery Group? 18:21 7 A Yes. 18:24 8 Q And what is the Corner Bakery Group? 18:24 9 A It's a group of standards developers that 18:27 10 meet in D.C. at the Corner Bakery, down the street from 18:29 11 ASHRAE, once a month to talk about issues of top -- you 18:24 12 know, that relate to standards development 18:28 13 organizations and have lunch. 18:22 14 Q And does that tend to be the D.C. offices of 18:23 15 the -- these standards development organizations? 18:29 16 A Yes. 18:23 17 Q Okay. And do they ever discuss Public 18:23 18 Resource? 18:29 19 A They have discussed it. 18:29 20 Q And do they ever discuss this litigation? 18:21 21 A Not this litigation in particular, no. 18:24 22 Q And how is it that you're familiar with the 18:21 23 Corner Bakery Group? 18:24 24 A That was part of my discussions with Mark 18:25 25 Ames. 18:28</p> <p style="text-align: right;">Page 218</p>	<p>1 green schools, specifically referencing ASHRAE Standard 18:25 2 189.1 and the IGCC. And they were going to consider 18:29 3 our edits, so he was asking for comments. 18:26 4 THE COURT REPORTER: They weren't or 18:21 5 they were -- 18:22 6 THE WITNESS: They were -- they were 18:24 7 asking for comments, so Jeff responded with a 18:24 8 comment basic -- and then pulling myself and 18:28 9 Claire Ramspeck and Steve Ferguson into the 18:21 10 conversation, suggesting that they also 18:24 11 encourage states to update their code minimum 18:29 12 to be compliant with the version of 90.1 18:22 13 recognized by DOE, which is EPAAct. 18:25 14 And they were considering a reference to 18:22 15 our 30 percent advance energy design guide 18:23 16 for K through 12 schools as a guidance 18:27 17 document. And then it looks like Mark sent 18:22 18 out all the comments in one document at the 18:26 19 very last email. 18:27 20 THE COURT REPORTER: "And they were 18:25 21 going to consider our edits"? 18:26 22 THE WITNESS: Comments. 18:26 23 THE COURT REPORTER: "They were," is 18:26 24 what I'm -- 18:26 25 THE WITNESS: Yes. 18:26</p> <p style="text-align: right;">Page 220</p>
<p>1 Q Does Mark Ames participate in the Corner 18:23 2 Bakery Group? 18:23 3 A Yes. 18:23 4 Q Does anybody else from ASHRAE participate in 18:23 5 the Corner Bakery Group? 18:23 6 A Doug Read probably did when he was still 18:23 7 there. 18:23 8 Q And are you familiar with an entity known as 18:23 9 the Coalition for SDO Awareness? 18:23 10 A No. 18:24 11 Q Are you familiar with an entity known as 18:24 12 FleishmanHillard? 18:24 13 A No. 18:24 14 Q Are you familiar with APCO Worldwide? 18:24 15 A No. 18:24 16 (Exhibit 1209 marked for identification.) 18:25 17 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 18:25 18 you what's been marked as Exhibit 1209. Do you 18:25 19 recognize this document? 18:25 20 A This is an email from Mark Ames to what 18:26 21 appears to be our -- our advocacy group at that time. 18:26 22 And about a -- there was a national -- the national 18:26 23 conference of state legislature has two -- had two 18:26 24 policies that were of interest to ASHRAE relating to 18:26 25 greening the built environment and healthy efficient 18:27</p> <p style="text-align: right;">Page 219</p>	<p>1 THE COURT REPORTER: Okay. 18:26 2 Q (BY MR. BECKER) And you are a recipient of 18:26 3 this email, correct? 18:28 4 A Correct. 18:29 5 (Exhibit 1210 marked for identification.) 18:24 6 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 18:22 7 you what's been marked as Exhibit 1210. Do you 18:23 8 recognize this document? 18:26 9 A Yes. 18:26 10 Q And what is this document? 18:27 11 A This is an email that started from Tim Manz, 18:28 12 who is -- was the Minnesota chapter president for 18:34 13 ASHRAE, that -- indicating that the Minnesota 18:37 14 chapter -- or he was representing the Minnesota chapter 18:32 15 of ASHRAE at the State of Minnesota Mechanical Code 18:36 16 Advisory Committee, and he wanted to use several 18:30 17 sections from 90.1-2010 in the Minnesota Mechanical 18:36 18 Code and/or Minnesota Commercial Energy Code. 18:31 19 They were adopting the 2012 International 18:37 20 Mechanical Code and the 2012 International Energy 18:32 21 Conservation Code by reference with amendments, so my 18:35 22 assumption is he's asking to add these as the minutes 18:39 23 to that code. 18:32 24 And he sent that to -- well, to Publication 18:34 25 Permissions, which is a general email inbox, and Mark 18:39</p> <p style="text-align: right;">Page 221</p>

1 Wills, who worked in the D.C. office at that time. And 18:33
2 then -- then Mark Wills sent that on to Steve Ferguson 18:37
3 and myself and copied Claire and Doug Read. 18:33
4 And then Steve Ferguson sent it on to Steve 18:39
5 Comstock to get permission to provide him, and then it 18:32
6 would have been up to Steve Comstock -- there's 18:37
7 obviously something missing from this email. 18:31
8 Q By which you mean the -- the next email after 18:35
9 this? 18:37
10 A Right. Right. So either Steve Comstock 18:37
11 responded back with language to provide to Mr. Manz or 18:33
12 he responded directly to Mr. Manz. 18:36
13 Q Does ASHRAE require that states or other 18:38
14 governmental bodies ask permission before reprinting 18:36
15 part of Standard 90.1 in their codes or regulations? 18:30
16 A If they're requesting portions of 90.1, yes. 18:37
17 Q Does ASHRAE consider it to be copyright 18:30
18 infringement if a state were to publish part of 18:34
19 Standard 90.1 in their codes or regulations without 18:37
20 getting permission from ASHRAE? 18:30
21 MR. CUNNINGHAM: Objection to the 18:33
22 form. 18:33
23 THE WITNESS: It depends on how it's 18:34
24 done. If it's part of a reference from the 18:36
25 IECC, we've already given permission through 18:30
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1 the IE -- ICC process. 18:35
2 Q (BY MR. BECKER) But if it's not part of a 18:39
3 portion from the IECC, does that mean that ASHRAE would 18:32
4 consider it to be copyright infringement? 18:36
5 MR. CUNNINGHAM: Same objection. 18:30
6 THE WITNESS: Yes, if we know about it. 18:31
7 MR. CUNNINGHAM: Madam Reporter, may I 18:36
8 inquire where we are, as far as time on the 18:39
9 record goes? 18:31
10 MR. FEE: We should have one minute 18:33
11 left. 18:35
12 THE VIDEOGRAPHER: Yeah, seven hours. 18:36
13 MR. BECKER: All right. Thank you very 18:38
14 much. 18:30
15 MR. CUNNINGHAM: You can finish this 18:30
16 document if you had more on this document. 18:31
17 MR. BECKER: Oh, no, that's -- that's 18:34
18 fine. 18:35
19 MR. CUNNINGHAM: I have just a few 18:36
20 questions, Ms. Reiniche, quickly. 18:37
21 EXAMINATION 18:36
22 BY MR. CUNNINGHAM: 18:36
23 Q First, I would like to ask you to look at 18:36
24 Exhibit 1159, which you were shown earlier today. 18:39
25 A Okay. 18:33
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1 Q Do you know who would have drafted this 18:33
2 document? 18:38
3 A This would have been drafted by Chris Mathis. 18:39
4 Q Is Chris Mathis an ASHRAE employee? 18:33
5 A No. 18:37
6 Q Right before lunch, you were asked the 18:32
7 following question: Does ASHRAE believe that it -- 18:36
8 that it owns copyright and contributions to Standards 18:38
9 90.1 or to the 1993 handbook by virtue of any other 18:31
10 means, other than the copyright releases that we 18:36
11 discussed today. Do you recall being asked that 18:38
12 question? 18:30
13 A Yes. 18:30
14 Q And when you answered that question, were you 18:31
15 answering with regard to ASHRAE's belief that it owns 18:34
16 copyrights generated by ASHRAE employees or by 18:30
17 third-parties? 18:34
18 A By third-parties. 18:34
19 Q Today we've seen a number of documents that 18:36
20 addressed -- or where you mentioned green building 18:39
21 standards or green building codes. When you were 18:32
22 talking about green building standards, was that a 18:35
23 reference generally to Standard 90.1 or to some other 18:38
24 ASHRAE standard? 18:33
25 A To another ASHRAE standard. 18:34
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1 Q What standard would that have been? 18:34
2 A 189.1. 18:34
3 MR. CUNNINGHAM: Thank you. That's all 18:34
4 I have. 18:34
5 MR. FEE: I don't have any questions. 18:34
6 MR. BECKER: I'd like to -- that's fine. 18:35
7 THE VIDEOGRAPHER: Going off the record 18:35
8 at 18:35. 18:35
9 (Deposition concluded at 6:35 p.m.) 18:35
10 --oOo-- 18:35
11 18:35
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CERTIFICATE
STATE OF GEORGIA:
COUNTY OF FULTON:

I, SHARON A. GABRIELLI, HEREBY CERTIFY that
the foregoing deposition was taken down by me in
stenotype, and the questions and answers thereto were
transcribed by means of computer-aided transcription,
and that the foregoing represents a true and correct
transcript of the testimony given by said witness.
I FURTHER CERTIFY that I am not kin or
counsel to the parties in the case; am not in the
regular employ of counsel for any of said parties; nor
am I in any way financially interested in the result of
said case.
IN WITNESS WHEREOF, I have hereunto set my
hand this 10th day of April, 2015

SHARON A. GABRIELLI, RPR
CCR-B-2002

--oOo--

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.