

DATE: OCTOBER 4, 2019

TIME 10:15 a.m.

INTERVIEWER: KEVIN GREENE AND TOM BEERS
EAGLE INTEL SERVICES

CONTRACTOR: NORTH CAROLINA GENERAL ASSEMBLY AND SUBCOMMITTEE
ON THE ACP

PARTIES PRESENT: KEVIN GREENE
TOM BEERS
BILL LANE, DEQ
JAY ZIMMERMAN, DIVISION OF WATER RESOURCES
DREW HARGROVE, DEQ

1 KEVIN GREENE: Alright, today's date is October 4, 2019. My name is Kevin Green.
2 Our company, Eagle Intel Services is contracted with the North Carolina General Assembly
3 Subcommittee on the ACP for the purpose of gathering and reporting information back to the
4 Subcommittee. We are recording this interview. I would like to have each person state their
5 name, their current position and also acknowledge that you understand that it is being recorded.
6 I will start with Tom.

7 TOM BEERS: Tom Beers, I understand this is being recorded.

8 BILL LANE: Bill Lane, DEQ, I understand this is being recorded.

9 JAY ZIMMERMAN: Jay Zimmerman. I understand this is being recorded. I am with
10 the Division of Water Resources.

11 DREW HARGROVE: Drew Hargrove, I am with DEQ. I understand this is being
12 recorded.

13 KEVIN GREENE: Thank you gentlemen. I believe Mr. Lane would like to add
14 something.

15 BILL LANE: Yes, for the record, these are the terms of the interview that have been
16 agreed upon by the parties. This interview is beginning at 10:15 a.m. and will conclude no later
17 than 11:15 a.m. The questions presented to Mr. Zimmerman will be related to his official duties
18 related to the 401 water quality certification for the Atlantic Coast Pipeline project. They will
19 not cover other projects or anything related to his personal life. Thank you.

20 KEVIN GREENE: Thank you. And thank you Mr. Zimmerman for being here. If you
21 would, you already stated your name, but if you would, please provide a brief history of your
22 employment with DEQ. When you started and positions that you served in?

1 JAY ZIMMERMAN: So I started with the DEQ, or the predecessor department in July,
2 1987. I started as a Hydrogeological Technician until January, 1990 at which point I was
3 promoted to the Regional Supervisor position, or Program Supervisor. I held that position of
4 Supervisor for one of our field offices in the Raleigh area. We have a Raleigh Field Office, until
5 September 2012, at which point I was promoted to Section Chief for the, at the time it was Aqua
6 for Protection Section. I held that position until March of 2015, at which point I was promoted
7 to Division Director for the Division of Water Resources. In November 2017, I took on the role
8 of the Lead Program Manager for Coal Ash, so I no longer was the Division Director. And then
9 I think it was June of 2018, so less than a year, I took over the position that I currently have
10 which is Section Chief for the Water Quality Regional Operation Section.

11 KEVIN GREENE: OK. You've worn a lot of hats and been here awhile. Thank you. I
12 appreciate your service. During 2000 - Well let's just start. When did you first become involved
13 with the Atlantic Coast Pipeline Project?

14 JAY ZIMMERMAN: I think it was early 2017 at which point we had a kickoff meeting
15 with a number of Stakeholders that were interested in or concerned about you know, the
16 Pipeline.

17 KEVIN GREENE: OK. And when you say Stakeholders, who are you referring too?

18 JAY ZIMMERMAN: Most of the people were environmental groups, some of the river
19 keepers, other State Agencies, our own staff, you know that would be involved in that, in that
20 project.

21 KEVIN GREENE: OK. And that was early 2017, and you were at that point, Division
22 Director?

23 JAY ZIMMERMAN: Yes.

1 KEVIN GREENE: OK. And kind of give me chain of command as to who worked
2 under you and who you answered to?

3 JAY ZIMMERMAN: OK, so I answer to Shelia Holman, who was the Assistant
4 Secretary for the Environment. I was responsible for all of the division of water resource
5 activities. So in the context of the 401 Certification, my immediate subordinate was Jeff
6 Poupart, who was the Section Chief for the Water Quality Permitting Section and that is the
7 section under which the 401 Certification staff were housed.

8 KEVIN GREENE: OK. So just under you would have been Poupart.

9 JAY ZIMMERMAN: Jeff Poupart.

10 KEVIN GREENE: And then above you would have been Holman.

11 JAY ZIMMERMAN: Holman, Yes.

12 KEVIN GREENE: OK. At, you said it was a kickoff with the Stakeholders in early
13 2017. When was the Application filed? Do you recall?

14 JAY ZIMMERMAN: I do not.

15 KEVIN GREENE: I believe, we've got a timeline, I believe it was May, 2017. We can
16 show you a document, but, roughly, I think it was early May, 2017.

17 JAY ZIMMERMAN: OK

18 KEVIN GREENE: Can you kind of go through the process of how that evolved before
19 the Application and then after the Application is filed? What's the process or steps that are
20 normally taken?

21 JAY ZIMMERMAN: To be honest, I do not really know. You know I, you know I, the
22 401 program is the program that I probably in all my career have had the least involvement,

1 almost no involvement. So I differed to Jeff Poupart and then his immediate direct report, Karen
2 Higgins to help steer us through that process.

3 KEVIN GREENE: OK. Alright, do you know what factors play into the 401 permitting
4 process? What has to be met for the Applicant to receive Certification or a Certificate?

5 JAY ZIMMERMAN: Yeah, in a general sense. I mean, we have to insure that at least
6 that we are convinced that the project is going to protect water resources in a general sense. And
7 the rules and regulations that apply to that part of the program are geared towards insuring that
8 that happens.

9 KEVIN GREENE: So the primary goal is to protect the water resources.

10 JAY ZIMMERMAN: Protect water resources.

11 KEVIN GREENE: As a result of the project.

12 JAY ZIMMERMAN: Yes.

13 KEVIN GREENE: Do you know what other factors are played into the decision for the
14 Certificate?

15 JAY ZIMMERMAN: Outside of what's in the rules and brief discussions I might have
16 had with Karen and/or Jeff, No.

17 KEVIN GREENE: OK. Can you refer back to you initially got involved in the kickoff
18 with the Stakeholders.

19 JAY ZIMMERMAN: Right.

20 KEVIN GREENE: Can you go through what actions or what roles you played and your
21 authority- what decisions were made during the timeframe you were in the Division Director's
22 Position?

1 JAY ZIMMERMAN: Mainly, since I was the Senior Management member for the
2 Division, I participated, a) to learn a little bit about the process. That was really my first
3 exposure to a big project. To make sure that I understood from the Divisions perspective what
4 concerns the general public had during that kickoff meeting. I don't even recall that I spoke
5 other than just to introduce myself and welcome people to the meeting. But that was really my
6 main function. And then ultimately, as the Division Director, once that certification decision
7 was made, whether it was to approve it or deny it, then as the Division Director, I would be my
8 responsibility to sign that certification.

9 KEVIN GREENE: I want to show you some notes dated 5/25/2017. I believe these were
10 pulled off the public site or the DEQ Public staff or sorry, Staff files. Is that meeting you would
11 have been referring to?

12 JAY ZIMMERMAN: No, I think it was prior to this probably sometime in March or
13 April.

14 KEVIN GREENE: This particular meeting, do you recall it?

15 JAY ZIMMERMAN: Not specifically. We had a number of meetings internally,
16 between staff, myself and the Department. During which time we were trying to navigate the
17 process and understand, make sure we understood what all the pieces were that needed to be
18 considered as part of the issuance of a 401. And so, did you have a question about the
19 highlighted section?

20 KEVIN GREENE: Yes, Sir. If you can read that? If you don't mind, read that out loud,
21 cause I can kind of see over there, but for the record?

22 JAY ZIMMERMAN: It says cumulative impact – how deficient and did we
23 communicate expectation? Did they look at other pipeline projects?

1 KEVIN GREENE: And I will go back to this meeting date, I believe that is 5

2 JAY ZIMMERMAN: 25, May 25, 2017.

3 KEVIN GREENE: Do you recall who was participating in that meeting.

4 JAY ZIMMERMAN: Not specifically, unless I sometimes I will make a note in the
5 margins of who might have attended.

6 BILL LANE: Can I just clarify one thing? Are these your notes?

7 JAY ZIMMERMAN: Yes, that looks like my writing.

8 BILL LANE: Thank you.

9 KEVIN GREENE: Alright, and the highlighted section that you just read. Can you
10 explain what that note is about?

11 JAY ZIMMERMAN: Well, I learned through this process that it is not, that the 401
12 Certification is not simply about water quality protection. That is a major focus but also
13 cumulative impacts that might come about as a result of say growth for example, associated with
14 a given project. And what impacts that might have on water quality. And so, that was sort of a
15 note to myself, just kind of asking a questions, you know, was that - is that something that's
16 important? Was it deficient? Have we communicated expectations up front? What the
17 expectations are?

18 KEVIN GREENE: Do you know the answer to that question? Whether your
19 communicated them up front?

20 JAY ZIMMERMAN: Normally, no, not specifically.

21 KEVIN GREENE: OK. And so when we talk about communicating them up front, we
22 are talking about to the Applicant, in this case the ACP?

1 JAY ZIMMERMAN: Presumably that's who we'd be communicating with and it would
2 be an expectation of staff to make sure that that communication occurred.

3 KEVIN GREENE: OK. Give that to him so we'll know what document it is. And you
4 stated that you were learning the process of the 401 Certification.

5 JAY ZIMMERMAN: Correct.

6 KEVIN GREENE: Were you involved in any other 401 Certification Project.

7 JAY ZIMMERMAN: I was, one was the, the first one that I recall was back when I was
8 a Regional Supervisor, it was the former Tiger Woods Golf Course out in the Western part of the
9 State and there were some implications associated with filling in some wetlands and some trout
10 streams. So that was my first experience in evaluating a 401 project. The bulk of that evaluation
11 actual heavy lifting of work was performed by the 401 staff and not myself.

12 KEVIN GREENE: Right, during this time we are talking 2017 as Division Director, how
13 many 401 Applications were being reviewed at that time?

14 JAY ZIMMERMAN: I would have no idea.

15 KEVIN GREENE: Do you have a ball park idea of - would we be talking 100's?

16 JAY ZIMMERMAN: I, I don't know. That would be information I would have to get
17 from a data base. That is something that as a Division Director I am not at least me, when I was
18 Division Director, I wasn't keeping tabs on how many Applications we were receiving on a
19 given month, year. Not just the 401 program, but any program. You know, I let the program
20 staff manage that workload.

21 KEVIN GREENE: OK, Alright. Would, was the ACP 401 one of the larger projects at
22 this time?

1 JAY ZIMMERMAN: As far as I know, because it was one of the only one at the time
2 that I was asked to be involved in and to sit in on meetings, which isn't you know typical for
3 every project. So I presume that it was probably, using that as the metric, was probably one of
4 the larger projects at that time.

5 KEVIN GREENE: That was going to be my next question. Why was there a need for
6 these meetings? And from what I can gather, were these meetings held on a weekly basis, do
7 you recall?

8 JAY ZIMMERMAN: I don't know if they were held every week. Typically if we
9 schedule meetings internally, we will have a regular schedule that everyone can plan around. I
10 would have to look at my Outlook calendar to see you know what was actually scheduled, and
11 when and with whom though.

12 KEVIN GREENE: OK. And typically, who attended these meetings?

13 JAY ZIMMERMAN: If it was with the Department, which a lot of them were, it would
14 typically be myself, Shelia Holman, might include somebody from the Office of General
15 Counsel, program staff, certainly. Jeff Poupart and/or Karen Higgins and sometimes both.

16 KEVIN GREENE: OK. And I've got. Again, this is from the staff notes. This is a
17 meeting dated September 8, 2017, and at the top it says ACP meeting. And as you said earlier,
18 you put who attended on the side over there in the margin. So, I will let you just review that.
19 Primarily I am interested if you could just read who was attending at that point in time?

20 JAY ZIMMERMAN: This meeting September 8, 2017, my notes indicate secretary- and
21 these are my notes - I can tell again from my handwriting, Secretary Regan, Deputy Secretary
22 Nicholson, Assistant Secretary Shelia Holman, Jeff Poupart, Karen Higgins, Sara Rice, Toby
23 Vincent, Michael Aprizinscus, Michael Projectra, Jennifer Mundt and Bridget Munger.

1 KEVIN GREENE: OK. And what were some of the topics there. Initially at the top,
2 that are highlighted, that are your notes. What, if you can read those.

3 JAY ZIMMERMAN: The highlighted notes are

4 KEVIN GREENE: And those are my highlights, they are not yours, I will clarify that.

5 JAY ZIMMERMAN: Right, Correct. What is our role and what is happening
6 Nationally? And what can we do to address disproportionate impacts?

7 KEVIN GREENE: OK and “what is our role and what is happening nationally,” Is that
8 something - How was that brought up in the meeting?

9 JAY ZIMMERMAN: My general recollection was just how does this project compare
10 with what other projects - similar projects that might be going on. And some general discussions
11 about what are other States doing, what are they faced with.

12 KEVIN GREENE: OK. And then the second highlighted note there?

13 JAY ZIMMERMAN: So what can we do to address disproportionate impacts?

14 KEVIN GREENE: What does that mean? Disproportionate impacts?

15 JAY ZIMMERMAN: Well, by this time, there had been some concern expressed about
16 the impacts of the Pipeline to the surrounding communities. And some of those impacted
17 individuals or entities felt that they were shouldering I guess, for lack of a better word, more of
18 an impact than they felt was appropriate. So this is sort of a note that my attempt to summarize,
19 well is that an issue and if it is, is there anything we can do about it? Is it outside of the scope of
20 the 401 permit? Not to say that it might not be true, but we are constrained by what is in the 401
21 regulations, that is what we are looking at, so some of these things may or may not fall within the
22 scope of what those regulations allow us to do or control.

1 KEVIN GREENE: In meetings such as this - which it was a topic, were there varying
2 opinions on that?

3 JAY ZIMMERMAN: Not, well I am sure there are, like any meeting. I don't know, I've
4 been to many meetings, as I am sitting by myself, where I am in total agreement with what other
5 people are saying. I do not recall anything specifically. Nothing that stands out where
6 somebody you know said something that was significantly counter to what the rest of the group
7 might have felt or expressed.

8 KEVIN GREENE: OK. And in looking at a lot of these staff file notes, it seems like this
9 cumulative impact was a regularly discussed item. Do you recall discussing it the majority of the
10 meetings?

11 JAY ZIMMERMAN: Not a majority. Initially, although I knew or had heard that
12 cumulative impacts had to be considered, I didn't necessarily in what context and for me, it was
13 really an exercise in trying to filter out what's a true cumulative impact in the context of 401 and
14 me trying to understand that verses someone alleging that something's an impact and should be
15 considered that maybe falls outside of the rules.

16 KEVIN GREENE: Right, and what was the Department's position at that time, how it
17 relates? Like you just said someone, was it outside the rules? Do we really need to focus on
18 this? At what cost or at what time consumption, I would say?

19 JAY ZIMMERMAN: Well, in all the meetings that I sat in, the Department I guess staff
20 or management wanted us to make sure that we were following the rules. Stick with the rules.
21 To the extent that there might be something that was a little bit of a grey area, then we would,
22 they would want to discuss that with us or hear our opinion.

23 KEVIN GREENE: Was this a grey area?

1 JAY ZIMMERMAN: I think only in the context of you know, I remember that there
2 were a lot of discussion about jobs and does the Pipeline really bring in the number of jobs that it
3 is alleged to bring in? You know the amount of money that it would bring in to the State and
4 there are some questions people were, the public in particular, in some of the environmental
5 groups were questioning whether or not that was real. My communication with staff was we just
6 need to stick with the rules. If that is something that we would consider as part of a 401 then
7 fine, let's consider it. I don't know how it's considered. I don't have the experience of other
8 401 permits, so I don't know. But if it is something that falls outside of the scope of a traditional
9 401 Certification then the people are entitled to their opinion.

10 KEVIN GREENE: Right.

11 JAY ZIMMERMAN: But it may not be something that we can really address through
12 that 401 Certification process.

13 KEVIN GREENE: So stick to the rules of how this is to be determine, the Certificate.

14 JAY ZIMMERMAN: Right.

15 KEVIN GREENE: Were there any people above you that had a different view point of
16 how that would be addressed?

17 JAY ZIMMERMAN: How what would be addressed?

18 KEVIN GREENE: The cumulative impact and how that factored into the permitting
19 process. Or the depth involved in determining it?

20 JAY ZIMMERMAN: Not to my recollection. I think my, in the meetings I was in, it
21 was repeated a number of times to follow the rules. We need to be consistent with what we have
22 done with other cases and again, so I don't know what we have done in other cases, so I don't
23 have that as a bench mark against which to compare this. But the general communications that

1 we had received is that we need to be thorough. We need to follow the rules and we need to be
2 consistent with what we have done in other, presumably other 401 case. I deferred to staff like
3 Karen Higgins, Jennifer Burdette and to even some extent, Jeff as a Section Chief to make sure
4 that we were doing just that.

5 KEVIN GREENE: And they had been in those positions or roles and had more of a
6 knowledge base regarding the 401 permitting process?

7 JAY ZIMMERMAN: Absolutely.

8 KEVIN GREENE: Were the ACP meetings like this - were there other projects that had
9 these type meetings during this time period?

10 JAY ZIMMERMAN: I don't completely understand.

11 KEVIN GREENE: On a weekly basis or on a regular basis, did you have other projects
12 outside the ACP that you would meet with, say these individuals that you are meeting with?

13 JAY ZIMMERMAN: Other 401 projects.

14 KEVIN GREENE: Yes, sir, sorry.

15 JAY ZIMMERMAN: I don't recall during my tenure which was about eight months. To
16 the best of my recollection, my time was spent, the only 401 project that, of any significance,
17 that I spent time on, the only one that I spent time on, that I can recall, was ACP.

18 KEVIN GREENE: OK. Here is another note dated September 29, 2017, and it is, I
19 believe, is that your handwriting? Your notes?

20 JAY ZIMMERMAN: Yes and I signed this one at the top.

21 KEVIN GREENE: OK. And when you start talking about environmental groups, if you
22 can read that?

23 JAY ZIMMERMAN: The highlighted section?

1 KEVIN GREENE: Yes, sir.

2 JAY ZIMMERMAN: So, it's dated September 29, 2017, and it is the third bullet.

3 Environmental groups have requested second public hearing discussing with Secretary Regan
4 when possible.

5 KEVIN GREENE: Was that done?

6 JAY ZIMMERMAN: I don't know. I mean, that would be a question you would have to
7 ask Karen Higgins.

8 KEVIN GREENE: OK. And, so how much interaction did your division have, or did the
9 401, or the Water Quality Division have with environmental groups?

10 JAY ZIMMERMAN: You would really have to ask Karen. I know that conversations
11 occurred, people had concerns that they would express. But as far as the frequency and duration
12 and whether or not there were other meetings that maybe I did not attend, I don't really have a
13 good feel for.

14 KEVIN GREENE: OK. And the public hearings that you referred to, that is when an
15 opportunity for the environmental groups and people that are affected, to come to these and
16 express their concerns. Is that the primary purpose of a Public Hearing?

17 JAY ZIMMERMAN: Yes, that's correct.

18 KEVIN GREENE: And then can you explain as a result, what takes place from those
19 comments?

20 JAY ZIMMERMAN: So if it's a true public hearing verses a public meeting and both are
21 intended to provide the public information. But a hearing is, I would say, more formal and often
22 times a regulatory requirement for certain types of permits. So for a public hearing, the staff
23 would collect the information that was provided during the hearing and then determine how that

1 information, how those comments were germane to the issuance of the permit or the certification.
2 And then make decisions about those comments. And whether or not any changes to the
3 certification or permit should be made to be responsive to the comments? Were any comments
4 outside of the rules? Something that the public might have been truly concerned about, but
5 again, like my last statement, not something that was necessarily consistent with
6 what we are required by rule to consider? So staff would have to sift through those comments
7 and incorporate any changes that they felt were appropriate into the certification or permit, prior
8 to its issuance.

9 KEVIN GREENE: OK.

10 JAY ZIMMERMAN: That is a very general overview of the process.

11 KEVIN GREENE: Well that is a good explanation, Thank you. There was also, I think
12 it was referred to as a listening session, that's not a formal public hearing? Is that correct? In
13 my understanding, is that?

14 JAY ZIMMERMAN: There was a listening session that I would characterize more as a
15 public meeting, where we just want to hear what people think about a project or something that is
16 before the agency.

17 KEVIN GREENE: And what was the primary topic for that meeting?

18 JAY ZIMMERMAN: It was the ACP Pipeline.

19 KEVIN GREENE: Was that the one that involved Environmental Justice?

20 JAY ZIMMERMAN: The one I am thinking of, that I recall, was at a Community
21 College and off the top of my head, I can't remember. But it was east of here. It involved a
22 number of staff that were there to listen to the public. And then the public was invited. It was

1 after normal working hours. I think it started around, I don't know it may have been 6 or 7. So
2 the purpose of that was again, to hear what the public's concerns were.

3 KEVIN GREENE: Oh, OK. So during this process, there is obviously a clock that starts
4 when an Application is filed and how is the timing of all this affected by that? How is the time
5 frame, I believe it is 60 days unless there is otherwise information requests. Can you explain the
6 timing of the Application process?

7 JAY ZIMMERMAN: So, typically and I think the best of my knowledge, that the 401
8 certification is the same as how we handle other permits, its, the clock starts once we receive a
9 complete Application. So presumably, once the Application was received, the clock would start.
10 Staff would begin their review of the document. If there were deficiencies in that document,
11 those deficiencies are communicated to the Applicant. The clock stops and traditionally, it
12 would start over at 60 days once we got that information. Because it's 60 days from the receipt
13 of a complete Application. So if it is incomplete, you know, we don't pick up where we left off.
14 So it is not 60 days total, it is 60 days from receipt of a complete Application. So it is incumbent
15 on the Applicant to make sure that the Application is complete, if they want to insure that it will
16 be issued say within 60 days.

17 TOM BEERS: And I suppose this is why it's important in that note we referred to that
18 you communicate the expectations to the Applicant so that they can include it in their
19 Application.

20 JAY ZIMMERMAN: You are referring to something specifically?

21 TOM BEERS: It's this one here.

22 KEVIN GREENE: Oh, That one, sorry.

1 JAY ZIMMERMAN: The cumulative impact, how deficient and did we communicate
2 expectations? Did they look at other pipelines projects? So, yes, so what I typically make sure
3 that staff understood – and they did understand – is that if we determine something is deficient,
4 are we communicating to them clearly what is needed to make that project complete?
5 Traditionally, there is a lot of back and forth. I mean that is typical of virtually every permit we
6 issue as an Agency. So, I don't even know that I can ever recall an Application that came in that
7 was complete from the get go.

8 KEVIN GREENE: So then you would have these additional information requests. Do
9 you know how many were, how many additional information requests were involved in the ACP
10 during your tenure?

11 JAY ZIMMERMAN: I do not.

12 KEVIN GREENE: Do you recall reviewing the additional information request?

13 JAY ZIMMERMAN: I didn't specifically. I do recall having some impromptu meetings
14 where I stepped into Karen's office - ask her if we got the information. And that is my typical
15 style. If I know something's pending to go to staff and ask did we get it and how did it look?

16 KEVIN GREENE: Who typically submits those to the Applicant?

17 JAY ZIMMERMAN: Who would sign off on them?

18 KEVIN GREENE: Yes.

19 JAY ZIMMERMAN: Typically it would be, the letters are drafted by staff and reviewed
20 by, signed by the Supervisor of that program.

21 KEVIN GREENE: OK. So at this point it would be - Who would be issuing those?

1 JAY ZIMMERMAN: It would likely - the staff reviewer that I recall was Jennifer
2 Burdette and her supervisor is Karen Higgins. So it would have either been Karen signing the
3 letter, although it may have been Jennifer. But Karen or possibly even Jeff Poupart.

4 KEVIN GREENE: OK. Would it ever go above those?

5 JAY ZIMMERMAN: I guess it could. You said ever.

6 KEVIN GREENE: Sorry, yes.

7 JAY ZIMMERMAN: I don't recall

8 KEVIN GREENE: In your tenure, did you ever see it go above those?

9 JAY ZIMMERMAN: Not that I recall. It's possible, I just don't recall signing off on
10 what we would call an additional information letter.

11 KEVIN GREENE: OK. Would it be common that the Director, I'm sorry, the
12 Secretary's Office asked to be notified or review any of these requests?

13 JAY ZIMMERMAN: That does occur - in my experience - at least during my tenure as
14 Division Director, with both administrations. The one prior to this one and the current one.
15 There is varying degrees of involvement by the Department and things that they indicate to me
16 and by extension to staff that they want to be aware of or be made aware of. And it would either
17 involve a brief conversation. Maybe a meeting overview of a document? That is not unusual.

18 KEVIN GREENE: OK. And referring back to the 9/29 notes.

19 JAY ZIMMERMAN: Yes.

20 KEVIN GREENE: The highlighted point down there next to the bottom. If you can read
21 that?

22 JAY ZIMMERMAN: The highlighted, the last bullet?

23 KEVIN GREENE: Yes, sir.

1 JAY ZIMMERMAN: Just the highlighted section? Or the entire?

2 KEVIN GREENE: Just the highlighted would be fine.

3 JAY ZIMMERMAN: The highlighted section is expect to complete review by end of
4 October.

5 KEVIN GREENE: And what are you referring to in that note?

6 JAY ZIMMERMAN: I'd probably have to read the entire document to get the right
7 context.

8 KEVIN GREENE: OK, yes, certainly, go ahead and get familiar with it. Yes, Sir.

9 JAY ZIMMERMAN: OK. And what was the question again?

10 KEVIN GREENE: If you can, I think it was expected the information to be received.
11 What was it, October?

12 JAY ZIMMERMAN: It says expect to complete review by end of October.

13 KEVIN GREENE: And what would that be pertaining to? The review?

14 JAY ZIMMERMAN: So this meeting was to discuss some of the deficiencies that
15 existed to date. And, one of the previous bullets indicates most issues concern lack of
16 specificity. Which is not unusual for Applications. Somebody will respond to something that is
17 in the Application or in the rules in a generic sense and that doesn't necessarily tell us what we
18 need to know to make the decisions that we need to make. And so, we were telling them that we
19 still need more information and that it needs to be more specific. That most of the issues we had
20 with their Application involved the lack of specificity, so we are constantly going back to the
21 Applicant to get more information. They just wouldn't completely answer the question. And
22 they indicated that they hoped to get to us by mid-October and if at all possible, we would try to
23 complete it by the end of October, our review.

1 KEVIN GREENE: OK. So you left in November?

2 JAY ZIMMERMAN: November 1, 2017, so through October.

3 KEVIN GREENE: So through October. And at that time it was still not complete?

4 JAY ZIMMERMAN: That is correct.

5 KEVIN GREENE: Do you know at what stage it was at? Or did you anticipate it being
6 completed at any other time outside of, obviously, that note?

7 JAY ZIMMERMAN: I don't know when it was complete. I started working full time in
8 other responsibilities that the Department really wanted me to focus on.

9 KEVIN GREENE: OK.

10 JAY ZIMMERMAN: So I don't beyond October or November.

11 KEVIN GREENE: Well I guess your last day as the Division Director, did you have –
12 Was there discussion regarding the anticipated completion date.

13 JAY ZIMMERMAN: Not that I recall specifically. There was discussion and concerns
14 expressed and it is probably reflected in my notes about, you know, windows of time that they
15 had to start conducting certain phases of the project. But, which is not, again, not unusual for
16 Applicant's if there are things, whether it's related to weather or other things that they kind of
17 want to make sure we are aware of. From my prospective, that's fine, but we need to have a
18 complete Application. That is what drive's the process. Outside of that, not to sound ugly, I
19 don't really care - if it's getting close to winter or if there is some window that we are going to
20 miss if we don't issue the permit. It's about issuing the permit or certification consistent with the
21 rules, consistent with our guidance and consistent with past certifications. To me, that is what
22 drives our decisions and not much else.

1 KEVIN GREENE: How often would you say you met with the Secretary's Office? With
2 anyone within the Secretary's Office? Regarding the project?

3 JAY ZIMMERMAN: Could you clarify Secretary's Office? I mean are you talking
4 Assistant Secretary Holman or the Secretary himself?

5 KEVIN GREENE: Assistant Secretary and the Secretary himself, both.

6 JAY ZIMMERMAN: Well just about every meeting, if it involved the Department and
7 an environmental issue, such as this Pipeline here specifically, would have likely involved
8 Shelia. Shelia Holman is our Assistant Secretary. And depending upon the purpose of the
9 meeting, myself and then some program state, Jeff Poupart, Karen Higgins, more than likely.
10 There were a couple meetings that the Secretary was involved in. Higher level meetings. But
11 those typically then would involve, typically more staff than just me and Jeff. It might involve
12 other divisions as well. And people within the Department that might have a role in helping us
13 formulate decisions.

14 KEVIN GREENE: OK. This is an email coming from Chief Deputy Secretary
15 Nicholson.

16 JAY ZIMMERMAN: OK.

17 KEVIN GREENE: If you could just – it is, the portion that is highlighted is not
18 highlighted on there, but it is darkened. Can you just review that email briefly and then I will
19 ask you a couple of questions. Basically, my question first is - What is being asked for you to
20 do?

21 JAY ZIMMERMAN: The question?

22 KEVIN GREENE: Yes, sir.

1 JAY ZIMMERMAN: The question specifically says, from each of your respective
2 divisions, what is our drop dead/response requirements on ACP? I am trying to determine how
3 much time we might have to make some internal adjustments related to ACP and what our
4 counterparts in other departments are doing/thinking that might impact our thought process. So
5 the question again?

6 KEVIN GREENE: Then the question would be - Did you have any further discussion
7 with Deputy Nicholson or anyone else regarding that question?

8 JAY ZIMMERMAN: I may have. Traditionally, Mr. Nicholson would send a request
9 for information. I would communicate to staff, get that information and then pass it along to
10 Management. And there may or may not be a follow up meeting or conversation.

11 KEVIN GREENE: OK. So what is your interpretation of what he was asking for?

12 JAY ZIMMERMAN: Based upon what I am reading here, it appears to be sort of
13 chronology of events. You know, when did things come in? What major milestones - typically
14 to me a major milestone in the context of the certification or permit would be when do we send
15 add info letters? When did we get a response? Things of that nature. To help understand, in
16 other words, the drop dead deadline, which I am going to presume he means the statutory
17 deadline or the regulatory deadline for issuance. Where are we in that process?

18 KEVIN GREENE: OK. And you had requested that information and we've got some
19 follow up emails and you did get it, but we are not going to go into that. One other thing - How
20 did, in your position, I am trying to determine how much time we might have to make some
21 internal adjustments related to ACP. Do you know what the reference to that statement is?

1 JAY ZIMMERMAN: Not specifically. I do not recall Secretary Nicholson, or Deputy
2 Secretary Nicholson discussing those with me. You would have to talk with him, because I don't
3 really know what that means.

4 KEVIN GREENE: Right, OK. This was September 6 and I think, like I said, you did
5 receive that information. There was a table. I don't know if we have that particular table. But

6 TOM BEERS: Which one is that?

7 KEVIN GREENE: We don't really need that, I don't think. At that point in time, do you
8 recall when you thought it was going – what the drop dead date was going to be?

9 JAY ZIMMERMAN: No, not at that particular time. Again, you know Karen is very
10 good and very thorough and very sensitive to deadlines. We don't want something to go
11 statutory. So I just really relied on her to ensure that we would meet deadlines and we could
12 defend and request that we made, which would then stop the clock, so to speak.

13 KEVIN GREENE: OK. Alright. Were you familiar with the draft denial letter.

14 JAY ZIMMERMAN: Not that I recall. Draft denial letter?

15 KEVIN GREENE: OK. Did you ever see a draft denial letter in your position, during
16 the tenure of the Division Director?

17 JAY ZIMMERMAN: Not that I can recall.

18 KEVIN GREENE: So you do not recall ever seeing or have seen one issued during that
19 time frame?

20 JAY ZIMMERMAN: Specific to ACP?

21 KEVIN GREENE: Specific to any project.

22 JAY ZIMMERMAN: I may have seen a denial letter for a 401 certification, but I can't
23 tell you in what time frame. Over that 2 ½ plus years that I was Director. I believe that I had

1 signed denials before, permit denials. I don't remember if any of them were 401 certifications.
2 They may have, I don't know.

3 KEVIN GREENE: OK. Were there any concerns in your position as Division Director
4 as to the time it was taking to issue or deny this permit?

5 JAY ZIMMERMAN: Any concerns that I had with respect? No.

6 KEVIN GREENE: OK. Did anyone outside your division express any concerns about
7 the time it was taking?

8 JAY ZIMMERMAN: Not that I recall. I just, may I ask a clarifying question?

9 KEVIN GREENE: Sure.

10 JAY ZIMMERMAN: When you asked anyone outside of my division, are you talking
11 about other divisions or are you talking about the general public?

12 KEVIN GREENE: Within the administration. How's that.

13 JAY ZIMMERMAN: OK. Not that I recall.

14 KEVIN GREENE: OK. Would you recall anyone ever saying that the Department was
15 trying to put up barriers regarding the permitting process?

16 JAY ZIMMERMAN: No. I do not recall anything like that. No comment.

17 KEVIN GREENE: OK. Did at this point in time, you went through, I think you said the
18 end of October as the Division Director. Did your change in positions have anything, position,
19 have anything to do with the 401 process for the ACP.

20 JAY ZIMMERMAN: Not that I am aware of. Not that has been communicated to me. I
21 was spending about 75% of my time on Coal Ash related duties and we had a lot of projects or
22 milestones that had to be met and what was expressed to me is they wanted someone to focus

1 100% on Coal Ash duties. A manager, a senior level manager to focus on Coal Ash, and so I
2 was asked to handle the Coal Ash program.

3 KEVIN GREENE: Did you object to that?

4 JAY ZIMMERMAN: No. As a matter of fact, I think I said I'd – I think that I expressed
5 in an email, that I would do anything that I could to support the Department.

6 KEVIN GREENE: OK. Did you have?

7 TOM BEERS: Yes, so I am just going to follow up on that. So you said that not that you
8 are aware of. Did you think there was a possibility that could have happened? That you were
9 removed from that position because of your work with the ACP permitting process? That you
10 were following the rules and you could have been moved because of that?

11 JAY ZIMMERMAN: Not that I am aware of. You know, I, in that capacity, you kind of
12 work at the pleasure of the administration. It was an appointed position. I was appointed by the
13 previous administration, when there was a change in the administration, some of the Division
14 Directors were – I guess, asked to move on. I was not. And, at some point, I guess there is an
15 assessment by administration to decide what they want to do. The direction they want their
16 program to go. The way it was explained to me is they needed somebody to focus 100% on Coal
17 Ash because there were a lot of timelines that had to be met. Some statutory requirements that
18 had to be met and they wanted somebody to focus 100% of their time on those activities and so I
19 was asked – I was told they were going to make a change in the Division and they really wanted
20 me to focus all of my energies on Coal Ash.

21 TOM BEERS: Had you pushed back in any way to redirect your efforts into following
22 just the rules to anyone above you? Prior to being removed from your position?

23 JAY ZIMMERMAN: When you say pushed back what are you talking about?

1 TOM BEERS: Well, someone may have suggested that you do things a different way,
2 that may have been slightly outside of the rules of the 401 permit and you were adhering to the
3 rules strictly. Do you remember having any conversations with anyone about your position of
4 following the rules and someone may have disagreed with you?

5 JAY ZIMMERMAN: No

6 TOM BEERS: In any shape, or even similar to that?

7 JAY ZIMMERMAN: No. The comments that I had heard is we need to make sure we
8 follow the rules. You know, my nature is, that is what I am going to do. In particular, if the
9 rules are clear. You know, when they aren't we have discussions within the Division.
10 Sometimes within a Department to figure out, well what is this? What does a particular rule
11 mean? Is there a policy we use to implement it? And I may agree or disagree with that, but at
12 the end of the day, you know, I am going to follow the rules. And to me, it's just that simple.

13 TOM BEERS: Do you remember any discussions where there was a difference of
14 opinion on how this- how a certain rule applied?

15 JAY ZIMMERMAN: Not specifically. There were discussions with the Applicant, you
16 know where they may have felt that they had provided the information we needed and we were
17 not satisfied with the information that they provided. And I would defer to the staff, to Karen
18 Higgins in particular and Jennifer. You know, they have reviewed a lot of 401 Certifications.
19 They are the subject matter experts and I was comfortable that both Karen and Jennifer were
20 following the rules and weren't treating the ACP Applicant or Applicants, the involved
21 individual, any differently than they would any other Applicant.

1 TOM BEERS: OK. I'm just going to go down a little timeline. This is the Hearing
2 Officer's Report. You may have seen one of these before. This is basically a timeline of the
3 Application, I guess additional requests for information, when it was received.

4 JAY ZIMMERMAN: OK.

5 TOM BEERS: Looking at this timeline, it looks like No. 2: Additional information
6 request on September 14. It looks like you were receiving information up to October 13 and that
7 kind of fits the timeline of when you believed something was going to be reviewed or completed
8 by the end of October, based on the submission of the additional information. Do you
9 remember?

10 JAY ZIMMERMAN: So in the earlier notes that I had taken where there was an
11 expectation that we would issue the certification by the end of October. Again, my recollection
12 of that meeting was we consistently were not getting the information that we wanted. And if that
13 information is provided, you know do we think we can issue it by the end of October? There is
14 an expectation and, so well yeah, if we get everything we ask for, if that's not unreasonable. It
15 really depends on the staff workload. If we don't, because we have other projects, then you
16 know, that's the way it is.

17 TOM BEERS: So, it looks like the last information request came in October 13, related
18 to this information request – No. 2. And then on the 26th another request for information went
19 out.

20 JAY ZIMMERMAN: OK.

21 TOM BEERS: Do you recall any conversations about this request being put out there at
22 the end of October, right before you were taken from the division, from your position?

23 JAY ZIMMERMAN: No, no I don't.

1 TOM BEERS: Do you recall at the end of October, having any understanding that the
2 permit could have been issued at that time, while you were still in your position at?

3 JAY ZIMMERMAN: Well, when I was in my position, in the conversations I had with
4 Karen, there was a level of frustration by her and Jennifer that we would ask for something, we
5 would have a meeting, we would explain our needs and we would get information in that might
6 answer part of what we asked for and not all of it. So there was a constant back and forth where
7 we didn't get the information we needed. Maybe there would be a subsequent meeting, you
8 know where someone would explain – we would explain in greater level of detail, again what we
9 wanted. And that is really, I think, that was my sense. And up until the point I left, I didn't have
10 any information or knowledge to suggest that it was imminent, issuance was imminent, it was
11 still in the here we go again, stage.

12 TOM BEERS: OK.

13 KEVIN GREENE: At the point when you left, do you recall what the primary
14 information that was needed or needed to be clarified what those issues were pertaining to?

15 JAY ZIMMERMAN: My recollection was that we still had some questions related to the
16 cumulative impact. We had some questions that I believe, I recall a meeting to talk about the
17 drilling activities, when they were going to drill under a stream and the mud that would be
18 generated as a result of that drilling process. You have to advance the bore hole, you fill it
19 with mud to stabilize it. You put in a pipe and then you have to evacuate that mud, that drilling
20 mud to ensure that it wasn't getting into service waters or didn't get spilled. So towards the end
21 of my tenure, the conversations we were having revolved around how they are going to handle
22 the drilling activities and making sure that any cumulative impact were thoroughly vetted and
23 considered.

1 KEVIN GREENE: So cumulative impact seems to be ongoing. It was at the beginning
2 of those notes and ongoing. Is that something that was on a regular basis discussion and you just
3 weren't receiving the information from the Applicant? Or

4 JAY ZIMMERMAN: No, I think it was just a difference of opinion. Which again, isn't
5 atypical you know, with an Applicant whether we are talking a 401 Applicant or any other
6 Applicant for any other permit. Sometimes there is a difference of opinion with respect to what
7 is needed. And we hold meetings to discuss that. And at some point, as an Agency, we have to
8 draw the line and say this is what we need and if we don't get it, then we won't issue a permit or
9 certification. I don't recall that we ever had that kind of a conversation with the Pipeline people,
10 but again, it was just this back and forth of discussing what we needed and why we needed it and
11 then them agreeing to provide it in some fashion and then we would get the information and it
12 wouldn't quite answer the questions and then we would send another letter. So there was a lot of
13 that throughout the whole process.

14 BILL LANE: We are at two minutes.

15 KEVIN GREENE: Yes sir, Thank you. I cannot recall if I asked this questions, if I did I
16 apologize. Did you ever have any contact with the Governor's Office or people working in the
17 Governor's Office regarding the ACP.

18 JAY ZIMMERMAN: Me personally?

19 KEVIN GREENE: Yes, sir. As Director

20 JAY ZIMMERMAN: As Director, not that I did. I was never called to the Governor's
21 Officer or ever met with the Governor or any of his staff specifically. There may have been
22 somebody there that I didn't know at one of our bigger meetings, but I don't recall that.

1 KEVIN GREENE: OK. Was it relayed down to you that there was the Governor was
2 involved in the permitting process.

3 JAY ZIMMERMAN: No, that was not communicated to me.

4 KEVIN GREENE: OK. Anything else with 20 seconds to go.

5 TOM BEERS: Just one last question. Did anyone at any time above you, either Shelia
6 Holman or anyone above, give you direction as to make additional information requests that you
7 didn't agree with.

8 JAY ZIMMERMAN: No.

9 TOM BEERS: OK.

10 KEVIN GREENE: We certainly appreciate your time and appreciate all you do for our
11 State.

12 JAY ZIMMERMAN: Sure.

13 KEVIN GREENE: The time is 11:15 a.m. and I am going to stop the recordings.