

1 In Re:

2 Solutia, et al.,

3
4 Vs. Case No. CV-03-PWG-134-E.

5
6 McWane, et al.,

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11
12 September 30, 2004

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14 Videotaped Deposition of ROBERT GEORGE KALEY II,
15 Volume II
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1 In the United States District Court
2 For the Northern District of Alabama
3 Magistrate Judge Green
4

5 Solutia, et al.,
6 Plaintiffs
7

8 Vs. Case No. CV-03-PWG-134-E.
9

10 McWane, et al.,
11 Defendants.
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17 Videotaped Deposition of ROBERT GEORGE KALEY II, taken
18 on behalf of the Defendants, at the offices of Husch &
19 Eppenberger, LLC, 190 Carondelet Plaza, Suite 600, in
20 the County of St. Louis, State of Missouri, between
21 the hours of 9:15 A.M. and 2:27 P.M. on the 30th day
22 of September, 2004, before J. Bryan Jordan, Certified
23 Court Reporter No. 532 and Notary Public, State of
24 Missouri.

Kaley, Robert Ph.D.

MCWANE

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1 ROBERT KALEY II,
2 of lawful age, having been previously duly sworn to
3 testify the truth, the whole truth, and nothing but
4 the truth in the case aforesaid, deposes and says in
5 reply to oral interrogatories propounded as follows,
6 to-wit:

7 VOLUME II -- SEPTEMBER 30, 2004

8 THE VIDEOGRAPHER: We're on the record at
9 9:15 A.M. Today's date is September 30th, 2004. We
10 are at the offices of Husch Eppenger. The address
11 is 190 Carondelet Plaza, Clayton, Missouri. My name
12 is Curt Shaw, legal videographer, along with Jerry
13 Jordan, Certified Court Reporter, here today to
14 continue to deposition of Robert Kaley II, to be taken
15 in the case of Solutia et al. vs. McWane, et al.
16 pending in the Northern District of Alabama, Cause
17 Number CV-03-DWG-1345-E. At this time, would counsel
18 please reidentify themselves for the record?

19 MR. LANGLAIS: This is Jim Langlais,
20 representing Defendant Walter Industries, Inc., and
21 United States Pipe & Foundry, Inc.

22 MS. O'NEAL: Lynne O'Neal, representing
23 Phelps Dodge.

24 MS. LAVEY: Wendy Lavey, of Squire, Sanders
25 & Dempsey, representing Mead Westvaco Corporation.

1 MR. NASSIF: Joseph Nassif, Husch
2 Eppenberger, representing Solutia/Pharmacia.

3 MR. LANGLAIS: Those on the phone?

4 MR. TAYLOR: Jarred Taylor, of Maynard,
5 Cooper & Gale, representing McWane FMC and United
6 Defense.

7 MS. SMITH: Lynette Smith at Troutman
8 Sanders, representing Scientific-Atlanta, Inc.

9 MS. RUTLEDGE: Stephanie Rutledge, at Butzel
10 Long, representing Huron Valley Steel.

11 MR. McMAHON: Mike McMahon, for McMahon
12 DeGulis, for Datron.

13 MS. McADAM: Allison McAdam, from Resolution
14 Law Group, for Southern Tool.

15 MR. LANGLAIS: Is that it? Can you all put
16 your phones on mute? Thanks.

17 ROBERT KALEY II,
18 of lawful age, having been first previously sworn to
19 testify the truth, the whole truth, and nothing but
20 the truth in the case aforesaid, deposes and says in
21 reply to oral interrogatories propounded as follows,
22 to-wit:

23 EXAMINATION (Continued)

24 QUESTIONS BY MR. LANGLAIS:

25 Q. Good morning.

1 A. Good morning.

2 Q. I'm going to ask you about a few names, if
3 you could tell me if you know these individuals. Do
4 you know a person by the name of Jim Bryant, who was
5 apparently a research chemist in Anniston?

6 A. Yes.

7 Q. Do you know how long Mr. Bryant was, was
8 with Monsanto?

9 A. He left, I would say approximately--well,
10 sometime in the mid 1970's.

11 Q. Okay.

12 A. I don't know when he joined the company.

13 Q. Have you ever spoken with Mr. Bryant?

14 A. Yes.

15 Q. When was the last time you spoke with
16 Mr. Bryant?

17 A. Probably three or four years ago.

18 Q. And do you recall, was that in connection
19 with one of the lawsuits?

20 A. No.

21 Q. What was the purpose of the discussion?

22 A. He had been contacted by some reporters
23 about a story in the Anniston Star about mercury.

24 Q. Do you recall anything else about your
25 discussions with him?

1 A. No. That was, that was the substance of the
2 discussion.

3 Q. Did you discuss with him at all the
4 processes or process involving mercury at the Anniston
5 plant?

6 A. No.

7 Q. Do you know if he did, in fact--if he was,
8 in fact, interviewed by the Anniston Star with respect
9 to the mercury?

10 A. I believe he was, yes.

11 Q. Do you know the substance of this interview?

12 A. I--no.

13 Q. Do you know a Don Huckaby?

14 A. No.

15 Q. How about Joe Heflin?

16 A. No.

17 MR. LANGLAIS: Yesterday, we, we had talked
18 about some of the other consulting work that the
19 witness did, Joe,--

20 MR. NASSIF: Mm-hmm.

21 MR. LANGLAIS: --and have you all, have you
22 all come to any determination with respect to the
23 nature of that work and whether it's going to be
24 discussed here today?

25 MR. NASSIF: Bob went back and took a look

1 at the agreements. I don't have copies of the
2 consulting agreements he has, and he can identify the
3 client that he's working for through those agreements
4 and some comment about the nature of the work, but he
5 can't go into his specific assignment. He's working
6 with law firms,--

7 MR. LANGLAIS: Okay.

8 MR. NASSIF: --so I don't know if that means
9 much to you, Jim, or not.

10 MR. LANGLAIS: Okay.

11 BY MR. LANGLAIS:

12 Q. With respect to the other consulting work,
13 and by "other," I mean consulting work for someone
14 other than Monsanto or the law firms that represent
15 Monsanto--can you tell me who you are doing consulting
16 work for?

17 A. Yes, I've--I'm doing some consulting work
18 for Spriggs & Hollingsworth in Washington, D.C., and
19 I'm a subcontractor to--on another site--or another
20 company to a consulting firm called Integral
21 Consulting in the State of Washington.

22 Q. Generally, what kind of consulting are you
23 doing?

24 A. Providing technical support to the attorneys
25 on the litigation.

1 Q. Is that PCB-related litigation?

2 A. Yes, it is.

3 Q. Can you discuss your--how you are being paid
4 by those, by those law firms?

5 A. I'm being paid an hourly rate.

6 Q. What's your hourly rate?

7 A. For Spriggs & Hollingsworth, it's \$175 an
8 hour. For the other, it's \$200 an hour.

9 Q. When did you start doing consulting work for
10 Spriggs & Hollingsworth?

11 A. Approximately a year ago.

12 Q. How about Integral Consulting?

13 A. Probably two or three months ago.

14 Q. How many hours do you estimate you've done
15 for Spriggs & Hollingsworth?

16 A. I, I don't know.

17 Q. Is it more than a hundred?

18 A. More than a hundred: Certainly not.

19 Q. How about integral?

20 A. Very, very, very minimal there. Trivial.

21 Q. Any other consulting work that you've done?

22 A. No.

23 Q. I'm going to hand you what was marked
24 yesterday as Kaley Exhibit 1, and that's the--your
25 letter to ADEM dated October 12th, 2000. Would you

1 look at the second page, the first complete paragraph?
2 In there, in the last sentence, you state that "We
3 have been told by former employees." Do you see that
4 sentence starting that?

5 A. Yes.

6 Q. "We've been told by former employees that
7 the lead in the pots was recovered and sold after the
8 units were shut down." Can you tell me which former
9 employees you are referring to in that sentence?

10 A. I'm relying to conversations Jerry Brown had
11 with other employees. I don't know the names.

12 Q. We would have to talk to Jerry to get those
13 names?

14 A. Yes.

15 Q. Do you know if he mentioned those names to
16 you and you just forgot them or--

17 A. I don't recall ever having heard them.

18 Q. Do you know if the still bottoms generated
19 during the lead pot process were tested for lead
20 levels at any time?

21 A. I haven't--I don't have any information
22 about that.

23 Q. If you would look now at that same exhibit
24 down to paragraph 3, where it discusses the lead
25 levels detected at the Anniston facility, in

1 particular--and I'm just going to kind of sum this--it
2 says lead levels rarely exceeded a hundred mgs. per
3 kilogram, and in one case, it was the highest value
4 was 250 mgs. per kilogram. Do you see that?

5 A. Yes.

6 Q. Now, was this the first time that soils at
7 the Anniston Plant had been tested for lead?

8 A. I don't know.

9 Q. Now, how is it that you can make the
10 conclusion you reach in the last sentence of that
11 paragraph that says, "These on site analytical results
12 provide confirmation that the former use of lead in
13 the polyphenyl process over 30 years ago has not
14 contributed to environmental lead levels at the
15 Anniston facility"?

16 A. Because it was my conclusion based on the
17 review of those analytical data that there wasn't any
18 evidence of lead contamination at the site in any
19 widespread manner.

20 Q. Analytical data that was collected 30 years
21 after the process had ended?

22 A. That's correct.

23 Q. And of course, you haven't come across any
24 analytical data that occurred either during the lead
25 pot process or shortly thereafter; is that correct?

1 A. I've not seen any of that, no.

2 Q. Isn't it possible that lead in the soils was
3 washed offsite by storm waters during the 30-plus
4 years that followed the end of the lead pot process?

5 A. I don't know the answer to that.

6 Q. But would you agree with me that that is
7 definitely a possibility?

8 A. Well, if it was, it would be where the PCBs
9 are, and those sediments have been tested and there's
10 not lead in the sediments where the PCBs are present,
11 so I think it's a very unlikely possibility.

12 Q. How mobile is lead in water?

13 A. I don't really know the answer to that. It
14 depends on the form of the lead.

15 Q. You can't say either way, then.

16 A. Well, I said what I said. I mean, that's my
17 understanding and my belief about the situation.

18 Q. Do you know when the Monsanto facility first
19 started testing outfall samples for, for lead?

20 A. No, I don't.

21 Q. When is the earliest that you know that the
22 Monsanto facility tested outfalls for lead?

23 A. That I know for sure would be the data
24 reported here.

25 Q. And that would be in 1999?

1 A. Uh, the data were probably collected before,
2 shortly before 1999. That's when the report was
3 issued.

4 Q. That would be 35 years after the lead pot
5 process had discontinued.

6 A. Yes, that's correct.

7 (Defendant's Exhibit

8 Kaley 5 marked for

9 identification.)

10 BY MR. LANGLAIS:

11 Q. I'm going to hand you what's been marked
12 Defendant's Exhibit 5, Kaley Exhibit 5. Would you
13 take a look at that?

14 MR. TAYLOR: Does it have a Bates range on
15 it, Jim?

16 MR. LANGLAIS: Yeah, it's beginning Bates
17 DSW 462477, and the ending Bates number is DSW 462620.

18 MR. TAYLOR: Thank you.

19 MR. LANGLAIS: And it's also, it was also
20 Exhibit 10 to the Papageorge deposition.

21 BY MR. LANGLAIS:

22 Q. Have you had an opportunity to review that--

23 A. I've seen it.

24 Q. Well, have you seen this before?

25 A. I don't recall having seen this particular

1 document, no.

2 Q. And this, would you agree with me that this
3 appears to be a standard operating procedure or SMP in
4 connection with the production of biphenyls? And this
5 is dated 1948.

6 A. Well, it's not an SMP; it's a, a report on
7 the process. I don't, frankly, know the particular
8 difference between what an SMP is--

9 Q. Sure.

10 A. --and I haven't reviewed this, so I don't
11 know exactly what it, what it--

12 Q. If you would turn--

13 A. --purports to be.

14 Q. Why don't you turn to page 1--it says
15 "Description of Process"--and look under
16 "Introduction."

17 A. Okay.

18 Q. Would you agree--read through that paragraph
19 and tell me if you would agree that this is, this
20 document purports to describe what is known as the
21 lead pot process and the production of biphenyls or
22 diphenyls.

23 A. Yes, it describes that process, but that--I
24 mean, there is a standard manufacturing procedure,
25 standard operating procedure, a specific document with

1 that title, but this document does describe the
2 process in general terms.

3 Q. As part of your task to respond to the
4 request for information concerning lead, would this
5 have been a document that you would have looked at?

6 A. I did not.

7 Q. Why wouldn't you have looked at a document
8 that appears to describe the lead pot process?

9 A. It was not one that I had available to me
10 for whatever reason. I don't know what reason.

11 Q. It's your testimony is that--is this--who
12 gave you, who gave you the, the SMP to review?

13 A. Attorneys.

14 Q. So is it your testimony that the attorneys
15 didn't provide you with a copy of this particular
16 document?

17 A. Well, I don't recall having seen this
18 document, no.

19 Q. Would turn to page 5? It's marked DSW
20 462484.

21 A. Okay.

22 Q. Why don't you go ahead and read to yourself
23 the first paragraph, including the analytical results,
24 and you tell me when you are finished.

25 A. Okay.

1 (Witness peruses document.)

2 A. Okay, I'm finished.

3 Q. Yesterday, I asked you if you had any
4 knowledge about carbon formation as part of the lead
5 pot process to manufacture biphenyls. Does this
6 paragraph refresh your memory with respect to the
7 formation of carbon?

8 A. No, it doesn't refresh my memory because I
9 had no recollection of it.

10 Q. Sure. Does--would you agree with me that
11 this paragraph seems to indicate that there was a--I
12 don't necessarily want to call it a problem, but there
13 was a--during the lead pot process that carbon would
14 be formed in the diphenyl units? It says here, "After
15 the converter units through the lead trap in the pipe
16 after the lead trap and in the fractionating column"?

17 A. Yes.

18 Q. Okay?

19 A. It says that.

20 Q. And that the analytical results of that
21 carbon material shows that lead comprised fifty--56.5
22 percent of that carbon formation?

23 A. Yes, it says that.

24 Q. And that it also says that, that the lead
25 trap and fractionating column were cleaned out? Does

1 it say--do you see that, as well?

2 A. Yes.

3 Q. So this is, this is yet another waste stream
4 from the lead pot process that contained lead. Would
5 you agree with that, after seeing this document?

6 A. I wouldn't call it a waste stream. It's
7 obviously deposits that have been removed and would
8 have to be disposed of. I'm not sure I would call it
9 a waste stream.

10 Q. Well, if it's, if it's a material that's
11 produced as part of a manufacturing process that's
12 disposed of, if you don't call it a waste stream, what
13 would you call it?

14 A. Well, I would call it deposits or byproducts
15 that have to be disposed of. I think of a stream as a
16 flowing part of the process. I would think of the
17 stream as the biphenyl being carried through the
18 process. I don't think this is a stream.

19 Q. Okay.

20 A. I'm just quibbling over the word--

21 Q. Right,--

22 A. --"stream."

23 Q. --but would--you would agree if it's
24 something you dispose of, it's called a waste, right?

25 A. Yes.

1 Q. Do you know how much of this material was
2 generated as part of the lead pot process?

3 A. I do not.

4 Q. Do you know where the, where the carbon
5 formation that contained this 55--56.5 percent lead
6 was disposed of?

7 A. I, without reading the rest of this document
8 to see whether it addresses that, I don't know.

9 Q. Sure, because this wasn't a document you
10 were presented with when you had to respond to the
11 request for information on lead; correct?

12 A. That's correct.

13 Q. Would you have liked to have had this
14 document in making your response?

15 A. I don't know. I'd have to read the document
16 and see if it provides additional information that
17 would have been relevant to my response to the ADEM.

18 Q. Well, with respect--if you would have had
19 this information about carbon formation, do you think
20 that's something that you would have included in your
21 response to the request for information?

22 A. I may or may not have. I would have to look
23 at it in the context of the other information and the
24 document.

25 Q. Because certainly, the request for

1 information was asking for waste materials that
2 contained lead; correct?

3 A. I don't recall.

4 Q. Just bear with me. I may have a few more
5 questions on this. I may have to come back to this.

6 (Pause.)

7 Q. I won't search for what I'm looking for
8 right now, but I may come back to this exhibit, so you
9 might want to keep it handy.

10 (Defendant's Exhibit

11 Kaley 6 marked for

12 identification.)

13 Q. (Continuing) I'm going to hand you what's
14 been marked Defendant's Exhibit 6, or Kaley 6. Take a
15 moment to look at that document. I understand that
16 you don't have time to read the entire document, but
17 take as much time as you need. This is Bates labeled
18 DSW 462055 through DSW 462197, and it also was
19 Defendant's Exhibit 11 in the Papageorge deposition.

20 (Witness peruses said

21 document.)

22 A. Okay.

23 BY MR. LANGLAIS:

24 Q. Okay, have you seen this document before?

25 A. I believe I have, yes.

1 Q. You believe that this is a document that you
2 reviewed in connection with your filing a response to
3 request for information on lead?

4 A. I can't recall specifically. It may have
5 been.

6 Q. And again, would you have received this
7 document from the attorneys?

8 A. Yes.

9 Q. Okay, if you would look for me on page 22,
10 it's Bates labeled DSW 462077--

11 A. Okay.

12 Q. Read the second paragraph to yourself and
13 let me know when you are finished.

14 (Witness peruses said
15 document.)

16 A. All right.

17 Q. Okay. Now, does that--would you agree with
18 me that that second paragraph describes pot failures
19 by something called washing erosion of the wells and
20 the pot bottoms?

21 A. Well, it doesn't--it mentions pot--it says
22 that another document describes the pot failures, but
23 it does mention pot failures, yes.

24 Q. Sure, and that other document is referred to
25 as the Anniston Interim Report 2211?

1 A. Correct.

2 Q. Is that correct?

3 A. Yes.

4 Q. And, and based on your testimony, the, the
5 Anniston facility was the only facility using the lead
6 pot process?

7 A. That's the only one I know of specifically.

8 Q. Sure, so would you also agree with me that,
9 that if they are describing pot failures, that they
10 have to be referring to pot failures at the Anniston
11 facility?

12 A. Yeah. I mean, it's obviously an Anniston
13 report. I'm sure that's correct.

14 Q. Okay, wouldn't, wouldn't--would it surprise
15 you that there were pot failures as part of that, that
16 lead pot process?

17 A. Not particularly.

18 Q. Were you aware that there had been pot
19 failures as part of that process?

20 A. I don't know that I was specifically aware
21 of that, but it's not particularly surpriseng.

22 Q. Would that have been something that you
23 would have, you would have included in your response
24 to the request for information?

25 A. Probably not.

1 Q. Why is that?

2 A. Well, they were describing, they wanted a
3 description of the process, and that's what I provided
4 them.

5 Q. Sure. How--but wouldn't that be important,
6 since, since you took the time to describe this closed
7 process, wouldn't it be important to inform ADEM and
8 EPA that, that there had, in fact, been failures of
9 that pot process?

10 A. It was not a point I chose to put in--I
11 don't recall specifically having seen this paragraph,
12 and if I had, it was a point I chose not to put in the
13 letter.

14 Q. Having seen it today, would it, now thinking
15 back, would it be something that you, you would have
16 included in that response?

17 A. Again, I would have to look at this, the
18 whole document and put it in the context of other
19 information to see whether it was something that
20 should have been included.

21 Q. Sure, and if, and if reading through the
22 rest of this document, there's nothing to, nothing to
23 change the fact that there appears to have been pot
24 failures as part of the lead pot process, would, would
25 you agree that that's something that should have been

1 in the response to the full--the information request?

2 A. I don't know. It would have to be looked at
3 in the full context of the information. I don't know
4 whether it could have or should have been.

5 Q. Now, does having seen that paragraph, does
6 that in any way affect your confidence level in the
7 closed system that you described for the lead pot
8 process?

9 A. No, it doesn't. I mean, the system, when
10 operating, was closed, and I think again, you go back
11 to the environmental levels around the plant and in
12 the discharges, and there is not elevated levels of
13 lead there, so obviously, if it occurred, did not lead
14 to environmental discharges of that lead.

15 Q. Well, I don't know--

16 A. I mean, the lead would solidify as soon as
17 it--if it did leak out of these pots, it would
18 solidify and be captured.

19 Q. And you are saying that the analytical
20 results that, that were taken some 35 years after the
21 process ended somehow confirms that there were no
22 releases from the lead pot process at that facility?

23 A. There were certainly no releases that were
24 having impacts on the analytical--or in the
25 environmental --excuse me, in the Anniston community

1 at the time those data were taken, correct.

2 Q. Right, 35 years after the process ended.

3 A. It was 35 years after the process was ended.

4 Q. And you can't, you can't cite to any, any
5 analytical data anytime close to when the process
6 ended, can you?

7 A. I'm not aware of any.

8 Q. Because that would be a better indicator,
9 wouldn't you agree, of whether or not there had been
10 releases from the lead pot process?

11 A. I wouldn't necessarily agree with that.

12 Q. Why wouldn't you agree with that?

13 A. Well, because lead is as persistent as many
14 other things. It's a metal. It's been around in the
15 environment for millions of years, and it's still
16 detected in the environment, and your argument really
17 would lead to the conclusion we should not see any
18 lead in the environment anywhere, and you clearly do.

19 Q. That, that's not my argument. What I'm
20 saying is that wouldn't you, wouldn't you, wouldn't
21 you think that testing close to the time that the
22 process actually ended would be a better indicator
23 than testing 35 years after the process had ended.

24 A. It would depend on a number of things. If
25 the lead were persistent and there were no mechanisms

1 moving it, you would have to look at the whole context
2 of what the discharge rate was, what the form of that
3 lead was, and, and what the environmental forces
4 working on it were.

5 Q. Is it, is it your testimony that, that
6 the--any lead as part of the lead pot process would
7 have just stayed in the soils and not been moved by
8 things like, like wind as part of particulate matter
9 or by storm water that runs across the facility?

10 A. I don't know. I would have to think about
11 that, but again, my point, really, about this
12 paragraph is that if the lead were leaking, it would
13 solidify as soon as it hit those soils and would be
14 recovered.

15 Q. But you don't have any particular
16 information, that's just speculation on your part,
17 right?

18 A. It's an assumption that that would be the,
19 the proper way to deal with that situation, yes.

20 Q. Did you discuss these lead pot, lead pot
21 failures with Jerry Brown?

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

23 Q. Did Jerry--okay. If you would, flip the
24 page to page 23 and go ahead and read that paragraph
25 to yourself and let me know when you are finished.

1 This is Bates label DSW 462078.

2 A. Okay.

3 Q. Okay, it says, here, that "Lead is known to
4 escape sometimes through the cover joints on the pots
5 at Anniston. It may form lead oxide the pot and the
6 lead oxide may attack the outer surface of the pot,"
7 so this appears to indicate lead escaping from your,
8 what you described as a closed process; is that
9 correct?

10 A. Yes, I would, I would agree with that.

11 Q. Okay, is this something that you should
12 have, you should have noted in your response to
13 request for information on lead?

14 A. I may have. I don't know about that. I
15 would have to think again look and see what it looked
16 like in the whole context of the information, and I
17 don't remember what the specific request was.

18 Q. Okay, and what in what context would
19 you--let's, let's think about this. In what context
20 would this not be important?

21 A. Well, the context of the whole inquiry was
22 was there a reason to believe that the lead pot
23 process at Anniston contributed to lead levels in the
24 Anniston community, and I don't think that this
25 necessarily changes that, the conclusions that were

1 drawn in that letter.

2 Q. So you don't think that lead escaping
3 through the joints of the pots is responsive to that
4 information request?

5 A. Not if it was not leaving the plant site,
6 no.

7 Q. Well, you don't know if that lead that was
8 escaping left the plant site, right? Because you
9 weren't there.

10 A. I don't have personal knowledge, or
11 see--correct, I didn't see whether it was escaping or
12 not, but it was forming lead oxide, and it was
13 obviously, based on this letter, also in the furnaces
14 at some point, and that would give me more confidence
15 that the lead that was escaping was being caught on
16 site.

17 Q. You don't know that for sure, though.
18 Again, you are speculating.

19 A. Well, I'm basing it on my judgment of, of
20 reading this and--

21 Q. Sure.

22 A. --knowledge of the physical properties of
23 lead, yes.

24 Q. But not on personal knowledge.

25 A. I was not there. That's correct.

1 Q. Okay, you can put this exhibit aside.

2 What's the most recent affidavit you recall
3 signing?

4 A. I don't recall. I'm sorry, I don't. I
5 don't know. With regard to the Anniston situation?

6 Q. Yeah.

7 A. Oh, it's been many years ago. Five years
8 ago, probably, maybe more.

9 Q. I just want to make sure I'm handing you a
10 clean copy of this affidavit.

11 (Defendant's Exhibit.

12 Kaley 7 marked for

13 identification.)

14 MS. LAVEY: Do you want to take a minute
15 break? Because we don't have an extra copy.

16 MR. LANGLAIS: Could we take a break and
17 could I get some copies of this exhibit?

18 THE VIDEOGRAPHER: We're off the record at
19 9:45 A.M.

20 (Recess.)

21 THE VIDEOGRAPHER: We're back on the record
22 at 9:52 A.M.

23 BY MR. LANGLAIS:

24 Q. Mr. Kaley, before I ask you about Kaley
25 Exhibit 7, I want to ask you which law firm gave you

1 the documents in connection with your preparing a
2 response to the information request concerning lead.

3 A. The Smith Moore firm.

4 Q. I'm sorry?

5 A. Smith Moore.

6 Q. And where is that firm located?

7 A. Greensboro North Carolina.

8 Q. Now, did you do any independent search of
9 documents within Monsanto for documents relating to
10 the lead pot process?

11 A. No.

12 Q. You relied entirely upon the law firm to
13 give you the documents that were needed?

14 A. Well, I asked them for the SMPs for that
15 process, and that's what was supplied.

16 Q. And those are the--did you ask them for, for
17 any documents that discussed the lead pot process or
18 just the SMPs?

19 A. I don't recall.

20 Q. Okay, if you would turn to page 5, I want to
21 make sure I'm--look at paragraph 7, dealing--this all
22 deals with the west end landfill, and I'm going to ask
23 you some questions. I don't necessarily think you
24 need to look at the response yet, but my questions
25 relate to fencing around the west end landfill. I'm

1 not sure, I'm unclear on your testimony yesterday.
2 Did you testify yesterday that there was a fence
3 around the west end landfill during the time that
4 Alabama Power Company owned the west end landfill
5 property?

6 A. I'm sure there was at some points in those
7 time frame, yes.

8 Q. And, and why is that? Do you have personal
9 knowledge?

10 A. I believe I recall seeing it in the 1980's,
11 yes.

12 Q. But I'm talking about during the, during the
13 time--well, when, when do you think, um, when in the
14 1980's do you think you saw a fence around that
15 property?

16 A. I was there in 1984-1985. That's when I
17 would have seen it.

18 Q. Okay, is that a fence that, that Alabama
19 Power Company would have put up, or is that a fence
20 that Monsanto would have put up?

21 A. I have no idea.

22 Q. Isn't it true that Alabama Power Company,
23 when they dug into the west end landfill, that they
24 came across what was described as seeping tars?

25 A. I don't know if that's a description. It

1 was a tarlike material is my understanding.

2 Q. Sure. It was more than, it was more, you
3 would agree, than Mon--than Alabama Power Company just
4 detecting, detecting PCBs in the west end landfill;
5 they actually came across undrummed materials.

6 A. That's my understanding, yes.

7 Q. And is there any reason to believe that that
8 ooze or that seeping tar was a result of them
9 breaching any of the drums?

10 A. I have no idea.

11 Q. Right, and so you can't--and so it's
12 possible that that material was just placed into the
13 landfill undrummed?

14 A. I don't know.

15 Q. Are you familiar with the Montar pit?

16 A. Yes.

17 Q. Where is the Montar pit located on the
18 facility? Do you know?

19 A. I believe I knew roughly where it was.

20 (Defendant's Exhibit.

21 Kaley 8 marked for

22 identification.)

23 Q. This is a different map from yesterday. I'm
24 going to mark this as Defendant's Exhibit 8. If you
25 could take a moment to look at it.

1 (Witness peruses said
2 document.)

3 MR. LANGLAIS: This is Bates labeled DSW
4 044190.

5 A. Yes.

6 BY MR. LANGLAIS:

7 Q. Could you tell me if you know where the
8 Montar pit was located?

9 A. It was in the general area where SWMU, or
10 SMU 7 or SMU 47 was, in that general area. I don't
11 know, one of those is probably the Montar pits; I
12 don't know which one.

13 Q. Sure, if you would mark--I'll give you this
14 red pen--if you would mark or circle just the general
15 location and just put "MP" in there to designate where
16 you think the Montar pit was located.

17 (Witness complies.)

18 Q. Now, do you know how long the Montar pit was
19 being used at the Anniston facility?

20 A. No, I don't.

21 Q. Do you know what the purpose of the Montar
22 pit was?

23 A. Yes. It was to collect montars from the
24 terphenyl process, biphenyl-terphenyl process.

25 Q. Was that something that was going on--well,

1 when was--when did they stop using the Montar pit?

2 A. I don't know.

3 Q. Who gave you the information that you just
4 described as the purpose for the Montar pit?

5 A. I don't recall: Just information I have. I
6 don't know that I got it any specific place.

7 Q. Do you think you read it from documents or
8 from speaking with employees?

9 A. I, I don't know where I got it.

10 Q. Would Jerry Brown know that information, do
11 you think?

12 A. Certainly.

13 Q. Because he would be the person--who would be
14 the person responsible for, for keeping track of the
15 solid waste management units within the Anniston
16 facility?

17 A. At this point, I don't know. Probably Craig
18 Branchfield, at this point.

19 Q. And who--how about the person before Craig
20 Branchfield?

21 A. It would have been Alan Faust.

22 Q. And how about before Alan Faust?

23 A. I don't know.

24 Q. Would Jerry Brown have had that
25 responsibility at any point during his, his time?

1 A. He may have when he was environmental lead
2 at the plant, certainly.

3 Q. Now, do you know what happened to the
4 material that was in the Montar pit?

5 A. Yes, it was, the material, some of it was
6 sold as Montar and some of the rest was drummed and
7 put in the landfill. I think it's important to note
8 that was not chlorinated material. That was
9 nonchlorinated terphenyl Montars. There are a number
10 of Montars, and that was nonchlorinated material.

11 Q. Sure. Do you know if the--and the Montars
12 were the--that was the still bottoms or the residue as
13 part of the biphenyl process; correct?

14 A. That was one of them, yes.

15 Q. And that was material that would have been
16 generated even during the lead pot process; correct?

17 A. Presumably, yes.

18 Q. Do you know if this Montar pit was used, was
19 being utilized during the time that the lead pot
20 process was being used?

21 A. I don't know.

22 Q. You can't say either way, right?

23 A. I don't know.

24 Q. And do you know if these Montars were tested
25 for lead?

1 A. I don't know.

2 Q. Because it's certainly possible that these
3 Montars had lead in them; is that correct?

4 A. I don't know.

5 Q. You don't know if that's possible?

6 A. No.

7 Q. Because Monsanto didn't do any testing for
8 lead of Montars?

9 A. I'm not aware of any.

10 Q. Now, yesterday, I believe you testified that
11 you were familiar, at least generally, with, with some
12 of the solid waste management units; is that correct?

13 A. No, I testified that I was aware there were
14 some. I'm not familiar with them at all.

15 (Defendant's Exhibit
16 Kaley 9 marked for
17 identification.)

18 Q. I'm going to hand--

19 A. I know they're there, but I don't know which
20 ones were designated and the reasons for their
21 designation.

22 Q. I'm going to hand you what's been marked as
23 Kaley Exhibit 9. This is a list provided as part of
24 Monsanto's document production to the defendants in
25 this case, and this is Bates labeled ADA 000079

1 through ADA 000084.

2 (Witness peruses said document.)

3 Q. (Continuing) Now, this document purports to
4 be a listing of the solid waste management units and
5 areas of concern; is that correct?

6 A. Yes.

7 Q. And you would agree that this, this appears
8 to be a list for the Monsanto Anniston facility?

9 A. Yes.

10 Q. Now, the--now, you are probably going to
11 have to go back and forth between the map and the
12 list, but if you would, please locate solid waste
13 management unit 19 on the list.

14 A. Could I make a clarifying point?

15 Q. Sure.

16 A. Having reviewed this document? It clarifies
17 that SM--SWMU-7 was the Montar pit, so that restricts,
18 further restricts--

19 Q. Okay.

20 A. --my answer to that previous question.

21 Q. And what is--while we're on that, what is,
22 is SWMU-47 identified?

23 A. Yes, it's on the first page. It's
24 identified as the west end landfill.

25 Q. Would you go ahead and, and write in "West

1 end landfill" within the SWMU-47 box?

2 (Witness complies.)

3 A. Yes.

4 Q. Now, was this--which landfill was cut into
5 as part of the construction of Highway 202, if you
6 know?

7 A. Well, it was part of what is now called the
8 south landfill.

9 Q. Okay. Was the west end landfill cut into at
10 all during the construction of Highway 202?

11 A. I believe not.

12 Q. Do you know, at the time that Highway 202
13 was constructed, whether or not the Highway Department
14 requested that Monsanto do any kind of sampling?

15 A. I believe they did, yes.

16 Q. Have you ever seen those sampling results?

17 A. I do not believe so.

18 Q. Do you know if Monsanto tested for lead as
19 part of that sampling?

20 A. I don't know.

21 Q. Do you know if they tested for heavy metals?

22 A. I don't.

23 Q. How about PCBs?

24 MR. NASSIF: Objection. He's said he didn't
25 see the results. You've asked him three questions

1 what the results says. If he didn't see the results,
2 how could he answer your question?

3 MR. LANGLAIS: Well, he can--just because he
4 didn't see the results doesn't mean he doesn't know
5 that there was, there was testing for certain
6 materials. He said he thought that there had been
7 testing,--

8 MR. NASSIF: Yes.

9 MR. LANGLAIS: --and I'm asking him if there
10 was testing for certain specific things.

11 MR. NASSIF: But he didn't see the results.

12 MR. LANGLAIS: That's a different question
13 from asking whether or not he saw the results.

14 MR. NASSIF: It is?

15 MR. LANGLAIS: Yeah. If you, if you don't--

16 MR. NASSIF: So he saw what they tested for
17 but he didn't see the results.

18 MR. LANGLAIS: Listen, I'm not going to
19 argue. Do you have an objection?

20 MR. NASSIF: Yeah, I have an objection.
21 You've asked the witness three questions about
22 something he says he has no knowledge.

23 MR. LANGLAIS: Well, that's fine. He can
24 answer, unless you are going to instruct him not to
25 answer.

1 MR. NASSIF: There's no reason for me to
2 instruct him not to answer.

3 MR. LANGLAIS: There's no reason for you to
4 have a talking objection, either.

5 MR. NASSIF: The reason I made the objection
6 is I let you ask him two questions about something he
7 said he had no knowledge about. When you got to the
8 third one, I raised the objection.

9 MR. LANGLAIS: Okay, I think the record is
10 clear.

11 MR. NASSIF: It is.

12 BY MR. LANGLAIS:

13 Q. Do you have any knowledge of Solid Waste
14 Management Unit 4, which is described as the leachate
15 storage tank?

16 A. No.

17 Q. Who do you think would have the, the most
18 information with respect to the solid waste management
19 units at the Anniston Plant? Which individual?

20 A. I would again have to point to Jerry Brown
21 as the place to start.

22 Q. Do you have any knowledge with respect to
23 what's labeled as Solid Waste Management Unit 19,
24 identified as a trash incinerator?

25 A. I believe that's the TP incinerator we

1 talked about yesterday.

2 Q. And what--tell me what was incinerated in
3 that TP incinerator.

4 A. Trash, wood and paper trash.

5 Q. Have you seen any indication that any still
6 bottoms were incinerated in that incinerator?

7 A. No.

8 Q. Do you know whether or not still bottoms
9 were ever incinerated in that incinerator?

10 A. My understanding is that they were not.

11 Q. Do you know how long that incinerator was in
12 place at the Anniston Plant?

13 A. I do not.

14 Q. Do you know when, when--has it been removed?

15 A. Yes.

16 Q. Do you know when it was removed?

17 A. No.

18 Q. Do you have any knowledge what--about Solid
19 Waste Management Unit 20, which is identified as a
20 sulphur incinerator?

21 A. If I do, it's just a little.

22 Q. Okay. If it would help you, if you--

23 A. I see where it is.

24 Q. Okay. What do you know about the sulphur
25 incinerator?

1 A. I believe that was burned--it was an
2 incinerator that was used exclusively to burn
3 sulphur-containing wastes from the parathion process.

4 Q. Do you know how long that incinerator was in
5 place at the facility?

6 A. No, I don't.

7 Q. And again, would Jerry Brown probably be the
8 person to talk to about that sulphur incinerator?

9 A. Yes.

10 Q. Are you familiar with what's described here
11 as Solid Waste Management Unit 21 and 22? And they
12 are the former boiler and the present boiler?

13 A. No.

14 Q. Are you familiar with any boilers at the
15 Anniston facility?

16 A. Excuse me. No.

17 Q. Do you know what purpose a boiler would have
18 at, at this facility?

19 A. I would be speculating, but my speculation
20 would be to boil water to provide steam.

21 Q. Do you know if still bottoms were ever
22 burned in order to provide any, any energy for the
23 facility?

24 A. I doubt it, but I don't know.

25 Q. Who would be the person to talk to about

1 whether or not this facility ever generated power
2 through the burning of, of still bottoms?

3 A. Jerry Brown.

4 Q. Have you ever heard of, of that practice of
5 burning, burning still, still bottoms, distillation
6 ends, to generate energy?

7 A. At Anniston?

8 Q. Anywhere. Just generally.

9 A. I don't recall.

10 Q. Have you ever heard that being any--the
11 practice at any Monsanto facility?

12 A. I, I don't recall specifically. It's
13 possible.

14 Q. What can you tell me about what's labeled as
15 Solid Waste Management Unit 3, described as the
16 Western Landfill Corrective Action System?

17 A. In the first place, I can't find it, and the
18 second place, the answer is, I guess, nothing.

19 Q. I don't believe it's--I don't see that it's
20 indicated anywhere on this map.

21 A. I don't, either, and by, by the naming of
22 it, it doesn't prompt any response.

23 Q. Do you know why it would be excluded from
24 the map?

25 A. I have no idea.

1 Q. Because there's a note off to the side that
2 notes that Solid Waste Management Unit 37, 38, and 2
3 aren't shown. I would think that they would have made
4 some indication about Solid Waste Management Unit 5.

5 A. You mean 3?

6 MS. LAVEY: You are talking about--

7 BY MR. LANGLAIS:

8 Q. Yes, 3.

9 A. I have no information on that.

10 Q. Now, this, does this appear to be a, a
11 facility map that was prepared by Monsanto Chemical
12 Company?

13 A. Well, it was either prepared by them or for
14 them, based on the--

15 Q. Is there any indication--

16 A. --title.

17 Q. --on here that this was prepared by, by some
18 outside consultant?

19 A. Uh, no, but I, I believe it probably was.

20 Q. In 1996, did Monsanto have its own drafting
21 department?

22 A. I don't believe they had one at Anniston.

23 Q. But did they have one in St. Louis?

24 A. I, I don't know.

25 Q. Are you familiar with what's labeled as

1 Solid Waste Management Unit 10, described as a
2 limestone bed corrective action system?

3 A. Not particularly, but both of these are
4 corrective action systems, so they may be subsequent,
5 actually, to the preparation of this map. I don't
6 know what this--what the relative time frames are of
7 the list you are referring to--

8 Q. Sure. I don't, either.

9 A. --in this map, but a lot of the corrective
10 action was done after 1996, so it could be units that
11 were identified to reflect corrective action that is
12 not shown on this 1996 map. I don't see, I don't see
13 SM--SWMU 10 on here, either.

14 Q. Now, do you--do you have any details on
15 what, exactly, the corrective action system for the
16 western landfill is?

17 A. I could speculate. I think you probably
18 ought to talk to, probably, Craig Branchfield to talk
19 about specifically what that would be.

20 Q. And would that be, would that be your answer
21 with respect to the other corrective action systems
22 listed on this?

23 A. Yes.

24 Q. What is the limestone bed?

25 A. Those were beds, lime beds containing

1 limestone which were used to neutralize acid before it
2 was discharged from the plant.

3 Q. Do you know how long the limestone bed was
4 in use at the Anniston facility?

5 A. Not specifically, no.

6 Q. What knowledge do you have about Solid Waste
7 Management Unit 14, described as the hazardous
8 material storage area?

9 A. None.

10 Q. Besides the description?

11 A. Yeah: None.

12 Q. Solid Waste Management Unit 15 is described
13 as the spent nickel catalyst storage area? Do you see
14 that?

15 A. I see that it says that.

16 Q. What, what process would, would nickel have
17 been used in?

18 A. I don't know.

19 Q. Who would be the person to have the most
20 knowledge about, about the PCB manufacturing processes
21 at the Anniston facility and the catalysts used in
22 those processes?

23 A. Well, the catalyst was iron chloride. We
24 talked about that yesterday. I, I can answer that
25 question or Jerry Brown could answer that question.

1 It was not nickel.

2 Q. Well, who would be the person you think that
3 would know what process utilized nickel catalyst?

4 A. Jerry, Jerry may very well be that person.

5 Q. Do you know anything about Solid Waste
6 Management Unit 23, which is described as "Satellite
7 accumulation area for compressor oil"?

8 A. No.

9 Q. Do you know what the, what the
10 compressor--do you know how long--well, strike that.
11 Are you familiar with Solid Waste Management Unit 26,
12 described as the blending tank?

13 A. No.

14 Q. Why do you think that a blending tank would
15 be identified as a solid waste management unit?

16 A. I don't know.

17 Q. Are you familiar with the drum crusher
18 identified as a Solid Waste Management Unit 32?

19 A. No.

20 Q. How about the self-scrap yard identified as
21 Solid Waste Management Unit 33?

22 A. No.

23 Q. Who within the facility in the Anniston
24 facility would have knowledge about that scrap yard?

25 A. I would again start with Jerry Brown.

1 Q. Do you know what process acetone would have
2 been used in?

3 A. Not for sure.

4 Q. What process do you think the carbon towers
5 identified as Solid Waste Management Unit 36 would
6 have been used in connection with?

7 A. Um, based on their location, I don't know.

8 Q. Now, we've discussed the south landfill and
9 the west end landfill. Are you familiar with what's
10 described as the phosphate landfill, Solid Waste
11 Management Unit 6?

12 A. No.

13 Q. If you would look for me, Solid Waste
14 Management Unit 7, which, which you now have
15 identified as the, as the monitor pit, do you see that
16 indication within that outlined area that says, "Dirt
17 piles"?

18 A. I do.

19 Q. Do you have any idea what those dirt piles
20 were for?

21 A. No.

22 Q. Do you recall ever seeing dirt piles in that
23 area?

24 A. No.

25 Q. If you would look at Solid Waste Management

1 Unit 42, which is described as the former PCB products
2 area,--

3 A. Yes.

4 Q. --do you think that's the area where
5 biphenyl production utilizing the lead pot process
6 would have occurred?

7 A. No.

8 Q. Where on this map do you believe the lead
9 pot process would have occurred?

10 A. Where it says, "Biphenyl production."

11 Q. Would you, would you circle that for me?

12 A. May I use your pen, please?

13 Q. Yes.

14 (Witness complies.)

15 Q. (Continuing) Do you know how much testing
16 for lead Monsanto did around that biphenyl production
17 area where the lead pot process occurred?

18 A. No.

19 Q. The analytical results that you mention in
20 your response to the information request concerning
21 lead, do you know where in the facility those samples
22 were taken?

23 A. As I sit here, no, I don't.

24 Q. Who would have that information?

25 A. Craig Branchfield.

1 Q. Do you, do you know who decided where, where
2 the sampling would, would occur?

3 A. Probably the consultants in conjunction with
4 the remedial managers at the time.

5 Q. Are you familiar with what's identified as
6 AOC-C, product underground storage tanks?

7 A. No.

8 Q. Are you familiar with any underground
9 storage tanks at the Anniston Plant?

10 A. No.

11 Q. Who would have the most knowledge about
12 current or historical product underground storage
13 tanks?

14 A. Jerry Brown.

15 Q. Have you ever heard anyone talk about leaks
16 of tanks at the Anniston facility?

17 A. No.

18 Q. Do you recall ever seeing any documents that
19 discuss leaks of tanks?

20 A. No.

21 Q. Do you recall there being any discussion of
22 any removal of underground storage tanks at any time?

23 A. No.

24 Q. Do you know what raw materials went into the
25 manufacture of phosphorus?

1 A. No.

2 Q. In connection with the reac--in connection
3 with the reacquisition of the west end landfill
4 property by Monsanto, do you know whether Alabama
5 Power Company ever threatened litigation in connection
6 with, with that landfill?

7 A. I never heard that.

8 Q. Were you involved in the decision to
9 reacquire title to that property from Atlanta--Alabama
10 Power Company?

11 A. No.

12 Q. Do you know which individuals were involved
13 in that decision?

14 A. No.

15 Q. Do you know if that was a decision based out
16 of St. Louis or Anniston?

17 A. I don't know.

18 Q. Do you know which individuals at Monsanto
19 were contacted when Alabama Power Company cut into the
20 old west end landfill?

21 A. Not specifically, no.

22 Q. Were you one of the individuals?

23 A. Yes.

24 Q. Do you recall having any meetings at the
25 time that occurred to discuss the west end landfill?

1 A. I don't recall any. I'm sure there were
2 some, but I don't have any recollection of them.

3 Q. You described the corporate structure of
4 environmental yesterday, and you identified VP of
5 Environmental Health and Safety; is that correct?

6 A. Yes.

7 Q. Was that person or that title in place at
8 the time Alabama Power Company cut into this west end
9 landfill which was in 1993?

10 A. I believe there was certainly a similar
11 position.

12 Q. Do you recall the title of that similar
13 position?

14 A. No. I mean, that was--that would have been
15 in the Monsanto days versus the Solutia days. I don't
16 know specifically what the title was.

17 Q. Do you recall who that person would have
18 been?

19 A. Probably Mike Pierle.

20 Q. Could you spell that?

21 A. P-i-e-r-l-e.

22 Q. Do you recall whether Mike Pierle was
23 involved in this decision to reacquire title to this
24 west end landfill property?

25 A. No.

1 Q. As whatever--in whatever role, he was
2 certainly the, the head of the Environmental Health
3 and Safety Division or whatever the environmental
4 section of Monsanto was called at that time; wouldn't
5 you agree?

6 A. That's my recollection--that's my
7 recollection if my timing is correct.

8 Q. And would you have any reason to believe
9 that the head of the environmental group at that time
10 would not have been involved in such a decision?

11 A. I wouldn't know.

12 Q. Do you recall, at the time this happened, do
13 you recall visiting the Anniston Plant?

14 A. No.

15 Q. After this happened, when was--when did you
16 go back to the Anniston Plant? Do you recall?

17 A. I don't know specifically.

18 Q. Do you recall anyone from the St. Louis
19 office traveling to Anniston with respect to this
20 event you described in paragraph 7?

21 A. No.

22 Q. You described in paragraph 8 a detailed
23 investigation of the west end landfill in August 1994.
24 Do you see that?

25 A. Yes.

1 Q. Can you describe for me the investigation
2 that was undertaken with respect to the west end
3 landfill?

4 A. Not specifically. I mean, analytical data
5 were acquired to delineate the extent of the PCB
6 contamination at the west end landfill. Other than
7 that, I don't know any more details.

8 Q. Do you know who was responsible for putting
9 together, say, the work plans for that detailed
10 investigation?

11 A. Probably one of the consultants to Monsanto.

12 Q. Do you know what consultants, can you
13 describe for me the consultants or give me the names
14 of the consultants that you recall Monsanto using?

15 A. I believe it was Golder Associates.

16 Q. Do you recall any specific employees that
17 worked for Golder Associates?

18 A. No.

19 Q. Do you recall ever having any discussions
20 with individuals from Golder Associates?

21 A. Well, I'm sure I have over the years.

22 Q. How about in connection with the detailed
23 investigation in August of 1994?

24 A. No.

25 Q. Do you know who prepared--would Golder

1 Associates have also been the, the consultant that
2 prepared the plan to upgrade the cap?

3 A. I believe they were, but I could be
4 mistaken.

5 Q. Do you know who their contact was at the
6 Anniston facility?

7 A. At that time, I don't.

8 Q. Do you know whether Golder Associates
9 implemented this project or if they hired some other
10 consultant to actually upgrade the cap?

11 A. I don't know.

12 Q. In 1995, which individual in Anniston would
13 have been responsible for oversight of this upgrade of
14 the cap?

15 A. Um, I don't know the exact time frames. It
16 could have been Alan Faust.

17 Q. Did Alan Faust report to you?

18 A. No.

19 Q. Do you know who Alan Faust reported to?

20 A. I believe a gentleman named Mike Foresman.

21 Q. What involvement would you have had with
22 respect to the upgrade of the cap?

23 A. None.

24 Q. So when you, when you say in this affidavit
25 that you have personal knowledge about, about the, the

1 things identified in paragraph 8, this is based upon
2 your discussions with, with Monsanto employees?

3 A. Yes, and my understanding of what actually
4 happened at the site.

5 Q. Where did you gain that understanding?

6 A. From being involved in, in discussions
7 around what was going on at the site, primarily.

8 Q. Okay. Well, I just, I guess I'm a little
9 confused, because I asked you what your involvement
10 would have been with respect to the upgrade of a cap,
11 and you told me you didn't have any.

12 A. Well, it was, it was primarily just to be--I
13 was at meetings where the upgrade was discussed and
14 knew that it was going on. As far as operational
15 details, I don't have any.

16 Q. Okay. Do you recall any, any other
17 individuals, Monsanto employees who were at that
18 meeting?

19 A. No.

20 Q. Do you recall if anyone else was present at
21 shows meetings, or was it just Monsanto employees?

22 A. I'm sure the consultants were present.

23 Q. Do you know if any attorneys were present at
24 that meeting?

25 A. I don't recall.

1 Q. Do you know if, if Monsanto had any
2 attorneys--if Monsanto contacted any attorneys with
3 respect to the reacquisition of this property from
4 Alabama Power Company?

5 A. I don't know specifically. I would assume
6 that a Monsanto attorney looked at any documentation
7 involved in reacquisition of property, but I don't
8 know who that would have been or if it happened for
9 sure. It's just an assumption.

10 Q. Did Monsanto have any in-house attorneys?

11 A. Yes.

12 Q. Can you give me the names of, of those
13 in-house attorneys?

14 A. Excuse me, but there are, I mean there
15 are--at the time, were a number of them.

16 Q. Well, can you give me the names that you
17 recall?

18 A. Well, the one, the environmental attorney
19 probably would have been Brent Gilhausen.

20 Q. Do you know if Brent is still with Monsanto
21 or rather what is now Solutia?

22 A. No, he's not.

23 Q. Did you ever have any discussions with Brent
24 Gilhausen?

25 A. I've had discussions with Brent over the

1 years, yes.

2 Q. At the end of paragraph 8 on page 6, you
3 discuss access to the property by members of the
4 public. Do you see that?

5 A. Yes.

6 Q. Are you able to tell me, without
7 speculating, whether or not the public had access to
8 the west end landfill prior to the acquisition of the
9 west end landfill by the Alabama Power Company?

10 A. Well, I think I described it that I had seen
11 a fence around it in the mid 1980's, and I think this
12 says that the landfill is surrounded, rather than--a
13 fence was put up at the time of the cap, so I believe
14 that also would suggest that it was there prior to the
15 upgrade.

16 Q. Well, my question was with respect--my
17 question was prior to 1960. Maybe I should have just
18 said the year. You have no knowledge whether or not
19 there was a fence prior to 1960?

20 A. I do not.

21 Q. Do you know, during the time that the
22 Alabama Power Company owned the facility, if they had
23 problems with the public accessing west end landfill?

24 A. I don't know.

25 Q. Did Monsanto, if you know, have, ever have

1 problems with individuals from the public ever
2 entering that west end landfill despite a fence?

3 A. I don't know.

4 Q. Do you know who at the Anniston facility
5 would have been responsible for maintaining the
6 integrity of that fence?

7 A. No.

8 Q. Do you know--if you don't know a person's
9 name, do you know a person's position, whose position
10 would have been responsible for maintaining the
11 integrity of that fence?

12 A. I don't know.

13 Q. Paragraph 9 discusses a 1993 fish
14 consumption advisory. Do you see that?

15 A. Yes.

16 Q. In November of 1993, do you recall reading
17 that fish consumption advisory?

18 A. I don't recall specifically.

19 Q. Do you recall how that fish consumption
20 advisory would have come to your attention?

21 A. Not specifically, no.

22 Q. Do you recall who you would have discussed
23 the fish consumption advisory with?

24 A. Not specifically.

25 Q. You don't recall having any discussions?

1 A. No.

2 Q. So is this, is this the extent of, of your
3 knowledge in paragraph 9 with respect to the fish
4 consumption advisory?

5 A. I wouldn't say it's the total extent of my
6 knowledge, no.

7 Q. Okay, what else can you tell me about the,
8 about the consumption advisory?

9 A. Well, I know some of the levels on which it
10 was based in the fish.

11 Q. Okay, what was--

12 A. I mean, I read it; I've seen the advisory; I
13 know it's exists. I know it was posted along
14 Choccolocco Creek to be sure the residents were aware
15 of it.

16 Q. Can you tell me about the levels that it was
17 based on?

18 A. They ranged up to about 30 parts per million
19 in some of the fish.

20 Q. Do you recall ever submitting--do you recall
21 if there was ever an Anniston, Anniston Star story
22 about this fish consumption advisory?

23 A. I don't recall.

24 Q. Do you recall what--the information
25 identified in paragraph 10, which describes the

1 sampling of sediment from Choccolocco Creek and
2 tributaries including Snow Creek?

3 A. I, I recall that that happened.

4 Q. Do you recall seeing the sediment results of
5 that sampling event?

6 A. I don't recall that, but I'm sure I did.

7 Q. Who at the Anniston Plant would
8 have--who--which Monsanto employee at the Anniston
9 Plant would have been involved with ADEM's sediment
10 sampling?

11 A. I don't know that anyone would have been.

12 Q. Okay, was there no contact person at the
13 facility with respect to this sampling event?

14 A. I don't know whether there was or not.

15 Q. Do you remember ever having any discussions
16 with ADEM personnel about this sampling event?

17 A. I don't recall any, no.

18 Q. Do you recall the ADEM report in connection
19 with the sampling event?

20 A. Not specifically.

21 Q. This, here, says the ADEM's report
22 identified 11 potential sources for the PCBs?

23 A. Yes.

24 Q. Can you tell me what sources, what those 11
25 potential sources are?

1 A. Not from memory, no.

2 Q. Paragraph 11 says that Monsanto also sampled
3 and analyzed sediment from Snow Creek. Do you see
4 that?

5 A. Yes.

6 Q. What involvement did you have with
7 Monsanto's sampling of the sediment in Snow Creek?

8 A. Nonparticipatory oversight. I was aware it
9 was going on.

10 Q. Who made the decision, if you know, within
11 Monsanto, to do, to do the sampling of Snow Creek?

12 A. I don't know.

13 Q. Did you do a comparison of Monsanto's
14 sampling results with those of ADEM?

15 A. I may have; I don't recall.

16 Q. Okay. You say on page 7 that "Monsanto took
17 samples of a pile of material that the City of
18 Anniston had dredged from Snow Creek"?

19 A. Yes.

20 Q. Do you see that sentence?

21 A. I'm sorry, yes, I do.

22 Q. Do you recall the City of Anniston dredging
23 material from Snow Creek?

24 A. I never saw them do it. I'm certainly aware
25 that there were piles of material dredged and were

1 aware that they had done some.

2 Q. Do you know why the City of Anniston would
3 have dredged material from Snow Creek?

4 A. To enhance water flow so it would minimize
5 the chance of backups and flooding.

6 Q. Sure. They weren't, they weren't dredging
7 from the, the creek in order to perform any kind of
8 removal action; that's certainly correct, right?

9 A. No, they were doing it to, to enhance flow
10 characteristics.

11 Q. Have you seen any other information--

12 A. Excuse me.

13 Q. --in any Monsanto documents that discuss
14 dredging by the City of, of Anniston with respect to
15 Snow Creek or any other creek in Calhoun County?

16 A. I don't know whether it's mentioned or not.
17 I believe there is some additional sampling of dredge
18 piles, yes.

19 Q. And I believe you testified yesterday that
20 the film material in residents' yards could have been
21 dredged material?

22 A. From Snow Creek?

23 Q. Yes.

24 A. That's a possibility.

25 Q. So and wouldn't that--wouldn't you agree

1 that that could be a potential source to account for
2 the dispersion of PCBs throughout Calhoun County?

3 A. I think I described that was one of the
4 possible routes for PCBs to get into residential
5 yards, yes.

6 Q. What knowledge do you have of Tull Chemical
7 Company?

8 A. Some.

9 Q. What can you tell me about Tull?

10 A. It's a company that the owner bought a
11 process from Monsanto in the early 1950's to make a
12 rodenticide, set up a plant on, on Snow Creek, and I
13 don't know whether it's in Oxford or in Anniston,
14 itself, but manufactured and continues to manufacture
15 the rodenticide.

16 Q. Did you provide, do you know if Monsanto
17 provided the Alabama Attorney General with any
18 information with respect to Tull Chemical Company in
19 connection with Alabama Attorney General suing Tull
20 for discharging PCBs?

21 A. I've never heard that they did, no. Excuse
22 me.

23 Q. Sorry. Do you need some water?

24 A. No, I'm fine, I think. Just--

25 Q. Do you have knowledge of, of anyone other

1 than the City of Anniston dredging from any of the
2 creeks or tributaries in Calhoun County?

3 A. Yes.

4 Q. Who would have, who would have dredged the
5 creeks?

6 A. The Fish and Wildlife Service dredged
7 Choccolocco Creek in the early 1990's, portions of it.
8 They didn't dredge the whole creek.

9 Q. Do you know what, what happened to that
10 material?

11 A. My understanding is it was placed in, some
12 of it was placed on bank, some of it was placed in--I
13 forget what they call them; the little cut-offs where
14 the creek is--used to be meandering, and it's been cut
15 off. I'm sorry, I can't recall the term.

16 Q. That's okay.

17 A. Any other, any other entities that you know
18 who, who have dredged the tributaries in Calhoun
19 County, those are the only ones I'm aware.

20 Q. Do you know why the Fish and Wildlife
21 Department would have done that dredging?

22 A. Flood control.

23 Q. Same as, as the City of Anniston? Flood
24 control and to increase the flow--

25 A. Yes.

1 Q. --of those tributaries?

2 A. Excuse me. Yes.

3 Q. Do you know if those dredgings were tested
4 for PCBs?

5 A. Yes, they were.

6 Q. What role did Monsanto play, if any, in the
7 dredging of--performed by the Fish and Wildlife
8 Department? Excuse me.

9 A. None that I know of.

10 Q. Do you know who performed the testing?

11 A. Well, they were tested subsequent to--I
12 mean, they've been tested by Monsanto or Monsanto's
13 contractors subsequent to or as part of our ongoing
14 investigation. I don't know if they were tested at
15 the time they were dredged or not.

16 Q. Sure, so it's possible that the dredgings
17 that were--that these dredgings contained PCBs?

18 A. Oh, some of them did.

19 Q. And how do you know that?

20 A. Because of the subsequent testing that
21 Monsanto has done.

22 Q. Okay, and did you--did Monsanto do testing
23 for lead of those dredgings? The subsequent testing?

24 A. Not that I'm aware of.

25 Q. So you wouldn't know either way if the

1 contained lead?

2 A. As I sit here, I don't know.

3 Q. Do you recall ever seeing any documents that
4 indicated that the Corps of Engineers had done any
5 dredging of any of the tributaries in Calhoun County?

6 A. No, I don't believe so.

7 Q. Have you ever seen any information that any,
8 any of--companies had done dredging of the, of the
9 creeks near their facilities?

10 A. Not that I'm aware of.

11 Q. And I believe you testified yesterday that
12 you haven't seen anything to indicate that Monsanto
13 did any, any dredging of, of their--discharge, the
14 11th Street drainage ditch or the tributaries leading
15 from that ditch, right?

16 A. No, I testified that Monsanto did dredge
17 along what is now called the 11th Street ditch in the
18 1989 removal action.

19 Q. Sure, and I guess I should have clarified.
20 I, I was looking for--it was probably a bad question.
21 I was interested in, in dredging outside of the
22 context of a removal action.

23 A. In that case, I'm not aware of Monsanto
24 doing any such dredging, no.

25 Q. Or anyone else doing any kind of maintenance

1 dredging?

2 A. I'm not aware of any.

3 Q. Were you involved in--with any of the
4 consent orders between Monsanto and ADEM?

5 A. Yes.

6 Q. What was your involvement?

7 A. I attended some of the meetings and
8 participated in the discussions.

9 Q. And you provided comments or suggested
10 changes to any of the consent orders?

11 A. I don't recall whether I did or not.

12 Q. Do you recall who else was at these
13 meetings, one of the Monsanto individuals?

14 A. I believe Robert Jones from the Anniston
15 Plant may have been at the meetings. I believe Mike
16 Foresman was at the meetings.

17 Q. Other than Golder Associates, can you
18 identify any other environmental consultants that have
19 done work for Monsanto in connection with, with PCBs?

20 A. Oh, there are a number.

21 Q. Can you identify those you recall?

22 A. "BBL" stands for Blouseland, Block & Lee
23 (Phonetic). That's the only one, only one that's
24 coming to mind quickly. They're, they have been the
25 major contractor on the offsite investigation, and

1 Golder was the major contractor on the on-site
2 investigation.

3 Q. Are you familiar with the report mentioned
4 in paragraph 12, prepared by ADEM, entitled "Summary
5 of Activities, Solutia, Inc., Anniston Facility"?

6 A. I've seen it, yes.

7 Q. Did you provide the comments, did you
8 receive that report in a draft form?

9 A. No.

10 Q. Did you provide comments to ADEM after the
11 report was issued?

12 A. No.

13 Q. Do you know if anyone at Monsanto provided
14 comments to that report?

15 A. No. I mean yes, I know. No one did.

16 Q. Can you tell me the potential pathways of
17 PCBs, exposure pathways for PCBs in connection with
18 the Anniston facility, which ones were identified?

19 A. I'm sorry, what are you referring to?

20 Q. Well, what I want to know is, I want to know
21 if you can identify to me the potential sources of
22 PCBs from the Anniston facility with respect to
23 their--the pathways that the--transport pathways that
24 these PCBs could have taken from the facility. Soil,
25 we know, is one; correct?

1 A. Soil, sediment, drainage pathway. The air
2 pathway was considered and determined not to be a, a
3 completed pathway. Groundwater was considered.

4 Q. What do you recall with respect to
5 groundwater as being a pathway for PCBs?

6 A. Well, there was lots of sampling done for
7 PCBs in groundwater.

8 Q. Okay, and what do you recall, what do you
9 recall those sampling results showing?

10 A. Almost exclusively nondetects in the
11 groundwater.

12 Q. Now, with respect to PCBs in the air, am I
13 correct that, that there is--PCBs could either be in
14 vapor form or as part of particular (sic) matter?

15 A. Adhered to particulate matter, that's
16 correct.

17 Q. Is Monsanto--when was the last time--is
18 Monsanto currently engaged in any program where, where
19 they are testing for PCB emissions in the air?

20 A. No.

21 Q. When was the last time that Monsanto did any
22 of, of that work?

23 A. I believe April of this year.

24 MS. LAVEY: He needs to change the tape.

25 THE VIDEOGRAPHER: This will end tape number

1 of today's deposition session of Robert Kaley II.

We're off the record at 10:42 A.M.

(Recess.)

THE VIDEOGRAPHER: We're back on the record
at 10:455 A.M. This will begin tape number 2 of
today's session of the deposition of Robert Kaley II.
BY MR. LANGLAIS:

Q. Before, when we were talking about two
possible forms of PCBs in, in air, we--I mentioned
vapor form and particulate matter. It sounds like my
pronunciation may not have been great and people think
that I said "particular matter," but you understood
that I said "particulate matter"?

A. Yes.

Q. On page 8 of, of Kaley Exhibit 7, there's a
figure in there that says Monsanto will have expended
approximately \$40 million on the planning,
investigation, remediation activities described in the
affidavit? Do you see that?

A. Yes, I do.

Q. Do you recall where you, where you got that
number from?

A. From the remediation manager.

Q. Who, who was that manager?

A. It was either Craig Branchfield or Alan

1 Faust. At this time, at the signing of this, it would
2 have been Craig Branchfield.

3 Q. Did he just provide you the number, or did
4 he provide you with any backup information for that
5 number?

6 A. Just provided me the total.

7 Q. Now, here, in paragraph--this was done,
8 obviously, this affidavit was done in August of 2000,
9 so I want to ask you some of these things have
10 occurred. On page 8, following the sentence, or a
11 couple of sentences after that figure I just
12 discussed, it says "Based on extensive sampling and
13 analysis." Do you see that sentence?

14 A. I do.

15 Q. In there, it says that "The need for
16 remediation in these areas will be addressed after the
17 necessary information is evaluated." Do you know if,
18 if those areas described in that sentence will require
19 or have been remediated?

20 A. My understanding is that Choccoloc--some of
21 the areas of Choccolocco Creek may require remediation
22 and that Lake Logan Martin will not require
23 remediation.

24 Q. Okay. I don't have the attachments to this,
25 um, to this affidavit, but can you tell me, it's, it's

1 described in, in a few--in the sentence following
2 that, it's an affidavit of Dr. Brown. Can you tell me
3 who Dr. Brown is?

4 A. Yes, it's Mark Brown from BBL.

5 Q. And do you know if Dr. Brown is still
6 involved with, with any of the Monsanto work in
7 connection with the Anniston facility?

8 A. I believe he is, to the extent we're doing
9 offsite work which is, is minimal, at this point.

10 Q. Do you recall when the last time it was that
11 you saw Dr. Brown's affidavit?

12 A. No, I don't.

13 Q. Do you recall whether or not this affidavit
14 has been, has been updated?

15 A. I don't recall.

16 Q. Because you said earlier that occasionally,
17 this affidavit would be, would be updated with
18 information; correct?

19 A. My affidavit? Yes, that is correct.

20 Q. Looking back, I know you've updated it, but
21 have you ever, have you ever revised this
22 affidavit--let me ask it this way. Have you ever made
23 any significant changes to this affidavit, or
24 different findings in this affidavit, or has it just
25 been the addition of new information?

1 A. My recollection is that it's been just the
2 addition of new information. I'm sure there's been no
3 major, you know, revisions to previously existing
4 paragraphs.

5 Q. Do you know if the remedial--in this last
6 sentence on page 8, it says, "Moreover, the
7 effectiveness," do you see that sentence?

8 A. Yes, I do.

9 Q. It says, "The effectiveness of the remedial
10 measures previously undertaken on Monsanto's and now
11 Solutia's property in Anniston will be evaluated by
12 ADEM and the United States Environmental Protection
13 Agency and will be subject to public review and
14 comment." Do you see that?

15 A. Yes, I do.

16 Q. And it goes on, but I just want to ask you
17 do you know if that, the remedial measures, have been
18 evaluated by ADEM and EPA?

19 A. They have done--been evaluated on a, on an
20 interim basis. I don't believe that they are approved
21 as final corrective measures.

22 Q. Did you provide--did EPA provide you,
23 Monsanto, or Solutia, with comments about the remedial
24 measures undertaken?

25 A. I believe they did, yes.

1 Q. And did you then, in turn, provide, provide
2 comments to ADEM and USEPA?

3 A. If by "you," you mean the company, yes, the
4 company did. I, personally, did not.

5 Q. Who would have provided those comments?
6 Would it have been one of the consultants?

7 A. They would have probably participated in the
8 preparation of those comments. They would have
9 probably been undersigned by Craig Branchfield.

10 Q. Or Alan Faust?

11 A. Or Alan Faust, but at this point, it would
12 have been probably Craig Branchfield.

13 Q. And so am I correct that these remedial
14 measures have not been ultimate--have not been
15 approved as final corrective measures?

16 A. That's my, that's my understanding. I could
17 be mistaken.

18 Q. On the next page, it's entitled the "1995
19 Consent Order." Do you see that?

20 A. Yes, I do.

21 Q. Under "AWPCA"?

22 A. Yes.

23 Q. Did you have any involvement with that
24 particular consent order?

25 A. Yes.

1 Q. Do you recall having, having reviewed that
2 consent order?

3 A. Yes.

4 Q. Do you recall having provided any verbal or
5 written comments with respect to that consent order?

6 A. No, it was presented to us.

7 Q. Now, in there--and I may have asked you this
8 yesterday, and I apologize--it says, "Monsanto
9 unexpectedly detected a trace amount of PCBs in storm
10 water runoff from the south landfill in a sample
11 obtained on Monsanto's property"?

12 A. Yes, you did ask me about that yesterday.

13 Q. Okay. I thought I did. I--what measures
14 following that sampling event did Monsanto take with
15 respect to the storm water runoff from the south
16 landfill?

17 A. Extensive sampling--excuse me, extensive
18 additional sampling of sediments along the drainage
19 pathways from the plant.

20 Q. Did Monsanto do any--make any physical
21 modifications or alterations to--that would affect the
22 storm water runoff from the south landfill?

23 A. Eventually, yes.

24 Q. How soon after this, this testing that's
25 described in paragraph 13 were, were such measures

1 taken?

2 A. My recollection--well, it probably tells in
3 here when we undertook those. In the next two to
4 three years, I believe.

5 Q. The sampling plan that's identified in, in
6 paragraph 14?

7 A. Yes.

8 Q. Who prepared that sampling plan?

9 A. One of the consultant firms; I don't know
10 which one.

11 Q. Were you involved in, in the preparation of
12 that sampling plan?

13 A. I don't recall. I may have been on an
14 advisory basis.

15 Q. Is that--do you know if that sampling plan
16 continues to be implemented or do you know if it's
17 complete?

18 A. That's complete.

19 Q. Do you know when it was complete?

20 A. I don't know specifically. Within a year or
21 two after--excuse me, after the consent order.

22 Q. Do you recall what that sampling, what that
23 sampling showed?

24 A. In the broadest terms, it showed that there
25 were some, in some of the sediments affected by

1 drainage from the Monsanto plant, that there were PCBs
2 present.

3 Q. Do you recall what levels were detected?

4 A. They varied. You know, there were some that
5 were in the tens of parts per million, maybe even a
6 couple a little higher. Some were nondetect.

7 Q. Can you tell me what the correlation is
8 between 8.3 parts per billion and mgs. per kilogram?
9 If you want, you can, following a break--

10 A. I believe parts per billion are mgs.--no,
11 micrograms per gram is parts per--no, it's parts per
12 million. Mgs. per milligram are parts per million.

13 Q. Okay.

14 A. Now, in a water sample, it's going to be
15 parts per million is going to be per millilitre or per
16 litre, not per gram, but--

17 Q. Right. Kilogram is used for solid matrixes
18 like sediment, soil?

19 A. Yes. So the eight, just to clarify, 8.3
20 parts per million would be micrograms per litre.

21 Q. The drainage ditch reflected in paragraph
22 14, are you referring--what drainage ditches are you
23 referring to? Can you--

24 A. I mean, these are the drainage--yeah, these
25 are the unnamed drainage ditches in the former

1 residential areas east of the plant.

2 Q. Looking at the map that we had earlier this
3 morning--

4 MS. LAVEY: Which exhibit, Jim?

5 MR. LANGLAIS:

6 Q. Um--

7 A. Okay.

8 Q. What exhibit is that?

9 A. Exhibit 8.

10 MS. LAVEY: Thank you.

11 BY MR. LANGLAIS:

12 Q. Can you identify on this map the location of
13 these drainage ditches with respect to the south
14 landfill?

15 A. Yeah, the area that's being discussed is, is
16 what's roughly described as AOC-B on this map, and the
17 drainage ditches are the alternating dashed and dotted
18 lines running through that large area.

19 Q. Would you circle for me those drainage
20 ditches?

21 THE VIDEOGRAPHER: We're off the record at
22 11:06 A.M.

23 (Discussion off the record.)

24 THE VIDEOGRAPHER: We're back on the record
25 11:07 A.M.

1 BY MR. LANGLAIS:

2 Q. Okay, now, have you had an opportunity to
3 circle--okay, if you would--

4 A. It's going to be difficult.

5 (Witness circles portions
6 of the map.)

7 Q. Okay, thanks and you've circled within the
8 area marked as AOC-B. Do you know if--how long these
9 ditches have, these ditches that you've circled have
10 been in existence at the Anniston planned?

11 A. No, I don't.

12 Q. Have you seen any--who would know whether or
13 not these ditches were in existence at the Anniston
14 Plant prior to your first visiting the site?

15 A. Well, Jerry would know from the time he
16 arrived at the plant, I assume. Jerry Brown. Excuse
17 me.

18 Q. Is it your testimony that you are--

19 A. I know some of them didn't exist prior,
20 because some of them are the ditches that carry the
21 storm water runoff from the south landfill under
22 Highway 202, so obviously, those didn't exist prior to
23 the construction of Highway 202, at least in their
24 present form.

25 Q. Sure, and prior to that time, do you know

1 that prior to the construction of Highway 202, do you
2 know how the ditches would have been configured?

3 A. I do not.

4 Q. Is it your testimony that you have no
5 knowledge about whether, whether these drainage
6 ditches within AOC-B have ever been dredged by
7 Monsanto?

8 A. I do not know.

9 Q. Have, have these drainage ditches ever been
10 remediated by Monsanto?

11 A. They have now.

12 Q. Okay, do you know how much soil was removed
13 from these drainage ditches?

14 A. None.

15 Q. Would Craig--okay, and how have they
16 been--how has this been remediated?

17 A. By a cover, cap and cover system.

18 Q. And does Monsanto, or rather Solutia
19 continue the test storm water discharge from this
20 landfill?

21 A. Yes.

22 Q. Do you know what--does--do these ditches
23 feed into any of the tributaries of Choccolocco Creek?

24 A. When they existed, they eventually fed into
25 the 11th Street ditch and eventually into Snow Creek.

1 Q. So these ditches no longer exist?

2 A. That's correct.

3 Q. When, when were these ditches, I guess for
4 lack of a better term, "decommissioned" or--

5 A. Well, they were capped and covered in the
6 time frame we talked about in, I believe, 19--I mean,
7 it's going to say when we get here.

8 Q. Right.

9 A. I'm going to say 1997, 1998.

10 Q. Sure, and if you--if we get further into
11 this affidavit, if you see a different date, just let
12 me know; we can make sure it's clarified on the
13 record.

14 Do you know if this landfill, the south
15 landfill, was ever subject to flooding?

16 A. No, it's a mountain. It's a mountain. It's
17 on the side of a mountain.

18 Q. Do you know if the drainage ditches, the
19 drainage ditches that you've circled were ever subject
20 to flooding?

21 A. Yes. They were. It's--at least, portions
22 of them were.

23 Q. What, what flooding of these drainage
24 ditches do you personally recall?

25 A. There was flooding in the area on the north

1 side of that, the property we've been discussing, near
2 and around a church called the Bethel Missionary
3 Baptist Church.

4 Q. And on that map, how close is, is that
5 church? Can you identify on this map where this
6 church would be located, or is it off the map?

7 A. It's not there.

8 Q. Can you identify where the church would have
9 been located?

10 A. Yes.

11 Q. Could you do that for me?

12 MS. LAVEY: John, could you please have him
13 mark "Church" or something to locate it for us?

14 BY MR. LANGLAIS:

15 Q. (Continuing) Yeah, just if you could mark,
16 draw a circle approximately where you think this was
17 located, and if you could within that circle put
18 "Church"?

19 (Witness complies.)

20 A. This is approximate, but that's
21 approximately where it was located.

22 Q. And there were drainage ditches associated
23 with the west end landfill, as well; is that correct?

24 A. Yes.

25 Q. And do you know the approximate locations of

1 those drainage ditches?

2 A. I'm much less familiar with those.

3 Q. Okay, do you know if those drainage ditches,
4 like the south landfill drainage ditches, were ever
5 subject to flooding?

6 A. I do not know.

7 Q. Do you know who would have that information?

8 A. Um, either the remedial managers or the
9 consultants that investigated the storm water flow
10 around that landfill.

11 Q. In paragraph 15 of this affidavit, it
12 describes a property purchase program implemented in
13 October 1995. What involvement did you have, if any,
14 in the property purchase program?

15 A. I was, I was aware of it and provided input
16 to the development of the program.

17 Q. Who would have provided you--did anyone
18 provide you the information in paragraph 15 with
19 respect to the property purchase program?

20 A. I knew all of that from--well, I knew all of
21 that from personal knowledge other than the number of
22 properties, and I assume that was provided by the
23 company that actually undertook the property purchase
24 program.

25 Q. Which company undertook that company

1 purchase program?

2 A. Prudential.

3 Q. Do you recall any particular person at
4 Prudential who was responsible for that program?

5 A. There certainly was. I'm not recalling his
6 name. I don't know.

7 Q. Who within Monsanto was responsible for the
8 property purchase program?

9 A. I believe probably Alan Faust had the most
10 direct oversight.

11 Q. Do you know if there were any--it says here
12 that participation in the program by eligible property
13 owners was voluntary. Do you know if there were any
14 property owners that refused to participate in the
15 program?

16 A. Yes, there were.

17 Q. Do you know how many property owners were
18 eligible and how many property owners actually
19 participated?

20 A. I believe, based on this number here, there
21 were, there were approximately--there were, like, 40
22 properties that, that could have been acquired in that
23 program, and I believe two or three did not
24 participate. One of those was, was a vacant lot.

25 Q. Do you recall anything about the others?

1 A. They were not vacant lots. I mean, they had
2 houses on them. There's nobody living in them now,
3 but the property is still owned by the previous
4 owners.

5 Q. Do you know what the requirements for
6 eligibility were in this program?

7 A. To live in the area that was designated as,
8 as--to have residential property or--yes, residential
9 property that was in the area designated to be
10 required for remediation of the area.

11 Q. Do you know who developed that area, that
12 designated area? Was that--

13 A. Well, it was a combination of, of
14 Prudential, Monsanto, and the environmental
15 consultants.

16 Q. Which consultant was involved with that?
17 Was that BBL?

18 A. Probably Golder.

19 Q. Golder? Now, was this, this eligibility
20 area, this program area, was that area expanded over
21 time?

22 A. Yes.

23 Q. What caused--on how many occasions was that
24 area expanded?

25 A. I think it was only expanded once. It was

1 expanded into two or maybe three additional areas, but
2 the expansion was all at the same time.

3 Q. Do you know what prompted that expansion?

4 A. Additional investigation and the
5 identification of PCB levels in areas that were
6 potentially impacted from drainage from the plant.

7 Q. Now, on that same page, there's reference to
8 the 1996 consent order. Do you see that?

9 A. Yes, I do.

10 Q. What involvement did you have with that
11 particular consent order, which apparently was entered
12 into on March 8th, 1996?

13 A. I was involved in, in the discussions with
14 ADEM and--that led to that consent order.

15 Q. Now, do you know if, if this was the
16 responsibility of Mr. Faust or Craig Branchfield?

17 A. At this time, it would have been Mr. Faust.

18 Q. If you would look on page 11, paragraph 19,
19 does this describe the property purchase expansion
20 that you mentioned earlier?

21 A. Yes, it does, although it clarifies that it
22 was actually done in two stages.

23 Q. Do you have any knowledge about the one
24 resident who refused to participate in the property
25 purchase program identified at the end of paragraph

1 19?

2 A. Uh, yes.

3 Q. And who is that? Have we already discussed
4 that one individual?

5 A. I don't believe so.

6 Q. Okay, who is that individual?

7 A. I don't know. It's a person that still
8 lives in a manufactured home on the property north of
9 the plant. I'm sorry, the name is not coming to me.
10 If it comes to me, I'll let you know.

11 Q. I appreciate that.

12 A. I should know the name.

13 Q. Did you ever have any discussions with this
14 individual who refused to participate?

15 A. No.

16 Q. Do you know if anyone--do you know anyone
17 within Monsanto that had discussions with this person?

18 A. No. No one did. Well, now, I say that.
19 There may have been--I can't say there wasn't an
20 initial approach made to that person, but once the
21 person got counsel, we really did not have any further
22 discussions with that person.

23 Q. Do you know who this person was represented
24 by?

25 A. I believe it was Donald Stuart, but I'm not

1 sure. I could be wrong on that.

2 Q. Do you know if this person would have been
3 part of any of the--any of the settlements that
4 Monsanto has entered into with respect to the PCB
5 contamination?

6 A. I don't know the answer to that.

7 Q. Do you know if this person had suffered any
8 personal injury?

9 A. Well, I do--I believe, I believe he was
10 represented by Donald Stuart, and I believe he would
11 have, would have been involved in the settlement of
12 Mr. Stuart's cases.

13 Q. Do you know if it would have involved just
14 property, property issues, or if it would also have
15 involved personal injuries?

16 A. I don't know the particular claims.

17 Q. Who within Monsanto was responsible for
18 filing biweekly reports with ADEM?

19 A. Me.

20 Q. What did those--what was detailed in those
21 reports?

22 A. The progress we were making on cleaning of
23 the homes, and moving of the residents, and the
24 acquisition of those properties.

25 Q. It appears that in 1996, ADEM, or ADPH,

1 Alabama Department of Public Health, expanded their
2 no-consumption advisory; is that correct?

3 A. Yes, it is.

4 Q. How, how far, how big of an expansion was
5 that? Do you know?

6 A. They--it was an expansion to Lake Logan
7 Martin for certain species of fish. I mean, it's in
8 here from Riverside, Alabama, to the lake, to the
9 Logan Martin Dam on Lake Logan Martin. Previously, it
10 had only been Choccolocco Creek in its abatement.

11 Q. Do you know if those reports were provided
12 to ADEM?

13 A. Yes, they were. It says that in the
14 affidavit.

15 Q. Oh, that's right. My apologies, and the
16 results, it says, here, the results confirm that
17 larger fish of several species contain PCBs at levels
18 in excess of the two parts per million FDA tolerance
19 level?

20 A. For that particular sampling, yes. That has
21 changed.

22 Q. How has it changed?

23 A. There are no longer fish above two parts per
24 million in lake Logan more Martin according to your
25 sampling.

1 Q. Does your sampling continue to indicate any
2 detection of PCBs in those fish?

3 A. Yes, they're detected, but at levels below
4 the, the tolerance level.

5 Q. When was the last time any testing described
6 in this paragraph concerning fish was done?

7 A. Well, this paragraph specifically addresses
8 the 1996 sampling. I believe there was additional
9 sampling--I don't know when the last sampling was
10 done, whether it was sometime in the 2000's, but I
11 don't know specifically.

12 Q. Now, is that sampling that Monsanto has
13 voluntarily undertaken?

14 A. Yes, it is.

15 Q. Monsanto is not required to do that under
16 any consent order or agreement?

17 A. No. It's part of our ongoing study of the
18 situation downstream of the plant.

19 Q. Now, in paragraph 22--and we discussed this
20 a little bit yesterday--refers to the 1996 NPDES
21 permit?

22 A. Yes.

23 Q. Do you know if the plant had had an NPDES
24 permit prior to that time?

25 A. I believe I said that I believe they did,

1 but I, I don't know that for sure. I believe they
2 did. They would have had to.

3 Q. Have you ever reviewed any of the NPDES
4 permits for the Anniston facility?

5 A. I looked at the analytical requirements for
6 PCBs in this permit, so I looked at small portions of
7 it.

8 Q. Do you know if this was the first NPDES
9 permit that had, had requirements for PCB discharge?

10 A. I believe it was, but I could be mistaken.

11 Q. And again, you don't recall whether or not
12 this NPDES permit had, had limits with respect to lead
13 or other heavy metals?

14 A. I don't recall.

15 Q. And it would be--am I correct that it would
16 be Craig Branchfield who would, who would be
17 responsible for this NPDES permit?

18 A. Either Craig or the present environmental
19 person at the plant, whom I don't know that is.

20 Q. Does Craig still work for Solutia?

21 A. Yes, he does.

22 Q. And how, how has his position changed?

23 A. Since when?

24 Q. Well, you said, you said--you described this
25 new environmental person?

1 A. Well, Craig is remediation manager.

2 Q. Okay.

3 A. He does not--he's not really a part of the
4 plant staff; he's part of the St. Louis remediation
5 organization,--

6 Q. Okay.

7 A. --although he was located in Anniston for
8 some time.

9 Q. Okay.

10 A. So in addition to Craig, there is still,
11 presumably, although there may not be, a plant
12 environmental lead or power--plant environmental
13 person.

14 Q. On page 14, paragraph 23 described a 1997
15 RCRA permit. Are you familiar with, with this RCRA
16 permit that was apparently issued on January 7, 1997,
17 to Monsanto?

18 A. Only in the most general terms. I know it
19 exists; that's about all the detail I know.

20 Q. Do you know who within the--who within
21 Monsanto would be responsible for ensuring that the
22 RCRA permit requirements were followed?

23 A. To the extent that it has to do with
24 investigations of, of PCB wastes, it would be Craig
25 Branchfield, but there's probably also joint

responsibility with the plant environmental lead.

Q. Do you know if Monsanto prepared this RCRA permit or if it had one of its consultants prepare the permit?

A. I believe it was a joint effort.

Q. Do you know if it was BBL or Golder?

A. I believe it was Golder.

Q. And do you think Golder also prepared the interim measures, or rather, the RFI work plan described in paragraph 24?

A. Yes, I do.

Q. What interim, interim measures were required as part of that work plan? Do you know?

A. Well, they are, you know, detailed on page 15.

Q. Okay.

A. In the middle, diversion of storm water, upgrade of the cap of the south landfill, the cover over the soils on the east side of the plant, installation of a cover on soils downstream of the west end landfill, and upgrade of in-plant storm sewers.

Q. And number 4 involved the installation of new piping to convey storm water and minimize flooding in the west end landfill; correct?

1 A. Well, downstream of the landfill, I believe.
2 Downgrading of the landfill.

3 Q. Okay, so there, there was downgrading of the
4 landfill? That area was prone to flooding?

5 A. Let me read that carefully,--

6 Q. Okay.

7 A. --to make sure we're not talking about two
8 different areas.

9 Q. And I'm referring to number 4.

10 A. I understand.

11 (Witness peruses said
12 document.)

13 A. (Continuing) Yes, that was the area that
14 the, the property purchase program, the extension of
15 the property purchase program into the area north of
16 the plant. That was, that was that area, yes.

17 Q. Okay. It appears on page 16 that Monsanto
18 took some steps to fence in the properties acquired as
19 part of that purchase program? Do you see that?

20 A. Yes, I do.

21 Q. And that involved removal of structures from
22 those properties?

23 A. Yes--well, I mean that was another part of
24 the, the program, yes.

25 Q. Who did the demolition for Monsanto? Do you

1 know?

2 A. Some construction--I don't know, some
3 construction company.

4 Q. Do you know where the demolition--

5 A. Well, that's not true, I do know. It was a
6 division of Westinghouse.

7 Q. Okay. Do you know where the, where
8 the--these demolished structures were--where this--the
9 demolition material was sent to?

10 A. If it contained PCBs greater than 50 parts
11 per million, it was sent to Emile, Alabama. If it was
12 less than 50 parts per million, it was incorporated
13 under the cover.

14 Q. Do you know what portion of the materials in
15 those programs were sent to Emile versus placed under
16 the cover?

17 A. I don't.

18 Q. Who would have done the testing to, to make
19 that determination? Would it have been one of
20 Monsanto's consultants or someone for the demolition
21 company?

22 A. One of Monsanto's consultants.

23 Q. That probably would have been Golder?

24 A. Or somebody working for them. I don't, I
25 don't recall.

1 Q. Can you tell me how the interim measures
2 work plan was revised?

3 A. Not specifically, no.

4 Q. Who would have the information--who would be
5 able to tell me how the interim measures work plan was
6 revised? Would that be--

7 A. Well, either Craig or Alan. I mean, if they
8 had the documents in front of them.

9 Q. Okay.

10 A. I don't think there were significant
11 revisions from the original plan, but there were
12 certainly ADEM had comments, and it was revised to
13 reflect our response to those comments.

14 Q. You'll notice in paragraph 25, it
15 measured--it mentions the construction of a storm
16 water detention basin called the lower detention
17 basin. This was apparently put in place to contain
18 storm water and minimize flooding.

19 A. Yes, that's correct.

20 Q. Was that, was that done in connection with
21 the, one of the landfills?

22 A. Well, it was done to collect the, largely to
23 collect the water or to detain the water. It
24 doesn't--it is a detention basin. It slows the water
25 flow from the south landfill.

1 Q. Okay. With respect to the implementation,
2 with respect to the additional actions to control
3 storm water, other than the one described here, which
4 says, "Including plant discharges of non-contact
5 cooling water, what other additional actions were
6 taken?

7 A. I don't recall specifically what, what that
8 addresses, at this point. I know that we're the--all
9 the plant cooling water was collected in a specific
10 pipe which was then routed to a single discharge point
11 for the NPDES sampling permit, so it may be referring
12 to that.

13 Q. Do you know how thick the cap was on
14 the--this would be the west end landfill when, when
15 that property was acquired by Alabama Power Company?

16 A. I don't know. I don't know.

17 Q. I just don't want there to be any confusion.
18 When you say "cap," you are not referring to what,
19 what is commonly referred to as a RCRA cap, correct?

20 A. In 1960 --

21 Q. Right,--

22 A. --no, it was--

23 Q. --because there was no RCRA.

24 A. It was a clay cover.

25 Q. And do you know if Monsanto--do you know if

1 Mon--if Alabama Power Company maintained that clay
2 cover?

3 A. I don't know.

4 Q. Do you know if Monsanto--well, strike that.
5 Previous, it determined that groundwater was not a
6 concern with respect to PCB pathways?

7 A. Following the sampling of groundwater for
8 PCBs over a fairly extensive period of time.

9 Q. Do you know how long that testing occurred?

10 A. It's still going on, I'm sure.

11 Q. Why do they continue to test the groundwater
12 if it's not a concern?

13 A. I believe it's part of the agreement with
14 ADEM.

15 Q. Do you know how long Monsanto is required to
16 test the groundwater?

17 A. I don't know.

18 Q. Has there been any, any detection of PCBs in
19 the groundwater over the course of this investigation?

20 A. There have been a few, yes.

21 Q. Can you--do you recall what, what kind of
22 levels you were finding?

23 A. In the range of one part per billion or
24 less.

25 Q. And on page 19, paragraph 29--now, this is

1 with--this is entitled "Supplemental RFI work Plan for
2 Offsite Remediation." In there, it discusses locating
3 and evaluating dredge piles?

4 A. Yes.

5 Q. Do you see that?

6 A. No, I'm sure it's in there. Yes, I see it
7 now.

8 Q. What, what is, what is that--what is
9 being--what is that referring to in there?

10 A. Those are primarily the dredge piles that we
11 spoke about in Choccolocco Creek.

12 Q. The dredge piles by the Fish and Wildlife
13 Division and by the City of Anniston?

14 A. Yes.

15 Q. Has Solutia identified all the locations of,
16 of dredge piles?

17 A. I believe so, yes.

18 Q. And do you know if--do you know if those
19 have been documented? What report would have
20 documented the location of those dredge piles?

21 A. I don't know specifically. One of the
22 offsite reports to ADEM would have; I don't know which
23 one.

24 Q. Has Monsanto identified any residential
25 areas, any residential locations that received any of

1 these dredge piles?

2 A. Not specifically from those dredge piles,
3 no.

4 Q. Has Monsanto identified any residential
5 locations that have received any dredge piles?

6 A. Not dredge piles that I know of, no.

7 Q. How did Monsanto go about locating and
8 evaluating these dredge piles?

9 A. I don't know specifically. I don't know
10 that one.

11 Q. Who would, who would have that? Who would
12 know that in Monsanto?

13 A. Someone in BBL. They were in charge--in
14 Monsanto? Craig would know, Craig Branchfield.

15 Q. And he worked with BBL, the consultant?

16 A. BBL was the primary contractor on the
17 offsite investigations, yes.

18 Q. At the end of page 19, you discuss Solutia
19 engaging a team of outside and in-house experts,
20 including Dr. Mark Brown, to design and implement the
21 supplemental work plan.

22 A. Yes.

23 Q. Do you see that? What other outside and
24 in-house experts do you recall besides Dr.--besides
25 Dr. Brown?

1 A. There's another BBL guy named John Schell,
2 who is a toxicologist. Alan Fowler works for BBL,
3 F-o-w-l-e-r. In-house, probably, I'm sure it
4 includes, um, Craig, myself. I don't recall who else
5 was--who else participated in that. Excuse me.

6 Q. On page 20, there is, there is some more
7 numbers in there. There's a figure of three million
8 dollars for the cost of, of the investigation in
9 connection with the supplemental work plan. Is that a
10 number that Craig Branchfield would have given to you?

11 A. Yes.

12 Q. And would he have also given you the
13 groundwater investigation work plan number of a
14 hundred thousand dollars?

15 A. Yes.

16 Q. Do you know if this investigation is
17 ongoing?

18 A. I believe it's slowly ongoing.

19 Q. Do you know how much--how many--strike that.
20 Would Craig Branchfield know, do you think,
21 the costs incurred to date?

22 A. Yes.

23 Q. Is there anyone within Monsanto, if you
24 know, who provides Craig Branchfield with assistance
25 in tracking costs incurred in connection with any

1 remedial activities or investigations?

2 A. No, I believe that's his, his
3 responsibility.

4 Q. What's Craig's background, if you know?

5 A. He's an environmental engineer.

6 Q. Page 21, it refers to ambient air
7 monitoring. What triggered Monsanto or Solutia to
8 retain ENSR to take air samples of ambient air at
9 locations near the Anniston facility and several
10 background locations?

11 A. Probably the prior air sampling conducted by
12 the plaintiffs' attorneys.

13 Q. As part of that air sampling, was that air
14 sampling looking for vapor form PCBs, as well as
15 particulate PCBs?

16 A. Yes, and unfortunately, it's very difficult
17 to differentiate those in the air sampling program, so
18 it was, it was looking for a combination of both.

19 Q. But they--but the testing that was done
20 would pick up both of those? You just can't
21 differentiate between--

22 A. Well, there's a, there is a, there is a
23 prefilter which is supposed to collect the particulate
24 matter, and then the PCBs and the vapor form pass
25 through the prefilter and are collected on an

1 adsorbent, but unfortunately, as the air passes over
2 the soils that have been collected on the filter, it
3 can vaporize some of the PCBs, so it makes it very
4 difficult to differentiate, so you end up measuring,
5 basically, a combination of vapor form and particulate
6 matter, although I am told by the consultants that
7 based on their experiences other places, it's almost
8 all in the vapor form, that that's what's being
9 measured is the vapor form.

10 Q. Do you recall which consultants would have
11 told you that?

12 A. Would have been ENSR.

13 Q. Do you recall any particular individual
14 within ENSR who would have told you that?

15 A. I believe the contact is Bruce Maisel,
16 M-a-i-s-e-l.

17 Q. Do you recall the results of the work
18 performed by ENSR on behalf of Monsanto?

19 A. Yes, I've seen all those results.

20 Q. Were PCBs detected in any of the air
21 samples?

22 A. PCBs were detected in most of the air
23 samples at levels comparable to background levels in
24 other urban areas in the United States.

25 Q. What, what levels were, were detected?

1 A. Most were around ten parts per--well, it's
2 ten nano--or ten nanograms per cubic meters. There
3 were some excursions up to as high as a hundred
4 nanograms per cubic meter, but those were very rare.

5 Q. Do you know how far away these excursions
6 were detected from the Anniston facility?

7 A. You mean how far from the facility?

8 Q. Yes.

9 A. These samples were all at the plant fence
10 lines.

11 Q. Okay.

12 A. The purpose of the program was to see if
13 PCBs were leaving the plant in the air.

14 Q. Do you recall what the plaintiffs' sampling
15 results, air sampling results have shown?

16 A. They were similar to what, what Monsanto had
17 found.

18 Q. Where within the plant were the highest PCB
19 levels detected with respect to air sampling?

20 A. They were really kind of sporadic and
21 random, but if there was any pattern at all, it was on
22 the, the north side of the plant.

23 Q. Which, which landfills located on the north
24 side of the plant?

25 A. None that I know of.

1 Q. Okay, were any excursions that you described
2 detected in connection with, with air sampling near
3 the west end landfill?

4 A. I don't recall. That was--the west end
5 landfill and the south landfill were typically low
6 numbers. Most of the higher numbers, on average,
7 were, were in that north area.

8 Q. What do you think accounts for those
9 excursions in that north area?

10 A. I wish I had an answer to that. I've
11 thought and thought about it: Don't know.

12 Q. Any of your consultants tell you what they
13 think caused those excursions in the north area?

14 A. Um, not that I know of, no.

15 Q. Now, in June of '99, on the next page, page
16 22, paragraph 35, it appears that EPA did air sampling
17 in the Anniston area. Do you recall that air
18 sampling?

19 A. I do.

20 Q. Do you recall where that air sampling was,
21 was done? Was it just on site? Was there some
22 offsite sampling?

23 A. They did some offsite sampling.

24 Q. Do you know how far away from the facility
25 EPA tested air samples?

1 A. Based on what's in paragraph 35, most of
2 them were fairly close to the facility except for the
3 Wellburn High School sampling.

4 Q. Do you recall whether there were any PCB
5 samples that tested higher than what you consider
6 background?

7 A. I believe there were a few. I don't, I
8 don't necessarily recall the exact numbers. I believe
9 a few did.

10 Q. Do you know where, where Wellburn High
11 School--how far Wellburn High School is from the
12 Anniston Plant?

13 A. I believe it's a couple of miles west.

14 Q. Do you know if there were any detections of
15 PCBs at Wellburn High School above the background
16 levels that you described earlier?

17 A. I, I believe there were not.

18 Q. What--if you could tell me again, what, what
19 do you consider to be background for PCBs, based upon
20 the ENSR study?

21 A. Well, it's--what I consider to be background
22 is not based upon the ENSR study. It's based upon my
23 reading of the literature, and it's, in urban areas,
24 it's about 10 nanograms per cubic meter.

25 Q. Do you know what urban areas were studied?

1 A. I don't recall exactly. Chicago, I think.
2 I think there was actually a study done in Gadsden,
3 Alabama. There have been a variety.

4 Q. So do you consider, do you consider Anniston
5 to be an urban area?

6 A. I believe it's an urban area, yes.

7 Q. You think Anniston is comparable to Chicago?

8 A. No.

9 Q. I've never been to Gadsden. Is it
10 comparable to Gadsden?

11 A. Probably bigger than Gadsden.

12 Q. Did you or anyone at Monsanto that you are
13 aware of provide comments to the laboratory results
14 prepared by EPA?

15 A. Uh, no. No, one at Monsanto prepared those
16 comments, prepared comments to EPA on their sampling
17 data.

18 Q. Did anyone on your behalf prepare comments?

19 A. No.

20 Q. On page 23, with respect to paragraph 37,
21 you have an opening line that says, "Solutia's
22 November 22nd, 1999, letter to ADEM contains the
23 following paragraph, summarizing Solutia's
24 understanding of the air level sampling results
25 available at that time." Do you see that?

1 A. I do.

2 Q. What--if you could walk through and tell me,
3 what air level sampling was available to Monsanto at
4 that time? What does this--what air level sampling
5 was, was looked at in preparing this paragraph?

6 A. All the sampling from 1998 through 1999 up
7 to the date of the preparation of the paragraph.

8 Q. Did you look at any air sampling that was,
9 was done at the facility prior to that time frame?

10 A. No.

11 Q. Did Monsanto do any air sampling prior to
12 that time frame?

13 A. There was some sampling right at vents in
14 the process done in 1970.

15 Q. Do you recall the results of that air
16 sampling?

17 A. No, I don't, as I sit here.

18 Q. Did you look at that air sampling in
19 connection with preparing this, this paragraph?

20 A. No, I didn't.

21 Q. Do you know how the 1970 results compare
22 with, with these later air sampling results?

23 A. Oh, I'm sure they're higher, because they're
24 at vent points in the PCB process, right at the
25 process, so I'm sure they would have been

1 significantly higher.

2 Q. Do you know if there was any off, offsite
3 testing performed as part of that, the 1990--1970 air
4 sampling that was done?

5 A. There was none that I know of.

6 Q. So you couldn't really do a good comparison,
7 right? Because you were talking apples and oranges.

8 A. That's correct.

9 Q. Is it your contention that PCB vapors and
10 PCB particulates would not have been transported
11 through the air to locate--residential locations where
12 they are finding detectable levels of PCBs?

13 A. Yes, I would agree with that. I think that
14 the--that there is no indication that the levels of
15 PCBs in residential areas have been contributed to by
16 air discharges from the Monsanto plant.

17 Q. What do you, what do you base that upon in
18 terms of--what do you base, what do you base that
19 conclusion on?

20 A. Primarily, the levels that we found, but
21 also the fact that if, if there were an air pathway
22 from the plant, there would be a recognizable plume of
23 PCB levels along the main air pathway, the air
24 direction from the plant, and also an air pathway
25 can't explain the sporadic levels that we find where

1 you find a hundred parts per million in one yard and
2 nondetect in the next. That can't be explained by an
3 air pathway.

4 Q. Has Monsanto ever done any or contracted
5 anyone to do any air modeling, modeling with respect
6 to that particular issue?

7 A. I believe there's a little bit that has been
8 recently.

9 Q. And do you know who performed that work?

10 A. Yes, Dr. Gale Nofnagle.

11 Q. Do you know when that work was performed?

12 A. In the last year or so.

13 Q. And have you reviewed any of that modeling?

14 A. No, I haven't.

15 Q. Do you know who within Monsanto would have
16 reviewed that air modeling?

17 A. Craig Branchfield.

18 Q. Was that air modeler someone who was hired
19 by a law firm or by Monsanto?

20 A. By Monsanto.

21 Q. Do you have any personal experience with,
22 with evaluating air modeling results?

23 A. No.

24 Q. Have you ever done any air modeling
25 yourself?

1 A. No.

2 Q. Do you know if Craig Branchfield has any
3 experience with air modeling?

4 A. I don't know.

5 Q. Can you name anybody within Monsanto that
6 has experience with air modeling?

7 A. Uh, no.

8 Q. If I wanted to talk with, with someone
9 within Monsanto about air modeling, who would I speak
10 with? Anybody?

11 A. I don't know.

12 Q. Other than Gale Hofnagle, is there anybody
13 else who has performed any air modeling with respect
14 to the Anniston facility?

15 A. Not that I'm aware of.

16 Q. Do you recall reading any, anyone else's
17 evaluation of Gale Hofnagle's air modeling?

18 A. No.

19 Q. Do you, do you know any of the conclusions
20 that Gale Hofnagle reached?

21 A. I've not seen the report.

22 Q. Do you know if she's issued a report?

23 A. I believe there is a report. I'm not sure.
24 I think there is one, yes.

25 Q. Do you know who would have that report?

1 A. Craig.

2 Q. Have you ever had any discussions with Craig
3 about that report?

4 A. No.

5 Q. If you would, please, open up the map that
6 we were looking at earlier.

7 (Witness complies.)

8 Q. (Continuing) Now, it appears on--and you
9 probably should have the affidavit at hand--on page
10 24, paragraph 39, apparently, Solutia was asked by
11 ADEM to undertake a--several activities including the
12 delineation of Area of Concern B. Do you see that?

13 A. Oh, I'm sorry, on page 29.

14 Q. I'm on page 24. I'm sorry.

15 A. 24?

16 Q. Yes.

17 A. Paragraph 39 in the middle, there?

18 Q. Yes.

19 A. Yes.

20 Q. Okay. Now, area--we've, we've written in
21 Area of Concern B, AOC-B, and that is the area that
22 would encompass the south landfill; is that correct?

23 A. Yes. Can I read this,--

24 Q. Oh, yeah. Yeah.

25 A. --to make sure we're talking about the same

1 AOC-B?

2 Q. Right.

3 (Witness peruses document.)

4 A. Okay, I've read it, and we're not talking
5 about the same AOC-B,--

6 Q. Okay.

7 A. --because this clearly talks about AOC-B
8 being the hundred-year flood plain, the Snow Creek,
9 Choccolocco Creek, and Lake Logan Martin between
10 Choccolocco Creek and the Logan Martin Dam, and that's
11 not on this map, obviously.

12 Q. Okay, can you mark on, on that map--I guess
13 we should call it affidavit AOC-B, if you know where
14 that location is?

15 A. Oh, it's not on this map at all.

16 Q. Okay, do you know if--have you seen a map
17 that identifies that area?

18 A. Well, obviously, Figure 2 in Exhibit 48 must
19 define it. I don't have the exhibits to this. I
20 mean, I've obviously seen it and attached it as an
21 attachment to this affidavit but I don't, I don't know
22 where that, you know, where that attachment might be,
23 at this point.

24 Q. And this clearly is an affidavit that was
25 filed with the court, so very likely, this court has

1 copies of the, of the exhibits?

2 A. I--yes, I would believe so.

3 Q. If you would, look on--we're still on page
4 24 in that first indented paragraph.

5 A. Okay.

6 Q. Would you mark the, what's referred to as
7 the east side ditch? Is that not on this map?

8 A. That's what I've discussed. That's what we
9 already circled.

10 Q. Okay, and, and the--and can you mark where
11 the 11th Street ditch is? I don't believe we've done
12 that.

13 A. It's not on this map.

14 Q. Okay, where, where would that be located?

15 A. It would be off the upper right-hand corner
16 of that map.

17 Q. Do you know any other areas in the Anniston
18 Plant that were prone to flooding?

19 A. No, I don't.

20 Q. Do you know if the Anniston Plant is located
21 within the hundred-year flood plain?

22 A. I believe it is not. I'm sure it's not,
23 because I think the flood plain is the one you find
24 for Snow Creek and Choccolocco Creek, and it's nowhere
25 near enough to Snow Creek to be part of the flood

1 plain.

2 Q. If you look at page 25, it's the first, the
3 first paragraph, not the first complete paragraph, but
4 it's carried over from the prior page. It says,
5 "After," "After"--where it reads Exhibit 50-A, it says
6 "Solutia is awaiting ADEM approval for these work
7 plans," which is referring to additional work plans
8 for remedial activities. Do you see that?

9 A. Yes, I do.

10 Q. Has that approval since been given, since
11 this affidavit was signed?

12 A. I don't know.

13 Q. What can you tell me--what involvement have
14 you had with the Alabama Department of Transportation
15 with respect to a bridge construction site on Highway
16 21?

17 A. I attended some of the early meetings,
18 discussing their concerns with potential for PCBs to
19 be present in an area they were going to do some
20 construction.

21 Q. Do you know why they, why they had these PCB
22 concerns?

23 A. Well, because it was after the time that
24 there started to be publicity about PCBs in
25 Choccolocco Creek and they were concerned about PCBs

1 in the side banks and sediments.

2 Q. And do you know if testing of those side
3 banks and sediments for PCBs has been done?

4 A. Yes, it has.

5 Q. And were PCBs detected?

6 A. Yes.

7 Q. Do you know at what levels they were
8 detected?

9 A. Tens of parts per million and higher, I
10 believe. In some, some limited areas.

11 Q. Do you know if those sediments were--and
12 soils were tested for lead or other heavy metals?

13 A. I don't know.

14 Q. Who would know that information?

15 A. Craig would know or the Department of
16 Transportation would know. They did some of their own
17 testing, so we--I'm not sure we have all of their
18 results.

19 Q. Was Craig also involved with, with this work
20 described in this paragraph?

21 A. Oh, very much so.

22 Q. Were you involved at all with the work in
23 connection with the Quintard Mall?

24 A. I was aware it was going on and had
25 discussions with Craig about it.

1 Q. Do you know when PCBs were detected in soils
2 at Quintard Mall?

3 A. I don't know the particular date, no.

4 Q. Do you know if lead was detected in those
5 soils?

6 A. I don't know.

7 Q. Do you know if they tested for lead?

8 A. I don't know.

9 Q. And Craig would know that, you think?

10 A. Yes, he would.

11 Q. And it begins on page 25, paragraph 41, and
12 carries over on to page 26, there's a reference in
13 here that DDT was detected. Are you familiar with
14 that?

15 A. Yes.

16 Q. Do you know the source of that DDT as you
17 sit here today?

18 A. No.

19 Q. Have any of your consultants provided you
20 with any, any theories on how that DDT would have,
21 would have reached that location?

22 A. No.

23 Q. And is it your testimony that that DDT was
24 not associated with any of the operations at the
25 Anniston Plant?

1 A. Yes.

2 Q. Who did you speak with to confirm that?

3 A. I don't know that I spoke with anybody. I'm
4 just aware that Monsanto did not manufacture DDT at
5 the Anniston Plant.

6 Q. Right, it manufactured parathion; is that
7 correct?

8 A. Yes, it did.

9 Q. And was parathion also an insecticide?

10 A. Yes, but it's very different: Very
11 different chemistry.

12 Q. What can you tell me about paragraph 42? It
13 discusses a request for information, a RCRA 3007
14 questionnaire. Have you seen a RCRA 3007
15 questionnaire?

16 A. I'm sure I saw it, yes.

17 Q. Did you assist in providing a response to
18 that RCRA 3007 questionnaire?

19 A. Yes.

20 Q. Do you recall what that questionnaire asked
21 for?

22 A. As I sit here today, not specifically. I
23 believe it asks for the information that, that we
24 subsequently, in that paragraph, described as
25 submitting to them; blood sampling, soil sampling, and

1 air sampling results.

2 Q. In here, it says that the information, the
3 request was for information generated by the
4 plaintiffs' attorneys. How do you know that?

5 A. I--if the letter requested, didn't say that
6 specifically, I know that from discussions with EPA.

7 Q. Who else would have had discussions with EPA
8 in connection with that RCRA 3007 questionnaire?

9 A. I'm sure Craig was involved.

10 Q. Would Craig have been the main person to
11 provide a response to that questionnaire, or would
12 that have been your responsibility?

13 A. I believe I did it; I'm not sure. Certainly
14 did a lot of the work. I don't know whether I signed
15 the cover letter or not. It may have been because it
16 was a, a EPA request, it may have been signed by an
17 attorney. I'm not sure.

18 Q. Paragraph 43, you reference a draft public
19 health assessment prepared by the Agency For Toxic
20 Substances and Disease Registry.

21 A. Yes.

22 Q. Are you familiar with that particular draft?

23 A. Yes.

24 Q. In here, you said Solutia disagrees with
25 some--disagreed with some of the characterizations of

1 potential exposures and potential health risks, and
2 filed comments.

3 A. Yes.

4 Q. What, what disagreements did, did Solutia
5 have with respect to the characterization of the
6 potential exposures?

7 A. I would hate--I--there have been a number
8 of, of draft public health assessments, and we have
9 provided comments on all of those, and I wouldn't want
10 to give any specific answers without seeing which
11 particular document was being commented on.

12 Q. Have you--do you recall whether, whether
13 Monsanto consistently disagreed with the ATSDR public
14 health assessments?

15 A. We disagreed with points in those
16 assessments. I don't know that we consistent--I
17 wouldn't characterize it as consistently disagree. We
18 had points of disagreement within each one, but there
19 was--I think there were things we did not disagree
20 with, or I know there were.

21 Q. Now, I'm not talking specific to this draft,
22 but can you recall any disagreement that you had with
23 respect to the characterization of potential
24 exposures? Not limited to this, but this and other
25 draft assessments?

1 A. I, I don't recall specifically what those
2 comments said. I believe they misinterpreted some
3 pathways, I think they misinterpreted some of the data
4 that had been given to them by plaintiffs' attorneys
5 on the ages of some of the people that were being
6 exposed--there were a number of things.

7 Q. Do you recall the potential health risks
8 that you disagreed with?

9 A. Uh, yes.

10 Q. And what potential health risks did you
11 disagree with?

12 A. I disagreed with the potential for
13 carcinogenicity, and I disagreed, or the company
14 disagreed with their characterization of potential
15 risks to children.

16 Q. Has Monsanto been involved in any, in any
17 studies that look into the carcinogenicity of PCBs?

18 A. Minimally, yes.

19 Q. And what, what studies have they been
20 involved with?

21 A. There was a very small study done at the
22 Krummrich Plant on our workers who had worked in the
23 PCB process.

24 Q. What did those studies indicate?

25 A. Well, they were really too small to indicate

1 anything, but there was a finding, I believe, of an
2 excess of lung cancer, consistent with the excess lung
3 cancer that is present in St. Clair County, Illinois,
4 where the plant is located.

5 Q. What do you mean by that, by "excess of lung
6 cancer"? What does that mean?

7 A. It means that there were more lung cancers
8 in that small cohort than would have been expected
9 based on national averages.

10 Q. Who made the decision on how many
11 employees--who was involved with the preparation of
12 that study?

13 A. Uh, I believe it was done by a Dr. Zack and
14 a Mr. Mush.

15 Q. Do you know if, if either of those
16 individuals are epidemiologists?

17 A. I believe they both were, are, were.

18 Q. Is it your testimony that that, that study
19 is insignificant because they, they didn't take a
20 proper statistical sampling?

21 A. Well, I don't know about their sampling.
22 It's insignificant because the numbers involved
23 weren't large enough to be meaningful in an
24 epidemiology study.

25 Q. And are you an epidemiologist?

1 A. Not trained as an epidemiologist, no.

2 Q. And so you, you don't think that a study
3 performed by an epidemiologist was sufficient?

4 A. It was a study; the study was sufficient.
5 It wasn't a meaningful study. The results aren't
6 meaningful compared to other epidemiology studies of
7 PCBs because the numbers are so small, and I'm
8 certainly not the only person that believes that. In
9 fact, it was not able even to be published in the
10 peer-reviewed literature because it was so small that
11 it couldn't be, it wasn't meaningful.

12 Q. Did--and this is work that Monsanto
13 requested be done?

14 A. It was work that Monsanto did.

15 Q. Okay. Now, why would Monsanto undertake a
16 study--I mean, didn't Monsanto know that, know the
17 number of people that they were looking at when they
18 did the study?

19 A. Sure.

20 Q. So why would Monsanto undertake a study that
21 would be statistically meaningless?

22 A. I don't know the answer to that.

23 Q. Okay. Is that something you've questioned
24 in the past, why they would do something like that?

25 A. Yes. That particular, that particular

1 study, yes.

2 Q. No, I know you don't agree with the results,
3 but certainly--

4 A. No, I agree with the results. The results
5 are what they are.

6 Q. Right, they are what they are, but they're,
7 in your mind, they're statistically meaningless.

8 A. I think they do not carry much weight when
9 compared with other epidemiology studies in the United
10 States of PCB-exposed workers, that's correct, but
11 they certainly can be taken into consideration.

12 Q. Do you know if there's a--have you seen a
13 copy of this study?

14 A. I'm sorry, which study?

15 Q. Of the study that was performed by
16 Monsanto--

17 A. Yes.

18 Q. --at the Krummrich.

19 A. Yes.

20 Q. Do you have a copy of that study?

21 A. Yes.

22 Q. Do you have a copy of that study in your
23 personal files?

24 A. Yes.

25 Q. What is it about the, the sampling, sampling

1 information provided by--here, you described Alabama
2 regulatory agencies, that--well, first of all, do you
3 believe that the sampling results that the Alabama
4 regulatory agencies provided to ATSDR had problems?

5 MR. NASSIF: Object to the form.

6 BY MR. LANGLAIS:

7 Q. Let me ask it this way: What was wrong with
8 the, with the sampling information and analysis
9 results provided by Alabama regulatory agencies?

10 A. I don't believe this says there was anything
11 wrong with it. It says it was information
12 relied--that that was among the information relied
13 upon by ATSDR to do the health consultation.

14 Q. Okay.

15 A. I don't know that there was anything wrong
16 with it.

17 Q. Okay, I just want to make sure this, this
18 describes the information, apparently, that was given
19 to ATSDR, and I just want to make sure, is your
20 problem with ASDR (sic) more with their evaluation of
21 the information that was provided to them, or is your
22 problem more with the information, itself?

23 MR. NASSIF: Object to the form.

24 BY MR. LANGLAIS:

25 Q. (Continuing) You can go ahead and answer.

1 A. I don't know what you mean by my problem
2 with ATSDR. I don't have a problem with ATSDR.

3 Q. Okay.

4 A. Monsanto, when it received drafts of these
5 health consultations, provided comments, and there
6 were certain points of disagreement, and I
7 don't--with--as I said earlier, without seeing the
8 particular draft, because there were a number of them,
9 and the particular comments, I'm uncomfortable trying
10 to tell you exactly what those comments addressed in
11 any particular set of comments.

12 Q. Have you had communications with anyone
13 within ATSDR concerning any of these draft health
14 consultations? Any verbal communications?

15 A. Occasionally, yes.

16 Q. Who within ATSDR have you spoken with, if
17 you recall their name?

18 A. His first name is Clint or Quint. I'm
19 sorry, I can't--I can see his face but I can't come up
20 with his name.

21 Q. Okay.

22 A. I mean, there is a particular person who I
23 have spoken to.

24 Q. Paragraph 27 describes some EPA sampling of
25 residential and what, what's referred to, here, as

1 communal areas in Anniston.

2 A. Mm-hmm.

3 Q. Can you tell me what, what is meant by
4 "communal areas"?

5 A. Paragraph 27, you mean?

6 Q. I'm sorry, it's page 27, paragraph 45.

7 A. Okay.

8 Q. What's meant by "communal areas"?

9 A. I think there was a public park was among
10 those areas sampled. That's the kind of thing they
11 were sampling.

12 Q. It appears that the samples were analyzed
13 for PCBs, pesticides, metals, and other compounds?

14 A. Yes, that's what's stated.

15 Q. What metals were tested for, if you know?

16 A. I don't know--

17 Q. Do you know if lead--

18 A. --as I sit here.

19 Q. Do you know if lead was one of those metals?

20 A. I'm sure it was.

21 Q. Do you know what other compounds were tested
22 for?

23 A. My understanding was that this was probably
24 a, a, what they call a broad scan analysis, so there
25 would have been a number of, of organic compounds of,

1 of interest.

2 Q. Does EPA have a specific protocol that they
3 follow in connection with what, what, what should
4 be--what samples should be--I mean what compounds they
5 should be analyzing the samples for?

6 A. Yes, they do.

7 Q. Do you know, do you know what protocol that
8 is?

9 A. I call it a broad scan analysis. That's not
10 the official name,--

11 Q. Okay.

12 A. --but I mean it's basically an outgrowth of
13 the TOSCA sampling program, Toxic Substances Control
14 Act sampling.

15 Q. Did you work, did Monsanto work with EPA in
16 connection with these environmental samples?

17 A. No.

18 Q. Did--are you aware if Monsanto took split
19 samples?

20 A. I believe we did not. We wouldn't have had
21 access to the residential properties.

22 Q. Is it your testimony, is it your testimony
23 that Monsanto didn't have the opportunity to get split
24 sampled?

25 A. I can't sit here and say we didn't have the

1 opportunity. I do not believe that we would have--I
2 mean, I'm sure we did not participate in this sampling
3 program. I'm not going to say we couldn't have; I
4 don't know.

5 Q. Do you think Craig Branchfield would know?

6 A. I, I don't know. I mean, I'm sure we
7 weren't--I mean, this was not something that we were
8 asked to participate in. It was a done deal by the
9 time we learned of it.

10 Q. Do you know what kind of lead levels were
11 detected as part of this EPA sampling event?

12 A. I don't.

13 Q. Page 28, paragraph 46, it says "EPA has
14 conducted and continues to conduct additional phases
15 of its sampling and analysis program in Anniston and
16 nearby areas." It says here "Results are not
17 available for any of these other sampling events,"
18 but as you sit here today, do you know if, if these
19 results are now available?

20 A. I don't, because this, this paragraph was so
21 general, I think we knew things were going on, I
22 assume they are. I mean, it's been five or, I guess,
23 four years, so I assume they are available.

24 Q. This is like kind of like a catch-all thing
25 because you know EPA was continuing to do various

1 investigations?

2 A. Yes. I believe they have stopped doing
3 their own sampling. I believe that Solutia is doing
4 the sampling now, but I, I assume those results are
5 available.

6 MR. LANGLAIS: This is probably a good time
7 to break for lunch. He's got to change a tape.

8 MR. NASSIF: Okay.

9 THE VIDEOGRAPHER: This will end tape number
10 2 in the deposition of Robert Kaley II. Going off the
11 record at 12:12 P.M.

12 (Luncheon recess.)

13 THE VIDEOGRAPHER: We're back on the record
14 at 1:11 P.M. This begins tape number 3 in the
15 continuance of the deposition of Robert Kaley II.

16 BY MR. LANGLAIS:

17 Q. Mr. Kaley, I realize that you have served as
18 a fact witness in several lawsuits relating to PCBs,
19 and also maybe at least on one occasion, you've served
20 as a corporate representative on Monsanto; is that
21 correct?

22 A. Yes.

23 Q. Have you ever served as an expert witness in
24 any PCB-related lawsuits?

25 A. I believe once.

1 Q. Do you recall--

2 A. It was actually an arbitration.

3 Q. Okay. What was involved with that
4 arbitration?

5 A. It was a dispute over cleanup costs in a
6 building in San Francisco.

7 Q. Okay. Did you file an expert report in
8 connection with that arbitration?

9 A. I don't recall.

10 Q. Could you spell--you've mentioned Gale
11 Hofnagle. Do you know how to spell that?

12 A. I think it's H-o-f-n-a-g-l-e.

13 Q. Can you tell me who Gale Hofnagle works for?

14 A. I believe he's self-employed.

15 Q. Now, you mentioned earlier that, that in
16 response to--in response to plaintiff's modeling--

17 MR. NASSIF: Jim? He's getting the static
18 on the audio.

19 THE VIDEOGRAPHER: Off the record at 1:12
20 P.M.

21 MR. NASSIF: Somebody has now accessed this
22 phone again that doesn't have their phone on mute.

23 THE VIDEOGRAPHER: That's real prominent,
24 too.

25 MR. NASSIF: When you are asking a question,

1 you are getting blanked out.

2 MR. LANGLAIS: Does anyone not have their
3 phone on mute? Can you all, please, check to see if
4 you're on mute? We're getting a lot of static.

5 MR. TAYLOR: This is Jerry. I'm in and out.

6 MS. LAVEY: Did somebody just dial in
7 recently, a second ago?

8 MR. LANGLAIS: Who just dialed in? Did
9 someone just come on line?

10 MS. SMITH: I don't think so. I think it's
11 just a problem that we're having.

12 MR. LANGLAIS: I tell you what, why don't
13 you all get off the line and give me, give me a
14 minute, let me call in to see if this will ask me for,
15 the number, the moderator number? So don't dial in
16 yet; give me a minute after you hang up.

17 MR. TAYLOR: Then dial in.

18 MR. LANGLAIS: Okay.

19 MR. TAYLOR: How many minutes?

20 MR. LANGLAIS: I just need--how about two?

21 MR. TAYLOR: Okay.

22 (Discussion off the record.)

23 THE VIDEOGRAPHER: We're back on the record
24 at 1:17 P.M.

25 BY MR. LANGLAIS:

1 Q. Mr. Kaley, with respect to the modeling that
2 Monsanto, Monsanto did that we had discussed earlier,
3 was, was that modeling report submitted to any
4 governmental agencies?

5 A. I may--you and I may be talking about two
6 different things. I--the report that Mr. Hofnagle
7 did, I believe, is interpretation of the most recent
8 air sampling data. It is not a theoretical modeling
9 data.

10 Q. Okay. Well, thank you for that
11 clarification.

12 A. And I believe it will be submitted to an
13 agency if it has not been. It will be submitted to
14 both EPA and ADEM if it has not already been. It may
15 have been.

16 Q. Do you know if the plaintiffs have done any
17 modeling?

18 A. I'm sure they have not.

19 Q. Paragraph 18 of the affidavit that we were
20 going through refers to the north drainage ditch, and
21 I just want to make sure I understand where the north
22 drainage ditch is located. Would you, would you mind
23 opening up to that map and indicating where the north
24 drainage ditch is? I believe you've testified that
25 the, the 11th Street drainage ditch is actually off

1 the map?

2 A. Right.

3 Q. Off to the upper right-hand corner. Where
4 is the north drainage ditch located?

5 A. It's also north of the--it's north of these
6 railroad tracks, and there's no indication--it's a
7 blank space on the map, but it's basically in the
8 general area of the blank space in the middle of the
9 top middle of the map.

10 Q. Would you mind indicating, just put "North
11 drainage ditch" in the area that you believe the ditch
12 is located?

13 (Witness complies.)

14 Q. Okay. Thank you. I just want to follow up
15 on Paragraph 20 of the affidavit, which is on page 12,
16 and this concerns the lower detention basin. Now, am
17 I correct, it seems to, it seems to be that the lower
18 detention basin can, can hold a 25-year flood but
19 would not have the capacity to hold a hundred-year
20 flood; is that correct? Oh, hundred-year storm; I'm
21 sorry.

22 A. Yes, my understanding--yes, it would hold
23 the 25-year storm and would not hold but would channel
24 the runoff from a hundred-year storm.

25 Q. Okay, and where were the runoff from a

1 hundred-year storm be channeled?

2 A. Through the same drainage that exists for
3 that basin at this point.

4 Q. Which--

5 A. To the discharge point past the remediated
6 area on the east side of the plant.

7 Q. So it would go through the, the east side
8 drainage ditches in the south end--

9 A. Well, they're--it's not drainage ditches
10 anymore; it's piped.

11 Q. Okay. You mentioned a name earlier, a Mike
12 Foresman?

13 A. Yes.

14 Q. How do you spell Mike Foresman's last name?

15 A. F-o-r-e-s-m-a-n.

16 Q. Does Mike Foresman--does Mr. Faust report to
17 Mike Foresman?

18 A. He did. He doesn't any more.

19 Q. Okay, and does Mike Foresman report to Mike
20 Pierle?

21 A. At one point, he did. He does--neither one,
22 neither Mr. Pierle nor Mr. Foresman work for the
23 company anymore.

24 Q. And when you say "the company," they don't
25 work for Solutia, either?

1 A. That's correct.

2 Q. Okay, but at one point, the kind of the, the
3 order in which the hierarchy with respect to those
4 individuals would be Mike Pierle, and then it
5 would--the lower person would be Mike Foresman, and
6 then Mr. Faust?

7 A. That's my recollection.

8 Q. Okay.

9 A. I believe that's correct.

10 Q. Is Mike Foresman located in St. Louis?

11 A. The last I knew, he was. I don't know.

12 Q. But as far as, um, when he worked for
13 Monsanto, was he in the--

14 A. Oh, yes.

15 Q. --St. Louis office?

16 A. I'm sorry, yes.

17 Q. That's okay. I just want to make sure the
18 record is clear. When, when--Santotar and Montar, are
19 those the same things?

20 A. Yes.

21 Q. Now, when you mentioned earlier that still
22 bottoms from biphenyl production are called Montars;
23 is that correct?

24 A. One of the Montars is the still bottoms from
25 the polyphenyl production, that is correct.

1 Q. What are the other Montars?

2 A. Most, if not all of them, were still bottoms
3 from the polychlorinated biphenyl process.

4 Q. Now, why--you had mentioned earlier that the
5 Montars would not have contained any PCBs; is that
6 correct?

7 A. No, what I said was that the Montar that
8 went to the Montar pit would not have contained PCBs.
9 It was only the Montar from the polyphenyl process,
10 the nonchlorinated Montar.

11 Q. And where, where did you obtain that
12 particular information?

13 A. I don't know.

14 Q. Why would, why would the--where would the,
15 the Montars from the PCB process, where were they
16 placed?

17 A. If they were not sold, they were drummed and
18 placed in the landfill.

19 Q. Okay. If you would, please, turn to Exhibit
20 1, which we introduced yesterday and discussed today.
21 On page 2 at the top of that, there is a reference to
22 lead being recovered after the process was shut down.
23 Do you see that?

24 A. Yes.

25 Q. I know you don't know who the individuals

1 are, but do you know when and what year the lead was
2 recovered?

3 A. I would presume it was 1964, when the last
4 unit was shut down, then it was probably throughout
5 the time that the units were being shut down, so I
6 would say it was probably several times between 1961
7 and 1964, but the real fact is, I don't know.

8 Q. Do you know to whom the lead was sold?

9 A. I do not.

10 Q. Now, you had discussed earlier the Krummrich
11 study on the Krummrich workers--

12 A. Yes.

13 Q. --that Monsanto had performed. Were there
14 ever any similar studies performed with respect to
15 Anniston workers?

16 A. No.

17 Q. How about studies at other Monsanto plants?

18 A. PCB workers?

19 Q. Yes.

20 A. No, there haven't been any other PCB plants,
21 I mean Newport--not--no.

22 Q. Was that Krummrich study ever, ever
23 submitted to any governmental agencies?

24 A. Yes, the government has them.

25 Q. The federal government?

1 A. Yes.

2 Q. Was it submitted to EPA?

3 A. I don't know. Probably. I mean, it's
4 referred to in governmental reports. That's how I
5 know that.

6 Q. Now, with respect to the ATSDR work, you
7 said you essentially discussed two issues. You had,
8 you had, um, issues with respect to the
9 carcinogenicity of PCBs and with PCBs' effect on
10 children; is that correct?

11 A. Those are the--I mean, these are two of the
12 issues I addressed. These are the two that I recall
13 specifically addressing potential health effects.

14 Q. What--we haven't talked about the, the
15 effects on children. What issues did you have with
16 what ATSDR was saying about what effects PCBs have on
17 children?

18 A. I believe they place, they
19 have--overinterpret the significance of the literature
20 suggesting that there might be neurodevelopmental
21 effects in children from prenatal exposure to PCBs.

22 Q. What other things do they say are
23 associated? Do they believe ATSDR is associated with
24 children being exposed to PCBs, if you recall?

25 A. That's all, neurodevelopmental effects.

1 Q. How about reduced birth weight?

2 A. Well, that's a developmental effect.

3 Q. Okay, and how about immunological
4 alterations? Do you categorize that as a--

5 A. That's probably--I don't know whether they
6 refer to that in those, those or not, but there is
7 some literature to that effect.

8 Q. And is it your opinion that children exposed
9 to PCBs, that the, that the current scientific studies
10 do not support that PCBs have connection with neuro,
11 neurobehavioral effects in children?

12 A. That's my belief and understanding of the
13 literature, yes.

14 Q. And that belief is based upon your review
15 of, of medical literature in various studies?

16 A. That's correct.

17 Q. What studies have you, have you reviewed to
18 lead you to that conclusion?

19 A. There are dozens of them. I mean, there are
20 essentially five or six cohorts of children out there
21 that are--have been or are being studied, and there
22 are tens of papers from each of those cohorts.

23 Q. Do you know if Monsanto has ever, has ever
24 been involved in any studies with respect to the
25 effects of PCBs on children?

1 A. Not that I know of.

2 Q. Do you know if the American Chemistry
3 Council has ever been involved in any PCB studies and
4 their effects on children?

5 A. As far as carrying out the studies, I don't
6 believe so.

7 Q. How about interpreting the studies?

8 A. Well, I think we talked it yesterday about
9 reviews that had been commissioned by ACC and
10 submitted to governmental agencies reviewing that
11 literature.

12 MR. LANGLAIS: I think that's all the
13 questions I have at this time.

14 EXAMINATION

15 QUESTIONS BY MS. O'NEAL:

16 Q. Dr. Kaley, my name is Lynne O'Neal, and I
17 represent Phelps Dodge, and in an effort to get us all
18 out of here sooner rather than later, I will do my
19 level best not to repeat anything that you've already
20 been asked in a day and a half, but I did have a few
21 follow-up questions and a couple of other series of
22 questions. If you don't understand any question I'm
23 asking you or if you think that, perhaps, we're
24 dealing with semantic issues, if you would, let me
25 know, because I want to make sure that your questions

1 and my answers match, so that anyone that can--

2 A. Or vice versa?

3 (Laughter.)

4 Q. Exactly. Exactly. I'll try to edit as we
5 go. Did you indicate, I believe, in your testimony
6 earlier, that you had had a conversation with Jim
7 Bryant within the past several years?

8 A. Yes.

9 Q. Is that right? What precipitated that
10 contact?

11 A. He called to let me know he'd been called by
12 the reporter from the Anniston Star.

13 Q. At the time that you had the conversation
14 with Mr. Bryant, did you gain an understanding as to
15 whether or not he had already participated in any
16 interviews with the Anniston Star on the mercury
17 issue?

18 A. I believe I understood that he had.

19 Q. And what did Mr. Bryant tell you during the
20 course of that conversation other than that he had
21 been contacted by reporters on the mercury issue?

22 A. Nothing.

23 Q. Did he give you any substance with regard to
24 his conversations or the subjects of the inquiry?

25 A. No.

1 Q. And did Mr. Bryant indicate to you the
2 purpose in calling you?

3 A. It was just giving me a heads up.

4 Q. How did you know Mr. Bryant?

5 A. I'd known him when we both worked at
6 Monsanto.

7 Q. In earlier testimony today, you were talking
8 about the buyback program and how that expanded one
9 time to include two or three additional areas. Do you
10 recall that?

11 A. Yes.

12 Q. The initial buyback area, I believe you
13 indicated there were 40 properties that could have
14 participated, and all but two or three did. Is that
15 correct?

16 A. That it is my understanding, yes.

17 Q. How many properties were included in the
18 expansion area?

19 A. I believe it was in the neighborhood of
20 twenty.

21 Q. And--

22 A. Uh--

23 Q. --how many of those--I'm sorry, I didn't
24 mean to interrupt.

25 A. I--there was one large landholder, so it was

1 a much smaller number.

2 Q. And how many of those properties
3 participated?

4 A. I think I said all but one.

5 Q. All but one? Perhaps I misunderstood your
6 earlier testimony, but my notes indicated that you
7 said that the south landfill did not flood because it
8 was located on a mountain.

9 A. That's correct.

10 Q. Is that correct? Would you, then, disagree
11 with the statement that the south landfill is located
12 at the base of Cold Water Mountain?

13 A. No.

14 Q. Not on the mountain, itself?

15 A. Well, we may be quibbling. I mean, it's
16 clearly on the slopes, downward slopes of the
17 mountain. It is not on flat ground; it is on a
18 sloping part of the mountain.

19 Q. But it is at the base of the mountain;
20 wouldn't you agree?

21 A. Yes.

22 Q. And in fact, the south landfill, at least
23 during a portion of its history, had an exposed clay
24 or dirt wall.

25 MR. NASSIF: Is that a question?

1 MS. O'NEAL: Question mark.

2 (Laughter.)

3 A. I don't know what that means.

4 MR. NASSIF: I'm sorry.

5 BY MS. O'NEAL:

6 Q. You don't know what that means? Uh, if you
7 were to observe the south landfill from the Monsanto
8 fence line--

9 A. Well, I'll, I'll assume I know--

10 Q. Directly across--

11 A. --what you mean. The Mon--

12 Q. --Highway 202.

13 A. Pardon? From across from Highway 202?

14 Q. Yes.

15 A. Okay.

16 Q. And you are gazing across at the south
17 landfill,--

18 A. Okay.

19 Q. --do you recall having done so and seeing
20 the exposed side of the mountain, i.e., a clay or dirt
21 wall exposed?

22 A. No. Now, during construction of the cover,
23 there was probably exposed clay during that
24 construction time in the 1990's, but besides--

25 Q. During the '60's and '70's, it's your

1 testimony that there was an exposed wall?

2 A. It's my testimony that there was?

3 Q. Not an exposed wall.

4 A. No, it's my testimony that I have no idea.

5 Q. You testified at some length with regard to
6 lead use at the Anniston facility. Who besides you
7 would have knowledge of the lead use at the Anniston
8 facility?

9 A. I think Jerry Brown's name has been raised.

10 Q. Anyone else?

11 A. Not that, that I know of.

12 Q. What were your instructions to Jerry Brown,
13 if any, concerning investigation or research into the
14 historical use of lead at the Anniston facility in
15 order to prepare your letter to ADEM?

16 A. I don't know that I gave Jerry any specific
17 instructions. I believe we got the request from ADEM
18 and Jerry and I, and I don't know whether it was Alan
19 or Craig at the time discussed what our approach would
20 be, along with the attorneys. It was, it was joint
21 effort. I mean, I was in no position to give Jerry
22 instructions. I think he relayed the information he
23 had to me, and it was incorporated into my report.

24 Q. What did you understand Jerry's
25 responsibilities to do --to be with regard to that

1 project?

2 A. To provide the information that he had and
3 to talk to former employees to see, you know, what
4 recollections they might have about that process.

5 Q. Did you understand that Jerry was to talk
6 with personnel who had been involved in the lead pot
7 process but who may not any longer work for Monsanto?

8 A. I don't know that I had that specific of an
9 understanding.

10 Q. You indicated that in addition to meeting
11 with Mr. Nassif and another lawyer from this firm
12 prior to your deposition, that you had met with
13 another lawyer about two weeks earlier for a period of
14 about four hours. What lawyer was that?

15 A. His name is Mike Kelly.

16 Q. And who does Mr. Kelly work for?

17 A. The Smith Moore law firm.

18 Q. You indicated that part of your
19 responsibilities as a consultant is to provide
20 technical support. What do you mean by "technical
21 support"?

22 A. Primarily, it's to remain current with and
23 aware of the scientific literature with regard to PCBs
24 and provide that literature and interpretations of it
25 to the attorneys representing Monsanto.

1 Q. You indicated in your testimony yesterday
2 that you had written agreements with Spriggs &
3 Hollingsworth and Integral Consulting. You also have
4 a written agreement with the Husch firm?

5 A. A retainer, yes. Retaining agreement.
6 Retention agreement. How's that?

7 Q. As opposed to a detention agreement.

8 (Laughter.)

9 Q. (Continuing) With regard to your background
10 and qualifications, Dr. Kaley, are you a hydrologist?

11 A. No.

12 Q. Are you an expert on air emissions?

13 A. I'm not sure what that means, but probably
14 in the terms you mean, no, I've not had college or
15 graduate training in studies of air emissions.

16 Q. Are you a toxicologist?

17 A. No.

18 Q. You indicated to Mr. Langlais that you had
19 served as an expert witness in one arbitration
20 proceeding--

21 A. Yes.

22 Q. --relating to a cleanup dispute on a piece
23 of property; is that correct? Or a building?

24 A. Generally, yes.

25 Q. Okay. What was the subject matter of your

1 testimony?

2 A. Basically, the development of the analytical
3 chemistry to PCBs and the combustion products of,
4 byproducts of PCBs.

5 Q. What was the name of that case? Do you
6 recall?

7 A. Uh, I don't know what the case name was.
8 The building was One Market Plaza in San Francisco.

9 Q. I believe there was a fire involved and
10 there were some deaths.

11 A. No, there were no deaths.

12 Q. There were no deaths?

13 A. No.

14 Q. Okay. When--you talked with Jerry Brown
15 about the lead pot process, and I think you said Jerry
16 reported his findings back to you for incorporation
17 into the report; is that correct?

18 A. Generally. I mean, "reported" is probably a
19 little fancier term than what it was, but there was a
20 conversation, yes.

21 Q. Jerry told you what he found out.

22 A. Yes.

23 Q. Okay. Do you know whether or not Mr. Brown
24 had taken any notes or statements from these former
25 employees or old employees of Monsanto concerning the

1 lead pot process?

2 A. I don't know.

3 Q. When you had this conversation with
4 Mr. Brown about his findings, was that conversation in
5 person? Was that conversation over the telephone?

6 A. Over the telephone.

7 Q. Okay. Did--I know you indicated you did not
8 recall who Mr. Brown talked to. Did he tell you at
9 the time who he had interviewed?

10 A. I don't recall whether he gave me names or
11 not. I don't know.

12 Q. Do you know whether there's any written
13 record of his conversations with these employees?

14 A. I don't know.

15 Q. To your knowledge, prior to the 1980's, were
16 any of the materials contained in the west end
17 landfill tested for PCBs or lead content?

18 A. Not that I'm aware of.

19 Q. Let's ask the same question with regard to
20 the south landfill.

21 A. Not that I'm aware of.

22 Q. You testified that with regard to the
23 landfills, the presence of a clay cap meant that there
24 was no mechanism for the PCBs to get away from or past
25 the surface; is that correct?

1 A. Generally true, yes.

2 Q. Absent a clay cap, is there a mechanism for
3 the PCBs to leave the landfill?

4 A. If--I mean surely, they could be carried
5 away by evaporation or by--with sediments by water
6 runoff.

7 Q. You also indicated that the lead pot process
8 was only used intermittently during the period, I
9 believe, from '61 to '64; is that correct?

10 A. Yes.

11 Q. And how did you come to know about the
12 intermittent nature of the use of those lead pot
13 process during that period?

14 A. I think it was in one of the documents. I
15 noted that in one of the documents I reviewed. Yeah,
16 I mean it says specifically, here, "These changes are
17 documented in Appendix J of Attachment 2," so I relied
18 on that document.

19 Q. And do you know what the term "intermittent"
20 meant in that context as far as how frequently they
21 were used, or whether it was a phase-in of the new
22 process, or how that worked?

23 A. Oh, I'm sure it was a phase-in, but I don't
24 know the extent of what intermittent means in that
25 context.

1 Q. This morning, you testified that if lead had
2 been leaking, it would solidify and be recovered. Do
3 you recall that?

4 A. That's my understanding.

5 Q. Now, I think you also said--and correct me
6 if I'm wrong, here--that that was an assumption that
7 you were making because that was the proper way to
8 deal with the issue; is that correct?

9 A. I--you are looking at the transcript. I'm
10 not sure exactly what--

11 Q. I'm looking at my notes--

12 A. Okay.

13 Q. --for clarification.

14 A. I believe I said something to that effect,
15 yes.

16 Q. But as far as the actual practice, you don't
17 know how lead issues were dealt with at the facility;
18 is that correct?

19 A. No.

20 Q. As far as losses?

21 A. That's correct.

22 Q. Your retainer group agreement with the Husch
23 firm, is it for a set period in time?

24 A. Uh, no, subject to cancellation by either
25 party at any time.

1 Q. Have you, Dr. Kaley, had any contact with
2 the customers of Monsanto with regard to PCB issues?

3 A. Ever?

4 Q. Yes.

5 A. Former customers?

6 Q. Yes, sir.

7 A. Yes.

8 Q. And in what context have you had those
9 communications?

10 A. A number of contacts, requests for MSDS's,
11 information about product makeup, general information
12 about PCBs, lots of different questions.

13 Q. Were these--

14 A. I mean, that's one of my--that has been and
15 remains one of my primary roles, is to handle
16 inquiries from outside the company about PCBs.

17 Q. Mr. Papageorge testified that when he first
18 came back to St. Louis in January of 1970, one of his
19 chief roles was basically to liaison on PCB issues.
20 Did you assume a similar-type role with regard to
21 PCBs?

22 A. I would call it a follow-up role because
23 obviously, when he came, we had customers, we were
24 making the product, there was a lot more dealing with
25 customers, there were changeover issues, there were

1 withdrawal from market issues, so I mean he actually
2 traveled to the plants, or of customers, met with
3 people at the other companies. I, I typically don't
4 do that. Mine are, are more--less and less frequent
5 phone call inquiries.

6 Q. Because there are fewer and fewer remaining
7 facilities that have any active PCB products; is that
8 correct?

9 A. Well, there probably aren't any that have
10 any active products, but there are fewer that have
11 active concerns about PCB issues.

12 Q. Are you aware of whether or not mercury was
13 discharged into the company storm sewer?

14 A. Into the company storm sewer? Um, I'm sure
15 there was some, some amounts discharged into the storm
16 sewer at various times.

17 Q. Would you agree that it's hard to quantify
18 those types of losses?

19 A. I think I said that somewhere.

20 Q. Did you participate in the brief description
21 of the use of mercury given by Solutia to ADEM in
22 1999?

23 A. Yes, I drafted that letter.

24 Q. And do you recall that the information
25 provided to ADEM indicated that Solutia most likely

1 did not release mercury into the environment?

2 A. I don't recall saying that. I may
3 have--what I recall saying was that there are, based
4 on the level--the analysis of mercuries in the
5 environment, there is no, has been no releases that
6 led to levels above background in the environment.

7 Q. Do you know how Monsanto dealt with or
8 disposed of its mercury-containing sludge?

9 A. I don't recall whether I addressed that or
10 not in the report.

11 Q. But do you know?

12 A. As I sit here today, I don't recall.

13 Q. Do you have any knowledge of the efforts and
14 direction given to Anniston Plant employees to find a
15 viable way to recycle the mercury into the
16 manufacturing process to eliminate losses?

17 A. Well, I know there was, there was a program
18 to eliminate losses, and that would have been, part of
19 that program, would have been to recover all the
20 mercury possible and put it back in the process, yes.

21 Q. Where did you get that knowledge?

22 A. I believe, from either SMPs about that
23 process or documentation around the, the reports
24 potentially on some of the efforts to, to implement
25 those controls.

1 Q. Any discussions with Jim Bryant about those
2 efforts?

3 A. No.

4 Q. Okay. Are you aware of the fact that those
5 efforts were largely unsuccessful?

6 A. I've seen that in a document, and I know
7 Mr. Bryant was quoted as saying that in the newspaper.
8 I don't necessarily agree with that, but I know
9 Mr. Bryant was quoted as saying that.

10 Q. Are you aware of the fact that there were
11 quantities of mercury spilled onto the ground at the
12 facility?

13 A. Yes.

14 Q. Okay, and that those pounds of, of mercury
15 were not recoverable or were not recovered when the
16 plant was shut down?

17 A. Some part of it probably were not. I
18 don't--again, it gets back to the whole question of at
19 this day and age, with the information that was
20 available, it's hard to quantify how much was and
21 wasn't, but I'm sure there are some small amounts that
22 were not recovered, but again, I would, I would
23 emphasize that in the mercury sampling we've done,
24 they're not, those levels are not seen in the Anniston
25 community or in the drainage pathways, so if they were

1 there, they're, you know, they're still at the plant
2 or they--and they're not at the plant because we don't
3 see them at the plant, either, so I, I don't know how
4 much would have been actually left in place after a
5 spill.

6 Q. Do you recall the theft of mercury from the
7 Monsanto facility in Anniston?

8 A. Well, yes, I know that, the outline or the
9 general outline of that story.

10 Q. Was--

11 A. But that was after the plant was shut down.
12 It was a theft or attempted theft of a truckload of
13 mercury that was being shipped back to St. Louis for
14 the process in St. Louis.

15 Q. And that was in 1969 when that process was
16 terminated; is that correct?

17 A. That's correct.

18 Q. And was that mercury recovered?

19 A. I believe it was, yes.

20 Q. Were you actually involved, Dr. Kaley, in
21 the process for attempting to recover the mercury and
22 recycle it into the manufacturing system?

23 A. No, I was not employed at that time by
24 Monsanto.

25 Q. Was Dr. Bryant involved in that process?

1 A. I don't know whether he was directly
2 involved or not.

3 Q. Are you familiar, Dr. Kaley, with the
4 sampling protocol that's used by Solutia with regard
5 to the residential yards in the Calhoun County area?

6 A. Uh, generally. There have been different
7 protocols used but generally, yes.

8 Q. Do you know or have you been told at what
9 depths foundry fill is encountered?

10 A. My recollection is that it's at various
11 depths, but I don't, I don't have any concrete
12 information, at this point. If I'd been told, I don't
13 recall what the numbers were.

14 Q. Is it your understanding that the sampling
15 protocol requires the top three inches to be tested
16 for PCBs and that if a reading of 1 ppb. or more is
17 encountered, then remediation is scheduled?

18 A. I believe that's generally correct. I mean,
19 it's a, it's a five-point composite for a given area
20 of a particular yard, and that determines the, either
21 the remediation or additional sampling.

22 Q. And the sampling is done at a depth of three
23 inches?

24 A. I believe that's the initial sampling. I
25 know there are, there are situations under which if,

1 if PCBs are detected above--maybe it's 1 or whatever
2 the point is, then sampling at greater depth is
3 required.

4 Q. But the initial sampling, it's your
5 understanding, is at a depth of three inches?

6 A. That's my recollection.

7 Q. And then depending on the reading, more
8 sampling may be required?

9 A. That's my recollection.

10 Q. All right.

11 A. I've not been involved in it for some time.

12 MR. NASSIF: Counsel, did you mean to say "1
13 ppb." or did you mean--

14 THE WITNESS: Oh, yes; sorry.

15 MR. NASSIF: --to say "1 ppm."?

16 MS. O'NEAL: Ppm.

17 MR. NASSIF: All right, can we correct it?

18 THE WITNESS: Thank you.

19 MR. NASSIF: Okay.

20 BY MS. O'NEAL:

21 Q. Dr. Kaley, do you know whether or not steel
22 bottoms were deposited in open, uncovered piles prior
23 to 1970?

24 A. Well, I believe--we talked earlier this
25 morning about the Montar pit, and that was an

1 uncovered pit into which the Montars were placed for
2 temporary storage, so--I mean, that did occur. Again,
3 and it's not Montars, it's the one specific Montar
4 from the polyphenyl process, not the PCB process.

5 Q. And when you say "Montars," I think my
6 question was still bottoms, so are we talking
7 about--are we splitting hairs?

8 A. Well, the Montars were specific still
9 bottoms from specific parts of the process.

10 Q. How were still bottoms created from the
11 production of biphenyl disposed of prior to 1970?

12 A. My understanding is that they were collected
13 and either sold as Montar or accumulated in the Montar
14 pit as it was called and then broken up and drummed
15 and placed in the landfill.

16 Q. And what is your understanding as to the
17 disposition of still bottoms from PCB manufacturing
18 prior to 1970?

19 A. My understanding is those were drummed and
20 placed in the landfills.

21 Q. Are you aware of any complaints made by area
22 residents concerning dust emanating from the facility?

23 A. I believe I, I have heard that there were
24 some. I don't have any particular information about
25 that.

1 Q. What do you recall about that?

2 A. Just that they existed.

3 Q. Are you aware of any investigation that was
4 done by Solutia with regard to those residential
5 citizen complaints concerning dust?

6 A. No. I mean, we're talking--you are not
7 talking in the recent remediation period, are you?

8 Q. No?

9 A. Are you talking the seven--'60's and '70's?

10 Q. Yes.

11 A. I don't know, other than I've heard that
12 they did have some complaints.

13 Q. Dr. Kaley, in your judgment, is it, is it
14 appropriate to judge a company's historical behavior
15 by modern standards?

16 MR. NASSIF: Object to the form.

17 BY MS. O'NEAL:

18 Q. (Continuing) You may answer.

19 MR. NASSIF: I'll object on the basis of
20 lack of foundation.

21 A. I think that depends on the behavior and the
22 standards to which you are comparing it to. I mean,
23 there are some circumstances where I think times have
24 changed and, and what's accepted as industrial,
25 standard industrial or accepted industrial practices

1 changes.

2 BY MS. O'NEAL:

3 Q. Have you ever made statements to the effect
4 that it's not fair to judge a company's behavior,
5 historical company behavior based on modern standards?

6 A. I don't recall, but I may have.

7 Q. In defending the conduct of Monsanto, have
8 you ever said that it's unfair to judge Monsanto's
9 behavior during the period of 1930 to 1970 based on
10 modern standards?

11 A. I may have. I believe that in some cases.

12 Q. In what cases do you not believe that to be
13 the case?

14 A. Well, I mean if there--I think if there is
15 intentional knowledge that something is being done
16 wrong, that the standards remain the same. I don't
17 think Monsanto ever did anything intentionally wrong
18 in Anniston. I believe they behaved and conducted
19 themselves in a manner consistent with, if not above
20 and beyond what was acceptable industry practice.

21 Q. Then would you agree, Dr. Kaley, that it's
22 not fair in that same context to judge other
23 industries based on modern standards in connection
24 with their historical conduct if it was unintentional
25 conduct?

1 MR. NASSIF: I'm going to object on the
2 basis that--object to the form and also lack of
3 foundation that the witness has any way to measure
4 what other industries did or didn't do, and he's not
5 qualified to answer that in regards to other
6 industries.

7 BY MR. LANGLAIS:

8 Q. You may answer, Dr. Kaley.

9 A. Again, I think it depends on the standard of
10 the particular action that you are talking about, and
11 in some cases, it may be appropriate; in some cases,
12 it may be not.

13 MS. O'NEAL: That's all I have, Wendy.

14 (Pause.)

15 MR. TAYLOR: Is Wendy going to ask some
16 questions?

17 MS. LAVEY: Yes, I am.

18 MR. TAYLOR: Okay.

19 MS. LAVEY: We're changing chairs.

20 MR. TAYLOR: Understood. I may have a few,
21 too.

22 EXAMINATION

23 QUESTIONS BY MS. LAVEY:

24 Q. Dr. Kaley, again, my name is Wendy Lavey,
25 and I represent Mead Westvaco Corporation in this

1 litigation. I, too, will try not to repeat anything,
2 and I think we're nearing the finish, here. I had a
3 couple of follow-up questions on Exhibit Number 7,
4 which was your affidavit in the Billy Nelson case?

5 A. I have that.

6 Q. Okay, if you could turn to page 15, in the
7 first full paragraph in the middle of that page, it is
8 describing interim measures at this point in your
9 affidavit?

10 A. Yes.

11 Q. Okay. Item number 1 refers to the diversion
12 of storm water run-on, upgradient of the south
13 landfill. Do you see that?

14 A. I do.

15 Q. Do you recall how storm water run-on,
16 upgradient of the south landfill, was handled prior to
17 implementation of this interim measure?

18 A. It was not handled. I mean, the storm water
19 ran where it was easiest, the path of the least
20 resistance to get down the hill.

21 Q. Would that include over the south landfill?

22 A. I'm sure there was some small amount over
23 the south landfill, but there were gullies and, you
24 know, lower portions of the landfill where most of the
25 runoff would accumulate on its way to Highway 202.

1 Q. You also indicated that this landfill was up
2 against the base of Cold Mountain, correct?

3 A. Cold Water Mountain.

4 Q. Cold Water Mountain?

5 A. Yes. It's on the side of the base.

6 Q. So storm water presumably would run down the
7 mountain, and at that point, there's not a gully, it's
8 going to cross the landfill, isn't it?

9 A. Well, the cells on the landfill are actually
10 slightly elevated above what would have been the
11 normal slope of the, the mountain, so in reality, the
12 major part of the water is going to go around the
13 landfill cells rather than over the top of them, but
14 there would, I assume, be some small amount that you
15 would--that would fall on top and run down those
16 sides.

17 Q. On that same page, the second item refers to
18 the upgrade of the cap on a portion of the south
19 landfill?

20 A. That's correct.

21 Q. Okay. What portion of the south landfill
22 required a cap upgrade?

23 A. It was the western portion.

24 Q. And why was an upgrade required?

25 A. Because PCBs were detected in superficial

1 soils on part of that landfill.

2 Q. Was that part of the landfill an older
3 section or a more recent section of the landfill?

4 A. I don't know.

5 Q. Mr. Langlais had asked you to indicate on
6 the map where the north drainage ditch was located,
7 and I believe you marked on the map an area north of
8 the railroad; correct?

9 A. That's correct.

10 Q. Is that property where the north drainage
11 ditch is located, is that property owned by Solutia?

12 A. It was acquired during the extension of the
13 property purchase program.

14 Q. Okay.

15 A. That was, the one of the areas of the
16 extension of that property purchase program, so yes,
17 now it is owned by Solutia.

18 Q. But it was not previously owned by Solutia?
19 They acquired it fairly recently?

20 A. They acquired it in approximately--or in the
21 mid 1990's as part of the property purchase program,
22 that's correct.

23 Q. Was there a single property owner associated
24 with the purchase of that area, or is this a
25 collection of multiple residences?

1 A. There was one woman who owned many of the
2 properties in the area, and then there were other
3 individuals property owners.

4 Q. Was there a former industrial facility in
5 that location?

6 A. No, that, that is south of that area.
7 That's actually, I believe--well, I'm not going to
8 say. I think that's on the south side of the railroad
9 tracks but I'm not, I'm not sure. No, the area that
10 we purchased was all residential property.

11 Q. Okay. As part of the property purchase
12 program, was any industrial property acquired?

13 A. Not as part of the property purchase
14 program. Some industrial properties have been
15 acquired, acquired independent of that program, and
16 some have been acquired as a result of settlements of
17 lawsuits.

18 Q. Okay, do you recall which industrial
19 properties have been purchased?

20 A. Um, there was a, there was a metal recycling
21 concern near the north area we were talking about just
22 previously. I believe we purchased an auto repair
23 shop along Clydesdale Avenue, we purchased the ice
24 house, which is essentially a stop-and-go-like or we
25 acquired a stop-and-go-like property as part of a

1 settlement of a lawsuit. Those are the ones I recall.
2 There may have been more.

3 Q. Were any former foundry properties acquired
4 as a part of either the formal program or otherwise?

5 A. Not that I'm aware of.

6 Q. I want to review, hopefully very briefly,
7 some of the information from early yesterday, make
8 sure that I got my notes correct, but my understanding
9 is you became the Manager of Product Acceptability in
10 approximately 1985.

11 A. That's correct.

12 Q. Okay, and at that point in time, you were
13 reporting to Mr. Craddock?

14 A. That's correct.

15 Q. And he, in turn, was reporting to
16 Mr. McCarville?

17 A. That's correct.

18 Q. Okay.

19 A. Both doctors.

20 Q. And what were Dr. Craddock's title at that
21 time when you were reporting to him?

22 A. I'm not even sure what my title was.

23 Q. Okay.

24 A. That was an approximation. His was, it
25 could have been Director of Product Acceptability or

1 something similar.

2 Q. And Mr. McCarville's title, do you recall
3 that?

4 A. I believe he was Director of Environmental
5 Affairs. I'm more sure about that.

6 Q. And then when he retired, you became the
7 Director of Environmental Affairs; is that right?

8 A. That's correct.

9 Q. Did you just leapfrog over Mr. Craddock, or
10 did he retire in that same time frame?

11 A. The first, first, and then the second. I
12 mean, John reported to me for a short period of time
13 and then he retired.

14 Q. Okay. Okay, and when you became the Manager
15 of Product Acceptability, just prior to that, you had
16 been--this was your return stint in Corporate as a
17 Senior Research Specialist?

18 A. Yes, and I'd like to correct that. I
19 believe that, that yesterday I said I went from Senior
20 Research Chemist to Certain Research Specialist about
21 1976. I don't think there was a promotion involved in
22 that. I think I changed laboratories but I remained a
23 Senior Research Chemist, then became Group Leader, and
24 then became Senior Research Specialist, so I would
25 like to correct that.

1 Q. Consider it done.

2 A. Thank you. I'm sure it's really important.

3 (Laughter.)

4 Q. Now, as Senior Research Specialist, after
5 you had been Group Leader, just prior to becoming
6 Manager of Product Acceptability, I believe you
7 testified that at that point in time, you had little
8 or perhaps no involvement with PCBs during that
9 particular time frame; is that correct?

10 A. I was in the laboratory. I had few, if any,
11 responsibilities to do analytical PCB work, but I was
12 still consulted by outside, you know, other people in
13 the company on PCB analytical questions.

14 Q. Okay, and was that the basis for your
15 qualifications to become Manager of Product
16 Acceptability relating to PCB issues?

17 A. That was a large part of it, I believe, yes.

18 Q. When you became the Manager of Product
19 Acceptability in 1985, I'm trying to sort out where
20 Bill Papageorge fit in the organization at that time.
21 What was his position in 1985?

22 A. Well, he--I'm not sure, but he was something
23 like a product acceptability manager, but it was for a
24 product line, a currently-existing product line with
25 no relationship to PCBs whatsoever.

1 Q. Okay.

2 A. I think whenever--I don't know what the
3 exact date but when Bill left, in about 1976, the PCB
4 area directly, then he moved on to non-PCB areas of
5 responsibility, so while he was still there and may
6 have been something like a Manager of Product
7 Acceptability, it was for an existing product line,
8 not for PCBs.

9 Q. Okay. When you became the Director of
10 Environmental Affairs when Mr. McCarville retired, you
11 indicated yesterday that your primary role was as an
12 internal company resource on PCBs, and you also
13 referred to other legacy chemicals. Do you recall
14 that?

15 A. Yes, I do.

16 Q. What were the other legacy chemicals for
17 which you had some responsibility?

18 A. Pentachlorophenol, and the other primarily
19 was phenoxy herbicides.

20 Q. Were either of those products made at the
21 Anniston Plant?

22 A. No.

23 Q. You've testified that the only location
24 within Monsanto where biphenyls were being produced
25 was at Anniston; correct?

1 A. That's my understanding.

2 Q. Do you recall the names of other
3 manufacturers of biphenyls in the United States?

4 A. I don't know of any. I mean, I don't know
5 whether there are any or not. I certainly don't know
6 any names.

7 Q. You indicated that the, the--"purpose" might
8 not be the right, the right term, but the reason a
9 lead pot process was being used, the molten lead
10 provided the heat environment in which the reaction
11 would need to take place; is that correct?

12 A. That's my understanding, yes.

13 Q. Are you aware of any other similar use of
14 molten lead in a Monsanto production process
15 throughout its history?

16 A. No, I'm not.

17 Q. Okay. Have you ever heard of a lead pot
18 process being utilized in connection with phosphate
19 production processes?

20 A. No.

21 Q. Do you recall--"recall" is not the right
22 word, either--do you know if an outside contractor was
23 used for landfill responsibilities when it was in
24 active use, speaking of the south landfill?

25 A. I don't believe so, but I don't, I don't

1 know for sure.

2 Q. Okay. Are you familiar with the term
3 "conceptual site model?

4 A. Yes.

5 Q. And are you familiar with the conceptual
6 site model development for the Anniston Plant under
7 the RCRA corrective action proceedings?

8 A. In, in a very general way, yes.

9 Q. Did you have any involvement in developing
10 the conceptual site model?

11 A. Other than reviewing drafts and providing
12 probably minimal comments, no.

13 Q. Okay, would Mr. Branchfield be the person
14 who is most familiar with the development of the
15 conceptual site model?

16 A. Either here--he or Mr. Faust. It's a very
17 early stage in the process, so Mr. Faust may have had
18 more direct responsibility for that.

19 Q. I believe you testified, in discussing some
20 of the characteristics of PCBs, that they are not
21 soluble in water? Is that correct?

22 A. Generally, that's correct, yes.

23 Q. And--

24 A. I mean they are very, very, very slightly
25 soluble in water. They're essentially soluble in

1 water.

2 Q. And PCBs also adhere to particulate? Is
3 that correct?

4 A. That's correct.

5 Q. When flooding occurred in the vicinity of
6 the ditches, and so forth, that are in and around the
7 Anniston Plant, after those flood waters recede,
8 wouldn't it be true that PCB-contaminated material
9 would be left behind as those flood waters recede?

10 A. Oh, certainly. I think that explains the
11 levels of PCBs found in some of the residential
12 properties adjacent to the creeks, yes.

13 Q. When the ground has died--has dried,
14 wouldn't it be possible, then, for that
15 PCB-contaminated material to become airborne dust?

16 A. Some small amounts may have been, sure.

17 Q. Do you know if that potential pathway was
18 evaluated as part of the development of the conceptual
19 site model at Anniston?

20 A. I--it may have been. I don't recall
21 specifically, you know, whether it was particularly or
22 not.

23 Q. When the south landfill was being upgraded,
24 do you know whether any dust control measures were put
25 into place at that time?

1 A. Yes, they were.

2 Q. What type of dust control measures were put
3 into place?

4 A. Primarily, water sprays.

5 Q. Do you know if dust control measures were in
6 place during the active operation of the landfill?

7 A. I don't know.

8 Q. And the same question with respect to the
9 west landfill: When that work was being done, were
10 dust control measures put into place?

11 A. When the remediation was being done, yes.

12 Q. And what were those control measures?

13 A. Again, water sprays.

14 Q. When the water spray was applied during
15 these remediation activities, was the water collected
16 in some fashion or allowed to run off?

17 A. I--my recollection is that there wasn't
18 enough to create runoff, that there was just enough
19 applied to keep dust down.

20 Q. So the water would just soak into the
21 ground?

22 A. Yes, that's my understanding.

23 Q. Was any monitoring done during the
24 remediation work at the west landfill of any PCB
25 levels in the air?

1 A. No. I believe there was just dust
2 monitoring was all the monitoring that was done.

3 Q. And the same question with respect to the
4 south landfill; do you know if any air monitoring for
5 PCB levels was done during that work?

6 A. I believe not.

7 Q. To your knowledge, have the Anniston, any
8 Anniston employees had their blood tested for lead
9 levels?

10 A. Not that I know of.

11 Q. Did there ever come a point in time when
12 Monsanto entered into a program to cease using PCB
13 fluid in dielectric equipment at its various plants?

14 A. Yes, we entered a program to at least
15 minimize that to the extent possible.

16 Q. When did that program come into place?

17 A. Sometime after 1980.

18 Q. Was that an area of responsibility for you?

19 A. Eventually, it did become one, yes.

20 Q. And that program applied at the Anniston
21 Plant, did it?

22 A. It applied at all the plants. It was a
23 voluntary program. It wasn't compulsory, but the
24 plants were encouraged to eliminate as much PCB
25 equipment as possible.

1 Q. Do you have a recollection as to when, if at
2 all, that program was implemented at the Anniston
3 Plant?

4 A. I'm sure it was, and I don't know what the
5 completion date was.

6 Q. Who would be the person who would be most
7 familiar with that program implementation at Anniston?

8 A. Again, I'm going to pick on Jerry Brown,
9 because I don't know who else to point you to to begin
10 with.

11 Q. What year did Jerry Brown retire?

12 A. The mid 1990's sometime. I don't know
13 specifically.

14 MS. LAVEY: That's all I have. Thank you,
15 Dr. Kaley.

16 THE WITNESS: All right, thank you.

17 MR. NASSIF: Anybody have questions on the,
18 on the phone?

19 MR. TAYLOR: Yeah, this is Jerry Taylor.
20 I've got a few. You want me to go?

21 MS. O'NEAL: Please.

22 EXAMINATION

23 QUESTIONS BY MR. TAYLOR:

24 Q. Dr. Kaley, can you hear me okay?

25 A. Yes, I can. You are faint, but I can hear

1 you.

2 Q. All right, I'll try to speak up. This is
3 Jerry Taylor with the Maynard, Cooper & Gale law firm.
4 I represent McWane, FMC, and United Defense, and like
5 both Ms. O'Neal and Ms. Lavey, I'll try not to ask you
6 questions you've already been asked. I know you've
7 been asked some questions about your involvement in or
8 assistance in previous litigation that Monsanto or
9 Solutia has been involved in, but I want to try to
10 gain an understanding of what role, if any, you've had
11 in this particular case you are being deposed about
12 today. Let me ask this first; what is your
13 understanding of this lawsuit that Solutia and
14 Monsanto have filed against these defendants that you
15 are being deposed about today?

16 A. My understanding is that it's an action
17 to--for contribution to recover--to recover
18 contribu--excuse me, for contribution to costs
19 incurred in cleaning up Anniston properties.

20 Q. All right, and prior to the lawsuit being
21 filed, were you part of any effort to assist lawyers
22 or, or the company with evaluating that particular
23 issue?

24 MR. NASSIF: Hang on. You can answer
25 factually whether you were part of any effort.

1 A. I don't believe I was part of any conscious
2 effort leading to that--leading down that path.

3 BY MR. TAYLOR:

4 Q. All right, let me ask it a different way.
5 Have you ever evaluated the issue of whether or not
6 entities other than Monsanto or Solutia, their
7 Anniston facility, is a contributor to PCBs that have
8 been found in the environment outside of the plant in
9 Anniston?

10 A. I've certainly considered those issues.

11 Q. All right, and have you considered those at
12 the request of counsel, or have you just considered
13 them generally?

14 A. I would say both.

15 Q. All right, and have you also been asked to
16 evaluate the issue of whether or not entities other
17 than Monsanto or Solutia at their Anniston facility,
18 being a contributor to heavy metals, or lead, or
19 constituents other than PCBs that have been found in
20 the environment outside of the plant?

21 A. Uh, no.

22 Q. So your evaluation, then, has been limited
23 to the PCB issue?

24 A. Yes.

25 Q. And have you, have you been asked to provide

1 an expert opinion in this case on that PCB issue?

2 MR. NASSIF: Hang on.

3 MR. TAYLOR: I know, Joe, that you have not
4 identified him as an expert, but--

5 MR. NASSIF: I don't think, I don't think we
6 are required to identify our experts, and asking that
7 question is potentially a privilege situation to the
8 extent that we may be considering using him as an
9 expert and having had discussions with him but have
10 not yet identified him, Jerry.

11 MR. TAYLOR: Right.

12 MR. NASSIF: So I don't think it's
13 appropriate for him to answer that question at this
14 time. If he's identified as an expert, you'll know it
15 when that, that is a requirement. Now, if you are
16 really excited about asking that question, you and I
17 can talk about it privately.

18 MR. TAYLOR: All right, let me go about it
19 this way, and obviously, Joe, you speak up when you
20 need to or feel you need to.

21 BY MR. TAYLOR:

22 Q. Dr. Kaley, did you review the Complaint that
23 was filed in this case prior to its being filed?

24 A. I don't, I don't, I don't believe so.

25 Q. And there has been discovery that has been

1 issued by various defendants in this case to
2 Solutia/Monsanto for which responses have been filed
3 by Solutia/Monsanto. Have you been involved in that
4 effort, either gathering facts or helping craft those
5 answers?

6 A. Certainly not having crafted the answers. I
7 may have been asked a question here or there, but I
8 have not played any major role.

9 MR. TAYLOR: I'm going to think about where
10 I'm going with that, Joe, and if we need to have a
11 private conversation, we can, but let me move on to a
12 couple of other things while I'm thinking about that
13 at the same time.

14 BY MR. TAYLOR:

15 Q. You were asked a little while ago,
16 Dr. Kaley, about certain properties that were
17 purchased by Solutia in the area of or surrounding the
18 Anniston facility; right?

19 A. Yes.

20 Q. Do you know who did the due diligence on
21 those properties that were purchased? And by "due
22 diligence," I mean to include either whether or not
23 there was environmental investigations done or
24 previous ownership determinations made.

25 A. The environmental investigations had been

1 done by Solutia. That was the basis of the property
2 purchase program. As far as property ownership, that
3 was handled by Prudential.

4 Q. The, the title work, in other words?

5 A. Yes.

6 Q. Okay, so if I wanted to find out what
7 information was obtained about previous ownership of
8 those properties, I would need to ask Prudential those
9 questions? You would not know?

10 A. I certainly don't know.

11 Q. Okay.

12 MR. NASSIF: I would suspect that--I'm not
13 sure that the Prudential information, which I haven't
14 seen, Jerry, I don't know that that Prudential
15 information isn't privileged.

16 A. And actually, as the more I think about it,
17 the more I think Solutia or Monsanto at the time
18 engaged a local attorney to do the title searches. I
19 believe that is the correct, actually what the
20 situation was, that Prudential, itself, did not do it,
21 that it was a local attorney engaged to do that.

22 BY MR. TAYLOR:

23 Q. And then who would have rendered, like, a
24 title opinion of some kind?

25 A. I, I don't know.

1 Q. Okay. You--in answering, Ms. O'Neal was
2 asking you some questions about the sampling protocol
3 that you understood Solutia was following, taking a
4 sample of the top three inches in five different
5 areas, and I believe she also asked you whether you
6 had an understanding of what depth foundry sand or
7 foundry fill had been encountered, according to
8 Solutia, and I think your answer was various steps.
9 Do I recall that correctly?

10 A. That's my understanding.

11 Q. Okay, have you ever been at--to one of these
12 residential yards where remediation was going on or
13 where foundry sand or foundry fill was encountered?

14 A. No.

15 Q. What various steps, if you could--can you be
16 any more specific about that?

17 A. No. You've, you've reached the limit of my
18 knowledge.

19 Q. Okay. All right, let me, let me probe with
20 a couple of questions, and then if you still don't
21 know, I'll move on. Is it your understanding that as
22 the foundry sand or foundry fill that has been
23 uncovered is uncovered only when the, the remediation
24 excavation is going on?

25 A. I don't know.

1 Q. So if, if the protocol is that the top three
2 inches is sampled, and if over one ppm of PCB is
3 found, the top foot of the yard is removed, you don't
4 know whether or not it's when that activity occurs
5 that the foundry sand has been encountered?

6 A. I don't know specifically when it has been,
7 no.

8 (Pause.)

9 MR. TAYLOR: I'm looking over my notes; just
10 give me a second.

11 BY MR. TAYLOR:

12 Q. Are you familiar at all or have you looked
13 at any kind of documentation or information that would
14 allow you to say you have some familiarity with the
15 pipe foundries that either were or are in the Anniston
16 area?

17 A. No.

18 Q. Have you ever been in one of those
19 foundries?

20 A. No.

21 Q. Are you familiar at all with their
22 historical practices of handling materials, or
23 liquids, or anything like that?

24 A. No.

25 Q. Are you familiar at all with their

1 historical use of PCB oils?

2 A. No.

3 Q. So when you, when you said, when you said
4 earlier that you looked at or may have an opinion
5 about whether or not other facilities are contributors
6 to PCBs, that would--what would that be based on, if
7 not some understanding of those other facilities' use
8 or possession of PCB materials?

9 A. Let me break in a minute and say that the
10 videographer is signifying that we only have--oh, I
11 thought he was saying five minutes on the tape. I'm
12 sorry, he was waving at someone.

13 MS. LAVEY: Fifteen. You missed the first
14 ten.

15 A. (Continuing) All right, sorry. It's based
16 primarily on the ADEM list of other potential sources
17 of PCBs and it's based on my more general knowledge
18 that PCBs, some applications of PCBs did involve
19 applications in foundries. There was nothing specific
20 to Anniston in that, in that understanding at this
21 point.

22 BY MR. TAYLOR:

23 Q. I know you have not been involved in detail
24 in the investigation and remediation activities Craig
25 Branchfield and others have been; right?

1 A. Right.

2 Q. Is that correct?

3 A. That is correct.

4 Q. Do you know whether or not Solutia or
5 Monsanto have engaged in any, as part of their
6 investigation, in any kind of--I'm not sure if this is
7 a correct way of saying it or not--distinction between
8 the types of PCBs that are being found?

9 MR. NASSIF: Object on the basis that to the
10 extent he's had any conversations with counsel about
11 that, I'm going to instruct the witness not to answer.
12 If he's had conversations outside of discussions with
13 counsel or discussions pursuant to instructions from
14 counsel, the witness can answer the question.

15 BY MR. TAYLOR:

16 Q. Go ahead.

17 A. Okay, under that, all right, those kinds of
18 discussions have been held with counsel.

19 MR. TAYLOR: Okay. Well--

20 MR. NASSIF: Okay, he just answered your
21 question.

22 MR. TAYLOR: --so are you objecting to him
23 at least confirming with me that that is a subject
24 matter of which he has been involved? I know you are
25 not going to let me ask him about it because that

1 would be your statement, "privileged," but will you
2 allow him to at least confirm that that is something
3 he has looked into or, or knows about?

4 MR. NASSIF: No.

5 MR. TAYLOR: Okay.

6 MR. NASSIF: I think the fact if he, if he
7 has looked into something pursuant to instructions of
8 counsel, I think the fact that he's looked into it is
9 privileged. If he did it on his own, I'd let you ask
10 him about it, but he already answered your question if
11 you heard his answer. Wendy is nodding yes, so
12 everybody in the room heard it, but I'm sure you were
13 concentrating on your--

14 MR. TAYLOR: I heard it. I just wanted to a
15 step further.

16 MR. NASSIF: That's right. Well, I'm not
17 going to let that happen.

18 MR. TAYLOR: I figured you wouldn't.

19 MR. NASSIF: Even though I'm such a nice
20 guy.

21 MR. TAYLOR: Right.

22 (Speaking to the court reporter) Erase that
23 shit about me being a nice guy.

24 THE COURT REPORTER: It's in stone.

25 BY MR. TAYLOR:

1 Q. So based on your earlier testimony, then,
2 Dr. Kaley, you would not have any current opinion, or
3 thought, or facts about what McWane, FMC or United
4 Defense did or didn't do specifically at, at their
5 facilities in the Anniston area?

6 A. That is--

7 Q. Is that correct?

8 A. That is correct.

9 Q. If you have some opinion, it would just be
10 based on some general understanding of what different
11 types of companies may have had or used in terms of
12 PCBs?

13 A. I have no opinion.

14 MR. TAYLOR: Okay, that's all I have.

15 MR. NASSIF: Anybody else have any questions
16 on the phone?

17 MS. RUTLEDGE: No.

18 MS. SMITH: No.

19 MR. NASSIF: Okay, we done?

20 MS. LAVEY: I have one follow-up question.
21 This is Wendy Lavey again.

22 MR. NASSIF: One question.

23 MS. LAVEY: One question.

24 FURTHER EXAMINATION

25 BY MS. LAVEY:

1 Q. You referred to an ADEM list of other PCB
2 sources a few moments ago? Do you recall, sitting
3 here today, any of those sources on that list?

4 A. I don't. I think I was asked that by
5 Mr. Langlais and didn't recall any of those names.

6 MS. LAVEY: Just checking to see if we were
7 talking about the same list.

8 A. (Continuing) The one I referred to in my
9 affidavit.

10 MS. LAVEY: Thank you. That's all I have.

11 MR. NASSIF: Thank you.

12 THE VIDEOGRAPHER: This concludes the
13 deposition of Robert Kaley II. We are off the record
14 at 2:27 P.M.

15 (Whereupon, at 2:27 P.M., the
16 deposition was concluded.)

17

18

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25

1 Page 12 Line 16 Should Read: November 8th

2 Reason for change:

3 Transcription error

4 Page 42 Line 5-6 Should Read: did them = ADEM

5 Reason for change:

6 Transcription error

7 Page 44 Line 20 Should Read: July 31st

8 Reason for change:

9 Misspoke

10 Page 56 Line 18 Should Read: failing = fairly

11 Reason for change:

12 Transcription error

13 Page 65 Line 14-15 Should Read: July 31st, 2003

14 Reason for change:

15 Misspoke

16 Page 85 Line 16 Should Read: specific = persistent

17 Reason for change:

18 Transcription error

19 Page 137 Line 6, 8, 9 Should Read: Krummrich

20 Reason for change:

21 Spelling

22 Page 170 Line 2 Should Read: marked = marketed

23 Reason for change:

24 Transcription error

25

1 Page 193 Line 11 Should Read: belief = brief

2 Reason for change:

3 Transcription error

4 Page 202 Line 22 Should Read: TP = tepee

5 Reason for change:

6 Transcription error

7 Page 203 Line 7 Should Read: TP = tepee

8 Reason for change:

9 Transcription error

10 Page 204 Line 16 Should Read: was official = were
11 superficial

Reason for change:

12 Transcription error

13 Page 217 Line 19 Should Read: policy = poly-

14 Reason for change:

15 Transcription error

16 Page 270 Line 25 Should Read: A. = a

17 Reason for change:

18 Transcription error

19 Page 300 Line 5 Should Read: lot = hot

20 Reason for change:

21 Transcription error

22 Page Line Should Read:

23 Reason for change:

24

25

1 Comes now the witness, ROBERT GEORGE KALEY II, Volume,
2 and having read the the foregoing transcript
3 of the deposition taken on the 9/30/2004,
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6 on the date hereinabove mentioned.

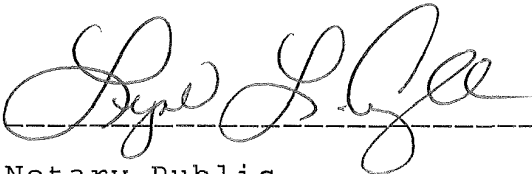
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8 
9 _____

10 ROBERT GEORGE KALEY II, Volume

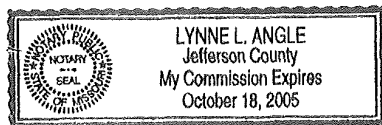
11
12 Subscribed and sworn to me before this

13 27th day of October, 2004.

14 My Commission expires

15
16 
17 _____

18 Notary Public



Gore Perry Gateway & Lipa St. Louis, MO
(314) 241-6750 621-4790 621-2571 621-8883

1 State of Missouri)
2) SS.

3 City of St. Louis)

4 I, J. Bryan Jordan, a Notary Public in
5 and for the State of Missouri, duly commissioned,
6 qualified and authorized to administer oaths and to
7 certify to depositions, do hereby certify that
8 pursuant to Notice in the civil cause now pending and
9 undetermined in the In the United States District
10 Court For the Northern District of Alabama, to be used
11 in the trial of said cause in said court, I was
12 attended at the offices of Husch & Eppenberger, LLC,
13 in the County of St. Louis, State of Missouri, by the
14 aforesaid witness and by the aforesaid attorneys, on
15 the 30th day of September, 2004.

16 The said witness, being of sound mind
17 and being by me first carefully examined and duly
18 cautioned and sworn to testify the truth, the whole
19 truth, and nothing but the truth in the case
20 aforesaid, thereupon testified as is shown in the
21 foregoing transcript, said testimony being by me
22 reported in shorthand and caused to be transcribed
23 into typewriting, and that the foregoing pages
24 correctly set forth the testimony of the
25 aforementioned witness, together with the questions

1 propounded by counsel and remarks and objections of
2 counsel thereto, and is in all respects a full, true,
3 correct and complete transcript of the questions
4 propounded to and the answers given by said witness;
5 that signature of the deponent was not waived by
6 agreement of counsel.

7 I further certify that I am not of
8 counsel or attorney for either of the parties to said
9 suit, not related to nor interested in any of the
10 parties or their attorneys.

11 Witness my hand and notarial seal at
12 St. Louis, Missouri, this 14th day of October, 2004.

13
14
15 J. Bryan Jordan

16 Certified Court Reporter No. 00532

17 State of Missouri

18 My License expires: January 1, 2005
19
20
21
22
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4 Joseph G. Nassif, Esq.

5 Husch & Eppenberger, LLC

6 190 Carondelet Plaza, Suite 600

7 St. Louis, MO 63105-3441

8

9 Enclosed please find the Original Signature pages

10 and errata sheets for the deposition of:

11 ROBERT GEORGE KALEY II, Volume taken 9/30/2004 in the case of:

12 Solutia, et al., vs. McWane, et al.

13 Please read your copy of the transcript, noting

14 any corrections on the enclosed erratta sheets,

15 and return all pages for filing in court to:

16 Wendlene M. Lavey, Esq.

17 Squire, Sanders & Dempsey, L.L.P.

18 4900 Key Tower

19 127 Public Square

20 Your prompt cooperation will be appreciated.

21 Sincerely,

22

23 Gore Perry Gateway & Lipa Reporting

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5 true and accurate transcript of the testimony given
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7

8

9

10 _____
10 ROBERT GEORGE KALEY II, Volume

11

12 Subscribed and sworn to me before this

13 _____ day of _____, 2004.

14 My Commission expires

15

16

17

18 _____
18 Notary Public

19

20

21

22

23

1 COURT MEMO

2 .

3 4

5 Solutia, et al., vs. McWane, et al.

6 CV-03-PWG-134-E

7

8 CERTIFICATE OF OFFICER AND

9 STATEMENT OF DEPOSITION CHARGES

10

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12 TAKEN ON BEHALF OF THE DEFENDANT

13 9/30/2004

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10 my hand and seal on this _____ day of _____
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