

Anniston #5
Cheever

1

IN THE 30TH JUDICIAL CIRCUIT COURT FOR
ST. CLAIR COUNTY, ALABAMA
PELL CITY DIVISION

THOMAS C. DYER, ET AL,

Plaintiff,

vs.

MONSANTO COMPANY, ET AL,

Defendant.

NO. CV-93-250

Consolidated For Discovery With

SHELTER COVE MANAGEMENT,
INC., ET AL,

Plaintiff,

vs.

MONSANTO COMPANY, ET AL,

Defendant.

NO. CV 94-50-PH

DEPOSITION OF ROBERT L. CHEEVER
Taken on behalf of the Plaintiff
September 3, 1998

COPY

REPORTER: Kevin J. Weichman, CSR-RPR No. 084-003189



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I N D E X O F E X A M I N A T I O N

QUESTIONS BY:	PAGE
MR. GRAMMAS	5

I N D E X O F E X H I B I T S

Plaintiff's 1	31
Plaintiff's 2	101
Plaintiff's 3	105
Plaintiff's 4	110

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Defendant.)

THE DEPOSITION OF ROBERT L. CHEEVER, produced,
sworn, and examined on behalf of the Plaintiff, on
Thursday, September 3, 1998, at 9:00 a.m., at the
offices of Taylor & Schroeder Reporting & Video, 7494
Ethel Avenue, St. Louis, Missouri, before KEVIN J.
WEICHMAN, a Certified Shorthand Reporter, Registered
Professional Reporter, and Notary Public within and for
the County of St. Louis, State of Missouri.

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1 IT IS STIPULATED AND AGREED by and between
2 counsel for the Plaintiff and counsel for the Defendant
3 that the deposition of ROBERT L. CHEEVER may be taken
4 pursuant to and in accordance with the provisions of
5 the Federal Rules of Civil Procedure pertaining to such
6 depositions, by and on behalf of the Plaintiff, on
7 Thursday, September 3, 1998, at the offices of Taylor &
8 Schroeder Reporting & Video, 7494 Ethel Avenue, St.
9 Louis, Missouri, before KEVIN J. WEICHMAN, a Certified
10 Shorthand Reporter and Notary Public within and for the
11 County of St. Louis, State of Missouri.

12 * * * * *

13
14 ROBERT L. CHEEVER
15 of lawful age, being produced, sworn, and examined on
16 the part of the Plaintiff, after answering "I do" to
17 the oath administered by the court reporter, deposes
18 and says:

19 DIRECT EXAMINATION

20 BY MR. GRAMMAS:

21 Q. Mr. Cheever, could you state your full name
22 for the record, please.

23 A. Robert Lewis Cheever.

24 Q. And who are you currently employed with?

25 A. Solutia.

1 Q. And is Solutia the company that took over
2 Monsanto, at least as far as the claims that are
3 involved in this lawsuit from the Monsanto Anniston
4 plant?

5 A. Solutia is a spun-off organization from
6 Monsanto. We're the chemical businesses of Monsanto,
7 yes, sir.

8 Q. And that would include the Anniston plant?

9 A. Yes, sir.

10 Q. In Anniston, Alabama?

11 A. Yes, sir.

12 Q. Have you ever been to that plant?

13 A. Yes, sir.

14 Q. Did you ever work down there or what was the
15 occasion for you to go there?

16 A. I was employed there from 1983 to 1990.

17 Q. And during that time, who was your employer,
18 both Monsanto and Solutia?

19 A. Solutia came into existence in 1997, so it was
20 only Monsanto.

21 Q. And what were you employed as from 1983 to
22 1990?

23 A. The environmental specialist for the Anniston
24 plant.

25 Q. And what does that title entail?

1 A. It involved managing the day-to-day activities
2 around air emission control, air permitting, wastewater
3 discharge and wastewater permitting, managing the solid
4 waste management facilities on site plus working with
5 solid waste disposal and management of the solid waste
6 off-site.

7 Q. Were you the senior employee at the plant
8 during that period of time?

9 A. No, sir.

10 Q. What is being made at that plant today?

11 MR. COX: If you know.

12 THE WITNESS: I'm sorry?

13 MR. COX: If you know.

14 THE WITNESS: I really don't know. When I
15 was -- my understanding, I haven't been there since I
16 left, but at the time I left they were making biphenyls
17 and paranitrophenole, PNP.

18 BY MR. GRAMMAS:

19 Q. Could you spell "biphenyls" and all that that
20 you just said for the court reporter. Do you know how
21 to spell it?

22 A. Sure, I can try. Biphenyl is B-I-P-H-E-N-Y-L.
23 Paranitrophenole is P-A-R-A-N-I-T-R-O-P-H-E-N-O-L-E.

24 Q. Is there a difference between biphenyls and
25 what we call "PCBs" or polychlorinated biphenyls?

1 A. It's my understanding that yes, there is a
2 difference.

3 Q. And what's the difference?

4 A. I'm not sure.

5 Q. Tell me real quickly your educational
6 background.

7 A. I'm a mechanical engineer by degree. I have
8 done some course work in environmental engineering
9 towards a master's.

10 Q. Towards a master's?

11 A. Uh-huh.

12 Q. Does that mean that you didn't receive a
13 master's degree?

14 A. I didn't complete the program, yes, sir.

15 Q. What college did you get your mechanical
16 engineering degree from?

17 A. University of Vermont.

18 Q. And what year was that?

19 A. 1969.

20 Q. And what course work did you -- what college
21 did you take your master's degree or your master's
22 course work?

23 A. I took some courses at the University of
24 Massachusetts in Amherst and at Rensselaer Polytechnic
25 Institute.

2

1 Q. What was that?

2 A. RPI, Rensselaer Polytechnic Institute.

3 Q. And how many courses are you shy of having
4 a --

5 A. I just took two different courses, one course
6 at each university.

7 Q. Is there any other formal education you've
8 received other than obviously in high school?

9 A. 30 years of on-the-job experience. That's not
10 quite formal, I guess.

11 Q. Tell me your work history starting from, I
12 guess, when you graduated from the University of
13 Vermont in '69.

14 A. I joined Monsanto Company in Indian Orchard,
15 which is a plant which is in Springfield,
16 Massachusetts, as a project engineer. I spent ten
17 years there.

18 Q. What did you do as a project engineer there?

19 A. I managed capital additions and
20 maintenance-type projects around utility projects; some
21 early environmental projects, "early" being that
22 environmental regulations didn't come into much play
23 until the early '70s; and also involved in working in
24 one of the manufacturing areas as a project engineer.

25 Q. When you say you worked in some environmental

2

1 projects, what type of work were you doing back then?
2 And this would be, I guess, the late '60s, early '70s?

3 A. '69 into '79 I worked at Indian Orchard. The
4 kind of projects we were involved in were wastewater
5 discharge sampling, managing the permit program, worked
6 as the Monsanto representative on an area-wide or
7 regional wastewater treatment plant that the City of
8 Springfield put in which included both municipal and
9 industrial wastewaters that were being collected. I
10 was Monsanto's representative on that particular
11 project.

3

12 Q. What types of chemicals were you-all sampling
13 for? Were PCBs one of them?

14 A. I don't recall.

15 Q. And you were there for ten years?

16 A. Yes, sir.

17 Q. What else did you do after that?

18 A. I transferred to corporate engineering in
19 St. Louis as an environmental design engineer. I spent
20 four years there. 1983 I --

21 Q. Hold on just a second. So from '79 to '83,
22 you were an environmental design engineer. What did
23 you do as an environmental design engineer for Monsanto
24 during that period of time?

25 A. I was the environmental representative on the

3

1 design of corporate -- project -- corporate-size
2 projects, involved with -- major projects that I was
3 involved in was incineration and wastewater treatment.

4 Q. Any other major projects?

5 A. Not that I recall.

6 Q. When you say "incineration," what do you mean?

7 A. I was involved with three different
8 incinerators. One was known as the -- what was called
9 the "area-wide" incinerator, which a -- Monsanto was
10 designing at that particular point in time a solid
11 waste rotary-kiln-type incineration facility to be
12 located at Sauget, Illinois, and it was going to be
13 sized such that it was to take chemical wastes from --
14 solid wastes from Monsanto facilities in the Midwest
15 region and bring them all to one site for treatment.

16 Q. For incineration, burning?

17 A. Uh-huh.

18 Q. That would include PCBs?

19 A. I don't recall PCBs as part of it.

20 Q. And what was your role in the designing of
21 this area-wide incinerator?

22 A. My role was to work with the site and get it
23 permitted by the EPA.

24 Q. Were you able to do that?

25 A. Yes, we were.

3

1 Q. Is it operating today?

2 A. It was never built.

3 Q. Why's that?

4 A. Cost. The cost of installation and operation
5 was more than what the company could financially -- I'm
6 trying to think of the right word.

7 Q. Cost too much to build?

8 A. Well, it didn't cost too much to build, but
9 when you did the economic value of putting it up versus
10 continuing to use commercial facilities, it was -- the
11 commercial route was more cost effective and the
12 company decided that they didn't want to get into the
13 waste disposal business.

14 Q. So what does the company do instead since it
15 did not build this area-wide incinerator for --

16 A. Continues to --

17 MR. COX: You need to not cut him off.

18 THE WITNESS: I'm sorry.

19 BY MR. GRAMMAS:

20 Q. And you are doing great. Believe me, most
21 witnesses and most lawyers would be overlapping much
22 more than we have.

23 A. We use commercial-available facilities that
24 are available across the country.

25 Q. And what is that, like, hazardous wet

3

1 landfills and things like that?

2 A. We utilize the services of what was Rollins
3 and now Laidlaw and Chemical Waste Management for the
4 treatment and disposal of solid wastes.

5 Q. So basically what you're testifying is, is
6 Monsanto made a business decision to continue to pay
7 other companies who were already in the business of
8 chemical and hazardous waste disposals rather than
9 getting into it itself?

10 A. Yes, sir.

11 Q. Okay. During '79 to '83, you said there were
12 three incinerator projects, one was called an area-wide
13 project. What were the other two names?

14 A. The other two involved incineration of vapors,
15 off of barge and rail cars, two facilities in Texas.

16 Q. Help me out here. What do you mean by that,
17 vapors off of barge and rail cars in Texas?

18 A. Monsanto had two sites in Texas, one in Texas
19 City and one in Alvin, where they loaded chemical
20 products into either rail cars or barges for shipment
21 off to customers, and it was -- projects involved
22 taking the displaced vapors off of those two
23 containers, either rail car or barge, and conveying
24 them to a thermal oxidizer for destruction.

25 Q. Now, I guess the problem I'm having, was this

3

1 a facility that you-all actually built to burn vapors;
2 is that what I'm hearing you say?

3 A. Yes.

4 Q. And I guess the reason I'm having trouble
5 understanding exactly what you're saying is if there
6 are rail cars or barges involved, it tells me that
7 there's motion involved, they're taking these chemicals
8 that Monsanto's manufacturing to some source, the
9 customers, correct?

10 A. That's correct.

11 Q. So how is it that you can burn vapors at one
12 facility when, once they're placed on these cars or
13 barges, you're taking them all over the country or the
14 world even?

15 A. Because when you pump a liquid chemical into
16 an empty container, some of the liquid flashes into the
17 vapor space. Additionally, there is vapor that was in
18 the container from the last time it was used in that
19 particular service, and when you take an empty
20 container and you put liquid in it, you force the
21 vapors out the top. So as opposed to dumping the
22 vapors into the atmosphere, we collected the vapors and
23 thermally destructed them.

24 Q. So the vapors needed to be burned, if I
25 understand what you're saying, only when they were

4

4

1 being -- when the chemicals were being loaded into the
2 barge and the rail cars in the tanks?

3 A. That's right.

4 Q. And once they're in there, they're capped and
5 the vapors aren't escaping?

6 A. That's correct.

7 Q. What about when they got to their source, what
8 happened to them then?

9 A. I don't know.

10 Q. So we had an area-wide incinerator that you
11 worked on during '79 to '83, and a vapor incinerator in
12 Texas; is that right?

13 A. Two separate ones that were essentially
14 identical, yes, sir.

15 Q. And they were both in Texas?

16 A. Yes.

17 Q. And are those the three incinerators that you
18 worked on during that time?

19 A. Yes, sir.

20 Q. And you were involved in, from an engineering
21 standpoint, designing how these incinerators were to be
22 manufactured and operated?

23 A. The area-wide incinerator I was involved only
24 in the permitting of it, getting a PSD permit. The
25 other two I was involved in the design of the thermal

4

1 oxidizer itself, yes, sir.

2 Q. Now, the area-wide was never constructed, if I
3 understand your testimony --

4 A. That's correct.

5 Q. -- but the other two were?

6 A. Yes, they were.

7 Q. And are they in operation today?

8 A. I don't know.

9 Q. Do you currently work for Solutia?

10 A. Yes, I do.

11 Q. And what are you employed as today?

12 A. I'm the environmental safety and health
13 coordinator at Solutia's plant.

14 Q. Where is that?

15 A. St. Louis, Missouri.

16 Q. From '83 -- after '83 what did you do?

17 A. Well, from '83 -- from '83 to 1990, I was the
18 environmental specialist at the Anniston plant,
19 A-N-N-I-S-T-O-N.

20 Q. Could you repeat your position again, I didn't
21 catch it.

22 A. Environmental specialist.

23 Q. There's been a document identified in a case
24 styled Hinds v Monsanto filed in federal court in
25 Alabama, and I believe -- I don't know if this -- no,

4

1 it wasn't this document. I read it off of another
2 document, where you were the senior environmental
3 specialist at the plant; is that a correct title?

4 A. I was promoted after being there for two or
5 three years. That was my title when I left, yes, sir.

6 Q. Okay. What is the difference between being an
7 environmental specialist and senior environmental
8 specialist, if anything?

9 A. It's a pay-grade level.

10 Q. How many environmental specialists did
11 Anniston employ at the plant while you were there?

12 A. One.

13 Q. And that was you?

14 A. Yes, sir.

15 Q. So when you became a senior environmental
16 specialist, did your duties change or just your pay?

17 A. Essentially the pay. It was a recognition of
18 years of service, opportunity to move into a higher pay
19 grade so that you can be recognized for achievements.

20 Q. Now, I've read somewhere that as part of your
21 responsibilities as a senior environmental specialist,
22 you were responsible for recordkeeping, inspections,
23 report preparations, inventory control, and a PCB-free
24 plant; does that sound all accurate and correct to you?

25 A. Yes, sir.

4

1 Q. Anything else that you were responsible for at
2 that time?

3 A. Not that I can recall.

4 Q. Now, what were your job duties as they related
5 to recordkeeping for Monsanto in '83 to '90 while you
6 were employed at the Anniston plant?

7 A. As I remember, primarily the recordkeeping was
8 involved around permit -- air permitting, permit
9 compliance, wastewater discharge permit compliance, and
10 the operation of the on-site solid waste management
11 facilities.

12 Q. Any other records you kept?

13 A. Not that I can recall.

14 Q. You've already told me this, but what was
15 Monsanto making during that time period?

16 A. During that time period?

17 Q. Uh-huh.

18 MR. COX: You haven't asked that question.

19 BY MR. GRAMMAS:

20 Q. What were they making during that time?

21 A. In addition to biphenyls and the
22 p-nitrophenol, they were making phosphorus
23 pentasulfide, P₂S₅, and parathion, and ethyl and methyl
24 parathion.

25 Q. What are these chemicals used for?

4
1 A. Parathion was a cotton pesticide used in
2 application on cotton fields. Phosphorous
3 pentachloride, P2S5, is used as a -- in many
4 applications, one being lubricating oils, motor oils,
5 and help with the lubricity in motor oil.

6 Q. What about the other two you mentioned?

7 A. Additionally P2S5, as I recall, was used as a
8 feed stock (PHONETIC) for parathion, as well.

9 Q. Used as a what?

10 A. A feed stock, a raw material for the making of
11 parathion, and they were coupled together for that
12 reason.

13 Q. Could you spell parathion?

14 A. P-A-R-A-T-H-I-O-N. One's methyl, one's ethyl,
15 depending on what the raw material is. One is made in
16 the summer, one is made in the winter.

17 Q. And both were used to kill --

18 A. Boll weevils.

19 Q. Can they kill anything else besides boll
20 weevils?

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

22 Q. What other uses did these chemicals have?

23 A. I don't know.

24 Q. So the recordkeeping you were responsible for
25 included air compliance, wastewater discharges, and

5 1 solid waste management, correct?

2 A. As I recall.

3 Q. The wastewater discharges go where, sir?

4 A. Process waste --

5 MR. COX: At what time?

6 MR. GRAMMAS: At that time.

7 MR. COX: '83 to '90.

8 BY MR. GRAMMAS:

9 Q. Yeah, '83 to '90. When you were responsible
10 and when you were overseeing wastewater discharges,
11 where did the wastewater go?

12 A. Process wastewater was treated on-site and
13 then discharged to the City of Anniston public
14 wastewater, a publicly owned wastewater treatment
15 plant. Noncontact cooling water and storm waters were
16 conveyed directly to an unnamed tributary of Snow
17 Creek.

18 Q. And Snow Creek flows into Choccolocco Creek,
19 correct?

20 A. That's correct.

21 Q. And Choccolocco Creek flows into Lake Logan
22 Martin, correct?

23 A. Yes.

24 Q. Some of the waste that Monsanto was generating
25 between that time period was ending up in Snow Creek,

5

1 Choccolocco Creek, and Lake Logan Martin, wasn't it?

2 MR. COX: Object to the form.

3 THE WITNESS: Noncontact cooling water and
4 storm water was being discharged in that direction.
5 I'm not sure that I would call that process waste.

6 BY MR. GRAMMAS:

7 Q. I didn't ask you if the process waste was
8 being discharged directly into these sources, and we'll
9 talk about that in a minute. My question is really
10 more limited. During the period of 1983 to 1990 when
11 Monsanto was manufacturing these chemicals that were
12 used as pesticides and lubricating oils, among other
13 things, some of those chemicals found their way into
14 Snow Creek, Choccolocco Creek, and Lake Logan Martin,
15 didn't they?

16 MR. COX: Object to the form.

17 THE WITNESS: I don't know the answer to that
18 question.

19 BY MR. GRAMMAS:

20 Q. Did you ever have any spills while you were
21 there, chemicals?

22 A. I don't recall.

23 Q. You were the senior environmental specialist,
24 at least at some point in time while you were there,
25 and you were the environmental specialist the entire

5
1 time. I would assume, as the environmental specialist,
2 you were responsible for being apprised of chemical
3 spills at the plant?

4 A. Yes, sir.

5 Q. And that would be part of your recordkeeping,
6 your inspections, and your reports, correct?

7 A. Yes, sir.

8 Q. Now, you're saying, during the entire time
9 that you were there for that seven or eight years,
10 you're not aware of a single chemical spill at the
11 plant?

12 A. I don't remember anything. It could have
13 been, but I don't remember.

14 Q. Would it be unusual for Monsanto to operate a
15 plant for that length of time and not have a single
16 chemical spill?

17 A. No.

18 Q. That would not be unusual?

19 A. That would not be unusual.

20 Q. You would expect for Monsanto to operate
21 during that -- almost an entire decade and not have a
22 single chemical spill?

23 A. Yep.

24 Q. And sitting here today, not one spill stands
25 out in your mind?

5

1 A. No, sir. There could have been, but I don't
2 recall anything off the top of my head.

3 Q. If there were chemical spills, did Monsanto
4 have a process or some type of policy in place to
5 collect chemicals that may have been spilled?

6 A. Yes, sir.

7 Q. And what was that policy?

8 A. It was to -- my recollection from the time was
9 the policy was to contain, you know, stop -- if it was
10 a spill, to stop the source, contain it, immediately
11 clean it up, and dispose of it in an approved manner.

12 Q. And what would that include?

13 A. It depends on the material that had been
14 spilled and its form, how it was captured. Primary
15 objective would have been to try to reuse it if at all
16 possible, capture it and reuse it. If it was a liquid,
17 it would have been containerized and treated off-site
18 by an incineration method, and if it was a solid
19 material and met the criteria available or approved, it
20 likely would have been landfilled.

21 Q. Did Monsanto have a landfill at the plant?

22 A. Yes, sir.

23 Q. And still has a landfill there, doesn't it?

24 A. I don't know that.

25 Q. Did the landfill -- how was that landfill

5

1 constructed, do you know? Were you responsible for
2 constructing the landfill?

3 A. No, I was not.

4 Q. And have you seen any documents or papers that
5 tell you how that landfill was constructed?

6 A. I believe I did.

7 Q. And what kind of documents did you see?

8 A. I recall seeing project documentation around
9 the construction of some of it.

10 Q. Are you familiar with the phrase "Subtitle D
11 Landfill"?

12 A. Yes.

13 Q. Are the landfills that Monsanto constructed at
14 the Anniston plant in compliance with Subtitle D
15 landfills?

16 MR. COX: Object to the form. Those
17 regulations didn't even exist when this landfill was
18 constructed.

19 But you can answer the question.

20 THE WITNESS: Could you repeat it again?

21 BY MR. GRAMMAS:

22 Q. Yeah. Are the landfills that are at the
23 Monsanto Anniston plant in compliance with Subtitle D
24 landfills?

25 MR. COX: Same objection.

6

6

1 THE WITNESS: I don't know the answer to that
2 question because I'm not familiar with all of the
3 requirements of Subtitle D landfills at this point in
4 time.

5 BY MR. GRAMMAS:

6 Q. One of the requirements of a Subtitle D
7 landfill is to put a liner system or a leachate
8 collection system in the Subtitle D landfill; isn't
9 that correct?

10 A. I don't know the rules.

11 Q. Well, let me ask you this --

12 A. I know where the rules are and how to use them
13 and look them up. I don't have them committed to
14 memory.

15 Q. That's understandable.

16 You do know that the landfills Monsanto
17 constructed to store the solid waste and various other
18 wastes do not have liners in them that control
19 leachate; isn't that true?

20 MR. COX: Object to the form.

21 THE WITNESS: It's my recollection that at
22 least one of the active cells that was in use at the
23 time that I was there had a leachate collection using
24 compacted clay as a liner. Did not have a synthetic
25 liner, it had compacted clay, but it did have a

6

1 leachate collection system involved.

2 Q. But whatever -- if the ground didn't perc,
3 then it was going to have a collection device; if the
4 ground did perc, then it wouldn't; is that a fair way
5 of saying that?

6 A. I don't understand the question.

7 Q. Well, there was nothing constructed in there
8 to make certain that nothing leaked out of that
9 landfill other than whatever the texture or content of
10 the soil is, correct?

11 A. That's my understanding, yes.

12 Q. And Monsanto had serious concerns about
13 groundwater contamination as a result of the way these
14 landfills are constructed, don't they?

15 A. Not that I'm aware of.

16 Q. You're not aware of any concerns Monsanto has
17 about chemicals leaking or leaching from its landfills,
18 even as we sit here today, that will contaminate local
19 drinking water?

20 A. No, sir.

21 Q. Let me ask you this: As the senior
22 environmental specialist for Monsanto between 1983 and
23 1990 at the Anniston plant, would that have been the
24 type of information that would have come to your
25 attention?

6

1 MR. COX: Object to the form. What type of
2 information?

3 BY MR. GRAMMAS:

4 Q. Should that have been the type of information
5 that would have come to your attention?

6 MR. COX: What type of information, are you
7 talking about the landfill construction or groundwater
8 contamination.

9 MR. GRAMMAS: Groundwater contamination.

10 MR. COX: Thanks.

11 THE WITNESS: Yes, it would have.

12 BY MR. GRAMMAS:

13 Q. And sitting here today, you're not aware of
14 any documents or of any statements that any employee
15 from Monsanto had with you regarding concerns about
16 groundwater contamination; is that a fair statement?

17 A. I'm not aware of any.

18 Q. How many landfills are on-site, to your
19 knowledge, at the Anniston plant?

20 A. There is only one landfill that I'm aware of.
21 There were several cells within it, but there's only
22 one landfill. So I'm not -- I don't know how you
23 define a landfill. I'm struggling with that.

24 Q. That's fair. How many cells are you aware of?

25 First of all, when you say "cell," what do you

6

1 mean?

2 A. Areas for waste disposal.

3 Q. How many cells were there?

4 A. I don't recall the exact number. There were
5 several that were active. There were several that were
6 inactive when I got there.

7 Q. Tell me, to the best of your recollection, how
8 many there were.

9 A. To the best of my recollection, there were,
10 like, maybe ten different cells, nine or ten different
11 cells.

12 Q. And how many of those were active?

13 A. Maybe half, as I recall.

14 Q. How many of those cells contained PCBs?

15 A. I don't recall.

16 Q. Is that something that you should know, you
17 should have known back then in 1983 to 1990 as the
18 senior environmental specialist at the Anniston plant?

19 A. No. I was -- I was involved with the ongoing
20 activities of the materials that were being
21 manufactured at the time, and I wasn't involved in
22 maintaining or archiving past information.

23 Q. Were you responsible for making sure that you
24 were going to be in compliance with all current
25 environmental regulations at that time regarding runoff

6 1 from any of the active and inactive cells?

2 A. Yes, sir.

3 Q. And if PCBs were in fact contained in the
4 inactive cells and they were leaking out, that would
5 have come under your responsibility, wouldn't it?

6 A. Yes, sir.

7 Q. So it is a fair statement to say that you
8 should have been concerned about leaks with PCBs even
9 though those products were not being currently
10 manufactured while you were there, correct?

11 A. I guess if I had known about it, yes, sir.

12 Q. Isn't it a fact that PCBs were leaking out of
13 inactive landfills during the entire time that you were
14 there?

15 A. Not that I'm aware of.

16 Q. And that would have been something that you
17 should have been aware of if that were true, correct?

18 A. Yes, it would have been.

19 Q. And it's your belief that no PCBs were leaking
20 out of any landfill cells at any time while you were
21 present at Monsanto?

22 A. Not that I recall.

23 Q. Were there any fish advisories posted on Snow
24 Creek, Choccolocco Creek, or Lake Logan Martin at the
25 time you came to the Anniston plant?

7

1 A. I don't recall.

2 MR. COX: In 1983, is what he's asking.

3 THE WITNESS: I understand, and I don't
4 recall. That was 15 years ago and my memory's not all
5 that great.

6 BY MR. GRAMMAS:

7 Q. Do you know if there are any fish advisories
8 posted on those bodies of water as we sit here today?

9 A. I don't know. I would doubt that there'd be
10 any on Snow Creek because it hardly has enough water in
11 it most of the time to have fish.

12 Q. But you wouldn't doubt that there'd be fish
13 advisories at Choccolocco Creek, would you?

14 A. I don't keep up with what's going on in the
15 State of Alabama.

16 Q. When did Monsanto stop making PCBs at the
17 Anniston plant?

18 A. I don't know exactly when. My recollection is
19 it was in the mid '60s, '65, '66, '67, somewhere in
20 that time frame, but I don't recall exactly when.

21 MR. COX: For the record, we believe it was in
22 '71 and '72 when Anniston stopped making PCBs. Bob
23 obviously wasn't there. So he's not testifying when it
24 was stopped, I'm just telling you when we think it was
25 stopped.

7
1 (PLAINTIFF'S EXHIBIT NO. 1 WAS FIRST DULY
2 MARKED, RECEIVED AND MADE A PART OF THE RECORD.)
3 BY MR. GRAMMAS:

4 Q. You, as the senior environmental specialist at
5 Monsanto, would have certainly been apprised of any
6 notice of violations of permits or groundwater
7 contamination between '83 and '90 at the Anniston
8 plant, would you not?

9 A. Yes, sir.

10 Q. I'm going to show you what's been marked as
11 Plaintiff's Exhibit 1 to your deposition. Would you
12 tell me what that is, Mr. Cheever. For right now I'm
13 more concerned with the first two pages.

14 MR. COX: Go ahead and look at the document.

15 BY MR. GRAMMAS:

16 Q. The first page, Mr. Cheever, is a document
17 from the Alabama Department of Environmental Management
18 talking to you about groundwater contamination, isn't
19 it?

20 A. It's addressed to Jerry Brown, but I got a
21 copy of it, yes, sir.

22 Q. Who's Jerry Brown?

23 A. He was my supervisor while I was employed at
24 Anniston.

25 Q. He worked at Anniston?

7

1 A. Yes, he did.

2 Q. And that document right there's talking about
3 groundwater contamination, right, the Alabama
4 Department of Environmental Management, correct?

5 A. It talks about the inspection of the system
6 and some concerns that they had, yes, sir.

7 Q. Now, you told me earlier that you weren't
8 aware of any concerns Monsanto had about groundwater
9 contamination, didn't you?

10 MR. COX: Object to the form. You talked
11 about contamination of drinking water sources in your
12 questions, Pete. I think that's what he was responding
13 to.

14 BY MR. GRAMMAS:

15 Q. The question speaks for itself and the record
16 reflects what the question was, but my question to you
17 right now is: Isn't it a fact that I asked you earlier
18 about whether Monsanto had any concerns about
19 groundwater contamination?

20 MR. COX: I object to the form. You're still
21 changing the question, Pete.

22 BY MR. GRAMMAS:

23 Q. Do you recall that?

24 A. Yeah, I think I recall the question, yes, sir.

25 Q. And you testified that you weren't aware of

7

1 any as the senior environmental manager at Monsanto,
2 right?

3 A. That's what I said, yes, sir.

4 Q. And we know on, January 14, 1997 -- or
5 actually there's a "Received" stamp on January 20,
6 1997 --

7 MR. COX: 1987.

8 BY MR. GRAMMAS:

9 Q. Excuse me, '87, that you received a copy of a
10 document from the Alabama Department of Environmental
11 Regulation citing Monsanto for groundwater violations,
12 correct?

13 A. It's a suspicion.

14 Q. Right above your name there's a paragraph
15 that -- or a section of a letter that talks about a
16 violation description, right? Did I read that
17 correctly?

18 A. That's a citation from the Alabama
19 Administrative Code, yes, sir.

20 Q. And it says "violation description," right?

21 A. That's what it says, yes, sir.

22 Q. On the second full paragraph of this letter to
23 Mr. Brown where you received a copy, Mr. Cheever, Mr.
24 Bernard -- strike that.

25 Do you know who Mr. Bernard Cox is at the

7

1 Alabama Department of Environmental Management?

2 A. I knew what he was at the time I worked there.
3 I don't know what he is today.

4 Q. Okay. What was he?

5 A. He was in charge of the hazardous waste
6 branch, Alabama Department of Environmental Management.

7 Q. And he dealt with you on a regular basis at
8 the Anniston plant, didn't he?

9 A. Yes, we dealt with him on a fairly routine
10 basis.

11 Q. And that's because even at that time Monsanto
12 was manufacturing hazardous products, correct?

13 A. We were manufacturing chemicals for use in
14 commerce, yes, sir.

15 Q. That were considered hazardous, correct?

16 A. If mishandled and disposed of, some were
17 considered hazardous, yes, sir.

18 Q. Right. And one of the things he was concerned
19 about in his discussions with you was groundwater
20 contamination, wasn't he?

21 A. We had a fully permitted hazardous waste
22 management facility, part of which required us to
23 monitor for groundwater in the upper sediments or upper
24 soil layers around the site, yes, sir.

25 Q. Mr. Cox was concerned about groundwater

8

8

1 contamination at the Monsanto plant and discussed those
2 concerns with you on numerous occasions, correct?

3 A. The potential for them.

4 Q. He says here that his review of information
5 indicates, based on data received from you --

6 A. Uh-huh.

7 Q. -- that drinking water standards violations
8 have occurred in several monitoring wells, doesn't he?

9 A. That's what it says, yes, sir.

10 Q. And you don't dispute his findings, do you?

11 A. No.

12 Q. So you are aware of groundwater contamination
13 at the Monsanto plant, correct?

14 A. Yeah, I was at that time. Like I say,
15 groundwater around those particular units were being
16 monitored. I guess it depends on how you define
17 "groundwater."

18 Q. During your tenure at the Anniston plant, sir,
19 what if any information did you receive regarding PCBs?

20 A. I don't recall everything that I received.

21 All the information when an employee starts at a
22 facility --

23 Q. I'm sorry, I didn't hear.

24 A. When a new employee starts at a facility or
25 transfers in to a facility, they're given an

8

1 indoctrination which includes historical overview or
2 perspective of the site and I was told about what had
3 been made there, what had been manufactured, and what
4 had gone on as far as I needed to know regarding my
5 job, but I don't recall every -- you know, that was 15
6 years ago. I don't recall every last thing that was
7 said to me, discussed with me.

8 Q. But what you do know is that Monsanto, from a
9 period of around, I believe, the 1920s through --

10 MR. COX: Do you want me to help you? 1935 is
11 when Monsanto bought the plant. PCBs were manufactured
12 there commercially beginning in 1929 when it was Swann
13 Chemical, and the PCB production continued until
14 approximately 1971.

15 BY MR. GRAMMAS:

16 Q. Right. And in your indoctrination courses,
17 you knew that Monsanto produced PCBs at the Anniston
18 plant from 1929 to 1971, correct?

19 A. Yes, sir, I was likely told that.

20 Q. You were also told, in your indoctrination
21 course when you came to the Anniston plant, that PCBs
22 were discharged into Snow Creek, Choccolocco Creek, and
23 Lake Logan Martin from the Monsanto plant, right?

24 A. I don't recall being told that.

25 Q. You don't know that?

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1 A. I don't recall being told that.

2 Q. Would that be something you should have been
3 told as a senior environmental specialist?

4 A. I don't know whether I should have been told
5 or not.

6 Q. Let me ask you this: Isn't it a fact, Mr.
7 Cheever, that PCBs manufactured by Monsanto at the
8 Anniston plant are in Snow Creek, Choccolocco Creek,
9 and Lake Logan Martin?

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

11 Q. You don't know that?

12 A. I don't know the answer to that, whether it's
13 a fact or not.

14 Q. Shouldn't you know the answer to that when you
15 were there from 1983 to 1990 as the senior
16 environmental specialist?

17 A. We weren't manufacturing PCBs when I was
18 there, and I was involved primarily in maintenance of
19 the ongoing activities as opposed to what had
20 transpired 15 years previous.

21 Q. Well, you were responsible for PCB sampling at
22 the Anniston plant, weren't you?

23 A. PCB sampling at --

24 Q. Right.

25 A. I'm not sure I understand the question.

8

1 Q. I'm not sure I do either, but there's a
2 document that's been found that's styled Cecil Hinds
3 and Richard Hinds v Monsanto Company where lawyers on
4 your behalf had described your general knowledge of
5 testimony as one of -- at least one thing, being
6 responsible for PCB sampling at the Anniston plant. Is
7 that not correct?

8 MR. COX: Why don't you ask him what PCB
9 sampling he was involved in while he was there at the
10 Anniston plant.

11 MR. GRAMMAS: I'll ask him what I want to ask
12 him.

13 MR. COX: He can answer the question that's
14 posed to him first.

15 BY MR. GRAMMAS:

16 Q. Were you not responsible for any PCB sampling
17 at the Anniston plant?

18 A. When we were doing sampling for groundwater or
19 around the landfill on a routine basis, I'm sure PCB
20 was part of that, but I don't recall exactly.

21 Q. You were also responsible --

22 A. If you're asking me if I went out there
23 specifically looking for PCBs, I don't ever recall
24 doing that.

25 Q. Do you know what PCBs are?

8

1 A. Do I know what they are?

2 Q. Yes, sir.

3 A. Yes, I do.

4 Q. Tell me what they are.

5 A. They're a polychlorinated biphenyl, which was
6 a heat transfer dielectric fluid used in electrical
7 transformers and capacitors. It's also used in
8 carbonless carbon paper and fluorescent light ballasts
9 among other things.

10 Q. What is the concern that the federal
11 government has regarding PCBs, to your knowledge?

12 A. It's my understanding that the concern is the
13 fact that it accumulates in the environment,
14 bioaccumulates.

15 Q. It also bioaccumulates in aquatic life,
16 doesn't it?

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

18 Q. It also bioaccumulates in any living organism
19 that ingests it, doesn't it?

20 A. That's my understanding. I've heard that or
21 read that.

22 Q. Including human beings, right?

23 A. I don't know the answer to that. I would
24 guess.

25 Q. If people are eating fish with PCB in it, the

9

1 PCB's going to get in the people, isn't it?

2 A. I would imagine.

3 Q. PCB's not a good thing to have in your body,
4 is it?

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

6 Q. You don't?

7 A. I'm not a toxicologist.

8 Q. I understand that, but you've reviewed a lot
9 of documents about PCBs during your 30 years at
10 Monsanto, I imagine, haven't you?

11 A. I'm not sure what "a lot" is.

12 Q. Well, let me ask you this: Have you ever seen
13 a document at any time during your entire 30-year
14 employment at Monsanto that even suggested to you that
15 PCBs are not a good thing to have in your body?

16 A. I don't recall seeing that as a document.

17 Q. Are you aware of any documents where Monsanto
18 talks about PCBs being toxic to animals?

19 A. No.

20 Q. As an environmental specialist at the Anniston
21 plant, wouldn't that be something that you should be
22 aware of, whether PCBs are toxic to animals or humans
23 or the environment?

24 A. No, I don't think so.

25 Q. Did you receive any bulletins or memos or

9

1 anything like that from Monsanto's headquarters
2 regarding PCBs while you were at the Anniston plant
3 between 1983 and 1990?

4 A. I don't recall. I received a lot of
5 information, a lot of mail, but I don't recall specific
6 information.

7 Q. Did you receive any information about or do
8 you have any knowledge of Monsanto's efforts to clean
9 up PCBs and PCB contamination at the Anniston plant
10 before you began work there?

11 A. Are you asking me was I aware of work that had
12 gone on before I got there?

13 Q. Correct.

14 A. I wasn't aware of that much at the Anniston
15 plant before I got there.

16 Q. No, that's not what I'm asking you. At any
17 time did you become aware of any remediation work
18 Monsanto performed at its Anniston plant regarding the
19 removal of PCBs at the plant before you started working
20 there? In other words, when you showed up --

21 A. -- did they tell me what had gone on in the
22 past? I don't recall specifically. They may have.

23 Q. Well, tell me what you recall generally.

24 A. What I recall generally from 15 years ago?

25 MR. COX: Just do the best that you can, Bob.

9

1 THE WITNESS: I kind of draw a blank. I don't
2 recall. I was introduced to the plant, people in the
3 plant, here's the products that we're making, here are
4 the products that we made in the past and here's where
5 they were made.

6 Was I aware of any specific efforts that
7 remediation had gone on before I got there? I don't
8 know. Nothing sticks out in my mind.

9 BY MR. GRAMMAS:

10 Q. Tell me about the remediation Monsanto engaged
11 in while you were there regarding PCB removal.

12 A. The only one that I recall was an effort to
13 address an issue that was raised by the attorney
14 general around Snow Creek and the unnamed tributary of
15 Snow Creek that extends kind of up the river and across
16 the street, and we proposed a cleanup to the attorney
17 general to alleviate some concerns that the attorney
18 general had about some samples that had been collected
19 in a particular area. I recall that, it was just about
20 the time that I left the area, about the time I was
21 leaving. That's the only remediation around PCBs that
22 comes to mind.

23 Q. Let me see if I get what you're saying
24 correctly. The attorney general for the State of
25 Alabama became aware of PCB contamination at Snow

9

1 Creek, correct?

2 A. That's my recollection, yes, sir.

3 Q. And they contacted Monsanto about cleaning it
4 up, correct?

5 A. Yes, sir.

6 Q. Do you know why in the world the attorney
7 general would ask Monsanto to clean up PCBs at Snow
8 Creek?

9 A. He was aware, in my understanding, obviously
10 that Monsanto manufactured PCBs at the Anniston plant
11 at some point in time.

12 Q. Well, not at some point in time, it did it for
13 about 40-something years, didn't it?

14 A. Yes, sir, 43.

15 Q. That's a long time, isn't it?

16 A. Uh-huh, yes, sir.

17 Q. Did the attorney general ask anybody else
18 other than Monsanto to clean up Snow Creek?

19 A. I don't know the answer to that. You'd have
20 to ask the attorney general.

21 Q. Did Monsanto take the position when the
22 attorney general came to them and said, Hey, there's
23 some high levels of PCBs at Snow Creek, that you-all
24 weren't the source of it?

25 A. I don't recall us taking a position that we

10

10 1 were not the source of it.

2 Q. You know that your -- "you" being Monsanto --
3 know that you're the source of PCB contamination in
4 Snow Creek, don't you?

5 A. No, I do not.

6 Q. Do you dispute that?

7 A. Do I dispute it?

8 Q. Yes.

9 A. I don't know that we are the source, the only
10 source of it there.

11 Q. Are you a source?

12 A. Potentially.

13 Q. Not potentially, sir. Are you a source of PCB
14 contamination, yes or no?

15 A. I don't know. I wasn't at the Anniston plant
16 between 1929 and '71, so I don't know the answer to
17 that.

18 Q. But you were the senior environmental
19 specialist when the attorney general called you and
20 said, There are PCBs in Snow Creek, weren't you?

21 A. I was down there at the time the letter was
22 delivered, yes, sir.

23 Q. Yes. And you know that the attorney general
24 accused Monsanto of putting them there, don't you?

25 A. I believe that's what the accusation was, yes.

10

1 Q. And if that weren't true, wouldn't you have
2 said, Hey, wait a minute, Mr. Attorney General, we
3 didn't put this stuff here? Wouldn't you have said
4 something like that?

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

6 Q. You would have cleaned up the PCBs even though
7 you didn't put them there; is that what you're telling
8 this jury?

9 A. That's our position. My understanding is that
10 Monsanto's position has been to try to cooperate and
11 make things right.

12 Q. Regardless of how it got there?

13 A. Without admitting guilt.

14 Q. You're never going to admit guilt, are you?
15 No matter what the evidence stacks up, you're never
16 going to admit that Monsanto's responsible for putting
17 the PCBs into Choccolocco Creek, Lake Logan Martin, and
18 Snow Creek, are you?

19 A. Only if I had knowledge that it happened.

20 Q. You're a man with an engineering degree,
21 correct?

22 A. That's correct.

23 Q. That's not an easy degree to obtain, is it?

24 A. No, sir.

25 Q. You consider yourself to have a lot of common

1 sense, too, don't you, Mr. Cheever?

2 A. Yes, I do.

3 Q. Now, are you telling me, based on all of the
4 education and training you've received in both
5 engineering school and your 30 years of experience at
6 Monsanto and the common sense that you bring here today
7 to this deposition, that you don't know, that based on
8 40 years of manufacturing PCBs in that area, Monsanto
9 is the party responsible for PCB contamination in Snow
10 Creek, Choccolocco Creek and Lake Logan Martin?

11 MR. COX: I object to the form.

12 BY MR. GRAMMAS:

13 Q. Are you denying that?

14 MR. COX: You can answer it if you know.

15 BY MR. GRAMMAS:

16 Q. And if you aren't, that's fine.

17 A. I guess I've lost track of what the question
18 started out. It was so long.

19 Q. Okay. Well, I will repeat it. I haven't lost
20 track of it. Based on the experience that you got in
21 your formal education as an engineer, the experience
22 you got in your 30 years of working with Monsanto, and
23 the common sense that you bring here today to this
24 deposition, are you denying that Monsanto is the party
25 responsible for PCBs being contained in Snow Creek,

10 1 Choccolocco Creek, and Lake Logan Martin?

2 A. Yes, I am.

3 Q. You're denying that?

4 A. Uh-huh.

5 Q. Okay. Who put them there?

6 Let me ask you this: Who, other than
7 Monsanto, in the United States of America manufactured
8 PCBs?

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

10 Q. You don't know that Monsanto was the sole U.S.
11 manufacturer of PCBs?

12 A. I didn't know that.

13 Q. You didn't know that until today?

14 A. There could have been others. I wasn't aware
15 that we were the sole, single source of it.

16 Q. Well, let me ask you this: Other than
17 Monsanto in Anniston, who was making PCBs?

18 A. Monsanto in Sauget, Illinois, was also
19 making --

20 Q. No, and I must not have asked my question
21 clearly. In the Anniston area, who other than Monsanto
22 had manufactured PCBs during that 40-or-so-year period?

23 A. No one.

24 Q. All right. Monsanto, then, was the only
25 manufacturer of PCBs in the entire State of Alabama

10 1 from 1929 to 1971; is that correct?

2 A. Yes, sir.

3 Q. And you are aware that PCBs are in fact in
4 Snow Creek, Choccolocco Creek, and Lake Logan Martin,
5 correct?

6 A. I knew that they were in Snow Creek and an
7 unnamed tributary of Snow Creek. Potentially in some
8 sediments in Choccolocco Creek, yes, sir.

9 Q. And despite the fact that Monsanto is the only
10 manufacturer in the entire state, you deny that
11 Monsanto put them there?

12 A. Yes, sir.

13 Q. And how is it that you can deny that?

14 A. Well, a lot of people using the material,
15 including Alabama Power and others, in electrical
16 distribution and electrical transformer equipment, and
17 it could have gotten -- there's no way to know how or
18 where it came from.

19 Q. Well, one thing we know for sure is that these
20 other potential sources that you're describing got
21 their PCBs from Monsanto, didn't they?

22 A. I believe so, yes, sir. If you tell me
23 they're the sole supplier, I guess I would have to.

24 Q. Do you deny, Mr. Cheever, that any PCBs flowed
25 from Monsanto's property into neighboring property?

11

1 MR. COX: Object to the form.

2 THE WITNESS: Do I deny that they flowed from
3 Monsanto's property into neighboring properties; is
4 that the question?

5 BY MR. GRAMMAS:

6 Q. Yes, sir.

7 A. I can't answer that question. I wasn't there
8 at the time PCBs were being manufactured. They could
9 have, but I don't know the answer to that. I wasn't
10 there. You'd have to ask somebody that was there at
11 the time.

12 Q. The document in the Hinds case that we've
13 talked about in the past that describes some of the
14 area of your testimony says that you were responsible
15 for a remediation of Snow Creek which was completed in
16 1989 through 1990. Is that the attorney-general issue
17 that you've just discussed with me?

18 A. Yes. I was not responsible for the project.

19 Q. What did Monsanto do as far as remediating
20 Snow Creek, if anything?

21 A. My recollection is that they -- we conducted a
22 sampling survey to try to delineate, to the best of our
23 ability, the areal extent, potential contamination or
24 known contamination that we could measure, and then it
25 was dredged. The material that was removed was

11 1 stockpiled on-site and then disposed of in accordance
2 to waste regulations at the time.

3 Q. You've said a lot here. The first thing you
4 did is you went and you sampled to see if the attorney
5 general was correct; isn't that what Monsanto did?

6 A. Yes, sir.

7 Q. And Monsanto learned, through those samples,
8 that the attorney general was absolutely correct,
9 didn't it?

10 A. I don't recall how the results of Monsanto's
11 sampling and the attorney general's compared.

12 Q. Monsanto would have never dredged any sediment
13 out of Snow Creek if it didn't find any PCBs, would it
14 have? Isn't that common sense?

15 A. I believe that's correct.

16 Q. Okay. So then can't we sit here today and
17 can't you testify that Monsanto independently confirmed
18 the attorney general's concerns in that there were in
19 fact PCBs in Snow Creek, right?

20 MR. COX: If you recall.

21 THE WITNESS: Yeah.

22 BY MR. GRAMMAS:

23 Q. Right?

24 A. I believe so.

25 Q. Okay. And when Monsanto learned about PCBs in

11 1 Snow Creek, it undertook efforts to remediate the
2 problem, didn't it?

3 A. Yes.

4 Q. Had the State of Alabama sued Monsanto to make
5 Monsanto do that?

6 A. Not to my knowledge.

7 Q. Monsanto voluntarily agreed to cooperate with
8 the State of Alabama and dredge sediment out of a
9 portion of Snow Creek, correct?

10 A. That's correct.

11 Q. And the reason Monsanto did that is because
12 PCBs were present in the silt sediment, correct?

13 A. To my understanding, that was the reason, yes.

14 Q. How many pounds of sediment were dredged out
15 of Snow Creek?

16 A. I don't have any idea.

17 Q. Did Monsanto hire a contractor to do this
18 work?

19 A. Yes, sir.

20 Q. Who was the contractor?

21 A. I don't recall for sure.

22 Q. Who do you think it was? Do you have any
23 recollection at all?

24 A. It was likely Anniston Concrete, but I don't
25 know that for a fact.

11 1 Q. Do you know what the procedures were in place
2 for these contractors to suck these PCBs out of the
3 sediment?

4 A. No, I sure don't.

5 Q. Did you know that these contractors were
6 instructed to throw away their clothes and dispose of
7 them in a PCB-approved manner after they sucked the
8 sediment out of the Snow Creek?

9 A. Did I know that?

10 Q. Yes.

11 A. No, I did not.

12 Q. Does it surprise you to know that?

13 A. No.

14 Q. Why does it not surprise you?

15 A. Common practice around investigative -- areas
16 that are being investigated or remediated is to use
17 throwaway clothing as an extra added precaution.

18 Q. You testified that -- let me ask you this: A
19 precaution for what? What are people being so cautious
20 about?

21 A. It's just good industrial hygiene to not wear
22 the same clothes at work that you wear at home, just to
23 avoid taking something off the site.

24 Q. Now, if a mechanic goes to work and works on a
25 car all day and gets grease on his outfit, he's going

11 1 to come home and throw those clothes in a washing
2 machine and wear them again the next day, isn't he?

3 A. Most of them do.

4 Q. Yeah. There's no need to take the mechanic's
5 clothes, Mr. Good Wrench's clothes out to the hazardous
6 waste landfill and throw the clothing away, is there?

7 A. I wouldn't think so.

8 Q. But when the contractors went out on Snow
9 Creek in the Monsanto remediation project to remove
10 PCBs from Snow Creek, they were instructed to throw
11 their clothes away after they came in contact with the
12 soil, weren't they?

13 MR. COX: He's already said he didn't know
14 that.

15 MR. GRAMMAS: No, he didn't say that.

16 THE WITNESS: I don't know what the
17 requirements were. If you tell me that's what
18 happened --

19 MR. COX: Well, don't assume anything and
20 don't let him tell you to assume anything, just answer
21 his questions to the best of your knowledge.

22 THE WITNESS: I don't know that the -- I'm not
23 aware of the procedures that were used in the cleanup
24 of that remediation of Snow Creek.

25 BY MR. GRAMMAS:

12

1 Q. But it wouldn't surprise you to know that they
2 threw their clothes in a solid waste landfill when they
3 were through or when they came into contact?

4 A. No, it doesn't surprise me at all.

5 Q. Okay. And that's because of the potential
6 hazardous human effects of PCB exposure, isn't it?

7 MR. COX: Object to the form.

8 THE WITNESS: It's good industrial hygiene
9 practice.

10 BY MR. GRAMMAS:

11 Q. It's more than just good industrial hygiene
12 practice, isn't it, Mr. Cheever? And I'll remind you
13 that you're under oath today.

14 A. I understand.

15 MR. COX: Pete, just relax. He's answering
16 your question.

17 MR. GRAMMAS: I'm relaxing.

18 BY MR. GRAMMAS:

19 Q. You're under oath to tell the truth, Mr.
20 Cheever, and you're telling me that the only reason
21 these contractors would have been instructed to throw
22 their clothes away in a hazardous waste landfill is
23 because it's good industrial hygiene practice; is that
24 what you're telling me?

25 A. I don't know why they were told that. I

12

1 wasn't part of the writing of the procedure instructing
2 them to do what they did. But normally, around
3 activities where you're investigating or cleaning up
4 areas like that, it is not uncommon to use throwaway
5 clothing and dispose of it like that, because it's good
6 industrial hygiene practice not to transport stuff from
7 one site to another and to go home.

8 Q. All right. PCBs are classified as a hazardous
9 material by the United States government, aren't they?

10 A. I believe they are, yes.

11 Q. PCBs are dangerous stuff on long-term exposure
12 to human beings, aren't they?

13 A. I believe that's true.

14 Q. PCBs cause cancer, liver disease, chloracne,
15 and have been classified as tumorigenic, haven't they?

16 MR. COX: If you know all that stuff.

17 THE WITNESS: I know that it causes chloracne
18 and it's been suspected of causing cancer.

19 BY MR. GRAMMAS:

20 Q. And it's also been suspected of causing liver
21 disease, hasn't it?

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

23 Q. Isn't that the reason, Mr. Cheever, that these
24 construction workers are throwing their clothes away in
25 an industrial hazardous landfill when they're done

12 1 cleaning up the PCBs that Monsanto put in Snow Creek?

2 MR. COX: Object to the form.

3 THE WITNESS: I don't know the answer to that,
4 no. I wasn't involved in the contract till the end of
5 that job.

6 BY MR. GRAMMAS:

7 Q. Did Monsanto, in this Snow Creek remediation,
8 take the soils to a place called a "mill," a landfill
9 called a "mill," in Alabama, are you aware of that?

10 A. I believe they were.

11 Q. And a mill is a hazardous waste landfill,
12 isn't it?

13 A. That is correct.

14 Q. And Monsanto would never spend the money to
15 clean up a site that it didn't feel it was responsible
16 for contaminating, would it?

17 A. Yes, it would.

18 Q. Tell me all the sites you're aware of, since
19 you say with such certainty, that Monsanto has cleaned
20 up, that it was not responsible for contaminating.

21 A. Name all the sites?

22 Q. Name every single one of them that you can
23 recall.

24 A. Monsanto's a participant in many kinds of.
25 hazardous waste or CERCLA-type or Superfund-type

1 cleanups as a potentially responsible party, and do
2 them all over the country.

3 Q. Right. My question is, is not tell me all the
4 sites Monsanto has cleaned up because it contaminated
5 it. My question to you is: Tell me all the sites
6 Monsanto has voluntarily agreed to clean up when it was
7 not responsible or potentially responsible for the
8 contamination?

9 A. I don't know if there's any of those.

10 Q. Right. So therefore we can assume, can we
11 not, Mr. Cheever, that Monsanto remediated Snow Creek
12 because it believed it was responsible for the PCB
13 contamination there, can't we?

14 A. Yes.

15 Q. And after it took samples out of -- or
16 sediment out of Snow Creek, by law Monsanto took that
17 sediment to a hazardous waste landfill in the State of
18 Alabama, correct?

19 A. Yes, sir.

20 Q. And the reason it took the sediment to a
21 hazardous waste landfill is because the sediment
22 contained hazardous waste, didn't it?

23 MR. COX: Object to the form.

24 THE WITNESS: Contained PCBs.

25 BY MR. GRAMMAS:

13 1 Q. Which is considered a hazardous waste,
2 correct?

3 MR. COX: Object to the form.

4 THE WITNESS: I don't know the answer to that
5 question. "Hazardous waste" has a specific definition.
6 I don't know if PCB's in there or not.

7 BY MR. GRAMMAS:

8 Q. Well, let me ask you this: Had Monsanto not
9 removed that sediment, which ultimately was required to
10 be disposed of in a hazardous waste land facility, that
11 sediment would have remained in Snow Creek, right?

12 A. Yes, sir.

13 Q. And all the hazardous waste contained in the
14 sediment likewise would have remained right there in
15 Snow Creek, wouldn't it?

16 MR. COX: Object to the form. Pete, I don't
17 mean to interrupt, but you're really mixing and
18 matching definitions and you're confusing me, so I know
19 you're confusing Bob.

20 THE WITNESS: "PCBs" and "hazardous waste"
21 have two different definitions, and that's why I'm
22 struggling with that. I don't know that PCBs are a
23 hazardous waste by definition. I believe they're not.

24 BY MR. GRAMMAS:

25 Q. Okay.

13

1 A. When you go into 40 CFR, Part 260, under the
2 definition of "hazardous waste," I believe PCBs are not
3 there listed. They're separately managed under a
4 different set of federal requirements.

5 Q. That's right. The United States government,
6 and in particular the United States Congress,
7 specifically chose to regulate PCBs apart from any
8 other chemical in the world, didn't they?

9 A. No, that's not -- there are other materials
10 that are regulated under the same Part 760.

11 Q. What are those materials?

12 A. There's beryllium, there's a list of -- I
13 think benzene's in there.

14 Q. Cyanide?

15 A. Other kinds of materials, yes, sir.

16 Q. Pretty bad stuff is regulated in those
17 regulations, right?

18 A. There's specific regulations around specific
19 chemicals as opposed to being generic as, quote,
20 "hazardous waste."

21 Q. Right. And that's because these chemicals are
22 particularly hazardous, dangerous, and carcinogenic,
23 correct?

24 A. I have no idea why the EPA did what they did
25 and the federal government passed the rules the way

13 1 they did.

2 Q. What materials other than PCBs were you-all
3 sampling when you decided to remediate Snow Creek?

4 A. My recollection is that's the only -- PCBs
5 were all we were looking for.

6 Q. Okay. So when you made -- "you" being
7 Monsanto, made the decision to dredge Snow Creek, the
8 decision was based on the fact that it did find PCBs
9 and only PCBs in the sediment, right? because that's
10 all you were looking for.

11 A. That's all we were looking for, yes, sir.

12 Q. And based on that finding, you made the
13 decision to suck some of the sediment out of Snow Creek
14 because it was classified as hazardous material, right?

15 A. It was --

16 MR. COX: Answer the question the way you need
17 to answer the question to clarify the definition.

18 MR. GRAMMAS: That's fine.

19 MR. COX: That's fine.

20 THE WITNESS: Okay. No.

21 BY MR. GRAMMAS:

22 Q. Why did you remove it?

23 A. It's my recollection that the results that we
24 obtained in our sampling confirmed what the attorney
25 general had done, and we made a good-faith effort to

13 1 alleviate an issue that -- so it would not become an
2 issue.

3 Q. You're going to have to do better than that.
4 I don't understand that. What do you mean, you
5 alleviated an issue so it wouldn't become an issue?

6 A. We took the attorney general and -- I'm trying
7 to -- my recollection and my recall is the fact that
8 the attorney general came, we put forth some results,
9 we confirmed the results, and we put forth a proposal
10 to him to remediate the PCBs that were in this
11 unnamed -- Snow Creek and unnamed tributary of Snow
12 Creek and then we went ahead and did it to take that
13 material up and just properly dispose of it.

14 Q. Properly dispose of it would mean disposing of
15 it in a landfill that is designated by the federal
16 government to receive hazardous waste material,
17 correct?

18 A. Among other things, yes.

19 Q. And the only way you can properly dispose of
20 that is to take it to that type of landfill, right?

21 A. No, that's not the only way.

22 Q. What else?

23 A. You could have incinerated it.

24 Q. But you couldn't have just left it there in
25 the creek, could you?

13 1 A. I don't know the answer to that. I don't
2 recall what the value of the levels were and what the
3 cleanup levels are.

14 4 Q. What information has Monsanto provided you or
5 what training have you received regarding whether PCBs
6 are biodegradable or not, if anything?

7 A. I don't recall. I don't recall any training
8 has been -- background or materials and information
9 around PCBs for years about its lack of
10 biodegradability; trade journals, magazines, articles,
11 EPA rule-making background. It's just a whole host of
12 stuff out there to come across to have to read to
13 become aware of, but, retaining forever.

14 Q. But you understand, based on all of your
15 experience, training, talking with the EPA, talking
16 about local governments, talking with state
17 governments, talking with your bosses, talking with
18 scientists that Monsanto has hired, you understand that
19 PCBs are not a biodegradable chemical, don't you?

20 A. Yes, I do.

21 Q. And that's a technical way of saying they
22 don't ever break down in the environment, do they?

23 A. That's right.

24 Q. They last for decades and decades and even
25 centuries, the literature shows, doesn't it?

14

1 A. I don't know exactly what the literature
2 shows.

3 Q. But we can expect that PCBs -- as a matter of
4 fact, they were manufactured to be a persistent
5 chemical, weren't they?

6 A. Yes, they were.

7 Q. Monsanto, when they made the decision to
8 manufacture PCBs, said, We need to make a chemical that
9 will last forever and ever, didn't it, among other
10 reasons?

11 A. I have no idea what was the reason for making
12 the chemicals.

13 Q. Okay. But you know that these things, when
14 they get in the environment, for lack of a better word,
15 just don't go away, does it?

16 A. I do know that.

17 Q. And you also know that they bioaccumulate,
18 don't you?

19 A. Yes, sir.

20 Q. And that's a fancy way of saying because they
21 don't go away, when they get into your body, they don't
22 ever leave your body, right?

23 A. I don't know what the exact definition is.

24 Q. I mean, in laymen's terms, that's basically --

25 A. That's my understanding.

14 1 Q. And they're stored in your fat tissues and
2 other tissue in your body, right?

3 A. I believe so.

4 Q. And that's why the EPA says that you shouldn't
5 eat fish that ever are contaminated beyond two parts
6 per million, correct?

7 MR. COX: Object to the form.

8 THE WITNESS: I don't know what the EPA says
9 about fish PCB content.

10 BY MR. GRAMMAS:

11 Q. Would you eat a persistent diet of highly
12 contaminated fish with -- highly contaminated fish with
13 PCBs in them? Would you do that --

14 MR. COX: Object to the form.

15 BY MR. GRAMMAS:

16 Q. -- knowing everything you know about the
17 chemical?

18 A. No, I probably wouldn't.

19 Q. And the reason you wouldn't do that is all the
20 fears that you would have about getting cancer, liver
21 disease, chloracne, or whatever other problems are
22 known or suspected to be caused by PCB exposure in
23 humans, correct?

24 A. No. I don't put any -- I wouldn't put any
25 kind of foreign material in my body in excess

14 1 quantities.

2 Q. That brings us up to an interesting point.
3 PCBs are not a naturally occurring phenomenon, are
4 they?

5 A. No.

6 Q. And if PCBs are in the environment in
7 Anniston, it's because some company somewhere made the
8 PCBs and some company somewhere discharged them into
9 that ecosystem, right?

10 A. Yes, sir.

11 Q. And they are -- PCBs are, according to your
12 own testimony, foreign objects that don't belong in
13 human beings, correct?

14 A. Yes, sir.

15 Q. Nor do they belong in fish, do they?

16 A. I wouldn't think so.

17 Q. Are you aware of the fish advisories that are
18 posted along Choccolocco Creek and Lake Logan Martin?

19 A. No, sir.

20 Q. Would it surprise you to know that the Alabama
21 Department of Human Health has done sediment sampling
22 of PCBs in that area and have posted signs all along
23 the creek and parts of Lake Logan Martin that
24 specifically warn of eating the fish in that ecosystem?

25 A. Would it surprise me?

14 1 Q. Yes.

2 MR. COX: Object to the form.

3 BY MR. GRAMMAS:

4 Q. Would it surprise you to know that?

5 A. Yeah, it kind of surprises me to know that.

6 Q. Why is that?

7 A. I wasn't aware that they had done it.

8 Q. Let me ask you this, Mr. Cheever: If sampling
9 of sediment and fish confirmed the presence of PCB
10 contamination in that system, don't you think it's a
11 good thing that the Alabama Department of Public Health
12 is trying to warn those people in the area not to eat
13 that fish?

14 A. Sure.

15 Q. And again, that's because PCBs are a foreign
16 substance and you don't want them in your body and you
17 don't think that the people below the Anniston Monsanto
18 plant should have them in their body, right?

19 A. Or anybody else. People above the plant too.

20 Q. Well, you don't know of any warnings below the
21 mill. Do you know of any fish advisories above the
22 plant?

23 A. No.

24 Q. It says in your statement describing your
25 knowledge that you were responsible for disposals of

15 1 PCBs at the Anniston plant. Is that a true statement?

2 A. Yes, it is.

3 Q. Tell me about that.

4 A. When I went down to the Anniston plant, there
5 was electrical equipment still in use, transformers,
6 capacitors that were still in use that had PCB
7 dielectric contaminated -- PCB-containing dielectric
8 fluids in them, and one of the undertakings that I
9 undertook was to rid the site of those electrical
10 devices as they became underutilized or replaced out
11 with a non-PCB-containing equipment in an attempt to
12 become a PCB-free site.

13 Q. Monsanto wants its site to be free of PCB
14 contamination, doesn't it?

15 A. Monsanto wants their sites to be free of
16 PCB-contaminated containing equipment of electrical
17 devices, yes.

18 Q. Monsanto does not want PCBs on its property,
19 does it?

20 A. Monsanto doesn't want equipment containing
21 PCBs to be continued in use. If they're in use, they
22 can stay in use. There's no directive to get rid of
23 them, but as they become free, they want you to
24 properly rid of them and dispose of them, yes, sir.

25 Q. Why?

15 1 A. I don't know. It's just a --

2 MR. COX: If you know what the corporate
3 policy is.

4 THE WITNESS: I don't know why the corporate
5 policy is the way it is.

6 BY MR. GRAMMAS:

7 Q. Why do you think that PCBs should be removed
8 in --

9 Well, let me ask you this: You were the man
10 in Anniston, for lack of a better word, that was
11 charged with the PCB-free plan, weren't you, at least
12 according to the documents I read?

13 A. Yeah, that was something that I undertook when
14 I got there. I don't recall being directed to do it.
15 It was something that I took on myself to do. It made
16 sense to do it.

17 Q. It made sense for Monsanto to make the
18 decision to get rid of all the known PCBs on its own
19 property, right?

20 A. Yes, just like everybody else is doing.

21 Q. And doesn't it make sense that the plaintiffs
22 in this case want to get rid of the PCBs on their
23 property?

24 MR. COX: Object to the form.

25 BY MR. GRAMMAS:

15

1 Q. Doesn't that make sense too?

2 A. Sure.

3 Q. And if Monsanto can spend the money -- how
4 much did it cost you-all to spend the money to become a
5 PCB-free site while you were there?

6 A. I don't recall.

7 Q. \$100,000?

8 A. I don't recall.

9 Q. \$100 million? Do you have any idea at all?

10 A. It certainly wasn't 100 million.

11 Q. Money was not an object; is that a fair
12 statement?

13 A. No, that's not a fair statement. It's always
14 an object.

15 Q. Okay. What directives did you have, Mr.
16 Cheever, to get a PCB-free environment at the Monsanto
17 plant with respect to money? What limits were imposed
18 on you? Did Monsanto tell you, We want a PCB-free
19 environment unless it costs more than a certain amount
20 of money?

21 A. No.

22 Q. So Monsanto never limited you on the amount of
23 money you could spend to get rid of the PCBs on its
24 property in Anniston, right?

25 A. I didn't have a wide open checkbook and free

15 1 rein, no.

2 Q. But you aren't aware, sitting here today, of
3 any limits imposed on you?

4 A. No, I wasn't aware of any.

5 Q. But you were charged with getting rid of them,
6 right?

7 A. I don't recall anybody telling me to do that.
8 It was something that I undertook on my own.

9 Q. You came up with this on your own? You walked
10 into the Anniston plant and said, Hey, I'm going to get
11 rid of PCBs?

12 A. No.

13 Q. Well, how'd you know to do that?

14 A. I don't recall. It's just something that
15 seemed like the right thing to do.

16 Q. Because PCBs are a bad thing, right?

17 A. Well, they were no longer --

18 MR. COX: I object to the form.

19 THE WITNESS: PCBs are no longer in service
20 and no longer in use, so it made sense to get rid of
21 them out of the site, it seemed to me anyway.

22 BY MR. GRAMMAS:

23 Q. But getting rid of them doesn't have anything
24 to do with the fact that they're known to cause cancer,
25 liver disease, chloracne, tumors, and all these other

15 1 things that we talked about; is that what you're
2 testifying?

3 MR. COX: Object to the form.

4 THE WITNESS: I don't recall doing the job
5 because of those particular concerns.

6 Is it all right if we take a break?

7 MR. GRAMMAS: Sure. Anytime you want to take
8 a break, let me know.

9 (A SHORT BREAK WAS HELD.)

10 BY MR. GRAMMAS:

16 11 Q. Before we took the break, we were talking
12 about the cleanup of Snow Creek and you had mentioned,
13 I think, some other potential sources of PCB
14 contamination, Alabama Power was one and some others.
15 How many potential sources of PCB contamination are
16 between Monsanto's plant and the area of Snow Creek
17 where you were dredging?

18 A. I don't know.

19 Q. Isn't it true, Mr. Cheever, that the only
20 source of PCB contamination between Monsanto's plant
21 and the area of Snow Creek where you were dredging is
22 Monsanto?

23 A. I don't know that.

24 Q. Snow Creek runs how close to Monsanto's plant
25 there at Anniston?

16

1 A. I don't know the exact distance.

2 Q. We're talking less than a quarter of a mile?

3 A. I would have thought it was further than that.

4 Q. It's just right across the divided highway
5 there, isn't it?

6 A. No.

7 MR. GRAMMAS: How far is it, Bill?

8 MR. COX: It is about a mile. Snow Creek
9 proper is near 11th Street, and if you're thinking of
10 Clydesdale --

11 MR. GRAMMAS: Right, we're going to talk about
12 that in a second.

13 BY MR. GRAMMAS:

14 Q. But Snow Creek is about a mile, then, let's
15 say.

16 A. That's my understanding, yes. That's what I
17 would guess it to be.

18 Q. And you were there for almost -- for eight
19 years in Anniston?

20 A. From February of '83 to January of 1990.

21 Q. How many manufacturing facilities are in
22 existence or were ever in existence between Monsanto
23 and Snow Creek?

24 A. I don't recall there being any manufacturing
25 facilities.

16

1 Q. The only manufacturing facility in that area
2 is Monsanto, right? And I'm talking about in any form.
3 I'm talking about making anything.

4 A. In what area, in West Anniston?

5 Q. In the area of the Monsanto facility and Snow
6 Creek, that mile distance, the only manufacturing plant
7 is Monsanto?

8 A. That's correct.

9 Q. And it's certainly the only chemical plant.

10 A. Yes, sir.

11 Q. And you've already said that it was the only
12 chemical plant that made PCBs in the entire State of
13 Alabama, so I can assume that there was no chemical
14 plant between the mile between Snow Creek and Monsanto
15 that was making PCBs, correct?

16 A. Yes, sir.

17 Q. And Alabama Power plant doesn't have a plant
18 there, does it?

19 A. Along that direct stretch, no.

20 Q. And Snow Creek basically forms right there at
21 that mile marker, doesn't it?

22 A. No.

23 MR. GRAMMAS: How far up, Buddy, does it form?

24 MR. COX: Several miles.

25 THE WITNESS: There's two or three different

16

1 unnamed tributaries, to my recollection, that went up
2 into West Anniston.

3 BY MR. GRAMMAS:

4 Q. Okay. And what other potential sources of PCB
5 contamination in that direction are you aware of, if
6 any?

7 A. I'm not aware of any other potential sources.
8 There was a -- FMC had a manufacturing facility. There
9 was a --

10 Q. Did they utilize PCBs?

11 A. I have no idea. There was a big electrical
12 substation that's just a little bit west of the
13 Anniston plant. U.S. Pipe had a cast iron pipe foundry
14 that was over in West Anniston.

15 Q. Did they use PCBs?

16 A. I don't know.

17 Q. So you're not saying that these companies that
18 you just identified are a source of PCB contamination,
19 you just said there are some facilities there?

20 A. That is correct.

21 Q. And you have no reason to believe that they're
22 a source of PCB contamination other than just the fact
23 that they happen to be there, right?

24 A. That's correct. I'm sure that they had
25 electrical distribution equipment like any manufacturer

16

1 does.

2 Q. What are the ways that you're aware of, Mr.
3 Cheever, that PCBs got into Snow Creek, Choccolocco
4 Creek, and Lake Logan Martin?

5 A. I'm not aware of any of the ways that it did.
6 I can speculate, but I won't.

7 Q. Why don't you do that for me.

8 MR. COX: No, we're not going to speculate.

9 BY MR. GRAMMAS:

10 Q. Tell me how you think they may have gotten in
11 there.

12 MR. COX: If you know, you know. If you
13 don't, you don't.

14 BY MR. GRAMMAS:

15 Q. Look, you were the senior environmental
16 specialist --

17 A. Uh-huh.

18 Q. -- for seven to eight years at Monsanto.

19 You've got engineering degrees, you've worked for the
20 company for 30 years or affiliated companies. You are
21 certainly entitled to give me an educated guess as to
22 how you believe PCBs got into this ecosystem, and I
23 want you to do that for me.

24 A. Do you want my opinion; is that what you're
25 asking for?

16 1 Q. Absolutely.

2 MR. COX: If you have one, you can give it to
3 him. If you don't, you don't have to have an opinion
4 on it.

5 THE WITNESS: Everybody has an opinion on
6 everything, don't they?

7 BY MR. GRAMMAS:

8 Q. This is not some schmoie out there having an
9 opinion.

10 A. I understand.

11 Q. This is serious stuff we're talking about
12 here, Mr. Cheever.

13 A. I fully understand that, sir.

14 Q. So tell me how it got in there.

15 A. I don't know how it got in there.

16 Q. Tell me what you believe the ways that PCBs
17 got in there, based on your experience, education,
18 common sense, and employment with Monsanto for 30
19 years, part of the time of which was dealing with PCB
20 removals, PCB disposals.

17 21 A. Not having been in that area in the time when
22 it was manufactured, I can't really say. It could have
23 gotten in there from leaky electrical transformers,
24 from the electrical substations, or anybody who has
25 electrical equipment that's transformer equipment

17 1 that's being used. That's one potential way that it
2 could have gotten there. It could have gotten there
3 from somebody inadvertently or illegally disposing of
4 it.

5 Q. You mean somebody at Monsanto?

6 A. I don't know. I wouldn't think so.

7 Q. What other ways --

8 A. PCB is quite ubiquitous in its use. It's used
9 in lots of things and lots of ways. As I recall,
10 there's a junkyard or two along Snow Creek. As I
11 recall, Alabama Power had a transformer area that was
12 kind of down towards the City of Anniston, if my
13 recollection is correct.

14 Q. Keep going.

15 A. Just lots -- those are just some that come to
16 mind right off the bat.

17 Q. Keep going. I've written down each one.
18 We're going to talk about them. Are you through?

19 A. Yeah.

20 Q. Okay. I noticed that conspicuously absent
21 from your list is Monsanto Chemical Company, the
22 corporation that made millions of pounds of PCBs over
23 40 years. Any reason for that?

24 A. No, no reason. Could have come from there.
25 That's another source.

17

1 Q. Well, it's more than just another source,
2 isn't it, Mr. Cheever, it's the absolute most likely
3 source for PCB contamination, isn't it?

4 MR. COX: Object to the form.

5 THE WITNESS: No.

6 BY MR. GRAMMAS:

7 Q. Huh?

8 A. I don't have any information that would make
9 it, to me, that way.

10 Q. Okay. Let's draw on your common sense for a
11 moment, Mr. Cheever. Monsanto at that facility
12 manufactured literally millions, if not billions of
13 pounds of PCBs, correct?

14 A. I have no idea how much they manufactured.

15 Q. This junkyard that you happened to see on the
16 side of the road, how much PCBs did it manufacture?

17 A. Likely none.

18 Q. What sources of PCBs would it have in it?

19 A. Contaminated equipment that it had picked up
20 from somebody else. I don't know.

21 Q. But relative to Monsanto, we're talking about
22 a gnat on an elephant's rear end, aren't we?

23 MR. COX: Object as to the form.

24 THE WITNESS: It's probably a smaller amount.

25 BY MR. GRAMMAS:

17 1 Q. Smaller than a gnat on an elephant's rear end?

2 A. No, smaller than what Monsanto manufactured.

3 Q. Probably smaller? I mean, come on. You've
4 got a jury listening to this. Is it probably smaller
5 or unbelievably smaller amount?

6 A. It's likely smaller than what Monsanto --

7 Q. It's more than likely, it's definitely
8 smaller.

9 MR. COX: Pete, quit arguing with him. Just
10 ask questions.

11 MR. GRAMMAS: I'm not arguing. I'm getting
12 testimony reluctant -- from a reluctant witness, okay,
13 and I'm taking the deposition how I want to take it,
14 Buddy.

15 BY MR. GRAMMAS:

16 Q. It's not more likely, it is a fact, Mr.
17 Cheever, that this junkyard you mentioned as a possible
18 source of PCB contamination -- before you even
19 mentioned Monsanto, the manufacture -- is not going to
20 have anywhere near the volume of potential PCB
21 contamination as Monsanto, right?

22 MR. COX: Object to the form.

23 THE WITNESS: That's right.

24 BY MR. GRAMMAS:

25 Q. And that's the same with leaking transformers

17 1 that you mentioned or Alabama Power Company, right?

2 MR. COX: Object to the form.

3 BY MR. GRAMMAS:

4 Q. Right?

5 A. Right.

6 Q. And when you talked about inadvertent spills,
7 that includes Monsanto, doesn't it?

8 A. Sure.

9 Q. Because you're aware of many, many occasions
10 where spills were made at that plant, based on the
11 documents, experience, education, training, or whatnot
12 that you received from Monsanto over the course of that
13 40-year period, right?

14 A. No.

15 Q. You're not aware of any of that?

16 A. I'm not aware of a lot of documents.

17 Q. You also mentioned illegal disposal. Would
18 that include somebody from Monsanto pouring PCBs into a
19 ditch that flowed into Snow Creek which flowed into
20 Choccolocco Creek and which flowed into Lake Logan
21 Martin?

22 MR. COX: Object to the form.

23 THE WITNESS: I wouldn't think a Monsanto
24 employee would do that, no.

25 BY MR. GRAMMAS:

17

1 Q. Let me ask you this: Monsanto never had the
2 right to put any PCBs into this ecosystem, did it?

3 MR. COX: Object to the form.

4 THE WITNESS: I don't know what the rules and
5 regulations the plant were under during the time that
6 they were making PCBs. I only know what were rules and
7 regulations at the time that I was there, how we
8 managed that.

9 BY MR. GRAMMAS:

10 Q. You tell me one rule, one regulation, one
11 statute in Alabama that you're aware of, any policy,
12 anything that allowed Monsanto to put PCBs into this
13 ecosystem.

14 A. I'm not aware of any.

15 Q. What does the term "sewering" mean to you, Mr.
16 Cheever?

17 A. The term "sewering"?

18 Q. Sewering, S-E-W-E-R-I-N-G.

19 A. It means the placement of materials into a
20 sewer.

21 Q. Does that have any significant meaning as a
22 30-year employee of Monsanto, "sewering"?

23 A. Yeah, it means placement of -- yeah, placement
24 of materials into a sewer.

25 Q. Sewers, where do they go? It depends on what

18 1 type, right?

2 A. Yes, it does.

3 Q. If it's a storm water sewer, they go into
4 tributaries around the sewer system, right?

5 A. That is correct.

6 Q. And if it's a -- what's the other term?

7 A. Processed waste.

8 Q. If it's a processed waste sewer, it will go
9 into the treatment plant.

10 A. That is correct.

11 Q. All right. What was your position as the
12 senior environmental specialist at Monsanto; and, for
13 that matter, the environmental specialist before you
14 were promoted, with respect to the neighbors around
15 Monsanto's plant, including the neighbors literally
16 adjacent to the plant and the neighborhood and the
17 neighbors who live along the tributaries in the Lake
18 Logan Martin area? Did you have a policy or position
19 regarding them and their rights with respect to
20 Monsanto?

21 A. I don't recall any particular policy or
22 position associated with it.

23 Q. You didn't have a policy not to unreasonably
24 interfere with their use and enjoyment of their
25 property in your operation of the plant?

18

1 A. I don't recall any.

2 Q. Do you believe that Monsanto should be allowed
3 to unreasonably interfere with their neighbors' use and
4 enjoyment of their property by running their plant?

5 A. No, sir.

6 Q. So safe, then, although you don't recall an
7 actual policy, to assume that it was one of your goals
8 to make sure that in running that plant, Monsanto did
9 not unreasonably interfere with others' uses and
10 enjoyments of their properties?

11 A. That's correct.

12 Q. And what did you do to make sure, while you
13 were there, that PCBs that were stored in Monsanto's
14 landfills were in fact not leaking from the landfills,
15 getting into tributaries, getting into Snow Creek,
16 Choccolocco Creek, and Lake Logan Martin?

17 A. Part of the job that I had was to ensure that
18 the landfill areas that were closed remained closed and
19 the caps were intact and there weren't any unusual
20 erosion of soils and so forth off of the landfill, and
21 also involved in performing -- managing and supervising
22 the collection of groundwater and the monitoring well
23 network that surrounded the landfills as well as the
24 manufacturing portion of the facility.

25 Q. I mean, really, with respect to the PCBs, did

18 1 you-all check for PCBs in the groundwater?

2 A. I believe from time to time we did, but I
3 don't recall exactly what we analyzed all the
4 groundwater for.

5 Q. Do you recall ever checking for PCBs in the
6 groundwater?

7 A. I recall or my recollection is that we did
8 from time to time, but I can't remember specific
9 events.

10 Q. And Monsanto found PCBs in the groundwater
11 when they monitored and inspected, didn't they?

12 A. I don't recall. I'd have to go back and look
13 at the date of its existence, public record, to know
14 for sure.

15 Q. You said something about caps on landfills.
16 Tell the jury what a cap is on a landfill.

17 A. It's just a completed surface and soils and
18 vegetation to keep the soil in place. It's just to
19 finish off a closed facility.

20 Q. And one of the purposes of the cap is to -- is
21 designed, anyway, to disrupt the flow of rainwater or
22 surface water through the waste that's being disposed
23 underneath it, right?

24 A. Yes.

25 Q. Now, when you started at the Anniston plant,

18 1 were there caps on these landfills?

2 A. There were several areas that had already been
3 closed, yes, sir.

4 Q. And there were several areas that didn't have
5 caps, weren't there?

6 A. There were several areas that were still
7 inactive that we were still using, yes, sir.

8 Q. Are there any cells that you're aware of --
9 and when I say "cell," we mean "areas,"
10 interchangeable. Were there any cells where Monsanto
11 stored PCBs that did not have caps on them?

12 A. Not to my recollection.

13 Q. Were there any cells that you're aware of
14 where Monsanto stored PCBs that did not have adequate
15 caps on them?

16 A. Not to my recollection.

17 Q. Okay. Do you believe, sir, that Monsanto
18 should take the position that if the plaintiffs in this
19 case do in fact prove that it is a source of PCB
20 contamination in their ecosystem, that Monsanto should
21 clean it up?

22 MR. COX: Object to the form.

23 Go ahead.

24 THE WITNESS: I don't have the ability to set
25 corporate policy.

18 1 BY MR. GRAMMAS:

2 Q. I understand that. It wouldn't be a corporate
3 policy. I'm asking you as an individual. Do you
4 believe, as an employee for Monsanto for 30 years or
19 5 more, given what you've already testified to about its
6 persistence, about the fact that it's a manmade object,
7 about the fact that you wouldn't want PCBs in your
8 body, about the fact that you wouldn't want PCBs in
9 fish that you were eating, about the fact that you
10 wouldn't want PCBs on your property, that if the
11 plaintiffs can prove in this case that Monsanto is a
12 source of PCB contamination in this system, this
13 ecosystem that Monsanto should clean it up?

14 MR. COX: Object to the form. You're talking
15 about -- you're not giving him anything on levels of
16 PCBs or anything like that.

17 MR. GRAMMAS: I agree. I'm not doing any of
18 that.

19 BY MR. GRAMMAS:

20 Q. Do you think they should clean it up? If they
21 put it there, should they clean it up?

22 A. If it's proven that they're one of the
23 potential responsible parties, yes, I do.

24 Q. What communications, if any, sir, did you have
25 with the class members in this case? First of all, do

19

1 you understand --

2 MR. COX: You've got to tell him who the class
3 members are.

4 BY MR. GRAMMAS:

5 Q. Right. Are you aware that an Alabama state
6 court has certified a class action against Monsanto in
7 this case?

8 A. Yes, I'm aware of that.

9 Q. And Buddy may be able to describe the exact
10 parameters more accurately than me, but in essence the
11 class consists of residents along Choccolocco Creek and
12 a very large portion of Lake Logan Martin in which
13 Choccolocco Creek flows into, towards the Logan Martin
14 dam.

15 MR. COX: That's accurate.

16 BY MR. GRAMMAS:

17 Q. What communications, if any, have you had with
18 any people who fit within that description?

19 A. None.

20 Q. Do you believe that Monsanto should warn
21 people who've been exposed to the PCBs that they
22 manufactured about the dangers of PCB exposure?

23 MR. COX: Object to the form.

24 THE WITNESS: I'm not sure that's
25 Monsanto's -- you know, if that's Monsanto's

19 1 requirement to do that.

2 BY MR. GRAMMAS:

3 Q. I didn't ask you if you thought that was
4 Monsanto's requirement. I asked you again as an
5 individual, with all of the common sense, morality,
6 sense of right and wrong that you bring to this table,
7 Mr. Cheever, and you seem to be a man of great
8 integrity, do you believe that a company who
9 manufacturers a product like PCB, with all of its known
10 health effects, has the responsibility to warn the
11 people who may be affected by exposure to its chemicals
12 of these dangers?

13 MR. COX: Object to the form.

14 BY MR. GRAMMAS:

15 Q. You can answer the question.

16 A. I think there are other agencies or other ways
17 and means that are more appropriate or more effective
18 than the company itself.

19 Q. Is that a no? Is it your opinion that
20 Monsanto doesn't have any obligation to warn these
21 people about PCB exposure?

22 A. I think Monsanto's done some communication in
23 the past regarding information over the years.

24 Q. Are you aware that Monsanto had an agreement
25 with the State of Alabama and some of its agencies to

19 1 conceal PCB contamination and exposure to these people?

2 A. No, I'm not aware of that.

3 MR. COX: Object to the form.

4 BY MR. GRAMMAS:

5 Q. Does that surprise you to hear that?

6 A. Yes, it would.

7 Q. Does it bother you to hear that?

8 A. Yes, it does.

9 Q. And that's because of all the things we've
10 talked about, about the dangers of PCB exposure, right?

11 A. No, it's just not the way the company that I
12 worked for for 30 years operates.

13 Q. It's not the way you thought it operated,
14 correct?

15 A. True.

16 Q. You're not testifying to this jury that
17 Monsanto didn't have an agreement with the state
18 agencies to keep contamination secret, are you?

19 A. I have no information that would indicate that
20 that happened.

21 Q. And it offends you to hear that, doesn't it?

22 A. Yes, it does.

23 Q. And that's because it's wrong for Monsanto to
24 deliberately conspire with anyone to keep the dangers
25 of PCB or the fact of PCB contamination a secret from

19 1 the people that are being affected by it, isn't it?

2 MR. COX: Object to the form.

3 THE WITNESS: I'm sorry?

4 BY MR. GRAMMAS:

5 Q. Mr. Cheever, it's wrong for Monsanto to
6 conspire with anybody to keep PCB contamination in this
7 area of the country, and especially in this area of the
8 state of Alabama, a secret from these people, isn't it?

9 A. Yes, it is.

10 Q. That certainly wouldn't be your policy towards
11 being a good corporate neighbor, would it?

12 A. No.

13 Q. Have you owned any lakefront property ever,
14 sir?

15 A. Yes.

16 Q. Where does your lake -- do you currently own
17 it?

18 A. No.

19 Q. Where did you own it?

20 A. New Hampshire.

21 Q. What type of lake was it?

22 A. What type of lake?

23 Q. Yeah. Was it a public lake?

24 A. Yes, sir.

25 Q. Did it have industrial waste dumped into it?

20

1 A. I have no idea.

2 Q. Would you want to own lakefront property where
3 industries are dumping, either legally or illegally,
4 their waste into your lake?

5 A. It wouldn't bother me.

6 Q. It wouldn't bother you at all?

7 A. No.

8 Q. Would it bother you if you knew there were
9 hundreds of thousands of pounds of PCBs in the sediment
10 at the bottom of that lake?

11 A. No.

12 Q. It wouldn't?

13 A. No.

14 Q. Would it bother you to know that the hundreds
15 of thousands of pounds of PCBs in the bottom of that
16 lake are bioaccumulating in the fish in that lake?

17 A. No.

18 Q. Do you fish?

19 A. Occasionally.

20 Q. Do you like to eat fish?

21 A. No.

22 Q. Is that why it wouldn't bother you to know
23 that PCBs are in it?

24 A. From a personal perspective, yes, sir.

25 Q. Are you married, sir?

20

1 A. Yes, sir.

2 Q. Do you have children?

3 A. Yes, I do.

4 Q. Grandchildren?

5 A. Yes, I do.

6 Q. Would you want your grandchildren eating
7 highly contaminated fish with PCBs in it?

8 A. No, sir.

9 Q. Would you agree with me, sir, that if you
10 owned lakefront property and you enjoyed your wife,
11 your children, and your grandchildren coming there,
12 swimming, boating, fishing, and eating the fish, that a
13 fish that's contaminated with PCBs to a level beyond
14 what the federal EPA or the federal Food and Drug
15 Administration recommends, that would interfere with
16 your ability to use and enjoy your lakefront property?

17 A. I'm not certain that it would interfere with
18 my use of it.

19 Q. Okay, well, let me ask you this: How old are
20 your grandchildren?

21 How many do you have?

22 A. Two.

23 Q. How old are they?

24 A. Six months and two and a half.

25 Q. Okay. So they're a little bit too young to be

20

1 out there fishing with their grandfather.

2 How many children do you have?

3 A. Four.

4 Q. Male or female?

5 A. Both.

6 Q. Did you ever go fishing with your sons or your
7 daughters?

8 A. Yes.

9 Q. And if they told you that they weren't going
10 to come over to your house on the lake anymore to fish
11 because the fish that they're pulling out of there have
12 high levels of PCBs, would that bother you?

13 A. Yes.

14 Q. And would that interfere with your right to
15 use and enjoy the property that you purchased?

16 A. I don't think so.

17 Q. You don't?

18 A. No.

19 Q. Okay. Do you think it's unreasonable -- even
20 though your personal opinion is that it wouldn't
21 interfere with your use and enjoyment, do you think
22 it's unreasonable for people who do own lakefront
23 property and riverfront and creekfront property on
24 Choccolocco Creek and Lake Logan Martin, that they
25 believe their rights to use and enjoy their property

20
1 have been interfered with with these high level of PCBs
2 they're finding in the fish in those bodies of water?

3 MR. COX: Object to the form.

4 You can answer.

5 BY MR. GRAMMAS:

6 Q. Do you think that's unreasonable for them to
7 believe that?

8 A. No, I don't think it's unreasonable.
9 Everybody has their own reasons.

10 Q. You're not sitting here, then, testifying that
11 you think the jury would be wrong if it concluded that
12 it's unreasonable for a company to allow PCBs to escape
13 its property at such levels that the fish are
14 contaminated beyond the federal agency's limits of PCB
15 contamination?

16 MR. COX: Object to the form. You're asking
17 him to --

18 MR. GRAMMAS: No, I'm not.

19 BY MR. GRAMMAS:

20 Q. I'm asking you --

21 MR. COX: I don't think that's a proper
22 question.

23 BY MR. GRAMMAS:

24 Q. I'm asking you about your opinion regarding
25 PCB contaminated fish.

20

1 MR. COX: Right.

2 BY MR. GRAMMAS:

3 Q. The people who live along these tributaries
4 and this ecosystem --

5 A. Uh-huh.

6 Q. -- fish in that water --

7 A. Uh-huh.

8 Q. -- and they take fish out of that water and
9 they eat it, right?

10 MR. COX: You're asking him to assume that?

11 BY MR. GRAMMAS:

12 Q. Isn't that generally what people do on
13 lakefront and waterfront property?

14 A. I don't know what others do. I'm sure some of
15 them do.

16 Q. Of course they do. I mean, one of the reasons
17 people like to buy lakefront property is to get on a
18 boat and go fishing, isn't it?

19 A. I guess some people do that.

20 Q. Sure. And when you owned your lakefront
21 property, you saw people all along that property
22 fishing, didn't you?

23 A. Not a lot of them, just some of them.

24 Q. You saw men with their sons?

25 A. Uh-huh.

20 1 Q. You saw little boys pulling fish out of the
2 creek --

3 A. Uh-huh.

4 Q. -- out of the lake that you lived on, didn't
5 you?

6 A. Uh-huh.

7 Q. And I'm sure --

8 MR. COX: I'm sorry, you need to answer out
9 loud.

10 THE WITNESS: Yes.

11 MR. COX: "Uh-huh" is not going to cut it,
12 Bob. You need to answer out loud.

13 BY MR. GRAMMAS:

14 Q. For the record you were saying "yes" to those
15 questions?

16 A. Yes, I was saying yes. I apologize.

17 Q. That's all right. It's easy to fall in that
18 habit.

19 While you were in Anniston, you saw people
20 fishing on Lake Logan Martin when you were driving past
21 it, didn't you?

22 A. Yes, I did.

23 Q. So it's not an unreasonable use or enjoyment
24 of one's property to fish, right?

25 A. That is correct.

1 Q. And by the same token, if for some reason the
2 fish in that system are contaminated, it wouldn't be
3 unreasonable for those same people to be upset about
4 not being able to fish and eat those fish, would it?

5 A. No, it would not.

6 Q. And you don't want a jury to find that that
7 would be unreasonable either, do you?

8 MR. COX: Object to the form.

9 Don't speculate about the jury.

10 BY MR. GRAMMAS:

11 Q. You don't have to speculate. You wouldn't
12 want a jury to find that, would you?

13 MR. COX: He's answered your questions, Pete.
14 I don't think you can ask him what -- I object to the
15 form. Sorry.

16 BY MR. GRAMMAS:

17 Q. Mr. Cheever, you wouldn't expect anyone to
18 find that it's unreasonable for these people that are
19 affected by the PCB contamination to feel and believe
20 that their use and enjoyment of their property has been
21 interfered with, do you?

22 MR. COX: Object to the form.

23 THE WITNESS: I don't know what the jury's
24 going to say.

25 BY MR. GRAMMAS:

1 Q. But you believe that their belief that it's
2 been interfered with is not unreasonable?

3 MR. COX: Object to the form.

4 THE WITNESS: It depends on what the jury
5 hears and how they rule on the facts of the case.

6 BY MR. GRAMMAS:

7 Q. Well, if the facts of the case are as follows:
8 that Monsanto, over a period of 40 years, allowed PCBs
9 to contaminate Snow Creek, Choccolocco Creek, and Lake
10 Logan Martin to such a level that fish advisories by
11 the Alabama Department of Health had to be posted to
12 warn those people not to eat the fish because the
13 levels of PCBs contained in them, if those are the
14 facts, isn't it your opinion, sir, that that
15 interference has caused damage to these people's
16 ability to use and enjoy their property?

17 MR. COX: Object to the form of the question.

18 Don't answer that. Just don't answer it.

19 It's an improper question.

20 MR. GRAMMAS: No, it's not improper. I can
21 ask him his opinion on one's use and enjoyment. It's a
22 balancing test, Buddy. That should be an easy question
23 to answer.

24 MR. COX: It's an improper question. Don't
25 answer it.

1 You can rephrase the question.

2 BY MR. GRAMMAS:

3 Q. If the facts that I just spelled out are
4 proven, do you believe it's unreasonable for these
5 people to think their use and enjoyment has been
6 interfered with of their property?

7 MR. COX: Same objection, but you can answer
8 the question.

9 THE WITNESS: If actually proven, if the facts
10 are proven it would be reasonable -- it would be one
11 reasonable judgment the jury could make.

12 BY MR. GRAMMAS:

13 Q. You will agree with me, Mr. Chéever, that
14 Monsanto should not have put PCBs in this ecosystem,
15 wouldn't you?

16 MR. COX: Object to the form.

17 THE WITNESS: Yes, I would agree that Monsanto
18 should not have done that.

19 MR. GRAMMAS: What's your objection, Buddy?

20 MR. COX: You're not giving him the time
21 period. You're not giving any time period over which
22 to do it. Are you asking him to go back and judge
23 conduct from 1940 based on his experience in 1998? Are
24 you asking him to assume that he was there in 1940 and
25 what would he do if he was there in 1940? That's my

1 objection. You're taking that out of perspective.

2 BY MR. GRAMMAS:

3 Q. At any time from the moment that Monsanto
4 began manufacturing PCBs up until yesterday or today,
5 assuming that PCBs are leaking from landfills there,
6 isn't it true that Monsanto shouldn't have put any PCBs
7 in this ecosystem?

8 MR. COX: Object to the form.

9 THE WITNESS: Sure, Monsanto should not have
10 put PCBs in an ecosystem.

11 BY MR. GRAMMAS:

12 Q. And isn't it true, as an employee of Monsanto
13 for over 30 years, that if they did do that, they're
14 responsible for taking it out of the system?

15 MR. COX: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. GRAMMAS:

18 Q. In your experience, did you have any other
19 experience in remediation other than this Snow Creek
20 thing we talked about earlier of removing PCBs from the
21 Snow Creek?

22 A. No.

23 Q. The levels of PCBs at that time, do you recall
24 what they were?

25 A. No, sir, I don't.

1 Q. In your opinion, were they at such extent that
2 at least that part of Snow Creek had been injured or
3 damaged?

4 A. I have no idea.

5 Q. I'm not going to make this an exhibit, but
6 there's a document here --

7 MR. GRAMMAS: Buddy, you can look at it.

8 BY MR. GRAMMAS:

9 Q. -- it's a \$200,000 expenditure dated in 1985.
10 What is that? I refer to the Bates number --

11 MR. COX: It's Bates number DSW -- I'm sorry.
12 DSW 116600. It's a --

13 MR. GRAMMAS: Let's just make it an exhibit.

14 (PLAINTIFF'S EXHIBIT NO. 2 WAS FIRST DULY
15 MARKED, RECEIVED AND MADE A PART OF THE RECORD.)

16 BY MR. GRAMMAS:

17 Q. I'm identifying this document, Mr. Cheever, as
18 Plaintiff's Exhibit 2, and your name appears on the top
19 of it. Is that your signature?

20 A. Yes, it is.

21 Q. What is that exactly?

22 A. It's a request for funds.

23 Q. For what?

24 A. The way it's written, it's a request for
25 funding for the removal and disposal of

2
1 PCB-contaminated sediment from a limited segment of
2 Snow Creek.

3 Q. The date of this document is 1985, right?

4 A. That is correct.

5 Q. You weren't -- yeah, you were at the mill
6 in -- you were at the Anniston plant in '85, weren't
7 you?

8 A. Yes, I was.

9 Q. Is this the same remediation work that was
10 done in 1989 and 1990?

11 A. Yes, it is.

12 Q. Is that how much it cost to clean up or is
13 that just part of how much it cost to clean up?

14 A. I have no idea what the final cost of cleanup
15 was.

16 Q. What's MAPC? It's a document that says -- it
17 says "Organization" and there's some initials that say
18 "MAPC."

19 A. It's Monsanto Agricultural Products Company.

20 Q. Okay. Are you aware of any other environment
21 expenditure authority request by Monsanto in the
22 Anniston area that you signed?

23 A. I'm sure there were. I don't recall any
24 specifically. There was --

25 Q. Are you aware -- excuse me. I didn't mean to

2
1 interrupt you.

2 MR. COX: Yeah, quit interrupting him.

3 THE WITNESS: It's -- an Environmental
4 Expenditure Authorization Request, or an EEAR, is an
5 approach used to provide funding to handle
6 environmental work associated with products that are no
7 longer produced by the company. We wrote one of those,
8 I think, every year to operate the landfill, provide
9 landfill operation and groundwater monitoring and run
10 all those things because a lot of that was associated
11 with facilities that are no longer in existence. It's
12 a common approach that the company still continues to
13 use to provide funding for these kinds of activities.

14 BY MR. GRAMMAS:

15 Q. I think that I cast way too broad in that
16 question. Really, what I was asking is: Are you aware
17 of any other expenditures for sediment removal around
18 that area other than this one we're talking about?

19 A. There may have been, but I don't recall. I
20 don't even remember writing that one, but obviously I
21 did.

22 Q. Is it fair to say that you were the head of
23 this project?

24 A. No, it's not true.

25 Q. This says right here that you were the

2

1 sponsor. What does that mean?

2 A. That means I filled out the paperwork and
3 submitted it.

4 Q. What made you decide, sir, that Monsanto
5 should ask for \$200,000 -- or, that you should ask
6 Monsanto for \$200,000 to clean up this part of Snow
7 Creek to get PCBs out of it?

8 A. The dollar value was likely the result of a
9 request for quotation or discussions with a potential
10 contractor on what they thought it would cost to clean
11 it up.

12 Q. I'm not concerned so much about the dollar
13 value. What I'm concerned about is what factors made
14 you decide to ask for the money, not the amount of
15 money. What factors did you rely on in deciding that
16 Monsanto should clean up this part of Snow Creek and
17 get the PCBs out?

18 A. What factors were involved in my decision?

19 Q. Right.

20 A. I was probably directed to put that together
21 by my boss.

22 MR. COX: I don't mean to interrupt, but I
23 think you're misunderstanding what Pete's asking. I
24 think Pete's talking about what drove this project
25 forward, the factors that drove the decision to

2
1 implement the project forward, not necessarily the
2 factors that led to the creation of this document.

3 MR. GRAMMAS: That's correct.

4 THE WITNESS: I'm sorry, I misunderstood the
5 question.

6 BY MR. GRAMMAS:

7 Q. That's my fault.

8 A. This is the result of the proposal that was
9 submitted by Monsanto to the attorney general in the
10 state of Alabama in response to his letter to the
11 company. Is that what you're asking?

12 Q. I believe so.

13 MR. GRAMMAS: Let's take a break.

14 MR. COX: Off the record.

15 (LUNCH RECESS.)

16 (PLAINTIFF'S EXHIBIT NO. 3 WAS FIRST DULY
17 MARKED, RECEIVED AND MADE A PART OF THE RECORD.)

18 BY MR. GRAMMAS:

19 Q. I'm going to show you Plaintiff's Exhibit 3,
20 Mr. Cheever. It looks again to be an environmental
21 expenditure authorization that you sponsored for
22 \$60,000; is that correct?

23 A. Yes, it is.

24 Q. What exactly were you needing that money for?

25 A. To reinstall an asphalt cap over the former

2
1 Aroclor manufacturing area inside the plant.

2 Q. And why were you doing that? And when I say
3 "you," why was Monsanto doing that?

4 MR. COX: Do you remember?

5 THE WITNESS: I don't remember exactly. Based
6 on the description that's written on this sheet of
7 paper, it was to repair existing asphalt and to improve
8 the drainage to eliminate standing water.

9 BY MR. GRAMMAS:

3
10 Q. And the purpose of the asphalt was to put a
11 cap over that area where Monsanto made Aroclors, right?

12 A. Yes, that's what it says.

13 Q. And Aroclor is a trade name for PCB, isn't it?

14 A. Yes, it is.

15 Q. All right. So in 19 -- what's the date of
16 that document, sir?

17 A. 1989.

18 Q. In 1989 Monsanto allocated \$60,000 for
19 construction to be done at the Anniston plant to put an
20 asphalt cap over the section of the plant where PCBs
21 were manufactured, right?

22 A. Yes.

23 Q. And isn't that because what was there before
24 was not adequately controlling the PCBs?

25 A. I don't believe so.

3
1 Q. Isn't that -- the reason you put a cap on
2 something, I thought you testified earlier, is so water
3 won't interfere with what's underneath it and allow it
4 to leak off the property. Isn't that the purpose of a
5 cap?

6 A. On a landfill cell, yes, sir.

7 Q. And the same thing, I mean, the word "cap" is
8 used here, isn't it?

9 A. Yes, it is.

10 Q. And the document says that the manufacturing
11 facility was dismantled -- the Aroclor manufacturing
12 facility -- which is where Monsanto made PCBs in
13 Anniston, right?

14 A. That's correct.

15 Q. All right. The PCB manufacturing facility was
16 dismantled to its concrete foundation in 1972; is that
17 what the document says?

18 A. Yes, it is.

19 Q. So that means in 1972, y'all took all the
20 equipment, all the machines, everything that you've
21 used to make PCBs down to the foundation, doesn't it?

22 A. Yes, that's what it says.

23 Q. And the document says that part of the PCB
24 facility foundation was crumbling in 1989, doesn't it?

25 A. That's what it says, yes, sir.

3
1 Q. And in an effort to remediate that
2 deterioration, Monsanto allocated, in part, \$60,000 to
3 put asphalt on top of the crumbling foundation,
4 correct?

5 A. My recollection, it was to repair the asphalt
6 that was there by putting another layer of asphalt on
7 top of what was already there.

8 Q. Right. And one of the purposes was to ensure
9 that the PCBs in that area of the plant would not leak
10 off the property, end up in Snow Creek, Choccolocco
11 Creek, Lake Logan Martin, correct?

12 A. No, it was to eliminate standing water in this
13 particular part of the manufacturing facility.

14 Q. And it didn't have anything to do with PCBs?

15 A. Not to my recollection.

16 Q. Okay. Who would know whether or not this
17 project had the added benefit of trying to control PCB
18 leakage, if you do not know as the sponsor of the
19 request expenditure -- expenditure request?

20 A. I don't know.

21 Q. What kind of radioactive material was present
22 on this site during the tenure that you had there at
23 Anniston?

24 A. Based on my recollection, we had some level
25 gauges that had a radioactive source as their -- within

3
1 the gauge to -- that was used for monitoring storage
2 tank levels.

3 Q. You're going to have to help me out and
4 explain to me what that means.

5 A. To monitor -- one method of monitoring tank
6 levels in storage tanks is to use what are known as
7 nuclear level gauges. They have a radiation source and
8 a target and it's used to control -- or used as
9 monitoring and controlling the liquid level in vessels.
10 It could be either in a reactive vessel or in a storage
11 tank. My recollection is we had some of those there at
12 that particular time.

13 Q. Did Monsanto have any other source of
14 radioactive material?

15 A. Not that I'm aware of.

16 Q. What kind of violations did the Department of
17 Public Health cite Monsanto for radioactive leaks or
18 whatever?

19 A. I don't know.

20 Q. In 1986, beginning of '86, January 14, 1986,
21 the Department of Public Health of the state of Alabama
22 wrote to Mr. Jerry Brown. Who is he?

23 A. He was the technical superintendent at
24 Anniston while I was there.

25 Q. What were his responsibilities?

3

1 A. I don't recall all of them.

2 Q. Was he your boss?

3 A. That was one of the jobs that he had was being
4 my supervisor, yes.

5 Q. You reported to him?

6 A. Yes, I did.

7 Q. Would you recognize his handwriting?

8 A. I might.

9 Q. Does that appear to be his handwriting,
10 showing you as receiving a copy of this document?

11 A. It could be.

12 (PLAINTIFF'S EXHIBIT NO. 4 WAS FIRST DULY
13 MARKED, RECEIVED AND MADE A PART OF THE RECORD.)

14 BY MR. GRAMMAS:

15 Q. You have in your hand Plaintiff's Exhibit No.
16 4, right?

17 A. Yes, sir.

18 Q. It's a letter dated January 1986 from Alabama
19 Department of Public Health to Mr. Brown, right?

20 A. Yes,

21 Q. And there's a handwritten note at the top
22 showing that you received a copy of this document,
23 correct?

24 A. Yes, sir.

25 Q. Do you recall seeing this document?

3
1 A. No.

2 Q. Did it raise any concerns at the time you
3 received it about radioactive material having some type
4 of effect on either the employees at Monsanto or any of
5 the neighboring landowners or property owners?

6 A. I don't remember what my response or reaction
7 was when I saw it.

8 Q. Take a moment to read through that. I know
9 it's been quite some time and I want to ask you a few
10 questions about it.

11 (WITNESS COMPLIES)

12 BY MR. GRAMMAS:

13 Q. Having read through that, Mr. Cheever, does
14 that jog your memory about receiving it.

15 A. I don't recall receiving it

16 Q. What is all this about? It may not be
17 anything, but when I just see the words "radioactive
18 material," it kind of is a red flag for me. What's
19 going on in that document?

20 A. Apparently, based on what I read and my
21 understanding of what I read, is that there was some --
22 the license that Monsanto Company's Anniston plant had
23 for -- their radioactive material license, the
24 individuals that were doing the routine leak testing on
25 the sources were not listed on the license. And the

4

1 second one appears -- it would appear that there was
2 some information that was not included in the -- or, in
3 the recordkeeping, inventory.

4 Q. What type of information?

5 A. I don't know. It doesn't say. I don't
6 recall.

7 Q. Monsanto, according to that document, was
8 allowing unqualified people to keep records regarding
9 the radioactive material. Is that in short what it's
10 saying?

11 A. No, it's just saying that the people who were
12 doing the work are not listed on the license. It
13 doesn't mention their qualifications.

14 Q. Okay. And did you ever have any knowledge,
15 notice, concern other than this about radioactive
16 material having any types of effects on anyone around
17 the Anniston plant for Monsanto?

18 A. No, sir.

19 Q. Who's Mr. Bruce Ely, do you know him?

20 A. Yes, sir.

21 Q. Who is he?

22 A. Bruce Ely was -- or was a corporate --
23 Monsanto corporate employee, and I'm trying to remember
24 exactly what his field of expertise is, but it slips me
25 now. I don't recall exactly what -- he was a corporate

4
1 employee who worked out of the St. Louis office.

2 Q. One of the things, in a document that I've
3 referred to many times is a list of people with
4 knowledge of the facts in another case where your name
5 appears, is that apparently you had communications with
6 the State of Alabama and the United States
7 Environmental Protection Agency regarding PCBs. Do you
8 recall any such conversations?

9 A. I'm sorry, I don't.

10 Q. Do you know why you would be communicating
11 with the State of Alabama or the EPA, United States
12 Environmental Protection Agency, regarding PCBs?

13 A. We talked about the -- it was likely
14 communication around that Snow Creek removal, and I
15 don't recall, the EPA I think was involved in that as
16 well as the State of Alabama.

17 Q. Did you have any communications with those two
18 governmental entities on matters other than the Snow
19 Creek remediation work in 1989 to 1990?

20 MR. COX: As it relates to PCBs?

21 BY MR. GRAMMAS:

22 Q. Yeah, as it relates to PCBs.

23 A. I don't recall having any others.

24 Q. Ever, I mean during the entire history of your
25 employment, relating to PCBs?

4
1 A. I may have. I don't recall specific instances
2 where that was a specific topic of discussion.

3 Q. And you certainly don't remember any as it
4 relates to the Monsanto plant in Anniston other than
5 what we've already talked about?

6 A. I don't remember anything specifically.

7 Q. Alan Faust, do you know who he is?

8 A. Yes, I do.

9 Q. Who's he?

10 A. He is a hydrogeologist who works for the
11 Monsanto -- now Solutia -- corporate office.

12 Q. Did he ever work under you?

13 A. No, sir.

14 Q. How do you know him?

15 A. He's a corporate resource that we -- sites had
16 available to our use as a hydrogeologist. We had two
17 or three hydrogeologists that we used to help us answer
18 questions and understand information and they worked
19 with us from time to time and we're a network of --
20 Environmental Safety and Health is a network of people
21 who get together from time to time and we know most
22 everybody.

23 Q. What is a hydrogeologist?

24 A. I --

25 Q. I mean what does he do? Why would you ever

4

1 call on one?

2 A. You'd have to ask him what he does.

3 Q. Why would you ever call him up?

4 A. Hydrogeologist is an individual who can help
5 explain the movement of water underground, as much as
6 anything.

7 Q. Underground?

8 A. Yes, sir.

9 Q. Not above ground?

10 A. He may know something above ground, too, I
11 don't know.

12 Q. Would he also know something about the
13 movement of contaminants in the water?

14 A. Yes, I believe so.

15 Q. Did you ever call Mr. Faust up to ask him
16 questions about PCBs contained in sediments that are
17 contained in water that are moving from the Anniston
18 plant into the ecosystem?

19 A. I don't recall having any specific
20 conversations with him about that subject.

21 Q. Mr. Jack Garrett, do you know who he is?

22 A. He was a doctor, I think he was the chief
23 medical man for Monsanto.

24 Q. So he's an MD, a medical doctor?

25 A. Yes, sir.

5

5
1 Q. Is he like a company doctor or something,
2 people would go to him when they were sick?

3 A. No. He was the head of the department of
4 medicine and health services, department of medicine
5 and environmental health. I don't recall exactly what
6 the group was called.

7 Q. Did he treat Monsanto employees for colds --

8 A. Not to my recollection.

9 Q. -- and flus and stuff like that?

10 A. You'd have to ask him what he did for a job,
11 but not to my knowledge.

12 Q. What is your understanding he did for
13 Monsanto?

14 A. All I knew is that he was the head of the
15 department and he was the boss or the head of the
16 department of medicine and environmental health or
17 whatever it was called.

18 Q. And he would --

19 A. It was a corporate position that was far
20 removed from me, so I'm not sure exactly what he did.

21 Q. Why does Monsanto need medical doctors in
22 their company, if they're not treating their employees
23 for illnesses?

24 A.. I don't know why the company employs him.

25 Q. Did you ever have any communications with Mr.

5
1 Garrett?

2 A. I don't recall having any specific
3 communication with him.

4 Q. You certainly don't recall having any about
5 PCBs?

6 A. I don't recall ever meeting the man.

7 Q. Gene Jessee, J-E-S-S-E-E, do you know who that
8 is?

9 A. He was a former plant manager at the Anniston
10 plant.

11 Q. When was he there?

12 A. I don't know the exact times.

13 Q. Can you guesstimate?

14 A. It was before 1981, that's all I know.

15 Q. Was he there in the '60s?

16 A. I don't know.

17 Q. How about Robert T. Jones?

18 A. He's the environmental person at the site
19 currently.

20 Q. He, for lack of a better word, took your job
21 when you left?

22 A. Yes, sir.

23 Q. Is he still there?

24 A. As far as I know.

25 Q. Joseph Landwehr, L-A-N-D-W-E-H-R, do you know

5
1 who he is?

2 A. I sure don't. I've never heard the name. I
3 don't recall.

4 Q. Jack Mayausky, M-A-Y-A-U-S-K-Y, do you know
5 who he is?

6 A. I don't know the man. He was -- I know he was
7 a plant manager down there recently.

8 Q. Is he still there?

9 A. I don't believe so.

10 Q. Do you know where he is?

11 A. I believe he's in Springfield, Massachusetts,
12 but I'm not certain.

13 Q. Is he still with Monsanto, to the best of your
14 knowledge?

15 A. He works for Solutia.

16 Q. He wasn't fired or anything like that?

17 A. Not to my knowledge.

18 Q. Gerald Miller?

19 A. No, the name doesn't ring a bell.

20 Q. Mr. Papageorge, P-A-P-A-G-E-O-R-G-E, do you
21 know who he is?

22 A. He was a -- I'm trying to remember his title.
23 He was a corporate manager, environmental manager, I
24 guess, is my recollection of what his -- the last time
25 I -- I'm sure he was other things, but that was what I

5
1 remember him as.

2 Q. He had pretty big involvement with PCBs for
3 Monsanto, didn't he?

4 A. I don't know.

5 Q. How about Mr. Taffy, W.F. Taffy, do you know
6 who he is?

7 A. Yes, sir.

8 Q. Who's Mr. Taffy?

9 A. He was an employee at the Anniston plant who
10 retired, and when I went to Anniston, I picked up part
11 of the work that he did.

12 Q. What type of educational background does he
13 have?

14 A. You'd have to ask him. I don't know.

15 Q. Have you seen him recently?

16 A. No, sir, I have not.

17 Q. The last time you saw him was when you were in
18 Anniston or even before that?

19 A. The last time when I recall seeing him was
20 after I first went to Anniston, yes, sir.

21 Q. Do you know what type of condition he's in
22 today --

23 A. No, sir.

24 Q. -- from a health standpoint?

25 A. I have no idea.

5

1 Q. How about Scott Tucker, do you know who he is?

2 A. I sure don't.

3 Q. Eugene Wright, do you know who he is?

4 A. No.

5 MR. COX: He was also known as "Bunky."

6 MR. GRAMMAS: Who, Eugene?

7 MR. COX: B-U-N-K-Y. Does that ring any

8 bells?

9 THE WITNESS: No.

10 MR. GRAMMAS: I appreciate your time.

11 MR. COX: Thanks, Pete.

12 (DEPOSITION ADJOURNED)

13

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1 STATE OF MISSOURI)
2)
3 COUNTY OF ST. LOUIS)

4 I, KEVIN J. WEICHMAN, CSR, RPR, Notary Public
5 in and for the County of St. Louis, State of Missouri,
6 do hereby certify that pursuant to stipulation there
7 appeared before me on the 3rd day of September, 1998,
8 at the offices of Taylor & Schroeder Reporting & Video,
9 7494 Ethel Avenue, St. Louis, Missouri, ROBERT L.
10 CHEEVER, who was first duly sworn by me to testify to
11 the whole truth of his knowledge touching the matter in
12 controversy aforesaid, so far as he should be
13 interrogated concerning the same; that he was examined
14 and the examination was taken down in shorthand by me
15 and afterwards transcribed by computer-aided
16 transcription.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my notarial seal on this 3rd day of
19 September, 1998.
20
21
22
23

24 KEVIN J. WEICHMAN, CSR/RPR
25 Notary Public

5
1 STATE OF MISSOURI)
2)
3 COUNTY OF ST. LOUIS)

4 I, ROBERT L. CHEEVER, do hereby certify:

5 That I have read the foregoing deposition;

6 That I have made such changes in form and/or
7 substance to the within deposition as might be
8 necessary to render the same true and correct;

9 That having made such changes thereon, I
10 hereby subscribe my name to the deposition.

11 I declare under penalty of perjury that the
12 foregoing is true and correct.

13 Executed this _____ day of _____,
14 1998, at _____,

15
16
17
18 _____
19 ROBERT L. CHEEVER

20
21
22 Subscribed and sworn before me this _____ day
23 of _____, 1998.

24 My Commission Expires: _____

25 _____
Notary Public

DEPOSITION CORRECTION SHEET

(Page 1)

DEPONENT: ROBERT L. CHEEVER

RE: THOMAS C. DYER, ET AL vs. MONSANTO COMPANY, ET AL
Consolidated For Discovery With
SHELTER COVE MANAGEMENT, INC., ET AL vs. MONSANTO
COMPANY, ET AL

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(Page 2)

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3

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Consolidated For Discovery With

4

SHELTER COVE MANAGEMENT, INC., ET AL vs. MONSANTO
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(Page 3)

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