

IN THE CIRCUIT COURT OF ST. CLAIR COUNTY, ALABAMA

PELL CITY DIVISION

THOMAS C. and CHARLOTTE	)	
G. DYER,	)	
Plaintiffs,	)	CIVIL ACTION NUMBER
	)	CV-93-250 consolidated
VS.	)	with CV-94-50-PH for
	)	discovery only
MONSANTO COMPANY, A	)	
Delaware corporation,	)	DEPOSITION OF:
Defendants.	)	WILLIAM L. DEFER
	)	
SHELTER COVE MANAGEMENT,	)	
INC., et al.,	)	
Plaintiffs,	)	
	)	CIVIL ACTION NUMBER
VS.	)	
	)	CV-94-50-PH
MONSANTO CORPORATION,	)	
et al.,	)	

S T I P U L A T I O N

IT IS STIPULATED AND AGREED, by and between
the parties through their respective counsel, that the
deposition of:

WILLIAM L. DEFER,
may be taken before Jill B. Sanders, Commissioner and
Notary Public, State at Large, at the Law Offices of
Burr & Forman, 3000 SouthTrust Tower, 420 20th Street
North, Birmingham, Alabama, on the 15th day of
September 1998, commencing at approximately 9:20 a.m.

Defer, William L. (fmr Monsanto employee) in DYER

1 IT IS FURTHER STIPULATED AND AGREED that the
2 signature to and reading of the deposition by the
3 witness is not waived, the deposition to have the same
4 force and effect as if full compliance had been had
5 with all laws and rules of Court relating to the
6 taking of depositions.

7
8 IT IS FURTHER STIPULATED AND AGREED that it
9 shall not be necessary for any objections to be made
10 by counsel to any questions, except as to form or
11 leading questions, and that counsel for the parties
12 may make objections and assign grounds at the time of
13 the trial, or at the time said deposition is offered
14 in evidence, or prior thereto.

15
16 * * * * *

A P P E A R A N C E S

FOR THE PLAINTIFF:

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1 I, Jill B. Sanders, a Court Reporter of
2 Birmingham, Alabama, and a Notary Public for the State
3 of Alabama at large, acting as commissioner, certify
4 that on this date, pursuant to Rule 30 of the Alabama
5 Rules of Civil Procedure and the foregoing stipulation
6 of counsel, there came before me on the 15th day of
7 September 1998, at the Law Offices of Burr & Forman,
8 3000 SouthTrust Tower, 420 20th Street North,
9 Birmingham, Alabama, commencing at approximately
10 9:20 a.m., WILLIAM L. DEFER, witness in the above
11 cause, for oral examination, whereupon the following
12 proceedings were had:

13 WILLIAM L. DEFER,
14 being first duly sworn, was examined and testified as
15 follows:

16 COURT REPORTER: Usual stipulations?

17 MR. GRAMMAS: Do you want to read and sign?
18 We've been doing that on all of them. I don't know if
19 you want to do it or not. It's fine with us if you
20 do.

21 MR. PECK: It's up to you. You can wait and
22 see how it goes and see if there are a lot of
23 complicated things that come up. It's up to you.

1 THE WITNESS: I have no idea what you're
2 talking about.

3 MR. PECK: At the end of the deposition --

4 MR. GRAMMAS: We'd rather him read and sign
5 it.

6 MR. PECK: -- you can read and sign the
7 deposition and make any corrections you feel are
8 necessary.

9 THE WITNESS: Okay.

10 MR. GRAMMAS: We'll go ahead and -- let's
11 just say he'll read and sign it.

12

13 EXAMINATION BY MR. GRAMMAS:

14 Q Could you state your full name for the
15 record, please, sir?

16 A William L. DeFer.

17 Q And where are you currently employed?

18 A Monsanto Company.

19 Q As what?

20 A Plant manager of the Augusta, Georgia
21 facility.

22 Q Plant manager of what?

23 A The Monsanto Facility in Augusta, Georgia.

1 Q What do y'all manufacture there?

2 A Pharmaceutical intermediates, Nutrasweet
3 brand of aspartame.

4 Q How long has that plant been there in
5 Augusta?

6 A 1982.

7 Q Was there ever an occasion, sir, where you
8 worked at the Anniston plant for Monsanto?

9 A Yes, there was.

10 Q What period of time would that be?

11 A December of 1991 through June of 1994.

12 Q And what did you do during that period of
13 time for Monsanto here in Anniston?

14 A I was the plant manager of that facility.

15 Q Monsanto wasn't manufacturing PCBs at that
16 time, was it?

17 A No, they were not.

18 Q Have you ever been employed by Monsanto --
19 let me ask you this: When did you first become
20 employed by Monsanto?

21 A 1979.

22 Q Was that right out of college?

23 A Yes, it was.

1 Q When did you graduate?

2 A 1979.

3 Q Okay. Where did you graduate from?

4 A University of Missouri.

5 Q What degree do you hold?

6 A Bachelors in chemical engineering from that
7 school.

8 Q A BS degree in chemical engineering?

9 A Yes.

10 Q Have you held any other degrees?

11 A I have a masters degree in business
12 administration.

13 Q And when did you obtain that?

14 A 1985.

15 Q Did Monsanto pay for that?

16 A Yes, they did.

17 Q Did Monsanto pay for your chemical
18 engineering degree?

19 A No, they did not.

20 Q Do you have any family members or anything
21 like that employed by Monsanto besides yourself?

22 A No.

23 Q How was it that you applied for a job at

1 Monsanto?

2 A Just one of the companies I interviewed with
3 at school.

4 Q Does your chemical engineering degree give
5 you any formal education or background on the study of
6 polychlorinated biphenyl?

7 A No formal education on PCBs while I got my
8 undergraduate degree.

9 Q Have you had any education on PCBs since you
10 have become employed by Monsanto?

11 A Some.

12 Q Tell me about those.

13 A I guess principally maybe two areas.
14 Although I never had formal accountability for any
15 kind of solid waste programs, I became familiar with
16 regulations regarding PCBs and transformers, so that
17 general area. I'm not an expert, but I have some
18 general understanding of that part of the regulations.
19 And just the secondary would be just general
20 scientific knowledge that either I read in a trade
21 article or learned internally through Monsanto,
22 whether it's, you know, a backgrounder that Monsanto
23 did on PCBs or something of that nature.

1 Q Did you say bread in a trade?

2 A Read.

3 Q That you have read in a trade.

4 A That I might have read in a trade journal
5 or something like that.

6 Q To your knowledge when did Monsanto stop
7 manufacturing PCBs?

8 A Sometime in the '70s.

9 Q Before you ever became employed with
10 Monsanto?

11 A Correct.

12 Q And you understand that PCBs were
13 manufactured with the intended purpose of being a
14 persistent chemical?

15 MR. PECK: Object to the form.

16 A No, that's not my understanding.

17 Q Why was Monsanto making PCBs to your
18 knowledge?

19 A To my knowledge Monsanto was making PCBs
20 because Swann Chemical Company made PCBs. And that's
21 how Monsanto got into the PCB business, when they
22 acquired Swann Chemical Company.

23 Q You are talking about back in the 20's?

1 A Let's see --

2 Q I'm talking about from like 1930 up through
3 1976 when Monsanto stopped making PCBs. Why were they
4 making them during that forty-year period of time?

5 A Because it was a useful commercial product.
6 It had unique electric properties and enhanced
7 significantly the safety of things such as
8 transformers and capacitors that needed dielectrics.

9 Q You say it enhanced the safety of them. Is
10 that because of the fire resistant nature of it?

11 A That's my understanding, yes.

12 Q But it also was manufactured, at least from
13 my reading of some of Monsanto's documents, to be a
14 very stable persistent chemical. Is that not your
15 understanding?

16 A No, that's -- it's not my understanding.
17 My knowledge of electrical engineering and power
18 distribution is very limited. And all I know is the
19 PCBs are a good dielectric fluid. I don't propose
20 to --

21 Q Why are they a good dielectric fluid?

22 A I don't know.

23 Q Well, how do you know that they are a good

1 dielectric fluid, then?

2 A Because I have been told by people, you
3 know, in the power industry and told by people who
4 know more about PCBs than I do. I'm relying on their
5 judgment.

6 Q Any of those people work for Monsanto?

7 A I suppose so, sure.

8 Q Who are they?

9 A Well, it would have been a whole host of
10 people.

11 Q Tell me who they are.

12 A Okay. First and foremost it would be in
13 Monsanto backgrounder material, which is where I would
14 have learned that. I don't recall it going into more
15 detail. I don't recall those kind of materials going
16 into the detail about, you know, what makes a good
17 dielectric fluid, I don't recall any of that
18 background. And some of the people I worked with at
19 the Anniston plant, principally.

20 Q Who would those be?

21 A Primarily, someone like Jerry Brown would be
22 a person who provided just general background
23 information. And another source of information

1 while -- would just be general records of Swann
2 Chemical and some of the information I have read about
3 the history of Swann Chemical and kind of the
4 discovery of PCBs.

5 Q Who is Jerry Brown?

6 A Jerry works at the Anniston plant. That's
7 my belief, he still works there. At the time Jerry
8 was -- I think his title was technical superintendent,
9 maybe, but he supervised the lab and some other
10 technical areas.

11 Q I don't understand -- and help me understand
12 this Mr. DeFer -- why is it that you're looking into
13 PCB issues if Monsanto stopped making PCBs four, five
14 years before you even became employed by Monsanto?

15 A Do you mean why are we looking into them
16 now, or why have we looked at them historically or --

17 Q I mean, I don't understand you personally.
18 Why is it necessary for you to be reading documents
19 from Swann Chemical about the manufacture and
20 production of PCBs and internal documents from
21 Monsanto and background material regarding PCBs if
22 y'all don't even make the stuff anymore?

23 A Well, as far as the background information

1 of Swann Chemical, that's just general background
2 trying to understand the history of the plant, nothing
3 special about that. I was just as interested in the
4 phosphates that were first manufactured there as PCBs.
5 That's just for general background information.

6 In terms of PCB just general information,
7 Anniston was a facility that once manufactured PCBs,
8 and those things like backgrounders were sent to me
9 when they were updated.

10 Q I guess what I'm getting at is this: Is
11 this just your drive to educate yourself informally
12 through these sources you have mentioned on PCBs in
13 general, is motivated by your own personal desires to
14 learn it, or is it motivated because Monsanto is
15 asking you in some official capacity to study these
16 issues? Do you understand my question?

17 A I think I do.

18 Q Okay.

19 A I did not have an official job
20 accountability that required me to have a technical
21 understanding of PCBs. My job accountability might
22 have included and would have included potentially
23 inquiries from someone in the community about things

1 at the plant. So I guess principally that's why I was
2 interested in it.

3 Q And that's where I'm going to. From 1991 to
4 1994 you were the plant manager at Anniston for
5 Monsanto; is that right?

6 A Yes.

7 Q As plant manager, you were the head honcho
8 down there, right?

9 A I had overall accountability for operation
10 of the site, yes.

11 Q So you know that Monsanto manufactured PCBs
12 at that site for a forty-year period roughly, don't
13 you?

14 A I knew that they were manufactured there for
15 a long period of time.

16 Q And you also knew -- I mean, as part of the
17 plant manager, wouldn't it have been your
18 responsibility to discover the waste disposal of those
19 PCBs before you got there?

20 A Can you be more specific?

21 Q Yeah. Didn't you need to know how Monsanto
22 manufactured those PCBs during that period of time,
23 what they did to capture any waste or spills that may

1 have occurred during that period of time, and what
2 they did to dispose of those PCB waste during that
3 period of time?

4 MR. PECK: During the period of time they
5 manufactured it?

6 MR. GRAMMAS: Right.

7 A No, I don't think I needed to know that.

8 I --

9 Q Even -- go ahead. I didn't mean to
10 interrupt you.

11 A What would be important to me is were there
12 any issues pertaining to PCBs, you know, that were
13 regulatory issues or something that demanded my
14 attention during that time period.

15 Q And sitting here today, sir, you know of
16 many issues relating to PCBs that demand your time,
17 don't you?

18 MR. PECK: While he was plant manager?

19 MR. GRAMMAS: Right.

20 A While I was plant manager I was not aware of
21 any significant issues surrounding PCBs on the site.

22 Q Did you know that PCBs are stored in a
23 landfill at the Anniston plant?

1 A I know that there is a closed landfill at
2 the Anniston plant that has by-products from several
3 processes in the plant, including by-products of the
4 PCB plant, yes, I know that.

5 Q I will ask you that question again because I
6 don't think you answered it. Are you aware, sir,
7 sitting here today that PCBs are stored in a landfill
8 at Monsanto's site in Anniston, Alabama?

9 A And I'm --

10 MR. PECK: Object to the form of the
11 question. Asked and answered. Go ahead.

12 A I'm aware that by-products from the
13 manufacture of the PCB process were placed in a
14 landfill on the plant site, yes.

15 Q What does that mean? I don't understand
16 what that answer means.

17 A Well --

18 Q True or false?

19 A I'm not trying to evade your question. Your
20 question seems to imply that we used a landfill for a
21 finished product storage area, which we did. It was
22 by-products -- at least from my understanding, it was
23 by-products from the manufacture of PCB, which

1 occurred before I got there.

2 Q True or false, PCBs are stored in a landfill
3 in Anniston, Alabama? Simple question.

4 MR. PECK: Object to the form of the
5 question. Asked and answered twice. It's not a true
6 or false question. You can explain your answer.

7 Q Well, it is a true or false question, Adam,
8 because I made it a true or false question.

9 MR. PECK: Okay. Go ahead.

10 Q True or false, PCBs are stored in a landfill
11 in Anniston, Alabama as we sit here today?

12 A By-products from the manufacture of PCBs are
13 in a landfill on the plant site, correct.

14 Q Is there some reason, Mr. DeFer, that you
15 don't want to tell me that PCBs are in a landfill in
16 Anniston, Alabama?

17 MR. PECK: Object to the form of the
18 question. Argumentative. Asked and answered three
19 times.

20 A No, there is no particular reason.

21 Q Let me ask you this: Do you have a
22 hesitation --

23 MR. PECK: Let him finish what he was

1 saying. You cut him off.

2 A I don't want to -- I guess that -- I would
3 characterize it this way, and let me expand on my
4 answer and maybe that will answer your question. Is
5 that my understanding of these things that predated my
6 arrival on the plant site is that this landfill was
7 used for by-products for a manufacturer of various
8 products including PCB by-products, and, yes, some of
9 those by-product would include molecules that we would
10 characterize as PCBs.

11 Q All right. Now, I have asked a very direct
12 question, and I, in my opinion, have gotten an
13 indirect answer. And I want the record to be clear.
14 Yes or no, true or false, are there PCBs stored in a
15 landfill on Monsanto's property in Anniston, Alabama?

16 MR. PECK: Object to the form of the
17 question. Now asked and answered four times.

18 A There are materials in that landfill that
19 include PCBs, yes.

20 Q So that means PCBs are, in fact, stored in a
21 landfill in Anniston, Alabama?

22 MR. PECK: Object to the form.

23 A I don't believe I said that.

1 Q That's why I keep asking you. See, your
2 lawyer keeps objecting and saying you have answered my
3 question, but I don't think you have. And now you've
4 agreed with me that you haven't. The question is are
5 PCBs in a landfill in Anniston, Alabama? Yes or no.
6 That's a simple question. Are they there?

7 MR. PECK: Object to the form of the
8 question. Asked and answered five times. He is
9 explaining his answer to you, Pete. If you don't like
10 it, that's your problem. You can go ahead again.
11 Tell him again.

12 Q Are PCBs present in a landfill in Anniston,
13 Alabama?

14 A There are by-products from the manufacture
15 of PCBs stored on-site, and those by-products do
16 include PCBs.

17 Q Okay. So let me ask you this: If a jury
18 reads -- where do you currently live, Mr. DeFer?

19 A Augusta, Georgia.

20 Q Are you planning on being present at the
21 trial of this matter to testify to this jury to your
22 knowledge?

23 A If called I will.

1 Q I guess what I'm asking you is, is there any
2 reason why you are not going to be present at the
3 trial of this matter to testify to the jury?

4 A I don't know of any reason right now, no.

5 Q Do you have any present intentions to appear
6 before this jury and give live testimony to the jury
7 regarding your involvement in Monsanto's Anniston
8 plant?

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

10 Q Assuming that you are not there and a jury
11 reads your deposition testimony as opposed to your
12 live questioning, do you want the jury to understand
13 that PCBs are not stored in a landfill in Anniston,
14 Alabama?

15 A I would not want to leave them with that
16 impression. I would want to expand on it, as I have
17 already done.

18 Q You want the jury to know the truth about
19 Monsanto's conduct, don't you, sir?

20 A I want the jury to know the truth.

21 Q And the truth is PCBs are located in a
22 landfill on-site at Monsanto's Anniston facility, yes
23 or no?

1 MR. PECK: Asked and answered like six
2 times now. Object to the form of the question. I
3 hope someday we move beyond this.

4 A There are many materials stored in that
5 landfill. They do include by-product materials. Some
6 of those by-products are PCBs.

7 Q Let me ask you this: Is the reason you are
8 hesitant to directly say that PCBs are present in the
9 landfill is because you know that PCBs are improperly
10 stored there?

11 A No, that's not the reason.

12 Q Is the reason that you are hesitant to say
13 directly that PCBs are stored in a landfill in
14 Anniston, Alabama is because you know that PCBs are a
15 known human carcinogen?

16 MR. PECK: Object to the form of the
17 question. Scientific facts not privy.

18 A No, that's not the reason and -- no, it's
19 not.

20 Q But you do know that PCBs are a known human
21 carcinogen, don't you?

22 MR. PECK: Object to the form of the
23 question.

1 A That's not a simple question to answer. As
2 far as I know, there is no scientific consensus that
3 PCBs are a human carcinogen. That's my belief and
4 understanding.

5 Q So you are denying the reports that have
6 discussed PCBs and classified them as a human
7 carcinogen?

8 A I don't know what reports you are referring
9 to.

10 Q Well, I'm referring to the ones you have
11 just discussed, that you have just mentioned
12 implicitly in your testimony.

13 MR. PECK: Object to the form of the
14 question. If you have got a report that shows it's a
15 known human carcinogen why don't you give it to him
16 because I know of no such report. He did not testify
17 to that.

18 A And I don't know that there is such a
19 report. I am not an expert in the health effects of
20 PCBs. My belief and understanding is and always has
21 been that there is no scientific consensus that there
22 is any long-term chronic significant health effects to
23 humans from PCBs.

1 Q And you want to testify under oath to what
2 you just said even though before you said -- you
3 admitted that you are not an expert on health effects
4 of PCBs, correct?

5 A I didn't represent that as an expert. I
6 just said it's my belief and understanding.

7 Q You believe that it doesn't cause -- that
8 PCB exposure does not cause long-term human health
9 effects yet at the same time you acknowledge you don't
10 know anything about the potential health effects of
11 human beings on PCB exposure? Is that what you are
12 saying?

13 A Actually, I believe what I said was to my
14 understanding there is no scientific consensus about
15 the health effects of PCBs in humans. So I'm not
16 taking a position one way or the other because I don't
17 have that expert knowledge.

18 Q That's what I'm getting to. You are not
19 saying that PCBs don't cause adverse human health
20 effects, are you?

21 MR. PECK: Object to the form of the
22 question. We are not offering him as an expert on the
23 issue of PCBs. I don't know why you are trying to

1 beat him up about things that we are not offering him
2 on. We will bring a toxicologist for you to --

3 MR. GRAMMAS: Is he an expert?

4 MR. PECK: -- discuss PCBs. He is here
5 because he has to answer the questions you ask.

6 MR. GRAMMAS: Is he an expert witness?

7 MR. PECK: He is not an expert on the issues
8 of PCBs.

9 MR. GRAMMAS: Are you going to designate
10 him as an expert witness in this case for any matter?

11 MR. PECK: I am not designating him as an
12 expert witness.

13 MR. GRAMMAS: So he is a fact witness.

14 MR. PECK: He will not be designated as an
15 expert witness.

16 MR. GRAMMAS: Then he is a fact witness from
17 Monsanto, and he is here to answer questions on behalf
18 of Monsanto, Adam, and I will ask him any questions
19 relating to PCBs that I feel are necessary.

20 MR. PECK: You can do that, but this is just
21 stupid to ask him quote, unquote, expert questions and
22 then beat him up for not being an expert. It's just
23 stupid.

1 MR. GRAMMAS: No, it's not. Well, you think
2 all you want about it. That's fair. If you think
3 it's stupid, that fine.

4 MR. PECK: It's stupid. It's argumentative.
5 I'm not going to stop it, but it's just absurd. I
6 mean, we are going to be here all day for a guy who
7 was in the plant for a year and a half, and it's just
8 stupid.

9 MR. GRAMMAS: Well, you are probably right.
10 We will be here all day. And as long as I continue to
11 get evasive answers, we may be here all week.

12 MR. PECK: You haven't gotten evasive
13 answers. You just don't like the answers you get.

14 MR. GRAMMAS: Oh, I like them. I like them
15 a lot.

16 Q (By Mr. Grammas) Now, scientific consensus,
17 that suggests to me, Mr. DeFer, that you have read
18 scientific literature on PCBs. You said there is not
19 a scientific consensus on the issue of adverse human
20 health effects of exposure to PCBs. Did I hear you
21 correctly?

22 A I said that it's my belief and
23 understanding that there is no scientific consensus.

1 I haven't done specific research on that.

2 Q Well, if you have an understanding that
3 there is not a scientific consensus, that suggests to
4 me that there is a debate -- at least that there is a
5 debate within the scientific community about adverse
6 human health effects on PCB, true?

7 MR. PECK: Object to the form of the
8 question. Lack of foundation.

9 A Could you repeat the question?

10 Q Yes. You said there is no scientific
11 consensus. That means some people are disagreeing
12 with the position that you have stated on the record.

13 MR. PECK: He said it's his understanding
14 there is no scientific consensus.

15 MR. GRAMMAS: Hey, Adam, the record speaks
16 for itself.

17 MR. PECK: I'm taking notes. You apparently
18 don't know what he said.

19 MR. GRAMMAS: I understand that you need to
20 object to the form of questions if you feel like I
21 have asked an improper question, but I will ask if you
22 will please stop interjecting, stop coaching your
23 witness. I know these are difficult questions.

1 MR. PECK: I'm not coaching my witness. I'm
2 trying to protect this incredible record you are
3 creating.

4 MR. GRAMMAS: I know this is a difficult
5 topic for Mr. DeFer to talk about, but let's let his
6 testimony be on the record instead of yours, okay?

7 MR. PECK: It's not a difficult topic. It's
8 just being made difficult by the argumentative nature
9 of your entire line of questioning. I've got to admit
10 I have never been in a deposition quite like this in
11 thirteen years of practice, but, you know, I guess I
12 haven't been in one with you, Pete.

13 MR. GRAMMAS: I guess you haven't been in
14 one with me, then.

15 Q (By Mr. Grammas) All right. Now, I will
16 ask you again. When you say that you are aware that
17 there is not a scientific consensus on the issues
18 relating to health effects of PCB exposure to human
19 beings, doesn't that mean that within the scientific
20 community as far as you know it there is a debate?
21 You will at least give me that, won't you?

22 MR. PECK: Object to the form of the
23 question. Lack of foundation.

1 A I'm not aware that there is a consensus on
2 the health effects of PCBs. And I base that not on
3 in-depth study, not on any expertise that I have, just
4 on both things, very casual kind of summaries that I
5 might read in trade journals and the position that
6 some of Monsanto's own experts have taken. But I have
7 not had that explained to me in any depth, and I am
8 not an expert. I'm just repeating what my belief is,
9 what my understanding was.

10 Q Are you finished?

11 A Yes.

12 Q You have heard some of Monsanto's experts
13 say that they don't believe PCB exposure causes
14 adverse human health effects. Have you heard any
15 other experts disagree with Monsanto's experts on that
16 topic?

17 A In what form or what are you referring to?

18 Q I'm repeating back to you what you are
19 telling me. You said you are aware that Monsanto's
20 experts have taken the position that there is not a
21 consensus that PCB exposure to humans have adverse
22 health effects. That's what you just told me. And
23 I'm just following up on that. And I'm saying, well,

1 are you aware of other experts who have taken a
2 contrary position?

3 A It's my understanding that there have been
4 contrary positions, yes. But I do not have a detailed
5 knowledge of those studies.

6 Q Right. And those contrary positions under
7 your understanding are, in fact, that PCBs do cause
8 adverse human health effects to PCB exposure?

9 A I'm not enough of an expert in the field
10 that I want to go on record as characterizing what
11 some of those other positions are. That wouldn't be
12 -- I don't have a basis to make that statement.

13 Q But you do have a basis to make the
14 statement that you don't believe it causes adverse
15 health human effects, is that what I am hearing you
16 say?

17 A No. I think what I said is it's my
18 understanding and belief that there is not a consensus
19 in the scientific community.

20 Q Let me ask you this: As the plant manager
21 in Anniston from 1991 to 1994, part of your
22 responsibilities were to make sure that chemicals that
23 were manufactured in the past that may be stored on

1 your property were not escaping your property and
2 getting into your neighboring landowner's property,
3 would you agree with that?

4 A I would say that in my role as plant
5 manager, I had many accountabilities. Those included
6 things like safety, quality, costs and compliance with
7 environmental regulations. It's my understanding at
8 the time -- at the time I was not aware of any issue
9 regarding PCBs that I needed to respond to or take any
10 action on while I was there.

11 In your question you have also raised the
12 issue about things -- potentially, you have raised the
13 issue about things that occurred long before I arrived
14 at the plant. And I don't have knowledge of those
15 things.

16 Q I didn't say a word about PCBs in my
17 question, Mr. DeFer. I didn't mention it. So maybe
18 you misunderstood my question. I will ask it again.

19 A All right.

20 Q As part of your responsibilities as the
21 plant manager at the Anniston facility from 1991 to
22 1994, you were charged with the responsibility of
23 making sure that chemicals Monsanto had manufactured

1 in the past did not escape its property and get onto
2 neighboring properties, isn't that a true statement?

3 A From an internal prospective -- let me
4 answer that from two perspectives, internal and
5 external. From an internal prospective it's not a
6 normal job accountability for someone in my role to
7 have oversight, expect to have complete knowledge of
8 things that happened before I was there because you
9 have talked about -- you have mentioned all chemicals
10 that we manufactured in the past. If there was an
11 ongoing issue that I was aware of, if there was a
12 facility that was in the process of being closed,
13 certainly I would act on those, and that would be the
14 kind of thing that I would respond to.

15 From an external perspective, I believe
16 that, you know, had I known of any issues like that
17 and when I do become aware of issues like that, those
18 are acted on.

19 Q Okay. Let's talk about an issue of PCB
20 contamination for a moment, sir. You are aware that
21 PCBs were leaking out of Monsanto's landfill during
22 the period of time that you were the plant manager,
23 they were leaving Monsanto's site, and they were

1 getting on neighboring landowners, and they were
2 getting into Snow Creek. Would you agree with
3 everything I just said?

4 A No, I wouldn't agree with any of it.

5 Q You don't believe that Monsanto is
6 responsible for putting PCBs into Snow Creek from its
7 landfill?

8 A Could you restate the question?

9 Q You don't believe that Monsanto is
10 responsible for putting PCBs into Snow Creek from its
11 landfill?

12 A I don't believe that Monsanto intentionally
13 placed PCB by-products anywhere but that landfill on
14 the site.

15 Q You don't believe Monsanto is responsible
16 for putting PCBs in Snow Creek from its landfill?

17 A Are you asking a question about PCBs that
18 might be there in Snow Creek today?

19 Q I'm asking you is it true that Monsanto
20 allowed PCBs to leave its landfill and get into Snow
21 Creek?

22 MR. PECK: During the time period he was
23 plant manager or in all time or what?

1 Q At any time.

2 A Well, during the time I was plant manager I
3 have no knowledge of that. It was not my belief that
4 that was occurring. I had no information to tell me
5 that it was occurring. Before that time I just don't
6 have a basis and fact to answer.

7 Q Okay. Well, during the time you were there,
8 you knew that there was a study being conducted on
9 Snow Creek relating to PCB contamination, weren't you?

10 A Could you be more specific about the study?

11 Q No, I can't. I'm not going to be more
12 specific about it. You knew when you were there at
13 the Anniston plant that Monsanto was studying Snow
14 Creek relating to PCB contamination, right?

15 A I don't believe there was a Monsanto study
16 during my time period there of Snow Creek.

17 Q Were you aware, sir, that the attorney
18 general had determined that Monsanto -- the attorney
19 general for the State of Alabama had determined that
20 Monsanto had put PCBs into Snow Creek?

21 A I'm not aware that there was any such
22 determination by the attorney general during the time
23 that I was there.

1 Q I didn't limit it to the time that you were
2 there, sir.

3 A I'm aware that Monsanto has cooperated with
4 agencies such as ADEM in investigating PCBs in Snow
5 Creek. I don't have a specific knowledge about an
6 attorney general's statement.

7 Q Okay.

8 A I have never seen any documents to that
9 effect.

10 Q Have you ever given a deposition before?

11 A No, I have not.

12 Q Have you ever testified at trial before?

13 A No, I have not.

14 Q Have you ever provided in any form or manner
15 or shape whatsoever any sworn testimony?

16 A Just trial testimony and depositions.

17 Q Affidavits, trial testimony, testimony in
18 depositions?

19 A I have probably provided affidavits for
20 various things, I guess. It's possible.

21 Q What types of things have you provided
22 affidavits for?

23 A It could be insurance. It could be -- I

1 suppose I could have already related to this case what
2 you would constitute an affidavit.

3 Q What would that be?

4 A I don't know. I'm not trying to be evasive,
5 but I don't want to say no when maybe I have.

6 Q Well, sitting here today do you recall
7 providing any affidavit testimony on behalf of
8 Monsanto relating to PCBs?

9 A No.

10 Q How about relating to any issue?

11 A Testimony, no, relating to any issue.

12 Q What did you do to prepare yourself for
13 this deposition today, if anything?

14 A Talked with -- spent some time with Adam
15 yesterday afternoon.

16 Q Anything else? And I don't want to know
17 about what y'all talked about.

18 A Did not.

19 Q Did you review any documents?

20 A I don't have any documents in my possession.

21 Q Did you review any documents to prepare for
22 your deposition testimony?

23 A I reviewed no documents whatsoever.

1 Q So you didn't do anything to educate
2 yourself about what Monsanto had done in the past
3 relating to PCB contamination of Snow Creek,
4 Choccolocco Creek and Lake Logan Martin; is that a
5 fair statement?

6 MR. PECK: Object to the form of the
7 question. It's argumentative. Go ahead.

8 A In terms of preparing for this deposition,
9 the answer is, no, I did no additional research
10 preparing for this deposition.

11 Q All right. Well, you have qualified your
12 answer so I'm going to ask you a broader question.

13 A Okay.

14 Q Have you ever read any documents or have you
15 ever done any research or investigation work to
16 determine whether Monsanto has contaminated Snow
17 Creek, Choccolocco Creek and Lake Logan Martin with
18 PCBs?

19 MR. PECK: Object to the form of the
20 question. Go ahead.

21 A I haven't reviewed any of those historical
22 documents, no.

23 Q You, if I understand your testimony, were

1 not present at any time during the manufacture of PCBs
2 at Anniston, correct?

3 A Correct.

4 Q And you've already testified under oath that
5 you're not aware of any PCBs leaking from the landfill
6 while you were employed by Monsanto at Anniston,
7 right?

8 MR. PECK: Object to the form of the
9 question. Mischaracterizes his prior testimony.

10 Q Did you testify to that, that you are not
11 aware of any PCBs leaking out of the landfill while
12 you were there?

13 MR. PECK: Object to the form of the
14 question. Mischaracterizes his prior testimony.

15 MR. GRAMMAS: I'm asking if that's what he
16 testified to.

17 A Could you read it back to me?

18 Q I'm asking you, sir, right now, did you
19 testify just a moment ago that you are not aware of
20 any PCBs leaking out of the landfill while you were
21 there?

22 A I do not remember. You have asked a lot of
23 questions. But if you want to ask the question again

1 as a new question, I'll answer that.

2 Q All right. Let's do that, then.

3 A Okay.

4 Q Are you aware of any PCBs leaking out of the
5 landfill while you were employed there?

6 A No, I was not aware of that.

7 Q That's what I thought you said earlier. So
8 sitting here today you have no personal knowledge nor
9 have you read any documentation that would suggest to
10 you, sir, that Monsanto ever allowed PCBs to leave its
11 plant site and contaminate Snow Creek, Choccolocco
12 Creek and Lake Logan Martin; is that a fair statement?

13 A Can you be more specific about what type of
14 documents you're talking about? Are you referring to
15 Monsanto internal documents?

16 Q I'm not referring to any particular
17 document. I just want to understand what your
18 knowledge as the plant manager in Anniston, Monsanto's
19 Anniston plant, for '91 to 1994 is. And the way I
20 have summed up your prior testimony can in my opinion
21 be summed up in the following statement. And if I'm
22 wrong, I want you to tell me. Sitting here today you
23 are not aware of any evidence, investigation, studies,

1 or whatever that would suggest to you through personal
2 knowledge or based on your investigation that Monsanto
3 has ever allowed PCBs to leave its property in
4 Anniston, Alabama and contaminate Snow Creek,
5 Choccolocco Creek, and Lake Logan Martin, true or
6 false?

7 A Okay. You have asked a complicated
8 question, and I need to give you -- I need to be
9 specific in my answer. I'm aware that different
10 groups have studied PCBs in those areas that you have
11 mentioned, for example, Choccolocco Creek. My -- I
12 have not reviewed any of those documents. I have
13 never reviewed those related to any of that specific
14 work. I have seen -- I believe that maybe I have seen
15 press clippings that alluded potentially to some of
16 those things, that's possible. But you did mention
17 the word "allow," and, you know, my -- the implication
18 is that Monsanto, you know, knowingly allowed
19 something to leave the plant site. And I should speak
20 for the time that I was there. And when I was there,
21 I don't have any knowledge of that.

22 Q I didn't limit it to the time frame, sir.
23 You see, you ran the Monsanto plant for a period of

1 time, correct?

2 A Yes, I did.

3 Q And as the head guy down there, it seems to
4 me -- and maybe I'm wrong. Maybe Monsanto is not like
5 this, but it seems to me that as part of your
6 responsibilities you would be placed with the duty to
7 make sure that hazardous chemicals that Monsanto
8 manufactured at any time at that facility weren't
9 leaving its property and getting into neighboring
10 landowners' property. That just seems to me, is that
11 true or false?

12 A Had I become aware of that kind of
13 information or had a reason to be concerned that
14 something like that was occurring, that is definitely
15 something I would have investigated.

16 Q Now, what about if -- are you aware of a
17 process called sewerage? Have you ever heard of that?

18 A Are you referring to discharge -- sewer
19 discharges at a plant?

20 Q Sewering, what does that mean to you?

21 A Well, it could mean a host of things. It
22 could mean cooling water. It could mean noncontact
23 water. It could mean water that's been in contact

1 with the process.

2 Q What does sewerage mean?

3 MR. PECK: Object to the form of the
4 question. Asked and answered.

5 Q When somebody sewers anything, what does
6 that mean?

7 A Well, it's going into a conveyance that you
8 call a sewer, I guess.

9 Q You're throwing it away, right?

10 A Well, not necessarily. It depends. It
11 depends where that sewer leads.

12 Q What if the sewer leads to -- what if
13 Monsanto were sewerage PCBs out of its Anniston
14 facility and the discharge was Snow Creek. Are you
15 aware of any of that ever happening based on review of
16 documents, Monsanto documents?

17 A I'm not aware of that based on review of
18 Monsanto documents.

19 Q Are you aware of that under any source of
20 information?

21 A I have been told by others that there were
22 process streams associated with that process that were
23 sewerage, yes, and left the plant property.

1 Q Right. So you know and you learned in your
2 official capacity at Monsanto that in the past
3 Monsanto sewered PCBs from its Anniston plant that
4 ended up directly deposited into Snow Creek during the
5 forty or so year period that it manufactured PCBs,
6 true?

7 MR. PECK: Object to the form of the
8 question.

9 A Well, I didn't have enough information -- I
10 can't say that I have enough information, either
11 reviewed the documents personally or was told enough
12 information to answer the question you have asked. I
13 don't know to the extent -- I don't know what kind of
14 pretreatment was going on in the plant boundaries. I
15 do not know specifically, you know, any kind of
16 specific information about the amount of PCBs it might
17 have been contained leaving the plant. And I'm not in
18 a position to speculate where those PCBs, you know, if
19 they left the plant, where they are.

20 Q Did you understand my question?

21 A I thought I did, yes.

22 Q Because you didn't answer my question. You
23 answered another question. My question was do you

1 know in your official capacity that Monsanto engaged
2 in a process called sewerage whereby during the period
3 of time when they manufactured PCBs they would dispose
4 of PCBs by putting them in a sewer and that sewer went
5 from a pipe that eventually went straight into Snow
6 Creek? Yes or no. It's a simple question. Are you
7 aware of that?

8 A I'm aware that there were process waste
9 waters. From that process, I don't know about what
10 kind of pretreatment they had. I know that those
11 waste waters eventually left the plant boundary and
12 went into a tributary of Snow Creek. I do know that.

13 Q That's all I'm asking. Now, so you will
14 admit to me that during that period of time you were
15 aware that Monsanto in fact dumped PCBs into Snow
16 Creek?

17 MR. PECK: Object to the form of the
18 question.

19 A I'm aware that there were waste waters
20 associated with that process. So, yes, left the plant
21 boundary and flowed through Snow Creek. I wouldn't
22 characterize that based on my limited understanding as
23 dumping.

1 Q Okay. But the waste waters did contain
2 PCBs in them?

3 A Based on what I've been told they could
4 have, yes.

5 MR. PECK: Just for the record. We are
6 talking about things that occurred back in the
7 manufacturing days of PCBs?

8 MR. GRAMMAS: Correct.

9 A Right.

10 Q Right. But we are talking about what you
11 have learned in your official capacity as a Monsanto
12 manager, okay? That's what we're talking about here.
13 So you know that Monsanto intentionally released PCBs
14 into Snow Creek over a period of time that it
15 manufactured PCBs at that site, right?

16 MR. PECK: Object to the form of the
17 question.

18 A I know that process waste waters potentially
19 containing PCBs were released from the plant into Snow
20 Creek over a period of time when PCBs were
21 manufactured.

22 Q You said process waste waters potentially
23 containing PCBs. There is no potential about it. The

1 waste water contained PCBs, right? That's what your
2 own documents show, right?

3 A I have not seen those documents.

4 Q But you know that to be the case. You have
5 already testified to that, that the waste waters
6 discharged into Snow Creek contained PCBs, right?

7 MR. PECK: Object to the form of the
8 question. Mischaracterizes his prior testimony.

9 A Could you repeat the question?

10 Q Yes, sir. Monsanto during the period of
11 time that it manufactured PCBs discharged waste water
12 into Snow Creek that contained PCBs?

13 A Monsanto during the period of PCB
14 manufacture, you know, based on what I am told, there
15 were process waste waters from that process that were
16 discharged from the plant. Those waste waters flowed
17 through a tributary of Snow Creek. And based on what
18 I'm told, there is the possibility that those waste
19 waters could have contained things from that process
20 including PCBs.

21 Q Were PCBs in the waste water or not?

22 MR. PECK: Object to the form of the
23 question.

1 A I do not have that information.

2 Q Someone at Monsanto told you that PCBs were
3 in the waste water?

4 A What I was told -- I was not told that
5 specifically. What I was told is that -- my
6 recollection is that I was told that at some point in
7 time that there was a monitoring requirement and they
8 monitored for PCBs. I know that.

9 Q And they found them?

10 A I haven't seen that data.

11 Q Okay. Who told you this?

12 A Well, one source of information would be
13 Jerry Brown.

14 Q Who else?

15 A Probably Jerry Brown.

16 Q He's the only person?

17 A He's the only person that I can recall.

18 Q Okay. Do you know whether or not PCBs have
19 been found in Snow Creek, Choccolocco Creek, and Lake
20 Logan Martin?

21 MR. PECK: Any particular time period or
22 just throughout all time?

23 Q Recently, over the past twenty years.

1 A Over the past twenty years my understanding
2 is they have been found in sediments of Snow Creek and
3 Choccolocco Creek and off the top of my head I don't
4 know about Lake Logan Martin.

5 Q Okay. And you know that fish advisories
6 have been posted along Choccolocco Creek and parts of
7 Lake Logan Martin because according to the Alabama
8 Department of Health, Public Health, PCB levels in
9 fish exceed the EPA requirements?

10 A I know that while I was in Anniston a fish
11 advisory was posted for parts of Choccolocco Creek.

12 Q Because of PCB contamination in the creek,
13 right?

14 A The advisory was based on PCBs in the fish.

15 Q Right. Have you ever talked to anybody from
16 the Department of Public Health for Alabama?

17 A Personally, I have not.

18 Q Okay. And when the Alabama Department of
19 Public Health placed this fish advisory while you were
20 in charge of the entire plant, did you ever call them
21 up and say, hey, what's this all about, some words to
22 that effect?

23 A No, I did not.

1 Q Did you ever deny to the Alabama Department
2 of Public Health that Monsanto was the responsible
3 party for the PCB contamination in that river system?

4 A I was never asked by the Alabama Department
5 of Health that question.

6 Q I understand that. Did you ever write them
7 a letter, call them, instruct your lawyers to tell
8 them, hey, Monsanto didn't put those PCBs in that
9 river system?

10 MR. PECK: I think he probably didn't mean
11 to do that but he just asked you a question invading
12 the attorney/client privilege when he asked you what
13 you instructed your lawyers to do. So I'm going to
14 instruct you not to answer that portion of the
15 question --

16 MR. GRAMMAS: That actually does not invade
17 the attorney/client privilege.

18 MR. PECK: Sure it does.

19 MR. GRAMMAS: No, it doesn't.

20 MR. PECK: Absolutely does.

21 MR. GRAMMAS: No, the attorney/client
22 privilege protects advice.

23 MR. PECK: It protects --

1 MR. GRAMMAS: It does not protect facts.

2 Q (By Mr. Grammas) And if you are aware of a
3 fact, sir, dealing with PCB contamination or your
4 denial of PCB contamination, I'm entitled to know it.

5 MR. PECK: I guarantee it will be denied in
6 the answers in this lawsuit, things that that question
7 invades.

8 MR. GRAMMAS: I won't split hairs. I
9 disagree with you, but I will give it to you. I don't
10 care. Did you ever instruct anyone to tell the
11 Alabama Department of Public Health that you do not
12 believe Monsanto was the responsible party for the PCB
13 contamination at Choccolocco Creek that caused the
14 Alabama Department of Public Health to post that fish
15 advisory?

16 MR. PECK: Object to the form of the
17 question. Argumentative.

18 A I don't recall nor do I believe that I gave
19 any instructions to anyone about communications with
20 the Alabama Department of Public Health.

21 Q Well, let me ask you this: Sitting here
22 today do you deny that Monsanto is the responsible
23 party for that fish advisory being posted?

1 MR. PECK: Object to the form of the
2 question. Lack of foundation.

3 MR. GRAMMAS: What do you mean lack of
4 foundation?

5 MR. PECK: It means he is not qualified to
6 express a very scientific opinion about whether or not
7 Monsanto was responsible for whatever PCBs may be in
8 Choccolocco Creek.

9 MR. GRAMMAS: You are telling me the head
10 honcho at Monsanto from '91 to '94 who was present
11 when one of the fish advisories was posted can't tell
12 me under oath whether Monsanto is the party
13 responsible for it? Is that what you are saying?

14 MR. PECK: Yeah, I'm telling you that.
15 That's a scientific question. And he's not qualified
16 to answer it.

17 MR. GRAMMAS: That's not a scientific
18 question.

19 MR. PECK: Yes, it is. You apparently don't
20 know what science is, Pete.

21 Q (By Mr. Grammas) You have scientist --

22 MR. PECK: You are asking about science in
23 every one of your questions.

1 Q You have scientists working for you, right?
2 When you were the plant manager out there in Anniston,
3 you had scientists working under your instruction and
4 direction, didn't you?

5 A There were technical people who worked for
6 me, yes.

7 Q And they were in charge with the
8 responsibility of determining factually the truth of
9 scientific evidence and then reporting it back to you
10 so you as a manager could make a decision based on the
11 evidence, right?

12 A Those technical people at the plant were
13 charged with doing technical things related to the
14 operations of the plant.

15 Q Right. And if Monsanto was the party
16 responsible for putting PCBs into Choccolocco Creek,
17 which ultimately led to a fish advisory, during the
18 period of time that you were the head man in Anniston,
19 you would have become aware of that type of
20 information, right, or should have become aware of it,
21 right?

22 MR. PECK: Object to the form of the
23 question.

1 A Let me start at the end of the question and
2 work forward. As far as, you know, the fish advisory,
3 my belief is that was related to PCB levels in fish
4 that they found. Neither myself nor anybody at the
5 plant has any expertise around aquatic fish, the
6 toxicity issues around fish, that's not our area of
7 expertise.

8 You have also asked -- in your question you
9 asked about responsible for that. Again, that's not
10 my area of expertise or the people at the plants area
11 of expertise to draw conclusions about how a past
12 process that we ran, you know, influenced that.
13 That's just not something I know about nor was the
14 technical staff at the plant charged with that. That
15 wasn't an area of their expertise.

16 MR. PECK: Can we take a break?

17 MR. GRAMMAS: Yeah.

18 (A brief recess was taken)

19 Q Mr. DeFer, have you ever told anybody in the
20 past that the PCBs that are being found in this river
21 system came from Monsanto?

22 A No, I have not.

23 Q If someone testified under oath at the trial

1 of this matter that they called you and you told them
2 that, would they be lying?

3 A MR. PECK: Object to the form of the
4 question. Improperly asked him to comment --

5 MR. GRAMMAS: Calls for what?

6 MR. PECK: It's improper to ask him to
7 comment on the testimony of another witness. That's
8 an improper question.

9 Q I'm just saying, if someone says that, if
10 someone stands up and swears under oath in front of a
11 jury that they talked directly to you about PCB
12 contamination in Choccolocco Creek and the
13 responsibility of the fish advisories and asked you
14 where the PCBs were coming from and you told them the
15 Monsanto plant, would they be telling the truth
16 according to as you know it?

17 MR. PECK: Object to the form of the
18 question.

19 A I would be surprised if that testimony was
20 given because I don't ever recall saying that. I want
21 to stop short of saying that if somebody, you know,
22 did that, would be a liar. I don't normally
23 characterize people as a liar without, you know,

1 hearing them out. But I don't remember saying that to
2 anybody.

3 Q Have you ever given any interviews or have
4 you ever spoken with any reporters about PCBs --
5 Monsanto's responsibility for PCBs in Choccolocco
6 Creek and Lake Logan Martin?

7 A I believe I have given -- had conversations
8 with reporters about --

9 Q And I'm talking about when you were the
10 plant manager.

11 A Yes. The answer is I believe I have been
12 interviewed by reporters and such. Boy, I can't
13 remember. I have been interviewed by them, yes.

14 Q And they talked to you about PCBs in this
15 river system, this eco system, right?

16 A I don't know that for sure. It's very
17 possible they have.

18 Q You are testifying under oath that you don't
19 recall a reporter during the time that you were plant
20 manager calling you and talking to you about
21 Monsanto's responsibility for PCBs located in
22 Choccolocco Creek and Lake Logan Martin?

23 A I don't recall a specific question like

1 that.

2 Q So then if a reporter testifies that you
3 told him that the PCBs came from Monsanto, you have no
4 basis to deny his statement, do you?

5 MR. PECK: Object to the form of the
6 question. It's improper on many grounds.

7 A Well, again, I guess if someone made that
8 testimony, I would want to hear the testimony first.
9 I'm just not going to -- I don't want to characterize
10 something I haven't heard. I would be surprised if I
11 heard that.

12 Q I understand that, sir. But what I want to
13 know is this: Either you told reporters about
14 Monsanto's responsibility for the PCBs in this eco
15 system or you haven't.

16 A Okay.

17 Q Okay. Now, which one of those two events is
18 it?

19 A I don't believe I have made a statement like
20 that to a reporter.

21 Q Are you saying that you didn't make the
22 statement or that you don't recall making the
23 statement?

1 A I'm saying that I don't believe I made that
2 statement, but it's been -- it's been over four years,
3 and I don't remember any of the specific details. I
4 don't have any of those files with me, and I have not
5 reviewed them.

6 Q I'm uncertain about what you're testifying
7 to. Are you saying you don't recall telling a
8 reporter that, or are you saying, Mr. Grammas, I never
9 told a reporter that? When I say "that", I mean that
10 Monsanto is the party responsible for putting the PCBs
11 in Choccolocco Creek.

12 A Well, the way you have asked the question I
13 think I need to say I don't believe I ever remember
14 doing that.

15 Q So your answer is you don't recall doing it?

16 A No, I don't recall ever doing that.

17 Q But you are not saying that you didn't do
18 it? There is a big difference there because I want to
19 tie this down.

20 MR. PECK: Object to the form.

21 Q You are not denying that you said it, you
22 are just saying I don't recall saying it?

23 MR. PECK: Object to the form of the

1 question.

2 A No, I certainly don't recall saying that,
3 and it's my belief that I wouldn't have said that
4 because I don't believe that personally now
5 necessarily, and, you know, I don't recall saying
6 that.

7 Q Okay.

8 A It's a complicated issue that can't be
9 answered simply in that one sentence.

10 Q What's a complicated issue?

11 A The question you asked, the statement you
12 made about the reporter.

13 Q What? What's complicated?

14 A Well, if you want to repeat the question,
15 then I will --

16 Q No, I want to understand what you're
17 defining as a complicated issue. Tell me what you are
18 saying is complicated in your mind.

19 A Your statement about -- your question, did I
20 make a statement to a reporter. And the statement
21 that you characterize strikes me as pretty
22 complicated, and it's got some assumptions in it.

23 Q Okay. And the statement is that Monsanto is

1 at least in part responsible for putting the PCBs in
2 Choccolocco Creek, right?

3 A I think that's what you asked, yes.

4 Q And you're saying that part of the question
5 is complicated.

6 A What I'm saying -- what I would say -- if
7 you asked me a specific question about responsibility
8 for PCBs in Choccolocco Creek, what I would say is
9 first of all I personally don't have the technical
10 knowledge to make that statement, you know, to make a
11 determination, and I just don't.

12 Q Okay.

13 A So to me it's a complicated question.

14 Q So what you're saying is that you can't
15 either admit or deny whether Monsanto is responsible
16 for putting PCBs into this eco system because you
17 don't have the training or the background to answer
18 the question?

19 A Would you repeat the question?

20 MR. GRAMMAS: Will you read that back, Jill?

21 (Requested portion of the record was read.)

22 A I don't want to -- Monsanto's operations
23 in manufacturing of PCB could be a source of PCBs in

1 the eco system. I would agree with that. But the
2 question of, you know, responsibility in a particular
3 place, that's a more complicated question. PCBs are a
4 widely used industrial chemical so they could have
5 come from other individuals or companies. They could
6 have been introduced at different geographic
7 locations.

8 Q Tell me all the different companies or
9 geographical locations that contributed to the PCB
10 contamination of Snow Creek.

11 A I personally haven't seen such a list, and I
12 haven't tried to develop such a list, but it does
13 remain a possibility.

14 Q Sitting here today you are not aware of a
15 single source of potential PCB contamination of Snow
16 Creek?

17 A Monsanto potentially released PCBs into Snow
18 Creek, but there might have been other sources as
19 well.

20 Q Okay. Now, you say Monsanto potentially
21 released PCBs into Snow Creek.

22 A Uh-huh.

23 Q Are you willing to concede, sir, that over

1 the forty-year period of manufacturing Monsanto did,
2 in fact, release PCBs into Snow Creek? Can you
3 concede at least that point for me?

4 MR. PECK: Object to the form of the
5 question.

6 A I would state that it's my belief that
7 Monsanto was a likely source, a potential source of
8 PCBs in Snow Creek, yes.

9 Q I understand and you've testified to that
10 and I appreciate that, that you believe it is
11 potential. What I'm saying is during that period of
12 time will you concede that Monsanto did, in fact,
13 release PCBs into Snow Creek?

14 MR. PECK: During it's manufacturing
15 process?

16 Q During it's manufacturing process.

17 MR. PECK: Object to the form of the
18 question. No foundation.

19 A During the time of manufacture based on
20 what I've been told, there were -- it's likely that
21 Monsanto discharged PCBs into Snow Creek, yes.

22 Q Okay. Now, tell me other than Monsanto who
23 is likely -- we'll do it again. Does likely mean in

1 your answer to my last question that Monsanto may not
2 have discharged PCBs into Snow Creek during the period
3 of time it manufactured PCBs?

4 MR. PECK: Object to the form of the
5 question.

6 A Again, that was before I arrived at the
7 plant. I have not seen any of those documents. Based
8 on what I've been told, it's my belief that PCBs were
9 discharged from the plant into Snow Creek.

10 Q Okay. Tell me your belief as to all of the
11 other sources of PCBs being discharged into Snow Creek
12 during any period of time.

13 A I don't -- you know, myself, personally, I
14 don't have a, you know, any basis, any factual basis,
15 that says there was some other source.

16 Q Okay.

17 A I'm simply stating the possibility that
18 there could be other sources.

19 Q But sitting here today you can't identify
20 one single solitaire source other than Monsanto being
21 responsible for having PCBs put into Snow Creek?

22 MR. PECK: During the manufacturing period?

23 Q During any period of time.

1 A During the time of manufacture, that was a
2 long time. And, yes, it's possible there were other
3 sources, but I do not know. I do not know definitely
4 of another source of PCBs personally.

5 Q Okay. Now my question is a little bit
6 broader than this, Mr. DeFer, and don't limit it to
7 the period of time that it was manufactured by
8 Monsanto. Sitting here today tell me one single
9 source of PCB contamination in Snow Creek other than
10 Monsanto.

11 MR. PECK: Object to the form of the
12 question. Lack of foundation.

13 A I don't have any specific personal knowledge
14 of other sources of PCBs in Snow Creek. However, the
15 only thing I would add is that property is not
16 Monsanto property, and we don't control access to that
17 property.

18 Q To Snow Creek?

19 A Correct.

20 Q PCBs don't occur naturally in the
21 environment, do they?

22 A I think that's generally accepted, yes.

23 Q And Monsanto is the only company that

1 manufactured PCBs in the entire United States, right?

2 A It's my understanding we are the only U.S.
3 manufacturer.

4 Q And no manufacturers outside the United
5 States imported PCBs into this country, correct?

6 MR. PECK: Object to the form of the
7 question. Lack of foundation.

8 A I don't know that.

9 Q You don't know the answer to that?

10 A I do not.

11 Q Do you know who Monsanto competed with for
12 PCB sells within the United States?

13 A No, I don't, but, again, I actually know
14 nothing of the commercial history of the PCB business.
15 I know nothing.

16 Q That's fair.

17 A And I have been told nothing.

18 Q That's fair.

19 A I just haven't asked.

20 Q Let me ask you this: Where does Snow Creek
21 flow into?

22 A It eventually flows into Choccolocco Creek.

23 Q Do you understand that PCBs attach to

1 sediment in river systems?

2 A Based on what I have been told, it's my
3 belief that they bind the soils and sediments, yes.

4 Q Okay. And you have been told this by Mr.
5 Jerry Brown at Monsanto?

6 A I'm not sure that I heard that from Jerry
7 Brown. My belief is that that's a -- that that is
8 generally accepted scientific fact about PCBs. So I'm
9 not sure where I heard that from.

10 Q Fair enough. Let me ask you this, sir.
11 Sediments travel within a river system based on water
12 flows and water conditions and stuff like that, right?

13 A I guess that's possible. It's not my area
14 of expertise, sediments and sediment flows.

15 Q Do you believe that you as the plant manager
16 at Anniston from 1991 to 1994 should have been made
17 aware of issues relating to environmental
18 contamination or potential environmental contamination
19 at the Anniston plant regardless of when the
20 contamination occurred?

21 A It's my belief that I was made aware of all
22 the ongoing issues and other issues that had a
23 potential that needed to be acted upon, and there were

1 several issues like that and I was involved with
2 those.

3 Q My question, sir, is more pointed than your
4 answer. My question is as the number one manager at
5 the Monsanto plant in Anniston, Alabama do you believe
6 that you should have been made aware of any and all
7 issues relating to environmental contamination at that
8 site whether current or past?

9 MR. PECK: Object to the form of the
10 question.

11 A Well, the time period covered by your
12 question is very broad. It also includes quite a
13 variety of different products and processes, and it
14 covers a period of time where when, you know, science,
15 environmental science, and environmental practices was
16 different and changing constantly during that time.
17 So it would be probably impossible to brief me on all
18 of those details.

19 Q Let me limit the question, then. Do you
20 believe as the manager at the Monsanto plant who was
21 charged with the responsibility of overall running of
22 the plant from 1991 to 1994 that you should have been
23 made aware of any environmental issues that were

1 having an impact on the environment during that period
2 of time?

3 MR. PECK: Object to the form of the
4 question.

5 A I would want -- I would want to know any of
6 those issues, and I believe that I was apprised of all
7 those issues when they became apparent, and that we
8 acted upon them. I mean, one example would be the
9 west end landfill, the Alabama Power property, which I
10 became aware of while I was working there. And we
11 investigated that and that was in progress at the time
12 I transferred to Augusta, Georgia.

13 Q So the answer to my question is yes, you
14 think as the head guy down there at Anniston you
15 should have been made aware of any environmental issue
16 that was having an impact during the time period you
17 were in charge of that plant?

18 MR. PECK: Object to the form of the
19 question. Asked and answered.

20 A I would expect to be made aware of issues or
21 facts or causes of concern that was, you know, some
22 sort of new information, some sort of -- any kind of
23 regulatory compliance, other issues that, you know,

1 information that was developed while I was there, yes,
2 I would want to know that.

3 Q It makes perfect sense to me. And that
4 would also include environmental issues that were
5 impacting the environment at that time even though the
6 issues -- even though the conduct that gave rise to
7 those issues occurred before you ever came to
8 Anniston, right? Do you understand my question? You
9 would want to know about environmental impact issues
10 during the period of time -- that were occurring
11 during the period of time you were the manager even if
12 what caused those issues happened at the plant before
13 you ever got there?

14 A Yes, I would. And an example I just cited
15 was the west end landfill.

16 Q Right.

17 A That information was developed while I was
18 there and we reacted to that.

19 Q And that west end landfill dealt with PCB
20 contamination, didn't it?

21 A That was one of the materials that was found
22 in the west end landfill, yes.

23 Q And we know that PCBs were manufactured

1 before you ever began -- I mean, stopped -- PCBs were
2 not being manufactured before you ever began working
3 in Anniston?

4 A Correct.

5 Q All right. It seems to me, sir if -- let me
6 ask you this: While you were the head manager at
7 Anniston, PCB related issues came up and were brought
8 to your attention, correct?

9 A Yes. The example I just cited, the west end
10 landfill.

11 Q That's one example. Another example would
12 be the fact that PCBs were being found in Snow Creek,
13 right?

14 A I'm not aware that there was any new
15 information developed on PCBs in Snow Creek during the
16 time I was at the plant.

17 Q You are not aware of any PCB contamination
18 issues relating to Snow Creek during the entire period
19 of time you were at the plant? Is that your testimony
20 under oath today?

21 MR. PECK: Object to the form of the
22 question.

23 A Could you repeat -- just repeat the

1 question.

2 Q You are not aware of any PCB contaminated
3 issues in Snow Creek during the entire time that you
4 ran the Anniston plant?

5 A I'm not aware of any new information that
6 was developed around Snow Creek while I was the plant
7 manager, no.

8 Q Did you hear me qualify my question like the
9 way you just answered it, Mr. DeFer? Did you
10 interpret my question as a qualification the way you
11 just answered it?

12 MR. PECK: You don't have to answer that
13 question.

14 Q Yes, you do.

15 MR. PECK: No, you don't.

16 Q Because I want to know where we are having
17 our communication breakdown. Did I qualify my answer
18 -- my question as you've answered it?

19 A And what qualification are you talking
20 about?

21 Q Well, when you say I'm not aware of any new,
22 you talk about new information while you were there.
23 See, that limits your answer. And I didn't qualify my

1 question. What I want to know is are you testifying
2 under oath that you, during the entire period of time
3 you were manager at the Anniston plant, were unaware
4 of any PCB contamination issues in Snow Creek, period?

5 MR. PECK: You can answer that question
6 however it is true for you. He doesn't have to like
7 your answer, Mr. DeFer.

8 THE WITNESS: Okay.

9 MR. PECK: You just answer truthful.

10 A I was aware that there were -- I guess
11 related to Snow Creek I was told -- I never saw any
12 documentation, I was told by others that there was an
13 investigation of PCBs in parts of Snow Creek. It's
14 also my understanding that Monsanto consulted with
15 ADEM on that. It's also my understanding that at some
16 point in time there was some removal of some of those
17 sediments and ADEM was aware of that.

18 Q And all of these people who told you this
19 were Monsanto employees, right?

20 A Yes, I believe that's true.

21 Q So as the plant manager you were, in fact,
22 aware of PCB contaminated issues in Snow Creek during
23 the period of time you were in Anniston?

1 MR. PECK: Object to the form of the
2 question.

3 A I was aware that there was a historical
4 issue in Snow Creek, and it was my personal belief
5 that the appropriate authorities such as ADEM were
6 involved and that it had been resolved.

7 Q When did this issue in your mind get
8 resolved or in your opinion?

9 A My opinion based on what I have been told
10 was that the resolution was the removal of some of the
11 sediments.

12 Q Jerry Brown told you this?

13 A Most likely.

14 Q Who else?

15 A Potentially Dave Denner.

16 Q Who?

17 A My predecessor.

18 Q What's his name?

19 A Dave Dinner.

20 Q D-e-n-n-e-r?

21 A Yes.

22 Q All right. Did they tell you that the
23 removal of sediment removed all of the PCBs out of

1 Snow Creek?

2 A No, I don't believe they told me that.

3 Q Has anyone ever told you that?

4 A No, I don't believe that anybody has ever
5 told me that.

6 Q Sitting here today do you believe that to be
7 the case?

8 MR. PECK: Object to the form of the
9 question. No foundation.

10 A I have never seen any factual, you know,
11 data like sample analysis from Snow Creek that would
12 lead me to say that or that would lead me to affirm or
13 deny that.

14 Q While you were the plant manager in Anniston
15 you were also aware of contamination of PCBs around
16 the neighboring property, weren't you?

17 A Can you be more specific?

18 Q How much more specific can I be than that?

19 A Just a -- okay, a general question about
20 contamination?

21 MR. PECK: You mean that was occurring
22 during the time period he was there? Contamination
23 that was occurring on neighboring property while he

1 was there? Is that what you are asking?

2 MR. GRAMMAS: My question is what it is.

3 MR. PECK: I object to the form of the
4 question. It's very unclear.

5 Q Okay.

6 A I never -- I was not aware of any factual
7 information that would lead me to believe that, either
8 in history or certainly not while I was there, and I
9 don't recall being told verbally of issues -- other
10 than Snow Creek is what you're asking? I want to make
11 sure that was what you were asking about.

12 Q I was asking about, yeah, neighboring
13 property.

14 A Yeah, neighboring property.

15 Q So you are unaware of a property purchase
16 that Monsanto engaged in to some -- of some of the
17 surrounding neighbors?

18 A I'm not totally unaware of that, but I only
19 became aware of that after I left. That occurred
20 after I left Anniston.

21 Q When did that occur?

22 A I do not know.

23 Q But you do know that the reason Monsanto was

1 buying that property back from people or was buying
2 the property from people around the plant was because
3 PCBs were found to be on their property?

4 MR. PECK: Object to the form of the
5 question. Lack of foundation.

6 Q Do you know that to be the case?

7 A I don't know that to be the specific case.
8 I know that -- I'm told that there was other
9 litigation and other issues going on. I don't know
10 the results of any specifics.

11 Q As the plant manager at Anniston it seems to
12 me, sir, that you would have wanted to educate
13 yourself thoroughly and completely on the issue of
14 potential PCB contamination of neighboring properties,
15 Snow Creek, Choccolocco Creek and Lake Logan Martin
16 while you were employed during that period of time.
17 Is that a fair statement?

18 A I would certainly want to be aware of any
19 current issues related to the operations of the
20 plant. I was not unaware that there had been, you
21 know, other issues -- and we discussed one of them,
22 Snow Creek -- but my belief was that those had been
23 satisfactorily resolved in concert with ADEM.

1 Q Okay. You mentioned something about the
2 west end landfill and somehow that related to some PCB
3 issues. Tell me what you know about that.

4 A In 1993 we were contacted by Alabama Power
5 about some substance on that property that they had
6 discovered.

7 Q And what was that substance?

8 A At the time I don't believe they knew.
9 Subsequently, an analysis was done. They -- one of
10 the reasons for contacting us was to get some ideas
11 about what it might be.

12 Q They could actually see it, pick it up,
13 touch it, feel it?

14 A You could see it, yes.

15 Q Pick it up?

16 A If you had wanted to, I guess you could have
17 picked some of it up, yes. It was -- it had become
18 exposed maybe by erosion.

19 Q This substance?

20 A Some of this material, yes.

21 Q Okay. Did they call you personally up as
22 the plant manager or someone under your control?

23 A I don't remember.

1 Q Did you ever talk with anybody personally
2 from Alabama Power about this issue?

3 A Yes, I did.

4 Q All right. We'll get to that in a minute.
5 First of all, how did Alabama Power ever -- how did
6 they ever become involved in this property in the
7 first place?

8 A As these conversations developed I became
9 aware that Alabama Power and Monsanto had exchanged
10 some property.

11 Q Do you know when?

12 A I don't recall exactly. I want to say it
13 was the '60s or the '70s, but I just don't recall.

14 Q You can't give me even a decade, late '60s,
15 early '70s, late '70s?

16 A I can't. If you had asked me four years
17 ago, I could have told you. I just don't remember.

18 Q Okay. Go ahead.

19 A Subsequent to that we got -- there was
20 analysis received back. You know, my recollection was
21 that it did indicate that the material contained PCBs,
22 at least some of the material. Some of the other
23 materials were not PCBs. Alabama Power and Monsanto

1 contacted ADEM which was followed by some press
2 release. Again, I'm going from memory. I have not
3 reviewed these documents. And I believe after that it
4 was followed by -- it was -- there were two other
5 things subsequent to that; there was discussions with
6 ADEM between Monsanto and Alabama Power and ADEM
7 about, gee, we've made this discovery, where do we go
8 from here. So there was a discussion about that. And
9 there were discussions between Monsanto and Alabama
10 Power about that property which subsequently led to
11 Monsanto taking title of that property back.

12 And as I recall at the time I transferred to
13 Augusta, the property transfer was complete and we had
14 either received approval from ADEM for preliminary
15 investigation. It was somewhere in that period is my
16 recollection, yes.

17 Q Okay. The substance, how was it first
18 discovered?

19 A I was told an Alabama Power employee
20 discovered it during a, you know, walk-through of the
21 site. It's a fairly large site. It's an industrial
22 site, and it's been there for many years. They have
23 got an old substation, some newer substations and some

1 power distribution lines on that property.

2 Q That turned out to be an old landfill that
3 Monsanto used to dump stuff in, didn't it?

4 A Subsequent to that discovery, yes, that's
5 when I found out that part of that property was used
6 by Monsanto to dispose of process waste.

7 Q Including PCBs?

8 A Including materials from the PCB process,
9 including still bottoms from the manufacture of PCBs.

10 Q What are still bottoms?

11 A I'm not an expert in the process so I really
12 -- I don't know specifically. Generically as an
13 engineer still bottoms means you distilled something
14 and it's the product remaining.

15 MR. LOWE: Are you saying distilled or
16 stilled or s-t-i-l-l?

17 A S-t-i-l-l, but normally it means you have
18 distilled something. Still bottom is a generic term.

19 Q Tell me what it means. How would this
20 relate to PCB manufacturing?

21 A I really don't know specifically. I just
22 know that in the manufacture of PCBs, and there was a
23 range of PCBs, I understand, that in some of that

1 processing steps you had a by-product that they called
2 still bottoms.

3 Q I mean --

4 A It probably would have been -- again, this
5 is total speculation on my part.

6 Q I understand.

7 A It would likely have been a final step
8 where, you know, you are purifying something, you
9 probably distill it off and then you have got this
10 residual material.

11 Q So the residual material then is more or
12 less an unwanted by-product of the process of
13 manufacturing PCBs?

14 A In this case, that's my understanding it
15 was.

16 Q And that by-product contained highly
17 concentrated levels of PCBs?

18 A Some of the still bottoms did contain PCBs.
19 I'm not sure they all did because not all of the still
20 bottoms -- not all of the products produced in that
21 unit -- Aroclor was a trade name, not all of them
22 would be characterized as PCBs.

23 Q Okay. But the ones that were characterized

1 as PCBs had high levels of PCBs contained in the still
2 bottoms?

3 A I don't know the exact levels, but, yes,
4 there were PCBs there.

5 Q And Monsanto knowingly and intentionally put
6 those still bottoms in a landfill on-site for
7 disposal?

8 A Yes, those still bottoms were placed on-site
9 by Monsanto.

10 Q Knowingly and intentionally?

11 A Yes, given the practices at the time. You
12 know, practices and the science has changed quite a
13 bit. At the time that was considered a very
14 responsible way of handling that material.

15 Q Looking back at hindsight, we know that that
16 was a very irresponsible way of handling that
17 disposal, don't we?

18 MR. PECK: Object to the form of the
19 question.

20 A Well, you know, that occurred long before I
21 arrived. And -- boy, I don't want to judge something
22 that occurred before me. That doesn't seem fair.

23 Q Using today's standards, we know that that

1 process of putting those PCBs in a landfill would not
2 be tolerated, don't we?

3 MR. PECK: Object to the form of the
4 question. No foundation.

5 A Well, I'm not an expert on disposal of PCBs,
6 but it's my belief that -- I don't know if it is still
7 currently allowed. I mean, land disposal of PCBs was
8 allowed up to very recently. And PCBs that are land
9 disposed, if they are properly capped, PCBs adhere to
10 the soil, that's not necessarily -- you know, that
11 could be a very responsible way of disposing the PCBs.
12 I'm sure that was Monsanto's intent at the time.

13 Q When we spoke a while ago about Monsanto
14 sewerage treated process waste water, do you remember
15 that?

16 A Uh-huh.

17 Q They intentionally, the employees at
18 Monsanto intentionally sewerage that product, did they
19 not?

20 MR. PECK: Object to the form of the
21 question. Lack of foundation.

22 Q To your understanding and knowledge. That
23 was part of the normal manufacturing process, to

1 intentionally dispose of the waste water?

2 MR. PECK: Object to the form of the
3 question. Lack of foundation.

4 A I don't have specific process knowledge, but
5 if you say was it the intention to dispose of waste
6 water, typically that's what is done in a process, you
7 typically have normal process streams that are
8 normally disposed of that way, that's true.

9 Q So Alabama Power employees were walking
10 through the site and visibly observed some substance
11 on the property; is that your testimony?

12 A That's what I was told by Alabama Power,
13 yes.

14 Q Was this substance like oozing from the
15 ground, or how did it appear?

16 A I wouldn't characterize it as oozing.
17 Oozing sort of implies something that's moving. It
18 was a black substance, and it was -- it was not on a
19 level ground. It was sort of on a slanted surface and
20 some of this material had become exposed.

21 Q Did you physically see it?

22 A I physically saw it, yes. I did go over and
23 look at the property.

1 Q And it was exposed from the surface, is that
2 what you are talking about? When you say exposed,
3 what do you mean?

4 A There was a -- this property actually had,
5 you know, as I recall, two main elevations. There's
6 an area up here and then there was a sloping area, and
7 then there was a flat area. It was along this slope,
8 as I recall, where it was seen (indicating).

9 Q Now, that's just where it was seen, but this
10 substance, as you are calling it, was certainly in
11 other places in the landfill other than just where it
12 was seen, right?

13 A At the time -- at the time I was in
14 Anniston, I don't -- well, there weren't any specific
15 studies to really characterize all those wastes in a
16 landfill. That's a hard thing to do after the fact.
17 I don't know since those wastes were placed there long
18 ago, I don't know exactly where they were placed over
19 there. I don't know that any records exist. As far as
20 I know, they don't exist.

21 Q If I'm understanding your testimony, then,
22 is it true that y'all, being Monsanto, did not go into
23 this landfill and remove all of that, all these

1 substances from the landfill?

2 A You are speaking of the west end landfill?

3 Q Right.

4 A And you are speaking -- you are talking not
5 in the last several years?

6 Q I'm talking about when Alabama Power came up
7 to y'all and said, what in the world is this stuff in
8 this property? And then y'all went out there and
9 said, oh, my gosh, that's some kind of substance,
10 let's see what it is, and then y'all tested it and you
11 confirmed in your minds that PCBs were in whatever
12 this was, did y'all at that point say, wait a minute
13 we have got a problem here, let's go out there and
14 take all this substance out of this landfill? Yes or
15 no?

16 A No, we did not do that. We informed ADEM
17 that it was there, and my recollection as part of that
18 information was that part of the property was
19 immediately covered, cover was provided over it.

20 Q So whatever it was that was containing these
21 PCBs is still in the ground out there at the west end
22 landfill, right?

23 A I can't speak to what's happened since I

1 left the plant. I don't have any knowledge that it --

2 Q As of the day you left the plant it was
3 still in the ground covered up?

4 A During the time I was there in Anniston from
5 '91 to '94 we didn't -- we, Monsanto did not do any
6 removal of materials from the west end landfill.

7 Q So isn't that a fancy way of saying, sir,
8 that at the time you left the stuff you found was
9 still in the ground?

10 A Now that I've qualified the question, my
11 answer is, yes, it was still in the ground. I just
12 wanted to make sure I was talking about the right
13 material and the right landfill.

14 Q Okay. All right. How much did you buy the
15 property back from Alabama Power?

16 A We did not buy it back from -- well, it
17 might have been a dollar or it might have been -- I
18 don't remember. I do not remember. They transferred
19 title back to us was the agreement, and I can't
20 remember if we paid them for the transfer.

21 Q Why would they give you property that has
22 value for nothing?

23 A The intent at the time was to bring that

1 property back under Monsanto's control so that we
2 could have the -- so we could most expeditiously
3 investigate and do what needed to be done to address
4 those issues.

5 Q You were threatened with litigation by
6 Alabama Power if you did not accept the property back,
7 weren't you?

8 A I don't recall a specific threat like that.

9 Q Nobody at Alabama Power said, wait a minute,
10 y'all swapped up some property and it's got a bunch of
11 PCBs in it and we know that's an environmental problem
12 and we don't want anything to do with this property.
13 You better take this property back from us or we are
14 going to sue you, or words to that effect? You are
15 saying that was never even mentioned by anybody at
16 Alabama Power?

17 A I don't recall that entire statement as you
18 have just said to me by anybody at Alabama Power.

19 Q I didn't say that it had to be verbatim and
20 I didn't say it had to be to you. Alabama Power is a
21 very large company, would you agree with me about
22 that?

23 A Yes, they are.

1 Q And Monsanto is a very large company,
2 would you agree with me about that?

3 A Uh-huh.

4 Q So you're the man in charge of the Monsanto
5 plant at this time, right?

6 A Yes.

7 Q When the issue developed?

8 A Yes.

9 Q It seems to me that it just -- common sense
10 tells me, sir, that when two big companies like that
11 get together on a deal like that, one of them --
12 Alabama Power is going to say, wait a minute, y'all
13 gave us some property that's got PCBs in it, and we
14 don't want it, take it back or face some lawsuit.
15 Now, I'm saying in general terms from anybody at
16 Alabama Power to anybody at Monsanto, did that idea
17 ever -- was that idea ever presented to you through
18 anyone?

19 A No, I wouldn't characterize it that way
20 because from the very beginning it was Monsanto's
21 intent to take that property back.

22 Q You mean, from the very beginning when they
23 said there is a substance on it, or from after -- tell

1 me that, when did Monsanto decide to take the property
2 back?

3 A That idea developed pretty quickly after we
4 discovered it was PCBs.

5 Q That's where I'm going to. Monsanto did not
6 have any thoughts or ideas of reclaiming this property
7 from Alabama Power until it learned that this
8 substance was in fact PCBs?

9 A What I would say is until -- when we learned
10 that there was an issue that needed to be addressed,
11 it could have been some other substance. In this case
12 it was PCBs that was cause for the immediate question.

13 Q And once you learned, you being Monsanto,
14 learned that it was PCBs, no questions asked, Alabama
15 Power gives the property back, right?

16 A Oh, I wouldn't say there was no questions
17 asked.

18 Q But you didn't pay them any money for that
19 property, did you?

20 A I don't believe we did.

21 Q And that's because the property wasn't worth
22 anything, was it?

23 A No, I wouldn't characterize it that way.

1 Q The property is a liability, isn't it?

2 A There are things -- Monsanto has spent money
3 investigating that site and will likely spend more
4 money. So from that standpoint, yes, there have been
5 funds expended related to that property.

6 Q Monsanto couldn't sell that property to
7 anybody right now, could it?

8 A Well, I wouldn't want to make that
9 speculation. I don't know that Monsanto would want to
10 sell the property to anybody else.

11 Q Let's assume that Monsanto wanted to get
12 rid of the property that contained all of these PCBs,
13 what would it do to do that? Let me ask you this: If
14 Monsanto chose to sell this property, would it not
15 have to disclose to the purchaser that PCBs were on
16 the site?

17 A Well, I don't know that Monsanto --

18 MR. PECK: Let me object to the form of the
19 question. Lack of foundation. Go ahead.

20 A Well, you are asking me a hypothetical about
21 whether or not Monsanto would sell the property. And,
22 again, it's been since 1994 when I was involved with
23 this property. So I'm making a speculation based on

1 what I know. I don't believe that Monsanto would sell
2 the property.

3 Q I understand that, Mr. DeFer. What I'm
4 saying is if Monsanto wanted to sell it, okay? If
5 they wanted to, could they sell it to anybody without
6 telling them PCBs are in there?

7 MR. PECK: Object to the form of the
8 question. Lack of foundation.

9 Q As you understand it.

10 A I can't -- I can't address -- again, it's a
11 speculative question, and you've asked me to make
12 that, you know.

13 Q Right. Let me ask you this: If you knew
14 that you owned property that contained PCBs in it,
15 much like this west end landfill, would you personally
16 sell that property to someone without telling them
17 about it?

18 A No, I would not, and I don't believe
19 Monsanto would today using today's standards and
20 today's knowledge.

21 Q That's all I'm asking. It's not a difficult
22 question but you hesitated answering it. I mean, it's
23 a simple question. Monsanto wouldn't sell that

1 property without telling people PCBs are in it, I hope
2 not. All right. Did y'all ever determine the amount
3 of PCBs in the property?

4 A Not that I'm aware of. I'm not aware that
5 there was an exact amount determined.

6 Q How about a general amount?

7 A My -- during the time I was there I think
8 there was an attempt to understand the size of the
9 landfill and that work was done. But, no, I don't
10 know that we were able to determine what percent of
11 that might have been related to the PCB process.

12 Q So Monsanto, if I understand you correctly
13 during the entire time that this issue came up, never
14 even bothered to determine how many pounds of PCBs
15 were stored in this west end landfill?

16 MR. PECK: Object to the form of the
17 question. Mischaracterizes his testimony.

18 A I don't think Monsanto was able to make that
19 determination. It's not that they didn't bother and
20 didn't care to make it, I don't think they were able
21 to make it.

22 Q Let me ask you this, sir: If Monsanto went
23 in and dug up this entire area and replaced all of

1 this landfill with clean fresh uncontaminated
2 landfill, wouldn't it have been possible for them to
3 determine exactly how many pounds of PCBs were in the
4 landfill?

5 MR. PECK: Object to the form of the
6 question. Lack of foundation.

7 A I don't know the answer to that. I don't
8 know how you would go about doing that.

9 Q Was it ever even discussed with you that
10 Monsanto would remove this dirt, this landfill dirt,
11 from that area including all the PCBs contained in it?

12 A No, it never was. That would have been a
13 premature discussion in terms of we needed to
14 understand the site first, understand what the issues
15 were.

16 Q Okay. So y'all never even -- it never even
17 crossed your desk on a memo on any discussions or
18 anything that Monsanto would say, hey, we need to get
19 these PCBs out of this land right here? And if the
20 answer is no, that's fine.

21 A I don't recall that discussion or any
22 discussions like that or any -- you know, that was not
23 the main issue. The main issue when I was there was

1 let's understand -- let's characterize what's there.

2 Let's understand what's going on with the site and
3 what actions need to be taken.

4 Q But you didn't understand what was going on
5 at the site in terms of discovering how much PCBs were
6 in that site, did you?

7 A I don't think we were able to make that
8 determination.

9 Q Why is that? Why were you not able to make
10 that determination, sir? What prevented Monsanto from
11 determining how much pounds of PCBs were in that
12 landfill?

13 A We didn't -- I don't know that there was any
14 historical records that indicated that.

15 Q What physically prevented Monsanto from
16 going out there and discovering exactly how many
17 pounds of PCBs were stored in that landfill?

18 A Well, there are things that could be done,
19 I'm suspecting probably have been done, maybe since
20 I've left to characterize what is there. But, you
21 know, as I understand what you're saying, you're
22 saying, gee, tell me how many pounds of this
23 by-product was put there. And short of actually

1 having that information, I don't know that you can
2 develop that exact answer. The main concern would be
3 on in the initial investigation is let's characterize
4 the site, let's look at it from an exposure
5 standpoint, you know, how might people be exposed to
6 this material, and that was the initial focus.

7 Q I understand what your initial focus was.
8 And just so the people who are going to be reading
9 your deposition or listening to your testimony
10 understand, Monsanto never did anything to determine
11 how many pounds of PCBs were in this site while you --
12 at least while you were there?

13 A During the time I was there and we were
14 investigating the west end landfill, we were unable to
15 determine how many pounds of PCBs were there.

16 Q Well, we have already been through that.
17 We'll go through it again. When you say unable, that
18 means something prevented you from doing it, is that
19 what you're saying?

20 A My belief is there weren't any records.

21 Q Okay. We've already talked about records.
22 Was there anything that physically prevented Monsanto
23 from going out and weighing, determining how many

1 pounds of PCBs were in the landfill?

2 MR. PECK: Object to the form of the
3 question. Asked and answered. He already explained
4 to you it wasn't possible.

5 MR. GRAMMAS: It has been asked several
6 times and it has never been answered.

7 MR. PECK: Well, you just don't like the
8 answers, Pete.

9 MR. GRAMMAS: I don't like evasive answers.
10 You're exactly right. And if this witness would
11 answer the questions, Adam, we could go on to the next
12 topic.

13 Q (By Mr. Grammas) What did you do to
14 determine how many pounds of PCBs were there?

15 MR. PECK: You need to stop asking the same
16 question over and over again and we could go on to the
17 next topic.

18 MR. GRAMMAS: Look, I'm going to ask
19 questions until there is an answer.

20 MR. PECK: I have noticed you ask the same
21 question over and over again, how you go about taking
22 depositions it takes all day. That's all I've
23 noticed.

1 Q (By Mr. Grammas) All right. What did you
2 do to determine how many pounds of PCBs were there, if
3 anything?

4 A Well, a moment ago you mentioned -- you
5 know, you have mentioned weighing the material. I
6 don't know how you weigh something when it's already
7 in the ground.

8 Q Well, how about digging it out of the ground
9 and separating it from the dirt and looking at it and
10 seeing what you've got?

11 A Well, while I was there, during the time I
12 was in Anniston, it would have been -- in my personal
13 belief it would have been premature and irresponsible
14 to dig that material up, expose all of it for the sole
15 purpose of figuring out exactly how much was there as
16 the driving intent.

17 Q Would it have been premature to dig that
18 material up and remove it from the site completely so
19 there is no possibility that it will ever leak out of
20 this site and get into neighboring property? Is there
21 anything wrong with doing that?

22 MR. PECK: Object to the form of the
23 question. Lack of foundation.

1 A You're asking a remediation type question,
2 as I understand it, and that's a complicated topic.
3 And you would have to -- you would want to consider,
4 are you creating worse of a problem by digging it up
5 and exposing it and moving it than leaving it there
6 and doing some other things.

7 MR. GRAMMAS: Let's take a break. Let's
8 take a thirty minute break, Adam, because I have got a
9 lot of stuff to go over.

10 (A brief recess was taken.)

11 Q Before we took our break, Mr. DeFer, we were
12 talking about the Alabama Power property that Monsanto
13 reacquired after y'all learned that PCBs were
14 contaminating. And one of the things you mentioned
15 earlier is that an Alabama Power employee noticed some
16 black substance on the ground as he was doing a
17 walk-through of the property. Does that fairly
18 summarize what you said earlier?

19 A That's my understanding.

20 Q Was that before or after Alabama Power did
21 any work on that property?

22 A Work meaning -- broadly defined.

23 Q Did Alabama Power do anything like -- what

1 were they going to do with the property that you gave
2 them?

3 A Oh, okay. Again, I'm not the best person to
4 comment on this, but here is what I know. Here is
5 what I believe to be true. When we transferred the --
6 when we did this transfer of property, Monsanto
7 eventually used the property we acquired for some
8 waste water treatment facilities and they used
9 portions of the land that they acquired from us to
10 expand their substations. As part of that, obviously,
11 it did correction activities on the site and grading
12 associated with that kind of work.

13 Q All right. At the time that this Alabama
14 Power employee noticed this black substance on the
15 surface of the ground, had they done any construction
16 work on the site?

17 A I don't recall that there was any recent
18 construction.

19 Q So that was observed before Alabama Power
20 began digging or anything like that on the site?

21 A Well --

22 Q As far as --

23 A -- in the history of their ownership, they

1 had moved soils and such to facilitate their use of
2 the property. But this was noticed before any kind of
3 digging or capping might have been done in response to
4 what was observed. Does that make sense?

5 Q Right. I think it does. You don't know how
6 long they owned that property?

7 A Again, late '60s or early '70s. I'm sorry I
8 don't have -- you know, I can't remember the exact
9 date. I know you asked that earlier.

10 MR. PECK: I can tell you it's 1960.

11 MR. GRAMMAS: It's 1960?

12 A There you go. I was off.

13 Q Good enough. They owned it from 1960 until
14 y'all reacquired it in, what, around 1994?

15 A It might actually have been the very end of
16 '93, early '94 when the deed was transferred, but
17 somewhere around there.

18 Q Now, from the time that Alabama Power had
19 it, Monsanto didn't use that property for any reason
20 whatsoever?

21 A No. In fact, it was fenced off, and the
22 only people that had access to that property, you
23 know, for safety reasons, were Alabama Power employees

1 who worked around high voltage kind of equipment.

2 Q So based on this acquisition date that Mr.
3 Peck just told us to be 1960, is it a fair statement
4 to say that any PCBs that were in that property from
5 Monsanto Manufacturing must have been put in there
6 sometime before 1960?

7 A If it came from Monsanto's manufacturing
8 process, that seems like a fair assumption.

9 Q And you will readily admit that the PCBs
10 that were found came from Monsanto's manufacturing
11 process?

12 MR. PECK: That you've been talking about?

13 MR. GRAMMAS: Right.

14 A It's my belief that they came from
15 Monsanto's manufacturing process, yes.

16 Q What do you base that belief on?

17 A The physical form that it was found in and I
18 think the composition. Again, I don't understand the
19 science, but my recollection is that's what I was told
20 at the time was, yes, it's consistent with this type
21 of by-product from our process.

22 Q Who did you delegate -- first of all, when
23 did this -- around 1993 I thought you said is when

1 this Alabama Power person noticed the substance?

2 A Late spring, maybe. Again, I'm just
3 recollecting.

4 Q And the substance was on a slope I believe
5 you said?

6 A I think it was.

7 Q And, obviously, rain water had been falling
8 on it?

9 A Well, that whole area was exposed to
10 rainfall, right.

11 Q And all that rainfall went where, sir, from
12 that area?

13 A Generally -- I don't know the exact detail
14 and flow, but general the rainfall would have drained
15 -- let me get reoriented. Would have drained, I
16 guess, towards the north end of the property.

17 Q And that would have gone directly into Snow
18 Creek, wouldn't it?

19 MR. PECK: Object to the form of question.

20 A I think -- not directly into Snow Creek but
21 some of the runoff from that property I believe could
22 have went into Snow Creek, yes.

23 Q Where else? What other creeks or

1 tributaries could that runoff have gone into besides
2 Snow Creek?

3 A I'm not aware of that. I'm not aware of any
4 other place.

5 Q So sitting here today, sir, the only
6 tributary you are aware of that would have captured
7 the runoff from this landfill where PCBs were
8 discovered was Snow Creek?

9 MR. PECK: Object to the form of the
10 question.

11 A To the extent that there was rain water on
12 the site and that it ran off and it didn't evaporate,
13 you know, in some intermediate place and there was
14 significant enough rain, the only one that I'm aware
15 of, yes, eventually it would have been into some
16 tributary that would eventually wind into Snow Creek.
17 Again, I don't have a map, but I think that's true.
18 There may be, you know, small portions of the property
19 that don't drain that way, but generally it sloped
20 away from Highway 202.

21 Q To Snow Creek?

22 A Actually, Snow Creek is not back behind
23 there. Snow Creek, I think if my memory is right, is

1 east of there. So it's -- if it were, you know, to
2 the extent that it gets to Snow Creek, it's going
3 through some other tributary.

4 Q Did you just change your testimony?

5 A No, I don't think so.

6 Q What you've said is still accurate with
7 regard to Snow Creek being --

8 A In a significant rainfall event, storm water
9 runoff would have eventually -- could have gone into a
10 tributary of Snow Creek, yes.

11 Q Could have or would have?

12 A Some parts of the site it's probably likely.
13 But, again, I didn't look at a study, you know. I
14 don't want to say would have and then one hundred
15 percent of it would not have. That's my only --

16 Q I understand your reservation --

17 A -- reservation.

18 Q -- but on the parts of the site that is
19 likely that water would have runoff from that west end
20 landfill into Snow Creek, it is just as likely that
21 water running over PCBs carrying those PCBs to Snow
22 Creek would have carried PCBs there, true?

23 MR. PECK: Object to the form of the

1 question. Lack of foundation.

2 A Again, that's outside my area of expertise.

3 And my -- you know, my belief is that PCBs are adhered
4 to the soil and they're not very mobile. But to the
5 extent that it was possible for them to be in the
6 storm water, yes, that's a possible place they could
7 have went.

8 Q And also storm water carries sediment in the
9 soil too, doesn't it?

10 A It can at times.

11 Q Sure. And the PCBs that were attached to
12 the soils and sediments in that storm water also went
13 into Snow Creek as far as you know?

14 MR. PECK: Object to the form of the
15 question. Lack of foundation.

16 A I don't know that to be a fact --

17 Q Well, let me --

18 A -- that it actually happened, which is I
19 think the way you've asked the question.

20 Q It absolutely is the way I asked it.

21 A And I don't know that it actually happened.

22 Q All right. Were you the man that decided to
23 cap this landfill once you discovered this problem by

1 Alabama Power and reacquired the land?

2 A No.

3 Q Who made that decision?

4 A First of all, let me clarify. If you're --
5 while I was there there was some immediate cover that
6 was applied to that property.

7 Q What kind of cover?

8 A I believe it was some type of, you know, a
9 type of clay cover, I believe. That's my
10 recollection.

11 Q Someone with a truck came in with a
12 bulldozer and put dirt on top of it?

13 A That's my recollection.

14 Q Did you order that?

15 A Actually, I think Alabama Power might have
16 done that. It was still their property at the time.
17 Once the material was discovered certainly it was
18 Alabama Power and Monsanto's aim that immediate
19 measures be taken. And after discussions with ADEM,
20 that was one of the steps that was taken. To the
21 extent that you're referring to some other capping, I
22 can't -- you know, that occurred after I left. I
23 can't comment on that.

1 Q Who did you relay this information to when
2 you first learned about it? First of all, how did you
3 personally first learn about it?

4 A It was more than likely either Robert Jones
5 or myself got a phone call. And I just cannot
6 remember.

7 Q From Alabama Power?

8 A Yeah, it would have been --

9 Q Who placed the phone call?

10 A It could have been one of their technical
11 people in town. It could have even possibly been
12 their regional vice-president.

13 Q Who was that at the time?

14 A A gentleman named Ronnie Smith.

15 Q Did you discuss this matter in detail with
16 Mr. Smith at any time?

17 A I did discuss it in some detail with Ronnie.

18 Q Okay.

19 A And there were discussions with other
20 Alabama Power people.

21 Q Who are the other people at Alabama Power?

22 A I don't recollect their exact names, I
23 really don't.

1 Q All right. After you learned of this, what
2 was the first step you took?

3 A Probably the very first step was to get as
4 much detailed, you know, information as we could from
5 Alabama Power.

6 Q Did you report it to anybody immediately?

7 A The fact that there was some unknown
8 substance was visible over there, that was reported,
9 yes.

10 Q To whom?

11 A That was reported within Monsanto to -- it
12 certainly would have gone a couple of places. One
13 would have been to the environmental affairs person
14 that had functional responsibility for our plant. And
15 it also would have went to a group in Monsanto that
16 had accountability for closed paths, you know, waste
17 sites, plant sites.

18 Q Tell me who those people are.

19 A The latter group was led by a gentleman
20 named Mike Foresman. The former person -- I am not
21 sure who that was at the time, there was a change.
22 I'm not sure.

23 Q So I'm hearing what you are saying is when

1 y'all learned there was some substance out there in
2 the property that you exchanged with Alabama Power,
3 before you even found out what the substance was, one
4 of the first steps you took as the man running this
5 plant down in Anniston was to pick up the phone and
6 let Mike Foresman know about it?

7 A Right. And that would have been consistent
8 with our procedures. That's property we did not own.
9 You know, the fact that it could have been adjacent
10 or, you know, several miles away, being informed about
11 an issue and having it linked to Monsanto in any way
12 is something that I would have reported, and I did.

13 Q Who else did you report it to internally?

14 A Obviously, I'm sure there were discussions
15 with some members of the Anniston plant team, and I'm
16 sure at some point in time my boss, you know, line
17 management was probably informed.

18 Q Who was your boss?

19 A My boss at the time was a gentleman named
20 Robert Jones.

21 Q Do you know where he is today?

22 MR. PECK: Robert Jones?

23 THE WITNESS: Same name. One is Robert T.

1 Jones and one is Robert N. Jones or -- I forget the
2 middle initials.

3 MR. PECK: Robert Jones is the local
4 environmental guy.

5 A Yeah, there is two Robert Joneses. This is
6 another Robert Jones. Bob Jones is what everybody --
7 what he went by.

8 Q Who besides Mr. Foresman and Mr. Jones did
9 you report this to?

10 A In terms of?

11 Q And this -- I guess the guy you can't
12 remember his name.

13 A I don't recollect, you know, talking to
14 anybody else about it inside the company. Certainly
15 it would have included that group of people.

16 Q What role did Mr. Foresman play after he
17 was notified of this potential problem?

18 A In general, you know, Mike's role in those
19 kind of situations, you know, consultative and to --
20 both in terms of knowledge of regulations and, you
21 know, the practice of waste disposal and remediation.
22 So that's the kind of advice Mike would have given us.

23 Q He was in charge of the remediation

1 department at Monsanto, wasn't he, at that time?

2 A Yes, he was.

3 Q As a matter of fact, he still is in charge
4 of that remediation responsibilities, which is now
5 Solutia, right?

6 A I think so. I'm not a Solutia employee
7 anymore so I wouldn't myself really know that.

8 Q Mr. Foresman would have been the man who can
9 -- or is the man who can answer questions as to what
10 it was that Monsanto did, why they did it, why they
11 didn't remove the PCBs from this site and those types
12 of questions; is that a fair statement?

13 MR. PECK: Object to the form of the
14 question.

15 Q As far as you understand the hierarchy at
16 Monsanto.

17 A Mike has that functional accountability,
18 yes. Now, to the extent that he's going to have a
19 specific answer to a question you want, I can't speak
20 for Mike.

21 Q But whether he has the specific answer to
22 the questions I ask or not, Monsanto charged him with
23 the responsibility of dealing with these types of

1 issues that we are talking about with respect to this
2 landfill and the Alabama Power project?

3 A That was his functional accountability and
4 we in cooperation with the local plant sites, yes, it
5 is his accountability.

6 Q When you say it's his functional
7 accountability, are you telling me that's something
8 he's supposed to know?

9 A Well, it could be somebody on his team. He
10 actually had a staff of people that worked for him.
11 It could be one of his people. I guess what I'm
12 saying is I don't know that Mike -- and I can't
13 remember this. It wouldn't be right to imply that
14 every decision that was made and has been made
15 subsequent to my leaving that Mike made each one of
16 those. That wouldn't be fair, probably, to
17 characterize it that way. I'm sure that's not the
18 case.

19 Q Functional accountability means that this is
20 something that comes under his instruction, authority,
21 direction, and responsibility, right?

22 A Yes.

23 Q Can you think of any other person that would

1 be responsible for this? And when I say this, I'm
2 talking about, again, the exchange of land between
3 Monsanto --

4 A Oh, okay.

5 Q Back from Alabama Power to Monsanto in
6 dealing with the PCB contamination issues once you
7 learned they were there.

8 A Well, it's implicit in some of the answers
9 I've already given. But obviously, I was part of that
10 process as were some other people at the plant. And
11 some of the other people on Mike Foresman's team.

12 Q Anybody above Mr. Foresman?

13 A No, not the way you've defined it.

14 Q What about Mr. Pierle?

15 A Not the way you've defined it. That would
16 be my opinion.

17 Q Do you know who Bob Cheever is?

18 A I know Bob a little bit.

19 Q Did he ever work with you?

20 A No.

21 Q Are you aware of any internal reports or
22 memoranda that were generated within Monsanto that
23 discussed the issue of PCB contamination on this

1 landfill?

2 A On the west end landfill?

3 Q Yes.

4 A No, I'm not aware of any. Well, I shouldn't
5 say -- let me qualify that. Obviously, there were
6 probably plans of study that were prepared, and that
7 would have been near the end of '93, '94 in terms of
8 getting consensus and approval from ADEM. I'm aware
9 of those types of documents, yes.

10 Q What was Mr. Foresman's role in this whole
11 issue relating to the Alabama Power landfill PCB site
12 as far as you understand it?

13 A Well, Mike worked with the plant, myself,
14 and others to map out the right course of action to
15 take.

16 Q So Mr. Foresman was the man who decided what
17 action Monsanto would take with respect to this PCB
18 contamination site that it discovered after the
19 Alabama Power employees saw this black whatever on the
20 property?

21 A Again, I would say that Mike did not make
22 every decision. He did not make every recommendation.
23 This wasn't his work product. I wouldn't want to

1 characterize it that way. Was Mike aware of the
2 significant decisions and milestones? Yes, he was.

3 Q Whose work product was it?

4 A Could have been -- I'm sure Robert Jones
5 supplied some of that input. It could have been our
6 hydrogeological consultants.

7 Q Who was that?

8 A Garrety & Miller.

9 Q Where is Robert T. Jones currently employed?

10 A You mean the one in Anniston or the one in
11 St. Louis -- the one that used to be my boss? I'm
12 confused now.

13 MR. PECK: Why don't you call the local guy
14 Robert Jones and the --

15 THE WITNESS: St. Louis guy Bob.

16 MR. PECK: -- St. Louis guy Bob Jones.

17 THE WITNESS: Yeah.

18 Q Well, who is Robert T. Jones?

19 A I think Robert T. Jones is the gentleman in
20 Anniston.

21 Q Well, I'm more concerned about your boss --

22 A Oh, the guy that was my boss at the time.

23 Q -- Bob Jones.

1 A I believe he is still employed by Solutia.

2 Q In St. Louis?

3 A I think so, yeah.

4 Q And you think Bob Jones may have had some
5 involvement in the remediation efforts on this site?

6 A Not directly.

7 Q What I'm getting at is this: I want to know
8 the man where the buck stopped at Monsanto to say,
9 let's remediate it, let's not remediate it, let's do
10 this, let's do that. Whatever the decisions were, I
11 want to know that man so I can sit him at a deposition
12 and talk to him about what he did.

13 MR. PECK: Assuming that man exists.

14 Q Well, somebody exist at Monsanto that did
15 that, doesn't he?

16 A It was definitely a team approach that we
17 did that. And in terms of the approach and the
18 technology and, you know, how all that was managed.
19 From a technical and regulatory point of view, yes, I
20 guess I would say that, you know, Mike had the final
21 -- would have had the final approval authority for
22 that. Not that we operated in that environment, that
23 he approved everything, but, yes, if there was

1 something that we were unsure of and we needed advice,
2 we would have went to Mike and conversely if there was
3 something he was concerned about, he would have told
4 us.

5 Q What I want to know is --

6 MR. PECK: Let's clarify something. Both
7 Pierle and Foresman are named Mike. Which one are
8 you talking about?

9 THE WITNESS: Mike Foresman.

10 Q I guess what I'm trying to get at here is
11 Mr. Foresman was the person charged with the
12 responsibility of making the final decision. And I
13 know that he had a lot of input. I know this wasn't
14 the only thing he was working on at that time. And I
15 know he wasn't out there looking at the dirt
16 physically and testing and all those type of things,
17 but he was the man at Monsanto that ultimately decided
18 what, if anything, was going to be done about this
19 issue, as far as you understand?

20 A It wasn't solely his decision, but, yes, I
21 would say he had the final accountability.

22 Q He had the final accountability about
23 whether or not Monsanto would even retake the property

1 from Alabama Power after they demanded you to do so,
2 right?

3 A Since property was involved I don't know
4 that he had the final and total accountability. That
5 probably included people in the legal department and
6 others.

7 Q Like who?

8 A Just from a land real estate perspective, I
9 don't know. That's one issue. From an environmental
10 perspective, I do not know which attorney was
11 involved. I can't remember.

12 Q Did Mr. Foresman have to get authority from
13 anyone above him from a financial standpoint about
14 what to do to fix this problem that y'all discovered?

15 A I don't know so much from a -- I don't know
16 the answer to financial. He probably did just because
17 it was a property transfer.

18 Q Who would he have gone to?

19 A I do not recall. It would have had to have
20 been someone that had approval authority for property
21 transactions.

22 Q What year was the Monsanto pledge enacted?

23 A I can't remember specifics. In the '80s --

1 it was enacted in the '80s, I believe. Since 1979
2 because it was enacted after I became an employee, and
3 I think it was in the '80s.

4 Q Have you ever seen the Monsanto pledge
5 before?

6 A Yes, I have. There has been several
7 versions of it. It's been updated periodically
8 through the years.

9 Q Did y'all have to do anything to adopt this
10 pledge? I mean, when I became a lawyer, I had to take
11 an oath that I would be an officer of the court and
12 all the other things that I had to swear to. When
13 this pledge was adopted, did Monsanto managers,
14 employees or anything have to do anything to adopt
15 this oath as their own oath?

16 A Well, not formally like you're asking. At
17 the time the pledge was adopted most of the pledge
18 elements, my recollection is, weren't required by law,
19 that was sort of the intent of the pledge was to go
20 beyond what was required by the law. And in many
21 cases these were new initiatives. So there were --
22 there would have been discussions about, gee, how are
23 we going to implement these elements of the pledge and

1 on what timetable.

2 Q Is it safe to characterize the Monsanto
3 pledge as self-imposed obligations by Monsanto?

4 A It's a challenge that we set for ourself and
5 set at internal expectations, yes, it was.

6 Q Expectations or obligations? Wasn't each
7 and every plant manager required to follow the
8 mandates of the Monsanto pledge?

9 A Actually, as the pledge was implemented, if
10 you think about a little bit of the history, first,
11 for some period of time it would have been physically
12 impossible to do that. It took time to do that.
13 Also, as we moved forward and looked at different
14 situations there were exceptions that were made and
15 some of those exceptions I think later on became
16 embodied as further revisions of the pledge. The
17 pledge was -- it was internal guidance and how we
18 wanted to conduct ourselves environmentally.

19 Q And one of the things that you pledged to
20 do and you told the world that you were going to do as
21 Monsanto, was to rectify past harms, correct?

22 A I don't remember the specifics of, you know,
23 that pledge element because there is quite a few of

1 them. But if you mean did it speak to ceased
2 operations, for example, and sites, I think it did.

3 Q That's not what I asked you. Rectify past
4 harms, what does that mean to you?

5 MR. PECK: Object to the form of the
6 question. You have it in the document. The document
7 speaks for itself.

8 Q What does it mean to rectify past harms,
9 sir?

10 MR. PECK: Same objection.

11 A I don't believe the guidelines said that.

12 Q What does it mean to rectify past harms in
13 your mind?

14 A My personal opinion what does it mean?

15 Q Right.

16 A Is that what you are asking? Rectify means
17 to some extent that you're going to address something
18 and do something about it, and that's what that
19 means. Harm is a little more subjective term. From
20 an environmental standpoint, I think the pledge speaks
21 to being proactive and working with regulators and
22 moving forward expeditiously and doing the right thing
23 for, you know, closed sites and waste areas, et

1 cetera.

2 Q I did not hear in your definition of
3 rectifying past harms cleaning up contaminated areas
4 with PCBs. Would that fall under that scenario in
5 your mind?

6 A Not necessarily and because I wouldn't want
7 to create an issue. You know, in addressing an issue
8 of PCBs or PCB by-products, you wouldn't want to
9 recklessly go in and do something or move something
10 without thinking through the consequences of that.

11 Q I didn't say -- I never said that, sir. I'm
12 saying you can think through all the consequences and
13 debate everything, come up with the best feasible way
14 to remove it. My question to you is simply Monsanto's
15 pledge to rectify past harms, does it or does it not
16 include removing PCBs from the environment that it is
17 found responsible for placing there?

18 MR. PECK: Objection. The pledge speaks for
19 itself.

20 MR. GRAMMAS: What was the objection?

21 MR. PECK: Object to the form of the
22 question. The pledge speaks for itself. If that's in
23 the pledge, show it to him.

1 A Well, that's sort of the question I was
2 going to ask of you. Are you saying that the pledge
3 says rectify past harms? I don't -- I don't have it
4 in front of me, sir.

5 Q Assume that it says that we will rectify
6 past harms.

7 A I don't think it would be appropriate for --
8 it's not appropriate for me as an individual to speak
9 speculatively about what Monsanto has said in the
10 pledge.

11 MR. PECK: It's off the internet. It's also
12 Solutia's pledge, which he wouldn't know anything
13 about. He's not with Solutia. It's a separate
14 company.

15 Q Okay. The document I read off the internet,
16 and it's been made an exhibit to --

17 MR. GRAMMAS: What was the man's name I took
18 last week?

19 MR. PECK: Mr. Eley.

20 Q -- Mr. Eley's deposition. We made it an
21 exhibit, and it said on the top, Monsanto Pledge. And
22 one of the things in there said to rectify past harms.
23 Assume that to be true. All I'm asking you is does

1 rectify past harms mean taking the PCBs out of
2 Choccolocco Creek, Snow Creek and Lake Logan Martin,
3 yes or no?

4 A Well, you've asked a question and it's not a
5 yes or no question.

6 Q Okay. Well, then answer it how you can.

7 A First of all -- or the first part of my
8 response would be, again, I'm not aware that those
9 exact words are used in the Monsanto pledge. And it's
10 inappropriate for me to set policy for Monsanto or
11 Solutia. I'm just not aware that those words are in
12 there. But to the extent that you did want to address
13 something, an issue, the specific one that you have
14 talked about, I think any remediation would have to
15 consider whether removal or leaving it there or
16 everything in between, that's a complicated subject.
17 That's not my area of expertise. And, you know, my
18 personal opinion is, no, I wouldn't automatically jump
19 to the conclusion that the only thing to do is to
20 remove them. I'm not -- my belief is that may not be
21 the right thing to do.

22 Q W.L. DeFer, that is you, correct?

23 A Correct.

1 Q Site twelve hundred. What does that
2 describe?

3 A That's an internal mail code designation
4 for -- what's the date of the memo?

5 Q It just says twelve hundred.

6 A Is there a date at the bottom? I think it
7 was the plant in Houston, actually.

8 Q It looks like May 22nd 1989.

9 A Yeah, that's a plant in Houston.

10 Q What were you doing in 1989?

11 A In 1989 I was working at the Chocolate Bayou
12 plant. It was then a Monsanto plant.

13 Q What were you employed doing? Were you a
14 manager, were you a line technician, what --

15 A I was a manager.

16 Q Were you a plant manager?

17 A No, I was not.

18 Q That was a position that was lower than the
19 position you took here in Anniston as being the plant
20 manager?

21 A Superintendent level position.

22 Q Right. Lower?

23 A Lower.

1 Q Below the hierarchy? Less responsibility?

2 A Yes.

3 Q So when you transferred to Monsanto's
4 Anniston plant, you had even more responsibility than
5 you did in 1989 in Houston?

6 A Correct.

7 Q And you would have been required to follow
8 the guidelines in a document entitled Environmental
9 Safety Health Guidelines, right?

10 A I would have been expected to understand
11 those guidelines and apply them wherever it made good
12 technical practical sense to our current operations.
13 And if for some reason I felt that it didn't, well,
14 then I would have been expected to discuss that with
15 other people.

16 Q So who is Mr. Corbett, H.J. Corbett? Do you
17 remember him?

18 A That's Hal Corbett. He's retired from the
19 company now.

20 Q In 1989 what position did he hold for
21 Monsanto?

22 A I believe he had a position that included
23 environmental.

1 Q Was he above you on that environmental
2 position?

3 A You mean in terms of corporate hierarchy?

4 Q Yes.

5 A Sure, yes, he was.

6 Q So what he told you to do you had to follow,
7 correct, at that time?

8 A If he gave me specific environmental
9 guidance, yes, I would.

10 Q Well, let's assume that you were -- well,
11 let's don't assume anything. Your name appears right
12 here on a distribution list, does it not?

13 A Yes, it does.

14 Q And you received an environmental safety and
15 health guidelines memorandum on or around May 22nd
16 1989 from Mr. Corbett, right?

17 A Could I see it, please, a little closer?

18 Q Yes.

19 A Yes, that's my name on the distribution
20 list. Now I need to look and see if this was really
21 for that attachment.

22 Q Well, let me just say this. That's how it
23 was produced to me.

1 A Yeah.

2 Q And Mr. Corbett is talking about the
3 attachment, isn't he?

4 MR. PECK: Feel free to look at the
5 document if he wants to ask you about it.

6 MR. GRAMMAS: He is looking at the document.

7 MR. PECK: And you keep asking questions
8 while he is looking at the document. He is entitled
9 to look at the damn document.

10 Q The question I'm asking you, Mr. DeFer, is
11 just about this page right here dated May 22nd 1989
12 from Mr. Corbett to distribution list, right?

13 A Uh-huh. (Indicating yes.)

14 Q And we know that you are on the distribution
15 list, right?

16 A Uh-huh. (Indicating yes.)

17 Q So May 22nd 1989 you got that letter from
18 Mr. Corbett?

19 A Uh-huh (Indicating yes.)

20 Q With the attached guidelines, environmental
21 guidelines?

22 MR. PECK: Feel free to look at the document
23 which is obviously a fairly thick document.

1 Q And I will represent to you that it is
2 produced in the exact same manner at this deposition
3 that it was produced to us by your employer, Monsanto.

4 MR. PECK: That's fine. He's got to look at
5 it and see if he got it if that's what you are asking
6 him to do.

7 Q Right? Are you with me?

8 A Yes, I'm with you.

9 Q Now, in here Mr. Corbett tells you that
10 "While requirements may vary across different units of
11 the corporation and worldwide guidelines require some
12 compromise to permit application to all operating
13 units, compliance with the spirit of these guidelines
14 is not optional."

15 A Uh-huh (indicating yes).

16 Q Did I read that correctly?

17 A Yes, you did.

18 Q That means when you were employed as an
19 environmental manager in 1991, you had to follow the
20 dictates of that document right there, correct?

21 MR. PECK: Object to the form.

22 A Well, I can't agree exactly with what you
23 just said because then the next sentence goes on to

1 say, "Modifications which achieve the spirit of the
2 guideline and more appropriate to a local condition
3 are permitted."

4 Q In other words, if you can do better than
5 these guidelines, by all means do so but this is the
6 absolute minimum you are going to be allowed to do as
7 far as environmental issues? Isn't that what that
8 second sentence is telling you as the manager at the
9 Anniston plant?

10 A I think in terms of the spirit of what it's
11 trying to achieve, yes. But in terms of specific
12 technical elements, the answer is, no, not
13 necessarily.

14 Q All right. Now, these guidelines were
15 replaced on November 11th 1992 by Mr. Pierle, weren't
16 they?

17 A According to this document they were sent
18 out again.

19 Q Okay. And Mr. Pierle says, right here, "In
20 support of this commitment, we have developed the
21 Monsanto Pledge Guidelines. These new guidelines
22 replace our Environmental, Safety and Health
23 Guidelines." Did I read that correctly?

1 A Uh-huh (indicating yes).

2 Q All right. So now we know that on November
3 11th 1992 these guidelines replaced these other ones,
4 right?

5 A Okay.

6 Q Am I right?

7 A No -- well, or --

8 Q I mean, you are the one who --

9 A They either replace that or some subsequent
10 revision of that. That's all I was saying. But, yes,
11 I agree with your intent.

12 Q All right. And, again, following these
13 guidelines was the same mandate as following the
14 earlier guidelines in that you had to follow them
15 unless you could do something better as far as
16 environmental issues?

17 A Something better or the situation just, it
18 just wouldn't fit.

19 Q So in other words, these guidelines only
20 applied if each individual manager felt like they
21 needed to follow them?

22 A (Witness shakes head negatively.) No, no,
23 it wasn't -- I'm not trying to say there was that much

1 latitude.

2 Q Well, I mean, how much latitude was there?
3 Let me put it to you in the context of PCBs. Didn't
4 these guidelines require Monsanto to take a lead role
5 in determining whether they were a major contributor
6 of PCBs in the Anniston area? And I will point you to
7 that.

8 A Okay. Since we've got them, let me turn to
9 that section of the guideline.

10 Q Before we even read these documents. While
11 you were employed there, didn't you have a general
12 understanding that these guidelines and that
13 Monsanto's policies were for you to take a lead and
14 active role in determining whether y'all were a major
15 contributor to the PCB problem that we're alleging in
16 this lawsuit? Did you believe that was part of your
17 job responsibility?

18 MR. PECK: Object to the form of the
19 question.

20 A In the form you have asked the question, no,
21 that's not specifically required by the guidelines.

22 Q All right. I'm going to show you the
23 guidelines that we first spoke about, the ones that

1 were in effect when you took over the plant in 1991.

2 Isn't that when you took over the plant?

3 MR. PECK: Is that the 1989 guidelines we
4 are talking about?

5 A December of '91.

6 Q The reason I'm not making them exhibits
7 again is they have already been made exhibits and I
8 don't want to have a bunch of exhibits that we don't
9 need. Now, I have showed you worldwide guideline
10 number two, correct?

11 A Uh-huh (indicating yes).

12 Q And it's entitled waste management, right?
13 Waste management, isn't that what it's entitled?

14 A Uh-huh (indicating yes).

15 Q All right. Now, I'm going to go to the
16 second page, again, under heading, Waste Management --
17 excuse me. Under heading, Corrective and Remedial
18 Action, paragraph number four.

19 A Uh-huh (indicating yes).

20 Q It says -- tell me if I'm reading this
21 right. "At sites where we are a major contributor, we
22 will seek a leadership role when appropriate to
23 facilitate resolution." Did I read that correctly?

1 A Yes.

2 MR. PECK: And you are entitled to read as
3 much of that document as you want to to answer his
4 question.

5 Q Did I read that sentence correctly, sir?

6 A Uh-huh (indicating yes).

7 Q Then it says, "The operating units will
8 cooperate to establish responsibility for sites where
9 several units contributed wastes. A goal of the
10 corporation is to resolve as soon as reasonably
11 possible our liability and remedial plans for sites
12 where we have major responsibility." Did I read all
13 of that correctly?

14 A Yes, you did.

15 Q All right. So tell me if I'm wrong, sir,
16 but that document, does it not tell you as the plant
17 manager in Anniston that you need to take a leadership
18 role in determining whether or not your company was
19 responsible for putting the PCBs into Snow Creek,
20 Choccolocco Creek and Lake Logan Martin? Take a
21 leadership role in making that decision?

22 MR. PECK: Let the record reflect Mr.
23 Grammas is walking around the room wagging his finger

1 standing and leering over the witness.

2 A As used in this guideline, the word
3 "responsibility" speaks to -- speaks to addressing the
4 issue as it's found. And the way I interpret your
5 question, though, you're using the word
6 "responsibility" potentially in a different way.

7 Q All right. Well, then let's go with your
8 answer then. Are you telling me that my
9 interpretation of that document is incorrect?

10 A No.

11 Q And the interpretation is that I can read
12 that document right there that I just showed you under
13 Waste Management headings and I should not believe
14 that it required Monsanto, in particular you, sir, in
15 1991 as the plant manager to take a leadership role in
16 determining whether or not Monsanto was responsible
17 for PCB contamination in Snow Creek, Choccolocco Creek
18 and Lake Logan Martin?

19 MR. PECK: Object to the form of the
20 question. He wasn't even the plant manager in 1991.

21 Q I thought you said you were the plant
22 manager in 1991?

23 A December of '91.

1 MR. GRAMMAS: Well, then your objection has
2 no merit and you shouldn't be interposing it, Adam,
3 okay?

4 MR. PECK: '91 implies January 1.

5 MR. GRAMMAS: No, it doesn't.

6 MR. PECK: Sure it does. You can answer the
7 question. The document speaks for itself.

8 A Again, I've listened to your question
9 carefully. And at the risk of being impertinent, I
10 think you are implying accepting legal responsibility,
11 which I did not have the authority to do, never had,
12 and these guidelines don't talk about that.

13 Q I never mentioned the word "legal." I
14 haven't yet. We are going to get to that in a second.
15 But I haven't mentioned that yet, sir. All I'm asking
16 you is you are the plant manager from December 1991
17 through November 11th 1992 when these second
18 guidelines came into effect, right?

19 A Uh-huh (indicating yes).

20 Q So for that year period you were the plant
21 manager responsible for running Anniston under these
22 guidelines, right?

23 A Uh-huh (indicating yes).

1 MR. PECK: Is there a reason why you
2 continue to stand up?

3 MR. GRAMMAS: Yeah, because I'm talking
4 about this document and I'm coming around back and
5 forth. That's the reason.

6 MR. PECK: Okay. Just wanted to be clear.

7 Q Right? You were the plant manager during
8 that period of time? Is that a hard question, Mr.
9 DeFer?

10 MR. PECK: Yes, it's a very long question
11 with a lot of detail in it.

12 Q You were the plant manager between
13 November --

14 A Oh, that question.

15 Q Oh, yeah, that one, the one I asked.

16 MR. PECK: The one about the five questions
17 in a row. You just keep rambling over there. Why
18 don't you stop and let him answer a question.

19 MR. GRAMMAS: Because he won't answer any
20 of them, Adam.

21 MR. PECK: Well, yeah, because you just keep
22 wandering around the room screaming and --

23 MR. GRAMMAS: I'm not wandering or

1 screaming. And you have done your job of trying to
2 mud up the record. Now, why don't you just let the
3 witness answer the question?

4 MR. PECK: Why don't you sit down?

5 MR. GRAMMAS: I told you why I'm not
6 sitting down.

7 MR. PECK: You've got another copy of the
8 document right there.

9 Q Go ahead, Mr. DeFer.

10 A If I read this section in its entirety
11 and --

12 Q First of all, do you understand what the
13 question is? The question is were you the plant
14 manager at the time that this document -- at the time
15 you were the plant manager, this document up until
16 November 11th 1993 controlled what you should do or
17 not do with respect to running your plant on
18 environmental issues, right?

19 A It wasn't the only guidance I had. And
20 assuming that there wasn't an intervening document, I
21 would say, yes, these were the guidelines that
22 applied.

23 Q All right. Now, does it not say that your

1 responsibility was to take a leadership role to
2 facilitate a resolution of environmental problems and
3 in particular cleanups when your company may be a
4 major contributor? Am I reading that correctly?

5 MR. PECK: You're not reading all of it,
6 that's for sure.

7 Q The portions that I read, did I read
8 correctly?

9 A You've --

10 MR. PECK: Object to the form of the
11 question. The document speaks for itself.

12 A I can read the paragraph you're reading
13 from. So if you have a question about that.

14 Q The question is did I read it correctly?
15 See, the record can't read, sir.

16 A Okay. I didn't know when you were reading
17 it you wanted me to verify that you read it word for
18 word. Now, if you want to read it again, I can watch
19 you while you're reading it.

20 Q "At sites where we are a/the major
21 contributor, we will seek a leadership role when
22 appropriate to facilitate resolution." Did I read
23 that correctly?

1 A Yes, you did.

2 Q Now, you were the head honcho down there
3 during a period of time when this sentence that I just
4 read was one of the obligations imposed upon you by
5 Mr. Corbett, correct?

6 A These guidelines were in effect for a part
7 of the time I was plant manager, correct.

8 Q So that sentence I just read was an
9 obligation imposed upon you by Mr. Corbett, right?

10 A It was part of the corporate environmental
11 guidelines at the time, yes.

12 Q He also told you -- the operating unit was
13 considered the plant in Monsanto, right?

14 A Where is that at?

15 Q It says -- the next sentence starts with
16 the operating units. That's the Monsanto plant, isn't
17 it, as it related to you at this time period?

18 A No. Actually, that's sort of company speak.
19 That would be business units within the company.
20 That's my interpretation of what that means.

21 Q But you certainly fell within the operating
22 unit as the manager of this plant?

23 A What I think that means is it's saying that

1 let's not -- let's not have internal disagreements
2 over which business inside of Monsanto is going to pay
3 for something. Let's not let that slow us down.
4 That's how I interpret that sentence.

5 Q Let me ask you this, sir: Do you see
6 anything inherently incorrect with me reading the
7 words as they appear on this document and applying
8 their everyday meaning to them?

9 MR. PECK: Object to the form of the
10 question.

11 Q Are you aware of any facts, any scenarios,
12 any meanings, that would suggest to me that I cannot
13 read the words contained in this document and apply
14 their everyday ordinary meaning?

15 MR. PECK: Calls for speculation by this
16 witness. Object to the form of the question.

17 Q Are you?

18 A You are certainly free to do that. But
19 inside of Monsanto we didn't call plants operating
20 units. That's a fact.

21 Q That's not what I'm asking, sir, and I'm not
22 talking about operating units. I'm talking about
23 every single word contained in these guidelines. Are

1 you telling me that -- are you aware of some reason
2 that I cannot read these words and apply their normal
3 everyday meaning?

4 MR. PECK: Object to the form of the
5 question.

6 A You are entitled to do that. And I'm
7 assuming that I need to give truthful answers and I
8 may have to add other facts to make sure that my
9 answer is coming across. So you have every right to
10 do that.

11 Q You read this document at least -- or at
12 least you were charged with reading this document when
13 you were the plant manager in Anniston, right?

14 A These were the guidelines then in effect for
15 part of the time I was in Anniston, yes.

16 Q Tell me who you called up and talked to at
17 Monsanto above you as these guidelines that I've just
18 read relate to PCBs, if anyone, to clarify the issues
19 that you are now clarifying for us on the record.

20 A Well, if I can use the, you know, west end
21 landfill as an example, I think that, yes, I called
22 and discussed with people but there wasn't a lot of
23 debate about this. You know, there was a discovery

1 made. We became aware that we were significantly
2 involved, and we took appropriate steps to get the
3 process going quickly in terms of taking the property
4 back, in terms of meeting with ADEM. There is an
5 example where we have done this.

6 Q You did exactly what the guidelines told
7 you, right?

8 A I believe so.

9 Q And that's because Alabama Power picked up
10 the phone, called you, made you aware of it, and you
11 responded to their demands and followed these
12 guidelines and took back the property?

13 MR. PECK: Object to the form of the
14 question.

15 A Well, Alabama Power called us and talked to
16 us about something they observed on their property.
17 In that call they didn't talk about these guidelines.

18 Q I understand that. They called you and
19 said, hey, there is PCBs on our property. Take it
20 back. We don't want it. And following these
21 guidelines y'all took immediate corrective action
22 because you felt like you were a major contributor.
23 You took the property back, right? That's what you

1 just said.

2 A No, I didn't say that Alabama Power called
3 us -- Alabama Power called us and said, hey, there is
4 PCBs, take it back. That's not what I said.

5 Q All right. Now, do you believe that you
6 have major responsibility -- Monsanto has major
7 responsibility for putting the PCBs in Choccolocco
8 Creek and Snow Creek?

9 MR. PECK: Object to the form of the
10 question. Lack of foundation for this witness.

11 A I've discussed this before, I think, but in
12 determining responsibility is a complicated thing.
13 There is many -- you know, PCBs were a commonly used
14 industrial product that could have come from many
15 sources and many individuals or corporations. So, no,
16 I don't think that the guideline says that.

17 Q You don't think the guideline says what?

18 A I think your question was do I think the
19 guidelines say that Monsanto has responsibility for
20 the PCBs in Snow Creek and Choccolocco Creek.

21 Q That's not what I asked you. I said, do you
22 believe that Monsanto has major responsibility or is a
23 major contributor for putting the PCBs there?

1 MR. PECK: Object to the form of the
2 question. Lack of foundation for this witness.

3 A I only came to the site in 1991. I wasn't
4 there during operations. I have not had an
5 opportunity to review any of the relevant records nor
6 was there a need to in the conduct of my job. There
7 is a lot of speculation that I would have to make
8 that's inappropriate. I think I have said that
9 Monsanto could be considered one of many possible
10 sources. I have said that.

11 Q I know you've said that. Now, the lawsuit
12 that my clients have brought against you was brought
13 in 19 --

14 MR. GRAMMAS: Adam, do you know what year
15 the lawsuit was brought?

16 MR. PECK: You guys want me to help you
17 after the way you have treated me all day?

18 MR. LOWE: You involuntarily help us all the
19 time.

20 MR. GRAMMAS: What year was the lawsuit
21 brought? I can take a break and go find out. Just
22 tell me when it was brought.

23 MR. PECK: Late '93.

1 MR. GRAMMAS: That's what I thought.

2 Q All right. This lawsuit was filed in late
3 1993, correct?

4 A If Adam says so.

5 Q You were the plant manager then, right?
6 You were the plant manager at that time?

7 A Uh-huh (indicating yes).

8 Q Now, you are saying there was no need for
9 you as the plant manager at Monsanto's Anniston
10 facility to determine whether or not you were a major
11 contributor of PCB contamination in this eco system
12 even after you got sued accusing you of being a major
13 contributor of PCBs in this plant system, is that what
14 I'm hearing you testify?

15 A Are you asking that of me as an individual?

16 Q No, as you as the plant manager at Anniston
17 at that time. There was no need -- you received this
18 lawsuit, and there was no need for you to go out and
19 figure out whether you were the major contributor of
20 the PCBs as we alleged against you; is that what
21 you're saying?

22 A In responding to, you know, a lawsuit like
23 this that involves processes that are discontinued and

1 ceased, as plant manager that is not my direct area of
2 accountability. If asked, you know, certainly I would
3 participate in that process. And obviously once a
4 lawsuit is filed, you know, you are in a legal arena.

5 Q You can't identify by name a single
6 potential source of PCB contamination in this eco
7 system sitting here today, can you, sir?

8 A No, not off the top of my head, but it's my
9 understanding that that has been done by others
10 including ADEM in the past.

11 Q And at the time you were sued, Monsanto was
12 sued, in 1993, you were being accused in the lawsuit
13 of putting PCBs into this river system, right? Did
14 you even read the complaint, sir?

15 A Yes, I did.

16 Q Okay.

17 A Yes, I did.

18 Q Aren't we accusing you of putting PCBs in
19 the river system?

20 MR. PECK: If you understand the legalese in
21 their complaint, you can answer the question. If you
22 don't understand the legalese --

23 A As a layman, yes, I guess I would interpret

1 it that way, okay, as a layman.

2 MR. PECK: Yeah, y'all served him at his
3 home.

4 A I've read it. I've just -- you know,
5 legalese aside, yes, I would interpret it that way.

6 Q And according to this Monsanto guideline
7 your -- the Monsanto goal in part as a corporation was
8 to resolve as soon as reasonably possible liability
9 and remedial plans for sites where y'all have major
10 responsibility, right?

11 MR. PECK: That's what you are reading in
12 the middle of the paragraph. Just for the record, you
13 are reading right dead in the middle of the paragraph.
14 It begins a sentence or two before where you started.

15 A Well, you know, part of this speaks to
16 Superfundfund site, part of it --

17 Q Okay. The reason you are saying that now is
18 because your lawyer just pointed to that.

19 A And part of it speaks to sites where we're a
20 major contributor.

21 Q Right. I understand that. You didn't
22 mention Superfund until your lawyer leaned over and
23 stuck his finger on a piece of paper and told you,

1 hey, read this right here, did you?

2 MR. PECK: That's not what happened. What
3 happened is I said he's asking you to read in the
4 middle of the paragraph whether the sentence or two
5 before and he looked back to see the sentence or two
6 before, which he is allowed to do. And you haven't
7 made this document an exhibit to the record so I had
8 to do that so the record was clear.

9 MR. GRAMMAS: No, no, you didn't have to do
10 that, Adam.

11 MR. PECK: Well, I did that.

12 MR. GRAMMAS: And he is telling you you
13 shouldn't have because he is saying this doesn't have
14 anything to do with the Superfund site.

15 MR. PECK: Well, that's fine for him to tell
16 me I shouldn't do that. My job is to worry about the
17 record. His job is to answer your questions honestly.

18 Q (By Mr. Grammas) All I'm asking you is the
19 question about sites where y'all are considered a
20 major contributor. You are supposed to take a
21 leadership role and you're supposed to find out as
22 soon as possible what your liability is and what your
23 remediation plans are, right? That's what this

1 document says in a nutshell, doesn't it?

2 MR. PECK: Object to the form of the
3 question. The document speaks for itself.

4 A In the context of a legal proceeding and all
5 the properties that you've talked about and the eco
6 system, I don't interpret that this -- my personal
7 interpretation was that this did not apply.

8 Q Great. Great answer. Thank you, sir.

9 A That doesn't mean -- let me clarify. That
10 doesn't mean that Monsanto is still not committed to
11 taking responsible actions and myself personally.
12 That's not what I said.

13 Q What have you done to take the responsible
14 actions? What have you done?

15 A I was not saying that I did not do anything.
16 All I'm trying to point out is your -- you seem to be
17 asking me does it fit the confines of this. And I'm
18 saying, I don't believe that this was intended to
19 apply to a lawsuit kind of a situation where I'm bound
20 to take advice. I'm bound to take advice by that
21 corporate charter and other environmental guidelines
22 from our corporate attorneys. I have to do that.

23 Q These policies apply unless we are being

1 sued where we may have to pay a bunch of money and
2 then they don't apply; is that what you are saying?

3
4 MR. PECK: Object to the form of the
5 question. Argumentative.

6 A No, that's not what I'm saying.

7 Q But you don't believe these policies
8 entitled, Corrective and Remedial Action apply to the
9 Monsanto plant with respect to this lawsuit? That's
10 what I'm hearing you say. And if that's your answer,
11 that's great. Just say it.

12 A No. What I'm saying is I don't think these
13 guidelines in and of themselves say that Monsanto has
14 to -- that it implies any particular responsibility
15 for PCBs in the eco system.

16 Q Okay.

17 A And that's why I'm concerned with the way
18 you are asking the question. I don't think it implies
19 that.

20 Q I got you. Great. The next sentence says,
21 "We intend a lessened legalistic approach to site
22 cleanup negotiations. Where our responsibility is
23 fairly established, we will not delay cleanup

1 unnecessarily by legal, yet negatively perceived
2 litigious steps." Did I read that correctly?

3 A Yes, you did.

4 Q Now, that is the exact opposite of what
5 you've done in this lawsuit, isn't it, sir, you being
6 Monsanto?

7 A No, it's not.

8 Q You haven't engaged in a lengthy legalistic
9 approach to cleaning up the PCB contamination that
10 we're suing you over?

11 A Speaking of the time that I was at the plant
12 and that I can fairly speak to the answer is no, we
13 were not pursuing a legalistic approach.

14 Q Is Monsanto's Anniston plant PCB free?

15 A And how do you define PCB free?

16 Q In the ordinary regular ole everyday
17 meaning, PCB free.

18 A Well, actually, in the everyday meaning, the
19 answer to that might be yes. Usually is applied to
20 PCB articles, things like transformers. So that's
21 why I'm asking.

22 Q So you believe that you can accurately tell
23 a jury that the Monsanto plant and its surrounding

1 landfills are PCB free?

2 A No.

3 MR. PECK: Object to the form of the
4 question.

5 A All I'm really saying is that the question
6 you've asked is pretty broad, and it cannot be
7 answered yes or no without explanation.

8 Q Well, if I told someone that the Monsanto
9 plant is PCB free, is that an accurate statement?

10 A Okay. If you said that to a member of the
11 public -- because you used the term "as usually used"
12 which, again, in my experience that's usually used in
13 a different context. A member of the public might
14 interpret that to mean something different.

15 Q Something different than what, Mr. DeFer?

16 A Well, something -- they might interpret that
17 to mean that there are no PCB by-products in any of
18 the landfills on the site, which is, you know, not
19 true.

20 Q Was Mr. Alan Faust involved in any manner,
21 shape, or form the west end landfill remediation?

22 A Yes, he was.

23 Q Tell me about his involvement.

1 A I can tell you what I know up until mid
2 '94. Mr. Faust was involved not only in meetings with
3 ADEM and Alabama Power but also meetings with the
4 consultants who were helping us with the work and
5 coming up with the plan of study for the site.

6 Q That was -- what was the name of the company
7 you mentioned?

8 A Garrety & Miller.

9 Q What was his role in these meetings, Mr.
10 Faust's role?

11 A Alan? Well, you know, I guess generally his
12 primary role would be to provide hydrogeological, you
13 know, input and expertise. And he also has experience
14 with dealing with companies like Garrety & Miller just
15 from a project management standpoint.

16 Q Mr. Faust will know more particularly how
17 the water flow off this area gets into Snow Creek?

18 A I suspect he might.

19 Q Will he also -- did you every rely -- did he
20 work under you while you were the manager at Monsanto?

21 A No, he did not.

22 Q What did he do while you were there?

23 A He never -- he wasn't based -- he worked out

1 of St. Louis while I was there.

2 Q Are you his boss? Is he your boss? Are
3 y'all equals? How does that work?

4 A He never worked underneath me or over me.

5 Q And you never worked underneath him?

6 A No.

7 Q All right. So did you rely on his
8 expertise, knowledge, or input in making decisions
9 about this west end landfill issue?

10 A Yes, we did.

11 Q And that would include his knowledge of how
12 PCBs may travel through storm water and things like
13 that?

14 A Yes, I personally would have relied on that.

15 Q What did he tell you his belief was about
16 PCBs leaving this site as it was discovered by the
17 Alabama Power employee, if y'all hadn't done anything
18 to fix it?

19 A Well, I guess, again, a lot has transpired
20 since I left. Probably the best source of information
21 on that would be the plan of investigation that we
22 carried out. I don't remember all the details, but in
23 general it focused on two areas, one was looking at

1 ground. Water and I can't remember -- my suspicion is
2 those probably weren't limited just to PCBs, but I
3 don't know that for a fact. And my other recollection
4 is it probably would have been focused on any
5 surface -- PCBs on the surface, you know, the nature
6 and extent of those.

7 Q Do you remember my question that I just
8 asked you?

9 A You asked me what kind of guidance -- you
10 know, what kind of advice I got from Mr. Faust about
11 the west end landfill related to PCBs.

12 Q No, that's not what I asked you. I asked
13 you did Mr. Faust tell you anything about PCBs moving
14 off of the west end landfill because of storm water.

15 A Oh, I don't recall.

16 Q Did you ever ask him anything about that?

17 A I don't recall if I personally asked him
18 that, no.

19 Q Don't you think it's important to know
20 whether PCBs were leaving that landfill area and
21 getting onto neighboring property into Snow Creek?

22 A Monsanto was interested in understanding
23 that, and the plan of study was designed to find out

1 that information.

2 Q And Mr. Faust would be the one at Monsanto
3 that knows about this information?

4 MR. PECK: Object to the form of the
5 question. Calls for speculation.

6 Q As far as you know.

7 A I can't speak for Mr. Faust, but he would be
8 someone who might know that.

9 MR. PECK: Let's take a five minute break.

10 (A brief recess was taken)

11 Q Mr. DeFer, would you agree with me that
12 Monsanto is a contributor of the PCB problem that we
13 now have in Choccolocco Creek, Snow Creek, and parts
14 of Lake Logan Martin?

15 MR. PECK: Object to the form of the
16 question. Lack of foundation for this witness.

17 A I would agree that to the extent that there
18 is PCBs there Monsanto is a possible source. And I
19 think Monsanto is being proactive in spending -- I
20 understand spending additional money since I have left
21 to, you know, investigate some of those things.

22 Q Will you agree with me, sir, that despite
23 the fact that you can't identify who these other

1 potential sources are that they must necessarily have
2 gotten PCBs that were manufactured by Monsanto?

3 MR. PECK: Object to the form of the
4 question.

5 A We talked about that earlier. I'm not -- I
6 just don't have the background to answer that
7 question. It is possible, I suppose, that some were
8 imported from somewhere. Absent seeing some facts I
9 would have to hold that open as a possibility.

10 Q What steps has Monsanto taken to remediate
11 the PCB contamination issues in Snow Creek,
12 Choccolocco Creek, and Lake Logan Martin, if any?

13 MR. PECK: Object to the form of the
14 question. Lack of foundation from this witness.

15 A I think the question applies to either a
16 time period before I was at Anniston or a time period
17 after I was at Anniston. So I really -- I can't
18 really answer that question. I don't have the facts
19 to answer it.

20 Q And you can't answer during the period of
21 time that you were the plant manager in Anniston what
22 steps Monsanto took to remedy the PCB contamination in
23 Snow Creek, Choccolocco Creek and parts of Lake Logan

1 Martin, if any?

2 MR. PECK: Object to the form of the
3 question.

4 A To my knowledge when I was plant manager
5 there was no new or active concern that was being
6 looked at. There was prior work that was done by
7 Monsanto and ADEM. And my belief and understanding
8 was that that work reached a conclusion point but
9 there was no new information while I was there that
10 led us to do any additional work while I was there.

11 Q Okay. So the answer to the question is that
12 you didn't -- Monsanto didn't do anything during the
13 entire period of time you were the plant manager to
14 remedy or remediate PCB related issues in Snow Creek,
15 Choccolocco Creek and parts of Lake Logan Martin,
16 correct?

17 MR. PECK: Object to the form of the
18 question.

19 A While I was in Anniston there was no new
20 information, no new investigations that were conducted
21 while I was there. They were conducted before and
22 after. And I'm not -- you know, you're asking me a
23 question about remedies and remediation and I'm just

1 -- number one, I'm not qualified to answer, and number
2 two, I'm not totally sure I know what you mean.

3 Q Well, if there was a big dredging machine
4 out there sucking up a bunch of sediment out at
5 Choccolocco Creek, would that be something that you
6 would be aware of during the period of time that you
7 were the plant manager?

8 A I might be, yes.

9 Q Might be? You mean there is a chance you
10 might not be aware of something like that going on at
11 your plant?

12 A You said Choccolocco Creek, actually.

13 Q I know what I said.

14 A That's a long creek.

15 Q I realize that.

16 MR. PECK: You are saying if Monsanto is
17 doing it or if somebody else is doing it, but you
18 didn't say if Monsanto is doing it.

19 Q That Monsanto is doing, absolutely.

20 MR. PECK: That wasn't part of the question.

21 A Well, if Monsanto was doing it, I would be
22 aware of it, yes.

23 Q Right. And you would be aware of any

1 remediation efforts Monsanto was doing during the
2 period of time you were there, right?

3 A Yes, I would be.

4 Q And sitting here today, sir, tell me
5 every single remediation effort you're aware of
6 that Monsanto engaged in relating to PCBs on Snow
7 Creek, Choccolocco Creek or Lake Logan Martin during
8 that period of time you were there as the plant
9 manager.

10 A I'm not aware of any active remediation
11 efforts that went on in the areas that you mentioned
12 while I was plant manager.

13 (Plaintiff's Exhibit
13 Number 1 was marked for
14 identification.)
14

15 Q Could you tell me, sir, what Plaintiff's
16 Exhibit 1 is?

17 A This is a letter from Alabama Power
18 addressed to me dated July 16th 1993.

19 Q What's the content of the letter, sir? You
20 can summarize the content.

21 A The content of the letter is -- it's a
22 little historical in nature in that it summarizes
23 some things that had happened in that recent time

1 period, in the period of months, I'm assuming, not
2 much longer than that. And it's a formal letter
3 documenting that, you know, the material that they
4 found, documenting that it contained -- that their
5 information says it contains PCBs, and wanting to
6 talk, have discussions between Monsanto and APCO
7 about transfer of the property. It talks about
8 respective rights of each of the parties. Talks about
9 our customer relationship, et cetera, et cetera.
10 Talks about notifications that were made to the public
11 and community leaders. It talks about and references
12 discussions with ADEM.

13 Q Alabama Power wrote you that letter on that
14 date and said, in essence, Monsanto, this property
15 has PCBs. You put the PCBs there. This used to be
16 your property. We want you to take it back and
17 take responsibility for any environmental related
18 issues. In a nutshell, that's what this letter says,
19 isn't it?

20 A The document speaks for itself, but in a
21 nutshell, I would agree with that.

22 Q And what's the date of that letter?

23 A July 16th.

1

(Plaintiff's Exhibit

Defer, William L. (fmr Monsanto employee) in DYER

HARTOLDMON0032707

Number 2 was marked for
identification.)

Q Now, I'm going to show you Plaintiff's
Exhibit 2. Now about, what, a week later to the day
you wrote this letter to Mr. Brown, didn't you?

A Mr. Bowers.

Q Bowers, I'm sorry.

A The author of this first letter.

Q I'm sorry. I read it upside down, and I
read it wrong.

A Yes, you did.

Q All right. And you were writing that letter
on behalf of Monsanto, weren't you?

A Correct.

Q And you were writing that letter as the
plant manager of Monsanto, were you not?

A Correct.

Q And in that letter you in a nutshell said,
we agree with what you are saying. We are going to
take responsibility for this issue. And we want to
transfer the property back from Alabama Power to
Monsanto. And we will take responsibility for the
issues.

1 A I think the document speaks for itself, but
2 as I read it, I would say that what it says is we're
3 willing to work with them, and we want to do it
4 promptly and without delay. And we are willing to
5 discuss arrangements under which the land could be
6 transferred back to Monsanto subject to agreements
7 defining the rights, responsibilities, and liabilities
8 of Monsanto and APCO.

9 Q And so what we have here, then, sir, is
10 less than a week after a formal letter by Alabama
11 Power was written to Monsanto, we have a prompt
12 statement by Monsanto saying, we're going to work with
13 you to resolve these issues. And we know ultimately
14 that you got the land back, right?

15 A Well, yes, after this letter was --
16 subsequent to the time this letter was written
17 Monsanto did get title to the land back.

18 Q During that period of negotiations between
19 Monsanto and Alabama Power, you asked -- you being
20 Monsanto, asked Alabama Power to indemnify Monsanto
21 for any environmental related lawsuits that may
22 result or that may have been filed as a result of
23 Alabama Power working out there on the property

1 during the period of time they owned it. Do you
2 recall that?

3 A I recall that we had discussions about
4 indemnification, yes.

5 Q But what you wanted is you wanted to make
6 sure that Alabama Power, you being Monsanto wanted to
7 make sure that Alabama Power was going to indemnify
8 Monsanto if anybody sued Monsanto as a result of
9 Alabama Power's conduct out there on the land that
10 y'all gave them, right?

11 A There were discussions about
12 indemnification -- and please understand that area of
13 law is -- I'm not a lawyer, so you can imagine that
14 I was not leading the strategy behind those
15 discussions. Please accept that. I think Monsanto's
16 legitimate concern was that during the time that
17 property was owned by Alabama Power that they may have
18 taken some actions that -- and as a result of those
19 actions they may have incurred some liability or
20 responsibility.

21 Q Alabama Power?

22 A Yes.

23 Q And the theory y'all had was is that with

1 its bulldozers and earth moving equipment and whatever
2 other equipment it was going to -- Alabama Power was
3 going to put out there to build a substation, they may
4 have cut through some buried materials that Monsanto
5 put out and allowed more directly PCBs and other
6 materials to escape that property and get into the
7 neighboring landowners' property, right?

8 MR. PECK: You are talking in the past
9 tense?

10 A Past tense, right.

11 Q Right.

12 A That was a scenario that was discussed at
13 the time. I don't know if that's been borne out by
14 the site investigation. But, yes, that was discussed
15 at the time.

16 Q So Monsanto, in your opinion and to use your
17 words, took the legitimate position that Alabama Power
18 should be responsible for PCBs leaving that site if it
19 was Alabama Power's bulldozers that cut through the
20 landfill and allowed it to escape?

21 A I think our concern was to the extent that
22 they increased the scope of the investigation or other
23 expenses like that that there were grounds to discuss

1 that with Alabama Power, yes.

2 Q And they wholesale rejected those proposals
3 by Monsanto, didn't they?

4 A No, that wouldn't be a fair characterization
5 I don't believe.

6 Q Well, tell me about the indemnity agreement
7 that Alabama Power entered into with Monsanto holding
8 y'all harmless for any environmental related issues
9 with respect to PCBs leaving that property.

10 A I know that we discussed indemnification. I
11 don't recall that we ever got -- that we ever got a
12 formal agreement. If you've got a document that shows
13 that, I would love to review it and refresh my memory.
14 I don't know.

15 Q I don't have a document that says that.

16 A I don't know that we ever got an agreement
17 that said that.

18 Q Right. Monsanto's proposals to have Alabama
19 Power indemnify them was rejected by Alabama Power,
20 right?

21 A There were discussions and proposals made,
22 that's true. Without having the documents in front of
23 me, I just can't speculate exactly how that played

1 out.

2 Q I don't expect you to sit here four years,
3 five years after the fact and tell me exactly what
4 happened. But, I mean, you're a man with a chemical
5 engineering degree and a masters degree in business
6 relations who was intimately involved in negotiating
7 this exchange of property between Monsanto and Alabama
8 Power during that period of time, right?

9 A I was involved in that, yes.

10 Q All right. Now, certainly with that much
11 education and intellect you could recall a general
12 agreement of indemnity that the two companies may have
13 entered into if one existed?

14 A I don't know if the question is about my
15 intellect and my memory or what I actually recall.

16 Q No. The question is, sir, based on your
17 intellect.

18 A Okay.

19 Q Based on all of your education, training,
20 background, you would recall, would you not, whether
21 such indemnity agreement existed or not?

22 A You're really questioning my memory and
23 you're linking it to my intellect --

1 Q Right.

2 A -- which I'm not sure that there is any
3 scientific basis for linking intellect and memory.

4 Q Okay.

5 A But I will say, I don't recall the
6 specifics of that. I don't recall that we ever got
7 that agreement. So if you forced me to, you know, to
8 speculate, my speculation would be that such an
9 agreement was never reached.

10 Q That was contrary to what Monsanto wanted at
11 the time?

12 A Again, Monsanto's position was, gee, you had
13 possession of this property for over thirty years and
14 during that time you did things and as a consequence
15 of that there may be some liability. And, yes, that
16 was one of the positions that Monsanto took.

17 Q How long have you been employed with
18 Monsanto, approximately twenty something years, right
19 at eighteen years, nineteen years?

20 A Nineteen plus years.

21 Q We are creeping up on twenty years, right?

22 A Yep.

23 Q During that period of time, during that

1 entire period of time, was it required of you to learn
2 about the potential dangers of PCBs?

3 A I think we talked about this early this
4 morning. But, you know, from a scientific basis and
5 understanding, the basic science of PCBs, no, that was
6 never a requirement.

7 Q How about from a managerial standpoint just
8 to have a general understanding of what PCBs were, how
9 they got into the environment, what potential harm
10 they had?

11 A Through my work and being aware of some
12 Monsanto programs I had a general knowledge of TSCA
13 regulations as it applied to PCBs and the way it
14 defined PCB materials and articles, it seems to me
15 that's the term that's used. And from a -- also from
16 more of a general management prospective, yes, I was
17 exposed to background material that Monsanto had
18 prepared on PCBs and position papers, press releases,
19 yes, I was exposed to that kind of material.

20 Q Based on your exposure to that kind of
21 material and the general background, sir, do you have
22 a position one way or the other about whether Monsanto
23 is responsible, at least in part, for the fish

1 advisories that have been and currently are posted on
2 Choccolocco Creek and parts of Lake Logan Martin?

3 MR. PECK: Object to the form of the
4 question. Lack of foundation from this witness.

5 A I'm not an expert in that area at all. I
6 really know nothing about aquatic toxicity or
7 bioaccumulation I know absolutely zero about it. I
8 can't say I have ever read more than a paragraph about
9 it. So I really don't know. I don't have a basis to
10 make that statement at all.

11 Q You can't just use common sense and ask
12 yourself, well, we manufactured millions of pounds of
13 PCBs right here in Anniston. I know some of that PCB
14 got out of our plant into Snow Creek which flows into
15 Choccolocco Creek which now flows into Lake Logan
16 Martin, therefore, common sense tells me that PCBs
17 from our plant are in this eco system and are
18 bioaccumulating in fish, you can't answer that
19 question on common sense like that?

20 MR. PECK: Object to the form of the
21 question. Lack of foundation from this witness.

22 A Because of my lack of scientific
23 background and experience, the short answer to your

1 question is, no, I don't feel qualified to answer that
2 question.

3 Q And your common sense will not allow you to
4 draw the conclusion that based on all of those facts
5 Monsanto is at least in part responsible for the fish
6 advisories on PCB contamination in Choccolocco Creek
7 and Lake Logan Martin?

8 MR. PECK: Object to the form of the
9 question. Lack of foundation.

10 A Since you narrowed your question to common
11 sense, I guess my answer would be -- and I think I
12 have said this before is that I'm willing to
13 acknowledge that in terms of sources of PCBs Monsanto
14 is a possible source of PCBs. But, you know, how PCBs
15 once they are in the environment and the
16 bioaccumulation and aquatic -- that is -- I know
17 nothing about that. I have absolutely no basis to
18 make a conclusion.

19 Q So the answer is you don't have the common
20 sense to allow you to conclude based on everything you
21 know that Monsanto is at least in part responsible for
22 fish advisories?

23 MR. PECK: Object to the form of the

1 question. Lack of foundation.

2 MR. GRAMMAS: Are you saying this man
3 doesn't have any common sense?

4 MR. PECK: I'm saying it's not a question of
5 common sense. It's a question of scientific study.
6 We have spent one point five to two million dollars to
7 study that area of issue, Pete. It's not an issue
8 that can be answered since you have asked me to
9 explain my objection.

10 MR. GRAMMAS: Well, I bet your study will
11 determine that y'all aren't responsible for anything
12 on Choccolocco Creek.

13 MR. PECK: I seriously doubt that's what it
14 will determine.

15 MR. GRAMMAS: Do you think it will
16 determine that it is responsible? Maybe I should be
17 talking to you, then, Adam.

18 MR. PECK: The study will determine what the
19 study determines. That's why we're doing it.

20 THE WITNESS: Thirty years too late.

21 MR. PECK: The problem is it didn't occur
22 thirty years ago.

23 Q (By Mr. Grammas) I mean, all I'm saying is

1 -- you tell me why I can't look at it, it's so simple.
2 Let's do it that way. Why is it impossible for me to
3 just draw on my common sense and say, if Monsanto made
4 this chemical for that many years and Monsanto is
5 responsible in part for the chemical being in this
6 water system, then Monsanto is responsible in part for
7 the fish advisory. Where does my logic fail?

8 MR. PECK: Object to the form of the
9 question. Lack of foundation.

10 A Well, that's your logic. My logic, would --
11 you know, if I constructed that same chain of events,
12 my problem is I would say that some of those things
13 are not questions of common sense. And that's where
14 we -- you know, you and I are not in agreement.

15 Q Well, let's go through them. Let's go
16 through them. Is it common sense or is it a fact that
17 Monsanto manufactured this stuff in Anniston from the
18 1930s to 1971?

19 MR. PECK: This stuff means PCBs?

20 MR. GRAMMAS: Right.

21 A I believe that's true.

22 Q Is it not a fact, sir, that Monsanto allowed
23 some of the PCBs to leave its system and get into Snow

1 Creek like you have already testified?

2 A I think I said that it's my belief based
3 on -- I understand that there were processed waste
4 waters from that unit some of which were discharged
5 into a tributary of Snow Creek.

6 Q All right. Is it not a fact, sir, that Snow
7 Creek flows into Choccolocco Creek?

8 A Yes, it does eventually.

9 Q Is it not a fact that Choccolocco Creek
10 flows into Lake Logan Martin?

11 A Yes, it is.

12 Q Is Monsanto not a probable source of PCBs
13 being in Snow Creek, Choccolocco Creek and Lake Logan
14 Martin?

15 MR. PECK: Object to the form of the
16 question. Lack of foundation for this witness.

17 A There is an assumption inherent in that.
18 The assumption to me is, you know, the breadth of
19 geography involved. I'm willing to say based on my
20 personal, you know, understanding -- again, I wasn't
21 there during the time of discharge -- that, yes,
22 Monsanto is a possible source of PCBs. But I don't
23 have the expertise, sir, knowledge, or the background

1 to say and that applies to Lake Logan Martin.

2 Q All right. Tell me the other possible
3 sources.

4 A Anybody else that's used PCBs. There are a
5 lot of other people that used them.

6 Q No, I mean by name here in this system.

7 A I don't have a specific list of names to
8 provide you. But it's my understanding that that's
9 been looked at before by ADEM.

10 Q Now, you are aware that there is a fish
11 advisory on Choccolocco Creek and Lake Logan Martin,
12 right?

13 A There was a fish advisory issued for parts
14 of Choccolocco Creek while I was in Anniston, yes.

15 Q And the fish advisory said, don't eat the
16 fish because they contain high levels of PCBs,
17 correct?

18 A Essentially I think that's correct.

19 Q Now, based on all of those facts are you
20 telling me that you cannot rely on your own common
21 sense and tell this jury that in part, at least in
22 part, Monsanto is responsible for the fish advisories
23 being posted as they relate to elevated levels of PCB

1 contamination in the fish?

2 MR. PECK: Object to the form of the
3 question. Asked and answered. Lack of foundation.

4 A The answer is no because it's not a -- I
5 don't believe it's a question of common sense, it's a
6 question of science.

7 MR. GRAMMAS: That's it. Thank you.

8
9 (End of Deposition)

C E R T I F I C A T E

STATE OF ALABAMA)

JEFFERSON COUNTY)

I hereby certify that the above and foregoing deposition was taken down by me in stenotype, and the questions and answers thereto were reduced to computer print under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

Jill B. Sanders, Commissioner

SIGNATURE OF WITNESS

I, _____, do hereby
certify that on this _____ day of
_____ 1998, I have read the foregoing
transcript and to the best of my knowledge it
constitutes a true and accurate transcript of my
testimony taken by oral deposition on September 15,
1998.

WITNESS

Subscribed and sworn to
before me this _____
day of _____,
1998.

NOTARY PUBLIC

Defer, William L. (fmr Monsanto employee) in DYER

HARTOLDMON0032724

1 E R R A T A S H E E T

2 PAGE LINE CORRECTION REASON

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