

STATE OF ALABAMA
IN THE CIRCUIT COURT FOR ETOWAH COUNTY
(Transferred from Calhoun County, Alabama)

SABRINA ABERNATHY, et al.,

Plaintiffs,

versus

CIVIL ACTION NO.
CV-2001-832
(Consolidated)

MONSANTO COMPANY, et al.,

Defendants.

DEPOSITION OF ROBERT G. KALEY, II, PH.D..

The deposition of ROBERT G. KALEY, II, PH.D., was taken before Deborah Salers Garrett, Certified Shorthand Reporter, Registered Professional Reporter, as Commissioner, commencing at 10:00 a.m. on August 21, 2001, by the Plaintiffs, at the law offices of Lightfoot, Franklin & White, The Clark Building, 400 North 20th Street, Birmingham, Alabama, pursuant to the stipulations set forth herein.

Regional Reporting Service, Inc.
755 Walnut Street
Gadsden, Alabama 35901-0755

A P P E A R A N C E S

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I N D E X

	<u>Page</u>
Stipulations	4
Reporter's Certificate	340

E X A M I N A T I O N S

Witness: ROBERT G. KALEY, II, PH.D.	<u>Page</u>
By Mr. Stewart	5

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E X H I B I T S

<u>Plaintiffs'</u>	<u>Marked</u>	<u>Offered</u>
One	28	
Two	34	
Three	40	
Four	48	
Five	57	
Six	69	
Seven	71	
Eight	81	
Nine	92	
Ten	103	
Eleven	111	
Twelve	125	
Thirteen	143	
Fourteen	153	
Fifteen	162	
Sixteen	166	
Seventeen	173	
Eighteen	186	
Nineteen	188	
Twenty	191	
Twenty-one	192	
Twenty-two	222	
Twenty-three	229	
Twenty-four	238	
Twenty-five	248	
Twenty-six	251	
Twenty-seven	260	
Twenty-eight	264	
Twenty-nine	267	
Thirty	311	
Thirty-one	314	

No other exhibits were marked for identification, offered or attached as exhibits hereto.

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED by the parties, through their respective counsel, that the deposition of ROBERT G. KALEY, II, PH.D., may be taken before Deborah Salers Garrett, CSR, RPR, as Commissioner and Notary Public, Alabama at Large, at Birmingham, Alabama, on August 21, 2001, at 10:00 a.m.

IT IS STIPULATED AND AGREED that the signature to and reading of the deposition by the witness is waived, the deposition to have the same force and effect as if full compliance were had with all laws and rules of Court relating to the taking of depositions.

IT IS STIPULATED AND AGREED that it shall not be necessary for any objections to be made by counsel to any questions except as to form or leading questions and that counsel may make objections and assign grounds at the time of trial or at the time said deposition is offered in evidence or prior thereto.

IT IS STIPULATED AND AGREED that notice of filing by the Commissioner is waived.

1 STATE OF ALABAMA, BIRMINGHAM, AUGUST 21, 2001

2
3 ROBERT G. KALEY, II, PH.D.,

4 after having been first duly sworn, was
5 examined and testified as follows:

6
7 EXAMINATION

8 BY MR. STEWART:

9 Q. Dr. Kaley, I believe we have met before,
10 but I'm Donald Stewart, and I represent
11 the plaintiffs in this case.

12 A. Yes, sir.

13 Q. We met at Dr. Carpenter's deposition if
14 I'm not mistaken. You have previously
15 given a deposition, so you know the
16 rules. But I will just say at the
17 beginning that if you don't understand a
18 question I ask you, let me know and I
19 will rephrase it. Or if you want some
20 clarification about a question --
21 sometimes I might ask two at once -- you
22 tell me. But if you don't tell me that
23 and you give me an answer, I assume that

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1 A. Something on parallel or something on
2 that order. We have no reporting
3 relationship.

4 Q. Mr. Branchfield is the person who is now
5 involved in the remediation process
6 there at the Solutia facility, which is
7 formerly the Monsanto plant in Anniston?

8 A. Yes.

9 Q. What relationship do you have with
10 Mr. Branchfield?

11 A. There is no official reporting
12 relationship. We are peers essentially.

13 Q. Are y'all both working on that
14 project --

15 A. Yes.

16 Q. -- there in Anniston?

17 A. Yes.

18 Q. What are your responsibilities with the
19 project in Anniston as you presently sit
20 here today?

21 A. Primarily my responsibility is to
22 provide technical support as needed to
23 Mr. Branchfield and the others involved

1 that is the answer that you are giving
2 to my question and you understand it.
3 Is that all right?

4 A. All right. That's fine.

5 Q. What did you do to prepare for your
6 deposition here today, your testimony
7 here today?

8 A. I met with Mr. Kelly for a few hours
9 yesterday afternoon.

10 Q. What documents did you look at in
11 preparation for the deposition?

12 A. I looked at the deposition notice. I
13 looked at a couple of the previous
14 depositions in the case, Mr. Smith's and
15 Mr. Branchfield's, and I skimmed the
16 experts' reports from -- the updated
17 experts' reports from your experts.

18 Q. Is that Steve Smith you are talking
19 about?

20 A. Yes, sir.

21 Q. What relationship does he have to you in
22 the company? Does he report to you, or
23 is he parallel with you?

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1 in the -- at the plant.

2 Q. What is your position as you sit here
3 today and testify today with Solutia?

4 A. I'm director of environmental affairs.

5 Q. What does that mean?

6 A. Well, I don't know that it means
7 anything. My responsibilities primarily
8 are to provide technical support to
9 whomever in the company needs such
10 support on what we call legacy chemicals
11 issues with PCBs and other chemicals
12 that the company no longer manufactures.
13 Q. When you say legacy chemicals, you are
14 talking about chemicals they have been
15 involved in manufacturing in the past
16 and no longer manufacture now?

17 A. Yes, sir.

18 Q. Is that what you are telling us?

19 A. Yes, sir.

20 Q. In your last deposition that you gave
21 when Don Barrett deposed you, you
22 indicated you had taken a position in
23 1985, is that correct, in the company?

1 A. Well, taken -- My first position with
2 the company in 1985?
3 Q. No.
4 A. No. I took a position in 1985 where I
5 moved from a laboratory position to a
6 position on basically the environmental
7 safety and health department. That's
8 correct.
9 Q. Were you in the position then that you
10 now hold with Solutia?
11 A. No.
12 Q. What was the nature of that position?
13 A. Well, it was I guess somewhat subsidiary
14 to the position I'm in now. I was
15 basically a technical advisor on PCB
16 issues to a gentleman who had overall
17 responsibility for those issues at the
18 time.
19 Q. Who was that person?
20 A. Dr. John Craddock.
21 Q. Who had he succeeded?
22 A. No one. It was a position that had been
23 created, and John had been the first

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1 PCBs --
2 A. Yes.
3 Q. -- is that correct?
4 A. That's correct.
5 Q. Kept up with the literature?
6 A. That's correct.
7 Q. Were familiar with the toxicity?
8 A. That's correct.
9 Q. And I would assume in that position also
10 familiar with the history of the company
11 in connection with the production of
12 PCBs?
13 A. That's correct.
14 Q. And that would also include, I would
15 assume, based on your testimony here
16 today, that the chemicals that you dealt
17 with, the poison such as PCBs --
18 MR. KELLY: Object to the form.
19 Q. -- you dealt in connection with those as
20 far as the waste disposal too; is that
21 correct?
22 A. Well, I -- Number one, I disagree with
23 your characterization of PCBs as

1 person in that position.
2 Q. So John Craddock took the position that
3 you now hold?
4 A. No. Let me just go through a chronology
5 a little bit I guess to -- I mean, I
6 came over to the environmental policy
7 staff or the ESH staff in 1985 to work
8 for Dr. John Craddock, who had
9 responsibility for PCB issues. In 19 --
10 I don't know -- 86 or 1987 I moved to a
11 position more parallel with John's than
12 just PCBs, where I had broader
13 responsibilities for other chemical
14 issues. Eventually John retired, and
15 his responsibilities then came back
16 under me.
17 Q. Did you continue, though, to have
18 responsibility for PCBs?
19 A. Yes.
20 Q. In your previous deposition you said you
21 were in a position of corporate
22 stewardship, that you responded to
23 external and internal inquiries about

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1 poisons. I think they were industrial
2 chemicals that were -- Aside --
3 Q. Would you just respond to the question?
4 A. -- from that --
5 Q. Did you deal with that?
6 A. Aside from that I had become familiar
7 with those issues. I did not deal
8 specifically with those issues.
9 Q. When you went into that position in
10 1985, didn't Mr. Craddock tell you where
11 those things were manufactured?
12 A. Well, I certainly knew where they were
13 manufactured, yes.
14 Q. Well, how did you know that? Did he
15 tell you, or did you just know?
16 A. I had known that from my early
17 experience with the company.
18 Q. And did he tell you anything at all
19 about the level of production at the
20 Anniston plant of PCBs over time?
21 A. I don't have a specific recollection of
22 that.
23 Q. Well, did you have any idea about that?

1 A. Only that large amounts were
2 manufactured there.
3 Q. Well, did you have any idea as to the
4 waste stream that was produced?
5 A. Well, number --
6 Q. PCB waste stream.
7 A. At what point in time? I mean, I
8 developed more understanding of that.
9 When I assumed that position, I wasn't
10 told anything specific.
11 Q. When you assumed the position what did
12 you understand the waste stream was, and
13 what did you understand had been buried
14 on the plant site there in Anniston,
15 Alabama?
16 A. Well, I don't recall specifically what I
17 knew in 1985 versus what I know now.
18 But I do understand that there were PCBs
19 manufactured -- PCBs were manufactured
20 there, that there were storm water
21 discharges from that manufacturing
22 process, and I understood that there was
23 a landfill that contained, you know, PCB

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1 company that you know of as you serve
2 in that position and I assume still have
3 a responsibility for it today, that
4 knows about how much waste, PCB waste is
5 buried in the landfill there in
6 Anniston?
7 A. I know of no one that has that specific
8 knowledge.
9 Q. And you know of no one as you sit here
10 today, is that correct, Dr. Kaley, who
11 can tell us what waste stream came off
12 of the manufacturing process and managed
13 to make its way into the dump over time?
14 A. I think there is some understanding of
15 the kinds of materials that possibly
16 left that manufacturing facility into
17 the various discharge points of the
18 company.
19 Q. Well, who would have some knowledge?
20 I'm talking about the waste dumps that
21 are located on that facility today.
22 A. Oh, no. I'm sorry. I misunderstood
23 your question. As far as the -- I don't

1 waste, and by the time I joined the
2 company, and also contained the former
3 PCB manufacturing facility.
4 Q. Well, in your last deposition you could
5 not tell the person who took your
6 deposition how much waste was buried on
7 the plant site. Are you unable to tell
8 us here today as to how much waste?
9 A. I have no specific knowledge of that as
10 I sit here today. That's correct.
11 Q. So you don't consider that to be
12 important in the job you have now?
13 A. I don't know if I consider it to be
14 important or not. I don't have that
15 information, don't know where I would
16 get that information. So it is
17 information I do not have.
18 Q. So as we sit here today there is nobody
19 in the company that you know of -- and
20 as you have indicated previously you are
21 -- in your previous deposition -- you
22 have corporate stewardship of PCB
23 information. There is nobody in the

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1 know of anyone that knows specifically
2 what particular amounts of what waste
3 streams went into the landfills on the
4 site. No.
5 Q. Are you familiar with the term still
6 bottoms?
7 A. Yes.
8 Q. And were there still bottoms that were
9 left in the manufacturing processes at
10 Anniston, at the plant there?
11 A. That's my understanding, yes.
12 Q. And as you sit here today you tell me
13 that there is nobody either in Monsanto
14 or in Solutia that can tell Dr. Kaley or
15 me or the ladies and gentlemen of the
16 jury how much in the way of pounds,
17 millions of pounds, over a hundred
18 million pounds -- you can't even
19 guesstimate how much is buried there?
20 A. I have seen a document which I think may
21 have been shown to me in the deposition
22 -- I don't know -- where there is some
23 estimate of the poundage in that

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1 landfill. But I don't recall that
2 number as I sit here. That's the only
3 thing I have ever seen. I don't know of
4 anybody that knows a specific number.
5 My understanding was that was an
6 estimate.
7 Q. And what was that estimate?
8 A. I don't remember.
9 Q. And you say the document was submitted
10 during your last deposition?
11 A. I don't recall whether it was or not.
12 It may have been. I don't recall.
13 Q. Well, do you remember seeing such a
14 document?
15 A. Not specifically. You mean in that
16 deposition?
17 Q. Yes.
18 A. No, I don't specifically remember.
19 Q. Do you remember seeing it since that
20 deposition?
21 A. I remember seeing it. I don't know
22 whether it was before or after that
23 deposition.

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1 should be done at the site.
2 A. Well, I provide technical input to those
3 decisions. I don't advise him what
4 should be done at the site.
5 Q. Well, what is the nature of the
6 technical input that you provide?
7 A. A variety of things, chemical behavior
8 of PCBs, chemical properties of PCBs,
9 just a variety of technical issues.
10 Q. Well, in your last deposition, as I
11 understood, you also advised him -- and
12 you correct me if I'm wrong, but you
13 also had the capability to advise
14 someone as to the environmental
15 remediation of PCBs.
16 A. Oh, I provide input into that process,
17 but I don't tell them what to do.
18 Q. Well, wouldn't a part of that process be
19 that you would have to know or have some
20 idea or some guesstimation to how much
21 was buried up there on the landfill on
22 the south side of 202 or on the west
23 side of the plant?

1 Q. And as you sit here today you don't know
2 the number that was on there that was
3 designated as to how many pounds of
4 PCBs, millions of pounds of PCBs were
5 buried on that landfill?
6 A. I don't know.
7 Q. But you do remember, don't you,
8 Dr. Kaley, that it was millions of
9 pounds?
10 A. I don't remember specifically.
11 Q. That's not important to you?
12 A. I don't remember specifically what that
13 number was.
14 Q. I didn't ask you if you remembered the
15 number. I asked you if that was
16 important to you.
17 A. As I sit here right at this very instant
18 it is not important that I know that
19 particular number, no.
20 Q. So as a person who is responsible -- and
21 I assume you are responsible for
22 advising Mr. Branchfield and anybody
23 else involved in that site as to what

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1 A. I don't believe I need that information,
2 no.
3 Q. That is not necessary for you to have?
4 A. I don't believe so.
5 Q. Well, wouldn't it be necessary for you
6 to know where they were buried, what
7 cells they were buried in?
8 A. I know that basically, vaguely.
9 Q. You know that?
10 A. I have some idea.
11 Q. What about the discharges from the
12 plant? Wouldn't that be something that
13 you would want to know?
14 A. Yes.
15 Q. What the historic discharges --
16 A. To the extent that information is
17 available, yes.
18 Q. Where did that plant in Anniston lose
19 PCBs, Dr. Kaley, if you know?
20 A. I don't understand your question. What
21 part of the process?
22 Q. How did it leave the plant?
23 A. Basically through wash water from the

1 process, storm water from the process,
2 some small -- or small amounts through
3 discharges of hydrochloric acid that was
4 a byproduct of the process.
5 Q. Is that the same as muriatic acid?
6 A. That's correct.
7 Q. And how did that -- Were there outfalls
8 that left the plant site?
9 A. Yes.
10 Q. Was there one that faced Clydesdale --
11 A. Yes.
12 Q. -- or Tenth Street, rather?
13 A. Yes.
14 Q. Was there one on the north side of the
15 plant?
16 A. There is. I don't know whether it
17 discharged PCB containing materials or
18 not.
19 Q. Oh, you don't?
20 A. No.
21 Q. Is that the one that goes into the
22 Eleventh Street ditch?
23 A. Yes.

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1 the manufacturing processes, Dr. Kaley?
2 A. There probably were some releases to
3 air, yes.
4 Q. Well, there were some substantial
5 releases to air, were there not?
6 A. I don't know the answer to that.
7 Q. You do not know the answer to that?
8 A. No.
9 Q. So you have not advised anybody as to
10 what they should or should not do in
11 connection with remediating that part of
12 the plant site there as it exists today?
13 MR. KELLY: Object to the form.
14 A. I don't understand your question.
15 Q. Well, as the plant exists today are you
16 aware of any air releases from the plant
17 site today?
18 A. There seem to be some levels of PCBs in
19 air that are above normal or backgrounds
20 around the plant site, yes.
21 Q. Where are those?
22 A. Where are they?
23 Q. Yes. Where are they coming from?

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1 Q. Weren't there PCBs found recently, say
2 in the last five or six years, in the
3 Eleventh Street ditch?
4 A. Yes.
5 Q. Is it your position as you sit here
6 today that that didn't come from your
7 plant site there in Anniston?
8 A. No.
9 Q. Then it is your position that it did
10 come from the plant site in Anniston?
11 A. It may have. There is certainly a
12 drainage pathway that would account for
13 that, yes, from the west end landfill.
14 Q. And that would have come from that
15 northern outfall from the plant; is that
16 correct?
17 A. Well, there are several northern
18 outfalls. I'm not sure which one
19 specifically you are talking about, but
20 it may have come from the discharge
21 runoff from the west end landfill.
22 Q. Okay. And what about air, releases to
23 the air of PCBs? Didn't that occur in

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1 A. I don't know the specific answer to
2 that.
3 Q. Well, where are you taking the tests
4 that would indicate to you that there
5 are elevated levels of PCBs coming off
6 your plant site?
7 MR. KELLY: Object to the form.
8 A. I don't believe we know where they are
9 coming from. We are currently in
10 discussions to answer those kinds of
11 questions.
12 Q. Discussions with whom?
13 A. The regulatory agencies.
14 Q. We'll get back to that in a few minutes.
15 In your previous deposition you've
16 indicated, Dr. Kaley -- Well, not
17 previous deposition, but in an affidavit
18 that you made. Do you remember the
19 affidavit that you made in connection
20 with the injunctive relief that our
21 clients are seeking?
22 A. Yes.
23 Q. I assume you put that together?

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1 A. Yes.

2 Q. The first four pages of that affidavit

3 deal with what your experience is, and

4 you indicate that you got a bachelor of

5 science in chemistry from Perdue

6 University in '68?

7 A. Yes, sir.

8 Q. And you got a Ph.D. the from the

9 University of Illinois in analytical

10 chemistry in '74?

11 A. That's correct.

12 Q. Dr. Kaley, you then go through sort of

13 the history of how PCB releases from

14 this plant site were discovered by

15 Monsanto. And the first, as I say, four

16 pages have to do with PCB

17 characteristics, what y'all

18 manufactured, when you shut down the

19 facility and everything. But on page

20 five of that affidavit you talk,

21 Dr. Kaley -- and this has been

22 introduced already or is a part of the

23 court record, and it is your affidavit,

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1 regarding a parcel of property. They

2 had done some testing, and they had

3 found PCBs on it.

4 A. That's correct.

5 Q. Now, before that portion of your

6 affidavit there is no statement made as

7 to any prior -- And I want you to take a

8 look at it and tell me. Is there any

9 statement made about any prior problem

10 with PCBs from that plant site, pages

11 one through four?

12 A. I will take your word for it. I don't

13 recall anything being in there. The

14 purpose of the affidavit was primarily

15 to review the history since 1993.

16 Q. Well, let me show you if I can -- And

17 let's mark this as Plaintiffs' Exhibit

18 One to your deposition, a letter that

19 you wrote, Dr. Kaley, to the editor of

20 The Nation magazine.

21 MR. STEWART: And let me have that

22 marked, please, ma'am.

23 (Plaintiffs' Exhibit Number

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1 as I have indicated, in connection with

2 y'all's opposition to our petition for

3 injunctive relief.

4 A. Yes, sir.

5 Q. You indicated that in 1993 the Alabama

6 Power Company that had had some land

7 that y'all had swapped to them

8 discovered PCBs on their plant site.

9 A. On that property, yes.

10 Q. On that property?

11 A. Yes.

12 Q. Now, Dr. Kaley, that's not in fact the

13 first time that you all realized --

14 Monsanto realized they had a problem

15 with PCBs off this plant site, is it?

16 MR. KELLY: Object to the form.

17 A. I don't understand your question.

18 Q. Well, in addition to that affidavit --

19 Let me see if I can just nail down what

20 you said first, and then I will ask you

21 a question about it. You say in 1993

22 the Alabama Power Company contacted

23 Monsanto requesting information

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1 One was marked for

2 identification.)

3 Q. You take a look at that letter, if you

4 would, please, sir. You just look at it

5 and then I'll ask you some questions

6 about it.

7 A. I have reviewed it in general.

8 Q. Take whatever time you need to take a

9 look at that. I'm going to ask you some

10 questions.

11 A. Well, if I need to review it in more

12 detail to answer yours questions, I'll

13 do so.

14 Q. That's fine. In this letter on page

15 two, the fourth paragraph down, you

16 indicate that in 1993 when early

17 information suggested that PCBs were

18 present in fish in Choccolocco Creek and

19 might be present on dirt particles and

20 surface water leaving the Monsanto site,

21 the company began an extensive

22 investigation to determine any potential

23 sources of PCBs and to understand the

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1 extent of PCB impacted soils in the
2 areas near the plant. Is that your
3 statement there from the letter?
4 A. Yes, sir.
5 Q. Now, you go on to say that upon finding
6 that some PCBs were associated with
7 drainage ditches leading away from the
8 plant y'all established a property
9 purchase program to acquire residential
10 property to facilitate management and
11 control of PCBs. Is that your
12 statement?
13 A. Yes, sir.
14 Q. Now, that implies, Dr. Kaley, that this
15 was a big surprise to Monsanto, that you
16 had PCBs that were leaving this plant
17 site and getting in those drainage
18 ditches and possibly affecting neighbors
19 to the point where you bought property
20 around that plant. Doesn't that imply
21 that?
22 MR. KELLY: Object to the form.
23 A. I would think in 1993 when we got that

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1 MR. KELLY: Object to the form.
2 A. There had been investigations prior to
3 1993 when PCBs had been found in
4 sediments and ditches leading to Snow
5 Creek. There was information about low
6 levels of PCBs in sediments in
7 Choccolocco Creek. That was not an
8 issue to be responded to in this
9 particular letter. I was addressing the
10 issues that she raised in her article
11 and that I felt needed to be responded
12 to.
13 Q. Well, didn't she say in that article
14 that you all had concealed from the
15 neighbors the fact that you had been
16 contaminating their property for years?
17 A. Did I say that?
18 Q. Did she say that?
19 A. I don't recall what she said. I don't
20 recall that statement being in there.
21 Q. You don't recall that statement being in
22 that Nations magazine article, that she
23 had historical data that indicated that

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1 information, as the information
2 developed, we were surprised by that
3 information.
4 Q. Now, where, Dr. Kaley, in the context of
5 the first part of this letter or in the
6 second part of this letter did you ever
7 tell anyone at The Nation magazine that
8 you all already knew that PCBs were
9 leaving that plant site at some time
10 before 1993?
11 MR. KELLY: Object to the form.
12 A. Well, I was addressing the issues she
13 raised in there. I don't know that it
14 says in there specifically that that --
15 you know, it provides that information.
16 Q. Well, isn't it a fact, Dr. Kaley, that
17 you certainly knew that PCBs had not
18 only left that plant site but had
19 contaminated not only the drainage
20 ditches but Snow Creek and Choccolocco
21 Creek? You knew that yourself when you
22 wrote this letter to the editor of The
23 Nation magazine, didn't you?

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1 y'all had known for years that you were
2 contaminating the neighbor's property?
3 A. I don't believe we did know for years
4 that we were contaminating the
5 neighbor's property. We knew that there
6 were -- at various times there had been
7 PCBs in the sediments of ditches leading
8 to Snow Creek and various issues with
9 PCBs in sediments of Choccolocco Creek.
10 But I was surprised and continue to be
11 surprised by the contamination of the
12 residential properties around the plant.
13 Q. Well, now, Dr. Kaley, you are sitting
14 here today telling me you were surprised
15 about it and telling the ladies and
16 gentlemen of the jury that you were
17 surprised about it, but, Dr. Kaley,
18 didn't you in fact participate in an
19 investigation about PCBs leaving the
20 plant site when you assumed this
21 position in 1985?
22 A. It was not an investigation of PCBs
23 leaving the plant site. It was an

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1 investigation of PCBs detected in
2 sediments in Snow Creek and ditches
3 leading up to Snow Creek.
4 Q. Did y'all own Snow Creek?
5 A. Well, no, we did not and do not own Snow
6 Creek.
7 Q. Did you own those drainage ditches and
8 the property around those drainage
9 ditches?
10 A. Portions of it.
11 Q. You didn't own all of it, did you?
12 A. No.
13 Q. Didn't it go through a residential
14 neighborhood, Dr. Kaley, and around a
15 church?
16 A. A small piece of it did, yes, or through
17 -- It went basically up to a residential
18 neighborhood and under a church. Yes.
19 Q. Isn't it a fact, Dr. Kaley, that the
20 attorney general of the State of Alabama
21 started that investigation? It is not
22 something you discovered or you said
23 anything about, is it? The attorney

REGIONAL REPORTING SERVICE, INC.

1 A. It is a letter from Mr. Charles Graddick
2 to Richard Mahoney discussing PCB levels
3 in sediments in Snow Creek. Yes.
4 Q. Well, now, Dr. Kaley, you are the
5 expert, but I believe what it indicates
6 is there are some fairly substantial
7 levels of PCBs in the sediments of Snow
8 Creek, about four hundred parts per
9 million. Isn't that a pretty high
10 level?
11 A. Well, as he states, it is in excess of
12 the fifty parts per million EPA standard
13 at the time. Yes.
14 Q. Well, the fifty part per million EPA
15 standard didn't apply, did it, to the
16 sediment in the creek, did it?
17 A. Well, I don't know. What Mr. Graddick
18 was applying it to was basically at that
19 time a disposal standard or disposal
20 cutoff that had been initiated by the
21 EPA.
22 Q. So we have established, then, that there
23 was a pretty significant problem in Snow

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1 general had to start that investigation,
2 didn't he?
3 A. It is my understanding it was initiated
4 by the attorney general of the State of
5 Alabama. Yes.
6 Q. In fact, it was initiated by Charlie
7 Graddick, wasn't it?
8 A. I don't recall the name.
9 Q. You don't recall the attorney general at
10 the time?
11 A. No, sir.
12 Q. Well, let me show you Plaintiffs'
13 Exhibit Two, and you take a look at that
14 and see.
15 (Plaintiffs' Exhibit Number
16 Two was marked for
17 identification.)
18 Q. Take a look at Plaintiffs' Exhibit Two
19 to your deposition, Dr. Kaley, and tell
20 me if that is not in fact a letter from
21 Charlie Graddick to Mr. Richard J. -
22 Mahoney about the problem we are talking
23 about.

REGIONAL REPORTING SERVICE, INC.

1 Creek. How far is it to Snow Creek from
2 where this stuff came from?
3 A. Well, I think we have established that
4 there were levels in excess of four
5 hundred parts per million. It's I would
6 guess maybe half a mile to a mile. I
7 don't know. I'm sorry. Repeat your
8 question. I think I know what it was.
9 Repeat your question.
10 Q. How far is it to Snow Creek from where
11 this came from, from the plant?
12 A. From the facility?
13 Q. Yeah.
14 A. I think it is about a mile.
15 Q. About a mile. Now, this indicates --
16 Well, first let me ask -- Strike that.
17 You participated in this
18 investigation, didn't you?
19 A. I had some involvement, yes.
20 Q. And that had to do with soil sampling,
21 didn't it?
22 A. Sediment sampling.
23 Q. Sediment sampling?

REGIONAL REPORTING SERVICE, INC.

1 A. Yes.

2 Q. That is in the tributaries that led away

3 from your landfill?

4 MR. KELLY: Object to the form.

5 A. No. It was in the tributaries that led

6 away from the plant discharge.

7 Q. From the outfall?

8 A. Yes.

9 Q. So this was coming from your plant site?

10 A. Well, I don't know what you mean by

11 "this was." These were sediments that

12 were in Snow Creek. I don't -- You

13 know, I don't understand "coming from

14 the site." I don't know how they had

15 gotten there at that time or how long

16 they had been there.

17 Q. Well, let me ask you just a couple of

18 simple questions. Y'all were

19 manufacturing PCBs prior to this time

20 frame, weren't you, at that plant site?

21 A. Yes, sir.

22 Q. And you were burying them in a landfill

23 south of 202 and on the west side of

REGIONAL REPORTING SERVICE, INC.

1 were higher than what the attorney

2 general had found?

3 A. I don't recall those numbers, but it is

4 possible.

5 Q. And in the last deposition you indicated

6 that just the attorney general of the

7 State of Alabama was involved, but that

8 is not true either, is it?

9 A. I don't know what you mean by that.

10 Q. Wasn't EPA involved at this time?

11 Didn't you have discussions with the

12 EPA, a Mr. Hudson from the EPA?

13 A. That name sounds familiar. It may very

14 well be.

15 Q. Henry Hudson, do you remember him?

16 A. Not specifically.

17 Q. So when you said last time when we took

18 your deposition that the attorney

19 general was involved, it was a little

20 bit more than that, wasn't it? The feds

21 were involved?

22 A. I'm sure -- Yes, I guess. I will accept

23 your representation that the EPA was

REGIONAL REPORTING SERVICE, INC.

1 your plant, weren't you?

2 A. There were materials disposed of in

3 those landfills that contained PCBs. I

4 don't know that I would say we were

5 burying PCBs. We were burying some

6 waste from the PCB process. Yes.

7 Q. And there is no manufacturing facility

8 in between y'all and say the south

9 landfill, is there, and Snow Creek?

10 A. No.

11 Q. And you found I believe around a Bethel

12 Church some fairly high levels of PCBs,

13 didn't you?

14 A. What time frame?

15 Q. 1985, in the tributary leading --

16 A. I -- There may have been. I don't

17 recall specifically what the findings

18 were and where they were. But certainly

19 there were -- I mean, there were PCBs

20 found in those ditches, yes.

21 Q. And isn't it a fact, Dr. Kaley, that in

22 1985 when you all, Monsanto, took

23 sediment samples, you found levels that

REGIONAL REPORTING SERVICE, INC.

1 involved.

2 Q. Well, let me show you if I can a

3 document we have here, Dr. Kaley, from

4 Mr. Hudson. Let's see if I can find

5 that. Hold it just a minute. This has

6 been provided to us in discovery. We

7 will mark that as Plaintiffs' Exhibit

8 Three. Take a look at that and read

9 over it.

10 (Plaintiffs' Exhibit Number

11 Three was marked for

12 identification.)

13 A. I've read it.

14 Q. Now, Dr. Kaley, when you look at this

15 document here, it indicates there was a

16 meeting that took place with some people

17 from the attorney general's office about

18 Snow Creek and PCBs. And on over on the

19 second page it mentions Choccolocco. It

20 is sort of spelled a little differently

21 than we spell it in Talladega and

22 Calhoun County. But are you familiar

23 with Choccolocco Creek?

REGIONAL REPORTING SERVICE, INC.

1 A. Yes, I am.
 2 Q. Is that what Snow Creek feeds into?
 3 A. Yes, it does.
 4 Q. And it appears that Mr. Hudson is saying
 5 that he is concerned about the PCBs
 6 getting down there in the food chain.
 7 Do you understand what he was talking
 8 about? You are the PCB man for
 9 Monsanto. Do you understand what he was
 10 talking about?
 11 A. Well, I find it difficult to read this
 12 particular area, but I do have an
 13 understanding that he is concerned that
 14 there is fishing in Choccolocco Creek
 15 and might get PCBs in the food chain.
 16 Yes.
 17 Q. Well, is that the first time you heard
 18 about that, in 1985, and knew about it
 19 in your position as the PCB corporate
 20 steward for PCB activity?
 21 A. Heard about what?
 22 Q. PCBs getting into Snow Creek and all the
 23 way down into Choccolocco Creek and

REGIONAL REPORTING SERVICE, INC.

1 contamination in the bodies of water
 2 that were affected by the tributaries
 3 that led away from your plant. Wasn't
 4 that one of the issues?
 5 A. I don't recall specifically whether it
 6 was or not.
 7 Q. Well, wouldn't that be something that
 8 you would be concerned about as the
 9 overseer and man who was responsible for
 10 the stewardship of this corporation,
 11 Monsanto, about PCB releases?
 12 A. I'm sorry, Mr. Stewart. You are losing
 13 me. What specifically is your question?
 14 Q. Contamination of the creek over an
 15 extended period of time.
 16 A. That would be an issue that I would have
 17 some responsibility for concern about,
 18 yes.
 19 Q. Well, why didn't you bring up with the
 20 special master when you filed this
 21 affidavit the fact that this had been
 22 going on for some time, Dr. Kaley?
 23 A. Well, I have trouble with your

REGIONAL REPORTING SERVICE, INC.

1 being uptaken by fish.
 2 A. It may have been. I don't recall.
 3 Q. So '85 was the first time you heard
 4 about that?
 5 A. It may have been.
 6 Q. But you didn't tell this editor of
 7 Nations magazine and you didn't tell
 8 that special master about this
 9 injunctive relief matter in your
 10 affidavit about the fact that you knew
 11 about all this stuff, that the attorney
 12 general and the EPA had discussed with
 13 you and others in '85 about PCB
 14 releases, did you, Mr. Kaley --
 15 Dr. Kaley?
 16 MR. KELLY: Object to the form.
 17 A. I was dealing with issues she had
 18 written -- had raised in her article,
 19 and this issue did not raise to that
 20 level.
 21 Q. One of the issues that was raised in the
 22 petition for injunctive relief,
 23 Dr. Kaley, was the extent of the

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1 characterizations of the "this's" and
 2 "that's." The issues that I was dealing
 3 with in the affidavit in that case dealt
 4 with the historic -- or a summary of the
 5 history since 1993 in these particular
 6 things. It was not intended to review
 7 every single thing that had happened at
 8 that plant since the beginning of time.
 9 We were dealing with -- in that
 10 affidavit I was dealing with the issues
 11 that triggered the present and ongoing
 12 investigations.
 13 Q. Well, is it an important part, Dr. Kaley
 14 -- I'm not going to say "this" and
 15 "that" any more. Isn't it an important
 16 part of anybody's characterization of
 17 the site to know how long y'all have
 18 been pouring this poison into the creeks
 19 that led away from the plant and into
 20 Snow Creek and into Choccolocco Creek?
 21 That is highly important, isn't it?
 22 MR. KELLY: Object to the form.
 23 A. In 1993 we got information that

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1 triggered a set of investigations. Some
 2 of that information was new to us and
 3 surprising to us. I was clearly aware,
 4 as were others, of the activities in
 5 1985, the investigations, the subsequent
 6 activities. But at that point we had no
 7 knowledge and no understanding that
 8 there were PCBs in residential areas in
 9 that portion of west Anniston. So to
 10 deal with the issues that we were
 11 dealing with in that affidavit and in
 12 that letter, this particular piece of
 13 information didn't have that much
 14 relevance.

15 Q. Well, the affidavit had to do with the
 16 common areas of creeks and waterways.
 17 And certainly, Dr. Kaley, you know
 18 enough about PCB contamination to know
 19 it would be important to know what had
 20 happened historically, don't you?

21 A. The affidavit in its form was intended
 22 to review the activity since 1993.

23 Q. So the answer to my question is --

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1 of the ditch, and we eventually
 2 implemented that sediment removal plan.

3 Q. Well, now, just exactly how many feet of
 4 Snow Creek did y'all clean up?

5 A. I don't know.

6 Q. Wouldn't it be about a hundred?

7 A. I don't know.

8 Q. Is Jerry Brown a name that is familiar
 9 to you?

10 A. Yes, sir.

11 Q. Can you tell us what he does?

12 A. Well, right now he is retired.

13 Q. What did he do in --

14 A. Well, he has had various
 15 responsibilities at the plant. He has
 16 had environmental responsibilities. He
 17 has had technical service
 18 responsibilities for our Therminol
 19 product line.

20 Q. What did he do in May of 1986?

21 A. I don't know specifically.

22 Q. Was he the environmental compliance
 23 officer or technology and engineering

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1 A. It is not a question of whether it was
 2 important or unimportant. That wasn't
 3 the purpose of the affidavit as I
 4 addressed it.

5 Q. Well, that is my question to you now.
 6 Would it be important for the special
 7 master and anybody having to make a
 8 decision about what to do about cleaning
 9 up that creek to know how long y'all
 10 have been pouring this poison in there?

11 MR. KELLY: Object to the form.

12 A. I can't address what may or may not have
 13 been important to the special master. I
 14 would have been happy to answer his
 15 questions or anyone else's if they had
 16 questions about this issue.

17 Q. Well, isn't it a fact, Dr. Kaley, that
 18 you all really didn't do a whole lot
 19 about this problem that you found in
 20 1985?

21 MR. KELLY: Object to the form.

22 A. I don't know that. We prepared a plan
 23 to remove sediments from those portions

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1 superintendent?

2 A. If that is what it says on that document
 3 that you are looking at, that he was,
 4 then I'm sure that is what he was.

5 Q. Do you remember working with him at that
 6 time?

7 A. I remember him being in meetings and us
 8 having discussions, yes.

9 Q. About this particular problem?

10 A. About this issue, yes.

11 (Discussion held off record.)
 12 (Plaintiffs' Exhibit Number
 13 Four was marked for
 14 identification.)

15 Q. Let me show you Plaintiffs' Exhibit
 16 Four. If you would, take a look at
 17 Plaintiffs' Exhibit Four and, if you
 18 can, identify that for us.

19 A. Without a detailed reading of it, it is
 20 a proposal to do sediment removal from
 21 the ditches leading up to Snow Creek.

22 Q. All right. Would you turn to page two
 23 of that document.

REGIONAL REPORTING SERVICE, INC.

1 A. Of the plan? Yes.
 2 Q. Of the plan. It talks about --
 3 A. I'm sorry. You want page two of the
 4 exhibit, not page two of the plan,
 5 right?
 6 Q. Yes. Page two of the exhibit, not the
 7 plan. I'm sorry, Dr. Kaley.
 8 A. I'm with you.
 9 Q. This indicates there are three sections
 10 of a drainage ditch and Snow Creek are
 11 proposed for sediment removal?
 12 A. Yes.
 13 Q. The first is about five hundred feet of
 14 a drainage ditch from sampling site one
 15 to a sampling site two. And that covers
 16 it from a -- The ditch comes out from
 17 under a culvert under the Bethel
 18 Missionary Baptist Church to a culvert
 19 under Route 202, Tenth Street.
 20 A. Yes, the old Route 202, yes.
 21 Q. The old Route 202?
 22 A. Yes.
 23 Q. What we call Tenth Street?

REGIONAL REPORTING SERVICE, INC.

1 was proposed not to EPA or to the
 2 attorney general but to ADEM, is that
 3 right, the Alabama Department of
 4 Environmental Management?
 5 A. Excuse me. Yes. According to the cover
 6 letter, that's correct.
 7 Q. Now, ADEM or the Alabama Department of
 8 Environmental Management had been
 9 involved with Mr. Henry Hudson and the
 10 EPA; is that correct?
 11 A. They talk about ADEM, this Henry Hudson
 12 letter. I don't see where it says he is
 13 from EPA, but I think I have a
 14 recollection that he was. I'll take
 15 your word for it. It does mention ADEM,
 16 so obviously they had some involvement.
 17 Q. And they were supposed to coordinate
 18 things, is that right, ADEM?
 19 A. Well, I don't see where -- Again,
 20 assuming you are reading from that
 21 letter. I don't see exactly where it
 22 says that. But okay. I'll take your --
 23 That would make sense. Since we

1 A. Yes.
 2 Q. Nothing south of Bethel then was
 3 remediated, correct?
 4 A. That's correct.
 5 Q. And then there was --
 6 A. Well, according to the plan there was no
 7 description of any plan to do that, to
 8 remediate anything south of there.
 9 That's correct.
 10 Q. Now, there a stretch of ditch between
 11 the Southern Railway rail yard tracks or
 12 railroad tracks and Eleventh Street to
 13 the confluence of the ditch and Snow
 14 Creek. That's about twelve hundred to
 15 fifteen hundred feet, correct?
 16 A. That's what the document says, yes.
 17 Q. And then there is a hundred feet of Snow
 18 Creek?
 19 A. Yes.
 20 Q. Now, am I to understand that what
 21 Monsanto did on this date or at a later
 22 date after this plan was put in or
 23 proposed -- and by the way, this plan

REGIONAL REPORTING SERVICE, INC.

1 subsequently wrote a letter to ADEM,
 2 that would make sense.
 3 Q. But there was some conversation about
 4 that in this letter that Mr. Henry
 5 Hudson or this note that Mr. Henry
 6 Hudson wrote about this particular
 7 problem that he found out there. And
 8 his letter or notes were made 9-9-85
 9 about NPL. What is that?
 10 A. In the context I would assume it would
 11 be the National Priorities List.
 12 Q. What is the National Priorities List?
 13 What was it at that time?
 14 A. It was and still is a list of sites that
 15 are potential sites for activity under
 16 the CERCLA or Superfund regulations.
 17 Q. And there is an indication in
 18 Mr. Hudson's notes that there would be a
 19 scoring process that would go on in '85.
 20 Is that correct?
 21 A. Yes. I mean, he talks about the
 22 possibility of that.
 23 Q. It didn't happen though, did it?

1 A. I don't recall that it did. I don't
2 know.
3 Q. Well, y'all worked it out, didn't you,
4 Dr. Kaley, where ADEM fixed it up for
5 you?
6 MR. KELLY: Object to the form.
7 A. We didn't work anything out. We had
8 meetings. We proposed a remediation
9 plan. That was that. I don't know what
10 ADEM or EPA might have done.
11 Q. Dr. Kaley, y'all did more than that.
12 Monsanto did more than that, didn't you?
13 A. I'm not --
14 MR. KELLY: Object to the form, no
15 foundation.
16 A. I'm not aware of anything more that we
17 did. No.
18 Q. Aren't you familiar with the fact as you
19 sit here today, Dr. Kaley, that
20 Mr. Graddick left the attorney general's
21 office --
22 MR. KELLY: Object to the form.
23 Q. -- and we got another person involved?

REGIONAL REPORTING SERVICE, INC.

1 Q. Do you know whether or not Mr. Brown or
2 Mr. Cheever or Mr. Foresman might have
3 met him?
4 A. I don't know.
5 Q. Who are they? We mentioned Mr. Brown.
6 Would J. L. Brown be Jerry Brown?
7 A. I believe so, yes.
8 Q. Would R. L. Cheever have anything to do
9 with environmental activities in
10 Monsanto at that time?
11 A. I believe at some point in time -- I
12 don't know exactly -- he was the
13 environmental person at the Anniston
14 plant.
15 Q. A compliance officer?
16 A. I don't know.
17 Q. An environmental compliance person?
18 A. I'll take your word for it. I don't
19 know specifically.
20 Q. Well, then, who is M. R. Foresman?
21 A. He is a Solutia retiree at this point.
22 He had remedial responsibilities within
23 Monsanto and Solutia for a number of

1 Aren't you familiar with that?
2 A. No.
3 MR. KELLY: Object to the form, no
4 foundation.
5 Q. Do you know a gentleman who worked for
6 Monsanto at the time named David Denner
7 in about this same time frame?
8 A. I do not know that name.
9 Q. Do you know him to be the plant manager
10 of Monsanto Chemical Plant in Anniston,
11 Alabama?
12 A. I don't recall that name.
13 Q. Well, do you recall the name of an
14 Honorable Donald Siegleman or Siegleman?
15 Do you recall that name?
16 A. I know who Mr. Siegleman is, yes.
17 Q. How is it that you know him?
18 A. I believe he is the current governor of
19 Alabama.
20 Q. Well, did you meet him when he was
21 Attorney General Siegleman sometime in
22 '88?
23 A. Not that I recall.

REGIONAL REPORTING SERVICE, INC.

1 years.
2 Q. Was he working on remediation of the
3 Anniston facility at that time?
4 A. I don't recall. I don't know. I don't
5 recall. I was not aware of that if he
6 was.
7 Q. Well, in your previous deposition you
8 indicated to the person who asked you
9 the questions, Dr. Kaley, you just
10 didn't know what happened. Y'all went
11 ahead at some point in time and did this
12 little project that Mr. Brown had laid
13 out for ADEM.
14 A. That's my understanding.
15 Q. That's what you did?
16 A. Yes. Eventually we notified ADEM we
17 were going to implement that plan and
18 did so.
19 Q. Implement the plan. Well, how much help
20 did you have from then Attorney General
21 Don Siegleman?
22 MR. KELLY: Object to the form.
23 A. I have no -- I don't know what you are

1 talking about.

2 Q. How much help did you give him?

3 MR. KELLY: Object to the form.

4 A. I don't know what you are talking about.

5 Q. Well, let me show you if we could a

6 letter which we will mark as Plaintiffs'

7 Exhibit Five and ask you to take a look

8 at it. I'm sorry I don't have another

9 one.

10 (Plaintiffs' Exhibit Number

11 Five was marked for

12 identification.)

13 A. I've read the letter.

14 Q. Okay. Now, can you look back on that

15 back page and see who signed it?

16 A. Yes.

17 Q. That's the plant manager of the Anniston

18 plant; is that correct?

19 A. That would seem to be correct, yes.

20 Q. Okay. And he is writing to Attorney

21 General -- then Attorney General

22 Siegleman and telling him it was a

23 pleasure to see him at the dinner with

REGIONAL REPORTING SERVICE, INC.

1 A. There's a statement to that effect in

2 the letter, yes.

3 Q. Continued success with what? Was he

4 running for something? Were y'all

5 helping him out? Is that what you were

6 doing?

7 MR. KELLY: Object to the form, no

8 foundation.

9 A. I understand -- My understanding from

10 this, since it is in the same sentence

11 with the drug problems, is wish him

12 continued success in his efforts to

13 attack the drug problem. It is the same

14 sentence.

15 Q. Then in the next sentence there or next

16 paragraph you begin to talk about the

17 PCB problem in Anniston; is that right?

18 A. Well, not me, but the author of the

19 letter did.

20 Q. Well, Mr. Denner. So we move from being

21 scored and put on a National Priority

22 List to a little bitty cleanup out there

23 on Snow Creek; is that correct?

1 the government relations group from

2 Monsanto. Is that correct?

3 A. Yes.

4 Q. And that was on the 29th that they had

5 him in?

6 A. Yes. That's what the letter says.

7 Q. What was the government relations group

8 from Monsanto?

9 A. Well, at that time I don't know

10 specifically. Basically it is a group

11 that has responsibility for initiating

12 and maintaining relations with the

13 various government agencies that the

14 company deals with.

15 Q. And then he also thanked him for taking

16 the time from his busy schedule to

17 address the Alabama Chemical Association

18 and have dinner with us on March 23rd.

19 Is that right?

20 A. The letter says that, yes.

21 Q. Then it indicates they were proud of him

22 for attacking the drug problem in the

23 state and wished him continued success?

REGIONAL REPORTING SERVICE, INC.

1 MR. KELLY: Object to the form.

2 A. I don't know how that would be

3 characterized, as big or little. And I

4 don't know if there was any connection.

5 Basically my reading of this

6 letter is that whatever happened in '85

7 happened. We made our proposed cleanup.

8 There is -- No action had been taken,

9 and we were asking, you know --

10 basically asking Mr. Siegleman if he

11 wanted to get involved in seeing if we

12 could implement our plan. That is the

13 only thing I can think could be taken

14 from that letter.

15 Q. How many of your neighbors that y'all

16 had living around you at that time were

17 in these meetings with the attorney

18 general where y'all were talking to him

19 about what you wanted to do down there

20 on Snow Creek?

21 MR. KELLY: Object to the form.

22 A. There were none present that I recall in

23 any of the meetings that I attended.

- 1 Q. How many of the folks that catch fish
2 and eat fish out of Choccolocco Creek
3 that probably were filled with that
4 poison were at that meeting, Dr. Kaley?
- 5 MR. KELLY: Object to the form.
- 6 A. Well, number one, I disagree with your
7 characterization if you are talking
8 about PCBs.
- 9 Q. I am talking about PCBs.
- 10 A. Then I disagree with your
11 characterization of them as a poison.
12 But I'm not aware of any meetings that
13 were held with fisherman from
14 Choccolocco Creek.
- 15 Q. Well, while we are on that subject,
16 didn't President Bush just sign a treaty
17 with a number of other people or a
18 number of other countries in this world
19 we live in where they are all going to
20 try to get rid of PCBs from the
21 environment all over the world? Do you
22 remember the treaty that he just signed?
- 23 A. I don't know whether he signed it or

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- 1 A. Well, DDT is another one of the
2 compounds that is addressed. But
3 interestingly, they decided that they
4 can't get rid of DDT because it serves a
5 useful purpose. I mean, it is on that
6 list, yes.
- 7 Q. And some of these PCBs act pretty much
8 like dioxins, don't they?
- 9 A. That is a very complicated discussion.
10 We can get into it if you wish. I'm not
11 going to agree with that statement just
12 standing right out there. If you would
13 like for me to discuss under what
14 conditions I would agree with you I
15 will.
- 16 Q. Well, there are some of these PCBs that
17 act like dioxins, are there not,
18 Dr. Kaley?
- 19 A. There are -- There is a small sub-class
20 of PCBs that bind to the -- what is
21 called the dioxin receptor or the AH
22 receptor in animal and probably human
23 bodies. They are presumed to -- Because

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- 1 whether Ms. Whitman signed it. But the
2 U.S. did sign a treaty on persistent
3 organic pollutants, as they are called
4 by that treaty, and to address various
5 issues with regard to a number of
6 chemicals including PCBs. Yes.
- 7 Q. But didn't he mention -- Didn't
8 President Bush mention in his statement
9 about the signing of that treaty by this
10 country the fact that PCBs were one of
11 the substances he was interested in
12 getting rid of?
- 13 A. I don't know whether he did or did not
14 mention them specifically. They are
15 certainly one of the chemicals that were
16 involved in the treaty. He may very
17 well have. I don't know.
- 18 Q. Because it was a toxic substance that
19 caused adverse health effects in people.
- 20 A. No. Because it is -- It is what is
21 characterized as a persistent organic
22 pollutant.
- 23 Q. Like DDT?

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- 1 they bind to that receptor, they are
2 presumed to have some of the same
3 effects that dioxin might have. But
4 that is basically a presumption based on
5 enzyme binding studies. And really
6 there is very little either animal or
7 human health data to support that
8 assertion. But if they do, they do it
9 at a very much reduced potency compared
10 to dioxin.
- 11 Q. And dioxins have just been named or
12 designated by the EPA as a known
13 carcinogen, haven't they?
- 14 A. I don't know that the EPA has designated
15 them that. Some groups have, yes.
- 16 Q. A cancer causing substance; is that
17 correct?
- 18 A. One specific congener, c-o-n-g-e-n-e-r,
19 of dioxin has been named as a known
20 human carcinogen. But there are a
21 hundred and thirty-five -- or two
22 hundred and ten related compounds not
23 even including the PCBs that those

REGIONAL REPORTING SERVICE, INC.

1 agencies have refused to make that
2 determination on. So there is one
3 specific congener of dioxin that has
4 been named as a human carcinogen. That
5 is correct. Or it has been listed.
6 Q. Isn't it a fact that a byproduct of
7 PCBs, Dr. Kaley, is dioxin?
8 A. No, that is not true.
9 Q. When it burns at certain temperatures it
10 is, isn't it?
11 A. That is not true.
12 Q. So dioxins don't show up in the
13 atmosphere when these PCBs catch on fire
14 and burn? Is that what you are saying?
15 A. That's correct. That's correct.
16 Q. Dibenzofurans don't?
17 A. No, dibenzofurans may under certain
18 circumstances.
19 Q. Dibenzofurans may. That is a pretty
20 nasty thing, isn't it, a pretty
21 poisonous substance, isn't it?
22 A. Well, it has its own set of toxicities
23 associated with doses and --

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1 point we may have had a discussion with
2 the attorney general's office about
3 implementing that plan, and eventually
4 we implemented that plan. We didn't
5 work out anything. Everything we did is
6 documented in the document you are
7 showing me.
8 Q. That was after the date of that letter
9 and after y'all had him to the Chemical
10 Association and after you had him to
11 your political action wing of your
12 group?
13 MR. KELLY: Object to the form.
14 A. I assume you are using the royal "you"
15 because I had no involvement in any of
16 that.
17 Q. Well, Monsanto.
18 A. Sure. I don't see anything wrong with
19 that. If you have an issue that you
20 need to deal with a government agency,
21 you deal with that government agency.
22 Q. You never called a town meeting about
23 it, did you?

REGIONAL REPORTING SERVICE, INC.

1 Q. It is a poison, isn't it? They don't
2 want people to be affected by it, do
3 they?
4 A. I don't know what definition you are
5 using of "poison." It has toxicities
6 when tested in animal testing, yes.
7 Q. So as we sit here today, you didn't tell
8 anybody along that creek or in the
9 neighborhood about this 1985 thing.
10 Y'all did as Monsanto usual does, and
11 you went to somebody like the then
12 attorney general of the State of Alabama
13 and worked it out, didn't you?
14 MR. KELLY: Object to the form, no
15 foundation.
16 A. I can't answer that question. I know
17 what involvement I had and what went on.
18 I don't believe we worked anything out.
19 We worked with the agencies to
20 understand and characterize the extent
21 of PCBs in the sediments. We proposed a
22 remediation plan. At some point we -- I
23 was not aware of this letter. At some

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1 A. I'm not aware of any.
2 Q. Never had a meeting at Bethel Church to
3 tell those folks about it, did you?
4 A. Not that I'm not aware of.
5 Q. And that is not the first time, is it,
6 Dr. Kaley, that you all knew that PCBs
7 were leaving your plant site in this
8 neighborhood out there? You in fact
9 found out about it as early as 1983,
10 didn't you? Monsanto did, didn't you?
11 A. I don't know specifically what you are
12 referring to.
13 Q. Well, didn't y'all find out from the
14 Conservation Department that PCBs were
15 getting all the way down into Snow Creek
16 and Choccolocco Creek?
17 A. I'm aware of some investigations of the
18 sediments in Choccolocco Creek in about
19 that time frame.
20 Q. About 1983?
21 A. '82, '83, sometime in that time frame.
22 Q. Well, you didn't say anything, did you,
23 Dr. Kaley, to the special master about

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1 that particular situation, did you?
 2 A. In my affidavit I was addressing
 3 summarizing the history of --
 4 Q. Just a yes or no will do, Dr. Kaley.
 5 A. In my affidavit I was addressing the
 6 issues that had arisen since 1993.
 7 Q. But you didn't say anything about
 8 knowing about it in 1983, did you?
 9 A. No, I did not.
 10 Q. Now, that dealt with PCB sampling on
 11 Snow Creek, didn't it?
 12 A. I don't recall as I sit here.
 13 Q. And also Choccolocco Creek?
 14 A. I recall Choccolocco Creek. I don't
 15 recall Snow Creek.
 16 Q. I'm sorry. I misspoke.
 17 MR. STEWART: Mark that, please.
 18 (Plaintiffs' Exhibit Number
 19 Six was marked for
 20 identification.)
 21 Q. Let me show you Plaintiffs' Exhibit Six
 22 and ask you to take a look at it and see
 23 if that is not in fact a letter from

REGIONAL REPORTING SERVICE, INC.

1 Q. -- to try to resolve this problem that
 2 you had with the fish down there in
 3 Choccolocco Creek?
 4 MR. KELLY: Object to the form, no
 5 foundation.
 6 A. I have no idea what you are referring
 7 to.
 8 Q. Let me show you Plaintiffs' Exhibit
 9 Seven and ask you to take a look at it
 10 if you would. Now, this is what is
 11 called a preparedness statement. I want
 12 you to read over it, and then I want to
 13 ask you some questions.
 14 (Plaintiffs' Exhibit Number
 15 Seven was marked for
 16 identification.)
 17 A. I've read it.
 18 Q. Now, if you look on page two -- On page
 19 one it talks about core samples of
 20 sediments that were taken from
 21 Choccolocco Creek and says the
 22 Conservation Service had gone down there
 23 to take them in preparation for dredging

REGIONAL REPORTING SERVICE, INC.

1 Mr. Robert Thompson of the Soil
 2 Conservation Service to, again,
 3 Mr. Brown. Is that right?
 4 A. That is what that letter is, yes.
 5 Q. And it talks about a PCB sampling
 6 program that was taking place on
 7 Choccolocco Creek?
 8 A. It mentions that, yes.
 9 Q. Now, y'all tried to diffuse that, didn't
 10 you, before you got this letter and
 11 before you got -- had this meeting with
 12 the Soil Conservation people?
 13 A. I have no idea.
 14 MR. KELLY: Object to the form, no
 15 foundation.
 16 THE WITNESS: Excuse me. I'm
 17 sorry, Mike.
 18 A. I have no idea what you are referring
 19 to.
 20 Q. Well, you used the normal public
 21 relations techniques that y'all are
 22 known for, didn't you --
 23 MR. KELLY: Object to the form.

REGIONAL REPORTING SERVICE, INC.

1 the creek. And this is March 16th of
 2 1983?
 3 A. Yes.
 4 Q. This is a statement y'all prepared,
 5 isn't it, Monsanto?
 6 A. Presumably, yes.
 7 Q. Well, it has an MONS 019321 on it, and
 8 it was produced by your folks to us.
 9 Would you assume with me, Dr. Kaley,
 10 that that is a Monsanto document, press
 11 release?
 12 A. Oh, I said it appears to be, yes.
 13 Q. On the last page, you say on page two --
 14 A. I wouldn't say it is a press release.
 15 It is a preparedness statement. I think
 16 that is different.
 17 Q. Is this to tell the folks at the plant
 18 what to say if anybody makes inquiry?
 19 A. That is basically what I would
 20 understand it to be, yes.
 21 Q. On the last page it talks about -- last
 22 paragraph on the first page says PCBs
 23 are ubiquitous in the environment.

REGIONAL REPORTING SERVICE, INC.

1 That's a big old word. What does that
2 mean?

3 A. It basically means everywhere.

4 Q. Everywhere. And they are commonly found
5 in small trace amounts in many rivers
6 and streams. But then on the next page
7 it says for these reasons it would be
8 unproductive to try to identify the
9 source of PCBs in Choccolocco Creek
10 especially since the creek readily
11 accepts surface water runoff from much
12 of the City of Anniston. It is sort of
13 misleading, isn't it, Dr. Kaley?

14 MR. KELLY: Object to the form.

15 A. I don't know what you mean by that.

16 Q. Well, isn't that a misrepresentation of
17 the facts that you know or whoever put
18 this thing together knew to be true at
19 the time this statement -- this
20 preparedness statement was put together
21 on March 16th of '83?

22 MR. KELLY: Object to the form.

23 A. I guess I don't understand what you are

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1 Q. The samples --

2 A. -- the honest statement is that about
3 two years later, based on another
4 incident, that is exactly what happened.
5 So, I mean --

6 Q. Based on what?

7 A. Based on the incident we just got done
8 talking about in 1985, that is basically
9 what happened. There were
10 investigations of Snow Creek and the
11 ditches.

12 Q. Well, why didn't y'all report what you
13 already knew in 1983 to the people at
14 ADEM? ADEM was in existence, wasn't it,
15 in '83?

16 A. I'm sorry? I don't understand your
17 question, Mr. Stewart.

18 Q. Why didn't you report the fact,
19 Dr. Kaley, that you all were the source
20 of PCBs in Choccolocco Creek and you
21 knew it --

22 MR. KELLY: Object to the form.

23 Q. -- at the time this preparedness

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1 addressing. I mean, the fact it accepts
2 surface water runoff from much of the
3 City of Anniston is true. Whether you
4 are questioning whether it is productive
5 or not to try to identify the source is
6 -- You know, in the person's mind who
7 wrote this, that may have been a true
8 statement, depending on the levels. I'm
9 not familiar with the levels and how
10 they compare to other levels. But if
11 the levels were low enough, it probably
12 is a true statement.

13 Q. Well, isn't it a fact, Dr. Kaley, that
14 if they had come up that creek, they
15 would have hit Snow Creek and come up
16 Snow Creek and wound up, my goodness,
17 right over there around those ditches
18 and tributaries that led away from your
19 plant, wouldn't they?

20 A. I don't know the answer to that. I
21 don't know where the samples were taken.
22 I don't know the data in between those
23 two. I mean --

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1 statement was put together on March 16th
2 of 1983? By you, I mean Monsanto.
3 There were people at Monsanto Chemical
4 Company who were fully aware of the fact
5 that y'all were the source.

6 MR. KELLY: Object to the form.

7 A. I -- Was your original question why
8 didn't we tell ADEM?

9 Q. Yes.

10 A. I assume ADEM was aware of this. They
11 were working with us with other
12 government agencies. I'm sure they were
13 aware of it.

14 Q. Are you sure they were aware of it?

15 A. I would presume so. I'm not sure of
16 that. No, I cannot be sure of that. I
17 would presume they would have been aware
18 of it.

19 Q. You all didn't tell them, did you?

20 A. I don't know whether we did or not.

21 Q. Well, you didn't tell anybody at all at
22 EPA, did you?

23 A. I don't know whether we did or not.

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1 Q. Well, did you tell those poor people who
2 were catching fish down there on
3 Choccolocco Creek and eating them at
4 that time that they had levels of a
5 toxic substance that was poison and
6 might harm them?

7 MR. KELLY: Object to the form.

8 A. Well, I'm sure we didn't say any of
9 those words because we never would say
10 any of those words and I wouldn't say
11 those words because I don't believe PCBs
12 are a poison.

13 But the fact is that this had
14 nothing to do with fish. It was
15 sediment levels and as it says in this
16 statement. Not having seen all of the
17 data as I sit here, I don't know exactly
18 what the levels are, but they were found
19 to be relatively low. And it is my
20 understanding of the outcome of that
21 eventual situation here, the people
22 agreed with that and the dredging plan
23 was eventually implemented. I just

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1 A. About this thing?

2 Q. The meeting that took place with y'all
3 and --

4 A. I'm not aware that this meeting was
5 communicated to the residents of
6 Anniston, no.

7 Q. So when you said -- In connection with
8 your affidavit to the special master and
9 those folks you didn't mention this 1983
10 thing. What else did you leave out of
11 that affidavit, Dr. Kaley?

12 MR. KELLY: Object to the form.

13 A. That affidavit was prepared to provide a
14 summary of the situation at the Anniston
15 plant since 1993. So to the extent that
16 there were things that occurred before
17 1993, I don't know specifically what was
18 included or what wasn't included.

19 Q. Now, Dr. Kaley, you know good and well
20 that they had had problems at this plant
21 site before with PCBs, didn't you,
22 leaving the plant site, getting into
23 Snow Creek, significant discharges

1 don't know.

2 Q. Now, when was that dredging plan put in
3 place?

4 A. I don't know.

5 Q. What part did y'all have in it?

6 A. I don't know. None that I'm aware of.
7 I don't know.

8 Q. If it wasn't your PCBs, what in the
9 world were y'all meeting with them
10 about?

11 A. Meeting with who?

12 Q. The Conversation Department. This
13 letter that we saw to Mr. Brown says
14 that -- from Mr. Thompson -- y'all were
15 going to have a meeting at ten a.m. on
16 December the 5th, 1983, to discuss the
17 results of the PCB sampling on
18 Choccolocco Creek.

19 A. I'm not aware of what led up to that
20 meeting.

21 Q. Well, you certainly didn't tell any of
22 your neighbors either, did you, about
23 this thing that took place?

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1 through the atmosphere? You knew that,
2 didn't you --

3 MR. KELLY: Object to the form.

4 Q. -- in 1983?

5 A. I'm not aware of 1983 information that
6 there were any, let alone significant
7 discharges to the atmosphere, no.

8 Q. Is it your statement as you sit here
9 today that you didn't know in 1983 that
10 there had been a history of discharges
11 from that plant site of PCBs?

12 A. Into the air? I'm sitting here saying
13 that.

14 Q. Well, any way first, Dr. Kaley.

15 A. No. We knew when we began investigating
16 outfall of the plant in the late 1960s
17 that there were discharges at the plant.

18 Q. You are telling me y'all knew about it,
19 is that correct, in 1960?

20 A. '69, in the late 1960s.

21 Q. Late '60s?

22 A. Yes.

23 Q. Well, hadn't you done some studies and

1 things about what you were losing?
 2 A. Those were initiated in the late 1960s,
 3 yes.
 4 Q. Well, in fact, Dr. Kaley, y'all knew
 5 about it a little bit earlier than that,
 6 didn't you? You knew you were losing
 7 some of the materials that were
 8 manufactured in the plant, including
 9 PCBs, earlier than 1969, didn't you?
 10 A. I mean, certainly we were aware of
 11 discharges of the plant at various
 12 times. I don't know what you are
 13 specifically referring to. If you have
 14 a document you would like me to look at,
 15 I will be happy to address it.
 16 Q. I'm asking you if you were aware of PCBs
 17 that were leaving the plant site in say
 18 1966 -- or at least Monsanto was. And
 19 let me just show you a document we will
 20 mark Exhibit Eight.
 21 (Plaintiffs' Exhibit Number
 22 Eight was marked for
 23 identification.)

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1 says. It is talking about HCl waste. I
 2 don't know. I don't know what anybody
 3 might make of that statement.
 4 Q. Well, was it coming from the area where
 5 y'all made PCBs?
 6 A. Some of it was, yes.
 7 Q. Okay. Isn't it a fact, Dr. Kaley, that
 8 as you and I sit here today that that is
 9 still creating problems on that plant
 10 site according to EPA?
 11 MR. KELLY: Object to the form.
 12 A. There is another one of your "that's."
 13 I don't know what you are addressing. I
 14 don't know what you are referring to.
 15 Q. Well, doesn't the manufacturing site
 16 even today have some releases of PCBs?
 17 A. Not that I'm aware of.
 18 Q. As you sit here today you just don't
 19 know of any that are coming off your
 20 plant site today?
 21 A. I'm not aware of any, no.
 22 Q. You don't know of any?
 23 A. That's correct.

1 Q. Take a look at that and let me ask you
 2 some questions about it.
 3 A. I've read it.
 4 Q. Now, Dr. Kaley, doesn't that indicate in
 5 this exhibit, Exhibit Eight, that there
 6 were some PCB laden materials that were
 7 leaving your plant site, going into Snow
 8 Creek?
 9 A. No, sir.
 10 Q. It doesn't have anything to do with
 11 PCBs?
 12 A. I only see one mention of PCBs. And it
 13 says HCl, hydrochloric acid waste from
 14 the biphenyl and Aroclor area plus
 15 cooling water and wash water from the
 16 Santowax area. It is talking about HCl,
 17 not talking about PCBs.
 18 Q. You are saying that wouldn't indicate to
 19 somebody that had one eye and half a
 20 brain that PCBs might be leaving the
 21 plant site?
 22 MR. KELLY: Object to the form.
 23 A. I'm just repeating what the document

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1 Q. So if somebody from EPA said they had
 2 some concerns about PCBs leaving your
 3 plant site today and showing up in
 4 wells, for instance, that were north of
 5 your plant, you don't know about that?
 6 A. Well, having concern -- I mean, I don't
 7 know what you are referring to. But
 8 somebody may have said they have
 9 concerns about that, may have said
 10 that -- You know, I don't know what they
 11 said after that. But because someone
 12 has a concern doesn't mean it is
 13 happening.
 14 Q. And they also indicated -- Well, they
 15 said they found PCBs. Y'all indicated
 16 you found PCBs in two monitoring wells
 17 north of the plant.
 18 A. I don't recall if they were north of the
 19 plant. We have had isolated detections
 20 of PCBs in unfiltered monitoring well
 21 samples. That's correct.
 22 Q. Today, in 2001?
 23 A. I don't know whether we have 2001 data

1 or not. You may or may not be right. I
2 don't know.
3 Q. And y'all were manufacturing PCBs --
4 A. But the ground water is being captured.
5 It is not being released.
6 Q. The ground water north of the plant is
7 being captured?
8 A. Yes, sir.
9 Q. All of it, Dr. Kaley, as we sit here?
10 A. I don't know the total extent, but I
11 understanding it is nearly all of it,
12 yes.
13 Q. Then this talks about a stream, on the
14 first page of Plaintiffs' Exhibit Eight,
15 that is located in Sweet Valley.
16 A. It does say that.
17 Q. Do you know where Sweet Valley is?
18 Isn't that that area north -- east of
19 the plant?
20 A. Well, my understanding would be that it
21 is one of the areas east of the plant.
22 I don't know specifically what Sweet
23 Valley refers to, no. But I know it is

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1 yes.
2 Q. And is east of the plant?
3 A. Yes.. I'm not arguing with you. I just
4 don't know specifically which part of
5 that area is Sweet Valley versus which
6 part is Cobbtown. I'm not -- I agree
7 with your characterization that is a
8 stream in an area east of our plant,
9 yes, or an area over there.
10 Q. And that is because of PCBs, the PCB
11 contamination?
12 A. The current remediation activities are
13 driven by PCB impacted soils. That's
14 correct.
15 Q. You bought a lot of houses in there and
16 tore them down for that very same
17 reason, haven't you?
18 A. We initiated a property purchase program
19 and demolished the houses and
20 incorporated that cover -- or that area
21 under our remedial cover. Yes, that's
22 correct.
23 Q. And literally destroyed that whole

1 generally in that area east of the
2 plant.
3 Q. Well, isn't that where y'all did your
4 work on the Bethel Church and in those
5 ditches?
6 A. Well, the problem I have is that part of
7 it is referred to as Cobbtown, and part
8 as of it is Sweet Valley. Exactly what
9 Sweet Valley referred to here, I don't
10 know the answer to that, no. I know
11 that that area is referred to as the
12 Cobbtown/Sweet Valley area by, you know,
13 the regulators and others. I don't know
14 specifically what the stream located in
15 Sweet valley was. I just don't know.
16 Q. Dr. Kaley, isn't it a fact that that is
17 where y'all have been attempting to do
18 some remediation work?
19 MR. KELLY: Object to the form.
20 A. We certainly have done a great deal of
21 remediation work in the area generally
22 -- which I generally understand to be
23 characterized as Cobbtown/Sweet Valley,

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1 little community in there because of PCB
2 contamination; isn't that correct?
3 MR. KELLY: Object to the form.
4 A. Well, I don't know that I would
5 characterize it as that. Those people
6 were offered the opportunity to sell
7 their homes to the company under the
8 terms of the property purchase program.
9 And those homes, the ones that we have
10 purchased, have been destroyed and
11 incorporated under the cover. That is
12 correct.
13 Q. Because you all were contaminating those
14 homes as early as 1966 and probably long
15 before that, weren't you?
16 MR. KELLY: Object to the form, no
17 foundation.
18 A. I don't know that the dates have been
19 established one way or the other. But
20 there were PCB impacted materials in
21 that area that were best dealt with by
22 obtaining the property in that area.
23 Q. Now, in 1966 y'all did not share with

1 those people who lived in Cobbtown and
 2 Sweet Valley anything at all about what
 3 your findings were about waste
 4 materials, poisons leaving your plant
 5 site and going through that property
 6 over there east of the plant, did you?
 7 MR. KELLY: Object to the form.
 8 A. I don't see anything in here that talks
 9 about poisons, but I'm not aware of
 10 communications with the community.
 11 Q. Is parathion not a poison?
 12 A. I suppose parathion is a poison. I will
 13 grant you that parathion is a poison.
 14 Yes, parathion is a poison.
 15 Q. Doesn't it mention that in Exhibit
 16 Eight?
 17 A. Yes. I'm sorry. You are correct. I
 18 misspoke.
 19 Q. Did you tell them anything about that?
 20 A. I'm not aware of what was or wasn't told
 21 to the community.
 22 Q. But y'all knew as a result of some tests
 23 and things that were done by a gentleman

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1 in the letter, did he?
 2 A. 1983, seventeen years after the date you
 3 are tracking, we had moved on and were
 4 addressing different issues and dealing
 5 with the issues we had on our plate at
 6 that time.
 7 Q. What do you mean different issues? PCBs
 8 is what y'all began to find?
 9 A. Well, in 1966 there wasn't even
 10 knowledge there were PCBs.
 11 Q. There wasn't?
 12 A. No, sir. In 1983 we had information
 13 about what we were dealing with at that
 14 time.
 15 Q. Are you telling me --
 16 A. I'm not sure when that dinner was. I
 17 think that dinner was in '88, not 1983.
 18 Q. Are you telling me now as we sit here
 19 today that y'all didn't know about PCBs
 20 leaving the plant site in 1966?
 21 A. I don't think we had confirmation of
 22 that fact, no.
 23 MR. STEWART: Okay. I'd like to

1 named Fuhrmeister from Mississippi State
 2 University that you had a problem in
 3 this plant, didn't you?
 4 A. Do you want me to correct you or not?
 5 Q. That materials leaving the plant site --
 6 A. Well, Mr. Fuhrmeister was a plant
 7 employee. He was not from Mississippi.
 8 Q. Okay. I'm sorry. Ferguson. I get
 9 those two mixed up. And he was
 10 reporting to the technical services
 11 superintendent, who was Mr. Fuhrmeister?
 12 A. That's correct. That's my
 13 understanding, yes.
 14 Q. Why didn't you tell the attorney general
 15 of the State of Alabama when y'all were
 16 having that supper with him about this
 17 problem that had existed for as far back
 18 as 1966? Why didn't you tell him that?
 19 MR. KELLY: Object to the form.
 20 A. Because I wasn't at that dinner.
 21 Q. Why did Mr. Denner not tell him?
 22 Apparently no one said anything.
 23 Mr. Denner didn't say anything about it

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1 put all these in just for the
 2 record, if we could, as one
 3 exhibit. Can we do that?
 4 MR. KELLY: Yes.
 5 MR. STEWART: We will make this
 6 Nine. It is a series of
 7 reports there from
 8 Mr. Ferguson.
 9 (Plaintiffs' Exhibit Number
 10 Nine was marked for
 11 identification.)
 12 Q. I'm sorry. I'll give you time to take a
 13 look at that.
 14 A. Do you want me to read these in detail
 15 or look at the titles or how much
 16 time --
 17 Q. Well, if you can take a look at it, I'm
 18 going to ask you some questions about
 19 them. It has to do, I'm going to state,
 20 with some tests that Mr. Ferguson and
 21 others did on fish that they found in
 22 Choccolocco Creek down near the Anniston
 23 sewage treatment facility, and there

1 were some other collection sites, the
 2 bridge on Highway 21, Jackson Shoal,
 3 four miles east of Boiling Springs, near
 4 the Anniston sewage plant.
 5 A. I'm just -- Mr. Stewart, I'm just trying
 6 to determine do you want me to take the
 7 time to read all these, or do you want
 8 to ask your questions and see if I can
 9 answer them without reading them. What
 10 is your preference? I will be happy to
 11 sit here and read them.
 12 Q. Well, it is up to --
 13 A. If you are going to talk -- ask in some
 14 detail, I probably need to take the time
 15 to read in detail.
 16 Q. Well, I just have a few questions to ask
 17 you about it. Maybe we can get to the
 18 heart of the matter. But you have
 19 indicated previously in response to some
 20 of the questions I've asked you that
 21 y'all were surprised to find -- And I
 22 don't want to put words in your mouth,
 23 Dr. Kaley. But y'all were surprised to

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1 A. My understanding is that there had been
 2 a fish kill in Choccolocco Creek and
 3 that we engaged Mr. Ferguson to do
 4 investigations to determine if we could
 5 find the source of that fish kill or if
 6 the source of that fish kill was
 7 associated with discharges from our
 8 plant.
 9 Q. What did y'all think it was killing
 10 those fish, parathion?
 11 A. My understanding is that is basically
 12 the material that was the primary
 13 suspect, yes.
 14 Q. Is parathion a pesticide?
 15 A. Yes, it is.
 16 Q. Is it a chemical compound that has a
 17 makeup somewhat similar to DDT?
 18 A. No.
 19 Q. Is DDT more similar to PCBs?
 20 A. Yes, I think that is a fair
 21 characterization. DDT is more similar
 22 to PCBs than --
 23 Q. Hydrocarbon, is that what you call it?

1 find PCBs that were leaving the plant in
 2 I think '83. Is that what you said, or
 3 was it '85?
 4 A. No. I said we were surprised to find
 5 PCBs leaving the plant in storm water in
 6 1993.
 7 Q. 1993?
 8 A. Yes, sir.
 9 Q. But you were aware of the fact that PCBs
 10 were leaving the plant site as far back
 11 -- and contaminating creeks, property,
 12 people, everything else as far back as
 13 1966, weren't you?
 14 MR. KELLY: Object to the form, no
 15 foundation.
 16 A. I am vaguely aware of the content of
 17 these Ferguson reports. I don't recall
 18 any specific statement that would
 19 suggest that we were aware of PCBs
 20 leaving the plant at that time.
 21 Q. Well, what were y'all looking for when
 22 you had Dr. Ferguson over there from
 23 Mississippi State?

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1 I'm just trying to get used to these
 2 terms. Persistent in the environment,
 3 has adverse health effects?
 4 A. Well, PCBs and DDT are characterized as
 5 chlorinated hydrocarbons. Under some
 6 conditions they are persistent in the
 7 environment, and they have health
 8 effects in some animal species.
 9 Q. Okay. And you determine what you are
 10 looking at by an analyses or tests,
 11 don't you, Dr. Kaley?
 12 A. Well, I will answer yes, assuming I
 13 understand what you mean. There are
 14 tests which you can use on environmental
 15 samples to determine if various
 16 chemicals are present in those samples.
 17 Q. Like fish?
 18 A. Fish.
 19 Q. And is gas chromatograph something you
 20 are familiar with?
 21 A. Yes.
 22 Q. Isn't that what he was using,
 23 Dr. Ferguson from Mississippi State

1 University?

2 A. Some form of that instrument, yes.

3 Q. Doesn't it make a graph on a little old

4 sheet of paper or a tracing on a little

5 old sheet of paper and you see certain

6 peaks and you count the peaks and you

7 know what it is? Isn't that basically

8 what you do?

9 A. That is a rough characterization of the

10 technique in that time frame.

11 Q. And didn't Denzel Ferguson, this

12 professor of zoology that y'all had from

13 Mississippi State over there, that old

14 country boy from down there in

15 Mississippi, find something that was

16 sort of unusual?

17 MR. KELLY: Object to the form.

18 A. I don't know what you are talking about.

19 I don't know what your question is.

20 Q. Well, take a look at page four of his

21 letter that is dated April the 6th,

22 1967, Dr. Kaley.

23 A. Okay. I have that letter. Page four,

REGIONAL REPORTING SERVICE, INC.

1 A. There are indications of unknown peaks

2 in his report, yes.

3 Q. They were not unknown to y'all, were

4 they, Dr. Kaley?

5 MR. KELLY: Object to the form, no

6 foundation.

7 A. My belief is, yes, they were unknown to

8 us.

9 Q. Now, Dr. Kaley, we are talking about

10 Monsanto, a company that has tremendous

11 research capability, are we not, even at

12 this time, even in the '60s?

13 A. Well, I don't know what "tremendous"

14 means. It was comparable. It was

15 certainly a respectable research

16 capability, yes.

17 Q. Certainly. And this is a product that

18 we are talking about that y'all made,

19 that you tested all the time, PCBs?

20 A. I would not say it is a product we

21 tested all the time, certainly not with

22 gas chromatography, no.

23 Q. Well, that is not something that was

1 did you say page four?

2 Q. Yes.

3 A. Okay.

4 Q. And there is a little note down there at

5 the bottom of that page, and he is

6 talking about these peaks that he is

7 finding. He said two peaks resemble

8 parathion and DDE but their partition

9 coefficients -- and I don't know

10 anything at all about that, but you are

11 an analyst, analytical chemist, and I

12 assume you know what he is talking

13 about. But he said those peaks didn't

14 match things that were pesticides,

15 wasn't parathion.

16 A. Yes. He said they did not match two

17 specific pesticides, parathion and DDE.

18 That's correct.

19 Q. And he was finding something in that

20 report that he prepared for y'all that

21 was a little different from what he was

22 looking for, from the parathion, wasn't

23 he?

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1 just unique in all the world, wasn't

2 something that was invented by Monsanto,

3 was it?

4 A. I'm sorry?

5 Q. Gas chromatograph being used to test

6 these, that wasn't invented by somebody

7 at Monsanto, was it?

8 A. The gas chromatograph was not invented

9 by somebody at Monsanto. That's

10 correct.

11 Q. Bought it off the shelf, didn't you?

12 A. I don't know to the extent they were

13 available off the shelf or not. It may

14 have been and may not have been.

15 Q. Well, y'all had them there in the lab,

16 didn't you --

17 A. Had them where in what lab?

18 Q. -- in Anniston?

19 A. In Anniston?

20 Q. Yes.

21 A. In Anniston in 1966, I don't know.

22 Q. Well, you certainly had them in St.

23 Louis, didn't you?

1 A. There were gas chromatographs in St.
 2 Louis.
 3 Q. And y'all knew exactly what Dr. Ferguson
 4 was finding at that time. He was
 5 finding PCBs in those fish, wasn't he?
 6 MR. KELLY: Object to the form, no
 7 foundation.
 8 A. There is nothing in this report to
 9 indicate that those peaks were PCBs.
 10 Q. Isn't that what y'all later found in the
 11 fish?
 12 A. PCBs were later found in fish in
 13 Choccolocco Creek, yes.
 14 Q. Right around the time that Dr. Ferguson
 15 was doing his testing; isn't that
 16 correct?
 17 A. Well, four to five years later, yes.
 18 Q. Four to five years later?
 19 A. That's my understanding, yes.
 20 Q. Well --
 21 A. Two to three years later. I'm sorry.
 22 Q. Two to three years later?
 23 A. '68, '69 time frame.

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1 A. In 1966?
 2 Q. Uh-huh (indicating yes).
 3 A. No, sir. I didn't join the company --
 4 Q. Did you work with him later?
 5 A. Yes. I didn't join the company until
 6 1973.
 7 Q. Was he working with them at this time?
 8 A. In 1966, I don't believe so, no.
 9 Q. Let me show you Plaintiffs' Exhibit Ten.
 10 (Plaintiffs' Exhibit Number
 11 Ten was marked for
 12 identification.)
 13 Q. There is a Monsanto document dated May
 14 26, '69, from an Elmer P. Wheeler. Do
 15 you know Mr. Wheeler to be an employee
 16 of Monsanto?
 17 A. He was prior to his retirement and
 18 subsequent death.
 19 Q. The last paragraph on the end of the
 20 page -- on the second page, rather, the
 21 end of this document, he talks about a
 22 gentleman named Dave Nelson. What does
 23 MRC stand for?

1 Q. Well, since y'all had been discharging
 2 at the creek and to that community for
 3 years, you certainly had a pretty good
 4 idea of what you were looking at, didn't
 5 you?
 6 A. I can't speak --
 7 MR. KELLY: Object to the form.
 8 A. -- to what those people may or may not
 9 have known. But I don't think that is
 10 necessarily correct because, you know --
 11 Q. Who is E. P. Wheeler?
 12 A. -- whoever was working with the
 13 researchers in Mississippi State.
 14 Q. Who is E. P. Wheeler?
 15 A. Who is E. P. Wheeler?
 16 Q. Uh-huh (indicating yes).
 17 A. I presume it is Elmer Wheeler.
 18 Q. Who is Mr. Tucker?
 19 A. Scott Tucker was an analytical chemist
 20 in St. Louis.
 21 Q. Did you work with him --
 22 A. Yes, sir.
 23 Q. -- at that time?

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1 A. To me it stands for Monsanto Research
 2 Corporation.
 3 Q. Research Corporation?
 4 A. Yes. It was an independent arm of
 5 Monsanto based in Dayton, Ohio, for many
 6 years.
 7 Q. Okay. And Mr. Nelson was apparently
 8 talking to Elmer Wheeler, and he told
 9 him that in the course of the meetings
 10 some of the FWPCA boys raised a question
 11 as to what Monsanto in Anniston,
 12 Alabama, does to control the escape of
 13 polychlorinated biphenyls or waste
 14 product getting out of the plant.
 15 A. Is that a question?
 16 Q. I was about to ask you one. I just want
 17 to make sure you know where I am.
 18 A. I'm with you.
 19 Q. He said, "Obviously Dave wouldn't have
 20 any of the details of our programs in
 21 Anniston but passed this word on to me
 22 with the thought that we can anticipate
 23 that the feds will be looking at creek,

1 river, or lake water and mud samples
2 below Anniston for PCBs."

3 Now, why in the world did
4 Mr. Wheeler say that if y'all didn't
5 have a pretty good idea that PCBs were
6 getting out to that creek, Snow Creek,
7 from your plant site and down into
8 Choccolocco Creek sometime before May 26
9 of 1969?

10 MR. KELLY: Object to the form,
11 calls for speculation.

12 A. I believe -- I mean, I think that is --
13 Sometime before 1969 is not necessarily
14 1966. It could have been May 25th,
15 1969. I mean, obviously I'm
16 exaggerating, but in that general
17 1968-69 time frame the company began
18 investigations of discharges from the
19 plant focused on the potential for PCBs
20 discharges. And there is nothing in
21 this that is inconsistent with that.

22 Q. Never had done it before?

23 A. Prior to that effort, not that I'm aware

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1 A. Is that a question?

2 Q. Yes, that's a question.

3 A. You will -- I don't understand the
4 question.

5 Q. It is a little late for Monsanto to be
6 looking for PCBs in 1966, isn't it?

7 MR. KELLY: Object to the form.

8 A. There was no reason to believe they were
9 in the environment. There was no reason
10 prior to that to begin to look for them.
11 So I don't know how to answer your
12 question. No, I don't believe it was a
13 little late. I believe Monsanto acted
14 promptly and expeditiously once those
15 reports hit the scientific literature.

16 Q. Well, let me ask you something,
17 Dr. Kaley. Isn't it your responsibility
18 as a chemical manufacturing company to
19 determine the properties of a product
20 that you are going to foist on mankind
21 by selling it for a profit?

22 MR. KELLY: Object to the form.

23 A. I think that is a statement that is true

1 of it, no.

2 Q. Just never had chosen to determine
3 whether or not PCBs were leaving that
4 plant before 1966?

5 A. Well --

6 MR. KELLY: Object to the form.

7 Q. Or in that time frame.

8 A. In late 1966 a report from Sweden
9 indicated that PCBs or something that
10 research has determined were thought to
11 be PCBs were being found in the Swedish
12 environment. That began an extensive
13 program of research in government
14 laboratories, university laboratories,
15 Monsanto laboratories as to the
16 potential sources for those PCBs. And
17 that led us to investigations of our
18 plant sites to see if PCBs were leaving
19 these sites. So that is the chronology
20 as I know it to be.

21 Q. You know, that's a little late, isn't
22 it, Dr. Kaley?

23 MR. KELLY: Object to the form.

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1 today and was true prior. But I think
2 what that statement means means a lot of
3 different things in 2001 versus 1966.
4 We have a lot more analytical
5 capabilities. We understand a lot more
6 about toxicology. We understand a lot
7 more about what kind of tests need to be
8 undertaken to characterize those
9 products. I believe the people making
10 the products in those time frames were
11 doing what they believed to be
12 appropriate to market a product that was
13 safe for its intended uses.

14 Q. Well, now, Dr. Kaley, you know good and
15 well that you all knew long before 1966
16 that you had the responsibility as a
17 chemical manufacturer to make sure of a
18 number of things, number one, that your
19 product was safe?

20 A. Is that a question?

21 Q. Yes.

22 A. I'm sorry?

23 Q. Didn't you have a responsibility to do

1 that, to make sure that your product
2 that you put into the general public was
3 safe and wouldn't harm people?
4 A. There is a general responsibility that
5 products are safe for their intended use
6 subject to the capabilities to determine
7 those various aspects of safety.
8 Q. And y'all had that responsibility when
9 you bought the Swan Chemical plant back
10 in the '30s, didn't you?
11 A. To some extent or another, yes.
12 Q. And you knew at that time also, didn't
13 you, Dr. Kaley, that you had specific
14 responsibilities about disposing of
15 waste? You knew that, did you not?
16 MR. KELLY: Object to the form.
17 A. I think that is a characterization that
18 is probably not correct. I think the
19 concept of appropriate waste disposal
20 has changed almost completely since the
21 1930s up to today.
22 Q. Well, Dr. Kaley, let's just take the
23 first one.

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1 things would cause somebody some
2 problems?
3 A. I assume you are referring to the work
4 at the Harvard School of Public Health
5 by Dr. Drinker and others. I don't -- I
6 think -- I don't know whether we paid
7 them or not. I know we were involved
8 and aware of work that was going on back
9 then. Yes.
10 MR. STEWART: Mark that, please.
11 (Plaintiffs' Exhibit Number
12 Eleven was marked for
13 identification.)
14 Q. Let me show you Plaintiffs' Exhibit
15 Eleven, Dr. Kaley.
16 A. Okay.
17 Q. It says at the top of that on the first
18 page "Report to the Monsanto Chemical
19 Company," and it is a report by Cecil K.
20 Drinker, M.D.
21 A. Correct.
22 Q. Dean and professor of physiology,
23 Harvard School of Public Health, Boston,

1 MR. STEWART: Can I finish this
2 first one, please, sir?
3 MR. KELLY: Sure.
4 Q. Let's just take the first one,
5 Dr. Kaley, the safety of your product.
6 Are you telling me as we sit here today
7 in this room in 2001 that y'all didn't
8 know long before, long before 1966, when
9 y'all got to hustling around looking to
10 see whether or not PCBs were leaving
11 your plant site, that they were harmful
12 to people?
13 MR. KELLY: Object to the form.
14 A. I believe that we knew prior to that
15 that under inappropriate use conditions
16 that there was the potential for harm
17 for some people. But I don't know that
18 we had any specific information that
19 PCBs were harming people in industrial
20 situations, where they were exposed to
21 high levels. No.
22 Q. Well, didn't y'all pay somebody to find
23 out back in 1938 whether or not these

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1 Massachusetts. Is that the same fellow
2 you are talking about?
3 A. Yes, sir.
4 Q. This was a report that was presented to
5 y'all on September 15th of 1938,
6 correct?
7 A. That's the date on the document, yes,
8 sir.
9 Q. Some twenty-eight years before 1966;
10 isn't that correct?
11 A. Yes.
12 Q. And doesn't that say in this report that
13 there are some adverse health effects
14 that are caused by PCBs based on animal
15 studies that he did?
16 A. I'd have to go to the PCB section in
17 here. Okay. I just read the part that
18 is addressing the chlorinated diphenyl
19 compound 1268, and Dr. Drinker did
20 report some very slight changes in
21 liver. But most of the report -- It
22 stresses the low toxicity of that
23 particular chlorinated biphenyl.

1 Q. Slight changes? Are we talking about
2 liver damage, Dr. Kaley?

3 A. I don't know whether he uses that term
4 or not. He is talking about changes in
5 the cell. I don't know that they were
6 -- I mean, he talks about the overall
7 health of the animal. The rats were
8 very healthy throughout the period. The
9 recovery animals showed no clinical
10 changes of any sort. So, I mean -- I
11 think there are cellular changes, but I
12 don't know that they would be considered
13 to be adverse health changes in these
14 animals. Under these extreme conditions
15 the animals again remained in perfect
16 health. That is just what the report
17 says.

18 Q. Isn't it a fact, Dr. Kaley, that y'all
19 paid for that report, and it told you
20 about this product that you then
21 continued to sell to the general public
22 for uses of all kinds, knowing that it
23 caused the damage to these animals after

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1 Dr. Drinker for this?

2 A. I'm not aware. This was probably -- I
3 don't know what other tests were done at
4 that particular time. Certainly this
5 was the era of the first time these
6 kinds of issues were arising around PCBs
7 and other chemicals that were being used
8 in industry. You know, a lot of the
9 tests he did we didn't pay for, and they
10 found basically this same thing. So --

11 Q. But you didn't -- Are you telling me
12 that you all did not perform any
13 additional research at that time --

14 A. In 1938 --

15 Q. -- do any animal studies of your own?

16 A. In 1938, I don't know. I mean,
17 certainly throughout the years we did do
18 others, but I'm not aware of anything
19 that we did in 1938. I'm not sure we
20 had the capability in the company in
21 1938. That is why we would work with
22 people like Dr. Drinker and other people
23 at schools of public health and

1 this study that was performed by
2 Dr. Drinker? Didn't you continue to do
3 that?

4 MR. KELLY: Object to the form, no
5 foundation on sales to the
6 general public.

7 A. I think even today this report would be
8 very encouraging. I think you
9 understand. You have taken enough
10 depositions to understand that
11 anything --

12 Q. I understand your point of view,
13 Dr. Kaley.

14 A. -- at high enough doses can cause damage
15 of one kind or another. When we got
16 this report that said this material was
17 very slightly toxic, et cetera, et
18 cetera, yes, I think we continued to
19 sell this material for its intended use
20 in industrial situations.

21 Q. What, Dr. Kaley, did y'all do by way of
22 tests as a chemical company at that
23 particular time other than pay

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1 universities, because the company in
2 that time frame didn't have those kinds
3 of capabilities. No company did.

4 Q. Well, let me see if I understand,
5 Dr. Drinker -- I mean, Dr. Kaley. You
6 say Dr. Drinker had this capability, and
7 you all paid for it, but you didn't have
8 the capability to make more extensive
9 tests to determine whether or not this
10 product was safe to put on the market
11 and wouldn't cause people harm?

12 A. Am I saying the company internally did
13 not have toxicology testing labs to do
14 this?

15 Q. Resources to pay for it or --

16 A. I said that we did not have internal
17 capabilities to do these kinds of tests,
18 and that is why we worked with people
19 like Dr. Drinker and others at
20 universities and testing labs to do the
21 kinds of testing that was appropriate
22 for those materials in that time frame.

23 Q. But you did have the resources to do

1 additional work to tie into what
 2 Dr. Drinker found, didn't you?
 3 A. Presumably if they would have felt --
 4 the people addressing these issues at
 5 the time would have felt that further
 6 tests were necessary, they would have
 7 done those.
 8 Q. Well, didn't you have the responsibility
 9 to do that even in 1938, 1940, 1945, to
 10 continue to take a look at this problem
 11 that --
 12 A. We did continue over the years to --
 13 Q. -- Dr. Drinker had raised?
 14 A. Number one, your characterization of
 15 this as a problem is your
 16 characterization.
 17 I think this is a very encouraging
 18 report, that this is a very slightly
 19 toxic material at very high levels of
 20 dosage in animals. The point of these
 21 studies and the others Dr. Drinker did
 22 was to come up with safe ways to use
 23 these materials in industrial

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1 were some harmful effects as a result of
 2 those animals being exposed to PCBs and
 3 potential harmful effects for people,
 4 didn't you?
 5 A. The point is that at high doses some
 6 PCBs cause certain end points during
 7 various tests. And the purpose of that
 8 testing is to determine where there is
 9 that potential for health effects in
 10 humans. Yes, that's correct.
 11 Q. That's when --
 12 A. But we also had the experience of our
 13 workers and workers of our customers who
 14 were exposed to these materials at high
 15 levels occupationally. And they were
 16 not experiencing health effects, so that
 17 provided additional information.
 18 Q. You mentioned something a minute ago,
 19 Dr. Kaley. You mentioned the fact that
 20 you vented the facility. Now, where
 21 would you vent --
 22 A. I did not mention the fact that we
 23 vented any facility. I mentioned the

1 situations.
 2 And he did that. He recommended,
 3 as did others, that materials like PCBs
 4 and other materials could be used safely
 5 in industrial situations if ventilation
 6 was provided, if people weren't exposed
 7 to the materials at elevated
 8 temperatures.
 9 So I think more work did continue.
 10 And as we learned more about the
 11 products and had other capabilities into
 12 the late '40s and early 1950s and '60s
 13 and so on, we did either internally or
 14 externally provide for further testing
 15 of these materials to be sure that they
 16 were safe for their intended use.
 17 Q. Now exactly where did you test them, on
 18 animals?
 19 A. Excuse me? Yes, sir. To the extent --
 20 Q. Did you test on animals?
 21 A. Yes.
 22 Q. And you made a determination on the
 23 basis of the animal tests that there

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1 fact that these materials in the
 2 applications which Dr. Drinker was
 3 doing, if they were being used at
 4 elevated temperatures, that those areas
 5 needed to be ventilated appropriately.
 6 I said nothing about out plant
 7 operations. I was talking about the
 8 applications of these materials,
 9 primarily in the cable pulling industry,
 10 which is what really started all these
 11 studies to begin with.
 12 Q. And when did that happen, Dr. Kaley?
 13 A. When did what happen?
 14 Q. Those studies that you are talking about
 15 Dr. --
 16 A. 1937, 1938, and 1939, the very studies
 17 we have been talking about.
 18 Q. So there was some concern at that time
 19 that there might be some harmful health
 20 effects to people back as far back as
 21 1938?
 22 A. Yes.
 23 Q. And didn't some people in your plant

1 indicate to customers -- or in your
2 company, rather, indicate to customers
3 -- Emmet Kelly, Elmer Wheeler, those
4 people who were involved in the medical
5 department, that there could be some
6 harm from the use of PCBs?
7 A. I believe they were reporting what their
8 understanding of this literature and
9 other literature was, that based on
10 animal testing there was potential for
11 health effects for humans at very high
12 levels of exposure. But I also believe
13 that they were communicating that we
14 weren't seeing health effects in our
15 workers, nor were our customers seeing
16 health effects in their workers.
17 So, yes, I know there are
18 statements in various documents that
19 talk about the potential for health
20 effects, yes.
21 Q. Liver damage?
22 A. I believe that is one that is mentioned.
23 Q. Chloracne?

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1 the residents about the Drinker study.
2 Q. Dr. Kaley, do you know that
3 environmentally weathered type and
4 environmental exposures rather than
5 occupational exposures can be more toxic
6 for certain substances, including PCBs?
7 A. I believe -- I mean, I'm aware that
8 there are researchers who make that
9 claim, that environmental PCBs are more
10 toxic for fish than other PCBs. Yes.
11 Q. You don't have any disagreement with
12 that, do you?
13 A. I'm not going to say I disagree with it.
14 I think some of the results that is
15 based on are subject to interpretation.
16 Q. And that is what these folks who were
17 working at the plant and who lived
18 around your plant were exposed to,
19 weren't they?
20 A. Well, they were exposed to all the PCBs
21 they were making, including the ones
22 that would be included in those
23 weathered PCBs. I mean, there is

1 A. Yes, sir. Certainly there is a
2 potential for that in high exposure
3 levels.
4 Q. Back in that time y'all knew that and
5 continued to sell this product for
6 industrial purposes, but you also
7 continued to sewer it out of your plant
8 site and to pour it out into the
9 countryside around that plant, didn't
10 you?
11 MR. KELLY: Object to the form.
12 A. To the extent there were low levels of
13 discharges or levels of discharges of
14 any magnitude from our manufacturing
15 facility, they're low -- you know,
16 relatively low levels, compared to
17 industrial exposure levels, were being
18 discharged for some time, yes.
19 Q. From '38 on when you got this Drinker
20 report, did y'all ever tell those folks
21 over there in that neighborhood about
22 that Drinker study?
23 A. I'm not aware of any communications with

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1 nothing particularly unique about
2 weathered PCBs other than the congener
3 or composition of the mixture has
4 changed. All those congeners were
5 present in the other -- in the PCBs as
6 they were manufactured. They had to be.
7 That is where they came from to begin
8 with.
9 Q. Now, what kind of burning or heating
10 process did you have of those PCBs at
11 this plant site?
12 A. I believe the video man wants to speak
13 with you.
14 MR. KELLY: Is this a good time
15 for a break, Donald? We have
16 been going for about two
17 hours.
18 MR. STEWART: I'd like to finish
19 with this part. Just give me
20 about ten minutes.
21 MR. KELLY: Okay.
22 Q. Let me show you something before we
23 leave this subject of the toxicity of

1 these substances.
 2 MR. STEWART: Would you mark that?
 3 (Plaintiffs' Exhibit Number
 4 Twelve was marked for
 5 identification.)
 6 Q. Let me show you Plaintiffs' Exhibit
 7 Twelve. Take a look at that.
 8 A. I've read it.
 9 Q. Who is Dr. Kelly?
 10 A. He was medical director of Monsanto for
 11 some period of time.
 12 Q. Could you read for me the last paragraph
 13 on page one of this letter?
 14 A. Yes. This document says, "MCC's
 15 position can be summarized in this
 16 fashion. We know Aroclors are toxic,
 17 but the actual limit has not been
 18 precisely defined. It does not make too
 19 much difference, it seems to me, because
 20 our main worry is what will happen if an
 21 individual develops any type of liver
 22 disease and gives a history of Aroclor
 23 exposure. I am sure the juries would

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1 determine the air concentration at which
 2 exposures to PCBs would not be harmful.
 3 That is what these maximum allowable
 4 concentrations are, and that was the
 5 outcome of that study. In fact, the air
 6 levels that were determined to be safe
 7 for occupational use of PCBs based on
 8 those studies are the same air
 9 concentrations that the Occupational
 10 Safety and Health Administration uses
 11 today for occupational exposure to PCBs.
 12 Q. Well, that is a little different if you
 13 are in the occupational setting because
 14 of what we talked about earlier, isn't
 15 it?
 16 A. I don't understand your question.
 17 Q. That the environmentally weathered PCBs
 18 are more toxic.
 19 A. Well, number one, I don't agree with
 20 that characterization except as to --
 21 Q. I understand you don't.
 22 A. -- except as to the species on which
 23 that has been tested, which is primarily

1 not pay a great deal of attention to
 2 MACs."
 3 Q. Now, Dr. Kelly is talking about in that
 4 paragraph potential liver disease, isn't
 5 he?
 6 A. Yes.
 7 Q. From PCB exposure of certain compounds,
 8 1254 and 1242; is that correct?
 9 A. Well, those are the compounds that are
 10 mentioned in a previous paragraph. I
 11 don't know that the statement is
 12 specifically limited to those.
 13 Q. He mentions some testing done by
 14 Kettering Laboratory?
 15 A. Correct.
 16 Q. Was that done on the toxicity of PCBs?
 17 A. Yes, it was.
 18 Q. So the position at that particular time
 19 in September of 1955 was that Aroclors
 20 were toxic and could harm people,
 21 correct?
 22 A. At high levels of exposure, yes. That
 23 was the point of those tests, was to

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1 fish. And second, these levels -- I
 2 don't disagree that at high levels of
 3 exposure to PCBs can be toxic to
 4 laboratory animals, potentially toxic to
 5 humans at very high levels. That's why
 6 you have these kinds of studies done,
 7 and that is why you have the
 8 determinations of what are here called
 9 maximum allowable concentrations and
 10 today are called permissible exposure
 11 levels.
 12 Q. Well, I assume that once y'all found out
 13 that these things were going to be
 14 harmful to people that you just quit
 15 selling this stuff on the market, didn't
 16 you?
 17 MR. KELLY: Object to the form.
 18 A. Mr. Stewart, if every company quit
 19 selling every product that has some
 20 toxicity at high levels of exposure to
 21 laboratory animals, you and I would be
 22 unable to eat or dress ourselves. All
 23 products are toxic at some high exposure

1 level. The purpose of the testing --
 2 Q. We are talking about here, Dr. Kaley --
 3 A. Can I finish my answer to the question?
 4 Q. Yes, you can finish your answer.
 5 A. Thank you.
 6 Q. But I want you to answer my question. I
 7 just asked you -- it takes a yes or no
 8 -- did you take it off the market at
 9 that time?
 10 A. There was no reason based on this
 11 finding to take it off the market.
 12 Q. Did you stop --
 13 A. These findings indicated that the
 14 material was -- there were safe ways to
 15 use this in an occupational setting
 16 throughout that time period.
 17 Q. Is that why they banned it --
 18 A. No, that is not why they banned it.
 19 Q. -- later?
 20 A. They banned it because of its
 21 environmental persistence.
 22 Q. And it had nothing whatsoever to do with
 23 its adverse health effects?

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1 Q. Did you make changes? Do you know
 2 whether or not changes were made in the
 3 operation of the plant at Krummrich and
 4 the operation of the plant at Anniston
 5 about safety precautions that were taken
 6 in connection say for instance with the
 7 workers?
 8 A. I know some little bit. I don't know
 9 the exact time frames, and I don't know
 10 in great detail what changes were
 11 implemented, but I know there were some
 12 changes implemented.
 13 Q. Well, would it be fair to say that it
 14 took place in the time frame we are
 15 talking about say in the '50s and '60s
 16 that y'all made some changes?
 17 A. I don't know specifically.
 18 Q. Well, do you know what the changes were?
 19 A. Not specifically. I mean, I know, you
 20 know, things like long sleeve shirts and
 21 rubber soled shoes and things like that.
 22 But I don't have any detailed specific
 23 information about that.

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1 A. I won't say it had nothing whatsoever to
 2 do with it. The primary concern was the
 3 environmental persistence.
 4 MR. STEWART: Now, we'll take up
 5 some additional questions
 6 after lunch and stop there if
 7 that is okay.
 8 MR. KELLY: Okay.
 9 (A lunch break was taken.)
 10 Q. (By Mr. Stewart) Dr. Kaley, I believe
 11 when we left you were talking about what
 12 all you all knew about the toxicity of
 13 PCBs and when you discovered those
 14 things. And it's fair to say that in
 15 that time frame that you are talking
 16 about you began to make some changes in
 17 how you approached your personnel,
 18 didn't you?
 19 A. Which time frame are you speaking of?
 20 Q. The time frame when you began to learn
 21 about the dangers of PCBs.
 22 MR. KELLY: Object to the form.
 23 A. If you have a specific year --

REGIONAL REPORTING SERVICE, INC.

1 Q. But there were some safety measures
 2 taken in connection with the workers'
 3 contact with PCBs; is that correct?
 4 A. There were some, yes.
 5 Q. And there were some changes made, were
 6 there not, in what y'all told your
 7 customers about the PCBs?
 8 A. I don't know specifically. I mean, once
 9 the environmental presence became known,
 10 we did alert our customers to that
 11 information, if that is what you are
 12 speaking about. Otherwise I don't know
 13 specifically what you might be
 14 addressing.
 15 Q. That is what I'm talking about.
 16 A. Okay.
 17 Q. In this time frame, whether it is when
 18 we say it happened, which the documents
 19 seem to indicate somewhere as far back
 20 as 1938 you became aware of it, or if it
 21 is when you say, despite those
 22 documents, when you found out about it,
 23 sometime in the '60s. Did y'all make

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1 changes in labels, warning labels and
2 things like that to tell your customers
3 about it?
4 A. After the presence of PCBs was confirmed
5 in the environment we did alert our
6 customers to the fact there were
7 precautions that needed to be taken with
8 regard to disposal of PCBs, primarily
9 disposal of PCBs, yes.
10 Q. Disposal of PCBs?
11 A. Primarily, yes.
12 Q. Well, we'll get to that in just a few
13 minutes. But before we get to that, did
14 you have a town hall meeting in Anniston
15 at say the municipal auditorium or high
16 school stadium or someplace and call all
17 these folks that lived around and tell
18 them there might be a problem?
19 A. Not that I'm aware of.
20 Q. You didn't do that?
21 A. Not that I'm aware of.
22 Q. So in that time frame that we just got
23 through talking about, whether it is the

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1 A. My understanding is that a hog was found
2 on the landfill. A dead hog was found
3 on the landfill. It was tested for the
4 presence of PCBs. Levels were detected.
5 I don't know specifically what those
6 levels were.
7 Q. Pretty high, weren't they?
8 A. I don't know. I really don't.
9 Q. And this wasn't Monsanto's hog, was it?
10 This was somebody's hog in the
11 neighborhood?
12 A. It was a hog that was on the property on
13 the landfill rooting around presumably.
14 I don't know. I mean, it was found
15 there. I don't really know how it got
16 there or why it got there or anything.
17 But in any case, after that then my
18 understanding is that the plant manager
19 assigned someone who worked with the
20 ministers of the community to identify
21 who those hogs might belong to, and
22 those hogs people -- those hogs were
23 purchased from those people.

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1 '50s or the '60s or the late '60s or
2 early '70s, y'all didn't do a thing to
3 notify these people about the dangers of
4 PCBs and the fact that they might be at
5 risk for living around this plant site?
6 MR. KELLY: Object to the form.
7 A. I'm not aware of any activities. I
8 don't believe they were particularly at
9 risk.
10 Q. Well, you bought the hogs, didn't you?
11 A. I understand that some hogs were
12 purchased at some point, yes.
13 Q. And they were tested, weren't they?
14 A. There was one hog tested prior to the
15 purchase. I don't believe the hogs that
16 were purchased were tested. It is my
17 understanding, anyway.
18 Q. Some of them you dumped after you -- How
19 did that sequence happen? You found a
20 hog, tested it, found he was highly
21 contaminated with PCBs, the hog was, and
22 then you bought the others?
23 MR. KELLY: Object to the form.

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1 Q. The minister?
2 A. That's my understanding, yes.
3 Q. Did y'all tell him that the hog was
4 contaminated with PCBs and he ought to
5 be careful about eating hogs or chickens
6 or anything like that?
7 MR. KELLY: Object to the form,
8 calls for speculation from
9 this witness.
10 A. I'm not aware of what was or wasn't told
11 to anyone.
12 Q. And you have no idea of what was said?
13 A. That's correct.
14 Q. As you sit here today do you know of
15 anything that was said about the hog
16 being contaminated to anybody out their
17 in the neighborhood, any personal
18 knowledge?
19 A. I have no personal knowledge.
20 Q. Okay. Now, when you were talking a
21 minute ago about y'all's capabilities,
22 Monsanto's capabilities to find out
23 whether or not you had PCBs in the creek

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1 or around the landfill or something like
2 that, were you talking about the
3 analytical capabilities of Monsanto?
4 A. I don't have a specific recollection,
5 but, yes, I believe that is what I was
6 addressing.
7 Q. And is it not a fact that Mr. Tucker had
8 that capability?
9 A. At what point in time? After the
10 reports in Sweden that PCBs were present
11 in the environment, were notified and
12 after they -- that presence was
13 confirmed, Monsanto undertook an effort
14 under the leadership of Scott to acquire
15 and develop those analytical techniques
16 necessary to reproduce those findings so
17 at some point in time we did have those
18 techniques in place, yes.
19 Q. Now, when you say techniques are you
20 talking about techniques to test fish to
21 determine whether or not PCBs are in
22 fish?
23 A. Among other things, yes.

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1 A. Dr. Tucker was given the responsibility
2 to implement those kinds of techniques
3 in the Monsanto laboratories in St.
4 Louis. He did not develop those
5 techniques. He was the chemist at
6 Monsanto that implemented those
7 techniques.
8 Q. Is it fair to say that tests had been
9 performed to determine whether or not
10 PCB -- I mean DDT was in the environment
11 at some point in time before Dr. Tucker
12 did this work?
13 A. By Monsanto or by others?
14 Q. By anybody.
15 A. Certainly.
16 Q. How long had that been going on?
17 A. Primarily since about -- Well, the early
18 1960s, 1962 time frame.
19 Q. Could it have been taking place sometime
20 in the '50s, '40s and '50s, where they
21 determined --
22 A. Well, not by the technique that was used
23 to identify PCBs. There may have been

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1 Q. Are you talking about testing water to
2 find out if PCBs are in water?
3 A. Among other things, yes.
4 Q. Soil?
5 A. Yes.
6 Q. Soil samples taken not in sediment, but
7 just soil samples taken from somebody's
8 yard or around the plant site?
9 A. The techniques could have been used for
10 that. I don't know if we did that.
11 Q. And were you capable of taking those
12 kinds of tests or doing or performing
13 those kinds of tests in sediment?
14 A. Yes.
15 Q. So it would be fair to say, would it
16 not, Dr. Kaley, that those
17 capabilities -- and I don't want to put
18 words in your mouth; I'm trying to
19 understand what you are saying -- were
20 arrived at by Dr. Tucker, Scott Tucker?
21 A. I'm not sure what you mean by arrived
22 at. Dr. Tucker was --
23 Q. He developed those?

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1 other techniques to determine DDT in the
2 environment. I don't have a specific
3 knowledge of that, but I know that the
4 detector that was being used, was then
5 used and still used to measure PCBs and
6 DDT at trace levels in environmental
7 samples wasn't developed until 1961 or
8 1962. So there may have been other
9 techniques.
10 Q. Who developed that?
11 A. A guy named James Lovelock in Great
12 Britain.
13 Q. That would have been somewhere in 1960
14 or '61?
15 A. Somewhere in that general time frame,
16 yes.
17 Q. And what are you talking about was used?
18 A. I'm talking about something called an
19 electron capture detector.
20 Q. Electron capture detector?
21 A. Correct.
22 Q. That is basically what Dr. Tucker was
23 using in his lab, wasn't it?

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1 A. Among others things, yes.
 2 Q. And isn't it a fact that Dr. Tucker had
 3 gotten far enough along with his
 4 understanding of something somebody else
 5 had put together that he could transfer
 6 that knowledge to Anniston? Isn't that
 7 right?
 8 A. At some point in time I'm sure that's
 9 correct.
 10 Q. Well, in fact isn't it somewhere around
 11 the time frame we're talking about in
 12 the late '60s?
 13 A. Well, I don't know, Mr. Stewart. You
 14 have a document there. I know there is
 15 a document that exists --
 16 Q. I don't have a document. I'm just
 17 asking you a question, Dr. Kaley.
 18 A. It was in the late 1960s, early 1970
 19 time frame. I don't know what time that
 20 transfer actually did occur.
 21 Q. And he transferred that capability, did
 22 he not, Mr. Tucker, to the folks -- or
 23 Dr. Tucker, to the folks in Anniston?

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1 Choccolocco on into the Coosa?
 2 A. I understand what the drainage basin is.
 3 I don't know to what extent that
 4 drainage basin, quote unquote, was
 5 tested. I know we were looking at the
 6 plant outfall and various other portions
 7 of that waterway, but I don't know the
 8 extent of that testing.
 9 Q. Let me show you an exhibit that we will
 10 mark as Exhibit Thirteen.
 11 (Plaintiffs' Exhibit Number
 12 Thirteen was marked for
 13 identification.)
 14 Q. If you will take a look at that
 15 document, I want to ask you a question
 16 about it.
 17 A. I've read the first page. The other
 18 ones are -- I'll read them if you want.
 19 Q. Well, I just want to ask you a question
 20 about the first page. This is titled
 21 "Aroclor Losses at the Anniston Plant"?
 22 A. Yes.
 23 Q. And it is to report the losses at the

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1 A. At some point.
 2 Q. So they could do that in the lab
 3 themselves?
 4 A. At some point in time I believe that is
 5 correct, yes.
 6 Q. And they in fact tested air, water,
 7 sediment and found PCBs, fairly
 8 extensive amounts of it, in Choccolocco
 9 Creek fish, in the sediment, and all
 10 around that plant site, didn't they?
 11 A. Certainly there were PCBs detected in a
 12 variety of matrices in that time frame.
 13 I don't know which ones or what levels,
 14 but generally yes.
 15 Q. And in the Snow Creek-Choccolocco Creek
 16 Watershed, wasn't it?
 17 A. I don't know what that means or how that
 18 is defined. In those waterways,
 19 presumably in fish and/or sediments,
 20 there were detections made. I don't
 21 know specifically.
 22 Q. You don't know the drainage basin that
 23 leads from Snow Creek down to

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1 plant, and then it is to report all the
 2 data on Aroclor residues in the Snow
 3 Creek-Choccolocco Creek Watershed?
 4 A. Yes, that is how it is described.
 5 Q. It indicates on the third page of this
 6 document, Exhibit Thirteen, that there
 7 were significant amounts of Aroclor in
 8 the mud and water of Choccolocco and
 9 Snow Creeks a considerable distance,
 10 fifteen to twenty miles downstream from
 11 the Anniston plant. Is that correct?
 12 A. That's what the document says, yes.
 13 Q. Well, I assume that once y'all found
 14 that out from this report that y'all
 15 rushed out and told the people down at
 16 ADEM that; is that correct?
 17 MR. KELLY: Object to the form.
 18 Q. Or AWIC?
 19 A. I don't know.
 20 Q. I think it was the Alabama Water
 21 Improvement Commission at that time.
 22 A. That was the agency that existed at that
 23 time. I don't know what if anything was

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1 done in response to this particular
2 finding or not.
3 Q. Didn't you have a responsibility under
4 the law in Alabama that was in place at
5 that time to report that?
6 MR. KELLY: Object to the form.
7 A. I'm not aware of any law. I don't know
8 specifically. I'm not aware of any law
9 in Alabama that would have required us
10 to report that.
11 Q. Dr. Kaley, we are talking to a gentleman
12 who is the PCB expert here for the
13 plant, steward, and you have looked back
14 over all these records, haven't you?
15 You are not unfamiliar with this
16 information, are you?
17 A. I don't know that I have seen this
18 document. I know generally what went
19 on. I've not looked at every document
20 that exists, no.
21 Q. Well, you know what stewardship means,
22 don't you? Do you think your
23 predecessor had the responsibility to

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1 Q. Well, forget the regulations. Isn't it
2 a fact that you all had the
3 responsibility as a good neighbor to let
4 people know the truth about what was
5 happening in Choccolocco Creek?
6 MR. KELLY: Object to the form.
7 A. We alerted the environmental agency at
8 the time about what our understanding
9 was of the situation there, yes.
10 Q. I'm not talking about the environmental
11 agency. I'm talking about these
12 neighbors of yours as to what you were
13 finding, Dr. Kaley, the people who
14 lived --
15 A. Yes.
16 Q. -- around your plant. That is what I'm
17 talking about. Didn't you have a
18 responsibility just as a good
19 neighbor --
20 A. No, because I don't believe we had
21 enough of an understanding of the
22 situation at the time to have anything
23 particularly to communicate.

1 let people know what was going on about
2 PCBs at this particular time frame?
3 A. I think there were responsibilities to
4 let the agencies know. I said I didn't
5 know what did or didn't happen.
6 Q. Okay. What about the EPA? They were in
7 existence at this time, weren't they?
8 A. I do not believe so.
9 Q. Sir?
10 A. I do not believe so.
11 Q. This was July of '70.
12 A. This is right around the time they were
13 created. I thought it was '71 that they
14 were created. If they were, they were a
15 very nascent agency at that time.
16 Q. But once they were created, didn't you
17 have some kind of responsibility to let
18 them --
19 A. I don't believe there were any
20 regulations at the time, and certainly
21 it is my understanding that AWIC did
22 have an understanding of what was going
23 on at the time.

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1 Q. Well, let's see, Dr. Kaley. We have
2 gone through the Drinker study. We have
3 gone through the study you said y'all
4 did after the Drinker study. We have
5 talked about Kettering. We have talked
6 about -- In fact, I think at some point
7 in time some of your own workers sued
8 you, didn't they, for some kind of
9 problem they had prior to this time,
10 prior to '70?
11 A. I do not believe that is correct.
12 Q. You are not aware of that?
13 A. I'm certainly not.
14 Q. So as you sit here today as the person
15 who is responsible for reporting to
16 these agencies, you have no knowledge
17 about the fact that y'all were actually
18 sued for health effects -- there were
19 adverse health effects that were caused
20 by PCB exposure by some of your workers
21 at the Anniston plant?
22 A. I'm not aware of it.
23 Q. But it is your position that all y'all

1 had to do is just tell your workers, the
2 people you were selling it to, and the
3 agencies; is that correct?

4 MR. KELLY: Object to the form.

5 A. I would think that's a fair
6 characterization, yes.

7 Q. Wouldn't it be fair to say that you
8 shouldn't tell a story about it?

9 MR. KELLY: Object to the form.

10 A. I'm sorry?

11 Q. Wouldn't it be fair to say that in this
12 time frame you shouldn't be telling a
13 story about it?

14 A. I don't know what you mean by a sorry.

15 Q. Misrepresenting the facts about the PCB
16 contamination that was coming off your
17 Anniston plant and manufacturing
18 facility, that's what I mean by a story.
19 Now do you understand?

20 A. I understand what you mean. I don't --
21 I don't know what you are referring to.

22 Q. Do you think that it is important that
23 you tell the truth about it?

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1 degrade for very extended periods of
2 time, but some of them degrade very
3 readily.

4 Q. Now, which ones are those that don't
5 degrade over an extended period of time?

6 A. Primarily those with five or six or more
7 chlorines on the biphenyl ring.

8 Q. The more highly chlorinated?

9 A. Correct.

10 Q. 1260, 1268?

11 A. Well, you really can't talk about the
12 mixtures. There are certainly
13 components of 1260 and 1268 that
14 degrade. But really, when you are
15 talking about degradation, you can't
16 really talk about a product as such.
17 You have to talk about the individual
18 components of that mixture. But
19 certainly 1260 has more highly
20 chlorinated materials in it, and many of
21 the components of that are going to be
22 among those that degrade more slowly.

23 Q. Stay there for a while?

1 A. Yes.

2 Q. Okay. And were y'all of the opinion at
3 that time that y'all had a pretty good
4 head of steam on solving this problem?

5 A. I don't know what date the document is
6 that you are reading, so I can't address
7 whether that is an appropriate statement
8 or not.

9 Q. I'm talking about in the '70s, that
10 y'all had a handle on stopping this
11 stuff from leaving your plant site,
12 taking care of the cleanup, whatever you
13 had to do.

14 A. I believe we had a generally good
15 understanding, yes.

16 Q. And was it your understanding that this
17 stuff biodegraded at that time?

18 A. Some PCBs biodegrade, yes.

19 Q. All of them?

20 A. Not every one, no. Well, I don't know.
21 At some rate they probably all do, but
22 some of them certainly degrade faster
23 than others, and some of them don't

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1 A. Stay where?

2 Q. In the environment, persist.

3 A. Oh, they stay there. I'm sorry. I
4 thought you were telling me to stay here
5 for a while.

6 Q. No. They stay there for a while, in the
7 environment.

8 A. They do.

9 Q. I'm sorry. I just used the vernacular
10 term. I certainly don't want to mislead
11 you. But y'all had a lot of that at the
12 Anniston plant, didn't you, a lot of
13 waste buried up on that landfill that
14 had 1260 and 1268 in it?

15 A. Well, there are certainly wastes on
16 those landfills that presumably have --
17 I don't think there is necessarily 1260
18 or 1268 product in them. But there are
19 wastes in the landfill that have more
20 highly chlorinated materials. That's
21 correct.

22 Q. Well, let me show you what was -- will
23 be Exhibit Fourteen.

1 (Plaintiffs' Exhibit Number
2 Fourteen was marked for
3 identification.)
4 A. I've read it.
5 Q. Now, this is by a guy named J. C.
6 Landwehr. Is he an employee of
7 Monsanto?
8 A. I believe at the time.
9 Q. Did he work at the Anniston plant?
10 A. I believe so.
11 Q. Who is J. L. Crockett?
12 A. I believe he was a commissioner or some
13 administrator in the Alabama Water
14 Improvement Commission.
15 Q. A person y'all worked with fairly
16 closely?
17 A. I don't know that. I know we had
18 communications with that commission and
19 with Mr. Crockett. I don't know that we
20 worked with him very closely. I don't
21 know what you mean by that.
22 Q. Well, you worked with them about as
23 closely as you worked with then Attorney

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1 was talking about this stuff in 1970,
2 would they?
3 A. That's correct.
4 Q. Isn't it a fact, Dr. Kaley, that y'all
5 are finding significant levels of PCBs
6 in the core sediment samples that you
7 are doing of Snow Creek and Choccolocco
8 Creek even today?
9 A. Well, number one, I don't know what that
10 question has to do with that statement.
11 But do you want me to answer that in the
12 abstract, or am I supposed to relate it
13 back to this statement?
14 Q. Well, I hope you do. I thought this
15 meant -- And I was asking you to tell
16 me. I could pronounce them, but I
17 couldn't tell you what they were. I
18 thought you told me -- And I may have
19 misunderstood you, so please clear it up
20 for me if I did. I thought these words
21 here meant that biologically these
22 things would degrade or break down. Is
23 that right?

1 General Don Siegleman, didn't you?
2 MR. KELLY: Object to the form, no
3 foundation.
4 A. I have no idea.
5 Q. Mr. Landwehr indicates -- And I want you
6 to help me with these, Dr. Kaley,
7 because I'm not an analytical chemist,
8 and I want you to help me and the jury
9 understand these things. He says -- And
10 he is talking about Aroclors or
11 polychlorinated biphenyls or PCBs. And
12 he is talking about the progress report
13 on the abatement of polychlorinated
14 biphenyl discharge to Snow Creek. Is
15 that what he is talking about?
16 A. That's what the underlined first
17 sentence says.
18 Q. He says, "Many of these are degradable
19 by biological and metabolic action if
20 introduced into the environment." Break
21 down?
22 A. That's fair, yes.
23 Q. So they wouldn't be there today if he

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1 A. Right. But that --
2 Q. Metabolic action would take place, and
3 would that remove them from where they
4 are? Or are you telling me they would
5 stay despite those things, PCBs?
6 A. Is it time for me to answer? She gets
7 mad when I start to answer and you keep
8 talking.
9 Q. I understand.
10 A. Okay. If we are looking at the second
11 paragraph, it talks about the discharge
12 being in the range of one to five total
13 mono and polychlorinated homologs. All
14 right. A homolog is a description of
15 PCBs based on the number of chlorines on
16 the biphenyl ring. So monochloro
17 biphenyls, biphenyls with one chlorine
18 on the ring, are the monochloro homolog
19 of PCBs. If they have two phenyl --
20 Excuse me. If they have two chlorines
21 on the ring, they are the diphenyl or --
22 I'm all messed up. I'm sorry. If they
23 have two chlorines on the ring, they are

1 the dichloro homolog of PCBs. We can do
2 the same thing for three through ten.

3 Okay. The next statement says,
4 "Many of these are degradable," and that
5 refers back to the biphenyl homologs.

6 So many of those homologs are
7 degradable, and that is true. The
8 monochloro biphenyl homologs are almost
9 instantaneously degradable in the
10 environment. The same is true of most
11 of the dichloro biphenyl homologs. The
12 same is true of many of the trichloro
13 and tetrachloro homologs and some of the
14 others.

15 As you get higher levels of
16 chlorination on the ring, as those
17 homolog numbers go up, fewer of those
18 congeners are degradable.

19 So what that statement means is
20 many of those homologs are degradable in
21 the environment, and that is what it is
22 talking about. It doesn't say every PCB
23 in the environment. It says many of

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1 sediment of that creek out there and be
2 gone; is that correct?

3 A. The purpose of the memo is to describe
4 to Mr. Crockett what we have learned
5 about the biodegradability of PCBs. The
6 lower chlorinated homologs are more
7 readily degraded. They are typically
8 not found in environmental samples. The
9 more highly chlorinated materials are
10 less chlorinated -- more chlorinated
11 tend to not be as degradable, are found
12 in environmental samples.

13 And the statement -- I don't know
14 -- in the middle of the second
15 paragraph, "We are in the process of
16 developing more sophisticated analytical
17 and computational techniques to report
18 to you analyses of our discharge of the
19 same homologs which are reported in
20 biological samples," is addressing that
21 very issue. We are telling them that
22 rather than tell them about all these
23 ones that degrade right away, we are

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1 those homologs are degradable, and that
2 is absolutely a true statement depending
3 on the level of chlorine and to some
4 extent the position of chlorines on
5 those rings.

6 Q. What about one of them big homologs, one
7 of them big chlorinated things that you
8 were talking about a minute ago?

9 A. That is certainly true. The more
10 chlorines on the ring, the more they
11 tend to stay in the environment and the
12 less degradable they are. In general
13 that is a true statement.

14 Q. Well, if I could just finish, it would
15 not be true that those things have the
16 same kind of properties that these that
17 you just mentioned?

18 A. Well, that's true. That's the whole
19 point of this state -- that's the whole
20 point of this memo.

21 Q. The point of this memo is to tell
22 Mr. Crockett that those things that you
23 just indicated would degrade in the

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1 going to tell them about the ones that
2 are found in biological samples, which
3 tend to be the more heavily chlorinated.

4 Q. I assume that you told them, "Fellows,
5 Mr. Crockett, folks at the Alabama Water
6 Improvement Commission, we have a lot of
7 still bottoms that are more highly
8 chlorinated than what we are talking
9 about here in this second paragraph on
10 this October 21st, 1970, document that
11 are buried in our landfill and very
12 frankly are stored in drums east of the
13 plant." Did you tell them that?

14 A. I don't know specifically what was told
15 them about the landfills or not. That
16 has nothing to do with this document.
17 This is about the analysis of
18 environmental samples, not samples from
19 the landfill.

20 Q. This is about an analysis of the less
21 chlorinated PCBs?

22 A. No, no. It is analysis about all of the
23 chlorinated PCBs, but that we are going

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1 to report to them our findings of the
2 more chlorinated materials, which are
3 the ones that are found in environmental
4 samples.
5 Q. Okay. Now, did y'all also do air
6 sampling or have the capacity to do air
7 sampling at that time?
8 A. I think there was some seminal attempts
9 to look at air discharges from discharge
10 points near the plant. I don't know
11 that there was any ambient air sampling
12 done.
13 Q. Tell me what you mean by what you just
14 got through saying.
15 A. I mean that --
16 Q. Put it in lay terms so the jury --
17 A. Air sampling for PCBs and many things is
18 a very difficult process. The
19 procedures in that time frame for
20 collecting were very experimental and
21 probably not too sensitive. The only
22 data that I have seen recording air
23 sampling at the Anniston plant in that

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1 Q. A Monsanto employee?
2 A. Yes.
3 Q. Apparently working at Krummrich at that
4 time?
5 A. Correct.
6 Q. And he sent this memo to a Mr. Pierle
7 and to a W. Engman. Do you know those
8 two people?
9 A. I know Mr. Pierle. I don't know
10 Mr. Engman. It is to Mr. Engman
11 referencing a memo of Mr. Pierle. That
12 is not really relevant. I do not know
13 Mr. Engman, no.
14 Q. This talks about an air sampling program
15 that was going on at Krummrich, correct?
16 A. Yes. Well, it was proposed to go on at
17 Krummrich, yes.
18 Q. And that would be because of the fact
19 that you all were aware that Aroclors
20 under certain conditions made it into
21 the air?
22 A. Well, I think it was to test that
23 hypothesis, to determine whether

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1 time frame is sampling at points near
2 the process itself, not in ambient air
3 samples away from where the PCBs were
4 being manufactured.
5 Q. What did they find?
6 A. I don't remember the numbers. In
7 certain cases they did find PCBs and
8 reported PCBs in the air near the
9 process.
10 Q. They were doing a pretty good sampling
11 program at Krummrich, weren't they?
12 A. I'm not aware of what specifically was
13 going on there.
14 MR. STEWART: Mark that Fifteen.
15 (Plaintiffs' Exhibit Number
16 Fifteen was marked for
17 identification.)
18 Q. If you will take a look at Plaintiffs'
19 Exhibit Fifteen, that's a document that
20 is signed by a gentleman named M. R.
21 Foresman. Is that Mike Foresman we
22 referred to previously?
23 A. Yes.

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1 Aroclors under the conditions in the
2 department where they were being
3 manufactured were leading to air
4 discharges, yes.
5 Q. And did you determine that they were?
6 A. I don't know the results of this
7 program.
8 Q. Was it determined or do you know whether
9 or not a determination was made that
10 your manufacturing process was admitting
11 PCBs into the air?
12 A. There are -- I have seen results from
13 the Anniston plant, not the Krummrich
14 plant, where they reported that there
15 were air levels at points within the
16 manufacturing process.
17 Q. Significant levels?
18 A. I don't recall what they were. They
19 were certainly measurable. But that
20 was, you know -- I mean, those PCBs
21 right at that plant are at elevated
22 temperatures from the manufacturing
23 process. And were they to be discharged

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1 to the air, they would not stay in the
2 air very long at very high levels.
3 Q. Were there any findings of dibenzofurans
4 in those air tests?
5 A. I don't believe that -- At the time
6 those were done I don't believe the
7 capability existed to do that analysis.
8 Q. Would there have been?
9 A. I don't believe so. I don't believe
10 they would have been detectable, no.
11 Q. Would they have been in there?
12 A. Well, I don't know the answer to that.
13 If they were in there, they were at
14 very, very, very low levels.
15 Q. Okay. Now, you have indicated all of
16 this stuff about your knowledge about
17 it, but you have left one thing out. Is
18 it not a fact that y'all got involved in
19 some tests at that time and were fully
20 aware of the persistence of PCBs in the
21 environment not just from the Swedish
22 study but also from a study that had
23 been done in Pensacola, Florida?

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1 Q. And the test plots at the University of
2 Florida in Gainesboro?
3 A. Right.
4 Q. It indicates that Aroclors were buried
5 on June 28th, 1939, doesn't it?
6 A. That is what this document says, yes.
7 Q. And they were dug up some thirty years
8 later; is that correct?
9 A. I believe they may have been. You
10 cannot get that from this document.
11 This document just says he believes he
12 knows where they are. I believe they
13 were dug up, but I don't know that. You
14 can't tell that from this document.
15 Q. Well, what did you find? What was
16 found? Do you know?
17 A. I don't recall specifically.
18 Q. Is it not a fact, Dr. Kaley, that what
19 was found at that time -- and Mr. Tucker
20 would certainly know, because he is
21 copied on this thing, isn't he? What
22 was found at that time is that there was
23 still pretty good evidence of a pretty

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1 A. I'm not aware of what you are
2 specifically referring to.
3 Q. Are you not aware of the fact that in --
4 It might have been University of Florida
5 Gainesboro. But are you not aware of
6 the fact that some Aroclors were buried
7 in the soil at some point in time say in
8 1939, and then they were dug up, and
9 there is pretty good evidence they had
10 lasted --
11 A. I have some recollection of what you are
12 talking about. I don't recall the
13 specific details, but I know what you
14 are referring to.
15 Q. Let me show you Exhibit Sixteen.
16 (Plaintiffs' Exhibit Number
17 Sixteen was marked for
18 identification.)
19 Q. This is Mr. Wheeler writing to a W. R.
20 Richard?
21 A. Yes.
22 Q. He is talking about the soil tests.
23 A. Okay.

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1 good percentage of the PCBs that had
2 been buried?
3 A. I would be surprised if they weren't
4 there. They are going to stay, adhere
5 to the soil and adhere to whatever they
6 were on. I assume they were on wood.
7 They are talking about termite proofing.
8 I'm assuming wood. I think they
9 probably would be there. I would not be
10 surprised at that at all. They are not
11 mobile under those conditions.
12 Q. Not mobile under those conditions?
13 A. That is why they are still there. I
14 mean, I would expect that some of the
15 Aroclor 1242 would have degraded but
16 some of the 48 and 54 was probably there
17 at very significant concentrations
18 because that is going to stay where it
19 is.
20 Q. Stay where it is, won't move or won't
21 migrate?
22 A. Yes.
23 Q. Is that your point?

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1 A. That's right.
 2 Q. Your point earlier is that it was
 3 persistent. But your point now,
 4 Dr. Kaley, is it won't migrate?
 5 A. Both of those.
 6 Q. Doesn't this show it stays there for a
 7 long period of time and doesn't
 8 biodegrade, doesn't break down?
 9 A. This particular test? Are we still
 10 talking about this document? I don't
 11 know the outcome of these tests. That
 12 would not surprise me, that if they
 13 found it it did stay there and didn't
 14 break down. Those two things are
 15 consistent and basically synonymous.
 16 That is what persistence is, that they
 17 stay there.
 18 Q. Right. And if they cause adverse health
 19 effects and didn't biodegrade, that
 20 would make them doubly dangerous,
 21 wouldn't it?
 22 A. Not if they are buried in ground and
 23 people don't have access to them, no.

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1 effect at that time where you take the
 2 responsibility for what you make on your
 3 plant site and don't let it off your
 4 plant site if it is harmful possibly to
 5 your neighbor? It wasn't in effect at
 6 that time?
 7 MR. KELLY: Object to the form.
 8 A. Well, it certainly hadn't been written
 9 at that time.
 10 Q. Well, Mr. Cheever, who is another
 11 Monsanto employee that I deposed, said
 12 that it didn't have to be in writing,
 13 that that is the hallmark of Monsanto,
 14 that y'all took it upon yourselves to
 15 make sure that you didn't injure your
 16 neighbors.
 17 A. I believe that's correct.
 18 Q. And that has been true about this
 19 company, certainly was true at the time
 20 you bought Swan? *
 21 A. I believe that's true. To the best of
 22 their ability to have knowledge about
 23 potential harm, that they would

1 Q. Now, did y'all do any aqueous phase
 2 testing at that time of Snow Creek back
 3 in the '60s?
 4 A. By that I assume you mean water sample
 5 testing. I assume water samples were
 6 tested, yes.
 7 Q. So you had capability to do it then?
 8 A. In the 1960s, yes.
 9 Q. Did you tell the neighbors about your
 10 findings?
 11 A. I'm not aware of what was or wasn't
 12 communicated.
 13 Q. You don't know whether it was
 14 communicated or not?
 15 A. That's correct.
 16 Q. Didn't you have an obligation to do
 17 that, Dr. Kaley, both about the toxicity
 18 of this substance and also about the
 19 fact that it was leaving your plant
 20 site?
 21 MR. KELLY: Object to the form.
 22 A. I don't believe so, no.
 23 Q. You mean the Monsanto pledge wasn't in

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1 communicate that.
 2 Q. Yet as you sit here today, Dr. Kaley,
 3 you cannot tell me of a communication
 4 that y'all have made to your neighbors
 5 either about the toxicity of this
 6 product and the adverse health effects
 7 it might cause them nor about the fact
 8 that it was leaving your plant site,
 9 didn't do that until sometime after
 10 1993? Isn't that true?
 11 A. I'm not aware of any efforts in that
 12 regard, but I don't necessarily think
 13 there was anything that should or could
 14 have been communicated that would have
 15 provided information that their health
 16 was at risk at that time frame.
 17 Q. What you all were interested in at that
 18 particular time was how much money y'all
 19 were making off the PCBs --
 20 MR. KELLY: Object to the form.
 21 Q. -- and continuing to keep that product
 22 flowing out of that Anniston plant and
 23 out of that Krummrich plant and ringing

1 up those dollar bills. Isn't that what
2 you were interested in?

3 MR. KELLY: Object to the form.

4 A. Those -- Economic considerations were
5 among the considerations Monsanto
6 considered -- I guess that is redundant
7 -- during that time frame. But I don't
8 know that your characterization is
9 correct that that is all that mattered.
10 No, it wasn't all that mattered.

11 MR. STEWART: Let's mark this as
12 Plaintiffs' Exhibit
13 Seventeen.
14 (Plaintiffs' Exhibit Number
15 Seventeen was marked for
16 identification.)

17 Q. Now, this is a long document. But it is
18 called "PCB Presentation to Corporate
19 Development Committee," Exhibit
20 Seventeen is. And the second page is
21 "PCB Agenda Review." And on that page
22 -- I'm looking for those things that
23 indicate any kind of notice that you all

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1 Would you assume that with me, Dr. Kaley
2 A. That would be a safe assumption, I
3 believe.

4 Q. It is talking about plasticizers
5 worldwide on the next page, and 1968
6 sales are mentioned on the next page.
7 Then you begin to talk at the tail end
8 of it about possible plans that y'all
9 have for recommended action plan.

10 MR. KELLY: Donald, what page are
11 we on?

12 MR. STEWART: Page twenty.

13 Q. It says clean up Monsanto plant
14 effluents within twelve months. Tell me
15 what effluents means, waste stream
16 coming off the plant?

17 A. Or streams coming off the plant, doesn't
18 have to be a waste stream. It could be
19 storm water, whatever is coming off the
20 plant, yes.

21 Q. It certainly would include the
22 landfills, wouldn't it?

23 A. If there were streams coming off the

1 were intending to make to your neighbors
2 there in Anniston. Do you see anything
3 on there that dealt with that?

4 A. I don't see anything that leads to that
5 specific --

6 Q. Sir?

7 A. I don't see anything that leads to that
8 specific area, no.

9 Q. On the next page -- Let's see, not that
10 page, but page four, which says,
11 "Monsanto Worldwide Aroclor Business,"
12 it talks about sales; is that correct?

13 A. Yes.

14 Q. Then it talks on page six about the
15 effect on Monsanto and our alternative
16 courses of action, right?

17 A. Yes.

18 Q. And to give you some kind of a date,
19 look on page fifteen, it talks about
20 fluids business threatened, and that is
21 on page fifteen. It is dated 1970
22 budget. So I would assume this document
23 was put together sometime in '69 or '70.

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1 landfills that contained materials of
2 concern, yes.

3 Q. Weren't there streams -- Haven't we
4 already established, Dr. Kaley, that
5 there were streams coming off that west
6 end landfill and also off the south end
7 landfill?

8 A. Well, there was storm water discharges
9 from those landfills. I don't know
10 that --

11 Q. Going into ditches and coming off those
12 landfills?

13 A. At some point in time.

14 Q. At this time those things were wide
15 open, weren't they?

16 MR. KELLY: Object to the form.

17 A. What were wide open?

18 Q. They were open pits?

19 A. What were?

20 Q. The landfill.

21 A. Well, certainly the west end landfill
22 wasn't. It had been closed and capped
23 in 1960, before it was transferred to

1 Alabama Power. I don't know the total
2 situation of the south landfill. If it
3 was being active, there were certainly
4 probably active cells open, yes.
5 Q. But there were also storage areas
6 outside that landfill area, weren't
7 there --
8 A. I don't know.
9 Q. -- of still bottoms?
10 A. There may have been. I don't know. I
11 believe that's correct.
12 Q. Now, y'all talk about five here on page
13 twenty. Educate customers on the need
14 for cleanup at their plants?
15 A. That is what it says, yes.
16 Q. Why didn't you do that to yourself?
17 A. We did.
18 Q. Sir?
19 A. We did. We made extensive efforts to
20 reduce the levels in our effluents.
21 Q. From the manufacturing process?
22 A. Yes.
23 Q. What about the landfill itself?

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1 Manufacturers Association? Wasn't
2 Monsanto a part of that in the '40s and
3 '50s?
4 A. I don't know the date when they joined.
5 I wouldn't be surprised, but I don't
6 know specifically when they might have
7 joined that organization
8 Q. And didn't those organizations -- Didn't
9 those organizations talk about what the
10 responsibilities of the chemical
11 manufacturers were to discharging wastes
12 into streams?
13 A. I'm not aware of what they may or may
14 not have said in the '40s and '50s.
15 Q. If they did during that particular
16 period of time, Monsanto certainly would
17 have been aware of it, wouldn't they,
18 Dr. Kaley?
19 MR. KELLY: Object to the form,
20 calls for speculation.
21 A. I don't really know. Presumably. If
22 they were a member and they made those,
23 I would presume they were aware of

1 A. Well, the landfill was there to serve
2 the purpose to dispose of those wastes.
3 That was the point of having a landfill,
4 was having a safe and secure way to
5 dispose of those wastes.
6 Q. Now, Dr. Kaley, I'm not going to go into
7 too much detail with you, but isn't it a
8 fact that you all knew what your
9 responsibilities were about waste
10 disposal long before 1970?
11 MR. KELLY: Object to the form.
12 A. I'm not sure what that question means.
13 I'm confident that the people operating
14 the plants were operating in ways that
15 they felt were the best available at the
16 time in whatever time frame.
17 Q. Weren't y'all a --
18 A. That's different then than it is now,
19 and there is no question about that.
20 But I believe that they were operating
21 those landfills in ways they believed
22 were appropriate.
23 Q. Weren't y'all a part of the Chemical

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1 those.
2 Q. They would know?
3 A. But the landfills were not discharging
4 into streams. The landfills were secure
5 to the best of their ability at the
6 time, methods of disposing of waste.
7 Q. Well, let's just say for the sake of a
8 hypothetical that that particular
9 organization that we just mentioned
10 indicated you should not landfill toxic
11 poisons such as PCBs in a place where it
12 might affect ground water.
13 MR. KELLY: Object to the form.
14 A. I cannot imagine that statement could
15 have been made by any organization in
16 the 1940s and the 1950s. There is no
17 way that statement could have been made.
18 Q. Okay. What about streams and waterways?
19 A. I don't know what was said and what
20 wasn't. If you have a document that you
21 would like to show me and ask me whether
22 it says that --
23 Q. I don't have a document.

1 A. I'm not aware of any of those
2 communications.
3 Q. But if they were, let's just say assume
4 for the sake of a hypothetical that that
5 organization itself and the federal
6 government said you ought be careful
7 about what you put into streams, then
8 Monsanto would have known that, wouldn't
9 they?

10 MR. KELLY: Object to the form,
11 calls for speculation.

12 A. You know, I would presume, depending on
13 how that communication was made, they
14 would have access to that information.
15 I don't know.

16 Q. And isn't it a fact that at this
17 particular plant site it does affect
18 streams? A waste stream coming off that
19 south landfill and the west landfill
20 does affect streams, water systems?

21 A. I do not believe that there were waste
22 streams coming off either the south
23 landfill or the west landfill.

REGIONAL REPORTING SERVICE, INC.

1 those properties of PCBs and frankly,
2 Dr. Kaley, know what might happen to
3 those PCBs once they were buried in that
4 landfill and exhibited those properties?

5 MR. KELLY: Object to the form.

6 Q. Do you not understand the question?

7 A. Well, I'm trying -- I'm not sure what
8 the question is. I believe that after
9 Monsanto in 1966 learned about the
10 potential for the environmental presence
11 of PCBs they undertook a program which
12 made them among the most knowledgeable
13 people in the world about PCBs and their
14 behavior, yes.

15 Q. We have already talked about the fact
16 that they probably, before they put this
17 product on the market, should have been
18 the most knowledgeable people in the
19 world and probably were.

20 A. Well, they were about -- I'm sure they
21 were, but not necessarily about the
22 environmental properties because that
23 was not an issue that the chemical

1 Q. You have indicated earlier, Dr. Kaley,
2 that PCBs are a fairly sticky kind of
3 substance, attach themselves to
4 particles --

5 A. That's correct.

6 Q. -- of dirt.

7 A. Correct.

8 Q. Hang on pretty tight?

9 A. Correct.

10 Q. If the wind were to come along and blow
11 over that landfill, there is a good,
12 distinct possibility, is there not,
13 Dr. Kaley, that it could blow those PCBs
14 that are just out there in the open,
15 attached to dirt, all over that
16 community? Isn't that right?

17 MR. KELLY: Object to the form.

18 A. If there were PCBs attached to small
19 soil particles that were subject to
20 being picked up by the wind, some small
21 amounts could have been picked up. Yes.

22 Q. And there is nobody in the world better
23 equipped than Monsanto to know about

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1 industry or anyone was dealing with at
2 that time because the techniques were
3 not available to make those kinds of
4 measurements. Once those measurements
5 were made and those techniques became
6 available, Monsanto, like the rest of
7 the chemical industry, changed the way
8 it did things and changed the way it
9 looked at things and changed the way it
10 studied things and changed its
11 behaviors, just as we did.

12 Q. The analytical capabilities didn't have
13 anything to do with the toxicity of
14 PCBs --

15 A. It certainly had a --

16 Q. Those animal studies were done by
17 Dr. Drinker in 1938.

18 A. To deal with heavy exposures in a
19 specific industry where PCBs were being
20 used -- pure PCBs and other materials --
21 mostly other materials in the cable
22 pulling industry. But exposure
23 situations where there were very high

1 exposures to elevated temperatures. The
2 analytical techniques and toxicity do go
3 hand in hand, because if you don't have
4 either the capability or understand the
5 need to measure, then you don't have the
6 capability to understand how the
7 toxicity tests should be done and under
8 what levels those toxicity tests may or
9 may not be important. So those two
10 techniques definitely go hand in hand.
11 Q. And Dr. Drinker felt confident enough to
12 tell you that it caused damage to the
13 liver, and Elmer Wheeler and Emmet Kelly
14 apparently bought some of that because
15 of their statements that they made in
16 documents that we have seen numerous
17 times in this case. They were concerned
18 about that very same thing, weren't
19 they?
20 A. Dr. Drinker made statements that the
21 material was very nontoxic and caused
22 changes in the liver. I don't believe
23 he used the term damage to the liver.

REGIONAL REPORTING SERVICE, INC.

1 it, and that is to keep selling this
2 product as much as you possibly can? Is
3 that correct?
4 MR. KELLY: Object to the form.
5 A. In a brief review, it looks like an
6 overall summary of what was the
7 understanding of the problem at that
8 date and time. I don't see any
9 statement in there at all about continue
10 to sell the product. I haven't read it
11 carefully, so if you have a statement
12 that you want to refer me to, I'll be
13 happy to take a look at it. But it
14 looks to me like it is a broad overview
15 of the entire PCB situation as it was
16 being understood at that time.
17 Q. Well, look at the first page and look up
18 at the top. It says one, two, three.
19 A. Okay.
20 Q. Permit continued sales and profits of
21 Aroclors and terphenyls. Those are
22 PCBs, aren't they?
23 A. Well, terphenyls aren't. Aroclors, some

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1 Q. Where would Mr. Wheeler and Emmet Kelly
2 get the kind of statement that they made
3 that they were concerned about liver
4 damage?
5 A. Well, because -- primarily from the
6 understanding of the potential effects
7 in animals and reports from industries
8 where PCBs were being used with a lot of
9 other materials that liver damage was a
10 potential from those kinds of mixtures.
11 So it was a potential. There is no
12 question.
13 Q. Let me give you document number Eighteen
14 and -- Now, Dr. Kaley this is a
15 confidential document called minutes of
16 the Aroclor ad hoc committee, first
17 meeting.
18 (Plaintiffs' Exhibit Number
19 Eighteen was marked for
20 identification.)
21 A. That's what it says at the top.
22 Q. Right. And this talks about what you
23 all were really concerned about, isn't

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1 of them were PCBs.
2 Q. Permit continued development of uses and
3 sales?
4 A. Right.
5 Q. Protect the image of organic division
6 and of the corporation?
7 A. Right.
8 Q. That is the purpose of all these actions
9 that follow that, isn't it, as you read
10 this document?
11 A. Well, that is certainly what is stated
12 as the objective. Yes, I think that is
13 true.
14 Q. Now, let's take a look at Plaintiffs'
15 Exhibit Number Nineteen and see what
16 y'all were doing about this same time
17 frame that you have indicated y'all were
18 really worried about everything.
19 (Plaintiffs' Exhibit Number
20 Nineteen was marked for
21 identification.)
22 Q. Nineteen, now these are notes from a
23 meeting of a board of directors, and it

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1 is dated May 22nd, 1969. And it talks
2 about what was happening in Anniston,
3 and there was an expenditure that was
4 going to be made of a million one
5 hundred thousand dollars for the
6 expansion of the solid Aroclor facility
7 at the Anniston, Alabama, plant. And
8 that was approved on May 22nd, 1969.

9 Now, you have indicated earlier
10 that y'all were concerned about this
11 product and concerned about the
12 persistence in the environment. But
13 what was really happening is y'all were
14 expanding your capacity to make it in
15 Anniston, weren't you?

16 A. Well, in the first place you need to
17 understand that solid Aroclor is
18 polychlorinated terphenyls, not
19 polychlorinated biphenyls. So that is
20 the first statement.

21 The second statement is that
22 certainly in 1969 we were continuing to
23 understand the issues around PCBs and

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1 of what you actually were doing. Read
2 that, and then I will talk to you more
3 about it.

4 (Plaintiffs' Exhibit Number
5 Twenty was marked for
6 identification.)

7 MR. KELLY: Donald, I'll represent
8 for the record that I believe
9 we are missing a cover page
10 to this document or a cover
11 memo, but go ahead with your
12 questions.

13 MR. STEWART: Okay. Do you have a
14 full document? If you do, I
15 will go on to something else,
16 and we will -- It is DSW
17 014256.

18 MR. KELLY: I believe we can get
19 one.

20 MR. STEWART: If you can get one,
21 I will go on to something
22 else and will not seek to
23 introduce that at this time.

1 discharges from our plant. And we
2 certainly had a product that we believed
3 performed a useful purpose, and we are
4 continue -- we are looking for ways to
5 continue to safely manufacture and
6 market that product.

7 Q. Well, tell me if you would, Dr. Kaley,
8 how this expenditure of a million one
9 hundred thousand dollars compares to
10 what y'all spent on upgrading your solid
11 waste disposal and liquid waste disposal
12 capacity there at the plant.

13 A. I have no idea.

14 Q. Isn't this far more than what you would
15 spend on those things?

16 A. I have no idea.

17 Q. Didn't care, don't care now?

18 A. Me?

19 Q. Yeah.

20 A. As I sit here today, I have no way of
21 knowing.

22 Q. Now, let's take a look at Plaintiffs'
23 Twenty and try to get some kind of idea

REGIONAL REPORTING SERVICE, INC.

1 MR. KELLY: I will get that at the
2 brak.

3 MR. STEWART: What?

4 MR. KELLY: I'll try to get that
5 at the break if you want.

6 MR. STEWART: Okay. Let me ask
7 him a few more questions, and
8 maybe we'll take a break and
9 just finish up perhaps with
10 that one

11 MR. KELLY: Okay.

12 (Plaintiffs' Exhibit Number
13 Twenty-one was marked for
14 identification.)

15 Q. Let me show you Exhibit Twenty-one with
16 the understanding we will substitute
17 Twenty as Mr. Kelly has said. This is
18 called a pollution letter. Do you know
19 who an N. T. Johnson is?

20 A. Not for sure. I knew a Norm Johnson. I
21 don't know if that is the same person or
22 not. I don't really know specifically,
23 no.

1 Q. Okay. Now, this is a February 16, 1970,
2 letter from Mr. Johnson to a number of
3 people, called the pollution letter. If
4 you will read over it, I want to ask you
5 some questions.
6 A. Are your questions just on the first two
7 pages, or should I read the entire Q and
8 A?
9 Q. You can read the Q and A. I want to ask
10 you some questions about it.
11 MR. STEWART: In fact, this may be
12 a good point to take a break,
13 while he reads that. And if
14 you can get that document for
15 me, I would appreciate it.
16 (A break was taken.)
17 Q. Now, that we have these additional
18 pages, have you had an opportunity to
19 take a look at both those pages and also
20 the defense of Aroclor fluids?
21 A. I looked at the two pages. I have
22 skimmed the defense documents. I
23 haven't looked at it in detail.

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1 program well before 1969. But certainly
2 part of what Scott Tucker was doing was
3 developing analytical techniques for
4 Aroclor and these particular -- and
5 other matrices.
6 Q. But what he was doing was sort of
7 seizing the day. Is that what it was,
8 sort of taking the offensive to deal
9 with government agencies on, one, how
10 you analyze it, number two, what might
11 be safe? Or was that a combination of
12 things, analytical and the bio tests,
13 which is the next one, prove bio
14 harmful?
15 A. I'm sorry, Mr. Stewart. I'm not sure I
16 understand the thrust of your questions.
17 Scott Tucker was given an assignment to
18 develop the analytical techniques within
19 Monsanto Company to be sure that we had
20 access to the most modern and most up to
21 date techniques to do the analyses that
22 we were embarking on in our program to
23 understand the PCB issue.

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1 Q. Okay. This first statement up here at
2 the top of the page on Exhibit Twenty,
3 which is this September 9th, 1969,
4 document, talks about general policy.
5 And it says make the government, states,
6 and universities prove their case but
7 avoid as much confrontation as possible.
8 It says the adverse publicity, down
9 there in the last sentence, and
10 competition are the real weapons. And
11 then it says analytical for Aroclor.
12 And it has in air and water and animals
13 and has got government agencies there.
14 Is that why Monsanto got busy and
15 stuck Scott -- Dr. Tucker into this
16 thing?
17 MR. KELLY: Object to the form.
18 A. I'm not sure I understand the thrust of
19 your question. I mean Scott Tucker
20 was --
21 Q. Let me --
22 A. My recollection, Scott Tucker was put in
23 charge of developing the analytical

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1 Q. Well, it is a little more than that,
2 isn't it, Dr. Kaley? This is a pretty
3 -- This is a pretty broad range program
4 that Monsanto undertook in connection
5 with a defense of Aroclors. This thing
6 says let the government prove its case
7 on a case-by-case basis. What kind of
8 language is that?
9 A. Number one, it is a draft document, and
10 I really can't understand what
11 Mr. Richard may have been attending by
12 that. I don't know what he meant by
13 that specifically.
14 Q. Monsanto visit government bio labs,
15 isn't that what actually happened?
16 A. I believe Monsanto scientists did visit
17 various government labs, yes.
18 Q. Well, they just sort of secreted away
19 one of the scientists that was doing
20 excellent work on finding out about
21 adverse health effects of PCBs, didn't
22 they?
23 MR. KELLY: Object to the form.

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1 A. I have no idea what you are talking
2 about.
3 Q. Do you know a Dr. Renate Kimbrough?
4 A. Yes.
5 Q. Do you have any idea how much Monsanto
6 has paid Dr. Kimbrough to testify in
7 different cases from time to time about
8 the effects of PCBs?
9 A. No.
10 Q. Did you know anything at all about the
11 early research that she did before
12 industry visited her lab, Monsanto in
13 particular, that found adverse health
14 effects in rats?
15 MR. KELLY: Object to the form.
16 A. I'm aware --
17 Q. Cancerous lesions in rats that were fed
18 PCB.
19 A. I'm aware of Dr. Kimbrough's research in
20 PCBs and the fact that she published a
21 paper describing her interpretation of
22 concern from feeding Aroclor 1260 to
23 rats, yes.

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1 A. Late 1960s at some point.
2 Q. Okay. And did y'all have a gentleman
3 who worked for Monsanto who was involved
4 in working at that lab on tests?
5 A. Well, those were two different times in
6 the career of a specific person, if you
7 are talking about what I assume you are
8 talking about.
9 Q. Yeah, well, who was it?
10 A. Dr. Paul Wright.
11 Q. Dr. Wright. Now, he worked for
12 Monsanto -- Let me see if I understand
13 how this worked. He worked for
14 Monsanto; is that right?
15 A. I believe that's correct.
16 Q. Then he left Monsanto, and he went to
17 work for who?
18 A. At some point he went to work for
19 Industrial Bio-Test. Then he didn't
20 leave Monsanto. It is my understanding
21 there was a reduction in force and his
22 position was eliminated.
23 Q. His position was eliminated?

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1 Q. And you all had a defense to that,
2 didn't you, and bought a lab or bought
3 the science in a lab that is called --
4 what is it Bio Tech?
5 MR. KELLY: Object to the form.
6 Q. Didn't y'all buy the science in a lab,
7 Dr. Kaley? Isn't that what you did?
8 MR. KELLY: Object to the form.
9 A. No, sir.
10 MR. KELLY: No foundation.
11 Q. Well, didn't y'all go to -- wasn't it
12 Illinois where y'all went and did some
13 studies somewhere around Chicago?
14 A. Monsanto contracted with a laboratory to
15 do toxicological studies of PCBs.
16 That's correct.
17 Q. What was the name of that lab?
18 A. Industrial Bio-Test.
19 Q. Industrial Bio-Test and that was located
20 where?
21 A. Somewhere around Chicago. I don't know
22 specifically.
23 Q. When did y'all do that?

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1 A. That's my understanding.
2 Q. What did he have before he went there?
3 A. I'm sorry.
4 Q. What did he have by way of a position
5 before he went there?
6 A. I'm certainly not totally up to speed.
7 I believe he was a toxicologist in the
8 agricultural division. I could be
9 mistaken.
10 Q. Then he was there at Bi -- Can you name
11 that for me again, please?
12 A. Industrial Bio-Test Laboratories.
13 Q. He was there at Industrial Bio-Test, and
14 then he went back, did he not, to
15 Monsanto?
16 A. Eventually there was a position that
17 opened in the corporate medical
18 department, and he was interviewed and
19 eventually accepted a job there, yes.
20 Q. It was a little more than accepted a
21 job. He was given a substantial bonus
22 after he went back there, wasn't he?
23 A. I don't know.

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1 Q. Isn't it a fact, Dr. Kaley, that he came
2 back, Paul Wright did, came back to
3 Monsanto after being at this company
4 that did your testing on the PCBs? And
5 he actually in fact was paid a
6 substantial bonus for delaying some kind
7 of FDA ruling on a particular product
8 that y'all were interested in?

9 MR. KELLY: Object to the form, no
10 foundation, calls for
11 speculation.

12 A. I don't know about that.

13 Q. When was he indicted?

14 A. I don't know specifically.

15 Q. He was still an employee of Monsanto's,
16 wasn't he, when he was indicted?

17 A. I believe that's correct.

18 Q. Wasn't he indicted along with this guy
19 that ran that facility up there for
20 falsifying data?

21 A. That's not what he was indicted for, but
22 that was the basis. It had nothing to
23 do with PCBs. It had to do with other

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1 happened?

2 A. I think there were meetings where
3 pathologists compared the findings of
4 those various studies, yes. I don't
5 know if they were attempting to disprove
6 what Dr. Kimbrough had found, but there
7 were certainly differences between the
8 Industrial Bio-Test findings and
9 Dr. Kimbrough's findings.

10 Q. What was the difference?

11 A. I think the primary difference -- I --
12 You are reaching the limit of my
13 knowledge. My understanding was it was
14 basically a difference in the
15 characterization of the lesions.

16 Q. Well, we have taken the deposition of a
17 Dr. Levinskas, who is the one that went
18 and talked to Renate Kimbrough.

19 A. He is certainly more knowledgeable than
20 I.

21 Q. And Dr. Levinskas indicated to this
22 fellow that ran the lab, Industrial
23 Bio-Test or whatever it is called, that

1 products.

2 Q. I'm not asking you about PCBs. I'm
3 asking you if he in fact was indicted.
4 Who paid his fees? Did Monsanto?

5 A. It is my understanding.

6 Q. Paid his fees to defend him, gave him a
7 bonus when he came back. Is it not a
8 fact, Dr. Kaley -- By the way, was he
9 convicted?

10 A. I believe so, yes.

11 Q. Is it not a fact that this same lab
12 where Dr. Wright, Paul Wright, worked
13 and his actions got him indicted, they
14 are the ones that did these tests on
15 PCBs?

16 A. They did some tests on PCBs, that's
17 correct.

18 Q. Didn't they take the rats that they fed
19 the PCBs and did the tests on at that
20 facility, take those little livers out
21 of those little rats and go in and
22 attempt to disprove what Dr. Renate
23 Kimbrough had said? Isn't that what

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1 you ought to change this little word in
2 here from slightly tumorigenic to
3 nontumorigenic.

4 A. Noncarcinogenic I believe is the term.

5 Q. Noncarcinogenic?

6 A. That's correct.

7 Q. Are you familiar with --

8 A. I'm familiar with it.

9 Q. -- the folklore of the time that y'all
10 were I guess, according to this
11 document, proving bio harmful, let
12 government prove its case and then visit
13 the lab?

14 MR. KELLY: Object to the form.

15 A. Well, that has nothing to do with what
16 we have been talking about.

17 Q. Isn't that what happened?

18 MR. KELLY: Object to the form.

19 A. This says visit government laboratories.

20 Q. Well, didn't she work at a government --

21 A. This is not a government laboratory.

22 Q. -- laboratory? Didn't Dr. Renate
23 Kimbrough work --

1 A. I'm sorry. You have me all -- I don't
2 know whether we are talking about
3 Kimbrough or Bio-Test. Please start
4 over.
5 Q. Didn't Dr. Kimbrough at the time work at
6 a government lab?
7 A. Yes. She worked for Centers for Disease
8 Control at some point in the early
9 1970s. Yes, that is correct.
10 Q. So she was working for the general
11 public, not making a whole lot of money
12 when she found that there was cancer in
13 these little rats.
14 MR. KELLY: Object to the form.
15 A. I have no idea what her salary was.
16 Q. Let me ask you something, Dr. Kaley. If
17 I start out with a certain cohort of
18 rats, okay, and I'm going to make some
19 kind of determination as to whether or
20 not after a certain feeding program --
21 That's how you do. You feed them, and
22 then you find out what their health is,
23 and then biopsy that stuff -- I mean,

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1 wouldn't you?
2 MR. KELLY: Object to the form.
3 A. You are speculating that that is what
4 happened. I have no knowledge that
5 that's what happened.
6 Q. Well, you are speculating that it didn't
7 happen, aren't you, Dr. Kaley?
8 MR. KELLY: Object to the form.
9 A. My understanding is that was -- There
10 was not any targeted in or out of the
11 rats. My understanding is that those
12 studies were looked at and found that
13 the results were probably not --
14 wouldn't have been any different anyway.
15 But I don't really know.
16 Q. Wouldn't have been any different anyway
17 if it had all the rats that they started
18 out with, is that what you are telling
19 us?
20 A. Yes.
21 Q. Well, who told you that?
22 A. I don't know. I don't even recall.
23 Q. You don't recall? Was it a Monsanto

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1 section that stuff and find out if they
2 have some damage to the liver. That is
3 what they did, isn't it?
4 A. Roughly, I think that is how that study
5 would be carried out.
6 Q. Well, if you start out with thirty rats
7 or forty or a hundred rats and because
8 of the fact you are not taking care of
9 them and you just start throwing rats
10 out, won't that skew your study?
11 MR. KELLY: Object to the form,
12 calls for speculation, no
13 foundation.
14 Q. Won't that skew your study?
15 A. There are standards which need to be
16 adhered to with regard to followup of
17 animals and care of animals during a
18 feeding study. And if those are not
19 adhered to, it would potentially affect
20 the outcome of the study.
21 Q. Well, it could be, if you threw out all
22 the rats that had cancer of the liver,
23 you would certainly skew the study,

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1 employee --
2 A. I don't recall.
3 Q. -- who told you that they looked at that
4 study knowing that certain rats had died
5 and they just cast them aside?
6 MR. KELLY: Object to the form.
7 A. I don't know the details of the
8 allegations with regard to either the
9 studies that came into question with
10 regard to Mr. Wright's difficulties or
11 the PCB study specifically. I just
12 don't know enough to answer those kinds
13 of questions. I told you.
14 Q. But if in fact hypothetically we are
15 correct about the facts as I've stated
16 them, that certain rats were thrown out
17 just because they died during the
18 process, you would agree with me that
19 that would skew the -- potentially skew
20 these results?
21 MR. KELLY: Object to the form.
22 A. It might potentially skew the results.
23 Q. Now, is it appropriate or proper for

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1 somebody like Dr. Levinskas, who is
2 asking an independent lab to do a study,
3 to have input and to actually tell the
4 people who are making the determination
5 as to -- like is it Calandra who ran
6 this thing -- telling Dr. Calandra what
7 to do in this study? Is that a true
8 independent study, Dr. Kaley?

9 MR. KELLY: Object to the form.

10 A. My understanding is Dr. Levinskas was
11 asking them to use consistent language
12 in the reports of the various Aroclor
13 mixtures and that those terms are
14 basically synonymous.

15 Q. What terms?

16 A. Nontumorigenic -- or slightly
17 tumorigenic and not carcinogenic.
18 Tumorigenic is not carcinogenic. You
19 can have benign tumors which are not
20 cancers. Those were the kinds of tumors
21 as I understand that Industrial Bio-Test
22 was finding in those animals so that in
23 fact there is no conflict between the

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1 MR. KELLY: Object to the form.

2 A. It is an important finding with regard
3 to any chemical, whether it causes
4 damage in any organ system. That
5 certainly leads one to further research
6 and epidemiology studies on humans
7 exposed to those things to see if those
8 animal findings could be confirmed. I'm
9 not denying those tests were done for a
10 reason, and the results are important,
11 whether Monsanto did them or
12 Dr. Kimbrough did them or any laboratory
13 did them. There have been a number of
14 tests of PCBs in laboratory rats that
15 have found that they cause liver damage
16 and/or in some cases liver cancer in
17 those rats. I'm not disputing that. It
18 is clearly true.

19 Q. Dr. Kaley, I'm struck by this whenever I
20 have a Monsanto person on the witness
21 stand. All of a sudden these animal
22 studies that other people do are just
23 not very conclusive. But isn't it a

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1 term slightly tumorigenic and
2 noncarcinogenic.

3 Q. But you will admit that if they were
4 finding tumors in those livers as a
5 result of this feeding of these PCBs
6 under those conditions, that would
7 certainly indicate damage to the liver,
8 wouldn't it?

9 MR. KELLY: Object to the form.

10 A. I would think that would be interpreted
11 as an effect on the liver, yes.

12 Q. Isn't that what Dr. Kelly and -- Emmet
13 Kelly and Elmer Wheeler said, damage to
14 the liver from this stuff?

15 A. Nobody is arguing that PCBs cause liver
16 damage at high doses to animals. I
17 concur in that statement.

18 Q. Well, you seem to equate that with just
19 sort of a nonmeaning kind of thing.

20 MR. KELLY: Object to the form.

21 A. Not nonmeaning at all.

22 Q. It is a very significant finding, isn't
23 it?

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1 fact that that is exactly what you all
2 did to determine certain things about
3 PCBs?

4 MR. KELLY: Object to the form.

5 A. Oh, absolutely --

6 Q. Conducted animal studies, isn't that the
7 fact?

8 A. The studies are conducted to give --
9 because if you want to test the effect
10 of a chemical you test it on laboratory
11 animals. That gives you some indication
12 of the potential effects in humans. But
13 if you can then go on and have
14 epidemiology studies where people
15 exposed to those materials have had
16 their health examined, their health
17 outcomes examined, and those end points
18 are not found in those human
19 populations, then that gives you more
20 important information about the
21 potential human health effects from
22 those particular compounds, whether it
23 is PCBs or any compound.

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1 Q. But, Dr. Kaley, if you find that a
2 consistent physical ailment that happens
3 as a result of those epidemiological
4 stuff -- let's just say cancer -- then
5 that tells you something, doesn't it?
6 A. If you find consistent convincing
7 evidence that some chemical causes -- is
8 associated with cancer in a number of
9 epidemiology studies and there is
10 consistent information there, sure.
11 Q. And it begins to confirm what you found
12 in these animals; is that right?
13 MR. KELLY: Object to the form.
14 A. Now you are getting personal and finding
15 what I found in what animals. Assuming
16 you mean Monsanto --
17 Q. I'm not getting personal. I'm talking
18 about what science found.
19 A. I was talking in generalities. I was
20 not talking about PCBs. If you are
21 going back to PCBs, that's another
22 discussion because I firmly believe that
23 there is no convincing consistent

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1 A. Not that I'm aware of.
2 Q. Has she looked at some studies at the
3 request of Monsanto Chemical Company?
4 A. The only study -- The only thing I know
5 she has looked at, at one point I asked
6 her to look at a draft risk assessment
7 that the Alabama Department of Public
8 Health did. That's the only thing that
9 I'm aware of that she has looked at at
10 our request.
11 Q. Oh, you did?
12 A. Yes, sir.
13 Q. When was that?
14 A. I don't know. 1995, 1996.
15 Q. Now, let's see. This independent
16 scientist that did this work at the
17 Centers for Disease Control and found
18 the cancer in these little rats' livers,
19 cancerous lesions, she is now coming
20 down here to Alabama and helping you
21 with the Alabama Department of Public
22 Health?
23 MR. KELLY: Object to the form.

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1 evidence that PCBs cause cancer in human
2 beings.
3 Q. Well, you've got somebody like
4 Dr. Kimbrough, that if you need her at
5 some point in time say to come down and
6 look at a plant site or whamp up a
7 little study, you can get her pretty
8 easily, can't you?
9 MR. KELLY: Object to the form,
10 calls for speculation, no
11 foundation.
12 A. You will have to ask Dr. Kimbrough about
13 that. I think that is a gross
14 mischaracterization of our relationship
15 with Dr. Kimbrough or anybody else's
16 relationship with Dr. Kimbrough. She is
17 a respected scientist with the greatest
18 of integrity, and I think your
19 insinuations are out of place and
20 improper.
21 Q. Hasn't Dr. Kimbrough recently done two
22 studies at the request of Monsanto
23 Chemical Company?

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1 A. She is not helping us with the Alabama
2 Department of Health at all. I
3 specifically requested her because she
4 is a respected, objective, independent
5 person to take a look at that risk
6 assessment and provide her input to it.
7 That was the very specific reason I did
8 it.
9 Q. Out of all the universe of people that
10 you would have picked, you chose
11 Dr. Kimbrough?
12 A. Correct.
13 Q. GE chose her too, didn't they?
14 A. Not to look at any studies that we had
15 anything to do with.
16 Q. Didn't they ask her to do this workers'
17 study that had been criticized in the
18 New England Journal of Medicine?
19 MR. KELLY: Object to the form.
20 A. She did a study funded by General
21 Electric, an epidemiology study of their
22 capacitor plants, which was published in
23 the New England Journal of Medicine.

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1 There were letters written that are
2 critical of that, and her response is
3 also published with those letters
4 addressing those criticisms.
5 Q. Tell me, Dr. Kaley, if you would how
6 much y'all paid her to come down here
7 and broker this deal with the Alabama
8 Department of Public Health?
9 MR. KELLY: Object to the form, no
10 foundation.
11 A. She brokered no deal with the Alabama
12 Department of Public Health. She wrote
13 a series of comments on a draft risk
14 assessment. I submitted those to the
15 agency. That is the only contact that
16 was done. There was no deal cut. There
17 was no such thing.
18 Q. Didn't she talk to Brian Hughes, who was
19 the state epidemiologist, about the
20 health effects of PCBs?
21 A. Not to my knowledge.
22 Q. Is it your testimony here today,
23 Dr. Kaley, that she didn't have a

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1 A. I don't recall.
2 Q. Well, how much have y'all paid her over
3 the past say six or seven or eight or
4 nine, ten years?
5 A. I have no idea.
6 Q. How long has she been working for y'all?
7 MR. KELLY: Object to the form.
8 A. She does not work for us.
9 Q. Sir?
10 A. She does not work for us. She has
11 appeared as an expert witness in some of
12 the litigation. She has reviewed
13 documents.
14 Q. How many?
15 A. I don't know.
16 Q. Twenty?
17 A. Two.
18 Q. Two? This case and what other?
19 A. This case and Owens.
20 Q. And Owens?
21 A. Yes.
22 Q. She has done consulting work for y'all
23 before on other cases?

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1 conversation with Brian Hughes and come
2 down and go down to Montgomery and talk
3 to him?
4 A. I'm not aware of it if she did.
5 Q. Did she go to the plant site with you?
6 A. Yes.
7 Q. This disinterested, independent party
8 went to this plant site with you?
9 MR. KELLY: Object to the form.
10 A. Yes. We asked her to look at the
11 situation there and provide her input on
12 what our program was to be and what her
13 thoughts were about it for the very
14 reason that she was an independent,
15 outside observer.
16 Q. You were satisfied with what she said?
17 A. I believe she basically said that the
18 situation was as we understood it, yes.
19 Q. Did y'all have a conversation about it
20 on the way to the plant site? Did y'all
21 fly down together?
22 A. No, sir.
23 Q. How much did you pay her?

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1 A. Not that I'm aware of. She had some
2 involvement as a government witness who
3 appeared in a case we had in Illinois,
4 but she was not working for us. I'm
5 sure she received no compensation from
6 us for that. She was there in her role
7 as a CDC employee.
8 Q. On page six of this document, two
9 paragraphs up, it says action. This has
10 to do with the Monsanto plants. It says
11 take steps to see that every precaution
12 is taken to prevent Aroclor entering
13 water streams. That applies to both
14 Anniston and Krummrich, doesn't it?
15 A. I would believe it would, yes.
16 Q. And then it talks about disposal and
17 what you need to do about that. And on
18 page seven y'all were looking at
19 incinerators, weren't you?
20 A. At some point or another. Obviously it
21 talks about set up an incinerator to
22 handle Aroclor disposal. So apparently
23 we were thinking about it.

REGIONAL REPORTING SERVICE, INC.

1 Q. Both liquid and solid?
 2 A. Well, solids such as muds or slurries.
 3 I don't -- I think that is qualified
 4 solids.
 5 Q. Isn't it a fact, Dr. Kaley, that that is
 6 exactly what y'all recommended and
 7 indicated to your customers was the best
 8 approach as far as resolving this
 9 matter?
 10 A. I believe --
 11 MR. KELLY: Object to the form.
 12 A. I believe that's correct, that we
 13 recommended. I don't know exactly what
 14 the recommendation was, but I think at
 15 some point we did recommend incineration
 16 of liquid Aroclors was the best means of
 17 disposal.
 18 Q. You also told them in the course of the
 19 conversations with them that what y'all
 20 were thinking about doing was working
 21 out a deal where you could in fact take
 22 care of solids, didn't you?
 23 MR. KELLY: Object to the form.

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1 that a pyrolysis of these materials in a
 2 rotary kiln followed by incineration of
 3 the resulting gasses at appropriate
 4 temperature will provide us with an
 5 acceptable solution. If you look at the
 6 first paragraph there he is talking
 7 about solid material contaminated with
 8 PCBs.
 9 A. Presumably askarel doesn't have to be
 10 PCB, but since it is Mr. Papageorge, I
 11 assume that is what he was talking
 12 about. But it doesn't say that we ever
 13 succeeded, and to my knowledge we never
 14 did succeed. And that is not an
 15 incinerator as such. That is pyrolysis
 16 in a rotary kiln for the solid materials
 17 then followed by a incineration of the
 18 resulting gasses, which would contain
 19 the PCBs, presumably. So it is
 20 different from incineration of solid
 21 waste.
 22 Q. It is a form of incineration of the
 23 byproduct of that first process, isn't

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1 A. I don't know.
 2 Q. Isn't that what you wrote them and told
 3 them?
 4 A. I don't recall whether we did or not. I
 5 don't believe we were ever successful in
 6 coming up with a supplier with an
 7 incinerator that could deal with solids,
 8 but I'm not that knowledgeable about the
 9 incinerator. I don't believe it was
 10 ever able to handle solids.
 11 Q. Now, let me show you what will be
 12 Plaintiffs' Exhibit Twenty-two. This is
 13 a letter written July 27th, 1970, in
 14 which the discussion was had by Mr.
 15 W. B. Papageorge, who I think was from
 16 the Anniston plant. He is a Monsanto
 17 employee, isn't he?
 18 (Plaintiffs' Exhibit Number
 19 Twenty-two was marked for
 20 identification.)
 21 A. He was.
 22 Q. And he says in there that y'all were
 23 actively pursuing and have high hopes

REGIONAL REPORTING SERVICE, INC.

1 it?
 2 A. Had it been successful it would have
 3 been, yes.
 4 Q. In the interim what does he recommend to
 5 your customer in Exhibit Twenty-two, the
 6 third paragraph?
 7 A. Use of properly operated sanitary
 8 landfills.
 9 Q. Well, what about the fourth paragraph?
 10 Where does he say it should be?
 11 A. It says these landfills must not be
 12 located near water systems, both surface
 13 and underground.
 14 Q. And then it goes on to say what you
 15 should do, if you are a customer of
 16 y'all's, what you should do about that
 17 landfill that would be associated near
 18 water.
 19 A. Do you want me to read it?
 20 Q. Yeah.
 21 A. Monitoring of rivers, creeks, lakes, et
 22 cetera, surrounding the fill, especially
 23 after heavy rainfall, will aid in

REGIONAL REPORTING SERVICE, INC.

1 assuring that PCBs are not escaping into
2 the environment.
3 Q. Can we agree, Dr. Kaley, that the
4 landfill that is located south of 202
5 and the one west of the plant there in
6 Anniston affect creeks and then
7 ultimately a lake?
8 A. No.
9 Q. Sir?
10 A. I do not believe storm water runoff from
11 those landfills historically or
12 currently has any effect on Choccolocco
13 Creek or Lake Logan Martin.
14 Q. Haven't y'all gone down to the Oxford
15 ball field and taken steps down there to
16 clean that up?
17 A. Yes, we have.
18 Q. Aren't y'all investigating the creek?
19 A. Yes.
20 Q. Snow Creek and Choccolocco Creek?
21 A. Yes.
22 Q. Does that happen to be because y'all are
23 just corporate citizens or you believe

REGIONAL REPORTING SERVICE, INC.

1 that the manner in which it was handled
2 could have created the kinds of problems
3 we are talking about?
4 MR. KELLY: Object to the form.
5 A. I don't know.
6 Q. It could have, couldn't it?
7 A. I don't know.
8 Q. And if that pit up there was effectively
9 open and liquid Aroclors were just
10 dumped into it, then there is a distinct
11 possibly that the pit south of 202 could
12 have affected it?
13 MR. KELLY: Object to the form.
14 A. Number one, I don't agree with your
15 characterization of how the wastes were
16 handled there. I do not believe liquid
17 Aroclors were dumped into that landfill.
18 But regardless of that, I still do not
19 believe that because it was being
20 operated as a landfill that significant
21 levels of PCBs were leaving that
22 landfill.
23 Q. The reason you don't think that PCBs in

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1 that maybe your PCBs might have migrated
2 down that creek because of the large
3 size discharges and got in Snow Creek,
4 now feeding into Choccolocco Creek and
5 ultimately Lake Logan Martin?
6 MR. KELLY: Object to the form.
7 A. You were asking a question specifically
8 about discharges from the landfills. I
9 was answering that question.
10 Q. Oh, you say you don't think it came from
11 the landfill?
12 A. That's correct.
13 Q. Well, do you know where the Mars Hill
14 Missionary Baptist Church is?
15 A. Yes.
16 Q. Do you know whether or not drummed
17 liquid and solid trappings from PCB
18 production was not in fact buried there
19 or held there in storage until it was
20 taken to the dump?
21 A. I don't know specifically that, no.
22 Q. Would it be fair to say that if it was
23 that there is a distinct possibility

REGIONAL REPORTING SERVICE, INC.

1 liquid form were dumped in that landfill
2 is somebody told you that. You weren't
3 there or present, were you?
4 MR. KELLY: Object to the form.
5 A. I was not present.
6 Q. Who told you that?
7 A. I don't know. It is just my
8 understanding.
9 Q. Well, how did you gain that
10 understanding, Dr. Kaley? Tell the
11 ladies and gentlemen of the jury how you
12 became aware of the fact there were no
13 liquid PCBs poured into that landfill.
14 A. I don't know that there wasn't one drop
15 of liquid PCBs. But the liquid PCBs
16 were our product which we were
17 manufacturing for sales. They weren't
18 materials to be poured into a landfill.
19 The landfills were primarily used for
20 waste from the process, which were
21 primarily -- to the extent they were,
22 were primarily, as we talked about
23 earlier, still bottoms.

REGIONAL REPORTING SERVICE, INC.

1 Q. Well, were there not some liquid and
2 solid trappings or still bottoms from
3 the process?
4 A. There would be very little liquid
5 bottoms from that process. That was the
6 whole point of the distillation process,
7 was to still off the liquids, capture
8 those as products. And what would be
9 remaining would be basically a tarlike
10 material or solid material.
11 Q. Now, do you know anything about the
12 hydrology of that situation?
13 A. Of what situation?
14 Q. The landfill up there.
15 A. Very little.
16 Q. Let me show you Plaintiffs' Exhibit
17 Twenty-three.
18 (Plaintiffs' Exhibit Number
19 Twenty-three was marked for
20 identification.)
21 Q. At the time frame that y'all were taking
22 these actions that we have just
23 mentioned a minute ago in Plaintiffs'

REGIONAL REPORTING SERVICE, INC.

1 them for their electrical equipment.
2 Q. Agreement to do what?
3 A. Whatever it says, basically indemnify us
4 after the date of the document, I guess.
5 Q. Indemnify you against what?
6 A. Well -- I mean, I can read this. Do you
7 want me to read the third paragraph? I
8 don't know specifically other than what
9 it says in this document.
10 Q. Isn't it a fact, Dr. Kaley, that you all
11 were concerned about the adverse effects
12 that PCB exposure -- as far as humans
13 were concerned, the adverse health
14 effects could come about, and y'all
15 wanted General Electric in between y'all
16 and the person who got hurt? Isn't that
17 what this is all about?
18 MR. KELLY: Object to the form.
19 A. I don't think it was targeted at human
20 health effects. It was targeted at any
21 potential liabilities associated with
22 the PCBs.
23 Q. That would be somebody suing you because

REGIONAL REPORTING SERVICE, INC.

1 Exhibit Twenty-two, you entered into an
2 agreement with General Electric
3 Corporation on January 21st, 1972. Do
4 you want to read that?
5 A. I have read the first page. Do you want
6 me to read the special undertaking?
7 I've read it.
8 Q. Tell me if you would, Dr. Kaley, why
9 this document was executed. Do you
10 know?
11 MR. KELLY: Object to the form,
12 calls for speculation.
13 A. Only the most general terms.
14 Q. Give me what general terms --
15 A. Well, my understanding is that by this
16 date Monsanto had made an internal
17 decision to only market PCBs to selected
18 -- or some manufacturers of electrical
19 equipment based largely on our
20 understanding that they did not have
21 available substitute materials. And we
22 asked them to sign this agreement in
23 order for us to keep selling PCBs to

REGIONAL REPORTING SERVICE, INC.

1 they might have been harmed by PCBs?
2 MR. KELLY: Object to the form.
3 A. I assume that particular circumstance
4 could be one of a number of
5 circumstances. But I don't think that
6 was the primary -- I don't have any
7 reason to believe, at least, from what
8 little I know that that was the primary
9 driver for this document. It was an
10 assumption or basically an agreement to
11 indemnify against all -- whatever the
12 various liabilities might be.
13 Q. Well, doesn't that fly in the face,
14 Dr. Kaley, of your stance to the ladies
15 and gentlemen of the jury that there is
16 no harm that comes from this substance?
17 MR. KELLY: Object to the form.
18 A. I don't think it flies in the face of it
19 at all.
20 Q. I mean, if you, Dr. Kaley, are saying to
21 the ladies and gentlemen of the jury
22 that there is no harm that comes from
23 it, why in the world would you need an

REGIONAL REPORTING SERVICE, INC.

1 indemnification agreement from General
2 Electric to sell them the product?
3 MR. KELLY: Object to the form.
4 A. Number one, I wasn't the decision maker
5 on that process. But I do not believe
6 that PCBs are associated with serious
7 long-term human health effects in
8 humans. However, PCBs are an industrial
9 chemical. They are persistent in the
10 environment, and there are various
11 liabilities associated with that,
12 whether they be cleanup liabilities or
13 any liabilities. And that would be my
14 -- a layman's understanding of the
15 nature of this legal agreement that
16 Monsanto asked its customers to
17 undertake.
18 Q. It may cause harm, so y'all wanted
19 protection, correct?
20 MR. KELLY: Object to the form.
21 A. I believe we wanted the protection
22 whether it caused harm or didn't cause
23 harm.

REGIONAL REPORTING SERVICE, INC.

1 Q. Wasn't one of the sort of lead-ins for
2 these folks accepting your new product
3 to continue to produce it and continue
4 to provide it to a lot of your customers
5 around the world until you got new
6 products into their hands? Isn't that
7 what you did?
8 MR. KELLY: Object to the form, no
9 foundation.
10 A. Certainly we were trying to introduce
11 substitute products in some applications
12 for those products, yes.
13 Q. And on page four of this document -- I
14 think it was Twenty, this defense of
15 Aroclors, page four of the full body of
16 the document, there is a Richard that
17 was suggesting possible substitution of
18 Aroclor 5442 for Aroclor 1254?
19 A. I'm sorry. Where are you? I'm sorry.
20 I see that. Yes.
21 Q. And on page five --
22 A. Well, I want -- I don't know why you
23 just said that, but I would point out

REGIONAL REPORTING SERVICE, INC.

1 Q. Now, y'all were making money in this
2 process, weren't you --
3 A. I would presume so.
4 MR. KELLY: Object to the form.
5 Q. -- from your customers here like General
6 Electric? Weren't y'all making money?
7 MR. KELLY: Object to the form.
8 A. Without being too much of a wise guy, I
9 presume we weren't making it to lose
10 money.
11 Q. When you took it back is what I'm
12 saying. Didn't y'all take back fluid
13 from these customers and make money off
14 it by incinerating it up there at your
15 plant in Sauget?
16 MR. KELLY: Object to the form.
17 A. I can't imagine we were making money. I
18 mean, we were charging a nominal amount
19 to cover our costs.
20 Q. What?
21 A. What?
22 Q. What?
23 A. I have no idea what it was.

REGIONAL REPORTING SERVICE, INC.

1 that Aroclor 5442 is a polychlorinated
2 terphenyl, not a polychlorinated
3 biphenyl.
4 Q. Okay. On five it says switch customers
5 to Therminol 55 or Therminol 66. Now,
6 what are those products, PCBs?
7 A. No. Those are non-PCB heat transfer
8 fluids.
9 Q. That you all --
10 A. Both of those efforts were part of our
11 efforts to substitute non-PCB products
12 for products which formerly contained
13 PCBs.
14 Q. Then on page six you're talking about
15 seeking a government contract on
16 absorption and incineration cycles. Is
17 that right?
18 A. Yeah. That is MRC, which is that
19 Monsanto Research Corporation, which is
20 kind of an independent research arm of
21 the company, right.
22 Q. Then on seven you were doing these
23 chronic toxicity studies up there where

REGIONAL REPORTING SERVICE, INC.

1 old Paul Wright was; is that right?
 2 MR. KELLY: Object to the form.
 3 A. Well, I don't know if he was there in
 4 1969 or not.
 5 Q. That is the Independent Bio-Test stuff?
 6 A. Industrial Bio-Test, yes.
 7 Q. Okay. And this was the defense products
 8 to keep it going?
 9 MR. KELLY: Object to the form.
 10 A. This was a draft letter to address, you
 11 know, possible activities.
 12 Q. Okay. Now, isn't it a fact that you
 13 all, just sort of like you worked out of
 14 the situation in 1985, were able to work
 15 out of this situation in 1971?
 16 MR. KELLY: Object to the form, no
 17 foundation.
 18 Q. Isn't that a fact?
 19 MR. KELLY: Object to the form.
 20 A. We didn't work out of any situations,
 21 assuming you are intending what you are
 22 intending. In 1985 -- In '90 we were
 23 implementing exactly the program we

REGIONAL REPORTING SERVICE, INC.

1 guy named John White, who was director
 2 of enforcement.
 3 A. Yes.
 4 Q. Mr. White had two primary areas for
 5 concern it says down there, doesn't
 6 it --
 7 A. It says that.
 8 Q. -- on this document? Is this
 9 Twenty-five on this -- Is it
 10 Twenty-five?
 11 A. I'm sorry. Twenty-four.
 12 Q. The Federal Department of Justice
 13 apparently recommended that suit be
 14 initiated against the Anniston plant for
 15 PCB emission under the Federal Refuse
 16 Act. Is that what it says?
 17 A. That's what it says.
 18 Q. Now, y'all had worked so long with
 19 Mr. Crockett that he helped you work out
 20 of that situation, didn't he?
 21 MR. KELLY: Object to the form, no
 22 foundation.
 23 A. I don't know that Mr. Crockett helped or

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1 proposed in '86.
 2 (Plaintiffs' Exhibit Number
 3 Twenty-four was marked for
 4 identification.)
 5 Q. I understand. Let me show you Exhibit
 6 Twenty-four and let you take a look at
 7 it.
 8 A. I've read it.
 9 Q. Now, Dr. Kaley, isn't it a fact that
 10 y'all were being investigated by the
 11 folks at Region Four for PCB
 12 contamination of Snow Creek and perhaps
 13 even on down to Choccolocco Creek --
 14 MR. KELLY: Object to the form.
 15 Q. -- in November of 1971?
 16 MR. KELLY: Object to the form.
 17 A. I don't know about the term
 18 investigation. Apparently from this
 19 memo EPA did have interest in the PCB
 20 effluents from the Anniston plant to
 21 Snow and Choccolocco Creek.
 22 Q. Well, on page two of this thing it
 23 indicates who was there, and there is a

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1 didn't help. He was certainly present
 2 at the meeting. It would make sense
 3 that a representative of the State of
 4 Alabama would be present just as they
 5 often are in meetings with ADEM today.
 6 Q. On page two of this document it says
 7 that -- and I think it is paragraph two,
 8 there was considerable discussion
 9 concerning limiting levels of PCBs that
 10 should be permitted in the discharge.
 11 Mr. White suggested no detectable
 12 amount. That is the guy from the
 13 federal government, isn't it?
 14 A. That is one of the men that was there
 15 from EPA, yes.
 16 Q. Who spoke up next? Can you read that?
 17 A. Mr. Crockett and the Monsanto personnel
 18 pointed out that this was an undesirable
 19 approach.
 20 Q. So Mr. Crockett, who worked for ADEM,
 21 spoke up along with y'all and said this
 22 is just not desirable?
 23 A. Well, number one, I don't know if it was

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1 ADEM or AWIC at this time. But
 2 apparently his understanding --
 3 Q. AWIC, probably AWIC.
 4 A. I mean, basically his understanding
 5 would have agreed with ours, that that
 6 was -- apparently was an undesirable
 7 approach.
 8 Q. Y'all had worked with Mr. Crockett and
 9 sort of helped him along to that
 10 understanding, hadn't you?
 11 A. We provided information to AWIC --
 12 Q. Analytical stuff?
 13 A. Pardon?
 14 Q. Analytical stuff?
 15 A. Well, we were providing data to the
 16 department and keeping them apprised of
 17 our efforts to reduce our discharges,
 18 yes.
 19 Q. That was a little old bitty department,
 20 wasn't it, in 1971?
 21 A. I don't have any idea.
 22 Q. Monsanto was probably bigger than that
 23 little bitty department, wasn't it?

REGIONAL REPORTING SERVICE, INC.

1 were educating poor all Mr. Crockett?
 2 MR. KELLY: Object to the form.
 3 A. I have no reason to understand he was
 4 poor or old either one, but certainly we
 5 were doing our best to --
 6 Q. I don't mean poor from a standpoint of
 7 financial. I mean just doesn't have the
 8 resources, didn't have the resources.
 9 So that the ladies and gentlemen of the
 10 jury understand it, just didn't have the
 11 resources y'all did?
 12 MR. KELLY: Object to the form.
 13 A. I have no idea whether that is true or
 14 not, but we were certainly communicating
 15 in our efforts to reduce our discharges
 16 from that plant and providing
 17 information to Mr. Crockett and whoever
 18 else at the regulatory agencies as there
 19 were others involved at the time.
 20 Q. Just like you did with the poor attorney
 21 general when you didn't tell him about
 22 all this history of things in 1985?
 23 MR. KELLY: Object to the form.

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1 A. I have no idea.
 2 Q. Sort of an unfair situation, wasn't it,
 3 with Mr. Crockett trying to regulate
 4 y'all?
 5 MR. KELLY: Object to the form.
 6 A. I couldn't imagine it would be. If that
 7 was his job, then he I'm sure was
 8 carrying it out to the best of his
 9 abilities.
 10 Q. Do you have any idea how much their
 11 budget is today, ADEM?
 12 A. No.
 13 Q. Do you have any idea how much it was in
 14 1971 or AWIC's budget?
 15 A. No.
 16 Q. Well, wasn't it just a part of the
 17 Alabama Health Department?
 18 A. I don't know.
 19 Q. And here is this big old company in
 20 there with all that personnel and
 21 sophisticated scientific data,
 22 Dr. Tucker doing all this work. Isn't
 23 it fair to say, Dr. Kaley, that y'all

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1 A. I have no idea what you are talking
 2 about.
 3 Q. And then in the next -- in paragraph one
 4 it says Mr. Crockett and Mr. White will
 5 agree upon an interim permissible level
 6 for PCB admission to be provided in the
 7 Refuse Act permit. Obviously
 8 Mr. Crockett will press for a number in
 9 excess of our zero point three pounds
 10 per day current level. Why in the world
 11 would he be doing that?
 12 MR. KELLY: Object to the form.
 13 A. I don't know why he would be doing it.
 14 I would speculate that he understood at
 15 that particular point in time the three
 16 pounds per day was the best we could do
 17 and that we were going on to do other
 18 things to reduce that level. If you
 19 look at number two, it talks about that
 20 level will be reviewed again when our
 21 new separation equipment is in operation
 22 and to arrive at a new permit level. So
 23 it was basically setting an interim

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1 level that would allow us to operate but
 2 give us time to get new pollution
 3 control devices in place.
 4 Q. You all are good at setting interim
 5 levels and interim measures that
 6 ultimately become permanent levels,
 7 aren't you, Dr. Kaley?
 8 MR. KELLY: Object to the form.
 9 A. I have no idea what that statement
 10 means.
 11 Q. That is what your efforts are today,
 12 isn't it, to put in interim measures?
 13 Isn't that what the consent orders that
 14 you all are operating under say?
 15 MR. KELLY: Object to the form.
 16 Q. Interim measures are being put in place
 17 up there on those landfills and around
 18 that remediated area east of the plant?
 19 MR. KELLY: Object to the form.
 20 A. The interim measures and the consent
 21 orders are two entirely different
 22 things. We are -- We have implemented a
 23 variety of interim measures to expedite

REGIONAL REPORTING SERVICE, INC.

1 find out.
 2 It was suggested by Mr. White on
 3 page three that it might be desirable to
 4 dredge Snow Creek. This was in 1971. I
 5 believe we convinced him that this is
 6 undesirable. Do you know what arguments
 7 these gentleman used at that particular
 8 point in time to keep this fellow both
 9 from suing them, suing Monsanto, and
 10 dredging Snow Creek at that time?
 11 A. I don't --
 12 MR. KELLY: Object to the form.
 13 A. I don't know the specific arguments, no.
 14 Q. Isn't it a fact that you all thought
 15 about closing this plant in around 1987?
 16 Didn't you think about closing it?
 17 A. I seem to have some slight recollection
 18 of that. I don't know specifically.
 19 Q. Sir?
 20 A. I said I seem to have some slight
 21 recollection of the discussion for that
 22 potential, but I don't know if that was
 23 the date or not.

1 and facilitate management of PCBs on
 2 those sites. If we had not done that,
 3 those areas that we have remediated
 4 would have remained unremediated. So,
 5 yes, we are clearly hopeful that when we
 6 go to final corrective measures on our
 7 site that those interim measures will be
 8 accepted as final measures. But there
 9 is no guarantee of that. That is up to
 10 the regulators to determine whether
 11 that's the case or not. But we
 12 certainly have used interim measures to
 13 address the issues around our plant site
 14 so we could move more quickly than we
 15 would have been able to otherwise.
 16 Q. Hopefully the cheapest, least expensive
 17 way to put a Band-Aid on the problem
 18 would be accepted by the government is
 19 what you are hoping for?
 20 MR. KELLY: Object to the form.
 21 A. That is an absolutely incorrect
 22 characterization of our efforts.
 23 Q. We will go through that in a minute to

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1 Q. Did you put it on the block or think
 2 about putting it on the block at that
 3 time?
 4 A. Not that I'm aware of.
 5 Q. Well, don't y'all have a history of the
 6 plant, a document that is entitled
 7 history of the plant?
 8 A. You obviously do.
 9 Q. Well, I would suggest to you, Dr. Kaley,
 10 that it was provided to me by your
 11 lawyer.
 12 A. I'm sure it was. I'm sorry for the --
 13 Q. No. That's okay.
 14 A. -- frivolity.
 15 Q. I just wanted you to know where it came
 16 from.
 17 MR. STEWART: Mark that, please.
 18 (Plaintiffs' Exhibit Number
 19 Twenty-five was marked for
 20 identification.)
 21 Q. This is Plaintiffs' Exhibit Twenty-five
 22 to your deposition. And on page --
 23 well, the last page. On October 25th,

1 1985, Monsanto announced that it was
 2 withdrawing from the parathion business
 3 and putting the Anniston plant on the
 4 sales block.
 5 A. I'm sorry. I was skimming the other
 6 part. Where are you, on the last page?
 7 Q. On the last page. I just want to ask
 8 you about the sale. On October 25,
 9 1985, they announced that -- Monsanto
 10 did, that they were going to withdraw
 11 from the parathion business and put the
 12 Anniston plant on the sales block?
 13 A. Okay. That's what it says. Yes, I
 14 agree that it says that.
 15 Q. Since that time several attempts to sell
 16 the plant have been unsuccessful.
 17 A. It says that.
 18 Q. Okay. Isn't one of the reasons,
 19 Dr. Kaley, that that sale was
 20 unsuccessful because of the PCB problem?
 21 MR. KELLY: Object to the form.
 22 A. I have no idea.
 23 Q. And wasn't a decision made, Dr. Kaley,

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1 A. Yes.
 2 Q. Okay. Let me show you what we will mark
 3 as our next exhibit and ask you to take
 4 a look at it and identify it for me if
 5 you would.
 6 (Plaintiffs' Exhibit Number
 7 Twenty-six was marked for
 8 identification.)
 9 Q. That is Twenty-six. Take a look at that
 10 and let me ask you some questions about
 11 it.
 12 A. Do you want me to do the whole document
 13 or just the front page?
 14 Q. Well, there are a number of questions
 15 I'm going to ask you about it. We can
 16 go from page to page.
 17 A. I mean, I can read it. If you want me
 18 to look at the whole thing, I will.
 19 That's fine.
 20 Q. Have you had the opportunity to look
 21 at -- Dr. Kaley, you have had the
 22 opportunity to look at this document,
 23 Plaintiffs' Exhibit Twenty-six?

REGIONAL REPORTING SERVICE, INC.

1 by Monsanto to keep this plant
 2 specifically because of the landfills
 3 and waste stream that was located on
 4 that site?
 5 MR. KELLY: Object to the form, no
 6 foundation.
 7 A. The next statement after you asked me to
 8 read says during the past eighteen
 9 months demands for the Anniston plant
 10 biphenyl products has improved to the
 11 point that efforts to sell the plant
 12 have ceased and a major restructuring of
 13 the plant is taking place to position it
 14 to stand alone as a small Monsanto
 15 facility. That would be my
 16 understanding as to the reason that
 17 decision was made.
 18 Q. Well, isn't it a fact that you all had a
 19 couple of gentlemen working for you who
 20 did an environmental survey of that
 21 plant at the time that these decisions
 22 were being made? Do you know a D. B.
 23 Reddington and Pierle, Mike Pierle?

REGIONAL REPORTING SERVICE, INC.

1 A. Yes, I have.
 2 Q. It is dated February 26, 1987, and it is
 3 entitled "Environmental Status, Anniston
 4 Plant"?
 5 A. Correct.
 6 Q. Who is D. B. Reddington?
 7 A. He was the environmental affairs manager
 8 for the agricultural company at
 9 Monsanto.
 10 Q. Who was Mike Pierle?
 11 A. He had I believe -- Well, I believe he
 12 had a similar position for the chemical
 13 company.
 14 Q. And on page two of this document it says
 15 RCRA remedial action?
 16 A. I'm sorry --
 17 Q. It says two at the top on mine.
 18 A. I'm sorry. I was counting pages. I see
 19 where it says that now. I'm with you
 20 now. Yes.
 21 Q. It talks about some things that needed
 22 to be done, and it says limestone bed,
 23 old landfill cells, added monitoring

REGIONAL REPORTING SERVICE, INC.

1 wells, four voluntary, two deep, two
2 shallow. Then it says PCB removal, Snow
3 Creek.
4 A. Yes.
5 Q. What does ERAP mean?
6 A. I knew you were going to ask that, and I
7 don't know the answer exactly. But
8 basically what it is is a proposal to do
9 some work, so it is actually -- there is
10 actually a project description out there
11 to do that particular work.
12 Q. To remove something from Snow Creek?
13 A. Yes.
14 Q. Is that this little thing we were
15 talking about that had been proposed and
16 was finally worked out in '88 or '89?
17 A. I don't know about little thing.
18 MR. KELLY: Object to the form.
19 A. Sorry, Mike. I don't know about little
20 thing, but it was -- my understanding
21 would be it was the proposal we had made
22 to ADEM of 1986 and by February of 1987
23 had not been undertaken as yet.

REGIONAL REPORTING SERVICE, INC.

1 there?
2 A. Well, if you go to the next page, that
3 is exactly what they are talking about.
4 It is titled "Chlorinated Organics in
5 the Ground Water," and it lists those
6 chlorinated organics in the ground
7 water.
8 Q. No PCBs?
9 A. No PCBs.
10 Q. Is all this stuff up there in that
11 landfill with the PCBs south of 202?
12 A. I don't know where this stuff -- I don't
13 know where -- I don't know where these
14 particular wells are and where these may
15 have been detected in landfills. I
16 don't think they were probably in
17 landfills at all. I think they were
18 probably from ongoing operations. They
19 talk about productions and things. I
20 don't know where they are or how they
21 were used or how they potentially got in
22 ground water.
23 Q. What are they?

REGIONAL REPORTING SERVICE, INC.

1 Q. Well, Snow Creek is a fairly lengthy
2 creek, and you were talking about a
3 hundred feet of it. Would you admit
4 that was a small portion of the total
5 length of the creek?
6 A. I don't know what Mr. Reddington may
7 have meant by Snow Creek. That was a
8 generic term that was used for ditches,
9 for the creek itself. I mean, I don't
10 remember the title of the proposal, but
11 it had something to do with Snow Creek
12 sediment removal or something. So I
13 mean, that's why he said that. I don't
14 think he was intending to characterize
15 whether it was a small or large portion
16 of the creek.
17 Q. Well, it goes on over there and says
18 Anniston environmental review, future
19 potential problem?
20 A. Yes.
21 Q. The first one is chlorinated
22 hydrocarbons in the ground water. What
23 in the world are they talking about

REGIONAL REPORTING SERVICE, INC.

1 A. They are primarily solvents.
2 Q. Solvents like TCE and --
3 A. Yes. That is probably one of them, if
4 you look on here. Trichloroethene, the
5 second one listed is TCE, yes.
6 Q. That comes from the manufacturing
7 process probably?
8 A. I don't know where it came from. More
9 than likely it was -- These things are
10 used as degreasers and any number of
11 things. I don't know where these
12 particular materials came from or how
13 they were used in the plant or why they
14 would be a concern in ground water.
15 Q. Well, is there --
16 A. They are fairly low levels actually.
17 Q. Are PCBs not chlorinated hydrocarbons?
18 A. They are chlorinated hydrocarbons, but
19 the term is more like -- is more often
20 used to describe these chlorinated
21 solvents.
22 Q. Now, it says future -- potential future
23 mobilization of soil contaminants. What

REGIONAL REPORTING SERVICE, INC.

1 does that mean?

2 A. I don't know what they means. I looked

3 at that.

4 Q. PCBS is at the top?

5 A. Yes.

6 Q. Doesn't that mean that there might be a

7 problem in the future with PCBs?

8 A. Well, that would be the sense of the

9 document. It is listed future potential

10 problems, and PCBs are listed, and

11 potential future mobilization of soil

12 contaminants. So that is presumably

13 what was meant. But I don't know

14 specifically --

15 Q. Mobilization -- Excuse me. I didn't

16 mean to cut you off. Mobilization would

17 mean possibly that you move it off site?

18 A. Move it somewhere on or off site, yes,

19 potentially.

20 Q. And PCBs are first, and then you have

21 mercury, right?

22 A. Yes.

23 Q. So back in February 26th, 1987, they

REGIONAL REPORTING SERVICE, INC.

1 aware of any potential order.

2 Q. Has anybody said anything to you about

3 how that was handled and how that was

4 worked out?

5 A. Well, since I don't know anything about

6 it --

7 MR. KELLY: Object to the form, no

8 foundation.

9 A. -- obviously nobody said anything to me

10 about it, because I presumably would

11 know something about it, and I don't.

12 Q. So as you sit here today am I to

13 understand that in your position -- at

14 that time you were the steward, company

15 steward or had stewardship over the

16 corporate responsibilities for PCBs,

17 which would include PCB waste, and you

18 know nothing about an order, an

19 administrative order, that had something

20 to do with cleaning up that waste at the

21 plant in '87 and '88?

22 A. Well, number one, I don't know what the

23 order is. I don't know whether it

REGIONAL REPORTING SERVICE, INC.

1 recognized there was a problem. Is that

2 why the EPA issued a draft

3 administrative order or put one

4 together, to try to get Monsanto to do

5 something about some of these problems?

6 MR. KELLY: Object to the form, no

7 foundation.

8 A. In the first place, it doesn't say these

9 are problems. It says they are

10 potential future problems. In the

11 second place, I'm not sure which -- what

12 you are talking about in the second part

13 of your question. Could you be more

14 specific about what EPA --

15 Q. Do you know anything about an

16 administrative order that was entered

17 into by -- or issued or potentially was

18 going to be issued against this Monsanto

19 plant in Anniston, Alabama, for some of

20 the problems that we have just been

21 talking about here all day long,

22 Dr. Kaley in 1987, 1988?

23 A. No, not in that time frame. I'm not

REGIONAL REPORTING SERVICE, INC.

1 addressed PCBs or not. But regardless

2 of either of those, I'm not aware of it,

3 no.

4 Q. If it says you ought to test for off

5 migration of PCBs, no one ever told

6 Dr. Kaley, Dr. Robert Kaley, that?

7 A. I'm not aware of it, no.

8 Q. Who would have briefed you on this

9 particular site?

10 MR. KELLY: Object to the form.

11 A. I have no idea in that particular time

12 frame.

13 Q. Could that have been handled at a level

14 up above you by someone else?

15 A. It could have been handled at a level

16 above me or a level below me. I don't

17 know.

18 Q. All right. Let me show you Plaintiffs'

19 Exhibit Number Twenty-seven and ask you

20 to take a look at it, please, sir.

21 (Plaintiffs' Exhibit Number

22 Twenty-seven was marked for

23 identification.)

REGIONAL REPORTING SERVICE, INC.

1 A. I've read it. Excuse me. I've read it.
 2 Q. All right. Are we talking about
 3 millions of dollars here or thousands of
 4 dollars? Five point eight M, for
 5 instance, in the first paragraph, is
 6 that five point eight thousand dollars?
 7 A. I have trouble with the Ms and the Ms
 8 with the lines over them. Although I
 9 would believe in this case it is
 10 probably five point eight million
 11 dollars. Five point eight thousand
 12 dollars would not be a very significant
 13 amount of money to talk about closure
 14 activities and things like that. So I
 15 will assume it is millions, and further
 16 down they say three hundred to four
 17 hundred K per year. That would be
 18 thousands. So I would think that's
 19 millions.
 20 Q. So ongoing monitoring and remedial
 21 actions associated with the old
 22 parathion plant and landfill are
 23 estimated at three hundred to four

REGIONAL REPORTING SERVICE, INC.

1 general, PCBs or not PCBs.
 2 Q. Well, isn't Mr. Pierle the one who with
 3 Mr. Reddington did this study?
 4 A. Yes.
 5 Q. And this letter and study, Exhibit
 6 Twenty-six, February 26, 1987, the same
 7 date as this letter?
 8 A. Yes.
 9 Q. And wasn't one of the problems that we
 10 just got through mentioning that there
 11 were some PCB problems there at the
 12 plant?
 13 A. It was listed --
 14 MR. KELLY: Object to the form.
 15 A. Sorry, Mike. It was listed as a
 16 potential future problem. It was not
 17 listed as one of the current problems
 18 they were addressing.
 19 Q. Okay. So when they made the survey they
 20 just ignored the possibilities that it
 21 might be a problem?
 22 MR. KELLY: Object to the form.
 23 A. They listed them as a potential future

REGIONAL REPORTING SERVICE, INC.

1 hundred thousand K per year?
 2 A. Yes.
 3 Q. That is the landfill that is south of
 4 202?
 5 A. Presumably that would be the case
 6 because the west landfill was --
 7 Q. This is February 26, 1987?
 8 A. Yes. The other landfill would have been
 9 an APCO property at that time. So I
 10 believe that would be the south
 11 landfill.
 12 Q. This says it should be made clear
 13 however that no monies have been
 14 reserved for a major site cleanup
 15 program?
 16 A. It says that.
 17 Q. So nothing was going to be done as of
 18 February 26, 1987, as far as PCBs were
 19 concerned about a major cleanup of this
 20 site?
 21 MR. KELLY: Object to the form.
 22 A. Well, this document doesn't even mention
 23 PCBs. So it was just the site in

REGIONAL REPORTING SERVICE, INC.

1 problem, but this is addressed -- This
 2 memo as I read it is addressed to the
 3 actual ongoing activities, not future --
 4 potential future problems.
 5 Q. Well, they did something about PCBs,
 6 didn't they?
 7 A. I don't know what that means.
 8 Q. Let me show you Exhibit Number
 9 Twenty-eight, I believe it is.
 10 (Plaintiffs' Exhibit Number
 11 Twenty-eight was marked for
 12 identification.)
 13 Q. And this is a report back from
 14 Mr. Cheever to Mr. Reddington. Can you
 15 tell us what he did?
 16 A. This reads with response to an effort to
 17 get all of the PCB containing electrical
 18 equipment off the Anniston plant site.
 19 Q. Well, actually it says a little more
 20 than that, doesn't it?
 21 A. I don't know. I just read it carefully.
 22 Q. In the letter it says, "Per your above
 23 referenced request, attached herewith is

REGIONAL REPORTING SERVICE, INC.

1 the plan to achieve a PCB-free status at
 2 the Anniston plant*?
 3 A. Yes, but that is with regard to
 4 electrical equipment.
 5 Q. That's --
 6 A. That was a plan throughout the company
 7 to remove PCB containing electrical
 8 equipment from the various plant sites,
 9 and that is why the PCB-free plan here
 10 addresses electrical equipment.
 11 Q. Well, you just didn't pay much attention
 12 to the stuff east of the plant or in the
 13 creeks or coming out of the landfill,
 14 but we want to make sure that
 15 transformer is clean. Is that what I'm
 16 understanding you to say, Dr. Kaley?
 17 MR. KELLY: Object to the form.
 18 A. The PCB plan for this Anniston plant was
 19 part of a company-wide program to remove
 20 PCB containing electrical equipment from
 21 all of our plants.
 22 Q. But would it be fair to say that the
 23 other problems that have since cropped

REGIONAL REPORTING SERVICE, INC.

1 about.
 2 Q. Weren't you with the company in '80?
 3 A. I was.
 4 Q. Were you with the environmental group in
 5 '80?
 6 A. No, I was not.
 7 Q. Weren't you testing samples that were
 8 taken in connection with the plant down
 9 there in Anniston?
 10 MR. KELLY: Object to the form.
 11 A. I may have been.
 12 Q. Well, let me show you what we will mark
 13 as Exhibit Twenty-nine and ask you to
 14 identify it. This is a Monsanto
 15 document that has to do with the
 16 corporate environmental policy regarding
 17 the sale or transfer of ownership of
 18 Monsanto owned lands is as follows. It
 19 is apparently board policy.
 20 (Plaintiffs' Exhibit Number
 21 Twenty-nine was marked for
 22 identification.)
 23 A. A what?

REGIONAL REPORTING SERVICE, INC.

1 up were certainly ignored in this time
 2 frame either by Mr. Pierle, by
 3 Mr. Reddington, by Mr. Potter, and
 4 Mr. Cheever?
 5 MR. KELLY: Object to the form.
 6 A. I think they recognized the potential.
 7 But as we said very early this morning,
 8 the PCB impact and the presence in
 9 ground water was a surprise to us in
 10 1993. And partly what you are saying is
 11 correct in that we were not aware of
 12 those potential problems at that time.
 13 Q. Okay. Really what happened on this
 14 plant site is y'all were just following
 15 corporate policy that had been devised
 16 as far back as May of 1980 where you
 17 decided if you had a waste stream that
 18 could prove harmful to people in the
 19 future, you are just going to hold onto
 20 that property? Isn't that what y'all
 21 had decided?
 22 MR. KELLY: Object to the form.
 23 A. I have no idea what you are talking

REGIONAL REPORTING SERVICE, INC.

1 Q. A board policy. Retain ownership of all
 2 company land known to contain waste of
 3 such composition and quantity which has
 4 the potential for injury to health or
 5 the environment except where otherwise
 6 approved by the environmental policy
 7 committee. It says to comply with the
 8 policy anybody that is going to sell
 9 land like that has to check with the
 10 long timers and retirees and find out
 11 where that waste is buried and get
 12 available waste disposal records. Have
 13 you attempted to do that at all in
 14 connection with this site?
 15 A. No, because I don't believe, number
 16 one -- I have never -- I don't know what
 17 this specifically applies to, but I
 18 don't believe we have attempted to sell
 19 any of this property since I've had an
 20 ongoing relationship with this site,
 21 other than that document which I had not
 22 seen before either. So I assume they
 23 were going to do something like that. I

REGIONAL REPORTING SERVICE, INC.

1 just don't know.

2 Q. And as a result of this policy, probably

3 decided because of that potential for

4 contamination in the future, let's don't

5 sell this thing, because what would

6 happen if you sold a site, Dr. Kaley, to

7 someone else and had this landfill on

8 there? Who would they report to?

9 MR. KELLY: Object to the form.

10 Q. If they didn't generate the material

11 that was on that site, just bought up a

12 piece of property and it had a waste or

13 landfill on it, dump, and it had

14 material like PCBs in it governed by

15 certain regulations and other things,

16 and they didn't generate it, who would

17 they report it to if they found it, like

18 the power company did? CERCLA, isn't

19 that who?

20 MR. KELLY: Object to the form.

21 A. I'm not sure I follow your question, but

22 it doesn't matter because the answer is

23 I don't know enough about environmental

REGIONAL REPORTING SERVICE, INC.

1 property. But whether that happens

2 anywhere or not, I don't know.

3 Q. What happened, Dr. Kaley?

4 A. When Alabama Power discovered PCBs on

5 what was formerly the west end landfill,

6 they reported that finding to the state

7 and to us. Eventually we reacquired

8 that property. So that was an example I

9 think of what you were describing.

10 Q. It is your understanding --

11 A. And that is what happened in that

12 particular case, but I don't know

13 whether that would happen in any

14 particular case or what.

15 Q. It is your understanding that there were

16 RCRA permits in place that covered the

17 landfills that were located on the

18 facility at that time, your property?

19 A. I believe that is correct. I'm not very

20 conversant in what permits or not

21 permits were there with regard to RCRA

22 or anything else. But I believe, since

23 I think many of the activities were done

REGIONAL REPORTING SERVICE, INC.

1 regulations to know how to answer that.

2 Q. Well, how is it that you assist these

3 people in -- just technical aspects of

4 it? You don't handle the environmental

5 regulation part?

6 A. I deal with the environmental

7 regulations that apply specifically to

8 PCBs, but I have very passing knowledge

9 of RCRA and CERCLA and things like that.

10 Q. So you are saying as you sit here today

11 you don't know whether you would kick

12 this over to CERCLA if you were not the

13 generator of the waste, just happened to

14 buy the property?

15 A. I think a lot would be dependent on the

16 terms of sale. You know, some of that

17 may very well be covered in the terms of

18 the sale of the property. If not, I

19 don't know what the approach would be.

20 I know what Alabama Power did in a

21 situation similar to that. They went to

22 the state. The state came to us, and we

23 reached an agreement to reacquire that

REGIONAL REPORTING SERVICE, INC.

1 under a reauthorization of our RCRA

2 permit, there must have been a RCRA

3 permit in place, so I think that is

4 correct.

5 Q. But this west end landfill wasn't

6 covered under that RCRA permit, was it?

7 A. I don't know. I do not believe so. I

8 believe that was part of the goal of

9 reacquiring it, and then it was put

10 under the RCRA in the reapplication or

11 whatever it was called.

12 Q. Just exactly how did that happen?

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

14 Q. Well, just exactly how did this west end

15 landfill find its way under your RCRA

16 permit?

17 A. Well, again, I'm stretching my knowledge

18 of what happened. But my understanding

19 is that once we reacquired that property

20 we notified ADEM that it was an

21 additional what we call a solid waste

22 management unit associated with the

23 former operations of our plant, and it

REGIONAL REPORTING SERVICE, INC.

1 was -- In fact, the cover of that
2 landfill was done as an interim measure
3 under that permit. I could be wrong,
4 partly wrong, totally wrong, but that is
5 basically my understanding.
6 Q. Did y'all have any hearings?
7 A. Oh, yes. That permit went to public
8 hearing, absolutely.
9 Q. That permit went to public hearing at
10 the time y'all slipped this west end
11 landfill up under that existing RCRA
12 permit?
13 MR. KELLY: Object to the form.
14 A. We didn't slip anything. If it
15 happened, Mr. Stewart, I told you I am
16 walking on very shaky ground here. That
17 is my understanding of the status of the
18 west end landfill at this point. But
19 certainly when our permit was
20 reauthorized there was public hearing.
21 There was a public -- There were two.
22 There was I believe a public
23 availability session and a public

REGIONAL REPORTING SERVICE, INC.

1 like that. Now, he might not have been
2 down there, but you had some other
3 buddies down there?
4 MR. KELLY: Object to the form.
5 A. That's a complete mischaracterization of
6 the process, Mr. Stewart.
7 Q. You certainly didn't have a hearing at
8 the time that occurred where the public
9 knew a thing about what was happening,
10 did you?
11 MR. KELLY: Object to the form.
12 A. It was available in public records to
13 the extent the public wanted to --
14 Q. Public records?
15 A. We were reporting to ADEM.
16 Q. Well, now, Dr. Kaley, isn't what
17 actually happened that y'all just sent a
18 couple of letters around the horn from
19 Mr. Jones, and then somebody down at
20 ADEM sent a letter over to the EPA and
21 they said that's all right, y'all just
22 slip up under there? Isn't that what
23 y'all did at that time?

REGIONAL REPORTING SERVICE, INC.

1 hearing associated with the
2 reauthorization of that permit.
3 Q. But isn't it a fact that those hearings
4 were held long after y'all reacquired
5 the property from Alabama Power?
6 A. Well, I don't know what long is. They
7 were within two or three years, I
8 believe.
9 Q. Two or three years?
10 A. Four. I don't know when. We reacquired
11 the property in '93 or '94.
12 Q. Right at the end of '93, Dr. Kaley.
13 A. That would be my recollection, December
14 of '93. And I don't know when those
15 permit hearings were, '97 or '98.
16 Q. The Alabama Power Company paid y'all
17 seven hundred and fifty thousand dollars
18 to take this back. Y'all slipped off
19 down to Montgomery in the dead of the
20 night and got them to let y'all take
21 this landfill and stick it under that
22 same agency that AWIC became, where you
23 had good old Mr. Crockett and people

REGIONAL REPORTING SERVICE, INC.

1 MR. KELLY: Object to the form.
2 A. I have no idea what you are talking
3 about.
4 Q. I'm just asking you because I really
5 don't know a whole lot about it. I'm
6 just trying to figure out how all this
7 was done. Is that another one of those
8 deals where you invited somebody to come
9 to the Chemical Manufacturers
10 Association, said here is what we will
11 help you do if you can sort of help us
12 slip this thing under our RCRA permit?
13 MR. KELLY: Object to the form.
14 A. In the first place, there was never
15 anything like that. In the second
16 place, we undertook our responsibilities
17 under appropriate regulation and with
18 appropriate regulatory oversight.
19 Q. I understand. I understand how it
20 happened. Now, Mr. Godfrey, who worked
21 for the power company, said they checked
22 your RCRA permit and they couldn't find
23 anything in your RCRA permit that

REGIONAL REPORTING SERVICE, INC.

1 covered this west end landfill. So they
2 reported it to CERCLA.
3 A. If that is what he said and that is his
4 understanding -- I have no comment on
5 what Mr. Godfrey said or didn't say.
6 Q. You really don't know what happened.
7 Who handled all that? I know Mr. Jones
8 actually went down there, but who
9 actually had the conversation with these
10 people? I'd just like to know.
11 A. With what people?
12 Q. The people at ADEM and the people over
13 there at EPA.
14 A. I don't know.
15 Q. How was that handled?
16 A. I don't know.
17 Q. Because my clients have no idea how it
18 worked.
19 A. Nor do I.
20 Q. Now, tell me if you would if there was
21 any public involvement at all in that
22 initial meeting between Mr. Jones and
23 whoever it was at ADEM and whoever it

REGIONAL REPORTING SERVICE, INC.

1 ADEM and perhaps EPA and perhaps ATSDR?
2 A. I don't know. I don't know who was or
3 wasn't there. I don't know if there
4 even was a meeting where it was all
5 decided. I'm sure it was an ongoing
6 process.
7 Q. Were there ever any members of the
8 neighborhood there?
9 A. I don't know.
10 Q. Well, who would know about that? Wasn't
11 Jack Mayausky there at that time?
12 A. I don't know. I don't remember who
13 was --
14 Q. Wasn't a woman named Jo Hanson there at
15 that time?
16 A. She may have been. She was there. She
17 may have been working at the site at
18 that time.
19 Q. Wasn't Mr. Michael Foresman involved at
20 that time?
21 A. He was remediation director at the time.
22 I don't know what involvement he had.
23 Q. Wouldn't a fair assessment of that

REGIONAL REPORTING SERVICE, INC.

1 was over there at EPA.
2 A. By public you mean residents of
3 Anniston?
4 Q. Absolutely, neighbors.
5 A. I don't know if there was or wasn't.
6 Q. Do you know of one single solitary
7 neighbor who knew anything about that
8 permit change --
9 A. I don't know.
10 Q. -- at the time it occurred? I'm not
11 talking about when the permit went
12 public, when everything went public.
13 I'm talking about when that occurred.
14 A. I don't know of any.
15 Q. Do you know of anybody as you sit here
16 today, Dr. Kaley, who knew anything
17 about what you were going to do on the
18 west end landfill?
19 A. I don't know of anybody.
20 Q. So isn't it fair to say, Dr. Kaley, that
21 the people who were there at the meeting
22 when all of that was decided was
23 Monsanto representatives and folks from

REGIONAL REPORTING SERVICE, INC.

1 situation be the deal was cut before the
2 public knew a single thing about what
3 y'all were going to do out there?
4 MR. KELLY: Object to the form.
5 A. There was not a deal that was cut. It
6 was our response to deal with a
7 situation that was brought to our
8 attention and to deal with the
9 appropriate regulators to handle that
10 situation.
11 Q. And just ignore those people that lived
12 in Cobbtown, Sweet Valley, west of the
13 plant, north of the plant, in an area
14 about a mile around there?
15 MR. KELLY: Object to the form.
16 A. We undertook a process in which they
17 eventually had the opportunity to
18 comment on those undertakings.
19 Q. What testing did you do initially on any
20 residential properties, Dr. Kaley?
21 A. I don't know what initially means.
22 Q. At the time you first began to do any
23 remediation out there, what testing did

REGIONAL REPORTING SERVICE, INC.

1 you do all on residential properties?

2 A. I mean certainly we instigated some at

3 some point. I don't know the exact time

4 frame vis-a-vis whatever it is you may

5 be talking about.

6 Q. I'm talking about when you initially

7 began work out there on this particular

8 project.

9 A. On the west end landfill cover?

10 Q. On -- That's the first project, wasn't

11 it?

12 A. It probably was. I don't know. There

13 was ongoing sampling.

14 Q. In connection with the south landfill?

15 A. I mean, the south landfill was part of a

16 bigger project to deal with drainage

17 issues on the site.

18 Q. Really that wasn't to deal with PCBs.

19 That was to deal with parathion, wasn't

20 it?

21 MR. KELLY: Object to the form.

22 A. Somehow we have lost each other.

23 Q. Well, you indicated that y'all did a

REGIONAL REPORTING SERVICE, INC.

1 A. In my understanding of the issue, he

2 would be wrong. One of us is -- I mean,

3 if that is what he said, fine. But my

4 understanding was that it was to deal

5 with PCB impacted soils on that portion

6 of the south landfill.

7 Q. Well, where are the PCBs buried over

8 there on that portion of the south

9 landfill, the east or west side of that

10 landfill?

11 A. Primarily east.

12 Q. Primarily what?

13 A. East.

14 Q. Well, that is covered by clay and

15 vegetation, isn't it?

16 A. It is my understanding, yes.

17 Q. And the synthetic membrane is over the

18 parathion cells, isn't it?

19 A. It is over those cells, but it is over

20 where PCB impacted soils were detected

21 on the surface. That is why the

22 remediation was done.

23 Q. So you mean you had PCBs all over that

REGIONAL REPORTING SERVICE, INC.

1 project on the south landfill after you

2 did the project on the west landfill, a

3 capping on the --

4 A. That's correct.

5 Q. Built a berm up there to take water from

6 around that thing?

7 A. That's correct.

8 Q. And piped it under the ground?

9 A. Well, we piped it above the ground and

10 then buried the pipes, but, yes.

11 Q. And as a practical matter, the capping

12 over there was done for purposes of

13 keeping parathion from migrating off

14 that landfill?

15 A. No, that is incorrect. It was done to

16 deal with PCB impacted soils that had

17 been detected on that portion of the

18 landfill.

19 Q. So that is exactly what you did it for?

20 A. Yes, sir.

21 Q. So if Mr. Brown said you did you it for

22 off migration of parathion, he would be

23 wrong?

REGIONAL REPORTING SERVICE, INC.

1 western portion of that landfill, and

2 yet they were buried on the east. Where

3 did it come from?

4 A. Well, number one, I don't know that the

5 interpretation of "all over" is correct,

6 and I don't know the answer as to

7 particularly where they came from. All

8 we know is when we did our sampling on

9 the landfill, that is where PCB impacted

10 soils were detected, and that is where

11 we implemented the cover project.

12 Q. And that was not -- didn't have a thing

13 to do with parathion? And if Mr. Brown

14 said it did, he is just wrong?

15 A. Well, it may very well have been on the

16 cells that were primarily parathion

17 disposal cells, but it wasn't done to

18 effect or control potential parathion

19 release from those cells. It was done

20 to deal with the PCB impacted soils on

21 those cells.

22 Q. Would you admit as you sit here today,

23 Dr. Kaley, that if someone buried PCBs

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1 or parathion or left it outside the
2 confines of that fence that encloses
3 your landfill, that that would be a
4 violation of federal law?
5 MR. KELLY: Object to the form.
6 A. I don't know.
7 Q. In other words, you are telling me that
8 if Monsanto knew that they had a toxic
9 substance like pure parathion or PCBs
10 buried outside the confines of those
11 cells in that landfill, they wouldn't be
12 violating federal law?
13 A. Probably not. I don't know what federal
14 law they would be violating.
15 Q. You mean there is no rule or regulation
16 or law that says if you have a regulated
17 landfill by the federal government, you
18 can just bury it anywhere on your site?
19 A. No, it doesn't say that at all. But I
20 don't know the regulations very well
21 except with regard to PCBs. But if
22 there are PCBs in the ground in a site
23 that was there prior to 1978 or 1976

REGIONAL REPORTING SERVICE, INC.

1 leave it, not do anything with it?
2 MR. KELLY: Object to the form.
3 A. Absolutely not. It is entirely
4 consistent with federal law.
5 Q. Okay. In other words, you are telling
6 me as you sit here today that if you
7 know for a fact that substance is
8 regulated by the federal government, is
9 stuck out beyond -- left by you, out
10 beyond the confines of your landfill,
11 when you are going through a remediation
12 process, that that is perfectly all
13 right to leave it there? Is that what
14 you are telling me?
15 MR. KELLY: Object to the form.
16 A. No. Number one, you have completely
17 lost me in your hypothetical. So I
18 don't know what we are talking about any
19 more.
20 Q. Let me try to clarify it.
21 A. There is a difference in being in
22 violation of federal law and being
23 perfectly okay also. So I'm kind of

REGIONAL REPORTING SERVICE, INC.

1 then, you know, it is not against
2 federal law to leave those materials in
3 the ground.
4 Q. Let's say you took them and dug them up
5 and buried them beyond the berm up
6 there, isn't that beyond the confines of
7 where the cells are?
8 MR. KELLY: Object to the form.
9 A. I don't know what you are talking about.
10 I can't answer that question.
11 Q. If you had a barrel of PCBs and you
12 buried it beyond the berm and outside
13 the confines of what is fenced in there,
14 dug it up and buried it, isn't that a
15 violation of federal law?
16 A. Today, yes.
17 MR. KELLY: Object to the form.
18 Q. And, Dr. Kaley, isn't it a violation of
19 federal law if you find it in the
20 process of digging it up, find a toxic
21 substance that is governed by federal
22 law, regulated by federal law as to
23 where you put it, and just cap it and

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1 lost, frankly.
2 Q. Let's say you are remediating a piece of
3 property, trying to clean it up under
4 federal law, and you find a substance --
5 A. I don't even know what that means,
6 trying to clean it up under federal law.
7 Q. Let's say it is --
8 A. I mean, we are subject to --
9 Q. It is a RCRA or Superfund site that you
10 are having to clean up, that you are
11 under a consent order to clean up, to
12 take corrective measures, whether it is
13 the state or federal government.
14 A. Okay.
15 Q. And you lie about substances that you
16 are supposed to be cleaning up, just
17 cover it up, don't tell the government
18 about it.
19 A. Mr. Stewart, I don't know what you are
20 talking about. You have completely lost
21 me. Do you have a particular situation
22 you are thinking of that you could
23 describe to me so I could understand --

REGIONAL REPORTING SERVICE, INC.

1 Q. I'm just asking you do you not know
2 environmental regulations, Dr. Kaley?
3 A. I know the environmental regulations
4 with disposal of PCBs.
5 Q. If you are under a consent order to
6 clean something up and you don't do it.
7 You know it is there. You know it is a
8 violation of that order to leave it
9 there, and you just leave it there --
10 MR. KELLY: Object to the form,
11 speculation, no foundation.
12 Q. -- isn't that a violation of the law?
13 A. Under the hypothetical you are doing, it
14 may be a violation of the consent order.
15 I don't know whether it is or not.
16 Frankly I'm having trouble visualizing
17 what it is you are asking me to say.
18 Q. Tell me what you know, Dr. Kaley, about
19 the trip that was made to Washington to
20 finalize the remediation at this plant
21 site.
22 MR. KELLY: Object to the form.
23 A. There was no trip made to Washington to

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1 not because Dick Green has had some
2 health problems. I don't recall whether
3 Dick was particularly at that meeting or
4 not. It may have been Dick Green, or it
5 may have been on of his associates. I
6 don't remember specifically.
7 Q. Well, who else was there for -- at the
8 Washington level?
9 A. At the Washington level, I believe the
10 only person there at the Washington was
11 the Department of Justice lawyer.
12 Q. What was the purpose of that discussion?
13 A. To begin discussion of terms for a
14 potential consent order to come to the
15 final efforts to remediate the areas
16 that are currently being handled under
17 EPA CERCLA authority.
18 Q. Did y'all arrive at an agreement in
19 principle? Mr. Branchfield said y'all
20 arrived at an agreement in principle.
21 A. I believe that's correct. I believe we
22 arrived at an agreement in principle.
23 Q. What are those?

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1 finalize the remediation of this plant
2 site. We are nowhere near finalizing
3 the remediation of this plant site, and
4 that would be done under the auspices of
5 ADEM and not anybody in Washington
6 anyway.
7 Q. Have you been to Washington anytime
8 recently with Glen Ruskin to meet people
9 at the EPA?
10 A. I don't know what recently means. I
11 have been to Washington in the company
12 of Glen Ruskin, and we have met with
13 people at EPA.
14 Q. Who?
15 A. Who did we meet with?
16 Q. Yeah.
17 A. We met with a DOJ lawyer. We met
18 with -- I believe there were a couple of
19 lawyers from Region Four in Atlanta, and
20 I believe there were some administrative
21 people from Region Four in Atlanta.
22 Q. Who was that?
23 A. I don't know if Dick Green was there or

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1 A. Pardon?
2 Q. What is your agreement?
3 A. That we would undertake an RFI process
4 at the plant site, that a risk
5 assessment would be done, primarily.
6 Q. What about the residential area?
7 A. That's dealing with the residential
8 areas. We are dealing with the areas
9 that are covered under the CERCLA -- the
10 EPA CERCLA authority.
11 Q. What are you going to be doing?
12 A. I don't know. We have not gotten to
13 that stage of the process yet.
14 Q. What do you mean, you haven't gotten to
15 that stage of the process?
16 A. I mean exactly what I said. That will
17 take the development of an RFI work plan
18 or an RI/FS or whatever they call it
19 under RCRA, and have not undertaken the
20 discussions to initiate that program.
21 Q. When you say you have an agreement in
22 principle, what is that?
23 A. We have an agreement that we will work

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- 1 towards a consent decree to develop that
2 program.
- 3 Q. Well, what parts of that program are
4 y'all in the process of developing?
- 5 A. Well, what kinds of sampling is going to
6 be necessary, what the risk assessment
7 is going to look like, the extent of the
8 sampling, the materials that are going
9 to be sampled for, a number of things.
- 10 Q. What materials are you going to be
11 sampling for?
- 12 A. We have not determined that. We are --
13 It is in the very early stage of
14 development. We have nothing more --
15 very much more than an agreement in
16 principle to move forward in the
17 process. But we do have an agreement to
18 move forward in the process.
- 19 Q. And who is it that met with you from the
20 Justice Department?
- 21 A. I think the guy's name was Bill
22 Weinischke or something like that.
- 23 Q. Weinischke?

REGIONAL REPORTING SERVICE, INC.

- 1 for the areas under which the EPA has
2 taken authority under their CERCLA
3 authority.
- 4 Q. What is the area that will be covered?
- 5 A. Primarily the residential areas that are
6 addressed in the orders and consent that
7 we are currently operating under and
8 whatever else EPA may determine to add,
9 I guess.
- 10 Q. And exactly what are the principles that
11 are going to govern this risk
12 assessment?
- 13 A. I don't know specifically. They are the
14 principles that are going to govern any
15 risk assessment I would assume. A risk
16 assessment will be performed in
17 accordance with federal guidelines on
18 how to do risk assessments.
- 19 Q. Who is going to be doing that?
- 20 A. I don't know that it has been
21 determined. I think we have asked that
22 Solutia or its contractors be allowed to
23 do that with EPA oversight.

REGIONAL REPORTING SERVICE, INC.

- 1 A. Something like that.
- 2 Q. So y'all have agreed with Mr. Weinischke
3 on behalf of the government. Now, did
4 anybody come in there from the EPA
5 director's office?
- 6 A. The Washington EPA?
- 7 Q. Yeah.
- 8 A. I don't believe -- My recollection is it
9 was Region Four people. I don't know.
- 10 Q. Well, why is it you met in Washington?
11 Why didn't you just meet in Atlanta?
12 That is where all of them are.
- 13 A. I don't know. I don't know. That is
14 where Mr. Weinischke wanted to have the
15 meeting. I don't know the answer to
16 that.
- 17 Q. So you have agreed in principle to move
18 forward to work out an agreement. Is
19 that basically what you are telling me?
- 20 A. We have agreed in principle to try to
21 agree on terms of a consent decree to
22 finalize the RFI process or the RI/FS
23 process, whichever it is, under CERCLA

REGIONAL REPORTING SERVICE, INC.

- 1 Q. The risk assessment?
- 2 A. Sure. It is common procedure.
- 3 Q. Okay. Now, Mr. Ruskin is involved in
4 government relations, is he not?
- 5 A. Yes.
- 6 Q. And you all have somebody in Montgomery
7 who does the very same thing, do you
8 not?
- 9 A. I don't -- I mean, I don't know whether
10 we have anybody in Montgomery that does
11 the very same thing that Mr. Ruskin
12 does, no.
- 13 Q. Do you know a David Robertson?
- 14 A. I know the name.
- 15 Q. Didn't he used to audit the plant site
16 there in Anniston?
- 17 A. I don't know.
- 18 Q. Didn't he used to work for ADEM?
- 19 A. I don't know.
- 20 Q. Who is it that worked for Monsanto that
21 now serves as an administrative
22 assistant to Ms. Whitten?
- 23 A. Used to work for Monsanto? Linda

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1 Fisher.
 2 Q. Okay.
 3 A. She is more than an administrative
 4 assistant. I don't know what she
 5 exactly is, but --
 6 Q. Deputy administrator?
 7 A. Something like that. I don't know
 8 exactly.
 9 Q. Pretty high position?
 10 A. Fairly high.
 11 Q. What did she do before she took that
 12 position?
 13 A. Which position?
 14 Q. The deputy administrator for EPA.
 15 A. She had some position in Monsanto's
 16 Washington office.
 17 Q. Just sort of moved over?
 18 A. Well, I don't know that she just sort of
 19 moved over. She had an opportunity to
 20 work for the government, and that is
 21 what she thought her career path ought
 22 to be.
 23 Q. Did she assist y'all in getting the

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1 president of the United States?
 2 MR. KELLY: Object to the form.
 3 A. I have no idea what she -- Mr. Stewart,
 4 I have told you I don't know what she
 5 does or did.
 6 Q. Okay. But she is in the government
 7 relations office for Monsanto in
 8 Washington?
 9 A. She was in the Monsanto Washington
 10 office. There are more than government
 11 relations people in there. So I don't
 12 know what she did.
 13 Q. What did she do before she went with
 14 Monsanto?
 15 A. I believe she was employed by the US
 16 EPA.
 17 Q. So she left the EPA. And what was her
 18 position with EPA?
 19 A. I don't recall.
 20 Q. So she left EPA and went to work for
 21 Monsanto?
 22 A. Well, she was released from EPA at the
 23 change of administrations and took a

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1 meeting with Mr. Weinischke?
 2 A. I don't know.
 3 Q. Well, didn't Mr. Ruskin used to be her
 4 boss?
 5 A. Heavens no, no. She always worked for
 6 Monsanto. Mr. Ruskin has always worked
 7 for Solutia. He was hired by Solutia.
 8 He has had -- as far as I know has no
 9 relationship with Ms. Fisher.
 10 Q. Doesn't know her?
 11 A. He might know her.
 12 Q. Might be acquainted with her?
 13 A. May be, may not be. I don't know.
 14 Q. What did she do in the Monsanto office
 15 in Washington?
 16 A. I don't know.
 17 Q. Was she in government relations like
 18 Mr. Ruskin is, a lobbyist like he is for
 19 Solutia?
 20 A. I don't know.
 21 Q. Handle PAC money and stuff like that and
 22 hand out contributions at fund raisers
 23 for senators and congressmen and the

REGIONAL REPORTING SERVICE, INC.

1 position with Monsanto. Yeah.
 2 Q. Right. And now she has gone back and
 3 she is working for EPA again as a deputy
 4 administrator?
 5 A. Or whatever her position is. You're --
 6 If that is what her position is and you
 7 -- I'm not testifying that she is a
 8 deputy administrator. Whatever she is,
 9 she is working for the EPA, that's
 10 correct
 11 Q. Was she involved in enforcement when she
 12 initially worked with EPA?
 13 A. I don't know.
 14 Q. How many former employees of Monsanto
 15 work with the EPA now?
 16 A. I have no idea.
 17 Q. How many would have -- former EPA people
 18 now work for Monsanto?
 19 A. I have no idea.
 20 Q. I assume the revolving door spins pretty
 21 good. I just was trying to find out how
 22 much.
 23 MR. KELLY: Object to the form, no

REGIONAL REPORTING SERVICE, INC.

1 foundation.

2 Q. Who would have that information?

3 A. I doubt if anyone knows that. I doubt

4 if it is anything anybody keeps records

5 on.

6 Q. Is it a pattern and practice for you all

7 to put somebody in charge of a site who

8 has no idea whatsoever about

9 contaminants that were released on a

10 site?

11 MR. KELLY: Object to the form.

12 A. I have no idea what you are talking

13 about.

14 Q. Well, let me just ask if you if you in

15 fact have made certain statements to the

16 press in Anniston about a mercury

17 release. Have you ever said anything

18 about that?

19 A. Have I?

20 Q. Yeah.

21 A. Yes, sir.

22 Q. Did you have any dealings with an outfit

23 called BB&L?

REGIONAL REPORTING SERVICE, INC.

1 A. I don't know what David may have heard

2 or not heard. I would have said and

3 have said to the newspapers in Anniston

4 that I believe the characterization of

5 that process as a closed process with

6 respect to mercury is a correct

7 characterization but that there were

8 probably releases of mercury from that

9 process.

10 Q. Well, if Mr. Cain said that he was going

11 to write to The Anniston Star and say

12 that there were -- and the person who

13 wrote this story -- I think an Elizabeth

14 Bluemink -- that she was incorrect in

15 saying there were forty to fifty tons of

16 mercury that went into the Anniston

17 waste stream because of representations

18 that you made to him, are you saying

19 that you didn't make those

20 representations? I'm trying to figure

21 out where Mr. Cain got that information.

22 He told me that he got it from you.

23 A. Well, you heard what I just said and

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1 A. Yes.

2 Q. Did you get the information up for BB&L?

3 A. No.

4 Q. Where did that come from?

5 A. I'm not sure I know. Well, I don't

6 know.

7 Q. You don't have any idea where BB&L got

8 the information about the mercury that

9 was used in the chlorine production

10 there at the Anniston plant?

11 A. No, I don't.

12 Q. Did you tell David Cain that there was

13 no mercury released at the Anniston

14 plant?

15 A. I'm sure I didn't.

16 Q. Sir?

17 A. I don't believe I did, no.

18 Q. So if he testified under oath that you

19 told him that the mercury that was used

20 in the chlorine production was part of a

21 closed system and there were no releases

22 whatsoever, are you saying here today

23 that that didn't come from you?

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1 what I have said to the newspaper and

2 what I would have said to Mr. Cain. He

3 may have misinterpreted it or

4 misunderstood what I said.

5 Q. Is it a fair representation of what the

6 consultants told ADEM that Monsanto used

7 mercury but most likely did not release

8 it to the environment because of what

9 you just said earlier, this was a closed

10 system in that production or

11 manufacturing process?

12 A. I think to a large extent that's true.

13 There were certainly some releases.

14 There is no question there were some

15 releases, and I have said that in my

16 comments to Ms. Bluemink and in my

17 letter to the editor.

18 Q. What did you say in your letter to the

19 editor? I'm sorry. I missed that.

20 A. Pretty much what I just told you. I

21 described the process and the fact there

22 were areas where there were potential

23 releases, but that the company was

REGIONAL REPORTING SERVICE, INC.

1 making serious and concerted efforts to
 2 keep those losses to a minimum and
 3 continued to do that through the life of
 4 the process there.
 5 Q. Did you tell The Anniston Star that BB&L
 6 didn't obtain access to all of the
 7 relevant documents which were buried
 8 deep within the company?
 9 A. I may have said something like that.
 10 That seems like a quote out of the
 11 thing. I don't remember saying that to
 12 her. I didn't remember it when I read
 13 it in the newspaper, but the fact is
 14 that in the limited time they had
 15 available to them they did not obtain
 16 all of the standard manufacturing
 17 processes that Ms. Bluemink got from the
 18 plaintiffs' attorneys and that
 19 subsequently I got.
 20 Q. Well, why wasn't BB&L given access to
 21 the documents, if you know?
 22 A. It wasn't that they weren't given access
 23 to it. It was that they had a limited

REGIONAL REPORTING SERVICE, INC.

1 sampling?
 2 A. Well, they didn't miss them in the
 3 documents. Those documents were not
 4 turned over in the time they had to
 5 respond to those comments.
 6 Q. Well, wasn't there somebody who reviewed
 7 this document for Monsanto before it was
 8 submitted to ADEM?
 9 A. I would presume so, yes.
 10 Q. Who would that have been?
 11 A. It may very well have been me.
 12 Q. And you are telling me sitting here
 13 today, Dr. Kaley, that you missed the
 14 fact that there were mercury emissions
 15 from this plant in the '60s that you had
 16 documented in these records?
 17 A. All I can say is at the time I probably
 18 reviewed that document I was not aware
 19 of the documents that were subsequently
 20 shown to me from the litigation. And it
 21 didn't strike me as out of line that
 22 those statements were made, and more
 23 importantly that, you know, we undertook

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1 time to respond to a twenty-six page
 2 document. The RCRA process requires us
 3 to be driven by the data. And the data
 4 indicated that mercury in the Anniston
 5 environment was not a problem, so they
 6 spent less resources on that particular
 7 question. Now, the most important thing
 8 is that in lieu of that -- if you read
 9 the ADEM statement that we were
 10 responding to, they said if you cannot
 11 provide information, then you have to do
 12 additional sampling. And that is
 13 exactly what we did. We did additional
 14 sampling to characterize the potential
 15 for mercury to be in the Anniston
 16 environment. That is exactly what we
 17 did.
 18 Q. Who did that sampling for you?
 19 A. Presumably the people who have done most
 20 of the sampling for us, either Genesis
 21 Project or BB&L people.
 22 Q. So BB&L missed the mercury releases in
 23 the documents, but they did the

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1 the sampling that ADEM required us to do
 2 if we didn't provide the information.
 3 Q. Now, are you disagreeing with
 4 Ms. Bluemink's statement that some fifty
 5 thousand pounds of mercury was released
 6 into the creek?
 7 A. I'm disagreeing with her statements that
 8 some fifty thousand pounds of liquid
 9 mercury were released into the creek.
 10 Absolutely, yes.
 11 Q. What do you base that on?
 12 A. I base that on the fact that my
 13 understanding of where that number came
 14 from is a mischaracterization of the
 15 document that it is based on.
 16 Q. What is that?
 17 A. It is a 1968 standard manufacturing
 18 process for Aroclor.
 19 Q. You are saying that somebody just
 20 miscalculated?
 21 A. No. They misunderstand what that number
 22 was -- misinterpreted.
 23 Q. That is what you mean. Somebody looked

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1 at the manufacturing process and just
2 made a mistake about the releases of
3 mercury?
4 A. I think they misunderstood the terms
5 that were being used to describe the
6 release, yes.
7 Q. Where would that mercury have come from?
8 A. Where would it have come from?
9 Q. Right.
10 A. I don't understand. It was used as part
11 of the process for manufacturing
12 chlorine at the plant. Where it came
13 from, it was purchased.
14 Q. No. What I'm saying, the releases,
15 where would that have come from, from
16 that chlorine process?
17 A. Well, there were a number of streams,
18 which is the term used, in which mercury
19 could come. Some of it was in the
20 product. Some was caught in drain traps
21 and recycled into the process. There
22 are a number of potential sources for
23 that.

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1 been discharges.
2 Q. Wouldn't you have to admit that if you
3 replaced the mercury and had to pay for
4 it, then it went somewhere, didn't it?
5 It certainly didn't stay in the
6 manufacturing.
7 MR. KELLY: Object to the form.
8 A. I just explained that there were various
9 potentials for mercury loss in that
10 process.
11 Q. And y'all had the capability to pretty
12 well gauge those losses based on what
13 you had to continue to supply to the
14 manufacturing process, either at
15 Krummrich or at Anniston, to replace
16 that lost mercury?
17 A. Certainly --
18 MR. KELLY: Object to the form.
19 A. -- they knew how much they were
20 replacing.
21 MR. STEWART: Mark that as Thirty.
22 (Plaintiffs' Exhibit Number
23 Thirty was marked for

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1 Q. Isn't it a fact, Dr. Kaley, that mercury
2 was used in the chlorine production --
3 or the production both at Krummrich and
4 at the Anniston plant?
5 A. Yes.
6 Q. And isn't it a fact that y'all have a
7 pretty good capability of tracking the
8 losses of mercury to the environment?
9 A. We developed that pretty much after --
10 Well, not of losses to the environment.
11 I mean, there were certainly inventories
12 of the mercury in the processes. But I
13 don't know that we have the capability
14 to track losses to the environment.
15 Q. Well, where did it go?
16 A. That is what I was trying to explain.
17 It went to -- Some of the losses they
18 talked about was mercury that was
19 entrained in product line. Some of the
20 losses of mercury was mercury that was
21 later recovered from sumps in the
22 drainage ditches and returned to the
23 process. Some of it may very well have

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1 identification.)
2 Q. Now, this is a progress report dated
3 10-8-65, and it comes from a fellow
4 named C. E. Woodward, who is a Monsanto
5 employee. And it is addressed to people
6 at Krummrich and Anniston, and it talks
7 about mercury loss. Now, maybe I'm
8 missing something, but it says y'all
9 lost in that year about a hundred and
10 nine thousand dollars worth of mercury
11 or about fifteen thousand eight hundred
12 and twenty pounds from those two plants.
13 A. I see where you are saying a hundred and
14 nine thousand, but where's the weight?
15 Q. Down at the bottom of the page on the
16 right.
17 A. Well, number one, this is Krummrich and
18 not both plants. The problem was to
19 determine mercury losses in the WGK
20 denora chlorine facility. So I think
21 this only applies to Krummrich.
22 Q. Look at the Anniston up there, over
23 there on your right. It was sent to a

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1 W. Voss who worked at that plant.
 2 A. Yes, it was sent to him.
 3 Q. Are you saying this just deals with
 4 Krummrich?
 5 A. That would be my reading, yes.
 6 Q. From what?
 7 A. I'm sorry?
 8 Q. From what?
 9 A. Because it talks about mercury loss
 10 sources in the WGK denora chlorine
 11 facility.
 12 Q. I see. You are saying this is just WGK?
 13 A. That is my reading of this document,
 14 yes.
 15 Q. Weren't the processes just the same at
 16 both plants or facilities?
 17 A. They were in general the same. As I sit
 18 here today I don't know that they were
 19 just the same. I haven't come to a
 20 conclusion on whether they were operated
 21 similarly, what the different sizes were
 22 or not.
 23 Q. Okay. Let me show you Thirty-one, if I

REGIONAL REPORTING SERVICE, INC.

1 that closed system there are areas where
 2 small amounts or whatever amounts of
 3 mercury could be lost. But the process
 4 itself, it can be described as a closed
 5 process with respect to mercury because
 6 the mercury did not take part in the
 7 reaction and was recycled through the
 8 process.
 9 Q. Okay. But as you went through that
 10 process, I reached back over here and
 11 got Exhibit Thirty, and it appears to me
 12 you are talking about the same kind of
 13 process.
 14 A. I am talking about the same kind of
 15 process. I said earlier that small
 16 amounts were entrained in various
 17 streams in that process and could
 18 account for a variety of losses. And
 19 that's what that is talking --
 20 Q. Could account for fifteen thousand eight
 21 hundred twenty pounds a year?
 22 A. That's the number they give there. I
 23 would have to look at this carefully to

REGIONAL REPORTING SERVICE, INC.

1 could.
 2 (Plaintiffs' Exhibit Number
 3 Thirty-one was marked for
 4 identification.)
 5 Q. Now, this is dated 1967 and talks about
 6 mercury in the plant effluent to Snow
 7 Creek. It says in a meeting held
 8 January 5th, 1967, on methods to reduce
 9 the mercury content in the waste stream
 10 leaving the plant. Now, if it is a
 11 closed system and you don't lose it, how
 12 is it leaving the plant and getting in
 13 the creek?
 14 A. Mr. Stewart, the closed system is a
 15 general characterization. The mercury
 16 was sent from a pump tank to the denora
 17 cells. It was sent to decomposers where
 18 it was cleaned with sodium and sent back
 19 to the pump tank. So it is a process --
 20 Q. Isn't that what he is taking about in
 21 this --
 22 A. It is a process in which mercury is
 23 recycled. As I said earlier, within

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1 put it in context, but you are reading
 2 the number correctly.
 3 Q. Well, that appears to me that it
 4 wouldn't take you many years to --
 5 A. Most of that --
 6 Q. -- reach --
 7 A. Most of that --
 8 Q. -- what Ms. Bluemink is talking about.
 9 MR. KELLY: Let me object to the
 10 form.
 11 A. But not all of that are losses to the
 12 environment.
 13 Q. Where would it be going?
 14 A. Well, some of it -- the first one, for
 15 example, is with the sodium hydroxide
 16 from the decomposers. The mercury has
 17 some slight solubility in the product
 18 sodium hydroxide. So it continued to
 19 stay with the sodium hydroxide, which
 20 was marketed as a product. It had some
 21 low level of mercury in it, and that
 22 accounted for some of those losses.
 23 That was not a release to the

REGIONAL REPORTING SERVICE, INC.

1 environment.

2 Q. Same thing for the second one?

3 A. Yes.

4 Q. What about the rest of them? This says

5 sewer water, vented hydrogen, result of

6 lead dumps. That looks like it left the

7 plant.

8 A. Well, it says "load" dumps. And I don't

9 know where --

10 Q. Load dumps, I'm sorry.

11 A. I think -- I don't know where that is,

12 and you know, that is one of the things

13 that has to be determined. The sewer

14 water presumably at Krummrich was

15 probably going to the American Bottoms

16 sewage treatment plant. What happened

17 to it from there, I don't know at this

18 point. Vented hydrogen was probably

19 released to the atmosphere.

20 Q. Based on what I read, it went in the

21 Mississippi after that.

22 A. After it went to American Bottoms?

23 Q. Yes.

REGIONAL REPORTING SERVICE, INC.

1 Q. Isn't that what they did on the Hudson?

2 A. It may be or may not be. I don't know.

3 Q. Are you sitting here today telling me

4 that the biggest dredging project in the

5 country you don't know whether or not

6 they tested for PCBs in the water, did

7 an aqueous phase testing up there?

8 A. I don't know.

9 Q. Do you have any idea about the average

10 aqueous phase PCB concentration in Snow

11 Creek?

12 A. No.

13 Q. Do you know anything at all about what

14 the lab that we have hired, the

15 plaintiffs have hired, found in the

16 aqueous phase tests they did,

17 concentrations?

18 A. I have not reviewed that data in detail

19 at this point, no. I know it was done.

20 I have not reviewed it in detail.

21 Q. If it is a hundred and fifty parts per

22 trillion, how does that compare, if you

23 know -- and you very well may not know

REGIONAL REPORTING SERVICE, INC.

1 A. I'm sure it did, but I don't know what

2 happened to the mercury, whether it was

3 retained in the sludge or disposed. I

4 don't know.

5 Q. All right. Let me ask you what y'all

6 plan to do about this creek and these

7 common areas. What have y'all worked

8 out with the EPA and ADEM about that?

9 MR. KELLY: Object to the form.

10 What locations?

11 MR. STEWART: Snow Creek.

12 A. We haven't worked out anything. We are

13 in the process of doing a flood plain

14 investigation. Based on that, the

15 results of that investigation, we will

16 propose either interim measures or final

17 corrective measures for Snow Creek.

18 Q. Have you done any aqueous phase testing

19 of that?

20 A. I don't know if we have tested water or

21 not.

22 Q. Wouldn't that be important?

23 A. Not necessarily.

REGIONAL REPORTING SERVICE, INC.

1 -- with what they have found in the

2 upper reaches of the Hudson?

3 A. I don't know. As I said, I don't know

4 whether they did aqueous phase testing

5 or not, so obviously I don't know how it

6 compares. Nor do I know what the

7 quality of those data are to compare it

8 to. So I have not reviewed the data in

9 detail. I really can't say --

10 Q. You don't know the quality of the data

11 at Triangle Lab?

12 A. Well, I do know the data -- the quality

13 of Triangle Labs, unfortunately, but

14 yes.

15 Q. How is that?

16 A. I don't have very much respect for

17 Triangle Labs.

18 Q. If Dr. Tucker didn't do it, you don't

19 have a whole lot of respect for them?

20 MR. KELLY: Object to the form.

21 A. That is not true at all.

22 Q. But you don't have any idea as to how it

23 compares with what was found on the

REGIONAL REPORTING SERVICE, INC.

1 Hudson?

2 A. I just told you that. That's correct.

3 As I sit here today, I do not.

4 Q. Is there any plans that you all have --

5 We have looked at your budget. Are

6 there any plans that you all have to

7 dredge any portion of Snow Creek?

8 A. We have not determined what our final

9 remedial measures will be on Snow Creek.

10 We haven't determined whether to dredge

11 or not to dredge.

12 Q. We haven't determined, is that Monsanto?

13 A. Solutia, yes.

14 Q. Or Solutia.

15 A. Or what we would recommend to the

16 agencies. That is obviously their final

17 determination. They have a right to

18 approve or disapprove our corrective

19 measure study.

20 Q. Well, does that agreement in principle

21 you talked about cover Snow Creek? Do

22 y'all have that down pat?

23 A. It does not cover Snow Creek.

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1 know who is handling them. Mr. Smith --

2 Q. Do you know who is involved?

3 A. -- and Mr. Branchfield will probably be

4 the primary person. He is the remedial

5 manager for the site.

6 Q. Who else is involved from the company?

7 A. At that level probably -- I don't know

8 -- Craig's supervisor, Mr. Felder may be

9 as an advisory role, but on the details

10 probably Craig and I will be the primary

11 people working with the agency to

12 develop those work plans.

13 Q. And then what happens to the general

14 public?

15 A. I assume they will have an appropriate

16 opportunity to comment on those final

17 corrective measures when they are

18 developed plus whatever the EPA chooses

19 to do. As I'm sure you are well aware,

20 we are not allowed to talk to the

21 public, so we cannot communicate our

22 efforts to the public.

23 Q. Let me ask you about that. Is there

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1 Q. Does the agreement in principle cover

2 what you propose to do with this

3 conservation corridor on --

4 A. No.

5 Q. -- Choccolocco Creek?

6 A. As I told you, the agreement in

7 principle to work towards a consent

8 decree is exactly that. It doesn't

9 cover or not cover anything at this

10 point because we haven't begun the

11 negotiations to iron out the details of

12 what that work plan is going to look

13 like.

14 Q. Where do y'all propose to do those

15 negotiations?

16 A. Where?

17 Q. Yeah. Are you going to do those in

18 Washington?

19 A. I have no idea.

20 Q. What is the time frame for that?

21 A. It has not been determined.

22 Q. Who is handling the negotiations, you?

23 A. I may very well be involved. I don't

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1 some provision in there that the EPA is

2 asking you for covered in Mr. Felder's

3 notes where they said EPA and ADEM

4 wanted you all to pay them some three

5 and a half million dollars for costs

6 they have incurred in overseeing this

7 site?

8 A. I'm sure there is a phrase in there that

9 is past cost. Yes, that is standard in

10 CERCLA proceedings, every one.

11 Q. And they want you all to also pay the

12 community some two million dollars?

13 A. There is some financial -- Well, it is

14 not pay the community. It's set up a

15 foundation to address some community

16 issues. There are some discussions

17 around the potential for doing that,

18 yes.

19 Q. Okay. And what are those community

20 issues that you all plan to address? It

21 is certainly not contamination. Beyond

22 that --

23 A. I don't know.

REGIONAL REPORTING SERVICE, INC.

1 Q. -- what do y'all plan to --
 2 MR. KELLY: Object to the form.
 3 A. I don't know that it has been addressed
 4 at that point. I think it has to do
 5 with education primarily.
 6 Q. Who is going to administer that?
 7 A. That has not been determined.
 8 Q. Who have you been talking to about that?
 9 A. Just the EPA as far as I know.
 10 Q. Just the EPA?
 11 A. Yes. We have not -- All we have is an
 12 agreement in principle. We have not
 13 moved forward in implementing any of the
 14 phases of that particular agreement.
 15 Q. So the EPA has asked y'all to take a
 16 look at a two million dollar payment for
 17 to the community for educational
 18 purposes?
 19 A. Well, it is not a payment to the
 20 community. It is the establishment of a
 21 fund to address issues which I believe
 22 focus on education in the community.
 23 Q. So you are going to leave millions of

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1 A. I don't know what difference you are
 2 talking about.
 3 Q. Are they not dredging to remove the PCBs
 4 from the Hudson? Didn't the EPA
 5 announce they would do that?
 6 A. That is what they've said they are going
 7 to try to do, yes.
 8 Q. Isn't that what the governor of that
 9 state indicated that they are going to
 10 do?
 11 A. I believe that is his desire, yes.
 12 Q. And isn't that what is being done at
 13 Sauget? Isn't a portion of Dead Creek
 14 being dredged?
 15 A. Sediments are being removed. They had
 16 PCBs in them. That is not necessarily
 17 the driver for the removal. But some
 18 sediments are being removed, yes, under
 19 EPA concern.
 20 Q. But you have no intention of treating
 21 these people here in Anniston like the
 22 folks are being treated in New York or
 23 like the folks are being treated in

REGIONAL REPORTING SERVICE, INC.

1 pounds of PCBs, not clean up Snow Creek,
 2 not clean up Choccolocco Creek, not do
 3 the things that you all indicate that
 4 should be done --
 5 A. We are going to do everything --
 6 MR. KELLY: Object to the form, no
 7 foundation.
 8 A. We are going to do everything that
 9 should be done in compliance with
 10 regulatory authority and in compliance
 11 with the corrective measure studies,
 12 which the public will have every
 13 opportunity to comment on to address any
 14 of the issues you just mentioned.
 15 Q. Tell me if you would, Dr. Kaley, what's
 16 the difference between the folks who
 17 live in Anniston and around this plant
 18 site and along Snow Creek or Choccolocco
 19 Creek and the folks that either live on
 20 the Hudson or fish in the Hudson or who
 21 live around your plant in Sauget.
 22 MR. KELLY: Object to the form,
 23 speculation, no foundation.

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1 Illinois?
 2 MR. KELLY: Object to the form.
 3 A. We have every intention of designing an
 4 appropriate remedy for the areas you
 5 mentioned.
 6 Q. Because really, to sum it all up, you
 7 all have never really cared about your
 8 neighbors either in '60 or '55 or '71 or
 9 '83 or '85 or '93 or even today as we
 10 sit here. What you're really concerned
 11 about is getting out of this community
 12 just as cheaply as you possibly can; is
 13 that right, Dr. Kaley?
 14 MR. KELLY: Object to the form.
 15 A. That is absolutely erroneous.
 16 Q. And that is why you got Dr. Woodyard to
 17 say in his supplemental report that what
 18 he would do is not dig up that landfill
 19 and move it out of that community.
 20 Isn't that what he said?
 21 MR. KELLY: Object to the form.
 22 A. I have not -- I haven't read
 23 Mr. Woodyard's report.

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- 1 Q. Isn't that what he said?
- 2 A. I have not read his report. He probably
- 3 said something like that because I
- 4 believe that is the appropriate action,
- 5 is to be sure those landfills are
- 6 secure.
- 7 Q. Well, why do you think it would be wrong
- 8 to dig that landfill up and move it out
- 9 when that is exactly what y'all were
- 10 doing on that west end landfill when you
- 11 started this project?
- 12 MR. KELLY: Object to the form.
- 13 A. That is absolutely incorrect.
- 14 Q. Didn't y'all take off about eight
- 15 hundred thousand dollars worth of that
- 16 soil over there and takes it to Emelle?
- 17 A. Some of the soils, the surface soils,
- 18 were removed. But we certainly did not
- 19 dig up the landfill. Surface soils that
- 20 were best handled that way were removed,
- 21 yes, under EPA and TOSCA regulations.
- 22 Q. According to Ms. Hanson, it got to be so
- 23 expensive that Mr. Foresman hit the

REGIONAL REPORTING SERVICE, INC.

- 1 MR. KELLY: Object to the form.
- 2 A. Absolutely not. We intend to remain in
- 3 town, and we intend to undertake
- 4 appropriate remedial activities for PCBs
- 5 associated with our former manufacturing
- 6 operations in Anniston.
- 7 Q. Well, are you claiming responsibility
- 8 now in these meetings in principle for
- 9 the contamination that has occurred on
- 10 those properties that are outside the
- 11 drainage basin?
- 12 A. No, we are not.
- 13 Q. So you are saying you are not
- 14 responsible to the EPA and to ADEM and
- 15 to anybody who will listen to those --
- 16 MR. KELLY: Object to the form.
- 17 A. We believe there are other explanations
- 18 for the presence of some of those PCBs
- 19 on some of those properties. That's
- 20 correct.
- 21 Q. Tell me what those are.
- 22 A. I'm not sure we know. Some of them seem
- 23 to clearly be associated with fill

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- 1 roof, and old Bob Jones went sailing off
- 2 down to Montgomery, and you were allowed
- 3 to do something different there in
- 4 Anniston than what's done elsewhere,
- 5 didn't you?
- 6 MR. KELLY: Object to the form.
- 7 A. I have no idea what you are talking
- 8 about.
- 9 Q. Well, that is what Jo Hanson indicated
- 10 happened.
- 11 MR. KELLY: Object to the form.
- 12 A. I have no idea what --
- 13 Q. You don't have reason to disagree with
- 14 her. She is an honest person.
- 15 A. Well, I don't know what happened. It
- 16 may have been something like that. I
- 17 don't think we whizzed off or however
- 18 you characterized it. But I'm certain
- 19 we undertook an appropriate remedy on
- 20 the west side landfill.
- 21 Q. So you all are counting on leaving town
- 22 just as cheaply as you possibly can in
- 23 Anniston?

REGIONAL REPORTING SERVICE, INC.

- 1 material.
- 2 Q. Fill material?
- 3 A. That's correct.
- 4 Q. From what?
- 5 A. Foundry sand. Other things I don't
- 6 think we know.
- 7 Q. You have no idea as you sit here today
- 8 what that is or where it came from?
- 9 A. That's in general correct, yes.
- 10 Q. What products do you know of as you sit
- 11 here today were used in the
- 12 manufacturing processes or the foundry
- 13 processes in Anniston that contained
- 14 PCBs.
- 15 A. There are potentials for some PCBs used
- 16 in casting waxes, but we have not
- 17 established that those processes were
- 18 used in Anniston. So the answer is we
- 19 have no firm information.
- 20 Q. You in fact know, Dr. Kaley, that they
- 21 were not used there.
- 22 MR. KELLY: Object to the form.
- 23 A. Clearly not. I don't know that at all.

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- 1 Q. Did you check with any foundry people
2 and ask them if they used that in those
3 waxes?
4 A. I don't know that we made those efforts.
5 I certainly haven't.
6 Q. Well, don't you have a right to pull in
7 somebody else if they did?
8 A. Certainly we have that right.
9 Q. Have you joined anybody else as a
10 responsibility party?
11 A. We have not.
12 Q. Isn't that because you don't have a
13 factual basis to do so?
14 MR. KELLY: Object to the form.
15 A. I think I told you we don't have any
16 specific knowledge of any other
17 alternative sources at this point, but
18 clearly the materials in some of those
19 areas are associated with fill material
20 and not with drainage from our facility.
21 Q. And is there any scientific basis for
22 your making that statement?
23 A. Yes, some.

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- 1 Q. Who is it that is doing that? Are
2 they --
3 A. I don't know that anybody is doing that
4 officially. Mike Price is making
5 observations. Other people have made
6 observations.
7 Q. Anybody else? Is Mr. Rogero making
8 those same observations?
9 A. I don't know who that is.
10 Q. A gentleman who works with Mr. Price.
11 A. I will take your word for that.
12 Q. Have y'all ever falsified data and
13 written letters to the EPA on the basis
14 of that data indicating to them -- not
15 EPA, but ADEM -- indicating to them that
16 the contamination on the residential
17 properties in this area is not as
18 widespread as the plaintiffs have
19 indicated it is?
20 MR. KELLY: Object to the form, no
21 foundation.
22 A. We have never falsified any data.
23 Q. Is that correct, y'all never falsified

REGIONAL REPORTING SERVICE, INC.

- 1 Q. What?
2 A. Primarily the profiles of the PCBs found
3 in some of those materials.
4 Q. Give me that information.
5 A. Well, primarily the areas where -- The
6 areas associated with our drainage
7 primarily have Aroclor 1254 and Aroclor
8 1260 residues. The areas associated
9 with what appears to be fill material
10 primarily have Aroclor 1268 type
11 residues.
12 Q. Okay.
13 A. Plus just the visual observation of the
14 material. It is not native soil in many
15 cases.
16 Q. Just eyeball it? You have somebody on
17 your group doing work that can just
18 eyeball something and say that is fill
19 material?
20 MR. KELLY: Object to the form.
21 A. Mr. Stewart, I'm sure you could go that.
22 Anybody could do that. You can tell red
23 clay from black sand I believe.

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- 1 data?
2 A. That's absolutely correct.
3 Q. Who did y'all use to take the tests of
4 the mobile lab to do the testing out
5 there on the properties that were owned
6 by the plaintiffs last year?
7 A. I believe Mike Price did the sampling.
8 I don't know who -- what firm ran the
9 labs.
10 Q. Who put the mobile lab out there?
11 A. Who put it out there?
12 Q. Yeah. Who owned the mobile lab that did
13 the analysis?
14 A. I don't know.
15 Q. Who ultimately wound up doing those
16 tests?
17 A. I'm not sure I know what you mean nor
18 the answer to the question. I mean --
19 Q. There was an analysis done of the soil
20 samples that were taken off the
21 properties initially, as I understand
22 it, by a mobile lab. That process was
23 discontinued at some point in time, and

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1 those tests or samples, rather, were
 2 sent for analysis to Savannah.
 3 A. That may very well be. I don't remember
 4 the details of that situation.
 5 Q. So you don't know who the lab was, the
 6 mobile lab that did the work, and you
 7 don't know why they were sent to
 8 Savannah as opposed to left at the
 9 mobile lab?
 10 A. Not specifically, no.
 11 Q. Which results did you rely on in writing
 12 your letter to either EPA or ADEM or
 13 both?
 14 A. I don't recall. I don't know, frankly.
 15 Q. Well, who drafted the letter?
 16 A. I did.
 17 Q. And you don't remember what results you
 18 used?
 19 A. No. As I sit here today, I don't know
 20 which results I used, no.
 21 Q. Could you have used the results that
 22 were generated by the mobile lab,
 23 Dr. Kaley?

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1 A. I will go back and make an
 2 investigation. And if it turns out that
 3 I have reported data that has since been
 4 shown to be erroneous, I will certainly
 5 correct it. You bet. Absolutely. I
 6 was unaware of your concerns about that
 7 data.
 8 MR. STEWART: Let me take a look
 9 at something here and take a
 10 little short break. We may
 11 be through.
 12 (A break was taken.)
 13 MR. STEWART: I'm through. Pass
 14 the witness.
 15 MR. KELLY: I have no questions at
 16 this time.
 17
 18 (The deposition concluded at
 19 4:30 p.m.)
 20
 21
 22
 23

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1 A. I suppose I could have. I don't know.
 2 Q. If you used those results and that turns
 3 out to be a misrepresentation of what
 4 was found, wouldn't that not be the very
 5 same thing if you relied on them? Let's
 6 just say it did not accurately portray
 7 what was found on the property.
 8 A. Well -- Okay. There is a lot of
 9 difference between a lab not accurately
 10 portraying and misrepresenting something
 11 or falsifying data. And I don't know
 12 the situation. I will certainly find
 13 out. But I don't -- Whether they were
 14 doing accurate analyses or not is a long
 15 way from the insinuations you were
 16 making.
 17 Okay. So in the first place, if I
 18 relied on data that turned out later to
 19 be inaccurate, I don't realize that as I
 20 sit here --
 21 Q. Do you plan to correct that?
 22 A. Pardon?
 23 Q. Do you plan to correct that?

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1 I do hereby certify that the witness
 2 whose attached deposition was taken before me
 3 was by me first duly cautioned and sworn to
 4 tell nothing but the truth in the cause
 5 aforesaid; that the testimony contained herein
 6 was by me reduced to writing in the presence
 7 of said witnesses by means of stenography and
 8 afterwards transcribed by means of computer
 9 aided transcription. The foregoing is a true
 10 and accurate transcript of the whole of the
 11 testimony given by said witness, as aforesaid.
 12 I do further certify that I am not
 13 connected by blood or marriage with any of the
 14 parties or their attorneys or agents and that
 15 I am not an employee of any of them, nor
 16 interested in the matter of controversy.
 17 IN WITNESS WHEREOF, I have hereunto set
 18 my hand and affixed my notarial seal at
 19 Gadsden, Alabama, County of Etowah, this 29th
 20 day of August 2001.

Deborah Salers Garrett
 Certified Shorthand Reporter
 Registered Professional Reporter
 Notary Public, Alabama-at-Large
 My Commission expires: 3-6-05

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