

MAYASKY

STATE OF ALABAMA
IN THE CIRCUIT COURT OF CALHOUN COUNTY

MARS HILL MISSIONARY
BAPTIST CHURCH, et al.,

Plaintiffs,

CIVIL ACTION NUMBER

versus

CV-96-243

MONSANTO COMPANY, et al.,

Defendants.

_____/

DEPOSITION OF JACK MAYAUSKY

The deposition of JACK MAYAUSKY, was taken before Deborah Salers Garrett, Certified Shorthand Reporter, Registered Professional Reporter, as Commissioner, commencing at 10:15 a.m. on April 7, 1998, by the Plaintiffs, at the law offices of Merrill, Porch, Dillon & Fite, suite 500, 1000 Quintard Avenue, Anniston, Alabama, pursuant to the stipulations set forth herein.

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HARTOLDMON0016869

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18	E X A M I N A T I O N S	
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1	E X H I B I T S	
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14 No other exhibits were marked for
15 identification, offered or attached as
16 exhibits hereto.

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

2 IT IS STIPULATED AND AGREED by the
3 parties, through their respective counsel,
4 that the deposition of JACK MAYAUSKY, may be
5 taken before Deborah Salers Garrett, CSR, RPR,
6 as Commissioner and Notary Public, Alabama at
7 Large, at Anniston, Alabama, on April 7, 1998,
8 at 10:15 a.m.

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

15 IT IS STIPULATED AND AGREED that it
16 shall not be necessary for any objections to

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17 be made by counsel to any questions except as
18 to form or leading questions and that counsel
19 may make objections and assign grounds at the
20 time of trial or at the time said deposition
21 is offered in evidence or prior thereto.

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

5

1 STATE OF ALABAMA, ANNISTON, APRIL 7, 1998

2

3 JACK MAYAUSKY,

4 after having been first duly sworn, was

5 examined and testified as follows:

6

7 BY MR. STEWART:

8 Q. Tell me your name, please, sir, if you
9 would.

10 A. Officially, it's John S. Mayausky, but I
11 go by Jack.

12 Q. John what?

13 A. S.

14 Q. Okay.

15 A. Mayausky.

16 Q. But you are known as Jack?

17 A. Jack, please.

18 Q. And where do you presently live?

19 A. In Longmeadow, Massachusetts, one word.

20 Q. And how long have you lived in
21 Longmeadow?

22 A. Since May of 1997.

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23 Q. And is that the time you left Anniston,

6

1 in May of '97?

2 A. Yes, sir.

3 Q. Okay. And for whom did you work when
4 you left Anniston in May?

5 A. I worked for Monsanto.

6 Q. And for whom do you work now?

7 A. Solutia.

8 Q. Solutia?

9 A. S-o-l-u-t-i-a.

10 Q. Now, tell me a little bit about Solutia.

11 Is that a spinoff company --

12 A. Yes, sir.

13 Q. -- from Monsanto?

14 A. It was a spinoff from Monsanto which
15 occurred on September 1st, 1997.

16 Q. Okay. And what basically does Solutia
17 manufacture, what kind of products?

18 A. Solutia is basically the chemical
19 operations of prior -- former Monsanto.

20 So basically the same product lines that
21 were produced when we were a part of
22 Monsanto.

23 Q. Okay. Now, when Solutia was spun off,

7

1 did they assume the responsibility for,

2 say, the operations that had previously

MAYASKY

3 been run by Monsanto, such as the
4 Anniston plant here?

5 A. Yes, sir.

6 Q. Do you know how that transfer or swap
7 took place? Are you familiar with it?

8 A. I'm not familiar with the details,
9 Donald. No, I'm not.

10 Q. What about the liabilities, such as the
11 present liability here?

12 A. I was told and I read in the annual
13 report, as a shareholder, that Solutia
14 assumed the liabilities.

15 Q. When you say Solutia assumed the
16 liabilities, all the liabilities of
17 Monsanto?

18 A. For those operations which they took
19 with them, yes.

20 Q. In other words, if there was a problem
21 which was presently existing, legally or
22 otherwise, at the Anniston plant, then
23 they agreed to take that responsibility?

8

1 A. It was my understanding.

2 Q. Solutia did?

3 A. Yes. And I'd like to add I only know
4 that from reading the spinoff report.

5 Q. The annual report?

6 who at the company, if you would
7 venture a guess, would we ask who could
8 tell us what that circumstance was or

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9 the circumstances surrounding that?

10 A. I would direct you to somebody in our

11 attorney's or legal department.

12 Q. Well, who as an officer would know?

13 A. The officer, I would assume, probably

14 best to talk to is Mike Pearly.

15 Q. And who is Mr. Pearly?

16 A. He is vice president of environmental

17 safety and health.

18 MR. STEWART: Off the record.

19 (Discussion held off record.)

20 Q. But Mr. Pearly would be aware and

21 familiar with --

22 A. I believe so. I believe that would be

23 correct.

9

1 Q. Is there any indemnification that would

2 be made or participation that would be

3 made by Monsanto in any potential

4 liabilities that might exist that you

5 know of that was reflected in the annual

6 report? In other words, did Solutia

7 assume the responsibility up to a

8 certain level and then after that it

9 would be --

10 A. I don't know, sir. I'm sorry. I don't

11 know.

12 Q. Okay. Would Mr. Pearly know that?

13 A. I would assume he would.

14 Q. I'll come back to that in a minute.

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15 Let's go on to some of these
16 biographical things.
17 Do you have any relatives,
18 Mr. Mayausky, in the Anniston area?
19 A. One distant cousin that I discovered
20 when I lived here.
21 Q. Who is that?
22 A. And her name is Bonnie Harris. And I'm
23 not even sure if she is still here since

10

1 I moved.
2 Q. Where did Ms. Harris live, if you know,
3 at the time?
4 A. Near the high school. I can't recall
5 the name of that street. Woodstock,
6 that ran in front of the high school.
7 Q. And do you know what her age was?
8 A. Late thirties.
9 Q. And do you know what she did, what kind
10 of work, kind of employment?
11 A. I do not recall. I'm sorry.
12 Q. How did you become acquainted with her;
13 do you know?
14 A. She was -- It was serendipity that I was
15 back home for a funeral back where I was
16 born and raised and was talking with her
17 mother and chatting about where I lived.
18 She said, "Oh, my daughter's moved
19 there."
20 Q. Is she married?

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- 21 A. She is divorced.
22 Q. Was her husband in this area?
23 A. Not that I know of.

11

- 1 Q. Did she have any children?
2 A. She had a daughter, thirteen-year-old
3 daughter.
4 Q. And did she go to the -- go to school
5 here, the daughter?
6 A. Yeah. I believe she went to one of the
7 Christian schools over on the other side
8 of the mountain. Faith, I believe.
9 Q. Do you know the name of the daughter?
10 A. No. I don't recall, sir.
11 Q. Any other children?
12 A. None I'm aware of.
13 Q. When you lived in Anniston, where did
14 you live?
15 A. I lived on Hillyer High.
16 Q. And how long did you -- when did you
17 first come here?
18 A. August of 1994.
19 Q. And while you were here, while we are on
20 this particular subject, what clubs did
21 you belong to?
22 A. Social clubs, the Rotary -- the noon
23 Rotary, the Anniston Country Club.

12

- 1 Q. Okay.

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- 2 A. And that's really about it.
- 3 Q. Okay. Did you go to church at First
- 4 Methodist?
- 5 A. Yes, I did.
- 6 Q. And did you participate in the Chamber
- 7 of Commerce?
- 8 A. Yes, I did, on some subcommittees.
- 9 Q. Did you hold any positions in any of
- 10 these organizations?
- 11 A. No officer positions, no.
- 12 Q. With whom did you socialize while you
- 13 were here? Can you tell me some of your
- 14 close friends that you --
- 15 A. The Newmans, Dottie and Mike Newman; a
- 16 lot of activities with our children, in
- 17 associations they had. I have reached
- 18 an age I don't remember names real well.
- 19 I apologize. The veterinarian on the
- 20 main Quintard Drive.
- 21 Q. Anybody else?
- 22 A. Mostly people I worked with, associated
- 23 with at work. A regular golfing partner

13

- 1 of mine was Ken Dill from Alabama Power.
- 2 Q. Did y'all play in some foursome?
- 3 A. Generally we would play just a twosome.
- 4 The other name I would offer up
- 5 was Chris Wright. I played with him
- 6 until he left. He was the director of
- 7 the museum.

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- 8 Q. When you moved here to Anniston, were
9 you -- well, before I leave that, any
10 other clubs or activities or positions
11 you held while you were --
- 12 A. I was a board director of the United
13 Cerebral Palsy Center. I was on the
14 board of the United Way. Various school
15 committees focusing on school systems,
16 three or four of those, mainly with the
17 Anniston City School. And I was on a
18 committee appointed by the local
19 legislative delegation to look at
20 museums in the greater Calhoun County
21 area.
- 22 Q. Who was on the delegation when that
23 happened?

14

- 1 A. Larry Sims, Doug Ghee, Barbara Boyd, the
2 legislator from the north part -- up
3 near Piedmont. His name escapes me
4 right now.
- 5 Q. Gerald Willis?
- 6 A. Gerald Willis. Thank you. Mike Rogers.
- 7 Q. Who was it out of the delegation that
8 picked you to serve?
- 9 A. Doug Ghee.
- 10 Q. Okay. Were you social acquaintances
11 with him?
- 12 A. Not really, no.
- 13 Q. Did you deal with him about matters that

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14 might have pertained to Monsanto when
15 you dealt with the legislative
16 delegation? Would you generally go to
17 Doug?
18 A. I would talk to Doug about some issues,
19 yeah.
20 Q. What issues would you talk to him about?
21 A. He and I talked about the issues around
22 the plant with PCBs. I kept him
23 apprised of what was going on there.

15

1 Q. How often did you do that?
2 A. I can remember one lunch meeting and a
3 phone call at least to talk specifically
4 about that.
5 Q. Okay. When did the lunch meeting take
6 place?
7 A. It was early on. That was shortly after
8 I got here, early '95.
9 Q. Who initiated that meeting?
10 A. I called him up and wanted to get to
11 know him, being new to the area. And I
12 called him up, and we had a lunch
13 meeting. I remember it was down at the
14 place down in Oxford.
15 Q. When you say place down in Oxford, a
16 restaurant in Oxford?
17 A. Yeah, a restaurant in Oxford.
18 We talked about that. He also --
19 He asked me to speak with Pete Conroy

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20 about it. I guess he knew Pete was
21 aware of these kinds of issues. At that
22 time, that's when he asked me about
23 being on the legislative committee to

16

1 look at the museums. He was looking for
2 a person to do that. That's about most
3 of what I remember about it.

4 Q. When you spoke to Doug Ghee on that
5 date, what did you tell him about PCBs?

6 A. I remember telling him that we had -- we
7 had -- At that time -- Again, the timing
8 of the meeting was iffy, but we had made
9 a discovery of finding some in water,
10 and we were trying -- in surface water
11 -- and we were trying to figure out
12 where it came from and talked to him
13 about working with the state to reach
14 the closure of the west end landfill.

15 That was mainly the things I
16 remember us talking about. That's when
17 he said, "Talk to Pete. Pete's aware of
18 these kinds of issues."

19 Q. So you talked to him about finding it in
20 surface water, PCBs?

21 A. Right. And we were trying to understand
22 it. We were going to be doing more
23 sampling. We didn't know exactly at

1 that time where it was going to go, but
2 we were trying to figure it out. And
3 then we also talked about the west end
4 landfill, because it seems to me he had
5 been aware of the west end landfill
6 before I came on board. And you know,
7 with the reacquiring land from Alabama
8 Power and getting the closure of that,
9 he was aware of the issues around that
10 landfill.

11 Q. When you say closure, what do you mean
12 by that? What are you talking about?

13 A. The closure was part -- It was a plan
14 worked out with the Alabama Department
15 of Environmental Management to cap the
16 landfill.

17 Q. And were you seeking Doug Ghee's
18 assistance to help get that done? Is
19 that what you were asking him to do?

20 A. No. I think my approach, again -- I was
21 new to the area and wanted to get to
22 know him and always just to keep him
23 apprised. I think maybe during a

1 transition from Bill Difur, the prior
2 plant manager, he mentioned that Doug
3 was aware of those issues and I should
4 keep him apprised. I was just following
5 up on that.

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6 Q. At any point in time did you talk about
7 Monsanto becoming a part of the city?

8 A. No. But we did have conversations about
9 that later.

10 Q. Well, what were those?

11 A. It was after a meeting of this
12 legislative delegation, the same one I
13 talked about looking at museums. Our
14 proposal was -- we had the legislative
15 delegation come in, and we made our
16 proposal to them. And our proposal was
17 more or less to do a combined
18 advertising of all the museums there
19 were in this area. And at that time we
20 were trying to solicit their support to
21 help us with that.

22 MR. PECK: I think you are
23 answering a different

19

1 question.

2 THE WITNESS: I'm getting to it.

3 I'm giving the context of the
4 meeting.

5 A. At the end of that meeting, Doug pulled
6 me aside, as we were having coffee and
7 chatting, and he said, "I would like to
8 talk with you about the possible
9 annexation of your property from the
10 City of Anniston. Anniston would like
11 to annex the plant."

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12 I had had a conversation with Tom
13 Wright shortly after I got there.
14 Again, it was just that I went down to
15 meet Tom, to get to know him. And Tom
16 had mentioned to me they were interested
17 in annexing us. I mentioned to Doug
18 that I had spoken with Tom, but I didn't
19 understand what annexation meant. I
20 didn't know what it would mean to the
21 company, that I would go back and work
22 with Tom Wright about that. And that's
23 pretty much where that particular

20

1 conversation went. He said, "Well,
2 you need" -- He encouraged me to go talk
3 with Tom Wright.
4 Q. Did you go talk to Tom Wright?
5 A. No. What actually happened, I found out
6 that we were annexed when an article
7 appeared in the newspaper announcing the
8 annexation plans that were approved by
9 the legislative delegation. And I never
10 closed -- never had the opportunity to
11 close the loop with Tom Wright about
12 what annexation meant.
13 Q. Did you later have conversations with
14 the city about the annexation?
15 A. Yes. Then I went back and talked with
16 Tom Wright and also initiated an
17 understanding within our plant of what

MAYASKY
18 did it mean. And what we quantified it
19 to mean was it meant somewhere in the
20 neighborhood of fifty thousand to one
21 hundred thousand dollars per year in
22 extra expenses because of the higher tax
23 rate being incorporated in the city.

21

1 So the conversation with Tom
2 Wright of basically trying to understand
3 what annexation meant to us, what city
4 services would we get, what other things
5 could we expect to have by being
6 annexed. And also, quite frankly, I was
7 concerned that this happened before I
8 had a chance to talk with him about it.
9 I wanted to understand how does
10 somebody, even if it's an industrial
11 property owner, get annexed without
12 really being consulted about annexation.
13 Q. Did y'all have any conversations at that
14 time or even later about some things
15 that y'all were going to do about
16 remediation --
17 A. We --
18 Q. -- with the city?
19 A. Tom Wright would be one person we would
20 keep apprised of what we were doing with
21 our efforts of remediation, he and the
22 city engineer, Johnson.
23 Q. Dale Garrett?

- 1 A. No.
- 2 Q. Charlie Johnson?
- 3 A. Charlie Johnson. Thank you. We would
- 4 meet with them periodically and tell
- 5 them what our plans were.
- 6 Q. Where did you meet with them?
- 7 A. The particular meeting about annexation,
- 8 I met in a conference room outside of
- 9 Tom Wright's office. And if you
- 10 remember, that is when they
- 11 restructured, and Tom was not actually
- 12 city manager at that time. He was in a
- 13 different role. That was after the
- 14 restructuring. I believe Charlie
- 15 Johnson might have been at that meeting
- 16 also.
- 17 Q. Why was Charlie Johnson there?
- 18 A. I think at Tom's request, that I went
- 19 down to meet with Tom, and he said,
- 20 "Well, we need to get Charlie involved
- 21 in this." So Charlie was there.
- 22 Q. Why would Charlie be involved in the
- 23 meeting about annexation?

- 1 A. I don't know.
- 2 Q. Did he make any contribution to the
- 3 meeting at all?
- 4 A. We were looking at some property lines

MAYASKY

5 of where the old city line was and where
6 the new city line would be. And I think
7 he rounded those prints up.
8 Q. You said you had some subsequent
9 meetings with city officials and kept
10 them apprised of the remediation
11 efforts. Who was it that you met with?
12 A. Personally I met with -- I remember
13 talking with Tom Wright and Charlie
14 Johnson.
15 Q. How many times did you talk to him?
16 MR. PECK: On remediation?
17 MR. STEWART: Yeah.
18 A. Once, that I specifically recall. There
19 may have been more.
20 Q. Tell me, if you would, when that meeting
21 took place.
22 A. The best I can do is probably springtime
23 of '95.

24

1 Q. What was the purpose of the meeting?
2 A. Again, at that time we were just
3 updating people on the west end
4 landfill, what we were planning on doing
5 with that, and then any further sampling
6 we might be doing, to try to understand
7 the water findings we had of PCBs.
8 Q. Tell me, if you would, what was the
9 substance of what you said to Mr. Wright
10 and Mr. Johnson.

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11 A. I remember taking a photograph of the
12 plant, an aerial photograph of the
13 plant, and showing them where the west
14 end landfill was and describing to him
15 what the cap would look like -- at least
16 my understanding that it would be a clay
17 cap, a synthetic liner, and then a
18 further clay cap and that it would be
19 bermed -- and talking them through some
20 idea of what that would look like and
21 then showing him some of the drainage
22 ditches that came off the west end
23 landfill and some of the drainage

25

1 ditches that came off the south end
2 landfill and talking with him about
3 that.

4 MR. PECK: Was it just Tom Wright
5 at this meeting?

6 THE WITNESS: I don't recall. It
7 may have been just Tom,
8 because he was city manager
9 at that time.

10 MR. PECK: I just asked that
11 because Mr. Stewart's
12 question suggested somebody
13 else was there.

14 Q. I thought you had previously indicated
15 at this second meeting --

16 A. At the second meeting I remember Charlie
Page 20

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17 Johnson being there, and that was
18 specifically about the annexation
19 issues.
20 Q. But the first meeting that you had
21 before the annexation meeting, it was
22 just Tom Wright?
23 A. Yes, as far as I recall.

26

1 Q. Did he initiate that meeting, or did
2 you?
3 A. I did.
4 Q. Is that all you told him, just about the
5 west end landfill?
6 A. I think so. I think at that point in
7 time I may have talked about the fact
8 that we had had the findings in water
9 and we were going to do further sampling
10 to try to understand that.
11 Q. You keep saying findings in water. What
12 do you mean by that? What findings were
13 there?
14 A. We found -- We tested some ditch water
15 off the west end landfill and off the
16 south landfill and found PCBs in the
17 water.
18 Q. Do you remember what the findings
19 showed, what levels they showed?
20 A. Less than ten parts per billion. I
21 remember a number of six parts per
22 billion.

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23 Q. well, when did you do that testing, now?

27

1 A. My recollection was early -- late winter
2 or early spring of 1995, February time
3 frame.

4 Q. And that's what you were talking to --

5 A. Yes.

6 Q. -- Tom Wright about?

7 A. And again, I think the meeting was
8 springish, springtime.

9 Q. of '95?

10 A. Yeah. I can't nail it any better than
11 that.

12 Q. Did you tell him at that point in time,
13 Mr. Mayausky, about any other testing
14 that y'all had done?

15 A. Not that I recall, sir.

16 Q. So --

17 A. I may have suggested that we were going
18 to do further testing, but --

19 Q. No. I'm not talking about that. I'm
20 talking about did you tell him at that
21 point in time that y'all had done other
22 testing and give him those test results?

23 A. No, sir.

28

1 Q. So I'm to understand that what you did
2 was you talked with Mr. Wright at that

3 point in time, in the MAYASKY spring of '95,
4 about the capping of the west end
5 landfill and some findings that you are
6 stating here to us today y'all found in
7 surface water?
8 A. Uh-huh (indicating yes).
9 Q. And that was about six parts per
10 billion?
11 A. Uh-huh (indicating yes).
12 Q. And can you remember where that was
13 found?
14 A. The six, the best of my recollection,
15 was off the south landfill, somewhere
16 sampled one of the ditches coming off
17 what's known as the south landfill.
18 Q. Am I to understand that in 1995 the only
19 testing that y'all had done as of
20 February or March or, you know, early
21 spring of 1995 was just surface water
22 sampling?
23 MR. PECK: Object to the form of

29

1 the question.
2 A. You know, I can't -- I really can't
3 recall if we had done soil sampling or
4 sediment sampling at that point in time.
5 Q. But as a practical matter, the only
6 thing you talked to Mr. Wright about was
7 the surface water sampling?
8 A. To the best of my recollection.

9 Q. MAYASKY
wouldn't you think it would be important
10 for you as the plant manager here at
11 Monsanto to talk to him about all you
12 had done?

13 A. I don't recall at that point in time
14 whether we had done the sediment
15 sampling or not.

16 Q. No, sir. I'm not asking you that
17 question. I've changed my question.

18 MR. PECK: I think you are asking
19 that question.

20 MR. STEWART: Well, let me
21 clarify. And then if you
22 want to make an objection,
23 Adam, make one. If you want

30

1 to take him outside and talk
2 to him, do that.

3 MR. PECK: I don't want to take
4 him outside and talk to him.

5 MR. STEWART: Well, just make an
6 objection.

7 MR. PECK: I want him to be able
8 to answer the question you
9 asked.

10 MR. STEWART: Just make an
11 objection.

12 MR. PECK: Let him answer the
13 question you asked. If you
14 don't like it, you can ask

15 MAYASKY
 him another question.
16 MR. STEWART: Well, if we have to
17 fix it up so both you and
18 Mr. Mayausky understand it,
19 like we did last time, we
20 might be here for a long
21 period of time. We won't get
22 through with the deposition.
23 MR. PECK: I don't recall what you

31

1 are talking about.
2 MR. STEWART: Well, I'm just
3 trying to ask the witness a
4 question.
5 MR. STEWART: I am just asking the
6 witness a question. If you
7 want to make an objection,
8 make one.
9 MR. PECK: And I want you to let
10 him answer your questions.
11 MR. STEWART: Well, if you want to
12 tell him what to say and you
13 want to consult with him --
14 MR. PECK: I haven't even
15 suggested an answer. All I'm
16 asking is you let him answer
17 the questions like lawyers
18 are supposed to let witnesses
19 answer questions. That's
20 all.

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21 Q. Mr. Mayausky, what I was asking you is
22 wouldn't you think it would be important
23 for you as the plant manager of Monsanto

32

1 to let Mr. Wright know all of the tests
2 that you had taken in addition to these
3 water tests?

4 A. Well, those results were -- if we had
5 results. And I'm saying I don't know at
6 that time whether we had done
7 sedimentation sampling. I'm trying to
8 put the sequence correctly in my mind.
9 Those results would have gone to ADEM.

10 I was trying to apprise Mr. Wright
11 of current plan for the west end
12 landfill, some findings we saw, and, if
13 I remember correctly, that we were going
14 to be doing more sampling. I don't
15 remember if we had results or not.

16 Q. I understand. But let me make my
17 question as clear as a bell to you.
18 I'll try. Maybe I'm just phrasing it
19 wrong. Adam may have been right.

20 But had you done soil sampling or
21 sediment sampling at that time, would
22 you not think that you as the plant
23 manager here at Monsanto had a

33

1 responsibility, when you sat down and
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2 talked with the city manager of the City
3 of Anniston, to tell him about that?

4 A. I think I have a responsibility to tell
5 him that we have reported those results
6 to ADEM and we are working with ADEM and
7 if he needs anything further, he should
8 talk to ADEM about those results. I
9 must tell him that.

10 Q. But you don't --

11 A. I remember telling him that we were
12 working with ADEM on all of our plans.

13 Q. But you don't take the position here
14 today that y'all have a responsibility
15 to talk to someone like Mr. Wright, who
16 is the city manager, or the mayor and
17 let them know what y'all have found out
18 there at Monsanto in the sediment or the
19 soil?

20 A. I thought I was doing that by telling
21 him we found results and that we were
22 working with ADEM to try to figure out
23 what to do about it.

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1 Q. Did you talk to any other officials
2 other than Mr. Wright? Did you ever
3 talk to the city council and tell them
4 what y'all had found either in the
5 surface or in any other tests that you
6 did?

7 A. No, sir.

MAYASKY

- 8 Q. Did you talk to county officials?
- 9 A. Eli Henderson came to visit the plant
10 one time.
- 11 Q. When did Eli Henderson come visit the
12 plant?
- 13 A. Again, I remember it being springtime
14 '95.
- 15 Q. Tell us what you talked to Mr. Henderson
16 about in the springtime of '95.
- 17 A. Essentially the same sort of thing,
18 telling him about the activities we had
19 planned for the west end landfill, that
20 we were sampling, trying to understand
21 where we were with the PCBs we found in
22 water; we would be doing more sampling;
23 I'm not sure of where it was going to

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- 1 lead, working with ADEM in all the
2 plans, and if he had any further
3 questions, to feel free to contact me.
- 4 Q. Did you tell Mr. Eli Henderson at that
5 time about anything other than the
6 surface water tests that y'all had
7 performed?
- 8 A. I honestly do not recall telling him.
9 Not to say I didn't, but I don't recall
10 telling him.
- 11 Q. Am I to understand your answer to be
12 that you just told him about the surface
13 water sampling?

MAYASKY

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

16 A. I'm saying I don't recall.

17 Q. You don't recall what you told him?

18 A. No, no. I asked him to come to the
19 plant just to meet about the west end
20 landfill and working with ADEM and
21 trying to understand this problem. I
22 don't recall telling him that we had
23 done any other sampling or any other

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1 results at that time. I just don't
2 recall.

3 Q. All right. Did you ever talk to anybody
4 in the legislative delegation other than
5 Doug Ghee?

6 A. Yes. I had -- Larry Sims came to visit
7 the plant.

8 Q. Okay. When did Mr. Sims come to visit
9 the plant?

10 A. Again, my recollection being the spring.
11 I tried to do these sort of meetings
12 when -- as we were rolling out the work
13 on the west end landfill and doing the
14 sampling. Mr. Sims came to the plant,
15 and Dr. Barbara Boyd came to the plant.

16 Q. And what did you tell them?

17 A. Essentially the same thing. I recall
18 telling them essentially the same thing,
19 as I've said, we are going to begin the

MAYASKY

20 work on the west end landfill, telling
21 them we are capping that, working with
22 ADEM on an approved plan, that we had
23 this finding of water and that we were

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1 going to be doing more sampling, trying
2 to understand that, and again working
3 with ADEM on that, getting to know them
4 -- I mean, I'm new to the area --
5 getting to know them and giving me as a
6 contact if they have any questions, or
7 if any of their constituents have
8 questions, to have them call me or they
9 can filter the questions and have them
10 call me, one way or the other.

11 Q. Mr. Mayausky, at any point in time did
12 you tell Mr. Wright, Mr. Henderson, or
13 Mr. Wright and Charlie Johnson, Doug
14 Ghee, Barbara Boyd, Larry Sims, any of
15 those people that you have mentioned you
16 talked to, anything at all about PCBs?

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

19 A. Well, we talked about PCBs. I mean,
20 that is what we found in the water.

21 Q. What did you tell them about PCBs?

22 A. Told them we found it in water and that
23 it was a chemical that we used to

1 produce at the plant several years ago,
2 back in the '70s, and that we were
3 trying to understand how we found this
4 water. We were at that time very
5 unclear of where it came from, that we
6 had plans, working with ADEM, trying to
7 understand it and to sample; and then if
8 we needed to do any remediation, to do
9 any remediation we had to do on it,
10 working with ADEM.

11 Q. And that is what you told them about
12 PCBs? You just mentioned that it was a
13 chemical that you had previously
14 manufactured at the plant?

15 A. Yes, yes.

16 Q. Now, did you ever say at any point in
17 time during your conversations with any
18 of these officials, Tom or any of them,
19 that anybody else was responsible for
20 the problem out there other than
21 Monsanto?

22 A. No.

23 Q. Did you ever indicate to them that there

1 was a third party who should be brought
2 into any conversations that you might
3 have had with those people about this
4 particular problem?

5 A. No, sir.

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6 Q. Did you indicate to them that Monsanto
7 was assuming the responsibility for what
8 damage had been done because of the
9 contamination coming off your property
10 and onto --

11 A. We told them we were working with ADEM,
12 trying to understand it, and that we
13 would work with ADEM and whatever
14 guidance they gave us, to assume
15 responsibility for it.

16 Q. Monsanto would assume the responsibility
17 for it?

18 A. To do as ADEM directed us to do, yes,
19 sir.

20 Q. Was there any doubt in your mind that
21 the PCBs came from anywhere other than
22 your landfill, even west of the southern
23 landfill?

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1 A. I can't say for certain it came from the
2 landfill.

3 Q. Where would you say it came from?

4 A. I don't know. To this day I can't say
5 for certain it came from the landfill.

6 It's there. We manufactured PCBs. I
7 assume that it must have come somewhere
8 from our operations.

9 Q. Are you saying in answering the question
10 in that fashion that it possibly came
11 from someplace other than these solid

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12 waste management units that y'all have
13 buried waste in?
14 A. I'm just saying with absolute one
15 hundred percent certainty I can't say
16 that it did, but it's likely that it
17 did.
18 Q. Can you tell me, Mr. Mayausky, if y'all
19 have got PCBs buried anywhere other than
20 in the landfill?
21 A. Not that I'm aware of.
22 Q. Okay. Give me some idea, Mr. Mayausky,
23 of your educational background.

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1 A. I have a BS in chemistry from the
2 University of Pittsburgh.
3 Q. When did you get that?
4 A. 1977.
5 Q. Okay.
6 A. And I have a Ph.D. in analytical
7 chemistry from Ohio State University,
8 1982.
9 Q. Did you specialize in any particular
10 field when you went through and got your
11 BS or your Ph.D.?
12 A. As a doctoral student, my dissertation
13 was on the reactions of a commonly used
14 neurotransmitter -- antipsychotic agent
15 known as chlorpromazine.
16 Q. And how is it that you went from that to
17 working for Monsanto? What was your

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18 first job experience?

19 A. I wanted to work for a drug company.

20 But when I came out of school, drug

21 companies were not hiring. So I had

22 interviewed with general industrial

23 chemical companies. And then Monsanto

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1 offered me a position, and I accepted.

2 Q. And where was that position? Where did

3 you first go to --

4 A. Pensacola, Florida.

5 Q. What did you do in Pensacola, Florida

6 for Monsanto?

7 A. I was a bench chemist, a bench chemist

8 working both on quality assurance and

9 research -- documenting research work by

10 some of the people who were doing

11 fundamental research on the products

12 that were produced there.

13 Q. And that was in 1982?

14 A. Yes, sir.

15 Q. What products in particular did you work

16 with?

17 A. Mainly the chemical products that were

18 produced at Pensacola, adipic acid and

19 maleic anhydride, m-a-l-e-i-c,

20 anhydride, a-n-h-y-d-r-i-d-e.

21 Q. And who did you work with there? Who

22 was your immediate supervisor?

23 A. A gentleman by the name of Larry Smith.

- 1 Q. What else did you do there, anything?
- 2 A. Some what's known as methods
- 3 development, working on new analytical
- 4 methods to be applied. That was part of
- 5 the quality work.
- 6 When you produce products, you
- 7 want to check their quality, so I worked
- 8 on developing new analytical methods
- 9 that were faster and more efficient,
- 10 better able to detect.
- 11 Q. Detect what, whether or not the product
- 12 was what you expected it to be, the
- 13 quality of it?
- 14 A. Right. Comparing it to quality
- 15 standards, yes.
- 16 Q. Did you develop some analytical
- 17 standards or new type things yourself?
- 18 A. When I was there, there was an emerging
- 19 field in chromatography, which is a
- 20 technique. There was an emerging growth
- 21 of what's known as capillary
- 22 chromatography. So I spent a great deal
- 23 of my time switching over some of our

- 1 chromatography from the pack, what is
- 2 known as pack column, to this capillary
- 3 column technology.
- 4 Q. Now, did you work with any products

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5 other than those you have mentioned
6 while you were there in Pensacola?
7 A. There is a laundry list of them,
8 hexamethylene diamine, h-e-x-a,
9 methylene, l-e-n-e, diamine.
10 Q. What was that?
11 A. The one I referred to early, adipic
12 acid, and hexamethylene diamine are
13 combined together to make a product
14 called nylon salt. Nylon salt is the
15 feed stock that goes to producing nylon.
16 It's the raw material for nylon. That's
17 the main product coming out of
18 Pensacola, was nylon for carpeting,
19 tires, seat belts, parachutes, things
20 like that.
21 Q. Did you ever work while you were at
22 Pensacola with anything that was like
23 PCBs or --

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1 A. No, sir.
2 Q. -- polybiphenyls or anything like that,
3 biphenyls?
4 A. No, sir, not at Pensacola.
5 Q. All right. Did you receive any
6 promotions -- How long did you stay
7 there?
8 A. I was in Pensacola for ten years.
9 Q. And you left there, then, in 1992?
10 A. Yes, sir.

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MAYASKY

11 Q. And where did you go after you left
12 Pensacola in 1992?

13 A. I went to another Monsanto plant in
14 Nitro, West Virginia, N-i-t-r-o, West
15 Virginia.

16 Q. And did you receive any promotions -- I
17 asked you, but I don't know whether I
18 got an answer or not.

19 A. Yes.

20 Q. -- while you were in Pensacola?

21 A. Yes. I moved from a bench chemist to a
22 quality assurance supervisor to a
23 laboratory supervisor to a business unit

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1 leader producing adipic acid and then
2 eventually left there.

3 Q. Okay. When you went to the plant in
4 Nitro, West Virginia, what did you go
5 there as?

6 A. A position known as general
7 superintendent of hodgepodge. And I use
8 that term lightly, because I had
9 responsibilities for warehousing,
10 traffic, distribution, quality
11 assurance, and one small manufacturing
12 operation.

13 Q. Like a middle level manager?

14 A. Yeah. I reported to a plant manager.

15 Q. And what did they make at the Nitro
16 plant in West Virginia?

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17 A. They made accelerators, which are
18 chemicals used in rubbers, rubber
19 compounds for tires. They accelerated
20 the vulcanization process. They also
21 made a chicken feed supplement called
22 santa -- I'm sorry -- alimet,
23 a-l-i-m-e-t (sic). They also made

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1 another product we had that was a
2 vulcanization inhibitor. Which as the
3 accelerators assured vulcanization,
4 there was also a chemical that was added
5 that if you didn't want the
6 vulcanization to go too far, you wanted
7 a soft rubber, we made a compound that
8 was used for that. Mainly rubber
9 chemicals.

10 Q. What was the product that you
11 participated in supervising the
12 manufacturing of?

13 A. The vulcanization inhibitor.

14 Q. Did you -- How long did you stay there,
15 until '94?

16 A. Until '94, yes, sir.

17 Q. Did you receive any promotions while you
18 were there at the West Virginia plant?

19 A. No, sir.

20 Q. Did you receive any training at all,
21 outside of, say, your formal educational
22 training, after you went with Monsanto

23 in 1982, any seminars or --

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1 A. Quality training, management training
2 techniques. Those come to mind, yes,
3 sir.
4 Q. Okay. Were you a part of the company
5 when a Mr. Mahoney was involved as the
6 CEO of the corporation?
7 A. Yes, sir. Dick Mahoney, yes, sir.
8 Q. Are you familiar with or did you become
9 familiar with a -- what was known in the
10 industry as the Monsanto -- I'm trying
11 to think of the exact terminology --
12 Pledge --
13 A. Yes, sir.
14 Q. -- as it relates to the environment?
15 A. Yes, sir.
16 Q. Tell us, if you would, Mr. Mayausky, how
17 you became familiar with that
18 particular --
19 A. It was a pledge that was signed off on
20 by Monsanto to reduce its emissions by X
21 percent -- I honestly don't remember the
22 exact percentage -- by 1997, I think was
23 the target date they were shooting for.

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1 Q. Do you remember when that particular
2 pledge was signed and put into effect?

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3 A. Early '90s. It may have been late '80s.
4 I don't recall the exact date.

5 Q. And how is it that you became aware of
6 the Monsanto Pledge? Did you have -- As
7 a superintendent at the plant in West
8 Virginia, were you given any kind of
9 special training on that particular
10 pledge?

11 A. No, not that I recall.

12 Q. Did you have any seminars just as an
13 employee?

14 A. No. It was communicated through
15 electronic mail or company mailings.
16 And I did not receive any special
17 training on it that I recall.

18 Q. Did you receive a copy of that, though,
19 as a superintendent or the position that
20 you held either in Pensacola or in West
21 Virginia? When is it that you recall,
22 if you do --

23 A. I believe it was Pensacola.

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1 Q. In Pensacola?

2 A. Yeah. I believe it was.

3 Q. Were there any discussions that took
4 place at the Pensacola plant in
5 connection with that particular pledge
6 that Mr. Mahoney had made?

7 A. No, sir. Were there any? I don't know.
8 Did I attend any? No, I don't remember

- 9 attending any.
- 10 Q. So did you understand this to obligate
- 11 you as an official or a manager of
- 12 Monsanto to adhere to what Mr. Mahoney
- 13 had to say?
- 14 A. I understood that, and I looked to our
- 15 environmental department at Pensacola to
- 16 give us guidance on what we needed to do
- 17 to meet the pledge.
- 18 Q. Okay. And tell us, if you would, what
- 19 you did, if anything, at Pensacola or
- 20 what you did, if anything, at West
- 21 Virginia to meet the pledge.
- 22 A. I remember one project that I was
- 23 involved with in Pensacola where we put

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- 1 in a compressor to collect fugitive
- 2 emissions off of our tank and take it
- 3 over to a thermo-reduction unit. But
- 4 that was part of -- to capture all of
- 5 that and take it over to the unit where
- 6 it would be reduced. And they were nox
- 7 emissions, if you are familiar with
- 8 those.
- 9 Q. No, I'm not.
- 10 A. Nitrous oxide. Nitrous oxides are
- 11 general nitrogen oxygen compounds that
- 12 are sometimes made by the incomplete
- 13 combustion of nitrogen.
- 14 Q. So what y'all chose to do at that

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15 particular instance, in order to reduce
16 that emission, was to take it, capture
17 it, and then --
18 A. Capture it off the tanks and off the
19 vessels and take it over to a compressor
20 and compress it and feed it to a
21 reduction furnace we had, which was
22 designed to complete that combustion and
23 turn it into nitrogen, CO2, and items

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1 like that.
2 Q. So what y'all did was basically kept
3 that particular substance from being
4 emitted from the plant --
5 A. Yes, sir.
6 Q. -- and turned it into an energy?
7 A. We did use the energy. We had a steam
8 boiler off of that reduction unit and
9 made some steam, yes, sir.
10 Q. And did you see that as a part your
11 responsibility as a middle level manager
12 at that point in order to carry out your
13 commitment to --
14 A. My responsibility working with the
15 engineers that worked for me was to
16 ensure we obtained the capital to do
17 that project, design the project,
18 present it to upper manager, have that
19 capital approved, and then see the unit
20 through installation and start-up of

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21 that modification unit.

22 Q. Now, did you ever understand that a part

23 of the pledge that you all took as a

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1 company -- and it was signed off on, I

2 assume, by Mr. Mahoney in the late '80s

3 or early '90s -- also included the

4 involvement of the community --

5 A. Uh-huh (indicating yes).

6 Q. -- that you surrounded?

7 A. Yes, sir.

8 Q. Or that surrounded your plant, rather?

9 A. Yes, sir.

10 Q. Was the purpose of that, the involvement

11 of those communities, the residents of

12 those communities, to protect the health

13 and welfare of those people who might be

14 around your plant and subjected to the

15 emissions that y'all were trying to

16 reduce?

17 A. No. I wouldn't agree that was the focus

18 of it. The focus of it was to provide

19 information to the public about the

20 operations of the plants, to understand

21 what we made, to have dialogue with

22 them, to understand, if there were

23 emissions, what they were.

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1 Q. Well, it wasn't just a big PR deal,

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2 though. Y'all had a purpose in making
3 an attempt to reduce the emissions,
4 which was to protect the environment,
5 which was in effect to protect those
6 residents, wasn't it, that lived around
7 your plants?

8 A. Again, I didn't sign it. Mr. Mahoney
9 signed it, but I assume that he was
10 looking at reducing the overall
11 emissions in the interest of the
12 environment, yes, sir.

13 Q. And then in turn that environment, if it
14 was free of those emissions, would be a
15 better place for the residents that
16 lived around your plant to live?

17 A. Yes, sir. I agree with that statement.

18 Q. And wasn't a part of what y'all's effort
19 was aimed towards then, Mr. Mayausky,
20 and what Mr. Mahoney was aiming for and
21 expected y'all to aim for, to make sure
22 that you did those things that would in
23 turn not only protect the environment

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1 but the health and welfare of the people
2 who lived around the plant?

3 MR. PECK: Object to the form of
4 the question, calls for
5 speculation.

6 A. I would -- Again, I can only speculate.

7 But my focus, the way I understood it,
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8 was to establish open dialogue with the
9 community, to get a representative group
10 of the community to understand our
11 operations and what we did, and for them
12 to serve as a vehicle for us to
13 communicate with the community.

14 Q. And ultimately resolve whatever problem
15 might exist?

16 A. If there was a problem.

17 Q. If there was a problem?

18 A. If there was a problem, yes, sir, to get
19 their input, and to be of help too. If
20 they needed funding for civic type
21 things, that may be a vehicle to do
22 that.

23 Q. Since you've mentioned that -- well,

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1 I'll get to that in a minute.

2 Okay. When you came to Anniston,
3 what did you come to Anniston as?

4 A. Plant manager.

5 Q. And how were you chosen as plant manager
6 to come here, Mr. Mayausky?

7 A. What selection criteria?

8 Q. What process took place that brought you
9 here to Anniston? Who picked you?

10 A. The corporation picked four candidates
11 that might be successful people to serve
12 as plant manager. All four candidates
13 came down and were interviewed by teams

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14 of people from the plant, both hourly
15 and salary, including union officers.
16 They then -- If a consensus was reached
17 amongst that group of who the next
18 manager would be, that was it, it was
19 done. If there wasn't a consensus and
20 two candidates were found to be equal,
21 it went back to St. Louis for the
22 ultimate decision. I was one of the
23 four candidates interviewed by teams of

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1 people from the plant, and I was
2 successfully selected.
3 Q. So you didn't take that second step.
4 You just met with the people down here,
5 and they selected you?
6 A. Yeah.
7 Q. Before you came down here, were you
8 briefed about the plant itself?
9 A. I was told of the products that were
10 made here, and I did some research on my
11 own to understand some of the people and
12 asked for -- I called down and talked to
13 -- At that time Bill Difur had already
14 left, and I had Dale Kline, who was
15 operating in his absence, to send me
16 some organization charts and basic
17 product literature, information about
18 the area, that sort of thing.
19 Q. Tell me who briefed you on the products

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20 that were produced here at the plant.
21 A. other than that reading that I had prior
22 to coming here, once I was in place,
23 then I would have tours and discussions

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1 about the products with the operations
2 people. Again, this is Dale Kline, who
3 was the operations manager at the plant,
4 and --
5 Q. Dale Kline?
6 A. Yes, sir.
7 Q. How do you spell that last name?
8 A. K-l-i-n-e.
9 Q. Is he still there?
10 A. No. He has moved on.
11 Q. Where is he now?
12 A. He is -- He lives in Oxford. But he is
13 now a national sales representative for
14 Monsanto, selling products.
15 Q. All right.
16 A. At least I still believe he lives in
17 Oxford. I haven't talked to Dale in a
18 long time.
19 Q. How many other people did you talk to
20 other than Mr. Kline?
21 A. Some of the -- we call them front line
22 supervisors, with the guys who are
23 actually directly over the hourly

1 personnel. And some names that come to
2 mind are Andy Nelson, Sandy Smith.
3 Those are two I remember taking me on
4 tours and showing me the process.
5 Q. When you say showing you the process,
6 you mean the manufacturing process --
7 A. Yes, sir.
8 Q. -- that was going on at the plant at
9 that time?
10 A. Yes, sir.
11 Q. Had you ever been around a plant that
12 manufactured the type of products that
13 were being manufactured here at the
14 local plant in Anniston?
15 A. No, sir.
16 Q. And at the time that you came here, what
17 product was the plant producing?
18 A. The main product from the plant was a
19 product called Therminol, which is a
20 heat transfer agent. The other
21 secondary product is para-nitrophenol
22 which is a feed stock to acetaminophen,
23 which we know as Tylenol.

1 Q. Anything else?
2 A. Those are really the main products
3 coming out of the plant. There was a
4 product called -- which the trade name
5 is known as VP1, which was a mixture of

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- 6 a product produced at our Chocolate
7 Bayou plant in Texas -- called DPO, and
8 then biphenyl. Biphenyl was the feed
9 stock to Therminol.
- 10 Q. Tell me, if you would, did anybody brief
11 you on that process other than these
12 people who were involved in the
13 manufacturing process?
- 14 A. Well, I had conversations with engineers
15 as I went along to try to understand
16 what their roles were in supporting the
17 products. But those are -- Nobody
18 outside the plant I don't remember ever
19 having conversations with about the
20 products.
- 21 Q. Did --
- 22 A. One another name that comes to mind is
23 Jerry Brown.

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- 1 Q. What conversations did you have with
2 Mr. Brown?
- 3 A. Jerry Brown is just -- he's the
4 technology manager at the plant. He's
5 been there a long time. He really
6 understands the products. He really
7 helped me understand some of the uses of
8 Therminol, what it was being used for in
9 the industry, gave me some examples of
10 people buying it, what it was used for.
- 11 Q. So that's basically what your role was

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12 -- what your briefing was at the time
13 you assumed the role of plant manager
14 here?
15 A. Yes, sir.
16 Q. Did anyone ever give you any information
17 at all about the history of the plant?
18 A. Jerry Brown, quite a bit, because he had
19 been around, plus some of the other
20 operators, the front line supervisors I
21 talked about, had been around for a long
22 time. Generally for us a front line
23 supervisor is somebody who was in the

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1 hourly ranks who promoted to the salary
2 ranks, and they tended to be long-term
3 employees.
4 Q. Did anybody tell you anything about the
5 solid waste management units that were
6 located on the plant property before you
7 came down to Monsanto?
8 A. Before I came down, no, sir.
9 Q. After you got to the Monsanto plant in
10 Anniston, did anybody tell you about
11 that?
12 A. Yes. Then we discussed with Robert
13 Jones, our environmental superintendent,
14 some of our environmental systems. We
15 talked about the west end landfill, the
16 closure plan.
17 Q. Excuse me? Go ahead. I'm sorry.

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18 A. Just talked about the -- At that time he
19 was working with ADEM to develop a plan
20 to close the west end landfill.
21 Q. I believe you indicated, Mr. Mayausky,
22 that you came here in '92, was it?
23 A. No. '94, August of '94.

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1 Q. '94?
2 A. Yes, sir.
3 Q. Okay. What did Mr. Brown tell you
4 prompted the problem or created the
5 problem for Monsanto at the west end
6 landfill?
7 A. And I don't recall if it was Mr. Brown
8 who told me or Mr. Jones --
9 Q. I may have misspoken. I think you did
10 say Jones. I apologize.
11 A. What was conveyed to me was that the
12 west end landfill --
13 Q. Go ahead.
14 A. That the west end landfill was land that
15 was used historically for a landfill by
16 the plant in the '60s and '70s, was
17 eventually deeded to Alabama Power to
18 build a switchyard on, and that there
19 was discovery of some tar material on
20 the surface of that landfill, and the
21 land was reacquired, I guess, from
22 Alabama Power, and we were moving
23 forward, trying to close it, cap it, as

- 1 it should be, with ADEM.
- 2 Q. Now, did Mr. Jones tell you what the
- 3 chemical compound was that had been
- 4 buried in the west end landfill?
- 5 A. Just in general terms. And the records
- 6 were very poor. But some of the --
- 7 known as steel bottoms from the PCB
- 8 operations, some of the heavy ends from
- 9 the distillation operations were in
- 10 there, other things from the plant that
- 11 the plant produced over history.
- 12 Q. What were those other things,
- 13 Mr. Mayausky?
- 14 A. I don't remember specific conversations
- 15 about what they were. I just remember
- 16 it was very difficult to ascertain
- 17 exactly what was in there, because it
- 18 had been used back in the '60s and '70s
- 19 and records were poor.
- 20 Q. Are you telling me here today that you
- 21 have no idea what was buried in the west
- 22 end landfill other than the steel
- 23 bottoms from the distillation and steel

- 1 bottoms from PCB production?
- 2 A. Yes, sir.
- 3 Q. And did you talk to Mr. Brown about what
- 4 might have been buried there?

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- 5 A. Yes, sir. Basically I was given the
6 same answer, that because of poor record
7 keeping and that it was -- there was
8 very little knowledge of exactly what
9 was in there. It wasn't documented.
- 10 Q. So no one knew?
- 11 A. No one knew.
- 12 Q. Did you know or have any idea or receive
13 any information from Mr. Brown or
14 Mr. Jones as to how much in terms of
15 amounts of PCBs were buried in the west
16 end landfill?
- 17 A. No, sir.
- 18 Q. Did you find out or did they tell you
19 what the readings were on the testing
20 that was done in and around the -- Was
21 it drainage ditches off the landfill?
- 22 A. The water, yeah. That's when I found
23 out that it was -- as I said earlier,

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- 1 the findings in water were less than ten
2 parts per billion.
- 3 Q. Who told you that?
- 4 A. Mr. Jones.
- 5 Q. And how did he tell you that he knew
6 that? Did y'all do the testing there
7 yourself, or did you hire somebody to --
- 8 A. We used a contract laboratory. If I
9 remember, it was Garrity and Miller.
- 10 Q. So Mr. Jones' statement to you is that

MAYASKY

11 all the testing that was done in
12 connection with the PCB problem that
13 came about through the Alabama Power
14 Company thing showed that there were
15 findings of ten -- less than ten parts
16 per billion in the surface water?

17 A. Yes, sir.

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

20 Q. And that was it? That is what he told
21 you as the plant manager?

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

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1 A. And he told me about the finding of a
2 tar material that Alabama Power
3 discovered. And I believe Alabama Power
4 analyzed that and found that it
5 contained PCBs.

6 Q. Did he tell you what that reading was?

7 A. He told me it was at percent levels in
8 the tar, as an element -- part of the
9 tar that was found was a percent level
10 of PCBs.

11 Q. Well, just assume I'm sort of a dumb lay
12 person and don't know anything about
13 that. Was the finding that he told you
14 about that had been discovered by the
15 Alabama Power Company a higher level of
16 contamination than what you have

MAYASKY

17 indicated to us you all found in the
18 water?
19 A. Water levels were parts per billion, and
20 the tar was percentile. Yes, sir.
21 Q. So it was higher?
22 A. Yes, sir.
23 Q. Well, did he tell you how much of that

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1 was found, or did you ever know how much
2 of that was found?
3 A. No. Just that some was found and that
4 it was analyzed.
5 Q. Mr. Mayausky, I'm not trying to belabor
6 this point, but in view of the pledge
7 that you have previously talked to us
8 about that Mr. Mahoney made in the late
9 '80s and early '90s, you as plant
10 manager had a responsibility, didn't
11 you, to find out a little bit more than
12 you have told us you discovered from
13 either Jerry Brown or Mr. Jones?
14 A. I had a responsibility to report it to
15 ADEM and work with ADEM on what we were
16 going to do about it, yes, sir.
17 Q. To report what to ADEM?
18 A. That we had found these tars, we had
19 found some in water, and to work with
20 them on what we were going to do about
21 it.
22 Q. We'll get to that in just a minute. But
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23 would it not be important for you as

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1 plant manager, Mr. Mayausky, to know

2 exactly what was buried there --

3 A. No, sir.

4 Q. -- and the amount?

5 A. Because again, I have to turn it over to

6 the environmental and working with ADEM

7 -- and work with them to develop a plan

8 on what we are going to do about it.

9 Q. But isn't the long-term situation,

10 Mr. Mayausky, as far as your

11 responsibilities are concerned as the

12 plant manager -- Doesn't the buck stop

13 at your desk? Aren't you held

14 accountable by St. Louis for what

15 happens here, whether it's done by the

16 technologist, Mr. Brown, or

17 the environmental person --

18 A. And it did. And we went straight to

19 ADEM and talked to ADEM about it.

20 Q. But my question was isn't it your

21 responsibility to be on top of things as

22 well as this environmental person since

23 you're the person who is ultimately held

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1 accountable?

2 A. And I was. And we went directly to ADEM

MAYASKY

3 and talked to ADEM about what we found
4 and worked with them to try to figure
5 out how we were going to manage it.

6 Q. So you actually went to ADEM with
7 Mr. Brown or Mr. Jones or a combination
8 of those people or other people and
9 talked to them about what you were going
10 to do about the west end landfill?

11 A. Eventually, yes. During the transfer,
12 yes. During my transition period,
13 Robert was doing a lot of those direct
14 conversations, but I did make trips down
15 to ADEM to talk to them about the
16 situation.

17 Q. Tell me, if you would, Mr. Mayausky,
18 when is the first time you personally
19 went to Montgomery and talked to the
20 people of ADEM.

21 A. I remember spring of '95.

22 Q. So in the spring of 1995 is the first
23 trip you made down to ADEM --

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1 A. That's what I recall.

2 Q. -- and you came here in August of '94?

3 A. That's what I recall. It may have been
4 winter, but I don't recall exactly.

5 Q. It may have been winter of --

6 A. of '94.

7 Q. of '94?

8 A. Yeah.

MAYASKY

- 9 Q. Had Mr. Jones been making trips, as you
10 have indicated, before that time?
- 11 A. Yes, sir.
- 12 Q. And was that related to the west end
13 landfill?
- 14 A. Yes, sir.
- 15 Q. And that particular problem solely?
- 16 A. No. We also reported to them the water
17 findings we had.
- 18 Q. Now, the water findings were not only
19 around the west end landfill, but they
20 were also around the south landfill?
- 21 A. Yes, sir.
- 22 Q. And had you engaged in 1994 Garrity and
23 Miller to take the tests both at the

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- 1 west end landfill and also at the south?
- 2 A. I think it was Garrity and Miller we
3 were using at that time, yes, sir.
- 4 Q. Can you tell us, Mr. Mayausky, with some
5 specificity, where you understood those
6 tests were made or done at the west end
7 landfill by Garrity and Miller?
- 8 A. They were on the surface of the landfill
9 and then also in the water, the ditch
10 that ran off the landfill.
- 11 Q. All right. Now, when you say the water
12 in the ditch that ran off the landfill,
13 can you tell us where that ditch went
14 to?

MAYASKY

15 A. To my recollection, it went down along
16 what would be immediately west of that
17 landfill, curved down along the set of
18 railroad tracks that were on the north
19 side of the plant, eventually wound
20 along that railroad track, crossed under
21 the railroad track about -- before
22 Clydesdale, and then ran again along the
23 railroad track to eventually go down to

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1 Snow Creek.

2 Q. So you understood in 1994, when you came
3 here, whether you went to ADEM or not,
4 that you had a problem from that
5 landfill with some contaminant -- And
6 would that be PCBs?

7 A. Yes, sir.

8 Q. -- that was coming out of the landfill
9 and going down that ditch that you've
10 just described ultimately into Snow
11 Creek?

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

14 A. At that time, in early 1994, all we knew
15 was we had the tar finding on the
16 landfill and found some in water and we
17 needed to do sampling to figure out
18 where it was coming from.

19 Q. Let me see, now. I'm from Munford, not
20 a big city south of here. But I thought

MAYASKY

- 2 Q. And so the PCBs were coming from your
3 landfill and contaminating the water?
- 4 A. I can't draw that conclusion. I don't
5 know. We needed to sample to understand
6 that.
- 7 Q. Tell me, if you would, what intervening
8 set of circumstances or institutions or
9 anything else of land or facility was
10 there between that landfill and that
11 tarry substance that you found in the
12 ditch. There wasn't any, was there?
- 13 A. There wasn't any.
- 14 Q. So would it be logical to assume that
15 the PCB contamination in the ditch would
16 have come from Monsanto's landfill?
- 17 A. It's likely, yes.
- 18 Q. And that's what y'all assumed, isn't it?
- 19 A. That's what we started to analyze for,
20 yes, sir.
- 21 Q. Now, you were talking at this point in
22 time, were you not, Mr. Mayausky, to
23 Jerry Brown?

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- 1 A. Uh-huh (indicating yes).
- 2 Q. Who had been here for, what, some twenty
3 years at that time?
- 4 A. At least.
- 5 Q. Maybe more?
- 6 A. Maybe more.
- 7 Q. And he had held Mr. Jones' position

MAYASKY

8 before that time?
9 A. Yes, sir.
10 Q. Did you ask him anything about the
11 history of this problem that you found
12 when you came here to the Anniston
13 plant?
14 A. We talked about what the landfill was
15 used for. And it was used, as I said,
16 during the '60s and '70s as a general
17 plant landfill.
18 Q. Did Mr. Brown tell you anything in any
19 of those conversations that you had with
20 him, Mr. Mayausky, about any testing
21 that had been done of the tributary
22 known as Snow Creek by your company
23 before the summer and fall and winter of

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1 1994?
2 MR. PECK: At this time or any
3 time in his life?
4 MR. STEWART: During that
5 conversation he had with him.
6 A. We discussed --
7 Q. I'm referring to the time in '94 when
8 y'all discovered this problem that you
9 had. Did Mr. Brown tell you anything
10 about some historical testing that had
11 been done by your company?
12 A. And I can't remember if it was Mr. Brown
13 or Mr. Jones that told me, but I was

MAYASKY

14 told that there was some sampling done
15 in snow Creek and some sediment removal
16 from snow Creek.
17 Q. Did he tell you when that was done?
18 A. I want to -- My recollection was late
19 '80s.
20 Q. Late '80s?
21 A. Yes, sir.
22 Q. Well, did he tell you what kind of
23 chemical was involved?

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1 A. PCBs.
2 Q. PCBs?
3 A. Yes, sir.
4 Q. Did he tell you about any testing that
5 had been done in Choccolocco Creek or
6 Logan Martin Lake?
7 A. The only testing I was aware of at that
8 time in Choccolocco Creek was some fish
9 samples.
10 Q. Fish samples?
11 A. Yes, sir.
12 Q. And who told you about the fish samples?
13 A. Either Mr. Jones or Mr. Brown. I'm not
14 sure, but one of those two.
15 Q. What did either one of those two
16 gentlemen tell you about the fish
17 samples?
18 A. What they told me was there was a
19 contractor doing dredging operations on

MAYASKY

20 Choccolocco, gathered up some fish, had
21 them analyzed, and found that they
22 contained PCBs.

23 Q. And did they tell you when that

79

1 happened?

2 A. '91, '92. I don't remember the exact
3 date.

4 Q. '91 or '92?

5 A. Yes, sir.

6 Q. And how is it that Mr. Brown or
7 Mr. Jones told you that they became
8 aware as employees of Monsanto about
9 that testing?

10 A. I believe it was communicated to them by
11 ADEM.

12 Q. So ADEM told Mr. Jones or Mr. Brown or
13 both of them in 1991 that there was some
14 fish in Choccolocco Creek that had PCBs
15 in it?

16 MR. PECK: It may have been
17 November of '93. I don't
18 want Donald to send me off
19 searching for stuff that
20 doesn't exist and I know it's
21 November of '93. So I don't
22 want the record to be unclear
23 about this.

1 THE WITNESS: I was going to say I
2 don't know if it was '91 or
3 not.

4 MR. STEWART: Thank you for your
5 help, Adam.

6 A. This incident, be it '91 or '93 -- My
7 recollection fails me. They were
8 communicated to by ADEM.

9 Q. Did anybody here at this local plant or
10 anybody in St. Louis ever tell you,
11 Mr. Mayausky, that there had been some
12 testing done before '93 by your company
13 in Snow Creek and before the mid '80s in
14 Snow Creek?

15 A. As I said earlier, they told me there
16 were some samplings in Snow Creek, some
17 was found in sediment. I don't remember
18 the amount, but a large amount of
19 sediment was dredged from Snow Creek and
20 hauled off for disposal at Emelle.

21 Q. And I believe you have indicated
22 previously -- and if I'm wrong, please
23 don't let me put words in your mouth --

1 that that was done sometime in the '80s,
2 mid '80s.

3 A. To the best of my recollection, yeah.

4 Q. My question to you was did they tell you
5 about any testing that had been done

6 before that time, before the '80s?
7 A. Not that I recall.
8 Q. And not by a person who was a
9 contractor, but by Monsanto itself?
10 A. Not that I recall, no, sir.
11 Q. Did anybody at St. Louis tell you
12 anything about any testing that had been
13 done of either Snow Creek, Choccolocco
14 Creek, or Logan Martin Lake for PCBs
15 before the mid '80s?
16 A. No, sir.
17 Q. So it was your understanding as the
18 plant manager of the Monsanto Chemical
19 Company plant here in Anniston that the
20 first time a problem had been discovered
21 by Monsanto about PCB contamination in
22 some of the tributaries that were
23 contiguous to the plant was in the mid

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1 '80s? That was your understanding as
2 you sit here today?
3 A. Yes, sir.
4 Q. No one told you any different?
5 A. No, sir.
6 Q. Would it not be correct, Mr. Mayausky,
7 that as the plant manager it would have
8 been beneficial to you to have that
9 information had this been a problem
10 before the mid '80s?
11 MR. PECK: Object to the form of

12 MAYASKY
13 the question, calls for
14 speculation.
15 A. I don't know what advantage it would
16 have been to me, because I knew we had
17 this situation on the west landfill, and
18 we needed to be about working to fix
19 that with ADEM.
20 Q. What I'm asking you, Mr. Mayausky, is
21 wouldn't you want to know, as the plant
22 manager for Monsanto, that the PCBs that
23 came from your landfill had migrated as
 far away as Logan Martin Lake?

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1 A. Again, I can't make the conclusion that
2 the PCBs necessarily came from there. I
3 knew we had a situation on our landfill
4 current, and I needed to work with ADEM
5 on that situation. That's where my
6 efforts needed to go.
7 Q. Well, Mr. Mayausky, let's say for the
8 sake of a hypothetical, as plant manager
9 here, if you had known that the problem
10 existed before the '80s and that the
11 PCBs were such a problem that they had
12 migrated all the way down to Logan
13 Martin Lake, wouldn't that bit of
14 information have been highly important
15 to you as the plant manager here in
16 Anniston?
17 MR. PECK: Object to the form of

18 MAYASKY
18 the question, calls for
19 speculation. It's an
20 inaccurate summary of the
21 testimony in this case to
22 date. Go ahead.
23 A. I knew that there was a finding of fish

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1 in Choccolocco Creek of PCBs. I knew we
2 had a situation at the plant with the
3 west end landfill. I needed to spend my
4 time and energy working on that. At
5 that time I still don't know if there
6 was a conclusion or a direct link
7 between those two.
8 Q. All right. Mr. Mayausky, you knew, of
9 course, there were neighbors who lived
10 north of this plant, didn't you?
11 A. There were neighbors on the north side
12 of the plant, yes, sir.
13 Q. And you knew that there were neighbors
14 who lived to the west and to the east of
15 your plant, did you not?
16 A. Yes, sir.
17 Q. And you knew that there were neighbors
18 who lived north of that landfill that
19 was located south of 202, didn't you,
20 across 202 in Cobb Town and Sweet
21 Valley? You knew there were people who
22 lived there?
23 A. Yes. I think of them more of the east

1 end neighbors, east of the plant.

2 Q. Let's say east of the plant. You knew
3 that there were people who were there,
4 didn't you?

5 A. Yes, sir.

6 Q. Don't you think it would be important,
7 in light of the fact that you had
8 residents who lived around this plant,
9 for you to know that this particular
10 material, PCBs -- which is a regulated
11 chemical compound, isn't it?

12 A. Uh-huh (indicating yes).

13 Q. Wouldn't you think it would be important
14 for you to know in connection with your
15 responsibilities, under this pledge that
16 we have previously mentioned, to those
17 people how far this stuff had migrated
18 in the '70s and in the -- maybe even the
19 '60s?

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

22 A. And I think for those nearby residents
23 -- I think we found it in the water. We

1 went immediately to ADEM and started
2 talking to them and started proposing
3 samples --

4 Q. We will get to that in a few minutes.

MAYASKY

5 But what I want you to tell me is if you
6 would consider that to be important in
7 light of what your responsibilities are
8 under that pledge to the neighbors?

9 MR. PECK: He's asking whether or
10 not it would be important to
11 know what happened thirty
12 years before, in light of the
13 responsibility of the pledge
14 to date.

15 A. I will go back to what I said earlier.
16 I knew we had situations we had to deal
17 with right now, and I threw my efforts
18 and energy into trying to correct those
19 situations, not what may have occurred
20 thirty years ago.

21 Q. Do you know what bio magnification is?

22 A. No. I don't even know what that term
23 is.

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1 Q. Do you know or have any idea what
2 passageways or pathways of PCBs might
3 get into a person's blood?

4 A. I'm not a medical expert, but I have
5 been told that it can be transferred by
6 eating fatty foods, fatty meats and
7 fishes, yes, sir.

8 Q. Did you know anything about the makeup
9 of the community or ask anybody about
10 the makeup of the community that existed

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MAYASKY

11 to the east and to the north and to the
12 west of that plant, Mr. Mayausky?
13 A. When?
14 Q. In '94.
15 A. I -- Not in '94, no, sir.
16 Q. Well, didn't you consider it important,
17 in light of what you knew about this
18 regulated chemical compound and what
19 effects it could have on people,
20 Mr. Mayausky, in '94, to find out those
21 kinds of things?
22 A. I did in '95. I started door-to-door
23 contacts in 1995.

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1 Q. But I'm talking about before 1995,
2 Mr. Mayausky.
3 A. In 1994, if you're asking should I have
4 spent the time to do that, perhaps I
5 should have. But I did in 1995, started
6 door-to-door contacts.
7 Q. Now, Mr. Mayausky, what did you do -- I
8 want to go back to these questions.
9 what did you do in preparation for your
10 deposition here today?
11 A. I met with Adam yesterday just to talk
12 about some of the issues --
13 MR. PECK: Don't --
14 Q. I'm not asking you what you talked to
15 Adam about.
16 MR. PECK: He's not asking or
Page 71

17 entitled to know about that.

18 That would be privileged.

19 Q. Let me just ask you. What documents did
20 you review?

21 A. Some of my communications that I had,
22 some notes I had written with the
23 church, some of the churches, some of

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1 the access agreements that we obtained
2 from the residents as I went door to
3 door. Those are things I remember.

4 Q. Did you look at any depositions?

5 A. My own from previous.

6 Q. Your own from previous?

7 A. Uh-huh (indicating yes).

8 Q. What did you look at in connection with
9 your previous deposition?

10 A. The record of my deposition.

11 Q. In what case?

12 THE WITNESS: What case was that?

13 MR. PECK: I think he was deposed
14 in Wilson versus Monsanto,
15 one of the lake cases. I
16 don't even know which one.

17 Q. Anything else?

18 A. No. That's really about it.

19 (Plaintiffs' Exhibit Number
20 One was marked for
21 identification.)

22 Q. Let me show you Exhibit One to your
Page 72

23 deposition and ask you if you have ever

90

1 seen that, Mr. Mayausky, the deposition
2 notice.

3 A. Yes. This is what was sent to me. I
4 have seen this.

5 Q. And did you make any efforts,
6 Mr. Mayausky, in connection with your
7 deposition here today, to secure any of
8 the documents that were referred to in
9 this request, deposition notice?

10 A. I did, but I don't have any -- I didn't
11 take any of this paperwork with me to
12 Massachusetts.

13 Q. Okay. The plans and documents that
14 relate to the remediation work, where
15 were those located when you left the
16 plant?

17 A. They would be in probably Robert Jones'
18 files.

19 Q. Okay. And the documents that you filed
20 or copies of documents that you filed or
21 submitted to the regulatory agency or
22 state or federal in connection with the
23 remediation work, the same place?

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1 A. Robert Jones' files, yes, sir.

2 Q. And the testing and sampling that you

3 MAYASKY
3 did in connection with the remediation
4 work, would that be in Mr. Jones' file?
5 A. Yes, sir.
6 Q. At the plant site?
7 A. Yes, sir.
8 MR. PECK: Are you talking about
9 the last time he knew?
10 THE WITNESS: The last as far as I
11 know, until May of '97.
12 Q. Okay. Now, the results of medical tests
13 that were done in connection with
14 remediation -- Y'all did medical tests,
15 didn't you, Mr. Mayausky, on a regular
16 basis, some kind of testing of the
17 people from Monsanto and the contractors
18 and employees who worked out there?
19 A. Yes, sir.
20 Q. Who did that testing?
21 A. The contract physician we used was
22 Dr. Gehi.
23 Q. Okay. And how often did he do it?

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1 A. It was -- I believe it was recommended
2 for anybody over forty.
3 MR. PECK: Are you talking about
4 testing done in connection
5 with radiation, which is what
6 this paragraph four talks
7 about, or are you talking
8 about general testing?

9 MAYASKY
THE WITNESS: I'm talking about
10 general testing.
11 Q. well, let's first talk about testing,
12 because that's what I was asking the
13 question about, with regard to
14 remediation. Did you do any testing,
15 blood tests or anything else, of people
16 who worked at the plant site? We have
17 been informed that you did.
18 A. Yes, yes. We offered blood testing to
19 employees at the plant site, done by
20 Dr. Gehi.
21 Q. Were those people who worked on
22 remediation or just people who worked at
23 the plant?

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1 A. Just anybody who worked at the plant.
2 We had general meetings for anybody who
3 was interested.
4 Q. When did you all do that, if you recall?
5 When did you first do that?
6 A. My best recollection is that was done
7 early '96. We had the meetings and
8 offered it to the people.
9 Q. What were you tested for?
10 A. PCBs in blood.
11 Q. Who recommended that you do the testing?
12 A. We talked about it, both myself and
13 Dr. Kaley.
14 Q. Who is Dr. Kaley?

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- 15 A. A person who works in St. Louis in our
16 environmental department.
17 Q. Is he the medical director? Is that
18 what he's called?
19 A. No. He is not the medical director. He
20 is a scientist, I guess, would be the
21 best word to describe him. He has
22 worked with a lot of PCB-related issues
23 for Monsanto.

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- 1 Q. So he recommended that you take blood
2 tests of your employees who worked at
3 the plant?
4 A. We talked about it. I don't know if he
5 recommended it, but we reached an
6 agreement that we should offer it to our
7 employees. Yes, sir.
8 Q. Because of the possibility that they
9 might have PCBs in their blood?
10 A. Yes, sir.
11 Q. How many people were tested?
12 A. I don't remember the exact number. My
13 recollection was twenty, twenty-five,
14 because I never saw the individual
15 results.
16 Q. Okay. Were you aware of what the
17 individual results showed?
18 A. No.
19 Q. Did anybody have PCBs in their blood?
20 A. Yes, sir.

MAYASKY

21 Q. And were they sent to a doctor after
22 that?
23 A. They were -- Dr. Gehi did all the

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1 communications. He delivered the
2 results.
3 Q. Was there any continuing program to work
4 with those people who had PCBs?
5 A. There were some suggested people, I
6 think, at the -- some Birmingham
7 hospitals who they could talk with if
8 they wanted to. The name escapes me.
9 Q. Dr. Mueller?
10 A. Yeah, Dr. Mueller.
11 Q. So you all hired Dr. Mueller?
12 A. I'm not sure if we hired him, but he was
13 offered up as somebody they could talk
14 to.
15 Q. Who offered him up?
16 A. Dr. Gehi and Dr. Kaley.
17 Q. So the employee scientist, Dr. Kaley,
18 and Dr. Gehi, who was y'all's regular
19 physician who treated your people,
20 suggested they go talk to Dr. Mueller?
21 MR. PECK: Object to the form of
22 the question.
23 A. Right. And if I remember correctly, we

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1 also talked to the -- they could talk to
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2 the Alabama Department of Public Health
3 through Dr. --
4 Q. Brian Hughes?
5 A. -- Hughes. Thank you.
6 Q. And this was all done in '96?
7 A. To the best of my recollection.
8 Q. Was Dr. Mueller paid for any
9 consultation that he gave to an employee
10 by Monsanto?
11 A. I don't know the details of that. I
12 don't know.
13 Q. Who would know the details of that,
14 Mr. Mayausky?
15 A. Dr. Kaley, probably.
16 Q. So that was handled out of St. Louis?
17 A. Yes, sir.
18 Q. Do you know if any of these people went
19 over and saw him?
20 A. No, I don't.
21 Q. Now, y'all gave out material safety data
22 sheets and training materials to people
23 in the remediation work, didn't you?

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1 A. I assume, yes, we would have.
2 Q. Who was responsible for that?
3 A. Either Robert Jones or Alan Faust.
4 Q. What did they relate to, if you know,
5 Mr. Mayausky?
6 A. They would relate to any substance they
7 may come in contact with. Usually there

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8 are MSDSS that are made available to
9 people who might be working with
10 anything.
11 Q. Again, maybe I'm just a little old
12 fellow from Munford, Mr. Mayausky, but
13 I'm having trouble understanding how
14 y'all would make a determination as to
15 what material safety data sheets to give
16 these people who were, I assume, people
17 working on the west end landfill and
18 subsequently on the south -- southern
19 landfill. How would you know what
20 material safety data sheets to give them
21 if you didn't know what was buried
22 there?

23 MR. PECK: Object to the form of

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1 the question. It calls for
2 speculation. This witness
3 wasn't involved in that.

4 A. I wasn't involved in that at all.

5 MR. STEWART: I don't mind you
6 making objections. If you
7 want to consult with him --
8 of course, if you want to do
9 it on the record, you can.
10 But why don't you just let
11 the witness answer the
12 questions.

13 MR. PECK: The witness is
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14 answering the questions.
15 A. I was not involved in those decisions.
16 Q. Well, let me just ask you.
17 Intellectually how would you have made
18 it -- You couldn't have told them what
19 material safety data sheets to use,
20 could you?
21 A. I would have directed them to the reams
22 of material safety data sheets we have
23 on file in the plant.

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1 Q. So there are material safety data sheets
2 that reflect what was stored in those
3 landfills?
4 MR. PECK: Object to the form of
5 the question.
6 A. I don't know if everything that could be
7 in that landfill would be in those
8 material safety data sheets, no.
9 Q. But there are some things other than
10 PCBs that are buried there that you know
11 about; is that correct?
12 A. No, I don't know. I don't know.
13 Q. So other than PCBs, you don't know of
14 anything else that's buried in the
15 landfill that you can tell us today?
16 A. No, sir.
17 Q. And didn't know it in '94?
18 A. No, sir.
19 Q. Didn't know it in '95?

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- 20 A. No, sir.
21 Q. And didn't know it in '96?
22 A. No, sir.
23 Q. Well, you did not consider it, then, a

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- 1 part of your responsibility as a plant
2 manager and representative of Monsanto
3 here in this community to know that?
4 A. I knew that we were monitoring ground
5 water for any potential -- The plant is
6 ringed by ground water monitoring wells
7 that capture that, send it to our waste
8 treatment plant. And I knew we had the
9 situation and we had to work with ADEM
10 to close that landfill.
11 Q. And that's all you knew?
12 A. Yes, sir.
13 Q. Now, were there documents that -- if you
14 will take a look at paragraph seven of
15 this notice -- that have to do with
16 correspondence, notes, records of
17 memorandum that relate to communications
18 that you might have had with employees
19 of the City of Anniston or city
20 officials?
21 A. Did I have any of these with me? No, I
22 did not in Massachusetts.
23 Q. Let me ask you this: Do they exist?

- 1 A. I -- The ones I --
2 MR. PECK: If you know.
3 A. The ones I remember, I reviewed
4 yesterday, the notes from the church and
5 the notes from -- the signature pages
6 for people who signed. But that's all I
7 remember.
8 Q. I'm talking about here copies of
9 correspondence that you might have
10 written yourself to some -- like Doug
11 Ghee or Eli Henderson.
12 A. No, sir.
13 Q. Now, what about the waterworks and sewer
14 board? Did you have any correspondence
15 with them, conversations with them
16 during the time you were working on the
17 west end landfill or the southern
18 landfill?
19 A. Not that I recall, sir, no.
20 Q. Do you know anything at all, as you sit
21 here today, Mr. Mayausky, from what you
22 have been told by either people in St.
23 Louis or people here at the plant --

- 1 like Jerry Brown or Robert Jones or any
2 of those operators that you talked about
3 -- about the hydrology of this area?
4 A. Yes. In talking with Robert Jones or
5 Jerry Brown about -- If you are talking

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6 about general ground water flows, yes.
7 we talked about how generally the
8 plant's ground water flows and moves in
9 a northwesterly direction. And then we
10 had the ground water monitoring wells
11 that were around that end of the plant
12 to capture that ground water flow.
13 Q. When did you have those conversations
14 with Mr. Brown and --
15 A. Again, late '94, as I was in transition.
16 Q. Did they ever indicate to you that they
17 had any kind of conversations with the
18 Anniston Waterworks and Sewer Board?
19 A. No, not that I remember them telling me.
20 Q. Did you ever have any conversations with
21 them?
22 A. No.
23 Q. Did you ever have any concerns about how

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1 this problem that you all have at the
2 plant might affect the water supply in
3 the City of Anniston?
4 A. No. Because the water supply from the
5 City of Anniston came from Coldwater
6 Mountain, which was the opposite
7 direction. And I knew the ground water
8 was being captured by the monitoring
9 wells, by the perimeter wells.
10 Q. So you were told by Mr. Jones and
11 Mr. Brown that that was just not a

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12 problem? Is that what you're telling
13 us?
14 A. Yes, sir; yes, sir.
15 Q. But you did consider the possibility
16 that it could be; is that correct?
17 A. But I felt that what we had in place was
18 controlling it, yes, sir.
19 Q. Did you ever talk to anybody at ADEM
20 about that at the time that you
21 discovered this problem in 1994,
22 Mr. Mayausky?
23 A. No, sir. That the ground water and the

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1 drinking water -- Is that what you are
2 asking particularly about?
3 Q. Yes.
4 A. No, sir.
5 Q. Did they ever talk to you about it?
6 A. No, sir, no.
7 Q. Did Mr. Jones or Mr. Brown ever indicate
8 to you that there had been some concern
9 expressed by ADEM about how your plant's
10 landfills and the contaminants that were
11 located there might affect the city
12 water here?
13 A. That ADEM was concerned?
14 Q. Or the ground water.
15 MR. PECK: Let me object to the
16 form of the question, because
17 I don't understand the

- 1 comfortable with what they told me, that
2 the ground -- drinking water supply for
3 Anniston was away from any concern of
4 the plant because it was on Coldwater
5 Mountain, hydraulically away from the
6 plant.
- 7 Q. That's what Mr. Jones told you and
8 Mr. Brown told you?
- 9 A. Yes, sir.
- 10 Q. So you never had any conversations with
11 the water department about that?
- 12 A. No, sir.
- 13 Q. Never felt it necessary to have any
14 conversation with them about that?
- 15 A. No, sir.
- 16 Q. Never felt it necessary to check with
17 them about that?
- 18 A. No, sir.
- 19 Q. Other than Garrity and Miller, who did
20 your testing out there?
- 21 A. That's the only contractor I'm aware of
22 that did some. There was --
- 23 Q. Who in particular did you have do the

- 1 sampling? who was the person?
- 2 A. There was a young man who was kind of
3 their supervisor, but I do not recall
4 his name right now. I'm sorry. I can
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5 see his face, but I don't recall his
6 name.

7 Q. Who were the people who put together
8 your plan of remediation?

9 A. Worked with Golder and Associates on
10 that.

11 Q. Golder?

12 MR. PECK: Are you talking about
13 the west end landfill, the
14 whole --

15 MR. STEWART: First the west end
16 landfill.

17 A. The west end landfill, the actual
18 contractor who did the work was
19 Westinghouse.

20 Q. Who did the plan itself?

21 A. I believe it was Golder and Associates,
22 but I may be mistaken.

23 Q. Y'all hired a company to do the plan?

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1 A. Yes, sir.

2 Q. What involvement, if you know, did the
3 Monsanto employees have in putting that
4 plan together?

5 A. I know that things were generally run by
6 Robert Jones for review and approval.

7 Q. Okay. Anything done by anybody outside
8 of the plant, or was it just up to
9 Mr. Jones?

10 A. Well, then later on Alan Faust or Jo
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11 Hanson.
12 Q. Alan Faust or Jo Hanson?
13 A. Yes.
14 Q. Who worked out of the St. Louis office?
15 A. Right.
16 Q. Now, who above them was involved in the
17 process, the decision-making process in
18 the plant?
19 A. Those people reported to a gentleman by
20 the name of Mike Foresman.
21 Q. And Mr. Foresman, would he have the
22 final say-so about what was done here
23 locally at the site?

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1 A. Yes, sir.
2 Q. And you say you looked at documents that
3 had to do with memorandum or
4 correspondence you might have had with
5 the residents down in Cobb Town and
6 Sweet Valley in connection with
7 preparation for your deposition here
8 today?
9 A. Yes, sir.
10 Q. Any other documents you might have sent
11 to ADEM or anything like that by
12 yourself?
13 A. We looked at the consent orders that
14 were signed, the first one signed in
15 March of '95 and the second one in, I
16 believe, April of '96.

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17 Q. Okay. So there was one signed in March
18 of '95?
19 A. Yes, sir.
20 Q. And one signed in April of '96?
21 A. Yes, sir.
22 Q. Now, let's go back from those consent
23 orders, if we can, Mr. Mayausky, and ask

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1 you --
2 MR. PECK: At some point I need a
3 break, Donald, when you reach
4 a good point.
5 MR. STEWART: Well, we have about
6 ten minutes before twelve.
7 Why don't we go as far as we
8 can, if that's all right with
9 everybody and get -- or do
10 you need to take one now?
11 MR. PECK: No. I don't need to go
12 that bad. I just didn't know
13 what we were going to do
14 about lunch, whether we can
15 keep going and get done.
16 MR. STEWART: My preference is
17 today, if you don't mind,
18 since he is here today,
19 finish him today. What I
20 would like to do is take a
21 short -- off the record.
22 (Discussion held off record.)

23 Q. what did you understand had been done on

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1 the west end landfill site,
2 Mr. Mayausky, as far as planning and
3 testing were concerned at the time you
4 got here in August of '94?

5 A. I know at that point in time they were
6 still interviewing contractors to come
7 in to do the work and trying to figure
8 out who exactly would do the work and
9 looking at some of the proposals that
10 they would perhaps come up with to cap
11 that landfill.

12 Q. Okay. Had the decision been made at
13 that time as to exactly what y'all were
14 going to do?

15 A. No, I don't believe so. I believe that
16 was made after I got here.

17 Q. So the decision had not been made as to
18 what you were going to do to remediate
19 it?

20 A. No.

21 Q. You had interviewed contractors and
22 looked at some proposals. What were
23 some of the proposals that had been

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1 looked at, if you know, Mr. --

2 A. I don't know.

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3 Q. Well, after you got here, did you learn
4 that there was more than one proposal
5 that was looked at?
6 A. No, sir.
7 Q. Well, what proposal did you understand
8 when you got here was being talked about
9 by either Mr. Jones, Mr. Brown, a
10 combination of both, and the other
11 people you have mentioned?
12 A. And ADEM.
13 Q. And ADEM.
14 A. It would be a capping of the landfill
15 with a clay cap, a synthetic line cap,
16 and then a dirt cap on top of that.
17 Q. And that's the only proposal that you
18 know of that was ever considered?
19 A. Yes, sir.
20 Q. Tell me what you know or what you knew
21 at that time, Mr. Mayausky, about
22 remediation.
23 A. Actually very little.

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1 Q. Okay.
2 A. I never had worked in that area.
3 Q. Weren't you the one who ultimately had
4 to sign off on what was done here
5 locally?
6 A. Yes, sir.
7 Q. And did you consider -- or if you know,
8 did the people who were involved in the

MAYASKY

9 planning, the Monsanto folks, Golder and
10 Associates, ever consider any other
11 possibility?
12 A. Not that I was aware of, no, sir.
13 Q. Are you aware as you sit here today of
14 other possibilities that Monsanto has
15 said could be used in situations like
16 this?
17 A. For PCB contamination?
18 Q. Well, first for contamination itself,
19 but then, yes, for PCB contamination.
20 Just take them both, combine them both.
21 A. There are other alternative technologies
22 for other types of contaminations, like
23 incineration or a technique that

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1 actually Monsanto developed known as the
2 lasagna technique, where you put
3 electrical poles into the ground and
4 migrate chemicals from one cathode or
5 anode. Those are distinct possibilities
6 for general contaminations. But for
7 PCBs, I'm not aware of any.
8 Q. So it's your statement here to us today
9 that as the plant manager of this
10 particular facility, the Monsanto plant,
11 you know of no other procedure that
12 could be used for contamination such as
13 this, PCBs?
14 A. PCBs? You can bake them out of soil,

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15 but it's not very -- From what I have
16 been told, it's very difficult to do.
17 Q. Tell me who told you about the baking.
18 A. Dr. Kaley.
19 Q. And when did Dr. Kaley tell you about
20 the baking?
21 A. I don't remember exactly when, but I
22 remember looking at some other
23 possibilities. I would guess '94.

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1 Q. Okay. And who brought up the baking
2 process?
3 A. I think I asked the question are there
4 other technologies you might use, and he
5 said there was a baking, in ground
6 incineration, but it was not practical
7 for what we were doing.
8 Q. Why did he tell you it was not
9 practical?
10 A. Because of the amount of material, the
11 mounds of dirt that we had, and it was
12 not -- in the end that it was not very
13 efficient in removal of PCBs.
14 Q. Not very efficient?
15 A. Yes, sir. Wasn't very practical, did
16 not work well.
17 Q. And why is it that he told you that it
18 did not work well? What were the
19 reasons that he gave to you as the plant
20 manager here that the baking in the

21 ground --
 22 A. It wasn't effective in removing it
 23 entirely.

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1 Q. Was not effective?
 2 A. No, sir.
 3 Q. But isn't that a form, Mr. Mayausky, of
 4 incineration?
 5 A. Well, it is a form of incineration, as
 6 the soil was baked, in my understanding,
 7 the way he described it to me, in large
 8 kiln ovens, rotating kiln ovens.
 9 Q. And that would be a form of
 10 incineration?
 11 A. Yes, sir.
 12 Q. And you would do it on-site?
 13 A. I think when he told me there were some
 14 people who were trying to do that at
 15 sites around the United States, yes,
 16 sir.
 17 Q. And who were the people he told you were
 18 trying to do it?
 19 A. I don't remember him telling me who they
 20 were.
 21 Q. Was there any discussion in your
 22 conversation with Dr. Kaley about the
 23 cost of doing that?

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1 A. There was discussion about because of
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2 the magnitude of soil we had it would be
3 very difficult to get enough of it
4 through and it would probably be very
5 costly to do that, yes.

6 Q. Did he give you any estimation as to the
7 cost?

8 A. No.

9 Q. Did he tell you whether or not what you
10 ultimately did would be cheaper or more
11 expensive than what you talked about
12 when you talked about baking it?

13 A. No. He never said that.

14 Q. Did you ever talk to anybody in Monsanto
15 who had had experience with other
16 methods of removal of this type of
17 contaminant from the soil other than
18 Dr. Kaley?

19 A. No.

20 Q. Were you ever told that y'all had
21 someone who was a, quote, expert in this
22 field who had specific thoughts about
23 how you dealt with PCB contaminant?

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1 A. No.

2 Q. Do you know sitting here today and did
3 you know then that there was a suggested
4 method or approach that Monsanto had for
5 doing away with contamination that was
6 better than what y'all did?

7 A. No.

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8 Q. Have you ever heard of detoxifying or
9 taking some biological kind of treatment
10 and really taking the poison out of a
11 substance, changing or transforming that
12 substance?

13 A. In 1996 I saw a little blurb in some
14 scientific article -- I think it was
15 Chemical and Engineering News -- about
16 an approach somebody was taking -- I
17 didn't understand it to be Monsanto
18 doing it -- of a biological treatment of
19 PCBs.

20 Q. Of PCBs?

21 A. Uh-huh (indicating yes).

22 Q. What did you understand the biological
23 treatment of PCBs would do?

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1 A. That it would detoxify it, break it
2 down.

3 Q. Detoxify it?

4 A. Yeah. Break it down to --

5 MR. PECK: You are not saying
6 there is such an approach.

7 A. I just saw this blurb about it in
8 C and E News. That's all I know about
9 it.

10 Q. If -- Let's just say any contaminant,
11 not just PCBs. But if you can detoxify
12 it, that's a better approach than what
13 you've done here; isn't it?

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14 MR. PECK: Object to the form.

15 A. I'm not a scientist to make that
16 conclusion.

17 Q. Well, as you sit here today, the cap is
18 on top of stuff -- Do you know anything
19 about the shelf life of PCBs?

20 A. I know it lasts a very long time.

21 Q. And you know that it is a toxic or
22 regulated chemical, do you not?

23 A. Yes, sir.

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1 Q. And that it stays in that state during
2 that long time that exists, does it not?

3 A. Yes, sir.

4 Q. So if you detoxified it, wouldn't it be
5 logical to say that you had basically
6 removed the problem from --

7 A. I don't know what the products of
8 detoxification are, are they better or
9 worse than the material we had. I don't
10 know.

11 Q. Did you even look at that at the time
12 you made the determination?

13 A. No.

14 Q. The next one would be incineration.
15 You've indicated to us you talked about
16 baking it in the ground. Did you talk
17 about actually at any point in time with
18 Dr. Kaley burning the substance, the
19 dirt and the other substances?

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- 20 A. No, sir.
21 Q. You never talked about doing that?
22 A. No.
23 Q. Did you know for a fact that that could

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- 1 or could not be done at the time that
2 you were --
3 A. No, sir.
4 Q. Tell me, if you would, if you talked
5 about removing the substance from the
6 area and taking it to someplace like
7 Emelle.
8 A. Yeah. We talked about moving some of it
9 to Emelle, yes, sir. And we did some of
10 that.
11 Q. Tell me about that.
12 A. I mean, when we first started to work on
13 the landfill and we were digging the
14 toe, the bottom basin of the landfill,
15 the edge, to build a pipe drainage
16 system, that dirt was removed and taken
17 to Emelle.
18 Q. When is that, now? Are you talking
19 about the western landfill?
20 A. The west end landfill.
21 Q. So you took that to Emelle?
22 A. Yes, sir.
23 Q. And do you know how much you took to

1 Emelle?

2 A. I want to say it was around four hundred
3 thousand pounds. It was quite a
4 substantial amount of material.

5 Q. How much did that cost you,
6 Mr. Mayausky?

7 A. The number -- my recollection could be
8 wrong -- was approaching nine hundred
9 thousand dollars.

10 Q. Did y'all make any estimation as to what
11 it would cost to remove the PCB
12 contaminated soil from the west end
13 landfill?

14 A. Not that I'm aware of, no, sir.

15 Q. Do you have any idea sitting here today
16 if anybody, Mr. Kaley -- or Dr. Kaley or
17 Robert Jones or any of those people ever
18 talked about doing that?

19 A. No, sir.

20 Q. Would you not admit sitting here today,
21 Mr. Mayausky, that that would remove the
22 problem from this area here?

23 MR. PECK: Object to the form of

1 the question.

2 A. It would remove the contaminated
3 material from the site here, yes, sir.

4 MR. STEWART: I'm going to stop
5 right there. I've got some

6 MAYASKY
other questions to ask, but I
7 will start back at twelve
8 thirty.
9 (A break was taken from 12:00
10 noon to 12:30 p.m.)
11 Q. You were talking about the different
12 methods of doing away with the materials
13 that y'all had in the western landfill
14 that you discussed with Mr. Kaley, and
15 you talked about the baking. And I
16 believe we had gotten to the point where
17 I had asked you about excavating the
18 material itself, similar to what you had
19 done with some of it. You told me that
20 y'all had actually done that with four
21 hundred thousand pounds of that.
22 A. To my recollection.
23 Q. Can you give me some idea sitting here

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1 today how much of that material that
2 would constitute, what percentage of the
3 material that was located in the western
4 landfill, that four hundred thousand
5 pounds y'all removed?
6 A. No.
7 Q. Would that be a very small amount?
8 A. No. I could only speculate. I wouldn't
9 -- It was very little compared to the
10 overall amount that was there.
11 Q. Would it be less than ten percent of the

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12 material?

13 MR. PECK: Object to the form of
14 the question. You don't have
15 to speculate.

16 Q. Would it be less than ten percent? You
17 can give a judgment.

18 A. My judgment, and strictly judgment,
19 would be less than ten percent.

20 Q. Less than five?

21 MR. PECK: Object to the form of
22 the question. You don't have
23 to speculate.

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1 A. I don't know. I'd say less than ten.

2 Q. And nine hundred thousand dollars, is
3 that just an approximation of what it
4 cost y'all to remove that?

5 A. Yes, sir. That's my recollection.

6 Q. Now, I assume the four hundred thousand
7 pounds that you removed y'all put on
8 trucks and took down to -- Was it buried
9 or --

10 A. It was put on trucks and transported to
11 Emelle, yes, sir.

12 Q. Was there a cost per truck?

13 A. Yes. Each truck was weighed and a cost
14 per truck was determined.

15 Q. Those special trucks that you had to use
16 to haul waste material such as this?

17 A. It was a trucking concern who was used

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18 to handling -- moving industrial waste.
19 Q. The name of the trucking concern?
20 A. I do not recall. Those records should
21 be available. I don't recall.
22 Q. Was the decision made not to use -- not
23 to move the rest of the material to

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1 Emelle based on the amount of material
2 that you had there and the cost?
3 A. Yes. We went back to ADEM and asked
4 ADEM -- Number one, there was a concern
5 about, as we moved it, that you would
6 lose some of it going down the highway.
7 You are disturbing it. You had the risk
8 of potentially -- any transportation
9 event could occur, and you could have a
10 problem. And then we had a contact with
11 ADEM and said, "Can we just -- This is
12 just dirt we are digging out from the
13 toe of the landfill. Would it be
14 possible for us to put that back on the
15 landfill that we are going to cap
16 anyway?" And the decision was by ADEM
17 that that would be okay, that would be
18 okay to handle the material.
19 Q. Let me see if I understand. Were y'all
20 at that particular point in time
21 planning on taking all of the
22 material --
23 A. No.

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- 1 Q. -- that had the contaminant in it to
2 Emelle and you stopped at midstream and
3 said, "Lord, this is costing too much,
4 so let's see if we can't get ADEM to let
5 us do otherwise"?
- 6 A. No. There was never an intention to
7 move the entire landfill. They were
8 digging around the toe and with that
9 dirt decided that they were going to
10 move it to Emelle.
- 11 Q. Why?
- 12 A. That's a good question. We did not
13 quite understand why ourselves. When
14 nobody really asked ADEM, given the
15 concern of potentially spreading that
16 material around and a traffic incident,
17 we went back to them and said, "Could we
18 possibly put this back on the landfill?
19 We are going to cap the landfill
20 anyway." They said, "Yes, you can do
21 that."
- 22 Q. Y'all had made the decision at that
23 point in time yourself, though -- ADEM

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- 1 didn't require that. Y'all had made the
2 decision to move it?
- 3 A. We had made the decision internally, and
4 I think when other people got involved

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- 5 in that decision and decided they wanted
6 to go back to ADEM and ask --
- 7 Q. Who made -- Excuse me. Who made the
8 decision?
- 9 A. I believe at that time the engineer in
10 charge of that project was Jo Hanson.
- 11 Q. So Jo Hanson had made the decision that
12 y'all would move the stuff to Emelle?
- 13 A. Yes, sir, as I recall.
- 14 Q. Who is it that got involved,
15 Mr. Mayausky, and decided that you
16 wouldn't?
- 17 A. I think it was Robert Jones who first
18 brought up the question of should we
19 approach ADEM about putting it on the
20 landfill.
- 21 Q. Robert Jones. And why is it that he
22 decided to do that, because of the cost?
- 23 A. No. Because of the concerns that it's

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- 1 probably better, that we had the
2 potential of spreading it around,
3 loading it in trucks and an event down
4 the highway. And I'm sure the cost
5 weighed in also.
- 6 Q. Well, it would be cheaper to do it the
7 way you ultimately did it, wouldn't it?
- 8 A. I would say it would be cheaper.
- 9 Q. Would you say that was a major factor in
10 Mr. Jones' decision?

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MAYASKY

- 11 A. I would say it was a factor, between
12 that and transportation concerns.
13 Q. How much of the material -- You moved
14 four hundred thousand pounds to Emelle.
15 How much of the material did you dig
16 around the toe of this thing and put
17 back in the landfill?
18 A. I don't remember.
19 Q. Did it exceed four hundred thousand
20 pounds?
21 A. I don't know. I couldn't even venture a
22 guess.
23 Q. All right. Now, you were telling me

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- 1 that when y'all got there -- or when you
2 got there in August of 1994, contractors
3 had been talked to and a proposal had
4 been put together. When did y'all
5 finally get your proposal together?
6 MR. PECK: Talking about the west
7 end landfill?
8 MR. STEWART: The west end
9 landfill is where we are.
10 I'm sorry.
11 A. It seems to me the best recollection is
12 late '94, early '95.
13 Q. In late '94 or early '95 --
14 A. Yes.
15 Q. -- y'all got it together? You then went
16 to ADEM with the proposal?

MAYASKY

- 17 A. We went to ADEM for them to look over
18 the proposal to see if they concurred
19 with it.
20 Q. What did the proposal consist of? What
21 were y'all going to do?
22 A. Cap the landfill, improve drainage
23 around the landfill, cap the landfill.

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- 1 And the way I understand the capping
2 process, was put a layer of clay over it
3 and a synthetic membrane and then a
4 layer of dirt on top of that for
5 vegetation.
6 Q. Now, y'all took that by way of a plan
7 and then got ADEM to approve it. What
8 major changes, if any, did they make in
9 it?
10 A. I don't recall any.
11 Q. Okay. So they took it, basically, as
12 you took it down there?
13 A. I can't say that for certain. I'd say I
14 can't recall that they made any changes.
15 Robert Jones would have been involved in
16 those negotiations or discussions.
17 Q. But you were too, weren't you?
18 A. No. I don't remember being there to
19 discuss the west end landfill, no, sir.
20 Q. But the approval came after you got
21 there in August of '94?
22 A. Yes, sir.

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23 Q. Did he report to you about his trips

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1 that he made down there?

2 A. He would tell me he was in the process
3 of taking the plan down to ADEM for
4 approval. If there was any back and
5 forth in between him and ADEM, he didn't
6 make me aware of those.

7 Q. Did he ever tell you at any point in
8 time, "They have approved what we have
9 proposed"?

10 A. Yes, yes.

11 Q. Did he tell you during that conversation
12 at any point in time that they have made
13 us change this or this or this --

14 A. Not that I recall --

15 MR. PECK: You are doing it again.

16 You have to wait until he
17 finishes.

18 Q. -- this or this or this, that would be a
19 major component of that plan?

20 A. No, I don't recall.

21 Q. Are you telling me that he didn't tell
22 you that?

23 A. I'm telling you I do not recall if he

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1 did.

2 Q. Okay. Wouldn't that be something you

MAYASKY

3 would remember, Mr. Mayausky, if they
4 told y'all, "Well, we don't think you
5 ought to do this or that or the other,"
6 that was a major component of it, say,
7 like put the cap on it, take it to
8 Emelle, something like that? They
9 didn't do any of those things, did they?
10 They pretty well bought the proposal
11 that you told me about a few minutes
12 ago, didn't they?

13 A. I don't recall if he told me anything.

14 Q. Well, let me ask you this way,
15 Mr. Mayausky: You have indicated to me
16 that y'all's plan consisted of putting
17 the dirt cap on there and then this
18 plastic cover and then --

19 MR. PECK: Synthetic.

20 Q. -- synthetic cover and then some more
21 dirt.

22 A. Yes.

23 Q. None of that changed, did it?

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1 A. I don't recall that he said it did. I
2 don't.

3 Q. That's what you actually did to the
4 landfill?

5 A. That's what we actually did to the
6 landfill.

7 Q. So as a practical matter, none of that
8 changed, did it?

MAYASKY

9 A. If that was in the original proposal. I
10 can assume it was, but I don't know if
11 it changed from the original proposal,
12 and I don't even know if the original
13 proposal changed. I just don't recall.
14 Q. What testing, if any that you know of,
15 was done by anybody other than Garrity
16 and Miller up there before y'all
17 presented your proposal to ADEM?
18 MR. PECK: West end landfill?
19 MR. STEWART: On the west end
20 landfill.
21 A. The only testing I'm aware of is what
22 Alabama Power did.
23 Q. So Alabama Power did it, and they

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1 reported it. Y'all took the property
2 back, and then y'all did testing?
3 A. Yes, to my knowledge, yes.
4 Q. And nobody else did?
5 A. To my knowledge, I don't think anybody
6 else did.
7 Q. So would it be fair to say, then, that
8 ADEM did not do any testing at the west
9 end landfill before y'all's proposal was
10 accepted by --
11 A. I do not recall ADEM coming out for
12 testing, no, sir.
13 Q. So they basically took your test
14 results, didn't they?

MAYASKY

15 A. The only testing I remember was as we
16 actually began the work they came out
17 and sampled some samples out there as
18 the work was in progress.

19 Q. Who did that and --

20 A. Somebody at ADEM. I do not recall the
21 individual's name.

22 Q. How often did they come?

23 A. I remember one time they came.

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1 Q. So during the whole time that y'all were
2 involved in capping the west end
3 landfill, ADEM came one time?

4 A. That I recall, yes, sir.

5 MR. PECK: One time to sample or
6 one time?

7 THE WITNESS: One time to sample,
8 but I do not recall -- They
9 visited the plant many times.

10 Q. How many times did they visit the
11 plant -- How frequently -- let me ask it
12 that way -- did they visit the plant and
13 monitor your activities during the time
14 you were doing the work on the west end
15 landfill?

16 A. I can think of -- Besides the one
17 sampling incident where one engineer of
18 theirs came out, I can remember at least
19 one other time that engineers and then a
20 next level person came out. I don't

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21 recall his name right now. But the
22 engineers would have reported to him.
23 Like a Gerald Hardy is one name I

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1 remember, but I don't remember Gerald
2 Hardy's level.
3 Q. How long did that project take?
4 A. I think that project was completed in
5 early '96, was actually wrapped up and
6 completed.
7 Q. So during the time frame from -- would
8 it be sometime in -- when did you begin
9 it?
10 A. Spring, early summer of '95.
11 Q. Spring or early summer of '95?
12 A. Yeah.
13 Q. Well, didn't you get a consent order in
14 March of 1995?
15 A. The consent -- Yes. The consent order
16 in March of 1995 was with ADEM to
17 complete that project. That was part of
18 the consent order.
19 Q. The project?
20 A. Uh-huh (indicating yes).
21 Q. Was there any other aspect of that order
22 that dealt with anything other than the
23 west end landfill?

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1 A. Yes. That order talked about sampling
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2 in the drainage areas around the plant.
3 Q. On the -- Below the south --
4 A. Below the south landfill and on
5 properties that we owned on the east end
6 of the plant.
7 Q. Across Clydesdale?
8 A. Yes, sir.
9 Q. And over north of the Mars Hill Church?
10 A. Some along -- Yeah, in that general
11 area, north, yeah, just north of that
12 piece of property we own, just north of
13 Mars Hill Church.
14 Q. And am I to understand that y'all got
15 that consent order and got the approval
16 of the work that y'all were going to do
17 on the west end landfill as a result of
18 y'all's presentation -- Monsanto's
19 presentation of the proposal, your
20 sampling results that you had done, the
21 one sampling that you have told us
22 about, and the one visit by an engineer
23 during the project -- is that correct --

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1 MR. PECK: Object to the form of
2 the question.
3 Q. -- by ADEM?
4 MR. PECK: Object to the form of
5 the question. I think he's
6 testified he doesn't know.
7 A. I remember the meeting where we had --
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8 The discussion of the consent order was
9 when we went down and talked to them
10 about the water findings.

11 Q. When was that?

12 A. March.

13 Q. In March?

14 A. Uh-huh (indicating yes).

15 Q. Did that take place here in Oxford?

16 A. No. That took place in Montgomery.

17 Q. In Montgomery?

18 A. Uh-huh (indicating yes).

19 Q. Who all was at that meeting?

20 A. A whole group of ADEM people. Some
21 names I remember are Jimmy Coles, Amy
22 Gray, Gerald Hardy, Barbara Jones,
23 myself, and kind of the section head of

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1 ADEM. His name escapes me now.

2 Q. Poole?

3 A. Poole, John Poole. Thank you.

4 Q. Anybody else?

5 A. That's all that I recall. A Dan Cooper.

6 Q. So am I to understand that at this point
7 in time there had been one visit by ADEM
8 people to the site that you know about?

9 A. I don't know -- When I talked about the
10 engineer coming out for sampling while
11 the work was progressing, I do not
12 remember whether that was before that
13 meeting or after that meeting. I just

MAYASKY

14 remember being told by Mr. Jones that
15 there was an ADEM engineer in the plant
16 and she was going to look at the
17 progress on the west end landfill and
18 pull some samples of what was going on.
19 Q. There certainly wasn't anybody on site
20 up there from ADEM from the time y'all
21 discovered it with Alabama Power until
22 y'all got your proposal ready, was
23 there?

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1 A. Was there anybody on-site?
2 Q. From ADEM. Did anybody stay there the
3 whole time while y'all were involved in
4 the construction project?
5 A. People working on the construction?
6 Q. No. I'm talking about from ADEM.
7 A. No, sir.
8 Q. Did an ADEM representative stay there
9 until y'all got your proposal ready and
10 then through the construction period?
11 A. No.
12 Q. Just these visits. And the only two
13 visits you can remember are the two you
14 mentioned?
15 A. That's the only two I remember, yes,
16 sir.
17 Q. So would it be fair to say that they
18 basically took y'all's proposal and
19 basically took your sampling results to

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20 make their decision as to what should be
21 done up there on that landfill? Didn't
22 they, Mr. Mayausky?

23 MR. PECK: Object to the form of

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1 the question, calls for
2 speculation.

3 A. I can tell you I wasn't involved in
4 those discussions, and I don't know what
5 give and take was going on between
6 Robert Jones and ADEM, what sampling
7 they requested. I don't know.

8 Q. Maybe I misunderstood you, but I thought
9 you were involved in the discussions
10 that you just mentioned when you finally
11 got your consent order. And you told me
12 what you knew about who came up there.
13 And you have also indicated to me that
14 they didn't make any major changes in
15 your proposal. What's different about
16 what I said and what actually happened?

17 A. Can I ask one question?

18 Q. Certainly.

19 A. What's one question? I mean, you have
20 asked me a lot of different things
21 there.

22 Q. What I'm saying to you -- what I'm
23 asking you is this, and let me ask

- 1 you this way: It is fair to say that
2 they didn't have someone on-site
3 watching what y'all were doing, testing
4 or anything else, before y'all began
5 your work. That's fair, isn't it?
- 6 A. They had people visiting the site and in
7 discussions with us on what we were
8 going to --
- 9 Q. But you don't know how often they would
10 visit? You don't know anything about
11 that?
- 12 A. No.
- 13 Q. But you only remember the one time that
14 they came up before y'all went down in
15 March?
- 16 A. I don't even remember if that was before
17 March.
- 18 Q. So you don't remember any visits as
19 plant manager?
- 20 A. No.
- 21 MR. PECK: Object to the form of
22 the question.
- 23 Q. And you all put the proposal together,

- 1 and there weren't any major changes in
2 it?
- 3 A. Again, I don't know what changes were
4 made particularly in it.
- 5 Q. But you know that what y'all had

MAYASKY

- 6 originally proposed that Robert Jones
7 told you about is what you ultimately
8 did. We have gone through that before,
9 haven't we?
- 10 A. I knew that we were proposing to cap the
11 landfill in place, and that's what we
12 ultimately did.
- 13 Q. Okay. And as a practical matter, y'all
14 met down there to get basically approved
15 what y'all had decided to do in
16 Monsanto; is that not correct?
- 17 A. That is not correct. What we went down
18 there to do is to tell them about the
19 water sampling and some of the results
20 that we found at that point in time.
- 21 Q. And you got a consent order to go ahead
22 and do what you ultimately did, didn't
23 you, in March?

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- 1 A. But you asked if that's what we went
2 down there with the intention of doing,
3 and no, that's not. We went down to
4 tell them about the water sampling
5 results.
- 6 Q. Didn't you also give them the plan at
7 that time? Didn't y'all discuss what
8 y'all planned to do?
- 9 A. I think they already had the plan in
10 hand by the time we got down there.
- 11 Q. And do you remember exactly when that

MAYASKY

12 was in March that y'all went down and
13 had the meeting?
14 A. No.
15 Q. Went was it in relation to when you got
16 the consent order signed? Did y'all get
17 it signed that day?
18 A. I think it was very shortly after that
19 we got it signed, within a week.
20 Q. Within a week?
21 A. Or two.
22 Q. And did they indicate on that occasion
23 that they would approve it?

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1 A. I don't remember when the exact approval
2 came. Time-wise I can't remember if it
3 was before that meeting or during that
4 meeting or after that meeting. I'm
5 sorry. I don't remember.
6 Q. During the meeting did anybody from ADEM
7 raise any serious questions that you can
8 recall sitting here today about either
9 your proposal or your test results?
10 A. No, sir.
11 Q. Was there any discussion that you had
12 with them, with the representatives from
13 ADEM, on behalf of Monsanto, about the
14 incineration process that you had talked
15 about to Dr. Kaley?
16 A. No, sir, not that I had.
17 Q. Did anybody else sitting in the meeting

18 say, "well, fellows, we have got an
19 alternative proposal, may be a little
20 more expensive, but it will be better
21 for us and for the community if we bake
22 it in the soil"? Did you talk about
23 that? Did you bring it up at all?

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1 A. No, I did not bring it up. And I don't
2 know if it would be better necessarily
3 for the community.

4 Q. Did you bring up?

5 A. No, I did not bring it up. But I --

6 MR. PECK: Please let him answer
7 your questions. He is trying
8 to make sure he lets you
9 finish your questions.
10 Please let him finish his
11 answer.

12 A. I'm not sure if that particular burning
13 technique, kiln technique, would be
14 necessarily better for the community.

15 Q. Did you bring it up while you were down
16 there?

17 A. No, I did not bring it up. I think with
18 the kiln technique you may be exchanging
19 a ground problem for an air problem. I
20 don't know. I'm not a scientist.

21 Q. Let me ask you a question while we are
22 talking about that. How many air
23 samples did you take?

- 1 A. None.
- 2 Q. So it's my understanding, sitting here
- 3 today, as plant manager you didn't have
- 4 any air sampling done around the plant
- 5 in connection with PCBs from the time
- 6 you came here in August of '94 until you
- 7 left in -- what time?
- 8 A. May of 1997.
- 9 Q. So in May of 1997 you didn't see any
- 10 benefit in doing air testing?
- 11 A. For PCBs?
- 12 Q. Right.
- 13 A. No, sir.
- 14 Q. Well, what if it was in the air,
- 15 Mr. Mayausky? Wouldn't you want to
- 16 know?
- 17 A. I would like to know. But I talked with
- 18 Dr. Kaley, and he did not believe it
- 19 would have air transmission routes to
- 20 necessarily require sampling.
- 21 Q. Tell me exactly what Dr. Kaley said that
- 22 you are referring to. What did he tell
- 23 you?

- 1 A. He told me the PCBs did not have a
- 2 transport mechanism through air, so
- 3 sampling would not be required.
- 4 Q. And when did he tell you that?

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- 5 A. I don't remember the exact time of that
6 conversation.
- 7 Q. Isn't it a fact, Mr. Mayausky, that
8 there is -- that you have now learned
9 that there is a method to test the air
10 to determine if PCBs are present?
- 11 A. I'm sure -- No, I have not learned that.
12 But as a chemist I know that you can
13 sample for many compounds in the air. I
14 would assume there would be one for
15 PCBs.
- 16 Q. But you are telling me that PCBs don't
17 travel by air is what Dr. Kaley told
18 you?
- 19 A. Sampling for it in the air and
20 determining if it's there is two
21 entirely different things to me. I
22 would assume there is a technique to
23 sample for chemicals in the air, yes.

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- 1 Q. But you're saying that Dr. Kaley told
2 you that it just didn't travel by air?
- 3 A. Yes, sir, that in his opinion he didn't
4 think that it was necessary to do air
5 sampling.
- 6 Q. Well, why is it, if you can tell me,
7 Mr. Mayausky -- and maybe you can't --
8 why is it that there are air samplers
9 located all around this site now, the
10 remediation site now?

MAYASKY

- 11 A. That may have occurred after I left. It
12 was not during the time that I was
13 there, for PCBs.
- 14 Q. Do you have any idea what the air
15 samplers are located on your property
16 for now?
- 17 A. For PCBs?
- 18 Q. I'm asking you, Mr. Mayausky, do you
19 have any idea why Monsanto has seen fit
20 to, since you left, place air samplers
21 around the south end landfill and the
22 catchment basin and behind Mars Hill
23 Missionary Baptist Church.

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- 1 A. No, I do not know.
- 2 Q. Is Dr. Kaley still working for Monsanto?
- 3 A. Yes.
- 4 Q. Would you think that he would still be
5 advising Monsanto about those air
6 samplers?
- 7 MR. PECK: I object to the form of
8 the question. It's asking
9 for gross speculation.
- 10 A. I -- You would have to ask Dr. Kaley
11 that question.
- 12 Q. Would he be the person one would talk to
13 in your position if he wanted to find
14 out about air sampling, as you did?
- 15 MR. PECK: About air sampling for
16 the Monsanto plant right now?

MAYASKY

17 You know darn well that's
18 being done by litigation
19 driven concerns, Donald, and
20 you are trying to mislead the
21 witness by discussing it with
22 him.
23 MR. STEWART: No, I'm not trying

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1 to mislead the witness. Why
2 don't you just make an
3 objection?
4 Q. I'm just asking you if Dr. Kaley would
5 be the one you could check with.
6 MR. PECK: About what?
7 MR. STEWART: About use of air
8 samplers. I'm not asking you
9 the questions, Adam.
10 MR. PECK: I think we need to get
11 a clear question. Your
12 questions aren't clear.
13 MR. STEWART: Let me just state
14 for the record, Adam, that if
15 you want to make an objection
16 or if you want to advise by
17 some speaking objection your
18 client what to say so that he
19 says what y'all have got on a
20 little written piece of paper
21 somewhere, then you can do
22 that.

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23 MR. PECK: I would instruct you

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1 when he asks you an unclear
2 question that doesn't have a
3 finish to it, like ask
4 Dr. Kaley about that, I will
5 instruct you to ask him what
6 that is.

7 Q. Mr. Mayausky, if you understand it --
8 Adam is having trouble with it. Let's
9 speed up the process. I will try to
10 make it as clear as I can.

11 MR. PECK: Thank you.

12 Q. Sometimes, though, you may catch a
13 question and have a perfect right to
14 answer it even if Adam doesn't.

15 A. Okay.

16 Q. Were there any people from the community
17 in the meeting?

18 A. Which meeting is that, please?

19 Q. The meeting that you had in March of
20 1995 about the west end landfill.

21 A. The meeting that we had with ADEM?

22 Q. Yeah.

23 A. No.

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1 Q. Had any of them been informed about the
2 problem y'all had out there?

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3 A. At the time of that meeting?

4 Q. Yes.

5 A. No. But very soon thereafter we started

6 to have some community meetings to let

7 people know what we had found.

8 Q. Well, I'm asking you, though, if before

9 the meeting in March of '95 with ADEM,

10 where y'all sought and subsequently got

11 approval for your plan, was there

12 anybody from the community informed.

13 And I believe your answer to that is no.

14 A. Not at the time of that meeting; but

15 very shortly thereafter, we did.

16 Q. Well, Mr. Mayausky, after y'all got that

17 consent order --

18 A. Uh-huh (indicating yes).

19 Q. -- you later got another consent order;

20 is that correct?

21 A. In April -- I think it was April 1996.

22 Q. '96?

23 A. Yes.

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1 Q. Now, where were those meetings held and

2 what was that consent order related to,

3 the south end landfill?

4 A. Those meetings were held at -- I believe

5 they were at the Ramada Inn in Anniston,

6 and -- what was the second part of your

7 question, please?

8 Q. Well, were they related to the south end

9 landfill? Was that consent order
10 related to the south end --
11 A. They were related to the sampling work
12 of both ours and the Alabama Department
13 of Public Health around the east end
14 neighborhood.
15 Q. And was the consent order related,
16 though -- subsequent consent order that
17 came about as a result of those meetings
18 related to the remediation work you did
19 to the south end landfill?
20 A. The consent order was a request to do
21 additional sampling around the east end
22 neighborhood, to expand that to the
23 north end neighborhood, a small amount

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1 on the west end, and another extension
2 of the east end neighborhood, to sample
3 in those areas.
4 Q. And that's what your conversations were
5 about at the Ramada Inn in Anniston?
6 Who all was in those meetings?
7 A. Attending that meeting was myself -- I
8 think at that time Alan Faust was there.
9 I can't recall exactly who else was
10 there from Monsanto. But EPA Region
11 Four was there, a representatives of EPA
12 Region Four; representatives of Alabama
13 Department of Public health; ADSTAR, the
14 agencies for toxic substances and

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15 disease registry, and ADEM were there.

16 Q. Now, those meetings were meetings held

17 at the Ramada Inn. There was more than

18 one meeting. Y'all had two meetings at

19 least, didn't you?

20 A. That's the one I remember.

21 Q. And that was at the Ramada in Anniston?

22 A. The Ramada at the crest of the hill

23 there. Isn't that a Ramada Inn?

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1 Q. Yeah.

2 A. Yes.

3 Q. And after that did y'all get the consent

4 order?

5 A. After that the consent order was signed.

6 Q. By the director of ADEM?

7 A. I think the director of ADEM signed it.

8 For us Mike Foresman signed it.

9 Q. Okay. And what you have indicated to me

10 is that y'all would -- that related to

11 sampling that y'all were going to do; is

12 that correct?

13 A. Related to sampling. It also related

14 to, at their suggestion, expanding the

15 property purchase program to Montrose

16 Avenue.

17 Q. Expanding it to Montrose Avenue?

18 A. Yes.

19 (Plaintiffs' Exhibit Number

20 Two was marked for

21 MAYASKY
identification.)
22 Q. Can you tell me what had taken place --
23 First, let he ask you to identify

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1 Plaintiffs' Exhibit Two to your
2 deposition. Is that the consent order
3 that was entered in April of '96 -- or
4 March of '96, rather? It says 8 March,
5 I believe --
6 A. It does say 8 March of '96.
7 Q. So rather than April, as you have
8 previously stated, it was in March of
9 1996?
10 A. March of 1996, yes.
11 Q. Can you tell me what events had taken
12 place that led up to this consent order
13 being entered?
14 A. At this time we had done sampling of the
15 east end neighborhood and the ditches
16 there in that area and the areas prone
17 to flooding. The Alabama Department of
18 Public Health had come in and done some
19 sampling themselves. And they were
20 working in conjunction with both ADEM
21 and ADSTAR. And they -- Based on the
22 results that they had of soil and dust
23 and blood samplings of residents, they

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1 had this meeting. They called this
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2 meeting. The EPA, I guess, was really
3 the driver of calling this meeting in
4 Anniston.

5 Q. The EPA was?

6 A. I believe so. I believe it was the EPA.

7 Q. Now, would you take a look at page two,
8 paragraphs six, seven, and eight, and
9 read over those, please. I want to ask
10 you some questions about those.

11 A. Okay. Six, seven, and eight?

12 Q. Yes. Now, that indicates that -- in
13 paragraph six -- that according to the
14 Code of Alabama, the department takes
15 certain steps when they find there has
16 been a release of hazardous waste into
17 the environment from a facility; is that
18 correct?

19 A. That's what it says here, yes, sir.

20 Q. In paragraph seven, it indicates that
21 there were PCBs found in the west end
22 landfill, the east drainage ditch, and
23 the northern drainage ditch; is that

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1 correct?

2 A. Yes, sir.

3 Q. Now, you previously mentioned to us,
4 Mr. Mayausky, that all you had found in
5 water was less than ten parts per
6 billion. It indicated that there were
7 six parts per billion, was the figure

MAYASKY

8 that sticks in your mind.

9 Isn't it a fact, Mr. Mayausky,
10 that y'all had found and also perhaps
11 even the Department of Health had found
12 some fairly high levels of PCB
13 contamination in the soil and the
14 sediment in the east drainage ditch, the
15 northern drainage ditch, and around the
16 west end landfill at this time?

17 A. In March of 1996 -- by March of '96 we
18 had characterized that there was soil --
19 sedimentation soil in the ditches that
20 contained PCBs, yes, sir.

21 Q. Of fairly high levels; is that correct?

22 A. Levels. I don't know how you want to
23 define high, but yes, there were levels.

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1 Q. As much as a thousand parts per million?

2 A. Well, there were some that were about a
3 thousand parts per million, yes, sir.

4 Q. In addition to that, you had also found
5 out that the area that you initially
6 thought was affected was a little more
7 widespread than what y'all had
8 originally discovered; isn't that
9 correct?

10 A. I'm not sure why you are referring to
11 what we originally discovered.

12 Q. Well, you indicated you originally
13 talked to Tom Wright about some things

MAYASKY

14 that y'all had discovered out there at
15 the west end landfill after Alabama
16 Power Company turned up these PCBs and
17 y'all had found some fairly low levels
18 in the surface water and y'all tended to
19 that. These are much higher levels and
20 are of much more concern, are they not,
21 Mr. Mayausky, what y'all are now
22 finding?

23 A. When I was talking to Tom Wright, I was

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1 talking about water samples, and they
2 were very low levels. And it was in
3 March of 1995 when we subsequently did
4 sedimentation samples all along the
5 north ditch, the east ditch through
6 areas around the plant, and we found
7 some in the sedimentation.

8 Q. Which were much higher than what y'all
9 had originally thought was present; is
10 that not correct, Mr. Mayausky?

11 A. When I talked to Mr. Wright, at that
12 time the only piece of data I had was
13 some numbers in water, yes.

14 Q. The only thing you knew about?

15 A. The only thing I knew about.

16 Q. But then you go on over to the order --
17 And would you look at paragraph A under
18 the order itself? Read that, and I want
19 to ask you --

MAYASKY

20 MR. PECK: Paragraph A, did you
21 say?
22 MR. STEWART: Under the order.
23 THE WITNESS: And the numbered

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1 items underneath?
2 MR. STEWART: Well, just read A.
3 MR. PECK: Well, you can read
4 anything you want. If you
5 want to read the rest, you
6 are welcome to.
7 MR. STEWART: There won't be any
8 trick questions, Adam, so if
9 you want him to read that,
10 that's fine.
11 MR. PECK: I haven't heard one
12 that isn't yet.
13 MR. STEWART: Well, they sound
14 pretty straightforward to me.
15 Q. Okay. The purpose of this order was to
16 minimize the risk of exposure to PCBs to
17 the people who lived in the contaminated
18 area, wasn't it?
19 A. That was one of the proposals, yes, and
20 also to do additional sampling of the
21 areas we talked about, A, B, C, and D.
22 Q. Which were places where people lived?
23 A. Some of them were industrialized areas

1 where nobody lived, and some were places
2 where people lived. The third part of
3 the order was also to complete anything
4 around the west end landfill.

5 Q. Okay. But the purpose of this consent
6 order was to protect -- The basic
7 purpose of it and the thrust of it was
8 to protect the people who lived in the
9 area?

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

12 A. It was part of the thrust of it, yes, to
13 take steps to -- as they say, mitigate,
14 minimize the risk of exposure.

15 Q. Is it not a fact, Mr. Mayausky, that
16 when y'all first started dealing with
17 this problem in 1994 you dealt with
18 ADEM?

19 A. Yes. Our initial discussions were with
20 ADEM, that's correct.

21 Q. And the initial consent order was
22 entered into with the ADEM people only?

23 A. Yes, sir.

1 Q. Then all of a sudden you got involved
2 with the health department?

3 A. Yes, sir.

4 Q. And they did a study. You are familiar
5 with that study, are you not?

MAYASKY

- 6 A. Which study are you referring to?
- 7 Q. The health consultation study.
- 8 A. Yes.
- 9 Q. Didn't you get a copy of it?
- 10 A. Yes. I did see a copy of it.
- 11 Q. And that came between the time that you
- 12 all worked with ADEM on the first
- 13 consent order and then the time that
- 14 y'all had this meeting in March of
- 15 1996 --
- 16 A. Yes, sir.
- 17 Q. -- and the second consent order?
- 18 A. Yes, sir. My recollection of that is
- 19 that the Alabama Department of Public
- 20 Health was asked to come into this by
- 21 ADEM to look at the situation.
- 22 Q. It's your understanding that ADEM asked
- 23 the health department to come in?

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- 1 A. Yes, sir.
- 2 Q. Who exactly did you understand at ADEM
- 3 asked the health department or the State
- 4 of Alabama to come into this situation,
- 5 Mr. --
- 6 A. Who at ADEM asked?
- 7 Q. Yes.
- 8 A. It might have been John Poole, but I
- 9 don't know.
- 10 Q. It's your understanding, then, that John
- 11 Poole, the head of the land division,

12 MAYASKY asked the health department to come in
13 and do a health consultation?
14 MR. PECK: Object to the form of
15 the question.
16 A. I don't know if they asked for a health
17 consultation, but they asked for a
18 consultation from the Alabama Department
19 of Public Health.
20 Q. For what purpose?
21 A. Because there was a -- they are not, I
22 guess, health experts. They wanted to
23 look for the agency that's the

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1 recognized health agency for Alabama and
2 ask them to become involved in this
3 situation.
4 Q. To determine if there was a risk to the
5 health of the people who lived around
6 the Monsanto plant?
7 A. To determine if there was any risk, yes.
8 Q. Now, what is it, Mr. Mayausky, that
9 prevented Monsanto Chemical Company from
10 doing the very same thing when this
11 problem was discovered by Monsanto in
12 1993?
13 MR. PECK: Object to the form of
14 the question, calls for
15 speculation.
16 A. We went to the Alabama Department of
17 Environmental Management, and they

18 MAYASKY
consulted with the Alabama Department of
19 Public Health, the right agency to
20 handle this.
21 Q. No, sir. What I'm asking you,
22 Mr. Mayausky, is what prevented you as
23 plant manager or Mr. Jones or Monsanto

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1 itself from assessing the potential
2 risks to residents of the area in 1993?
3 MR. PECK: Object to the form of
4 the question, calls for
5 speculation.
6 A. 1993?
7 Q. Yeah, when y'all discovered this in
8 1993.
9 A. I wasn't there in 1993. I can't speak
10 to that. The water samples were
11 discovered in 1994, was when I first
12 became --
13 Q. After you got back -- After you got here
14 in 1994, what prevented you from doing
15 it, Mr. Mayausky?
16 A. We went directly to ADEM and talked with
17 them and brought them into it.
18 Q. Mr. Mayausky, is there not some point in
19 time when y'all got consent forms from
20 people who were residents of the Cobb
21 Town and Sweet Valley area and did some
22 testing on property?
23 A. Yes.

1 Q. That's just a simple piece of paper that
2 gives you the right to go on someone's
3 property and to check that property,
4 isn't it, Mr. Mayausky?

5 A. To pull samples from that property, yes,
6 sir.

7 Q. And that's something that you could have
8 done in 1993 or Monsanto could have done
9 in 1993 just as easily as you did it in
10 1996 as a result of this consent order?

11 A. We did it --

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

14 A. It was done in March of 1994.

15 Q. It was done in March of 1994?

16 A. Yes.

17 Q. Okay. And what did do you about
18 notifying the residents about having
19 blood tests in March of 1994?

20 A. What did I do then? I did not do --

21 Q. What did Monsanto do?

22 A. We talked to the Alabama Department of
23 Environmental Management, and they in

1 turn talked to the Alabama Department of
2 Public Health.

3 Q. Did you ask them to talk to the Alabama
4 Department of Public Health?

MAYASKY

- 5 A. I don't remember specifically asking
6 them.
- 7 Q. Did you or anybody from Monsanto
8 indicate that there was a health risk
9 and you felt there was a health risk in
10 that area and that they ought to call in
11 the Department of Public Health?
- 12 A. We are not medically trained. We are
13 not a medical company, so we asked the
14 Alabama Department of Environmental
15 Management to consult with the health
16 experts of the state, which is the
17 Alabama Department of Public Health.
- 18 Q. Is it your testimony here today that
19 y'all do not know the dangers of PCBs
20 and what problems it could cause for
21 people?
- 22 A. Our own internal people and some
23 external medical consultants we have

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- 1 consulted with did not see a reason for
2 concern.
- 3 Q. Tell me who those people where.
- 4 A. Dr. Kaley, Dr. Kimbrough, and
5 Dr. Forrester.
- 6 Q. And when did y'all contact those people?
- 7 A. Well, Kaley right away, absolutely.
- 8 Q. What did you tell him?
- 9 A. Kaley visited the site, looked over the
10 site, looked over the data, and was in

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11 regular communications about the
12 situation.

13 Q. The data you're talking about is the
14 data that y'all got from those little
15 health samples; is that right?

16 A. No. The data referring to --

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

19 A. You asked when I first contacted him or
20 when he was first asked, and that was
21 early on. I would assume he was
22 involved right from 1993. He was
23 involved when I came on board in 1994.

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1 Q. Now, who were the other key people
2 involved?

3 A. Dr. Ranada Kimbrough.

4 Q. And where is Dr. Ranada Kimbrough
5 located?

6 A. Washington, D.C.

7 Q. Who contacted Dr. Kimbrough?

8 A. Dr. Kaley.

9 Q. What did you understand was provided
10 to --

11 A. Sampling results. At that time when we
12 talked with her, we had some soil sample
13 results and sedimentation results, some
14 of the surface water results. Those
15 were shared with her. She actually came
16 to visit the site and walk the

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17 neighborhood to see what the site looked
18 like.
19 Q. And she made a determination from that?
20 A. That there were minimal routes of
21 exposure for the people who lived there
22 and she wasn't concerned about it.
23 Q. Okay. Had any blood tests been

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1 performed on any people as of that day?
2 A. No, sir.
3 Q. Had any dust or soil samples been taken
4 from the property at that date?
5 A. Not to my knowledge, no, sir.
6 Q. Had any air sampling been done as of
7 that date?
8 A. Not to my knowledge, no, sir.
9 Q. So she had none of that information?
10 A. No, sir.
11 Q. When you later got that information, did
12 you ever provide it to her?
13 A. I did not. I don't know if it was, but
14 I did not.
15 Q. Do you have any idea as to whether or
16 not any of that information was passed
17 on to Dr. Kaley?
18 A. I know Dr. Kaley has seen some of the
19 blood results from the residents next to
20 the plant, yes, sir.
21 Q. Has he changed his opinion since that
22 time?

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23 A. No, sir.

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1 Q. He is an employee of Monsanto, and he is
2 standing pat on what he originally told
3 you?

4 A. Yes, sir.

5 Q. Who is the other person that you talked
6 to?

7 A. Dr. Forrester from the University of
8 Alabama.

9 Q. Dr. Forrester?

10 A. Uh-huh (indicating yes).

11 Q. Is that the University of Alabama in
12 Birmingham?

13 A. Yes, sir.

14 Q. Now, did y'all hire Dr. Forrester from
15 the University of Alabama in Birmingham?

16 A. Did Monsanto hire him?

17 Q. Yes.

18 A. I do not know the details, if he's a
19 consultant or not. I know he did come
20 out to visit the plant. He basically
21 did the same tour that Dr. Kimbrough
22 did, where he had data, walked the
23 neighborhood, looked at the situation.

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1 Q. Now, when exactly did this take place?

2 A. Kimbrough, I would say, would be May

3 time frame of '94 -- MAYASKY
4 MR. PECK: '95, you mean?
5 THE WITNESS: '95. Sorry. Thank
6 you.
7 A. '95. '94 is when I got there. And
8 Forrester was more fall of '95.
9 Q. Fall of '95?
10 A. Yes.
11 Q. And what department did Dr. Forrester
12 work in?
13 A. I think it was industrial health, but
14 I'm not sure.
15 Q. Industrial health?
16 A. I think it was.
17 Q. Did he make any affidavits for Monsanto
18 Chemical Company in connection with any
19 litigation that had been filed against
20 Monsanto as a result --
21 A. Not to my knowledge. I'm not aware of
22 any.
23 Q. Did he make any trips to talk to any

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1 medical personnel who were treating
2 patients in the Anniston Area?
3 A. Not to my knowledge.
4 Q. Who was it that Monsanto got to go to
5 the Calhoun County Medical Association
6 and talk to them about PCBs?
7 A. When you say this right now, it's the
8 first time I've known that was done. I

MAYASKY

9 did not know that was done.

10 Q. okay. I'm just asking you. Let me ask

11 you this: Was it done to your

12 knowledge?

13 A. No, it was not done to my knowledge.

14 Q. Was it done during the time you were

15 here to your knowledge?

16 A. No.

17 Q. Tell me, if you would, if ADEM or the

18 health department tested in any area

19 outside of what Monsanto suggested that

20 they test in?

21 A. ADEM?

22 Q. Uh-huh (indicating yes).

23 A. or the Alabama Department of Public

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1 Health?

2 Q. Right.

3 A. We never suggested that they sample
4 anywhere. They basically told us where
5 they were going to sample.

6 Q. All right. Was that the information
7 that was attached to this --

8 A. No. That was --

9 Q. -- attached to this -- attachment one to
10 the --

11 A. These attachments to this consent order
12 were the areas they suggested we do
13 additional samplings on.

14 Q. They suggested you do additional

15 sampling?

16 A. Yes. But we never suggested to them
17 that they sample anybody or anything.

18 Q. So did y'all test on Boynton Avenue?

19 A. Boynton? Which page are you on?

20 Q. Attachment one to the consent order.

21 Let me just ask you. Did y'all
22 test on all the streets that they have
23 indicated here, West Eighth Street,

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1 Ferron, Montrose, West Sixth Street, and
2 Cobb Town Road?

3 A. I can't refer to this attachment. But
4 if you refer to the tables, the general
5 areas that are in the tables, I know
6 that we sampled in those areas.

7 Q. My colleague here said attachment one is
8 where y'all have already had positive
9 hits. And then attachment two
10 apparently is the area they want y'all
11 to test further.

12 MR. PECK: I would not assume
13 that's correct. I don't know
14 that's correct. I believe
15 it's correct.

16 A. The reason I'm hesitant to answer about
17 attachment one is I get confused on some
18 of the street names. And I'm a little
19 clearer if you'll look at a map. I know
20 that we sampled north of the railroad

MAYASKY
21 tracks, which is what that area is, or
22 this area along Zinn Parkway or this
23 area -- I'm more aware --

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1 Q. All of the areas that are marked to the
2 attachments to the order is where y'all
3 tested?
4 A. Yes.
5 MR. PECK: The maps?
6 Q. The maps that are attached?
7 A. Yes.
8 Q. Did y'all find -- Did y'all get positive
9 hits for PCBs in all of those areas?
10 A. We had some negative readings and some
11 positive hits, yes.
12 Q. And can you tell me what the readings
13 were generally?
14 A. No. I don't remember the details or the
15 numbers, but some were -- There was --
16 The way the sampling was done was there
17 was a screening test of plus or minus
18 ten percent that was based on an
19 aminoacid analysis. So some of them
20 were just merely screening tests, plus
21 or minus ten parts per million, and some
22 were actual quantitative results.
23 Q. Can you give me the highest reading that

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1 you got?

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2 MR. PECK: Object to the form.
3 A. In these four areas?
4 Q. Yes.
5 A. No. I don't recall what the highest
6 reading was. I could only speculate.
7 Q. Did Garrity and Miller do those tests
8 for you?
9 A. Yes, sir.
10 Q. As a result of the test results that you
11 got, did you do the remediation?
12 A. We moved forward with remediation of
13 some of these areas and also expanded --
14 to help us with the remediation,
15 expanded the property purchase program
16 to some of these areas.
17 Q. Okay. Now, tell me about this property
18 purchase program. Who came up with the
19 property purchase program, Mr. Mayausky?
20 A. It was -- The idea originated as
21 something from our remediation
22 department. They had seen other
23 companies do these sorts of programs.

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1 So we contracted with a firm known as
2 Prudential to help us to develop the
3 program. And they have a lot of
4 experience in these types of programs,
5 and they came in and scoped it for us
6 and helped us to define a property
7 purchase program.

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- 8 Q. Who at Prudential worked with you on
9 that?
- 10 A. The main contact was a gentleman by the
11 name of John Mitchell.
- 12 Q. And Prudential handled the relocation
13 program for Monsanto and put a person
14 here?
- 15 A. Yes. They had -- They had two people
16 here, actually.
- 17 Q. Now, is it not fair to say that the
18 property purchase program was basically
19 moved by the areas that y'all needed to
20 remediate?
- 21 A. The property purchase program, if I
22 understand your question correctly, was
23 originally proposed so that we could

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- 1 acquire land to do remediation of the
2 east end neighborhood.
- 3 Q. Basically why you put it in place?
- 4 A. Yes, sir.
- 5 Q. And also to avoid EPA coming in here and
6 taking over the site?
- 7 A. We were working with ADEM to develop a
8 remediation plan, and we were building
9 our plan so that whatever land we could
10 acquire we could move forward with that.
11 I don't recall any discussions about EPA
12 taking over the site, no, sir.
- 13 Q. Don't you recall, say, earlier -- And

MAYASKY

14 maybe I misunderstood -- that EPA for
15 the first time was involved in the
16 meeting in March of 1996?

17 A. In March of 1996, they were involved,
18 yes, sir.

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

21 Q. And they were concerned about,
22 apparently, the people who lived in the
23 area?

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1 A. They asked for the meeting. I don't
2 know if that was the driving concern for
3 them, but they asked for the meeting,
4 yes, sir.

5 (Plaintiffs' Exhibit Number
6 Three was marked for
7 identification.)

8 Q. This is Plaintiffs' Exhibit Three. This
9 is a letter. And if you would,
10 Mr. Mayausky, if you will read it. It
11 is from a Myron D. Lair, with the EPA,
12 Region Four, to Mr. Cooper, Dan Cooper,
13 who works at ADEM.

14 Have you read the letter,
15 Mr. Mayausky?

16 A. I'm almost done. Okay.

17 Q. It indicates in the second paragraph,
18 does it not, that the EPA was concerned
19 about PCB contamination, widespread PCB

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20 contamination in the residential areas
21 around this Anniston plant -- weren't
22 they?

23 A. Yes, sir.

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1 Q. They had asked y'all to relocate
2 citizens in that area, otherwise EPA
3 would come in and take over the site;
4 isn't that correct?

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

8 A. What it says is that they would -- the
9 Alabama Department of Environment
10 Management Program would take the lead
11 and order Monsanto to relocate the
12 affected residents and conduct
13 additional sampling.

14 Q. To relocate the residents?

15 A. (Witness nods head affirmatively.)

16 Q. Because of PCB contamination?

17 A. It says that they would -- that ADEM
18 should take the lead and ask us to
19 relocate the residents and to conduct
20 additional sampling.

21 Q. If you didn't take that action, what did
22 you understand from reading this letter,
23 Mr. Mayausky, would happen?

1 A. It says that the EPA agrees that this
2 should be a state lead if we agree to
3 this; however, if we don't, then they
4 would likely initiate the appropriate
5 actions to protect the public health and
6 the environment. I don't know what
7 those -- what those appropriate actions
8 would be.

9 Q. That means at the very least,
10 Mr. Mayausky, that the EPA would step in
11 to a situation where y'all had otherwise
12 been dealing with ADEM?

13 A. You would have to ask EPA what they
14 thought appropriate actions were. I
15 don't know.

16 Q. Let me ask you this, Mr. Mayausky: Does
17 this site -- Does the relocation program
18 referred to in Mr. Lair's letter to
19 Mr. Cooper say, "Buy property on which
20 you remediate the land only," or does it
21 say, "Relocate residents who might be in
22 danger of health and safety"?

23 MR. PECK: Object to the form of

1 the question. The document
2 speaks for itself.

3 A. What it says is it says that they should
4 order Monsanto to relocate the affected
5 residents.

MAYASKY

6 Q. So if someone was affected on an area
7 where y'all didn't plan to build a
8 catchment basin, one would take from
9 that, just reading the letter, that
10 y'all should relocate that person?

11 MR. PECK: Object to the form of
12 the question. The document
13 speaks for itself.

14 A. I don't know what they mean by affected
15 residents.

16 Q. But you all didn't do that, did you,
17 Mr. Mayausky? What y'all did is what
18 you previously told me. Y'all bought
19 property you needed for your purposes,
20 which was to build a catchment basin and
21 to remediate some of the property east
22 of Monsanto's plant around that drainage
23 ditch. That's exactly what you did,

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1 isn't it, Mr. Mayausky?

2 A. We bought property in the east end
3 neighborhood and the north side
4 neighborhood.

5 Q. And unless someone would sell their
6 property to you, you wouldn't relocate a
7 soul, would you, Mr. Mayausky?

8 A. In the property purchase program where
9 we were buying property, we offered to
10 relocate people.

11 Q. No, sir, Mr. Mayausky. Listen to my

12 MAYASKY
12 question. Unless they sold their
13 property to you, you never relocated a
14 person, unless it was in the little
15 demolition phase. That's the only time
16 you ever did it; isn't that right,
17 Mr. Mayausky?
18 MR. PECK: Object to the form of
19 the question.
20 A. I'm trying to understand the question.
21 Q. The question is very simple,
22 Mr. Mayausky. I'm asking you a very
23 simple question. Unless they sold their

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1 property to you, you didn't relocate
2 anybody, did you, unless it was just in
3 that little demolition phase?
4 A. We had people we temporarily relocated.
5 Q. Who?
6 A. I do not remember their names, but I was
7 told that there were people that
8 accepted temporary relocation.
9 Q. Who told you that?
10 A. Alan Faust.
11 Q. Can you tell me a person, sitting here
12 today, that y'all relocated, who refused
13 to sell you their property and had a
14 suit against you?
15 A. I don't understand the question.
16 Q. If someone refused to sell their
17 property that they lived in to Monsanto

MAYASKY

18 and filed a lawsuit against you, tell me
19 one of those people, Mr. Mayausky,
20 sitting here today, that under this
21 grand relocation program y'all
22 relocated.
23 A. I'm sorry. Can you be a little more

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1 succinct in your question? I'm very
2 unclear. I'm sorry.
3 Q. That's all right, sir.
4 A. I'm from a little coal mining town in
5 Pennsylvania. I'm sorry. I'm a little
6 slow on this sort of thing.
7 Q. I may be phrasing the questions wrong.
8 And I will be glad to rephrase it. Can
9 you tell me sitting here today --
10 A. Okay.
11 Q. -- any person out of these residents, in
12 the area around the plant, that refused
13 to sell their property to Monsanto that
14 y'all relocated temporarily?
15 A. No, I cannot tell you. I do not know
16 the residents' names that were offered
17 temporary relocation or ultimately
18 whether they sold to us or not. I was
19 only told that there were some residents
20 that took us up on the offer of
21 temporary location. I do not know the
22 outcome of the eventual sale of their
23 property to us.

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- 1 Q. Do you know, Mr. Mayausky, sitting here
2 today, that the program of relocation
3 was tied to the ultimate sale of the
4 property to Monsanto?
5 A. The program was designed that when a
6 person sold property to us that we would
7 take possession of that property and
8 they would move out.
9 Q. And in the time frame, say, when they
10 didn't have a permanent residence, y'all
11 would temporarily relocate them?
12 A. That was my understanding, yes.
13 Q. What if they didn't sell?
14 A. If they didn't sell, we then moved to
15 offering them to clean their residence.
16 Q. Clean their residence?
17 A. Yes.
18 Q. And how many people do you know of,
19 Mr. Mayausky, was the cleaning program
20 offered to residents?
21 A. How many was it offered to?
22 Q. Yes.
23 A. I can't say how many it was offered to.

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- 1 Q. There was a cleaning program offered?
2 A. Yes.
3 MR. STEWART: Okay. Mark this.
4 (Plaintiffs' Exhibit Number
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MAYASKY

- 5 Four was marked for
6 identification.)
- 7 Q. Let me show you Plaintiffs' Exhibit
8 Four. Is that the cleaning program you
9 are talking about?
- 10 A. Sir, this is the first time I've seen
11 this document.
- 12 Q. That's the first time you have seen the
13 document?
- 14 A. Yes, sir.
- 15 Q. So you don't know whether it's a
16 cleaning program you offered or not?
- 17 A. Well, it says Cleaning Guidelines for
18 Residents, so I assume we did offer it,
19 but this is the first time I've seen it.
- 20 Q. So as the plant manager during the time
21 -- was it offered during the time you
22 were here?
- 23 A. Yes.

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- 1 Q. Who was to do the cleaning?
- 2 A. I don't know. I don't know who we
3 contracted with.
- 4 Q. Who would have handled that at the
5 plant?
- 6 A. Alan Faust.
- 7 Q. Okay. Would Robert Jones have had any
8 involvement in it at all?
- 9 A. I can't say for certain.
- 10 MR. STEWART: Okay. I'm going to
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11 take that back, then.
12 Q. Does Exhibit Four look consistent with
13 what you understood the cleaning program
14 was?
15 A. For what I understood, yeah. This is
16 what they were talking about, going in
17 and cleaning a person's residence.
18 MR. STEWART: We will offer all
19 those exhibits so far.
20 (Plaintiffs' Exhibits Numbers
21 One, Two, Three, and Four
22 were offered and attached as
23 exhibits hereto.)

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1 Q. Now, Mr. Mayausky --
2 MR. PECK: Let's take a quick
3 bathroom break.
4 (A break was taken.)
5 Q. Now, you were telling me about site work
6 -- I mean, visits around this area that
7 you may -- When did you start those?
8 A. Visits to --
9 MR. CUNNINGHAM: Door to door.
10 A. Oh, door-to-door visits. The first time
11 I remember going out was March, late
12 February or early March of 1995.
13 Q. Tell me -- At that point in time you all
14 had the first consent order?
15 A. No. The first consent order was March
16 of 1995. It may have been around the
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17 same time, but I don't know when I
18 actually went out if I had them in hand
19 or not.
20 Q. where did you go?
21 A. Two general areas. One was the east end
22 neighborhood, out in that neighborhood,
23 and one was the houses that faced

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1 immediately the west end landfill along
2 -- I believe it's called Adams Street.
3 Q. And did you visit every house on the
4 street or just --
5 A. Went door to door knocking. And if I
6 found somebody home, I tried to talk
7 with them. If I didn't, I'd stick a
8 business card, usually with a note, that
9 they could call me if they wanted to.
10 Q. And what exactly did you tell the people
11 when you got there?
12 A. The west end neighbors, the ones along
13 Adams Street -- I knew that the work was
14 going to be beginning on the west end
15 landfill. I wanted to go tell them that
16 they would be seeing lots of heavy
17 equipment and what that was all about,
18 that we were closing the landfill, that
19 they would see activities, if they had
20 any concerns about noise, dust, or
21 anything like that, to give me a call.
22 Q. Okay. And did you visit in this time

23 frame the Mars Hill Missionary Baptist

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1 Church?

2 A. In this approximate time frame, yes,
3 sir.

4 Q. And who did you visit with there?

5 A. Rev. Weatherly, Deacon Bowie, and Deacon
6 Freeman.

7 Q. And how is it that you recall that you
8 visited with them?

9 A. I remember the first one -- the first
10 visit I actually wrote some notes, when
11 I returned to my office, of the subject
12 of the conversation.

13 Q. Did you do that contemporaneously,
14 Mr. Mayausky, with your visit?

15 A. Yes.

16 Q. Are you in the habit of doing that?

17 A. I deal with lots of information, and
18 sometimes it's better if I write things
19 down so that I have a record of it and
20 capture it. And I wrote down that
21 meeting, I remember.

22 Q. And how many other people's meetings did
23 you write down, where you went by and

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1 talked to other people?

2 A. The only other one I remember formally

MAYASKY

- 3 documenting was the meeting with Mars
4 Hill -- Not Mars Hill. Bethel Baptist
5 Church, Rev. Fields.
- 6 Q. So you also wrote down about your
7 meeting with Rev. Fields?
- 8 A. Yes, sir.
- 9 Q. Exactly when did that meeting take
10 place?
- 11 A. About the same time. I remember the
12 Mars Hill meeting was on a Sunday. I
13 believe we met after services. And the
14 Rev. Fields meeting was in the evening,
15 because he worked, and he met me after
16 his other job. Besides being a
17 reverend, he also worked, and he met me
18 after work at his office at the church.
- 19 Q. Can you remember what you told the
20 people at Mars Hill?
- 21 A. I remember two meetings with them.
- 22 Q. You remember two?
- 23 A. Yes. And the first one --

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- 1 MR. PECK: He said two meetings in
2 March?
- 3 THE WITNESS: Two meetings in
4 March.
- 5 A. Introducing myself, telling them who I
6 was, telling them that we were doing
7 some sampling in the area, we had found
8 the water readings for PCBs, told them

MAYASKY

9 that we had made PCBs in the past time
10 of the plant, '60s and '70s time frame,
11 that we would be doing more sampling,
12 trying to understand that, and that we
13 didn't know exactly where things were
14 going to go, but the sampling would help
15 us decide what we were going to do, that
16 we were working with the Alabama
17 Department of Environmental Management
18 on the whole issue.

19 Q. And that's the substance of what you
20 told them on the first meeting?

21 A. First or second meeting. They kind of
22 run together. I think that's the
23 essence in the first meeting, yeah.

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1 Q. I want to be clear about what you told
2 them, because it's my understanding that
3 this consent order, the first consent
4 order was signed sometime in March --

5 A. Uh-huh (indicating yes).

6 Q. Was that fairly -- signed fairly early
7 in March?

8 A. Right.

9 Q. The consent order?

10 A. The consent order was signed the first
11 week of March, to my recollection.

12 Q. And there is a possibility that you
13 perhaps did not discuss on the first
14 occasion all that you just mentioned;

MAYASKY

15 you might have covered it in the second
16 meeting with the folks at Mars Hill?
17 A. I think in the first meeting I covered
18 pretty much what I just said, and in the
19 second meeting I went back and asked --
20 and sought permission to go onto the
21 church property to do sampling and
22 actually took a sampling agreement with
23 me. And that was more like the third

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1 week of March.
2 Q. That's in March?
3 A. That's also in March, yes.
4 Q. And it would be your testimony here
5 today that Garrity and Miller or whoever
6 y'all had doing your testing did that
7 testing sometime in March or thereabouts
8 of 1995?
9 A. Yeah. It could have been -- Yeah,
10 March, March or April, sometime in --
11 Q. of '95?
12 A. Yeah. For sedimentation samples.
13 Q. And you told the people at Mars Hill
14 that you meet with on that date, Zeb
15 Freeman and Andrew Bowie and Rev.
16 Weatherly, that y'all had manufactured
17 PCBs and you found PCBs in the water
18 samples that you've previously
19 mentioned?
20 A. Yes.

MAYASKY

- 21 Q. Is that about the same thing you were
22 telling Mr. Wright?
23 A. Yes, about the same information I was

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- 1 sharing.
2 Q. Are you familiar with a Mr. Cheatwood
3 with ADEM?
4 A. Now that you have mentioned his name,
5 what comes to mind is that he was an
6 engineer that worked for ADEM.
7 Q. Okay. And is it -- Did you have any
8 contact with him, Mr. Mayausky, before
9 you met with these people at the church?
10 A. Not that I recall.
11 Q. Not that you --
12 A. I may have, but I don't recall.
13 Q. Okay. Did you have any more information
14 than you've just mentioned to us at the
15 time you met with these people?
16 A. At the first meeting at the church or
17 the second meeting at the church?
18 Q. The first.
19 A. At the first meeting I think that's all
20 the information I think I had at that
21 point in time.
22 Q. At the second meeting of the church,
23 where you got the content form, what was

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- 1 the purpose in that meeting,
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MAYASKY

2 Mr. Mayausky?

3 A. At that time, after meeting with ADEM,
4 they requested that we sample the water
5 as it -- basically on our property down
6 on the -- what would be the north side
7 of the church, and we found some PCBs in
8 water there.

9 So it became apparent to us that
10 we had to do some sampling for
11 sedimentation in soils all along on that
12 east end property that was ours, plus
13 perhaps would have to go into some of
14 the neighborhoods. So I was there to
15 specifically get permission from the
16 church to do some sampling on their
17 properties.

18 Q. And is it your distinct recollection
19 that you had told these people at the
20 church, before you got that consent
21 form, that y'all were looking for PCBs?

22 A. Yes, sir.

23 Q. And that's because you got this memo?

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1 A. No. I remember other details of the
2 conversation too.

3 Q. Okay. Tell me about it.

4 A. I remember Rev. Weatherly -- I said --
5 It may have been in the second meeting,
6 but I remember talking with him about
7 that we would be sampling the ditch; if

MAYASKY

8 we found material in the ditch, we would
9 move to remediate, that remediation
10 might include picking up the soil and
11 moving it. I remember Rev. Weatherly
12 saying, "Does that mean there is a
13 possibility of covering up the ditch and
14 closing it?" I remember saying that
15 that would be a distinct possibility.
16 He was very grateful that we would close
17 the ditch because it had always been an
18 eyesore for them. At the church there
19 was a concern because there was such a
20 deep ditch.
21 I remember discussions somewhat
22 about we didn't know where this was
23 going, but if we needed to do something

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1 to the church property, that we would
2 work with them on the church property.
3 I remember, "Would that include perhaps
4 relocation of the church," and we
5 discussed that, yeah, that would be a
6 possibility, somewhere we may want to
7 relocate the church.
8 Q. Is that in the second meeting or the
9 first meeting?
10 A. I believe it was the second meeting when
11 we talked about that.
12 Q. Is it the second meeting you made notes
13 of --

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14 A. The first. I remember in the
15 discussions of the relocation that there
16 was, you know, just, you know, very high
17 levels. What else -- I remember that
18 Rev. Weatherly thanked us -- it was
19 either in the first meeting or the
20 second meeting -- for his relationship
21 with Monsanto and allowing us to use --
22 us allowing them to use our property for
23 their annual Easter egg hunt.

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1 Q. Y'all's property for the Easter --
2 A. Yeah. At the time I thought it was the
3 piece of property next door, but I
4 subsequently found out that when they
5 actually used our property at one
6 incident it was the property immediately
7 adjacent to the plant on our side of
8 Clydesdale. In Easter of '96 they were
9 out there using that property for their
10 Easter egg hunt. In those conversations
11 I always thought it was the clay pit
12 immediately next to their plant. But it
13 came up that they -- that some of our
14 operators observed them using the
15 property right next to the plant on
16 Clydesdale.

17 Q. Okay.

18 A. Easter of '96, that was.

19 Q. Was that all in your notes?

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- 20 A. No, no. It's just my recall.
21 Q. Well, Mr. Mayausky, at this time were
22 you relocating people?
23 A. No. At that time we weren't relocating

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- 1 people. We were just trying to get
2 access agreements to sample and trying
3 to understand the problem.
4 Q. Okay. Now, Mr. Mayausky, you've talked
5 about trying to make an assessment of it
6 and trying to make a determination as to
7 what the problem was and what y'all
8 wanted to do. I assume from your
9 statements that you had no other
10 information at this point in time other
11 than what you have previously told
12 Mr. Cunningham and me here today --
13 A. I think so.
14 Q. -- and the Court here today. Just those
15 little samples that y'all had taken of
16 the water and the drainage ditch and the
17 western landfill over there and --
18 A. I honestly can struggle to remember if
19 we had sediment results at that point in
20 time.
21 MR. PECK: Are you talking about
22 the first meeting now or the
23 second meeting?

1 THE WITNESS: At the second
2 meeting. I can't remember --

3 Q. But you all had made a determination at
4 some point in time during the '80s that
5 you had a problem, hadn't you?

6 A. I just remember that we had -- we had
7 sedimentation samples, because I also
8 talked with them at the second meeting
9 about there was a -- there was -- in the
10 ditch on our property there was a
11 sedimentation that had relatively high
12 levels --

13 Q. About two hundred and twenty thousand
14 parts per million?

15 A. -- that we wanted to go in and do
16 something about. And I remember telling
17 them that I thought we could get our
18 equipment in there to do that by going
19 down the road in front of the church, up
20 through the field that was beside them,
21 and back in through the woods so that we
22 wouldn't have to disturb the church
23 property to do that. I told them that

1 was back there and we wanted to get into
2 that site. We wanted to get that soil
3 dug up and put down a polyethylene
4 liner, which was the action that we
5 agreed to with the Alabama Department of

MAYASKY

6 Environmental Management.

7 Q. Actually, that's the proposal that y'all

8 made to the Alabama Department of

9 Environmental Management, and they

10 really didn't make any change in that

11 any more than they made any change to

12 your western landfill and your southern?

13 MR. PECK: Object to the form of

14 the question.

15 A. To my recollection they did not make any

16 major changes to what we proposed to do.

17 Q. That's just what Monsanto proposed to

18 do?

19 A. Right.

20 Q. When is the next time you met with the

21 church?

22 A. I remember a meeting in July.

23 Q. Of what year?

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1 A. 1995.

2 Q. And who all was at that meeting? By the

3 way, who was at the second meeting? You

4 mentioned Mr. Bowie and Mr. Freeman

5 and --

6 A. Mr. Weatherly.

7 Q. -- Mr. Weatherly at the first.

8 A. The second meeting was after services

9 again, because I distinctly remember

10 Rev. Weatherly had a habit that

11 surprised me, quite frankly, being

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12 around ministers, some as I grew up and
13 whatnot. I remember going to his
14 office, and he would take off his
15 vespers as quickly as he could and
16 immediately start to smoke like crazy,
17 because he was a very heavy smoker. I
18 just remember that it was after
19 services, and I remember him taking off
20 his vespers.

21 Q. Did that offend you, Mr. Mayausky?

22 A. No, not necessarily. It's just that I
23 have not had a lot of time with --

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1 personal relationships with reverends,
2 to see that side of somebody. Usually
3 it's a very professional type role.

4 Then the second meeting was again
5 after church, because I remember that
6 same exact thing happening. And at that
7 meeting we talked about setting up a
8 meeting for later on with a larger
9 deacon body. And to my recollection
10 that larger deacon meeting occurred in
11 July. And I believe it was right around
12 the 4th of July, very soon after that.
13 Now, it was an evening meeting, because
14 Rev. Weatherly wasn't there, and only
15 the deacons were there.

16 Q. What did you discuss at that meeting?

17 A. At that meeting -- It was in July, and

MAYASKY
18 we were all ready to -- doing some
19 sampling, had some sedimentation
20 results. we had already begun to
21 discuss offering the property purchase
22 program. we hadn't formalized the plan
23 at that point in time, but we had

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1 already begun to talk about we would be
2 making offers to the residents in that
3 area for possible relocation.

4 I remember specifically that
5 wanted they to -- they offered to go out
6 and begin communication on behalf of us
7 to the residents. And I said, "No. I
8 think that should come from us when the
9 time comes." And I sort of let them --
10 To use a phrase, I sort of left them
11 peek under the kimono a little bit and
12 told them we were thinking about this
13 property purchase program but asked them
14 to keep it quiet because we hadn't
15 formalized the program yet, the details
16 of it yet, but I knew it would be a
17 program of appraisals on properties and
18 then some premiums offered on top of
19 those appraisals, and I'm sure we can
20 talk about the details of the program.

21 Q. So at that point in time you all had
22 your plans made about what you were
23 going to do to the property, is that

1 right, in July?

2 A. We were formulating the plan, as I would
3 say, at that point.

4 Q. Didn't you have boards that you showed
5 to the deacons at the meeting that you
6 had with the -- the third meeting you
7 had with them?

8 A. No. In the third meeting I remember
9 telling them that we were talking about
10 build a sedimentation pond. I did not
11 show them anything at that meeting. It
12 was a fall meeting in which I remember
13 Reverend -- or Deacon Bowie saying that
14 the Reverend wanted to meet and talk
15 about what might be some of the plans.
16 It was more of a fall meeting that I
17 took in some definitive plans of some
18 potential sedimentation ponds that we
19 might build. I took over three
20 proposals.

21 Q. Wasn't one of them going to be at the
22 church site there?

23 A. There were three potentials, yes, sir.

1 One was -- They were full-size drawings
2 that I carried in. And one was a
3 drawing that showed a pond on what
4 was now -- we call it the clay pit. If

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5 you will bear with me, the clay pit was
6 the area right next to the plant -- a
7 large pond on the clay pit with a
8 smaller pond a little bit downstream of
9 that. One opportunity was a very large
10 pond that basically did cover the area
11 where the church was. And the third one
12 was a smaller pond on the clay pit and
13 then a larger pond over on our side of
14 Clydesdale in the lot -- the same lot we
15 were talking about earlier that they
16 used for the Easter egg hunt.
17 Q. When you didn't get the church, you went
18 to another plan; is that correct?
19 A. That was our intention all along, that
20 we would modify the plan based on what
21 properties we could obtain, yes, sir.
22 Q. And that's really the purpose, as I
23 stated earlier or asked you earlier, of

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1 the relocation program, to acquire
2 property that you wanted to remediate as
3 part of the remediation process.
4 A. Yes, sir.
5 Q. The cheapest way to go, wasn't it,
6 Mr. Mayausky?
7 A. I don't know if it was the cheapest way
8 to go, but we would adjust our plans. I
9 didn't see all the analyses to say, "If
10 we acquired this piece of land, it would
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11 be cheaper; or if we acquired that piece
12 of land, it would be cheaper." It was
13 just what land we could acquire and what
14 can we do that would help us in our
15 plans.

16 Q. When, if ever, did you or anybody from
17 Monsanto explain to the people who were
18 the residents -- first explain to the
19 people who were the residents of the
20 neighborhood that surrounded the plant
21 of the dangers that PCBs might present
22 to those people?

23 A. When I went out in March to obtain

214

1 access agreements, we talked about PCBs.
2 I wouldn't say necessarily talked about
3 dangers at that point in time, but --

4 Q. When did you ever?

5 A. I definitively remember talking about
6 that at the community meetings we held
7 on October 4th, 5th. We had community
8 meetings, one at Mars Hill and one at
9 Bethel Baptist, in which we talked about
10 we had consulted with internal and
11 external medical experts and made
12 available -- if anybody had concerns
13 about health, we gave them a contact
14 list that listed Dr. Forrester,
15 Dr. Kimbrough, and Dr. Hughes from the
16 Alabama Department of Public Health.

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- 17 Q. Did you pay Dr. Forrester for the trip
18 down here? Did Monsanto?
19 A. Again, I don't know. I really don't
20 know.
21 Q. This plant didn't pay it. It would have
22 come --
23 A. It would have come from the remediation.

215

- 1 Q. Would the same thing be true of
2 Dr. Kimbrough?
3 A. Yes.
4 MR. PECK: If any payment was
5 made.
6 THE WITNESS: If any payment was
7 made.
8 Q. You mean, they got on a plane and flew
9 down here just out of the goodness of
10 their hearts, or do you think,
11 Mr. Mayausky, sitting here today that
12 they were probably paid?
13 A. I can only speculate, but I would assume
14 as professionals that their per diems
15 were paid.
16 Q. Okay. And those are the people that you
17 basically referred these people to for
18 the first time for health reasons and
19 risks in October of 1995?
20 A. Yes, sir.
21 Q. And that's after y'all had done fairly
22 extensive testing beginning as far back,
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23 perhaps, maybe, as 1993 --

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1 A. Well, I'd like --
2 Q. -- to your knowledge?
3 A. Yes, sir. I'd like to qualify that,
4 though. As I went around to residents
5 and as they asked questions, I would try
6 to answer the questions as best I could.
7 If an individual person brought up an
8 issue about medical concerns, I would
9 try to get their questions answered or
10 provide them with -- At that time
11 Dr. Hughes was not involved, but I
12 provided them with Dr. Kimbrough's phone
13 number. I don't even think Dr.
14 Forrester was. But as they came on
15 line, each of those individuals came on
16 line, I would give them as a contact
17 that a resident or a minister or anybody
18 could talk to.
19 Q. To your knowledge is your trip in the
20 neighborhood beginning in March, if it
21 began there, beginning in March of 1995,
22 the first time anybody from Monsanto
23 went to the neighborhoods and told the

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1 neighbors what the problems were?
2 A. It began in March of 1995 because of the

MAYASKY

3 access agreements. I know that's when I
4 went out. And it was probably the first
5 attempt during my tenure there that
6 somebody was out in the community. But
7 as I was going around, I was told by
8 people that they had contact with prior
9 Monsanto people.

10 Q. And PCBs?

11 A. Well, about any issue. They didn't
12 specify PCB. Rev. Weatherly knew the
13 prior plant manager at Monsanto and said
14 he talked with them about using the
15 property, so I assumed he must have
16 talked with somebody.

17 Q. What I'm asking you specifically about,
18 Mr. Mayausky, as you sit here today, if
19 you know of anybody in your category as
20 a plant manager or in Dr. Kaley's
21 category or a hired employee like
22 Dr. Kimbrough who went out and visited
23 the neighbors and talked to them about

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1 PCB contamination or the need to go get
2 health checks and things like that.

3 A. No, sir, I do not. I do not know of
4 anybody doing that, no.

5 Q. Before you did it?

6 A. Before I did it, no, sir.

7 Q. Tell me, if you would, exactly what the
8 remediation plan was for the south end

9 landfill.

10 A. I can't answer that question.

11 Q. You don't know?

12 A. I don't know.

13 Q. Were you not here when the plan was

14 formulated?

15 A. No, sir. It may have been in

16 formulation as I was transitioning, but

17 I have no knowledge.

18 Q. Do you have any idea about what the

19 problem was?

20 A. No, sir. I mean --

21 Q. Do you know the contaminants that are

22 buried there?

23 A. No, sir.

219

1 Q. You don't even know that PCBs are buried

2 there, whether it's buried there or not?

3 A. No, sir.

4 Q. Well, how it is, Mr. Mayausky, that you

5 were skilled enough to go out and talk

6 to these people about the problem if you

7 don't even know what it was?

8 A. If you recall what I said while I was

9 talking to them, I was telling them we

10 were trying to do sampling, the need to

11 do sampling, and offering them medical

12 assistance if they had medical-related

13 questions. I was not proposing to be a

14 medical expert.

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15 Q. So what you were basically out there for
16 was to get access permits so that you
17 could get Garrity and Miller onto their
18 property to do testing?
19 A. And then to give them a name and a face
20 and a business card, if they had further
21 questions, of somebody within Monsanto
22 they could call.
23 Q. You were just doing PR, then, weren't

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1 you, basically, for Monsanto?
2 MR. PECK: Object to the form.
3 A. I was doing what I would call community
4 outreach, yes, sir.
5 Q. In an effort to get their cooperation so
6 you could get on their property and do
7 the testing?
8 A. And to provide a service for them and a
9 face and name and a number that they
10 could contact if they had any questions.
11 Q. And then try to get this problem sort of
12 swept under the rug as cheaply as you
13 could. Isn't that basically what you
14 were doing, Mr. Mayausky?
15 A. No. I was trying to give them a name
16 and number if they had further questions
17 and to get access to their property to
18 do some sampling.
19 Q. Now, Mr. Mayausky, can you name me one
20 piece of property that y'all got an

MAYASKY
21 access agreement to that y'all didn't
22 contemplate needing for remediation or
23 to meet EPA's requirements?

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1 A. Is there any property that we
2 eventually -- Can you ask the question
3 differently?
4 Q. Can you name one piece of property
5 sitting here today, Mr. Mayausky, that
6 you got an agreement, an access
7 agreement, signed by the owner of the
8 property, that y'all didn't either need
9 for reclamation purposes or to meet the
10 requirements that were set out for y'all
11 by ADEM or EPA?
12 A. Yes. I would say some of the properties
13 that were closer up to the commercial
14 properties on the far end, some of the
15 residential properties up there.
16 Q. Which properties were they? When you
17 say far end, are you talking east, west?
18 A. Up near where the pawn shop is at, those
19 properties on that end.
20 Q. Why is it that you got access agreements
21 there?
22 A. We wanted to sample to understand the
23 situation, to see if there was a need to

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1 do anything up there.

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2 Q. And what did you determine?

3 A. I recall very low levels, if any, that
4 were ever found there.

5 Q. And you made a determination there
6 wasn't anything you were going to do?

7 A. We eventually bought some of those
8 properties, because we went with the
9 approach that in the residential
10 property purchase program we didn't feel
11 like we should exclude those properties,
12 that they were within a boundary bounded
13 by Clydesdale and Tenth Street. So we
14 couldn't concentrate on this low ground
15 that we needed, that we would like to
16 have. We needed to offer it to all of
17 the residents in that area, including
18 some that were more upgrade.

19 Q. Now, back to the south landfill. So
20 you're telling me you didn't even know
21 what the ultimate determination was
22 going to be that was going to be done?

23 A. No, sir. Because at the time during my

223

1 tenure there we were still dealing with
2 building the sedimentation pond and
3 doing the work on the east end, and the
4 south landfill only started after I
5 left.

6 Q. Okay. So on the east end, what did you
7 all -- in addition to building the

MAYASKY

- 8 catchment basin that you subsequently
9 built, what else did you understand
10 y'all were going to do?
- 11 A. Try to purchase as much of the property
12 as we could, and then based on that we
13 would work with the remaining residents
14 who were there or facilities that were
15 there; and any required remediation that
16 ADEM directed us to do, we would take
17 care of.
- 18 Q. Okay. On the east end?
- 19 A. On the east end.
- 20 Q. And does that extend on over to Zinn
21 Drive or Montrose or any of that area
22 over there?
- 23 A. We did sampling on Zinn Drive and only

224

- 1 found a few readings of PCBs in soil.
- 2 Q. What about --
- 3 A. Generally most of them were negative or
4 non-detects.
- 5 Q. What about Montrose?
- 6 A. Montrose, in soil we found very low
7 levels there also.
- 8 Q. When you say low levels, what were the
9 levels that you found on Zinn Drive?
- 10 A. As I recall, less than ten parts per
11 million. But there were a couple of
12 hits on Zinn Drive. I don't remember
13 what they were.

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MAYASKY

- 14 Q. Fairly significant hits?
- 15 A. I don't remember the exact numbers.
- 16 Q. And on Montrose what did you find?
- 17 A. Again, my recollection is most were less
- 18 than ten parts per million.
- 19 Q. Well, do you understand actionable parts
- 20 per million in soil to be ten? Is that
- 21 what you understand?
- 22 A. My understanding -- And this is a source
- 23 of contention with ADEM, and I never

225

- 1 have gotten a clear definitive answer of
- 2 what it should be. But yes, my
- 3 understanding is it is ten.
- 4 Q. From whom?
- 5 A. ADEM.
- 6 Q. ADEM tells you ten?
- 7 A. Yes.
- 8 Q. Have y'all pushed for the ten yourself?
- 9 A. No, sir.
- 10 Q. What's the figure you all have pushed
- 11 for?
- 12 A. I didn't push for any figure. We asked
- 13 them what should be the level. And the
- 14 best they were able to tell us was ten.
- 15 There was some discussions about fifty
- 16 on industrial property, but ten on
- 17 residential property.
- 18 Q. Okay.
- 19 A. General use property, is I think how

20 they actually put it.
21 Q. And where did ADEM indicate they got
22 that particular standard?
23 A. I'm sorry. I don't recall. I just

226

1 remember somebody saying that.
2 Q. Do you know at all if there were any
3 fairly significant levels of PCB found
4 in the blood of people who lived either
5 on Montrose or on Zinn Drive?
6 A. Yes. Only from what I've read in the
7 newspaper. But I remember one
8 particular person who was quoted in the
9 newspaper saying he had two hundred
10 parts per billion in his blood.
11 Q. And you understood that was a fairly
12 significant level of PCBs?
13 A. Yes.
14 MR. PECK: Parts per billion?
15 THE WITNESS: I said parts per
16 billion.
17 Q. Did that cause you any concern?
18 A. I was confused about how it got there.
19 I certainly didn't understand it. I can
20 only go back to the Alabama Department
21 of Public Health, again, told us that
22 generally the concern was less than
23 fifty parts per billion and was not a

- 1 necessary cause for concern. But they
2 were concerned about anything above
3 fifty parts per billion.
- 4 Q. When did they tell you that?
- 5 A. It seems I read that or heard that in
6 some conversation.
- 7 Q. And who exactly at the department told
8 you that?
- 9 A. I'm very fuzzy on who told me that. I
10 would guess, speculate that it would be
11 Dr. Hughes.
- 12 Q. Okay. You all have provided us with a
13 consent form and with some notes that
14 you had made at some point in time.
15 Were those the notes that you made at
16 the -- provided it in discovery, and it
17 has got your signature on it. It talks
18 about a meeting, the notes do -- about
19 meeting with Rev. Weatherly and Zeb
20 Freeman and Andrew Bowie.
- 21 A. Yes. That was the first meeting.
- 22 Q. That's the very first meeting you had?
- 23 A. Yes.

- 1 Q. And the consent form that was signed
2 after that was signed --
- 3 A. Two Sundays after that.
- 4 Q. Two Sundays after that?
- 5 A. Yes, sir.

MAYASKY

6 Q. And that's your testimony here today.
7 It didn't happen in the fall of the
8 year; it happened in the March --
9 A. The consent order was signed --
10 MR. PECK: Do you mean the access
11 agreement?
12 A. The access agreement was signed in
13 March.
14 Q. And those notes were made about a
15 meeting that took place about two weeks
16 before?
17 A. Two weeks prior to that, yes, sir.
18 Q. And the testing was done in that time
19 frame?
20 A. I do remember -- This is where I get a
21 little fuzzy. But I do remember talking
22 to them at one point in time -- I
23 thought it was the second meeting --

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1 about access to their property, that we
2 wanted to get in there and clean that
3 up. And I thought we could come in from
4 the back side. And I think it was in
5 that second meeting, so I must have
6 known about the higher level spot that
7 was on our property but right
8 immediately behind the church.
9 Q. So you wanted to -- When you went in
10 there to test, did the people park their
11 vehicles on the property of the church?

MAYASKY

12 A. I remember that they parked the vehicles
13 -- We went through the gate up under the
14 clay pit and then came in back through
15 the woods, dug a path back through the
16 woods, from the clay pit back to the
17 area.
18 Q. I wanted to make sure I understood you
19 when you answered a question just a few
20 minutes ago so that I'm clear about it.
21 I don't want to have any mistake in the
22 record about it. Are you telling me
23 sitting here today that you really don't

230

1 know what is buried in those cells that
2 are south of 202?
3 A. Yes. I'm telling you I do not know in
4 detail what is buried in these cells on
5 202.
6 Q. Generally what do you know about it?
7 A. It was a landfill that was used for
8 years at the plant, and plant waste,
9 plant construction materials, plant
10 materials of any kind may have been
11 placed up there.
12 Q. Did anyone ever tell you, who was
13 located at the plant, of any particular
14 material that was buried up there?
15 A. In general terms, that there were waste
16 materials from the parathion operation
17 back when the parathion was in

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18 production at the plant, perhaps some
19 material from the feed stream, the
20 parathion. But that was all I've ever
21 been told was up there.
22 Q. So just parathion is what you understood
23 was up there?

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1 A. Parathion materials, materials related
2 to the production of parathion.
3 And I remember there was some PCB
4 equipment that might have been up there,
5 equipment used in PCB that was
6 decontaminated and decommissioned,
7 cleaned, and placed up there.
8 Q. So that's all you understood was up
9 there as far as PCB?
10 A. To my knowledge, yes, sir.
11 Q. Just contaminated equipment?
12 A. Well, cleaned equipment.
13 Q. Cleaned equipment after it was taken out
14 of service?
15 A. Yes, sir.
16 Q. When did you understand that was done?
17 A. When was it put up there?
18 Q. Yes.
19 A. Well, my understanding was the PCB
20 operation was dismantled in the late
21 '70s.
22 Q. So you understood that just the PCB
23 production equipment was all that was

1 related to PCBs that were stored up
2 there in the south landfill?

3 A. That was my understanding, yes, sir.

4 MR. STEWART: I want to make sure
5 -- tell me just for the
6 record -- that we have that
7 particular area located. I
8 will get the map here and
9 have it marked.

10 (Plaintiffs' Exhibit Number
11 Five was marked for
12 identification.)

13 Q. Let me show you Plaintiffs' Exhibit
14 Five. And this purports to be those
15 cells or solid waste management units on
16 the south of 202. We have previously
17 offered this to Mr. Faust's deposition.
18 Let me just ask you if that's where you
19 are saying the parathion was located.

20 A. In some of these cells -- and I'm not
21 certain which ones -- were wastes from
22 the parathion operation.

23 Q. You don't know which one it is?

1 A. No, sir.

2 Q. And do you know where the PCB -- Can you
3 point with a pen anywhere the PCBs are?

4 A. No.

MAYASKY

5 (Plaintiffs' Exhibit Number
6 Six was marked for
7 identification.)

8 Q. Let me show you Plaintiffs' Exhibit Six.
9 This is the eastern -- This purports to
10 show the remediated area for the eastern
11 side of -- east of the plant, area east
12 of the plant?

13 A. Yes, sir.

14 Q. And there is a church building located
15 on there. And I'm going to mark it with
16 an X. Let's see.

17 A. This is 202 (indicating).

18 Q. Okay. Right there. I couldn't see it
19 from here. That purports to be Mars
20 Hill.

21 Now, can you show me the area that
22 y'all -- Let me give you a pen, please,
23 sir. And show me the area that y'all

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1 tested in, as best you can, near Mars
2 Hill.

3 A. (Executed by the witness.)

4 MR. PECK: Just for the record,
5 you placed an X on PX Six
6 behind Mars Hill?

7 THE WITNESS: Yes.

8 A. That would be just about where we
9 sampled, just behind Mars Hill, if you
10 are referring -- Let me make sure I'm

MAYASKY

11 clear. You are referring to when I
12 talked to Mars Hill about --
13 Q. Absolutely. That's what I'm talking
14 about, in March.
15 A. It would be in a ditch area that ran
16 just behind Mars Hill on our property.
17 Q. Now, where did the ditch come from?
18 A. The ditch came from -- collected from --
19 Q. Could you just make a mark on that and
20 show us where the ditch came from?
21 A. Yes. To the best of my understanding
22 there were drainage ditches that came
23 off the south end landfill, went under

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1 202, and meandered down through a wooded
2 area back behind the church and then
3 alongside the church. It was
4 approximately in this region that we
5 sampled (indicating).
6 Q. Now, Mr. Mayausky, there was a spot
7 along that ditch -- And of course this
8 was something that I read in the
9 newspaper and have heard just bandied
10 about in this case -- where there was a
11 hit of some two hundred twenty thousand
12 parts per million in the soil. Is that
13 correct?
14 A. That's the number I recall, yes, sir.
15 Q. Is it your testimony -- And that was a
16 PCB level?

- 17 A. That was a PCB level, yes, sir.
- 18 Q. Is it your testimony here today that
- 19 that particular kind of level of PCB
- 20 contamination came off equipment that
- 21 was taken down and --
- 22 A. I cannot speculate where that level came
- 23 from. I have no idea.

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- 1 Q. You're a chemist. I'm not. I'm a
- 2 lawyer and have not ever taken a
- 3 chemistry course in my life. But would
- 4 that be a fairly high figure in your
- 5 opinion?
- 6 A. In my opinion it was a high figure, yes,
- 7 sir.
- 8 Q. And a high level to come off just
- 9 equipment that had been cleaned and
- 10 stored in one of those cells?
- 11 A. Yes. I would say that was very, very
- 12 high, and it was a puzzlement to me
- 13 personally as a chemist to understand
- 14 where that came from.
- 15 Q. Did you ask anybody, either Robert Jones
- 16 or Jerry Brown or anybody who
- 17 historically worked for Monsanto and had
- 18 been involved with this plant, where
- 19 such a level could have come from during
- 20 this time?
- 21 A. Right. Robert Jones and Jerry Brown and
- 22 I talked about it, and it was a

23 puzzlement to all of us where it came

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1 from.

2 Q. would it be logical to assume, based on
3 what you tell me or have told me and
4 Mr. Cunningham and the Court today about
5 what y'all were checking, the surface
6 water coming off that landfill, that it
7 certainly came off the south end
8 landfill?

9 A. I can't conclude that, because that is
10 such a high level that it was very much
11 a surprise to me that it was that high.

12 Q. well --

13 A. To conclude that it came from the south
14 landfill, I can't make that conclusion.

15 Q. well, if you checked in the ditch and
16 the ditch carried water that came --
17 surface water that came off the
18 ditch, wasn't the purpose of your
19 remediation work to catch the surface
20 water that came off the landfill?

21 A. Yes, sir. That was the purpose of the
22 sedimentation pond, to collect any
23 sedimentation that may be bearing PCBs.

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1 Q. And the PCBs would have come off that
2 landfill?

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3 A. I can't -- I can't definitively say that
4 the PCBs came off that landfill.
5 Q. Where else would they have come from?
6 A. I don't know.
7 Q. Well, I would assume, based on y'all's
8 efforts there, that y'all are taking the
9 responsibility for it, are you not?
10 A. Yes, we are.
11 Q. Monsanto is?
12 A. Building a sedimentation pond to capture
13 the sediment to keep it from moving
14 further downstream.
15 Q. From moving further downstream. What
16 happens to it when it settles there?
17 A. It's captured in the pond, and it's not
18 going to go anyplace. The sediment
19 falls out.
20 Q. Not going to go anyplace?
21 A. It stays in the pond.
22 Q. To your knowledge does it vaporize at
23 any point in time or become a part of

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1 the air?
2 MR. PECK: Object to the form of
3 the question. This witness
4 has already testified he
5 doesn't know what the south
6 landfill remediation program
7 was, calls for speculation.
8 A. I don't know if it would volatilize or

9 not.
10 Q. Don't you think that would have been
11 important for you as plant manager to
12 know when you were down there talking to
13 Rev. Weatherly and to -- certainly to
14 those residents as you were walking
15 around, that y'all might have been
16 building a time bomb there, something
17 that would have continued to contaminate
18 that area?
19 A. When I was out talking to the residents,
20 my approach was to tell them that we
21 wanted to go in and clean up the area we
22 found, get the soil removed.
23 Q. But you left PCBs in the sediment pond,

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1 Mr. Mayausky. And let's just say --
2 assume for the sake of a hypothetical
3 they did vaporize and became a part of
4 the air that the people breathe. All
5 y'all are doing is just leaving the
6 contamination there, aren't you?
7 MR. PECK: Wait, wait, wait, wait.
8 I object to the form of the
9 question. The hypothetical
10 also assumes there is PCBs in
11 the sediment basin, and there
12 is no evidence to support
13 that.
14 MR. STEWART: Y'all haven't

15 MAYASKY
15 tested, Adam, for the record,
16 to see if there is.
17 MR. PECK: Alan Faust testified
18 about -- He was the right
19 witness to discuss that
20 issue. His record speaks for
21 itself.
22 Q. You can go ahead and answer the
23 question, Mr. Mayausky.

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1 A. I can't hypothesize whether it was
2 volatilized or not.
3 Q. Wouldn't you want to know as plant
4 manager when you were talking to --
5 That's my question. Wouldn't you want
6 to know when you were talking as the
7 plant manager to Rev. Weatherly and
8 Andrew Bowie and Zebedia Freeman -- If
9 you were creating this situation there,
10 wouldn't you want to know that?
11 A. My approach was to clean up the
12 situation that we had, to get in and get
13 the sedimentation that we had already
14 identified as a problem.
15 Q. Well, I understand just based on -- And
16 let me mark this area off for you. And
17 let me just ask you a question about it.
18 This dark, lined area here, y'all have
19 put down another type substance. It's
20 not the polyurethane substance. But

21 y'all put down, in a large portion of
22 that area, clay and then a substance,
23 and then you put clay on top of that.

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1 A. If we have --
2 MR. PECK: Wait a minute. Let me
3 object to the form of the
4 question. I think it's a
5 gross mischaracterization of
6 the remediation plan. But go
7 ahead.
8 A. If we have, it was done -- I don't
9 recall that work being done while I was
10 there.
11 Q. Do you recall any contemplated -- doing
12 any work to cover any area east of the
13 plant and north of those cells on the
14 north side of 202?
15 A. My only involvement when I was there was
16 to build the sedimentation pond, and
17 that construction project started when I
18 was there and as I was leaving. I don't
19 know what the finalized plan was for
20 this area (indicating). I do not know.
21 MR. PECK: When you point -- By
22 this area, you mean the east
23 side area?

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1 THE WITNESS: The east side area.
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- 2 Q. why don't you just mark on that? Just
3 sort of put red there.
- 4 A. In this area (indicating).
- 5 Q. So if there is some form of material put
6 down, a cover put down and dirt put over
7 it, do you know what purpose that would
8 be based on what you understood the
9 problem was on the eastern side of the
10 plant?
- 11 MR. PECK: Object to the form of
12 the question, calls for
13 speculation.
- 14 A. I would assume that it was like the west
15 end landfill. It would be a capping
16 exercise where you would cap the soil in
17 place.
- 18 Q. Okay. To your knowledge were PCBs
19 buried anywhere on the east side of the
20 plant across Clydesdale over there and
21 north of Mars Hill?
- 22 A. No, sir. I have no knowledge of that.
- 23 Q. Are you telling me that there are no

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- 1 PCBs buried there?
- 2 A. I have no knowledge of it.
- 3 Q. Do y'all have a permit that would allow
4 you to bury PCBs in that area?
- 5 A. No, sir. We did not have a permit to
6 bury any PCBs.
- 7 Q. What would be your standard operational

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8 procedure, Mr. Mayausky, if you
9 discovered PCBs in that area? What
10 would you be required to do?

11 A. To remove it to Emelle or to cap it in
12 place.

13 Q. Who gave you the right to cap it in
14 place?

15 MR. PECK: Object to the form of
16 the question. He has already
17 told you he doesn't know
18 anything about what was done
19 in that area, so he can't
20 testify about what happened.

21 Q. Who would give you the right to cap it
22 in place?

23 A. We would talk with ADEM.

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1 Q. But you would have to report it, would
2 you not, Mr. Mayausky, to some
3 regulator?

4 A. To the Alabama Department of
5 Environmental Management.

6 Q. What would happen if you did not report
7 that, Mr. Mayausky?

8 MR. PECK: Object to the form of
9 the question, calls for
10 speculation.

11 A. I don't know. I have never been
12 involved in a situation where we haven't
13 reported it.

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- 14 Q. well, do you not understand that the
15 plant manager has the responsibility to
16 report the finding of contaminants that
17 are outside a regulated landfill?
18 A. If we found it, it would be my
19 obligation to report it, yes, sir.
20 Q. And if you did not report it, do you
21 understand that could possibly be a
22 criminal activity?
23 A. Yes, sir.

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- 1 Q. And would you expect under those
2 particular rules and regulations that
3 anyone who was a plant manager here
4 would be the one who would be
5 responsible for doing that?
6 A. You're asking me to speculate about past
7 environmental law and how it applied to
8 past plant managers. I can't do that.
9 I don't know when the law took effect
10 that would place a person in criminal
11 liability if they didn't report
12 something. I honestly don't know when
13 that law took effect.
14 Q. But you're saying during the remediation
15 process, that you know anything about,
16 nothing like that happened?
17 A. To my knowledge, no.
18 MR. PECK: I have no idea what
19 "nothing like that" is.

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20 Q. Burying contaminated materials without
21 reporting it to regulators outside of
22 regulated landfills.

23 A. To my knowledge, no.

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1 (Plaintiffs' Exhibit Number
2 Seven was marked for
3 identification.)

4 Q. Now, let me show you Plaintiffs' Exhibit
5 Seven. Now, this is the western
6 landfill, and I want you just to tell me
7 where y'all did the testing or show me
8 where y'all did the testing in
9 connection with that, Mr. Mayausky.

10 Can you draw where y'all did the
11 testing with a red pen on that one?

12 A. Which testing are you referring to,
13 please?

14 Q. The original testing that y'all did when
15 Alabama Power Company notified the
16 Department of Environmental Management
17 that they had found this material on
18 your property.

19 MR. PECK: The original testing
20 Alabama Power did? Is that
21 what --

22 MR. STEWART: No. I'm talking
23 about the original testing --

- 1 Q. I understood that Monsanto did some
2 testing around the western landfill that
3 you talked to Mr. Wright about, and you
4 were describing where y'all did the
5 testing and where you found the PCBs.
6 A. In water, the water testing?
7 Q. Yes.
8 A. That would have been a ditch that ran
9 along here. And I'm not sure where the
10 sample point was, but the ditch ran
11 along there, where I have just marked.
12 (Indicating.)
13 Q. And it ultimately went into Snow Creek?
14 A. Yes. It ultimately worked down and went
15 into Snow Creek.
16 Q. Okay. Now, the landfill that was capped
17 is marked in fairly dark lines; is that
18 right? Is that the landfill area that
19 y'all capped?
20 A. No.
21 Q. Show me what y'all capped.
22 A. The landfill area is this light area
23 right here (indicating).

- 1 Q. So the light area is the landfill area
2 that you capped?
3 A. Yes.
4 Q. And you are certain that PCBs are buried
5 there?

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- 6 A. We found it in tars on top of the
7 landfill before we began the capping
8 process, so I would conclude that PCBs
9 are there, yes, sir.
- 10 Q. Okay. Now, did you understand anything
11 at all about the nature of a remediation
12 program that should be put in place
13 being different for landfills that might
14 affect streams or water supplies as
15 opposed to just a landfill that might
16 not affect -- or at least from a
17 landfill that might not affect water
18 supply?
- 19 A. No. I'm not aware of any differences in
20 the way you would handle it. I know --
21 what I do know is that we had storm
22 water discharge permits for this storm
23 water that came off our plant that we

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- 1 worked with ADEM on. But I don't know
2 if you would -- I don't know if you
3 would handle a landfill differently that
4 would impact a waterway and not impact a
5 waterway. In fact, there would be --
6 with storm water, it's going to
7 eventually all end up in some waterway
8 someplace.
- 9 Q. Well, what we're talking about here,
10 though, are we not, Mr. Mayausky, is a
11 facility that's located in such a

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12 position where the storm water that
13 comes off Coldwater Mountain and the
14 water that -- and goes in the ditch that
15 goes beyond the church there. And on
16 Plaintiffs' Exhibit Seven there is a
17 meandering little trail over there. And
18 I will mark it in red, on the east side
19 of the plant, and ask you --

20 MR. CUNNINGHAM: Do you want to do
21 that one in blue?

22 MR. STEWART: Okay. I will do
23 that one in blue.

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1 Q. -- and ask you if in fact that's a
2 ditch, that represents a ditch that goes
3 into Snow Creek eventually and comes off
4 your landfill on the south side. Then I
5 will go back to the question I was about
6 to ask you.

7 A. It's labeled east end drainage ditch,
8 yes, sir.

9 Q. So as a practical matter, you know or
10 did know at the time we originally
11 talked about -- when you first learned
12 about this and you first started talking
13 about how to remediate the problem out
14 there, beginning with the west end
15 landfill, that both the drainage ditch
16 on the eastern side and the drainage
17 ditch along the west landfill affected

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18 -- eventually affected Snow Creek, which
19 made its way down to Choccolocco Creek
20 and Logan Martin Lake. You knew that it
21 affected a water type system, didn't
22 you?
23 MR. PECK: Object to the form of

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1 the question.

2 A. I know that the east drainage ditch, the
3 one we marked here in blue, and I know
4 the west drainage ditch that I marked in
5 red eventually found their way into Snow
6 Creek.

7 Q. But didn't you know that Snow Creek
8 ultimately emptied into Choccolocco and
9 then ultimately into Logan Martin Lake?

10 A. Yes. I know that Snow Creek eventually
11 goes into Choccolocco Creek and
12 eventually goes into Lake Logan Martin.

13 Q. Therefore the contamination that we're
14 talking about, whether it came off the
15 western landfill or off the southern
16 landfill, ultimately affected those
17 streams, either Snow Creek, Choccolocco
18 Creek, Logan Martin, or a combination of
19 all three?

20 MR. PECK: Object to the form of
21 the question, lack of
22 qualification.

23 A. I can't speculate whether the

1 contaminants that were in the west
2 stream or east ditch, these two ditches,
3 would impact the water quality or
4 "affect," is the word you used, Snow
5 Creek, Choccolocco Creek, or Lake Logan
6 Martin.

7 Q. Weren't you aware, Mr. Mayausky, from
8 conversations you had had with Mr. Jones
9 and Mr. Brown that the Alabama
10 Department of Conservation had issued a
11 fish advisory to people who were
12 residents along Logan Martin Lake
13 because of PCB contamination?

14 A. I'm aware that there was a fish advisory
15 on Lake Logan Martin and Choccolocco
16 Creek, yes, sir.

17 Q. And it actually preceded your coming.
18 It took place before you came here,
19 didn't it?

20 A. Yes.

21 Q. And they told you about it?

22 A. Yes.

23 MR. PECK: Object to the form of

1 the question, improper facts.

2 Q. Did you seek anybody's assistance in
3 making a determination when y'all were
4 formulating this remediation plan --

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5 which really ultimately is your
6 responsibility as the plant manager
7 here, isn't it?

8 A. Yes. It's part of my responsibility.

9 Q. Did you seek the advice of anybody in
10 Monsanto who might have told you that
11 they would have done something different
12 than what you did here, by capping the
13 landfill, as opposed to maybe
14 incinerating it or taking the material
15 away from the site, because of the
16 effect it had on those streams that I
17 mentioned?

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

20 A. I can't say that it affected the
21 streams.

22 Q. Why is that, Mr. Mayausky?

23 A. PCBs are generally industrial chemicals

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1 that were used widely, both around the
2 world and particularly in Anniston. The
3 PCBs in Choccolocco Creek and Lake Logan
4 Martin could have come from anywhere. I
5 couldn't definitively say they came from
6 us.

7 Q. I know that's a party line,
8 Mr. Mayausky, but can you tell me why
9 Monsanto chose to remove the large size
10 amounts of materials from Snow Creek?

MAYASKY

- 11 A. Because there was discovered
12 sedimentation containing PCBs in Snow
13 Creek, and working with ADEM the
14 decision was made to remove that
15 material.
- 16 Q. Because it came from your plant, didn't
17 it?
- 18 A. I can't say. I never saw a document
19 that said it definitively came from our
20 plant. But it was working with ADEM
21 that we decided to remove it.
- 22 Q. Mr. Mayausky, what plant is located
23 between the site where the materials

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- 1 were removed and your landfill, either
2 the western or the southern landfill?
- 3 MR. PECK: Object to the form of
4 the question. It's not been
5 established this witness
6 knows where the material was
7 removed.
- 8 A. And I don't. I don't know where the
9 material was removed.
- 10 Q. Well, it certainly was beyond the
11 drainage ditch that drained the landfill
12 on the south side or the west side?
- 13 MR. PECK: I object to the form of
14 the question.
- 15 A. I don't know.
- 16 Q. Tell me, if you would, Mr. Mayausky --

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MAYASKY

17 well, let me let you take a look at --

18 MR. PECK: Are you ready for a
19 break?

20 THE WITNESS: Yes, I am.

21 MR. PECK: While you read that
22 document, Donald, let's take
23 a quick break.

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1 (A break was taken.)

2 Q. Let me go to a series of questions about
3 public relations in the community. Who
4 handled that when you were here?

5 A. Pretty much I did most of it myself.

6 Q. And what about contributions to
7 charitable organizations?

8 A. Myself also.

9 Q. Who all did y'all contribute to, and can
10 you give us some idea about kinds of
11 contributions y'all would make during
12 the time that you were here?

13 A. Civic organizations?

14 Q. Yeah. Well, any kind of organizations.

15 A. United Way, the Cerebral Palsy Center,
16 various schools in the area, Wellborn,
17 Anniston, Oxford.

18 Q. What kind of contributions were you
19 making to those schools?

20 A. To Wellborn, it was a -- They were our
21 Adopt-A-School, so it was a standard
22 donation we made to be used for whatever

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23 discretion they chose to use it for,

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1 scientific equipment or whatever they
2 wanted to buy.

3 Q. What kind of donation would you make?

4 A. Money.

5 Q. Annually?

6 A. Yes, annually.

7 Q. How much?

8 A. I don't remember the exact amount. It
9 was in the ballpark of three or four
10 thousand dollars a year.

11 Q. The same to Anniston?

12 A. Anniston, it was usually we would work
13 with them if they needed a particular
14 piece of equipment, and we would buy it
15 for them. I can remember us purchasing
16 some materials for their tech prep
17 curriculum.

18 Q. What was the amount of money you spent?

19 A. Two thousand dollars. We also sponsored
20 teachers in the area to the National
21 Science Teachers Convention.

22 Q. How much would you spend on that per
23 year?

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1 A. Two thousand per school system, and we
2 did basically every school in the

- 3 county.
- 4 Q. When did you start that, when you came
- 5 here, or had y'all been doing that
- 6 before you came here?
- 7 A. We were doing that before I came here,
- 8 but I expanded it to include every
- 9 school system in the county.
- 10 Q. When did you expand it?
- 11 A. The first year we did that was 1995.
- 12 Q. Was that after you discovered the PCB
- 13 problem?
- 14 A. The timing was, yes.
- 15 Q. And was the two thousand dollars what
- 16 you gave each school in the county?
- 17 A. Yes.
- 18 Q. What other charitable organizations
- 19 besides the school did --
- 20 A. The Anniston Museum of Natural History.
- 21 Q. You made an annual contribution?
- 22 A. Yes.
- 23 Q. How much?

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- 1 A. That was a specific three-year program
- 2 we set up where we would sponsor a
- 3 teacher who would do a traveling science
- 4 road show to every school in Calhoun
- 5 County. And it was on terms of we
- 6 basically underwrote her salary in terms
- 7 of twenty thousand dollars per year, in
- 8 that ballpark.

9 Q. At the museum?

10 A. Yes.

11 Q. What other contributions -- Did you make

12 that determination, or had they been

13 doing that before you came here?

14 A. No. That was a specific determination I

15 made after I came here.

16 Q. After you came here?

17 A. Yes, sir.

18 Q. And was that also in '95?

19 A. I think the first year that might have

20 been '95, yes.

21 Q. What other kind of contributions did you

22 make?

23 A. Those are the only ones I can recall.

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1 There may have been others, but those

2 are the ones I recall.

3 Q. Did y'all ever hire anybody in the

4 public relations area during the time

5 that y'all first discovered this PCB

6 problem?

7 A. No. We have -- We were supported by the

8 public relations staff in corporate.

9 Q. Tell me who that is.

10 A. It was a series of people while I was

11 there because they kept transitioning.

12 It was originally Beth Rusert,

13 R-u-s-e-r-t. Then it transferred to a

14 Diane Herndon. And then now more

MAYASKY

15 recently it is now Kevin Cahill.

16 Q. Kevin Cahill?

17 A. Uh-huh (indicating yes).

18 Q. What did Beth Rusert do for you in

19 connection with this problem that you

20 found?

21 A. Beth, really very little about the

22 problem that we found.

23 Q. Did you have any communication with her?

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1 A. She was aware of the issue. She knew

2 that we were having these issues. She

3 made suggestions of approaches we might

4 make to the community, going door to

5 door, type things we might deliver. She

6 helped us to develop a brochure that we

7 used about general information about the

8 plant. Somewhere in transition that

9 brochure transitioned from her to Diane

10 Herndon, in helping us to develop that

11 brochure.

12 Q. When you say brochure, was that a

13 brochure that y'all developed to tell

14 people in this community about the

15 Monsanto plant because of the PCB

16 problem?

17 A. No. It was an update of a general

18 information brochure the plant had had

19 long before. In fact, it had -- the one

20 that was being used when I went there

MAYASKY

21 had the photograph of a plant manager
22 two plant managers ago in it. So it did
23 need updating. So we just updated it.

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1 Q. So what you've told me -- Is it Rusert?
2 A. Beth Rusert.
3 Q. What you've told me Ms. Rusert did had
4 to do with door-to-door programs? She
5 suggested that?
6 A. She just worked with me on -- And I
7 don't remember if she suggested it or I
8 suggested it, but we talked about it.
9 Q. Did she suggest to you what you should
10 say?
11 A. Not really.
12 Q. What about other suggestions she made
13 about how you would approach the
14 community? Is she the one that
15 recommended that y'all go to make
16 speeches to civic clubs?
17 A. No. That was pretty much my decision,
18 that we needed to go out and talk to
19 civic clubs and talk to organizations.
20 It was my decision to go door to door,
21 but she helped me. If I needed
22 material, she would help me to develop
23 that. She served -- Every year we

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1 prepared a budget for our philanthropic
Page 213

MAYASKY

2 giving that we talked about. She would
3 look that over and help me to decide if
4 we were meeting community needs with
5 some of that giving.

6 Q. When did that increase?

7 A. Actually it had decreased prior to my
8 coming here, and then I was successful
9 in landing the special grant to the
10 Anniston Museum of Natural History for
11 the outreach teacher. So that was my --

12 I wanted to do something for the
13 community. I felt frustrated that there
14 was no one school system that I could
15 reach out to here. And if you live
16 here, you understand that the school
17 systems are a problem in this community.
18 I wanted to be able to do something that
19 would reach out to all schools in
20 greater Calhoun County without
21 particularly funding one school yet
22 impact the education of students across
23 the county system. And we worked with

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1 the Anniston Museum of Natural History
2 for this program.

3 Q. Other than that, did your general
4 contributions go up as a result of her
5 suggestions to you?

6 A. No. That was the only increase we saw,
7 was that special one-time grant -- well,
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MAYASKY

- 8 three-year grant. I'm sorry. We funded
9 that position for three years.
- 10 Q. So the twenty thousand dollars came for
11 three years, for a total of sixty
12 thousand dollars?
- 13 A. Yes.
- 14 Q. Y'all didn't make any additional
15 contributions during the time that you
16 were here than you had previously --
- 17 A. I don't remember more monies,
18 Mr. Stewart. I remember, if anything,
19 maybe shuffling some of the monies down,
20 giving less to the United Way and more
21 to the schools.
- 22 Q. Did she have something to do with that
23 suggestion?

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- 1 A. No. Again, that was probably my own
2 suggestion. Because my assessment of
3 what was needed in the community was
4 that we wanted to help the schools. It
5 was something I personally believed in,
6 and I wanted to see our philanthropic
7 efforts going in that direction. I
8 consulted with her on it, talked about
9 it.
- 10 Q. Did you have anything to do with the
11 fifteen hundred dollar contribution to
12 the science department out at Wellborn?
- 13 A. That's not the number I recall. I don't
- Page 215

MAYASKY

14 think it was fifteen hundred dollars. I
15 think it was more like a couple thousand
16 dollars. But that was an ongoing --
17 again, a part of the Chamber of Commerce
18 Adopt-A-School program. They have long
19 been our Adopt-A-School.

20 Q. So you generally gave to an educational
21 program?

22 A. Yeah.

23 Q. Who would have made the determination to

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1 pave the parking lot out there?

2 A. Pave the parking lot at Wellborn school?

3 Q. Yes.

4 A. I would have nothing to do with that.

5 Q. Are you familiar with the fact that that
6 was done?

7 A. No.

8 Q. Is that something out of the ordinary
9 for y'all to do?

10 A. We may have done it. I have no
11 knowledge of doing it. We would donate
12 equipment to the school, excess
13 equipment, things like computers, faxes,
14 scientific equipment. So it's not out
15 of the ordinary.

16 Q. What other assistance did they give you?
17 Did they help you in preparing the
18 speeches that y'all might make to the
19 civic clubs, giving you suggestions as

20 to what you might say?
21 A. Yes.
22 Q. Did they help you write those speeches?
23 A. I would generally draft something up and

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1 then run it by them, and they would
2 maybe modify it or change it, add to it,
3 clarify it.
4 Q. Do you have copies of those somewhere?
5 A. The only copy of the talking points I
6 have -- and I don't have now -- are the
7 talking points that were used in the
8 community meetings.
9 Q. Okay. Who would have those?
10 MR. PECK: You have them.
11 MR. STEWART: We have them?
12 A. Yeah. Those were produced.
13 Q. Did they have anything to do with those?
14 A. Yes.
15 Q. The public relations people?
16 A. Yes.
17 Q. Did your in-house legal people go over
18 any of those at any point in time?
19 A. Yes.
20 Q. So each time you would make a talk to
21 the civic clubs or the community groups,
22 your in-house legal people would look at
23 -- I don't want to know what they told

1 you -- but your in-house legal people
2 would look at it and your public
3 relations people would look at it?

4 A. No, they would not. I would say that
5 they helped me to develop those general
6 talking points, which were -- I then was
7 able to use these -- If I talked to a
8 civic organization, I would use those
9 general talking points.

10 Q. Was there a point in time when you all
11 made available to the Department of
12 Public Health, Brian Hughes and those
13 folks, the Prudential relocation program
14 number?

15 A. I believe we gave them copies of the
16 program. I know we gave ADEM copies of
17 the program. Since Alabama Department
18 of Public Health is a subset agency of
19 ADEM --

20 Q. Is that your understanding?

21 A. That was my understanding. I remember
22 ADEM telling us that they paid part of
23 Brian Hughes' salary. So I would assume

1 by giving things to ADEM they also made
2 their way to the Alabama Department of
3 Public Health.

4 Q. Did y'all work with them closely on
5 trying to relocate people, Dr. Hughes?

MAYASKY

- 6 A. No. Generally that was handled between
7 the residents and Prudential.
- 8 Q. Okay. Was that particular person who
9 handled the sale -- or the purchase of
10 property, rather, the relocation
11 program, located in the facility on-site
12 at the plant?
- 13 A. Yes, sir.
- 14 Q. A Prudential person?
- 15 A. Yes, sir. For a while there was a
16 trailer on the plant that was manned or
17 personed by a Prudential employee. And
18 then after that person was no longer
19 there, then there was an 800 number they
20 could call and talk to basically that
21 same person.
- 22 Q. So if someone at ADEM or someone at the
23 public health department had the 800

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- 1 number, y'all would have given it to
2 them?
- 3 A. If they received our materials, they got
4 the number also.
- 5 Q. Now, let me ask you. What did the other
6 two people -- You mentioned what this
7 other woman did for you. What did the
8 other two people with the public
9 relations thing do specifically for you
10 in connection with the PCB problem?
- 11 A. Diane Herndon, when she came into the

MAYASKY

12 role, basically did the same sort of
13 thing. I would consult with her about
14 -- if I had any speeches to give or
15 discussions or anything, that she just
16 -- probably because Beth had set up so
17 much that Diane really didn't have much
18 involvement. And then Kevin Cahill, the
19 last person I talked about
20 transitioning, was coming in just as I
21 was leaving, so I didn't have a whole
22 lot of interaction with him.
23 Q. What about dealing with the press? Did

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1 they assist you in dealing with the
2 press and formulating a plan to deal
3 with the press about this particular
4 problem, help you prepare press releases
5 and things like that?
6 A. If there was a press release to be
7 prepared, they would help me to prepare
8 that. But I have been trained in media
9 relations early on in my career, back at
10 Nitro, West Virginia.
11 Q. Who did you contact -- First, what did
12 that training consist of?
13 A. It was done by Ryan and Associates,
14 which is a consulting firm in
15 Charleston, West Virginia. It consisted
16 of practice and presentation in front of
17 a camera, understanding different media,

MAYASKY

18 in that you understand timetables, that
19 an afternoon paper needed to have any
20 statements they needed by noon to make
21 the afternoon paper; a television
22 station makes the six o'clock news, and
23 you needed to have your quote by two

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1 o'clock; the difference in context, the
2 way they approach things. The newspaper
3 would require generally more detail,
4 better to give them information than ask
5 them to follow up with questions. A
6 television station was more interested
7 in the sound bites, so to speak, looking
8 for that one impact of the sound bite.

9 Q. Who was it that came up with the
10 proposal, Mr. Mayausky, or the
11 statement, Mr. Mayausky, that these
12 people should be moved out of the area
13 if they didn't want to be affected by
14 PCBs? Did that come from you, or did
15 that come from somebody -- sort of a
16 Monsanto resident -- I mean, a Monsanto
17 employee quoted as saying that the
18 residents that wanted to avoid the
19 problem should have moved out long ago.

20 A. You are talking about a newspaper
21 article?

22 Q. Yes.

23 A. That was not a quote from me.

- 1 Q. Was that a quote from somebody with
2 Monsanto?
- 3 A. If I recall correctly, it was a quote
4 from our attorneys.
- 5 Q. Oh, your attorney?
- 6 A. I believe so.
- 7 MR. PECK: I don't remember saying
8 that.
- 9 Q. Are you talking about an in-house
10 attorney?
- 11 A. When you say in-house, a Monsanto
12 attorney?
- 13 Q. Yes.
- 14 A. No, I don't think it was.
- 15 Q. Did you ever make such a statement,
16 Mr. Mayausky?
- 17 A. Absolutely not.
- 18 Q. Did you ever see in writing from the
19 company any such position that y'all
20 took in connection with -- that was
21 released to the press other than that
22 statement from the attorney?
- 23 A. May I ask a question? Are you saying

- 1 did I see anything that said that the
2 residents should have moved out?
- 3 Q. other than in the newspaper.
- 4 A. No.

MAYASKY

- 5 Q. I'm talking about in a written document
6 that Monsanto prepared that said that
7 the residents should have moved out, if
8 they didn't want to be contaminated, a
9 long time ago?
- 10 A. No, sir. I never saw anything from
11 Monsanto on that.
- 12 Q. And that's a rough paraphrase of what
13 they said in the newspaper article.
- 14 A. I remember the statement vaguely.
- 15 Q. Who is it that you dealt with personally
16 at the press here in the local area?
- 17 A. It was a number of people. Again, at
18 The Anniston Star it was -- The first
19 reporter we had lots of contact with was
20 Shawn Riley. Then he moved on. And
21 then we talked with Elizabeth Bazulo and
22 Tom Spencer, were two other reporters.
23 And then from The Birmingham News was

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- 1 Rose Livingston. From the newspapers
2 (sic), I don't remember. There was a
3 reporter from TV 40, and there was a
4 reporter that came out from the
5 Birmingham station, 13.
- 6 Q. Did you ever have an occasion to sit
7 down and talk to the folks who
8 editorialized at The Star, Chris
9 Waddell, Brandy Ayers?
- 10 A. Chris Waddell was in a presentation that
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11 I talked with a group called CUL,
12 Committee of Unified Leadership. Chris
13 Waddell was a member of that group. And
14 sometime in 1995, probably the best I
15 can pin it down, I met with that group
16 and talked about the sampling and the
17 community issues of PCBs.

18 Q. Okay. And did you ever go to The Star
19 or go to the TV stations and sit down
20 and talk with people other than the
21 regular work reporters?

22 A. I talked with Randolph Murray when he
23 was the editor there, but it was totally

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1 unrelated to PCB issues. It was just he
2 and I talking. I also had a
3 relationship from knowing and talking
4 with Pat -- He has since left The
5 Anniston Star too. I can't remember
6 Pat's last name. I talked with him.

7 Q. About PCBs?

8 A. No. Just general issues.

9 Q. What general issues did you talk with
10 him about?

11 A. I can remember having a conversation
12 with Randolph Murray about what it took
13 the run a newspaper, how he had a talent
14 side of running a newspaper and the
15 reporters were temperamental.

16 Q. It wasn't about PCBs on Monsanto

17 property?

18 A. No.

19 Q. Did you ever provide any background

20 material to The Star or background

21 material to any of the local radio

22 stations or TV stations?

23 A. To the reporters, the ones we talked

278

1 about, Tom Spencer, Shawn Riley, and

2 Elizabeth Bazulo, yes.

3 Q. What form did that take?

4 A. Shawn Riley actually came out to the

5 plant and had a detailed tour of the

6 plant, took him through processes, took

7 him to the landfill.

8 Q. When did you do that?

9 A. That was -- I believe that was late 1994

10 or early '95.

11 Q. Okay. And who suggested that you do

12 that?

13 A. The public relations people suggested

14 it, plus it was a good turnover for him.

15 I remember the prior plant manager, Bill

16 Difur, came over from his new job. It

17 was a good turnover since Shawn knew

18 Bill, for him to meet me and also to

19 visit the plant.

20 Q. Now, did you -- At the time that you

21 talked to him, did you talk to him

22 specifically about PCBs and about the

23 landfills and --

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1 A. Yes.

2 Q. -- their effect on the area?

3 A. Yes. The main thing we talked to him

4 about at that time was the west end

5 landfill, because that was --

6 Q. Did you take him to the south end

7 landfill?

8 MR. PECK: West end landfill? You

9 said west end landfill.

10 Q. I was asking did you take him to the

11 landfill that was south of 202?

12 A. Yes. We took him up on top of the south

13 end landfill.

14 Q. And did you talk about any findings that

15 you had at that point in time that

16 indicated that there might be a problem

17 there?

18 A. I don't think we had a finding then. In

19 fact, if I remember correctly, he wrote

20 an article, and the photograph for that

21 article was taken from the south end

22 landfill, back towards the plant.

23 Q. Did he write an article after y'all went

280

1 up there?

2 A. Yes, sir.

MAYASKY

- 3 Q. Was that in fact before you talked to
4 residents in the area?
- 5 A. Yes, sir, as far as I remember, it was.
- 6 Q. Did the public relations people tell you
7 that it would be wise for you to do that
8 so you could get the paper on your side,
9 Mr. Mayausky?
- 10 A. Generally, again, through my media
11 training, I understood that you wanted
12 an effective presentation of your story.
13 So, yeah. We took that upon bringing
14 them in so they could understand our
15 side of the issues.
- 16 Q. Now, what about Ms. Bazulo? Did you
17 ever provide her any background
18 information?
- 19 A. The background -- I believe it was
20 either her or Tom Spencer who received
21 copies of the property purchase plan.
22 Ms. Bazulo also -- I can remember giving
23 her our contact list, the same list that

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- 1 we would give to anybody who asked about
2 health consultations, the list of names
3 and numbers on that. She got that from
4 us. She was also at the community
5 meetings that we held, so she picked up
6 some of those materials there. She
7 visited the plant -- I don't remember
8 her having a detailed tour -- as did Tom

9 Spencer. He was at the plant.
10 Q. When she visited the plant, who did she
11 talk to?
12 A. Myself, Robert Jones. Mainly myself.
13 Q. Okay. And what was the purpose of that
14 conversation, the PCB problem and the
15 situation that y'all had?
16 A. Yeah. We were -- At the time I remember
17 that, we were already moving into the
18 property purchase program. And where we
19 used to have one reporter to talk to,
20 Shawn Riley, they seemed to tag-team us,
21 with Tom Spencer looking at the -- He
22 was based in Montgomery, and he would
23 look at the state side of the issues and

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1 the regulatory aspects; and Bazulo was
2 actually tagged as their health
3 reporter, but she would look at the more
4 human side of the issues and the health
5 results of the issues.
6 Q. In addition to contacting the press and
7 the TV and radio and newspaper, did you
8 all also contact community leaders as a
9 result of the public relations folks'
10 suggestion?
11 A. I wouldn't say it was as a result of
12 public relations' suggestions, but we
13 began what we call a road show, for lack
14 of a better term, where we would present

MAYASKY

15 to the noon Rotary of Anniston, the
16 Lion's Club, the Historical Society,
17 basically any group we could get on
18 their docket. We would meet with them
19 and talk about the program and what we
20 were trying to do. This was well into
21 the property purchase program and
22 beginning to develop some plans for the
23 sedimentation pond.

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1 Q. And that was in '94 and '95?

2 A. That would have been after the property
3 purchase plan was already started up, so
4 it would have been '95, late '95. Prior
5 to that I made some individual contacts
6 to people like the president of the
7 Chamber of Commerce, who was acting
8 president at the time, the ex-FBI agent.
9 Q. Larry Sylvester?

10 A. Larry Sylvester -- thank you -- who was
11 the acting president of the Chamber of
12 Commerce. He was one person I talked
13 to.

14 Q. Did y'all ever brief the chamber or any
15 group in the chamber?

16 A. Yes. Later on in that same time frame,
17 when we were talking to the Lion's Club
18 and folks like that, we talked to the
19 board of directors at the Chamber of
20 Commerce.

MAYASKY

21 Q. What was the substance of your
22 conversation with them?
23 A. We came in and explained the elements of

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1 the property purchase program, the
2 sedimentation pond we would be building,
3 what we had done at the west end
4 landfill, and at that time any future
5 activities we might have with the
6 remediation efforts.
7 Q. Did you talk in that time frame about
8 the PCBs, to those people about PCBs and
9 the problems that it might create for
10 the environment?
11 A. All the conversations dealt with talking
12 about PCBs. And if health concerns or
13 health questions came up, we were always
14 prepared to give them the list of
15 contacts.
16 Q. No. I mean in the course of your
17 conversations that you had with the
18 chamber or the press or anything, did
19 you ever say anything about the problems
20 it might create for people being exposed
21 to them at the level that these people
22 had been exposed to out there?
23 MR. PECK: Wait a minute. Object

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1 to the form of the question.
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MAYASKY

- 2 A. We would -- Again, if health related
3 questions came up, we would say what we
4 knew, that we consulted with the
5 internal and external experts and they
6 didn't feel like we had a problem. If a
7 particular person in the audience had a
8 concern, we had this list of people they
9 could call.
- 10 Q. And they basically told them the same
11 thing you just got through telling me?
- 12 A. I don't know. I never called them. I
13 know what they told me is they didn't --
- 14 Q. Which is the same you just got through
15 telling me?
- 16 A. But bear in mind, one of those contacts
17 is Brian Hughes, and he has never told
18 me his official position.
- 19 Q. What relationship, if you know, did
20 Dr. Mueller have with -- is it
21 Dr. Foresman?
- 22 MR. PECK: Forrester.
- 23 Q. Were they colleagues?

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- 1 A. I believe they are.
- 2 Q. What relationship is there between
3 Dr. Hughes and the department that you
4 talked to?
- 5 A. Dr. Hughes?
- 6 Q. Brian Hughes.
- 7 A. None that I'm aware of.

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MAYASKY

- 8 Q. Isn't he being trained there?
- 9 A. I don't know. I don't know where
- 10 Dr. Hughes did his training.
- 11 Q. Tell me, if you would, if y'all had any
- 12 other agents that represented you in the
- 13 property purchase program other
- 14 than Prudential.
- 15 A. Well, in terms of agents, there were
- 16 appraisers that people could choose from
- 17 to have their properties appraised that
- 18 were selected by Prudential.
- 19 Q. Who were those appraisers?
- 20 A. I don't know.
- 21 Q. Did y'all have any Realtors that you
- 22 dealt with?
- 23 A. No, sir.

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- 1 Q. Did you ever deal with Harris McKay
- 2 Realty?
- 3 A. No, sir. Yes, yes, I did. That's the
- 4 one that Walt Frazier worked for,
- 5 correct?
- 6 Q. You tell me.
- 7 A. I think so. I think so.
- 8 Q. And how did you deal with Walt Frazier?
- 9 A. Mr. Frazier was a son of one of the
- 10 residents who we were trying to purchase
- 11 the property, that's Dorothy Hammock.
- 12 And I remember at the community meeting
- 13 Mr. Frazier spoke up and offered his

MAYASKY

14 services to the residents who were
15 involved -- who might be thinking of
16 participating in the property purchase
17 program.

18 Q. So y'all began to deal with him?

19 A. No. I never dealt with Mr. Frazier. In
20 fact, later on he and I had an
21 altercation.

22 Q. And what was that altercation about,
23 Mr. Mayausky?

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1 A. Mr. Frazier threatened me.

2 Q. Where was that?

3 A. Called me on the telephone.

4 Q. And threatened you?

5 A. Absolutely.

6 Q. What about, the property purchase
7 program?

8 A. It was at the time we were demolishing
9 buildings in the area, and he was very
10 concerned about his mother and basically
11 told me if we continued to show up down
12 there to demolish buildings that he
13 would shoot my ass.

14 Q. Walt Frazier told you that?

15 A. Yes.

16 Q. Did y'all ever have Walt asking people
17 to sell their houses to you?

18 A. No. I had no business relationship with
19 Mr. Frazier.

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MAYASKY

20 Q. Did you ever pay him any money?
21 A. Absolutely not to my knowledge.
22 Q. Okay. What about conversations with
23 people who were members of Mars Hill

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1 Missionary Baptist Church? Did you ever
2 have any while you were here?
3 A. I'm sorry. Could you ask the question
4 again?
5 Q. Conversations, other than the ones we
6 have mentioned with Mars Hill Missionary
7 Baptist Church.
8 A. It was very unclear to me who were
9 members of the church and who were not
10 numbers of the church. I found out
11 later, I believe, some of the residents
12 that I knocked on doors were members of
13 the church, like -- well, I didn't knock
14 on her door. But Cassandra Roberts, her
15 mother, Mrs. Meeling, and her sister,
16 Mrs. Meeling's sister who lived next
17 door, I think, was also a member of that
18 church. It was difficult for me to
19 distinguish who was a member of that
20 church and who wasn't. I met with the
21 deacon board and those recognized as
22 officers of the church.
23 Q. When exactly did you meet with or talk

1 to Cassandra Roberts or Mrs. Meeling?

2 A. My first approach to Mrs. Meeling was
3 whenever we started to get access
4 agreements down around Bethel Baptist
5 Church and the residents around Bethel
6 Baptist Church. I would have to go back
7 and see when I actually first received
8 those. I would say the April time
9 frame.

10 MR. PECK: '95?

11 THE WITNESS: '95.

12 Q. Okay.

13 A. And Cassandra owned some property in
14 that area. So I remember her talking
15 with me maybe on the phone or in person
16 about that property. She also showed up
17 at some of the community meetings we
18 had, and I talked with Cassandra. I've
19 talked with both Mrs. Meeling, on her
20 doorstep, and her sister. I remember
21 when we talked with Cassandra Roberts we
22 talked about the fact they used to run a
23 beauty salon out of the house next door,

1 that that business is now defunct, that
2 Mrs. Meeling used to be a beautician,
3 and they actually had a shop there.

4 Q. When did you have a conversation with
5 them about the church, Mars Hill?

6 A. Oh, I don't remember -- If your question
7 was did I talk with them about Mars
8 Hill, I don't ever recall talking with
9 them about Mars Hill. Oh, I stand
10 corrected.

11 I remember mentioning to
12 Mrs. Meeling that I was talking with the
13 church across the street, Bethel, and
14 talking with Rev. Fields. And I
15 remember her mentioning to me that she
16 sometimes attended that church, although
17 she was a member of Mars Hill Church.

18 Q. But you never talked to Cassandra, and
19 you never talked to Mrs. Meeling or any
20 group of people out at the church?

21 A. No.

22 Q. What did you understand your
23 responsibility was if a person was

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1 represented by a lawyer and was a member
2 of that church?

3 A. My understanding was that any person who
4 showed up on the list that began to
5 appear in late 1995 and '96, that I
6 should not talk with them.

7 Q. Okay. And why is that, Mr. Mayausky?
8 why did you understand that?

9 A. The list said, "You should have no
10 further contacts with these people."

11 Q. Did you comply with that?

MAYASKY

12 A. To the best of my knowledge, I did. It
13 was very difficult, because the list was
14 getting to be hundreds of people, and I
15 didn't know who they were. So in
16 essence, I stopped going door to door,
17 because I didn't know whose door I was
18 knocking on and who was on the list and
19 who wasn't on the list. So I basically
20 stopped doing direct community contacts
21 unless I could distinguish that somebody
22 was on the list.

23 Q. And that's because they were represented

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1 by an attorney, and you understood that
2 was improper to do?

3 A. Well, you in particular, Mr. Stewart.
4 There were other attorneys that we could
5 talk with who had clients, that I could
6 talk with their clients.

7 Q. Who was that?

8 A. Grover Hankins.

9 Q. Is that by some special permission by
10 him?

11 A. I just never received any correspondence
12 from him telling me I couldn't talk with
13 them, and he never seemed to stop me
14 from talking to them.

15 Q. So your understanding was if they were
16 represented by a lawyer, unless they
17 told you not to contact a client, you

18 MAYASKY
18 could contact them, and you did?
19 A. Yes, sir.
20 Q. Okay. Now, did you do that on advice of
21 counsel, Mr. Mayausky?
22 MR. PECK: Objection. You can't
23 answer that question. He

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1 can't answer that question.
2 It is privileged.
3 Q. Mr. Mayausky -- Well, let me ask it this
4 way: Did you do that after talking to a
5 lawyer?
6 MR. PECK: You can answer that. I
7 don't think it gets him
8 anywhere.
9 A. I made that decision after talking with
10 a lawyer, yes, sir.
11 Q. Okay. Tell me, if you would,
12 Mr. Mayausky, if you have ever seen this
13 letter right here.
14 MR. STEWART: Mark that as
15 Plaintiffs' Exhibit Eight.
16 (Plaintiffs' Exhibit Number
17 Eight was marked for
18 identification.)
19 A. Okay.
20 Q. Now, this is from Mr. Jones, the
21 environmental supervisor, dated July the
22 11th, 1994, Exhibit Eight is, a letter
23 to Mr. Phillip Davis, industrial branch,

- 1 water division of ADEM in Montgomery.
- 2 A. Uh-huh (indicating yes).
- 3 Q. It refers to, does it not, Mr. Mayausky,
- 4 some work that was going on on the
- 5 landfill across Highway 202 -- that
- 6 plant site; is that correct?
- 7 A. Yes. It talks about some work in the
- 8 old Monsanto landfill located across 202
- 9 from the plant site.
- 10 Q. Would that not be what we have briefly
- 11 described in Plaintiffs' Exhibit Five
- 12 where that work was taking place?
- 13 A. Yes, sir.
- 14 Q. And that would be in the cells that are
- 15 located south of 202. Let me ask you to
- 16 mark north on this map as being
- 17 generally in this -- Is that right?
- 18 A. North is generally that direction, yes,
- 19 sir.
- 20 Q. Now, on Plaintiffs' Exhibit Five.
- 21 So what do you know about the work
- 22 that was done over there on the south
- 23 end? This was about the time you came

- 1 to the plant as the plant manager,
- 2 wasn't it?
- 3 A. Yeah. I was still in transition and
- 4 didn't officially show up until August.

MAYASKY

5 Q. This is what, three weeks before you got
6 here?

7 A. Yes. This was -- We talked earlier
8 about the clean decontaminated equipment
9 that was placed up in the landfill.
10 This was removing some of that equipment
11 and transporting it to Emelle. And then
12 to reseed, revegetate the area where it
13 was taken from. And the second
14 paragraph talks about some additional
15 sampling that was to be done.

16 Q. Well, the additional sampling I will get
17 to in just a minute. But the capping
18 and reseedling of the area where the
19 equipment was removed was where in
20 connection with Exhibit Five? Can you
21 show us on that where it would come?

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

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1 A. I don't recall exactly where it was. It
2 would be hard for me to place on that
3 map. I know as you drove up the access
4 road that it was somewhere in this
5 general vicinity (indicating).

6 Q. Can you just make a little circle mark
7 there and put equipment, just e-q-u-i-p
8 there?

9 A. (Executed by the witness.)

10 Q. And that's where you understand the old
Page 240

MAYASKY

11 PCB equipment was buried --
12 A. Yes.
13 Q. -- that they removed?
14 A. Yes, sir.
15 Q. Is that the equipment that you
16 previously discussed was part of the
17 production facility that had been taken
18 down and cleaned and then buried in that
19 area?
20 A. Yes, sir.
21 Q. Now, Mr. Mayausky, it also talks in this
22 letter from Mr. Jones to Mr. Davis,
23 Mr. Phillip Davis, Plaintiffs' Exhibit

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1 Eight, about once the work on the
2 landfill has been completed and
3 additional samples were taken, just
4 before that it says, "In conjunction
5 with this effort we will be sampling
6 storm water discharge from the landfill
7 at its outfall." Where is that?
8 MR. PECK: Object to the form of
9 the question, lack of
10 qualification.
11 A. If I remember correctly -- and I don't
12 know exactly where the samples were
13 pulled -- I would say it was in the
14 drainage ditches that came off of here
15 and somewhere along this site, because
16 they tended to run along this side of
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17 202 (indicating).
18 Q. Along the south side of 202? Can you
19 just draw a little picket fence type
20 thing where you think those samples were
21 taken?
22 A. I don't know where the samples -- I'm
23 only drawing where the ditch ran.

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1 Q. And that would be the outfall in your
2 opinion that he was referring to in his
3 letter?
4 A. I would think so, yes.
5 Q. And tell me, if you would, Mr. Mayausky,
6 if it would be fair to say that those
7 samples were performed or taken sometime
8 in July or August of 1994.
9 MR. PECK: Object to the form of
10 the question, calls for
11 speculation.
12 A. No. My recollection is they weren't
13 taken at that time because we had to
14 wait for a significant rain event. And
15 what was described to me as a
16 significant rain event is a certain dry
17 spell period followed by a certain
18 amount of rain in a given time before
19 you could pull the samples. So we had
20 to wait for nature to tell us when we
21 could sample for these.
22 Q. When did that happen?

23 A. I don't recall exactly when the samples

300

1 were taken.

2 Q. Well, it was in '94, wasn't it?

3 A. It was probably late '94, yes.

4 Q. What did you find when you did the
5 sampling in late '94?

6 A. If I remember correctly, these results
7 -- And it may have been early '95. I
8 don't remember. But these results were
9 found to be clean, very undetectable
10 parts of PCBs from this ditch area.
11 That's my recollection of it.

12 Q. And who performed those tests?

13 A. Garrity and Miller, I would assume.

14 Q. So they were clean tests that were
15 performed in '94 in connection with this
16 test here?

17 MR. PECK: Or early '95, I think
18 he said.

19 A. And again, I'm fuzzy on the timetable.
20 But late '94 or early '95, from this
21 ditch area right here (indicating).

22 Q. Would you call those grab samples,
23 Mr. --

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1 A. If I remember correctly, there were
2 grabs and some composites.

MAYASKY

3 Q. And did y'all report those to ADEM --

4 A. Yes, sir.

5 Q. -- as you have indicated?

6 A. Yes.

7 Q. And those indicated basically no problem

8 at that time?

9 A. In that ditch, that's true, yes, sir.

10 Q. Okay. Now, y'all were -- had some

11 wells, did you not, that were located

12 near that landfill?

13 A. There were wells, ground water wells

14 around that landfill, yes, sir.

15 Q. What were you testing for?

16 A. In those ground water samples we

17 generally tested for parathion.

18 Q. Why would you be testing for parathion,

19 because it was buried there?

20 A. It was used for parathion storage, yes,

21 sir.

22 Q. What else did you test for?

23 A. I don't recall exactly what else. But

302

1 that was the one main thing that I

2 remember that we tested for. Those were

3 wells which captured that ground water

4 and sent it to our waste treatment plant

5 for treatment.

6 Q. Did you ever check in that general area

7 during the time frame that you were

8 here, from August of '94 until you left,

9 for PCBs?
10 A. Yes. There were tests of the ground
11 water for PCBs. And if I recall
12 correctly, there was none detected in
13 the ground water monitoring wells.
14 Q. That was your recollection of how it
15 was?
16 A. Yes.
17 Q. And that was for the full time that you
18 were here?
19 A. That I recall, yes, sir.
20 Q. Who told you that?
21 A. Robert Jones.
22 Q. And that was also true of the Western
23 landfill?

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1 A. There were no ground water monitoring
2 wells right up against the western
3 landfill. There were some further north
4 of there, and those were tested also.
5 Q. And you never found any PCBs?
6 A. Not to my knowledge, that I remember,
7 no.
8 (Plaintiffs' Exhibit Number
9 Nine was marked for
10 identification.)
11 Q. Let me show you what is Plaintiffs'
12 Exhibit Nine. This is a letter from
13 Bruce Mathews, who is an investigator
14 with the Office of the Attorney General

15 MAYASKY
15 in the State of Alabama. And it refers
16 to opening of case files which pertain
17 to Monsanto Chemical Company in
18 connection with PCB contamination of the
19 Choccolocco Creek area.

20 Are you familiar or did someone
21 make you familiar with that particular
22 problem, Mr. Mayausky?

23 A. No. I was not aware that the attorney

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1 general asked for the case to be opened
2 again. This is the first time I have
3 ever seen this. I was aware that Tull
4 Chemical had had some -- may have been
5 even action by the state as a result of
6 some PCB release that they had to Snow
7 Creek. I was told about that.

8 Q. Who told you about that?

9 A. Jerry Brown or Barbara Jones. I can't
10 remember the specific conversation.

11 Q. When did they tell you that took place,
12 in this time frame or some earlier time
13 frame or later than this?

14 A. Well, in February -- I was still in West
15 Virginia. So no, it wasn't in this
16 frame. It would have been after I came.

17 Q. Tull Chemical Company --

18 MR. PECK: I think he is asking
19 you when the Tull Chemical
20 incident occurred, not when

21 MAYASKY
 you knew about it.
22 MR. STEWART: Right.
23 A. Oh, I don't know the date it occurred.

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1 I never nailed the date down.
2 Q. Was it before you came here?
3 A. Yes.
4 Q. And did you understand at that time that
5 the problem at Tull Chemical Company
6 that was actioned for by the attorney
7 general had to do with PCB
8 contamination?
9 A. Yes, sir.
10 Q. And do you know how big Tull Chemical
11 Company is? Are you familiar with the
12 company?
13 A. I have only seen it from driving along
14 the road and what I was told by Robert
15 Jones and Jerry Brown, that it's not a
16 very big facility.
17 Q. Okay. And it's my understanding, then,
18 that this action took place before you
19 came here and it dealt only with Tull
20 Chemical Company. Is that what you
21 understand?
22 A. My understanding is that Tull Chemical
23 was cited -- and they may not even have

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1 been cited -- but asked to clean up by
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2 the state for some PCB material they
3 released to Snow Creek.

4 Q. Okay. Do you know or did Robert or
5 Jerry Brown tell you if Monsanto was
6 involved in any way, shape, form, or
7 fashion with that particular problem.

8 A. The Monsanto connection came up that --
9 I don't even recall how the PCBs were
10 discovered. But there was a finding of
11 PCBs in the creek. And in tracing it
12 back, it was traced back to Tull
13 Chemical. And they did approach us --
14 they knew we used to manufacture it --
15 and ask us questions, but that the
16 ultimate finding was that it was Tull
17 Chemical who released that material.

18 Q. And either Robert or Jerry told you
19 that?

20 A. Yes, sir.

21 Q. When you say they approached us, who was
22 it that you understood approached
23 Monsanto?

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1 A. ADEM.

2 Q. Okay. And so did ADEM indicate -- Did
3 Monsanto or Robert and them indicate
4 that Monsanto had told them that they
5 didn't have any involvement in it and
6 ADEM agreed with that?

7 A. I don't remember the details. I just
Page 248

MAYASKY

8 know that the ultimate finding was it
9 was a release from Tull Chemical.
10 Q. That went into Snow Creek?
11 A. Yes, sir.
12 Q. And ultimately -- Did you understand
13 that came about because of some problem
14 with Choccolocco Creek or Logan Martin?
15 Is that how you understood that came
16 about?
17 A. I would hate to speculate, but it must
18 have been. Logic says it would have to
19 be.
20 Q. Okay. Then let me understand,
21 Mr. Mayausky. You are saying that Tull
22 Chemical Company, which is a smaller
23 company than Monsanto, can release

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1 chemicals into Snow Creek and that could
2 eventually find its way into Choccolocco
3 or Logan Martin, but y'all couldn and it
4 wouldn't make its way down there. Is
5 that what you are telling me?
6 MR. PECK: Object to the form of
7 the question. It calls for
8 speculation.
9 A. I only speculated that there was
10 something found in Snow Creek that
11 caused ADEM to start looking and found a
12 release from Tull Chemical.
13 Q. And Robert Jones and Jerry Brown told
Page 249

MAYASKY

14 you -- never told you that there was
15 some concern expressed about y'all's
16 involvement in it?
17 A. I was told that they talked to us about
18 it, yes, sir.
19 Q. But that was resolved, and y'all were
20 found faultless, blameless, or whatever?
21 MR. PECK: Object to the form of
22 the question.
23 A. I would assume that was the outcome,

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1 because I don't remember any specific
2 action that came out of this.
3 Q. Who did Mr. Brown or Mr. Jones indicate
4 that they dealt with from the state,
5 from ADEM, in connection with this?
6 What particular individual? Did they
7 mention the name of an individual they
8 dealt with?
9 A. No, sir.
10 Q. Who did -- You have indicated earlier
11 who y'all dealt with on the western
12 landfill. Who did y'all deal with on
13 the catchment basin at ADEM? Was it a
14 different person or the same person?
15 A. Generally it was the same people. But
16 by that time it was pretty much Jo
17 Hanson or Alan Faust who was doing the
18 direct dealings.
19 Q. You did not -- You didn't deal with
 Page 250

MAYASKY

20 those people?

21 A. No, sir.

22 Q. Let me ask you if you know anything
23 about the Monsanto Defense Group.

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1 MR. PECK: What?

2 MR. STEWART: Monsanto Defense
3 Group.

4 A. I have never heard of that group.

5 Q. Do you know of a group of insurance
6 companies known at the Monsanto Defense
7 Group that provided coverage to Monsanto
8 down through the years?

9 A. No, sir.

10 Q. Okay. Do you know whether or not,
11 Mr. Mayausky, that group or a group of
12 insurance companies has been involved in
13 anything that has to do with this
14 particular problem that y'all are
15 experiencing here?

16 A. No, sir.

17 Q. And in particular the Anniston plant.

18 A. I have never heard of that group, and I
19 know of no involvement in that group,
20 the Monsanto Defense Fund, with any of
21 the issues we had at the Anniston plant.

22 Q. It's Monsanto Defense Group, not
23 Monsanto Defense Fund. Have you ever

- 1 heard of that group of people before?
- 2 A. No, sir, never heard of that group.
- 3 Q. Anybody at St. Louis ever told you y'all
- 4 had some kind of relationship with that
- 5 group or any of those people?
- 6 A. No, sir.
- 7 MR. STEWART: If y'all would give
- 8 me a few minutes, I want to
- 9 talk to Charlie. I may be
- 10 close to winding up.
- 11 (A break was taken.)
- 12 Q. (By Mr. Stewart) Who was the previous
- 13 manager here at the plant?
- 14 A. William Difur.
- 15 Q. How long had he been here?
- 16 A. I don't know when he started, but he
- 17 left in June of 1994. I think he came
- 18 about 1992.
- 19 Q. Where did he go?
- 20 A. He went to Monsanto's Augusta plant that
- 21 produces Nutrasweet, actually a division
- 22 of Monsanto.
- 23 Q. Why was he moved from this plant?

- 1 A. Promotional opportunity.
- 2 Q. Okay. And where were you moved to?
- 3 A. Indian Orchard, Massachusetts.
- 4 Q. What kind of plant is that?
- 5 A. It's a solutia plant. Is that your

6 question?
 7 Q. What kind of product does it produce?
 8 A. It produces inner liner for safety
 9 windshields of automobiles.
 10 Q. What is your position there at the
 11 Indian Orchard plant?
 12 A. Plant manager.
 13 Q. Was that a promotion for you?
 14 A. Yes, sir.
 15 Q. Larger plant?
 16 A. Yes, sir.
 17 Q. More employees?
 18 A. Yes, sir.
 19 Q. Okay. Have you ever been told about a
 20 historical health study for the Anniston
 21 plant workers?
 22 A. Yes. We had a presentation from -- I
 23 don't remember the name of the gentleman

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1 from our corporate public health group
 2 -- talking about generally health
 3 studies of Monsanto workers, chemical
 4 workers, including Anniston chemical
 5 workers.
 6 Q. When was that done?
 7 A. When was the presentation done? I want
 8 to say it was fall of '95.
 9 Q. When was the health study done?
 10 A. I don't recall.
 11 Q. Did Monsanto conduct the study or have

MAYASKY

12 someone conduct the study?

13 A. Monsanto gathered the data and analyzed

14 the data ourselves.

15 Q. And was that related to exposure to

16 chemicals that these workers might have

17 had while they worked for Monsanto?

18 A. There were questions of where the people

19 may have worked, yeah. But it was in

20 general just our normal -- We have a

21 physical program we do with people to

22 study their health as they work for us.

23 Q. Where would that study be located?

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1 A. Somewhere in the corporate offices.

2 Q. How is it -- What's the title of it?

3 How would you ask for it?

4 A. I don't know. A health study of

5 Monsanto chemical workers. I really

6 don't remember the title of it.

7 Q. And do you know the general time frame

8 in which it was done, have any idea?

9 A. Oh, it was from the early '70s, when the

10 data started being collected, to

11 present.

12 Q. And were they looking for particular

13 diseases that people might have had?

14 A. I don't remember particular diseases,

15 but it did heart attack rates, high

16 blood pressure, cancer rates, anything

17 like that. I don't remember diabetes,

18 MAYASKY
but those things I do remember.
19 Q. So cancer, heart, high blood pressure?
20 A. High blood pressure.
21 Q. Any kind of liver problems or anything
22 like that?
23 A. I don't remember liver enzyme problems

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1 or anything like that.
2 Q. And did it give any findings -- When the
3 presentation was made, did they indicate
4 what the findings were?
5 A. I clearly remember the general findings
6 were that as a population our workers
7 were healthier than the general
8 population.
9 Q. Was this a study that was conducted
10 in-house? I believe I've asked you who
11 did it. But was it conducted in-house,
12 or did y'all farm this out?
13 A. My understanding, the way the study was
14 done was we collected the information
15 from the annual physicals we do, and it
16 was analyzed and compiled in-house.
17 Q. Was Dr. Kaley involved in the
18 presentation that was made here?
19 A. Dr. Kaley was down for that
20 presentation, yes, sir.
21 Q. And would he be familiar with the study?
22 A. Yes, sir. Dr. Kaley would be familiar
23 with the study.

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- 1 Q. Do you have regular medical testing done
2 by Monsanto?
3 A. Do I personally?
4 Q. Yes.
5 A. Yes.
6 Q. What have you been tested for?
7 A. Annual testing for general health,
8 hearing, sight, health history. I fill
9 out questionnaires on health history.
10 Q. Do they do a prostate test for cancer?
11 A. Yes, sir.
12 Q. Did Monsanto pay for that?
13 A. Yes, sir.
14 Q. Have you had any particular testing
15 that's different from what you normally
16 had since you have been here at the
17 Anniston plant?
18 A. No, sir. Every plant I have worked at
19 has had pretty much the same protocol of
20 testing.
21 Q. Was the Anniston plant profitable when
22 you were here?
23 A. Yes, sir. We had two product lines, two

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- 1 major product lines. Therminol was very
2 profitable, one of the better profitable
3 products for Monsanto. And PNP
4 para-nitrophenol was basically a

MAYASKY

5 break-even product, but it was a -- it
6 fed acetaminophen, and that was --
7 Q. Which was profitable?
8 A. Which was profitable. It fed -- a name
9 of Rhone Poulenc.
10 Q. Let me ask you this: Would the
11 remediation here or the cost of the
12 remediation here come out of the profits
13 of this local plant, or is that
14 something the company assumes?
15 A. No. What we have here is we send
16 forward a gross profit number, and then
17 from that are taken corporate items.
18 Any of the remediation work would come
19 out of those corporate items above the
20 -- We talk in terms of above the line,
21 above the plant line those would come
22 out. So the cost of remediation would
23 not impact --

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1 Q. The profitability?
2 A. -- the profitability of this site, no,
3 sir.
4 Q. Are you familiar with the cost of the
5 proposed remediation of at least the
6 western landfill?
7 A. I know that the western landfill cost
8 approximately five million dollars. I
9 have no idea of the cost for where we
10 have been since we have built the basin.

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MAYASKY

- 11 Q. What were the basins? Do you know what
12 they were?
13 A. No, sir, I don't.
14 Q. Was that for the total project over
15 there, capping that west end landfill?
16 A. Yes, sir.
17 Q. Westinghouse did that project. Do you
18 know the contractor that did the
19 catchment basins? Are you familiar with
20 those people?
21 A. No. I don't remember who was used. I'm
22 sorry. That escapes me.
23 Q. You dealt with Rev. Fields at the Bethel

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- 1 Church?
2 A. Yes, sir.
3 Q. Are you the one that negotiated with
4 Rev. Fields about that?
5 A. When you say negotiation, for the
6 construction of their church? Is that
7 what you are talking about?
8 Q. Yeah. Did you handle all that?
9 A. No, sir. I did not do any of the direct
10 negotiations. I began the initial
11 conversations. And then when it came
12 time to start working with them on the
13 construction of their church, it came to
14 either Jo Hanson or Alan Faust.
15 Q. Was anybody hired out of that church as
16 a consultant?

MAYASKY

17 A. Not that I'm aware of, no, sir.

18 MR. STEWART: I believe that's
19 all.

20 MR. PECK: Let me ask you. I
21 didn't get clear. Y'all are
22 going to take -- You are
23 taking Pearly. So can we

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1 just moot our motion for
2 protective order?

3 MR. STEWART: Let me see your
4 protective order, but I think
5 that's correct. Let me see
6 your protective order. We've
7 just got to have -- It is my
8 impression, yes, that's what
9 we are going to do.

10 The other thing is the
11 dates that y'all have set for
12 a couple of depositions, that
13 particular person on the
14 dates that you have offered
15 -- I have got to clear that
16 with Don Barrett. That's not
17 my deposition.

18 MR. PECK: Have we set a date for
19 that?

20 MR. STEWART: I believe there's a
21 date that Buddy has
22 indicated.

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MAYASKY

23 MR. PECK: I don't know if that's

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1 clear or not.

2 MR. STEWART: I'd have to check,
3 and let's get a date for
4 that. And then y'all have
5 noticed the 30(b)(6)
6 representative of the church
7 for the 15th.

8 MR. PECK: Yeah.

9 MR. STEWART: There's a good bit
10 of the information that y'all
11 already have, that you have
12 asked for in connection with
13 that. And in addition to
14 that, there's a good bit of
15 information y'all will have
16 by the time you get there.
17 Plus I'm going be talking
18 over the next couple of days
19 with the deacons, the
20 remaining deacons, and the
21 former pastors, and we'll set
22 those depositions. So I
23 don't really know what you

322

1 want to do. But if you want
2 a 30(b)(6) representative, we

3 MAYASKY
will be glad to sit down and
4 talk about these.
5 MR. PECK: Well, we just want to
6 make sure we have got it.
7 MR. STEWART: Huh?
8 MR. PECK: We filed it, so we want
9 to make sure we have got it.
10 MR. STEWART: You have most of it.
11 MR. PECK: We haven't taken
12 somebody -- You know, we have
13 taken a few depositions in
14 this case, is about all we
15 have done. But we haven't
16 taken anybody who clearly
17 speaks for the church. And
18 we wanted to make sure we got
19 it.
20 MR. STEWART: You have taken the
21 pastor and the chairman of
22 the deacon board.
23 MR. PECK: Right. We did that,

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1 right.
2 MR. STEWART: Both of those people
3 speak for the church fairly
4 effectively. And plus,
5 you've got every scrap of
6 paper that I can find that --
7 In other words, y'all have
8 been in the church with an

9 MAYASKY
architect and you've gone
10 through every single --
11 frankly every single piece of
12 property that they have got
13 there. of course, you've got
14 all the bank notes and
15 everything else. I really
16 don't know what else you will
17 find out about the church,
18 but we will be more than
19 happy to give you whatever
20 little bit of information --
21 I've talked to Buddy.
22 The spreadsheet is basically
23 what we are going to give you

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1 on those members. I'll try
2 to get that to you in the
3 next couple of days. I've
4 just got to catch up with
5 some depositions I've got to
6 do. And then Charlie has got
7 some sampling information
8 that we have been working on.
9 MR. CUNNINGHAM: Byron is supposed
10 to be mailing that.
11 MR. STEWART: And we will get it
12 to you. I don't know a whole
13 lot about -- much more that
14 you would need.

MAYASKY

15 MR. PECK: So you are going to get
16 that? You are going to try
17 to get up with the deacons
18 and see whether or not we can
19 get dates maybe next week,
20 the week of the 13th?
21 MR. STEWART: I'm going to try my
22 best to get those people.
23 Some of those people work,

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1 and their availability --
2 MR. PECK: We will work around
3 their schedules. Are you
4 doing -- I think Buddy gave
5 you that, did he not, Jerry
6 Brown and maybe --
7 MR. STEWART: Yeah. We are going
8 to take Jerry Brown and --
9 MR. PECK: On the 21st?
10 MR. STEWART: Yeah. We're going
11 to take those dates. And I'm
12 going to send him a letter
13 and send all this
14 information.
15 Now, I am not going to
16 sit up here for Andrew to be
17 the representative. I'm not
18 going to sit up here with
19 Andrew Bowie and have him go
20 through the same questions

21 MAYASKY that y'all asked him on the
22 first shot.
23 MR. PECK: I don't have any

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1 interest in that either.
2 MR. STEWART: That won't happen.
3 He will be our 30(b)(6)
4 representative. He will give
5 you the information. And if
6 you have it already -- we say
7 in our response to your
8 discovery requests that
9 you've got it. Because he
10 works, and it's awfully
11 difficult for him to get off
12 and come back. And
13 y'all already had him one
14 time.

16 (The deposition concluded at
17 4:35 p.m.)

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1 I do hereby certify that the witness
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MAYASKY

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 24th
20 day of April 1998.

21
22 Deborah Salers Garrett
23 Certified Shorthand Reporter
Registered Professional Reporter
Notary Public, Alabama-at-Large
My Commission expires: 3-7-2001