

IN THE CIRCUIT COURT OF
CALHOUN COUNTY, ALABAMA

JOHN E. MASSEY and
PEGGY MASSEY,

Plaintiffs,

vs

CV-96-657

MONSANTO COMPANY, et al.,

Defendants.

DEPOSITION OF: BRUCE ELLY

In accordance with Rule 5(d) of
the Alabama Rules of Civil Procedure, as
Amended, effective May 15, 1988, I, Susan
Masters Goldman, am hereby delivering to M.
JACK HOLLINGSWORTH, ESQ., the original
transcript of the oral testimony taken on
the 17th day of July, 1998, along with
exhibits.

Please be advised that this is
the same and not retained by the Court
Reporter, nor filed with the Court.

COPY

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CALHOUN COUNTY, ALABAMA

JOHN E. MASSEY and
PEGGY MASSEY,

Plaintiffs,

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MONSANTO COMPANY, et al.,

Defendants.

STIPULATION

IT IS STIPULATED AND AGREED, by
and between the parties through their
respective counsel, that the deposition of
BRUCE ELLY, taken before Susan Masters
Goldman, Certified Shorthand Reporter and
Notary Public at Hollingsworth and
Associates, 505 North 20th Street, 1615
Financial Center, Birmingham, Alabama,
35203, on the 17th of July, 1998,
commencing at 10:00 a.m.

IT IS FURTHER STIPULATED AND
AGREED that the signature to and the
reading of the deposition by the witness is
waived, the deposition to have the same
force and effect as if full compliance had

REGISTERED PROFESSIONAL REPORTERS

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

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

EXAMINATION BY:

Mr. Hollingsworth

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APPEARANCES

BEFORE:

Susan Masters Goldman, CSR, and
Notary Public.

APPEARING ON BEHALF OF THE PLAINTIFF:

M. Jack Hollingsworth, Esq.
Hollingsworth and Associates
1615 Financial Center
Birmingham, Alabama 35203

APPEARING ON BEHALF OF THE DEFENDANTS:

William S. Cox, III, Esq.
Suzanne Alldredge, Esq.
Lightfoot, Franklin & White
300 Financial Center
Birmingham, Alabama 35203

Also present: John Massey

1 I, Susan Masters Goldman, CSR,
2 acting as Notary Public, certify that on
3 this date as provided by Rule 30 of the
4 Alabama Rules of Civil Procedure, and the
5 foregoing stipulations of counsel, there
6 came before me at the law offices of
7 Hollingsworth and Associates, 505 North
8 20th Street, 1615 Financial Center,
9 Birmingham, Alabama, 35203, on the 17th of
10 July, 1998, commencing at or about 10:00
11 a.m., BRUCE ELLY, witness in the above
12 cause, for oral examination, whereupon, the
13 following proceedings were had:

14 BRUCE ELLY,
15 after having been first duly sworn,
16 testified as follows:

17 EXAMINATION BY HOLLINGSWORTH:

18 Q. Mr. Elly, could you state your
19 name for the record, please?

20 A. Bruce W. Elly.

21 Q. And where do you reside?

22 A. 1729 Carman Valley Drive,
23 C-A-R-M-A-N, St. Louis, Missouri.

1 Q. How long have you been at that
2 address?

3 A. Since 1985.

4 Q. Have you been in St. Louis longer
5 than that -- have you been in St. Louis
6 prior to 1985?

7 A. Yes.

8 Q. Okay. Where did you live prior
9 to that?

10 A. I can't remember exactly the
11 address. It was Monaco Road in Creve
12 Coeur, Missouri.

13 Q. Creve Coeur. Is that a bedroom
14 community of St. Louis?

15 A. Yes, it is.

16 Q. How do you spell that?

17 A. C-R-E-V-E, C-O-E-U-R.

18 Q. And any other locations there in
19 St. Louis? Are you a native of St. Louis?

20 A. No, I'm not.

21 Q. Okay. Where are you from
22 originally?

23 A. Originally born in Conway,

1 Arkansas.

2 Q. Did you go to high school there
3 in Conway?

4 A. No, I didn't.

5 Q. Where did you go to high school?

6 A. Went to high school in Prescott,
7 Arkansas.

8 Q. Do you or have you known anyone
9 associated with Bill or Hillary Clinton?

10 MR. HOLLINGSWORTH: Off the
11 record.

12 (OFF-THE-RECORD.)

13 Q. (By Mr. Hollingsworth) High
14 school in Prescott. And is that -- what
15 part of the state is that in?

16 A. That's near Texarkana, Arkansas.
17 Texarkana, Texas.

18 Q. Okay. And then you went to
19 college, I assume?

20 A. Yes.

21 Q. Okay. Where did you go?

22 A. At the University of Arkansas in
23 Fayetteville, Arkansas.

1 Q. Chemistry major, chemical
2 engineering?

3 A. Civil engineering.

4 Q. Civil engineering. Did you join
5 Monsanto right out of college?

6 A. Yes.

7 Q. Okay. And then you moved to St.
8 Louis, I assume?

9 A. Correct.

10 Q. Okay. What capacity did you join
11 Monsanto?

12 A. As an environmental research
13 engineer.

14 Q. What year was that?

15 A. 1969, June.

16 Q. Okay. And were you -- was your
17 primary place of employment in St. Louis?

18 A. Yes.

19 Q. Okay. And how long were you in
20 that capacity?

21 A. Until September of 1971.

22 Q. And then what area did you move
23 into?

1 A. I transferred into the department
2 of medicine and environmental health, a
3 corporate staff function. I transferred in
4 as an industrial hygienist.

5 Q. Did you receive any post-graduate
6 education at all following your degree
7 from --

8 A. Yes.

9 Q. And what was that?

10 A. Masters in civil engineering and
11 the discipline was sanitary or
12 environmental engineering.

13 Q. Was that at the University of
14 Arkansas, as well?

15 A. Correct.

16 Q. Did you go immediately
17 afterwards, or did you do this as you were
18 working for Monsanto?

19 A. I went immediate afterwards.

20 Q. Okay. So that would have been a
21 one-year curriculum following your --

22 A. About a one-year curriculum.

23 Q. Did you have any other

1 post-graduate education in related fields
2 of environmental health or as an industrial
3 hygienist, did you take any courses in that
4 regard?

5 A. Yes, I did, not formal academic
6 courses, but training courses given by
7 NIOSH, the National Institute of
8 Occupational Safety and Health, seminars on
9 noise control, a course at Wayne State
10 University on toxicology, industrial
11 toxicology. Then I continued to take
12 seminars at various conferences,
13 professional development courses throughout
14 the years.

15 Q. Okay. Let me go on that and ask
16 you following your appointment in 1979 to
17 the department of medicine, --

18 MR. COX: '71.

19 Q. '71, I'm sorry. -- what was your
20 next position?

21 A. Between 1971 and 1981, I was an
22 industrial hygienist and advanced in the
23 field of industrial hygiene within the

1 department; and by that I mean, industrial
2 hygienist, senior industrial hygienist,
3 industrial hygiene specialist.

4 Between approximately 1978 and
5 1981, I was the corporate manager of
6 industrial hygiene.

7 Q. Tell me what in laymen's term or
8 how you'd define in laymen's terms the job
9 of industrial hygienist.

10 A. I think the simplest description
11 is industrial hygiene is the recognition,
12 evaluation and control of workplace
13 chemical and physical hazards.

14 Q. Now, are you in that capacity --
15 no, I'm sorry, that's still 1981. What is
16 your current capacity, or was there
17 anything between 1981 and now that --

18 A. Yes.

19 Q. Okay. Tell me about that.

20 A. Between 1981 and 1987, I was
21 manager of health and safety -- or
22 industrial hygiene and safety in the
23 agricultural group of Monsanto.

1 From 1987 until 1981 --

2 MR. COX: Wait. '91.

3 A. Excuse me, '91. -- I was manager
4 of the product labeling safety and health
5 for the agricultural group.

6 And then in 1991, I transferred
7 back into the corporate environment safety
8 and health staff, we called the ESH staff,
9 as manager environmental technical
10 support.

11 I was in that position until
12 September of 1997, at which time I joined
13 Solutia, S-O-L-U-T-I-A, Inc., I-N-C., as
14 manager environmental affairs.

15 Q. And that's your current position?

16 A. Correct.

17 Q. Okay. Now, is the agricultural
18 division, is that a subdivision of
19 Monsanto? Is that a separate division?

20 A. At that time, the agricultural
21 division had grown to be the agricultural
22 company or agricultural group of Monsanto.

23 Q. Okay. Prior to that, you were

1 with the corporate group which you are now
2 part of, as well?

3 A. Correct.

4 Q. That's right.

5 A. But prior to that, I was part of
6 the corporate group with Monsanto.

7 Q. Okay.

8 A. I'm currently a part of the
9 corporate group with Solutia, Inc.

10 Q. Did Solutia -- I don't know
11 whether this was a name change or whether
12 this was a reorganization or a spin-off or
13 what, but did that have anything to do with
14 the purchase by American Home Products?

15 A. No.

16 Q. Okay. That came about before the
17 purchase?

18 A. Correct.

19 Q. Okay. Are you involved with any
20 of the personnel or management of American
21 Home Products today?

22 A. No.

23 Q. Okay. Has that purchase been

1 consummated?

2 A. I don't know.

3 Q. Okay. Have you published any
4 articles or written any authoritative
5 treatises or anything of that nature at
6 all?

7 A. I have authored or coauthored
8 four publications.

9 Q. Can you tell me off the top of
10 your head, or would you just like to
11 supplement the deposition with maybe with
12 your CV or something of that nature?

13 MR. COX: Do you recall what
14 they were?

15 A. That would probably be best.
16 There's only one of the four that I really
17 recall, and that was my Masters' thesis.

18 Q. Okay.

19 A. And that dealt with the
20 eutrophication process.

21 Q. The what process?

22 A. Eutrophication.

23 Q. Okay.

1 A. That's the nutrient inflow into
2 bodies of water, excessive nutrient inflow
3 of nitrogen phosphorus.

4 Q. Like chicken plants?

5 A. That didn't deal with the source,
6 but the characteristics of the body of
7 water, and the body of water happened to be
8 Beaver Reservoir located near Fayetteville.

9 Q. Okay. And the effect of that on
10 the ecosystem and --

11 A. Looking at inflow -- looking
12 material balances.

13 Q. Right. Have you ever testified
14 before Congress?

15 A. No, I have not.

16 Q. All right. Have you been asked
17 to author any legislation or contribute to
18 any legislation in Congress?

19 A. No.

20 Q. Okay. Have you ever acted as a
21 consultant to the Environmental Protection
22 Agency?

23 A. No.

1 Q. Okay. Have you ever prepared any
2 position statements on behalf of Monsanto
3 in that respect?

4 A. No.

5 Q. Okay. So you haven't worked on
6 any task force or anything of that nature
7 as far as any legislation is concerned that
8 might affect Monsanto?

9 A. That's correct, I have not.

10 Q. At any state level, have you ever
11 testified before any committees or any
12 agencies regarding legislative matters?

13 A. No.

14 Q. Okay. Have you given other
15 deposition testimony in lawsuits?

16 A. Yes, I have.

17 Q. Okay. Can you tell me what those
18 are or --

19 A. The first case involved, and this
20 was many years ago, in the 1970's, the
21 Sturgeon, Missouri lawsuit against
22 Monsanto.

23 Q. That's a city, Sturgeon,

1 Missouri?

2 A. That's correct.

3 Q. Okay. What was the nature of
4 that lawsuit?

5 A. It's my understanding that
6 involved the spill of material from a tank
7 car of a chlorophenol by-product.

8 Q. Was the city alleging damage to
9 its physical property?

10 A. I never read the complaint.

11 Q. Okay. What capacity did you
12 testify, as an expert for Monsanto or were
13 you a fact witness as to what actually
14 happened?

15 A. I was a fact witness.

16 Q. Okay.

17 A. But the testimony did not
18 surround the actual incident.

19 Q. Would have been more of a
20 procedures and Monsanto guidelines and that
21 type of thing with respect to spills or
22 avoiding spills?

23 A. It dealt with industrial hygiene

1 practices.

2 Q. Okay. Did you testify in court
3 in that case or just by deposition?

4 A. Deposition.

5 Q. Did the case proceed to court, if
6 you are aware?

7 A. Yes, it did.

8 Q. What county was that in?

9 A. I'm afraid I don't know.

10 Q. Sturgeon, as in the fish, though?

11 A. That's correct. I'm not sure of
12 the spelling.

13 Q. Okay. Any other cases?

14 A. I gave deposition testimony in
15 litigation that was called the
16 Environmental Insurance Litigation.

17 Q. Was Monsanto a defendant in that
18 case?

19 A. Quite frankly, I'm not sure.

20 Q. Okay. Was the plaintiff
21 Environment Insurance, or was this just a
22 consortium of potential defendants who were
23 trying to seek coverage under some kind of

1 environmental insurance?

2 A. I believe that's correct. As I
3 understand --

4 Q. Dealing with closure?

5 A. -- it involved Monsanto Company
6 and insurance companies regarding
7 environmental liabilities.

8 Q. Okay. And was this a question of
9 whether coverage had been denied or whether
10 coverage existed?

11 A. I don't know that detail.

12 Q. Was that in St. Louis?

13 A. No.

14 Q. Where would that have been?

15 A. Wilmington, Delaware.

16 Q. And what year was that?

17 A. I believe that was the late
18 '80's.

19 Q. And that was by deposition only?

20 A. Correct.

21 Q. Do you know the outcome of that
22 case?

23 A. No, I don't.

1 Q. Okay. Was this the subject of
2 some type of environmental incident that
3 this company had refused coverage on? Was
4 that the nature of this lawsuit?

5 A. I don't know.

6 Q. Okay. Was it in Federal Court?

7 A. I believe it was, but I'm not
8 positive.

9 Q. Do you know the outcome?

10 A. No, I don't.

11 Q. Any other depositions? Let me
12 ask you this one more question about
13 environmental insurance: Do you know the
14 individual insurance companies that might
15 have been part of this consortium?

16 A. I may have seen the names at one
17 time because I --

18 Q. Was it Aetna, perhaps?

19 A. I don't even -- I don't
20 remember.

21 Q. Well, do you have in possession
22 any of the pleadings or your deposition
23 notice or anything of that nature with

1 respect to this?

2 A. No.

3 Q. Okay. Who defended you or
4 Monsanto in this lawsuit?

5 A. I don't recall the counsel or --

6 Q. Do you know where they're located?

7 A. -- the law firm.

8 Q. Do you remember where they were
9 located?

10 A. The law firm was in Wilmington,
11 Delaware.

12 Q. Okay. And then next time you
13 gave a deposition?

14 A. I'm not sure whether it's the
15 next time.

16 Q. Okay.

17 A. Because I'm not so sure I can go
18 in chronological order.

19 Q. Okay.

20 A. There were two depositions I
21 recall that dealt with asbestos. One was
22 -- I think the caption Stanley versus
23 Monsanto.

1 Q. Where was that located?

2 A. I believe Stanley versus Monsanto
3 was out of New Orleans.

4 Q. Do y'all have a facility in New
5 Orleans?

6 A. We have a facility outside of New
7 Orleans, at Luling, Louisiana.

8 Q. Luling?

9 A. Yes.

10 Q. Did you use asbestos as an
11 insulating device at that plant? Is that
12 the nature of this lawsuit?

13 A. We have in the past, correct.

14 Q. Okay. Is that how this arose,
15 was a claim saying he was exposed to
16 asbestos as a result of that?

17 A. I believe so.

18 Q. Okay. And your testimony was
19 with respect to industrial hygiene at that
20 plant?

21 A. Correct.

22 Q. Okay. Anything else?

23 A. The other asbestos case I

1 mentioned was in California, and it
2 involved I believe our Avon, California
3 site.

4 Q. Same general set of
5 circumstances?

6 A. Similar.

7 Q. Okay.

8 A. I was involved in or I gave
9 deposition testimony in a benzene case.
10 That case was captioned Skeen versus
11 Monsanto.

12 Q. S-K-I-N-G?

13 A. S-K-E-E-N.

14 Q. Okay. Where was that?

15 A. Houston, Texas.

16 Q. Y'all don't manufacture or didn't
17 manufacture benzene anywhere; did you?

18 A. We were an internal producer of
19 benzene at a plant in Chocolate Bayou,
20 Alton, Texas.

21 Q. Internal producer. That was the
22 basic element, I guess, for phenolic resins
23 and y'all produced phenolic resins?

1 A. We used that material in other
2 processes internally.

3 Q. Okay. What was the primary
4 product of Chocolate Bayou? Was that a
5 herbicide plant?

6 A. You mean involving --

7 Q. Commercial product?

8 A. -- this particular case or --

9 Q. No. Didn't Anniston manufacture
10 parathion? Wasn't that one of their big
11 products for a long time?

12 A. Anniston manufactured parathion;
13 correct.

14 Q. I know they may have manufactured
15 other things, but the primary product was
16 parathion; right?

17 A. Parathion, to the best of my
18 knowledge, was perhaps the biggest unit.

19 Q. Right. What was the biggest unit
20 at Chocolate Bayou?

21 A. Biggest unit was probably the
22 ethylene hydrocarbons complex.

23 Q. Ethylene hydrocarbons?

1 A. Correct. And I think those may
2 have been two processes where you had an
3 ethylene unit and then you had a
4 hydrocarbons unit.

5 Q. Okay. So you were just cracking
6 ethylene basically. There was no end
7 product, these were all intermediary
8 products that would be used at another
9 facility?

10 A. Correct.

11 Q. Okay. Was this Mr. Skeen
12 claiming that he contracted cancer as a
13 result of exposure of benzene there at the
14 plant?

15 A. As I recall, I think that was a
16 wrongful death suit and I think the issue
17 was some type of cancer.

18 Q. Okay. You all no longer
19 manufacture benzene as an internal product;
20 do you?

21 A. No.

22 Q. Okay. And I assume you took the
23 position in that case that benzene was not

1 a carcinogen; is that correct?

2 MR. COX: Him personally or
3 Monsanto?

4 A. I'm not sure what position we
5 took.

6 Q. Okay. Anything else?

7 A. There was a recent benzene case
8 that I gave deposition testimony in. That
9 was captioned Tarin, T-A-R-I-N, versus
10 Monsanto.

11 Q. Where was that?

12 A. Excuse me?

13 Q. Where was that?

14 A. Houston. Houston, Texas.

15 Q. Okay. Same plant, Chocolate
16 Bayou plant?

17 A. I'm trying to recall whether it
18 was the Chocolate Bayou plant or the Texas
19 City plant.

20 Q. Did they pretty much do the same
21 thing?

22 A. No, not really.

23 Q. What does Texas City --

1 A. Both would have used benzene. It
2 was the Texas City plant.

3 Q. Okay. Was that a wrongful death
4 case or an exposure case, as well?

5 A. That was a wrongful death case.

6 Q. When did you give that
7 deposition?

8 A. Last Friday.

9 Q. Oh, really. What was the outcome
10 of the Skeen case, if you know?

11 A. I don't.

12 Q. Okay. How long ago did you give
13 that deposition?

14 A. The Skeen deposition?

15 Q. Yes.

16 A. Early 1980's.

17 Q. Do you recall who the plaintiff's
18 counsel is in the Tearin -- that's

19 T-E-A-R-I-N?

20 A. T-A-R-I-N.

21 Q. Do you recall who the plaintiff's
22 counsel is in that case, who represents the
23 estate of Tarin?

1 A. No, I don't.

2 Q. That would be in -- is it Houston
3 County; is that the --

4 A. The deposition was in Houston,
5 Texas.

6 Q. Okay.

7 A. I'm not sure I know --

8 Q. Is that in Federal Court or State
9 Court?

10 A. I think it's in State Court.

11 Q. Okay. Any other depositions?

12 A. There was a deposition in a case
13 in St. Louis, and as best I can remember,
14 it involved workers' compensation.

15 Q. Did it involve exposure to any
16 type of chemicals?

17 A. It involved exposure to a variety
18 of chemicals in a laboratory and at one of
19 the plants.

20 Q. Do you remember the plaintiff's
21 name?

22 A. The John F. Queeny plant.

23 Q. Queeny. That's the plaintiff's

1 name?

2 A. No, that was the plant.

3 Q. Do you remember the plaintiff's
4 name, though?

5 A. No, I don't.

6 Q. About what year was this?

7 A. About two years ago.

8 Q. Okay. Any other depositions?

9 A. Those are the only ones I
10 recall.

11 Q. Okay. Have you given any
12 testimony in any case regarding
13 polychlorinated biphenyls?

14 A. No.

15 Q. Okay. Have you ever offered any
16 testimony to any type of municipal
17 regulatory authority, state or federal
18 authority regarding polychlorinated
19 biphenyls?

20 A. No.

21 Q. Okay. Have you yourself ever
22 performed any tests or published the
23 results of any tests regarding

1 polychlorinated biphenyls, other than soil
2 samples and things of that nature?

3 A. No.

4 Q. Okay. When did you first visit
5 the Anniston plant?

6 A. I believe it was approximately
7 1973. It may have been 1974.

8 Q. Okay. And what was the purpose
9 of your visit? At that time you were an
10 industrial hygienist with -- you were
11 corporate manager of industrial hygiene?

12 A. Well, at that time, I was an
13 industrial hygienist, one of two field
14 industrial hygienists. I had corporate
15 responsibility for several of the operating
16 units, one of which included the Anniston
17 plant. I was there for kind of a liaison
18 between a number of the plants and our
19 corporate disciplines. And as I recall, I
20 went to the Anniston facility just to gain
21 an understanding of who the people were,
22 what type of processes they had at that
23 facility and the status of the industrial

1 hygiene programs.

2 Q. Okay. Who was the manager of
3 that plant? Would it have been Mr.
4 Severson at that time?

5 A. I don't recognize that -- the
6 name Severson. It may have been Gene
7 Jesse.

8 Q. Okay. And was this during the
9 period of time when they were manufacturing
10 parathion in Anniston?

11 A. I believe they were manufacturing
12 parathion at that time.

13 Q. Okay. And were you aware of the
14 presence of PCBs during your visit in 1973?

15 MR. COX: Object to the form.

16 Q. Meaning PCBs either being used on
17 the property, manufactured on the property
18 or stored on the property?

19 A. As I recall, when I first went
20 into that plant, I was shown where the PCB
21 facility used to be located.

22 Q. Okay. Where was that, if you
23 recall?

1 A. Inside the plant?

2 Q. Yes. I mean, if you can recall,
3 just in what corner or where
4 geographically, northeast corner, northwest
5 corner. Was it in --

6 A. Seems like it was in the center
7 south section of the plant.

8 Q. Okay. That unit was not in
9 service in 1973; is that correct?

10 A. That unit was not even in
11 existence.

12 Q. Okay. When had it been
13 dismantled or discontinued? When did the
14 manufacture discontinue, if you recall?

15 A. It was prior to my visiting that
16 facility. As I understand, it's 1971.

17 Q. Okay. And then they dismantled
18 the process unit entirely?

19 A. By the time I was on site they
20 had, yes.

21 Q. Okay. Why was PCBs -- why were
22 they manufactured there, what use, if you
23 know, did Monsanto have for PCBs? I mean,

1 were they placed directly in the market as
2 a cooling agent?

3 A. Well, I've got a general
4 knowledge.

5 Q. Right.

6 A. And I'm not so sure at that
7 particular point in time I had or I gained
8 knowledge of exactly what PCBs were used
9 for because I had no reason to inquire on
10 that.

11 Q. All right.

12 A. But my general knowledge is, yes,
13 PCBs -- various mixtures of PCBs under the
14 trade name Aroclor were used for many
15 years, principally in the -- as electric --
16 or in electrical capacitors and
17 transformers.

18 Q. Heat transformations?

19 A. Correct.

20 Q. Okay. What was the brand name,
21 product name?

22 A. Aroclor.

23 Q. A-I-R?

1 A. A-R-O-C-L-O-R.

2 Q. And that was a Monsanto brand
3 name?

4 A. Correct.

5 Q. Had you learned anything at all
6 prior to your visit there in 1973, of any
7 potential hazards associated with PCBs?
8 Had you read anything in the literature
9 regarding PCBs and whether or not they were
10 at that point considered --

11 MR. COX: He wants you to put
12 yourself back in 1973, not what you've
13 learned since then, is the way I understand
14 your question.

15 THE WITNESS: Correct.

16 A. Not that I recall.

17 Q. Okay. When did you first come to
18 learn of a potential hazard regarding PCBs?

19 A. It would have been some time
20 between -- oh, I would think somewhere
21 between 1972 to '75.

22 Q. You made a visit to the plant in
23 '73.

1 A. I visited the plant in '73.

2 Q. Had some knowledge then of
3 potential hazard of PCBs?

4 A. From the standpoint of that
5 plant?

6 Q. No, no, no. Generally.

7 A. I may have had some knowledge
8 just from the standpoint of visiting or
9 touring another plant site.

10 Q. Okay. Well, do you know why
11 Monsanto discontinued producing PCBs in
12 1971?

13 A. Personally, no.

14 Q. You don't know whether or not it
15 had anything to do with any action taken on
16 behalf of the EPA? I'm not talking about
17 with respect to that one plant, I'm talking
18 about whether PCBs -- or NIOSH or any
19 Federal agency, whether or not PCBs had
20 been categorized as a carcinogen?

21 A. From the standpoint of my
22 knowledge then or from --

23 Q. What you knew then?

1 A. -- or in the context of my
2 knowledge now?

3 Q. What you knew -- both, I
4 suppose. I mean, when you were at the
5 plant in 1973, did they make you aware of
6 why they had discontinued manufacturing
7 PCBs? I mean you were --

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

9 Q. Okay. You were an industrial
10 hygienist?

11 A. Correct.

12 Q. You were, I guess, deemed to be
13 aware of potential hazardous situations
14 within the Monsanto plant environment?

15 A. Yes. Generally, yes.

16 Q. But you had no knowledge of any
17 problems associated with PCBs at that time?

18 A. I don't believe so.

19 Q. So you say then between 1972 and
20 1975, you began to learn about published or
21 alleged hazards associated with PCBs?

22 MR. COX: Object to the form.

23 A. I became more knowledgeable of

1 the characteristics and any potential
2 health hazards associated with PCBs.

3 Q. Okay. And did you -- did
4 Monsanto ask you to do any specific work
5 with respect to PCBs during this period of
6 time?

7 A. No.

8 Q. Okay. Were you asked to conduct
9 any research or do a literature search or
10 anything of that nature?

11 A. No.

12 Q. Okay. Did Monsanto, if you know,
13 develop any type of task force internally
14 to deal with what may have been termed a
15 PCB problem or potential PCB problem?

16 A. Personally, I am not aware of
17 that.

18 Q. Okay. As we sit here today, are
19 you aware of anything of that they may have
20 formed to -- or organized to deal with
21 them?

22 A. It's my understanding there may
23 have been a task force that was formed at

1 one time in the past.

2 Q. That would have been in St.
3 Louis?

4 A. Correct.

5 Q. Do you know who the members of
6 that force might have been?

7 A. No, I don't.

8 Q. Do you know anybody that would
9 know? I mean, would it have had anything
10 to do with your department?

11 A. There may have been one gentleman
12 that was a part of that task force. He was
13 the manager of -- I think at that time the
14 manager of environmental health. He has
15 since passed away.

16 Q. What was his name?

17 A. Elmer Wheeler.

18 Q. What year would that have been?

19 MR. COX: When he passed away or
20 when he was on this committee?

21 Q. When this committee was formed.

22 A. Well, I guess I started -- I
23 prefaced my remarks by saying it's my

1 general understanding that there was a task
2 force.

3 Q. Right.

4 A. From the standpoint of when,
5 specifically when such a task force may
6 have been formed, I don't know.

7 Q. Well, when did Mr. Wheeler die?

8 A. I believe Mr. Wheeler died in the
9 late 1970's.

10 Q. Okay.

11 A. Late 1970's or, perhaps, the very
12 early 1980's.

13 Q. Okay. And he was the manager of
14 environmental health?

15 A. I believe he at that time was
16 manager of environmental health.

17 Q. Now, you were in industrial
18 hygiene at that time?

19 A. Correct.

20 Q. What was the relationship between
21 environmental health and your department?

22 A. I reported to the manager at that
23 time of pollution control and industrial

1 hygiene, Jack Garrett.

2 Q. Is he still with Monsanto?

3 A. No.

4 Q. Where is he now?

5 A. He's retired.

6 Q. Where does he live?

7 A. I'm not sure he still lives in

8 St. Louis. At one time he lived in St.

9 Louis, but I think he may have moved.

10 Q. Do you know where he may have
11 moved to?

12 A. No, I don't.

13 Q. And he was the manager of
14 environmental health; is that right?

15 A. He was the -- are we talking
16 about Mr. Garrett?

17 Q. Yes.

18 A. He was the manager of -- manager
19 of pollution control and industrial
20 hygiene.

21 Q. Okay. And that was your
22 supervisor --

23 A. Correct.

1 Q. -- during that period of time
2 from 1971 to '81?

3 A. Correct.

4 Q. Okay. Now, what was the
5 relationship between that department and
6 the department Mr. Wheeler was in?

7 A. Mr. Garrett, as I recall,
8 reported to Mr. Wheeler.

9 Q. Could Mr. Garrett have been on
10 this task force?

11 MR. COX: If you know.

12 A. I don't know.

13 Q. Well, I mean, it seems logical
14 that it would be -- it would have been made
15 up of various environmental entities, which
16 would have included yours, industrial
17 hygiene, pollution control as well as
18 environmental health. Would you agree with
19 that, that would be the logical team of
20 individuals from which to compose a team?

21 A. That would be a possibility. But
22 to answer any further would just be a
23 guess.

1 Q. Any other departments within
2 Monsanto that you think might have had
3 individuals contributing to this task
4 force?

5 A. I don't specifically know.

6 Q. When did you first learn of this
7 task force?

8 A. I don't know if there was any
9 particular year or any particular point in
10 time. It's just my understanding that
11 there was some type of a task force. When
12 I gained an understanding of that, I'm not
13 sure.

14 Q. Well, I mean, Mr. Wheeler died in
15 the late '70's.

16 A. Late '70's, early '80's.

17 Q. Okay. Did you know of it while
18 it existed? Obviously, Mr. Wheeler, if he
19 had been a party of it, would have been on
20 this task force during the '70's.

21 A. No. While it existed during
22 those times, no, I wasn't aware.

23 Q. Have you ever read or seen the

1 results of any of their work, any
2 recommendations that they made?

3 A. No, not that I recall.

4 Q. So the only persons that you know
5 could have been, possibly Mr. Garrett and
6 Mr. Wheeler for sure?

7 A. Well, I think I mentioned Mr.
8 Wheeler. Mr. Garrett, I don't know.

9 Q. Were there any other
10 departments -- tell me the other
11 departments that might have been associated
12 with environmental hazards, pollution
13 hazards?

14 A. Well, at the corporate level,
15 there was the department of medicine and
16 environmental health.

17 Q. Who was head of that department
18 during that time?

19 A. During that time --

20 MR. COX: You're talking
21 about -- just so the record is clear,
22 you're talking about the early 1970's?

23 MR. HOLLINGSWORTH: Well, no.

1 The period of 1970 through 1980, when this
2 task force might have existed.

3 MR. COX: Well, I don't want to
4 be cute, but I'm not sure that the task
5 force existed much beyond 1973 or '74.

6 Q. You understand what I'm saying,
7 don't you?

8 A. Well, what you're asking is who
9 was the medical department during that time
10 frame.

11 Q. Right.

12 A. The director of what we call
13 DMEH, all caps, from when I came into the
14 department in 1971, until 1974, was Doctor
15 Emmett Kelly.

16 Q. Is he still alive or is he still
17 associated with Monsanto?

18 A. No, Doctor Kelly is deceased.

19 Q. Okay. Did he have a secretary or
20 anybody acting under him, associate
21 director?

22 A. There was an assistant medical
23 director who left Monsanto and went with

1 another company, and I can't recall what
2 his name was.

3 Q. Okay. Anybody else in that
4 department?

5 A. His name was Maury Johnson.
6 Doctor Johnson.

7 Q. Maury. He was a medical doctor?

8 A. Correct.

9 Q. And he left Monsanto?

10 A. Left Monsanto.

11 Q. About what year?

12 A. I think the mid 1970's.

13 Q. Do you know where he went?

14 A. He went with another company. I
15 think it may have been Goodyear.

16 Q. Anybody else in that department
17 that might possibly have been on this task
18 force? I'm just asking. I know you have
19 testified that you don't know of anybody
20 else. But --

21 A. Within the department, and it was
22 a relatively small department at the time,
23 I don't -- no one else comes to mind.

1 Q. Okay. In addition to your group,
2 industrial hygienist, pollution control,
3 which Mr. Wheeler was a part of, and DMEH,
4 is there any other potential group that may
5 have contributed to this task force?

6 A. There was a corporate staff group
7 called CED, central engineering
8 department. As I recall, within CED, there
9 were some environmental engineering type
10 people.

11 Q. Do you recall who the head of
12 that department was during this period of
13 time, early '70's and late '70's?

14 A. No, I don't.

15 Q. Anybody in that department at all
16 that you recall?

17 A. I'm sorry, no names come to
18 mind.

19 Q. Okay. Are there any other
20 departments that you think may have
21 possibly contributed to this task force?

22 A. We had several operating units.
23 And I'm not sure -- we've been through a

1 number of reorganizational changes through
2 the years. But there would have been
3 manufacturing divisions or manufacturing
4 operating units. As a part of those
5 operating units, I believe they may have
6 had some people that were in charge of
7 environmental related matters.

8 Q. When you say operating unit, do
9 you mean Anniston as an example, or do you
10 mean --

11 A. No, Anniston would have been a
12 part of an operating unit. For example,
13 you can have an inorganics division, you
14 can have an organics division, an
15 industrial chemicals group.

16 Q. Okay. So that would be a unit?

17 A. That's what I would call an
18 operating unit or an operating group.

19 Q. Was Anniston a part of the
20 agricultural unit at that time?

21 A. I don't believe so.

22 Q. What unit would they have been a
23 part of?

1 A. At one time we had an organics
2 division, organics company. I believe they
3 may have been a part of that.

4 Q. Do you know who the head of that
5 division was?

6 A. No, I do not.

7 Q. Before Anniston became Solutia,
8 what division were they a part of or what
9 unit were they part of? Were they still
10 organics?

11 A. No, there had been a number of
12 organizational changes.

13 Q. Since that time?

14 A. When the parathion unit was
15 discontinued, they reverted from a -- from
16 the agricultural group to the chemical
17 group. The chemical group consisted of a
18 number of divisions, one of which was a
19 specialty chemicals or specialty fluids. So
20 I think it may have been that group that
21 they were a part of.

22 Q. When did they discontinue the
23 parathion production?

1 A. I believe it was somewhere around
2 1985.

3 Q. Did you all sell that product
4 label?

5 A. I am not sure.

6 Q. Parathion is a herbicide; is that
7 right?

8 A. It's an insecticide.

9 Q. Insecticide. Now, we got to your
10 first visit to Anniston. Okay?

11 A. Okay.

12 Q. I'm sure you've been there plenty
13 times since then.

14 When was the first time you --
15 to cut to the chase, when was the first
16 time you visited Anniston with regard to
17 any problems associated with
18 polychlorinated biphenyls, and not
19 necessarily legislation, but on-site
20 problems or potential problems, anything
21 dealing with -- when is the first time you
22 went to Anniston to deal with any PCB
23 issues at all?

1 A. The first time I went to Anniston
2 in the context of remediation projects or
3 remediation activities associated with PCBs
4 was approximately November of 1995.

5 Q. Let me just ask you quickly: Are
6 there any other plants that Monsanto owns
7 or operates that have PCBs on site whether
8 they manufacture them or they store them,
9 that you're aware or have been aware of?

10 A. Are we talking about currently or
11 what time frame?

12 Q. Well, at any time that you are
13 aware of. In other words -- well, let's
14 say in the mid '70's, were there other
15 plants other than the Anniston where the
16 PCBs were located?

17 A. Yes.

18 Q. Where were those plants?

19 A. We had a producing facility in
20 Sauget, Illinois. The plant was the W. G.
21 Grumrick.

22 Q. Grumrick?

23 A. Grumrick.

1 Q. Okay. Manufactured PCBs --

2 MR. COX: You're not including
3 in there manufacturing facilities that may
4 have had PCBs transformers on site, are
5 you?

6 MR. HOLLINGSWORTH: No.

7 Q. Any other plants?

8 A. Well, if we are excluding any
9 plants that may have had PCBs as a part of
10 electrical transformers, capacitors, no.

11 Q. Any other plants where they were
12 stored in any other vessels other than
13 transformers or capacitors? In other
14 words, were there any landfills on any
15 other plants sites that may have taken
16 PCBs?

17 A. Not that I'm aware of.

18 Q. What was the occasion for you do
19 come to Anniston -- well, let me ask you
20 this: Had you gone to -- is it the W. G.
21 Grumrick?

22 A. Grumrick plant.

23 Q. Have you visited that site --

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1 A. Yes, I have.

2 Q. -- with respect to remedial
3 activities?

4 A. No.

5 Q. Okay. What was the nature of
6 your visit there?

7 A. In the context of assessing
8 general industrial hygiene practices at the
9 plant, assisting the plant in their
10 industrial hygiene program.

11 Q. They don't still manufacture PCBs
12 there?

13 A. That's correct, they do not.

14 Q. When did they discontinue that?
15 Early '70's?

16 A. I believe the time frame 1976.

17 Q. Okay.

18 A. Somewhere in that time frame.

19 Q. How do you spell the name of that
20 city again?

21 A. Sauget?

22 Q. Yes.

23 A. It's a very good question.

1 Q. I think I'll just --

2 A. S-A-U-G --

3 MR. COX: E-T.

4 A. -- E-T.

5 Q. Yeah, E-T-T. And that's --

6 MR. COX: They changed the name
7 from Monsanto, Illinois, too, by the way.

8 Q. That's in Illinois?

9 A. Correct.

10 Q. Okay. Is there any litigation
11 ongoing or has there been any litigation
12 ongoing at that facility that you're aware
13 of regarding PCBs?

14 A. Not that I'm aware of.

15 Q. Okay. Is there a landfill at
16 that facility that may store PCBs?

17 A. I don't know personally.

18 Q. Your visits there have not had
19 anything to do at all with any remedial
20 activities regarding PCBs?

21 A. That's correct.

22 Q. Okay. Now, under what set of
23 circumstances did you come in November of

1 1995, regarding remedial activities at
2 Anniston? Had a lawsuit been filed at that
3 point in time? I mean, what triggered
4 your --

5 A. I'm not sure.

6 Q. Okay. Would you have gone at the
7 direction of somebody else?

8 A. Yes, I was asked to go by my
9 boss.

10 Q. Who at the time was Mr. Garrett?

11 A. No. We're talking about --

12 Q. '85 -- '95.

13 A. -- in '95.

14 Q. That's right. Who would that
15 have been?

16 A. Doctor Bob Kaley.

17 Q. Kaley with a "K"?

18 A. K-A-L-E-Y.

19 Q. And what did Doctor Kaley tell
20 you about the Anniston plant?

21 A. In the context of my visit?

22 Q. Yes.

23 A. Bob had been talking with some of

1 the people in our public relations group,
2 and they were looking at the possibility of
3 eventually, perhaps, setting up a community
4 advisory panel at Anniston as we've set up
5 in a number of our other plants; also, they
6 had at Anniston recently published a
7 brochure explaining a little bit about the
8 plant, the product.

9 Q. Community relations group had?

10 A. Correct. And they were looking
11 at the possibility of advancing a community
12 outreach program.

13 Q. Had the problems at Mars Hill
14 Baptist Church surfaced at this point in
15 time, in November of '95?

16 A. Not that I'm aware of.

17 Q. Okay. There weren't any
18 community problems as far as -- that you're
19 aware of?

20 A. That's correct.

21 Q. Okay. That's something you were
22 trying to head off, I assume?

23 A. Well, I think that --

1 Q. I mean, from an educational
2 standpoint?

3 A. I'm not sure that's true.

4 Q. Okay. All right. Doctor Kaley
5 had talked tot he public relations group
6 about some community awareness of what the
7 plant actually did and that type of thing.
8 What was your role in that?

9 A. The thought was that I might be a
10 person that, perhaps, could go around and
11 meet with some of the individual neighbors,
12 discuss plant operations, make them aware
13 of the type of products and processes that
14 we had at that particular plant and just
15 represent kind of a focal point if they had
16 any further questions on that particular
17 facility.

18 Q. Were you to speak to them
19 specifically about the presence of PCBs in
20 that plant and the fact that they had been
21 manufactured at that facility?

22 A. No.

23 Q. So you were just basically going

1 to talk to them about what that plant did
2 and how they did it and what type of
3 products they manufactured there?

4 A. Correct, who we were.

5 Q. And you were not specifically
6 authorized to discuss PCBs in any manner
7 whatsoever?

8 A. I'm not so sure that that term
9 avoidance really came up in those
10 discussions --

11 Q. No, that wasn't --

12 A. -- at that time.

13 Q. -- the purpose of your trip -- I
14 mean, that wasn't the purpose of your
15 public relations effort, was not to deal
16 with the PCBs issue; was it?

17 A. It was not what we were -- that's
18 exactly right.

19 Q. In fact, it hadn't even been
20 discussed really; had it?

21 A. That's right.

22 Q. Because it really wasn't a
23 problem as far as the community was

1 concerned at that time; isn't that correct?

2 A. That would be a pure guess or
3 speculation on my part.

4 Q. And did you, in fact, meet with
5 various members of the community and
6 property owners around the site, around the
7 manufacturing facility?

8 A. At that time?

9 Q. Yes.

10 A. No.

11 Q. What did you do?

12 A. Met with some of the plant
13 people, met with some of the people
14 involved in the purchase property program
15 that was underway.

16 Q. Okay. Now, at this point in time
17 the purchase property program was already
18 underway?

19 A. I believe so.

20 Q. Okay. And why would Monsanto
21 have been purchasing property in and around
22 that area?

23 A. That was a part of the east side

1 purchase property program that had
2 started --

3 Q. East side?

4 A. The east side. East side
5 property purchase program that had been
6 started prior to me coming there and
7 visiting on site.

8 Q. What was the purpose of the east
9 side property purchase program? Why did
10 Monsanto want to purchase property on the
11 east side?

12 A. You mean from the standpoint of
13 my knowledge when I came on site or --

14 Q. Well, either. What do you know
15 now or what you knew then?

16 A. Well, I think that PCBs had been
17 detected in a drainage system, a ditch
18 leading from a portion of our property on
19 the east side of the plant. There had been
20 a lot of soil sampling and sediment
21 sampling taken in and adjacent that ditch.
22 There were levels of PCBs detected in soils
23 and settlement and they were looking at the

1 remediation project that would be necessary
2 in that particular area.

3 Q. Okay. But you weren't aware of
4 that when you went there in November of
5 '95?

6 A. That's correct.

7 Q. And you thought basically you
8 were just going to go down there to meet
9 with folks about disseminating information
10 in the community regarding what Monsanto
11 did there at that location?

12 A. At that time, I'm not so sure
13 that that plant had been that firm. That's
14 something that had been discussed. I went
15 down there to familiarize myself again with
16 the Anniston area, the plant operations,
17 the general locale.

18 Q. Well, were you informed at that
19 time of the existence of the east side
20 property purchase property?

21 A. I may have been aware of it.

22 Q. But you didn't know why they were
23 doing it?

1 A. But I was not aware of all the
2 details, that's correct.

3 Q. And just to reiterate, you had --
4 no one had specifically mentioned PCBs or a
5 PCB problem during your visit in November
6 of 1995?

7 A. During the visit of November of
8 1995?

9 Q. Right. When Doctor Kaley had
10 asked you to go down and meet the community
11 advisory panel, public relations group,
12 representatives.

13 A. I believe that when I went on
14 site and I met with a number of people just
15 to introduce myself to them and find out
16 who they were, then I believe that issue,
17 that topic certainly did come up.

18 Q. But you weren't aware of it until
19 you got to the plant?

20 A. I may have had prior to then some
21 vague understanding of what was occurring,
22 but not in any detail at all.

23 Q. And you were manager of the

1 environmental technical support at that
2 time; is that right?

3 A. At that time, that was my job
4 title, manager of environmental technical
5 support.

6 Q. Did anybody go down there with
7 you from any other departments or from your
8 department in November of '95?

9 A. I went down there with one of the
10 ladies that was in the remediation
11 management group.

12 Q. What was her name?

13 A. Jo, J-O, Hanson.

14 Q. Is she still with Monsanto?

15 A. No, she retired.

16 Q. Still living in St. Louis?

17 A. I think she and her husband have
18 bought a residence down in Florida.

19 Q. Do you know her husband's name?

20 A. First name is Joe. I think it's
21 J-O-E.

22 Q. I wonder what their --

23 A. Jo and Joe.

1 Q. -- license plate says? Jo Joe.

2 And then what basically was the
3 outcome of that visit?

4 A. I think the outcome was I just
5 got more of an appreciation of the plant,
6 the processes manufactured at the plant,
7 some of the people that were at the plant,
8 became a little bit more familiar with the
9 purchase property program, some of the
10 remediation efforts.

11 Q. The east side property purchase
12 program, is that a -- obviously, that's the
13 name of a program that's been implemented
14 there to purchase property on the east side
15 of that plant.

16 Is there any type of document
17 that sets out the parameters of this
18 program?

19 MR. HOLLINGSWORTH: Buddy, have
20 you produced that?

21 MR. COX: Yes, it was the stuff
22 yesterday.

23 MR. HOLLINGSWORTH: Oh, was it?

1 Okay.

2 MR. COX: Or the day before.

3 It's produced, as well as many of the
4 agreements through which we acquired
5 property under that program.

6 Q. With respect to detection of PCBs
7 in the ditch in that area, who first
8 detected PCBs in that ditch?

9 A. I don't know.

10 Q. Was it a State agency?

11 A. I don't know that.

12 Q. Okay. After this November '95
13 visit, when was the next time for you to --
14 I assume you went back and you reported to
15 Doctor Kaley what your findings were, and
16 you all formulated some type of plan as to
17 what your next visit would entail; is that
18 correct?

19 A. As I recall, I went back and
20 talked with Bob, that, yes, I had gone down
21 there and had gained an understanding --
22 better understanding of the plant. The
23 last time I had been to that plant was some

1 years prior to that. I don't think --
2 well, I know there was no specific report,
3 and I'm not so sure that we established any
4 particular plan.

5 Q. No plan as to what you might
6 do -- as to how you might approach
7 residents who had owned property within the
8 east side property purchase program, what
9 you would do, whether you would clean up
10 this property or purchase it?

11 A. Well, I don't think there was any
12 discussions along that line at all.

13 Q. Okay. And when was the next time
14 for you to go back to Anniston?

15 A. I believe it was March 1996.

16 Q. And again at the direction of
17 Doctor Kaley?

18 A. Correct.

19 Q. What was the purpose of this
20 trip?

21 A. At that time, we had signed a
22 consent order or consent agreement with the
23 State Department of Environmental

1 Management, ADEM, to undertake a number of
2 responsibility regarding expansion of the
3 purchase property program to the Montrose
4 Street area, and to undertake a program of
5 off-site soil sampling in four specific
6 areas.

7 Q. Soil only, no air sampling at all
8 at this point in time?

9 A. I don't believe there was any
10 mention of air sampling in that consent
11 order.

12 Q. Okay. And, obviously, by this
13 time then you were aware of the fact that
14 there may be a problem with PCBs, much more
15 aware than you were in November of '95?

16 A. Well, I guess I was aware that --
17 a little bit more aware of the sampling
18 that had been undertaken in the east side
19 area along the ditch. I was aware that
20 they had been doing sampling on the west
21 side where there's another ditch and
22 drainage system. I was certainly aware
23 that there had been a consent order or

1 agreement signed stipulating certain
2 responsibilities from Monsanto.

3 Q. Right. Were you a party to that
4 consent agreement?

5 A. No.

6 Q. Did you participate in any
7 advisory position whatsoever?

8 A. No.

9 Q. Okay. And what specifically did
10 you do in March of '96, when you went
11 down? Did you meet with the residents in
12 and around the area, the property owners?

13 A. My responsibility primarily was
14 to meet with residents in the areas where
15 we had to do soil sampling or we were
16 requested to do soil sampling under the
17 consent agreement, meet with the residents,
18 tell them what we were going to be doing
19 and get their permission to do soil
20 sampling and sediment sampling in that
21 ditch and adjacent areas of the ditch.

22 Q. Okay. Did you have -- I don't
23 mean to be cute or anything -- any type of

1 script? Obviously, this is -- you know,
2 this is an important step, you're meeting
3 the public and you want to put your best
4 foot forward and explain to them what the
5 situation is. Was there anything that --
6 any document that was prepared for you to
7 review with respect to what you would say
8 to these individuals?

9 A. No.

10 Q. Okay. Had you met with any
11 members of the community advisory panel,
12 public relations group to discuss how you
13 might present what could be a potential
14 problem and explain it to these property
15 owners? Obviously, you had some parameters
16 as to what you could not -- what plans you
17 all had with respect to the property.

18 A. Well, number one, there was no
19 community advisory group that had been set
20 up.

21 Q. Okay. I thought you mentioned a
22 community advisory panel.

23 A. We looked at the possibility of

1 forming one prior to that, but never did.

2 Q. Never did. Okay. Did you ever
3 have any brochures published?

4 A. There were brochures that were
5 published. I don't know whether I'd call
6 them a brochure or a pamphlet, explaining
7 what we did and who we are as Monsanto
8 Anniston plant.

9 Q. Was that ever disseminated to the
10 public there?

11 A. I handed out a number of those.

12 MR. HOLLINGSWORTH: I'm sure
13 that's in those documents.

14 MR. COX: I believe so. If not,
15 we still have them. I think there's still
16 some at the plant.

17 Q. Did that brochure deal with the
18 subject of PCBs at all?

19 A. I don't believe so.

20 Q. Did it deal with the subject of
21 soil contamination generally or water
22 contamination?

23 A. No.

1 Q. Did it deal with any type of
2 potential hazard that might be associated
3 -- or that those property owners may face
4 as a result of either being there or as --
5 did it deal with any contaminations of the
6 property of these particular owners?

7 A. Not that I recall, no.

8 Q. Basically, just a here is who we
9 are, we're Monsanto and this is what we do?

10 A. Correct.

11 Q. Okay. Now, were you authorized
12 when you visited the plant in March of '96,
13 to contact property owners and seek to make
14 some sort of deal wherein Monsanto would
15 purchase their property?

16 A. No, that was not the purpose when
17 I was there in March of 1996.

18 Q. What basically did you say to the
19 property owners you contacted, in a
20 nutshell?

21 A. In a nutshell, I made them aware
22 of the soil and sediment sampling that we
23 had been doing for the detection of PCBs on

1 the east side and west side of our plant;
2 specifically, the focus of that sampling
3 was on two ditches and drainage systems,
4 and that we were continuing our sampling
5 into off-site areas following those ditches
6 and draining systems to see whether any
7 PCBs were present in those areas.

8 Q. How many people did you talk to
9 during this visit?

10 MR. COX: March of '96?

11 MR. HOLLINGSWORTH: Yes.

12 A. More than twenty, less than
13 fifty.

14 Q. Okay. When you talked to these
15 folks and you told them about the sampling
16 that you'd been doing in this area, did you
17 tell them that you had determined that
18 there was some relatively high samples of
19 PCB contamination in these two areas, the
20 two drainage ditches that you'd been
21 testing?

22 Let's strike that. Let me --

23 A. I'm not sure.

1 Q. Okay. Well, let me ask you
2 this: When you tell these -- you had never
3 met these people before?

4 A. Correct.

5 Q. And you introduced yourself as a
6 representative of Monsanto?

7 A. True.

8 Q. And you told them that you all
9 had been doing testing in and about this
10 area regarding PCBs?

11 A. In and about the area --

12 Q. East side?

13 A. -- adjacent to the plant; not in
14 the area of where those people currently
15 lived.

16 Q. Did any of these people ask you
17 exactly what are PCBs?

18 A. Yes.

19 Q. Well, how would you respond?

20 A. PCBs are synthetic, that is
21 man-made, chlorinated hydrocarbons that
22 were made at the Anniston plant for -- I
23 guess it goes back to 1929, the early

1 1930's and discontinued around 1971, and
2 that PCBs are persistent, stable materials
3 and adhere in very -- or bound very tightly
4 to the organic matter in soil.

5 Q. Well, did any of them ask you why
6 that would be of any concern to them?

7 A. I believe at that point in time
8 there had been a lot of communications in
9 the local paper regarding PCBs.

10 Q. Well, how would you respond to
11 their questions, if you were asked, is this
12 a danger to me to have to worry about this
13 on my property, to have to worry about my
14 children, perhaps, eating dirt or something
15 of that nature? How would you respond to
16 their concerns when you informed them of
17 the presence -- the potential --

18 A. Generally, in just about all the
19 cases, I would respond to them that I was
20 certainly not an expert in the toxicology
21 and health effects of PCBs. And in many
22 cases, I gave them several people -- or the
23 names of people that they could contact to

1 surface those particular concerns or those
2 issues that you've just described.

3 Q. When they would press you, and I
4 assume some of them did, about whether or
5 not you were aware that this was a
6 potential hazard, how would you respond?

7 A. I'm not so sure that there were
8 that many people that I recall that really
9 pressed me as you've just described it.

10 Q. In other words, somebody from
11 Monsanto comes and knocks on their door and
12 informs them that there is a presence of --
13 high presence of PCBs that may be on their
14 soil, that may be in their bodies, and they
15 basically didn't really press you for any
16 answer as to whether or not it could
17 potentially be a harm to them or harm to
18 their property?

19 A. If you would, you'll have to ask
20 that again. I didn't get the first part
21 of --

22 Q. I mean, let's --

23 MR. COX: I'm not sure it was a

1 question.

2 MR. HOLLINGSWORTH: Well, let me
3 make sure you're sure.

4 MR. COX: Rephrase it.

5 Q. When you knocked on the door of
6 these less than twenty, more than ten folks
7 at this time that had property, I guess, in
8 about --

9 A. Greater than twenty, less than
10 fifty.

11 Q. Okay. I'm sorry. I would think
12 that if I were in their shoes and you as
13 representative of Monsanto came to me and
14 informed me that you all had been doing
15 some testing, and there was a potential
16 that my property may be contaminated as a
17 result of PCBs, that I would be concerned,
18 number one, about whether or not me or a
19 member of my family or someone who worked
20 for me might be -- may have toxic levels of
21 PCBs, and number two, whether or not my
22 property would have been contaminated. I
23 would expect that they would have asked you

1 those questions in a rather pressing
2 format.

3 Is it your testimony that they
4 did not?

5 A. There may have been certain
6 individuals that had specific concerns.

7 Q. But you're saying generally you
8 were not pressed to offer your opinion as
9 to how this might harm them or their
10 property?

11 A. Generally, that is correct.

12 Q. Okay. In any situation were you
13 pressed to offer them your opinion as to
14 whether or not they stood in harm's way or
15 their property was contaminated?

16 A. Yes.

17 Q. And how did you respond?

18 A. Well, in those cases, that's when
19 I indicated, as I would indicate today,
20 that I'm not an expert in the toxicology
21 and health effects of PCBs, and that I
22 would give them people to -- and telephone
23 numbers to contact that were experts.

1 Q. Did you, in fact, do that?

2 A. Oh, yes, in a number of cases.

3 Q. Who was the expert at that time
4 that you were referring them to?

5 A. We had made arrangements, when I
6 say we Monsanto, had made arrangements with
7 two individuals, I guess, in a consulting
8 role to field those types of questions that
9 dealt with toxicology or environmental
10 health issues.

11 Q. Who were those individuals?

12 A. One of the individuals was a
13 Doctor Renada Kimbrough.

14 Q. I've got her address right here
15 (indicating).

16 A. In Washington D.C.

17 Q. All right. And who was the other
18 one?

19 A. There was a second individual who
20 I never met, and quite frankly, I'm not
21 sure -- I don't recall his name, but he was
22 a -- I believe a professor in occupational
23 medicine at UAB, University of --

1 Q. Doctor Robert Meeks?

2 A. -- Alabama at Birmingham.

3 Q. Sir? It wasn't doctor -- let's
4 see. Was he an industrial hygienist?

5 A. No, this was occupational
6 medicine.

7 Q. Okay. You don't recall his name.
8 I know -- he was with the Department of
9 Public Health?

10 A. I don't believe so.

11 Q. Okay.

12 A. There was a third individual that
13 requested that he be on some type of a
14 contact list, and that was Doctor Brian
15 Hughes.

16 Q. Brian Hughes.

17 A. Who was affiliated with the
18 Department of Public Health, Alabama
19 Department of Public Health.

20 Q. I meant the school of public
21 health with UAB, the second person that you
22 were --

23 MR. COX: If you know.

1 A. I would think he would have been
2 affiliated with the school of public
3 health.

4 Q. You don't recall his name,
5 though?

6 A. No, I do not.

7 Q. Okay. And you would tell them
8 that you were not an expert in this?

9 A. Absolutely.

10 Q. You would tell them you had no
11 knowledge regarding PCBs and its toxicity?

12 A. Correct.

13 Q. Okay. And was that, in fact, a
14 true statement?

15 A. I think from the standpoint of
16 the concerns that I heard in those
17 particular situations, yes, that's a true
18 statement.

19 Q. But you had read just about all
20 the literature regarding PCBs and its
21 potential toxicity; had you not?

22 A. Oh, no.

23 Q. Okay. You had not done any type

1 of literature search, you had not read --
2 had you read anything? Had you read any of
3 Doctor Kimbrough's publications?

4 A. I may have read Doctor
5 Kimbrough's paper, but it would have been
6 perhaps some years ago.

7 Q. Well, did Doctor Kimbrough
8 express any concerns about potential
9 toxicity of PCBs in her study?

10 MR. COX: Which one?

11 Q. The one you read.

12 A. I'm not even familiar enough with
13 the study. As I recall, it was an article
14 or a publication that dealt with some of
15 the animal toxicology studies that she had
16 done or had coordinated back in the '70's.

17 Q. Do you know whether or not she
18 came to the conclusion that it was a
19 potential carcinogen or toxic hazard?

20 A. As I recall, I think the
21 conclusion was that PCBs fed in very high
22 dosage levels to rodents could cause
23 cancer.

1 Q. Okay. Did you tell this to any
2 of those people that you talked to?

3 A. I believe there were questions
4 regarding in general the carcinogenicity of
5 PCBs in animals.

6 Q. Okay. How did you respond to
7 those questions?

8 A. I said that was true from the
9 standpoint of what i just told you, and
10 that is not all animals because they
11 haven't been tested in all animals, but
12 they've been tested in rodents in feeding
13 studies, and as I understand, caused --
14 were found to cause cancer.

15 Q. Did you suggest that any of the
16 individuals you talked to have any type of
17 tests done for -- to determine whether or
18 not they had levels of PCBs in their body?

19 A. No.

20 Q. Okay. Were you aware of any
21 testing firms that were capable of doing
22 that at that time?

23 A. I knew of tests that were

1 available. I was not aware of testing
2 firms that did that type of work.

3 Q. Okay. But could you have
4 directed these individuals to a clinic or
5 their physician or someone that might
6 have -- might have the capability of having
7 them tested had you been asked?

8 A. No. But I was asked.

9 Q. And how did you respond?

10 A. And in those situations, I
11 suggested that they contact Doctor Brian
12 Hughes.

13 Q. Okay. Is Doctor Hughes an M.D.?

14 A. Doctor Hughes, I believe, is a
15 Ph.D.

16 Q. Okay. To any of the less than
17 fifty, more than twenty people you talked
18 to, did you make any effort at all to
19 mediate -- I'm sorry-- to mitigate any
20 damage that may have occurred to them or
21 their property with respect to PCBs
22 contamination? In other words, did you
23 suggest to them that they might want to

1 seek medical attention regarding
2 contamination of their body and that they
3 may want to make some remedial effort such
4 as keeping their children inside and not
5 letting them eat dirt, that type of thing
6 with respect to soil contamination?

7 Did you make any effort to --

8 A. At that point in time, we didn't
9 know of any soil contamination.

10 Q. Now, you had already
11 tested -- the east side property purchase
12 program had already been established?

13 A. The east side program had already
14 been established.

15 Q. Okay.

16 A. I was not meeting with east side
17 residents.

18 Q. Okay. You were meeting with west
19 side residents at this time?

20 A. West side residents were one of
21 four groups.

22 Q. Okay. At this point, you had not
23 done any off property soil testing?

1 A. Correct.

2 Q. And this is the predecessor to
3 that, this is a precursor to doing that,
4 you're trying to get their permission?

5 A. Correct.

6 Q. Okay. And I assume that you, in
7 most cases, got their permission?

8 A. I think in every case I got their
9 permission.

10 Q. And was Mr. Massey one of the
11 people you met with on that occasion?

12 A. Not during that time frame.

13 Q. All right. Okay. When was the
14 next time for you to -- and I assume that
15 was basically the sum and substance of your
16 visit to Anniston, to begin meeting with
17 people, begin letting them know you'd like
18 to do some off site soil testing on their
19 property, kind of let them know what's
20 going on with respect to property purchase,
21 property cleanup and that type thing?

22 A. Correct. That was the purpose --

23 Q. The first time?

1 A. -- in March of 1997 -- 1996.

2 Q. Okay. And when was the next time
3 for you to come to Anniston? Let me ask
4 you this: How long were you there in March
5 of 1996?

6 A. Just about every week.

7 Q. Every week during March?

8 A. Every week during March, perhaps
9 April, May, June, July. And that was not
10 every week, but I got into a schedule of,
11 perhaps, flying in on a Monday and Tuesday
12 and flying out on a Thursday or Friday.

13 Q. Yeah. But again, the purpose --
14 and during this time you were meeting with
15 this less than fifty, more than twenty
16 group?

17 A. It would have been expanded to
18 more than fifty at that time.

19 Q. Okay. But again, purpose the
20 same, to gain permission to do testing on
21 the property, basically tell them what it's
22 all about, kind of, as we said, an
23 introductory visit?

1 A. Yes.

2 Q. Okay. Now, was there a period of
3 time after July of 1996, where you just
4 didn't come back to Anniston for a long
5 time? Was there a tertiary phase to
6 your --

7 A. After July of 1996, I continued
8 and have continued to periodically come
9 back to Anniston for different purposes,
10 different reasons.

11 Q. Okay. I assume that -- excuse
12 the expression. But I assume that the
13 visit in March of '96, was the beginning of
14 some campaign to educate, to inform, to
15 sort of bring the community in to let them
16 know what was going on with respect to
17 property purchases and cleanups and that
18 type thing?

19 A. Well, the real purpose starting
20 in March and really continuing until July,
21 was to very simply comply with the
22 provisions that dealt with soil sampling
23 under that purchase property program.

1 Q. Okay.

2 A. And in addition, there was a
3 stipulation or provision in the consent
4 order or consent agreement to perform some
5 house cleaning or cleaning homes and
6 temporary relocation of people in, I think
7 the east side and -- the east side area and
8 the expanded -- what I'll call the expanded
9 east side area, which covered Montrose
10 Avenue.

11 Q. All the way to and including
12 Montrose Avenue?

13 MR. COX: Right.

14 A. Including residents on both
15 sides, all of those would have been
16 included under that program.

17 Q. Were any commercial properties
18 included in that program?

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

20 Q. All right. Now, was there
21 another phase to this campaign that
22 occurred after July of '96? In other
23 words, you were there pretty much every

1 week in July and we completed that. Now,
2 are we on to another phase of compliance
3 with the consent order?

4 A. Well, at one period in time, I
5 think under the compliance order,
6 compliance agreement or the consent order,
7 consent agreement, we were to offer
8 cleaning and temporary relocation services
9 to certain individuals. By certain
10 individuals, I mean residents in certain
11 areas. I was involved in that.

12 Q. All right. And then when was
13 your next trip back then after July of '96?

14 A. I think I continued to come back
15 to Anniston on some frequency of, perhaps,
16 every couple of weeks or, perhaps, every
17 week for a period of time.

18 Q. Okay. When did you first have an
19 occasion to meet Mr. Massey and introduce
20 yourself to him?

21 A. I think it was in May of 1996.

22 Q. So it was during that first visit
23 then?

1 A. Correct.

2 Q. Okay.

3 A. Correct.

4 Q. What do you recall about your
5 meeting with Mr. Massey? Do you recall
6 what you said to him?

7 A. The first meeting that I had with
8 Mr. Massey, I think, was an introductory
9 meeting where Joe Lambert introduced me to
10 Mr. Massey.

11 Q. Okay. Where were you?

12 A. I think right in the middle of
13 Parkland Avenue, right next to Mr. Massey's
14 Anniston Rental Equipment Company.

15 Q. Okay. Do you recall what, if
16 anything, was said regarding your purpose
17 of being there?

18 A. No, I don't recall, you know,
19 exactly the conversation --

20 Q. Did you go into detail --

21 A. -- we had at that period in time.

22 Q. -- at all as to what -- as to the
23 testing, whether or not PCBs had been found

1 in the ditch, that type of thing?

2 A. No, not at that -- not at that
3 introductory meeting.

4 Q. Then what was the next occasion
5 for you to see Mr. Massey? That was
6 basically just how are you, my name is Jack
7 Massey?

8 A. Correct.

9 Q. Okay.

10 A. Correct. I think the next
11 meeting was, perhaps, within a couple of
12 days.

13 Q. Still in May of '96?

14 A. Correct.

15 Q. How did that come about?

16 A. That's when we were -- we had
17 been sampling soils and sediments in the
18 area south of West Ninth Street between
19 Bancroft and Duncan.

20 Q. West of Ninth?

21 A. South.

22 MR. COX: South.

23 A. South of West Ninth Street.

1 Q. Okay.

2 A. Between Bancroft and Duncan. And
3 I was trying to determine where this ditch
4 flowed. For a long time, I was under the
5 impression by looking at the topography,
6 that the ditch ran west to east behind Joe
7 Lambert's property and then vanished. I
8 was under the impression that it then went
9 subsurface until it got to the railroad
10 tracks east of Clydesdale. I was informed
11 by local residents that that was not the
12 case, that that ditch, and again, this is
13 the ditch that we would call the west side
14 ditch, the ditch that runs the west side of
15 Monsanto Anniston plant.

16 Q. By the railroad track?

17 A. It goes by the railroad track, it
18 continues up diagonally towards the north
19 and then it goes behind Lambert Recycling.
20 And I was informed that, no, that ditch
21 makes an abrupt turn to the north and goes
22 underneath the Lambert Recycling Center.

23 Q. All right. Underneath the slab

1 there?

2 A. Goes right underneath the slab.

3 Q. Yes.

4 A. Continues north and then goes
5 subsurface in a culvert. It joins the
6 storm water drain system right at West
7 Tenth Street.

8 Q. All right. Then it goes east?

9 A. Then it runs east to the
10 intersection of Parkland and West Tenth
11 Street and diverts diagonally toward the
12 north side of West Tenth Street, continues
13 to run east to the intersection of West
14 Tenth Street and Clydesdale and then runs
15 subsurface diagonally towards the southeast
16 toward the railroad track.

17 Q. And then does it sort of parallel
18 Tenth going northeast?

19 A. Well, at that point when it goes
20 and comes to the surface again at the
21 railroad track, it follows the railroad
22 track and at a certain point it then runs
23 parallel to Eleventh Street.

1 Q. Okay.

2 A. Well, it was during this process
3 of determining where this ditch flowed.
4 Because the purpose was to follow that
5 ditch and sample the sediments in that
6 ditch and then, if need be, sample the
7 adjacent properties outside the ditch.

8 So at that particular point, we
9 were initiating sampling in that ditch
10 behind Lambert Recycling, and also under
11 Lambert Recycling up until West Tenth
12 Street.

13 Q. And so that was the purpose of
14 your second meeting with Mr. Massey?

15 A. The purpose of the second
16 meeting, which was a longer meeting,
17 certainly longer than the first, was to get
18 Mr. Massey's permission to sample the ditch
19 behind the Lambert Recycling building
20 because Mrs. Lambert, as I understand,
21 leased that property from Mr. Massey.

22 Q. Which is now called the motor
23 pool? You all now lease that from Mrs. --

1 A. We -- it's my understanding it's
2 a sublease --

3 Q. Okay.

4 A. -- type of situation.

5 Q. And I assume you obtained that
6 permission?

7 A. Correct.

8 Q. Okay. Did you discuss anything
9 else with Mr. Massey during that meeting?

10 A. Well, I think at that time, I
11 discussed and summarized or briefed Mr.
12 Massey on the sampling that we had been
13 doing on the east side, west side
14 associated with PCBs in and adjacent the
15 two ditches, and that the ditch in
16 question, the west side ditch, is the one
17 that meandered north of the railroad track,
18 through a mobile home park and then
19 diverted south of Lambert Recycling on his
20 property and then diverted north. So that
21 was the ditch that we wanted to sample.

22 Q. Okay. Did you discuss anything
23 else with him at that point?

1 A. At that time, nothing comes to
2 mind, no.

3 MR. COX: We've been going about
4 an hour and forty-five minutes. It's about
5 a quarter to 1:00. Let's take a break for
6 lunch.

7 (Lunch recess was had.)

8 Q. (By Mr. Hollingsworth) I think we
9 were talking about when you visited Jack,
10 and we were at the second visit, and that
11 was when you were trying to determine where
12 the ditch was flowing?

13 A. Correct.

14 Q. And you visited him for the
15 purpose of getting his permission to test
16 on his property?

17 A. Correct.

18 Q. Okay.

19 A. That was a joint permission, I
20 believe, between Joe Lambert and Mr.
21 Massey.

22 Q. All right. How did you test
23 under the Lambert building?

1 A. We didn't test under the Lambert
2 building. What we did is we tested right
3 there in the ditch. And at one point, we
4 took some samples of sediment inside the
5 building.

6 Q. Inside the building? That would
7 have been on top of the concrete?

8 A. Correct.

9 Q. Okay. All right. Did you have
10 subsequent meetings with Jack or was
11 that --

12 A. No, I had subsequent meetings
13 with Jack.

14 Q. All right. But at that time, you
15 only discussed the possibility -- getting
16 his permission to test on that property?

17 A. Correct. That would be the lease
18 property behind Lambert Recycling.

19 Q. Okay. And you, in fact, tested
20 there?

21 A. Correct.

22 Q. Okay. Now, as a practical
23 matter, has it been your finding that your

1 readings in that creek basis, ditch basin
2 had been inordinately high compared to
3 other soil samples that you conducted?

4 A. I'm not sure I had a frame of
5 reference at that particular time. Keep in
6 mind, I came in March of 1996. I had not
7 been involved in any soil sampling at that
8 particular point in time. We had four
9 areas where we needed to conduct soil
10 sampling.

11 I would also like to clear up
12 one point earlier. We are talking about a
13 time frame between March and July. Our
14 sampling in our areas went well beyond
15 July.

16 Q. Right. I'm not talking -- I'm
17 talking about as we sit here today. I'm
18 not talking about what you knew at the
19 time, but as we sit here today, looking
20 back on the data that you've accumulated.

21 A. Oh, okay.

22 Q. Has that --

23 A. Framing it in that way, there are

1 certain levels of PCB in that ditch which
2 are quite low. For the most part, they're
3 relatively low in the ditch.

4 Q. In the ditch. How about
5 contiguous --

6 A. Contiguous to the ditch?

7 Q. Right.

8 A. There are some concentrations
9 that get into the hundreds.

10 Q. Okay.

11 A. Which again, relative to areas
12 contiguous to, for example, the east side
13 ditch, might be termed -- as I recall, we
14 saw, perhaps, some levels that high, but
15 most of the -- most of the results were not
16 extremely high in the ditch, or either on
17 or contiguous to the ditch. As I recall,
18 about the highest concentration I saw
19 adjacent that ditch, and that would have
20 behind Joe Lambert's Recycling Center, was
21 about three hundred and sixty, three
22 hundred and eighty ppm.

23 Q. Okay.

1 A. In a localized area where we knew
2 based on discussions with Joe Lambert,
3 perhaps even Mr. Massey, that we had
4 continual flooding in that area and
5 had -- and that was an area that continued
6 to flood in the past for many, many years.

7 Q. Tell me about the results of the
8 surface testing on the Lambert property.
9 Were they inordinately high, or were they
10 above five parts per million?

11 A. Well, certainly above five parts
12 per million, above our screening level
13 would not be inordinately high.

14 Q. Right. Well, let me ask -- let
15 me show you, and I'm not going to mark
16 this, but I'll just tell you this is a plat
17 that Golden and Associates did, I assume at
18 your request. Is this the Lambert property
19 right here (indicating)? Is that the slab?

20 A. This is the Joe Lambert Recycling
21 Center (indicating).

22 Q. Okay.

23 A. This building right here

1 (indicating).

2 MR. COX: Just for record, he's
3 pointing to the --

4 MR. HOLLINGSWORTH: I'll
5 introduce this --

6 MR. COX: You may want to mark
7 it.

8 Q. Would this have been the surface
9 test results? This is the slab itself
10 (indicating).

11 A. Are we talking about this
12 particular sample (indicating)?

13 Q. Yes.

14 A. This would have been a sample of
15 residue debris.

16 Q. On the --

17 A. On the slab right above that
18 ditch.

19 Q. Which would have had to have been
20 the result of flooding?

21 A. I would expect that would have
22 been the case.

23 Q. Okay. But I guess to follow-up

1 my last question, as you tracked the ditch
2 or the creek down through its various gigs
3 and jaunts and ended up at, I guess,
4 ultimately paralleling Eleventh Street --

5 A. Correct.

6 Q. -- did you find elevated levels
7 of PCB as you followed the creek? Did you
8 test all the way down -- you tested passed
9 Clydesdale, I'm sure. Well, let me ask you
10 this --

11 A. Well, we tested in the ditch --

12 Q. Okay.

13 A. -- where the ditch was open to
14 the surface. A portion of that ditch, as I
15 said earlier, joins a storm water draining
16 system that runs underground.

17 Q. Okay. Then it emerges again?

18 A. It emerges again by the railroad
19 track, and then runs in parallel to
20 eventually Eleventh Street, and then
21 eventually reaches a confluence point with
22 Snow Creek.

23 Q. Okay. What was the furthest

1 point north -- I guess the ultimate flow is
2 northeast; isn't that right? I mean, to
3 parallel Eleventh Street would be northeast
4 by southwest.

5 A. Yeah. At Eleventh Street, I
6 guess you're pretty well going west to
7 east.

8 Q. Right. So what was the furthest
9 point that you all tested, you know, away
10 from the head waters, if you will, of that
11 creek?

12 A. The furthest point north of the
13 head waters for that particular ditch --
14 the farthest point north would have been at
15 West Tenth Street because that ditch runs
16 north to West Tenth Street. At that point,
17 it turns and it's going due east.

18 Q. That would have been right in
19 front of Mr. Massey's property?

20 A. That would have been on the north
21 side --

22 Q. The funeral home?

23 A. -- of Massey's property. The

1 north side of West Tenth Street in front of
2 Mr. Massey's property.

3 Q. Okay. That's the furthest you
4 all tested?

5 A. Well, we didn't test there
6 because the ditch at that particular point
7 was subsurface underground.

8 Q. All right. Have you tested where
9 the ditch again emerges?

10 A. Yes, but I don't know whether
11 we've tested at that specific point.
12 There's a junction box. I think we've
13 tested downstream of that junction box at
14 various stations.

15 Q. All right. Which would actually
16 be close to Tenth Street at that point;
17 would it not be?

18 A. At that point, we would have been
19 between the railroad track east of
20 Clydesdale, south of West Eleventh Street.

21 Q. Okay. Did you find levels that
22 were inordinately high in that testing?

23 MR. COX: Object to the form.

1 Q. Let me say this: Let me rephrase
2 that. Did you find levels that were at or
3 above the average that you had found in
4 previous tests on that ditch?

5 A. As I recall, we found some levels
6 that were in the same or similar range.

7 Q. Okay. Did you test adjacent to
8 the ditch passed Clydesdale as the creek
9 reemerged, or were you just in the creek
10 bed?

11 A. No. What we did is we tested
12 actually the side of the ditch and then at
13 the berm of the ditch and then usually --
14 excuse me -- at the side of the ditch, at
15 the edge of the ditch at the berm; and by
16 berm I mean where it flattens out at the
17 top, and then usually five to ten foot
18 outside of the ditch.

19 Q. Okay.

20 A. And where we're doing this
21 testing that I'm talking about is at about
22 four different locations in the ditch or at
23 the ditch north of -- parallel the railroad

1 track east of Clydesdale.

2 Q. Okay. And again, were those
3 levels consistent with what you had found
4 prior to?

5 A. Those levels were variable.

6 Q. Okay.

7 A. Some below the limit of detection
8 of the screening.

9 Q. Okay.

10 A. Some higher of the magnitude of
11 the two hundred, three hundred ppm.

12 Q. Okay. Now, tell me again your
13 next meeting with Mr. Massey that you
14 recall.

15 A. The next meeting with Mr. Massey,
16 I believe was -- could have been a week or
17 a couple of weeks later than the last one,
18 or after the last one, where I gained Mr.
19 Massey's permission to sample a piece of
20 property, an empty lot that he had north of
21 West Tenth Street at the junction of West
22 Tenth and Parkland.

23 Q. Okay. And I think, if I recall

1 correctly, the values -- tested values of
2 that area were below five parts per
3 million; isn't that correct?

4 A. Except one value.

5 Q. Right. Which was --

6 A. And there's a -- there's a
7 question on whether the location of that
8 sample point is on the property or in the
9 right-of-way.

10 Q. Now, in any of your meetings with
11 Mr. Massey, did you discuss with him the
12 possibility of Monsanto cleaning up his
13 property from the standpoint --
14 environmentally cleaning up his property?

15 A. No.

16 Q. Never did, never said that?

17 A. No.

18 Q. Did you ever discuss with him the
19 possibility of Monsanto purchasing his
20 property?

21 A. No.

22 Q. Okay. Did you discuss with him
23 Monsanto purchasing other pieces of

1 property in that area?

2 A. The only conversation that we may
3 have had in that regard is that Mr. Massey
4 may have asked me some questions regarding
5 the purchase property program that we had
6 on the east side.

7 Q. Okay. Now, you never made the
8 statement then to Mr. Massey that Monsanto
9 was going to come in and cut down sixteen
10 inches of dirt and haul that off to a
11 certified landfill, secure landfill?

12 A. No.

13 Q. Okay. And you never said to him
14 that they were going to do that on his
15 property, and that they were going to
16 basically require him to move while you did
17 this?

18 A. No, because I never had the
19 opportunity to meet with Mr. Massey to go
20 over the sampling results on two of the
21 three properties that we've discussed.

22 Q. That's because he had hired a
23 lawyer?

1 A. Correct.

2 Q. Okay. But, in fact, the folks
3 that didn't hire a lawyer, you told them
4 what -- you responded to them in writing
5 and told them what the levels were; isn't
6 that correct?

7 A. Correct.

8 Q. Okay. Well, you're aware of the
9 fact that the levels on Mr. Massey's
10 property are extremely high in some areas;
11 are you not?

12 A. There are a couple of locations
13 on Mr. Massey's property that are quite
14 high.

15 Q. Okay. And is it your testimony
16 that you did not suggest to him that
17 Monsanto would clean up that because you
18 never were allowed to -- because of the
19 fact he had hired a lawyer?

20 A. Correct. We never discussed the
21 levels on his property other than the lease
22 property that I just talked about.

23 Q. Did you ever discuss with him

1 Monsanto's plans to acquire the residential
2 property in that area and clean them up and
3 remove the soil, contaminated soil off
4 premises?

5 A. I may have mentioned to Jack
6 that -- and I'm not sure whether at that
7 particular point in time that we were
8 expanding the purchase property program for
9 residential properties in areas north of
10 our plant, including the area abounded by
11 Bancroft, West Ninth Street and Duncan
12 Street and the residential community --
13 residential series of houses along the
14 south side of West Tenth Street between
15 Parkland and Duncan.

16 Q. Well, at this point, was it ever
17 included in the property purchase -- the
18 east side property purchase program that
19 any commercial property would have been
20 purchased?

21 A. At this particular point in time
22 with the expansion in those areas, no.

23 Q. Okay. Did you ever indicate to

1 Mr. Massey or in a conversation indicate to
2 him that you all had made a deal with ADEM
3 or the EPA to clean up the commercial
4 property?

5 A. No, because I'm not so sure there
6 was, as you say, a deal or a
7 communication --

8 Q. Well, I use that loosely.

9 A. -- at that stage on what we would
10 be doing.

11 Q. Okay. There wasn't any
12 representation that the soil would be
13 hauled off and that asphalt would be
14 replaced there to cover up the soil?

15 A. Specifically on his property?

16 Q. On any property? In a general
17 discussion with Mr. Massey, I guess is what
18 I'm saying.

19 A. I don't believe so.

20 Q. Okay. At any point in time, did
21 Monsanto decide to as part of this property
22 purchase program to purchase commercial
23 property?

1 A. We have purchased some commercial
2 properties.

3 Q. Well, what was the -- what
4 prompted the change in the program to
5 purchase commercial property as opposed to
6 your earlier comments to Mr. Massey that no
7 commercial property would be purchased?
8 What precipitated the change?

9 A. Well, the commercial properties
10 -- and I can only speak personally. But
11 the commercial property negotiations that I
12 personally was involved in dealt with
13 commercial properties that we were impacted
14 directly by the ditch or the creek.

15 Q. Okay. So it was the testing?

16 A. Or properties that we felt were
17 needed in order to do what remedial
18 projects our design team or design
19 engineers thought were feasible.

20 Q. Okay. And so it would have been
21 the testing ultimately, that determined
22 which commercial properties were to be
23 purchased?

1 A. The testing would have been the
2 first -- obviously, the first catalyst.

3 Q. Okay. Now, tell me what remedial
4 projects you're referring to that the team
5 had concluded needed to be done.

6 A. Well, at this time when I say
7 remedial projects, I'm referencing some of
8 the types of remedial projects that were
9 underway; for example, on the south
10 landfill, the west landfill, the east side
11 remediation project that involved the
12 construction of a detention basin, piping,
13 berms, changing of drainage flows,
14 diversion of water, control of flooding.

15 One particular property,
16 commercial property was what I call the
17 Miller property, which we purchased that
18 allowed us to construct a drainage channel
19 from Tenth Street up to the railroad
20 track.

21 Q. Okay. And at some point in time
22 then after you got the test, you all made
23 the determination that you needed to buy

1 some commercial property to complete the
2 remedial projects that you had on the
3 table?

4 A. Yeah. I'm not sure that would
5 have been my decision.

6 Q. I mean as a group.

7 A. Correct.

8 Q. Okay. And however, at that
9 point, you were not able to convey that to
10 Mr. Massey because he had hired me?

11 A. Well, I was not able to convey
12 the communications on sampling results,
13 which was my responsibility to communicate
14 sampling results.

15 Q. Right. Was the prospect of
16 actually just cleaning up the commercial
17 property, Mr. Massey's property in
18 particular, ever discussed or was that ever
19 a possibility among the remedial team
20 members that you're aware of?

21 A. I don't recall any specific
22 discussions --

23 Q. Well, I mean --

1 A. -- regarding that.

2 Q. -- did anybody ever say let's do
3 a cost analysis to see if it'd be cheaper
4 to try to clean this property up as opposed
5 to purchasing it? Did you ever get any
6 figures from Waste Management or any of the
7 secure landfills as to what it would cost
8 to do -- did you ever have any outside
9 consulting firms come in and give you any
10 prices on what it would cost to clean up
11 this property?

12 A. No.

13 Q. Okay. Was anything ever done
14 internally to give you some cost estimate
15 as to clean up versus purchase?

16 A. Not that I'm aware of, no.

17 Q. I've gone through a lot of
18 documents or people on my staff have gone
19 through a lot of documents, one hundred and
20 ninety-eight thousand pieces of paper. A
21 lot of them has your signature on them.
22 They basically dealt with permission to
23 test, results of testing and that type of

1 thing. And I think -- you know, obviously,
2 you're aware of the fact that many of the
3 pieces of property were purchased by
4 Monsanto in and around Mr. Massey's
5 property.

6 Do you have an opinion as to
7 whether or not the property that you
8 purchased that had, just for lack of a
9 better word, inordinately high levels of
10 PCBs, do you have an opinion as to whether
11 or not that fact alone would have caused --
12 I guess presented a hazard to those
13 occupying that property? In order words,
14 why did Monsanto buy this property?

15 MR. COX: Are you asking him did
16 Monsanto buy the property because they were
17 afraid of what would happen to the people
18 that were occupying it?

19 MR. HOLLINGSWORTH: Yes.

20 A. What property?

21 Q. Well, let's just say the
22 residential property. Obviously, that
23 would be the -- that's the first property

1 you purchased; is it not?

2 A. The residential property --

3 Q. Right.

4 A. -- in the east side area?

5 Q. Well, was that the first property
6 you purchased, the east side property?

7 A. I believe that was the first --

8 Q. Coming down by the railroad
9 track?

10 MR. COX: No.

11 A. No. This would have been the
12 east side property east of the Monsanto
13 plant, east of --

14 Q. Not Mars Hill?

15 A. -- Clydesdale.

16 MR. COX: Mars Hill and that
17 area.

18 Q. Okay.

19 A. All of that is the east side.

20 Q. But was there residential
21 property there or was that simply just
22 churches and --

23 MR. COX: That was residential.

1 Q. And that was the first property
2 you purchased?

3 A. Correct.

4 Q. What was the motivation --

5 A. I wasn't involved in those
6 decisions on what we would purchase, what
7 we would not purchase.

8 Q. Right.

9 A. That particular purchase property
10 program, as I understand, was initiated
11 prior to me coming in March of 1996.

12 Q. Okay. Do you know why Monsanto
13 purchased that property?

14 A. Not personally, no.

15 Q. Do you have an opinion?

16 A. The opinion I have that one would
17 purchase the properties in that particular
18 area south of West Tenth Street in order to
19 put in remedial projects necessary to
20 minimize and contain the possibility of any
21 release of PCBs on sediment outside of
22 Monsanto property.

23 Q. So your opinion is that it was

1 not purchased to alleviate any particular
2 hazard that may be posed to landowners?

3 A. Not that I'm aware of, no.

4 Q. Do you have an opinion as to
5 whether PCBs constitute a hazard to humans?

6 A. Yes.

7 Q. What is that?

8 A. I think it all depends on what
9 the concentration of the PCBs are and what
10 the nature of exposure is.

11 Q. Well, --

12 A. My familiarity is primarily in
13 the occupational arena, the occupational
14 workplace.

15 Q. Well, humans work in the
16 workplace; do they not?

17 A. You bet you.

18 Q. Okay. And at what level then
19 would you consider PCBs to pose a threat to
20 humans in the workplace?

21 A. That would be a -- I would only
22 be guessing. I can tell you that there are
23 exposure limits that have been

1 established --

2 Q. What are those?

3 A. -- for PCBs in the workplace. It
4 depends on the PCB mixture.

5 For example, if you have a
6 higher chlorinated PCB mixture, one that
7 contains fifty-four percent or greater
8 chlorine, then the occupational exposure
9 limit is zero point five milligrams per
10 cubic meter of air.

11 Q. Is this a Dragger tube testing
12 method?

13 A. No. Certainly much more
14 sophisticated than that. It is a --

15 Q. Gas chromatography?

16 A. You will use gas chromatography to
17 do the analysis, but you'll collect your
18 sample by using various collection devices
19 depending upon the nature of whether it's a
20 particulate, an aerosol, a vapor or
21 whatever you've got.

22 Q. Well, these were air tests?

23 A. Correct.

1 Q. Okay.

2 A. Now, I mention that's for the
3 higher chlorinated materials. For the
4 lower chlorinated materials, for example,
5 forty-two percent and less chlorine than
6 the occupational limit, and I might mention
7 the TLV, called threshold limit value, is,
8 I believe, zero -- excuse me -- one point
9 zero milligrams per cubic meter.

10 Q. Okay. Now, PCBs, as you
11 mentioned earlier, they remain stable and
12 bound to organic material and soil?

13 A. That's my understanding;
14 correct.

15 Q. Now, the chlorine -- I guess at
16 this point, you're talking about PCBs that
17 -- in determining these testing levels
18 with various levels of chlorine, is there
19 some assumption that there's some
20 alteration in the cyclic structure of PCBs
21 over time, or is this in their various
22 stages of production? Why and how would
23 you have higher levels or lower levels of

1 chlorine bound to the biphenyls?

2 A. Depends on how you process the
3 material. If you want to manufacture a
4 higher chlorinated material, then you're
5 going to have a -- and I'm certainly not an
6 expert in chemical engineering, but you're
7 going to manufacture a process or produce a
8 mixture that's got a higher chlorinated
9 content.

10 Q. Okay. So there are various
11 isotopes, if you will, of chlorinated
12 biphenyls?

13 A. Various isomers.

14 Q. Isomers, right.

15 A. Right.

16 Q. And so you could have maybe two
17 or three chlorine locations on the cyclic
18 ring, or you might have four or five?

19 A. Or conceivably you could have
20 more than that.

21 Q. Sure. But it's depending on the
22 process, not something that happens to PCBs
23 over time. Once they're manufactured,

1 whether it's location one, five, six or
2 whatever, that's it? You're not saying
3 that they alter or change?

4 A. I'm not sure of that. We're
5 talking now about the degradation, what may
6 happen to a PCB mixture in an environment
7 to cause it to, let's say, lose certain
8 chlorines on a chemical molecule, and I'm
9 not that versed in those particular
10 characteristics.

11 Q. All right. But are you saying
12 that on this site Monsanto manufactured
13 various isomers of chlorinated biphenyls,
14 or was there just one particular?

15 A. From what I understand, in the
16 Aroclor line of PCBs, we manufactured a
17 number of different mixtures.

18 Q. Okay. Well, now, you mentioned
19 in some of your letters regarding soil
20 sampling that you were going to go beyond
21 the soil sampling and perform other tests
22 on samples that you obtained?

23 A. Beyond the analysis that was done

1 on the screening of soil samples to do what
2 we would call a confirmatory analysis.

3 Q. Okay. And would that have
4 included a determination as to the chlorine
5 levels?

6 A. That would have included the ppm
7 levels of the specific levels of the
8 various mixtures.

9 Q. Okay. It wouldn't have anything
10 to do with the availability of chlorine on
11 each molecule?

12 A. Yes, in a way it would. It would
13 have a difference from the standpoint of if
14 I conduct an analysis on a sample, and I
15 say that I have so much content, this is
16 the level of 1254 and this is the level of
17 1268, what I'm reporting is I've got so
18 many ppm of a component that --

19 Q. You could actually determine what
20 the component was, though? You could
21 determine which isomer that you had?

22 A. It's really -- when I say a
23 mixture, you're really talking about a

1 mixture of isomers.

2 Q. But I mean if you look at it on a
3 gas chromatograph, I mean, you see peaks
4 and valleys?

5 A. What you see is you see a
6 fingerprint, and that fingerprint then is
7 matched against standards. And that
8 standard, for example, could be a 1254,
9 1248, 1268. And then those results are
10 reported in terms of the mixtures that were
11 detected in that particular sample.

12 Q. Okay. Now, was it important for
13 you to determine that so that you can
14 compare this to the occupational guidelines
15 that, I assume, OSHA or the EPA has
16 established for --

17 A. No, it wasn't important for me.

18 Q. Okay.

19 A. What we did is we followed the
20 particular procedure that was called for in
21 the consent agreement.

22 Q. Okay.

23 A. And that's the way that procedure

1 presents or analyzes the samples.

2 Q. Well, is there a formula for
3 equating the contamination in terms of
4 parts per million to milligrams per cubic
5 liter?

6 A. Milligram per cubic meter?

7 Q. Right.

8 A. Yes, there is.

9 Q. Okay.

10 A. You won't be able to do it,
11 though, --

12 Q. No, I'm not going to do.

13 A. -- the way I've suggested.

14 Q. I'm going to have you do it for
15 me.

16 A. I'm not sure I could do it right
17 now.

18 Q. Well, let me ask you then to tell
19 me what, if you know, fifty-four percent --
20 let's assume that we're dealing with
21 fifty-four percent chlorine.

22 A. Okay.

23 Q. And that equates to a maximum

1 threshold limit value; is that right, of
2 five milligrams per cubic meter?

3 MR. COX: Point five.

4 MR. HOLLINGSWORTH: Point five.

5 A. Let's say point five milligrams
6 per cubic meter.

7 Q. How does that equate -- can we
8 equate that to parts per million?

9 A. Yes, you can. But again, that
10 will be parts per million in terms of
11 airborne.

12 Q. Right.

13 A. And it will be how much of this
14 material on a volumetric basis versus a
15 weight basis. And --

16 Q. Okay.

17 A. -- I'm asked that sometimes, and
18 I usually go to my handydandy reference
19 book. But what you have to do is you have
20 to look at the average molecular weight
21 that you're talking about and then you'll
22 use a constant. A constant is about
23 twenty-four point four five for a standard

1 temperature and pressure.

2 Q. All right. For it to become
3 atmospheric?

4 A. Well, in the formula that we're
5 talking about where you convert weight in
6 air to volume in air.

7 Q. All right. So practically
8 speaking, I mean, could you tell from a
9 soil sample -- let me back up a little bit.

10 You mentioned that these
11 occupational levels are for airborne
12 concentrations?

13 A. These are for airborne
14 concentrations.

15 Q. Okay. And these are promulgated
16 by?

17 A. Right now they're promulgated by
18 OSHA.

19 Q. Okay. Do they have maximum
20 levels for soil contamination in the
21 workplace arena?

22 A. No.

23 Q. Okay. How about liquid

1 contamination of any type, water
2 contamination?

3 A. No.

4 Q. Okay. Obviously, there's some
5 method for soil contamination to become
6 atmospheric contamination conceivably in
7 the workplace; would there not be?

8 A. Correct.

9 Q. Okay. And is there a method of,
10 let's say in this case, where you test on
11 the surface of the Lambert Recycling
12 Center, is there some way to equate what
13 hazard fifty-three point five parts per
14 million constitutes compared to an airborne
15 level? In other words, can you say, well,
16 yeah, that would present a hazard because
17 it's point five milligrams per cubic meter
18 or greater? I mean, is there some rule of
19 thumb?

20 A. What you would have to look at is
21 most of those levels, if not all of those
22 levels, are expressed in ppm.

23 Q. Right.

1 A. We're talking about ppm of
2 polychlorinated biphenyls in soil.

3 Q. Okay.

4 A. Therefore, the first thing we
5 have to do is determine what that is on a
6 weight basis in terms of milligrams per
7 kilogram.

8 Q. Okay.

9 A. Milligrams of ppm per kilogram of
10 soil is equivalent to ppm.

11 Q. Okay.

12 A. Now, if I say we have one ppm or
13 five or ten -- ten is a good number. Ten
14 ppm, then that's equivalent to ten
15 milligrams per kilogram. We're talking
16 about a mixture that represents 1254. It's
17 got an airborne exposure limit of point
18 five milligrams per cubic meter. Okay?

19 Q. Okay.

20 A. Now, we would have to say how
21 much soil would we have to have in the
22 ground here, coverage, to represent point
23 five milligrams, point five milligrams,

1 because we've got ten milligrams per
2 cubic -- per kilogram. Okay?

3 Q. All right.

4 A. Then point five is one-twentieth
5 of that. So if we took one-twentieth of a
6 kilogram, we disperse that evenly in a
7 cubic meter of air, then that would
8 represent the amount of material equivalent
9 to the occupational exposure limit of PCBs.

10 Q. I'm sure you've done that on some
11 of these samples; have you not?

12 A. I have not done that because I
13 have never seen the situation where you
14 could, in any operation I've seen, generate
15 sufficient amount of soil in air with PCBs
16 contained in that soil to even approach and
17 get anywhere close to an occupational
18 exposure limit.

19 Q. All right. Because of the
20 density and the mass of the soil? I mean,
21 it's just -- to get a kilogram of soil
22 airborne -- one-twentieth of a kilogram of
23 soil airborne, and then take those

1 measurements would be practically
2 impossible; would it not?

3 A. To take the measurements would
4 not be impossible. It's just generating
5 that type of atmosphere long enough where
6 you could actually take the measurement.

7 Q. Actually have it come off the
8 soil into the atmosphere?

9 A. Well, it really wouldn't come off
10 the soil. It would be a part of the soil,
11 but what you would have to do is take the
12 soil, pulverize it and then conduct some
13 operation with the soil that then generates
14 a fairly consistent mass of material in the
15 air.

16 Q. Okay. Well, I mean to get back
17 to my earlier question then, why do you
18 think Monsanto purchased this property from
19 these individuals who occupied this
20 property?

21 MR. COX: The residential?

22 Q. The residential, yeah. I mean,
23 you --

1 A. The residential on the east side
2 area?

3 Q. Well, do you agree with OSHA that
4 these threshold limits, these maximum
5 threshold limits, if they're exceeded could
6 constitute a hazard to human beings in the
7 workplace?

8 A. Yeah, they could, I guess,
9 represent a hazard.

10 Q. Okay.

11 A. That's typically the way that
12 OSHA or the American Conference of
13 Governmental Industrial Hygienists
14 establish TLDs.

15 Q. Okay.

16 A. Now, we've got to keep in mind
17 when I say the limit is point five or one
18 or whatever, then clearly both agencies
19 admonishes you to not treat that as a "safe
20 and unsafe level".

21 Q. Okay.

22 A. And it may well be that you might
23 have to go quite above those before it

1 would represent --

2 Q. A sustained --

3 A. -- a significant hazard because
4 in most cases, in a lot of the threshold
5 limit values and permissible exposure
6 limits, you've also got kind of a margin, a
7 working operating margin there.

8 Q. Like if you went into a dry
9 cleaner, and you know, I guess if you took
10 a Dragger meter and you did an initial test
11 just as their -- when they used to use
12 propyl ethylene, I mean, you would -- there
13 were TLVs established for propyl ethylene
14 that would not -- as I understand it, would
15 not necessarily be the sustained value of
16 propyl ethylene in the atmosphere, but
17 could be an initial value on a day that was
18 hot, like today, or real humid, you could
19 get readings that would be inordinate
20 compared to maybe a yearlong average of
21 what somebody is experiencing there?

22 A. You could certainly get higher
23 levels than what you would ordinarily see

1 on average, yes.

2 Q. All right. What types of
3 hazards do you -- in your judgment, could
4 occur from exposure to PCBs in levels
5 higher than those established by OSHA?

6 MR. COX: Are you talking about
7 airborne PCBs?

8 Q. Yes.

9 A. Well, it's been my experience
10 that in the occupational sector, I think
11 the hazards that have been reported and
12 presented by PCBs are skin irritation, the
13 literature has reports of -- if you've got
14 high concentrations of airborne vapor of
15 PCBs, I think they report irritation and a
16 skin condition known as chloracne. I've
17 never seen any information at all in
18 Monsanto that we've ever had any cases of
19 chloracne associated with polychlorinated
20 biphenyl manufactured.

21 The other thing that you will
22 see in the literature is that when you have
23 high concentrations of PCBs in air and have

1 the corresponding high exposure, then you
2 may see liver enzyme changes, adverse
3 effects on the liver. Those are the two
4 principal effects that are -- that I note
5 in the literature.

6 Q. Well, do you accept that as a
7 professional, and do you accept that as a
8 fact that in your judgment PCBs can cause
9 liver enzyme alteration and skin
10 irritations of some type?

11 A. I've never seen a situation, but
12 I accept it on the fact that I know some of
13 the occupational physicians that support
14 that and support those findings and I would
15 say, yes.

16 Q. You adopt those as credible
17 findings?

18 A. Correct. And generally, I think
19 the documentation or the threshold limit
20 values are based on those types of
21 effects.

22 Q. Well, I mean, with that in mind
23 -- and my earlier question to you, what is

1 the motivation for Monsanto to purchase
2 those properties, and I know that you've
3 indicated that it's part of the remedial
4 plan.

5 A. Uh-huh.

6 Q. But the short of the long is that
7 Monsanto perceives a potential hazard to
8 human beings and to other living creatures?

9 A. I'm not sure that's true.

10 Q. Okay. Well, what is Monsanto's
11 position with respect to purchasing this
12 property? Are they just doing it because
13 they want to acquire more property in and
14 around the Anniston area?

15 A. Now, personally, I guess -- I
16 think you'd asked that question with regard
17 to at least the east side area. I think my
18 response on why we were purchasing that
19 property is really for remediation projects
20 to minimize the -- any downstream movement
21 of polychlorinated biphenyls.

22 Q. Okay. Well, I mean, then are you
23 saying you recognize a hazard downstream

1 due to polychlorinated biphenyls? I mean,
2 you're attempting to abate some event
3 that's going to occur downstream; is that
4 correct?

5 A. Well, again, I think that I --
6 I'm not the one to ask that question.

7 Q. Well, unfortunately, you're the
8 only one I can ask right now.

9 A. I appreciate that. And again,
10 personally, since I was not involved in the
11 original plans or the whys and why nots
12 regarding the purchase property program,
13 and when I came in in March of 1996, I had
14 a consent order or consent agreement in
15 front of me that said --

16 Q. You didn't work beyond the four
17 corners of that document?

18 A. -- that, you know, we're going to
19 do sampling in areas where -- in these four
20 areas or in areas which we have a belief
21 that there may be impacted --

22 Q. Okay.

23 A. -- soil.

1 Q. But I guess I'm trying to get to
2 the ultimate question and that is: What is
3 the motivation for doing this? I mean,
4 does Monsanto, from a corporate standpoint
5 and based on your familiarity with their
6 corporate position on PCBs, do they
7 recognize that PCB contamination of the
8 soil poses any danger whatsoever to living
9 creatures or -- well, just simply that. I
10 mean, do they recognize that?

11 A. I think that when we start
12 talking about living creatures, I'm much
13 more acquainted in the occupational area,
14 in the workplace.

15 Q. Well, I mean --

16 A. I have a tendency to deal with
17 humans, with people that operate
18 facilities, and I'm certainly not -- have
19 no particular expertise in wildlife and
20 animals.

21 Q. I'm not asking you that. But
22 obviously you have some understanding of
23 what their concerns are. I mean, you've

1 been very much involved in the attempt to
2 purchase this property; have you not?

3 A. No.

4 Q. Okay. You've been very much
5 involved in contacting members of the
6 public who own this property?

7 A. Right.

8 Q. And --

9 A. To do the soil sampling.

10 Q. And certainly you've had to ask
11 yourself at one point in time why is
12 Monsanto trying to purchase their
13 property.

14 Now, I mean, I know your answer
15 is -- has been so far, to be able to
16 complete your remedial activities.

17 But what is the ultimate reason
18 -- certainly you're a very smart man, Mr.
19 Elly. I mean, what, in your judgment, is
20 Monsanto's ultimate goal in purchasing this
21 property, and do they recognize any type of
22 hazard posed by presence of PCBs on this
23 property?

1 A. Again, I think the purpose, as I
2 understand it, is to minimize any off site
3 release of PCBs in soils and sediments.

4 Q. Okay. Which would result in?

5 A. Which would result in those soils
6 and sediments going further downstream or
7 outside of the boundaries of our plant.

8 Q. All right. And would that result
9 in a hazard? Would that create a hazard?

10 A. Oh, I think it would all depend
11 on what concentration you would have.

12 Q. Well, you all are purchasing this
13 property, have there been any studies to
14 determine what concentration you would have
15 downstream?

16 A. There may be. I'm not --

17 Q. I mean, the question is this: I
18 mean, you're buying up property that's
19 contaminated by PCBs; isn't that a fact?

20 A. We're buying up properties that
21 are impacted by PCBs or in areas where we
22 would like to be able to -- in areas that
23 we like to be able to utilize in our

1 construction project.

2 Q. And the construction project is
3 the abatement of PCBs -- the containment of
4 PCBs. I mean, you're not putting a
5 playground out there.

6 A. Correct. That's right.

7 Q. Okay. And the question, the
8 ultimate question is this: What is the
9 motivation beyond the remedial efforts for
10 Monsanto to purchase properties that are
11 impacted, as you say, by PCBs?

12 A. Well, I guess -- maybe I think
13 we're going in a loop here, but the
14 reason --

15 Q. We are, and you're the problem.

16 A. -- that we're purchasing the
17 property is to be able to put in and
18 construct --

19 Q. Okay.

20 A. -- engineering systems,
21 remediation systems that minimize the
22 release of PCBs.

23 Q. Why do you want to minimize the

1 release of PCBs?

2 A. It may be due to -- I'm certainly
3 aware that there are regulations in the
4 area of managing PCBs. I think there are
5 regulations from the standpoint of water
6 and air permitting and there have been for
7 many, many years.

8 Q. So you're saying the reason you
9 would want to do it would be in compliance
10 with regulations?

11 A. I think compliance with
12 regulations. But another aspect is, if
13 you're talking about an industrial chemical
14 that is stable, very persistent, and if
15 you've got high concentrations, let's say,
16 in certain areas of a ditch system, then I
17 would think that like many industrial
18 chemicals, you'd want to minimize the
19 release of soils and sediments into
20 downstream areas or, quite frankly, off of
21 your property.

22 Q. Because they may pose a hazard to
23 those downstream?

1 A. They may pose a hazard either to
2 aquatic systems, wildlife, perhaps to
3 individuals.

4 Q. Okay. And has Monsanto accepted
5 responsibility for putting those PCBs into
6 the ditch, into the streams downstream
7 which you're trying to abate, which your
8 remedial efforts are trying to control?
9 Does Monsanto accept responsibility for
10 having caused that contamination?

11 MR. COX: Object to the form.

12 A. I think Monsanto is accepting
13 responsibility for putting in place
14 remedial projects to minimize any release
15 of PCBs.

16 Q. I understand that. That wasn't
17 my question.

18 Is Monsanto accepting
19 responsibility for having manufactured PCBs
20 on that location from 1929 or '30, up till
21 1971, and as a result of that, having put
22 or caused PCBs to be on and in property
23 adjacent to that location?

1 A. I believe that would be a fair
2 summary, yes.

3 Q. And that's why Monsanto is
4 participating in the remedial activities?
5 Obviously, if Chevron had done this, they
6 would --

7 A. Correct. Oh, yes. Sure. Yes.

8 Q. Okay. That took a long time.

9 A. Well, --

10 MR. COX: That's not his fault.

11 Q. Oh, okay. I'll accept
12 responsibility.

13 Now, Mr. Massey, as you know,
14 occupied this land from a commercial
15 standpoint and operated a business there
16 for a number of years.

17 A. Uh-huh.

18 Q. And his recollection of your
19 conversations with him have been that you
20 told him, and I know this is in dispute,
21 that you all were not going to buy his
22 property, that you were going to come in
23 and basically clean it up, take the soil

1 off the property, clean the surface of the
2 buildings and come back in and pave that.
3 Now, I know you dispute that.

4 But hypothetically, if that were
5 the case, would you expect that to
6 interfere with the operation of his
7 business?

8 A. The scenario that you just talked
9 about, --

10 Q. Yes.

11 A. -- is that in reference to Mr.
12 Massey's property at Anniston Rental
13 Equipment Company?

14 Q. Right.

15 A. Okay.

16 Q. Where his commercial business
17 was. I know he owns other pieces of
18 property around there.

19 A. Okay. I just wanted to get clear
20 on that. So if you would, the last part of
21 your question?

22 Q. That is in reference to property
23 associated with the Anniston Rental

1 Equipment business.

2 A. Okay. Because I know that Mr.
3 Massey, from time to time, has owned, for
4 example, Anniston Iron Works.

5 Q. Right.

6 A. And even had metal fabrication
7 over there at Lambert Recycling.

8 Q. Right.

9 A. Okay. So if you could, now that
10 I've got that, I'd like for you to repeat
11 the question.

12 Q. Hypothetically, is as Mr. Massey
13 says that he was told by you and, perhaps,
14 other representatives of Monsanto, that you
15 all were not going to purchase his
16 property, that you were just going to clean
17 it up, that you were going to remove the
18 soil, that you were going to pave over
19 contaminated areas where you could not
20 cleanu up the soil, and that you were going
21 to clean out existing buildings, would you
22 expect that to, in Mr. Massey's mind or
23 from a business standpoint, pose an

1 interruption of business and, perhaps, even
2 a discontinuation of business?

3 A. I guess if we were to -- and this
4 is a hypothetical, because first, I don't
5 have any recollection at all --

6 Q. I understand?

7 A. -- of telling Mr. Massey what you
8 just said in that context.

9 Q. Right.

10 A. And the first thing is I would
11 have to have a little bit better
12 characterization of Mr. Massey's property
13 and the PCB -- not levels, but the profile.

14 Q. Well, I'm just talking about the
15 act of cleaning it up itself, I mean, as a
16 business interruption.

17 A. Uh-huh.

18 Q. I mean, wouldn't you consider
19 that to be a business interruption?

20 A. It could be.

21 Q. Okay. And from the --

22 A. But on the other hand, if under
23 the theoretical or the hypothetical and

1 still hypothetical, if the PCB on soil were
2 isolated to, hypothetically, the top one
3 inch of the property, then I would expect
4 that one might be able to come in there,
5 remediate the whole property without doing
6 absolutely any damage or down time to the
7 business whatsoever.

8 Q. Unlike a service station that has
9 been sold and there's a cleanup or closure
10 procedure where there has to be aeration,
11 property has to be subsurfaced down ten or
12 twelve feet. You wouldn't envision that in
13 this particular location?

14 A. No. But in that situation, of
15 course, again as a hypothetical, there
16 would certainly be a business interruption
17 because if you were closing the tanks --

18 Q. That would be it.

19 A. -- or upgrading tanks, yes, there
20 is business interruption.

21 Q. Okay. But if that were the case
22 hypothetically, from a business standpoint
23 he would have an interruption, he'd have to

1 remove everything from his property, and
2 that would be -- would you agree with me
3 that there would be a significant business
4 interruption?

5 A. Again, it depends on -- under my
6 scenario that I just mentioned, very, very
7 little, if any.

8 Q. All right.

9 A. But again, it depends on not only
10 the level of PCBs in the soil, but the
11 vertical profile in the soil.

12 Q. Okay. Now, as we sit here today,
13 what remedial plans are envisioned for Mr.
14 Massey's property if you all are able to
15 purchase that property?

16 A. I have no idea.

17 Q. Do you know what remedial
18 projects are on the table for property in
19 and around that area, that ditch area?
20 Let's say the Lambert property. The
21 Lambert you purchased, and this other
22 property, do you know if there's any plan
23 for -- I mean, are you going to put any

1 type of holding ponds on that property?

2 A. I think there's some preliminary
3 plans for that particular property that may
4 envision some type of -- not holding ponds,
5 but, perhaps, a detention basin for storm
6 water flood control.

7 Q. Okay. Would that include Mr.
8 Massey's property?

9 A. I don't know.

10 Q. Okay. You haven't seen any plats
11 or any drawings of that?

12 A. The only preliminary drawings
13 that I've seen only encompassed between
14 Duncan and Parkland.

15 Q. What about Mr. Jones' property?

16 A. I haven't seen anything regarding
17 Mr. Jones' property.

18 Q. Okay. Do you yourself have any
19 opinion as to whether or not PCB
20 contamination in the human body constitutes
21 a hazard to health?

22 A. Yes.

23 Q. And what is that?

1 A. I think my opinion is, again it
2 all depends on the concentration.

3 Q. And in your opinion, what level
4 of concentration would it constitute a
5 hazard?

6 A. I have no idea other than to say
7 at a very, very high level. But there's
8 no --

9 Q. Greater than a hundred parts per
10 million?

11 A. I have no reason to be able to
12 pick out one level versus another.

13 Q. But you would -- it's your
14 opinion that at some level it constitutes a
15 hazard?

16 A. Yes.

17 Q. Okay. I guess ice tea does at
18 some level?

19 A. Most chemicals do.

20 Q. Okay. I'm about done here, I
21 think.

22 Doctor Kimbrough, has she ever
23 worked for Monsanto, that you know of?

1 A. No, I don't.

2 Q. Has she ever been compensated by
3 Monsanto in any way that you're aware of?

4 A. Not that I'm aware of.

5 Q. Okay.

6 A. Or I just don't know.

7 Q. Have you all ever been cited by
8 ADEM or EPA for noncompliance with the
9 consent agreement that you all worked out,
10 beginning I guess in 1995? Is that right?

11 MR. COX: '96.

12 Q. '96.

13 A. Not that I'm aware of. But if
14 that was a possibility, I'm not sure I
15 would know it.

16 MR. HOLLINGSWORTH: Let's take a
17 short break.

18 (Short recess was had.)

19 MR. HOLLINGSWORTH: I don't have
20 anything else.

21 FURTHER DEPONENT SAITH NOT
22
23

1 STATE OF ALABAMA)
2 COUNTY OF JEFFERSON)
3

4 I, SUSAN MASTERS GOLDMAN,
5 Certified Shorthand Reporter and Notary
6 Public, hereby certify that the above and
7 foregoing deposition was taken down by me
8 on Computerized Stenotype, and the
9 questions and answers thereto were
10 transcribed by me, and that the foregoing
11 represents a true and correct transcript of
12 the deposition given by said witness upon
13 said hearing.

14 I further certify that I am neither
15 attorney or counsel for, nor related to or
16 employed by any of the parties to the
17 action in which this deposition is taken.
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23 CSR and Notary Public