

✓ annotated / #5 Kaley
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IN THE 30TH JUDICIAL CIRCUIT COURT FOR
ST. CLAIR COUNTY, ALABAMA
PELL CITY DIVISION

THOMAS C. DYER, ET AL,)
)
 Plaintiff,)
)
 vs.)
)
MONSANTO COMPANY, ET AL,)
)
 Defendant.)

NO. CV-93-250

Consolidated For Discovery With

SHELTER COVE MANAGEMENT,)
INC., ET AL,)
)
 Plaintiff,)
)
 vs.)
)
MONSANTO COMPANY, ET AL,)
)
 Defendant.)

NO. CV 94-50-PH

DEPOSITION OF ROBERT G. KALEY, II
Taken on behalf of the Plaintiff
September 4, 1998

*** MINUSCRIPT & WORD INDEX ***

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

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24)
25 Defendant.)

THE DEPOSITION OF ROBERT G. KALEY, II,
produced, sworn, and examined on behalf of the
Plaintiff, on Thursday, September 4, 1998, at 9:00
a.m., at the offices of Taylor & Schroeder Reporting &
Video, 7494 Ethel Avenue, St. Louis, Missouri, before
KEVIN J. WEICHMAN, a Certified Shorthand Reporter,
Registered Professional Reporter, and Notary Public
within and for the County of St. Louis, State of
Missouri.

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

12 * * * * *

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

19 DIRECT EXAMINATION

20 BY MR. LOWE:

21 Q. Would you state your full name for the record.

22 A. Robert George Kaley, II.

23 Q. I introduced myself earlier, but for the
24 record, my name is Clay Lowe. I'm one of the lawyers
25 representing the plaintiffs in a case styled

1 Dyer vs. Monsanto Company that's pending in the Circuit
2 Court of St. Clair County, Alabama.

3 Do you understand that your deposition here
4 today is going to be used as evidence or as discovery
5 in that case?

6 A. Yes.

7 Q. Have you prepared for this deposition in any
8 way today?

9 A. I read an affidavit I prepared for this case.

10 Q. You prepared that affidavit?

11 A. Yes.

12 Q. You actually typed it?

13 A. I didn't actually type it.

14 Q. Was every word in there your words?

15 A. In consultation with counsel, yes. I
16 certainly stand by every word in there.

17 Q. You're presently the director of environmental
18 affairs for Solutia, Inc.; is that correct?

19 A. That's correct.

20 Q. And Solutia, Inc. was spun off from Monsanto
21 in 1997; is that correct?

22 A. That's correct.

23 Q. What relationship does Solutia now have to
24 Monsanto?

25 A. None. In a business sense, we're renting

1 space in the old Monsanto headquarters.

2 Q. Are there any common directors or officers?

3 A. There may be common people on the board of
4 directors. I don't know.

5 Q. How about you, in any of your present duties
6 do you serve a dual capacity where you're representing
7 Monsanto and Solutia?

8 A. No.

9 Q. Who are you representing here today?

10 A. Solutia.

11 Q. How about when you attend public meetings in
12 front of citizens in St. Clair County, Alabama, who do
13 you tell them that you're there for?

14 A. The one time that I can recall doing that, I
15 told them I was there for Monsanto because that's who I
16 worked for at the time.

17 Q. So that was before '97?

18 A. My recollection it was the summer of 1997.

19 Q. You received a Bachelor of Science Degree in
20 chemistry from Purdue University in 1968; is that
21 correct?

22 A. That's correct.

23 Q. And a Ph.D. from the University of Illinois in
24 analytical chemistry in 1974; is that correct?

25 A. That's correct.

1 Q. You started working for Monsanto in 1973; is
2 that correct?

3 A. That's correct.

4 Q. Was that here in St. Louis?

5 A. Yes.

6 Q. Were you still in school at that point?

7 A. No, actually I'd completed my degree
8 requirements. That's when I started work. The degree
9 wasn't actually awarded until 1974.

10 Q. The Ph.D. in analytical history?

11 A. Analytical chemistry, yes.

12 Q. I'm sorry.

13 Since graduating from college, have you been
14 employed by anyone other than Monsanto and then
15 ultimately Solutia?

16 A. No.

17 Q. Your entire working career, then, has been
18 with Monsanto and Solutia?

19 A. Since college graduation. Graduate school
20 graduation, yes.

21 Q. Did Monsanto contribute any of the funding for
22 your education?

23 A. No.

24 Q. You're familiar with Monsanto's manufacture of
25 polychlorinated biphenyls, which we're going to refer

9

1 to today as PCBs, at the Anniston plant; is that
2 correct?
3 A. Yes.
4 Q. You're also familiar with the characteristics
5 of PCBs?
6 A. Yes.
7 Q. And in your position with Monsanto and
8 Solutia, you've been charged with reviewing literature
9 and reports regarding PCBs; is that correct?
10 A. That's correct.
11 Q. Including information regarding the toxicity
12 of PCBs and the environmental remediations involving
13 PCBs; is that right?
14 A. That's correct.
15 Q. As part of your duties with Monsanto and now
16 with Solutia, have you been involved in giving a
17 deposition in any other lawsuits regarding PCBs?
18 A. Yes.
19 Q. Where were those and when were those?
20 A. One was in Texas in the late 1980s. I don't
21 know exactly. I don't remember. There may have been a
22 couple others. That's the only real deposition in a
23 PCB case that I recall now.
24 Q. So you gave a deposition in a PCB-related case
25 on behalf of Monsanto somewhere in Texas in late 1980s;

10

1 is that right?
2 A. Yeah. It wasn't Houston.
3 Q. Is that where the case was pending?
4 A. No, the case was pending in Beaumont.
5 Q. Was this case regarding Monsanto's discharge
6 of PCBs into the environment?
7 A. No.
8 Q. What were the facts in that case, as best you
9 remember?
10 A. A wide variety of workers who, in the course
11 of their employment, had been exposed to PCBs.
12 Q. Were you deposed by the plaintiffs in that
13 case?
14 A. Yes.
15 Q. What was the outcome of that case, do you
16 know?
17 A. The initial phase was a decision for Monsanto.
18 I think the remaining plaintiffs eventually settled. I
19 don't know for sure, but I think that's the outcome.
20 Q. Were the workers alleging that they were
21 exposed to PCBs while working in a Monsanto plant?
22 A. No.
23 Q. What was the nature?
24 A. Well, there were health claims for exposure in
25 their employers, which was not Monsanto.

11

1 Q. Okay. They were not employed by Monsanto?
2 A. No.
3 Q. Do you remember who they were employed by?
4 A. Some of them were by Westinghouse Electric
5 Corporation and the others were a wide variety of
6 different employers.
7 Q. As part of Monsanto's defense in that case,
8 did you allege that Westinghouse should be responsible,
9 rather than Monsanto, for exposing the workers to the
10 chemicals?
11 A. Did I? I didn't personally.
12 Q. No, I said Monsanto.
13 A. I don't recall what the defenses in that case
14 were.
15 Q. You weren't involved in preparing and
16 assisting in preparing the case?
17 A. No, I didn't prepare any legal defenses. I
18 was technical support.
19 Q. What kind of technical support did you
20 provide?
21 A. Basically information about PCBs and the
22 literature.
23 Q. Did you submit an affidavit in that case
24 similar to the one you've done in this case?
25 A. I don't recall, but I don't believe so.

12

1 Q. Have you been involved in any other lawsuits
2 filed against Monsanto regarding PCBs other than this
3 Texas case?
4 A. Yes.
5 Q. What were those?
6 A. I gave testimony in a case in Indianapolis,
7 Indiana, again in the late 1980s regarding, I guess,
8 Westinghouse discharge, discharges from their
9 manufacturing plant in Bloomington, Indiana.
10 Q. Did you testify at trial in that case?
11 A. Yes, I did.
12 Q. Did you testify on behalf of Monsanto?
13 A. Yes, I did.
14 Q. Monsanto called you as a witness?
15 A. Yes, I believe that's correct.
16 Q. And what was the nature of your testimony?
17 A. Just basically description of the properties
18 of PCBs and the state of scientific knowledge about
19 PCBs.
20 Q. Did you give any testimony regarding warnings
21 from Monsanto to its customers regarding properties of
22 PCBs?
23 A. Not that I recall.
24 Q. Did you submit an affidavit in this
25 Indianapolis case?

1 A. Not that I recall.
 2 Q. Were you deposed in that case?
 3 A. I don't really remember. It's certainly
 4 possible. Yes, I was. As a matter of fact, I was
 5 deposed in that case.
 6 Q. What law firm represented you and Monsanto in
 7 that case, do you recall?
 8 A. The attorney's name was Mike Freewald.
 9 Q. Where is he located?
 10 A. He is in Indianapolis. I should know the name
 11 of the firm. I don't as I sit here right now.
 12 Q. Let me back up to the Texas case. Which law
 13 firm was representing you and Monsanto?
 14 A. Woodard, Hall & Primm.
 15 Q. Woodard, Hall & Primm?
 16 A. Yes.
 17 Q. Is that in Houston?
 18 A. Yes.
 19 Q. All right, that's two cases. Let's talk about
 20 the outcome in the Indianapolis case. Was Westinghouse
 21 found liable?
 22 A. It was a case against Monsanto, and Monsanto
 23 was not found liable.
 24 Q. Westinghouse sued Monsanto?
 25 A. No, the City of Bloomington sued Monsanto.

1 Q. Maybe I wrote down the wrong thing. I thought
 2 you said it was regarding a Westinghouse discharge in
 3 Bloomington.
 4 A. It was. Go figure. Yes, it was a
 5 Westinghouse plant and Monsanto was sued by the City of
 6 Bloomington.
 7 Q. On the theory that you made it -- you should
 8 be responsible for it? You don't remember?
 9 A. I'm sure it was something like that. I don't
 10 remember what their theory was.
 11 Q. What's the next case that you were involved
 12 in?
 13 A. I was involved in an ADR, an alternative
 14 dispute resolution proceeding, in San Francisco.
 15 Q. What were the nature of the claims in that
 16 case?
 17 A. It was claims arising out of a fire in a
 18 building in San Francisco.
 19 Q. And during this fire, I assume PCBs were
 20 released?
 21 A. Yes.
 22 Q. Was the lawsuit against Monsanto or one of
 23 your customers?
 24 A. Well, both.
 25 Q. Who was the customer?

1 A. Westinghouse.
 2 Q. Did Westinghouse bring you, Monsanto, into
 3 that lawsuit?
 4 A. I don't know.
 5 Q. But Monsanto was a defendant?
 6 A. Yes.
 7 Q. What was the outcome of that ADR proceeding?
 8 A. As far as I know, moneys were exchanged. I
 9 think there was a resolution based on the outcome of
 10 that hearing. I don't recall exactly what it was.
 11 Q. Do you have any sort of indemnity agreements
 12 between Westinghouse and Monsanto or Solutia?
 13 A. There is some sort of an agreement that exists
 14 on materials purchased after, like, 1972 or something.
 15 Q. Is that something you're familiar with?
 16 A. I know it exists.
 17 Q. Well, what's the nature of the deal, the
 18 agreement?
 19 A. As far as my recollection of the agreement is,
 20 is that at the time we restricted our sales to
 21 electrical equipment manufacturers, Monsanto asked them
 22 to accept responsibility for any liability after that,
 23 the day of the signing of that agreement.
 24 Q. Has Monsanto attempted to enforce that
 25 indemnification agreement against Westinghouse, to your

1 knowledge?
 2 A. I don't really remember.
 3 Q. After the San Francisco case, have you been
 4 involved in any other litigation for or on behalf of
 5 Monsanto?
 6 A. Other than these Alabama cases, there's
 7 nothing that comes to mind right now. There may have
 8 been.
 9 Q. What other Alabama -- have you given any
 10 depositions in any other Alabama cases?
 11 A. No, I haven't.
 12 Q. What is your -- what are your present duties
 13 with Solutia?
 14 A. A variety of issues mainly. One of the
 15 primary ones is to be a source person for information
 16 at Solutia about a variety of chemicals, including
 17 PCBs; stay up to speed on the literature and things on
 18 those issues and other developing issues that affect
 19 the company.
 20 Q. Which company?
 21 A. Solutia right now.
 22 Q. Did you do the same thing when you were with
 23 Monsanto?
 24 A. I did.
 25 Q. The source person for information, who is it

1 that comes to you as the source?
 2 A. A variety of people.
 3 Q. Who are they?
 4 A. Internal. Remediation managers within
 5 Monsanto, upper management. I deal with all the phone
 6 calls that come into Monsanto regarding PCBs; so, a
 7 variety of outside persons.
 8 Q. All phone calls for PCBs. Where do you
 9 receive those calls?
 10 A. In my office.
 11 Q. Yeah, where is that?
 12 A. Here in St. Louis?
 13 Q. How long have you been located here in St.
 14 Louis?
 15 A. Since 1973.
 16 Q. So you never lived in Anniston, Alabama, did
 17 you?
 18 A. No, I didn't.
 19 Q. Have you spent much time there?
 20 A. I've been there occasionally over the past
 21 several years. It wasn't much time there.
 22 Q. What's the longest period of time you ever
 23 spent at the plant in Anniston, Alabama?
 24 A. A continuous period of time? Two or three
 25 days. Probably more like two days.

1 Q. When was that?
 2 A. Several times over the past several years.
 3 Q. Several times over the past several years for
 4 an average of two days apiece; is that right?
 5 A. That seems fair, yes.
 6 Q. So a total of maybe six days?
 7 A. Oh, heavens no. Several times per year over
 8 the past several years.
 9 Q. Okay. So less than ten times?
 10 A. Probably more than ten, maybe 20-ish. I don't
 11 really know. I don't count them.
 12 Q. Well, as the source person for information for
 13 Monsanto and then eventually Solutia, what was your
 14 reasons for going to the Monsanto plant in Anniston,
 15 Alabama, on these occasions?
 16 A. There have been several: meetings regarding
 17 the activities at the site, I've been down for meetings
 18 with state regulators.
 19 Q. But you're the information guy for PCBs; is
 20 that right?
 21 A. Yes.
 22 Q. What's the source of your knowledge and
 23 information about PCBs? Where do you go to when you
 24 need information?
 25 A. Scientific literature.

1 Q. For example, are there any specific
 2 periodicals that you rely on regularly?
 3 A. Well, I try to be aware of what is written
 4 about PCBs in a wide variety of periodicals. I don't
 5 know there's any one specific any more than another.
 6 Q. Obviously, then, you must subscribe to some of
 7 these where they're mailed to your office.
 8 A. That's correct.
 9 Q. Which ones do you subscribe to?
 10 A. I subscribe to Environmental Science and
 11 Technology. I subscribe to Environmental Health
 12 Perspectives. I subscribe to Science Magazine. I'm a
 13 member of the Society for Risk Analysis, so I get their
 14 journal which is called Risk Analysis. That seldom has
 15 anything to do with PCBs, but I do receive it in my
 16 office. I think that's all I subscribe to.
 17 Q. Are there any PCB-specific periodicals or
 18 newsletters that you receive?
 19 A. No.
 20 Q. How about from the EPA or any other government
 21 agency?
 22 A. Well, I try to be aware of what's being
 23 published with regard to PCBs in the Federal Register;
 24 and Environmental Health Perspectives, although it
 25 isn't a specific PCB, is published -- well, I don't

1 know whether it's published by the government. It's
 2 out of NIEHS in North Carolina, so it's a government --
 3 in a sense, a government publication. But it's not PCB
 4 specific.
 5 Q. Are there any particular computer sites that
 6 you regularly rely on to get information regarding
 7 PCBs?
 8 A. I don't believe so. I mean, occasionally I'll
 9 have a TOXLINE done or a MEDLINE search. They're
 10 search services. I think that they're government
 11 search services.
 12 Q. Kind of like West Law, for doctors?
 13 A. Exactly.
 14 Q. Have you published anything yourself regarding
 15 PCBs?
 16 A. Yes.
 17 Q. What were those?
 18 A. There was an article in the early 1970s
 19 published in the "Bulletin of Environmental
 20 Contamination and Toxicology."
 21 Q. What was the nature of that article other than
 22 PCBs? What was the focus?
 23 A. It was basically a study of PCB levels in a
 24 rat feeding study.
 25 Q. You were employed by Monsanto at that time,

1 weren't you?
 2 A. That's correct.
 3 Q. Was that a study that was financed by
 4 Monsanto?
 5 A. Yes.
 6 Q. Did any other Monsanto employees work on that
 7 study with you?
 8 A. I'm sure there were.
 9 Q. Was that study performed in a Monsanto
 10 laboratory or by an outside company?
 11 A. I believe it was done by an outside
 12 laboratory.
 13 Q. Do you remember who it was?
 14 A. As I sit here today, I don't. I think it
 15 was -- I think it was a consulting laboratory in St.
 16 Louis. I don't remember the name of it right off.
 17 Q. Did you actually perform the test, dissect the
 18 rats, or did you just look at the data and make the
 19 conclusions?
 20 A. I performed the analytical chemistry
 21 associated with the termination of the tissue residue
 22 levels.
 23 Q. Have you ever testified as an expert witness
 24 in any case you've been involved in?
 25 A. I think I was qualified as an expert witness

1 in that ADR hearing in San Francisco; and I don't
 2 remember the Bloomington case, whether I was qualified
 3 as an expert. That may have very well been expert
 4 testimony also.
 5 Q. What specific issues were you qualified in
 6 those cases to testify as an expert?
 7 A. Primarily analytical chemistry and the
 8 chemistry of PCBs, properties of PCBs.
 9 Q. Have you been informed that you're going to
 10 testify as an expert witness in this case on a similar
 11 issue?
 12 A. I have not.
 13 Q. When an issue regarding PCB exposure to the
 14 environment comes up and it involves Solutia or
 15 Monsanto, are you the person that Solutia or Monsanto
 16 sends to explain to the public the nature of the PCBs
 17 and report to the local newspapers?
 18 A. I have been a resource in those kinds of
 19 situations. I don't know that I was sent there to do
 20 that, but I've certainly done things like that.
 21 Q. I mean, that's one of your jobs, isn't it?
 22 A. Yes.
 23 Q. It's the job?
 24 A. Pardon?
 25 Q. That is the primary focus of your job, isn't

1 it, to disseminate information to the public?
 2 A. No, it's certainly not the primary focus.
 3 Q. What is the primary focus?
 4 A. The primary focus of my job is to serve as an
 5 internal resource for Monsanto Company on those issues
 6 and to respond from inquiries outside, but I'm seldom
 7 sent out to do those kinds of things. If there's a
 8 request for information that's relayed to me, I'll deal
 9 with it, yes.
 10 Q. All right. Well, is there anyone else in the
 11 company that such information is relayed to to issue a
 12 response on behalf of the company to the public?
 13 A. With response to PCBs?
 14 Q. Yes.
 15 A. Probably not, that I wouldn't be involved in
 16 somehow.
 17 Q. Of course the reason that I'm asking these
 18 questions is I know you've made statements to local
 19 newspapers in and around St. Clair County.
 20 A. Yes.
 21 Q. You've been quoted there, and I know you went
 22 to at least one public meeting there where you spoke.
 23 A. Yes.
 24 Q. So is it safe to assume, then, that if someone
 25 goes out and meets with the public on these issues,

1 it's probably going to be you?
 2 A. Well, it may be me or it may be me with
 3 somebody else. It depends on what the particular
 4 issues are.
 5 Q. Okay. Who are the other people, then, that
 6 would normally or have in the past gone with you to
 7 address issues at public forums regarding PCB?
 8 A. Allen Faust, for example. He's typically been
 9 involved in every situation in Anniston.
 10 Q. Tell me first who Allen Faust is, what he
 11 does. We'll start with that.
 12 A. Allen Faust is remediation manager for the
 13 Anniston, Alabama, site.
 14 Q. Is he based in Anniston?
 15 A. Yes, he is.
 16 Q. How long has he been there?
 17 A. Two to three years, I guess, two years.
 18 Q. And his primary job responsibility, then, is
 19 for remediation of the Anniston site regarding PCBs?
 20 A. Well, regarding whatever is involved in that
 21 remediation. PCBs are clearly a focus, yes, but not
 22 necessarily exclusive of --
 23 Q. Now, what's Mr. Faust's educational training?
 24 A. I believe he's a geologist or a hydrologist.
 25 I think a geologist.

1 Q. Do you have any other remediation managers
2 anywhere in the country who are responsible for
3 remediating PCBs, whether employed by Monsanto or
4 Solutia?

5 A. I'm sure there are other remediation managers
6 that have dealt with PCB issues at the plant. I don't
7 know of one specifically.

8 Q. Is there any other location in the country
9 where you have a -- "you" being Monsanto or Solutia --
10 have a remediation manager on-site full-time?

11 A. Certainly, yes.

12 Q. Where are those?

13 A. There is one -- has been one in Texas.

14 Q. What's the name and location in Texas?

15 A. It was associated with the Chocolate Bayou
16 plant, if I recall.

17 Q. Chocolate Bayou?

18 A. Right. I think the site is actually called
19 Brio, B-R-I-O, Brio site.

20 Q. So it's just -- is Chocolate Bayou, then, just
21 a nickname?

22 A. No, that's the name of the plant.

23 Q. I didn't know if after the PCBs were dumped
24 there they might have started calling it that.

25 A. No, this is not a PCB site. The question was

1 not addressed to PCB sites. It's not a PCB site.

2 Q. I'm sorry, I guess I got a little fuzzy then.

3 Let's talk about PCB remediation. Are there
4 any other sites in the country where you have a
5 remediation person such as Mr. Faust on-site full-time
6 where the remediation includes PCBs?

7 A. Not that I'm aware of.

8 Q. All right. Let's talk about your involvement
9 in remediation efforts on behalf of Monsanto or Solutia
10 regarding PCBs --

11 A. Okay.

12 Q. -- in your full tenure with both companies.

13 What other remediation projects have you been
14 involved in regarding PCBs besides the Monsanto plant
15 in Anniston?

16 A. I've been consulted on a couple other small
17 projects, but I really had only minimal input into any
18 of those projects. They were more spill cleanups than
19 they were what I would call remediation projects.

20 Q. Is it fair to say, then, that the Anniston
21 plant is your first remediation project to work on,
22 then, regarding PCBs?

23 A. I'm not sure -- I don't know what "work on"
24 means. I'm a participant in the discussions down
25 there, bringing PCB expertise to the table, but I'm not

1 involved in designing the remediation or the remedial
2 actions or designing the investigations particularly.

3 Q. Okay. We've defined your job. Part of your
4 job is to go in and talk about PCBs and answer people's
5 questions internally in the company and to the public,
6 right?

7 A. Yes.

8 Q. Now, how many projects have you been involved
9 in where you performed your duties with Monsanto or
10 Solutia and you were there because remediation efforts
11 regarding PCBs were taking place?

12 A. This is probably the first one under those
13 conditions.

14 Q. Do you have -- I guess for lack of a better
15 term, a form file for news releases on PCBs that your
16 company will distribute if there's an issue of PCB
17 releases?

18 A. No.

19 Q. Have you ever prepared a news release to be
20 issued to newspapers or other publications?

21 A. I think I was involved in the preparation of
22 what they call a "backgrounder" several years ago, but
23 it's fairly outdated.

24 Q. Have you reviewed any of the prior news
25 releases that Monsanto's done over the past 20 to 30

1 years regarding PCBs?

2 A. Well, yeah. I just talked about that
3 background.

4 Q. What's been the nature of your involvement in
5 the Anniston, Alabama, Monsanto plant remediation
6 efforts?

7 A. Well, I talked about it. I've been a PCB
8 resource to the site remediation people. I have sat in
9 on meetings of the consultants who are responsible for
10 both the on-site and the off-site remediation efforts.
11 I have attended meetings with state regulatory persons
12 and accompanying Anniston site people. When necessary
13 or appropriate, I have spoken to either the public or
14 the press people.

15 Q. If a press person asks for a statement from
16 Monsanto regarding the Anniston plant, are they
17 referred to you?

18 A. They are if it's with regard to questions
19 about PCBs and the issues that I deal with. If it's a
20 question about the remediation efforts, no.

21 Q. Who are the remediation questions referred to?

22 A. Mr. Faust.

23 Q. When is the first time that you had any
24 involvement whatsoever with the Monsanto plant in
25 Anniston? When was the first time that you got

1 involved there?

2 A. Probably 1984, 1985 time frame. I'm not
3 counting analysis of samples from Anniston early in my
4 career, you know, when I was actually in the laboratory
5 as an analytical chemist. I very well could have done
6 some analyses of samples from Anniston, but I don't
7 have any specific recollection of that.

8 Q. So PCB samples were being sent -- or, were
9 they soil samples that were suspected to contain PCBs
10 that were sent to the lab in St. Louis to be tested?

11 A. Some of that was done, but by far most of that
12 was done before I joined Monsanto in 1973. The plant
13 was closed in 1971. I didn't join Monsanto until 1973.
14 So I don't know -- as I said, I don't have any specific
15 recollections that those kinds of analyses were done.
16 I just don't want to exclude the possibility that they
17 could have been done.

18 Q. You're not insinuating that Monsanto quit
19 taking soil samples when they closed the plant in 1973,
20 are you?

21 A. I don't know specifically.

22 MR. PECK: '71.

23 THE WITNESS: I don't know specifically what
24 samples were or weren't taken.

25 BY MR. LOWE:

1 Q. I thought we started this line of questioning
2 out by you saying that in 1984 to 1985 you were in the
3 lab --

4 A. No, no, no, I was not in the lab from 1984 to
5 1985. I was in the lab in 1973. There is a potential,
6 although I have no specific recollection, that I could
7 have analyzed one or more samples that originated in
8 the Anniston plant. By 1984/1985 I was no longer in
9 the laboratory. I was in a position very similar to
10 what I'm doing now.

11 Q. Which regulatory -- state regulatory persons
12 have you spoken to regarding the Anniston plant?

13 A. I guess primarily Stephen Cobb, C-O-B-B. I
14 think Mr. Gerald Hardy has been present at some of
15 those meetings and a Jim Grassiano, G-R-A-S-S-I-A-N-O.
16 Those are the ones that I recall.

17 Q. Which agency is Stephen Cobb with?

18 A. Those people are all with ADEM, Alabama
19 Department of Environmental Management.

20 Q. You haven't had any involvement with the
21 Alabama Department --

22 A. Yes. Public Health, I'm sorry, yes, I was
23 recalling now. I have talked to Dr. Brian Hughes from
24 ADPH.

25 Q. How often have you spoken with Mr. Cobb at

1 ADEM?

2 A. Two to three times a year over maybe the past
3 two or three years.

4 Q. How about Gerald Hardy?

5 A. Somewhat less than that.

6 Q. Mr. Grassiano?

7 A. He's a new hire, so it's only been a couple
8 times over the past six months or something.

9 Q. What's your reasons with talking to ADEM?

10 A. Primarily to discuss either measures,
11 regulatory measures and compliance measures that we are
12 in the process of undertaking or will be proposing to
13 undertake.

14 Q. Regarding PCBs?

15 A. Regarding the Anniston site, yes.

16 Q. Regarding PCBs at the Anniston site?

17 A. Primarily.

18 Q. Are there some other issues?

19 A. There were other chemicals made there that
20 have been brought up occasionally.

21 Q. What are those?

22 A. Well, they still make biphenyl there. They
23 used to make parathion there.

24 Q. When was the first time you had any contact
25 with the Alabama Department of Environmental

1 Management?

2 A. Ever?

3 Q. Yes.

4 A. Probably in 1984/1985 time frame.

5 Q. Why were you called to the plant in 1984?

6 A. There was a situation involving PCBs in Snow
7 Creek.

8 Q. Can you relate to us the details about PCBs
9 being found in Snow Creek in 1984?

10 A. My recollection is that PCBs had been found, I
11 guess, in either Snow Creek or Choccolocco Creek and
12 led to the discovery that a small chemical company in
13 South Anniston or Oxford was discharging PCBs into Snow
14 Creek.

15 Q. Tull Chemical, T-U-L-L?

16 A. That's correct. And as -- the state attorney
17 general got involved in that and that investigation
18 eventually involved the Monsanto plant.

19 Q. Why did it involve Monsanto if Tull was the
20 one that they accused of dumping?

21 A. Well, Monsanto was a manufacturer of PCBs that
22 was known to the people and it was on the same Snow
23 Creek, so I guess it was just a normal course of the
24 investigation.

25 Q. Were there any other companies at this point

1 in time manufacturing -- let me back up.
2 Between, say, 1939 and 1971, were there any
3 other companies besides Monsanto in the United States
4 manufacturing PCBs?

5 A. Not to any significant amount. There are
6 stories out there of this, that, and the other, but
7 Monsanto was by far the major manufacturer in the
8 United States.

9 Q. Well, actually Monsanto used to tout itself as
10 being the only manufacturer, didn't they?

11 A. I don't know.

12 Q. I mean, you've seen documents that have said
13 that, haven't you?

14 A. I don't have any specific recollection of
15 that. It may very well have been said. As I said, the
16 other ones are stories that may be apocryphal. I don't
17 know whether there were or not.

18 Q. As part of your job, have you gone back to
19 review files and news releases, press releases, memos,
20 et cetera, regarding statements that Monsanto officials
21 have made over the past few decades regarding PCBs?

22 A. I mean, I've seen documents. That's not
23 specifically part of my job is to go back and review
24 that kind of material necessarily.

25 Q. Well, you want to be consistent in what your

1 company says, don't you?

2 A. That's true.

3 Q. So it would be a good practice to go back and
4 see what other people have said about it?

5 A. As I said, I've done some of that. I haven't
6 made a study of everything that was ever said by
7 everybody about PCBs.

8 Q. I just want to make sure that we're clear that
9 Monsanto was the only manufacturer of PCBs in the
10 United States.

11 A. I don't know that.

12 Q. You don't?

13 A. In fact, there are people manufacturing PCBs
14 in the United States right now, to be truthful.

15 Q. Any of them in Anniston, Alabama?

16 A. No, and they're not making very much, they're
17 making analytical standards. But clearly Monsanto is
18 not the, quote, "only manufacturer" of PCBs in the
19 United States. It's by far the major manufacturer of
20 PCBs for commercial production and sales in the United
21 States. I'll agree with that.

22 Q. Was Monsanto the only manufacturer of PCBs in
23 Anniston, Alabama?

24 A. As far as I know.

25 Q. Are they the only one that is in any close

1 proximity to Snow Creek?

2 A. As far as I know.

3 Q. How many thousands of pounds or tons or
4 whatever measurement you can use would you estimate
5 were manufactured at the Monsanto plant?

6 A. I have no basis to make an estimate like that.
7 I don't know.

8 Q. You have no idea, you never heard?

9 A. No.

10 Q. What was your involvement in 1984, then, with
11 the attorney general's office at Snow Creek, regarding
12 Snow Creek?

13 A. Primarily the same as it has been here, the
14 source of information about PCBs and the chemistry and
15 the properties of PCBs.

16 Q. I'm still struggling with why Monsanto took --
17 let me ask you: Did Monsanto take any action to
18 remediate or clean up Snow Creek in 1984 or immediately
19 thereafter in response to the attorney general's
20 inquiries?

21 A. There was a remediation of some of the ditches
22 leading from the Monsanto facility to Snow Creek, and I
23 think the remediation was finally done in about 1989.

24 Q. Did you have any involvement in determining
25 the extent of the remediation effort by Monsanto?

1 A. Yes.

2 Q. What specifically did you do to do that?

3 A. I think I drafted the plan to do that
4 remediation, actually.

5 Q. You drafted the remediation plan?

6 A. Well, yeah, I guess, at that point. Yes, I
7 would say that's true.

8 Q. What input did you get to help you prepare
9 that plan?

10 A. I had the input of people at the plant.

11 Q. Like who?

12 A. Shoot, I don't know. I guess Jerry Brown
13 primarily.

14 Q. Did you remediate Snow Creek from the closest
15 proximity to the Anniston plant to where Tull Chemical
16 is located or did you go back past Tull Chemical?

17 A. We in fact did not remediate Snow Creek. We
18 remediated the ditches leading from our facility to
19 Snow Creek.

20 Q. So that's obviously before you get to Tull
21 Chemical, right?

22 A. Yes.

23 Q. It drains -- it drained out of your plant,
24 through the ditches into Snow Creek, and then somewhere
25 along the way, Tull Chemical's down Snow Creek

1 somewhere; is that right?
 2 A. Yes.
 3 Q. So you remediated from your plant, from the
 4 ditches that flow to Snow Creek in 1984; is that right?
 5 A. Well, the actual remediation I think was
 6 carried out in 1989.
 7 Q. But you started investigating it in 1984?
 8 A. Right.
 9 Q. Because the attorney general of Alabama
 10 contacted Monsanto about it; is that right?
 11 A. That's my understanding.
 12 Q. What alerted the Alabama attorney general's
 13 office to the presence of PCBs in the ditches near the
 14 Monsanto Anniston plant?
 15 A. I don't know specifically. As I said, my
 16 understanding is that it was an extension of the
 17 investigation involving Tull Chemical.
 18 Q. Well, as the point man for information
 19 regarding PCBs, did you dispute with the attorney
 20 general's office that PCBs were indeed flowing at that
 21 point, or had up to that point in time, from the
 22 Monsanto plant into these ditches?
 23 MR. PECK: Object to the form of the question.
 24 THE WITNESS: I don't think that was the
 25 question that we were dealing with.

1 BY MR. LOWE:
 2 Q. Well, you didn't deny liability for placing or
 3 being a source of the PCBs, did you?
 4 A. There were PCBs detected in the sediments in
 5 those drainage ditches and we removed some of those
 6 sediments containing those PCBs. Whether we accepted
 7 or denied liability to anything, I have no idea.
 8 Q. So why did you do it?
 9 A. There were PCBs in the ditches and we felt
 10 that removal of those sediments containing those PCBs
 11 was an appropriate action.
 12 Q. What were the levels of PCBs that you found in
 13 the ditches?
 14 A. I don't recall.
 15 Q. Were they more than one part per million?
 16 A. Yes. I mean, in fact I know that some of them
 17 were more than 50 parts per million, because that
 18 determined our eventual disposal of those materials.
 19 But other than that, I don't know..
 20 Q. Right. You did the remediation plan, so
 21 obviously you must have had some criteria for --
 22 A. I'm sure at the time I knew what the levels
 23 were. I just don't know as I sit here today. But
 24 clearly some of them were greater than 50 parts per
 25 million.

1 Q. How did you remediate the area? Did you
 2 dredge, cap it, or what?
 3 A. I think basically they removed them with -- I
 4 don't know exactly, probably something, a backhoe kind
 5 of thing, and the sediments were removed then to our
 6 landfill facility where they were analyzed and then
 7 determined that they were greater than 50 parts per
 8 million and they were shipped to the TSCA landfill.
 9 Q. So why were they shipped to Amel (PHONETIC)?
 10 A. Because they contained greater than 50 parts
 11 per million which is the regulatory cutoff for disposal
 12 requirements in a TSCA landfill.
 13 Q. Just so anybody reading this or hearing this
 14 later understands, you're telling us that anything, any
 15 soil that has greater than 50 parts per million of PCBs
 16 has to be disposed of, under federal regulations, in a
 17 hazardous waste landfill?
 18 A. No, that was not correct.
 19 Q. Can you restate, then, why this particular
 20 soil in the ditches outside Anniston in 1989 had to be
 21 carried to Amel?
 22 A. Because once the material is removed from its
 23 existing site, if it's a pre-1978 or -1979 material, if
 24 it's removed physically from the ground, then it
 25 becomes a TSCA waste. At that point, then, the TSCA

1 disposal -- that's Toxic Substances Control Act --
 2 disposal regulations become effected.
 3 Q. Did you make any effort to ascertain the
 4 source of the PCBs in these ditches?
 5 A. Not particularly, no.
 6 Q. Was that because it was so readily obvious
 7 where the sources were?
 8 A. I think we took the responsibility in the
 9 ditches that close to our plant that they certainly
 10 might have come from our plant.
 11 Q. They might have come from there?
 12 A. That's what I said.
 13 Q. Was there any other source between the
 14 Monsanto plant and these ditches?
 15 A. Not that I specifically know of.
 16 Q. How did the PCBs, to your knowledge, get from
 17 the Monsanto Anniston plant to these ditches?
 18 A. I think the ditches flowed from our plant site
 19 and presumably were attached to sediment particles that
 20 carried them to those ditches.
 21 Q. Was there a discharge pipe from the Anniston
 22 plant that exited under the plant fence line, so to
 23 speak, that flowed to these ditches?
 24 A. There was a discharge point that discharged,
 25 yes.

1 Q. Did you ever go back and try to ascertain the
2 volume in pounds of PCBs discharged in any particular
3 date in history for the Monsanto plant?
4 A. No.
5 Q. From your experience, would it be reasonable
6 to assume that these PCBs that flowed from the Anniston
7 plant into these ditches would eventually make their
8 way into other waterways?
9 A. The potential is certainly there for that.
10 Q. Do you think that occurred here?
11 A. To some extent or another, it probably did. I
12 don't know.
13 Q. You don't know? I mean, you're the point man
14 for answering these questions, aren't you, for the
15 company?
16 A. Yes.
17 Q. You don't have a good-faith belief that PCBs
18 that are now being found in Choccolocco Creek and Logan
19 Martin Lake, some or all of them did not originate from
20 the Monsanto plant in Anniston, Alabama?
21 A. Some or all of them may have originated from
22 the Anniston plant, yes.
23 Q. You're unwilling to say here today that some
24 of them did originate from that plant?
25 A. I think that's a reasonable assumption, but,

1 you know, I don't think that we know necessarily and I
2 don't know how far down the stream that that might have
3 occurred at this point as we sit here today.
4 Q. All right. Just so we nail this down, you're
5 willing to say that it's a reasonable assumption that
6 some of the PCBs presently found in Choccolocco Creek
7 and Lake Logan Martin originated from the Monsanto
8 plant?
9 A. To some extent, and my confidence in that
10 statement is less as you move further down the stream.
11 Q. So you'd dispute any findings of PCBs in Lake
12 Logan Martin as being -- as having originated from the
13 Monsanto plant; is that correct?
14 A. I think what is correct is that I don't know
15 that there's any way of knowing for sure whether any of
16 those PCBs came from the Monsanto plant.
17 Q. Well, obviously unless you put some sort of
18 collar on each PCB or some radio detection device, you
19 could never be absolutely sure where it came from,
20 could you?
21 A. That's correct.
22 Q. But then Monsanto was the only manufacturer of
23 PCBs in the country, weren't they? I think we've
24 already established that.
25 A. Yes.

1 Q. So even if Tull Chemical dumped a few pounds
2 in there, Monsanto was the original source, weren't
3 they?
4 MR. PECK: Object to the form of the question.
5 THE WITNESS: Certainly we probably supplied
6 those at one point or another, yes.
7 BY MR. LOWE:
8 Q. It's fair to say you knew PCBs were escaping
9 from the Monsanto plant into the tributaries next to
10 the plant and that you reasonably assumed that they
11 were finding their way into Choccolocco Creek and then
12 into Logan Martin?
13 A. At some point in time, that's correct, yes.
14 MR. PECK: I object to the form of the
15 question.
16 BY MR. LOWE:
17 Q. In your affidavit you said you're familiar
18 with sampling to determine whether PCBs are present in
19 sediments, soils, and storm water in the vicinity of
20 the Anniston plant or in sediments in Snow Creek and in
21 fish in Choccolocco Creek and Lake Logan Martin. I
22 mean, you know good and well that they're present in
23 those sediments in all those areas, don't you?
24 A. The PCBs are present in them?
25 Q. Yes.

1 A. To the extent that they've been reported and
2 detected, yes.
3 Q. Well, Monsanto's done its own tests, they did
4 some 30 years ago, didn't they, on fish in the area?
5 A. Yes.
6 Q. And they found PCBs in them, didn't they?
7 A. In some of them, yes.
8 Q. And they considered themselves, Monsanto, a
9 source of those PCBs, didn't they?
10 A. I think they certainly considered themselves a
11 possible source.
12 Q. A possible source.
13 Have you reviewed the sediment sample studies
14 for Snow Creek? Are you familiar with any sediment
15 sample studies?
16 A. The one we did, yes.
17 Q. And the results from that test that you,
18 Monsanto or Solutia, did, was there's PCBs present in
19 that creek; was that correct
20 A. In some of the samples, yes.
21 Q. In some of the samples. And also for
22 Choccolocco Creek and Lake Logan Martin; isn't that
23 correct.
24 MR. PECK: Sediment samples, is that what
25 you're asking about?

1 BY MR. LOWE:
 2 Q. Sediment samples.
 3 A. To this point, I'm not aware of sediment
 4 samples that we've done.
 5 Q. You did some fish samples, though; is that
 6 right?
 7 A. Yes.
 8 Q. And you found PCBs in some of those fish; is
 9 that right?
 10 A. That's correct, but we had the fish sample
 11 study done, I didn't do it at Solutia. We contracted
 12 that study.
 13 Q. Right. What year was that when you first got
 14 some fish results?
 15 A. In this time frame or previously?
 16 Q. No, ever.
 17 A. I know samples were taken in, I guess, the
 18 early 1970s.
 19 Q. Which, in the early 1970s, showed elevated
 20 levels of PCBs in certain fish that were caught?
 21 A. It showed PCBs in those fish.
 22 Q. Some of them were over two parts per million,
 23 weren't they?
 24 MR. PECK: Object to the form of the question.
 25 I'm not clear what you guys are talking about.

1 MR. LOWE: Well, he was clear, anyway.
 2 MR. PECK: I mean, you're talking about
 3 Choccolocco Creek, Lake Logan Martin, Snow Creek?
 4 BY MR. LOWE:
 5 Q. Let's talk about Choccolocco Creek. You did
 6 some fish samples -- or you, Monsanto, in the 1970s
 7 there, didn't they?
 8 A. I understand they contracted with a consultant
 9 to do some fish samples.
 10 Q. Right. And they found that some of the fish
 11 caught there had PCBs over two parts per million?
 12 A. I don't know the exact numbers, but I believe
 13 some of them were over two.
 14 Q. All right. Instead of struggling through your
 15 affidavit, let's do something easy for a while. Let's
 16 answer a series of, like, true/false questions for me.
 17 It'll be easy. We'll streamline this.
 18 True or false: PCBs occur naturally in the
 19 environment?
 20 A. I think that there are some studies that
 21 indicate that some low levels of PCBs can be formed
 22 naturally, yes.
 23 Q. What studies were those?
 24 A. I think that there were studies -- the one
 25 that I recall is an author named Gribben,

1 G-R-I-B-B-E-N.
 2 Q. How does he say that they can be formed
 3 naturally?
 4 A. I don't recall the specifics.
 5 Q. Well, are PCBs normally considered a manmade
 6 substance?
 7 A. Normally, yes.
 8 Q. Were they created to be a persistent
 9 substance?
 10 A. No.
 11 Q. No?
 12 A. No.
 13 Q. Even as a dielectric fluid?
 14 A. They were created to be a thermally and
 15 electrically stable substance. They were created to
 16 meet a group of properties and they were created to be
 17 thermally and electrically stable and that's why they
 18 found use in the electrical industry.
 19 Q. Do you have a copy of this Gribben report
 20 somewhere in your office?
 21 A. I may have. I don't know.
 22 Q. Who is this Gribben fellow that says they can
 23 create themselves?
 24 A. I professor. I believe he's from Great
 25 Britain. I don't think he says they create themselves.

1 Q. Well, how does it occur naturally?
 2 A. I don't recall the details of what he said.
 3 You asked me a question and I answered it. I don't
 4 know the specifics. He has in there a mechanism for
 5 that natural occurrence.
 6 Q. Did he do that in a lab or did he test -- how
 7 did he make that conclusion?
 8 A. I don't recall.
 9 Q. Did you read his report --
 10 A. I read it several years ago.
 11 Q. -- or just the conclusion?
 12 A. No, I read it years ago.
 13 Q. True or false: PCBs have a low solubility in
 14 water?
 15 A. They're generally considered to have low
 16 solubility in the water depending on what your
 17 definition of that is. They're generally soluble in
 18 water at the part-per-billion level or lower than that.
 19 Q. Will they float, normally, or sink?
 20 A. Normally they would sink. They're denser than
 21 water. That has nothing to do with their solubility,
 22 but they're denser than water.
 23 Q. Okay. So normally if they're introduced into
 24 a water system such as a lake or stream, they're going
 25 to go to the bottom, so to speak?

- 1 A. If a drop of PCB is introduced into a
2 ecosystem, it will go to the bottom, that's correct.
3 Q. So normally, then, the highest concentration
4 of PCBs are going to be in the sediment rather than
5 suspended in the water; is that fair to say?
6 A. Well, that generally is fair to say, but that
7 really has nothing to do with their density, it has --
8 or their solubility -- well, it has to do with their
9 solubility; it has to do with their adsorption
10 characteristics to the sediment. It's not really a --
11 in that case it's not a density question, it's a
12 solubility/adsorptivity question.
13 Q. They sink to the bottom, they don't stay
14 suspended in the water, normally, to any great extent,
15 is that right, unless you stir it up?
16 A. That's correct, but that doesn't necessarily
17 explain why they adhere to the sediments. There are
18 chemicals which would in fact float in water, but when
19 they have the opportunity to adhere to the sediments,
20 would go to the bottom of the sediments.
21 Q. I don't care. I didn't ask you that. I'm
22 just asking about: Do PCBs normally sink to the bottom
23 or do they stay suspended in the water?
24 A. I answered that question yes, several
25 questions ago.

- 1 Q. Good. True or false: PCBs have a high
2 liquid -- or lipid, excuse me, lipid solubility?
3 A. They're certainly more lipid soluble than
4 they're water soluble, that's correct.
5 Q. First I should have asked, what is lipid
6 solubility?
7 A. That's basically solubility in fat, like
8 fat-like chemicals, materials
9 Q. Like fat in human beings?
10 A. For example, yes, or oils.
11 Q. Or fish?
12 A. Or fish, yes.
13 Q. What does "bioaccumulate" mean?
14 A. "Bioaccumulate" is one of the terms that's
15 used to describe the characteristics of chemicals to
16 accumulate in various biota in the food chain.
17 Q. True or false: PCBs bioaccumulate in animal
18 and human tissue?
19 A. If they're in the food chain, there is that
20 potential, yes.
21 Q. That potential. I mean, if you eat them,
22 they're not going to buy bioaccumulate, some of them?
23 A. It depends whether you're eating enough
24 that -- it's the relative enough of intake versus
25 outgo. So, if you're eating small amounts, the

- 1 natural -- I lost the word, but the natural processes
2 to excrete the PCB, if they're taking care of that
3 intake, then they will not bioaccumulate, no.
4 Q. PCB -- it's not your testimony that PCBs will
5 not bioaccumulate in humans or fish?
6 A. The potential is there, certainly, yes.
7 Q. In fact, there have been many studies done
8 that conclude that they do bioaccumulate in humans and
9 in fish.
10 A. Certainly there have been studies done on fish
11 which demonstrate that under the conditions of those
12 tests, PCBs do bioaccumulate, yes. I'm not sure that
13 there have been studies done on humans which
14 demonstrate that.
15 Q. There've been studies done on other animals
16 though, haven't there --
17 A. I think that's fair, yes.
18 Q. -- that show that PCBs bioaccumulate; is that
19 right?
20 A. I'm not sure that studies were done to show
21 that. Certainly because it's --
22 Q. I'm asking you for a conclusion.
23 A. It's a food-chain kind of definition, and most
24 of the studies, in a rat study, for example, you're
25 feeding the rat the PCBs and they -- assuming the rats

- 1 are getting more than their bodies are able to excrete
2 within the time frame of the study, those PCB levels in
3 their fat tissues will increase. That's not really a
4 definition of "bioaccumulation" because it's not a
5 food-chain kind of thing. I mean, it's in their food,
6 so -- I may be dancing a fine line here, but the
7 study --
8 Q. You're on a roll here.
9 A. That's fine. The studies really aren't
10 studies of bioaccumulation in rats, although the PCBs
11 may accumulate. So if that satisfies your question,
12 that's fine. I'll agree with that.
13 Q. All right. So if PCBs bioaccumulate, is it
14 fair to say, then, that the bioaccumulating PCBs are
15 certainly going to be higher than those in the external
16 environment, that is, let's say, if sediment has .1
17 parts per million and the fish have over two parts per
18 million, wouldn't that be an example of
19 bioaccumulation?
20 A. If you can demonstrate -- well, yeah. If you
21 can demonstrate that that sediment is the source of
22 those PCBs, yes.
23 Q. Well, have tests shown that PCB exposures to
24 rabbits, birds, quail, wild fowl in general display
25 dose-related adverse health effects?

- 1 A. I would agree that there are studies in those
2 various species that have shown those related effects,
3 yes.
4 Q. Such as liver damage?
5 A. I'm sure in some of those situations, yes.
6 Q. Diminished egg production?
7 A. I believe that's correct.
8 Q. Increased embryonic mortality rates?
9 A. I don't remember which species those were in
10 which you read, but I think there are indications that
11 in some species that's occurred, yes, in some dose.
12 Q. We talked earlier about finding PCBs in
13 sediment samples in the Lake Logan Martin, Choccolocco
14 Creek, and Snow Creek. Did you yourself or Monsanto do
15 any testing above Snow Creek where the plant ditches
16 discharge into Snow Creek?
17 A. Yeah, I believe both the State and Monsanto
18 has tested -- has done some testing above that point.
19 Q. What time frame was that?
20 A. Early 1990s, I think.
21 Q. Who did those?
22 A. We did some as part of the test we talked
23 about earlier, and I believe the State has also done
24 some.
25 Q. Why did you test above the discharge points?

- 1 A. To determine what the relative levels were
2 above the discharge point and below the discharge
3 point.
4 Q. Were the relative levels higher below than
5 above?
6 A. Yes.
7 Q. How much higher?
8 A. I don't recall the exact numbers.
9 Q. Well, generally you must have some idea.
10 A. I think above they were -- if detected at all,
11 they were relatively low levels, parts per million;
12 where below, I don't know what the levels were. There
13 were 10s and 15s, some maybe some higher.
14 Q. True or false: The marketplace standard for
15 PCBs in food as established by the United States Food
16 and Drug Administration is two parts per million?
17 A. False.
18 Q. That's false?
19 A. Yes.
20 Q. What is it, then?
21 A. It depends on the foodstuff.
22 Q. What about for fish?
23 A. For fish there's a tolerance level of two
24 parts per million.
25 Q. Do you have some analogy you usually use to

- 1 explain to people when you talk to public groups about
2 parts per million?
3 A. There are out there -- I'm very bad at
4 memorizing those, so I typically don't use them. I
5 have a sheet of them, but I don't remember generally
6 what they are.
7 Q. Well, you don't try to indicate or give some
8 analogy of how small a particle --
9 A. There may have been times when I have, but
10 there's no magic analogy that I use. I know they're
11 out there and I may have used one or another at a
12 particular time, but it is a small number.
13 Q. True or false: The runoff of PCBs from
14 Monsanto's Anniston property continued into Snow Creek
15 even after Monsanto ceased production of PCBs at the
16 Anniston plant?
17 A. I think, based on our sampling in the 1990s,
18 there was some indication that trace levels were in
19 storm water that was leaving that plant.
20 Q. What do you call "trace" levels?
21 A. Few parts per billion.
22 Q. Are you testing water or sediment?
23 A. Those tests were of storm water. The PCBs
24 that were detected were probably associated with
25 sediment in that storm water, or almost certainly were.

- 1 Q. Did you make any effort to determine
2 whether -- well, let me back up.
3 How many landfills exist on the Monsanto
4 property in Anniston?
5 A. There are two major areas that are considered
6 landfill areas.
7 Q. In terms of volume or area, can you give us an
8 indication of how large those landfills are?
9 A. I really can't. It's not something in terms I
10 think of. I don't really know.
11 Q. Well, in your role as the point man for the
12 company, did you obtain or amass any information
13 regarding what had been placed in those landfills over
14 the year?
15 A. I'm generally aware of that. I don't have any
16 specific knowledge.
17 Q. Generally what's contained in those landfills?
18 A. A variety of wastes from the various
19 manufacturing processes at the Anniston plant.
20 Q. Does that necessarily include PCBs?
21 A. In some of the landfill areas there are PCB
22 wastes from the manufacturing process, yes.
23 Q. Which areas are those?
24 A. My understanding is that there's some -- were
25 some in now what's being called the West End Landfill,

1 the area west of our plant, and there's certainly a
2 cell or an area in the landfill south of the plant that
3 had PCBs placed in it.

4 Q. Beginning in 1983/'84 time frame when you were
5 first contacted by the attorney general's office, have
6 you been confronted with any concerns regarding the
7 escape of PCBs from these landfills?

8 A. Well, until our investigations determined that
9 there were PCBs in storm water, I don't know that there
10 was -- I don't know what you mean by confronted by
11 concerns. We did those -- we did those investigations,
12 found the PCBs in storm water, and have undertaken
13 programs to manage and control.

14 Q. Was this storm water that was washing over the
15 tops of the landfills; is that what we're talking
16 about?

17 A. That would be the safe assumption. I don't
18 think we know where it particularly came from
19 specifically, but it was material that had water that
20 had been in contact with the landfill and then was
21 leaving the landfill, yes.

22 Q. Were these landfills lined in the bottom?

23 A. Some of the landfills are lined in the bottom.
24 I'm not totally sure about the landfill that
25 contains -- I think it was. Yeah, I think the old PCB

1 landfill is certainly closed RCRA under regulations.
2 I'm not sure whether it's lined or not. I don't know
3 the answer to that for sure.

4 Q. Are you familiar with Subtitle D compliance
5 for landfills?

6 A. Not really. I have heard of it, that's about
7 all I can say about it.

8 Q. That's really sort of a recent animal, so to
9 speak, for regulations.

10 A. Yes, that's my understanding.

11 Q. Do you have any reason to believe that any
12 type of lining was used by Monsanto Company when they
13 were initially dumping PCBs into the Anniston plant
14 landfill in the '70s?

15 A. I really don't know.

16 MR. PECK: I object to the form of the
17 question.

18 THE WITNESS: I don't know.

19 BY MR. LOWE:

20 Q. Have you made any investigation to determine
21 whether or not those PCBs are leaching into the
22 groundwater near the Anniston plant?

23 A. Yes, groundwater has been analyzed for PCBs.

24 Q. Have you found any presence of PCBs?

25 A. Not in the water itself, no.

1 Q. Are we talking about groundwater near the
2 landfill sites or have you done any type of dye testing
3 or anything of that nature to trace the water into
4 nearby tributaries?

5 A. I'm not sure how many questions were in there.

6 Q. That was compound.

7 A. Certainly there are groundwater monitoring
8 wells associated with the landfills. So to the extent
9 that PCB testing has been done, I mean, I think that
10 answers one of the questions. I don't even know if dye
11 testing is appropriate for groundwater kinds of
12 investigations. I'm not a hydrologist. I'm certainly
13 not aware of any, but I don't know.

14 Q. When were these groundwater monitors placed in
15 service?

16 A. I don't know specifically. I think in the
17 1980s. Other than that, I don't know specifically.

18 Q. At what point did Monsanto start capping the
19 landfills to comply with federal regulations? That
20 wasn't until 1993 or so, was it?

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

22 THE WITNESS: I'm not the right person to be
23 asking. It's my understanding that some of the cells
24 were what I call RCRA, R-C-R-A, RCRA capped prior to
25 1990s, but I don't know the specifics on the various

1 cells within those landfills and I don't know what
2 regulations were in compliance. So I shouldn't even be
3 answering the question.

4 BY MR. LOWE:

5 Q. Is that something for Mr. Faust?

6 A. He would certainly be more knowledgeable than
7 I.

8 Q. What does ATSDR stand for?

9 A. Agency for Toxic Substances and Disease
10 Registry.

11 Q. True or false, then: PCBs are listed as
12 probable human carcinogens by the EPA, ATSDR, and the
13 International Agency for Research on Cancer?

14 A. They're listed as probably human carcinogens
15 by the EPA and the international agency, IARC. ATSDR
16 just basically reports those previous listings. They
17 don't have an independent listing system.

18 Q. True or false: PCBs are distributed into the
19 human body fat stores and are retained for long
20 periods?

21 A. That is generally true for some higher
22 chlorinated PCBs.

23 Q. What's a higher chlorinated PCB?

24 A. A PCB with four or five or more chlorines on
25 the biphenyl ring.

1 Q. In terms of Aroclor, is the name brand for the
2 PCBs manufactured by Monsanto, which ones would fall
3 into that category?

4 A. The Aroclor mixtures were mixtures of wide
5 ranges of various chlorinated materials, so there are
6 lower and higher chlorinated materials in all of --

7 Q. Sure, but which one has four or five molecules
8 or whatever you said, which brand?

9 A. Some components of almost all of the brands,
10 as you call it, of all the various product designations
11 have some chlorine -- have some biphenyl molecules of
12 four or more chlorines on it. Almost all of them have
13 some that have less than that. They were very complex
14 mixtures.

15 Q. So back to my question, then, that would mean
16 that all of these PCBs had the characteristic of being
17 distributed into the body fat stores and retained for
18 long periods?

19 A. Some components of some or all of the Aroclor
20 mixtures contained four or more chlorines on the
21 biphenyl ring, which would make them tend to be more
22 long lasting in human -- we're talking about human fat,
23 was that your question?

24 Q. Yes.

25 A. But even that is not a firm rule. There are

1 certainly some highly chlorinated materials that are,
2 for whatever reason, rapidly excreted from the human
3 system.

4 Q. Let's talk about the ones produced by Monsanto
5 and that were commonly released into the environment by
6 Monsanto.

7 A. Well, I'm not -- I don't think they were
8 commonly released into the environment by Monsanto.

9 Q. How about every day? They were released every
10 day from that plant during the production period
11 weren't they?

12 A. I don't know that.

13 Q. Come on, you've read that stuff.

14 A. I don't know that.

15 Q. You've seen the documents.

16 A. I don't know. You use the term "every day," I
17 don't know that they were released every day from that
18 plant. Certainly PCBs during the period of manufacture
19 were released from the Anniston plant.

20 Q. All right. Well, we'll split hairs, then. At
21 least every week there were pounds at least?

22 A. I don't know that.

23 Q. Well, you've looked at the documents. You
24 were employed there. I mean, you're a relatively young
25 man. You weren't there every day of the history of the

1 plant, but in your job where you said you've reviewed
2 literature and reports regarding PCBs including
3 information regarding the toxicity of PCBs and
4 environmental remediations involving PCBs and you're
5 familiar with Monsanto's manufacture of PCBs at its
6 Anniston plant and the characteristics of PCBs, how'd
7 you get all that information? You never looked at any
8 Monsanto documents?

9 A. I didn't say I didn't look at any Monsanto
10 documents. I said I can't say that PCBs were released,
11 quote, "every day" or, quote, "every week." There are
12 certainly documents which indicate that PCBs were
13 released in discharges at the Monsanto Anniston plant.

14 Q. Do you think it was proper to release PCBs
15 into the environment?

16 A. I think at the time that most of this
17 manufacture was going on, there was very little
18 understanding of what was, quote, "proper and
19 improper." I think Monsanto was doing the best job
20 they could to manufacture a useful product at that
21 time.

22 Q. What time are we talking about?

23 A. Until -- basically the time the manufacture
24 until the information began to be available in the late
25 1960s that PCBs were persistent in the environment.

1 Q. Well, they closed the plant in 1971, didn't
2 they?

3 A. That's correct.

4 Q. And they discharged PCBs into the environment
5 knowingly well beyond 1971, didn't they?

6 A. I don't know that I can agree with that
7 statement. I'm not even sure what that means.

8 Q. You haven't looked at any of those documents
9 where it says: We sewered X pounds today of PCBs?

10 A. After 1971, I'm sure that's not true. We
11 weren't -- the manufacturing facility was shut down.
12 There was no way we would be sewerage PCB materials
13 after 1971.

14 Q. Well, up to 1971 they did that, didn't they?

15 A. There's indication that some PCBs were
16 discharged into the sewers prior to 1971.

17 Q. How did you learn that?

18 A. We learned it by following up on the
19 information that was beginning to be available in the
20 late 1960s, studying -- looking at our plant, trying to
21 determine, you know, in fact were there were
22 discharges, what do we do to reduce those discharges.
23 We worked, as I'm sure you know, very hard to reduce
24 those discharges. Eventually made a decision that that
25 plant should be closed.

1 MR. PECK: Can we take a quick break?
 2 MR. LOWE: Yeah. That's a good idea.
 3 (A SHORT BREAK WAS HELD.)
 4 BY MR. LOWE:
 5 Q. Are you familiar with any studies being done
 6 by Monsanto in the 1960s regarding the effects of PCBs
 7 on the environment in humans?
 8 A. Done by Monsanto in the 1960s? By late 1960s
 9 there may have been some studies going on looking at
 10 biodegradation and that kind of stuff. I don't know
 11 the exact timing of that.
 12 Q. Well, actually Monsanto was taking upon itself
 13 to try to determine what health effects or
 14 environmental hazards PCBs were presenting, weren't
 15 they?
 16 A. Yes.
 17 Q. But they weren't necessarily reporting those
 18 to the public, were they?
 19 A. Well, they were reporting them to regulators.
 20 They were reporting some of them to scientific
 21 meetings. I mean, they were generally publicly
 22 available.
 23 Q. At what point did Monsanto start warning its
 24 customers that they shouldn't allow the release of PCBs
 25 into streams or any other water source?

1 A. I don't know the exact date of that, sometime
 2 in the early 1970s, I believe, but I don't know the
 3 exact year.
 4 Q. Well, that was to their customers, right?
 5 A. Yes.
 6 Q. What was the reason for alerting their
 7 customers to that?
 8 A. Because by the time that warning was put on
 9 them, we had done enough and understood enough to
 10 realize that PCBs should not be discharged into the
 11 environment and wanted their customers to have that
 12 same understanding.
 13 Q. What about the public in general or either
 14 employees who came in contact? For example, at
 15 Westinghouse, did Monsanto make any effort to warn
 16 those people as to the possible adverse effects of
 17 PCBs?
 18 A. Certainly. We had the warnings on the
 19 materials that we shipped to their employers.
 20 Q. So there was a label, then, on each barrel of
 21 PCBs that went to these plants?
 22 A. That's my understanding.
 23 Q. Was part of that warning to insulate or
 24 protect Monsanto from legal action rather than helping
 25 the environment?

1 A. I don't know if it would have had that effect
 2 or not. The reason the labels were put on were to
 3 alert people who were using those pure PCBs, the
 4 precautions necessary to use them safely and regarding
 5 the environmental level, to alert the customers that
 6 those materials should not be carelessly released into
 7 the environment.
 8 Q. When these lawsuits we started out talking
 9 about this morning that you've been involved with
 10 Monsanto, wasn't that one of the defenses you raised
 11 that, Well, we warned Westinghouse, so we shouldn't be
 12 liable?
 13 A. That may have been, I don't know.
 14 Q. You don't know?
 15 A. I'm not involved in those kinds of strategic
 16 decision of what the defenses are or are not.
 17 Q. What is your role again, then, in these cases?
 18 A. I provide technical support.
 19 Q. Like what? Tell me specifically. What's your
 20 script? What's your script?
 21 A. I don't have a script. I respond to specific
 22 inquiries about technical issues relating to PCBs or
 23 whatever, or not PCBs if it's not a PCB issue.
 24 Q. What's the most commonly asked question of you
 25 about PCBs?

1 A. I have no idea.
 2 Q. This is your job, man. You know this.
 3 A. I don't keep track.
 4 Q. Sure you do.
 5 A. By who?
 6 Q. Let's say by the public.
 7 A. By the public? What do we know about PCBs,
 8 what do we know about the toxicity of PCBs, what do we
 9 know about the human health effects of PCBs.
 10 Q. What do you tell them?
 11 A. I tell them what my understanding of the
 12 literature is.
 13 Q. What do you tell them the human health effects
 14 are?
 15 A. Generally we tell them that in highly exposed
 16 persons, you can see skin -- various skin conditions,
 17 possibly including chloracne, and you may see elevated
 18 transient liver enzyme levels.
 19 Q. Well, there hasn't been a whole lot of human
 20 testing done for PCBs, have there?
 21 A. Well, as far as I know, there's never been any
 22 humans testing done. There's been lots of people,
 23 humans, exposed to PCBs in their jobs, and those people
 24 have been looked at extensively for health effects.
 25 Q. Have you ever told anyone at a public meeting

1 that there aren't any adverse health effects for being
2 exposed to any level of PCBs?

3 A. I may have told people that there are -- it's
4 based on our understanding of highly exposed people.
5 It's extremely unlikely that environmentally exposed
6 people are at risk of long-term chronic health effects,
7 I may have said that. That's certainly my
8 understanding of what the literature is, so it's
9 possible I said that.

10 Q. What about environmental effects as to fish
11 and animals, what's your standard response to those
12 questions?

13 A. My standard response is that in areas where
14 there are high levels of PCBs detected in the
15 environment, that there are effects observable on them.

16 Q. What do you consider a high level?

17 A. It really depends on a particular situation
18 and it depends on the levels in the wildlife that are
19 there. There's no magic number that makes something
20 high or low.

21 Q. You don't think two parts per million in fish
22 isn't some sort of a trigger level?

23 A. Well, it's a trigger level for a fish
24 consumption advisory. It's a level that the regulatory
25 agencies have decided that fish aren't to be

1 commercially sold at that level. I don't think it's
2 hurting the fish, no.

3 Q. How many millions of pounds of PCBs do you
4 think Monsanto produced over the many of years?

5 A. I've seen a number, I don't even know what it
6 is. It's not a number I have on the tip of my tongue.

7 Q. Yeah, guesstimate. Do you have a guess?

8 A. I wouldn't even want to guess. It's
9 available.

10 Q. From where?

11 A. I think some EPA documents have it. I don't
12 know that there isn't a Monsanto document that doesn't
13 have some estimate of how many pounds were produced. I
14 just don't know.

15 Q. In your job as the information man for PCB, do
16 you normally provide information to government agencies
17 other than Alabama that we talked about?

18 A. If asked, and sometimes --

19 Q. Well, who's asked? Has the EPA ever asked
20 you?

21 A. Sure.

22 Q. What information did they require from you?

23 A. I don't even know specifically, but I've
24 certainly talked to EPA people.

25 Q. Have you provided them any written

1 information?

2 A. Just a general MSDS sheet, material safety
3 data sheet.

4 Q. Is that something you prepare?

5 A. I've been involved in the preparation of
6 those.

7 Q. Tell me again what that was?

8 A. Material safety data sheet.

9 Q. What kind of information is going to be on
10 this MSD sheet?

11 A. There's a variety of information from chemical
12 properties to naming nomenclature, to hygiene measures,
13 toxicological information, a variety of different kinds
14 of information; Department of Transportation shipping
15 information.

16 Q. When's the last time you had to provide one of
17 these sheets to the EPA regarding PCBs?

18 A. To the U.S. EPA? I don't recall. Not
19 recently.

20 Q. How about other agency, state or federal?

21 A. I don't know. I don't keep track of what I do
22 and don't, but I'm sure I provided them for regulatory
23 agencies in the past year or so a couple times.

24 Q. Do you have a written outline of what you
25 normally present at public meetings?

1 A. I wouldn't say I normally present to public
2 meetings. I have done so occasionally, and no, I don't
3 have a written outline.

4 Q. At your meeting at Pell City a year ago, you
5 had some slides with you, didn't you?

6 A. Yes.

7 Q. Where did those come from?

8 A. I prepared them.

9 Q. What about the text of the comments that you
10 made before anyone asked you questions?

11 A. It was just basically driven by what's on
12 those slides.

13 Q. Does Monsanto dispute that it is responsible
14 for the fish advisories that have been issued by the
15 Alabama Department of Public Health for Choccolocco
16 Creek and Lake Logan Martin?

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

18 THE WITNESS: I think that we are involved in
19 a process to understand what the source of those fish
20 advisories are.

21 BY MR. LOWE:

22 Q. Well, the source of the fish advisories are
23 the presence of PCBs.

24 A. To understand the source of the PCBs in those
25 fish and to understand what has led to those levels.

1 Q. You don't dispute -- after all we talked about
2 this morning, you don't dispute that Monsanto is a
3 source of the PCBs that have found their way into
4 Choccolocco Creek and Lake Logan Martin?

5 A. I think Monsanto may be one of the sources of
6 PCBs to Choccolocco Creek. It may be one of the
7 sources to Lake Logan Martin. I don't think we know
8 that.

9 Q. It is a source, it's not maybe, is it?

10 A. That's your words, not mine. I answered the
11 question.

12 Q. You're not willing to admit here under oath
13 that the Anniston plant for Monsanto is a source of
14 PCBs that are presently existing in Choccolocco Creek
15 in Lake Logan Martin?

16 A. I certainly am on Choccolocco Creek. The Lake
17 Logan Martin situation is much more complex. It's a
18 possibility. I don't know.

19 Q. Just so the record's clear now, then you admit
20 that the Monsanto plant in Anniston, Alabama, is a
21 source of PCBs for Choccolocco Creek?

22 A. Is one of the potential sources for the PCBs
23 in Choccolocco Creek, yes.

24 Q. It is a source. There isn't any potential,
25 because it exists. The potential's there. It is a

1 fact. It is there and you're not going to dispute
2 that, are you?

3 A. I answered the question. Monsanto is one of
4 the potential sources of PCBs to Choccolocco Creek.

5 Q. All right. Then we defined, then, under EPA
6 standards for potentially responsible parties; is that
7 what you're going under?

8 A. No. I'm going under the common meaning of the
9 words I'm using.

10 Q. It's a mere potential, then, rather than a
11 fact that there are PCBs in the lake? Let's back up.

12 There are PCBs in Choccolocco Creek, aren't
13 there?

14 A. There are PCBs in the sediments in Choccolocco
15 Creek, yes.

16 Q. Do you dispute that there are PCBs in the
17 sediment and the fish in Lake Logan Martin?

18 A. I'm not aware of sediment analyses from Lake
19 Logan Martin. There are PCBs in the fish in Lake Logan
20 Martin.

21 Q. Well, would you be surprised to learn that
22 there are elevated levels, that is, above one part per
23 million, in soil samples taken from Lake Logan Martin?

24 A. Would I be surprised to learn that? I don't
25 know the answer. In some ways, yes, I might be a

1 little surprised, depending on how the samples were
2 taken or where they were taken. I don't know the
3 answer to that.

4 Q. Have you gone out and, like, physically walked
5 out onto the banks of Choccolocco Creek?

6 A. Yes.

7 Q. How many times have you done that?

8 A. A couple maybe, three.

9 Q. What did you observe about the characteristics
10 of that creek?

11 A. It's a very large creek, what I would call a
12 river. It seems to carry a lot of water. Generally
13 muddy.

14 Q. Do you think it's a fast-flowing creek?

15 A. I don't know. Generally, moderately flowing.
16 I don't know that it's fast, but it moves right along.

17 Q. Did it appear to you in many areas it was
18 shallow with a rock bottom where there wasn't a large
19 presence of sediment where the water flowed?

20 A. I don't know that I made that observation.

21 Q. Why would you be surprised that PCBs have been
22 found in the sediment in Logan Martin?

23 A. Well, as I said, I don't know that I'd be
24 surprised that they would be found. I think, depending
25 on the location and the sampling protocol and where the

1 samples were taken, I might be surprised that they
2 would be above one part per million.

3 Q. What would that equate to in fish, in your
4 experience?

5 A. We don't know the answer to that to Lake Logan
6 Martin. It depends on many characteristics of the
7 sediment, it depends on the characteristics of the fish
8 and the system involved. That's part of the study that
9 we're proposing to do.

10 Q. Really? How many other studies have you done
11 similar to that?

12 A. I haven't, but the consultants that we're
13 engaging to help us in this process have done studies
14 like that.

15 Q. Really, where? Who have you engaged?

16 A. Dr. Mark Brown.

17 Q. All right. I've got a copy of his affidavit
18 with his resume attached to it. Have you looks at
19 that?

20 A. Yes.

21 Q. Did it state all of his experience in
22 remediation that he related to you?

23 A. I'm not sure -- I've seen his affidavit. I'm
24 not sure I've seen his resume.

25 Q. Were you the person responsible for hiring

1 Mark Brown or is that someone else?
 2 A. Someone else.
 3 Q. Who else?
 4 A. Mr. Faust.
 5 Q. Who do you report to?
 6 A. A gentleman by the name of Mike Foresman,
 7 F-O-R-E-S-M-A-N.
 8 Q. Is he located here in St. Louis?
 9 A. Yes.
 10 Q. What's his title?
 11 A. Director of remedial projects or something.
 12 Something like that.
 13 Q. Have you ever worked with Robert Cheever?
 14 A. Not directly.
 15 Q. Do you know him?
 16 A. I've been introduced to him. I know him a
 17 little.
 18 Q. Have you talked with him about the Anniston
 19 plant since he was the senior environmental specialist
 20 at the plant for a number of years?
 21 A. I don't recall whether he was involved in the
 22 1984 discussions or not. Certainly not recently.
 23 Q. He was there from 1983 to 1990 as senior
 24 environmental specialist. You didn't talk to him?
 25 A. As I said, if he was in that role at that time

1 in the 1980s, I'm sure I did. I don't have a specific
 2 recollection of that.
 3 Q. You think it would have been good practice if
 4 you went to the plant that you would talk to the senior
 5 environmental specialist?
 6 A. If he was involved in those discussions. I
 7 don't recall if he was or not. He may very well have
 8 been.
 9 Q. Do you know for a fact, then, that he was the
 10 environmental specialist there?
 11 A. I'm taking your word for that.
 12 Q. So you don't even know that.
 13 A. No. I know that he spent some time in
 14 Anniston. If that's the title that he had, that's
 15 fine. I don't know specifically that that was his
 16 title, no.
 17 Q. Well, what do you know him, then? How do you
 18 know him?
 19 A. He's been a -- he's an environmental person
 20 that's been at several plants. That's how I know him.
 21 Q. Is he above you at the company or in line with
 22 you or what?
 23 A. I have no idea.
 24 Q. Is he in the same department?
 25 A. That's a good question. Before, I could have

1 easily answered that no. Under the new Solutia regime,
 2 he may very well be. Because the plant people now
 3 are -- report in through the shared services concept,
 4 he may very well be in the same organization as me, but
 5 I don't really know. He's certainly not in the chain
 6 that I operate in.
 7 Q. Do you know anything about his credentials as
 8 an engineer or environmental specialist?
 9 A. No, I don't.
 10 Q. Do you have any reason to question his
 11 abilities or his opinions?
 12 A. I have no reason to question his abilities or
 13 opinions, no.
 14 Q. Earlier I was asking you about the storage of
 15 PCBs in body fat. To your knowledge, is it true or
 16 false that during the storage period, PCBs constantly
 17 move out of the fat into the blood and are
 18 redistributed to various organs?
 19 A. PCBs certainly establish an equilibrium in the
 20 fat stores in the human body. So, to the extent that
 21 if the fat stores in the blood were somehow reduced or
 22 changed, then the PCBs would move in and out of fat to
 23 maintain that equilibrium.
 24 Q. Does that sound like a true statement, then?
 25 A. I think it's a general -- generally fair

1 characterization, although I don't know about the term
 2 "constantly" and I don't know -- as far as the
 3 distribution -- I mean, there is an equilibrium. So to
 4 the extent that other organs may or may not have a fat
 5 repository associated with them, I suppose it's true to
 6 that effect.
 7 Q. True or false: PCBs are very stable compounds
 8 which persist in the environment for many years.
 9 A. That's a fair characterization of some of the
 10 more highly chlorinated PCBs. It is certainly not true
 11 of some of the lowly chlorinated PCBs.
 12 Q. Well, tell me what a lower chlorinated PCB is,
 13 using the Aroclor designation, like 1246 or whatever?
 14 A. You can't do that, because the Aroclor
 15 mixtures were complex mixtures of a variety of the
 16 possible PCB -- what we call congeners,
 17 C-O-N-G-E-N-E-R-S. So 1242, for example, had some
 18 lower chlorinated PCBs, it had some more highly
 19 chlorinated PCBs. That can basically be true of any of
 20 the particular products that we marketed.
 21 Q. Exactly. So once those were dumped into the
 22 water system around the plant and traveled to
 23 Choccolocco Creek, then naturally some of these are
 24 going to be persistent in the environment because,
 25 according to you, every one of these Aroclors had the

1 characteristics of being persistent.
 2 A. No, that's not true. There are components of
 3 the individual Aroclor mixtures, depending on the level
 4 of chlorination of that mixture, some of which would be
 5 persistent and some of which wouldn't, or some of which
 6 had the potential to be persistent.
 7 Q. Oh, of course, the potential.
 8 A. Absolutely.
 9 Q. I'm still not following you. If some of it
 10 had the characteristics of dissolving or evaporating or
 11 whatever and then some of it didn't, it seems that some
 12 portion of it, under every circumstance, is going to
 13 persist in the environment.
 14 A. Is that a question?
 15 Q. Yeah.
 16 A. To the extent that the various mixture -- I'm
 17 just going to say what I've already said. To the
 18 extent the various mixtures had some of the more highly
 19 chlorinated materials, those materials have a greater
 20 potential to persist in the environment than the more
 21 lowly chlorinated, in general; although, there are
 22 exceptions to that.
 23 Q. All right. The question is: Isn't it a fact
 24 that every type of PCB released from the Monsanto plant
 25 had one of the highly -- what is it? -- chlorinated

1 characteristics that you're talking about that makes it
 2 persistent?
 3 A. I would say that's probably not true. I don't
 4 know what that means. To the extent that materials
 5 were discharged from the plant, they weren't discharged
 6 as products, they were discharged however they were
 7 discharged. So without -- and certainly within those
 8 discharges there was the potential for more lower
 9 chlorinated materials and there was certainly the
 10 potential for more highly chlorinated materials. To
 11 the effect that there were more highly chlorinated
 12 materials, those materials are the ones that have the
 13 higher potential to persist in the environment for
 14 longer periods of time.
 15 Q. If they're being found 20, 30 years later,
 16 wouldn't you deem them to be persistent in the
 17 environment?
 18 A. If the materials that are being found in the
 19 environment have been there for 20 years, those
 20 particular congeners, those particular materials
 21 certainly would be considered persistent.
 22 Q. When was the last time PCBs were made in
 23 Anniston? 1971, wasn't it? Isn't that what you told
 24 me?
 25 A. That's correct.

1 Q. Well, how many years has that been from today?
 2 A. I don't know, 27.
 3 Q. All right. And you're still finding runoff
 4 from your property in your storm water runoff at least
 5 by, let's say '89, still had PCBs present, didn't they?
 6 MR. PECK: Object to the form of the question.
 7 THE WITNESS: When we did the analyses -- I
 8 don't know that the analyses were done in 1989. When
 9 the analyses were done in 1993/1994 time frame, '94 I
 10 guess, there were trace levels of PCBs found in some of
 11 the storm water.
 12 BY MR. LOWE:
 13 Q. All right. There are PCBs on that property
 14 right now, aren't there?
 15 MR. PECK: Object to the form of the question
 16 It's very unclear what property.
 17 MR. LOWE: The Monsanto Anniston property. It
 18 has a fence around it now so people won't come in and
 19 play on it anymore.
 20 MR. PECK: You mean the landfills?
 21 MR. LOWE: And the plant. The plant has a
 22 fence around it and the landfills have a fence around
 23 it.
 24 MR. PECK: I don't recall any fence around the
 25 plant. Maybe you know the plant better than I do.

1 MR. LOWE: The last time I drove up there, it
 2 had a fence around it.
 3 MR. PECK: I drove right in every time I drove
 4 there. No fence at all.
 5 MR. LOWE: That's beside the point.
 6 BY MR. LOWE:
 7 Q. On the property in Anniston, owned by Solutia,
 8 I suppose, today, there are PCBs in the landfills,
 9 aren't there?
 10 A. Yes, there are PCBs in some of the landfills
 11 on that property.
 12 Q. And that's why you put groundwater monitors
 13 there, didn't you?
 14 A. No, that has nothing to do with PCBs --
 15 Q. That doesn't have anything to do with PCBs?
 16 A. PCBs are not --
 17 Q. What do those groundwater monitors test for?
 18 A. They're testing for the materials that happen
 19 to be in the groundwater. They're not testing for
 20 anything. They're collecting the water, the samples
 21 that are analyzed for the materials that have been
 22 detected in groundwater.
 23 Q. But they're not looking for PCBs?
 24 A. Generally not. In times they have been
 25 checked for PCBs and they have not been detected. But

- 1 they're not there for PCBs, no, absolutely not.
- 2 Q. You're not going to dispute that there aren't
- 3 PCBs existing on the Monsanto property, whether it's
- 4 the landfills or underneath the concrete slabs in the
- 5 plant today, are you?
- 6 A. Well, no. I mean, we know that. We've just
- 7 undergone a very complex and expansive project to
- 8 encapsulate, control, and manage those PCBs that happen
- 9 to be on property that was -- and some of it was and
- 10 some of it's now -- Solutia property.
- 11 Q. And this recently completed and ongoing, I
- 12 suppose, expensive project that you refer to is taking
- 13 place now, right, 1997 and up until today?
- 14 A. Through the last several years.
- 15 Q. And no one dumped any more PCBs on Anniston's
- 16 property between, let's say, 1984 to today, have they?
- 17 You're not accepting any more dumping of PCBs in your
- 18 landfill, are you?
- 19 A. Well, we never did accept any dumping of PCBs
- 20 in the landfill.
- 21 Q. The only point is, they're persistent; they're
- 22 very persistent, aren't they?
- 23 A. Some PCB congeners are persistent. I'm not
- 24 disputing that.
- 25 Q. I just don't want anyone to get the impression

- 1 that they all just evaporate and disappear. You're not
- 2 saying that, are you?
- 3 A. Not all of them. Some of them do biodegrade,
- 4 some of them evaporate, some of them are photodegraded.
- 5 That's more likely to occur with lower chlorinated
- 6 materials than highly chlorinated materials. I don't
- 7 think that's any different than what I've been saying.
- 8 Q. True or false: From your studies, PCBs have
- 9 been shown to produce adverse health effects on humans,
- 10 including reproductive and developmental toxicity?
- 11 A. I'll disagree with that. I don't think that
- 12 is a fair characterization of the literature.
- 13 Q. True or false, then: PCBs have been shown to
- 14 produce adverse health effects in humans, including
- 15 neurobehavioral alterations?
- 16 A. I don't think that's a fair characterization
- 17 of the literature.
- 18 Q. How about immunosuppression, adverse effects
- 19 on immunosuppression?
- 20 A. I'm not aware of documented reports of
- 21 immunosuppression in humans.
- 22 Q. How about endocrine alterations?
- 23 A. I'm not aware of any literature support for
- 24 the hypothesis that PCBs cause endocrine alterations,
- 25 whatever that might mean, in humans, no.

- 1 Q. How about a word spelled P-O-R-P-H-Y-R-I-A?
- 2 A. Porphyrria? There is one report of possible
- 3 porphyria in one group of Italian workers. Other
- 4 studies have not confirmed that finding.
- 5 Q. What is porphyria?
- 6 A. It's basically an upset in a process which
- 7 eventually leads to the formation of hemoglobin.
- 8 Q. What about chloracne? We know it causes that,
- 9 or can.
- 10 A. It may cause chloracne. I'm not as convinced
- 11 of that as some other people, but certainly I will
- 12 admit or acknowledge that Monsanto -- the doctors at
- 13 Monsanto will say that PCBs are a possible cause of
- 14 chloracne.
- 15 Q. Even the doctors at Monsanto say that; is that
- 16 what you're telling me?
- 17 A. I believe a doctor has said that at one point
- 18 or another.
- 19 Q. That's an MD doctor, not a Ph.D. doctor?
- 20 A. That's correct.
- 21 Q. And you're not an MD, are you?
- 22 A. I'm certainly not.
- 23 Q. And your understanding or your disagreements
- 24 with whether or not adverse health effects occur in
- 25 humans as a result of PCB exposure is based solely upon

- 1 your reading other people's conclusions; is that right?
- 2 A. My interpretation of those, yes, that's
- 3 correct.
- 4 Q. You haven't done any studies on your own?
- 5 A. No, sir.
- 6 Q. How do you select what literature you're going
- 7 to read on this subject?
- 8 A. I try to scan as much of it as I can, the ones
- 9 that tend to -- the ones that I actually read. It just
- 10 depends. There's no magic thing. Some of them --
- 11 after reading enough literature, you have a sense for
- 12 which ones are worth delving into a little more than
- 13 others.
- 14 Q. As a Ph.D. as opposed to an MD, how do you
- 15 determine whether one researcher's conclusions on
- 16 reproductive developmental toxicity are any better than
- 17 anyone else's?
- 18 A. I rely on the opinions of other scientists and
- 19 other MD's that review that same literature and my
- 20 understanding of the literature also.
- 21 Q. Would you agree, then, that there's a fair
- 22 scientific basis to disagree with your conclusion that
- 23 it doesn't have an adverse effect on reproductive
- 24 developmental toxicity?
- 25 A. I'm sorry?

1 Q. In other words, you don't dispute that there
2 are scientific studies that have made that conclusion,
3 you have just chosen to disagree with them?

4 A. There are studies that have reached that
5 conclusion. There are also a number of studies that
6 have reached the opposite conclusion, and my
7 evaluation, and others, and the weight of the evidence
8 is that there's no consistent scientific basis or
9 medical basis for holding that conclusion.

10 Q. Of course. As Mr. Monsanto, you get paid to
11 reach that conclusion, don't you?

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

13 THE WITNESS: No, I do not.

14 BY MR. LOWE:

15 Q. You don't? How long is your job going to last
16 if you're out telling people near the lake that, All
17 this causes reproductive and developmental toxicity
18 based upon Mr. -- Dr. So-and-so's study that I just
19 read?

20 A. If I believed that and if that was my analysis
21 of the literature, I'm sure I would continue in
22 employment just as I do today.

23 Q. You wouldn't be the point man for Monsanto in
24 this case, would you?

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

1 Q. Yeah. All right. What about studies on
2 neurobehavioral alterations, is it fair to say that
3 there are studies out there that have found that PCBs
4 have an adverse effect on human neurobehavioral
5 characteristics?

6 A. That is some people's interpretation of the
7 studies.

8 Q. But you disagree with those, too; is that
9 correct?

10 A. I don't disagree with the particular studies
11 that report their findings. Well, no, that's not true,
12 I do disagree with some of those studies, but I believe
13 the weight of the evidence -- there are more studies
14 which indicate that PCBs don't have that effect, and I
15 believe the weight of the evidence is such that that
16 effect is not consistently reported. I also know that
17 most of those studies are based on fish consumption
18 largely in the Great Lakes, and the authors of those
19 studies acknowledge that if the effects are real, that
20 they may certainly be caused by other materials besides
21 PCBs.

22 Q. Do you also, then, dispute tests which have
23 found adverse effects on human immunosuppression?

24 A. I don't know who told you to ask that
25 question.

1 Q. Well, I thought you said you didn't agree with
2 it.

3 A. I disagree with that. I don't believe there
4 are studies which do make that.

5 Q. You don't think there are any studies?

6 A. As I sit here today -- I mean, you may be able
7 to go find one, but as I sit here today, I'm not aware
8 of any that make that claim, no.

9 Q. But if I find one, you're going to disagree
10 with it, right?

11 A. I don't know that I'll disagree with the
12 study.

13 Q. I have one, but you're going to disagree with
14 it, right?

15 A. I will disagree that it represents the weight
16 of evidence of human populations who have been observed
17 after exposure to PCBs.

18 Q. I thought that you said there hadn't been any
19 studies on immunosuppression?

20 A. I said I wasn't aware of one as I sit here.
21 If you have one, obviously there must be one.

22 Q. But you were going to disagree with it without
23 ever seeing it.

24 A. No. I will look at it and weigh it with the
25 weight of the evidence. I'm certainly aware of studies

1 where they've looked for immunosuppression and haven't
2 found it.

3 Q. Was that a Monsanto-funded study?

4 A. Absolutely not.

5 Q. How many studies has Monsanto funded on health
6 effects regarding PCBs?

7 A. On humans?

8 Q. Well, you know, that's kind of tough to
9 dissect humans and do an adequate study. How about
10 just studies period, other than your rat study you did
11 20 years ago?

12 A. There are a number of animal studies which
13 Monsanto sponsored in the early 1970s.

14 Q. The puppy study, you're familiar with that
15 one, aren't you?

16 A. The puppy study?

17 Q. Yeah. They fed some dogs and then they
18 dissected the puppies and found that they had adverse
19 effects from PCBs.

20 A. There were studies done of dogs. I don't know
21 about whether they dissected puppies or not, but dogs
22 were among the species that were fed PCBs in a feeding
23 study sponsored by Monsanto, that's correct.

24 Q. And what were the results of that?

25 A. I don't recall specifically.

1 Q. Well, it wasn't good, is that why you don't
2 recall it?
3 A. No, I just don't recall specifically.
4 Q. Okay. I also must assume that you disagree
5 with any reports or studies which find the porphyria
6 symptom from PCB exposure?
7 A. I think I explained, there is a study that
8 reports that, there are also other studies following up
9 that study which weren't able to reproduce that
10 finding. So, again, I believe the weight of the
11 evidence does not support that PCBs are a cause of
12 porphyria in humans.
13 Q. All right. What about injury to the liver,
14 stomach, thyroid, or kidneys, any studies on those?
15 MR. PECK: In humans?
16 MR. LOWE: Yeah, in humans.
17 THE WITNESS: I think I said that there are
18 reports that high-level exposure to PCBs can cause
19 transient elevations of liver enzymes.
20 BY MR. LOWE:
21 Q. What does that mean, first, and then tell me
22 what studies show that?
23 A. I don't know exactly what studies show it, but
24 that was supposed to be second. It means that in some
25 of the worker populations who have been examined by

1 physicians to look for health effects of PCBs, there
2 are certain liver enzymes that show elevations. If you
3 go to the doctor to have a fiscal, one of the things
4 that he gives you is a liver function test. In some
5 cases, PCBs -- people exposed to PCBs have some
6 elevations in some of those liver functions. But after
7 they -- the exposure is stopped, those liver enzymes
8 return to normal levels.
9 Q. Have there been any animal studies where they
10 tested the liver, stomach, any other organs that you're
11 aware of?
12 A. Certainly liver, yes.
13 Q. All right. What were the results of those?
14 A. In high-dose studies or in certain studies,
15 certain doses have caused liver damage in laboratory
16 animals.
17 Q. Were those tests done by Monsanto or funded by
18 Monsanto?
19 A. Some, certainly not all of them, probably not
20 even a significant portion of them, but there were some
21 tests done by Monsanto which I believe demonstrated
22 that, yes.
23 Q. So do you or do you not disagree with those
24 results?
25 A. Which?

1 Q. With the liver studies that found high doses
2 that caused some liver effects.
3 A. High doses of PCBs can -- do cause liver
4 damage in laboratory animals.
5 Q. And some of those tests were done by Monsanto,
6 is that right, and they reached that conclusion?
7 A. Yes, I think that's true.
8 Q. All right. And that necessarily causes you to
9 lead to that conclusion, does it?
10 A. Well, not necessarily.
11 Q. Well basically you're biased towards Monsanto,
12 is what I'm hearing.
13 A. That's not true. I'm not biased toward
14 anything. I read the literature and try to understand
15 what each individual piece of literature means in the
16 broader context of other literature on those same
17 issues. If Monsanto said it was the only study that
18 showed liver damage and there were a dozen others by
19 other groups that didn't show liver damage, I would say
20 the weight of the evidence is that PCBs don't cause
21 liver damage in animals, laboratory animals.
22 Q. Does having a Ph.D. in analytical chemistry
23 provide you with any sort of specialized knowledge or
24 ability to analyze and draw a conclusion from
25 scientific testing?

1 A. Well, I think the ability to get a Ph.D.
2 demonstrates an ability to read and understand
3 scientific literature.
4 Q. That's what I'm getting at. Is your opinion
5 more credible or valid than anybody else that reads
6 this information?
7 MR. PECK: Object to the form of the question.
8 BY MR. LOWE:
9 Q. That's not what you're telling me, is it, this
10 is just merely your opinion?
11 A. No, it is my opinion. It is not "merely" my
12 opinion, whatever that may mean, and there are other
13 people who share that opinion that have no association
14 with Monsanto whatsoever.
15 Q. I think that we've gone through this almost ad
16 nauseam now, but there are studies apparently on both
17 sides of the issue of whether or not these particular
18 health effects that I've referenced result from PCB
19 exposure; is that right?
20 MR. PECK: Object to the form of the question
21 as a mischaracterization of the last 30 minutes of
22 testimony. I think the record speaks for itself.
23 THE WITNESS: Do I answer?
24 MR. PECK: Yeah, you can answer.
25 What was the question?

1 BY MR. LOWE:

2 Q. Can you --

3 A. I know enough to answer the question. For the
4 health effects which you have mentioned, with the
5 exception of those where I said I couldn't bring to
6 mind any specific studies, specifically
7 immunosuppression is the one that comes to my mind,
8 there are studies which report findings that the
9 authors may or may not attribute to PCBs. There are
10 other studies which don't report those findings. Did
11 that answer your question?

12 Q. No. Let me ask you another one. Having
13 performed, yourself, no studies regarding reproductive
14 or developmental toxicity in humans relating to PCB
15 exposure, how do you feel that you're qualified -- and
16 you may not feel qualified -- to question or dispute a
17 study by someone who actually did the scientific
18 testing and concluded that there are adverse effects?

19 A. Well, I do feel like I'm qualified to try to
20 read and understand and critique any individual study
21 and any body of literature on a particular issue. I
22 don't know that that gives my opinion any more weight
23 than anyone else's opinion. I also utilize other
24 resources available to, in some cases, test whether
25 that opinion is consistent with other people's

1 understanding and in these particular cases there are
2 lots of other physicians and toxicologists whose
3 opinion would be the same as mine on these particular
4 issues.

5 Q. Well, these issues come up often, don't they,
6 particularly when you're speaking to public groups and
7 answering questions about PCB exposure? I mean, the
8 health effects, and that's the primary concern of
9 anyone, isn't it? Isn't that what you found in your
10 experience as being the point man for answering PCB
11 questions at Monsanto? Isn't it?

12 A. Which of those questions do you want me to
13 answer?

14 Q. Let me ask one question. That was compound,
15 you're right. He should have objected.

16 MR. PECK: Which one are you going to ask?

17 BY MR. LOWE:

18 Q. I'm trying to figure out which one to ask
19 first. Is it the most often asked question of you
20 regarding PCB exposure, isn't it a health-related
21 question?

22 A. In what context?

23 Q. When you're speaking to the public.

24 A. I do that so rarely that I don't have a basis
25 to answer. That's kind of where I was going to begin

1 with. I rarely speak to the public in the forum that
2 you're talking about, for instance, the Pell City
3 meeting which you seem to be aware of.

4 Q. And quoted in the newspaper.

5 A. And in that situation and in that particular
6 talk, I addressed my understanding summarily of the
7 health effects of PCBs, and I frankly don't recall that
8 there were any questions addressing that particular
9 issue. There may have been, but certainly -- go ahead.
10 Ask whatever the next question is.

11 Q. What did you do to prepare yourself to
12 ascertain whether or not one study should, in your
13 opinion, outweigh another on any of these issues?

14 A. I consider my training as a scientist for lo
15 these many years has prepared me to do that.

16 Q. What training do you have?

17 A. I'm trained -- I have a Ph.D. in analytical
18 chemistry and that involves critical reading of the
19 literatures. I've done since then lots of reading
20 about other academic disciplines including toxicology
21 and some of the issues that you're addressing here and
22 I feel that I'm qualified to read and understand and
23 develop an opinion about that literature.

24 Q. Okay. I'm just a lawyer. I didn't really
25 have to do anything in getting educated, you know. But

1 to get a Ph.D. in analytical chemistry, what exactly
2 did you have to do?

3 A. I had to take several years of course work and
4 do a research project.

5 Q. Did you take courses in human anatomy?

6 A. No.

7 Q. Toxicology?

8 A. No.

9 Q. What exactly did you have to do? Did you have
10 to memorize --

11 A. I took courses in --

12 Q. -- the elements in the environment? I guess
13 surely you did that in your chemistry classes. What
14 did you have to do to get a Ph.D. in analytical
15 chemistry?

16 A. I told you, I had to take several years of
17 course work and did a thesis.

18 Q. What were the topics of these courses that you
19 were taking?

20 A. Chemistry.

21 Q. Were you reading literature?

22 A. In some cases, yeah.

23 Q. What were the subjects? That's the bottom
24 line.

25 A. Chemistry, primary analytical chemistry.

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1 Organic chemistry, or physical chemistry; environmental
2 chemistry.
3 Q. Were any of those taught by the medical
4 school?
5 A. No.
6 Q. Do you think it's prudent to try to minimize
7 exposures of PCBs to the environment?
8 A. I'm sorry, would you repeat that question.
9 Q. Do you think it's prudent to try to minimize
10 releases of PCBs to the environment?
11 A. Yes.
12 Q. Why is that?
13 A. Because I believe that PCBs are an industrial
14 chemical. They were manufactured to be used as an
15 industrial chemical. They should have been used
16 under -- and were in those characteristics. They were
17 a material that has been reported to be in the
18 environment at high levels. They have shown in some
19 cases to cause effects in wildlife and for those
20 reasons, their releases should be minimized to the
21 extent consistent with good practice and risk benefit
22 analysis.
23 Q. If Monsanto is shown to be a source of PCBs
24 that are found or that exist in Choccolocco Creek and
25 Lake Logan Martin, is it your opinion that Monsanto or

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1 Solutia should remediate or clean up those PCBs?
2 A. I think Monsanto should have a responsibility
3 to evaluate various alternatives to, you know,
4 remediate, for lack of a better term, those PCBs
5 consistent with good science and understanding of the
6 system, yes.
7 Q. I'm not talking about evaluating alternatives.
8 Should they be responsible for cleaning it up? I'm not
9 talking about after that decision's made how it's going
10 to be cleaned up, I'm talking whether or not they
11 undertake the responsibility of cleaning it up.
12 MR. PECK: Object to the form of the question.
13 THE WITNESS: What do you mean by "clean it
14 up"?
15 BY MR. LOWE:
16 Q. Take any effort whatsoever to remediate the
17 property.
18 A. If, after the project, the process that we're
19 involved in, the RCRA process, is completed and there
20 is an opportunity to understand the system and to
21 evaluate alternative measures in that system, if the
22 decision is made that certain remedial measures are
23 appropriate, Monsanto will undertake those measures,
24 yes, or Solutia.
25 Q. You're saying if Monsanto concludes that there

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1 are some appropriate measures to remediate, that
2 they're willing to do; it's that what you're telling
3 me?
4 A. No. I'm saying that the course of study that
5 we're involved in at this point will help us understand
6 the system, it will help us understand how PCBs move
7 through that system, it will help us understand how
8 PCBs get from whatever's in that system to the fish,
9 and it will help us understand what potential there is
10 for remedial measures. Then we will make proposals to
11 the various regulatory agencies and it is their final
12 decision whether our proposals are accepted or rejected
13 and how that process will be carried out.
14 Q. If there is a finding that Monsanto
15 contributed to cause the existence of the PCBs that now
16 exist in Lake Logan Martin and Choccolocco Creek, do
17 you disagree that Monsanto should be responsible for
18 paying for and perhaps even creating some measures for
19 remediation?
20 MR. PECK: Object to the form of the question.
21 It calls for a legal conclusion.
22 Go ahead.
23 THE WITNESS: I don't know how to answer that
24 other than just say what I've already said. We are
25 involved in a process which will enable us and our

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1 consultants to understand the Choccolocco Creek/Lake
2 Logan Martin system, the presence or absence of PCBs in
3 that system, the movement of PCBs in that system. That
4 information will guide us into proposing or
5 understanding what various remedial measures might be
6 appropriate or might not be appropriate in that
7 particular system and we will develop a
8 corrective-measures plan or study to present to the
9 State and the state regulatory officials will be able
10 to act on that plan.
11 Q. Is it fair to say, then, that Monsanto/Solutia
12 is already undertaking a process to clean up the PCBs
13 that are in the lake?
14 A. We are undertaking a process to understand the
15 system that will eventually guide us into being able to
16 propose one or more measures which will address the
17 PCBs in that system.
18 Q. Well, you're not denying responsibility for
19 contributing to the PCBs that exist in Choccolocco
20 Creek or Lake Logan Martin, are you?
21 MR. PECK: Object to the form of the question.
22 Asked and answered three or four times already.
23 THE WITNESS: We're involved in a process
24 which will help us understand the sources, the movement
25 of PCBs in that system.

1 BY MR. LOWE:

2 Q. How do PCBs move from one point in a creek to
3 another point in a creek?

4 A. Generally they move by associated with
5 sediments that are moving in the creek.

6 Q. That's right, and that's how they got from
7 Monsanto to Snow Creek to Choccolocco Creek to Lake
8 Logan Martin, isn't it?

9 A. That's the potential scenario. That's part of
10 what we're trying to understand, is where they started,
11 where they got to where they are now, how they got
12 there, how fast are they getting there, how fast are
13 they getting covered up, are there other sources, are
14 the data in consistent with or consistent with Monsanto
15 or any other facility being a source of those PCBs.
16 It's not the yes-or-no, deny/not deny question that
17 you're asking. It's a process that we're involved with
18 to understand all of those issues that you're raising.

19 Q. Monsanto has known since 1969 or '70 how these
20 migrated down the creek and to the lake. Now, why in
21 1998 do you need to figure that out again?

22 A. I don't know that we know about migration to
23 the lake. We certainly understand that PCBs were in
24 sediments, potential of leaving the plant, leaving the
25 plant into Snow Creek, but we don't even know where the

1 PCBs are in Lake Logan Martin. We don't know if we're
2 the source, if somebody else is the source, where the
3 fish are getting them. We don't understand that.
4 Before we or anybody else spends a lot of money
5 usefully or uselessly trying to do some remediation
6 project or one another, we need to understand the
7 answers to those questions.

8 Q. Well, what took you 30 years to do it? You're
9 talking about going into the year 2000 with some
10 studies to figure out what everybody's known for 30
11 years. Why are you doing that?

12 A. What has everybody known for 30 years?

13 Q. That there are PCBs that have flowed from the
14 plant to Snow Creek, Choccolocco Creek, and eventually
15 into Lake Logan Martin.

16 MR. PECK: If you've known that for 30 years,
17 you should have filed a lawsuit for 30 years ago.

18 MR. LOWE: I wasn't a lawyer then.

19 MR. PECK: Your client should have. Statute
20 of limitation bars the entire claim, then.

21 BY MR. LOWE:

22 Q. Well, that's another point. If Monsanto --

23 MR. PECK: That's crazy, Clay, if that's your
24 position.

25 MR. LOWE: Do you have an argument or an

1 objection?

2 MR. PECK: Yeah, I object to the form of the
3 question. It's a ridiculous question.

4 MR. LOWE: Good.

5 BY MR. LOWE:

6 Q. Answer my question.

7 A. Which was?

8 MR. PECK: Monsanto's certainly known for 30
9 years.

10 MR. LOWE: We know that.

11 MR. GRAMMAS: They've known for 30 years.

12 MR. PECK: You guys have known for 30 years --

13 MR. GRAMMAS: I said you guys, this man's
14 company.

15 MR. PECK: We have not known for 30 years that
16 PCBs in Lake Logan Martin are at the levels above the
17 FDA --

18 MR. GRAMMAS: Now we're going to qualify, Oh,
19 levels above an advisory. You've known that the
20 PCBs -- you being -- the client that you represent
21 have known that the PCB are leaving that plant and
22 going in the lake system. This testimony is
23 ridiculous.

24 MR. LOWE: Let's stop the editorial comments.
25 We all want to leave by 4:00.

1 MR. GRAMMAS: Stop talking about statute of
2 limitations.

3 MR. LOWE: Enough, enough, enough. Stop.

4 BY MR. LOWE:

5 Q. Why do you want to continue this into the next
6 century when you already know what the levels are? Why
7 don't you do some sediment testing and clean it up?

8 A. We are involved in a process which will
9 involve extensive sediment testing and that will help
10 us understand the system and what potential remediation
11 measures are appropriate or not appropriate for that
12 particular system. At that point we will propose a
13 corrective-measure study to the state regulatory
14 agencies under whose oversight -- assuming that the
15 measures are deemed appropriate, we or someone else
16 maybe will undertake those measures.

17 Q. Do you have any reason to believe you're not
18 going to find PCB levels above one part per million in
19 sediment in Choccolocco Creek?

20 A. Choccolocco Creek runs for 30 miles. There
21 may be some at one part per million some places, there
22 may be not be others. That's why we have to do the
23 study.

24 Q. That's right. Do you have any reason to
25 believe, though, that there aren't going to be levels

1 such as that anywhere in the creek or on the bank?
2 MR. PECK: I object to the form of the
3 question.

4 THE WITNESS: As I sit here today, I will
5 assume that some places in Choccolocco Creek may very
6 well have levels above one part per million. I would
7 also assume that other places in Choccolocco Creek
8 won't have such levels.

9 BY MR. LOWE:

10 Q. What about the confluence of Choccolocco Creek
11 and Lake Logan Martin, wouldn't you reasonably expect,
12 based on your experience and all of the data that
13 you've read, that PCBs would have migrated all the way
14 to what we call the delta area where Choccolocco Creek
15 dumps into Lake Logan Martin?

16 A. I'm not going to presume to answer that
17 question. That's what our study's designed to
18 investigate.

19 Q. Well, many years ago Monsanto determined that
20 the fish in that area had over two parts per million,
21 didn't they?

22 A. I believe that's consistent with some of the
23 studies done in the 1970s, yes.

24 Q. And due to the persistent nature of PCBs,
25 isn't it reasonable to believe that PCBs are still

1 there even after all these years?

2 A. Whether they're there or not and whether
3 they're above one part per million or not -- I'm just
4 going to go back and say I think that's exactly why we
5 are doing the study or would propose to do the study
6 that we propose, to help us and others understand the
7 answers to those questions and what the significance of
8 those answers is.

9 Q. Explain to me why 1998? Why are you just now
10 going through this so-called extensive and exhaustive
11 study to determine whether or not some remediation
12 should be done? Why now?

13 A. It's several things. Number one, for whatever
14 reason, the fish levels in Choccolocco and Lake Logan
15 Martin, certainly Lake Logan Martin, seemed to have had
16 some sort of step increase. I think it's partly
17 because of the fact that we are involved in a RCRA part
18 B process at the facility. It's partly because our
19 investigations, primarily as part of that process,
20 actually, have identified trace levels of PCBs in storm
21 water leaving that facility. There's lots of reasons
22 why I know.

23 Q. But you haven't told me anything that Monsanto
24 couldn't have determined 20 years ago. They knew they
25 were discharging at that point in time. They knew that

1 fish had elevated levels of PCBs at that time. The
2 only difference we have now is some federal and state
3 involvement demanding that you clean up your plant.

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

5 Assumes facts not in evidence.

6 BY MR. LOWE:

7 Q. Now, why didn't Monsanto do something about
8 this many years ago?

9 A. Well, we have done a number of things
10 throughout the years.

11 Q. Like what?

12 A. Most importantly, we stopped the manufacturing
13 process in 1971. We continued some investigations
14 through the early 1970s. In 1984 we looked at the
15 issue around sediments in those ditches. I don't
16 believe now that the materials leaving the plant in the
17 storm water, the few part-per-billion levels, were
18 having or are having any impact on Snow Creek,
19 Choccolocco Creek, or further downstream. But we are
20 involved in this process that's -- that we're
21 cooperating with the federal agencies to get our Part B
22 permit and do what needs to be done on the PCBs that
23 have been located.

24 Q. Have you determined -- or anybody at Monsanto
25 or Solutia -- determined what findings will trigger

1 Monsanto agreeing to remediate areas of Choccolocco
2 Creek and handle the lake?

3 A. That's the whole process in a nutshell. The
4 findings that we find will be integrated, probably will
5 prompt other testing, and that will in fact drive
6 whatever corrective measures need to be done. Risk
7 assessments involvement, there's a process that we're
8 involved in.

9 Q. What time frame has Monsanto or Solutia set
10 for establishing all of this?

11 A. We're moving as rapidly as we can.

12 Q. What's the time frame?

13 A. Well, the bulk of the studies will be done in
14 1999, presumably the initial steps of risk assessment,
15 remedy identification or potential remedy
16 identification, further testing will be done in, I
17 guess, the year 2000.

18 Q. And then what?

19 A. Then we will submit a proposal or study to the
20 State, they will determine what measures that we
21 proposed or what measures we haven't proposed might be
22 appropriate for remediation, if any.

23 Q. And then all the while there's still going to
24 be fish advisories, there's going to be people who eat
25 the fish anyway, there's going to be kids that play in

1 the water or whatever, and they're going to be
2 bioaccumulating PCBs; although they've been doing it
3 for 30 years, it's still going to persist in the
4 environment while you guys screw around for another
5 three or four years just to figure out whether or not
6 you want to do anything and to keep ADEM at bay; is
7 that a fair statement?

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

9 STPHAO: Is that a question or a speech?

10 MR. LOWE: It's a fair statement, no.

11 BY MR. LOWE:

12 Q. Did this lawsuit or any of the other lawsuits
13 that have been filed against Monsanto over PCBs in the
14 Anniston area, has that motivated any of this?

15 A. No.

16 Q. Not at all?

17 A. No.

18 Q. Okay.

19 A. We were involved in a Part B process with
20 ADEM. That process would have been carried out,
21 litigation or no litigation.

22 MR. KELLY: We can put you on the record and
23 let you testify.

24 MR. GRAMMAS: Why, I haven't said a word.

25 Would you like to testify?

1 MR. KELLY: I'm just watching your antics.

2 MR. GRAMMAS: My antics, when this man denies
3 that a lawsuit's motivated this company to cleaning up
4 stuff they've known they've been dumping?

5 MR. KELLY: Now we've got you on the record
6 testifying what your antics are about. That's what I
7 wanted.

8 BY MR. LOWE:

9 Q. Has Monsanto or Solutia reserved any amount of
10 money in anticipation of performing studies of cleanups
11 of the lake and Choccolocco Creek?

12 A. I'm sure they have. I don't know that
13 specifically.

14 Q. How --

15 A. That's standard procedure when we have
16 cleanups. My understanding is that when we have
17 cleanups either in process or potentially, that there
18 are reserves set aside for that.

19 Q. What is the reserve for this case?

20 A. I have no idea.

21 MR. PECK: That's a different question
22 entirely. You're not entitled to the answer of that
23 question.

24 BY MR. LOWE:

25 Q. I don't care about the legal reserves an all

1 that kind of stuff. I want to know just the reserves
2 for remediating, studying, whatever it is you're trying
3 to do with regard to the lake and Choccolocco Creek.

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

5 Q. You're not privy to that kind of information?

6 A. I don't know what you mean by "privy." I
7 suppose if I went and asked the question, I might get
8 an answer. I don't know the answer.

9 Q. But no one's told you that?

10 A. No.

11 Q. Do you think that you could find out during
12 lunch if you can ask?

13 MR. PECK: He's not going to do that. It's
14 not his job. You're going to see other witnesses. We
15 don't have an obligation to go out and do research for
16 you during a damn deposition and we're not going to do
17 it.

18 MR. LOWE: I asked him if he could find out
19 during lunch. Lighten up, guys. Come on. Do you need
20 a beer for lunch? I'm sorry you-all got so upset.
21 We're just asking questions. Lighten up.

22 BY MR. LOWE:

23 Q. Who would know in your company?

24 A. I assume Mr. Faust would know. I don't know
25 that for sure.

1 Q. Is he going to be in charge of this
2 remediation process into the next millennium?

3 A. He is the remediation manager at the Anniston
4 site for the RCRA process, yes.

5 Q. Is part of your message in talking with people
6 about PCBs, particularly at the Anniston plant, to show
7 that Monsanto wants to be a good neighbor to all the
8 people around them?

9 A. Is that part of our message? I don't know if
10 that's part of our message or not. I think we do want
11 to be a good neighbor. I'm sure that we want to be a
12 good neighbor.

13 Q. Were you involved in the process of -- or
14 Monsanto's process of buying up all the neighboring --
15 or many of the neighboring houses to the Anniston
16 plant?

17 A. I was aware of it. I don't know that I was
18 involved in it.

19 Q. You didn't take any part in that process? I
20 mean, as the point man, certainly these people were
21 asking you questions about it or at least the Alabama
22 Department of Public Health.

23 A. I'm trying to remember. I believe I may have
24 been present as a resource when the program was
25 announced. I'm not positive. As I sit here today, I'm

- 1 not positive about that, but I think that's true.
 2 Q. Why was that process undertaken by Monsanto,
 3 the property buy-up, for lack of a better word?
 4 A. As a result of your extensive sampling and
 5 characterization of the area east of the plant, we
 6 realized that in fact there were PCBs in the sediments
 7 in those ditches, in some cases, PCBs out of the
 8 sediment -- or out of the course of those ditches, and
 9 understood that in order to manage and control those
 10 PCBs, it would be best for us to own that property.
 11 Q. You actually bought the property and tore down
 12 many of the homes; isn't that right?
 13 A. We tore down structures on the property that
 14 we purchased, yes.
 15 Q. Why was that necessary, in your opinion?
 16 A. Well, because the process that -- the interim
 17 measure that we have undertaken to remediate that
 18 property involved placing a synthetic cover and a soil
 19 cover over those areas. Obviously that would be very
 20 difficult to do over existing structures.
 21 Q. Was that --
 22 A. And not sensible to do.
 23 Q. Was that process with the soil cover and the
 24 liner cover, was that to prevent the further release of
 25 erosion of PCBs off that property?

- 1 A. It was to prevent the potential of that
 2 release, yes.
 3 Q. The potential?
 4 A. Yes.
 5 Q. It's starting to sound almost like improper
 6 relationships. I keep hearing "potential."
 7 The erosion was causing the release of PCB;
 8 that is, a washing off of this property around these
 9 homes, weren't they?
 10 A. I don't think we know the answer. The PCBs
 11 associated with sediments and storm water were coming
 12 from somewhere. It could have been landfills, it could
 13 have been on the property, but we covered it to
 14 eliminate the potential for those PCBs to --
 15 Q. How much money did Monsanto spend buying up
 16 property in that area?
 17 A. I don't know the answer to that.
 18 Q. You weren't involved in that?
 19 A. Not in the monetary things. I don't really
 20 know the answer.
 21 (LUNCH RECESS.)
 22 BY MR. LOWE:
 23 Q. Let's focus on the demolition of the
 24 properties that Monsanto bought adjacent to the
 25 Anniston plant. Were you involved in that process of

- 1 buying up the property and demolition?
 2 A. Not directly. I was aware of it.
 3 Q. What involvement did you have?
 4 A. I guess I was just basically consulted on what
 5 the procedures -- not so much for the buying of the
 6 property, that was handled by an outside consulting
 7 firm. The demolition, just basically consulted on the
 8 demolition plans, if it made sense, whatever point of
 9 view I could bring to it.
 10 Q. What kind of information were you asked to
 11 give, then, in regard to the demolition?
 12 A. Questions about what kind of testing might be
 13 appropriate on the materials prior to disposal, that
 14 kind of stuff primarily.
 15 Q. What did you tell them?
 16 A. I told them I thought we ought to test the
 17 bulk materials prior to disposal.
 18 Q. What's the bulk material you're talking about,
 19 the actual wood from houses or what?
 20 A. Test some of the wood, some of the flooring
 21 material, whatever was going to need to be disposed of,
 22 just take some bulk samples of that.
 23 Q. Who was asking you these questions?
 24 A. Primarily Mr. Faust.
 25 Q. Did he oversee the demolition?

- 1 A. He had the ultimate responsibility, yeah.
 2 Q. Did he hire the contractor to do this?
 3 A. I'm sure he did.
 4 Q. Are you familiar with what sort of protection
 5 practices the workers who actually engaged in the
 6 demolition undertook to protect themselves from
 7 exposure?
 8 A. From exposure to PCBs?
 9 Q. Yes.
 10 A. I don't think they took any specific
 11 precautions themselves. They were very strict
 12 dust-control measures in place throughout the whole
 13 demolition process.
 14 Q. Were those questions that you were asked for
 15 input?
 16 A. Probably, yeah. I mean, I remember having
 17 those kinds of discussions.
 18 Q. What kind of steps were taken to reduce the
 19 possibility of exposure to PCBs for these construction
 20 workers?
 21 A. Well, I don't know that we really took any
 22 particular steps to protect the exposure. We
 23 instituted dust-control measures just to be sure that
 24 there wasn't a dust situation, whether it was the
 25 workers or the adjoining property owners or whatever.

1 But the facilities wet down thoroughly before the
 2 demolition began and continued to be wet down during
 3 demolition.
 4 Q. Where did the runoff from this water go?
 5 A. I don't think there was that much. It just
 6 soaked into the ground, as far as I know.
 7 Q. And then after the houses were removed, you
 8 tested the materials for PCBs; is that right?
 9 A. No, it was actually done before the
 10 demolition, I believe.
 11 Q. But then after the houses were removed, did
 12 you test the soil underneath for PCBs?
 13 A. No.
 14 Q. Why did you buy the property, then?
 15 A. Because we needed that property to facilitate
 16 construction and institute management control measures
 17 for those -- for the PCBs that were in those ditches in
 18 those areas.
 19 Q. So what have you used the property where the
 20 houses were located for? What's been done to it other
 21 than the houses have been moved off of it?
 22 A. It has been uncovered with a geotextile
 23 barrier layer and at least 14 inches of dirt have been
 24 put on top of it. It's been sodded -- or, reseeded,
 25 I'm sorry, seeded.

1 Q. How many acres did this involve?
 2 A. I don't remember specifically. I think it's
 3 in my -- it seems like it was around 40 or 50 acres,
 4 something like that, on the east side. We're
 5 undertaking that same effort on the north side right
 6 now. It's a much smaller area.
 7 Q. Did the Alabama Department of Public Health in
 8 1996 classify the West End Landfill at Monsanto as a
 9 public health hazard?
 10 A. I believe those words are in their health
 11 assessment document, yes.
 12 Q. Did the Alabama Department of Public Health
 13 classify the West End Landfill at Monsanto as a public
 14 health hazard?
 15 A. I believe those words are in their document,
 16 yes.
 17 Q. You can't say yes or no, can you?
 18 A. Yes, I can.
 19 Q. Okay. Answer yes or no. The Alabama
 20 Department of Public Health classified the West End
 21 Landfill at Monsanto as a public health hazard in 1996.
 22 A. Those words are in their document, yes.
 23 Q. Is that a yes answer?
 24 A. The answer speaks for itself. It's there.
 25 Q. Yes or no? We don't have their document in

1 front of us. I'm asking you your knowledge of the
 2 situation.
 3 A. My knowledge is that those words appear in
 4 that document, yes.
 5 Q. Did the landfill at Monsanto, was it ever
 6 classified as a public health hazard by anyone?
 7 A. Now I'm trying to think what the documents
 8 really talked about. Yes, I believe the Alabama
 9 Department of Public Health in their health assessment
 10 referred to the area, the West End Landfill, as a -- or
 11 whatever the words are -- a public health hazard, if
 12 that's what the words are in the document. Without
 13 seeing it in front of me, I don't know what their words
 14 are anyway.
 15 Q. But you're the one that talked to them at the
 16 Alabama Department of Public Health, didn't you, about
 17 the assessment in responding to that health
 18 consultation, didn't you?
 19 A. I responded to that, yes.
 20 Q. Why did you respond to it?
 21 A. Because I felt there was erroneous information
 22 in it.
 23 Q. Based upon your knowledge and training and
 24 reading of the literature regarding PCBs, you thought
 25 you should respond to their health consultation or were

1 you directed to respond by one of your superiors?
 2 A. It was my decision in consultation with other
 3 people, Mr. Faust and others, involved in the Anniston
 4 situation.
 5 Q. Okay. Who else did you consult with other
 6 than Mr. Faust?
 7 A. That's the only one I really remember.
 8 Q. Were there other people or not?
 9 A. I'm sure the attorneys looked at what I wrote,
 10 yes.
 11 MR. PECK: Obviously. Don't disclose
 12 information between counsel.
 13 MR. LOWE: He knows that. That's why he's
 14 being evasive in his answer to begin with.
 15 THE WITNESS: I was not being evasive in my
 16 answer.
 17 MR. PECK: You're not entitled to get into
 18 that, you know, anyway.
 19 MR. LOWE: Right. I agree with his objection.
 20 Thank you for stating it.
 21 BY MR. LOWE:
 22 Q. Did the Alabama Department of Public Health,
 23 in this same health consultation in 1996 that we
 24 referenced earlier, classify Snow Creek as a public
 25 health hazard because of the presence of PCBs?

1 A. I would have to see the document. Number one,
 2 I don't think -- if they even did, it probably wasn't
 3 in that document, and I'm not sure to what extent they
 4 characterized that area, the east side area. I don't
 5 know what the answer is.
 6 Q. You reviewed the health consultation,
 7 obviously, when it came in, didn't you?
 8 A. Yes.
 9 Q. And did you single-handedly prepare a response
 10 or did you get any help in preparing a response to it?
 11 A. Actually we engaged an outside consultant to
 12 also look at it, as I recall now.
 13 Q. Why did you do that?
 14 A. Because we felt that this particular person
 15 had expertise in matters addressed in the health
 16 assessment.
 17 Q. Had you used this Dr. Kimbro (PHONETIC)
 18 before? Wasn't that her name?
 19 A. Have I used her before?
 20 Q. For health consultation responses or any other
 21 purpose at Monsanto.
 22 A. We've consulted her at various times
 23 throughout the years, yes.
 24 Q. For what?
 25 A. Her opinions and expertise on issues around

1 PCBs primarily.
 2 Q. What other sites?
 3 A. I didn't say there were any other sites.
 4 Q. Okay. Be more specific.
 5 A. Well, she's a knowledgeable person about PCBs,
 6 she's been involved with PCBs, and at various times
 7 we've asked her opinion. In this particular case we
 8 felt that she would be a person valuable to have to
 9 look at this health assessment.
 10 Q. All right. I anticipate this woman may --
 11 she's an expert in this case, whether testifying or
 12 not, and I would like to know what other matters you,
 13 Monsanto or Solutia, has used her in?
 14 A. In litigation?
 15 Q. Anything.
 16 A. I don't know if there have been any specific
 17 matters. She's a person that I have occasional
 18 conversations with and I respect her opinions on issues
 19 regarding PCBs and other things.
 20 Q. Have you asked her for advice -- prior to this
 21 health consultation in 1996 from Alabama Department of
 22 Public Health, have you ever asked her for advice on
 23 other PCB-related issues?
 24 A. I believe so, yes.
 25 Q. Okay. Tell me the circumstances of you asking

1 her for her advice.
 2 A. I don't recall any specific circumstances.
 3 Q. Do you recall the Alabama Department of Public
 4 Health classifying Choccolocco Creek as a public health
 5 hazard in the same 1996 health consultation because of
 6 the presence of PCBs?
 7 A. I can't answer that without seeing the
 8 document.
 9 MR. LOWE: Let's mark this as Exhibit I to
 10 your deposition.
 11 (PLAINTIFF'S EXHIBIT NO. 1 WAS FIRST DULY
 12 MARKED, RECEIVED AND MADE A PART OF THE RECORD.)
 13 MR. PECK: We are operating under the usual
 14 stipulations, I think. He was not in the room when he
 15 had that discussion. We are operating under the usual
 16 stipulations for today and yesterday and I don't know
 17 if they put it on record yesterday, but we've agreed,
 18 when you weren't here, probably before we came back
 19 from the lunch break that that would be the case, and
 20 both the witnesses, both Mr. Cheever and Dr. Kaley,
 21 wish to read and sign their depositions. Is everybody
 22 in agreement on that?
 23 MR. GRAMMAS: Yeah.
 24 MR. LOWE: Yes.
 25 BY MR. LOWE:

1 Q. Take a minute to look at what we've marked as
 2 Exhibit 1, please.
 3 A. Do you want me to read the whole thing?
 4 Q. You don't have to, you don't have to look at
 5 any of it, but do look at the first page. It's dated
 6 February 15, 1996, and it's addressed to you, Robert G.
 7 Kaley, from Brian J. Hughes at the Department of Public
 8 Health. Do you recall receiving this document?
 9 A. Yes.
 10 Q. And does this appear to be the health
 11 consultation that we were talking about a minute ago
 12 where you did not recollect whether or not certain
 13 properties were deemed to be public health hazards?
 14 A. Well, you characterized it as the health
 15 consultation to the Monsanto West End Landfill. That
 16 was part of my difficulty in that I didn't recognize
 17 that terminology. This is in fact the health
 18 consultation for Monsanto Company in Anniston, Alabama.
 19 Q. Oh, the whole plant, it's the whole plant and
 20 all the property, right?
 21 A. Without reading it, I don't remember what
 22 exactly it is, but basically just whatever it addresses
 23 in here, it addresses in here. I haven't read it
 24 recently.
 25 Q. The only reason we have this in front of you

1 is because you said, I cannot answer that without
 2 seeing the document.
 3 A. All right.
 4 Q. Is that the document?
 5 A. What question am I supposed to answer?
 6 Q. Let's look at Page 21. Flip on over to Page
 7 21 in Exhibit 1. It says "Conclusions." Real easy.
 8 A. Okay.
 9 Q. Do you see paragraph 1?
 10 A. Yes.
 11 Q. "After reviewing the data, we have classified
 12 the WEL" -- that stands for West End Landfill, right?
 13 A. Yes.
 14 Q. On the Monsanto plant.
 15 A. Yes.
 16 Q. In Anniston.
 17 -- "EDD" -- what does that stand for?
 18 A. East drainage ditch.
 19 Q. And then -- "Snow Creek" -- we know what that
 20 is -- "and Choccolocco Creek as a public health
 21 hazard."
 22 A. Yes.
 23 Q. Do you recall that now?
 24 A. That's what it says.
 25 Q. And you don't dispute now that the Alabama

1 Department of Public Health in 1996 issued a
 2 determination to you and apparently for public
 3 dissemination, perhaps, if it is indeed public
 4 record --
 5 A. It is.
 6 Q. -- that the West End Landfill on the Monsanto
 7 property, the east drainage ditch on the Monsanto
 8 property, Snow Creek, and Choccolocco Creek were public
 9 health hazards. You don't dispute that?
 10 A. I do not dispute that that's what APH says.
 11 Q. And that refreshes your recollection, then, I
 12 hope, regarding the Alabama Department of Public
 13 Health's conclusion in 1996?
 14 A. Yes.
 15 Q. So you can answer yes or no to those questions
 16 now.
 17 A. I just did.
 18 Q. Okay. That's what I thought.
 19 Were you involved in giving the Alabama
 20 Department of Public Health any information that they
 21 used in preparing this health consultation, Exhibit 1?
 22 A. I believe so, yes.
 23 Q. Do you recall what information you gave to
 24 them?
 25 A. Primarily specifics about this particular

1 site. I don't recall specifically.
 2 Q. And once you received this Exhibit 1, the
 3 health consultation, what steps did you take?
 4 A. I read the document, I decided that there were
 5 things in there that I thought deserved comment, and
 6 asked Dr. Kimbro to look at the document and asked her
 7 to prepare a report or jot down or whatever her review
 8 of the document and I wrote my comments and submitted
 9 them to the State.
 10 Q. Is Dr. Kimbro an employee of Monsanto?
 11 A. No, sir.
 12 Q. Ever been?
 13 A. No, sir.
 14 Q. Where is she employed?
 15 A. She was originally at Centers for Disease
 16 Control, then at the U.S. EPA, and now she works for a
 17 consulting firm in Washington D.C.
 18 Q. How many other matters has Monsanto engaged
 19 her on, do you know?
 20 A. I don't recall. I don't know. Not very many.
 21 Not very many. She's a person I talk to. She's very
 22 knowledgeable.
 23 Q. Are you consulted normally on storage
 24 questions for PCBs?
 25 A. I would say not normally, but that doesn't

1 mean I haven't been asked a question by a call or
 2 something.
 3 Q. And how about incineration questions?
 4 A. I would say again not normally, but I probably
 5 have been asked questions about that.
 6 Q. Let's talk about the public meeting you
 7 attended in Pell City. Do you have a recollection as
 8 to how long ago that was?
 9 A. My recollection was the summer of '97.
 10 Q. Was that a meeting that was called or
 11 scheduled by Monsanto?
 12 A. No.
 13 Q. What was the occasion for you attending the
 14 meeting?
 15 A. My understanding was that it was the annual
 16 meeting of the Lake Logan Martin Protective
 17 Association, and that Mr. Greer (PHONETIC), who is a
 18 president or an officer in that association, contacted
 19 Monsanto and asked for someone to come and talk about
 20 what we were doing over at the plant.
 21 Q. A Mr. Greer; is that right?
 22 A. Yes.
 23 Q. Had you met with Mr. Greer before this meeting
 24 in '97?
 25 A. No, sir.

1 Q. Didn't know him before?
 2 A. No.
 3 Q. Did you meet him at the meeting --
 4 A. Yes.
 5 Q. -- for the first time?
 6 A. Yes.
 7 Q. Did you, before attending the meeting, report
 8 your anticipated attendance to any superiors at
 9 Monsanto?
 10 A. I'm sure I did.
 11 Q. Who would that have been?
 12 A. Well, my superior's Mr. Foresman. I'm sure I
 13 told him.
 14 Q. Do you have to file any sort of written
 15 reports regarding your daily, weekly, monthly, or
 16 annual activities?
 17 A. No.
 18 Q. How is your work supervised?
 19 A. I'm frankly pretty much left to my own
 20 devices.
 21 Q. Did you ask anyone else from Monsanto or
 22 Solutia or any related company to attend this meeting
 23 with you in 1997?
 24 A. Not that I know of.
 25 Q. How about Mr. Faust?

1 A. Well, he was there. He was the original
 2 contact and he was the one in fact who actually invited
 3 me.
 4 Q. I thought Mr. Greer --
 5 A. It was someone from Monsanto and I believe he
 6 eventually got to Allen either first or second to come
 7 and talk about what Monsanto was doing around the
 8 plant. Mr. Faust said, Well, we also -- I think not
 9 the exact words, but basically the characterization,
 10 Mr. Faust said, Well, Dr. Kaley is knowledgeable about
 11 PCBs and we would like him to attend too. I don't know
 12 if those are the words, but that's the sense of what
 13 happened. Mr. Greer did not contact me. I did not
 14 talk to Mr. Greer before I showed up at the meeting
 15 that night. He contacted the company.
 16 Q. The company policy, though, is that if
 17 someone's going to attend a public meeting with
 18 citizens regarding PCB contamination, that Mr. Kaley
 19 needs to be there, isn't it?
 20 A. I don't know that that's policy, no.
 21 Q. It's not? Leaving yourself to your own
 22 devices, that's what you would prefer, that you would
 23 be the point man, right?
 24 A. Sure, yes, on issues relating to the things I
 25 talk about, not on the issues that Mr. Faust is much

1 more knowledgeable.
 2 Q. He's the remediation person, the cleanup,
 3 right?
 4 A. Remediation, yes.
 5 Q. Do you have any input into remediation, then?
 6 A. I review documents. I usually don't have any
 7 real substantive input.
 8 Q. How about permitting, discharge permits for
 9 any type of chemicals that are not PCBs?
 10 A. No, that's not an area of my responsibility.
 11 Q. What about the ongoing programs, then, to
 12 remediate, monitor, or clean up any hazards or
 13 hazardous substances at the Monsanto plant in Anniston?
 14 A. I'm sorry, what's the question?
 15 Q. Do you have any involvement from a remediation
 16 standpoint regarding what's going on presently at the
 17 Monsanto plant?
 18 A. I review the documents. If I have a comment,
 19 I give them. I don't necessarily have responsibility
 20 for that. I'm certainly aware of what's going on.
 21 Q. Would somebody else, then, be the most
 22 knowledgeable what federal and state activities are
 23 taking place at the West End Landfill and other areas
 24 of the Monsanto plant regarding surface water,
 25 groundwater discharges?

1 A. I mean, if you want to get into the
 2 nitty-gritty details of that, yes, somebody else would
 3 probably be more knowledgeable.
 4 Q. What's the source of your knowledge of it now?
 5 A. Discussions with Mr. Faust, reading the
 6 documents, reading work plans, reading any variety of
 7 communications.
 8 Q. So does Mr. Faust, then, have the firsthand
 9 knowledge of what remediation is going on at the
 10 Monsanto plant better than you?
 11 A. Yes.
 12 Q. Would he be the most knowledgeable about the
 13 ongoing investigations and activities regarding PCB
 14 disposals, landfill storage, and potential discharges
 15 from the plant?
 16 MR. PECK: Object to the form of the question.
 17 It calls for speculation.
 18 BY MR. LOWE:
 19 Q. Well, you talked to --
 20 A. Well, he's in charge of the remediation. To
 21 the extent that those things that you mentioned are
 22 characterized as part of the remediation projects, he
 23 would be the most knowledgeable.
 24 Q. Well, who's the most knowledgeable, then,
 25 about the April 5, 1995, consent order Monsanto entered

1 into with ADEM under the Alabama Water Pollution
2 Control Act?
3 MR. PECK: Object to the form of the question.
4 Calls for speculation.
5 THE WITNESS: I would speculate that Mr. Faust
6 is the most knowledgeable, certainly more than I.
7 BY MR. LOWE:
8 Q. Would that also hold true for the 1996 consent
9 order under AHWMA, Alabama Hazardous Waste Management
10 and Minimization Act?
11 MR. PECK: Same objection.
12 THE WITNESS: I'm more familiar with that
13 document than the other.
14 BY MR. LOWE:
15 Q. Why are you involved more in that than Mr.
16 Faust is?
17 A. I didn't say "more." I said I am more
18 knowledgeable about that consent order than the
19 previous consent order. I didn't say I was more
20 knowledgeable than Mr. Faust. There are aspects of
21 that which I was more directly involved in implementing
22 and communicating results to the State, so I have more
23 direct involvement in that in terms of that order.
24 Q. How about the 1996 National Pollutant
25 Discharge Elimination System permit, were you involved

1 in obtaining or negotiating or talking with the
2 regulatory agencies about that permit?
3 A. No, I reviewed the documents, made some
4 comments.
5 Q. Who was the most knowledgeable about that?
6 MR. PECK: Same objection. Speculation.
7 THE WITNESS: I would presume that Mr. Faust
8 is.
9 BY MR. LOWE:
10 Q. Does Monsanto have a permit from any
11 regulatory agency allowing it to discharge PCBs into
12 ditches surrounding the plant?
13 A. Well, I mean, the permit speaks for itself.
14 It permits what it is. Basically the permit requires
15 us to notify the State if our discharges exceed the
16 level -- whatever level is established in that permit.
17 I don't know that it prohibits us from -- I've read --
18 I don't know that it prohibits us from discharging PCBs
19 below the level in that permit.
20 Q. Do you think there's some sort of minimum
21 level of PCBs that can legally be discharged?
22 A. Oh, certainly.
23 Q. What do you think that is?
24 A. It varies on the various sites throughout the
25 country, but certainly at our site, at the levels

1 specified in the permit.
2 Q. But if that happens, you're supposed to notify
3 ADEM; is that right?
4 A. That's right.
5 Q. And then ADEM will hopefully take some sort of
6 action to prevent any further discharge; is that right?
7 A. Yes.
8 Q. So I think it's logical to assume that you're
9 looking for a zero discharge, isn't it?
10 A. No, we're looking at a discharge at or below
11 that specified limit.
12 Q. Have you had any discharges above the
13 specified limit for the 1996 permits?
14 A. I really don't know.
15 Q. Well, I mean, you're the PCB guy. Wouldn't
16 you know?
17 A. I'm not involved in the direct details of
18 reporting permit compliance for the Anniston plant.
19 No, I wouldn't know and I don't know.
20 Q. In looking at your affidavit, you look like
21 you're supposed to be the man, the most knowledgeable
22 man on everything that's happened at this plant. Is
23 that the truth?
24 A. That's highly unlikely, isn't it?
25 Q. Not in light of your affidavit that you

1 submitted to the judge in this case.
2 A. I'm knowledgeable about everything that's in
3 that affidavit. Nowhere in that affidavit does it say
4 that I'm on the permit compliance for our NPDES permit.
5 I'm certainly knowledgeable -- if we have a permit, I'm
6 generally knowledgeable about the requirements of that
7 permit.
8 Q. Who told you all this information that went
9 into this affidavit that was recently filed with the
10 Court?
11 A. Most of it I know from my involvement in the
12 thing. Mr. Faust provided dates and information.
13 Q. Did you dictate this off the top of your head,
14 this 21-page affidavit, double spaced, did you dictate
15 all this off the top of your head?
16 A. This particular document is basically an
17 expansion of a previous affidavit I filed in another
18 case. So a lot of it came from that. Some of it I
19 dictated, some of it I wrote. Some of it Mr. Faust and
20 I discussed. Frankly, the attorneys were involved in
21 looking at the writing. It was a joint effort to make
22 sure the facts and the dates were correct.
23 Q. A joint effort among whom, besides you and Mr.
24 Faust?
25 A. Mr. Peck was involved.

1 Q. Is there anything in this affidavit that was
2 told to you immediately before you prepared this
3 affidavit which you incorporated in the affidavit, I
4 mean something that you didn't know?
5 A. No.
6 Q. All this was knowledge that you had before it
7 was printed here?
8 A. Yes.
9 Q. Tell me the previous case where some or much
10 of this affidavit was used.
11 A. I don't remember the exact -- which case it
12 was.
13 MR. PECK: I think it's your case, Owens
14 Adams.
15 MR. LOWE: Owens Adams?
16 MR. PECK: Yes, versus Monsanto.
17 MR. LOWE: The federal court case?
18 MR. PECK: That case in which you-all were
19 seeking class action.
20 MR. LOWE: Well, part of my late entrance into
21 this matter.
22 MR. PECK: In Judge Pointer's court. And then
23 those other people intervened and took over your case.
24 That's why we call it "Owens Adams" because Adams
25 intervened in a case you-all had filed called "Owens."

1 Adams is the first of about four or 500 other people.
2 MR. GRAMMAS: Individuals?
3 MR. PECK: Yes.
4 MR. GRAMMAS: That all sued in the case?
5 MR. PECK: Yes, they all jumped into y'all's
6 lawsuit. They apparently liked your form.
7 BY MR. LOWE:
8 Q. This prior affidavit, how long ago was it
9 prepared and submitted?
10 A. I don't know. A couple years. I don't know.
11 MR. PECK: It has been -- it was submitted on
12 the issue of class certification.
13 BY MR. LOWE:
14 Q. I was going to ask you what portions of the
15 affidavit were changed or updated, and I was trying to
16 find another copy of your affidavit. We don't need to
17 mark it, it's already in the case. You can't --
18 A. Primarily, it's basically the chronological
19 recitation of material. So generally whatever has
20 happened since the original affidavit was filed has
21 been updated.
22 Q. So the prior affidavit had similar chronology
23 and all you did was add whatever events had taken place
24 after?
25 A. That's basically it.

1 Q. Here on Page 21 of your affidavit, which you
2 now have in front of you -- and we didn't mark it as an
3 exhibit because it's already been filed with the Court,
4 it states there, the last sentence of Page 21:
5 "Solutia's ambitious and expediting approach to the
6 off-site RFI process will assure that appropriate
7 information is obtained in a timely and comprehensive
8 manner and that necessary and appropriate remedial
9 measures will be proposed to ADEM with confidence that
10 the measures will accomplish the goals of the RFI
11 process."
12 Is that your language?
13 A. Yes, sir.
14 Q. Is that what you and Solutia intend to do in
15 this matter --
16 A. Yes.
17 Q. -- from here on out?
18 A. Yes, sir.
19 Q. And you're going to be directly involved in
20 that?
21 A. As long as I'm employed by Solutia.
22 Q. And do you have any -- is there any likelihood
23 you're not going to be employed that you know of?
24 A. Who knows these days.
25 Q. Well, call me if you get terminated.

1 We don't have any potential time frame for
2 completing this ambitious and expedited approach?
3 A. I think we spoke earlier this morning about
4 what my anticipated time frame might look like over the
5 next year, year and a half. We are frankly moving as
6 quickly as we can to gather the appropriate
7 information.
8 Q. What is the trigger or base amount that you
9 would need for Monsanto to recommend any type of
10 cleanup?
11 MR. PECK: Object to the form of the question.
12 THE WITNESS: There's no such number that I'm
13 aware of.
14 BY MR. LOWE:
15 Q. How are you going to make such an evaluation
16 whether or not there are appropriate remedial measures
17 unless you have some idea of what the base level for
18 cleanup would be?
19 A. Part of the process involves risk assessments
20 and consideration of alternatives, and both of those
21 things are built into that decision.
22 Q. What are risk assessments, from Monsanto's
23 perspective?
24 A. What are risk assessments?
25 Q. Yes.

1 A. Risk assessment is an assessment of the
2 potential for human or environmental effects from a
3 particular compound in a particular situation at a
4 particular level.

5 Q. What are the particular levels you're talking
6 about?

7 A. Until we do our analyses and gather the
8 information, we don't know what the levels are on which
9 to base that assessment.

10 Q. Well, you spent your entire career basically,
11 or at least your recent career, focusing on PCBs, their
12 toxicity, the effects on the environment and humans,
13 haven't you?

14 A. That's correct.

15 Q. Now, surely you have in mind some minimum
16 level that would trigger action to clean it up.

17 A. That's not true.

18 Q. That's not true?

19 A. No.

20 Q. So you're going to spend, what, I think your
21 affidavit said a million and a half bucks --

22 A. In 1999.

23 Q. -- just in 1999, doing some assessments to see
24 what's out there, right?

25 A. That's kind of a flip characterization.

1 Q. How would you characterize it?

2 A. It's going to be a full characterization of
3 the Snow Creek/Choccolocco/Lake Logan Martin system to
4 understand the distribution of PCBs in that system and
5 the potential pathways for PCBs into wildlife and/or
6 humans, and that's the basis for the risk assessment.

7 Q. And then once you get that full
8 characterization, what are you going to do with it?

9 A. We're going to determine whether the
10 information we have available to us and the risk
11 assessment suggest that certain remedial activities may
12 be appropriate in certain areas of that system to
13 develop plans to design it and ask for approval and
14 eventually implement those remediation plans.

15 Q. What facts will go into your analysis of
16 whether or not remedial action will be required?

17 A. Lots.

18 Q. Well, let's talk about them.

19 A. Existing levels, potential for future levels,
20 sediment, all the things that we describe take --
21 looking at. Levels of, you know, suspended sediments,
22 how fast the sediments move, how fast are sediments
23 covered up in the system, where are the PCBs all coming
24 from, what other sources are out there that might be --
25 you know, might be contributing, what receptors --

1 that's the risk assessment term -- receptors are out
2 there that need to be considered in the risk assessment
3 process, then what kind of potential -- if you decide
4 that there's a pathway, for instance, from fish to
5 humans, what activities would be appropriate to break
6 that pathway, whether it's institutional controls like
7 fishing advisories or some other sort of activity. All
8 those things get build into that whole process. That's
9 what the process is all about.

10 Q. Are you telling me a permanent fish advisory
11 would be an acceptable alternative?

12 A. I don't know what "permanent" means, but
13 certainly a fish advisory, if the fish are above two
14 parts per million, is an institutional control that is
15 in place and may remain in place.

16 Q. Do you think it would be unreasonable for a
17 lakefront property owner along Choccolocco Creek and
18 its confluence with Logan Martin to believe that a fish
19 advisory saying, Don't eat any of the fish out of here,
20 adversely affects their use and enjoyment of their
21 lakefront property?

22 A. I don't know.

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

24 BY MR. LOWE:

25 Q. You don't know?

1 A. I think that would depend on the particular
2 property.

3 Q. You don't think someone who likes to fish and
4 eat fish out of the lake, that that doesn't have an
5 adverse effect on their use and enjoyment of the lake?

6 A. I would suspect if that's -- somebody's habit
7 is to fish and eat the fish out of that lake and
8 they're now being recommended by the state health
9 department that they don't eat that fish, I'm sure it
10 would have some effect, yes.

11 Q. It wouldn't have a positive effect, would it?

12 A. No.

13 Q. Well, my question was an adverse effect.

14 A. Yes, some individual that meets those
15 criteria, I don't know "adverse," it would not be a
16 positive effect, be a negative effect on that
17 particular person.

18 Q. Now, what has Monsanto done to rule out other
19 possible sources of contamination by PCBs along -- from
20 the Monsanto plant all the way down to the lake?

21 A. Well, we haven't done anything to rule them
22 out. We're involved in a process which may help us
23 identify whether there are potential sources, and the
24 ruling in or ruling out will follow that process.

25 Q. When did Monsanto start cleaning up its own

1 property for PCBs?
 2 MR. PECK: When or why?
 3 BY MR. LOWE:
 4 Q. When?
 5 A. Well, a number of things have been done over
 6 the years.
 7 Q. When did you start?
 8 A. When we closed the plant in 19 -- obviously we
 9 started prior to the closing of the plant, but when the
 10 plant was closed in 1971, we removed the plant --
 11 Q. Well, the plant wasn't closed; you quit making
 12 PCBs, right?
 13 A. The PCB process at the plant was closed and
 14 dismantled.
 15 Q. In 1971?
 16 A. Yes.
 17 Q. Here we are in 1998 and it now dawns on you to
 18 start looking for other sources of PCBs along the
 19 ditches and creeks and the lake; is that right?
 20 A. That's part of a RCRA process that we're
 21 involved in, that's correct. We addressed that this
 22 morning also.
 23 Q. And again, I expressed my -- just being my
 24 disbelief that it's taking that long for Monsanto to
 25 decide that, We need to look and see where all our PCBs

1 have gone the last four years.
 2 You don't find that suspicious?
 3 A. That that's your belief? No. You're a
 4 plaintiff's attorney, that would be your belief.
 5 Q. No, I'm the people's attorney. I'm on the
 6 side of truth and justice. I represent a lot of
 7 defendants, too, more defendants than plaintiffs, by
 8 the way, other big companies like Monsanto.
 9 MR. PECK: Is that supposed to make us put
 10 more credibility in your belief?
 11 MR. LOWE: Maybe.
 12 MR. PECK: I think everybody's paying you,
 13 aren't they?
 14 MR. LOWE: Some do, some don't.
 15 MR. GRAMMAS: That's the goal. It doesn't
 16 always happen.
 17 BY MR. LOWE:
 18 Q. I guess my point in all of this is trying to
 19 determine what would make Monsanto do something to
 20 clean up this lake? You go through this process,
 21 you're talking about spending a million and a half
 22 dollars just within the next year to do assessments.
 23 Surely you've done some sort of modeling or business
 24 planning or just some sort of foresight to see, Well,
 25 darn, if this comes out in certain levels to be five

1 parts per million or 500 parts per million, we are
 2 going to have to do X, Y, and Z.
 3 A. That's the process we're involved in right
 4 now.
 5 Q. All right. You're telling me that Monsanto or
 6 Solutia has done no projections as to what up side,
 7 down side, potential costs, et cetera, may be incurred
 8 by this process?
 9 A. I don't think we can do that until we
 10 understand what the appropriate remedy selection might
 11 look like. As far as I know, that's not been done.
 12 Q. From your experience, what are the appropriate
 13 remedy solutions for PCBs?
 14 A. I don't know if -- there are a number that
 15 have been selected at different sites. Certainly
 16 natural attenuation, natural recovery is a potential
 17 that has been effective at sites. There's sediment
 18 armoring is a potential that's been used at sites.
 19 Dredging has been attempted at sites. There are any
 20 number of potential alternatives that need to be
 21 evaluated, both, as you say, the up sides and the down
 22 sides of those alternatives, and they all have up sides
 23 and down sides.
 24 Q. Now, has Monsanto been involved in any
 25 natural recovery efforts, whatever that is? First tell

1 me whether they have.
 2 MR. PECK: Where?
 3 MR. LOWE: Anywhere in, let's say, the United
 4 States, yeah, for PCBs.
 5 THE WITNESS: Not that I'm aware of for PCBs.
 6 BY MR. LOWE:
 7 Q. Okay. Let's talk about set sediment armoring.
 8 What does that mean?
 9 A. You basically use some sort of a system to put
 10 a protective layer over sediments that contain some
 11 chemical.
 12 Q. And that's usually used on dry land, not in
 13 creek beds, is it?
 14 A. That's not true. Certainly if sediments --
 15 it's sediment armoring. It can be used in --
 16 Q. Where have you seen that done successfully?
 17 A. I don't know that I have. It's an approach
 18 that we need to look and see whether it can be done
 19 successfully.
 20 Q. How much time do you need to do that?
 21 A. It's part of this process that's going to roll
 22 out over the next year or two.
 23 Q. Well, you know the EPA has found that doesn't
 24 necessarily work very well with PCBs, it tends to wash
 25 away.

1 A. I don't know that, no.
 2 Q. Well --
 3 A. You're much more knowledgeable than I on that.
 4 Q. Well, I thought you kept up with PCBs and the
 5 EPA and all that kind of stuff. That's your job.
 6 A. I do.
 7 MR. PECK: Despite the fact he represents a
 8 bunch of big companies, don't assume he knows
 9 everything.
 10 BY MR. LOWE:
 11 Q. Have you ever heard lately of any EPA
 12 bulletins that polychlorinated biphenyls in sediments
 13 in the upper Hudson River are not being buried under
 14 fresh sediments but are reentering the river?
 15 A. I've read something to that effect. That
 16 doesn't have anything to do with sediment armoring if
 17 that's what you're trying to relate it to.
 18 Q. You're certainly familiar with the Hudson
 19 River problem with PCBs from -- let's see, the General
 20 Electric or Westinghouse plant?
 21 A. General Electric's plant.
 22 Q. What about dredging, have you been involved in
 23 that at any Monsanto facility?
 24 A. For PCBs? No.
 25 Q. Have you been involved in natural recovery

1 sediment armoring or dredging for any other chemical at
 2 Monsanto?
 3 A. I'm not involved in it, no.
 4 Q. Who's going to, then, make this assessment and
 5 come to whatever conclusions are made by Monsanto in
 6 the next three years on remediation for Lake Logan
 7 Martin?
 8 A. The responsible Monsanto people in conjunction
 9 with our consultants that we've engaged to help us in
 10 this investigation.
 11 Q. Who ultimately at Monsanto will make that
 12 decision, or Solutia? Which one's it going to come
 13 down to?
 14 A. I'm sorry, make which decision? What we do?
 15 Q. Yeah.
 16 A. It will be a team of people involved in
 17 remediation aspects of our operations. Mr. Faust and
 18 others probably.
 19 Q. Who are the others going to be?
 20 A. Mr. Faust reports to Mr. Foresman, so I'm sure
 21 he'll be involved. Consultants will be involved. ADEM
 22 will be most directly involved. Certainly they have
 23 the ultimate decision on what remedy's selected.
 24 Q. Actually you anticipate recommending to ADEM
 25 what is done, don't you?

1 A. We will provide a corrective-measure study to
 2 ADEM with -- I don't know recommendations, certainly
 3 proposals on what we propose to do, yes.
 4 Q. ADEM hasn't dictated to you any sort of
 5 parameters or guidelines for doing this undertaking
 6 that you've assumed, have they?
 7 A. There are general parameters on how you do
 8 this RCRA off-site investigation process.
 9 Q. There are? Where are those, the CFR?
 10 A. I don't know specifically.
 11 Q. Who knows all this stuff?
 12 A. I suppose the regulators do.
 13 Q. I mean, you're telling me you're doing all
 14 these broad programs, you filed a 22-page affidavit,
 15 and you're kind of vague on the specifics. Now, what
 16 are the parameters for doing this broad-based
 17 examination?
 18 A. I'm sure whatever the RCRA authority for the
 19 state of Alabama is.
 20 Q. You think that there are guidelines for
 21 Monsanto to determine whether or not they ought to
 22 clean up Lake Logan Martin or Choccolocco Creek?
 23 A. I think -- I don't know, but I think that
 24 there are probably guidelines on the appropriate steps
 25 to take in a RCRA investigation --

1 Q. Is that how you --
 2 A. -- and preparation for a corrective-measure
 3 study.
 4 Q. Is that how you have looked at preparing the
 5 scope of this three-year examination you're going to
 6 undertake?
 7 A. I'm sure those kinds of considerations were
 8 considered.
 9 Q. But you're going to --
 10 A. To a large extent, we're relying on Mr.
 11 Brown's expertise in doing these kinds of
 12 investigations to provide information, help us make
 13 those correct decisions.
 14 Q. Has Mr. Brown performed any sort of cleanup
 15 assessments for Monsanto in any other matters?
 16 A. Not that I'm aware of.
 17 Q. How did you come upon Mr. Brown to hire him,
 18 then?
 19 A. He's a well-known person in the consulting
 20 area on these particular kinds of matters.
 21 Q. Is it your expectation that Mr. Brown is going
 22 to come up with some sort of assessment and then he's
 23 going to confer with you and Mr. Faust and possibly Mr.
 24 Foresman who will all together come up with some sort
 25 of recommendation to make to ADEM as to whether or not

1 any sort of cleanup should be done; is that your goal?
 2 A. I would say that's an oversimplification, but
 3 I think that's basically a fair characterization, yes.
 4 Q. If PCBs are a human -- and a hazard to nature
 5 and if Monsanto put them in this ecosystem, shouldn't
 6 they be required to take them out?
 7 A. No, I don't believe that that necessarily is
 8 the correct approach. I think we should be doing what
 9 we're doing, and that is trying to understand the
 10 system, trying to understand the risk that that system
 11 poses or potentially posts, and try to design
 12 appropriate actions to address those risks.
 13 Q. I want to know at what point you're going to
 14 take some action to eliminate risks.
 15 A. I told you that that's part of the outcome of
 16 this process.
 17 Q. So if you dump something on somebody's
 18 property, even if it doesn't cause a health hazard, do
 19 you think you have the right to leave it there?
 20 A. I don't think that's a fair characterization
 21 of this situation.
 22 Q. Well, let's look at it this way: Has your
 23 garbage can ever blown over and the contents gone into
 24 your neighbor's yard?
 25 A. No.

1 Q. Never?
 2 A. No.
 3 Q. Do you live in a house?
 4 A. Yes.
 5 Q. That's never happened?
 6 A. No.
 7 Q. How about anything going into your neighbor's
 8 yard? How about if theirs blew over into yours, do you
 9 think that they ought to come pick it up?
 10 A. I don't know.
 11 Q. So you don't have any idea at what sediment
 12 levels you would deem it appropriate to dredge, cover
 13 up, or do anything for PCBs in this waterway?
 14 A. Not at this point, no.
 15 Q. You don't even think you should try to get it
 16 to a level -- the PCB content to a level where you can
 17 eliminate the fish advisory?
 18 A. I think that would be the ultimate goal of our
 19 remediation proposals would be to somehow figure out
 20 what is the best way to accelerate the process to get
 21 those fish below two parts per million, yes, I do think
 22 that, if, in fact, the ultimate determination is that
 23 we have the responsibility for the PCBs that are
 24 causing that fish advisory to begin with.
 25 Q. You're still denying that. You're not --

1 A. I'm not denying that, but I'm not willing to
 2 admit that, no.
 3 Q. You're not willing to admit -- we went through
 4 this, but one more time: You're not willing to admit,
 5 on behalf of Monsanto, that Monsanto is a probable
 6 source for the PCBs in Choccolocco Creek and Lake Logan
 7 Martin?
 8 A. I will admit that Monsanto is a potential
 9 source for some of those PCBs, but there are any number
 10 of -- we don't know. There are a number of other
 11 potential sources.
 12 Q. Who are the other potential sources?
 13 A. I don't know. We don't know yet, but there's
 14 lots of users of PCBs. Maybe there's a PCB recycler in
 15 Pell City or something, I don't know.
 16 Q. You know there's not.
 17 A. Do I?
 18 Q. You should.
 19 MR. PECK: Look. See if you can find one.
 20 BY MR. LOWE:
 21 Q. You should.
 22 A. Okay.
 23 MR. PECK: You're saying there's not?
 24 MR. LOWE: Who is it?
 25 MR. PECK: You're saying there's not?

1 MR. LOWE: I don't know. He's the PCB expert.
 2 THE WITNESS: That's what we don't know.
 3 Maybe there is. That's part of why we need to do these
 4 studies to see if there are levels; if there are
 5 levels, do they make sense that Monsanto's one of the
 6 sources or if somebody else is the source. That's why
 7 the study has to be done.
 8 BY MR. LOWE:
 9 Q. Where's the other source of PCBs? Where do
 10 you suspect they are?
 11 A. I told you, I don't know the answer to that.
 12 Q. Where would these people have gotten the PCBs
 13 that they may or may not presently have on their
 14 property?
 15 A. I don't know the answer to that.
 16 Q. Of course not.
 17 We got off the subject a little bit, and that
 18 was who was going to make the decision as to whether or
 19 not, for example, Monsanto decided to clean up the lake
 20 to a point at least where the fish wouldn't have -- or
 21 test for two parts per million and you can do away with
 22 the fish advisory. Who's going to ultimately make that
 23 decision?
 24 A. Well --
 25 MR. PECK: Monsanto.

1 MR. LOWE: Or Solutia.
 2 THE WITNESS: Are you asking who at Solutia's
 3 going to make that ultimate decision or, you know, is
 4 it Solutia or ADEM? I think those are different
 5 questions.
 6 BY MR. LOWE:
 7 Q. Let's leave ADEM out of it.
 8 A. I think ADEM's going to be a big part of that
 9 decision of what's appropriate and who's responsible
 10 for doing what's appropriate.
 11 Q. Well, you're going to make a proposal to ADEM,
 12 they're not going to make a proposal to you first?
 13 A. That's correct.
 14 Q. Who's going to ultimately decide what proposal
 15 is made to ADEM?
 16 A. There will be a group of people, primarily
 17 people we talked about: Mr. Faust, I'm sure I'll be
 18 involved, the consultants that are involved, our
 19 management. A lot of people.
 20 Q. I've got to believe that someone with the
 21 authority to sign off on spending tens of millions of
 22 dollars, if not more, has to make that decision. Is
 23 that the way it works?
 24 A. Didn't I say that Monsanto or Solutia
 25 management, a team --

1 Q. Yeah, but I want to know who they are. Do
 2 they have names? faces?
 3 A. Mike Foresman is both Allen and my supervisor.
 4 Q. And he has the authority within Solutia?
 5 A. I believe so, and he's the director of
 6 remediation. I believe he has the authority to approve
 7 those expenditures, yes.
 8 Q. Director of remediation?
 9 A. Something like that, or whatever I said this
 10 morning. That's probably not what I said this morning
 11 when I gave you name and title before.
 12 Q. He said he was here in St. Louis this morning,
 13 right?
 14 A. Yes.
 15 Q. Is that right?
 16 A. Yes.
 17 Q. How long has he worked for Solutia; since the
 18 spinoff, I suppose?
 19 A. Yes, that's correct.
 20 Q. Did he work for Monsanto before that?
 21 A. Yes.
 22 Q. What did he do for Monsanto?
 23 A. Same thing, in recent times. I don't know
 24 exactly what he did prior to that responsibility.
 25 Q. And what's Mr. Foresman's first name?

1 A. Michael.
 2 Q. What's his middle initial, or does he have an
 3 initial before Michael?
 4 A. I think it's R., but I'm not all that
 5 positive.
 6 Q. And Foresman is spelled F-O-R-E-S-M-A-N?
 7 A. That's correct.
 8 Q. Did he ever work at the Anniston plant?
 9 A. I don't know.
 10 Q. How long has he been with Monsanto?
 11 A. I don't know.
 12 Q. Is he older than you?
 13 A. About the same age.
 14 Q. What sort of degrees and education does he
 15 have?
 16 A. He's an engineer. I don't know. I think he's
 17 a master's degree engineer.
 18 Q. Chemical engineer, do you think?
 19 A. I don't know.
 20 Q. Do you believe he has some familiarity, then,
 21 with this lawsuit and this proposal to investigate and
 22 perhaps remediate Choccolocco Creek and Lake Logan
 23 Martin?
 24 A. Yes.
 25 Q. Has he been directly involved in that process,

1 to your knowledge?
 2 A. He's been involved as the person to whom Mr.
 3 Faust and I report.
 4 Q. How often do you report to him?
 5 A. What do you mean by "report to him"? I was
 6 using that in a more generic term than an activity.
 7 Q. Certainly -- he's a manager -- at least every
 8 six months he wants to know what's going on with his
 9 underlings, doesn't he? How often do you tell him
 10 what's going on in the Anniston situation?
 11 A. When I see him.
 12 Q. Well, how often is that?
 13 A. Weekly, biweekly. Sometimes less.
 14 Q. When was the last time you talked to him about
 15 it?
 16 A. I don't know. I suppose within the last two
 17 or three weeks. I don't have a specific recollection.
 18 Q. Is your office in the same building as his?
 19 A. Yes.
 20 Q. What proximity, same floor?
 21 A. Yes.
 22 Q. How many steps away is his office from yours?
 23 A. I have no idea. We're at opposite ends of the
 24 building, whatever that means.
 25 Q. It doesn't mean anything to me since I've

1 never been to your building.
 2 A. I don't know. I obviously don't count my
 3 steps. I can't stand up and wave at him, if that's
 4 what you mean.
 5 Q. You use the same elevator, I suppose, to get
 6 to your offices?
 7 A. No.
 8 Q. No?
 9 A. No.
 10 Q. Does he even know you're here today?
 11 A. I don't know.
 12 Q. Did you talk to him about having to give
 13 testimony in this case?
 14 A. No.
 15 Q. Do you expect to have to report to him
 16 afterwards?
 17 A. No.
 18 Q. No? You're not going to tell him this
 19 happened? You don't anticipate reporting back to --
 20 A. No.
 21 MR. PECK: Telling him you're a bunch of
 22 assholes.
 23 MR. LOWE: I hope so.
 24 THE WITNESS: It may never come up in
 25 conversation, but the first thing I'm going to do

1 Tuesday morning is walk into his office and report what
 2 happened.
 3 BY MR. LOWE:
 4 Q. You're making it sound like he doesn't care.
 5 Surely he does.
 6 A. Certainly he cares, but he trusts me to carry
 7 out the duties of my responsibilities in the
 8 appropriate manner.
 9 Q. Have you ever seen the documents called
 10 "Defenses of Aroclor"?
 11 A. I may have. That name doesn't necessarily
 12 ring a bell.
 13 Q. You know, the one that says, Our position is
 14 deny, deny, deny?
 15 A. If you've got a document like that, I'd like
 16 to see it.
 17 MR. PECK: Object to the form of the question.
 18 If you want to ask about a document, show him.
 19 MR. LOWE: I'm just asking if he's ever seen
 20 it.
 21 BY MR. LOWE:
 22 Q. How about the one that says, Delay, delay,
 23 delay?
 24 MR. PECK: Same objection. If you want to ask
 25 him about a document, show him the document. If you

1 want to ask him about a document, show him the
 2 document.
 3 MR. LOWE: You have permission to skip the
 4 objections. If you would like to not put those on the
 5 record.
 6 MR. GRAMMAS: That's obviously a joke.
 7 MR. LOWE: No one's laughing except me.
 8 BY MR. LOWE:
 9 Q. Do you own any lakefront property? Do you?
 10 A. No.
 11 Q. Ever have?
 12 A. No.
 13 Q. Do you have any family members who do?
 14 A. Not that I know of.
 15 Q. Do you ever go visit them or friends that have
 16 lakefront property?
 17 A. No.
 18 Q. Would you knowingly eat any fish that you knew
 19 contained two parts per million or greater PCBs?
 20 A. Probably. I don't know.
 21 Q. You probably would? You don't have a problem
 22 with --
 23 A. No.
 24 Q. Because the literature you rely on convinces
 25 you that it's not a problem; is that right?

1 A. Yeah, largely.
 2 Q. Do you think that there should be a fish
 3 advisory for this Lake Logan Martin, then?
 4 A. Yeah, and I think the Alabama Department of
 5 Public Health has reacted appropriately to the
 6 detection of levels of PCBs in those fish, yes.
 7 Q. But it wouldn't bother you to go out there and
 8 fish and eat the fish, then?
 9 A. Not particularly, no.
 10 Q. Are you familiar with any documents where
 11 Monsanto officials are conferring with Alabama
 12 officials regarding keeping the presence of PCBs quiet;
 13 that is, the discharge of PCBs?
 14 A. Do you have a specific document in mind?
 15 Q. I'm just asking if you're familiar with that?
 16 MR. PECK: I object to the form of the
 17 question. If you have a document, show it to him?
 18 BY MR. LOWE:
 19 Q. Do you have any knowledge whatsoever, in your
 20 review of the PCB history of Monsanto, that Monsanto
 21 officials conspired with Alabama officials to keep the
 22 presence of PCBs in rivers and streams quiet?
 23 A. No. Monsanto wouldn't conspire to do anything
 24 like that.
 25 Q. They wouldn't do that? Would that offend you

1 if they did that?
 2 A. If they conspired? Yes.
 3 Q. Maybe that's a bad word in today's environment
 4 with our President and other people. Let's say if they
 5 just said -- if Monsanto said, This would be bad if
 6 this gets out, let's not let it out. And the Alabama
 7 people agreed, If the public found out about this, it
 8 wouldn't be good for us. Do you think that's the right
 9 thing to do?
 10 A. I think there are appropriate circumstances
 11 under which, as you begin to understand and develop
 12 information about a system, that it may be appropriate
 13 to understand it fully before you make public
 14 pronouncements about it.
 15 Q. Do you think, having the knowledge in the
 16 early '70s and before that, even, that PCBs were a
 17 potential hazard to the environment, that Monsanto
 18 should have continued to release those to the
 19 environment?
 20 A. I think Monsanto took appropriate actions to
 21 reduce their releases when they became aware of the
 22 presence in the environment.
 23 Q. Well, they're still leaking out of there
 24 today, aren't they?
 25 A. I don't know the answer to that, whether

1 "leaking's" a fair characterization.
 2 Q. Well, there's still some storm water
 3 discharge, isn't there, that's being monitored and
 4 detected recently amounts of PCBs running off that
 5 property?
 6 MR. PECK: At the plant; is that what you're
 7 asking?
 8 BY MR. LOWE:
 9 Q. Yeah, at the plant.
 10 A. I don't know what you mean by "recently."
 11 Q. Let's say in the last two years.
 12 A. In the last two years, yeah, there have been
 13 part-per-billion levels in storm water at some point,
 14 discharge.
 15 Q. And then it goes necessarily into creeks
 16 around the plant, into Snow Creek, and which of course
 17 we know where that flows, right, that's where the storm
 18 water goes?
 19 A. That doesn't mean that that's where those
 20 trace levels of PCBs end up.
 21 Q. No, my only point is that in the last two
 22 years, there are discharges that have been detected?
 23 A. I don't know that specifically, but that's
 24 certainly a potential in my understanding. As we've
 25 worked -- since -- excuse me, the remediation's been

1 going on over the past two years, so I suspect that's
 2 probably true.
 3 Q. If Monsanto is of the belief that they needed
 4 to stop the runoff, why didn't they make some effort to
 5 remove entirely the PCBs that are there today on the
 6 property in Anniston; for example, landfills perhaps
 7 under the Aroclor -- the former Aroclor facility,
 8 production facility?
 9 A. Because the decision was made that the most
 10 appropriate approach to managing and controlling the
 11 PCBs in those soils was to leave them in place and
 12 insulate them from the forces that could potentially
 13 cause migration.
 14 Q. Were you involved in that decision-making
 15 process whether to move them, cap them?
 16 A. I would say peripherally, yeah.
 17 Q. Was money one of the considerations, the cost
 18 in removing the PCBs from the landfill?
 19 A. No. They were done as interim measures. It
 20 was a measure that could be taken quickly to respond to
 21 a situation as we went through the rest of the RFI
 22 process.
 23 Q. An interim measure? Leaving them there was an
 24 interim measure?
 25 A. Certainly. It's being done in interim

1 measures, certainly.
 2 Q. Well, then, what ultimately is planned for
 3 these landfills?
 4 A. After the RFI process continues to work, there
 5 will be a corrective-measure study proposed to the
 6 State and the ultimate decision will be made.
 7 Q. The corrective measure study. That again is
 8 going to be another study prepared by Monsanto
 9 recommending to ADEM, or whatever state agency there
 10 may be in the next millennium governing these things,
 11 recommending to that agency what should be done; is
 12 that what you're telling me?
 13 A. That's what the RCRA process requires, yes.
 14 Q. Okay. So you're not saying -- although you're
 15 sort of inferring -- that these PCBs may someday be
 16 removed?
 17 A. No, I'm not inferring anything. You may be
 18 reading me as implying that, but --
 19 Q. I am.
 20 A. -- I'm not implying that. I think certainly
 21 one of the considerations for the corrective measure
 22 will be to leave them in place --
 23 Q. Because of the cost?
 24 A. -- with the institution of controls.
 25 Q. Because of the cost?

1 A. The cost is -- there are lots of
2 considerations. Cost is among them.
3 Q. Have you considered the cost before in
4 removing these PCBs from the landfill, before today?
5 A. I don't know that cost has been a specific
6 consideration in the decisions we've made today.
7 Q. So far, you haven't even had to consider it
8 because you just don't want to do it. You're making
9 all the recommendations to ADEM; is that right?
10 MR. PECK: Object to the form of the question.
11 He hasn't considered the cost? He hadn't considered
12 the \$30 million in cost that's been studied?
13 BY MR. LOWE:
14 Q. Well, they haven't removed anything from the
15 landfills, have you?
16 MR. PECK: That \$30 million in interim
17 measures, do you think that's consideration of costs?
18 It's fairly obvious. Go ahead, I'm sorry.
19 MR. LOWE: Thanks, Adam.
20 BY MR. LOWE:
21 Q. Do you agree with Adam? He was testifying for
22 you.
23 A. I don't know whether he's answering your
24 question.
25 Q. I don't know what he's talking about either,

1 but you and I can keep talking.
2 A. What's your question?
3 Q. My question is: Have you considered, up to
4 this day, the cost of removing the PCBs from the
5 landfill? I'm not talking about tearing down houses or
6 putting dirt over PCBs that are under these houses, I'm
7 talking about digging out the thousands of pounds of
8 PCBs or tons of PCBs that have been dumped in there
9 over the past 40 years.
10 MR. PECK: And take them where?
11 MR. LOWE: Somewhere else. Put them on a
12 barge in the Antarctic, I don't know, whatever people
13 do with hazardous waste.
14 THE WITNESS: Are you asking me if we
15 estimated what the cost of that would be?
16 BY MR. LOWE:
17 Q. Yes, exactly.
18 A. Never considered it.
19 Q. Never considered it?
20 A. Not that I know of.
21 Q. But you think that at some point in the future
22 that's the goal, though, to consider that, or is it
23 always --
24 A. I don't know whether that will be part of the
25 consideration or not.

1 Q. Well, reasonably, though, you're just going
2 to -- you intend to leave them there?
3 A. I think that would be one of the strong
4 options that we would like to have considered as the
5 final measure, yes, with the institutional controls,
6 yes.
7 Q. In an unlined, unprotected landfill?
8 A. It's protected. It has got fabric cover and
9 soil cover on top of it.
10 Q. On top?
11 A. It's well protected.
12 Q. So you're absolutely certain, as a Ph.D.
13 chemist, that there can't be any leachate in those
14 landfills that's going to leach into the underground
15 water table?
16 A. We have monitoring wells in place. They will
17 continue to be monitored. That's part of the
18 institutional controls that are part of that process.
19 Q. That's right. That's why they're monitoring
20 it so that when -- if it does happen, you'll know it.
21 It doesn't prevent it from happening, it just lets you
22 know that it happened. Isn't that what a monitor is?
23 MR. PECK: Object to the form of the question.
24 This has all been discussed this morning. Go ahead.
25 THE WITNESS: If the monitoring well suggests

1 further action is necessary, those actions will be
2 taken, I'm sure.
3 BY MR. LOWE:
4 Q. But my question that led into that was: You
5 can't say here, to a scientific certainty, that
6 groundwater won't be contaminated by these landfills
7 that contain PCBs, can you?
8 A. Can come pretty close.
9 Q. You can?
10 A. You can never say anything's totally
11 impossible, but I believe our controls of taking the
12 necessary measures will keep PCBs from entering the
13 groundwater. I don't think they would have entered the
14 groundwater anyway because that is not a typical
15 environmental behavior of PCBs. They adhere strongly
16 to the sediments and typically are not associated with
17 groundwater.
18 Q. Okay. So you're a geologist now too?
19 A. No, I'm an analytical chemist who has read a
20 lot about PCBs and understands their physical
21 properties and environmental properties.
22 Q. I read Sports Illustrated, but I'm not going
23 to hit any home runs in a major league ballpark,
24 either.
25 A. Sorry.

1 Q. But you read a lot of stuff and you have a lot
2 of opinions, so how can you tell me that you're certain
3 that this stuff, this PCB, this hazardous material,
4 banned by the U.S. government isn't going to get into
5 the groundwater in Anniston, Alabama?

6 A. I just did.

7 Q. You told me that's your opinion.

8 A. It's based on my understanding of the nature
9 and chemistry and characteristics of PCBs, that's true.

10 Q. Did you confer with the Alabama Department of
11 Health before the fish consumption advisory was posted?
12 Did you talk to them?

13 A. No.

14 Q. Did they call you and say, We're about to do
15 this?

16 A. No.

17 Q. Did they ask for any information from you?

18 A. No.

19 Q. Did they call anybody, to your knowledge, at
20 Monsanto and Solutia and discuss it before this issue?

21 A. No.

22 Q. Did you call the Alabama Department of Public
23 Health or go see anyone at the department after the
24 advisory was issued to talk about the advisory?

25 A. No.

1 Q. Why not? You're the PR man.

2 A. They were carrying out their duty.

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

4 THE WITNESS: I'm not a PR man, but there was
5 no reason to do that. They were carrying out what they
6 felt was an appropriate response to the detection of
7 PCBs in fish in -- I don't know which one that is, but
8 assuming it's the Choccolocco Creek -- in the
9 Choccolocco Creek

10 BY MR. LOWE:

11 Q. Well, you're the man that the company refers
12 inquiries about PCBs, aren't you? If someone calls
13 asking about PCBs, you're the one that the call is
14 directed to, aren't you?

15 A. Yes.

16 Q. So you're not the public relations or the
17 point person for PCBs for Monsanto/Solutia?

18 A. I may be the point person. I'm not a PR
19 person.

20 Q. Do you know -- if you look at those
21 nonconsumption advisories that are posted all along
22 Choccolocco Creek and in the lake -- have you looked at
23 those?

24 A. I've seen those.

25 Q. When you've driven by -- I guess when you went

1 down to look at the creek, you probably saw one, didn't
2 you?

3 A. Right.

4 Q. Did you notice it had a telephone number on
5 there, an 800 number? That written thing in front of
6 you doesn't have it, though.

7 A. I don't recall that specifically.

8 Q. So you've never called that number or had
9 anyone call it for you?

10 A. No.

11 Q. So would you be surprised that when you called
12 that number and asked them where those PCBs come from,
13 they say "Monsanto"?

14 MR. PECK: Object to the form of the question.
15 It's not an appropriate question.

16 BY MR. LOWE:

17 Q. That wouldn't surprise you that that's what
18 the Alabama Department of Public Health is advising?

19 A. I don't know. If that's your 800 number, it
20 wouldn't surprise me if that's what they're told. I
21 don't know whose -- I don't know where the 800 number's
22 going. I don't know who's telling who what.

23 Q. Well, in your job with Solutia, you contact
24 the Alabama Department of Public Health and ADEM
25 regarding what's going on at the Monsanto plant, don't

1 you? I mean, that's one of your jobs.

2 A. We have --

3 Q. You're the liaison between the two, aren't
4 you?

5 A. We've done that, yes.

6 Q. Yeah. So, in talking with the Alabama
7 Department of Public Health, have you exchanged any
8 information about the sources of PCBs in these areas
9 that are mentioned in the consumption advisory?

10 A. Other than what's reported in their health
11 consultations, their health documents, I don't know
12 that we've discussed sources.

13 Q. Well, one of your points in having ongoing
14 discussions with the Alabama Department of Public
15 Health and ADEM is to influence those agencies with
16 regard to what actions they take against your company,
17 aren't they?

18 A. That's absolutely incorrect.

19 Q. Absolutely incorrect?

20 A. That is absolutely incorrect.

21 Q. You don't attempt to suggest to them what
22 efforts should be made to remediate your property?

23 A. We propose to them what efforts we believe are
24 appropriate. They have the knowledge and abilities to
25 make decisions on their own.

1 Q. Who do you deal with at ADEM?
 2 A. I think we answered that question this
 3 morning. Primarily Steve Cobb.
 4 Q. Steve Cobb. How long has he been there that
 5 you've dealt with him?
 6 A. I have no idea.
 7 Q. Has he been there the whole time you've been
 8 dealing with ADEM?
 9 A. Yes.
 10 Q. The Department of Public Health, I know they
 11 changed directors. Who do you deal with there now?
 12 A. Well, nobody really. Dr. Hughes is gone.
 13 Q. Where did he go?
 14 A. Florida.
 15 Q. Have you talked to him recently?
 16 A. No.
 17 Q. How about the present director or acting
 18 director, you haven't talked with him recently?
 19 A. He was the state toxicologist, and as far as I
 20 know, there is no state toxicologist. I don't know
 21 that I've ever talked to the director or acting
 22 director of ADPH.
 23 Q. The Alabama Department of Public Health, as I
 24 said, when you call the 800 number on the fish advisory
 25 signs, say that Monsanto is the source of PCBs. Has

1 anyone in your company tried to, I guess for lack of a
 2 better term, make them stop saying that?
 3 MR. PECK: Object to the form of the question.
 4 It's an improper question. It assumes facts not in
 5 evidence. Contains hearsay. He doesn't even know they
 6 were doing it.
 7 So go ahead, if you can answer that question.
 8 THE WITNESS: I was going to say, not that I'm
 9 aware of.
 10 (PLAINTIFF'S EXHIBIT NO. 2 WAS FIRST DULY
 11 MARKED, RECEIVED AND MADE A PART OF THE RECORD.)
 12 BY MR. LOWE:
 13 Q. Please look at what we marked as Kaley Exhibit
 14 2, please. Is that the report -- is that the study you
 15 talked about this morning that you performed on rats
 16 regarding PCBs?
 17 A. Well, the analytical work, I did the
 18 analytical work on some of it, yes.
 19 Q. It lists -- it says down at the bottom
 20 copyright 1976. Is that about when this was performed?
 21 I assume the testing was done before '76.
 22 A. That's correct.
 23 Q. How long before?
 24 A. A year or two.
 25 Q. And then you reviewed the test results and

1 came up with this report, Exhibit 2; is that correct?
 2 A. Well, I participated in some of the analytical
 3 work and reviewed that work.
 4 Q. Okay. In addition to your name at the top
 5 under the heading, it says Orville Hicks, William Mees,
 6 M-E-E-S, E. Scott Tucker, James P. M-I-E-U-R-E,
 7 Frederick R. Johannsen, with an E-N. Who are those
 8 people? And George L-E-V-I-N-S-K-A-S. It all says
 9 "Monsanto Company." Were those all Monsanto employees
 10 at that time?
 11 A. Yes.
 12 Q. How many of these gentleman were MD's?
 13 A. MD's?
 14 Q. Medical doctors, for us people in Alabama.
 15 A. None that I know of.
 16 Q. None?
 17 A. None that I know of.
 18 Q. Did they all work -- what department did these
 19 guys work in for Monsanto?
 20 A. Somewhere in the analytical division,
 21 somewhere in toxicology.
 22 Q. At this point in time in the early 1970s, did
 23 Monsanto normally have members of their analytical
 24 department performing tests on rats to see what effects
 25 their various chemicals manufactured by Monsanto would

1 have on animals?
 2 A. I could give you a smart answer, but I won't.
 3 Q. Come on. You owe me one. You can.
 4 A. No. No.
 5 Q. They didn't?
 6 A. No, nor did they here.
 7 Q. What was this on? Maybe I misread it.
 8 A. I think we discussed this this morning, that
 9 Monsanto commissioned a laboratory. Here it says, on
 10 the second page, Younger Laboratories, St. Louis,
 11 Missouri. "Feeding, sacrifice, and tissue excision
 12 were carried out Younger Laboratories, Inc., St. Louis,
 13 Missouri."
 14 So, the toxicology department commissioned
 15 that study. The tissues that were excised were
 16 returned to Monsanto for analysis. That's what the
 17 analytical chemists were doing. The analytical
 18 chemists then did these analyses, compiled the data,
 19 worked with the toxicology people then to draft this
 20 paper.
 21 Q. Well, my question was: For how many other
 22 chemicals was Monsanto doing these types of tests?
 23 A. Oh, lots.
 24 Q. They regularly did this for all of their
 25 chemicals, then?

- 1 A. I wouldn't say all, but they regularly did it
2 for chemicals, absolutely yes.
3 Q. Common practice, then, to test the effects on
4 animals, rats?
5 A. Depending on the chemical and the
6 toxicological profile of that chemical, it may be a
7 different test, but certainly, yes.
8 Q. And this is early 1970s. This is basically
9 when you got your start with Monsanto, right?
10 A. Yes.
11 Q. That's the kind of thing you were doing,
12 testing the effects of chemicals, in this instance,
13 mice?
14 A. I wasn't. I was an analytical chemist
15 performing analyses in an analytical chemistry lab.
16 Q. Okay. I think you answered this this morning,
17 but after performing the analysis in Exhibit 2, have
18 you ever engaged in any similar endeavor for PCBs after
19 that in 1976?
20 A. We continue to do a variety of PCB analyses.
21 Q. You. You do?
22 A. I continue to do a variety of PCB analyses.
23 Q. Where you do a written report on tissue
24 samples?
25 A. I don't know whether I specifically did that

- 1 or not. Certainly possible. Obviously not published,
2 but there may be internal reports. I don't recall
3 specifically.
4 Q. What's the last internal report that you
5 recall preparing regarding PCBs?
6 A. I don't remember.
7 Q. Well, you do that routinely or is it so
8 routine that you just can't remember them or has it
9 been so long you can't remember?
10 A. Well, it was 20 years ago and there were a lot
11 of analytical studies done. Some were written up, some
12 weren't written up.
13 Q. Well, that's my point. Over -- since 20 years
14 ago, how often do you do this?
15 A. I'm sorry, since 20 years?
16 Q. Have you done it since 1976?
17 A. Have I done PCB analyses since 1976?
18 Q. And written reports about it.
19 A. And published reports or just written?
20 Q. No, just written reports.
21 A. I'm sure I have, yes.
22 Q. All right. When was the last time you did
23 that?
24 A. I went from the chemical company laboratory to
25 the corporate laboratory about 1980, so it would have

- 1 been somewhere around that time frame.
2 Q. And what was the nature of that study test?
3 A. Just doing analytical chemistry on samples to
4 determine their PCB content.
5 Q. What kind of samples were they? Were they rat
6 tissues? sediment? birds? What?
7 A. It could have been any number of things. It
8 could have been rat tissues, it could have been
9 sediments, it could have been water, it could have been
10 products. A number of things.
11 Q. And you're testifying today that you've done
12 testing on all those types of samples?
13 A. Certainly. Analytical chemistry testing,
14 certainly.
15 Q. And the last time, though, was when?
16 A. 1980 time frame, something like that.
17 Q. And these were all tests and reports that
18 were, I guess, filed away with Monsanto for some
19 particular purpose?
20 A. To the extent reports were written, yeah.
21 Q. So why were you doing these tests?
22 A. There were lots of questions around PCBs and
23 regulations that needed to be complied with and we were
24 testing to check compliance with regulations. There
25 were lots of reasons for doing it.

- 1 Q. What was the name of that department that you
2 worked in for Monsanto at that point in time?
3 A. Let's see, applied sciences.
4 Q. And who was the head of that department at
5 that point in time?
6 MR. PECK: What time frame?
7 MR. LOWE: He's talking about the '80s.
8 MR. PECK: He's talking about the '80s?
9 MR. LOWE: Oh, to '80?
10 MR. PECK: I don't know.
11 BY MR. LOWE:
12 Q. See, if he doesn't know I don't know.
13 A. I was answering -- I was answering for the
14 time frame for which this report was prepared. That's
15 what I'm answering.
16 Q. I'm talking about the last time you did any
17 sort of analysis as a chemist for Monsanto where you
18 actually examined samples and made determinations and
19 wrote a report.
20 A. Okay.
21 Q. When was that? When was that?
22 A. Around 1980, give or take a couple years.
23 MR. LOWE: That's what I got, Adam, 1980.
24 BY MR. LOWE:
25 Q. So in 1980 you worked in the applied sciences

1 department?
 2 A. No. I worked in applied sciences department
 3 when I did this work, which is what I thought what you
 4 were addressed.
 5 Q. All right. Where did you work in 1980?
 6 A. In environmental sciences.
 7 Q. And who was the head of that department?
 8 A. Jim Mieure, M-I-E-U-R-E.
 9 Q. Is he still with Monsanto?
 10 A. Yes.
 11 Q. What's his position now. They're the same
 12 company.
 13 A. They're not the same company.
 14 MR. PECK: Not now.
 15 THE WITNESS: They're totally different
 16 companies. He's, like, the manager of product
 17 stewardship or something, I don't know. That's more a
 18 function than a title.
 19 BY MR. LOWE:
 20 Q. But he's here in St. Louis?
 21 A. Yes, he is.
 22 (PLAINTIFF'S EXHIBIT NO. 3 WAS FIRST DULY
 23 MARKED, RECEIVED AND MADE A PART OF THE RECORD.)
 24 BY MR. LOWE:
 25 Q. Let's look at Kaley Exhibit 3. Do you

1 recognize that?
 2 A. Yes.
 3 Q. Do you recall talking to a reporter of the
 4 Talladega Daily Home in August of 1988?
 5 A. Yes.
 6 Q. Where did this conversation take place?
 7 A. In the offices of Mr. Church.
 8 Q. What were you doing in Anniston in August of
 9 1998?
 10 A. I wasn't in Anniston.
 11 Q. I mean, Pell City, excuse me.
 12 A. I was present at a hearing in Judge Austin's
 13 court.
 14 Q. Were you wearing a disguise? I don't remember
 15 seeing you there. You must have been in the back.
 16 A. I was there.
 17 Q. Gosh. What was your purpose for attending
 18 that hearing?
 19 A. The attorneys felt there was a potential that
 20 Judge Austin might have questions regarding information
 21 in my affidavit.
 22 Q. So you were prepared that day to testify; is
 23 that correct?
 24 A. Well, I was there. I was willing to answer
 25 question. I wasn't prepared to testify in the sense of

1 preparing a witness. I was there. I was prepared to
 2 answer questions, sure.
 3 Q. What was the purpose for speaking with the
 4 reporter in Mr. Church's office? Was that prearranged
 5 or did she just happen to show up?
 6 A. No, she --
 7 MR. PECK: I'm going to -- I can tell you.
 8 MR. LOWE: I don't want you to, Adam.
 9 MR. PECK: She showed up.
 10 MR. LOWE: You don't have to say that. Thank
 11 you.
 12 MR. PECK: You don't want to know the answer,
 13 then.
 14 MR. LOWE: I want to know his answer. If he
 15 said, I don't know, then that would have been
 16 appropriate for you to interject.
 17 THE WITNESS: I know in the roughest of terms.
 18 BY MR. LOWE:
 19 Q. Okay. What are they?
 20 A. She was observed talking to one of the
 21 attorneys for the other side, and our counsel felt it
 22 might be useful to talk to someone from our side, and I
 23 happened to be in town and they made arrangements for
 24 that conversation to occur.
 25 MR. PECK: That's what I would have said.

1 MR. GRAMMAS: That's not real rough.
 2 BY MR. LOWE:
 3 Q. Did you review this article after it appeared
 4 in the Talladega paper, or have you seen it before
 5 today?
 6 A. Yes.
 7 Q. How did you come to obtain it the first time?
 8 A. It was faxed to me.
 9 Q. By who?
 10 A. I don't know. It could have been Mr. Faust,
 11 it could have been Mr. Peck. I don't know.
 12 Q. Did you leave immediately after this hearing
 13 in Pell City or did you go back to the plant?
 14 A. No, I had another commitment. I left.
 15 Q. Where did you go?
 16 A. Where did I go? That's a good question.
 17 Maybe Philadelphia.
 18 Q. I mean in the area.
 19 A. Oh, where did I go? I went back to the
 20 airport. I went and had lunch, I think, and I went
 21 back to the airport.
 22 Q. So you came in the day of the hearing or the
 23 day before?
 24 A. The day before.
 25 Q. Did you stay in Anniston or Birmingham?

1 A. Birmingham.
 2 MR. PECK: I showed him our new office.
 3 (THERE IS A DISCUSSION OFF THE RECORD.)
 4 BY MR. LOWE:
 5 Q. After receiving a copy of this article, did
 6 you dispute anything you said in here to the reporter?
 7 Did she report anything incorrectly? I guess I should
 8 say.
 9 A. I don't remember having that response, no.
 10 Q. Well, come on --
 11 A. I'm sorry, you're right, I said 30 million not
 12 30 billion.
 13 Q. That was the one I was going to put out, just
 14 to prove that you read it.
 15 A. I forgot about that.
 16 Q. So you don't dispute, then, saying: "The
 17 thing we need to get fixed is that the fish have above
 18 the level (PCBs) determined safe for human
 19 consumption"?
 20 A. I think I said something -- I'm not sure that
 21 was an exact quote, but I said something to that
 22 effect, that that was the pathway, that we needed to
 23 understand that pathway and do something to break that
 24 pathway, yeah.
 25 Q. Then you said: "We don't think this is a

1 health problem, but this is a regulated chemical"?
 2 A. I'm --
 3 Q. That's consistent with what you were trying to
 4 tell us
 5 A. I could have said something like that.
 6 Q. That's what you're paid to say, isn't it?
 7 A. No. I'm paid to understand health and science
 8 issues around PCBs. I'm not paid to say anything.
 9 Q. You also state: "We're confident that
 10 materials are not leaving the plant site."
 11 Does that mean, like, barrels on trucks or are
 12 we talking about PCBs there?
 13 A. I'm talking about trace levels of chemicals.
 14 Q. Monsanto's position, you say here, "...is that
 15 you say we couldn't have a position on remediation
 16 until a study is made to determine the situation." Is
 17 that correct? That's what you're telling me.
 18 A. Yeah. I don't know that I said those words.
 19 If I did, they sound kind of funny, but, yeah, that's
 20 right, our position that we need to complete the
 21 proposed study to determine what activities, if any,
 22 are appropriate. It says our position is we have no
 23 position.
 24 Q. When did Monsanto or Solutia first determine
 25 that they should initiate a study on remediation?

1 A. That's part of the ongoing RCRA process.
 2 Q. When did that start?
 3 A. I don't know. Sometime in the early '90s. I
 4 don't know exactly.
 5 Q. Why did you wait so long to get to the
 6 property owners, the individuals, in Choccolocco Creek
 7 and Lake Logan Martin?
 8 A. I'm sorry?
 9 Q. Well, you're talking about -- it's been six
 10 years, at least, if I accept your RCRA statement that
 11 that's when you first started thinking about
 12 remediation.
 13 A. Something like five or six years, yeah.
 14 Q. Why should the people on Choccolocco Creek and
 15 Lake Logan Martin be the last to get any help in the
 16 form of remediation?
 17 A. Well, we have determined, and ADEM agrees,
 18 that a phased approach was appropriate to get to the
 19 levels that -- to the extent that there was a potential
 20 source at the Anniston plant, to get that source
 21 buttoned up, to do the appropriate interim measures
 22 there, and then move off-site in a later phase.
 23 Q. Who at ADEM agreed with you that it should be
 24 a phased approach?
 25 A. I don't have a specific name that agreed with

1 me. I think that Steve Cobb would say that that's
 2 consistent with their position.
 3 Q. Is there some particular reason you couldn't,
 4 like, clean up at the plant and clean up in the stream
 5 at the same time?
 6 A. There's no -- the information required to
 7 determine whether cleanup is appropriate in the stream
 8 or somewhere else and what that appropriate cleanup, or
 9 whatever the remedial action might be, isn't available.
 10 You need to get that information.
 11 Q. Is ADEM going to do any of its own soil or
 12 bore testing on the sediment?
 13 A. I don't know.
 14 Q. That's not part of your plan, is it? You're
 15 going to do it, you're going to pay for it?
 16 A. Yeah. We are going to pay for the plan that
 17 we're proposing to do.
 18 Q. That's right. And then you're going to write
 19 up what you find and then you're going to submit some
 20 proposals to ADEM, right?
 21 A. Presumably. That's the process.
 22 Q. But ADEM's not, to your knowledge, going to do
 23 any sort of independent testing, are they?
 24 A. I don't know.
 25 Q. You haven't thought about any of that? Have

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1 you ever talked about that point to ADEM?

2 A. I have not asked ADEM whether they're going to

3 do any independent testing, no.

4 Q. So this idea of just spending a million and a

5 half bucks to go out and do some sampling, testing, and

6 propose maybe if something comes up where you think you

7 need to remediate something, you were going to submit a

8 proposal to ADEM; that's your future plan for helping

9 these people that you dumped PCBs on at Choccolocco

10 Creek and Lake Logan Martin?

11 A. It's our plan and proposal for dealing with

12 the issues relating to PCBs in the off-site areas, yes.

13 Q. But for the next three years there's still

14 going to be a fish advisory, don't you think?

15 A. I don't know. Presumably. Could very well

16 be.

17 Q. Because these levels of PCBs aren't going to

18 diminish significantly within the next three years, are

19 they?

20 A. In the fish? Probably not.

21 Q. That's because it stays in the soil, doesn't

22 it? I don't know what the life of a fish is, but I

23 don't think it's very long.

24 A. It's not clear where those PCBs that the fish

25 are getting are necessarily coming from.

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1 Q. They're coming from the sediment in the soil

2 and you know good and well they are. You can keep

3 splitting hairs on me.

4 A. I'm sorry, I'm sorry. I don't know that I

5 agree with that.

6 Q. Well, do fish breathe air?

7 A. No.

8 Q. It bioaccumulates. The little bitty things

9 down by the sediment are swimming around and the fish

10 eat that and then bigger fish eat the little fish and

11 then birds eat the fish people eat the fish and it

12 keeps going up the chain, right? Isn't that how it

13 works?

14 A. That's a fair description of bioaccumulation,

15 right.

16 MR. PECK: Can we have a biobreak?

17 MR. LOWE: Any time.

18 (A SHORT BREAK WAS HELD.)

19 BY MR. LOWE:

20 Q. What did Monsanto/Solutia do with the debris

21 that was removed from the houses that were bought

22 around the plant?

23 A. I think it was taken -- well, I think there

24 was some asbestos concerns and I think the asbestos

25 debris may have been taken to an asbestos landfill. I

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1 think the rest of it was taken to a construction debris

2 landfill maybe in Georgia somewhere. I'm not totally

3 sure.

4 Q. Why so far? Was that some specialized

5 landfill?

6 A. Not that I know of. I don't know the

7 arrangements for why there or why anywhere else.

8 Q. Were you involved in the settlement

9 negotiations with the plaintiff's group of the houses

10 and the church near the plant?

11 MR. PECK: Are you talking about the

12 Marcel (PHONETIC) case?

13 MR. LOWE: Donald Stewart's case. Is that

14 what it is? If you're going to jump up there and

15 answer questions for people, you need to disclose

16 everything you know. You can't just be quiet when I

17 ask you a follow-up question.

18 BY MR. LOWE:

19 Q. Were you involved in that?

20 A. In which?

21 Q. In --

22 A. The answer is: I can answer your question as

23 to settlement discussions. As to settlement

24 discussions, the answer is no, I have not been involved

25 in settlement discussions.

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1 Q. Well, are you familiar with whether or not

2 those settlement agreements are public or was there

3 some privacy provision?

4 A. I don't know.

5 Q. Do you know the reason why Monsanto agreed to

6 give two and a half million dollars to the church

7 that's across the street from the property?

8 A. In general terms, yes.

9 Q. Why?

10 A. Because we made an offer to them constant with

11 the offer we made to the church that agreed to a

12 relocation proposal, and then we had to pay the

13 attorneys, I guess.

14 Q. Is the agreement to buy the church or did they

15 just give them a payment?

16 A. My understanding is we will receive or have

17 received title to the church.

18 Q. And it's going to be destroyed, I assume?

19 A. I don't know. Presumably at some point in

20 time. I don't know.

21 (THERE IS A DISCUSSION OFF THE RECORD.)

22 (PLAINTIFF'S EXHIBIT NO. 4 WAS FIRST DULY

23 MARKED, RECEIVED AND MADE A PART OF THE RECORD.)

24 BY MR. LOWE:

25 Q. Let's look at what's marked as Kaley Exhibit

1 4. Do you recall receiving that document from the
2 Alabama Department of Public Health?
3 A. Yes.
4 Q. Why was this sent to you?
5 A. I asked Brian Hughes for it.
6 Q. And this appears to be blood test results that
7 the department performed on residents near the plant;
8 is that right?
9 A. Well, it's a form letter used to report those
10 blood results, yes.
11 Q. All right. Now, why did he right on the front
12 of this fax cover sheet: "This is a 'sanitized' copy"?
13 A. Because there are no names involved. The
14 letters that went to the people had their names and
15 their blood levels and this has no names and blood
16 levels. It's just a form letter.
17 Q. It's a form letter?
18 A. I mean, it's a form letter they prepared to
19 communicate these results to those people. It's not a
20 letter that they used year after year after year.
21 Q. So your testimony is that it was -- this form
22 letter was sanitized because this form letter didn't
23 contain all of the people's names that it was going to
24 be sent to?
25 A. It didn't contain any of the people's names.

1 I asked Brian for a copy of the letter that was used to
2 communicate the results to the people who had their
3 blood tested, and he agreed to send me that letter with
4 no identifiers. So he, quote, "sanitized" it by --
5 you'll see here it says: Field, Field, Field, Field.
6 Dear Field. That's because in the original letters
7 would have had somebody's name and their particular
8 blood level.
9 Q. Did you make any effort to call on, contact,
10 meet, go up to the door to any of these people that
11 lived around the plant?
12 A. Did I specifically?
13 Q. Yeah, did you do that or have someone do it on
14 your behalf?
15 A. People from Solutia and the property purchase
16 program contacted people in those neighborhoods on
17 various occasions. Not with regard to the blood
18 levels. We're done with this document? People from
19 Solutia did contact some people in those neighborhoods.
20 Q. Why was that?
21 A. To communicate the -- primarily communicate
22 the property purchase program, the opportunity to
23 participate in that, and then in consultation with --
24 consultation, compliance with the second consent order,
25 the 1996 consent order, for people who didn't

1 participate in the property purchase program, we
2 offered those people cleaning and temporary relocation
3 of their homes and they were contacted for that reason.
4 And prior to that, way before that, they were -- people
5 were contacted for permission to sample on their
6 property.
7 Q. With regard to the cleaning program, you
8 offered to come and clean people's homes; is that what
9 you did?
10 A. That was one of the terms of the agreement of
11 the consent order, yes.
12 Q. All right. Does Endust and Formula 409
13 counteract or do away with PCBs?
14 A. I don't have any idea. I think you're
15 mischaracterizing the cleaning that was done. We
16 offered -- the ADPH had determined or detected that in
17 some homes there were levels of PCBs in dust in the
18 homes, and we offered to engage a commercial cleaning
19 firm to come in and give those homes a thorough
20 cleaning.
21 Q. No, I'm talking about the subsequent. Wasn't
22 there, like, an offer of at least once a month they'd
23 come in and Endust and 409 your house?
24 A. No. We did a monthly cleaning on the Bethel
25 Missionary Baptist Church, but the homes themselves

1 were cleaned on a one-time basis.
2 Q. Did you report these blood test results that
3 are on Exhibit 4 to any of your superiors in the
4 company?
5 A. There are no blood results there.
6 Q. Did you get any blood test results,
7 information regarding blood test results? You did, I
8 know you did.
9 A. I attended a meeting that Brian Hughes and
10 others presented those to the people in the
11 neighborhood. I got the same information on a general
12 basis that the other people did.
13 Q. You didn't get any written reports regarding
14 blood test results, a little chart that had --
15 A. I think I asked -- after Brian's presentation;
16 I asked him if I could have copies of the slides he
17 used to present that.
18 Q. Did you report those to your superior, Mr.
19 Foresman?
20 A. Probably not.
21 Q. You're on your own?
22 A. In many cases, yes.
23 MR. LOWE: If you give me a few seconds to
24 talk with Pete, we may be able to wrap this up.
25 (A SHORT BREAK WAS HELD.)

1 BY MR. LOWE:

2 Q. Is it your personal opinion that the PCBs that
3 exist in Lake Logan Martin and Choccolocco Creek should
4 just be left alone, left there?

5 A. I don't have sufficient information to make
6 that decision at this point.

7 Q. You mentioned earlier that you wouldn't have a
8 problem in eating fish that you knew contained more
9 than two parts per million PCBs. Do you have any
10 children?

11 A. Yes.

12 Q. Would you have any problem with allowing them
13 to eat fish with that?

14 A. On an occasional basis, no.

15 Q. How often is an occasional basis?

16 A. I don't know.

17 Q. Come on.

18 A. The answer's no.

19 Q. You're the PCB man?

20 A. The answer is no to your original question.

21 Q. You wouldn't have a problem with it?

22 A. No.

23 MR. LOWE: That's all I have.

24 MR. PECK: All right.

25 (DEPOSITION ADJOURNED)

1 STATE OF MISSOURI)

2)
3 COUNTY OF ST. LOUIS)

4 I, KEVIN J. WEICHMAN, CSR, RPR, Notary Public
5 in and for the County of St. Louis, State of Missouri,
6 do hereby certify that pursuant to stipulation there
7 appeared before me on the 4th day of September, 1998,
8 at the offices of Taylor & Schroeder Reporting & Video,
9 7494 Ethel Avenue, St. Louis, Missouri, ROBERT G.
10 KALEY, who was first duly sworn by me to testify to the
11 whole truth of his knowledge touching the matter in
12 controversy aforesaid, so far as he should be
13 interrogated concerning the same; that he was examined
14 and the examination was taken down in shorthand by me
15 and afterwards transcribed by computer-aided
16 transcription.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my notarial seal on this 4th day of
19 September, 1998.

24 KEVIN J. WEICHMAN, CSR/RPR
25 Notary Public

1 STATE OF MISSOURI)

2)
3 COUNTY OF ST. LOUIS)

4 I, ROBERT G. KALEY, do hereby certify:

5 That I have read the foregoing deposition;

6 That I have made such changes in form and/or
7 substance to the within deposition as might be
8 necessary to render the same true and correct;

9 That having made such changes thereon, I
10 hereby subscribe my name to the deposition.

11 I declare under penalty of perjury that the
12 foregoing is true and correct.

13 Executed this _____ day of _____,
14 1998, at _____.

18 _____
19 ROBERT G. KALEY

21 Subscribed and sworn before me this _____ day
22 of _____, 1998.

23 My Commission Expires: _____

24 _____
25 Notary Public

1 DEPOSITION CORRECTION SHEET
2 DEPONENT: ROBERT G. KALEY
3 RE: THOMAS C. DYER, ET AL vs. MONSANTO COMPANY, ET AL
4 Consolidated For Discovery With
5 SHELTER COVE MANAGEMENT, INC., ET AL vs. MONSANTO
6 COMPANY, ET AL

7 Upon reading the deposition and before subscribing
8 thereto, I would like to indicate that the following
9 changes should be made:

10 Page _____ Line _____
11 Should read _____
12 Reason assigned for change: _____

13 Page _____ Line _____
14 Should read _____
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16 Page _____ Line _____
17 Should read _____
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19 Page _____ Line _____
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Page _____ Line _____
Should read _____
Reason assigned for change: _____

23 SIGNATURE OF DEPONENT: _____
24 DATE: _____

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