

STATE OF ALABAMA
IN THE CIRCUIT COURT OF CALHOUN COUNTY

MARS HILL MISSIONARY
BAPTIST CHURCH, et al.,

Plaintiffs,

VS.

CIVIL ACTION NUMBER
CV-96-243

MONSANTO COMPANY, et al.,

Defendant.

VIDEOTAPED DEPOSITION OF MICHAEL A. PIERLE

Taken on behalf of the Plaintiff

June 2, 1998

KRIEGSHAUSER REPORTING & VIDEO
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Deposition of MICHAEL A. PIERLE
produced, sworn, and examined on behalf of the
Plaintiffs on June 2, 1998, between the hours
of nine o'clock in the forenoon and five
o'clock in the afternoon of that day, at the
Ritz-Carlton Hotel, 100 Carondelet Plaza, St.
Louis, MO 63105, before Sheila L. Ford, a
Registered Professional Reporter and Notary
Public within and for the State of Missouri.

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A P P E A R A N C E S

The Plaintiffs were represented by
Mr. John W. Barrett of the law firm of Barrett
Law Office, P.A., P. O. Box 987, Lexington,
Mississippi 39095.

The Defendant was represented by
Mr. Adam K. Peck of the law firm of Lightfoot,
Franklin & White, 300 Financial Center, 505
North 20th Street, Birmingham, Alabama 35203,
and Mr. Michael E. Kelly of the law firm of
Smith, Helms, Mulliss & Moore, P. O. Box
21927, Greensboro, North Carolina 27420.

Videographer: Gerard A. Kriegshauser, CLVS

I N D E X O F E X A M I N A T I O N

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Examination by Mr. Barrett 6

I N D E X O F E X H I B I T S

Plaintiffs' Exhibits 1 - 36 were pre-marked

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IT IS STIPULATED AND AGREED by the
parties, through their respective counsel,
that the deposition of MICHAEL A. PIERLE, may
be taken before Sheila L. Ford, CSR, RPR, as
Commissioner and Notary Public in the State of
Missouri, on June 2, 1998, at 9:00 a.m.

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

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

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THE VIDEOGRAPHER: Today is June 2nd, 1998. The time is approximately 9:14 a.m. This is the deposition of Michael A. Pierle in the cause of Mars Hill Missionary Baptist Church, et al., versus Monsanto, et al., pending in the State of Alabama in the Circuit Court of Calhoun County, Civil Action Number CV-96-243. And if the court reporter will please swear in the witness.

MICHAEL A. PIERLE,
of lawful age, produced, sworn, and examined
on behalf of the Plaintiffs, deposes and says:

MR. BECK: Usual stipulations?

MR. BARRETT: Yeah. That's fine.

EXAMINATION

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similar position since April of 1991 from Monsanto Company, did you not?

A. That is correct.

Q. And when there was a spin-off of Monsanto's chemical division, you moved over and became the vice president of Environment Safety and Health for the new company; is that correct?

A. That's correct.

Q. And the new company is called Solutia, Inc.; is that correct?

A. That's correct.

Q. Now, explain to the jury, if you would, please, about this breakup, about this spin-off, in laymen's terms so that we can understand it. What happened?

A. Basically it was a division of Monsanto's businesses between the chemical businesses that were operating together inside the company, and the other companies were what was viewed as the life science businesses, the agricultural sector, the pharmaceutical

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QUESTIONS BY MR. BARRETT:

Q. Mr. Pierle, my name is Don Barrett. I'm an attorney that represents the plaintiffs in this litigation, Monsanto in Anniston. I'll be asking you some questions today. We can go ahead and get started.

State your name for the record, please.

A. Michael A. Pierle.

Q. And where do you live, sir?

A. I live at 801 Greenwich, G-R-E-E-N-W-I-C-H, Green Lane in Town and Country, Missouri.

Q. Is that a suburb of St. Louis?

A. Yes.

Q. What is your social security number?

A. 306-46-2942.

Q. And what is your occupation?

A. I'm currently employed at Solutia as the Vice President of Environment Safety and Health.

Q. Now, prior to that position you held a

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sector, and the food and nutrition sector. And what had evolved over time in Monsanto was a divergent set of businesses with different, really, interested shareholders, much different customers, and much different philosophies. And it was decided to split these businesses such that they could both maintain sort of their maximum value to their customers and in the marketplace.

So on September 1 of 1997 there was a split, and the chemical businesses, which were about three billion dollars in sales were separated from Monsanto Company, took a new name of Solutia, and the balance of the company of nominally about five to six million dollars sales stayed as Monsanto Company.

Q. And it was Monsanto that decided what assets would go into this new company; is that correct?

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1 A. Yes. All the decisions were made by
 2 Monsanto employees. We were all
 3 Monsanto employees up to September 1.
 4 Q. Right. Along that line, your chairman
 5 and CEO of the new company is Robert G.
 6 Potter; is that correct?
 7 A. Yes.
 8 Q. And he was formerly the corporate
 9 executive vice president of Monsanto; is
 10 that right?
 11 A. That's correct.
 12 Q. Similarly, your president is John
 13 Hunter, and he's also chief operating
 14 officer and formerly he was president of
 15 fibers at Monsanto Company; is that
 16 correct?
 17 A. That's correct.
 18 Q. So all of your executive officers came
 19 in a block from Monsanto?
 20 A. That is correct.
 21 Q. What did Monsanto decide to do about its
 22 outstanding potential liabilities for
 23 environmental matters?

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1 some indemnity agreement that they
 2 agreed to pay any liability that would
 3 be assessed against Monsanto?
 4 A. I'm not fully familiar with all of the
 5 sections of the separation agreement. I
 6 was involved in the splitting of the
 7 liabilities on the environmental side.
 8 But I'm not a hundred percent sure what
 9 the mechanism was for sort of securing
 10 that division of liabilities.
 11 Q. Okay. I looked at -- on the Internet.
 12 I had to get one of my children to look
 13 it up for me. But I looked at the
 14 Internet day before yesterday for both
 15 Solutia and for Monsanto, the remaining
 16 Monsanto Company. And I noticed that
 17 Monsanto -- excuse me -- I notice that
 18 Solutia -- I'm not trying to make you do
 19 a memory quiz for you here. I'll show
 20 you these documents -- but for the year
 21 ending 1997 had net sales of 2.969
 22 billion dollars. Is that about right?
 23 A. Sounds about right.

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1 A. The liabilities for environmental
 2 matters, we went through the process of
 3 trying to assign those to basically the
 4 businesses that were basically
 5 identified or associated with those
 6 liabilities. So those that were
 7 associated with businesses that were
 8 still in -- or prior had been in a life
 9 science sector stayed with Monsanto, and
 10 those that were associated with the
 11 chemical businesses were assigned to
 12 Solutia.
 13 Q. Okay. And of course we're interested in
 14 the Anniston environmental situation.
 15 And do I understand from your testimony
 16 that Monsanto decided to give all of the
 17 liabilities that it may have in this
 18 litigation concerning the PCB discharges
 19 from the Anniston plant to Solutia; is
 20 that correct?
 21 A. They were -- That was the decision that
 22 was made.
 23 Q. And did Solutia sign -- give Monsanto

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1 Q. And income before income taxes of 290
 2 million dollars?
 3 A. Sounds about right.
 4 Q. And with net income of 192 million; is
 5 that right?
 6 A. Uh-huh (indicating yes).
 7 Q. Now, I noticed also -- then I'm going to
 8 compare this with Monsanto. But I
 9 notice that the total stockholders
 10 equity is a minus 131 million dollars;
 11 is that correct?
 12 A. I believe as we were spun, we were a
 13 negative equity company. That's
 14 correct.
 15 Q. And just so the jury will understand
 16 this --
 17 MR. PECK: Go ahead.
 18 Q. -- Monsanto itself retained a positive
 19 equity or a -- equity is another way of
 20 saying net worth, is it not?
 21 A. Yes.
 22 Q. That Monsanto retained for itself a net
 23 worth of shareholders equity of over 4.3

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1 billion dollars, did it not?

2 MR. PECK: I'm sorry. Let me
3 interpose an objection. I
4 stayed silent on this because
5 I have the usual
6 stipulations. Obviously by
7 allowing it I'm not conceding
8 this would be at all relevant
9 or material during this --

10 MR. BARRETT: I understand that.
11 Let me say now for the record
12 so this deposition will go
13 more smoothly, I understand
14 that you have the right to
15 reserve to object to
16 anything, whatever time we
17 offer to admit it. We may
18 not offer to admit it.

19 MR. PECK: I just wanted to -- I
20 felt compelled to say that.

21 MR. BARRETT: No problem.

22 Q. (By Mr. Barrett) Mr. Pierle, Monsanto
23 spun off Solutia as a deficit company,

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1 give away its liability for its past
2 conduct at Anniston but didn't appear to
3 transfer enough assets to pay for it, or
4 any assets to pay for it. Or is that a
5 simplistic way of looking at it?

6 A. I think what happened was that basically
7 we went through a logical assignment of
8 assets and liabilities. And what was
9 necessary at the time of spin was that
10 the shareholders and the market would
11 view both companies as successful
12 financial entities. While you have read
13 from the documents, which, you know, I
14 think the numbers speak for themselves,
15 the fact is both companies since that
16 split time have appreciated nominally
17 thirty percent or more in the market.
18 So I think the market view on all of
19 this is that the balance sheets and the
20 ability to produce economic benefits for
21 the shareholders in the future, both
22 companies are sound.

23 Q. Is it your belief that the real value of

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1 that is, it had more debt than it had
2 assets given to it, but it retained for
3 itself 4.3 billion dollars' worth of
4 equity; is that accurate?

5 A. The number that you showed me is March
6 of 1998, and the other number is
7 December. So I'm not exactly sure what
8 the number was in September at the time
9 of the spin.

10 Q. But --

11 A. But it was positive.

12 Q. It would have been somewhere in that
13 vicinity or maybe a little lower; is
14 that right?

15 A. I don't know whether it was higher or
16 lower.

17 Q. But somewhere --

18 A. I would think it would be somewhere
19 around that number.

20 Q. And I don't want to dwell on this
21 particularly, but Monsanto, according to
22 this split that it did for its own
23 purposes, it gave away or purported to

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1 a company, the market value of a
2 company, can be defined by the market
3 price of the stock times however many
4 shares are outstanding?

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

7 A. I think in purely analytical terms or
8 mathematic terms, that the market value
9 definition of a company is determined by
10 the product of those two factors.

11 Q. I noticed from the Internet information
12 posted by the new company, Solutia,
13 Inc., it says net income includes
14 charges for changes and estimates for
15 environmental liability of forty-six
16 million dollars. You put -- or Solutia
17 put forty-six million dollars --
18 additional dollars in reserve to pay for
19 future -- set aside for future payments
20 of environmental liabilities; is that
21 right?

22 A. Yeah. That's the common practice. And
23 there are conventions required by

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1 reporting procedures, like the SEC, that
 2 require us to take reserves when certain
 3 facts are known about sites. And we
 4 have taken adjustments inside Monsanto
 5 periodically, and that was an adjustment
 6 taken at the end of the year '97, I
 7 believe for Solutia.

8 Q. Did the reserves that Monsanto had set
 9 aside to pay their environmental
 10 liabilities that they -- prior to the
 11 split-up of the company, were they
 12 transferred to the new company?

13 A. Yes, they were.

14 Q. Okay. How much was that? How many
 15 dollars?

16 A. I don't recall the exact number.

17 Q. Well, approximately.

18 A. That number seems to me in reserves
 19 associated with the chemical business
 20 was somewhere at that time around a
 21 hundred and sixty or seventy million
 22 dollars.

23 Q. And you have added forty-six million

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1 liabilities, I think I'm going to see,
 2 if I understand what you're saying,
 3 include reserves for really two areas.
 4 One area is what the government is going
 5 to make you pay in clean-up. And
 6 secondly, would be for litigation costs,
 7 what you have to pay to people who have
 8 sued you for environmental damages; is
 9 that correct?

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

12 A. No. I think what I was trying to
 13 indicate clearly is that the reserves
 14 and the accounting practice with respect
 15 to these reserves we're talking about is
 16 inclusive of the site clean-up and sort
 17 of related matters but does not include
 18 litigation, litigation defense, or other
 19 costs associated with litigation.

20 Q. Okay. Does your company -- or did
 21 Monsanto set aside any money for
 22 litigation reserves?

23 A. There is a reserve that we have had as

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1 dollars to that since then?

2 A. That's correct. We have also spent
 3 monies during that time which has
 4 brought the reserves down somewhat.
 5 That's a dynamic situation that changes
 6 pretty much every month.

7 Q. That's right. How much of this total
 8 amount of reserves is allocated for the
 9 Anniston plant and Anniston situation?

10 A. Again, I don't recall the specific
 11 number. And I need to be sure we're
 12 talking about environmental reserves in
 13 the same fashion.

14 Q. Yes, sir.

15 A. This account, you know, covers the cost
 16 of the remediation programs, the cleanup
 17 programs, that sort of thing, at the
 18 plant site. We did take an additional
 19 adjustment based on the ongoing work at
 20 the Anniston site. I don't recall that
 21 number. It was less than ten million
 22 dollars, I believe.

23 Q. And your reserves for environmental

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1 common practice for what we would call
 2 general products liability and other
 3 litigation reserve. And that was
 4 handled very similar to the
 5 environmental reserve area. And the
 6 portion again assignable to Solutia's
 7 businesses was transferred to Solutia.

8 Q. Okay. If you were required to pay one
 9 dollar or a million dollars or a billion
 10 dollars, whatever, just any number of
 11 dollars, as a result of this litigation,
 12 would it be paid first from a certain
 13 reserve -- any certain reserve fund?

14 A. Let me make two comments on that.
 15 First, reserves is an income/expense
 16 accounting mechanism and not a fund with
 17 money in it, cash. That comes out of,
 18 you know, our cash financing part of the
 19 organization. Second, environmental
 20 liabilities that are -- or litigation
 21 associated with environmental claims are
 22 typically not reserve. Our history has
 23 been very infrequent; they're difficult

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1 to predict. The products liability
2 reserve is based on historical
3 understanding of the numbers in cases
4 and cost of defense. And there's
5 actually a process for reserving that
6 issue. So the monies associated with
7 litigation around environmental issues
8 have typically in the past come out of
9 current income. That was the practice
10 in Monsanto. Obviously, we have not
11 had, you know, a case like this in
12 Solutia and have not set a practice on
13 that yet.

14 Q. Yes, sir. Just one more question on
15 that. I'm trying to understand. You
16 said it was an accounting -- income
17 accounting practice. In other words, by
18 setting aside forty-six million dollars
19 for estimates on environmental
20 liabilities, an additional forty-six
21 million, Solutia doesn't have to pay
22 income tax on that forty-six million
23 dollars, at least for the time being; is

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1 A. And we have -- a part of our program
2 also asks us to at least ask about our
3 customers as well.

4 Q. Okay. Well, I represent people who live
5 in the community. And of course that's
6 what I'm interested in, and that's the
7 reason we're having this deposition
8 today. Is it your job as vice president
9 of Environment Safety and Health to have
10 responsibility for the safety and health
11 of your neighbors outside the plant, in
12 the community?

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

15 A. I think the way to properly answer that
16 is that with respect to the Solutia
17 operations with respect to the
18 community, we need to be aware of and
19 concerned that our operations are not
20 adversely impacting the health or safety
21 of the community. Certainly the health
22 and safety of the community is a much
23 broader issue --

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1 that correct?

2 A. That is not correct.

3 Q. Okay.

4 A. That is another tax accounting procedure
5 -- you do not get a tax deduction for
6 any expenditure until the time that it's
7 actually spent.

8 Q. I see. But you're required to make some
9 estimate and set it aside in some --

10 A. In the current -- Yeah. With respect to
11 the current business.

12 Q. All right. That's enough of that.

13 You're the vice president of
14 Environment Safety and Health. Whose
15 safety and whose health?

16 A. The entire program, the way we view
17 that, we focus on the environment, the
18 safety, and the health of our employees,
19 certainly our workers, the people that
20 enter the site, work at the site. We
21 also are cognizant of our issues with
22 respect to our surrounding communities.

23 Q. Well -- Excuse me.

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1 Q. Of course. You're not responsible for
2 the tonsillectomies?

3 A. That's correct.

4 Q. But you are responsible for any chemical
5 that would escape from your -- excuse me
6 -- escape from your premises which may
7 cause harm or environmental damage. Is
8 that what you're saying?

9 A. We look at that particular question,
10 that's correct.

11 Q. Well, is that different from having
12 responsibility for it? I'm trying to
13 find out who in your company has
14 responsibility for safety and health
15 related to your company's products off
16 site.

17 A. Yeah. Well, that would be me. I guess
18 the point that I'm trying to define here
19 is that there are materials that may be
20 emitted from the site that are emitted
21 in conjunction with permits from the
22 state, the Federal government, that
23 basically design-describe allowable

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1 levels of releases that are viewed not
 2 to be harmful. So in that case, I would
 3 in my mind assume that, yes, we're
 4 responsible, but there is a level that
 5 has been determined is acceptable.

6 Q. Are you saying that if you manufacture
 7 some harmful chemical and it escapes
 8 from the site and it injures somebody,
 9 that you wouldn't have responsibility?
 10 When I say you, you know I mean your
 11 company, not you personally. That you
 12 wouldn't have responsibility if in fact
 13 you had a permit from the state allowing
 14 you to do that?

15 A. I don't know what responsibility means
 16 in the terms you're describing. And I
 17 suspect that's a fact based discussion,
 18 you know, someone else would determine.

19 Q. Mr. Pierle, the point I want to make is
 20 that yours is a very important executive
 21 position within the company. Because
 22 your company now and because -- just as
 23 Monsanto, your predecessor, for many

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1 A. Yes, it does.

2 Q. And for that reason, your company's
 3 primary first responsibility is the
 4 health and safety of people, both in the
 5 plant, your worker, as well as people in
 6 the community. Would you agree with
 7 that?

8 A. We believe so.

9 Q. Tell the jury the names of some of the
 10 hazardous substances that Monsanto has
 11 produced or used at its Anniston plant
 12 over the years.

13 A. I may not be able to give you a -- I
 14 don't understand fully the entire
 15 detailed history of that plant site.
 16 And the materials that we use there that
 17 either by our definition or government
 18 would be termed to be hazardous, they
 19 would include --

20 Q. I didn't ask for today, right now. I'll
 21 get to that in a moment. I don't mean
 22 to interrupt you. But I want to do it
 23 chronologically. Let's get the

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1 years has done, manufactured chemicals
 2 and substances which can pose a great
 3 threat to the environment and to the
 4 health and safety of people. So your
 5 position is very important, is it not?

6 A. I believe so.

7 Q. And that's what your company does for a
 8 living primarily; that's what Solutia
 9 now does for a living and what Monsanto
 10 in some substantial part did for a
 11 living prior to September 1, 1997; that
 12 is, to manufacture chemicals, some of
 13 which can be harmful, and to make a
 14 living -- make a profit doing it?

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

17 A. I think we make -- our intent all along
 18 has been to make chemicals that are safe
 19 for customers in intended use.

20 Q. That's right. But nevertheless, your
 21 company manufacturers and uses in the
 22 manufacture of other chemicals, certain
 23 hazardous substances, does it not?

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1 historical -- What have you done over
 2 the years? What did Monsanto do?

3 A. Well, we made polychlorinated
 4 biphenyls --

5 Q. PCBs?

6 A. -- at the site and manufactured those
 7 materials.

8 MR. PECK: I'm sorry. I'm not
 9 sure. Are you asking him --
 10 I thought I understood the
 11 question. Are you asking him
 12 whether or not there was --
 13 this substance was deemed
 14 hazardous when it was
 15 manufactured or in
 16 retrospect? Or what do you
 17 mean? Can you clarify?

18 MR. BARRETT: I don't have to.
 19 He's answering the question
 20 like I asked him. He's doing
 21 a good job.

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

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1 A. Yeah. Again, the materials that we have
2 made at the plant site -- and we need to
3 distinguish, again, between materials
4 that we made and materials that have
5 hazardous properties or materials that
6 are safe for use -- They're categories
7 here, that we're dealing with.

8 Q. But PCBs were one. What were some
9 others?

10 A. In terms of products that we made at the
11 plant site? I know that we made
12 polychlorinated biphenyls there. We
13 made parathion at that plant site. And
14 I think we currently make some biphenyl
15 materials. There are others, but as I
16 said, I'm not fully cognizant of the
17 product history at that plant site.

18 Q. And part of your job, as I understand
19 it, is to prevent or minimize the escape
20 of these hazardous substances from your
21 company's property?

22 A. I think the responsibility and role is
23 to make sure that we're in compliance

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1 that have left the plant property.
2 That's correct.

3 Q. Do you agree that companies such as
4 Solutia and Monsanto, until September of
5 '97, have chosen to be in this business
6 of manufacturing and using and selling
7 hazardous chemicals; that such companies
8 have a moral and ethical responsibility
9 to pay for the damages or any damages
10 caused by these substances when they do
11 escape from your company's premises --

12 A. Well, you used two --

13 Q. -- and cause damage?

14 A. Well, you used two terms there, "moral"
15 and "ethical." I think what you end up
16 with is do you have a legal
17 responsibility, which, you know, you'll
18 decide whether that's part of that
19 factor or not. I think, you know, what
20 we have done historically is to, you
21 know, operate in a responsible manner,
22 which has intended over the years to
23 include both -- certainly meeting the

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1 with rules and regulations with respect
2 to releases of materials and where there
3 may be additional requirements beyond
4 compliance, to do that as well.

5 Q. So I guess the answer to my question is
6 yes, that it is part of your job to
7 prevent or minimize the escape of these
8 substances from your company's property?

9 A. Yeah. I think what I'm trying to do is
10 give you a description of what I think
11 the role is.

12 Q. Over the years, Mr. Pierle, there have
13 been instances at your facilities -- and
14 I'm specifically talking about Anniston
15 and interested in Anniston, hazardous
16 substances have escaped into the plant
17 and into the public streams and on to
18 the properties of others. Is that not
19 so?

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

22 A. Again, I think we know today in the work
23 that we're doing that we have materials

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1 rules and regulations that the
2 government has issued and where we
3 believe additional measures are
4 appropriate, to undertake those as well.

5 Q. Do I understand you to say that you
6 believe that moral and ethical -- the
7 moral and ethical responsibility of your
8 company is determined solely by what
9 you're legally required to do?

10 A. I think you're into an area that seems
11 to me, morals and ethics, are to some
12 extent personal values. And people may
13 have different values around certain
14 things. And certainly we have had an
15 ethic within the company to be
16 responsible and to include a definition
17 of that beyond legal requirements where
18 it's appropriate.

19 Q. Okay. That was my only question. And
20 so I guess the answer, again, to my
21 question is yes, that you do agree that
22 companies such as Solutia and Monsanto
23 who have chosen to be in this business

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1 of handling these hazardous substances,
2 that they have certain moral and ethical
3 responsibilities to handle them in a
4 responsible way?

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

7 A. Yeah. I, you know -- I think I have
8 answered the question. But I think we
9 feel that we have acted in a responsible
10 fashion, you know, for years within
11 Monsanto and within Solutia on these
12 types of matters.

13 Q. Does Monsanto -- Did Monsanto until
14 September of '97 have ethical standards
15 that guided it --

16 A. What --

17 Q. -- or not?

18 A. We have -- In this particular area,
19 Environmental Health and Safety, we have
20 had a set of guidelines that we have
21 used for quite some time that describe
22 what we are required to do internally,
23 and those have been written and explicit

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1 in each case the individuals or the
2 collection of individuals would feel
3 they're operating responsibly and
4 ethically.

5 Q. Let's talk about personal beliefs, then.
6 When I was in kindergarten, I was taught
7 that, quote, if you mess it up, you
8 clean it up. Do you ever remember being
9 taught that lesson when you were a
10 child?

11 A. I don't recall that one specifically.

12 Q. Do you believe in the axiom that if a
13 person makes a mess, that that person
14 ought to clean it up?

15 A. I guess I believe in the axiom that, you
16 know, people ought to do the right
17 thing.

18 Q. That's a good one.

19 A. And again, that may have a different
20 definition, you know, person to person.
21 But that's sort of an axiom that I think
22 we have operated inside Monsanto, is
23 that you should always do the right

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1 for the organization. That has been our
2 expression of what our policies and
3 requirements are.

4 Q. Those ethical standards are not any
5 different for Monsanto than it would be
6 for an individual that owned a business,
7 that owned such a business. If I owned
8 a plant that manufactured hazardous
9 substances, I would have certain ethical
10 responsibilities, I assume you agree;
11 and do you agree that the fact that
12 Monsanto is a corporation, Solutia is a
13 corporation, that doesn't relieve them
14 of having the same ethical standards,
15 does it?

16 A. I think what I'm trying to say is that
17 as I sort of understand ethics, that in
18 large part they're formed by personal
19 beliefs, and therefore I could see that
20 an ethical behavior in this area from a
21 small company to a large company and a
22 different company within that spectrum
23 could produce different behaviors; yet

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1 thing. And I think that has helped
2 guide us broadly as well as in this
3 particular area.

4 Q. Okay. Do you believe that it's the
5 right thing for a chemical company, for
6 Monsanto, or any chemical company, to be
7 responsible for cleaning up chemicals it
8 discharges onto the property of others?

9 A. I think where we know that, you know, is
10 occurring or has happened, I think we
11 certainly need to understand the
12 presence of materials and whether they
13 are hazardous, whether they are harmful,
14 whether they can cause injury. And we
15 need to fully understand that
16 consequence and take appropriate action
17 where it is warranted.

18 Q. Okay. In other words, if it is
19 hazardous, you ought to clean it up, if
20 it's on someone else's property?

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

23 A. I think where it's hazardous to the

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1 environment or to health, I think that's
 2 what we are doing and have been doing
 3 for quite some time.
 4 Q. Because that's the right thing to do?
 5 A. I believe so.
 6 Q. If a chemical company causes damage to
 7 its neighbor, is the chemical company
 8 responsible for setting things right,
 9 for doing whatever is necessary to put
 10 his neighbor back to the position to
 11 where he was before the spill occurred
 12 or the discharge occurred?
 13 A. I don't know exactly what you mean by
 14 that question. Maybe you could help me
 15 out a little and expand on it.
 16 Q. Well, let me -- if a chemical company
 17 damages its neighbor, that is, by the
 18 discharge of hazardous substances, is
 19 the company responsible for doing
 20 whatever is necessary or paying whatever
 21 is necessary to put that neighbor back
 22 to where he was before the discharge
 23 occurred?

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1 maybe all his dogs get out and hurt
 2 somebody, should that dog owner pay for
 3 the damages?
 4 A. Yeah. I guess that might be complicated
 5 a bit by whether or not there was
 6 anything, you know, by the person that
 7 was injured that got into provocation or
 8 other --
 9 Q. Right, but assuming -- assuming no
 10 provocation. That's a good point.
 11 Assume there wasn't any provocation.
 12 Assume it's some little kid playing in a
 13 sandbox up the street. What would your
 14 answer be? Should the dog owner pay for
 15 the injuries and damages?
 16 A. If those were the only facts that are
 17 presented, I would think probably that's
 18 right.
 19 Q. Let's say that the owner of this kennel
 20 has several very dangerous dogs who had
 21 bitten people before and he knows how
 22 dangerous they are. I'm going to add a
 23 few facts for you. And his kennel is

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1 MR. PECK: Object to the form of
 2 the question.
 3 A. Without getting into semantics, I think,
 4 you know, the way we would want to look
 5 at that is that if we had caused some
 6 level of damage, we try to right that
 7 particular damage with that individual.
 8 Q. Okay. Thank you. Let me expand on it,
 9 as you said a moment ago, with an
 10 analogy. If a person chooses to raise
 11 -- let's say rottweilers or pit bulls on
 12 its property, some dangerous animal, do
 13 you agree that that person is
 14 responsible for making sure that these
 15 dangerous animals don't escape from his
 16 property and hurt somebody?
 17 A. Yeah. I would think that person would
 18 take proper care to see that that would
 19 not happen.
 20 Q. And he ought to?
 21 A. I would think so.
 22 Q. If it turns out that that man's fence is
 23 not very good, and one of his dogs or

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1 right in the middle of the residential
 2 neighborhood where there are generally
 3 many little children playing outside,
 4 especially on warm summer days. Let's
 5 say on one of those warm summer days one
 6 Saturday morning this owner of these
 7 very dangerous dogs goes outside and
 8 discovers -- probably to his horror, but
 9 he discovers that an entire pack of
 10 these very dangerous dogs has escaped
 11 from the pen; he looks around; he
 12 doesn't see the dogs, but he sees little
 13 children around the neighborhood playing
 14 outside, playing in sandboxes and
 15 swinging on swings; it's Saturday
 16 morning; he knows the parents are at
 17 home. What should that dog owner do,
 18 Mr. Pierle?
 19 A. Again, I think as you said, if he knows
 20 that these dogs are dangerous, that
 21 probably means they have had an attack
 22 or something before; I think he ought to
 23 find his dogs and at the same time he

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1 would probably have some conversations
 2 with the neighbors about the fact that
 3 the dogs are loose and he's about trying
 4 to round them up.
 5 Q. And why should he warn these parents?
 6 A. I think in this case, you know, there's
 7 a history that says there's a potential
 8 danger with these dogs. And he ought to
 9 so advise them of that.
 10 Q. Mr. Pierle, do you agree that common --
 11 in the example I have raised here, that
 12 common human decency would require this
 13 dog owner to warn those parents or
 14 anybody else in the neighborhood about
 15 this danger until the dogs can be
 16 recaptured that he has -- that common
 17 human decency requires him to warn these
 18 parents?
 19 A. I would think in that case, he would.
 20 Q. Okay. I want to take it one step
 21 further. Suppose this kennel owner
 22 lacks the common decency that -- and
 23 instead of rushing to warn these parents

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1 any other facts and why he didn't take
 2 some appropriate action.
 3 Q. Right. And unless you got an answer
 4 that satisfied you, you would want to
 5 punish him, wouldn't you? He should
 6 be --
 7 A. I probably would think hard about it.
 8 You bet.
 9 Q. Why is punishment appropriate? Why
 10 would you think hard about it, for the
 11 dog owner in this story? What are the
 12 purposes of punishment here?
 13 A. You know, I kind of go back that usually
 14 punishment is trying to change behavior
 15 of an individual.
 16 Q. To deter him from doing it again,
 17 perhaps? Is that one?
 18 A. Could be.
 19 Q. Is another purpose to deter others who
 20 might be inclined to do the same thing,
 21 to let them know that our society
 22 doesn't -- there are certain types of
 23 misconduct that society will not

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1 to protect their children from these
 2 dogs loose in the neighborhood, instead
 3 of that, he thinks if I tell people,
 4 these people are going to know that
 5 these dogs are mine. I better keep
 6 quiet to protect myself. So this man
 7 shrinks back into his house and doesn't
 8 tell anybody. And sure enough, these
 9 dogs maul and hurt several children. In
 10 addition to paying for the damages to
 11 the injured neighbors, should this man
 12 be punished for his conduct?
 13 A. It seems like he would take a more
 14 aggressive posture than that. I don't
 15 know to what extent additional
 16 requirements or damages would be, you
 17 know, appropriate for that individual or
 18 not.
 19 Q. If you were sitting on a jury, wouldn't
 20 you want to punish this man under the
 21 fact scenario that I have given you?
 22 Wouldn't you punish him?
 23 A. I would sure want to know if there were

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1 tolerate? Is that a proper purpose of
 2 punishment in a situation like this?
 3 A. You know, I think it basically is a
 4 process to sensitize the individual with
 5 respect to what a broader group may feel
 6 is appropriate behavior.
 7 Q. If a lawsuit were brought on behalf of
 8 one of the injured children seeking in
 9 addition to the medical expenses and the
 10 hospital costs and so forth -- but also
 11 seeking punishment damages, that is,
 12 punitive damages, against this dog owner
 13 who didn't warn his neighbors, do you
 14 agree under the fact situation that I
 15 laid out to you that this is a case
 16 where punitive damages ought to be
 17 awarded?
 18 A. Again, I don't know. Part of this is --
 19 You know, was the guy there at the
 20 house? Did he know they were out? How
 21 soon did he know they were out? It
 22 seems to me there are several other
 23 questions that someone would explore to

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1 understand that question.
 2 Q. Uh-huh (indicating yes).
 3 A. So I think it's difficult to say yes or
 4 no to your question.
 5 Q. Well, let me rehash. In the scenario
 6 that I gave you, he didn't have a very
 7 good fence, but he didn't turn the dog
 8 loose himself. He didn't know they were
 9 out until he went out that Saturday
 10 morning and saw that they were out. But
 11 what I described to you was he then
 12 elected not to warn these little
 13 children and not to warn their parents
 14 who were in the immediate vicinity and
 15 in danger from these escaped creatures.
 16 Now, that's what I'm asking you. But to
 17 protect himself, or what he thought was
 18 protecting himself, he went back in his
 19 house and kept his mouth shut. Now,
 20 that's what I'm asking you, your opinion
 21 as to whether or not is that misconduct
 22 deserving of punitive damages in your
 23 opinion?

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1 one of the dogs in -- excuse me --
 2 Monsanto's kennel.
 3 You mentioned PCBs as the first
 4 hazardous substance when I asked you to
 5 name some. Tell the jury what PCBs are,
 6 Mr. Pierle.
 7 A. Let me be clear, and as I do -- because
 8 we were having this discussion about
 9 whether they were products or hazardous
 10 materials or safe for intended use.
 11 PCBs were a category of materials that
 12 were used in a variety of commercial
 13 industrial uses. The material itself,
 14 as I remember, was basically inert. It
 15 was not unsafe or hazardous to handle
 16 from a physical standpoint as something
 17 like an acid or potentially a bleach or
 18 something might be.
 19 Q. In other words, it wasn't corrosive and
 20 it didn't blow up?
 21 A. Well, those are two things it didn't do.
 22 Q. Right. But there were other things that
 23 it did do, correct?

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1 A. Again, it would seem like -- and again,
 2 I don't know what you're talking
 3 punitive. It would seem like something
 4 beyond actual damage here or recovery
 5 would be appropriate based upon that
 6 behavior.
 7 Q. As a general proposition, Mr. Pierle, do
 8 you agree or disagree with the law in
 9 Alabama that allows a plaintiff to
 10 receive punitive damages over and above
 11 his actual compensatory damages when
 12 that defendant's conduct is grossly
 13 negligent or willful and malicious?
 14 MR. PECK: Object to the form of
 15 the question.
 16 A. Are you basically asking me do I agree
 17 that punitive damages as a factor or
 18 concept in some cases may be appropriate
 19 as a principle?
 20 Q. Yes. I am asking that.
 21 A. I don't disagree with that.
 22 Q. Let's get specific now and leave the
 23 analysis behind and talk about -- Well,

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1 A. Well, I think as I understand this, and
 2 certainly it's a historical
 3 understanding, PCBs were sold; they were
 4 safe for their intended use; they were
 5 useful in many systems, actually made
 6 some systems you know, safer for use.
 7 It became known at a point in time that
 8 they had some adverse environmental
 9 characteristics. And that information,
 10 as I understand it, began a whole
 11 process which then withdrew those
 12 materials from commerce in the United
 13 States.
 14 Q. PCBs don't occur naturally on this
 15 earth, do they?
 16 A. I don't know whether they do or not. I
 17 think in general -- I mean, we made a
 18 lot of PCBs, and we know that a lot of
 19 them were man-made. I don't know that
 20 everybody said they have or haven't
 21 occurred by some natural phenomenon. I
 22 have never heard that.
 23 Q. You have never heard that they occurred

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1 naturally?

2 A. Never heard that.

3 Q. To your knowledge all the PCBs are

4 man-made, as far as you know?

5 A. I think -- I stand on my answer; I have

6 never heard they occur naturally.

7 Q. As far as you know, God didn't make any

8 PCBs himself, did he?

9 A. Not to my knowledge.

10 Q. Tell the jury what company manufactured

11 all PCBs ever manufactured in the United

12 States, ever?

13 A. Well, as I understand, there was more

14 than one company in the United States

15 that made PCBs historically. Monsanto

16 made a lot of the PCBs, but my

17 recollection is there were other PCB

18 producers.

19 Q. What other PCB producers?

20 A. I don't know. I'd have to go back and

21 -- you know, and look for that. But

22 again, it's just a recollection that

23 there were others that made this

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1 I think there is a general consensus and

2 fact as to those hazardous

3 characteristics and properties. From a

4 handling and from human health

5 standpoint, I think they have not been

6 shown to be hazardous from that

7 standpoint.

8 Q. Are you telling this jury that PCBs are

9 not hazardous to human beings, that they

10 cause no detrimental health effects to

11 human beings?

12 A. In the work that we have done -- I think

13 the work that the experts that I have

14 talked to about this do not demonstrate

15 that PCBs are a human health hazard,

16 typically in the range of concentrations

17 and exposures that humans may be exposed

18 to.

19 Q. I see. So then there are no -- you say

20 typically. Are PCBs a substance which

21 are hazardous to human beings or not?

22 Can you answer that yes or no?

23 A. I think our view is that they are not.

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1 product.

2 Q. Do you agree -- It's our information

3 that Monsanto made them all. But that

4 may not be correct. Would you agree

5 that certainly Monsanto made the

6 overwhelming majority of the PCBs

7 produced in the United States?

8 MR. PECK: Object to the form of

9 the question, lack of

10 foundation.

11 A. I don't remember the numbers. I don't

12 ever remember seeing the numbers on how

13 much we made. Certainly Monsanto made a

14 large amount of PCBs, but I do not

15 recall the portions or the splits or who

16 the other producers may have been.

17 Q. And you certainly agree, do you not,

18 that PCBs are a hazardous substance?

19 MR. PECK: Object to the form of

20 the question, calls for a

21 legal conclusion.

22 A. I think what I tried to describe was

23 with respect to environmental properties

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1 Q. Now, the EPA says that they are,

2 correct?

3 MR. PECK: Object to the form.

4 Q. That they are hazardous, the Federal

5 government defines PCBs as a hazardous

6 substance?

7 MR. PECK: Object to the form of

8 the question.

9 A. Again, they are defined as a substance

10 under the Toxic Substance Control Act,

11 for example. But my recollection is

12 that PCB under the Resource Conservation

13 Act which defined hazardous materials,

14 it's not included under that act. So

15 the government definition of materials,

16 depending upon where they describe it,

17 may have different definitions, so I

18 can't give a flat answer to your

19 question.

20 Q. And you're saying, then, for regulatory

21 purposes PCBs are not treated as a

22 hazardous substance? And that's your

23 opinion and you're the vice president of

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Environment Safety and Health of
Solutia?

A. That's not what I said. I think I have tried to be fairly clear in my prior answer. There's general agreement and consensus that with respect to environmental threats of PCBs. And those are typically at well above detectable concentrations, that those are a concern and should be managed. I think the question I'm separating here is that with respect to human health and exposures that we do not believe that they cause adverse health consequences to humans.

Q. Okay. And are you saying -- leave aside your own personal -- We're going to get to that in a minute. You said we. I assume that means Monsanto's view, that was Monsanto's view prior to September of 1997?

A. That's correct.

Q. Leave aside those corporate views about

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And with respect to clean-up or cleanup requirements, the agency has levels and standards that they have set that basically do not require PCBs to the last molecule to be picked up. There are standards through different discharge permits, I believe, that set limits on PCBs. So your question was an absolute, that there are no allowable discharges and every molecule needs to be cleaned up in the United States. And that's what I was reacting to, that that is not my experience nor my understanding of requirements.

Q. All right. I want to talk about some of the physical characteristics of PCBs. Let's talk about some that are maybe noncontroversial that we can agree on first. Unlike most naturally reoccurring compounds, PCBs are stable and tend not to degrade or decompose or break apart when they're out in the environment. Is that not true?

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PCBs. PCBs are regulated; they are considered to be hazardous substances, are they not? In other words, they carry that label, and therefore the regulatory authorities with which your company and Monsanto have to deal, treat these materials, even if they were benign as corn flakes, as materials that if they get on somebody's property, they have got to be remediated; they cannot be allowed to run into the streams of this nation. Is that not true?

A. I don't believe that that's true.

Q. Okay. Are you aware that most standard form -- mortgage forms in the United States that banks use require property owners to guarantee that there are no PCBs on their property before they will -- can get a mortgage on the property? Did you know that?

A. I'm not aware of that.

Q. You're not?

A. Again, you asked a very broad question.

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A. As I understand it, depending upon the PCB molecule, there are different degrees of breakup that could happen from some breakup to some molecules where there's probably no breakup.

Q. Right. But overall, chemists give PCBs -- say that PCBs have a quality of persistence in the environment.

A. They tend to be stable. That's correct.

Q. And therefore, to the extent that PCBs are a problem to living creatures such as fish, it's going to remain a problem. Is that a fair statement?

A. Again, I think that depends on the question of levels and concentrations as to whether they are or not a problem.

Q. I understand. But assuming that they are in levels that even you would agree cause problems to living creatures, the fact that they are persistent in the environment complicates and makes the problem worse, does it not?

A. It could. It depends. The other factor

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1 is whether they're available in the
2 environment.
3 Q. Right. Of course.
4 A. And of course that's a factor that is
5 important for consideration.
6 Q. Another property or characteristics of
7 PCBs is that they tend to
8 bio-accumulate. Is that not true?
9 A. I believe that's the correct term, yes.
10 Q. Explain to the jury what
11 bio-accumulation is.
12 A. Again, I'm not the expert on this. So
13 I'll -- You know, you probably want to
14 talk to an expert that would understand
15 this better. In general,
16 bio-accumulation, I think, is a process
17 whereby materials may collect in the
18 tissue of animals and may have the
19 propensity to concentrate if there's
20 additional accumulation. So that's the
21 biological accumulation that makes up
22 the term.
23 Q. It has -- PCBs have a tendency to build

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1 A. I think that's possible.
2 Q. Well, it's probable, is it not?
3 A. Well, it may be. I guess I was reacting
4 to, you know, whether it always happens
5 or not. But I think certainly that's
6 possible and probable.
7 Q. So every time a person takes PCBs into
8 his body through eating, breathing dust
9 that's contaminated with PCBs, whatever,
10 that adds to the PCBs or tends to add to
11 the PCBs that are already in his body,
12 thus, building up the level? Is that
13 not true? And is that not what we mean
14 by bio-accumulation in man?
15 A. Again, I guess the differentiation I
16 make here is that you're getting it
17 ingested into the system such that it
18 can get into the fat which would cause
19 it to bio-accumulate. You used the term
20 breathing, or dust. Something like that
21 might be filtered out into the nose or
22 into the system and expelled. So I
23 mean, you broadened the root that says

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1 up in living creatures, is that --
2 A. They can, yeah. If I understand it.
3 Q. That's right. I understand that they
4 are what's called lipophilic, that is,
5 they love fat. They have a tendency to
6 attach themselves to fat molecules in
7 living creatures. Do you understand
8 that?
9 A. I think that's correct.
10 Q. And so they attach themselves to a --
11 the fat molecules in a little fish, and
12 that little fish gets eaten by a bigger
13 fish who eats a lot of little fish that
14 have accumulation of PCBs. And all --
15 it accumulates in the body of that
16 larger fish; is that right?
17 A. I believe in the tissue of it, correct.
18 Q. And has a tendency to stay there?
19 A. That's correct.
20 Q. And then if a fisherman, a human being
21 eats that fish, it's going to -- those
22 PCBs are going to bio-accumulate in his
23 body as well?

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1 every molecule that gets to the body
2 goes in. For example, I don't know that
3 it goes through the skin. I'm just not
4 an expert on that.
5 Q. Right. Well, we'll talk about that in a
6 moment. And I'll show you some Monsanto
7 documents that speak to that.
8 MR. BARRETT: You want to take a
9 break.
10 MR. PECK: Sure.
11 [A break was taken.]
12 Q. (By Mr. Barrett) Mr. Pierle, before the
13 break we were talking about the
14 properties of PCBs. Is it a fact that
15 both Monsanto and Solutia have known for
16 many years that PCBs are persistent in
17 the environment and that they
18 bio-accumulate, that they build up in
19 the body of living creatures? Is that a
20 fair statement? That Monsanto and
21 Solutia have known, that these are
22 characteristics, and your company has
23 known it?

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- 1 A. We do know that. We have known it for a
2 while. I don't know when that
3 information first became available.
- 4 Q. And Monsanto has known, at least since
5 1950, that these PCBs are a hazard to
6 human health. Is that true or false?
- 7 A. I'm not aware of that fact.
- 8 Q. I'm going to hand you Exhibit One, which
9 is an exhibit we received from Monsanto,
10 a document we received from Monsanto.
11 In looking over it, it doesn't have a
12 date on it. We know -- and you'll have
13 to assume with me that this bears a date
14 of 1950. And we'll have to prove that
15 otherwise. But assume with me for
16 purposes of these questions that it's
17 1950. Look -- What's the title of this?
- 18 A. The heading at the top of this page says
19 "The handling of Aroclors (Chlorinated
20 Diphenyl)".
- 21 Q. Aroclors are Monsanto's trade name for
22 its PCBs; is that correct?
- 23 A. I believe that's correct.

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- 1 into evidence. You are welcome to look
2 at them, and you're welcome to read them
3 before we have -- I have highlighted the
4 parts that are relevant to this
5 deposition, that we think are relevant.
6 Obviously, if you want to talk about any
7 others, you can. You can do it later.
8 If we were foolish enough to try to make
9 something say that it wouldn't -- you
10 know, it'll blow up on us later, and
11 you'll have plenty of opportunity to
12 come back, or others on your behalf, can
13 come back and show us that we
14 misrepresented something. I'm not
15 telling you or your lawyer how to do it.
16 I'm just -- I'm trying to do this so we
17 can get through it today.
- 18 A. I'll wait for your questions and see.
- 19 Q. That's fair enough.
- 20 MR. BECK: Of course, as he's
21 saying, if you feel you
22 needed to look at the
23 document --

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- 1 Q. Look at the last paragraph. And you
2 tell me if I'm reading this correctly
3 from this 1950 Monsanto document,
4 "Personal cleanliness is of utmost
5 importance. Work clothes should be
6 changed daily and must not be worn away
7 from the plant. Before changing to
8 street clothes at the end of the day,
9 the workmen should bathe with plenty of
10 soap and warm water. Neglect of these
11 simple precautions may result in skin
12 infections, ill health, discomfort,
13 inefficiency, and loss of time." Did I
14 read that correctly?
- 15 A. You did.
- 16 Q. We'll go on through these documents
17 pretty quickly. I'm going to hand you
18 next Exhibit Number Two.
- 19 A. You want me to read the rest of it?
- 20 Q. It's not relevant. Let me say, on any
21 of these documents -- so we can get
22 through this deposition today, these
23 documents are going to be introduced

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- 1 MR. BARRETT: Absolutely. No
2 question about that. I'm
3 just trying to be practical.
- 4 Q. (By Mr. Barrett) The second document I
5 want you to look at is Plaintiff's
6 Exhibit Two. And I'm going to ask you
7 in conjunction with this document to
8 tell us whether or not Monsanto has
9 known at least since 1956 that
10 chlorinated phenols can cause skin
11 eruptions, plus other symptoms -- or at
12 least there was evidence of that
13 accumulating in the workplace, even back
14 as far as 1953.
- 15 A. I may want to -- You want me to go ahead
16 and just look at this real quickly, if I
17 can?
- 18 Q. Yes, sir.
- 19 Have you now read this document,
20 Plaintiff's Exhibit Two?
- 21 A. I have reviewed it, yes.
- 22 Q. Who -- Is this a Monsanto document?
- 23 A. Yes. From Dr. Emmet Kelly, Monsanto

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1 Chemical Company.
 2 Q. Who is Dr. Emmet Kelly?
 3 A. I believe Dr. Kelly was the head of the
 4 medical department for Monsanto back at
 5 the time this was written in the
 6 mid-fifties.
 7 Q. And this is a report to Dr. Kelly about
 8 a problem that had occurred in a plant
 9 -- I believe in Germany where some
 10 workers were injured. Is that not
 11 correct?
 12 A. It appears that's the case. They -- I
 13 guess specific, looks like some cases of
 14 chloracne developed.
 15 Q. Right. And see if I'm not reading this
 16 correctly. There was -- in the second
 17 paragraph says the photographs of the
 18 worst -- can't pronounce that German
 19 word?
 20 A. Badische.
 21 Q. That's the name of a plant or town in
 22 Germany; is that right?
 23 A. It's probably the name of a company.

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1 Q. Yes, sir.
 2 A. Yes.
 3 Q. It says that about ten days following
 4 the incident and after the initial
 5 clean-up, they put rabbits in open wire
 6 cages in that operating area where there
 7 had been a spill and left them there for
 8 twenty-four to forty-eight hours. Is
 9 that true? Is that what it says?
 10 A. Yes.
 11 Q. And said that there were no obvious
 12 symptoms in the animals for a week.
 13 Then the animals all died. Is that not
 14 true?
 15 A. Yes.
 16 Q. And they autopsied them and showed liver
 17 necrosis?
 18 A. Liver failure.
 19 Q. The liver tissue had died; is that
 20 correct?
 21 A. That's my sort of common understanding
 22 of that term.
 23 Q. Now, Dr. Oettel, who was performing this

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1 Q. Okay. "Cases show horrible skin
 2 eruptions with nearly blister-like welts
 3 and some ulcerations where infection
 4 ensued." Did I read that correctly?
 5 A. Yes.
 6 Q. And look down to the last sentence in
 7 that paragraph. "In addition to the
 8 skin manifestations, their men reported
 9 all the additional symptoms as
 10 experiences in our workers, i.e.,
 11 fatigue, vertigo, loss of libido,
 12 painful joints," and so forth. Did I
 13 read that correctly?
 14 A. Yes.
 15 Q. Loss of libido, that's loss of sexual
 16 drive, is it not?
 17 A. I believe so.
 18 Q. The next paragraph concerns apparent
 19 testing that showed that there was liver
 20 damage resulting -- not in the workers
 21 but in these test animals at that place.
 22 Is that not true?
 23 A. This is in the third paragraph?

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1 experiment, thought there might be virus
 2 infection or some other cause of deaths
 3 until he exposed additional animals in
 4 that department, others in cages
 5 suspended inside had, quote,
 6 decontaminated autoclave, and some in
 7 the adjacent department, and every one
 8 of them died within one to two weeks
 9 following exposure, did they not?
 10 A. That's what the report says.
 11 Q. And then not only that, but animals that
 12 were placed in the cages which had
 13 previously been in the department, they
 14 died of liver necrosis as well, did they
 15 not?
 16 A. That's what's written down.
 17 Q. And Monsanto knew this as of June 12,
 18 1956?
 19 A. With respect to this incident, that's
 20 correct.
 21 Q. Yes. And this incident is pretty
 22 powerful evidence that something is
 23 wrong with -- that there may be some

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1 real health problems here related to
2 this product, this line of products. Is
3 that not so?

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

6 Q. Wouldn't you agree with that?

7 A. I think what was described, as I
8 understand this memo in the first
9 paragraph, was some sort of a process
10 operation upset which reached control
11 pressures and temperatures similar to
12 what had happened at a Monsanto facility
13 and with the trichlorophenol product. So
14 my sense is this is not about the
15 product that is normally produced, but
16 this is about an event that happened at
17 this plant site and following that
18 incident where there must have been
19 overpressurization or explosion or
20 something. They had some adverse
21 consequences to the workers exposed and
22 put test animals into that atmosphere
23 again and had the adverse consequences

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1 product?

2 A. No. I think what this memo really
3 suggests is that -- as what would be
4 appropriate, if you had a similar
5 incident, you may expect these kinds of
6 consequences. But that doesn't speak to
7 the everyday production or the safety of
8 the product.

9 Q. Okay. Now, what are Montars?

10 A. Are you reading from --

11 Q. I'm deciding whether to use this exhibit
12 or not. I'm looking at an Exhibit Three
13 which is a Monsanto Chemical Company
14 memo dated 1957, talking about the
15 toxicity of Montars, M-O-N-T-A-R-S.

16 A. I'm not really certain as to what that
17 term applies to.

18 Q. Okay. Said in the reference memo
19 Dr. Kelly -- That's Emmet Kelly, your
20 health director, right?

21 A. I would assume it is.

22 Q. "Advised that he had no laboratory
23 toxicological data on the Montars but

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1 that you described to the test animals.

2 Q. And are you telling this jury that this
3 information is not evidence that should
4 have alerted Monsanto that there may be
5 health consequences to its chlorinated
6 phenol product, including PCBs?

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

10 A. I would say not. I think what this memo
11 basically says is that -- It describes a
12 specific incident. And it talks about
13 clean-up being carried out. So clearly
14 there was something that was nontypical
15 here with respect to this operation.
16 And under those conditions there were
17 adverse consequences. I don't think
18 this speaks to the trichlorophenol
19 product itself under normal
20 manufacturing operation.

21 Q. Okay. So Monsanto had no reason to
22 suspect anything because of this
23 incident, anything bad about its

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1 felt certain they could cause chloracne
2 similar to the chlorinated naphthalenes
3 and diphenyls, and, secondly, that they
4 could cause liver trouble by inhalation
5 of the fumes liberated at elevated
6 temperatures."

7 But you don't know whether Montars
8 are chemically similar to PCBs, do you?

9 A. I don't.

10 MR. BARRETT: Off the record.

11 [Discussion held off the
12 record.]

13 Q. (By Mr. Barrett) Mr. Pierle, do you
14 know -- We were talking about Exhibit
15 Three. Do you know what Montars are?

16 A. I do not know specifically what they
17 are. I haven't read past the first
18 paragraph.

19 Q. If it turns out that they are similar to
20 or have similar properties of PCBs, this
21 would be evidence that PCBs could cause
22 liver trouble by inhalation of the
23 fumes. Is that a fair statement?

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1 MR. PECK: Object to the form of
2 the question.
3 A. I think that's pretty broad. I couldn't
4 answer that.
5 Q. Okay. Now, would you hand Mr. Pierle
6 Exhibit Four?
7 I hand you a copy of a letter
8 written -- we obtained from Monsanto
9 that was written to apparently a
10 Mr. Buchanan in St. Louis with copied to
11 Mr. Emmet Kelly in St. Louis and others,
12 dated December 1, 1956. Do you see
13 that?
14 A. That looks right. I mean, my copy's
15 almost ill -- or not readable.
16 Q. Well, we do the best we can with these
17 old copies we're given. You can read
18 that.
19 A. I just can't tell if that's '56 or '66.
20 It's all blacked across on my copy.
21 Q. I see. But it attaches, does it not --
22 that's just an enclosure letter or it is
23 an enclosure letter, and it attaches a

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1 A. That's the highlighted sentence. That's
2 correct.
3 Q. And then it goes down and talks about a
4 Swedish article which talks about how
5 very widespread that PCBs had become.
6 MR. PECK: John, let me just
7 state, I don't want to object
8 in the middle of your
9 question constantly to these
10 documents. Obviously,
11 Mr. Pierle can't authenticate
12 the document.
13 MR. BARRETT: Not asking him to.
14 MR. PECK: Never seen it before.
15 I know. If you could, just
16 kind of give me a standing
17 objection as to that issue,
18 standing objection as to form
19 as to that issue.
20 MR. BARRETT: Fair enough. We
21 don't -- We got these
22 documents from you. They
23 will be authenticated.

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1 letter to Monsanto Europe in Brussels,
2 Belgium in which it discusses Aroclors,
3 that is PCBs manufactured by Monsanto,
4 does it not?
5 A. Looks like a letter from Rising &
6 Strand, or something, to Mr. D. Wood,
7 looks like David Wood.
8 Q. Yes.
9 A. And I can't read the date on that. I
10 mean, I'm assuming these are attached
11 together, but I don't know that for
12 certain.
13 Q. Well, that's the way we got them, and
14 they're in sequential order, and one
15 refers to the other. But we're going to
16 assume that. And I want you to look at
17 that letter. We're talking now about
18 what Monsanto knew about PCBs and what
19 it knows and when it learned these
20 things. Okay. In the first paragraph
21 it says that PCBs accumulate -- or
22 accumulated in certain organs of
23 animals; is that right? It says that?

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1 MR. PECK: In some cases not.
2 MR. BARRETT: Right. We got these
3 from you. And we will agree
4 that you have a standing
5 objection to that. We intend
6 to authenticate them in other
7 ways. There's some that he
8 wrote that we'll authenticate
9 with him.
10 MR. PECK: And just a standing
11 objection as to -- I don't
12 know whether the judge will
13 allow it or not, but you're
14 questioning him about a
15 document he knows nothing
16 about.
17 MR. BARRETT: Okay. Right.
18 MR. PECK: I don't want to have to
19 keep objecting. I don't want
20 to be deemed to have waived
21 that should --
22 MR. BARRETT: No question. And
23 we'll say here, again, to

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1 expedite this deposition,
2 that you have not waived any
3 objection. You can take
4 anything to Judge Laird and
5 we will not and cannot say
6 now because I'm saying we
7 can't say, well, you waived
8 that; you should have brought
9 it up earlier.

MR. PECK: Fair enough.

11 Q. (By Mr. Barrett) Mr. Pierle, I'm asking
12 you about these documents because you
13 have told me that Monsanto believes that
14 PCBs are not hazardous to humans. And
15 I'm showing you documents that I think
16 will make you realize that that's an
17 incorrect statement. I hope it will.
18 And that's the purpose of these
19 documents. And they are Monsanto
20 documents. So that's what I'm going
21 through here.

22 At any rate, it refers to PCBs
23 "Polychlorinated Biphenols," (sic per X)

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1 PCBs we're talking about here.
2 Q. You think this is talking about some
3 PCBs that are not manufactured by --
4 that were not manufactured by Monsanto?
5 A. I'm saying it's referring to throughout
6 this as biphenols. And my understanding
7 of chemistry, and obviously it's not
8 complete, but that's different than a
9 biphenyl.
10 Q. I'm not sure about your spelling, but
11 that's okay. Look over on the last page
12 of this letter. PCB -- I've highlighted
13 it there. "PCB is equally harmful
14 whether absorbed via the skin, through
15 the food, or by inhalation."
16 A. You're on page three?
17 Q. Yes. Does it say that? I'll read it
18 again. "PCB is equally harmful, whether
19 absorbed via the skin, through the food,
20 or by inhalation."
21 A. That's what it says.
22 Q. You said earlier that you didn't know if
23 it could be absorbed through the skin.

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1 in the second paragraph of the Swedish
2 report, as a group of poisons,
3 "Polychlorinated Biphenols (for short,
4 PCB) which are closely related to, and
5 equally poisonous as, DDT."

Did I read that correctly?

7 A. That's what it says.
8 Q. And this was a document, was it not,
9 that was mailed to Monsanto in Europe;
10 is that correct? On whatever day it was
11 mailed?

12 A. It appears to have been.

13 Q. And I'll read the next sentence, "PCB is
14 broken down considerably slower than DDT
15 and gives rise to damage of liver and
16 skin."

Did I read that correctly?

17 A. That's what it says. I would insert
18 this is referring to polychlorinated
19 biphenols. And, you know, I don't know
20 whether biphenols -- I know they're not
21 the same as biphenyls, so I don't know
22 whether we're talking about -- which
23

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1 This apparently back in -- forty years
2 ago, apparently, or more, Monsanto knew
3 that it could be absorbed through the
4 skin? Is that not so?
5 A. I think that is what this says. I don't
6 know what they did with the information
7 and what other information has been
8 around to either confirm or conflict
9 with this.
10 Q. And maybe this answers your question.
11 You raised the question about the
12 spelling. Maybe it's a different
13 chemical. Read the last sentence of the
14 -- first sentence of the last big
15 paragraph on that page. Let me read it,
16 and you tell me if I'm reading it
17 correctly. It's not highlighted. "I
18 suppose there is no doubt that what has
19 been termed Polychlorinated Biphenyls is
20 equal to Aroclor." Did I read that
21 correctly?
22 A. It is. I guess I'm curious as to why
23 they're using a different --

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1 Q. Spelling?
 2 A. -- spelling compound. And indeed those
 3 could be two different materials.
 4 Q. Right.
 5 A. I would assume this person was smart
 6 enough to understand the difference
 7 between the two.
 8 Q. Yeah. Okay. But he apparently thinks
 9 that what he's talking about here being
 10 harmful is the same thing that's
 11 manufactured right there in Anniston,
 12 Alabama; is that right?
 13 A. I'd have to read the letter a lot more
 14 thoroughly to come to that conclusion.
 15 Q. Well, okay. If you read the letter
 16 after this deposition and think that
 17 what I have said is not so and that that
 18 conclusion is wrong, there's an addendum
 19 where you can make changes and additions
 20 if you want to. And I invite you to do
 21 that.
 22 MR. BECK: I don't know that we
 23 have -- I would assume he did

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1 customer, or potential customer of
 2 Monsanto, that they were buying PCBs
 3 from Monsanto at the time and they were
 4 discussing the labeling of this
 5 material. Is that not so? Take a
 6 moment and look at that letter and see
 7 if I'm not correct.
 8 [Discussion held off the
 9 record.]
 10 MR. BARRETT: Back on the record.
 11 Q. Have you read that --
 12 A. Could I go through it again because I
 13 had --
 14 Q. Yes.
 15 MR. BARRETT: Go back off the
 16 record.
 17 [Discussion held off the
 18 record.]
 19 Q. (By Mr. Barrett) Now, you have had a
 20 chance to look at this December 5, 1958
 21 letter from Monsanto to Westinghouse.
 22 And let me ask you some basic questions
 23 about it. First of all, it's reference

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1 not waive signature. I don't
 2 know that we had decided not
 3 to waive signature. If you
 4 would like him to read the
 5 letter, he can. I think that
 6 might pose an undue
 7 obligation on him to clarify
 8 your question.
 9 Q. (By Mr. Barrett) Now, let's look at a
 10 letter, this Exhibit Five, a letter that
 11 Monsanto wrote to Westinghouse. What
 12 was the relationship -- This is 19 --
 13 It's dated December 5, 1958, is it not?
 14 A. Yes.
 15 Q. Now, what was the relationship between
 16 Westinghouse and Monsanto in December of
 17 1958?
 18 A. I'm not certain. I know that
 19 subsequently they were a customer, but
 20 at this time, you know, I'm just not
 21 sure.
 22 Q. Well, the letter itself indicates fairly
 23 clearly that Westinghouse was a

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1 to Pydraul labeling. Pydraul is a brand
 2 name of a PCB product made by Monsanto,
 3 is it not?
 4 A. I'm familiar with the Pydraul name, but
 5 I'm not familiar with it's formulation
 6 or what was in it.
 7 Q. Well, assume for this question that it's
 8 PCBs, and we'll prove that by other
 9 means. It is in fact a brand name of
 10 PCB used in compressors and other
 11 industrial equipment. But this letter
 12 concerns how to label this product, does
 13 it not?
 14 A. Yes.
 15 Q. And there's been a request made that a
 16 fairly elaborate caution label be put on
 17 this material when it's resold to other
 18 people. Somebody else outside the --
 19 either Westinghouse or Monsanto made
 20 that request. Is that not so?
 21 A. I mean, the way I look at this letter,
 22 Westinghouse received a copy and is not
 23 involved in the letter itself at all.

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1 It looks like an internal memorandum
 2 that somebody from Monsanto, D. F.
 3 Smith, wrote to another person at
 4 Monsanto, R. D. Minter, or something
 5 like that.

6 Q. Okay. Okay. But let's go to the
 7 content of the letter. Look at the last
 8 sentence on that first page. Monsanto
 9 says, "It is our desire to comply with
 10 the necessary regulations, but to comply
 11 with the minimum and not to give any
 12 unnecessary information which could very
 13 well damage our sales position in the
 14 synthetic hydraulic fluid field." Did I
 15 read that correctly?

16 A. That's what it says.

17 Q. Do you agree that Monsanto here is --
 18 seems to be more interested in sales of
 19 its product than it is in public safety?

20 A. I don't read that that sentence says
 21 there's a contest between those. I
 22 mean, I think as you go on, it basically
 23 says that he wants to do what what's

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1 which could very well damage our sales
 2 position. Is that not so?

3 A. I think that's what it says.

4 Q. By 1965 Monsanto knew that PCBs could
 5 kill human beings with liver and kidney
 6 damage, is that not true?

7 A. I don't know that for a fact.

8 Q. Well, now, you testified earlier that
 9 your recollection was or your current
 10 belief is that Monsanto understands that
 11 there are some environmental problems
 12 maybe with PCBs, but there's certainly
 13 no human health effects. Didn't you
 14 testify to that earlier?

15 A. Yes.

16 Q. All right. Now, I'm showing you a
 17 letter, Exhibit Six, from Monsanto's
 18 files dated September 3, 1965. And this
 19 is a letter, is it not, or a report,
 20 from a man named Elmer P. Wheeler, to a
 21 Richard Davis in Monsanto; is that
 22 right?

23 A. Yes.

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1 necessary from a labeling viewpoint and
 2 a legal side and maintain our excellent
 3 position in this field. So it looks to
 4 me like the request here is, you know, I
 5 need to be both; I need to be successful
 6 in the marketplace, and I need to do
 7 what's appropriate from a labeling and a
 8 requirement standpoint.

9 Q. Right. And they were afraid if they put
 10 a strong label on this product that it
 11 wouldn't be successful in the
 12 marketplace, to use your word. Is that
 13 not so, that it would hurt its sales?

14 A. I mean, I think that there's a caution
 15 there that the person is raising, and I
 16 want to construct the correct balance
 17 between labeling and its accuracy and
 18 what -- you know, what we do in the
 19 marketplace in order to be successful.

20 Q. And to be successful in the marketplace,
 21 Monsanto here wanted to put the very
 22 minimum, to use Monsanto's words, and
 23 not to give any unnecessary information

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1 Q. Who is Elmer P. Wheeler?

2 A. I do remember Elmer. He was in the
 3 medical department, I believe, when I
 4 started working for the company.

5 Q. So Mr. Wheeler in the medical department
 6 is writing to Richard Davis. Who is
 7 Richard Davis?

8 A. I do not know Richard Davis.

9 Q. But -- okay. But it says St. Louis
 10 general offices. Would Richard Davis
 11 have been in the general offices, or was
 12 that -- Mr. Wheeler himself was in the
 13 general offices?

14 A. Typically, you know, the heading on that
 15 is -- that's who the letter is from and
 16 where the letter is from. And I know
 17 Elmer was at the St. Louis general
 18 offices.

19 Q. But he's talking about a telephone call
 20 that he had gotten from a customer -- a
 21 Mr. Haredos, H-A-R-E-D-O-S, who
 22 apparently was at Reliance Electric and
 23 Engineering Company in Cleveland, Ohio.

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1 Is that not so?

2 A. I assume so.

3 Q. Let me see if it's not self-explanatory.

4 Let me read the first sentence to you.

5 "As I told you on the telephone,

6 Mr. Haredos called me earlier this week

7 quite disturbed as a result of my letter

8 of August 27th. This letter apparently

9 alerted him somewhat to the potential

10 toxic hazards of Aroclor 1242 at

11 elevated temperatures. He told me that

12 the Monsanto literature furnished him

13 had been more reassuring in terms of

14 what problems might arise in their

15 application." Did I read that

16 correctly?

17 A. Yes.

18 Q. Now, the first sentence of the second

19 paragraph says, "For the record,

20 Mr. Haredos' application involves the

21 use of Aroclor 1242 as a coolant in

22 electric motors." And does it say down

23 at the bottom that Mr. Haredos went on

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1 substance called Dioxin. Is that true?

2 A. Again, I'm not certain of that. No.

3 Q. Do you believe it to be true, from your

4 reading of the literature and your

5 responsibility as the vice president for

6 the environment and health and safety?

7 A. Listen, the PCB business -- they were

8 out of business long before I got

9 involved in this in my career. I don't

10 recollect that -- you know, a lot of

11 conversations about PCBs being

12 contaminated with Dioxin.

13 Q. Okay. Are you aware that as early as

14 1965 that your medical director,

15 Dr. Kelly, Dr. Emmet Kelly, knew that

16 Dioxin could be a potent carcinogen?

17 A. In humans or animals or --

18 Q. Well --

19 A. I mean, my recollection is --

20 Q. Living creatures?

21 A. -- we have known for some time that in

22 tests certain of the isomers of Dioxin

23 are harmful to animals. I think there's

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1 to say that in his own plant hot Aroclor

2 spills on the floor were common and that

3 his own employees had complained of

4 discomfort." Did I read that correctly?

5 A. Yes.

6 Q. Now, I want you to read to the jury the

7 next sentence, if you would read it

8 slowly and clearly where the jury can

9 hear this.

10 A. "I was brutally frank and told him that

11 this had to stop before he killed

12 somebody with liver or kidney damage --

13 not because of single exposure

14 necessarily but only due to emphasize

15 that 8-hour daily exposures of this type

16 would be completely unsafe."

17 Q. Thank you. Now, on the same year

18 Monsanto knew that -- Skip this. Stop

19 that just a moment.

20 [Discussion held off the

21 record.]

22 Q. (By Mr. Barrett) Mr. Pierle, PCBs are

23 contaminated with another hazardous

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1 been a much longer debate about the

2 human health effects of Dioxin that has

3 continued on for several years even to

4 today.

5 Q. So what you're saying is that while you

6 acknowledge that Dioxin has been shown

7 to cause cancer in laboratory animals,

8 Monsanto and you do not accept that that

9 might indicate that it likewise could

10 cause cancer in a human being?

11 A. In and of itself, I don't think that's a

12 given. And there's also in all of this

13 always the question of dose and

14 response, which is always an issue

15 relative to anything that has a toxic or

16 hazardous property.

17 Q. Well, that's right. But that's a

18 separate issue. We're not talking about

19 that right now. We're talking about at

20 some level Dioxin is a potent

21 carcinogen, that is, it causes cancer,

22 in laboratory animals. Is that your

23 understanding?

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1 A. Yeah. In some laboratory animals.
 2 Again, I'm not an expert. But I'm just
 3 sort of recalling what I understand
 4 about the whole Dioxin discussion and
 5 debate that's been ongoing for years.
 6 Q. Right. And for that reason as well as
 7 the totality of other evidence,
 8 scientists consider and classify Dioxin
 9 as a human carcinogen as well, do they
 10 not?
 11 A. I'm not --
 12 Q. You don't know that?
 13 A. I'm not familiar with the exact
 14 classification.
 15 Q. What about PCBs? Are you aware that PCB
 16 is classified as a probable human
 17 carcinogen, that is, that it probably
 18 causes cancer in human beings?
 19 A. Again, there is a classification.
 20 There's differences between possible,
 21 probable, and all of that.
 22 Q. I know.
 23 A. And I'm just not an expert on that. I

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1 human health is a particular human
 2 health issue.
 3 Q. Okay. I want to ask you to look at the
 4 next -- go back to Exhibit Three, if you
 5 don't mind.
 6 A. Is this what you're looking at or are
 7 you looking at something else? Looks
 8 like you're looking at something else.
 9 MR. BARRETT: Let's go off the
 10 record.
 11 [Discussion held off the
 12 record.]
 13 Q. (By Mr. Barrett) Mr. Pierle, I'm going
 14 to hand you a document; we have called
 15 it exhibit -- Plaintiff's Exhibit Number
 16 Eight. What's the title of this
 17 document?
 18 A. It's titled "Process for Production of
 19 Aroclors" -- looks like "Pyranols, Etc."
 20 at the Anniston and the W. -- or the
 21 William G. Krummrich plant, dated April
 22 1955, E. Mather.
 23 Q. Do you know who E. Mather is?

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1 don't know.
 2 Q. You don't think it's your responsibility
 3 to know that and you're responsible
 4 overall -- you're the man for the
 5 environment for safety and health in
 6 your company? Who should know it if you
 7 don't know it in your company?
 8 A. I think the toxicology experts and the
 9 people that we rely on in the medical
 10 department would know the phraseology
 11 and the specifics of whether it's
 12 classified by some agency or some group
 13 in a particular fashion. I think what I
 14 have referred to is that I have
 15 exercised my responsibilities and were
 16 asked the question about -- you know, in
 17 the particular situations that we have
 18 with the dose and what we know about it,
 19 do we think we're presenting a hazard to
 20 human health, the answer that we have
 21 continually attested and concluded on is
 22 that no, we do not see that PCBs in the
 23 concentrations that we see and expose to

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1 A. I do not.
 2 Q. But you know what the Krummrich plant
 3 is, don't you?
 4 A. Yes.
 5 Q. That's one of Monsanto's plant?
 6 A. It is.
 7 Q. And the Anniston plant is another one of
 8 them, right?
 9 A. Yes.
 10 Q. Does this appear to be a Monsanto
 11 document to you?
 12 A. Yes.
 13 Q. Are you familiar with any of the persons
 14 named on the distribution list?
 15 A. Only one.
 16 Q. Which one?
 17 A. D. B. Hosmer.
 18 Q. In Anniston?
 19 A. Yes.
 20 Q. Who was D. B. Hosmer in Anniston?
 21 A. I don't know what he did in Anniston. I
 22 worked for Mr. Hosmer in the mid-1970s
 23 in St. Louis.

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1 Q. He was a Monsanto employee?

2 A. Right.

3 Q. And he got a copy of this. All right.

4 I want you to -- What's the date of it

5 again, 19 what?

6 A. Looks like it's April 1955.

7 Q. Okay.

8 A. Although it says the distribution list

9 is amendment July 19, 1956.

10 Q. Right. Look over on the fourth page of

11 this document under the title "Hazards"

12 and then "Toxicity" at the top of the

13 page. Do you see that?

14 A. Yes.

15 Q. It says, the first sentence, "There are

16 many literature references to harmful

17 effects of the type of 'chlor acne'

18 resulting from exposure to chlorinated

19 diphenyls." Did I read that correctly?

20 A. Yes.

21 Q. Then down the third paragraph?

22 MR. PECK: Could you read the rest

23 of that sentence? I think

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1 same issue of same clothes.

2 Incidentally, why would Monsanto treat

3 its workers differently or better at the

4 Krummrich plant in Illinois than they

5 would in Anniston, Alabama?

6 A. You're implying better. It may be -- I

7 think back at the time in Monsanto these

8 operations were pretty autonomous in

9 terms of their practices. And it may

10 have just been, you know, a different

11 process in place in those two areas.

12 Q. But obviously, they knew what was going

13 on at the home office. But anyway.

14 A. Well, they did at this point in time.

15 Q. Yeah. By then.

16 It also attaches, does it not, a

17 1947, September 1947 article about

18 Aroclors?

19 A. It does.

20 Q. And in fact, the title is on the

21 toxicity of the Aroclors. Is that not

22 true?

23 A. Yes.

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1 it --

2 Q. "Especially in cases where people

3 working with small electrical components

4 have been exposed to fumes of hot highly

5 chlorinated Aroclors." Did I read that

6 correctly?

7 A. Yes.

8 Q. Aroclors are the PCB product of

9 Monsanto. Is that not true?

10 A. Yes.

11 Q. Now, let's look at the third paragraph.

12 "From the start of Aroclor manufacture

13 at the Krummrich plant the operators

14 have been supplied with a clean change

15 of clothes every day, and time as been

16 allowed at the end of the shift for

17 bathing. Operators are advised to wash

18 hands and face before eating." Did I

19 read that correctly?

20 A. Yes.

21 Q. Where is Krummrich?

22 A. It's in the State of Illinois.

23 Q. The Anniston operators do not have the

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1 Q. Tell me whether I'm reading this

2 correctly. This is a 1947 article

3 that's been reproduced by Monsanto in

4 April of 1955 and perhaps distributed in

5 1956. "There is need therefore to give

6 warning. For the toxicity of these

7 compounds has been repeatedly

8 demonstrated, both from the standpoints

9 of their absorption from the inspired

10 air, as well as their effects in

11 producing a serious and disfiguring

12 dermatitis when allowed to remain in

13 contact with the skin." Did I read that

14 correctly?

15 A. Yes.

16 Q. And then go to the next page. "Health

17 and Safety." You see that?

18 A. Yes.

19 Q. And we'll get back to the same thing why

20 they treated the workers in Anniston

21 differently than they did the northern

22 workers. "At Anniston no specific

23 protective clothing is provided to the

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Diphenyl and Aroclors operators." And then it says that "The men are expected to take a bath in their own time at the end of the shift." Does it say that?

A. It does.

Q. Look down in the third -- fourth paragraph there, emphasized there, it says, "At St. Louis, Plant B, the Aroclors building is rated a toxic department. Each operator is provided with a complete set of clothing, comprising hat, coat, trousers, combination underclothes, socks, and rubber shoes. A clean change of clothing except shoes is placed in the operator's locker in time for the following shift." And then "Twenty minutes' paid time is allotted for bathing at the end of the shift." Does it say all that?

A. It does.

Q. But you didn't give the Anniston workers the free time to change and the clean

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change of clothing placed in the locker and they're given twenty minutes to bathe at the end of the shift if it's not -- if there are no health affects or no health worries?

A. Well, again, I think this goes back to the question of were they provided proper protection equipment for a general chemical atmosphere where you're either handling high concentrated chemicals or where you may have other conditions that would create potential exposures. So I think this is different. Again -- I mean, this is preventive. The question is did this -- or exposure -- or were these workers ever suffer any long-term effects associated with handling PCBs. Again, my understanding and my answer to that is we do not believe that that occurred. Much of the normal protection that's provided here is around just keeping things, you know, off your skin, off

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clothes and so forth, did you? Or when I say you, you know I mean Monsanto.

A. And again, I think this defines different practices at the plant. For example, up in that first paragraph it says a daily change was provided to Anniston prior to the war and it was ceased before the war. So there was a change in practice for some reason. Maybe they were preserving materials for the war effort. I don't know. But to me it kind of illustrates the fact that there was some autonomy between these locations with respect to their employee practices.

Q. Yeah. Okay. What my next question is, at St. Louis or Krummrich, wherever, or at Anniston before the war, if there's no health affects from PCBs, as you have testified, why on earth would the operators or people that work in those areas be provided with a complete set of clothing and rubber shoes and a clean

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your body, is a good hygiene practice.

Q. I see. So that's what Monsanto did for all their workers at all their plants, whether it was PCBs or not? Is that your testimony?

A. No. What I'm saying is I suspect there was some conscious process around what was appropriate protection for workers at plant sites in operations. And I suspect back then it was different building to building or unit to unit, just as it is today, proper equipment for the proper condition.

Q. And doing all those things that Monsanto did for those workers in St. Louis shouldn't be seen by this jury in any way as implying that Monsanto may have in fact known that there were bad health effects associated with PCB?

A. I think what the jury should look at is there may have been a different set of plant practices with respect to these people. What I don't read into this is

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1 that there was a knowledge that there
2 was an absolute understanding of adverse
3 health consequences with respect to
4 these working conditions.

5 MR. BARRETT: Let's go off the
6 record.

7 [Discussion held off the
8 record.]

9 MR. BARRETT: Back on.

10 Q. (By Mr. Barrett) Mr. Pierle, before the
11 break we were talking about what
12 Monsanto knew and what the evidence from
13 their own records shows that they knew
14 or should have known about PCBs.

15 Look at Exhibit Nine, if you
16 would, please. And while you're looking
17 at it, I'll tell you that's a letter
18 dated July 8, 1970, written -- we
19 obtained it from Monsanto, written by
20 Mr. W. B. Papageorge, Bill Papageorge,
21 manager of environmental control. You
22 certainly know Mr. Papageorge, don't
23 you?

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1 implications perhaps for human health?
2 A. I think that's consistent with what I
3 have said relative to the concerns on
4 environmental -- you know, adverse
5 environmental consequences.

6 Q. So it hurts all living creatures but
7 human beings; is that right?

8 A. Well, I think in these particular areas
9 that -- you know, what -- it is
10 important to understand that at what
11 level and what compounds may have
12 adverse toxic properties. And I think
13 we do see in many cases there can be
14 negative reactions in animals that are
15 not produceable or do not exist in man.
16 So I don't think you draw that straight
17 line conclusion from this statement.

18 Q. No, but -- Of course, not. But don't
19 you agree that this is evidence that ill
20 health could happen not only to birds
21 but to human beings as well?

22 A. No.

23 Q. You don't? Okay.

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1 A. I do.

2 Q. And this is a Monsanto letter, is it
3 not?

4 A. Yes, I would assume so because Bill
5 wrote it.

6 Q. Right. And in this letter he -- This
7 letter is written in July. Apparently
8 he had visited with this customer in
9 Massachusetts in June, and there had
10 been some concerns raised. So he wrote
11 this letter on July 8th and responded to
12 these concerns. I wanted to look where
13 -- what Mr. Papageorge said about
14 toxicity. Does he say "There is ample
15 evidence from many laboratories that
16 certain species of birds which are at
17 the top of the marine food chain cannot
18 reproduce properly when PCBs are present
19 in their diet." Did I read that
20 correctly?

21 A. Yes.

22 Q. You don't think that has any implication
23 -- Monsanto doesn't think that has any

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1 A. I think one of the things we talk about
2 is sort of a concept of weight of
3 evidence and the evidence in its
4 totality. And this is just one piece of
5 information that Bill speaks to
6 specifically about certain marine
7 animals.

8 Q. Let's look at another piece of evidence,
9 which is his next sentence. The U. S.
10 Fisheries Laboratory other Gulfbreeze,
11 Florida conducted a study which
12 indicated that juvenile brown shrimp did
13 not survive in water containing five
14 parts per billion of PCB. Did I read
15 that correctly?

16 A. Yes, you did.

17 Q. And that's not of any concern to
18 Monsanto about human health, though?

19 A. Again, what we would want to understand
20 is both the sort of fish and bird
21 toxicity as well as human toxicity and
22 understand both of those. And we have
23 spent a lot of energy and effort and

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1 test work on our product line to
 2 understand those situations. So I think
 3 in this context it's very specific to
 4 that outcome.

5 Q. Look over on page two when he talks
 6 about disposal of PCBs. "The preferred
 7 method for disposable is high
 8 temperature incineration. I suspect
 9 there are several commercial burners on
 10 the market which will perform well."
 11 Then it says that it has to exceed 1600
 12 degrees and so forth, otherwise you
 13 might create dioxins and so forth. Have
 14 I read that correctly? Have I
 15 characterized it correctly, what it
 16 says?

17 A. As I read this, I think what Bill's
 18 basically saying is there is an
 19 acceptable practice available for
 20 destruction, the safe destruction of
 21 concentrated PCB materials.

22 Q. Right. To your knowledge here in June
 23 of 1998 has the PCB material at

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1 A. When you think about the question of
 2 available technology, you have to sort
 3 of say, is it technologically feasible.
 4 Then you have to ask the question, you
 5 know, is it economically feasible. Then
 6 you have to ask the question whether or
 7 not it's acceptable to the community.
 8 Any decision requires more than just can
 9 you technically do it.

10 Q. I understand that. But if I ask you all
 11 three of those questions, your attorney
 12 would have objected, said it was a
 13 compound question. My question, is it
 14 technologically feasible. Answer that
 15 part of it first, and we'll get to these
 16 other things.

17 A. No, not in all conditions.

18 Q. What conditions is it technologically
 19 feasible to do it?

20 A. Again, if you're burning concentrated
 21 materials at the proper conditions, you
 22 can burn that material. Incineration on
 23 certain things, such as burning dirt, we

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1 Anniston, Alabama, waste material, been
 2 incinerated?

3 A. These are not the same materials that
 4 Bill speaks to in this particular
 5 letter.

6 Q. What materials does he speak to?

7 A. I think what he's speaking to here is
 8 the material that was product that once
 9 it was ready for disposal, that you
 10 could dispose of it in this manner. And
 11 he goes on to describe conditions under
 12 which that can be done safely. And I
 13 think he goes further on here to sort of
 14 talk about plans to actually put one of
 15 these incinerators in at one of our
 16 sites.

17 Q. Right. Is technology available to
 18 dispose of PCB contaminated soil as
 19 opposed to liquid product by
 20 incineration? Does the technology exist
 21 to do that?

22 A. Today?

23 Q. Yes.

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1 have had an experience with an
 2 incinerator where we tried to burn
 3 materials that were contaminated, and
 4 the best incineration consultant in the
 5 world in a project had to be shut down
 6 because the system just simply would not
 7 operate.

8 Q. What did you do with that dirt after you
 9 found that you couldn't burn it?

10 A. It is basically been -- what was liquid
 11 was moved off and burned consistent with
 12 an ability to burn liquids, and the rest
 13 of the material has basically been
 14 closed in place.

15 Q. Where was that?

16 A. In Texas.

17 Q. Now, do you have any information about
 18 whether or not PCBs are believed to be
 19 teratogenic?

20 A. Again, my memory is not clear on that
 21 question. Again, you're asking I think
 22 in laboratory animals or in humans? I
 23 know of nothing that says it is a proven

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1 teratogen in humans. Whether or not
2 there's anything relative to test work
3 in laboratory animals, I'm just not
4 certain of all those details.

5 Q. Even if it were a probable teratogen in
6 humans, that would be -- you wouldn't
7 want it on your property, would you, if
8 you had children or if your wife was of
9 childbearing age?

10 A. Again, the question that you asked
11 doesn't ask the question about, you
12 know, what is the concentration of the
13 material and is that likely to be a --
14 have a possible effect. And if you said
15 that this was relatively low levels of
16 material that were around on my property
17 or with my children or my grandchildren,
18 I don't know that I would get, you know,
19 very upset or excited about that.

20 Q. Uh-huh.

21 A. I think I'd want to make a judgment in
22 my own mind as to personally did I
23 understand whether it was or not, and

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1 carcinogen by government regulatory
2 agencies that both Solutia and Monsanto
3 have to deal with?

4 A. Again, this goes back to an earlier
5 question where I think I described it.
6 Depending upon the regulatory statute,
7 it may be specifically categorized one
8 way, and it could be categorized another
9 way under a different statute. And I
10 don't today have all those facts in
11 front of me.

12 Q. Okay. Let's get away from the
13 properties of PCBs and discuss their
14 discharge by Monsanto into the
15 neighborhood. It's a fact, is it not,
16 that at least as early as 1968 Monsanto
17 knew that it was contaminating its
18 neighbors with PCBs?

19 A. I recall there was a lot of effort
20 around that time to understand
21 discharges from production units. You
22 know, I'm not familiar with what we knew
23 at that point in time in 1968.

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1 then probably take action based upon
2 that judgment.

3 Q. Tell the jury what a teratogen is.
4 Define that word.

5 A. Again, you're sort of asking very
6 technical terms that have very specific
7 meanings.

8 Q. I wasn't trying to trick you. It just
9 means birth defects, does it not?

10 A. I don't know if that's all that it
11 means. That's why I say -- you know, I
12 would really like for -- I'd ask my
13 experts that, and I wouldn't give you an
14 incomplete definition.

15 Q. But it means at least that, does it not?

16 A. It can include that, I believe.

17 Q. That's what the Greek word -- basis of
18 it is, means -- I mean, it means birth
19 defects?

20 A. You're better at the Greek language than
21 I am.

22 Q. And do you admit or deny that PCBs are a
23 -- are classified as a probable human

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1 Q. Let's look at the documents. That will
2 maybe clear it up some. The first one
3 is Exhibit Ten that you have got there
4 in front of you. It's dated December
5 30, 1968, referenced, "Aroclor -
6 Wildlife." Does this -- or is this a
7 copy of a Monsanto document?

8 A. It appears to be.

9 Q. Written by W. R. Richard, Bill Richard?

10 A. Yes.

11 Q. Do you know Bill Richard?

12 A. I knew Bill.

13 Q. To W. A. Kuhn or Kuhn?

14 A. Kuhn, I believe.

15 Q. Did you know him?

16 A. Yes, I did.

17 Q. Both of them employees of Monsanto?

18 A. Yes.

19 Q. It says, does it not, "Bill, you wanted
20 to become more familiar with the
21 legal-political problems facing Aroclor
22 with regard to pollution and the
23 accumulation" --

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MR. PECK: I'm sorry.

Accusations, I guess. I think it was accusations in the literature. You said accumulations.

MR. BARRETT: I'm sorry.

Q. (By Mr. Barrett) Start over. "Bill, you wanted to become more familiar with the legal-political problems facing Aroclor with regard to pollution and the accusations in the literature that chlorinated biphenyls are poisoning and killing wildlife." Then it said, "These wildlife people have to be taken seriously." Did I read that correctly?

A. You did.

Q. So Monsanto is realizing that, hey, St. Louis, we have got a problem here; is that right?

A. Well, I think both these people were in St. Louis, and yeah. I'm reading here that it's saying here's some information, much of which we have

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Q. Second thing we're going to do, Mr. Wheeler, Mr. E. Wheeler --

A. The first thing was -- sort of in the first one was the analytical stuff. I think in the paragraph above that, that, you know, we're going to find out if this is really PCBs or not. And we need to understand that.

Q. That's right. And by the way, they did find out that it was PCBs, didn't they?

A. I guess you'll tell me about that.

Q. I will. I sure will.

A. As we go forward.

Q. The next thing that said that Mr. Wheeler -- Now, who is Mr. Wheeler?

A. Again, he was in the medical department. I think his area of concentration was on industrial hygiene, worker exposure, that area.

Q. It says he's going to try to find a -- says, quote, "safe" level for Aroclor feeding.

A. Right.

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talked about; we need to take them seriously; we're taking steps, you know, to move forward here.

Q. And it says that "We are taking three steps to protect ourselves."

A. Uh-huh.

Q. That's right. They're not talking about protecting anybody but Monsanto here. Is that what it says?

A. I think that's an overread of the situation.

Q. Okay.

A. I mean, we ought to I guess go down and read and find out what they're doing.

Q. That's right. Says "We are taking three steps to protect ourselves." I did read that correctly, didn't I?

A. Yes.

Q. And one of the things we're going to do is do some -- we're going to feed Aroclor to some chickens. We're going to do some tests.

A. Right.

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Q. Says, "If we can find a 'safe' level, Calandra's lab will do 2 year experiments on animals," so forth?

A. Uh-huh.

Q. Calandra's lab, that's IBT, is it not? Industrial Bio --

A. I know IBT. I don't know Calandra. I know IBT by reference.

Q. We'll get to that. That's okay.

Then on the second page it said, "The third step is to minimize exposure of Aroclor to reduce air and water pollution, and to restrict it to the uses which can be controlled. This is the only way I see to survive." And when he's talking about surviving, he's talking about Monsanto surviving and selling this PCB material? Is that -- He's not talking about his own life, right?

A. No, he's not. I know Bill Richard. He was a, you know, real responsible guy, and that's the way I'm reading this

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1 note.

2 Q. So you agree with me, then?

3 A. He wasn't talking about himself.

4 Q. Right. He was talking about the

5 company's financial viability; is that

6 right?

7 A. Again, he says survive. I mean, whether

8 that's that business, financial, or

9 whatever, I don't know how broad his

10 interpretation was on that.

11 Q. But it's certainly reasonable to think

12 that's what he's talking about, isn't

13 it?

14 A. That would be included. Again, I can't

15 read his mind.

16 Q. Next paragraph. "I believe we should

17 make sure that our plants have minimum

18 air or stream pollution." And then, "I

19 believe Anniston is vulnerable." Does

20 it say that?

21 A. Yes.

22 Q. So at least back as far as 1968 Mr. Bill

23 Richard was concerned that Anniston was

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1 Q. Right. And that was dated 1968, right?

2 A. That's correct.

3 Q. Okay. Look at Exhibit Eleven, please.

4 Now, do you -- Do you know who Robert

5 Metcalf is?

6 A. I do not.

7 Q. Okay. And do you know what Industrial

8 Biotest Laboratories is, don't you?

9 A. I have heard of it.

10 Q. We're going to talk about it in a

11 minute, but they had a pretty close

12 connection -- They were an independent

13 laboratory with a close working

14 relationship with Monsanto. Is that not

15 true?

16 A. I understand they were a contract

17 laboratory. I don't know what the

18 relationship was.

19 Q. Okay. All right. And anyway, this

20 contract laboratory of Monsanto says in

21 March of 1969 that, first of all, that

22 about 80 million pounds of PCBs are

23 produced annually?

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1 vulnerable to the claim that there's air

2 and water pollution with PCBs?

3 A. Yeah. I think what Bill is saying here

4 is what I would view as a pretty

5 classical response, we ought to

6 understand what we know about PCBs and

7 are they there. We ought to understand

8 toxicological what their properties are

9 and where safe levels are, and we ought

10 to understand our manufacturing

11 processes and minimize loses from those.

12 Q. And specifically he said he believed

13 Anniston is vulnerable. And by saying

14 "vulnerable" there, he's saying that

15 it's vulnerable because there probably

16 is PCB air and water pollution at

17 Anniston. Is that what that means?

18 A. I think what he's saying is -- The way I

19 would read that is what he was basically

20 saying is that there are probably some

21 things we're going to have to do in

22 Anniston when we get on with the

23 information.

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1 A. That's what it says.

2 Q. And down below that "it seems possible

3 that at least 10 million pounds annually

4 may become environmental contaminants,"

5 right?

6 A. I'm trying to scan this sort of as you

7 read it. That's what that phrase says.

8 That's correct. Or that clause, I

9 guess.

10 Q. And down -- It says -- Take a break.

11 [A lunch break was taken.]

12 Q. (By Mr. Barrett) Mr. Pierle, before we

13 broke for lunch, we were discussing the

14 IBT report of March 1969. And we had

15 gotten down to where it says that there

16 were at least 10 million pounds -- or it

17 seems possible that at least 10 million

18 pounds annually may become environmental

19 contaminants. That is where we broke.

20 You see that in the document?

21 A. I do. Just a point, I'm not sure -- As

22 we said, I don't know Metcalf, and I

23 don't know if this is an IBT document or

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1 a memo and a meeting or what. So I
2 don't know --

3 Q. I understand that you don't. It also
4 says that perhaps two to the -- times 10
5 to the 8th pounds have entered the
6 environment. That's 200 million pounds.
7 Is that not so? Is your math --

8 A. I think that would be what that math
9 would be.

10 Q. So 200 million pounds of PCBs have
11 entered the environment. And then on
12 the next page it says, and it's
13 underlined, there is an important
14 environmental quality problem involved
15 in the waste of PCBs.

16 A. Yeah. Then again, I don't know what
17 that refers to.

18 Q. Well, it may well refer to just what you
19 said earlier, that environmental, that
20 is segmented, and not human beings. But
21 at least it means what it says,
22 environmental quality problem. Would
23 you agree?

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1 chronic toxicity hazards of chronic
2 injection -- excuse me -- chronic
3 ingestion of the PCB at part per
4 million, ppm, levels. And this will
5 almost certainly result in severe liver
6 damage at some reasonable level. Did I
7 say that right?

8 A. Yeah. Again --

9 Q. Talking about rats and dogs, not humans?

10 A. That's correct. And they're talking
11 about, you know, study levels to try to
12 induce or produce a chronic condition.
13 That's typically the way you run tests.
14 You want to run them at a level that
15 you're going to produce some sort of
16 effect so that you can then find levels
17 where you don't produce effects and then
18 go from there with respect to what is a
19 hazardous material.

20 Q. Part per million levels, are you aware
21 -- Since you brought that up, are you
22 aware that many of the neighbors, many
23 of your neighbors around the Anniston

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1 A. I'm just reading the line above it is
2 all, that it talks about mass
3 spectrometry, and that's an analytical
4 methodology. So it says there is an
5 important environmental quality problem
6 involved in waste of PCBs. So I don't
7 know if it's a problem in the analytical
8 detection method or what. So that's
9 what had me confused.

10 Q. So let's go forward and see what the IBT
11 people said about the experimental work
12 planned at Industrial Biotest. And
13 apparently they were going to do
14 long-term feeding studies on rats and
15 dogs. Right? I'm on page two in the
16 middle of the page.

17 A. I apologize for catching up to you here.
18 Yeah. This looks like studies they're
19 going to have done. And I guess there
20 were going to be done at IBT, because it
21 talks about work planned at IBT.

22 Q. Right. And it says that these studies
23 will doubtless serve to indicate the

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1 plant, have part per million levels in
2 their own blood?

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

5 A. I know that there are some people that
6 have PCBs that have been determined. I
7 thought it was part per billion level,
8 which is one one-thousandth of this
9 number.

10 Q. Okay. Look at the bottom of the page
11 there, conclusions and suggestions. Do
12 I read this correctly: "It seems to the
13 writer that the evidence regarding PCB
14 effects on environmental quality is
15 sufficiently substantial, widespread,
16 and alarming to require immediate
17 corrective action on the part of
18 Monsanto." Did that say -- Did I say
19 that correctly?

20 A. You did.

21 Q. And the date of this was March 21, 1969?

22 A. Right.

23 Q. And this was done -- It's an Industrial

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1 Biotest Lab report, right?

2 A. Well --

3 Q. Apparently?

4 A. I think it's a report from this

5 individual about a meeting. I don't

6 think this says this is what IBT is

7 concluding and suggesting.

8 Q. Right.

9 A. It goes on to identify seven things that

10 should be done on the next page.

11 Q. Right. And we'll talk about the

12 connection between IBT and Monsanto here

13 in just a few moments.

14 All right. Monsanto was aware

15 that PCB discharges were going into and

16 through residential areas of Anniston

17 back during this time. Is that a fair

18 statement?

19 A. I don't know that for a fact.

20 Q. Okay. All right. I'll show you the

21 documents there about that in a moment.

22 Monsanto was aware that children

23 live and play -- and at that time lived

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1 houses in the area. And I have been

2 down there recently and I have seen some

3 of that.

4 Q. Okay. But you won't concede that

5 Monsanto knew that there were children

6 living in the neighborhood, but let me

7 ask you this, then. If you personally

8 were living in that neighborhood, next

9 to the Anniston plant, and you had

10 little children who played outside and

11 played in ditches that drained from

12 Monsanto and overflow areas that were

13 affected by Monsanto discharges,

14 wouldn't you as a parent want to be told

15 about those PCBs and about what the

16 levels that may be -- you said levels

17 are important and -- that the children

18 were being exposed to? Wouldn't you

19 want to know that?

20 A. I think back at that time, and as I

21 would think back to the '60s, '70s, that

22 time frame, that there was certain

23 information that folks did know. But I

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1 and played in the neighborhood -- and

2 neighborhoods immediately surrounding

3 the Monsanto plant. They knew that,

4 didn't they?

5 A. I don't know what they knew at that

6 time.

7 Q. You don't think that -- Did you ever go

8 to Anniston?

9 A. I have been to Anniston.

10 Q. When were you in Anniston for the first

11 time?

12 A. I think for the first time was somewhere

13 in the last five years or so.

14 Q. Uh-huh. Had the houses been destroyed,

15 or were you able to see that that

16 Monsanto plant was right in the middle

17 of a residential area?

18 A. The first time I visited the plant I was

19 not out in the community. We were in

20 and out for a plant business. I am

21 familiar with the work that we have done

22 in the last couple of years with respect

23 to the buy-outs and the removal of

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1 think there was a lot of reliance on the

2 governmental agencies at that time with

3 respect to sort of the interactions

4 between industry and the public. It was

5 a conversation that was predominantly

6 with the regulators. And my guess is

7 that -- you know, people knew the plant

8 was there. They knew where the waste

9 water discharges were that happened from

10 the plant site. I mean, my assumption

11 would be -- and I don't know that for a

12 fact -- you know, that there was a fair

13 amount of general information known.

14 Q. Monsanto never voluntarily told people

15 about these PCBs discharges into the

16 neighborhood, did they?

17 A. That I don't know.

18 Q. If they failed to do it, that was a bad

19 thing, wasn't it?

20 A. No. I don't think you can draw that

21 conclusion. Again, as I said, I think a

22 lot of the conversations -- I know

23 starting in this area back at that time,

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1 the regulatory agencies were the agent
 2 for the public, and most of those
 3 discussions really did happen with the
 4 regulatory authorities.
 5 Q. When's the last -- Do you know where the
 6 Mars Hill Missionary Baptist Church is?
 7 A. I do.
 8 Q. When is the last time you have seen that
 9 church?
 10 A. Probably sometime in the last six
 11 months.
 12 Q. Then you yourself saw that the
 13 neighborhood that that church used to
 14 serve has been pretty well destroyed and
 15 demolished by this PCB contamination and
 16 the resulting buy-out and so forth by
 17 Monsanto. Is that a fair statement?
 18 A. Yeah. I mean, I'm familiar with several
 19 of the homes in the area have been
 20 purchased and removed. But also very
 21 near there there are several homes that
 22 are still existing and standing within
 23 that community. Clearly, there have

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1 something else. I was just asking you
 2 are the -- many of the homes right
 3 around that church, have they been
 4 destroyed and demolished? And the
 5 answer is yes, isn't it?
 6 A. I think I said yes. What you were also
 7 suggesting was that that was the only
 8 extent that the church's community. And
 9 I think what I was reacting to is the
 10 community of a church, at least my
 11 understanding and experience represents
 12 a large body of people that are both
 13 usually close to the site as well as
 14 maybe far away.
 15 Q. Mr. Pierle, you said you go to church
 16 four miles from here. We're in a suburb
 17 of St. Louis today as we speak.
 18 A. Uh-huh.
 19 Q. Do you know what a baptismal pool is?
 20 A. Yes.
 21 Q. Do you have one in your church?
 22 A. We do. Baptismal font, I think, may be
 23 the terminology. But it's a place where

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1 been a number of those -- those that
 2 were closer to the plant site that have
 3 been removed.
 4 Q. Right. And --
 5 A. In conjunction, I guess, with the
 6 people's desires to move.
 7 Q. Well, the church itself looks different
 8 than it looked five years ago. I mean,
 9 now it's not in a neighborhood. Now all
 10 the neighborhood has been taken away,
 11 hasn't it?
 12 A. I wouldn't describe it that way. I
 13 mean, it's accessible. It had roads.
 14 There are homes that are close by. It
 15 looked to me like there was still easy
 16 access and egress in and out. I mean,
 17 the church I go to is four miles away.
 18 It's not in my neighborhood, but that's
 19 the church that I go to because I can
 20 get there.
 21 Q. That's not what I asked you, though.
 22 A. I'm sorry.
 23 Q. You're assuming that I'm thinking about

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1 baptisms take place inside the church
 2 itself.
 3 Q. Did you know there used to be a
 4 baptismal pool out behind the Mars Hill
 5 Church?
 6 A. I did not know that.
 7 Q. Nobody has ever told you that?
 8 A. I don't believe that I have heard that.
 9 Q. And that the water which filled it was
 10 mostly run-off water from your plant?
 11 Did you know that? Nobody told you
 12 that?
 13 A. No.
 14 Q. Well, now that I have told you that, is
 15 it any surprise to you that -- to learn
 16 that in that area of the church property
 17 it was recently tested and very high
 18 levels of PCBs were found there? Did
 19 you know that?
 20 A. I don't know what levels you're talking
 21 about. I do know that part of the work
 22 we're doing, we had low part per billion
 23 levels in some of the run-off in the

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1 water. And that's -- you know, when we
2 found this, triggered a whole series of
3 additional work and investigation.
4 Q. You say low parts, parts per billion,
5 well, it's -- I mean, that's -- PCBs are
6 not very soluble in water, are they?
7 A. They are not.
8 Q. So you're not ever going to have as high
9 as a part per million, are you, in the
10 water?
11 A. No. But I think you have -- You would
12 have solubility above the levels that we
13 found. And they were, again, as I
14 recall, pretty low part per billion
15 levels. Single digit numbers was my
16 recollection.
17 Q. Mr. Pierle, you agree that there's been
18 so many PCBs discharged into the
19 environment in the United States that
20 practically everybody in the United
21 States has at least some tiny amount of
22 PCBs in their body?
23 A. No. I don't think -- I think that's not

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1 Q. Earlier we had talked about who
2 manufactured PCBs. And you told me that
3 you thought that other people
4 manufactured PCBs in the United States
5 besides Monsanto?
6 A. Yes.
7 Q. I have a document, Plaintiff's Exhibit
8 Twelve, I'd like for you to look at.
9 Now, this is a Monsanto document;
10 I'll tell you that it is. But I'm going
11 to ask you to confirm it. It says, "On
12 15 October the 'AD HOC' Committee
13 consisting" -- and it gave a list of
14 people -- gave a report summarizing the
15 PCB pollution problem. Who are those
16 gentlemen? Who is M. Farrar? Let me
17 ask you this way. Do you know these
18 people?
19 A. I do not recall E. John. The other
20 individuals I do recollect.
21 Q. Farrar, Hodges, Richard, and Wheeler are
22 all Monsanto employees; is that correct?
23 A. That's correct.

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1 a fact. I think there have been blood
2 level work that's been done that don't
3 show detectable levels.
4 Q. But don't scientist believe that there
5 are so-called background levels? You
6 have heard the word "background levels"?
7 A. Background is usually -- in my
8 understanding is a level at which sort
9 of is a limited detection. And
10 sometimes background means it's not
11 there but background is generally sort
12 of at the level that we can measure.
13 Doesn't mean it's present; it just means
14 that's the lower limit of what we might
15 be able to detect with our analytical
16 devices.
17 Q. So you don't agree that it's ubiquitous
18 in the environment now?
19 A. You asked me if it was ubiquitous in
20 people. And I said no to that.
21 Q. But do you believe it's ubiquitous in
22 the environment?
23 A. No.

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1 Q. Do you know what the -- Have you ever
2 seen this document before?
3 A. Boy, not that I recollect. I don't
4 believe so.
5 Q. We won't spend much time on it, then.
6 But I will ask you to look at -- on page
7 six, item seven, "Involvement With Other
8 Producers."
9 A. I see that.
10 Q. Does it say, "Although Monsanto is most
11 probably responsible for the U. S.
12 contamination and jointly responsible
13 with MCL, for the United Kingdom
14 problem, we cannot accept responsibility
15 for the world." Does that indicate to
16 you that Monsanto -- that whatever PCB
17 problem is in the United States that it
18 is most probably Monsanto?
19 A. I think what that says is we made a lot
20 of PCBs and we recognize that we did,
21 but we weren't the sole producer on a
22 global basis.
23 Q. Not on a global basis. We don't care --

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1 We're not trying to cure the world here;
 2 we're just talking about the United
 3 States.
 4 A. Yeah. I think what that indicates is we
 5 were a producer. That doesn't say we
 6 were the sole manufacturer or sole
 7 seller in the United States or Great
 8 Britain.
 9 Q. But it does say that Monsanto is most
 10 probably responsible for the U. S.
 11 contamination, does it not?
 12 A. That's what it says.
 13 Q. Thank you. That's all for that exhibit.
 14 Now, you have talked quite a bit
 15 about levels. Most scientists believe,
 16 do they not, that the higher the level
 17 of PCBs is in a living creature, the
 18 more likely that creature is to develop
 19 some health problem. Is that a fair
 20 state?
 21 A. I think that's a fair statement.
 22 Q. In fact, that's what you have been
 23 saying at every opportunity today, you

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1 world, anywhere, that has identified a
 2 safe level of PCBs in the human body?
 3 A. I don't know whether that has been done
 4 or not. I mean, there are a lots of
 5 regulatory levels which imply that there
 6 are thresholds -- acceptable levels of
 7 PCBs in regulations.
 8 Q. So regardless of whether there's a safe
 9 level or not, if it builds up in a
 10 person's body, the more he gets, the
 11 more likely he is going to be to reach
 12 that threshold level or cross that
 13 threshold level, is he not?
 14 A. That's conceivable.
 15 Q. Well, it's a fact, is it not?
 16 A. No. I think it's conceivable. The fact
 17 is whether or not they are continuously
 18 exposed, whether or not there's anything
 19 that's going to continue to add to that.
 20 Because you could get to a point that
 21 you have received a certain level and it
 22 will not increase. And perhaps as you
 23 lose fat or secrete -- under certain

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1 talk about levels and dose response and
 2 so forth.
 3 So the fact that most people have
 4 background levels -- that people may
 5 have background levels of PCBs in their
 6 body, or have some levels of PCBs in
 7 their body, that makes the situation
 8 worse if they absorb more PCBs from
 9 whatever activity, if they happen to
 10 live near the Monsanto plant and they
 11 absorb it that way. And the more they
 12 absorb, the more likely they are to have
 13 health effects. Do you agree with that?
 14 A. I think again in this whole discussion
 15 there's a concept of threshold and a
 16 level at which you may have an effect
 17 and you may not. So you may have -- you
 18 know, above the threshold some
 19 relationship or dose response, but
 20 there's also a concept that says at a
 21 particular level and below you may not
 22 have any adverse health effect.
 23 Q. Do you know any scientific body in the

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1 circumstances probably lose some. I
 2 think that's dynamic. And I think the
 3 health experts would be best equipped to
 4 respond to that.
 5 Q. Right. And they will.
 6 Do you agree or disagree that the
 7 more a member, say, of the Mars Hill
 8 Missionary Baptist Church breathes in
 9 dust with PCBs on it, on that dust, the
 10 more PCBs are likely going to build up
 11 in his or her body?
 12 A. Again --
 13 Q. Do you agree or disagree with that?
 14 A. I think what I stated before, that with
 15 respect to dust, for example, is that
 16 may -- a PCB particle may be attached to
 17 dust, that may be filtered out in the
 18 respiratory system and not enter the
 19 body. And under those conditions the
 20 answer to that question would be no, I
 21 wouldn't expect it to increase.
 22 Q. But the fact is, just like cigarette
 23 smoke, part of it is going to remain in

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1 the lung and part of it is going to be
2 exhaled, isn't that right, if you
3 breathe it in?
4 A. No, I don't think so. Because the nose
5 filters out certain levels and particles
6 of material. And you then have to ask
7 the question that, you know, is a bit
8 more scientific, at which level the
9 particles pass the respiratory system
10 and get into the lung.
11 Q. And you're telling this jury that none
12 of these particles do?
13 A. What I'm telling you and telling the
14 jury is that that's a fact dependent
15 situation. And it could range all the
16 way from none of it got in to some of it
17 got in. And I don't know the answer to
18 that question. I think you have to look
19 at those particular facts.
20 Q. Are you aware that the Alabama
21 Department of Public Health did an
22 independent study of PCB dust levels at
23 the Mars Hill Church and found that dust

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1 pastor of the church. Do you have that
2 in front of you now?
3 A. I do.
4 Q. Does it say that -- Does it give three
5 locations where they tested for
6 polychlorinated biphenyls, PCBs, in dust
7 at the church?
8 A. Yes, it does.
9 Q. And it goes all the way from 1.80 parts
10 per million to 4.42 part per million.
11 Is that not so?
12 A. That's correct.
13 Q. And does the next paragraph say EPA
14 lists the level of concern for PCBs in
15 dust at one part per million. Your dust
16 level is above the level of concern.
17 Sir?
18 A. That's what it says. And I think that's
19 the point at which they look at is a
20 concern to look to trigger some action.
21 Q. We know that you may be exposed to PCBs
22 by accidentally swallowing contaminated
23 soil and dust. So the Department of

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1 in the Mars Hill Church had PCB levels
2 which were more than four times the
3 official EPA level of concern? Did you
4 know that?
5 A. I know that work has been done down
6 there in general. And certainly we have
7 participated with that work. And that's
8 what's driving our actions down there to
9 remediate those conditions.
10 Q. That was nice, but you didn't answer my
11 question. Are you aware that they did a
12 study at Mars Hill Church first?
13 A. Yes, I am.
14 Q. Are you aware of the results of that
15 study?
16 A. I have heard the results of those
17 studies. I don't remember all those
18 numbers and data in my mind.
19 Q. Would you hand Exhibit Thirteen to him?
20 I hand you now a letter dated March 8th,
21 1996, from the State of Alabama
22 Department of Public Health to Rev.
23 Weatherly, whom I will tell you is the

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1 Public Health, apparently they disagree
2 with you about whether or not you can
3 ingest PCBs by accidentally swallowing
4 dust? Or do you not disagree?
5 A. I don't think we're in disagreement on
6 that point.
7 Q. You're just saying that you can't
8 measure it; it's every breath is going
9 to be a different amount?
10 A. It could be. I mean, again, when you're
11 looking at the cumulative dose.
12 Q. And that's right. That's the next
13 sentence, says, "Contaminated in-door
14 dust can add to your total exposure."
15 What do they mean by that?
16 A. I think that's just -- it's just a
17 statement that contaminated indoor dust,
18 and it refers to accidental swallowing,
19 can add to your total exposure. I don't
20 know what it means beyond that.
21 Q. In other words, it means what it says,
22 the more you breathe that stuff, the
23 more your exposure level is going to

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1 rise, right?

2 A. On the swallowing basis, I mean, that's

3 what I'm reading, and that's what he's

4 referring to.

5 Q. And it also says "Exposure levels depend

6 on amount and time of contact with

7 contamination."

8 A. Yes.

9 Q. You agree with that, don't you?

10 A. Yes.

11 Q. And then finally that "contact with more

12 of the PCBs for a longer time causes

13 higher levels of PCB in blood." Do you

14 agree with that?

15 A. That's what it says.

16 Q. I know it's what it says. I said do you

17 agree with it?

18 A. Again, I think that is possible.

19 Q. Is it is more than possible, is it not?

20 It is likely?

21 A. You're asking me to be an expert on this

22 as to whether or not you take it in and

23 it gets on up.

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1 want to know what was going on.

2 Q. Well, right. And do you think it's

3 reasonable that it caused fear and

4 anxiety among them?

5 A. That would be, you know, at an

6 individual level. Could it have in

7 some? Sure. Anything is possible, and

8 reasonable to assume that could happen.

9 Q. Rephrase it. Is it reasonable that the

10 church members -- that some of the

11 church members became upset and afraid

12 after reading this letter?

13 A. Yes. Especially if that is all the

14 information they were given.

15 Q. And again, for the record, and you may

16 not have answered this question yet.

17 But these PCBs, which are in this dust,

18 which are in the Mars Hill Church that

19 we have seen the letter about, tell the

20 jury in all probability who manufactured

21 those PCBs.

22 A. They were close to the plant site and we

23 made PCBs, so I mean there's a logical

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1 Q. No, sir. I'm just asking your opinion

2 as the vice president in charge -- of

3 this company and the same position at

4 Monsanto of being responsible for the

5 health and safety of your neighbors, as

6 I said you were, among other people,

7 your workers and your neighbors. And

8 I'm asking you do you agree or disagree

9 that contact with more of the PCBs for a

10 longer time causes higher levels of PCBs

11 in blood?

12 A. Yeah. And I guess my take on that would

13 be that it can cause higher levels.

14 [Discussion held off the

15 record.]

16 Q. Mr. Pierle, do you agree that it is

17 quite reasonable that this letter that

18 we are looking at now and the airborne

19 PCBs, which was the reason for the

20 letter, caused fear and anxiety among

21 the church membership? Is that

22 reasonable that it did?

23 A. I would think that they would really

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1 assumption that PCBs in the area could

2 have come from the plant.

3 Q. It's a logical assumption that they did

4 come from the plant. Is that not so?

5 A. Could or did. Is it logical that they

6 may have come from some place else?

7 Q. Is it likely that they came from the

8 plant?

9 A. Probable.

10 Q. Now, we looked at documents earlier that

11 -- one dated 1955, where Monsanto knew

12 that people could get PCBs in their

13 bodies by breathing it in. Do you

14 remember that document? We can pull it

15 out. It's Exhibit Three, I think.

16 Exhibit Twelve. Without having to go

17 through it, do you remember that?

18 A. This was the memo I think when we talked

19 about Montars, I couldn't recall. I

20 don't know what the Montars were. And

21 it talks about chloracne with the skin,

22 and it could cause liver -- by

23 inhalation of fumes that liberated at

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1 elevated temperatures.
 2 Q. Do you know whether or not Monsanto knew
 3 for many years that people could ingest
 4 PCBs into their body by breathing it?
 5 A. Is that the end of the question?
 6 Q. Yes, sir.
 7 A. Did we know that, that you could ingest
 8 PCBs through breathing?
 9 Q. Yes.
 10 A. Again, I think what I'm reading from
 11 these documents, that PCBs in the
 12 atmosphere and work conditions could
 13 exist under high temperatures and
 14 releases. And under those conditions it
 15 could be in the atmosphere, and under
 16 those conditions it could be breathed.
 17 That's what the documents that we looked
 18 at tell me about what we knew about
 19 breathing and ingesting PCBs.
 20 Q. Okay. When did Monsanto first realize
 21 that it had a problem with airborne PCBs
 22 in Anniston to your knowledge?
 23 A. I don't know that what -- What are you

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1 Q. Of course not.
 2 Mr. Pierle, look at the second
 3 paragraph of that document. Does it
 4 discuss atmospheric losses? Does it
 5 say, "We do not plan to look for
 6 atmospheric losses based on our present
 7 mutual feeling that losses to the
 8 atmosphere are negligible"?
 9 A. I think that's what it says. Sort of
 10 based upon the properties of the
 11 material, we would not have expected
 12 that you would have atmospheric losses
 13 out of the production unit. That's what
 14 I read that to say.
 15 Q. Well, it says -- that's not -- It says
 16 that they didn't do any testing, that
 17 they just had a feeling about it; is
 18 that right? Isn't that what it says?
 19 A. It does. But that feeling was, you
 20 know, based on what we talked earlier,
 21 about the properties of PCB, and clearly
 22 this is a low volatile material. So I
 23 don't think they felt that. I think

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1 describing as airborne?
 2 Q. I don't know.
 3 A. My first recollection of this, again, if
 4 you use dust as a surrogate, was when we
 5 began the work here just a few years
 6 ago, that was precipitated after this
 7 question of sort of off-site run-off.
 8 Q. But didn't you know as far back as 1969,
 9 1970, that PCBs were being vented into
 10 the atmosphere?
 11 A. I think the documents indicate that
 12 there was potential that we had air
 13 losses or water losses. And I think
 14 what was described in that seven point
 15 program, as I read it, was an effort to
 16 try and find out what the facts were.
 17 Q. Well, in 1969 -- Look at Exhibit
 18 Fourteen, if you would, please. In
 19 exhibit -- In 1969 Monsanto had a
 20 memorandum on this subject about -- that
 21 concerned, at least partly, atmospheric
 22 losses in Anniston, Alabama, did it not?
 23 A. Do you mind if I read this?

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1 that was feeling based upon what they
 2 knew about the properties of the
 3 material.
 4 Q. But yet they elected not to test because
 5 what they say is we got a feeling that
 6 it's not going to be there?
 7 A. I think what it says is, as I read these
 8 notes, just scanned it, they were
 9 putting together a plan to begin to look
 10 at where do we have PCB losses. And
 11 they came to the conclusion -- and
 12 again, I'm assuming that based upon
 13 their knowledge of the properties of
 14 PCBs that it was not likely that they
 15 would look at the air emissions as a
 16 source of loss.
 17 Q. You don't think that the real feeling
 18 that these Monsanto employees had was
 19 that if they tested the air they would
 20 actually find it?
 21 A. No. I don't feel that. I don't believe
 22 that for a minute.
 23 Q. You don't feel that way?

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1 A. I don't believe that, and I don't feel
2 that way.

3 Q. All right. Let's go -- What we know
4 now, if they had actually done those
5 tests, if they hadn't had that feeling
6 and they had tested in 1969, they would
7 very probably have found PCBs in the
8 air, and if they would have tested the
9 dust, they would have found PCBs in the
10 dust that their neighbors were
11 breathing. Isn't that true?

12 A. No. Again, you're drawing a conclusion
13 that I can't weave together in my mind.

14 Q. Let me ask you this: If they found it
15 in the dust in 1996, which they did --
16 You concede that, do you not?

17 A. Yes.

18 Q. This is a quarter of a century after
19 they had stopped producing it. They
20 certainly would have found it in 1969
21 when that plant was blowing and going,
22 as we say in the south. It was up and
23 operating full speed. And they

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1 sampling for air losses in Anniston but
2 you would need to do it up north in your
3 Krummrich plant?

4 A. Again, I'd have to go back and look at
5 the two processes and whether they were
6 the same or not. But, sure, it's
7 conceivable that different processes
8 have different potential for air
9 emissions.

10 Q. But at any rate, Monsanto decided to
11 test at Krummrich, the air sample, but
12 they decided not to test in Anniston.
13 That's what these last two documents
14 show without equivocation. Is that not
15 so?

16 A. Well, the one was in '69, and this is in
17 '70. So I don't know whether they had
18 decided anything different in Anniston
19 or not subsequent to that note. I just
20 don't know.

21 Q. Let's talk about that. Look at the next
22 exhibit. Looks like to me that -- You
23 see Exhibit Number Sixteen?

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1 certainly would have found it then.
2 That's just common sense, isn't it?

3 A. No. Again, I don't think you can draw
4 that conclusion.

5 Q. All right. Didn't you get involved in
6 this issue of air testing yourself
7 personally in Anniston back in those
8 days?

9 A. Not in Anniston.

10 Q. Okay. You did at Krummrich; is that
11 correct?

12 A. That's correct.

13 Q. Why would you -- Hand him Exhibit
14 Fifteen. Krummrich is not any different
15 than Anniston in the sense that both of
16 them manufactured PCBs, right?

17 A. I'm not certain that the processes were
18 identical or making the exact same
19 products.

20 Q. But is there any reason to believe that
21 the PCBs were different enough or the
22 process was different enough in Anniston
23 that you wouldn't need to check for the

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1 A. Yes.

2 Q. This is a Monsanto document, is it not,
3 that we received?

4 A. Uh-huh (indicating yes).

5 Q. And it's from Mr. Ramsey at the Anniston
6 plant, right?

7 A. Yes.

8 Q. And it's addressed to Mr. Wright. Who
9 is Mr. Wright?

10 A. I don't recall.

11 Q. But the subject is Aroclor losses to the
12 atmosphere at the HCL scrubber jet,
13 right?

14 A. Yes.

15 Q. The HCL scrubber jet is part of the
16 equipment at the Anniston plant, right?

17 A. Yes, it is.

18 Q. And it says -- the result is, is that
19 apparently 2.6 pounds per day are being
20 lost to the atmosphere; is that right?

21 A. Let me read this, if I may, please.
22 [Discussion held off the
23 record.]

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1 A. Okay. I'm sorry. Would you repeat the
2 question?
3 Q. The letter reflects that according to
4 their measurements and the calculations
5 based on those measurements that
6 approximately 2.6 pounds per day were
7 being -- of PCB were being lost to the
8 atmosphere at the scrubber jet?
9 A. That's the way I read the note based
10 upon, again, calculations, not sampling.
11 Q. Right. But these were Monsanto's
12 calculations?
13 A. Yeah.
14 Q. Nobody did this for Monsanto, no Federal
15 agency. They did it themselves?
16 A. That's true.
17 Q. So these are their notes. 2.6 pounds.
18 That's Monsanto's number?
19 A. That's correct.
20 Q. And I'm sure that Monsanto was
21 disappointed probably to learn that they
22 were losing PCBs to the atmosphere like
23 that. Do you agree?

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1 Q. Did Monsanto inform its neighbors that
2 the neighborhood was being contaminated,
3 not only from run-off water but also
4 from airborne PCBs as a result of this
5 test?
6 A. I don't know what communications were
7 made, nor whether there was an
8 assumption or conclusion that this was
9 actually falling off the plant property.
10 So I don't know what was done at that
11 point.
12 Q. In other words, you think they may have
13 thought that it just went up into the
14 air but stayed on the right side --
15 stayed on the correct side of that fence
16 like obedient animals or something?
17 A. No. I don't know what they thought.
18 I'm just saying PCB is a pretty heavy
19 molecule. It would fall out pretty
20 close relative to something that was a
21 lot lighter. I don't know what they
22 thought at that point in time.
23 Q. So it's either going to fall out back on

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1 A. I don't know what their feelings were
2 then. This was part of this overall
3 exercise to try to get control of PCB
4 losses.
5 Q. Right. Did Monsanto follow up this
6 report by doing any air or dust sampling
7 in the yard or the homes or the churches
8 in the immediate neighborhood of
9 Anniston?
10 A. I don't know what they did as next
11 steps.
12 Q. Well -- Let me tell you that we have
13 found no record of it. And I'm
14 wondering if you have seen any record
15 which would indicate or if you have any
16 record that hasn't been turned over to
17 us that would show that they went out
18 and followed this up with any air or
19 dust sampling.
20 A. I don't know.
21 Q. You don't know of any? You certainly
22 don't know of any, do you?
23 A. No, I do not.

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1 the plant itself or within the close
2 neighborhood?
3 A. Or it may be carried further. I don't
4 know the air chemistry and dynamics of
5 it.
6 Q. Do you have any evidence that Monsanto
7 ever called or alerted the Alabama
8 Department of Health about this airborne
9 PCB contamination that it discovered in
10 1970?
11 A. I don't know. You know, my recollection
12 was there was a lot of conversation back
13 and forth on this with regulatory
14 agencies in general on the PCB issue.
15 But I don't know specifically with
16 respect to the question you have asked.
17 Q. Let's talk about that exactly. Let's
18 talk about the relationship that you had
19 with the -- and I don't mean you
20 personally -- the relationship that
21 Monsanto had with the government, the
22 State of Alabama. The fact is Monsanto
23 had a friend in government that it

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1 didn't mind talking to. That man's name
 2 was Joe Crockett. Do you remember Joe
 3 Crockett?
 4 A. I recall the name, but I don't know the
 5 individual. Or -- and you have
 6 described some relationship. I don't
 7 know anything about that.
 8 Q. Okay. Do you remember him -- We'll go
 9 through the documents if we need to, as
 10 we need to, but do you remember whether
 11 or not in 1970 and '71 that he was the
 12 secretary of the Alabama Water
 13 Improvement Commission?
 14 A. I recall he was an official. You have
 15 given more specific reference.
 16 Q. Let's look at Exhibit Seventeen, please.
 17 Now, have you ever seen this document
 18 before?
 19 A. I don't recall seeing it.
 20 Q. It's a Monsanto document, is it not?
 21 A. Yes.
 22 Q. Dated August 7, 1970?
 23 A. Yes.

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1 the general offices in St. Louis. Read
 2 what he said at the top of it.
 3 A. The "Confidential - FYI And Destroy."
 4 Q. Yes.
 5 A. "Following are the moves under way
 6 resulting from the FDA findings of high
 7 levels of PCB in fish taken from
 8 Choccolocco Creek downstream from its
 9 confluence with Snow Creek." Goes on --
 10 Q. Right. Did -- Wonder why Mr. Hodges
 11 wanted this document destroyed?
 12 A. I don't know.
 13 Q. Well, now, have you read the document?
 14 A. No, I have not.
 15 Q. Look down in paragraph three. See if it
 16 won't give us -- tell us something about
 17 that. "Joe Crockett, Secretary of the
 18 Alabama Water Improvement Commission,
 19 will try to handle the problem quietly
 20 without release of the information to
 21 the public at this time." That's the
 22 reason Mr. Hodges wanted this document
 23 destroyed, isn't it?

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1 Q. Subject to PCB cleanup program,
 2 Anniston?
 3 A. Yes.
 4 Q. And it's written to Mr. H. S. Bergen.
 5 Who is he?
 6 A. My recollection was he was a business
 7 manager.
 8 Q. And it was written by Paul B. Hodges.
 9 Tell the jury who Paul B. Hodges is, or
 10 was?
 11 A. I know Paul. He was my first boss at
 12 Monsanto at the Krummrich plant and
 13 later moved to the general offices to
 14 become an environmental manager and I
 15 think at that time it was -- in part of
 16 Monsanto. It may have been called the
 17 organic chemical division. I don't
 18 recall the precise organizational name.
 19 Q. He was a man that was fairly high up in
 20 the management structure of Monsanto in
 21 August of 1970, was he --
 22 A. He was a middle manager.
 23 Q. And he wrote a letter to Mr. Bergen at

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1 A. I don't know why he put that up there.
 2 I mean --
 3 Q. Do you think -- Is it shocking to you
 4 that here is a man who is in a position
 5 of authority with the Alabama Water
 6 Improvement Commission who is -- who
 7 wants to handle the problem quietly
 8 without release of the information to
 9 the public? Do you find that shocking?
 10 A. Back in 1970, you know, the fact here is
 11 that Monsanto was talking to the
 12 regulatory authorities. And that may
 13 not have been a requirement at that
 14 point in time. And the way I read this
 15 is Crockett has made the judgment that
 16 as the officer of the State of Alabama,
 17 that's how he intends to handle this
 18 matter. So I don't view it as --
 19 Q. Shocking?
 20 A. -- improper or shocking, given the time
 21 and the trust that existed in regulatory
 22 agencies at that point in time. This
 23 was kind of standard practice. It's

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1 changed since then.
 2 Q. Monsanto has done this with other -- has
 3 had other people with -- in Alabama
 4 government that have agreed to, quote,
 5 handle the problem quietly without
 6 release of the information to the
 7 public? Other people besides Joe
 8 Crockett?
 9 A. No. That's not what I said. I think
 10 what I said was it was fairly standard
 11 practice at this time for matters to be
 12 handled with regulatory agencies who
 13 were acting on behalf of the public.
 14 That was pretty much what I'm referring
 15 to as standard practice.
 16 Q. And Joe Crockett was supposed to be
 17 acting on behalf of the public, behalf
 18 of the citizens of the State of Alabama,
 19 was he not?
 20 A. He was a regulatory agent. And that was
 21 the relationship then.
 22 Q. And the fact is, the truth is that Joe
 23 Crockett violated his position of trust

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1 letter to the home office to say,
 2 "Confidential, FYI," meaning for your
 3 information, "And Destroy"? Do you find
 4 that unusual?
 5 A. I don't find that unusual. I mean, we
 6 have various reasons and document
 7 retention kinds of things that get into
 8 document destruction. I don't know what
 9 was envisioned here.
 10 Q. Well, let me ask you about this: Have
 11 you seen other documents related to
 12 Anniston that said "read and destroy" or
 13 "for your information and destroy"?
 14 A. I have not looked at the Anniston, you
 15 know, files or documents.
 16 Q. And are you telling me that an -- that
 17 Monsanto had a document destruction
 18 policy which allowed confidential memos
 19 to be sent and immediately destroyed?
 20 A. I think there was a document policy, and
 21 what it was is what it was.
 22 Q. Uh-huh. And -- but you don't find it --
 23 you see nothing unusual about having a

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1 given him by the State of Alabama and by
 2 the people of Alabama, and he was
 3 working to protect Monsanto and not the
 4 people of Alabama. Is that not so?
 5 A. No. I mean, you have to ask Joe
 6 Crockett what his basis for decision and
 7 determination was in this particular
 8 case.
 9 Q. Yeah. Look up at the top. It says that
 10 under "Status," that "We are presently
 11 discharging to Snow Creek about sixteen
 12 pounds a day of PCB down from 200 fifty
 13 pounds a day in '69." Does it say that?
 14 A. Yes, it does.
 15 Q. And I guess that's right underneath the
 16 part where it says, talking about the
 17 FDA findings of high levels of PCB in
 18 fish taken from Choccolocco Creek,
 19 right?
 20 A. Yes.
 21 Q. Did you see any other -- Do you find it
 22 unusual that this Monsanto middle
 23 management individual would send a

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1 document where it indicates that a high
 2 regulatory authority for the State of
 3 Alabama is going to handle the problem
 4 quietly without release of the
 5 information to the public -- you don't
 6 find that unusual or anything wrong with
 7 the idea that this document is labeled
 8 "confidential, FYI and destroy"?
 9 A. I think by the standards and sort of
 10 practice that were ongoing then and
 11 relationships with the agencies, that I
 12 don't find that uncommon.
 13 Q. Monsanto did it all the time?
 14 A. I didn't say that. I didn't say that.
 15 Q. Okay. Have you ever seen this document
 16 before?
 17 A. I don't believe so.
 18 Q. Has this document ever been shown in any
 19 regulatory authority or to any jury
 20 before?
 21 A. Are we still talking about Seventeen?
 22 Q. Yes, sir.
 23 A. I have no knowledge of that.

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1 Q. The fact is, Mr. Pierle, that Monsanto
2 had found a man inside the Alabama Water
3 Improvement Commission who would
4 actually assist Monsanto in covering up
5 this PCB disaster. Is that not so?
6 A. No.
7 Q. That's just not so?
8 A. No.
9 Q. Let's look at another one of your --
10 that is Monsanto's memorandum returning
11 to Mr. Joe Crockett. Look at Exhibit
12 Eighteen, please.
13 Go now -- This is May the 7th,
14 1970. Again, it's labeled confidential
15 up in the top right?
16 A. Yes.
17 Q. See that?
18 A. Yes.
19 Q. It's a Monsanto document, is it not?
20 A. Yes.
21 Q. Written by G. W. Miller this time,
22 right?
23 A. Yes.

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1 of Monsanto to visit Mr. Crockett,
2 right?
3 A. Yeah. My guess is he's a plant
4 employee.
5 Q. And who is E. G. Wright?
6 A. I do not know.
7 Q. You don't know any of these persons?
8 A. No. Only Mr. Hodges.
9 Q. And says that Mr. Crockett -- down in
10 the third paragraph, Mr. Crockett --
11 excuse me -- second paragraph. "Mr.
12 Crockett and the staff were totally
13 unaware of the published information
14 concerning Aroclors."
15 And then on the third paragraph,
16 "Mr. Crockett was most appreciative of
17 Monsanto's approach to the problem and
18 the fact that Monsanto came to him." Is
19 that what it says?
20 A. Yes.
21 Q. And he made -- Mr. Crockett apparently
22 made some recommendations; is that
23 right? According to this letter?

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1 Q. Who is G. W. Miller?
2 A. I do not know.
3 Q. Written to J. L. Jessee. Do you know
4 who he is?
5 A. I do.
6 Q. Who is he?
7 A. I believe he was the site manager at the
8 time.
9 Q. And he says that on May 6th -- I assume
10 that was yesterday, before this article
11 was written, that "J. C. Landwehr, E. G.
12 Wright, and I visited Mr. J. L.
13 Crockett, technical director of the
14 Alabama Water Improvement Commission in
15 Montgomery." Who is Mr. Landwehr?
16 A. I do not know.
17 Q. He's shown as getting a copy of this.
18 He's obviously an employee of Monsanto,
19 is he not?
20 A. Looks like it.
21 Q. In management? Pretty clearly?
22 A. No.
23 Q. But at least he was -- he went on behalf

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1 A. I'm trying to catch up to you.
2 Q. According to this letter? His
3 recommendations were as follows, and it
4 lists five things?
5 A. Yes.
6 Q. Item three, "Give no statements or
7 publications which would bring the
8 situation to the public's attention."
9 That's reprehensible, is it not?
10 A. Well, again, I think you have got to get
11 your mind and ask Joe Crockett that
12 question. Did he know enough to feel
13 that it was appropriate that he and the
14 state handle the matter at that point in
15 time. And it may seem reprehensible
16 today.
17 Q. Does it seem reprehensible to you today?
18 A. At that time I would say this was
19 standard practice. Today I would expect
20 that, just like we have done at the
21 plant site, we go to the regulatory
22 agencies; we give them the information.
23 And we probably jointly go to the

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1 community and talk about the
 2 information. I think today that's --
 3 may not be standard practice for
 4 everybody, but it's pretty standard for
 5 Monsanto and now Solutia. But I don't
 6 view back at this time that that was a
 7 different practice than what generally
 8 existed in dealing with matters.

9 Q. Why would Monsanto and Mr. Joe Crockett
 10 want to keep the public from knowing
 11 about this PCB problem?

12 MR. PECK: In fairness to
 13 Mr. Pierle, I think he's been
 14 trying to keep up with you.
 15 I think you ought to let him
 16 read the entire document if
 17 you're going to ask --

18 MR. BARRETT: I'm not asking about
 19 any specific part of the
 20 document. I'm asking him a
 21 general question. I'm
 22 delighted to let him read --

23 Q. (By Mr. Barrett) Mr. Pierle, if you

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1 A. Which I would have assumed had they done
 2 that, the next call would have been to
 3 Mr. Crockett to ask him what was going
 4 on.

5 Q. Then look on page two, last sentence of
 6 the first paragraph, "The full
 7 cooperation of the Alabama Water
 8 Improvement Commission, AWIC, to reach
 9 the above objective on a confidential
 10 basis can be anticipated." That --
 11 apparently Monsanto was very pleased
 12 that this was going to be handled on a
 13 confidential basis; is that true? Is
 14 that the way you read this letter?

15 A. I think that basically says that right
 16 at that point in time they were going to
 17 cooperate with AWIC. And it would be up
 18 -- at that point in time confidential.

19 Q. They were delighted -- Why would they
 20 want it to be confidential? Why would
 21 Monsanto want to keep this knowledge
 22 away from the public? You have got
 23 little children out there playing in

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1 want to stop and read that whole
 2 document, that's fine.

3 A. I mean, as you read through the whole
 4 thing, what it basically says is that
 5 like in four, that if approached, we'll
 6 talk about what's going on. So to me it
 7 isn't saying we're going to cloak and
 8 hide this; it basically says, okay, you
 9 have come and told me. Thanks. I
 10 didn't know about it. Now I know more.
 11 Right now I don't see a need to go to
 12 the public. However, if the public
 13 starts asking questions, then, you know,
 14 you're free to state the situation.

15 Q. No. It doesn't say that, does it? Says
 16 -- number four, it says if approached by
 17 news media, either the Alabama Water
 18 Improvement Commission or Monsanto is
 19 free to say what? To state that the
 20 situation is under study by the staff of
 21 Alabama Water Improvement Commission.

22 A. Uh-huh.

23 Q. At the direction of Mr. Crockett?

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1 these ditches. You got people going to
 2 that church and breathing this dust.
 3 Why would you want to keep them from
 4 learning about it?

5 A. I don't know what information they went
 6 to them with at this point in time.
 7 Most of this study work was about what
 8 was going on in the plant sites.
 9 There's obviously some other dates. So
 10 I don't know what they took to them or
 11 what they didn't take to them. I mean,
 12 sounds to me like what they said is we
 13 went in and made a report to make sure
 14 that the regulatory authorities in the
 15 area were well apprised of what we knew
 16 as of May 7th with respect to the
 17 situation at Anniston.

18 Q. Let's go to the next document. Exhibit
 19 Nineteen? This is about three months
 20 later, August 8, 1970. Is it not?

21 A. Yes.

22 Q. This is written to the medical
 23 department. No, no. It's from the

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1 medical department to Mr. Landwehr at
 2 the Anniston plant. Is that not so?
 3 A. Yes.
 4 Q. And it's signed by Jack Garrett, right?
 5 A. Right.
 6 Q. Who's Jack Garrett?
 7 A. At that time Jack was -- as I recall was
 8 involved in sort of regulatory matters,
 9 environmental regulatory matters. He
 10 was in the medical department, which was
 11 about a three or four person operation
 12 at that time.
 13 Q. Okay. Look at two things on this
 14 letter. The first one is in the last
 15 paragraph. Does it say this: Does it
 16 say Crockett -- And we're talking about
 17 Mr. J. L. Crockett, Jr., right?
 18 "Crockett told me that if this PCB issue
 19 hits the Alabama press, the Alabama
 20 Water Improvement Commission would be
 21 forced to close Choccolocco Creek and
 22 the Logan Martin reservoir to commercial
 23 and sport fishing unless we can prove

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1 happened relative to fish advisories and
 2 that. And that's the standard practice
 3 today. I don't know that in today's
 4 judgment I would do this. I just don't
 5 know what the judgment was --
 6 Q. But you might? You might do this?
 7 A. Would I do this today?
 8 Q. Yeah.
 9 A. Why do you suggest that?
 10 Q. You said you don't know. I'm just
 11 asking.
 12 A. Are you asking me whether I would? You
 13 seemed to make it a statement.
 14 Q. You said it yourself. I thought you
 15 did.
 16 A. No.
 17 Q. You said didn't know what you would do.
 18 I was incredulous. I can't believe --
 19 A. I said in 1970 --
 20 Q. -- that you don't know what you would
 21 do.
 22 A. In 1970. Today with this information,
 23 just like we have done it, we would make

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1 that the contamination level does not
 2 reach the reservoir." Did I read that
 3 correctly?
 4 A. Yes.
 5 Q. Does that not show reprehensible
 6 conduct, hiding the levels of PCBs in
 7 fish that people are going to take -- or
 8 that people may eat so as to avoid
 9 enforcing the law?
 10 A. I don't understand all of this and what
 11 was going on at that point in time. I
 12 mean, I thought the letter earlier --
 13 and I may be wrong -- was that the FDA
 14 -- from the FDA findings. So the FDA
 15 had this information if the letter of
 16 August 7th is correct. So if FDA has it
 17 who can act, and Alabama has it, I don't
 18 know what's right, wrong, or indifferent
 19 here.
 20 Q. You can't see anything wrong with -- You
 21 as Monsanto's representative --
 22 A. You know, today, clearly under this
 23 condition exactly what has happened has

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1 it public; we'd go to the authorities,
 2 and what happens, happens. And the
 3 public knows and everything else,
 4 certainly.
 5 Q. In 1970, August 17, 1970, Monsanto and
 6 Mr. Crockett were both willing to hide
 7 what they knew about PCBs in the fish so
 8 that Monsanto would not have to take the
 9 adverse publicity that would result from
 10 closing Choccolocco Creek to fishing.
 11 Isn't that so?
 12 A. I think what he's saying is that we
 13 would have had to close it, and I don't
 14 know what the additional consequences of
 15 that were. But --
 16 Q. Why do the FDA and the State of Alabama
 17 have regulations designed to keep people
 18 from eating fish with elevated levels of
 19 PCBs?
 20 A. I think those were fish advisories at
 21 that point in time. As I recall with
 22 all this information on PCBs coming out,
 23 it says advisories, don't eat fish with

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1 these levels.
 2 Q. Why?
 3 A. Because they judge that to be
 4 potentially unsafe for their health.
 5 Q. Right. It's public health and safety?
 6 A. Sure.
 7 Q. And Monsanto in 1970 Monsanto and this
 8 Joe Crockett were willing to put aside
 9 public health and safety and hide this
 10 information from the public to keep from
 11 having to enforce the law. Is that not
 12 true? Is that not precisely true?
 13 A. Well, the way, again, I read the
 14 document is that the FDA knew about it,
 15 that could have taken independent
 16 action, the State of Alabama had the
 17 information. I don't know why Joe
 18 Crockett felt that it was important that
 19 he not do that or not take action.
 20 Q. Did Monsanto directly or indirectly ever
 21 before, during, or after this period
 22 make any payments to Joe Crockett or
 23 give him any gifts or anything of value

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1 Exhibit Nineteen on August 17, he's now
 2 gone so far as that he's going to keep
 3 the information that he has as an
 4 official of the State of Alabama, his
 5 PCB information, and he's saying that if
 6 it hits the Alabama press, we're going
 7 to be forced to follow the law. And I
 8 had asked you was that reprehensible.
 9 And what was your answer?
 10 A. We did talk about this. And I think it
 11 was a long sort of answer which says
 12 basically I don't know what was in
 13 Crockett's mind about that. You know,
 14 at this point in time a lot of this
 15 information, even the three references
 16 you note, were sort of May, August,
 17 September, shortly after this thing was
 18 all under way. This was all pretty new
 19 information. And looks to me like he's
 20 suggested some recommendations. He
 21 wanted more facts than that before he
 22 did any more with this. So I don't read
 23 it that he was hiding it. I mean, I

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1 to your knowledge?
 2 A. I have no understanding or knowledge of
 3 any of that.
 4 Q. So not to your knowledge?
 5 A. Sounds completely out of line with the
 6 people that I know, like Mr. Hodges,
 7 that something like that would have been
 8 conceivable.
 9 Q. Sound -- Okay. Time out.
 10 [A break was taken.]
 11 Q. (By Mr. Barrett) When we took our break
 12 in this deposition, we were talking
 13 about Mr. Crockett for the Alabama Water
 14 Improvement Commission. And we see on
 15 Exhibit Seventeen where he's saying that
 16 he's going to handle the problem quietly
 17 without release of the information to
 18 the public. We see on Exhibit Eighteen
 19 where his recommendations are we "Give
 20 no statements or publications that would
 21 bring the situation to the public's
 22 attention." We see in the document we
 23 were talking about most recently,

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1 could read this to where the guy was
 2 trying to get more facts about where the
 3 contamination was, what it was, and at
 4 what level.
 5 Q. Joe Crockett, and Monsanto, which went
 6 along with Joe Crockett, clearly chose
 7 to protect Monsanto's profits here at
 8 the expense of public health and safety.
 9 Is that not so?
 10 A. No. I don't believe so.
 11 Q. You know, Mr. Pierle, one hears about
 12 government regulators being in bed with
 13 the corporations they're supposed to be
 14 regulating. But this is an especially
 15 clear and brutal example of that right
 16 here with these documents. Is that not
 17 so?
 18 A. I don't believe so.
 19 Q. Because of this conspiracy of silence
 20 that these documents have just been
 21 talking about, Choccolocco and the other
 22 waters downstream from the Anniston
 23 plant remained open and were not closed.

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1 No advisories were issued until November
2 of 1993. Is that not so?

3 A. I don't recall the specific date.

4 Q. Well, I'll show you that document in a
5 moment. You can assume it's true. And
6 all of that time -- this is twenty-three
7 years, over twenty-three years and three
8 months, you had unsuspecting citizens of
9 the Anniston area continuing to eat fish
10 laden with PCBs in levels beyond limits
11 allowed by the FDA until the Alabama
12 Department of Public Safety finally came
13 in themselves, did testing, saw what was
14 there, and issued an advisory. Is that
15 not so?

16 MR. PECK: Object to the form of
17 the question, lacks
18 foundation.

19 A. Again, I think what we described here is
20 that the FDA had the information,
21 Alabama had the information. I don't
22 know that the rationale was or wasn't
23 for communication. They were early in

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1 to generate the information about the
2 issue. I think that's my reading of
3 what Monsanto did.

4 Q. You said that all this happened over the
5 course of just a few months, and those
6 three documents reflect that. But let's
7 go forward. Go forward to October 15,
8 1971, about a year later. Look at
9 Exhibit Twenty, please. Here it says
10 that "We have an appointment with
11 Mr. Crockett on Wednesday, October 20,
12 to present our story to him, so we need
13 your comments." So they're fixing to
14 meet with Mr. Crockett on Wednesday
15 October 20, 1971; is that right,
16 according to this memo?

17 A. October 20th. Correct.

18 Q. And to give him, quote, "our story," end
19 quote?

20 A. That's what it says.

21 Q. Let's look at the memo, the next exhibit
22 that describes what happened at that
23 meeting. Okay? Exhibit Twenty-One,

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1 the process of gaining more information.
2 I believe there was some public
3 discussion of this at a point in time.
4 So I guess my characterization of this
5 is this is about people dealing with a
6 new subject relatively early trying to
7 understand facts and make appropriate
8 judgments and decisions. That's the way
9 I read these documents.

10 Q. Monsanto intentionally went along with
11 hiding this information both as to the
12 PCBs that it was discharging and the
13 PCBs that were in the fish. They went
14 along with this plan as outlined by Jim
15 Crockett, did they not?

16 A. I think that is mischaracterization of
17 what Monsanto was doing.

18 Q. Whatever they did, they did it on
19 purpose, did they not?

20 A. I think what they did was to disclose
21 all of the information to the state to
22 work with the state about the collection
23 of additional information and continue

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1 would you take a look at that? Maybe
2 this -- This was a meeting, apparently,
3 that happened about three weeks after
4 that. I take it back. It was not the
5 October meeting. This was a meeting on
6 November 11, 1971 that's described in
7 this Monsanto document. Is that not so?

8 A. Yeah. Describes a meeting at the
9 offices of EPA in Atlanta, Georgia in
10 November.

11 Q. And this is a Monsanto document, is it
12 not? Can you look and tell?

13 A. It appears to be.

14 Q. Again, it's got "Company Confidential"
15 on it, doesn't it?

16 A. Yes, it does.

17 Q. Don't want anybody to see this outside
18 the company, right? That's what that
19 means?

20 A. That would be the intent of that.

21 Q. Yes.

22 A. It's limited to the discussion of the
23 people that received it.

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1 Q. The people present at the meeting, there
2 were four people there at the EPA office
3 in Atlanta. There were four people
4 there from Monsanto, right?
5 A. Appears that way, yes.
6 Q. And who was there representing the State
7 of Alabama?
8 A. Joseph Crockett.
9 Q. That's the Mr. Crockett we have been
10 talking about, right?
11 A. I believe it is.
12 Q. And then there were four people there
13 from the EPA, including the director of
14 enforcement, Mr. John White. Is that
15 not so?
16 A. Yes.
17 Q. The first paragraph says, "This meeting
18 was arranged by Mr. Crockett at the
19 request of Mr. John White." So the EPA
20 asked Joe Crockett to set this meeting
21 up, right?
22 A. Yes.
23 Q. Now, it says our program to control and

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1 to a discharge limit.
2 Q. Well, Mr. Crockett did, anyway. It
3 suggests Mr. Crockett did, right?
4 A. That's what it says.
5 Q. And as a result of the meeting the
6 agreements were reached. Number one:
7 They're going -- Mr. Crockett and
8 Mr. White are going to agree on some
9 level of emissions going to be
10 permitted?
11 A. Uh-huh.
12 Q. Look here, the last sentence:
13 "Obviously, Mr. Crockett will press for
14 a number in excess of our 0.3 of a pound
15 per day current level." Did I read that
16 right?
17 A. Yes.
18 Q. Mr. Crockett is going to see to it --
19 going to press, do his best, to make
20 sure that Monsanto doesn't have to do
21 anything different, that they will be
22 allowed to discharge more than they
23 already -- or at least as much or more

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1 reduce PCB emissions to Snow Creek was
2 reviewed by both Monsanto employees and
3 Joe Crockett, who emphasized we had kept
4 him fully advised concerning our program
5 and our --
6 A. I'm sorry. Where are you?
7 Q. Bottom -- I thought I had it highlighted
8 on the bottom paragraph of the first
9 page. Does it say that?
10 A. Yes.
11 Q. Look at the first full paragraph on page
12 two. Says, "There was considerable
13 discussion concerning the limiting level
14 of PCB that should be permitted in the
15 discharge. Mr. White -- that's the EPA
16 -- "suggested no detectable amount. And
17 then Mr. Crockett and the Monsanto
18 personnel pointed out that this was an
19 undesirable approach." Mr. Crockett is
20 certainly being very, very cooperative
21 with Monsanto here, is he not?
22 A. I mean, what this suggests is that
23 Alabama had the same impression relative

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1 that they already are discharging. Is
2 that not exactly what that says?
3 A. No, it is not. It refers to an interim
4 permissible level and at that time in
5 all those permit discussions interim
6 permit levels were typically in the
7 range of what you were currently doing.
8 And they were typically in a range of
9 which you wouldn't violate that. They
10 then went on to have additional
11 conditions about future action. This
12 was an absolutely brand new program in
13 the Federal government with a new
14 Federal agency. And I was in the
15 process of that when it was being
16 administered. And that's the way the
17 program virtually worked.
18 Q. So what you're saying is that the way it
19 worked is that the permits meant
20 nothing, the permits were -- would be
21 defined as to what they were doing
22 anyway, what Monsanto was doing anyway?
23 A. I think what the permit said under those

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1 conditions, when you went in and
 2 applied, was that day one you couldn't
 3 do any worse than what you were doing,
 4 and in the future the permit would be
 5 the vehicle by which future reductions
 6 would be required if appropriate. I
 7 mean, it was a very logical step. And
 8 when you're dealing with the director of
 9 enforcement, which they were, you want
 10 to come to agreement with something that
 11 you can meet and be in compliance with.
 12 Wouldn't have been really appropriate to
 13 do differently.

14 Q. Then on the last page it says "It was
 15 suggested by Mr. White that it might be
 16 desirable to dredge Snow Creek. And I
 17 believe we convinced him that this was
 18 undesirable." Had Snow Creek -- This
 19 was done in 1971; it's 1998 now. Has
 20 Snow Creek ever been cleaned up yet?

21 A. I think there are parts of Snow Creek
 22 under other provisions that have been --
 23 there have been contaminants removed.

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1 not any further clean-up is necessary.

2 Q. Okay. Now, that document we looked at
 3 while ago, Exhibit -- I believe --
 4 Sixteen, the confidential and destroy
 5 document we talked about a good while,
 6 it mentioned that there were high levels
 7 of PCBs in the fish in Snow Creek? Do
 8 you remember that?

9 MR. PECK: Object to the form of
 10 the question. It was
 11 Seventeen, I think.

12 Q. Yeah. Exhibit Seventeen. No tricks
 13 there.

14 A. I just couldn't find it. It didn't have
 15 that number on that that I thought you
 16 referred to, so I was looking further
 17 for it.

18 Q. Look up at the top. I'm doing this from
 19 memory, but doesn't it talk about high
 20 levels of PCBs in the fish in Snow
 21 Creek, correct? Or is it Choccolocco?

22 A. It refers to FDA findings of high levels
 23 taken from Choccolocco Creek downstream

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1 Q. Has PCB -- has PCB been removed from
 2 Snow Creek?

3 A. I think in parts of the area, yes.

4 Q. Where?

5 A. Again, I'd have to go back to the
 6 detailed documents. But there are
 7 sections of that that I know were
 8 improved.

9 Q. Improved. But is Snow Creek cleaned up
 10 yet? Let me ask it that way.

11 A. Consistent with what the discussions are
 12 with the regulatory requirements in the
 13 past and currently, I think we have done
 14 all that has been proposed and accepted.
 15 And I think we have additional study
 16 work to do, which we're in the process
 17 of discussing with the regulatory
 18 officials today.

19 Q. So the answer is no. It has not yet
 20 been cleaned up?

21 A. That's not what I said. I said parts of
 22 it have been. And there are further
 23 discussions under way as to whether or

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1 from its confluence with Snow Creek.

2 Q. It also says that Monsanto was
 3 discharging some sixteen pounds of PCBs
 4 a day?

5 A. Yes.

6 Q. Now, some ten days after that read and
 7 destroy memo, Paul Hodges at Monsanto
 8 wrote another memo. And that would be
 9 Exhibit Twenty-two, if you'll pull it
 10 out. And the -- It basically says that
 11 Monsanto ought not be giving such
 12 emissions data to the state because
 13 there could be a record of it that could
 14 be subpoenaed later in legal action. Is
 15 that not the gist of this letter?

16 A. Let me go ahead and read it. It's a
 17 short letter.

18 [Discussion held off the
 19 record.]

20 Q. (By Mr. Barrett) Mr. Pierle, you have
 21 read that document now, Exhibit
 22 Twenty-two?

23 A. Yes.

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1 Q. I doubt you remember my question. The
2 memo says in substance that Monsanto
3 ought not be giving such emission data
4 to the state because there would be a
5 record that could be subpoenaed later in
6 legal actions? Is that not true?

7 A. Well, the way I read this, Hodges wasn't
8 pleased that the losses were going up,
9 but it says, obviously, having to report
10 these gross losses multiplies enormously
11 our problem because the figures would
12 appear to indicate lack of control. Can
13 you do something more about this. I
14 mean, he's reluctant, and I read he
15 wasn't happy. But he also says having
16 to report these losses indicates to me
17 that they're going to get reported. And
18 now that we're there, what else can we
19 do at the site to get these back down.
20 And, oh, by the way, check and make sure
21 that the numbers are accurate.

22 Q. Now, that's an interesting answer that
23 you gave, because we have got a couple

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1 said that -- this way -- The way you
2 read this was that they would go ahead
3 and do it even though they would hate to
4 do it?

5 A. I think what it says is that from the
6 legal standpoint -- and I imagine that
7 the lawyers are saying, boy, do we have
8 to report this or not. And he's saying
9 that we're going to have to report this.
10 And the fact now that we have to report
11 higher levels indicates lack of control.
12 What can we do to get this -- to get
13 these losses reduced at the site.

14 Q. Things were out of control for a long
15 time at that Anniston plant, the PCB
16 releases, weren't they?

17 A. I think what the data show here is that
18 over time -- because the numbers as you
19 stated earlier were up to, what, two or
20 three hundred pounds a day? That things
21 were coming down and that the controls
22 were increasing through this time period
23 as a result of the immediate actions

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1 of more documents to look at. But the
2 letter says specifically for the jury to
3 know that -- and you take -- keep --
4 watch it with me, that we requested
5 latest emissions data on the flow to
6 Snow Creek. "We had hoped it might show
7 an improvement over the first week of
8 September and thus demonstrate a
9 favorable trend to Crockett. Instead,
10 emissions are considerably increased
11 with September 13, 1970 at 6.25 parts
12 per million or about eighty pounds of
13 PCB for the day. From the legal
14 standpoint there is an extreme
15 reluctance to report even the relatively
16 low emission figures because the
17 information could be subpoenaed and used
18 against us in legal actions." And then
19 it says what you read about that having
20 to report these gross losses multiplies
21 enormously our problems, because the
22 figures would indicate -- would appear
23 to indicate lack of control. Now, you

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1 that were being taken.

2 Q. Of course, during this period of time
3 Monsanto's friend, Mr. Crockett, is
4 telling Monsanto not to worry, that he's
5 not going to let these effluent levels
6 go to the public.

7 I'm going to hand you a
8 Plaintiff's Exhibit Twenty-three. I'm
9 sorry I don't have a copy of it. I'm
10 just going to give it to you. I'll ask
11 my question now and then hand it to you.
12 Talks about -- Tell us whether or not it
13 talks about a meeting that you had,
14 again, that Monsanto had again, on
15 October 23rd with Mr. Crockett, 1970,
16 says he's well satisfied and that we had
17 a discussion of the technical complexity
18 of Aroclor, or PCB numbers, resulted in
19 Mr. Crockett's agreeing that any written
20 effluent level reports would be held
21 confidential by the technical staff and
22 would not be available to the public
23 unless -- until or unless Monsanto

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1 releases it. Look at that and tell me
 2 if I have read that correctly.
 3 A. I think that describes -- You read it
 4 correctly. Again -- Here we are again
 5 in October back in talking to Crockett.
 6 You described him as Monsanto's friend.
 7 I don't know what his relationship was
 8 with Monsanto. Again, through this time
 9 -- and it refers to the technical
 10 complexity of the Aroclor, or PCB
 11 numbers. And I do recall that we were
 12 developing analytical methodology during
 13 this period of time. And there was
 14 considerable question as we were
 15 developing that as to the accuracy of
 16 the methodology. And again, I think
 17 that's what's coming through here, is
 18 that we're giving you the data that we
 19 have. We're telling you how good we
 20 think it is. And because of the
 21 complexities in the analysis, we're not
 22 certain how good the data really are.
 23 To me that sounded like pretty much open

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1 to?
 2 A. May I take a look at it?
 3 Q. Yeah. You tell me.
 4 A. Typically the top line would indicate
 5 who wrote the letter.
 6 Q. Okay. So --
 7 A. One would have thought you could see a
 8 signature on it.
 9 Q. So anyway, Mr. Savage is then writing to
 10 Mr. Papageorge. And it says "PCB levels
 11 in Snow Creek." "Average PCB loss for
 12 the month" -- This is now -- would be I
 13 guess September -- "was high at 2600
 14 parts per billion, or 32 pounds per day
 15 largely a result of one very bad day,
 16 400 pounds." And did I read that
 17 correctly?
 18 A. Yes.
 19 Q. Now, let's go to November of 1970. I'm
 20 going to hand you a document. We have
 21 marked it Exhibit Twenty-Seven. It's
 22 from the Anniston Monsanto Plant
 23 Technical Services Department. It says

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1 disclosure with him.
 2 Q. So where we are here is that Monsanto's
 3 worried about giving this data because
 4 they don't want it to be subpoenaed.
 5 Crockett is saying, don't worry, I'm not
 6 going to let it out. But that doesn't
 7 help Monsanto -- if somebody issues a
 8 subpoena, there's not anything Crockett
 9 can do to help them then, is it?
 10 A. I don't know, again -- what it says is
 11 the legal department was concerned about
 12 that. But the fact is in making a
 13 decision that we're going to give this
 14 data and information to the regulatory
 15 authorities.
 16 Q. Let's see, then, what they did do about
 17 that. I'm going to hand you Exhibit
 18 Twenty-six, an October 7, 1970 -- It's
 19 called "September PCB Report" to
 20 Mr. Papageorge in the general office in
 21 St. Louis. No. I beg your pardon. It
 22 is to Mr. -- The top line, does that
 23 indicate who wrote it or who it's going

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1 "Confidential, Read and Destroy."
 2 "Aroclor losses during November averaged
 3 25 pounds a day, (4620 ppb)." That's
 4 parts per billion. Does it say that?
 5 A. Yes, it does.
 6 Q. Put that aside because we're going to
 7 return to it in just a moment. Put it
 8 where you can reach it, if you would.
 9 Now, you said that Monsanto agreed
 10 that -- they decided reluctantly -- as
 11 bad as they hated to, they were going to
 12 have to tell the truth, and now we have
 13 the October 15, 1971 letter to
 14 Mr. Crockett from Monsanto which --
 15 MR. PECK: '71?
 16 MR. BARRETT: Yes.
 17 Q. But it refers to the -- since our first
 18 report, then it gives a graph,
 19 supposedly attaches a graph, which we
 20 don't have. But it says, "The attached
 21 graph of weekly PCBs and effluent flows
 22 shows progress since our first report to
 23 you in November 1970. As shown at the

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1 beginning of the graph, effluent was in
 2 the range of 1 - 5 pounds per day."
 3 Did I read that correctly?
 4 A. That is what it says. You know, I don't
 5 know what this is -- what stream this
 6 may be referring to. And it's 1971.
 7 Q. Right. And it refers back to November
 8 of 1970. Pick up November of 1970 again
 9 and tell the jury what the confidential,
 10 read and destroy memo said that Monsanto
 11 was dumping in, you know, in its waste
 12 treatment every day. How many pounds?
 13 A. Well, it says in 1970 it was about 25
 14 pounds a day.
 15 Q. November of 1970, 25 pounds.
 16 A. In October of '71, almost a year later,
 17 it says it's down to 1 - 5.
 18 Q. Oh, no, sir. It doesn't say that. Read
 19 it again. It says in -- that 1 - 5
 20 pound is referring to the beginning of
 21 the report, in November of 1970, they're
 22 telling Joe Crockett that our discharge
 23 was 1 - 5 pounds a day when in fact it

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1 fact, that would be intentional
 2 misconduct for a corporation to do that?
 3 A. Wouldn't do that.
 4 Q. Now, speaking of falsifying evidence,
 5 have you ever heard of a test -- I
 6 believe you did say you have heard of a
 7 testing company called IBT, Industrial
 8 Biotest?
 9 A. Yes.
 10 Q. Tell the jury what IBT was and what its
 11 relationship with Monsanto was.
 12 A. My understanding is IBT was a commercial
 13 testing laboratory, basically a
 14 toxicological testing. And they were --
 15 they did work for Monsanto Company on
 16 the testing of certain of its products.
 17 Q. And did they get into trouble?
 18 A. There were -- I recall that there was an
 19 investigation. The details I'm not
 20 familiar with. There were accusations
 21 -- I think one Monsanto employee may
 22 have been convicted. Again, I don't
 23 know the details on that. My

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1 was twenty-five times that. It was 25
 2 pounds a day. Is that not so?
 3 A. I don't know what this says or if
 4 they're both referring to the same
 5 thing. That's what the letter says.
 6 Q. Okay. All right. Let's move on.
 7 A. Could I read the rest of this?
 8 MR. BARRETT: Let's go off the
 9 record so he can read the
 10 rest of this.
 11 [Discussion held off the
 12 record.]
 13 Q. (By Mr. Barrett) Do you agree that it
 14 is wrong in general for a company to
 15 falsify documents and falsify data that
 16 it believes will wind up being used as
 17 evidence in lawsuits?
 18 A. Absolutely.
 19 Q. That's intentional. That would be
 20 intentional misconduct?
 21 A. I wouldn't approve that or stand for it.
 22 Q. Right. Of course you wouldn't. That
 23 wasn't my question. As an objective

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1 recollection of the outcome of all that
 2 was that -- you know, that caused a redo
 3 of a lot of toxicology work on products.
 4 And my understanding of the net effect
 5 of that was there was really no change
 6 in the outcome of test work.
 7 Q. I'm going to hand you Plaintiff's
 8 Exhibit Twenty-nine. This is a copy of
 9 the indictment of the Federal Grand Jury
 10 in the Northern District of Illinois in
 11 October of 1980. It refers to a man
 12 named Paul Wright. Did you know Paul
 13 Wright?
 14 A. I did.
 15 Q. Did not?
 16 A. I did.
 17 Q. Did? Says here that Paul Wright was
 18 section head for rat toxicology at IBT
 19 from approximately March of 1971 until
 20 September of 1972, at which time he
 21 became manager of toxicology for the
 22 Department of Medicine and the
 23 Environmental Health at Monsanto

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1 Corporation in St. Louis Missouri from
 2 1972 until the time of his indictment in
 3 A. That's correct.
 4 Q. And he was indicted -- Do you know
 5 whether or not IBT itself was indicted?
 6 A. It was my understanding that IBT -- and
 7 Paul Wright was an employee of IBT, as
 8 this describes, and that was the subject
 9 of his indictment. And after this legal
 10 proceeding was over, I believe he was
 11 dismissed as a Monsanto employee.
 12 Q. Now, he was convicted and actually went
 13 to the Federal penitentiary, did he not?
 14 A. I believe that's the case.
 15 Q. And Paul Wright falsified data for
 16 Monsanto during this period of time, did
 17 he not?
 18 A. My understanding was he was not an
 19 employee of Monsanto at that time.
 20 Q. I know he was not. He was working at
 21 IBT. And while working for Industrial
 22 Biotest Laboratories at the request of
 23 Monsanto he altered tests and falsified

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1 results actually showed, if that
 2 occurred? That's a subjective --
 3 A. Yeah. I mean, we have a right to
 4 comment on the work and raise
 5 professional opinions. It's up to the
 6 report writer then to make a final
 7 judgment with respect to what that
 8 person does, common peer review process
 9 and practice.
 10 Q. But that doesn't answer my question at
 11 all. I mean, that's a separate issue.
 12 Do you agree with me that it would
 13 be unconscionable and malicious conduct
 14 for Monsanto to intentionally attempt to
 15 influence the results of supposedly
 16 independent laboratory tests to make
 17 PCBs appear to be less harmful than the
 18 test actually shows?
 19 A. No. We should not intentionally do
 20 that. That's correct.
 21 Q. Now, I have asked you to look at Exhibit
 22 Thirty. This is a letter written by
 23 George Levinskas at Monsanto dated July

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1 test data for Monsanto, did he not?
 2 A. I don't know that that's the case. No.
 3 Q. You deny that that happened? You don't
 4 know anything about it?
 5 A. I do not know the facts on that.
 6 Q. All right. We are -- I'm going to hand
 7 you a document marked Exhibit Thirty
 8 which is a Monsanto document dated July
 9 18, 1995. And I'm going to ask you to
 10 take a look at that.
 11 MR. BARRETT: The court reporter
 12 has asked me for a short
 13 break, so you look at it
 14 during the break, and we'll
 15 pick back up.
 16 [A break was taken.]
 17 Q. (By Mr. Barrett) Mr. Pierle, do you
 18 agree with me that it would be
 19 unconscionable as well as malicious
 20 misconduct for Monsanto to attempt to
 21 change the results of a supposedly
 22 independent animal study to make PCBs
 23 appear to be less harmful than the test

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1 18, 1975, is it?
 2 A. Yes.
 3 Q. And in this letter -- It's written to
 4 Biotest Laboratories; is that right?
 5 A. Yes.
 6 Q. And they're saying that apparently
 7 Biotest Laboratories has done this two
 8 year rat feeding study. But they have
 9 sent it to Monsanto for review and
 10 apparent approval before publishing it;
 11 is that correct?
 12 A. I think they sent it to them for
 13 comment. I don't know that they sent it
 14 to them for approval.
 15 Q. And apparently the -- this supposedly
 16 independent Industrial Biotest
 17 Laboratories, the way they had written
 18 the report was they came to a conclusion
 19 that the PCBs, Aroclor 1254,
 20 specifically, was slightly tumorigenic.
 21 Is that -- So far am I accurate?
 22 A. Yes.
 23 Q. Tumorigenic means that it produces --

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1 that if a substance is tumorigenic, it
2 produces tumors.
3 A. It has the ability to produce tumors.
4 Q. Right. And that doesn't mean that it
5 causes cancer, but it is a marker for
6 causing -- if a substance is
7 tumorigenic, then that is one step
8 towards being -- producing a tumor that
9 is malignant, right?
10 A. My understanding is that that is not
11 correct, that you can produce tumors
12 that are not malignant.
13 Q. That's my point. That's what I was
14 saying. To say it's tumorigenic doesn't
15 mean that -- Every tumor is not
16 cancerous?
17 A. I believe that's correct.
18 Q. But every cancer is a tumor?
19 A. Well, now you're -- I mean --
20 Q. All right. The fact is that when
21 something is tumorigenic, that is a
22 marker that it might be carcinogenic,
23 right?

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1 A. Again --
2 Q. That's a yes or no question.
3 A. No, it isn't. I mean, I think generally
4 it's not a good sign, but again, what I
5 said earlier, you typically test at high
6 enough levels to produce an effect. And
7 in most tox -- testing you are dosing
8 animals to where, if you find a tumor at
9 one dose, you're also expecting or
10 looking for whether or not tumors are
11 produced at all doses.
12 Q. At any rate, Monsanto requests Biotest
13 Laboratories to change this report from
14 slightly tumorigenic to the phrase "does
15 not appear to be carcinogenic. Did I
16 read that correctly?
17 A. Yes.
18 Q. Look at the next exhibit, Exhibit
19 Thirty-one.
20 A. Is that the additional one?
21 MR. PECK: He hasn't given it to
22 me yet.
23 MR. BARRETT: I thought I did.

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1 A. Would you repeat that?
2 Q. When -- If a substance is tumorigenic,
3 that let's scientists know that it may
4 be carcinogenic, that it may produce
5 malignant tumors?
6 A. Again, I think as you even stated, it
7 indicates that it's tumorigenic. One
8 would then want to do more work, I
9 think, to find out whether or not it's
10 carcinogenic.
11 Q. But it's pretty bad. It's a bad sign?
12 A. Well, a lot of people have tumors
13 removed and polyps removed and that --
14 that are not carcinogenic. So it
15 doesn't mean it's a bad sign.
16 Q. You don't want -- In a test like this,
17 when you're testing doing feeding
18 studies to see whether or not Aroclor
19 causes problems in living creatures,
20 when you're doing a rat feeding study,
21 if you find that the Aroclor is
22 tumorigenic, that's not a good thing to
23 find, is it?

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1 Maybe I just have one copy.
2 MR. PECK: I just have
3 Twenty-seven.
4 MR. BARRETT: Here it is. I'm
5 sorry.
6 Q. (By Mr. Barrett) Look at Exhibit
7 Thirty-one. This is a letter, is it
8 not, dated August 4, 1975 responding
9 from the -- this is Mr. Calandra.
10 Remember, we talked about his rat tests
11 earlier in the deposition. This is the
12 Mr. Calandra now responding to Monsanto.
13 Dear George, "1. We will amend our
14 statement in the last paragraph on page
15 2 of the Aroclor 1250 report to read,
16 quote, 'does not appear to be
17 carcinogenic,' end quote, in place of
18 'slightly tumorigenic' as requested.
19 Did I read that correctly?
20 A. Yes.
21 Q. You don't see anything wrong with that,
22 do you?
23 A. I don't. I mean, I think it again is an

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1 accurate -- It sounds like it's an
 2 accurate description. I mean, I would
 3 read that to assume that there were
 4 tumors but they don't appear to be
 5 carcinogenic. It's an additional
 6 interpretation and actually gives more
 7 information than what was initially
 8 given.

9 Q. Mr. Pierle, the fact is that there's a
 10 very definite pattern here throughout
 11 these documents of Monsanto not trying
 12 to get to the truth and not trying to
 13 protect public safety by just the
 14 opposite. Is that not so?

15 A. I don't believe that that's the case at
 16 all.

17 Q. That Monsanto is not concerned with the
 18 truth, not concerned with the health and
 19 safety of the people in Calhoun County,
 20 Alabama, anyway, but concerned with
 21 Monsanto and its bottom line profits?

22 A. No. We have always been concerned, I
 23 believe, with the health and safety of

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1 A. Yes.

2 Q. And then he talks about this -- There
 3 was this note from a man named Ed Gustaf
 4 raising concerns about PCBs. And does
 5 he not say, "I can only suggest that you
 6 attempt to put Gustaf's mind at ease
 7 regarding the 'toxic' aspects of these
 8 chlorinated biphenyls by playing down
 9 the medical reports and playing up
 10 proper system design." I read that
 11 correctly, didn't I?

12 A. Yes.

13 Q. How can it ever be in the public
 14 interest to play down medical reports
 15 when you're giving out information to
 16 the public?

17 A. Again, I don't know what was
 18 specifically talked about here. But it
 19 goes back to the discussion we have had
 20 throughout this deposition where there
 21 are medical reports and tox reports
 22 about the hazards of material as opposed
 23 to safe handling of those materials.

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1 our products, our workers, and people
 2 around our plant sites.

3 Q. Let's look at a couple more exhibits,
 4 then. Look at what I have as Exhibit
 5 Thirty-two. I'll hand it to you. It's
 6 a document dated February 14, 1969. Who
 7 is -- while you're looking at it, tell
 8 the jury who Don Roush is, or was?

9 A. I don't recall.

10 Q. Okay. But this is definitely a Monsanto
 11 document, is it not?

12 A. It appears to be, yes.

13 Q. And there have been questions raised.
 14 There were a lot of questions being
 15 raised about chlorinated biphenyls at
 16 this time. Is that not so?

17 A. Yes.

18 Q. And Mr. Roush says here, does he not, in
 19 the third paragraph, "However, it only
 20 seems a matter of time until the
 21 regulatory agencies will be looking down
 22 our throats regarding the use of this
 23 material." Is that what it says?

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1 And it's very conceivable here that he's
 2 saying, listen, we know that under the
 3 medical reports under testing or the
 4 environment that the information shows
 5 adverse properties. But in a proper
 6 design system, in a closed design system
 7 where there's no exposure, there's no
 8 risk associated with this product.
 9 That's how I view this letter being
 10 written.

11 Q. By playing down the medical reports,
 12 does that sound like protecting the
 13 health and safety of the public or
 14 protecting Monsanto?

15 A. Looking back, you know, one would have
 16 suggested probably different words
 17 there. But I think the reality of it is
 18 they're saying don't have the entire
 19 conversations about the hazards of the
 20 material. Also let's look at the proper
 21 design and utilization of the material.

22 Q. I expect you wish you could rewrite a
 23 lot of these old Monsanto documents that

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1 we have looked at today.
 2 A. I don't know that that's the case or
 3 not.
 4 Q. All right. Go forward. One more.
 5 MR. BARRETT: Do you have Exhibit
 6 Thirty-two?
 7 MR. PECK: That's the one we just
 8 did.
 9 MR. BARRETT: All right.
 10 Thirty-three. Excuse me.
 11 MR. PECK: Which I don't have.
 12 Q. (By Mr. Barrett) I just have one copy
 13 of it. I'll give it to you in a moment.
 14 This is another document, again, dated
 15 January 23, 1969. This document again
 16 says "C-O-N-F-I-D-E-N-T-I-A-L." And the
 17 reason I say it, that's the way it's
 18 spelled, all capital letters, underlined
 19 twice, and it's got a dash between each
 20 word spelling out "confidential."
 21 "Aroclors in Plant Effluent." And it's
 22 -- I'm going to read the first sentence,
 23 and you tell me if I'm reading it

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1 A. I believe I was the director of
 2 environmental operations within the
 3 chemical unit of Monsanto.
 4 Q. You are writing a report or memo for
 5 environmental status of Anniston plant,
 6 are you not?
 7 A. Yes.
 8 Q. You and a Mr. Redington?
 9 A. That's correct.
 10 Q. Who is he?
 11 A. I believe that he was the environmental
 12 manager within the agricultural
 13 chemicals company.
 14 Q. You say in the last sentence on the
 15 memo, "We should continue to maintain a
 16 cooperative interaction with the
 17 regulators." Was Jim Crockett still
 18 there?
 19 A. I don't recall that. Joe Crockett, you
 20 mean.
 21 Q. Whatever. Joseph Crockett.
 22 A. I don't ever recall meeting him.
 23 Q. "And to be responsive to local community

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1 correctly. I'll hand it to you when I
 2 get through. "With the likelihood that
 3 the attention now being focused on the
 4 presence of Aroclors in natural waters
 5 will draw attention to any Aroclor being
 6 sewerred in your production plant
 7 outfalls, we should begin to protect
 8 ourselves." Does it say that?
 9 A. That's what it says.
 10 Q. Do they seem to be concerned about the
 11 public safety aspects or environmental
 12 aspects of dumping PCB in the sewer, or
 13 are they concerned with protecting
 14 Monsanto? What's the thrust of that?
 15 A. Yeah. I mean, it says protect
 16 ourselves. I don't know totally what
 17 that means.
 18 Q. Okay. Let's go forward eighteen years.
 19 One of your memos, Mr. Pierle. I'll
 20 hand you Exhibit Thirty-Four. As you're
 21 reading that, what were you doing in
 22 1987, February 1987? What was your
 23 employment position?

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1 attitudes." And the purpose is, it
 2 says, "to stay ahead and defuse these
 3 future concerns." Is that what it says?
 4 A. Yes.
 5 Q. Now, at this time when you wrote this,
 6 Monsanto's known at least since 1968,
 7 according to one document, '69 some
 8 others, that there was a serious PCB
 9 release into the area outside the
 10 Anniston plant. Is that a fair
 11 statement? At least since that time?
 12 A. Again, there was documented information
 13 about some presence in Choccolocco
 14 Creek. Whatever we have talked about
 15 today. I don't think that that
 16 indicates that that was a consideration
 17 of a severe environmental condition off
 18 the plant property.
 19 Q. Would you think finding elevated --
 20 finding elevated levels of PCBs in the
 21 blood of hundreds of people that live
 22 around that plant, that that would
 23 indicate a serious problem?

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1 A. I think it would indicate something that
2 we sure need to understand as to whether
3 it is a problem or not. We didn't know
4 that. I mean, my understanding is we
5 didn't know that at the time this letter
6 was written.
7 Q. You are going to have a hard time
8 convincing one of those folks with it in
9 his blood that it's not a problem,
10 aren't you?
11 A. Well, I think that that is always a very
12 tough challenge. You're absolutely
13 correct on that.
14 Q. But at any rate, this is 1987. And
15 basically there's been no major PCB
16 clean-up that has occurred since 1969,
17 has there?
18 A. At this point in time I don't know how
19 much of what was done or not.
20 Q. Well, I mean in 1987 Monsanto at this
21 point has avoided any major cleanup
22 expenses, has it not?
23 A. Again, expenses -- There was no

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1 conversation at this point in time about
2 a need based on that information that
3 was available to do any additional work.
4 Q. Okay. That's a long answer. But the
5 fact is, it boils down to they have not
6 had any major cleanup expense, certainly
7 outside the gate at the Anniston plant.
8 Is that true?
9 A. We talked about some stuff at Snow
10 Creek. I don't know the time frame, but
11 there was some work done relative to
12 that.
13 Q. And PCBs at this time, in 1987, are
14 still going off site every day, aren't
15 they, from that plant?
16 A. At this point in time I don't believe
17 there was any information to indicate
18 that.
19 Q. Well, we know that it was going -- every
20 time you test it it's going off the
21 plant, isn't it? Can you find any
22 record of any test anywhere before 1987
23 or after 1987 when Monsanto actually

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1 requirement, nothing that needed to be
2 done. So I don't think we have avoided
3 anything at this point in time.
4 Q. In other words, unless the government
5 tells you -- unless the government finds
6 out about it -- I'm not talking about
7 Joe Crockett. But unless the government
8 finds out about it, the EPA or somebody
9 that's going to -- and forces you to
10 take cleanup measures, then you don't
11 see there's a problem?
12 A. No. That's not what I'm saying. I'm
13 saying from what we have described,
14 there was plenty of information that was
15 available to the public and the
16 regulatory agencies about PCBs around
17 the plant site before. There was not
18 out of that a -- through that set of
19 conversations, but there was a lot of
20 work done at the plant site, obviously,
21 to reduce losses and to make things
22 better. And then the plant was shut
23 down. But there was out of that not a

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1 went out and did some testing that they
2 didn't find PCBs escaping from the
3 plant?
4 A. I don't know what was done relative to
5 the continuation of the discussion we
6 had in '70, after the plant was shut
7 down, if it indicated that those losses
8 from the plant site had gone to zero.
9 I'm not -- I just don't know the
10 specifics of data or what may have
11 existed between the time we left the
12 discussion in '87.
13 Q. But PCBs are still in the fish in 1987;
14 is that right?
15 A. Again, I don't know that that's the
16 fact, what the data were or where they
17 were.
18 Q. Wait a minute. We know -- We just
19 looked at documents that indicated in --
20 I believe in 1970 that there were high
21 levels of PCB in the fish, right?
22 A. That's correct. The FDA work that we
23 talked about.

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- 1 Q. But Mr. Crockett kept it quiet and
2 didn't put anything -- didn't let the
3 Alabama press find out about it, and no
4 advisory was ever issued. And then in
5 1993, twenty-three years and three
6 months later, some more tests are done,
7 and PCBs are still in the fish, and they
8 issue an advisory. Is there anything
9 that makes you believe for a second that
10 the PCBs disappeared from the fish
11 during this period from 1970 to 1993 but
12 only came back a short time before the
13 tests were done?
- 14 A. I don't know. There was some indication
15 in the document that the levels in the
16 fish were tracking the reductions in the
17 level of the discharge from the plant
18 site. But I mean, it sounds to me like
19 from what we said, the fact we know,
20 they were there in '70; they were there
21 in '93. I don't know what the
22 conclusion is in between those time
23 periods.

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- 1 Q. People are still catching them and
2 eating them, aren't they?
- 3 A. That I don't know either.
- 4 Q. Probably? Because there's no advisory.
- 5 A. I don't know what the practice is down
6 there. I'm not a resident. I don't
7 know.
- 8 Q. But yes, you are a resident, are you
9 not? Don't you have responsibility, and
10 haven't you had responsibility for the
11 safety and health as a corporate
12 citizen? You have had the job yourself
13 on behalf of Monsanto since 1991. And
14 you mean to tell me that you haven't
15 found out whether or not people fish in
16 those bodies of water that you have been
17 dumping PCBs in?
- 18 MR. PECK: Object to the form of
19 the question.
- 20 A. That's not a specific question that I
21 would ask. I think the question that I
22 would ask is do we feel we have any
23 environmental health or safety concerns

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- 1 Q. But you have got a lot of common sense,
2 and you know if it was there in '70 and
3 it was there in '93, that it was there
4 in 1987, weren't they?
- 5 MR. PECK: Object to the form.
6 Lack of foundation.
- 7 Q. In all probability
- 8 MR. BARRETT: What? Foundation
9 that he's got common sense?
- 10 MR. PECK: Foundation that he's
11 not a toxicologist, and you
12 have skipped a lot of data
13 between then and now that
14 indicates that it was
15 dropping and was out of the
16 fish in '89 and '90 and '92
17 and '93. There's data on
18 that. You haven't presented
19 it to him.
- 20 Q. So you think that there weren't PCBs in
21 the fish in 1987? Or you just don't
22 know?
- 23 A. I don't know.

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- 1 around plant sites and would react and
2 respond to that line of inquiry.
- 3 Q. All right. You don't have any reason to
4 indicate people weren't -- that they had
5 stopped fishing, do you?
- 6 A. I just don't know.
- 7 Q. Do you know -- You have seen houses
8 there. I know you have told me you have
9 seen houses. Does Monsanto assume that
10 people lived in those houses, including
11 children?
- 12 A. I mean, I know we know that people live
13 in some of those houses. But -- at the
14 time of the buy-out children -- again, I
15 don't know what the marital status or
16 child status was.
- 17 Q. Wouldn't it have been safe for Monsanto
18 to assume that children were living in
19 those areas and playing in those ditches
20 and playing in those overflow areas?
21 Wouldn't that have been the wise thing
22 for Monsanto to do with its primary
23 responsibility being to protect the

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1 health and safety of the neighborhood?

2 A. I think that what we, you should have

3 known and did know was where were the

4 PCB going and in the discharges during

5 this time period, what the levels were.

6 And they were going down discharge

7 canals that were permitted pathways for

8 waste water discharge.

9 Q. You have seen the little three monkey

10 paper weights, see no evil; hear no evil

11 -- See, hear -- speak no evil. That

12 shouldn't apply to Monsanto, should it?

13 A. I don't think it does.

14 Q. But it shouldn't, should it? Monsanto

15 can't just turn a blind eye to problems

16 and say, gee, we didn't know, if it's

17 right there in front of their faces, can

18 they?

19 A. I don't think we, you know, should,

20 would, or did.

21 Q. People are out there, whether they are

22 children or not, and they're breathing

23 -- This is 1987. They're breathing the

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1 been no reason to do that.

2 Q. And you didn't do it, did you?

3 A. Pardon?

4 Q. You didn't do it? You, Monsanto, did

5 not issue any public warning about any

6 PCBs at any time from 1931 up through

7 1987, did you?

8 A. I think there was a lot of public

9 information available relative to PCBs.

10 Q. Not the question.

11 A. And we did a lot of work with people

12 around that.

13 Q. With Joe Crockett? But did you give any

14 public --

15 A. I think we did a lot of work with a lot

16 of people in addition to Joe Crockett.

17 Q. Did you give any -- Yes or no. Did you

18 give any public warning? Did you issue

19 any notice? Did you put an ad in the

20 paper? Did you have a press release?

21 Did you put up any signs to say that

22 there's a PCB problem here or that there

23 may be a PCB problem here so that your

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1 PCBs in the air and the dust if there

2 are any?

3 A. Well, they're breathing, certainly, yes.

4 And they're breathing air in the area.

5 Q. And if PCBs are in the air, they're

6 breathing it into their bodies. Maybe

7 they're exhaling it, as you say, or some

8 of it, but they're breathing it into

9 their bodies, aren't they?

10 A. Again, you leave out the facts of

11 whether or not there were PCBs there,

12 which I don't know.

13 Q. Okay. And again, we're still setting

14 the stage of what's happening in 1987.

15 Still in 1987 there's been no public

16 warning of any PCB hazard or the fact

17 that they are being discharged, or no

18 advisory, nothing by Monsanto, to tell

19 the public that you have PCBs in your

20 midst?

21 A. Yeah. If in fact the levels have come

22 down before the fish advisories, I guess

23 at that point in time there would have

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1 neighbors could make their own

2 conclusions about what they should do

3 with their children? Did you do any of

4 that?

5 A. I don't think we did. And I don't think

6 there was a basis to do that.

7 Q. Right. And so, anyway, you authored

8 this memo. And it's supposedly -- or

9 giving an environmental status to the

10 plant, right?

11 A. That's correct.

12 Q. Now, in this environmental status report

13 you don't mention any of the factors

14 that I have just enumerated over the

15 last five or six minutes, did you?

16 A. I'd have to go back and refresh my

17 memory on the report.

18 Q. Well, okay. To your knowledge did you

19 say anything about warning people or the

20 fact that it's still -- it's still going

21 into the effluent, it's still in the

22 fish people are still catching, any of

23 those things?

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1 MR. PECK: Object to the form of
2 the question. No foundation.
3 A. I don't recall any of that at that time.
4 Q. But you do say that we need to defuse
5 the future concerns -- these future
6 concerns of the community. What future
7 concerns are you talking about? I
8 assume that -- or do I actually assume
9 correctly that Monsanto here, and you,
10 Mr. Pierle, knew that one of these days
11 Monsanto -- the bubble was going to
12 break, that the dam would break, or
13 whatever you want to say, that the word
14 would get out of this environmental
15 disaster concerning PCBs at your
16 Anniston plant. Is that what you were
17 talking about when you said future
18 concerns?
19 A. No. I think what it says there is that
20 -- because we were doing work at that
21 site. And it was a tone question that
22 basically says, you know, in the future
23 we have got to be attentive to the

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1 don't you?
2 A. I think we have acted on this on the
3 basis that there is information that
4 needs to be available. We need to do
5 that on open disclosure. And if that
6 suggests that there are issues or
7 problems that need to be dealt with,
8 real and including any community
9 reaction, we ought to do that
10 appropriately.
11 Q. The fact is here we are in June of 1998,
12 and PCBs are still escaping from the
13 Anniston site into the community. And
14 there are still millions of pounds of
15 PCBs buried on the Monsanto-Solutia
16 property in Anniston. And not a thimble
17 full of PCB contaminated dirt has been
18 removed from the Mars Hill Church
19 property or from the properties of any
20 of our clients to this day. Isn't that
21 -- All of those things are true, aren't
22 they?
23 A. No, they're not.

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1 attitudes of the communities. We have
2 got to be responsive to those, stay
3 ahead of them, and defuse those. In
4 other words, act responsively and
5 properly.
6 Q. Does that memo that you wrote in 1987
7 not indicate that both you and Monsanto
8 were concerned primarily with public
9 relations rather than with public health
10 with regard to the Anniston PCB
11 situation?
12 A. No. I mean, everything above that
13 document is work and activity that is
14 going on. And this says in addition
15 basically we should continue to maintain
16 cooperative interaction with regulators.
17 That was a posture of what we were
18 doing, be responsive to community
19 attitudes, stay ahead and defuse those
20 future concerns.
21 Q. Mr. Pierle, you still think this -- the
22 main problem that Monsanto and Solutia
23 has now is a public relations problem,

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1 Q. Let's take them one at a time. PCBs are
2 still escaping from the Anniston site
3 into the community. That's true, isn't
4 it?
5 A. I don't know that that's true. We have
6 undertaken significant remedy with
7 respect to the run-off from the landfill
8 to interject and prevent that
9 occurrence.
10 Q. There's still millions of pounds of PCBs
11 buried on the plant site in Anniston,
12 are there not?
13 A. I don't know the number. There's a
14 large quantity. And they are buried on
15 the plant site, just as they are in a
16 lot of different places.
17 Q. In unlined --
18 A. As I understand the geology in that
19 particular area is such that there --
20 Q. Don't have to?
21 A. -- is deep play, and they basically
22 prevent a line in and of itself.
23 Q. Not a thimble full of PCB contaminated

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1 dirt has been removed from the Mars Hill
 2 Church premises or from the properties
 3 of any of our other clients there?
 4 A. Quite some time ago we made offers to a
 5 large number of people, including the
 6 churches in the particular area. And we
 7 have stood ready to undertake those
 8 actions and stand ready to today to do
 9 those. And many people have accepted
 10 those offers, and removal has taken
 11 place.
 12 Q. And they have to be -- have to accept
 13 your offer on your terms before you will
 14 remove the dirt, right, the PCB
 15 contamination?
 16 A. I think we have extended an offer that
 17 we thought was fair, and we have, where
 18 discussions have warranted, negotiated
 19 from that. So I think we have not made
 20 it a unilateral take-it-or-leave-it
 21 proposition.
 22 Q. Mr. Pierle, has a thimble full of PCB
 23 contaminated dirt from Choccolocco Creek

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1 health. That's what we're about.
 2 MR. BARRETT: That's all the
 3 questions I have.

4
 5 (AND FURTHER DEPONENT SAITH NOT.)
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1 or from the Coosa River been removed and
 2 properly disposed of?
 3 A. That I don't know. We have not taken
 4 those actions. Whether others have, I'm
 5 not aware.
 6 Q. And the fish advisory is still in
 7 effect?
 8 A. For portions I believe of Choccolocco
 9 Creek and maybe portions of one of the
 10 lakes.
 11 Q. Because the fish there still contain
 12 PCBs?
 13 A. That's correct. They contain it as of
 14 the data that we have done here
 15 recently.
 16 Q. This isn't a public relations problem at
 17 all, is it? It's a lot more serious
 18 than that, is it not?
 19 A. It is an issue that we are dealing with
 20 openly with the affected people in the
 21 area. And it's very important that we
 22 reach the right solutions with respect
 23 to control and the protection of public

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June 12, 1998

Mr. Michael A. Pierle
 C/O Adam Peck, Esq.
 Lightfoot, Franklin & White
 300 Financial Center
 505 North 20th Street
 Birmingham, Alabama 35203

Dear Mr. Pierle:

This page is incorporated as page 247 of your deposition. Your deposition transcript has been completed, and as per requested, is ready for you to read over. Please do not write on the transcript but make any changes you wish on the errata sheet provided. If there are no corrections, write across page "no corrections." Please sign the signature page before a notary, and then return errata and signature page.

Under the Rules of Civil Procedure you have thirty days to read and sign your deposition transcript.

If you have any questions, please feel free to call me at (314) 729-0575 and I'll be glad to help in any way I can.

Sincerely,

Sheila L. Ford, RPR, CSR
 KRIEGSHAUSER REPORTING & VIDEO
 cc: John Barrett, Esq.

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SIGNATURE PAGE

MICHAEL A. PIERLE

Subscribed and sworn before me on this
_____ day of _____, 1998

My commission expires:_____.

[NOTARY PUBLIC]

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NOTARIAL CERTIFICATE

I, SHEILA L. FORD, a Registered Professional Reporter and duly commissioned Notary Public within and for the State of Missouri, do hereby certify that there came before me the Ritz-Carlton Hotel, 100 Carondelet Plaza, St. Louis, MO 63105,

MICHAEL A. PIERLE,

who was by me first duly sworn to testify to the truth and nothing but the truth of all knowledge touching and concerning the matters in controversy in this cause; that the witness was thereupon carefully examined under oath and said examination was reduced to writing by me; and that the signature of the witness was not waived by agreement of witness and all parties, and that this deposition is a true and correct record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this deposition is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 13th day of June, 1998.

My commission expires: March 13, 2002

Sheila L. Ford
Notary Public

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