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1 1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ALABAMA 3 SOUTHERN DIVISION 4 5 CIVIL ACTION NO.: CV-01-C-1407-S 6 7 ANTONIA TOLBERT, et al., 8 Plaintiffs, 9 v. 10 MONSANTO COMPANY; 11 PHARMACIA, INC.; and 12 SOLUTIA, INC.; et al., 13 Defendants. 14 _____ 15 16 DEPOSITION OF ALAN FAUST 17 The deposition of ALAN FAUST was 18 taken before Karen Kelley, Notary 19 Public, State at Large, on April 23, 20 2003, by the plaintiffs, commencing at 21 10:40 a.m. in the office of Kevin Clark 22 in Birmingham, Alabama, pursuant to the 23 stipulations set forth herein.	4 1 INDEX 2 3 EXAMINATION PAGE 4 By Mr. Davis 5-59 5 6 7 8 EXHIBITS MARKED 9 Plaintiff's Exhibit 1 33 10 11 12 13 14 15 16 17 18 19 20 21 22 23
2 1 STIPULATIONS 2 3 IT IS HEREBY STIPULATED by and 4 between counsel that the deposition of 5 ALAN FAUST be taken on the date and time 6 specified and in the action denominated 7 herein before Karen Kelley, Notary 8 Public, State at Large. 9 IT IS FURTHER STIPULATED that 10 all objections and assignment of 11 grounds, except as to the form of the 12 question, are reserved to the time of 13 trial. 14 IT IS FURTHER STIPULATED that 15 the signature to and reading of the 16 deposition by the witness is waived, the 17 deposition to have the same force and 18 effect as though full compliance is had 19 with all laws and rules of court 20 relating to taking depositions. 21 22 23	5 1 ALAN FAUST 2 was sworn and testified as follows: 3 THE COURT REPORTER: Usual 4 stipulations? 5 MR. DAVIS: Yes. 6 MR. CLARK: Did you want the 7 opportunity to read and sign your 8 deposition? 9 THE WITNESS: Sure. I mean, I 10 don't know that I have before. 11 MR. CLARK: You don't have to. 12 Generally speaking, I don't. But if you 13 wanted to -- some witnesses are peculiar 14 about that. 15 THE WITNESS: No, that's fine. 16 EXAMINATION 17 BY MR. DAVIS: 18 Q. Mr. Faust, by whom are you 19 currently employed? 20 A. Solutia Incorporated. 21 Q. And you have been employed by 22 Solutia since Solutia came into 23 existence?
3 1 APPEARANCES 2 3 4 FOR THE PLAINTIFF: 5 FRANK DAVIS 6 Attorney at Law 7 One Highland Place 8 2151 Highland Avenue 9 Suite 100 10 Birmingham, Alabama 35205 11 12 FOR THE DEFENDANT: 13 KEVIN CLARK 14 Attorney at Law 15 The Clark Building 16 400 20th Street North 17 Birmingham, Alabama 35203 18 19 20 21 22 23	6 1 A. Yes. 2 Q. Who was your employer before 3 that? 4 A. Monsanto. 5 Q. When did you first go to work 6 for Monsanto? 7 A. June of '91. 8 Q. What is your current position 9 with Solutia? 10 A. I am the environmental safety 11 and health lead for the Krummich Plant 12 in Sauget, Illinois, and the Queeny 13 Plant in St. Louis, Missouri. 14 Q. And do you currently have any 15 responsibilities with regard to the 16 Anniston Plant? 17 A. No. 18 Q. When is the last time you did 19 any work in connection with the Anniston 20 Plant? 21 A. October of '99. 22 Q. When was the first -- well, let 23 me restate it.

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7 1 Have you ever done any work in 2 connection with the Anniston Plant? 3 A. Yes. 4 Q. When was the first time that you 5 did any work in connection with the 6 Anniston Plant? 7 A. I think it was '93/'94 time 8 frame. 9 Q. Where were you physically 10 employed at that time? 11 A. With Monsanto, in the 12 engineering group of Monsanto. 13 Q. Where was your office at that 14 time? 15 A. St. Louis. 16 Q. What was your position? 17 A. I was a hydrogeologist in the 18 engineering group. 19 Q. Who did you report to? 20 A. Bruce Yare, Y-A-R-E. 21 Q. You have an undergraduate degree 22 in geology? 23 A. Yes.	10 1 area of hydrology? 2 A. Yes. 3 Q. Can you tell me what that was? 4 A. When I came to Monsanto, I 5 joined the group that was in charge of 6 supporting the plants on ground water 7 investigations, RECRA facility 8 investigations, and all of those had a 9 component of geohydrology, ground water 10 flow. So I had four or five plants that 11 I was assigned to, Anniston being one, 12 to help them with their annual 13 monitoring and ground water studies. 14 Q. All right. Then what was your 15 first responsibility with regard to 16 Anniston? What were you doing? 17 A. Well, various things. Again, it 18 was supporting them on any of their 19 environmental issues, whether it's 20 ground water or surface water. They've 21 had a collection system in place since 22 the -- I think the early '80s for 23 capturing and treating ground water from
8 1 Q. And do you have a master's 2 degree in something? 3 A. MBA of business. 4 Q. And in getting your geology 5 degree, did you take some hydrology 6 courses? 7 A. Yes, I did. 8 Q. And describe those for me 9 generally. 10 A. Generally it was an elective 11 part of the program where I took 12 hydrogeology courses at the university. 13 So there was two courses in 14 hydrogeology. 15 Q. When did you graduate? 16 A. In '81 -- I take that back. 17 1980, December of '80. 18 Q. Between 1980 and 1991 describe 19 for me, in general, what sort of 20 experience or additional training you 21 had in hydrology. 22 A. Well, in fluid movement, 23 subsurface fluid movement, I worked for	11 1 the south of the south landfill and 2 north -- on the north end of the plant 3 to capture for paraffine and PNP, two 4 contaminants in the ground water. So 5 they had annual reports that they had to 6 submit and compliance reports they had 7 to submit to ADEM on the effectiveness 8 of that. So I assisted them annually on 9 those reports. 10 Q. Did that have anything to do 11 with PCBs? 12 A. No. 13 Q. Were the wells being tested for 14 PCBs? 15 A. I don't recall. 16 Q. When was the first time you 17 heard anything about PCBs in Anniston? 18 A. That would have been probably 19 late '95, about late '95, I think. 20 Q. And what did you hear at that 21 time? 22 A. Well, at that time I was in a 23 different group and I didn't have
9 1 City Service Oil and Gas, and then later 2 bought out by Occidental Petroleum. So 3 I was a petroleum geologist/geophysicist 4 for those two firms, studying oil, fluid 5 movement. 6 Q. Ground water? 7 A. Not ground water per se, but 8 oil, gas. 9 Q. Okay. 10 A. Let me go on. From '89 to '91 I 11 worked for an environmental consulting 12 firm in St. Louis where I did hydrologic 13 studies for projects in the St. Louis 14 area for that firm. 15 Q. Service water, hydrology of 16 ground water, hydrology or both? 17 A. Both. 18 Q. Prior to the time you went to 19 Monsanto, did you have any -- let me 20 restate that. 21 Prior to the time you went to 22 the Anniston Plant of Monsanto, did you 23 have any experience with Monsanto in the	12 1 responsibilities for -- well, let me 2 take that back. It would have been 3 probably '95 is when the west end -- the 4 issues with the west end landfill, the 5 plant was working on that. And I was 6 still in the group, the technical group. 7 So we met with ADEM and presented a 8 sampling plan for determining the impact 9 of the west end landfill. 10 Q. Okay. Before we get to that, 11 maybe it would be a good idea for me to 12 just let you walk me through your career 13 and history at Monsanto, slash, Solutia. 14 A. Okay. 15 Q. Can you do that for me? 16 A. Right. I came in in '91 in the 17 engineering technology group, which had 18 a subset within that was the remediation 19 group. In '95 I believe I moved into 20 the remediation project management group 21 where I was assigned -- I think that was 22 late '95 -- where I was assigned 23 different projects to keep track of

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13 1 across the country that Monsanto was 2 involved in on former facilities, 3 landfills and whatnot. In '95, early 4 '95, is when I would have still been in 5 a technical role and was assigned to 6 work with the plant to come up with this 7 sampling plan for the west end landfill. 8 In late '95 I moved into the 9 remedial management group, and at that 10 point I no longer had any 11 responsibilities for Anniston. Then in 12 '96, March time frame of '96 when the 13 consent order for the west end landfill 14 remedy was signed, I was asked to take 15 on the Anniston project as the primary 16 project to manage. And we, my family 17 and I, transferred to Anniston in July 18 of '96. 19 Q. Still part of remediation -- 20 A. Remediation group, right. So I 21 reported back to St. Louis. 22 Q. Now, are you still in that 23 group?	16 1 since I was on the project. Just 2 updates on work that occurred over the 3 last three to six months and work that 4 was going to occur over the next three 5 to six months. 6 Q. Second occasion, when was that? 7 A. It was probab'ly -- what is this, 8 2003? I think, again, about that same 9 time in 2002. 10 Q. Same kind of meeting? 11 A. Yeah. 12 Q. Okay. Any other -- anything 13 else that you have done in connection 14 with Anniston since '99? 15 A. No. 16 Q. All right. Let's back up now to 17 1995. 18 A. Okay. 19 Q. 1995, you said there was a 20 consent order concerning the west end 21 landfill? 22 A. In '96. 23 Q. In '96. Okay. I want to --
14 1 A. No. In '99 I transferred to 2 St. Louis and worked in the plant. So I 3 was no longer in that remediation group. 4 I was part of the plant staff doing 5 day-to-day compliance oversight. That's 6 where I am currently. 7 Q. All right. Since you 8 transferred to St. Louis in 1999, have 9 you been back to Anniston other than on 10 depositions perhaps? 11 A. Depositions. And occasionally 12 in early, you know, 2000, maybe once in 13 2001, just as transition, attended, you 14 know, technical meetings. 15 Q. What kind of technical meetings? 16 A. We have a lot of consultants 17 that work on the project, so once a 18 quarter or thereabouts they will -- 19 Craig Branchfield, I did in the past, 20 get together those different groups and 21 just do updates on status, where we are 22 and what we are going to be working on 23 for the next quarter or two quarters.	17 1 what is the first thing you heard about 2 the west end landfill? 3 A. That Alabama Power, who at the 4 time owned the landfill -- I think this 5 was in '95, probably summer of '95 -- 6 was doing some grass cutting and normal 7 maintenance on the property around their 8 substation and noticed a black substance 9 on the hills, on the slope of what was 10 the west end landfill. And they tested 11 it and it was PCBs, so they contacted 12 Solutia -- well, Monsanto at the time. 13 And I think at that point we took back 14 ownership of the property and took over 15 ownership operations of whatever the 16 remedy was going to be for that 17 property. 18 Q. What was the status of all of 19 that at the time you first heard about 20 it? 21 A. I think the status was they 22 didn't know much more than there was 23 this black substance on the side and
15 1 Q. Okay. I am confused, and 2 sometimes I get confused. You may not 3 be able to help clarify my confusion, 4 but you went to St. Louis in '99? 5 A. Right. 6 Q. And I thought you didn't have 7 any responsibilities with regard to 8 Anniston after '99? 9 A. No responsibilities other than 10 just if asked to come down and help in 11 the transition between myself and Craig 12 Branchfield, who now manages the 13 project. 14 Q. Okay. How many times has that 15 occurred? 16 A. I think twice. 17 Q. Okay. Let's take the two times. 18 Do you remember when the first one was? 19 A. It would have been probably in 20 the first half of 2001. 21 Q. What do you remember about that? 22 A. Not a great deal, other than 23 just like our normal meetings we've had	18 1 didn't know what the lateral or vertical 2 extent of PCB impact was. 3 Q. Did Monsanto know at the time 4 that you got involved in it in 1995 that 5 it had been an old landfill? 6 A. Yes. 7 Q. Do you know whether Monsanto 8 knew that the property had been an old 9 landfill at the time the property was 10 transferred to Alabama Power Company? 11 A. I believe so. 12 Q. Okay. Did you get involved in 13 the investigation with regard to where 14 the PCBs had gone from that landfill? 15 A. I think my involvement was 16 coming up with the initial proposal for 17 sampling surface and subsurface and 18 ground water of the actual 19 implementation of that study and 20 evaluating the results. I wasn't at -- 21 that's when I switched over into the 22 management group and Anniston was no 23 longer one of my sites that I worked on.

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19 1 Q. Okay. Let me talk for a few 2 minutes about what information you 3 had -- first, you physically went down 4 to Anniston at that time, right? 5 A. In '95? 6 Q. Right. 7 A. Yes. 8 Q. Was that for a temporary period? 9 A. Oh, no, I was just down for a 10 meeting or so. So it was just a 11 commute. 12 Q. Did you inquire at that time as 13 to what sort of information existed, 14 what kind of testing had been done 15 already? 16 A. I don't remember specifically. 17 But anytime we do an investigation, we 18 look at is there any historical 19 information that could help in the 20 investigation going forward. 21 Q. Was there, in place at the time 22 that you went there, any regular testing 23 of the ditches that lead from the west	22 1 Monsanto? 2 A. Yes. 3 Q. And one up gradient, was that on 4 Monsanto property? 5 A. Yeah. I believe it was on that 6 property closest to 202. 7 Q. Did one of those wells show some 8 PCBs for a period of time? 9 A. I don't recall because, again, 10 at the time that sampling was done and 11 results, I had then transferred out of 12 that group. 13 Q. You don't remember whether one 14 of the wells showed some PCBs and then 15 collapsed or something like that? 16 A. No. 17 Q. The surface water testing, where 18 did you recommend that be done? 19 A. There was -- at the same time 20 there was testing being done for the 21 NPDES renewal. I think they did the 22 sampling in conjunction with that and 23 there was a drainage ditch that led from
20 1 landfill? 2 A. I am not sure. I don't 3 remember. 4 Q. Did you physically observe the 5 west landfill when you went down there? 6 A. Yes. 7 Q. What did you see? 8 A. Just a grassy hill. 9 Q. Were you able to see any of the 10 tar-like substance, or had the power 11 company already covered that? 12 A. I think the power company had 13 already covered that. 14 Q. You said you designed the plan 15 for testing? 16 A. Right. 17 Q. You told me what kind of 18 testing, but I have forgotten. Surface 19 water testing? 20 A. Surface soil sampling, surface 21 water sampling and ground water testing. 22 Q. Describe for me what you 23 recommended.	23 1 the west end landfill that was tested. 2 Q. Were those tests for the water 3 or for the sediment, or what was that? 4 A. I believe it was just the water. 5 Q. Now, you also mentioned surface 6 soil testing. Where was that? 7 A. That was across all of the 8 property there in a grid form. I don't 9 remember the number of samples. 10 Q. What do you mean by all of the 11 property? 12 A. The landfill and the adjacent 13 property, all of the property that we 14 reacquired from Alabama Power. 15 Q. Was there any soil testing done 16 in any areas other than property that 17 you reacquired from Alabama Power? 18 A. I don't believe so. 19 Q. Did you do anything with regard 20 to the landfill after you got it back, 21 the west landfill? 22 A. Well, that later became part of 23 the consent order that was filed in
21 1 A. In the testing? 2 Q. Yes. 3 A. Was to put a grid across both 4 the landfill and the adjacent land 5 around the station, around the power 6 station and substation and test the 7 surface soils, as well as test the 8 ground water down gradient of the 9 landfill for PCBs. 10 Q. Start with what you said last, 11 which is the ground water. 12 A. Uh-huh. 13 Q. Where were those wells located 14 generally? 15 A. There were three wells, I 16 believe -- four wells, an up gradient 17 well, which would have been near 202, 18 and then three down gradient wells at 19 the toe of the slope, at the bottom of 20 the slope of the landfill. 21 Q. The three down gradient wells, 22 were they on property that was 23 transferred by the power company back to	24 1 March of '96, was to develop a remedy 2 for controlling those surface results, 3 PCBs, and then designing that and 4 implementing and constructing that 5 remedy. 6 Q. And with regard to the west 7 landfill, when was the -- y'all put a 8 cap on it? 9 A. Yeah. 10 Q. When was that completed? 11 A. That was completed in -- I think 12 it was completed in '96. 13 Q. Okay. And were you still 14 responsible for it at the time it was 15 completed? 16 A. Well, it was that interim where 17 I was no longer, in '95, responsible for 18 it. But then in March of '96 I took -- 19 in my management position I took over as 20 manager. So from '96 through '99 I was 21 responsible for it, yes. 22 Q. When it was completed and -- 23 when the cap in it at least was

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25 1 completed in 1996, did you put in place 2 a regular sediment sampling program for 3 ditches below it? 4 A. I believe in the '96 order we 5 were to sample the ditches leading from 6 the west end landfill as well as the 7 south landfill leading to Snow Creek. 8 So there was still an investigation 9 being ongoing. It expanded out from 10 that property. 11 Q. Here is what I am really curious 12 about, is whether you know of -- let's 13 back up to an even earlier date. Okay. 14 I will try not to be too confusing the 15 way I ask this question. I want to back 16 up to an even earlier date. Were you 17 familiar, in general, with the cleanup 18 that was done of ditches from Bethel 19 Church on down to Snow Creek and part of 20 Snow Creek, some remediation work that 21 was done there in the 1980s before you 22 got there? 23 MR. CLARK: Object to the form.	28 1 taken quarterly, I believe it was, to 2 look for PCBs in the sediments. 3 Q. For how long? 4 A. Continual. It continues to be a 5 part of the NPDES permit, and I believe 6 the operation and the maintenance of the 7 west end landfill is a 30-year 8 obligation. 9 Q. Now, you have experience in 10 ground water hydrology; right? 11 A. Right. 12 Q. In the 1995/96 time frame when 13 you were doing work on the west end 14 landfill, did you investigate the 15 question of the flood planes along those 16 ditches leading to Snow Creek? 17 MR. CLARK: Object to the form. 18 A. Yes, as it was a part of the 19 consent order that we were working -- 20 the consent order was to investigate the 21 impacts of the ditches into the flood 22 planes into Snow Creek, and if impacts 23 were found, contaminants were found,
26 1 A. Not really. 2 Q. Did you hear at some point in 3 time that there had been some work done? 4 A. Yes. 5 Q. Are you aware of any regular 6 program that was in place to 7 periodically sample the sediment in the 8 ditches leading from the Monsanto Plant 9 to Snow Creek, any kind of regular 10 program to sample that sediment that 11 existed between the date of the cleanup 12 in the mid '80s -- or whatever was done 13 in the mid '80s -- and the time that you 14 were concerned with the west end 15 landfill in the mid '90s? 16 MR. CLARK: Object to the form. 17 A. No. 18 Q. Did you put in effect any 19 regular system of periodically sampling 20 those ditches after the work on the west 21 end landfill? 22 A. The NPDES permit renewal -- I 23 have to remember when that was -- had	29 1 design a remedy to control that. 2 Q. Okay. Now, prior to 1996 -- the 3 consent decree of 1996, prior to that, 4 are you aware of any investigation that 5 had been done by Monsanto concerning the 6 flood planes below its plant and leading 7 to Snow Creek? 8 A. I don't think so. I am not 9 aware of -- I don't recall any. 10 Q. Now, when you went to 11 investigate the flood planes after 1996, 12 where did you go to begin that 13 investigation? Were there any flood 14 plane maps or anything like that 15 available? 16 A. Well, we had maps of Snow Creek 17 that would depict the flood plane. Near 18 the plant there were no maps that showed 19 drainage ditches, but we knew -- by just 20 walking around you could see where water 21 flowed. So we mapped the location of 22 those ditches and sampled those ditches 23 both in the ditch and lateral, either
27 1 PCB sampling in surface water as part of 2 that sampling. So that renewal happened 3 in, I think it was '97. But at that 4 point there was a formal plan for 5 sampling our surface water discharges 6 from our facility for PCBs. 7 Q. See, what I am looking for is 8 really not, say, a single occasion on 9 sampling. What I am wondering is after 10 you did the work on the west end 11 landfill in the mid '90s, did you, as 12 manager of that project, put into place 13 a system for periodically, you know, 14 say, like once every three months or 15 once every six months or once every year 16 sampling the sediment in those ditches 17 leading from the plant to Snow Creek? 18 A. I didn't take anything on 19 personally, but as part of the NPDES 20 permit and as part of the operation and 21 maintenance of that cap that we put on 22 at the west end landfill, there was 23 surface water samples that had to be	30 1 side of the ditch. 2 Q. Okay. Let's start, then, with 3 the Snow Creek, the question of Snow 4 Creek itself. There were in existence 5 flood plane maps for Snow Creek? 6 A. Yes. 7 Q. And who would have done those 8 originally? 9 A. Not Monsanto. Those are done 10 by, I believe, probably the City of 11 Anniston and FEMA. 12 Q. What is FEMA? 13 A. Federal Emergency Management 14 Agency. 15 Q. So do you know when flood maps 16 basically first started coming into 17 existence? 18 A. No, I don't. 19 Q. But in any event, flood maps of 20 Snow Creek were publically available; 21 Monsanto could have gone out and gotten 22 those prior to 1996? 23 A. They are publically available.

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31 1 Q. If someone had wanted to know 2 the area that the ditches would flood in 3 a rain, say, a 100-year flood or a 4 50-year flood or a 25-year flood, how 5 would you have gone about determining 6 that? 7 A. Well, the -- again, it depends 8 on the magnitude of the storm, but for 9 Snow Creek you could look at the flood 10 plane map and determine the contours, 11 how far it's predicted. Other than 12 that, I would say observation would be 13 -- you know, if you observed actual 14 flooding. But there was no -- there was 15 nothing on record to look at to say 16 where it would have flooded other than 17 very close to the ditch at a minimum. 18 Q. So there was no publically 19 available information on the ditches 20 leading to Snow Creek as opposed to Snow 21 Creek? 22 A. Right. 23 Q. That would show you where the	34 1 Q. Okay. Here is what I am curious 2 about and the reason I wanted to hand it 3 to you. If you will look at that, there 4 is a map on the back and it shows, I 5 think, an area where work was going to 6 be performed between Bethel and Snow 7 Creek. And that's what we have been 8 talking about. That's a plan that was 9 entered into in the 1980s for some work 10 to be done in that area, in that 11 tributary -- or that ditch, rather, 12 leading to Snow Creek. I would rather 13 say ditch than tributary. Here is what 14 I am interested in knowing, the PCBs 15 that were found in the 1990s in the area 16 between Bethel Church and Snow Creek, 17 how they got there. And what I am 18 curious about is can you tell us, were 19 those PCBs that just weren't cleaned up 20 in the 1980s or were they new PCBs that 21 had gotten into the creek since the work 22 done in the 1980s? 23 MR. CLARK: Object to the form.
32 1 flood planes were? 2 A. Correct. 3 Q. If you wanted to know, one way 4 you could do it, I think you said, was 5 to ask people about it. Did y'all go 6 out and ask people about what areas were 7 flooding? 8 A. No. 9 Q. Okay. Could one have also 10 employed an engineer to look at the 11 elevations and look at the drainage 12 basin and determine where the flooding 13 would likely have occurred? 14 A. An engineering firm could do an 15 estimate, yes. 16 Q. And prior to the consent order 17 in 1996 had that been done for that 18 area, to your knowledge? 19 A. No. 20 Q. Did you commission such a study 21 after 1996? 22 A. As part of -- in order to 23 fulfill the obligations of the order, we	35 1 A. Well, the drainage between 2 Bethel and Snow Creek takes waters from 3 areas -- a pretty large area up gradient 4 of Bethel. And later in '96/'97 we 5 found PCBs in those ditches up from 6 Bethel. So those could have been 7 scoured and placed over the area that 8 was dug out in '84/'85, whenever it was. 9 Q. Basically in the ditches that 10 lead to the ditch at Bethel, further up 11 in those ditches there were PCBs that 12 had not been cleaned up? 13 A. Correct. 14 Q. And your conclusion is, it's 15 likely that what occurred is the PCBs 16 moved from further up, down back into 17 this area? 18 A. Could very well, yes. 19 Q. I had asked you earlier about 20 whether there was in place -- was 21 already in place when you got there in 22 '95/'96 a program of systemically -- a 23 program of regularly monitoring the
33 1 had to understand where things might 2 flood, so we did an engineering study. 3 Q. After 1996 did y'all, in your 4 investigation, find PCBs in the 5 settlement in the ditches between the 6 area of Bethel Church and Snow Creek? 7 A. Yes. 8 Q. Were those -- here, let's do it 9 this way. I am going to break a 10 tradition for me and I am going to mark 11 an exhibit. I am going to show you 12 what's been marked as Exhibit Number 1 13 to your deposition, which appears to be 14 a letter dated May 15, 1986, from a 15 Jerry Brown to an engineer with the 16 Alabama Department of Environmental 17 Management, and it attaches to it a Snow 18 Creek tributary sediment removal plan. 19 (Plaintiff's Exhibit No. 1 was 20 marked for identification) 21 A. Uh-huh. 22 Q. Have you seen that before? 23 A. No.	36 1 sediment levels, and I want to be sure 2 that I wasn't limiting that to the west 3 end landfill. Is it correct that there 4 was no such program with regard to the 5 ditches leaving the south landfill as 6 well? 7 MR. CLARK: Object to the form. 8 A. Correct. 9 Q. All right. I want to ask you 10 some questions about when you first 11 arrived at Monsanto. What did you say 12 it was, '95 or '96? 13 A. In Anniston? 14 Q. I'm sorry. Yes, in Anniston. 15 A. '96. 16 Q. Okay. When you first got down 17 there in 1996 concerning what the 18 conditions were at the plant with regard 19 to -- well, several areas. I think I 20 have already asked you about what you 21 observed at the west end landfill. 22 Maybe you could do that in a little more 23 detail for me. Tell me what you saw

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37 1 when you stood there and looked at it. 2 A. When I arrived in early -- well, 3 probably April of '96, at that time I 4 was just commuting, had not transferred. 5 The construction of the west end 6 landfill cover was underway. So there 7 was grading, and some of the materials 8 were being laid for the remedy. So in 9 general it was void of grass and a lot 10 of construction work going on at the 11 west end landfill. 12 Q. When did you first get an 13 opportunity to observe the south 14 landfill? 15 A. I mean, pretty much immediately. 16 I knew where the south landfill was 17 because we did ground water and 18 monitoring previously when I was 19 involved with Anniston on a technical 20 side. So I knew where the west end 21 landfill was. 22 Q. Because you had some monitoring 23 wells along the --	40 1 A. Well, I would guess it would 2 have been in '96 when I came in April. 3 Then we toured up there because that was 4 part of the consent order, was to 5 investigate the ditches leading from the 6 south landfill. 7 Q. Let me ask you, first standing 8 from the road, before you actually went 9 up on it, standing from the road looking 10 at the south landfill in 1996 could you 11 observe erosion on the landfill at that 12 time? 13 A. No. 14 Q. Once you got up on the landfill, 15 is it your testimony that you did not 16 observe any erosion of that landfill at 17 that time in 1996? 18 A. No erosion on the landfill. 19 Q. Were you able to observe erosion 20 on Monsanto's property on the south side 21 of 202 leading from the landfill? 22 A. Yes. 23 Q. Okay. And where -- were you
38 1 A. Along 202, south of the 2 landfill. 3 Q. So maybe I need to back up even 4 earlier. When is the first time you saw 5 the south landfill? 6 A. It would have been probably in 7 the '93 time frame, I think. 8 Q. Did you see the west landfill 9 back then, by the way? 10 A. No. 11 Q. Did you have any monitoring 12 wells at that time around the west 13 landfill? 14 A. No. 15 Q. Why were there monitoring wells 16 at the south landfill and not the west 17 landfill? 18 A. We didn't own the west landfill. 19 Q. Because it was transferred to 20 Alabama Power? 21 A. Right. 22 Q. You told me when -- in '91, you 23 say, you went up there the first time?	41 1 able to see that back in '93? 2 A. No -- I never looked. I mean. 3 Q. But you saw it in '96? 4 A. Correct. 5 Q. Where did you observe the 6 erosion in '96? 7 A. In the area between the Settler, 8 three, three cells, I think. Three 9 different locations up there. And there 10 is a ravine, a ditch where storm water 11 flowed through between those, and that 12 was eroded out, led to the ditch at 202 13 and then under the culverts of 202. 14 Q. Okay. Were any contaminants of 15 any kind buried in the area of that 16 erosion? 17 A. No. 18 Q. And how do you know that? 19 A. Well, the landfilling, the 20 location of the landfills were adjacent 21 to it. So where the landfill was the 22 ditch was in between that area. So we 23 had no knowledge of anything being
39 1 A. I think '93. Somewhere after 2 joining. 3 Q. All right. In '93, or about '93 4 when you went to the south landfill for 5 the first time, did you actually go up 6 on the landfill or stand down there at 7 the road? 8 A. Just at the road. 9 Q. What did you see concerning that 10 landfill from the road when you stood 11 there? 12 A. You could see a mounded area 13 where the landfill was and then, you 14 know, growth around it and growing up. 15 You could see the wells that we 16 recovered from, but not a whole lot more 17 than that. 18 Q. Okay. Were you able to observe 19 erosion of that landfill from the road 20 in 1993? 21 A. No. 22 Q. Okay. When is next time you saw 23 it?	42 1 buried there. 2 Q. Are there complete records of 3 where things are buried up on the south 4 side? 5 A. I think the records are maps and 6 knowledge of and topography in that 7 area. 8 Q. How confident are you that the 9 maps are complete with regard to the 10 area that the PCBs were buried on that 11 site? 12 A. Very confident. 13 Q. Were there some old mines on 14 that side of the road? 15 A. Pardon me? 16 Q. Some old mines on that side of 17 the road? 18 A. I don't know. 19 Q. Were PCBs put in some old mines 20 on that side of the road? 21 A. I am not aware of that. 22 Q. At the time that you arrived in 23 the mid '90s -- let's just say, '93,

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43 1 '96; either one is okay with me -- with 2 regard to the south landfill -- well, 3 let me withdraw that question. 4 Did you have some 5 responsibilities also with regard to the 6 south landfill? 7 A. Yes. 8 Q. And describe in general what 9 those were. 10 A. Well, for the south landfill it 11 was the monitoring and recovery system 12 we had for ground water that had been in 13 operation. Again, I am not sure of the 14 exact start date, but somewhere in the 15 '80s. 16 Q. Those were your first 17 responsibilities? 18 A. Right. 19 Q. And then sometime later did you 20 have some additional responsibilities? 21 A. In '96 I became the manager of 22 all of the Anniston work, and the 23 consent order was the south landfill	46 1 that only the water that fell on that 2 surface would drain off and could 3 significantly reduce the erosion 4 capabilities. 5 Q. And if any PCBs had migrated 6 back to the surface, it would help not 7 to have as many of them flow off the 8 landfill? 9 A. Well, the caps and covers were 10 designed to keep anything from migrating 11 to the surface. 12 Q. When you arrived there, there 13 were no caps and covers? 14 A. There were clay caps across 15 those areas. 16 Q. But when you sampled the surface 17 of the landfills when you arrived there, 18 you found PCBs on top of the landfills? 19 A. I am not sure -- we sampled 20 adjacent to the landfill. I am not sure 21 how much sampling was actually done on 22 the surface of the south landfill. I 23 don't recall because we were going to
44 1 property and the ditches leading from it 2 were part of that investigation. 3 Q. And were you responsible for 4 some mediation with regard to the 5 landfill itself, the south landfill? 6 A. Yes. 7 Q. Any did that include capping 8 that landfill? 9 A. Yes. 10 Q. And did it include rerouting the 11 water that came off of the mountain 12 behind the landfill? 13 A. Yes. 14 Q. At the time you got there then 15 in the mid '90s was -- what was the 16 situation with regard to water coming 17 off of the mountain and flowing over the 18 landfill? 19 A. It just made its way into a 20 ditch down gradient of it and went under 21 202 and down through the ditches east of 22 the plant to Snow Creek. 23 Q. The portion of the landfill that	47 1 cap that. So it really wasn't 2 important. We were going to do a remedy 3 for it all anyway. 4 Q. Do you at least remember that 5 you found PCBs around the perimeters of 6 that land? 7 A. Yes. 8 Q. Do you have an opinion 9 concerning how they got there? 10 A. They would have eroded from 11 somewhere and been deposited across that 12 in a sheet flow during a storm. 13 Q. That would be your conclusion, 14 that that eroded from the landfill? 15 A. More than likely. 16 Q. So it would be your conclusion 17 that there were PCBs on the top of the 18 landfill, whether you had actually 19 sampled it or not? 20 MR. CLARK: Object to the form. 21 A. Correct. 22 Q. If there was a clay cap on that 23 landfill, how would PCBs get back up on
45 1 had PCBs on it, it's fair to say that 2 water flowed from the mountain over the 3 top of that landfill and then down into 4 the ditch and under 202? 5 A. Yes. 6 Q. And one of things that you 7 recommended and did later was to reroute 8 that water so it would not flow over the 9 top of that landfill? 10 A. Correct. 11 Q. And what was the reason for 12 that? 13 A. Well, we were about to put in 14 place caps and covers on the landfill 15 and adjacent properties. And the 16 magnitude of the storm water that comes 17 off the mountain, had we not addressed 18 that, we would have been out there 19 reinstalling these remedies time and 20 time again. So in the interest of 21 taking that mechanism out of the 22 equation, we captured the water coming 23 off of the mountain, piped it around so	48 1 the surface? Do they migrate through 2 the clay to get there? 3 A. Well, it could have been during 4 the operation of the landfill, before 5 the cap. I am not sure historically how 6 they would have got -- when or how they 7 would have gotten there. 8 Q. But in any event, your 9 conclusion was that that landfill needed 10 capped? 11 A. Correct. 12 Q. And if you had not thought that 13 it needed a cap, I suppose you wouldn't 14 have recommended it? 15 A. Correct. 16 Q. The contaminated dirt that you 17 found around the south landfill that had 18 PCBs in it, was any of it hauled off? 19 MR. CLARK: Object to the form. 20 A. No. 21 Q. Some of your samples for PCBs in 22 the ditches since you have been there 23 have found PCBs; right?

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49 1 A. Correct. 2 Q. Has any of that sediment been 3 hauled off? 4 A. No. 5 Q. Y'all bought out a neighborhood 6 and built a settlement -- well, talk 7 about what you did in particular. Y'all 8 bought out a neighborhood with houses in 9 it? 10 MR. CLARK: Object to the form. 11 A. In the area that we were going 12 to be doing construction of these 13 remedies we put together a property 14 purchase program and bought a number of 15 properties, yes. 16 Q. In that area -- 17 A. Yes. 18 Q. -- have PCBs been found? 19 A. That area was part of the remedy 20 because of PCBs, yes. 21 Q. Was any of the dirt from that 22 area hauled off? 23 A. Not that I recall.	52 1 basin in, there is a requirement 2 anything over five acres of disturbance 3 you have to have measures in place to 4 control sediment off of any construction 5 project. So that became the sediment -- 6 that became the storm water sediment 7 control for the construction that we 8 were going to do on the south landfill. 9 Q. This is just a Corps of 10 Engineers requirement? 11 A. State of Alabama, I think. 12 Q. A storm water retention 13 requirement like would be on any 14 construction project? 15 A. Correct. 16 Q. It had no designed function or 17 intention of controlling PCBs? 18 A. No. 19 Q. Does it, in your opinion, act in 20 any way to control the PCBs? 21 A. It controls -- it controlled and 22 controls any sediments that are flowing 23 upstream of it.
50 1 Q. Along the banks of Snow Creek is 2 -- exists dirt which has been dredged 3 out of Snow Creek from time to time? 4 A. I believe so. 5 Q. Up until the date of this 6 deposition have y'all hauled any of that 7 dirt off? 8 A. I don't recall that we did. 9 Q. Let's talk a little bit more 10 about what you saw when you got there in 11 the mid '90s when you went to Monsanto. 12 There had been some sumps in operation 13 earlier to catch PCBs in the fluids in 14 water coming down the ditches or some 15 ditches. Did you see any sumps 16 operational for that purpose when you 17 got there? 18 MR. CLARK: Object to the form. 19 A. No. 20 Q. There had been a limestone pit 21 that was used for acid neutralization, 22 and some people at least say also caught 23 some PCBs. Was that in operation when	53 1 Q. Because it acts as somewhat of a 2 sediment pond? 3 A. Correct. 4 Q. It wasn't designed for that 5 purpose, but to some extent it has that 6 effect? 7 A. Correct. 8 Q. Was there a settling pond of any 9 kind in place when you got there? 10 A. No. 11 Q. And to be sure that I 12 understand, the ditches that lead or -- 13 well, the ditches that led from the 14 south landfill, was there a sediment 15 pond to catch any sediment coming off of 16 the south landfill when you arrived 17 there in the mid '90s? 18 A. No. 19 Q. Do you know whether there had 20 been one earlier? 21 A. No, I am not aware of one. 22 Q. The west landfill, with regard 23 to the west landfill, when you arrived
51 1 you got there? 2 A. No. 3 Q. In fact, I think there has been 4 some testimony that there might have, at 5 one point in time, been two different 6 limestone pits. Were either one of them 7 in operation? 8 A. No. 9 Q. Y'all built a settling pond? 10 MR. CLARK: Object to the form. 11 A. Storm water retention, yeah. 12 Q. So y'all built a storm water 13 retention pond? 14 A. Right. 15 Q. Was one of the purposes of the 16 storm water retention pond to control 17 PCBs? 18 A. No. 19 Q. What was the purpose of the 20 storm water retention pond? 21 A. With all the work we were going 22 to do on the south landfill, which was 23 up gradient of where we put the pond in,	54 1 there in the mid '90s, was there a 2 settling pond to catch any sediment 3 coming off of the west landfill? 4 A. No. 5 Q. Was there a settling pond 6 anywhere to catch any sediment coming 7 off of the area of the Monsanto Plant? 8 A. No. 9 Q. When you arrived at that 10 Monsanto Plant in Anniston in the mid 11 1990s, was there in place any system or 12 device to control PCBs that had escaped 13 either of the docks, either the south 14 landfill or the west landfill? 15 A. No. 16 Q. It's been about 10 years since 17 you first went out to Monsanto and 18 looked at the west landfill; is that 19 right? 20 MR. CLARK: Object to the form. 21 Q. Was it '93? 22 A. Well, let me think. No. Let me 23 clarify the dates. '93 would have been

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55 1 when I was down -- we were doing work 2 with -- 3 Q. Monitoring wells? 4 A. -- monitoring wells. '95 was 5 when Alabama Power noticed -- 6 Q. I'm sorry. I did confuse those 7 dates. So it's been about eight years 8 since you went down to look at the PCBs 9 escaping to the west landfill? 10 A. To investigate PCB impact, yes. 11 Q. How long is it going to be 12 before all of PCBs around the plant are 13 cleaned up and all of the PCBs along 14 Snow Creek are cleaned up? 15 MR. CLARK: Object to the form. 16 A. I can't answer that. 17 Q. Can you tell me whether it's 18 going to be 10 more years or 20 or 30 or 19 50? 20 MR. CLARK: Object to the form. 21 A. I really can't answer. 22 Q. What did y'all do to cap the two 23 landfills?	58 1 Q. So as far as you know, there are 2 additional PCBs still there at that 3 location? 4 MR. CLARK: Object to the form. 5 A. I don't know. 6 Q. Don't know one way or the other? 7 A. I don't know one way or the 8 other. And it's concrete lined at this 9 point. 10 Q. But as far as you know, you 11 haven't been back to test around there 12 to see if there are additional PCBs -- 13 A. No. 14 Q. -- in the area where you didn't 15 have to remove soil to put the flume in? 16 A. Correct. 17 Q. And as far as you know, no 18 efforts have been made to go back and do 19 any cleanup work of the PCBs there on 20 the state right-of-way, if they exist 21 there? 22 A. Right. I don't know of any 23 additional working being done.
56 1 A. The two landfills were capped 2 using what's called a RECRA subtitle C, 3 I believe it is, design which is 4 multiple layers of fabrics, impermeable 5 liners, soils, clay and topsoil and 6 seeding. 7 Q. Was the south landfill fenced 8 off when you got there in the mid '90s? 9 A. Yes. 10 Q. Did you recommend some 11 additional work with regard to fencing? 12 A. Not that I am aware of. 13 Q. Now, I am going to test your 14 memory. 15 A. All right. 16 Q. I have been reading too many 17 depositions, and it seems like I 18 remember in one of the depositions you 19 were giving some testimony about some 20 PCBs you found in the state 21 right-of-ways when you were putting a 22 flume down. Do you remember anything 23 about that?	59 1 Q. There certainly is not any that 2 has been done at your direction or 3 instruction or request? 4 A. Correct. 5 Q. I don't have anything else. 6 Thank you very much. 7 MR. CLARK: Okay. Thank you. 8 9 10 11 12 13 (The deposition concluded at 11:44 a.m.) 14 15 16 17 18 19 20 21 22 23
57 1 A. Well, we tested the ditches 2 along 202 and found PCBs, yes. 3 Q. Was that within the State of 4 Alabama? 5 A. Yes. 6 Q. On state property? 7 A. Yes. 8 Q. And have you been back since 9 then to clean those PCBs up? 10 A. Well, the areas where we put in 11 those flumes, we had to do construction 12 to remove soils. Those soils were 13 removed and put with the south landfill, 14 to be covered with the south landfill. 15 I am not -- I am not aware of any other 16 PCBs in right-of-ways that required 17 cleanup. 18 Q. Okay. I thought I remembered 19 from your earlier deposition -- you 20 correct me if I am wrong -- that y'all 21 only removed soils as deep as you needed 22 in order to put the flume in? 23 A. Correct.	

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