

1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

2 ST. CLAIR COUNTY, ILLINOIS

3 FRANCES E. KEMNER, ET AL.,

4 Plaintiffs,

5 vs.

Case No. 80-L-970

6 MONSANTO COMPANY,

7 Defendant.

8
9
10 REPORT OF PROCEEDINGS

11 August 2, 1985

12
13 Before the HONORABLE RICHARD P. GOLDENHERSH, Circuit Judge

14
15
16 **APPEARANCES:**

17 Mr. Rex Carr and Mr. Jerome Seigfreid, Attorneys at
18 Law, on behalf of the Plaintiffs; and

19 Mr. Kenneth Heineman, Mr. John R. Musgrave and Mr.

20 Joseph Nassif on behalf of the Defendant, Monsanto
21 Company.

22
23 Kathleen Watson Brunsmann
24 Official Court Reporter

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

FEB 25 1994

IN RE:

TRANSFER OF CASES

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U. S. DISTRICT COURT.
E. DISTRICT OF MO.

ORDER

IT IS HEREBY ORDERED that the following cases, currently assigned to the undersigned, are TRANSFERRED to the Honorable Charles A. Shaw:

4:88CV1270	SELLERS v. ST. LOUIS POLICE DEPARTMENT
4:91CV488	SCHWARTZ v. AMERICAN RIVER TRANSPORTATION
4:91CV713	AEROTRONICS v. PNUEMO
4:91CV973	ADDISON v. DELO
	(consolidated with 4:91CV1162, 4:91CV1735, 4:91CV-1930 and 4:92CV697)
4:91CV1938	GAFFEY v. MONTAGUE
4:92CV519	BARNES HOSPITAL v. SANUS PASSPORT
4:92CV1788	KAYSER v. CASPARI
4:92CV2126	BUNYARD v. RONES
4:92CV2419	SALAMON v. MALLINCKRODT, INC.
4:93CV293	HOLBROOK v. APEX R.E. & T.
4:93CV324	GEROWIN v. FORD MOTOR COMPANY
4:93CV326	BRELAND v. CONTINENTAL CASUALTY COMPANY
4:93CV500	WILSON v. McDONNELL-DOUGLAS CORPORATION
4:93CV547	LUEBBERS v. McDONNELL-DOUGLAS CORPORATION
4:93CV695	BLACK v. ST. LOUIS OFFSET
4:93CV855	STOTLER v. DELEVAN INDUSTRIES

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Called on behalf of the Plaintiffs:

JOSEPH METCALF

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<u>Plaintiff's Ex. No.</u>	<u>Marked for I.D.</u>	<u>Admitted into Evidence</u>
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1 BE IT REMEMBERED AND CERTIFIED, that heretofore,
2 on to-wit, August 2, 1985, the matter as hereinbefore set
3 forth came on for hearing before the Honorable Richard P.
4 Goldenhersh, Circuit Judge in and for the Twentieth Judicial
5 Circuit, and the following was had of record, to-wit:
6
7

8 JOSEPH METCALF,
9 having previously been called as a witness under
10 Section 2-1102, having previously been sworn,
11 continued clarification examination as follows:
12

13 CLARIFICATION EXAMINATION (Continued)

14 THE COURT: Okay, gentlemen.

15 BY MR. HEINEMAN:

16 Q Mr. Metcalf, when we broke yesterday afternoon
17 we were talking about this meeting at EPA Headquarters in
18 Kansas City, Kansas on January 26, 1979. Do you recall that,
19 sir?

20 A Yes.

21 Q And subsequent to the meeting, sir, were there
22 some minutes prepared of the meeting?

23 A Yes.

24 Q And by whom were they prepared?

1 A By Region 7 EPA.

2 Q All right. And were they sent out to the people
3 who were in attendance at the meeting?

4 A Yes.

5 Q And did you receive a copy of them?

6 A Yes.

7 Q And did you review them?

8 A Yes.

9 Q And did you approve them?

10 A Yes.

11 MR. HEINEMAN: Would you mark that please.

12
13 (Defendant Monsanto Exxhibit 931 was marked
14 for identification by the court reporter.)

15
16 Q (by Mr. Heineman) Sir, let me hand you what's
17 been marked as Defendant's Exhibit 931, and ask you to examine
18 that and identify it for me, please.

19 A This is the EPA report with a cover letter of mine
20 to Inside Monsanto Distribution, and with the Attachment
21 that were a part of the EPA report.

22 Q All right. By the EPA report, are you referring
23 to the minutes that you talked about a moment ago?

24 A Yes.

1 Q And the second page of Exhibit 931 is what, sir?

2 A Are you speaking -- referring to the page that
3 has January 25, 1979 at the top?

4 Q No, sir. To the second page of the exhibit
5 itself.

6 A Oh, I'm sorry. That is my cover letter to the
7 file regarding the minutes of this meeting.

8 Q And the first page is what, sir?

9 A I beg your pardon?

10 Q The first page of the exhibit is what, sir?

11 A The Internal Monsanto Distribution.

12 Q That you had made --

13 A Yes.

14 Q -- of this report?

15 A That's correct.

16 Q Now if I could direct your attention to the first
17 page, or excuse me, the second page of the exhibit, which
18 is your memo, dated January 31, '79, and the second paragraph
19 of that memo --

20 MR. CARR: Excuse me, Counsel. Do you have a
21 copy?

22 MR. HEINEMAN: Oh, certainly. I'm sorry. As a
23 matter of fact, your Honor, if Mr. Carr has no objection,
24 once he has read the exhibit, I would ask the Court's permission

1 to have it admitted as a Defendant's Exhibit and passed to
2 the jury so that they could follow along when the witness
3 is testifying about it.

4 MR. CARR: I have no objections, your Honor.

5 THE COURT: Fine. Then it will be admitted at
6 this time by agreement.

7 MR. CARR: I think portions of it are already in
8 evidence as Plaintiff's exhibit, if not the entire document,
9 your Honor.

10 MR. HEINEMAN: I can't reach you, Judge.

11 THE COURT: Thank you. Okay, Mr. Heineman.

12 MR. HEINEMAN: I was just giving the jury a
13 chance to look it over for a minute, Your Honor.

14 THE COURT: Why don't you proceed now.

15 MR. HEINEMAN: All right. Thank you.

16 Q (By Mr. Heineman) Now, Mr. Metcalf, the second
17 page of the exhibit which contains your memorandum to the
18 file, are there some additional comments that you made
19 there, sir?

20 A Yes, sir.

21 Q And why did you add those comments?

22 A I didn't feel that they were reflected in the
23 EPA minutes, and I thought it would be information that our
24 people would like to have.

1 Q All right. And other than those comments, was it
2 your feeling that the report was accurate and substantially
3 complete?

4 A Yes.

5 Q All right, sir. Now, the very first paragraph of
6 the added comments that you made relates to some conversations
7 or apparently comments by Roland Miller; is that right, sir?

8 A Yes.

9 Q And he was the vice president -- was he the vice
10 president and general manager of Western Environmental
11 Services, the clean-up contractor?

12 A Yes.

13 Q I'd like you to -- to refer you to the last
14 sentence in that paragraph, sir, where it states, "They did
15 not receive it and, in fact, didn't learn of the 200 parts per
16 million cutoff on excavation until the day before the meeting,
17 over two weeks after cleanup was started." Did I read that
18 accurately, sir?

19 A Yes.

20 Q What is it that you are specifically referring to
21 there?

22 A The decision that EPA said they would have to
23 remove all material that contained over 200 parts per million
24 of phenols.

1 Q And was there -- do I understand it to be correct
2 that Western didn't learn of that until the day before the
3 January 26 meeting?

4 A That's what they said at this meeting.

5 Q All right. Now, had clean-up been going on out
6 there as reported at this meeting prior to the time when
7 Western learned of this 200 parts per million level?

8 A Yes. About two weeks.

9 Q All right. Now let me direct your attention to
10 the next page of the exhibit, sir, which has the date January
11 26, 1979 typed at the top. There's a purpose stated there;
12 is that right?

13 A Yes.

14 Q Whose purpose was that?

15 A I believe that's the EPA's purpose.

16 Q The purpose of the meeting?

17 A Yes.

18 Q And this meeting was called by the EPA?

19 A Yes.

20 Q In Item 2 it says "Presentation of Analytical
21 Data, EPA, Western Environmental Services and Discussion."
22 Was that item of the agenda performed at the meeting?

23 A Yes.

24 Q Okay. What was presented by the EPA and Western

1 Environmental Services?

2 A Analytical data on total phenols, on samples that
3 had been taken in a specific series, I think of six series,
4 I think that had been taken sometime before the meeting.

5 Q Now, the fourth item on the agenda, on that same
6 page states "Approach For Continuation of Monitoring," does
7 it not, sir?

8 A Yes.

9 Q Was it discussed in the meeting as to whether or
10 not monitoring had already been going on at the clean-up site?

11 A Yes.

12 Q Who had been doing it?

13 A Monitoring, EPA had been monitoring the efforts
14 of Western Environmental Services.

15 Q And what sort of monitoring -- well, under that
16 paragraph it says "Approach for Continuation of Monitoring,
17 Air, and Soil at the Spill Site." Had there been air and
18 soil monitoring going on by EPA prior to that time?

19 A I believe so. I'm not a hundred percent sure
20 about air monitoring, but certainly soil monitoring.

21 Q Now, if you go to the next page of the exhibit,
22 there's an EPA Press Statement, is there not?

23 A Yes.

24 Q And I'd like to direct your attention to the third

1 paragraph of that Press Statement, and the second sentence,
2 where it says, "The air will be monitored on a 24-hour basis
3 and analyzed daily." Do you see that, sir?

4 A Yes.

5 Q All right. Now what's that -- had that been going
6 on according to what was said in the meeting by the EPA?

7 A I'm not sure. It says that there will -- they
8 will begin on the 29th and will continue until clean-up is
9 completed.

10 Q All right.

11 A There had been air monitoring that Monsanto did.
12 I'm not really sure how much EPA had done.

13 Q All right. But according to this, was the EPA
14 going to be doing it -- who was going to be doing the moni-
15 toring on a 24-hour basis and analyzing it daily, according
16 to your understanding at the meeting?

17 A EPA.

18 Q All right. And Harry Gilmer, the EPA chemical
19 engineer, was the on-scene coordinator; is that right?

20 A That's correct.

21 Q Now, what does that mean, sir?

22 A Well, it's my understanding that he is the one
23 who was given the responsibility of saying the work was
24 progressing satisfactorily, and that when it was finished, it

1 would be clean. The state of Missouri had deferred to EPA
2 on this, and apparently Western Environmental Services and
3 the railroad had also.

4 Q Now, the next paragraph on that same page states
5 "EPA will continue to analyze samples of the soil as it is
6 removed by Western Environmental Services." To your knowledge,
7 sir, as it was reported in the meeting, was the EPA doing
8 that?

9 A Yes.

10 Q Was that the split sampling thing we talked about
11 yesterday?

12 A Yes.

13 Q And the last paragraph of this EPA Press Statement
14 says, "The cooperative effort by the railroad, its cleanup
15 contractor and the government agencies will help mitigate
16 this unfortunate environmental accident as quickly as
17 possible, said Gilmer." Correct?

18 A Yes.

19 Q Was any discussion of that sort had in the
20 meeting itself on January 26th?

21 A Yes.

22 Q All right. Now, if I can direct your attention
23 to the next page of this -- of these minutes, specifically
24 to paragraph three of the next page, where it says, "All

1 cleanup operations including analytical monitoring are the
2 responsibility of the spiller;" correct, sir?

3 A Yes, sir.

4 Q What was discussed at the meeting on the 26th
5 with respect to that subject, if anything?

6 A I am not sure I understand your question. I'm
7 not sure I understand your question. I'm sorry.

8 Q All right. Let me rephrase it. Was there any
9 discussion at the meeting with respect to who the spiller
10 was, and who was assuming responsibility for the clean-up
11 operations and the analytical monitoring?

12 A Yes, there was discussions.

13 Q All right. Now what was that discussion?

14 A Well, it was generally agreed that the prime
15 responsibility for clean-up of the spill was the railroad,
16 and that Western Environmental Services was retained by the
17 railroad to clean up the spill. And that EPA and the
18 Missouri Department of Natural Resources had to agree with
19 the clean-up method, and that they would work with the others
20 in developing the proper clean-up method.

21 Q All right. NOW the next sentence there says,
22 "EPA will restrict its monitoring activities to those areas
23 it believes to be necessary to protect the environment during
24 cleanup operations and to insure that the cleanup is completed

1 in a satisfactory manner." Do you see that, sir?

2 A Yes.

3 Q Was there any discussion at the meeting about
4 that subject?

5 A I think it was -- I don't remember specifically
6 what was said. But the gist of it was that the basic respon-
7 sibility for collection of samples and of analysis would be
8 Western Environmental Services. The EPA would monitor enough
9 of those analyses to convince themselves that the work done
10 by Environmental Services was sufficiently accurate, and
11 that they would concentrate in areas where they were concern-
12 ed about possible public health effects.

13 Q All right. I'm interested in that last phrase,
14 "that they would concentrate in areas where they were
15 concerned about public health effects." Is that what the
16 EPA said at the time?

17 A I believe so.

18 Q Now who was the spokesman? Was that Harry Gilmer?

19 A I believe so. I'm not sure, but I think so.

20 Q Now, if you turn to the next page, where the
21 minutes themselves actually begin, right under the heading
22 "Background" there, there's a paragraph where it introduces
23 someone named Bill Rice. Do you see that, sir?

24 A Yes, sir.

1 Q Now, how many people were at this meeting on
2 behalf of the Environmental Protection Agency?

3 A I believe 13.

4 Q All right. Now, how did that relate to the
5 number of people representing other organizations all put
6 together?

7 A I think there were 12 others.

8 Q All right.

9 A All total.

10 Q Now --

11 A Twenty-five at the meeting.

12 Q If I can direct your attention to two paragraphs
13 after that, sir, there's a paragraph that begins with the
14 name Steve Sisk. Now he, I guess, was another EPA man that
15 was there.

16 A Yes.

17 Q They talk about their samples being collected from
18 shallow holes between the rails and between the ties. The
19 collection holes were approximately 12 inches deep. Eight
20 samples were collected, one was collected east of where the
21 spill began and seven were collected in the spill zone itself.
22 And it talks about them being collected by EPA and Western
23 and being split. Right?

24 A Yes.

1 Q Now there is a map here, sir, which is Attachment
2 3 to this exhibit. It's the last page. Do you see that,
3 sir?

4 A Yes.

5 Q Does that, according to what was discussed at
6 the meeting, show the locations where the collection holes
7 described in that paragraph we just read were done --

8 A Yes.

9 Q -- were made?

10 A Yes.

11 Q Now they're talking about -- farther down on that
12 page, the following chart shows the results of the analyses
13 of EPA and of Western Environmental Services; correct, sir?

14 A Yes.

15 Q Now what do these numbers have to do, ESO101,
16 102, 103? What do those sample numbers have to do with the
17 location reflected on the map?

18 A Well, ESO101 is Sample 1. ESO102 is Sample 2,
19 and so forth.

20 Q All right. So that they -- if the numbers on the
21 map are 01, 02 through 08 --

22 A Yes.

23 Q -- those correspond to these results that are
24 stated on pages 1 and 2?

1 A That's correct.

2 Q All right. Now I'd like to direct your attention
3 to page numbered 2 of the exhibit, sir.

4 A Of the exhibit?

5 Q I'm sorry. Page numbered two of the minutes.

6 A Oh, I'm sorry.

7 Q I misspoke. That page right there. It's the
8 one that's got the drawing of the railroad track.

9 A Yes.

10 Q About here. Right below that drawing it states,
11 "Problem - not having puddle or frozen substance but a liquid
12 on ground," does it not, sir?

13 A Yes.

14 Q Now what was discussed at this meeting on January
15 the 26th, 1979 with respect to there being a liquid as
16 opposed to frozen material?

17 MR. CARR: Your Honor, I object to any such
18 discussion. It's hearsay. He can report what's in this
19 memo. But I object to anything this witness might say as to
20 what was said at that meeting.

21 MR. HEINEMAN: Well, your Honor, we've been
22 talking for the last 10 minutes about what the discussions
23 were at the meeting.

24 MR. CARR: I'm objecting at this point in time

because of the nature of the comments. It's hearsay.

THE COURT: Objection is sustained. It is hearsay.

Q (By Mr. Heineman) Sir, was it apparent from the meeting itself that Western and the EPA were aware --

MR. CARR: Your Honor, I object to that. That's another way of doing that which he may not do directly, and I object to it.

THE COURT: Objection is sustained. It is the same.

Q (By Mr. Heineman) Who was the one -- was there anyone at the meeting who discussed the statement set forth as a problem there?

A One of the Western Environmental Services people.

Q All right. And the minutes here reflect that there was a problem because it was a liquid on the ground?

A Yes.

Q All right. Did that Western Environmental Services person who mentioned the problem of there being a liquid on the ground --

MR. CARR: Your Honor, I object.

Q (By Mr. Heineman) -- know that there was a liquid on the ground?

MR. CARR: Would you wait until I finish my objection. He is now saying the same thing indirectly again

that he cannot do directly.

THE COURT: Objection is sustained.

Mr. Heineman, I'm admonishing you not to do that.

Q (By Mr. Heineman) All right. Let's look at two paragraphs down from there, sir. There's another problem listed there, is there not?

A Yes.

Q It says, "running into large volume of material," correct, sir?

A Yes.

Q If this is in the minutes, can we assume that there was a discussion --

MR. CARR: Your Honor, I object to that. The minutes speak for themselves. Counsel persists in doing that which he knows is improper.

THE COURT: Objection is sustained.

Q (By Mr. Heineman) Who was it, sir, that was making a determination of what the clean-up methods would be?

A There were several methods that were considered by Western -- that were proposed, I think, by Western Environmental Services, and one of those methods was agreed to between EPA and the Department of Natural Resources of Missouri, and the railroad. I'm sorry, EPA, DNR and the railroad.

1 Q And Western?

2 A Well, Western proposed them.

3 Q I see. Now which method was that, sir?

4 A A method that involved drumming all of the
5 material that was picked up, that contained more than two
6 hundred parts per million of phenol. And shipping it to a
7 landfill in Wichita, Kansas.

8 Q Now, let me direct your attention, sir, to the
9 next page of the exhibit, which has the number three at the
10 top of it. Do you see that?

11 A Yes.

12 Q In that first incomplete paragraph at the top
13 of the page, the last sentence says, "After they started
14 dealing with 200 parts per million figures, they went back
15 to the beginning and started over;" is that correct, sir?

16 A Yes.

17 Q Whose activity is being referred to there?

18 A The clean-up crew, Western Environmental Services.

19 Q And did they have to go back and start over
20 again once that level was set?

21 A Yes. Because they didn't know what the level
22 was. They had not confirmed at that point in time that they
23 had reached that level.

24 Q If I can direct your attention to the page

1 numbered five in those minutes, the numbers at the top. I
2 direct your attention to the fifth paragraph of that page
3 where it says, "Western Environmental Services asks could
4 the level be 200 to 300 - they would have to go back to beginning
5 beginning to reduce level to 200." Do you see that, sir?

6 A Yes.

7 Q Did Western dispute this 200 level in some way?

8 A Well, I Don't know whether dispute is the word.
9 Apparently some of their areas where they sampled were, you
10 know, close to 200, but below 200. They thought maybe they
11 could save some time on the clean-up if they were given a
12 little more leeway.

13 Q All right. Did the EPA hold firm, however?

14 A Yes.

15 Q And demanded 200?

16 A Yes.

17 Q Now, sir, I'd like to hand you, if I may, sir, a
18 document that Mr. Carr had marked, called Plaintiff's 1536,
19 yesterday. Do you recall discussing that document with Mr.
20 Carr?

21 A Yes.

22 Q Now, does this document, sir, reflect the
23 qualitative core analysis results that were done by Monsanto?
24

A Yes.

1 Q And the date of this document is January 16,
2 1979, is it not, sir?

3 A Yes.

4 Q Ten days before the meeting in Kansas City with
5 the EPA?

6 A Yes.

7 Q Did the EPA and Western Environmental Services
8 know that not all of the phenol and OCP had been removed from
9 the track as of January 26, 1979?

10 A Did they know that not all of it --

11 Q Yes.

12 A Yes, they knew.

13 Q As a matter of fact, they lowered the level to
14 which it would have to be done; isn't that right?

15 A Apparently.

16 Q And Western would have to go back and start over
17 again?

18 MR. CARR: Objection to that, your HOnor.
19 Leading form of the question.

20 THE COURT: Objection is sustained. Would you
21 rephrase the question.

22 Q (By Mr. Heineman) Would Western have to go back
23 and start it over again?

24 A They indicated that at the meeting.

1 Q So clearly --

2 MR. CARR: Object to the leading form of the
3 question.

4 THE COURT: Rephrase it please.

5 Q (By MR. Heineman) Whether or not -- may I ask
6 you, sir, this, were these six samples, these qualitative
7 results, discussed at the meeting on January 26, 1979?

8 A I don't recall.

9 Q At that meeting, did Western and the EPA have
10 quantitative sample results?

11 A Yes.

12 Q Of the material that remained in the track?

13 A Well, of samples that had been taken during the
14 clean-up, yes.

15 Q Did they need qualitative sample results as to
16 whether there was a smell?

17 A No.

18 MR. HEINEMAN: I have no other questions, your
19 Honor.

20 THE COURT: MR. Carr, do you have anything
21 further?

22 MR. CARR: Nothing, your Honor.

23 THE COURT: You may step down. Thank you, sir.

24 THE WITNESS: Thank you.

1 MR. CARR: I call Phocion Park as an adverse
2 witness.

3 (At this point a short recess was taken.)
4

5 PHOCION PARK,
6 having previously been called under Section 2-1102,
7 having previously been sworn, testified further
8 as follows:
9

10 CROSS EXAMINATION

11 BY MR. CARR:

12 Q Mr. Park, you understand -- your Honor, for the
13 record, this is a recall of Mr. Park, as an adverse witness
14 under that section of the rule that I keep forgetting,
15 1102, is it?

16 THE COURT: 1102.

17 MR. CARR: 1102, formerly known as Section 60.
18 I can remember that.

19 THE COURT: Always to be known as Section 60.

20 MR. CARR: Having used it for about 38 years,
21 or 35, whatever.

22 Q (By MR. Carr) Mr. Park, of course you understand
23 that you are still under oath.

24 A Yes.

1 Q I'd like to hand you some exhibits that I want
2 to get your agreement on. I hand you what's been marked
3 Plaintiff's Exhibit 1149, and ask you to look at that and
4 confirm that that was dated April the 5th, 1979. It has
5 attached to it tables that show the presence of TCDD in the
6 products produced at Monsanto, and specifically the third
7 page of that exhibit shows that of the 2,3,7,8 -- in the
8 2,3,7,8 column, in parts per billion that there are
9 respectively, 23 parts per billion, 25 parts per billion,
10 180 parts per billion, and 240 parts per billion of products
11 identified in the Chlorinated Phenol Department, Santophen
and Chlorinated Phenol.

12 MR. MUSGRAVE: Objection to the question as
13 repetitious. He's been through this exhibit before.

14 MR. CARR: I know I've been through this exhibit,
15 your Honor, and not with this witness. And this is a
16 predicate to another point that I wish to establish.

17 THE COURT: You may proceed. Go ahead.

18 THE WITNESS: I didn't follow you, Mr. Carr. I
19 don't see that column here.

20 Q (By Mr. Carr) The last page attached to the
document. Do you see the column 2,3,7,8 -- Cl₄ 2,3,7,8?

21 A Yes, I do see that.

22 Q All right. Now the figures that I read appear in
23 that column, do they not, sir? It was values on the 2,3,7,8
24 isomer.

A I don't recall the figures you read, Mr. Carr.

1 Q Well, I'll read it again. That column shows
2 that in the chemicals produced in the Santophen and
3 Chlorinated Phenol Department, 23 parts per billion in the
4 2,3,7,8 column, 25 parts per billion in that column, 180
5 parts per billion in that column, 240 parts per billion in
6 that column. Isn't that correct, sir?

7 A Mr. Carr, I'll have -- this is the first time
8 I've seen this exhibit. I'll have to study it a moment.
9 I see the numbers that you read. They are in that column
10 headed Cl₄ 2,3,7,8. I cannot make out the wording over on
11 the left-hand side of this chart.

12 Q Well, Mr. Park, you don't need to, because those
13 are batch numbers that have previously been identified as
14 products in the Chlorinated Phenol Department, in Plaintiff's
15 Exhibit 1135. I don't know whether I went through it with
16 you, but I went through it with other witnesses. The
17 Monsanto Numbers 654, Monsanto Numbers 697, two of them that
18 are 697 there, all have been identified as chlorinated
19 phenols. And specifically Santophen in the one instance,
20 I believe, and I know 2,4-Dichlorophenol in the Number 697.
21 So at any rate, what I'm asking you to agree, sir, is that
22 this exhibit reports on the 2,3,7,8 isomer as identified in
23 the Santophen 1 and chlorophenols as I've related it to you,
24 as I've read to you.

25 A Mr. Carr, looking at the heading which says,
26 Environmental Sciences Data on Santophen 1 and Chlorophenols --

27 Q Yes.

1 A -- I can then look down the column and read those
2 numbers that you had. That's as much as I can tell about
3 this document.

4 Q Well, that's all that I want you to tell about
5 this document.

6 A All right.

7 Q That I have correctly read the figures that appear
8 in that column under the 2,3,7,8 heading.

9 A Yes, there are other figures. But these four
10 do appear in the column.

11 Q The other figures that appear there are all non
12 protected; is that right, sir?

13 A Yes.

14 Q The only affirmative figures in the batch
15 entitled 654, you have 23, and 25 parts per billion of
16 2,3,7,8 respectively, and in the batch enumerated 697 you
17 have 180 and 240 parts per billion respectively.

18 MR. MUSGRAVE: Object to the question, which
19 misinterprets the document and misstates prior testimony
20 with regard to the document, with regard to what the column
21 means, in connection with labeling of this 2,3,7,8 and what
22 the document itself says down at the bottom.

23 THE COURT: Objection is overruled. That objec-
24 tion has been made and denied before.

 Q (By Mr. Carr) Do you see -- this is a later
table taken from Exhibit 1135, and, Mr. Park, I don't want
to make a big thing of it, but do you see the 654 there,

1 one of the batches described?

2 A Yes.

3 Q All right. And you see the C1₄ numbers over
4 there?

5 A Yes, I do.

6 Q That are all joined in one column?

7 A Yes.

8 Q The C1₄ that you have in that exhibit are in two
9 columns, 1,3,6,8 et al., and 2,3,7,8; isn't that correct, sir?

10 A Yes.

11 Q And if you add those two columns together, you
12 get these figures, do you not, sir?

13 A Let me see, Mr. Carr.

14 Q Could you get 1135 out.

15 A They don't appear to be identical. But I suppose
16 they'd be in the same ballpark.

17 Q And if you will -- and to help you, so you don't
18 have to strain your eyes, you can look at 1135-B.

19 MR. MUSGRAVE: I'm sorry, what did you say,
20 1135-B?

21 MR. CARR: That's correct.

22 A (By Mr. Carr) Also look at 1135-C, because it
23 goes to those same two values.

24 A These two columns in this first document --

Q Mr. Park, I haven't asked you a question yet, and
I appreciate if you wouldn't mark the court's exhibits.

A I'm sorry.

1 Q Could you erase your marks, please.

2 A Sorry. My eyes are not what they were years ago.

3 Q Now, if you look at 1135-C, it breaks those --
4 it is a typed duplicate of the exhibit that's attached to
5 1149, or at least part of it. Now on 1135-C, in the typed
6 portion, do you see related to MB 654, the findings of 23
7 and 25 parts per billion in the 2,3,7,8 TCDD column? Right
8 here, Mr. Parks. Did you see the same figures appear in
9 the April document that appear in this later June document,
10 Exhibit 1135?

11 A I do see these numbers.

12 Q All right. You also see the other numbers that
13 are in the 1,3,8 -- 1,3,6,8 column, et al., don't you, sir?
14 For that MB --

15 A Only in these two cases.

16 Q That's all I'm asking, Dr. Parks.

17 A Yes, I do see those numbers.

18 Q And it is repeated in the June 26, 1979 document,
19 those handwritten figures that appear on the April 5th, 1979
20 document with relation to the batch that I just described
21 to you, and for your information, the batch MB 654 has been
22 previously described as parachlorophenol. Now, the next
23 I want to direct your attention to the batch 697, sir.
24 You see 697?

A I see that.

Q Has the figures of 180 and 140 parts per billion
in the 2,3,7,8 TCDD column?

1 A Yes.

2 Q And those are the same figures that appear in
3 the handwritten exhibit of April 5th, 1979 in that same
4 column; isn't that correct, sir?

5 A That does appear to be, yes.

6 Q Yes. Again for your information, MB 697 is
7 2,4-Dichlorophenol. Now, Mr. Park, you, of course, recognize
8 that 2,4-Dichlorophenol and parachlorophenol are products
9 manufactured by Monsanto, do you not, sir?

10 A If you say they are, I accept it, Mr. Carr. I'm
11 not that familiar --

12 Q Mr. Park, I am not a witness in this case.

13 A Yes.

14 Q The only knowledge that I have is from witnesses
15 and exhibits that have come to my attention in this case.
16 You are an employee of Monsanto. I'm not going to be put
17 in the position of telling you anything in that regard. If
18 you don't know that 2,4-Dichlorophenol and parachlorophenol
19 is a product of Monsanto and was a product in 1978, '79,
20 please say so, sir.

21 A Mr. Carr, I believe I recall that 2 -- I'm just
22 not that certain. Can I check on this?

23 Q Mr. Park, don't you recall that we spent
24 days cross examining you about 2,4-Dichlorophenol and whether
or not you're going to report to TSCA, under the TSCA Act,
report to EPA that your 2,4-Dichlorophenol had 2,3,7,8 --

A I do.

1 Q Don't you recall we spent --

2 A Yes.

3 Q -- just this spring, a few months ago --

4 A We did manufacture 2,4-Dichlorophenol.

5 Q You recall that, don't you, sir?

6 A I recall that, yes.

7 Q And -

8 A The other was para?

9 Q Parachlorophenol.

10 A I'm sorry, I just don't remember.

11 Q Parachlorophenol is what you use to make Santo-
12 phen. You know that, don't you, Mr. Park?

13 A Mr. Carr, I'm sorry, but I don't.

14 Q Well, Mr. Park --

15 A That's not something I keep up with.

16 Q Mr. Park, you will accept the exhibit that
17 describes these chemical as chemicals in the Santophen and
18 chlorophenol? Do you accept that Monsanto Document?
19 Won't you, Mr. Park?

20 A Which document are you speaking of?

21 Q The April 5, 1979 document that I handed you at
22 the outset, sir.

23 A Well, it speaks of chlorophenols.

24 Q Yes, that's what I'm asking you, sir.

1 A I'm sorry --

2 Q Do you recognize parachlorophenol as one of the
3 chlorophenols? Don't you, sir?

4 A I don't recognize it, but I guess I can assume
5 that it is one.

6 Q Now, Mr. Park, you in your position, at least
7 in your position in 1979 as one of the attorneys for
8 Monsanto, you had responsibilities with regard to what the
9 public was to be told and what the public was not to be
10 told about Monsanto's products, did you not, sir?

11 A I would be asked to submit comments on proposed
12 released on occasion.

13 Q Mr. Park. This exhibit dated June 6, 1979 is
14 in evidence, and you recognize that it talks about dioxin
15 concentration in PCP and OPC crude. Do you see that, sir?

16 A Yes.

17 MR. MUSGRAVE: Give me the exhibit number,
18 please.

19 MR. CARR: I'm sorry, Mr. Musgrave, it's 1249,
20 and I can give your witness the court's exhibit. Would you
21 mark that as another exhibit?

22 Q (By Mr. Carr) You recognize, Mr. Park, do you
23 not that that Table 2 -- have you got it, Counsel?

24 MR. MUSGRAVE: I have it. Thank you.

1 Q (By Mr. Carr) All right. 1249 reports the
2 dioxin concentration in parts per million in PCP, OCP and
3 2,4-Dichlorophenol.

4 A Yes.

5
6 (Plaintiff's Exhibit 1542 was marked
7 for identification by the court reporter.)
8

9 Q (By Mr. Carr) I hand you now what's been
10 marked Plaintiff's Exhibit 1542, and ask you if you recog-
11 nize that you are listed there as one of the recipients of
12 that Monsanto document?

13 A Yes, I am.

14 MR. CARR: I offer 1242 and what will be marked
15 1242-A into evidence, if it please the Court.

16 MR. MUSGRAVE: Object to the document, relevance,
17 materiality, no probative value.

18 THE COURT: Objection is overruled. 1542 is
19 admitted over objection.
20

21 (Plaintiff's Exhibit 1542-A was marked
22 for identification by the court reporter.)
23

24 Q (By Mr. Carr) 1542 is a blow up of -- 1542-A

1 is a blow up of 1542, is it not, sir?

2 A I believe it is, yes.

3 MR. CARR: I offer 1542-A into evidence, your
4 Honor.

5 MR. MUSGRAVE: Same objection.

6 THE COURT: Same ruling. I'll incorporate your
7 argument.

8 Q (By Mr. Carr) Mr. Park, this is a memo prepared
9 by someone in your press or public relations department, is
10 it not, R.L. Neunreiter?

11 A Yes. Someone in Monsanto's -- yes, he's in
12 Monsanto's Public Relations Department.

13 Q And a number of people, according to this list,
14 received copies of this response to the Post Dispatch
15 reporter, did they not, sir?

16 A Yes, they did.

17 Q You were one of those recipients, were you not,
18 sir?

19 A Yes.

20 Q Mr. Park, according to this exhibit there had
21 been, and the jury knows about it, and I don't think you've
22 been interrogated about it except in passing by Mr. Musgrave,
23 about the OSHA detection of dioxin in the chlorophenol unit
24 at Krummrich. Do you recall that press release that you

1 all put out in June?

2 MR. MUSGRAVE: Object, relevancy, materiality,
3 and also repetitive.

4 THE COURT: Objection is overruled.

5 Q (By Mr. Carr) Now, this press -- it says that
6 the reporter was told, and that reporter is Roy Malone of
7 the Post Dispatch -- do you know Roy Malone?

8 A No, I do not.

9 Q Never met him?

10 A Not that I can recall.

11 Q All right. In any event, it says here that he
12 was told on June 9, 1979 specifically that our analysis
13 of a recent product sample did not indicate the presence
14 of 2,3,7,8 dioxin. Do you see that, sir?

15 A Yes, I do.

16 Q Now in point of fact, that isn't the truth,
17 is it, sir?

18 A I don't know, Mr. Carr. I would assume that it
19 is.

20 Q If the exhibit that you have, that was dated
21 April the 5th, 1979, two months before this press release,
22 that exhibit indicates the presence of 2,3,7,8 TCDD in your
23 product sample, does it not, sir?

24 MR. MUSGRAVE: Object, your Honor, Mr. Carr is

1 referring to samples that have dates that are not recent.
2 The document talks about recent product samples, which is
3 June, not the dates of the products that he's identified.

4 THE COURT: Do you have anything you want to say?

5 MR. MUSGRAVE: Misleading the witness and
6 misleading the jury as to what the document says.

7 MR. CARR: No, your Honor.

8 THE COURT: We have plenty of exhibits that show
9 as 1135 shows product samples in June and thereafter that
10 had TCDD.

11 MR. MUSGRAVE: Then why did you identify --

12 THE COURT: Let him finish, Mr. Musgrave.

13 MR. MUSGRAVE: February, March exhibit.

14 THE COURT: Mr. Musgrave, I said let him
15 finish. Mr. Carr, you may proceed.

16 Q (By Mr. Carr) Now, the --

17 THE COURT: The objection is overruled.

18 Q (By Mr. Carr) -- the sentence of what the
19 reporter would want to know, because the OSHA release deals
20 with sampling that was conducted in February of '79, where
21 there was a spill that took place in the plant. You recall
22 that? I won't get into details with you.

23 MR. MUSGRAVE: Object to the question as suggest-
24 ing as to what the sentence of what the reporter wanted to

1 know, which requires the state of mind as to others, as
2 to what they did or didn't do, or want --

3 THE COURT: Objection is overruled. I don't
4 think it calls for the state of mind.

5 Q (By Mr. Carr) Mr. Park, the information that
6 you at Monsanto gave to the public at large through Roy
7 Malone and the Post Dispatch, was that your product sample
8 did not indicate the presence of 2,3,7,8 dioxin.

9 MR. MUSGRAVE: Object to it. It's a misstatement
10 of what the document says. It says a recent product sample.

11 THE COURT: Objection is overruled.

12 Q (By Mr. Carr) Isn't that correct, Mr. Park?

13 A As the question was phrased, I'd have to say no.

14 Q You'd have to say no? Wasn't the reporter told
15 that, exactly what it says here, that the analysis of the
16 recent product sample did not indicate the presence of
17 2,3,7,8 dioxin?

18 A That is correct.

19 Q And is there any statement there that any
20 analysis did indicate the presence of 2,3,7,8 dioxin?

21 A There is no statement on this paper that so
22 states.

23 Q Would you as a reasonable person, if you read
24 that, wouldn't you be lead to believe that Monsanto has

1 checked its material and this OSHA release talking about
2 dioxin in the products is somehow at fault, faulty, or false
3 and that, in fact, Monsanto doesn't have any products that
4 has 2,3,7,8 dioxin in it, wouldn't you read that as a rea-
5 sonable person, Mr. Park?

6 MR. MUSGRAVE: Object to the question as calling
7 for speculation, conjecture, and vague and indefinite,
8 using a legal term, or potential legal term of reasonable
9 person.

10 THE COURT: Objection is overruled.

11 Q (By Mr. Carr) How would you read that, Mr.
12 Park, if you wouldn't read it that way?

13 A Just simply that a recent analysis of a product
14 sample did not indicate the presence of 2,3,7,8. I would
15 not read it more broadly to go any farther.

16 Q If I understand you correctly, if you had one
17 recent product that was sampled, and if that one sample
18 didn't show 2,3,7,8 in it, that that's all you're really
19 saying there. Is that the way you interpret that?

20 A It doesn't say only one has been done. All it
21 says is that an analysis of a recent product sample did not
22 indicate the presence of 2,3,7,8 dioxin.

23 Q Then if, in fact, you had a recent product
24 sample that did not indicate the presence of 2,3,7,8 TCDD in 36

1 that sample, this statement would be technically correct,
2 wouldn't it, sir?

3 A Yes.

4 Q Even though you might have a thousand other pro-
5 duct samples tested that all of which showed the presence of
6 2,3,7,8 TCDD; isn't that correct, sir?

7 A The statement would still be correct.

8 Q All right. And when you read that press
9 release, did you have in mind that well, what he was told,
10 if we have a single sample that shows no 2,3,7,8 TCDD, then
11 what the press was told, and what the public is ultimately
12 told was correct, and we're not misleading anyone? Was that
13 your view at the time you saw that, sir?

14 A It's certainly possible that I might not have
15 ever seen this, even though I'm named as one to whom it
16 would have been sent, Mr. Carr. I don't -- I'm not in a
17 position to read everything that comes into me.

18 Q Mr. Park, I'm not asking you whether you speci-
19 fically remember or don't remember reading this. I'm asking
20 you whether or not you would interpret that, and I admit
21 there's no conceivable way at this point in time you could
22 remember whether you did or did not get this presss release
23 that occurred some six years ago. You would have a fantastic
24 memory if you could remember it. I'm not asking you whether

1 you do or do not remember. I'm asking you, sir, would you
2 interpret that press release as being correct if you had a
3 product sampling that showed no 2,3,7,8 TCDD, although you
4 had one hundred others or one thousand other product samplings
5 that showed the presence of 2,3,7,8 TCDD?

6 MR. MUSGRAVE: Object to the question. It assumes
7 facts not in evidence for the witness to speculate with
8 regard to.

9 THE COURT: Objection is overruled.

10 THE WITNESS: Recognizing that this may not
11 describe everything covered in the conversation between
12 Neunreiter and Malone, I would think this sentence, just
13 as it says, and I would feel it would be technically correct
14 if there were a number of analyses that found dioxin, and
15 yet as he says, a recent product sample did not indicate
16 the presence of 2,3,7,8 dioxin. That may have been the
17 question.

18 Q (By Mr. Carr) I'm sorry?

19 A That may have been the question.

20 Q I take it then that you agree that this would
21 be appropriate response to make if you knew that you had
22 99 tests that showed 2,3,7,8 TCDD was there, and you had
23 one test that showed it wasn't there?

24 MR. MUSGRAVE: Same objection.

1 Q (By Mr. Carr) Is that correct, sir?

2 THE COURT: Same ruling.

3 THE WITNESS: I'm not saying that, Mr. Carr, no.

4 Q (By Mr. Carr) Well, isn't that really what you
5 are saying, Mr. Park, because you know, and we have ample
6 documentation here to show that 2,3,7,8 TCDD, or that which
7 coelutes with 2,3,7,8 TCDD, has been in your products and
8 remains in your products up until, oh, '82, at least, if my
9 memory serves me correctly, that you at Monsanto knew that
10 all during this unbroken period of time? You knew that.

11 MR. MUSGRAVE: Object to the question, your
12 Honor, he's asking the question about what he would have
13 done in June of '79, and then he challenges his answer by
14 talking about analysis and events that occurred after June
15 of '79. It's an improper question to challenge the witness
16 with. I object to it.

17 THE COURT: Objection is overruled. It's a
18 proper question. You may proceed, Mr. Carr.

19 Q (By Mr. Carr) Assuming that Monsanto tested
20 its products, its Santophen, recent Santophen, and we have
21 those going down from '78 and '79, and those exhibits I
22 don't need to show you, but they're here in evidence, and
23 showing the presence of 2,3,7,8 TCDD, or that which coelutes
24 with it, and that you had all that knowledge, test after test

1 indicated that, do you consider that this is being fair and
2 honest with the public?--

3 MR. MUSGRAVE: Object to the question --

4 MR. CARR: May I finish it, Counsel?

5 MR. MUSGRAVE: I thought you were. Excuse me.

6 THE COURT: Go ahead, Mr. Carr.

7 Q (By Mr. Carr) -- by saying to them, making no
8 mention of the numerous tests that you had, including this
9 one that we've just discussed in April of '79, making no
10 mention of the numerous tests that you conducted showing
11 2,3,7,8 TCDD, or that which looks like it, and you had
12 other tests that showed there wasn't any? Do you think this
13 is fair and honest when you say that there wasn't any in this
14 sample?

15 MR. MUSGRAVE: Object to the question, a multi-
16 ple question. Object to the question as assuming facts not
17 in evidence, making references to analysis in '78, which
18 there's no evidence showing detectible TCDD in these
19 products, and object to the use of the term "numerous tests
20 of product showing this prior to June of '79," which is
21 totally incorrect.

22 THE COURT: Objection is overruled. It's a
23 proper question and based on matters in evidence. Answer
24 the question, please.

1 THE WITNESS: Mr. Carr, this paper here was not
2 provided to the public. This is an internal communication.
3 It does not purport to describe everything that went on in
4 the conversation between Neunreiter and the reporter. I
5 have no way of knowing any reason that this is not correct.
6 The reporter may well have asked the question, "Have you
7 made a recent product sample analysis that did not indicate
8 the presence of 2,3,7,8 dioxin." Neunreiter could have
9 answered, if that was the case, "Yes, we have made such a
10 recent product analysis,"and then so stated here.

11 Q (By Mr. Carr) Mr. Park, to refresh your memory
12 as to the June 8 news release OSHA's finding, what it said
13 was that OSHA had detected 300 parts per billion in the
14 2,4-Dichlorophenol of what they thought was 2,3,7,8 TCDD,
15 or half of which they thought was 2,3,7,8 TCDD, and also
16 discussed findings in a wipe sample finding TCDD there.
17 Monsanto put out a press release saying that they have
18 checked these products down to 10 parts per billion, at a
19 detection level of 10 parts per billion and haven't found
20 it. That's the press release that was put out. Now the --

21 MR. MUSGRAVE: Object, your Honor. Counsel
22 speaks-- because it is a mischaracterization of the evidence.
23 The news release he has reference to speaks to, quote, a
24 recent product sample, close quotes. That is a deliberate

1 misrepresentation by Mr. Carr. It's totally inconsistent
2 with this document.

3 THE COURT: Objection is overruled.

4 Q (By Mr. Carr) Now, the reporter in this cir-
5 cumstance is getting more specific. He wants more informa-
6 tion than the press release gives, does he not, sir?

7 MR. MUSGRAVE: Object, speculation and conjecture
8 as to what the reporter is doing or not doing.

9 THE COURT: Objection is overruled.

10 Q (By Mr. Carr) Isn't that correct, Mr. Park?

11 A I don't know, Mr. Carr. He may have just felt
12 that this question was not answered by the press release
13 and wanted to raise it.

14 Q Well, Neunreiter says all these questions were
15 answered from the prepared question and answer form. This
16 is, he kept to the prepared question and answer that was
17 supplied or prepared by him to answer these questions. But
18 in this instance he deviated from it somewhat. He went
19 more precisely and said a recent product sample did not
20 indicate the presence of 2,3,7,8 TCDD, of dioxin. Now, Mr.
21 Park, the thrust of my question here --

22 MR. MUSGRAVE: I object to Counsel's speech.
23 He just made an affirmative statement of fact. That was
24 not posed as a question. And it's testimony by Counsel as 42

1 to what Mr. Neunreiter was doing or not doing with regards
2 to the questions and answers. It's totally improper for
3 Counsel to testify and make conclusionary statements. I
4 object to it and request it be stricken.

5 THE COURT: Mr. Carr, please finish your ques-
6 tion and then I'll rule.

7 Q (By Mr. Carr) In that framework, Mr. Park, do
8 you not agree that this reporter, wanting more specific
9 information, was given information that would be totally
10 misleading?

11 MR. MUSGRAVE: Object to the question because it
12 assumes a framework that Mr. Carr has testified to rather
13 than any witness, and Mr. Carr is, therefore, testifying as
14 to what this reporter was doing or not doing, or what Mr.
15 Neunreiter was doing or not doing. There's no evidence of
16 that.

17 THE COURT: Objection is overruled. Properly
18 preparatory to the question, and the question as a whole.
19 Answer the question, please, Mr. Park.

20 THE WITNESS: No, I don't agree with that, Mr.
21 Carr.

22 Q (By Mr. Carr) From this document, does it
23 indicate that the public and the press were told the entire
24 facts, that is that you did sample and you did have samples

1 analyses that showed the presence -- indicated the presence
2 of 2,3,7,8 TCDD?

3 MR. MUSGRAVE: Object to the question. It calls
4 for speculation and conjecture as to what the other questions
5 were that were responded to as set out in this, and there's
6 no foundation laid that this witness knows what the other
7 questions were that were asked, what the responses were that
8 were given, and so it's pure speculation and conjecture to
9 try and answer that question.

10 THE COURT: Objection is overruled. Answer
11 the question please.

12 THE WITNESS: The document indicates that there
13 was a lengthy conversation between Neumreiter and the
14 reporter, and that a number of other questions were asked
15 and answered.

16 Q (By Mr. Carr) Well, that really isn't what I've
17 asked you, sir. I've asked you doesn't this document
18 suggest that, from what you see there, unless you have some
19 additional facts that you haven't told us about, or some
20 additional knowledge of what went on at this press conference,
21 he answered questions based upon the prepared question and
22 answer, which didn't talk about 2,3,7,8 TCDD being there as
23 found by Monsanto, and then he was told specifically that
24 the recent product sample did not indicate the presence of

1 2,3,7,8. Don't you consider that, sir, misleading in view
2 of the knowledge that Monsanto had that it did have evidence
3 or indications of 2,3,7,8 being in its product?

4 MR. MUSGRAVE: Object to the question as calling
5 for conclusion, speculation, vague as to what the document
6 suggests, improper question for this witness.

7 THE COURT: Objection is overruled.

8 THE WITNESS: Mr. Carr, as you phrased it, I'll
9 have to answer that question no.

10 Q (By Mr. Carr) All right. That's your judgment,
11 and if you got this document and read it, you, Mr. Park,
12 would not have called Mr. Neunreiter and said, "Look, you're
13 not being candid, and you're misleading the public and the
14 press, you better call up the Post Dispatch, call up Roy
15 Malone and tell him that while we did have recent product
16 sample analyses that indicate no 2,3,7,8 TCDD, we've got
17 other analyses that do indicate the presence of 2,3,7,8 TCDD?"
18 Since you have the frame of ind that you just answered to,
19 you, of course, would not tell Neunreiter to do that, would
20 you, sir?

21 A If his conversation had been totally correct
22 with the reporter and he informed the reporter and answered
23 all of his questions properly, there would be no reason to.

24 Q Well, but if he doesn't tell the reporter that

1 you did -- if he tells the reporter one tenth of the story,
2 you've got 9 tests that show 2,3,7,8 and one that doesn't
3 show it, he's not telling the whole story, is he, sir?

4 A He may have told him the rest.

5 Q Now you're speculating -- I gave you --

6 MR. MUSGRAVE: You're asking for the speculation,
7 Mr. Carr.

8 THE COURT: Objection is overruled.

9 Q (By Mr. Carr) I gave you the hypothesis, Mr.
10 Park, based on what we know was in the press release, and
11 what we know is here, and there is no mention of 2,3,7,8
12 found by Monsanto. That's the hypothesis I'm asking you to
13 accept, sir.

14 MR. MUSGRAVE: Now I object, your Honor,
15 because he's changing horses. On the one hand he's talking
16 about a number of questions that Roy Malone posed, and now
17 he talks about a press release. He's changing horses.

18 THE COURT: Objection is overruled.

19 MR. MUSGRAVE: I object to the question as being
20 an improper question and that it be stricken.

21 THE COURT: Objection is overruled. The
22 question is proper. Answer the question, please.

23 THE WITNESS: I don't see that there's anything
24 in here that is improper.

1 Q (By Mr. Carr) In view of the knowledge that
2 Monsanto had as to the presence of 2,3,7,8 TCDD, you believe
3 that it is proper to give the impression that its products
4 do not contain 2,3,7,8 TCDD; is that correct, sir? Could
5 you answer that question specifically so that we could pass
6 on, Mr. Park.

7 A I'm trying to now reconstruct your question.
8 You're asking do I feel it is proper or improper?

9 Q In view of the knowledge that Monsanto had that
10 its product did, indeed, have 2,3,7,8 TCDD in it.

11 MR. MUSGRAVE: Object to the question as
12 improper assumption of facts with regard to this point in
13 time, June of '79.

14 THE COURT: Objection is overruled.

15 THE WITNESS: Based on the knowledge I have, that
16 this was an appropriate information document here.

17 Q (By Mr. Carr) And based upon the knowledge that
18 Monsanto had as well; is that correct, Mr. Park, in your
19 judgment?

20 A For him to prepare this internal memorandum,
21 communicative, whatever?

22 Q No. For him to tell the press and the public
23 at large that 2,3,7,8 TCDD was not found in a recent product
24 sample, Mr. Park. You know exactly what I'm asking.

1 A I see nothing improper in that.

2 Q Is that correct, sir?

3 A I see nothing improper.

4 Q All right. Now, Mr. Park, let me hand you a
5 document marked Plaintiff's Exhibit 1233. Would you look
6 at that, please. Do you recognize Plaintiff's Exhibit 1233
7 as a memo written by Dallas Armstrong?

8 A Yes.

9 Q And that indicates -- have you had a chance
10 to look at the tables --

11 A No.

12 Q -- behind it?

13 THE COURT: What is that exhibit number?

14 MR. CARR: 1233, your Honor.

15 THE COURT: Thank you.

16 Q (By Mr. Carr) Have you had an opportunity to
17 look at that, plus the tables attached to it?

18 A Yes.

19 Q Now, that shows, does it not, in the wipe tests
20 there were tetra dioxins detected in the one exhibit, the
21 control room, and Building 237 on the Control Room Table,
22 and in other places according to the exhibit?

23 A I'm sorry now, Mr. Carr, you're back at the
24 tables?

1 Q Yes, that's where I am.

2 A Okay.

3 Q You see here Cl₄ in the Department 236, found
4 Cl₄ tetra dioxins.

5 A Yes.

6 Q And in another one in 236, found 3.2 micrograms
7 or nanograms of the tetra dioxins.

8 A It says Cl₄.

9 Q Cl₄ you know is the tetras, do you not, sir?

10 A I suppose that's what he means.

11 Q All right. And the next table shows for the --
12 in the pentachlorophenol and the support girder for the Cl₄,
13 it shows 7.3 nanograms.

14 A I'm not familiar with these designations, Mr.
15 Carr. I see the 7.3, and then something.

16 Q On Building 237, the Control Room Table.

17 A Yes.

18 Q Cl₄ .175 nanograms.

19 A Yes.

20 Q Or the u.g.

21 A Whatever, yes. I see the numbers.

22 Q And you see Mr. Malloy describes those wipe tests
23 that they're higher than those reported by OSHA.

24 MR. MUSGRAVE: Mr. Armstrong.

1 Q (By Mr. Carr) I'm sorry, you're correct. Mr.
2 Armstrong reports to Mr. Malloy in June of '79 that these are
3 higher than reported by OSHA. Do you see that, sir?

4 A I see the statement there, yes.

5 Q Yes. And you do remember that OSHA said there was
6 642 nanograms and these tests are something like -- well, one
7 of them is twice that. .175 nanograms or u.g.'s is signifi-
8 cantly higher than -- it's twice as high as 642 nanograms.

9 MR. MUSGRAVE: Your Honor, I object to this line
10 of questioning. It's all repetitive. Its been gone into.
11 This witness is not the author of any of these documents that
12 have been introduced, nor is there any evidence that he ever
13 saw them. I object to it.

14 THE COURT: Mr. Carr, do you have anything you
15 wish to say to the objection?

16 MR. CARR: Yes. I wish to establish this point
17 as being in the knowledge of Monsanto prior to going on to
18 the next point.

19 THE COURT: You may proceed. Objection is over-
20 ruled.

21 Q (By Mr. Carr) Do you see, sir, that it is talking
22 about tetra dioxins in various places found in your plant?

23 A If we take the Cl₄ to refer to the tetra dioxins,
24 than that would be correct.

1 Q Yes. Would you mark this as Plaintiff's exhibit

2
3 (Plaintiff's Exhibit 1543 was marked
4 for identification by the court reporter.)

5
6 Q (By Mr. Carr) Handing you now Plaintiff's
7 Exhibit 1543, and ask you if you recognize that as a question
8 and answer sheet prepared by Sarah Collins, and you received
9 a copy of it dated November 15, 1983.

10 A Yes.

11 Q Do you see that, sir?

12 A Yes, I do.

13 MR. CARR: I offer 1543 into evidence, if it
14 please the court.

15 MR. MUSGRAVE: I object to it, your Honor, as
16 being irrelevant and immaterial, too remote in time to have
17 any probative value. That ought to cover it.

18 THE COURT: Okay. It's admitted over objection.

19 MR. CARR: Could I have 1543-A please.

20
21 (Plaintiff's Exxhbit 1543-A was marked
22 for identification by the court reporter.)

23
24 Q (By Mr. Carr) Mr. Park, do you recognize 1543-A

1 as the page numbered 2 at the top on Exhibit 1543?

2 A Yes, I do.

3 Q MR. CARR: I offer 1543-A, your Honor.

4 MR. MUSGRAVE: Same objection.

5 THE COURT: Same ruling.

6 Q (By Mr. Carr) Mr. Park, putting 1543 in a
7 context, have you read enough of it to recognize that it was
8 prepared because of the certain soil sampling that had taken
9 place at the Krummrich Plant?

10 A Ms. Collins indicates that it was prepared for --
11 in connection with the Krummrich Plant soil sampling program.

12 Q You and a number of others received copies of
13 this question and answer prepared by Mrs. Collins, did you
14 not?

15 A Yes. She was seeking review and comments on it.

16 Q Now, the question and answers are to be used
17 when representatives of Monsanto meet with the press, aren't
18 they, sir? Just as we saw earlier, Neunreiter referred to a
19 question and answer, a prepared question and answer when talk-
20 ing about OSHA's findings. That's what the question and
21 answer is for, isn't it, sir, to be used by Monsanto repre-
22 sentatives to present Monsanto's official position taken
23 with the public; isn't that correct, sir?

24 A I would not state it quite that way.

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1 Q Well, state it the way you would state it, sir.

2 A I would say this is information which the Public
3 Relations Department tries to gather in order to respond to
4 press inquiries.

5 Q Well, that's fair enough. Isn't the purpose of it
6 so that all of Monsanto's persons that meet with the public
7 will be saying the same things, have the full knowledge, full
8 information and be able to respond in the same and consistent
9 fashion?

10 A I think the purpose is so that whoever is
11 contacted by the press will be in a position to provide
12 accurate information to the press.

13 Q Now, among other things, it discusses the findings
14 in the soil samples of point -- and I'm now directing your
15 attention to the top of page 2, the page numbered 2. It
16 talks about the result of soil samples that were taken in
17 the Krummrich, Sauget, Illinois Plant, and it gives the
18 numerical results as ranging from .5 to .10 parts per billion
19 in two samples. Now -- and in one area the sample was 2.4
20 parts per billion. So what this is showing here, you have
21 from 500 -- from 100 parts per trillion to 500 parts per
22 trillion in two samples, and 2.4 parts per billion in another
23 sample. Isn't that so?

24 A That isn't the way she stated it, but --

1 Q She said the numbers range from .5, that's 500
2 parts per trillion, isn't it, sir?

3 A Yes.

4 Q And .10 is 100 parts per trillion, isn't it, sir.

5 A Yes.

6 Q And 2.4 is 2.4 parts per trillion, isn't it?
7 Isn't that correct, sir?

8 A Sure, one can make that conversion.

9 Q They suggest there that it's a couple of inches
10 below the surface, and you're going to pave the area that
11 has this dioxin in it ranging from 100 parts per trillion
12 to 2.4 parts per billion, that you're going to pave that
13 parking lot, and that will eliminate any exposure. Do you
14 see that, sir?

15 A That's what she states.

16 Q Now farther on down I want to direct your atten-
17 tion to the Question Number 10 where it says "Had you ever
18 tested for TCDD before now." Do you see that, sir?

19 A Yes.

20 Q Now we know that Monsanto had tested for TCDD
21 before 1983, don't we, sir?

22 A You're referring back to

23 Q The June of '79 --

24 A Yes.

1 Q -- finding, where you had tested and where you
2 had found TCDD.

3 A Mr. Carr--

4 Q I mean we know that, don't we, sir?

5 A No. All we have is this document here.

6 Q Yes. And that June 12th document is a Monsanto
7 document, isn't it, sir?

8 A Yes. But one --

9 Q And it is discussing testing done by Monsanto,
10 isn't it, sir?

11 A That's correct.

12 Q And it did find TCDD, didn't it, sir?

13 A The document indicates that there was -- that
14 they did find, whatever it is, a quantity of Cl_4 .

15 Q Which is TCDD, isn't it, sir?

16 A Yes. That is the numbers written on this document.

17 Q You tell the public here "We had tested for TCDD
18 by taking wipe samples and found it not to be present. In
19 taking the wipe samples, we tested the surface of equipment
20 and furniture in the chlorophenol units and their control
21 areas." Isn't that what you say, Mr. Park?

22 A Some of what you said is expressed in 810.

23 Q Didn't I read it exactly as it was said in the
24 answer to number 10?

1 A You didn't read the whole answer, I thought. I'm
2 sorry, Mr. Carr, maybe I was looking over it.

3 Q Let me read it again. The answer to the question
4 "Had you ever tested for TCDD before now?" was, "We had
5 tested for TCDD by taking wipe samples and found it not to be
6 present. In taking the wipe samples, we tested the surface
7 of equipment and furniture in the chlorophenol units and
8 their control areas." Isn't that what it says, sir?

9 A That is correct.

10 Q And we know in the control areas you found TCDD
11 on the control room table. We know that, don't we, sir?

12 A Mr. Carr, I don't know that.

13 Q The document shows that, doesn't it, sir?

14 A Is what you have there taken from a table --

15 Q Why don't you answer the question yourself, by
16 looking at the table that's attached to it.

17 A I'm trying to find it.

18 Q The control room table. Do you see that, sir?
19 The words Control Room Table, 237 and the .175 and the Cl₄?

20 A Yes, I see it.

21 Q And you see that this says Control Room Table.
22 Do you see there it says Control Room Table?

23 A Yes.

24 Q And .175 on the Control Room floor. Do you see

1 A Yes.

2 Q And that document shows that you tested in 1979
3 and found TCDD on the Control Room table, doesn't it, sir?

4 A It appears to indicate that.

5 Q Yes. And what you told the public in 1983
6 wasn't the truth, was it, sir?

7 A There's no indication that we told the public
8 in 1983, Mr. Carr.

9 Q Isn't that what you used to respond to the public's
10 requests?

11 A Not necessarily. This is Sarah Collins sending
12 this out to people to get their comments.

13 Q Well, did you comment, "Hey, that's not correct.
14 You shouldn't say that."?

15 A I can't recall whether I commented or not.

16 Q Let me suggest to you that this is the only
17 question and answer press release document that was given
18 to us relating to this area, unless you have some that you
19 know of, unless you know that it was changed, and that this
20 is not the one that was used. Then I'll stand corrected if
21 you know there was some other.

22 A This is not something that I am responsible for,
23 Mr. Carr. I'm just not that familiar with it.

24 Q Mr. Park, I suggest that you do have a responsibi-

1 lity. You are one of the recipients of it, are you not?

2 A I am named as one of those to whom it was
3 addressed.

4 Q You have an obligation, and Malloy has an
5 obligation. And Malloy was the man at the plant. Malloy is
6 the one that received this memo, Exhibit 1233, wasn't he, sir?

7 A That's correct.

8 Q It's addressed to him.

9 A Yes.

10 Q Each of you, Smull, Malloy, Gilhousen, McCarville,
11 Papageorge, Shaneberger, each of you have a responsibility
12 not just to the plant, but to the public, don't you, sir?

13 A I don't understand your question, Mr. Carr.

14 Q You have the responsibility to make sure that the
15 information that you give out is the truth and not a lie,
16 don't you, sir?

17 A Certainly if we have contact with the public, we
18 do, yes.

19 Q And this is the purpose for this question and
20 answer preparation was to tell this to the public. Didn't
21 we establish that already, sir?

22 A Yes.

23 Q And if this is what was told to the public, it
24 wasn't true, was it, sir?

1 A I don't know, Mr. Carr. You're assuming that
2 this prior thing was correct.

3 Q No, I'm saying --

4 MR. MUSGRAVE: Just a moment, your Honor.

5 Q (By Mr. Carr) It's not true, is it, sir?

6 MR. MUSGRAVE: May he finish his answer, sir.

7 THE COURT: It was not responsive. The objection
8 is overruled.

9 Q (By Mr. Carr) If this is what was used and what
10 was told to the public, it's not correct, is it, sir? It's
11 not true, is it, sir?

12 A I don't think your statement is correct, neces-
13 sarily, Mr. Carr.

14 Q Mr. Park, if it were told the public, they were
15 told an untruth, weren't they, sir?

16 MR. MUSGRAVE: Objection. It's been asked and
17 answered.

18 THE COURT: Overruled.

19 Q (By Mr. Carr) Assuming they were told, sir.

20 A I don't know that that is the case. As you are
21 phrasing this, Mr. Carr, I would have to answer no, I don't
22 think it would be an untruth.

23 Q Well, Mr. Park, the truth is that you found TCDD
24 there, isn't it, sir? Isn't that the truth?

1 A I don't know that that is the truth.

2 Q Mr. Park, we just established that that was a
3 Cl₄. Cl₄ stands for tetra, you know that, don't you?

4 A All you've established is that's written on that
5 piece of paper, Mr. Carr.

6 Q That's all we've established?

7 A Yes.

8 Q And that piece of paper is tests done by Monsanto,
9 isn't it, sir, and we established that, didn't we, sir?

10 A By whomever, yes. I don't know that it says -- did
11 it say on here who performed the tests? I can remember that
12 there was much confusion over wipe sample testing.

13 Q I learned from Brian Ward -- you know who Brian
14 Ward is, don't you, sir?

15 A I remember Brian Ward.

16 Q He took the wipe samples and followed them through
17 analysis. You know Brian Ward is the man who was doing the
18 testing. He was head of that department at that time, wasn't
19 he, sir?

20 A I don't recall what his position was exactly.

21 Q Don't recall exactly, but tell me what it was,
22 what his responsibilities were with regard to testing.

23 A I don't remember his responsibilities, but he did
24 have to do -- he was in our department of Medicine and

1 Environmental Health.

2 Q He had to do with analysis, didn't he, sir? And
3 it describes that he took the wipe samples and followed them
4 through. So you did have the information, you did do the
5 testing; isn't that correct, sir?

6 A Yes.

7 Q And that information was of the tetra TCDD isomer,
8 you had .175 micrograms per square meter.

9 A That's what you have on our plaque there.

10 Q That's what you had on the exhibit that you hold
11 in your hand.

12 A I don't see that last part.

13 Q Mr. Park, we just went through it.

14 A I don't see the micrograms per square meter on
15 here.

16 Q You see the 1.75 u.g.?

17 A Yes.

18 Q They had added to that the M-2 square, don't they,
19 sir?

20 A Yes. That's different from this.

21 Q That is different from that. The figures are the
22 same, the control table is the same; isn't that right?

23 A What do you mean control table, Mr. Carr?

24 Q Mr. Park, why are you doing this to me.

1 A Oh, the heading, I'm sorry.

2 Q The Control Room Table.

3 A Yes.

4 Q And the information is shown there is that there
5 was TCDD in the wipe samples, isn't it, sir?

6 A That's what the document indicates.

7 Q And, therefore, the press question and answer
8 statement is wrong, isn't it, sir?

9 A Not necessarily. This could be wrong, Mr. Carr.

10 Q Do you have any indication that it's wrong, sir?

11 A I can recall that there was much confusion over
12 the taking and analysis of wipe samples. This was one reason
13 why OSHA decided to drop its allegations or violations.

14 Q Is that right, Mr. Park?

15 A As I recall.

16 Q Now, perhaps it's because OSHA wasn't told the
17 truth by Monsanto.

18 A No. It was because OSHA decided to have no
19 case that it could bring against us.

20 Q And somebody from OSHA, I take it, wrote you a
21 letter to that effect?

22 A No. OSHA went into the administrative court and
23 decided to withdraw its allegations.

24 Q Is there some document they said they withdrew?

1 A No, there's a ruling by the judge that I mentioned --

2 Q No. All it mentions is that they do not prosecute
3 it. It doesn't say they withdrew it. He dismissed it because
4 it wasn't prosecuted. You know that.

5 A No. I think I recollect that they were withdrawn.

6 Q Well, do you have any document that indicates
7 that?

8 A No, not off the top of my head.

9 Q As a matter of fact, what OSHA would do or not do
10 depends a great deal on information that they get from the
11 respondent, in this case Monsanto.

12 MR. MUSGRAVE: Objection, speculation, conjecture
13 about what OSHA, an unnamed individual at OSHA, or all
14 individuals at OSHA. It's vague and indefinite in that
15 respect. It also calls for speculation and conjecture.

16 THE COURT: The objection is overruled. It's a
17 proper question to be asked of this witness.

18 THE WITNESS: I would say no.

19 Q (By Mr. Carr) Mr. Park, you are aware of, and
20 you participated in a process whereby OSHA sent you in that
21 very case that you're talking about a long list of requests
22 for information, for responses to long lists of questions, and
23 you participated, you yourself participated directly in
24 answering those questions. You know, and the responses to

1 those requests for admission of fact. You recall that, don't
2 you, Mr. Park?

3 A I recall the admission, yes.

4 Q And it was after you responded to those questions
5 that the case was not further prosecuted by OSHA; isn't that
6 correct, sir?

7 A Well, it was sometime later. That was fairly
8 early on. This was the first step in discovery.

9 Q It was after that, wasn't it, sir?

10 A Much after.

11 MR. CARR: Would you mark this Plaintiff's
12 Exhibit, please.

13
14 (Plaintiff's Exhibits 1544 and 1545 were marked
15 for identification by the court reporter.)

16
17 Q (By Mr. Carr) Mr. Park, I'll hand you what's
18 been marked Plaintiff's Exhibit 1544 and ask you if you
19 recognize that exhibit as the OSHA's Request for Admissions,
20 addressed to Monsanto, and Plaintiff's Exhibit 1545 as
21 Monsanto's response to that Request for Admissions.

22 A Yes, I do.

23 MR. CARR: I offer those two exhibits into
24 evidence, if it please the court.

1 MR. MUSGRAVE: The same objections. This is all
2 irrelevant and immaterial, your Honor. It deals with another
3 proceeding handled by Frank Pellegrini, another lawyer. This
4 is irrelevant and immaterial to any issue in the lawsuit.

5 THE COURT: The objection is overruled. They're
6 both admitted over objection. Mr. Carr, before you go into
7 this, is this a good point to break for lunch?

8 MR. CARR: Yes, your Honor.

9 THE COURT: Ladies and gentlemen, we will break
10 for lunch at this time. I would remind you the admonishments
11 that I've given you earlier are applying during this break
12 also. We'll resume again at 1:00. Court is in recess.

13
14 (Lunch recess.)

15
16 THE COURT: Mr. Carr.

17
18 (Plaintiff's Exhibit 1546 was marked
19 for identification by the court reporter.)
20

21 Q (By Mr. Carr) Mr. Park, I hand you what's now
22 been marked Plaintiff's Exhibit 1546, and ask you if that is
23 not a memo of January 5, 1981 referring to wipe samples.
24 Could you answer the question?

1 A I'm sorry. I didn't know you were addressing me,
2 Mr. Carr. I didn't hear the question.

3 Q The exhibit that I handed you, Mr. Park --

4 A Yes.

5 Q -- Plaintiff's Exhibit 1546 is a memo dated
6 Janaury 5, 1981, referring to dioxin wipe samples, is it not,
7 sir?

8 A Yes.

9 Q It's addressed to Ward and Bohl in St. Louis, and
10 to Keating in St. Louis as well, is it not, sir?

11 A Well, it's addressed to Ward and Bohl. It shows
12 copies to Keating and some others.

13 MR. CARR: I offer this exhibit into evidence, if
14 it please the court.

15 MR. MUSGRAVE: Your Honor, I object to this. It
16 deals with a different plant, appartntly West Footscray. It
17 has nothing to do with this lawsuit, much less the Krummrich
18 Plant. And even if it did, again we would object on the
19 basis that it's irrelevant and immaterial to any issue in
20 this lawsuit, have no probative value.

21 THE COURT: It's admitted over objection.

22 Q (By Mr. Carr) And, Mr. Park, you see the very
23 first sentence of that, contrary to what Mr. Musgrave said,
24 refers to wipe samples taken in the Krummrich Plant, doesn't

1 it, sir?

2 MR. MUSGRAVE: Object to counsel's comment, your
3 Honor, because he has not read the entire document, obviously,
4 then. The document speaks for itself.

5 THE COURT: Objection is overruled. The
6 question was directed to the first sentence. It was not an
7 improper question.

8 MR. MUSGRAVE: I believe, your Honor, my comments
9 were with regard to his saying contrary to what I said about
10 this dealing with West Footscray.

11 MR. CARR: You said this didn't have anything
12 to do with Krummrich is exactly what you said, Counsel. The
13 very first sentence deals with Krummrich.

14 A (By Mr. Carr) Doesn't it, Mr. Park?

15 THE COURT: The objection is overruled.

16 THE WITNESS: The first sentence does mention the
17 Krummrich Plant.

18 MR. CARR: Will you pass that exhibit to the jury,
19 please.

20 Q (By Mr. Carr) You recognize B.G. Ward as the
21 same Ward that wrote the memo that we've been dealing with
22 on the wipe samples? If we can find it again.

23 MR. MUSGRAVE: Plaintiff's 1233, Mr. Carr?

24 MR. CARR: I'm not sure, Counsel.

1 MR. MUSGRAVE: It was not written by Ward.

2 MR. CARR: Yes. Ward is referred to in Exhibit
3 1233.

4 THE WITNESS: I would assume that it is.

5 Q (By Mr. Carr) And does -- and it does say, does
6 it not, "Dioxin was detected in wipe samples taken in the
7 chlorophenol unit at the W.G. Krummrich plant in February,
8 1979." Doesn't it say that?

9 A Yes, that's the first sentence.

10 Q And that is an affirmation or an agreement with
11 the exhibit that we previously had been discussing, that is
12 Plaintiff's Exhibit 1233, is it not, sir?

13 A Well, it's written by someone in Australia. I
14 guess he's just maybe repeating what he's heard.

15 Q I wonder if you couldn't answer my question, Mr.
16 Park.

17 A Well, I would say no, it appears to be repeating
18 something he's heard.

19 Q Does it not say that it was detected in the
20 chlorophenol unit at the W.G. Krummrich Plant in February of
21 '79?

22 A Yes.

23 Q And isn't that the plant that we've been talking
24 about?

1 A Yes.

2 Q And isn't it wipe samples that were from the
3 Krummrich Plant that we're talking about?

4 A Yes, we were.

5 Q And isn't -- doesn't this exhibit show the other
6 Exhibit 1233, show that dioxin was detected in the wipe
7 samples taken from the Krummrich Plant?

8 A Yes.

9 MR. CARR: Would you mark this as an exhibit.

10
11 (Plaintiff's Exhibit 1547 was marked
12 for identification by the court reporter.)
13

14 Q (By Mr. Carr) I hand you now what's been marked
15 Plaintiff's Exhibit Number 1547, and it's the only copy I
16 have, so let me show it to Counsel first. Let me ask you if
17 you recognize that as a Monsanto document dealing with Build-
18 ings 236 and 237, and describing the same samplings that we
19 have previously discussed as attached to Exhibit 1233, only
20 1233 is handwritten and the document you have now, 1547, has
21 the results typed.

22 A If you're asking me if it is, Mr. Carr, I'll have
23 to take time to check them. I haven't seen this before.

24 Q That's what I want you to do.

1 A Well, we're comparing Table 1 of the document you
2 have just handed me last, 1547, and --

3 Q First of all, confirm that they're talking about
4 the same buildings and the same areas from the same buildings,
5 Mr. Park.

6 A Is there a page to this document --

7 Q You have the document as it was given to me, Mr.
8 Park.

9 A It doesn't say which location --

10 Q Mr. Park, it does say. It says Building 236,
11 Blower Motor Housing.

12 A Yes..

13 Q And it says Building 236, Blower Motor Housing,
14 does it not, sir?

15 A Yes. But this is attached to a Monsanto memo,
16 and this is not.

17 Q That is also a Monsanto memo. It was given to
18 me -- you see the "Confidential" stamp, you see the C.O. number.

19 A Yes, sir.

20 Q It's a Monsanto document, it was given to me.
21 Just confirm for me, if you would, that they're talking about
22 the same buildings, the same places. There's the same date.

23 A I see the same date. I see the same building
24 number here.

1 Q You see the same part of the building, Blower
2 Motor Housing, and walls, control tables, and things of that
3 sort that they're taking the wipe samples.

4 A Mr. Carr, this most recent document says, "Blower
5 Motor Housing Outside Walls," this says "Blower Motor Housing
6 Top Cover." You're asking me to distinguish documents I'm
7 not familiar with. But they appear to be different to me.

8 Q Well, whether they are different or not, you
9 recognize these as buildings examined on 6/6/79, don't you,
10 sir?

11 A I see these numbers across here.

12 MR. MUSGRAVE: Where does it say they were
13 examined on 6/6/79, Mr. Carr?

14 MR. CARR: The date at the top of the page,
15 6/6/79.

16 MR. MUSGRAVE: Is the word "examined" there?

17 MR. CARR: No, Counsel, the word isn't there. It
18 says, "Wipe sample 1A - Building 236, 6/6/79, 1315 hours,
19 Blower Motor Housing Outside Wall, six by six area of wipe."

20 Q (By Mr. Carr) Now it also describes on the
21 Exhibit 1233, does it not, sir, Building 236, 6/6/79, Blower
22 Motor Housing six by six area wiped? You see that, sir?

23 A But it says "Top cover," and not outside walls.

24 Q Well, there's a little more information on one than

1 there is on the other.

2 A There's different information.

3 Q If it is a different test, that's fine with me.

4 I don't quarrel with that. But if you will look at the inside
5 page, it's fine with me that it is more, because it shows more
6 tests and more findings. Now if you look at the inside pages
7 do you see, sir, that they have wipe numbers 1-A, 2-A, 3-A,
8 4-A, 5-A, 6-A, 7-A and 8-A?

9 A I see that.

10 Q And wipe number 1-A is the Blower Motor Housing
11 Outside Walls, Building 236, is it not, sir?

12 A Yes.

13 Q And they found there 2,160 nanograms of dioxin
14 per wipe, did they not, sir?

15 A That appears to be what it says.

16 Q And wipe 5-A, which is the vertical support
17 girder in Building 236, southeast of the foreman's office,
18 they found in 5-A 200 nanograms of dioxin per wipe in the
19 tetra 4 column, did they not, sir?

20 A That's correct.

21 Q And in the 6-A -- 6-A -- that was 210 for 5-A --
22 and the 6-A column it's 200 nanograms per wipe, which is the
23 table in the Control Room. Do you see that, sir?

24 A Yes, I do.

1 MR. MUSGRAVE: Let my objection be a continuing
2 objection to this. It's all repetitive, your Honor. It's
3 been gone through this morning. It's been gone through with
4 other witnesses. Just all repetitive.

5 THE COURT: Continuing objection noted.

6 Q (By Mr. Carr) You see in the next lower column,
7 1-A, wipe sample found 1700 nanograms of dioxin in the wipe
8 on sample 1-A.

9 A I see that number.

10 Q Now, Mr. Park, referring now to the Exhibits 1544
11 and 1545, which I've previously given you, and which have
12 been passed to the jury, if you would please, sir.

13 A Yes.

14 Q 1544 is a request that was submitted to you that
15 you took to various people at your plant and got input from
16 them as to how to answer these questions, did you not, sir?

17 A I sent copies of it, as I recall, to different
18 people.

19 Q And they responded to you as to how they thought
20 these various questions should be answered, did they not,
21 sir?

22 A I think I received responses from some. I'm
23 not sure from all. There was some, I think, confusion
24 concerning many of these questions.

1 Q And then you prepared the information that was
2 given -- you prepared these responses from the information
3 given you by these various people, Dr. Wilson and other
4 people that gave you information, you prepared these
5 responses, did you not, sir?

6 A No, Mr. Carr. As I recall, there was further
7 discussion, and then retained counsel, outside counsel actual-
8 ly prepared the submission to OSHA, the response.

9 Q Well, he prepared these responses based upon
10 information given to him by Monsanto employees, did he not,
11 sir?

12 A Well, as a result of discussions.

13 Q Well, as a result of discussions. He had no
14 information of his own, did he, sir?

15 A He would have received information concerning
16 the Monsanto facility from Monsanto employees.

17 Q Yes. And based upon the information that you at
18 Monsanto gave him, he prepared these responses to these
19 Requests for Admissions, did he not, sir?

20 A Well, not me personally.

21 Q Sir?

22 A No. Not me personally.

23 Q I said he prepared.

24 A Yes, he prepared them.

1 Q With your help, and you saw it before it got
2 filed, did you not, sir?

3 A Yes.

4 Q Now, you're, of course, aware that the plaintiffs
5 in this case also had asked Monsanto in court documents -- I
6 recognize that these responses that you filed were not responses
7 to requests filed in a court. It's before the OSHA Review
8 Commission. But you do know that in this case, Monsanto was
9 also asked to admit the truths of certain facts.

10 You know that, or did you know that that took
11 in this case?

12 A This Request for Admissions?

13 Q No. I'm now talking about Requests for Admissions
14 in fact that were filed in this case by Monsanto's lawyers,
15 based upon information given the Monsanto lawyers by Monsanto
16 people.

17 A The case that we're in trial with?

18 Q That we're currently in trial on.

19 A I'm not familiar with that, Mr. Carr.

20 Q You had nothing to do, I take it, or did you, sir,
21 have anything to do with the preparation of the answers to
22 Requests for Admission of Fact that was filed in this case
23 that we're trying here, the Kemner case? Did you have any-
24 thing to do with that, sir?

1 A No.

2 Q All right. So let's discuss then what you did
3 have to do with, Mr. Park, namely these answers that you gave
4 to these requests. Now you have responded -- first of all,
5 it's clear that they're talking about the Krimmrich Plant;
6 isn't that correct, sir?

7 A Yes.

8 Q And they ask you to admit that OSHA did conduct an
9 inspection between February 7 and February 23 of '79.

10 A Yes.

11 Q And, of course, you admit that they filed the
12 citation, and that the inspection took place, and that you
13 have certain employees, and that you manufactured chloronated
14 phenols at your plant for more than 30 years. That would be
15 question number 5 or 6, I'm sorry.

16 MR. MUSGRAVE: Your Honor, may my objection to
17 Counsel going through this document also be noted again on
18 the basis of relevancy and materiality, and no probative
19 value.

20 THE COURT: The objection is noted, and it is
21 overruled. I will take it as a continuing objection.

22 MR. MUSGRAVE: Thank you.

23 Q (By Mr. Carr) You also admit that orthochloro
24 phenol was manufactured in Department 237; isn't that correct?

1 A Let's see. This is number what, Mr. Carr?

2 Q Number 7, sir.

3 A Yes. We admitted 7-b.

4 Q Now in request number 8 they asked you to admit
5 that synthesis of chlorinated phenols can produce polychlori-
6 nated dibenzo-p-dioxins, referred to as dioxin, as a by-
7 product, and polychlorinated dibenzofurans as a by-product,
8 do they not, sir?

9 A Yes.

10 Q You denied the truth of that, did you not, sir?

11 A Yes.

12 Q Sir?

13 A That's correct.

14 Q Now, Mr. Park, you knew, and others at Monsanto
15 knew in 1979, in November of '79 when you filed these responses,
16 that dioxin had been detected in your chlorinated phenols.
17 You knew that for a number of years.

18 A It was not a by-product as we defined it.

19 Q Well, what was it, a product?

20 A No. It would be an undesired contaminant, if it
21 was anything.

22 Q Well, all right. Isn't any contaminant undesired?
23 When it's manufactured in a process, isn't it a by-product?
24 It's not what you intend to produce.

1 A Not as that term is used by many people, Mr. Carr.

2 Q Mr. Park, is there any question in your mind that
3 what they were asking you that dioxin is produced in the
4 synthesis of chlorinated phenols?

5 A This type of a request by a party in an administra-
6 tive hearing, it is customary if there is anything not totally
7 correct about it to deny it. Therefore, allow the party who
8 proposes it to prove it when it comes to hearing. Therefore,
9 there is something that is not correct about this, so it's
10 denied on that basis.

11 Q Mr. Park, what you're saying is what you did, if
12 you could find some little area there that you thought you
13 could quarrel with, and be technically correct, in so doing
14 it, you gave a denial instead of an affirmative response, didn't
15 you, sir?

16 A As you phrase that, I have to say no. We denied
17 number 8. We denied number 8. It was not totally correct.
18 And every other one in here that was not totally correct was
19 denied.

20 Q Well now, Mr. Park, did you produce dioxin or not
21 at that plant?

22 A Not intentionally.

23 Q Well, I didn't ask you whether you did it inten-
24 tionally or unintentionally. Did you produce dioxin in that

1 plant?

2 A It's -- apparently dioxin was an unwanted contami-
3 nant that can result from certain processes.

4 Q And you produced it at that plant, didn't you,
5 sir?

6 A Not as a by-product, as I define the term.

7 Q My question, one at a time, is, sir, did you
8 produce it at the plant?

9 A Not intentionally.

10 Q My question is did you product it at the plant.

11 A In a sense it was produced.

12 Q And was it the end product that you were seeking?

13 A No.

14 Q Was it a by-product then?

15 A No.

16 Q You either have an end product or a by-product.
17 You've got one of the two, sir.

18 A No, we don't, Mr. Carr.

19 Q Oh, is it an end product?

20 A It's a contaminant, an undesired contaminant.

21 Q It was produced, though, wasn't it, sir?

22 MR. MUSGRAVE: Object. It's been asked and
23 answered.

24 MR. CARR: And he said it was produced.

1 MR. MUSGRAVE: He said in a sense, Mr. Carr.

2 MR. CARR: Certainly in a sense. That's all I'm
3 talking about. In a sense it was actually one hundred percent
4 produced in the Krummrich Plant, wasn't it, sir?

5 MR. MUSGRAVE: Object to the question, been
6 asked and answered.

7 THE COURT: It has been answered in the affirma-
8 tive, yes.

9 THE WITNESS: One hundred percent, you say,
10 produced? I don't know that I can agree with that.

11 Q (By Mr. Carr) Yes. It was produced at the
12 Krummrich Plant, wasn't it, Mr. Park?

13 MR. MUSGRAVE: Object. It's been asked and
14 answered.

15 THE COURT: Go ahead and answer it.

16 THE WITNESS: It was produced in the sense it
17 was a result of the manufacturing process, an undesired
18 contaminant.

19 Q (By Mr. Carr) And it was, therefore, a product
20 of a manufacturing process, was it not, sir?

21 MR. MUSGRAVE: Object. It's been asked and
22 answered.

23 THE COURT: No, it has not.

24 THE WITNESS: Not as you're using the term, Mr.

1 Carr.

2 Q In any context. If it's produced, the end result
3 of produced is product, is it not, sir?

4 A Mr. Carr --

5 Q Excuse me, Mr. Park, could we answer that
6 question, so we can pass on to another one.

7 A No. My answer must be no, Mr. Carr, as we under-
8 stand those terms.

9 Q When you produce something, you make products,
10 don't you, sir?

11 A No.

12 Q Doesn't the word "produce" and "Product", aren't
13 they the same word, one is the end result and the other is
14 the verk? One is the noun, the result.

15 A No. Mr. Carr, I tried to explain that. You
16 cut me off.

17 Q Isn't produce the verb, sir?

18 A The verb of what?

19 Q Isn't produce a verb, sir?

20 A I will produce, yes, it would be a verb.

21 Q Isn't product, derived from produce, the verb?

22 A In a context it would be.

23 Q In any context.

24 A No.

1 Q Product is a result of producing.

2 MR. MUSGRAVE: Object. It's been asked and
3 answered.

4 THE COURT: It has not. Overruled.

5 THE WITNESS: Semantics, Mr. Carr.

6 Q (By Mr. Carr) Indeed, we are. That, Mr. Park,
7 is exactly the point, that you cannot escape from the conclu-
8 sion that dioxin was a by-product because it wasn't the end
9 product. It wasn't that which you were wanting to produce.

10 MR. MUSGRAVE: Object to Counsel's speech. It's
11 not a question. It's Counsel's opinion. It's Counsel's
12 conclusions. Request it be stricken, the jury instructed to
13 disregard it.

14 THE COURT: The objection is overruled. Answer
15 the question, please, Mr. Park.

16 THE WITNESS: No.

17 Q (By Mr. Carr) You wanted to produce it, then.

18 A No.

19 Q Was it a product?

20 A It was a by-product. It was not a by-product.

21 MR. MUSGRAVE: Objection.

22 THE COURT: Objection is overruled.

23 Q (By Mr. Carr) Now you've gone one step farther,
24 one step at a time, please. When you have confirmed and the

1 court has confirmed if it was a product.

2 MR. MUSGRAVE: Object.

3 THE COURT: Objection is overruled.

4 THE WITNESS: No, I didn't confirm that.

5 Q (By Mr. Carr) Mr. Park, I want you to assume, so
6 we don't --

7 MR. MUSGRAVE: I object further, the testimony,
8 your Honor, that it was in a sense produced. It is not a
9 correct characterization of the testimony of Mr. Park.

10 THE COURT: Objection is overruled.

11 Q (By Mr. Carr) Now, if it was produced, it is some
12 kind of product, isn't it, sir?

13 A No, it's not, Mr. Carr.

14 Q What is it if -- if it's a result of a producing
15 process, what is it then?

16 A It is an unwanted contaminant.

17 Q And that is a product, isn't it, sir?

18 A No, it is not.

19 Q What is a product?

20 A A product is something we produce and market.

21 Q A product is something that you produce and market?

22 A And market as a product.

23 Q Can't you have products that you never market, sir?

24 A No. Not in the sense in which we use the term.

1 For example, as a result of production --

2 Q What is a by-product, sir?

3 MR. MUSGRAVE: Just a minute, Mr. Carr, may he
4 finish?

5 MR. CARR: No.

6 MR. MUSGRAVE: Your Honor, may the witness finish
7 his answer?

8 THE COURT: No.

9 MR. MUSGRAVE: May my objection as to the Court's
10 refusal to let the witness --

11 THE COURT: I said it was overruled.

12 MR. MUSGRAVE: I just want to make sure my
13 objection was noted.

14 THE COURT: Your objection is fully noted. Mr.
15 Carr, you may proceed.

16 Q (By Mr. Carr) What is a by-product, Mr. Park?

17 A Commonly used definition is that it would be a
18 secondary produced product that is marketed.

19 Q By-products are marketed?

20 A Yes.

21 Q And because you don't sell dioxin as such, you
22 don't consider it a by-product?

23 A We do not.

24 Q Do you sell it, however?

1 A No, not intentionally.

2 Q I didn't ask you intentionally. Oh, you do intend
3 to sell it, you know it's in the product when you're selling
4 it?

5 A Mr. Carr --

6 Q Excuse me, Mr. Park. You know it's in the product
7 when you're selling it, don't you, sir?

8 A I'd have to go check. Perhaps in tiny quantities.

9 Q Whatever quantity. You know it's in the product
10 that you're selling, don't you, sir?

11 A Not as a product.

12 Q It's in the product you're selling. It's part of
13 the product that you're selling; isn't it, sir?

14 A In tiny amounts.

15 Q And you are marketing that, aren't you, sir?

16 A We're marketing the product.

17 Q And that product has in it phenol, it has in it
18 chlorine, it has in it chlorinated phenols, it has in it
19 dioxin, doesn't it, sir?

20 A It may have trace amounts of unwanted impurities.

21 Q And you are selling those unwanted impurities,
22 aren't you, sir? They're part of the product, and you're
23 marketing it, aren't you, sir?

24 A That may be present in the product being marketed.

1 Q Yes. Now the next question that they've asked
2 you is whether or not you've researched or authorized research
3 in the formation of dioxin, and you admit that you did so,
4 don't you, sir?

5 A Yes.

6 Q Then the next one they ask you is whether or not
7 studies prepared by or for Respondent have determined that
8 dioxin is a potential by-product in the manufacture of
9 chlorinated phenols, and you deny that also, don't you, sir?

10 A Because of a difference in opinion about the mean-
11 ing of the question, yes, we deny that.

12 Q You deny that in the same sense that you denied
13 question number 8, didn't you?

14 A Well, it was denied.

15 Q You denied it for the same reasons you denied
16 number 8; isn't that correct, sir?

17 A That and there may well have been other reasons
18 here.

19 Q The next question, number 11, they ask you, "The
20 term dioxin refers to 75 different compounds, dependent upon
21 the location of the chlorine atoms within the dioxin molecular
22 structure," and you deny the truth of that, don't you, sir?

23 A Yes.

24 Q Why do you deny that, sir?

1 A The response states because dioxin refers to a
2 broad class of compounds estimated to exceed 10,000 in number.

3 Q And it isn't commonly referred to that there are
4 75 --

5 MR. MUSGRAVE: Object to that, your Honor. That's
6 not what the question was that was asked.

7 THE COURT: Number 11?

8 MR. MUSGRAVE: Yes.

9 THE COURT: Overruled.

10 MR. MUSGRAVE: Number 11?

11 THE COURT: Number 11. You may proceed, Mr. Carr.

12 Q (By Mr. Carr) Isn't that what your lawyers and
13 you and your scientists and your chemists, and everybody else
14 has said that there are 75 different dioxin isomers?

15 MR. MUSGRAVE: Object. It's irrelevant.

16 Q (By Mr. Carr) Some people have said 72, others
17 have said 75. Isn't that exactly what they're saying here,
18 sir?

19 MR. MUSGRAVE: I object, it's irrelevant to the
20 question that's at hand.

21 THE WITNESS: No, Mr. Carr.

22 MR. MUSGRAVE: And the question speaks for itself,
23 as to what was asked. There's no word commonly in there, or
24 what people might generally think.

1 THE COURT: Objection is overruled. It's a proper
2 question. It's relevant.

3 Q (By Mr. Carr) Did you answer the question, Mr.
4 Park?

5 A I did, Mr. Carr. The answer was no.

6 Q And number 12, you deny that tetrachlorodibenzo-p-
7 dioxin refers to 22 potential isomers, each containing four
8 chlorine atoms in varying locations, don't you, sir?

9 MR. MUSGRAVE: Objection. It's a misstatement
10 of the question, your Honor. The question in its entirety
11 must be read, your Honor, and he is not doing that. He's
12 taking it out of context.

13 THE COURT: Objection is overruled. It's a proper
14 paraphrasing of the question.

15 Q (By Mr. Carr) Excuse me. My question is you
16 denied that the term tetrachlorodibenzo-p-dioxin refers to
17 22 potential isomers, each containing four chlorine atoms in
18 different locations. You denied that, didn't you, sir?

19 A As you have stated, I have to say no, Mr. Carr.

20 Q Well, did you admit that, sir?

21 A That question was not one of these in the Request
22 for Admissions.

23 Q That question is not --

24 A You didn't read the whole question, Mr. Carr.

1 MR. MUSGRAVE: The one you just read, Mr. Carr,
2 is not what was asked, Mr. Carr.

3 Q (By Mr. Carr) What did I just ask you --

4 A Would you like me to read the entire question 12?

5 Q You tell me.

6 A You left out the paren statement --

7 Q Hereinafter referred to as TCDD, didn't I, sir?

8 A Yes.

9 Q Did it change the meaning of the question by
10 leaving that out, sir?

11 A I think you did.

12 Q How so, sir?

13 A Because TCDD -- the term TCDD is used elsewhere
14 in here in another manner, a confusing manner which raises
15 questions as to what was intended by the asker of these
16 questions.

17 Q You don't understand that TCDD is referring to
18 tetrachlorodibenzo-p-dioxin, exactly as they say there, tetra-
19 chlorodibenzo-p-dioxin, hereinafter referred to as TCDD?

20 A The next question he says it's a toxic compound.

21 Q Let's look at question number 12 first of all.

22 A Yes. We denied this because of confusion over the
23 definition of TCDD by the asking party.

24 Q And where is the confusion over what is a tetra --

1 what is TCDD?

2 A Did the asker of these questions intend that that
3 term mean an isomer, a compound, a specific entity, or a broad
4 group of entities, or what?

5 Q You can't see? He says it refers to 22 potential
6 isomers. You're denying that, aren't you, sir?

7 A Yes.

8 Q And you also deny number 13, that TCDD is a toxic
9 compound, don't you, sir?

10 A Yes.

11 Q Well, you know it is a toxic compound, don't you,
12 sir?

13 A It's not a compound.

14 Q What is it, sir?

15 A That's a question --

16 Q It is a compound --

17 A We are limited by the terms used in this
18 document, you see, at least at the time we dealt with this.

19 Q Well, does this somehow or other define compound
20 that allows you to say why this doesn't fall within the frame-
21 work of the word compound? Is there some word --

22 A There was enough inconsistencies and confusion,
23 ambiguity, concerning use of this term.

24 Q Where, sir?

1 A I guess in 11, 12, 13.--

2 Q Where is the use of the word "compound" confusing?

3 A -- and further on. It appears to refer to a set
4 of isomers in 12, then he's talking about, apparently, a
5 specific compound in 13.

6 Q What is a compound, sir?

7 A I'm not sure I know in the context of this at
8 this moment.

9 Q Did anybody tell you that TCDD was not a compound?

10 A As defined in this document.

11 Q In any document, anywhere.

12 A No, no, we're limited to this document, Mr. Carr,
13 when we answered it.

14 Q Is compound defined in this document?

15 A The word compound was not defined, which was
16 unfortunate.

17 Q All right. Then you used the common, accepted
18 definition of compound, wouldn't you, Mr. Park?

19 A No, we wouldn't because --

20 Q Well, what would you use then, sir?

21 A The common practice throughout the trade is to
22 deny it and then the first party will come back and ask the
23 question --

24 Q I'm talking about the word compound, sir.

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A Yes, I'm trying to say.

Q What is the meaning of the word compound?

A The party that asks the question, Mr. Carr --

Q Excuse me, I'm asking you the question at this time, what is the meaning of the word compound.

A It wasn't clear to us what he meant.

Q What does it mean to you, sir?

A The question was what did it mean to the OSHA attorney.

Q My question to you, Mr. Park, what does the word compound mean to you?

A I'm not sure what it would mean.

Q I'm asking you, Mr. Park, what it means to you.

A I don't know, Mr. Carr.

Q Then if you don't know, Mr. Park, how can you deny that tetrachlorodibenzo-p-dioxin is a compound?

A Because those technical persons who were giving us advice on this raised a question concerning what it meant.

Q They told you --

A They were confused by it.

Q Did they tell you that tetrachlorodibenzo-p-dioxin was not a compound, and if so, who told you that?

A I think, perhaps, they did. I think they may have said there are a number of compounds that could fall

1 within that TCDD term, and that some of those are relatively
2 not toxic.

3 Q Well, relatively is a modifying word. We're not
4 worrying about the meaning of the word compound now. We
5 passed from that. Because you do know, and you do agree that
6 the word compound would encompass a tetrachlorodibenzo-p-
7 dioxin because it is a compound, it's made of more than one
8 substance? Isn't that correct, sir?

9 A I don't think so, Mr. Carr.

10 Q Well, what is a compound, if that's not the case?

11 A In another context, not this document, I would
12 take it to mean a substance or chemical.

13 Q Well, dioxin is a chemical, isn't it, sir?

14 A Dioxin is a large number of chemicals, hundreds
15 perhaps.

16 Q And, therefore, it's a compound, isn't it, sir?

17 A No, not a compound.

18 Q Well, it's not a compound, and that's the reason
19 you denied that?

20 A Yes. Because there was something that was not
21 correct about it.

22 Q What about the word toxic, do you consider that
23 it's toxic? Is that the reason you denied it?

24 A That could have been a reason right there.

1 Q That could have been?

2 A Yes.

3 Q Because relatively it's not as toxic as all TCDD --
4 different TCDD isomers, one is more toxic than the other?

5 A Some are relatively non-toxic as I understand.

6 Q Yes. But they're all toxic, aren't they, sir?
7 So why do you deny that it's toxic?

8 MR. MUSGRAVE: Just a moment. Just a moment. Are
9 you asking that as a question, Mr. Carr?

10 MR. CARR: Yes, indeed. I'm waiting for him to
11 answer.

12 THE WITNESS: I don't know that they are.

13 Q (By Mr. Carr) You don't know that. All right.
14 That's the reason you denied it, because you have no knowledge
15 on that point; is that correct, sir?

16 A No.

17 Q Well, why did you deny it?

18 A Because one or more things about it that were not
19 correct, so it was denied.

20 Q And you denied also that it's generally recognized
21 as the most toxic dioxin compound?

22 A Recognized by whom, Mr. Carr?

23 Q By you, sir.

24 A No, sir.

1 Q Or generally recognized by the scientific world
2 at large.

3 MR. MUSGRAVE: Where does it say that, Mr. Carr,
4 in the question?

5 MR. CARR: The word generally is there in the
6 question.

7 MR. MUSGRAVE: The words you just put into it,
8 Mr. Carr, where does it say that in the question?

9 Q (By Mr. Carr) Mr. Park, you understand what the
10 words "generally recognized" means, don't you, sir?

11 A Not when they come -- when we're limited by the
12 words on this paper.

13 Q Well, my question is aside from that, Mr. Park,
14 you do know what the words "generally recognized" means,
15 don't you, sir?

16 A Well, yes, and I don't know --

17 Q All right. Now, Mr. Park, just one thing at a
18 time. You do know what the words "generally recognized"
19 means?

20 A No. No, if you put them in a context.

21 Q Sir?

22 A Put them in a context, Mr. Carr.

23 Q I intend to do so after I get your agreement that
24 you know the meaning of those commonly used words.

1 A No, I don't know that I do, Mr. Carr.

2 Q You don't know that you know the meaning of the
3 words "generally recognized?"

4 A Generally recognized, no.

5 Q Do you know the meaning of the word "general?"

6 A I'm not sure I know the precise meaning of that.

7 Q Do you know a commonly accepted meaning of the
8 word "general?"

9 A No.

10 Q You don't know that. Do you know the meaning
11 of the word "recognized?"

12 A I know the meaning of the word "recognized."

13 Q You do know the meaning of the word "recognized?"

14 A Yes.

15 Q All right. But you don't know what generally
16 mean; is that correct, Mr. Park?

17 A Mr. Carr --

18 Q If you don't know, we'll pass on, sir.

19 A Okay.

20 Q You don't know what the word "generally" means?

21 A We didn't know what the writer meant.

22 Q Excuse me, Mr. Park, I'm asking you about what you
23 know the word "generally" means. I'm not asking you about the
24 writer.

1 A In many contexts I do know what the word means,
2 Mr. Carr, obviously.

3 Q All right. Well, apparently not so obviously
4 because you denied it a moment ago that you knew what it
5 meant.

6 A Okay.

7 MR. MUSGRAVE: Without context, Mr. Carr --

8 Q (By Mr. Carr) What you're saying now, in this
9 context you don't know what is meant by the use of the words
10 "generally recognized;" is that correct, sir?

11 A That's correct.

12 Q And the same thing, if you're -- what you're
13 talking about is because you're not in that mind of that
14 person, and you don't know just precisely what that person
15 means, so you're just going to assume then that it's to be --
16 have no attention paid to it, and you're not going to give it
17 the commonly accepted useage, are you, sir, or meaning?

18 MR. MUSGRAVE: Object to this line of questioning,
19 your Honor. These are questions asked, that have to be
20 responded to in accordance with rules, and no one is required
21 to assume what is the lawyer drafting these has in mind. It
22 is the duty of the lawyer to be specific with the question
23 so they can be responded to. It's unfair for Mr. Carr to
24 question in this regard, with regard to this document, by

1 taking it out of context of the rules that govern the
2 responses that are made.

3 THE COURT: His questioning is completely within
4 the rules that govern Requests for Admissions, common to both
5 the state court, federal court, and the administrative agency
6 in the federal system. The objection is overruled.

7 Q (By Mr. Carr) Now, Mr. Park, question number 14,
8 you denied that 2,3,7,8 TCDD is generally recognized to be
9 the most toxic of the "tetra" isomers, "didn't you, sir?"

10 A Yes.

11 Q Well, now you do know in point of fact that
12 2,3,7,8 TCDD is generally recognized to be the most toxic of
13 the tetra isomers, don't you, sir?

14 A Not as the terms are used in this particular
15 document, Mr. Carr.

16 Q Well, how on earth -- what meaning can you get
17 from that, other than the words, sir?

18 A If there was anything about it not totally correct --

19 Q What is it that's not totally correct?

20 A The term TCDD has confusion in it as it's used
21 in these documents is one.

22 Q TCDD, they tell you up above there, is short for
23 tetrachlorodibenzo-p-dioxin. You see that, don't you, sir?

24 A Yes, I do.

1 MR. MUSGRAVE: Just a moment, Mr. Carr. Above
2 it says it's 22 isomers.

3 Q (By Mr. Carr) You see that, don't you, sir, TCDD
4 is tetrachlorodibenzo-p-dioxin, hereinafter referred to as
5 TCDD, you see that, don't you, sir?

6 A Yes, sir.

7 Q They use that term TCDD, tetrachlorodibenzo-p-
8 dioxin, you see that, sir?

9 A Yes.

10 Q You can read those together?

11 A Yes, sir.

12 Q So you know that that means, 2,3,7,8 tetrachloro-
13 dibenzo-p-dioxin is generally recognized to be the most toxic
14 of the tetra isomers, isn't it, sir?

15 A There would be another difficulty with the term
16 "generally recognized," and finally with the term "tetra."

17 Q All right. I thought we agreed we knew what the
18 word -- you knew what the word "generally" meant.

19 A Not in this context, Mr. Carr. I tried to make
20 that clear. I'm sorry.

21 Q Well, what do you think it means in this context?

22 A We did not know what it meant in this context.

23 Q My question is what do you as a lawyer, a graduate
24 of law school, years of college --

1 A That's not the point, Mr. Carr.

2 Q Yes, it is.

3 A No, it isn't.

4 Q It's exactly the point.

5 MR. MUSGRAVE: I object to the question because
6 it is not the point. What he may think it means in responding
7 to these questions is totally irrelevant. Putting his own
8 interpretation on words that may have other meaning to other
9 people. I object to that as being irrelevant.

10 THE COURT: Objection is overruled. It is
11 properly the point in answering the Request for Admissions.
12 You may proceed.

13 THE WITNESS: I know what it means in a given
14 context.

15 Q (By Mr. Carr) Mr. Park --

16 A I did not know what it meant in this context.

17 Q Then you could have responded to that, "We believe
18 the word generally means," and then give your definition of
19 the word generally. If you are using the word "generally" in
20 that sense, our response or our answer to that request is yes
21 or no, depending on whatever you want to say. If there is any
22 thought in your mind about the meaning of the word, you know
23 that you have the right to say we are answer this to the assump-
24 tion that you mean "generally" means so and so. You know that,

100

1 don't you, Mr. Park?

2 A Counsel advised to answer it as we did.

3 Q Excuse me. My question is you know that, don't
4 you, sir?

5 A We had the liberty to answer it a number of ways,
6 I'm sure.

7 Q You could have made it very precise what you meant.
8 Now what do you believe, as you sit here today, that the word
9 "generally" means? Let me suggest to you that it means that
10 most people believe something to be so. Generally means not
11 everybody, but most people. Commonly accepted. Not that
12 everyone says so, but most people say it's so. That's the
13 word "generally recognized." Generally understood. That's
14 the way you understood those two words are to be taken, don't
15 you, sir?

16 MR. MUSGRAVE: Object to the multiple form of
17 the question.

18 THE COURT: Objection is overruled.

19 THE WITNESS: I would have to answer no, Mr. Carr.

20 Q (By Mr. Carr) I'm sorry?

21 A I would have to answer no.

22 Q And so you denied that it was generally recognized
23 to be the most toxic of the tetra isomers, didn't you, sir?

24 A That's correct.

1 Q You also denied the next one, that you had
2 analyzed samples of orthochlorophenol produced at the W.G.
3 Krummrich Plant for the presence of dioxin, both prior to
4 and after February 7, '79, didn't you, sir?

5 A Yes.

6 Q Now, again you know that the truth is that you
7 did analyze orthochlorophenol, both before and after February
8 the 7th, '79, don't you, sir?

9 A No.

10 Q You don't know that, sir? Your chemists know
11 that. We've got the documents in evidence here, sir.

12 A I don't think that's correct. I think --

13 Q Oh, yes. In March of '78 Vulcan asked you to
14 analyze for the presence of dioxin, and you did.

15 MR. MUSGRAVE: In what, Mr. Carr?

16 MR. CARR: In orthochlorophenol.

17 MR. MUSGRAVE: Crude?

18 Q (By Mr. Carr) Isn't that correct, sir?

19 A I think that was a different product, Mr. Carr.

20 Q You don't know that you're selling orthochloro-
21 phenol to Vulcan and Reichhold Chemical?

22 A I would assume that orthochlorophenol means the
23 final product. I believe the other might be the crude, not
24 the final product.

1 Q Do you have a product that you sell at the plant
2 in '79 called orthochlorophenol? Not the product you sell
3 as orthochlorophenol crude. You don't sell anything other than
4 that, are you, sir?

5 A I'm sorry, I just don't know the answer to that.

6 Q Well, if you sell anything other than the ortho-
7 chlorophenol crude, it's not shown by the documents, and you
8 admitted in request number 7 that you manufactured orthochloro-
9 phenol, and they're talking about the orthochlorophenol produced
10 at that plant, aren't they, sir?

11 A Request number 15 was a statement or number 15
12 was simply incorrect, Mr. Carr, and I'm assuming that it was
13 because samples of this particular product, the orthochloro-
14 phenol itself had not been analyzed.

15 Q But you know that it's not the case. You know
16 that you've seen --

17 A No.

18 Q -- you've seen the documents where they've
19 analyzed. I've seen them to you, where they analyzed the
20 orthochlorophenol.

21 A Crude?

22 Q They're not even talking about orthochlorophenol
23 crude, and neither are you. You call it OCP in all of your
24 documents, don't you, sir?

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A I don't know, Mr. Carr.

Q You don't know that. The people that you went to for these responses knew, though, didn't they, sir?

A I would assume so.

Q Over on page -- the next page on question 17, you deny -- well, that's not airborne concentration of dioxin. The next question, 18, you deny that chloracne is a symptom of dioxin exposure, don't you, sir?

A Yes.

Q And you know that it is a symptom of dioxin exposure, don't you, sir?

A No. Not as limited by this document.

Q Mr. Park, do you understand that the witness, two witnesses preceding you, Dr. Roush, took the position that chloracne is the only symptom of dioxin poisoning, none others. He spent weeks here testifying to that. Do you understand, sir?

A Yes. All right.

Q And he swore under oath that it is --

MR. MUSGRAVE: Is what?

Q (By Mr. Carr) -- caused by dioxin poisoning. And here you're saying in this document that it's not --

MR. MUSGRAVE: Object.

Q (By Mr. Carr) -- a symptom of dioxin exposure.

1 MR. MUSGRAVE: Object. That's contrary to what
2 the question asked. There's two different questions.

3 THE COURT: Objection is overruled.

4 THE WITNESS: No. We're merely denying this
5 Request for Admission, Mr. Carr.

6 Q (By Mr. Carr) Well, in this request, it is asking
7 you to agree that chloracne is a symptom of dioxin exposure.

8 A Not in the context of this document. I guess a
9 couple of things come through to me as possible reasons why
10 this was considered not to be a totally correct statement.

11 Q Well, you must not agree with what the word
12 "symptom" means, or what the word "chloracne" meant.

13 A No.

14 Q Or what the word "dioxin" meant, or what the word
15 "exposure" meant.

16 A Yes.

17 Q Is that it, Mr. Park, one of those words you don't
18 know what it means?

19 A No. We feel the statement as written was not
20 totally correct.

21 Q Okay.

22 A And, therefore, not subject to being admitted.

23 Q Where is it not correct, sir?

24 A For one thing, it's the dose that may --

1 Q There's no mention about --

2 A That's right, there isn't.

3 Q There's no mention about dose.

4 A That's right. Mere exposure to a small amount
5 may not result in chloracne.

6 Q Yes. So --

7 A A large amount may.

8 Q Yes, that's right.

9 A We don't know. But chloracne can be caused by
10 other things.

11 Q That's true. No doubt about that.

12 A So the statement as written is not wholly correct.
13 At least that was the conclusion drawn six years ago.

14 Q It doesn't say it's the only symptom, and it
15 doesn't ask you to say that it's only dioxin that can cause
16 it. It doesn't ask you to say the amount that can cause it.
17 It's a simple little statement that you had witnesses here
18 testifying under oath for a considerable period of time that
19 chloracne was a symptom of dioxin exposure.

20 MR. MUSGRAVE: Objection, that's not the testimony.
21 Not exposure, dose.

22 MR. CARR: It's not the testimony?

23 MR. MUSGRAVE: Dose. Not exposure.

24 THE COURT: Objection is overruled. You may

1 proceed, Mr. Carr.

2 Q (By Mr. Carr) Here in order to stop this
3 proceeding that was going on, you undertook to deny the truth
4 of something that Dr. Roush has pointed out document after
5 document, chloracne is the hallmark of dioxin exposure.
6 Chloracne is generally recognized as being caused by dioxin
7 exposure. Yet here you deny it, don't you, sir?

8 A It's totally false, Mr. Carr.

9 Q That's totally false?

10 A That was not the stopping proceeding at all. This
11 was merely as you see, this was the first set of interrogato-
12 ries. Those that were not totally correct, we would deny,
13 actually expecting that the plaintiff, OSHA, would come back
14 with some more detailed and more clear requests for admissions.

15 Q Did you tell them somewhere, did you write them
16 a document saying that number 18, we don't know what you mean
17 by that, we don't agree. We don't know what chloracne is, or
18 be more precise about what you mean by symptoms, or be more
19 precise what you mean by exposure. You've got the right, and
20 you understand that you have the right, don't you, Mr. Park,
21 if you believe it's ambiguous, and you don't understand it,
22 you have the right to object to it? You have the right to
23 say we cannot answer that question because it's ambiguous,
24 because we don't understand what it means. You have the right

1 to do that, you know that, don't you, Mr. Park?

2 A Yes.

3 Q But you didn't do that with these questions, did
4 you, sir?

5 A We denied those that were not totally correct.

6 Q And you didn't tell them that you were denying
7 it because it was ambiguous, or you didn't know what it meant,
8 you just out right denied it, didn't you, sir?

9 A Yes, if it was not totally correct.

10 Q Now, don't you reckon that they could have given
11 you more questions if you said, "Hey, we really don't under-
12 stand what you mean by that. Give us more detail, because we
13 don't understand what you mean by symptom, or by dioxin, or
14 by exposure."

15 MR. MUSGRAVE: Object to the speculation and
16 conjecture.

17 THE COURT: Objection is overruled.

18 THE WITNESS: What we followed was the common
19 method of practice, Mr. Carr, advised by a counsel experienced
20 in OSHA matters. We fully expected OSHA would come back with
21 several series of questions that would define themselves.

22 Q (By Mr. Carr) But they didn't, did they, sir?

23 A I don't believe they did.

24 Q Sir?

1 A No.

2 Q They took your denials at face value, didn't they,
3 sir?

4 A No.

5 MR. MUSGRAVE: Object to that. Objection, specula-
6 tion as to what anyone at OSHA did upon reviewing and receiving
7 these. There's no foundation for that. It's totally specula-
8 tion and conjecture. I object to it.

9 THE COURT: Objection is overruled.

10 Q (By Mr. Carr) Did you write them a letter saying
11 to them that if you'll send us some more questions, more
12 precise questions, and define every word in your document, or
13 the words like compound and symptom, and TCDD, define those
14 for me, we can give you another set of answers?

15 A No.

16 Q Did you say that to them?

17 A No.

18 Q No. Now on question number 20 you did admit that
19 a chemical spill took place, didn't you, sir?

20 A Yes.

21 Q But you promptly denied question number 21 because
22 it didn't consist of orthochlorophenol, did it, sir?

23 A I think that's correct.

24 Q The spill consisted of 2,4-Dichlorophenol that

12

Q With a different number?

13

A Yes.

14

Q What numbers were different, sir?

15

A I don't recall the number.

16

Q Well, they also say then that approximately 3,000

gallons spilled, and you denied that as well, didn't you, sir?

18

A Yes.

19

Q Why did you deny that one, sir?

20

A Because it's incorrect.

21

Q What is incorrect about it?

22

A The quantity that the statement says was spilled

23

is incorrect.

24

Q Well, what's incorrect about it, sir? Was it more

1 took place in February, 1979; isn't that right, sir?

2 A Yes.

3 Q But then they get a little more precise. They
4 say the spill referred to in request number 20, the spill
5 from rail car number ACFX 23376, don't they, sir?

6 A Yes.

7 Q And it did spill from that rail car, did it not,
8 sir?

9 A No.

10 Q What rail car did it spill from?

11 A I think it was another rail car.

1 than 3,000 gallons or less than 3,000 gallons, or what was it?

2 A I think it may --

3 Q Sir?

4 A I believe it was more actually.

5 Q So because it was more you denied it, even though
6 they used the word "approximately," is that correct?

7 A The statement was incorrect. We would have been
8 wrong to have confirmed an incorrect statement.

9 Q Oh, but why couldn't you say it wasn't 3,000
10 gallons that spilled, but it was 5,000 gallons that spilled?
11 Why couldn't you have answered that way?

12 A Mr. Carr, because that's not the practice.

13 Q Mr. Park, it's not the practice at Monsanto that
14 way. But I assure you it is the practice in many, many other
15 places to respond just exactly as I've suggested.

16 A That's before the OSHA Review Commission.

17 MR. MUSGRAVE: Object to Mr. Carr's statement.
18 Request that it be stricken.

19 THE COURT: Objection is overruled.

20 Q (By Mr. Carr) Mr. Park, now you state there that
21 you -- well, you do admit that you analyzed subsequent to
22 the clean-up of the spill, and that is a true statement, you
23 had not analyzed it prior to the clean-up of the spill, had
24 you, sir?

1 A That's right.

2 Q Now you do admit that you did find the presence
3 of dioxin in your analysis, didn't you, sir?

4 A Are you in item 25, Mr. Carr?

5 Q Yes.

6 A Yes.

7 Q And the next few questions deal with the protective
8 measures given for the workers, which you admit were correct.
9 But over on question 33 you object because it's something
10 that occurred at Sturgeon, and you deny what was said there,
11 don't you, sir?

12 A Yes. This was on advice of counsel.

13 THE COURT: Mr. Carr, before you get into that,
14 is this a good point for a short break?

15 MR. CARR: Sure.

16 THE COURT: Ladies and gentlemen, we'll take a
17 short recess at this time, and then resume again. Court is
18 in recess.

19
20 (Short recess.)

21
22 (The following proceedings were had at the bench out
23 of the hearing of the jury:)

24 THE COURT: When can you get me the response to

1 that motion?

2 MR. NASSIF: I talked with Bruce, he said he
3 could have it by next week.

4 THE COURT: Sometime next week?

5 MR. NASSIF: Would that be early enough?

6 THE COURT: Can you make it early next week?

7 MR. NASSIF: I'll try.

8 THE COURT: That's probably okay.

9 MR. NASSIF: And the experts you're talking about.

10 THE COURT: That will be okay. Thank you.

11
12 (The following proceedings were had in the presence
13 and hearing of the jury:)

14
15 (Plaintiff's Exhibit 1548 was marked
16 for identification by the court reporter.)

17
18 Q (By Mr. Carr) Mr. Park, in response to the
19 request to admit 8a, as I recall your reasoning to that
20 response, you said that you were denying it because, or
21 should be denied because it's not a by-product. That is the
22 dioxin is not a by-product. Do you recall that, sir?

23 A Yes.

24 Q Now do you consider that you might be guilty of

1 deceit in denying that it is a by-product?

2 A No.

3 Q I would like to show you Plaintiff's Exhibit
4 1548 and see if you recognize that as an exhibit written by
5 Wilson on the subject of deceit, if you deny that that is the
6 by-product.

7 THE COURT: Is this 1548? Is that the number?

8 COURT REPORTER: Yes.

9 THE WITNESS: Yes, this is a memorandum from
10 James Wilson.

11 Q (By Mr. Carr) It's a memorandum to you in
12 response to your request that he and others, that they give
13 you information so that you can respond to these OSHA citation --
14 OSHA requests made in the citation.

15 A Yes.

16 MR. CARR: I offer 1548 into evidence, if it
17 please the Court.

18 MR. MUSGRAVE: Object on the same basis as the
19 last exhibit. It's irrelevant, immaterial, no probative value
20 and weight of the considerations to the issues in this lawsuit.

21 THE COURT: Overruled. It's admitted over objec-
22 tion.

23 Q (By Mr. Carr) Dr. Wilson in this memo dated
24 October the 9, 1979, it states with reference to the request 114

1 that dioxin is a by-product in the synthesis of chlorinated
2 phenols by saying, does he not, quote, My dictionary defines
3 "by-product" as "something produced in addition to the principal
4 product." To contaminate is "to make impure by admixture."
5 There's no disputing the fact that the aforementioned "dioxins"
6 were contaminants in our chlorophenols. However, I'm afraid
7 we will be guilty of deceit if we deny that they might not
8 also be by-products. Certainly the fact that TCDD concentra-
9 tions declined following certain changes in operating procedures
10 at W GK argues that they were being formed as by-products of
11 manufacture. Especially since those changes were designed to
12 eliminate TCDD formation.

13 Isn't that what he says, sir?

14 A That's correct.

15 Q And you did deny that it was a by-product, didn't
16 you, sir?

17 A Yes.

18 Q And Dr. Wilson would characterize that -- well,
19 as a matter of fact, he said, "We will be guilty of deceit if
20 we deny that," didn't he, sir?

21 A It appears to be what he said. He was overruled
22 by the group as to the meaning of the word "by-product," as I
23 recall it.

24 Q Someone can be overruled as to the meaning of words?

1 Words have meanings. You can't overrule someone as to the
2 meaning of the word, can you, sir?

3 A The meaning was his understanding of the term
4 "by-product," was different from the way the others would
5 commonly understand it.

6 Q He's referring to a dictionary. He says it's
7 something produced in addition to the principal product. That's
8 exactly what it is, isn't it, sir?

9 A Well, it's an unwanted contaminant is what it is.
10 It's not a by-product --

11 Q Whether it's a contaminant or not. It's produced
12 in addition to the product, isn't it, sir?

13 A Mr. Carr, as I said earlier, many people, if not
14 most, use the term "by-product" to mean something that is
15 produced and is sold. It would not be the principal --

16 Q The precise dictionary definition Dr. Wilson gave
17 you. He pointed out to you that you would be guilty of deceit
18 if you denied it, but nevertheless you denied it; isn't that
19 correct, sir?

20 A In our response to OSHA we denied that.

21 Q Yes. Now on number 15 -- I'm sorry, on question
22 number 15, that we've already passed by, and you said that it
23 was correct to deny that you had analyzed samples of ortho-
24 chlorophenol produced at the W.G. Krummrich Plant for the

1 presence of dioxin prior to February the 7th, '79. Do you see
2 that, sir?

3 A Yes, I see that.

4 Q And I suggested to you that you had, indeed, tested
5 two samples in 1978. Do you recall that I suggested that to
6 you?

7 A Yes, I think I do.

8 MR. CARR: Would you mark this as an exhibit,
9 please.

10
11 (Plaintiff's Exhibit 1549 was marked
12 for identification by the court reporter.)
13

14 Q (By Mr. Carr) It's the only copy I have, so I
15 show it to you first, Counsel. 1549.

16 I hand you what's been marked Plaintiff's Exhibit 1549
17 and see if you recognize that as another memo written earlier
18 in point in time by James Wilson, to you, again on the subject
19 of 8a and now also on the subject of 15a. And on 8a he again
20 tells you that by-product is properly in the process there,
21 does he not, sir? 8a.

22 A Oh, I'm sorry. Yes, he repeats that.

23 Q And what does he say about by-product there?

24 A He says "As chemists use the word 'by-product',

1 dibenzodioxins can be manufactured as by-products during
2 chlorophenol manufacture. Dibenzofurans cannot so be made."

3 Q What does he say about 15a where OSHA has asked
4 you whether or not it's true that you've analyzed samples of
5 orthochlorophenol for the presence of dioxin prior to February
6 7, 1979?

7 A He says, "Two samples produced in 1978 were analyzed
8 and found to contain no dioxins."

9 Q And he suggests the answer to that question
10 should be yes?

11 A Yes.

12 Q But nonetheless, you answered it no, knowing that
13 in fact what Dr. Wilson pointed out to you that you had
14 analyzed it; isn't that correct, sir?

15 A The response went in denying that. I cannot
16 recollect exactly why. Perhaps Dr. Wilson was incorrect and we
17 had not. Perhaps it was a different product. I don't know.
18 Perhaps there was a mistake made. I don't remember.

19 Q Mr. Park, as I advised you already, we have
20 exhibits in evidence that shows that you requested in 1978 to
21 analyze for dioxins, and you did. They're in evidence. That's
22 exactly what Dr. Wilson is telling you. But nevertheless --

23 A Yes.

24 Q -- having those facts you denied the truth of the 118

1 statement, didn't you, sir?

2 A Dr. Wilson was one of a number of people who
3 participated in this.

4 Q Excuse me. Mr. Park, that isn't what I'm asking.

5 A I understand.

6 Q Nevertheless, having knowledge of those facts,
7 people can't overruled facts.

8 A These are statements coming from Dr. Wilson.

9 Q Those facts, he told you were facts, and they
10 were indeed facts, but yet you denied the truth of them, didn't
11 you, sir?

12 MR. MUSGRAVE: Objection, it's contrary to the
13 evidence, your Honor, as to what the facts were. It's 1978
14 OCP crude was analyzed, not the CP.

15 THE COURT: Objection is overruled.

16 Q (By Mr. Carr) Would you answer the question.

17 A I'd have to say no, Mr. Carr.

18 Q All right. On the -- I think we were to -- you
19 denied that the chemical in number 33, you denied that the
20 chemical spill -- you denied the truth of the fact that the
21 newspaper article attached there was fully identifying it. You
22 denied all those matters from 33 down through 41 all together,
23 didn't you?

24 A Yes. This was a procedural thing, Mr. Carr. It

1 was felt that was not relevant to the OSHA proceeding. We
2 objected to it, and since it was felt that we either had to
3 admit or deny it, we denied it.

4 Q Well, at least here you give the reason for the
5 denial, don't you, sir?

6 A Yes.

7 Q You're letting them know that you are denying it
8 on technical grounds, wherein in these other instances of
9 denial, you didn't let them know that you were denying on
10 technical grounds, did you, sir?

11 A I guess we felt it would be understood.--

12 Q Excuse me. Would you answer that question.

13 A We just denied it.

14 Q And you didn't let them know that you were denying
15 on technical interpretation of these various words, did you,
16 sir?

17 MR. MUSGRAVE: Well, I object to that. That's
18 contrary to what the answer says. The objection says that the
19 basis for it is immaterial and irrelevant, not some technical
20 basis, Mr. Carr. That's a misrepresentation of what the
21 document says.

22 Q (By Mr. Carr) Could you answer my question,
23 please.

24 THE COURT: The objection is overruled.

1 THE WITNESS: We didn't state we were -- we just
2 denied them, Mr. Carr.

3 Q (By Mr. Carr) And you didn't give any reason
4 for denying, did you?

5 A No, that's correct.

6 Q As you did give a reason for denying 33 through
7 41, didn't you?

8 A Yes.

9 Q Now, directing your attention to number 42a and
10 b, you deny 42 a and b, don't you, sir? 42 says, "Prior to
11 OSHA's February 7, 1979 inspection, Respondent's employees in
12 the areas of its W.G. Krummrich Plant where chlorinated phenols
13 were manufactured, handled, or stored were not advised of the
14 hazards of dioxin contamination." You denied that, didn't you,
15 sir?

16 A Yes.

17 Q By denying that, you mean to say that they were
18 advised of the hazards of dioxin contamination, don't you, sir?

19 A Yes.

20 Q Now, did you ever see a document or a memorandum
21 of any sort dated before February the 7th, 1979 which any
22 employee was advised at any time that they were handling
23 dioxin, other than the laboratory employees, and of the hazards
24 associated with dioxin handling, other than the laboratory

1 employees?

2 A Mr. Carr, I cannot recall with great specificity,
3 but I believe that some employees in the pentachlorophenol
4 operation would have been advised concerning chloracne. This
5 would have been in writing and I think that there were verbal.

6 Q You think that?

7 A Yes.

8 Q But my question did you ever see any memo, any
9 writing, any document.

10 A I think there was some writing on the chloracne.

11 Q In the pentachlorophenol department?

12 A Yes.

13 Q That writing was dated December of '79. The only
14 hazard they were told that was possible was chloracne. There
15 was some reversible liver changes is what they said. That's
16 the only document that Dr. Roush could find, according to his
17 testimony, in which employees were told of the hazards, or
18 possible hazards of dioxin contamination. Do you have any
19 knowledge of anything else, other than that?

20 A Not specifically. I just -- I think --

21 Q Well, you think.

22 A Yeah, uh-huh.

23 Q Now question number 46, would you look at that,
24 please.

1 A Yes.

2 Q In number 46 they ask you to admit that, quote,
3 During the manufacturing process of certain chlorinated phenols
4 produced at Respondent's W.G. Krummrich Plant the following
5 contaminants are potentially present: (a) dioxin, (b) TCDD,
6 and (c) 2,3,7,8 TCDD, do they not, sir?

7 A Yes.

8 Q And you deny the truth of that, don't you?

9 A Yes.

10 Q Now you do know that dioxins were present in
11 those -- found in the manufacturing process of these chlorinated
12 phenols, don't you, sir?

13 A Not personally. I assume that there are documents
14 here that might so indicate.

15 Q Well, look at this dated 6/6/79. It talks about
16 dioxin concentration, doesn't it, sir? And in parts per
17 million, doesn't it, sir? And look at document 1135, there's
18 all kinds of dioxins present under all these columns here,
19 dealing with dioxins, all eight dioxins are dealt with. There's
20 thousands and thousands of dioxins -- thousand parts per billion
21 of dioxins in your product, according to 1135, aren't there,
22 sir?

23 MR. MUSGRAVE: You want to show me which one says
24 that as far as a product, Mr. Carr, as a part of the process --

1 Q (By Mr. Carr) Would you answer the question, sir?

2 MR. MUSGRAVE: Object to Counsel's representation
3 of documents incorrectly, request that it be stricken from
4 the record as improper characterization of the evidence.

5 THE COURT: Objection is overruled. You may
6 proceed, Mr. Carr.

7 Q (By Mr. Carr) You know this document, 1135,
8 refers not just to processing, but to products, not as Mr.
9 Musgrave thinks.

10 A I don't know that, Mr. Carr.

11 MR. MUSGRAVE: That's not what I said. I said
12 I want the one that's got thousands of parts in a product, not
13 in a process stream.

14 THE COURT: Mr. Carr, go ahead with your question
15 please.

16 Q (By Mr. Carr) You do know that dioxins are
17 produced and have been found in your products, don't you, sir?

18 A Which dioxin, Mr. Carr?

19 Q I don't care about dioxin. (a) is dioxin. It's
20 talking about all dioxins.

21 A Okay.

22 Q Any dioxin. You denied that, and yet you had
23 all the evidence, all the findings these products contained
24 dioxins. You don't have any question about that in your mind,

1 do you, sir?

2 A This item number 46 --

3 Q 46(a).

4 A It's not totally correct, Mr. Carr.

5 Q Where is it incorrect?

6 A It's vague in some areas.

7 Q Where is it incorrect, sir?

8 A All right. Certain chlorinated phenols.

9 Q Yes. Now certain chlorinated phenols were
10 included parachlorophenol, Santophen, 2,4-Dichlorophenol,
11 orthochlorophenol; isn't that correct, sir?

12 A No.

13 Q That wasn't?

14 A No.

15 Q Those are not --

16 A We are limited to this document. We're trying
17 to respond to it. The customary thing is then the complainant
18 would come back with another document.

19 Q Mr. Park, please don't get off on that again.
20 They're asking you for things outside the document. They're
21 wanting to know -- they're wanting you to tell them that it's
22 true.

23 A We can admit or deny.

24 Q Excuse me. You deny, and you're guilty of deceit

1 if you deny something that you know to be the truth. Sure,
2 you're capable of denying everything, as you did. But it's
3 deceitful to do that. OSHA --

4 A No, sir, not when it's incorrect.

5 MR. CARR: It's a speech, your Honor. Request
6 that it be stricken. It's not a question. It's an insinuation
7 and an attack on the witness. I ask that it be stricken and
8 the jury be instructed to disregard it.

9 THE COURT: It's overruled. It was a proper
10 question.

11 Q (By Mr. Carr) Mr. Park, I agree with you, if it
12 is incorrect, you should deny it. But now I'm asking you, sir,
13 where is it incorrect that certain of your chlorinated
14 phenols contain dioxin as a contaminant?

15 A Okay. The vague -- the places where the statement
16 is unclear --

17 Q No, let's say where it's incorrect.

18 A I said it's not a totally correct statement.

19 Q Okay. Where isn't it totally correct that certain
20 chlorinated phenols produced at the Krumrich Plant had dioxins?

21 A We had no way of knowing what the writer meant
22 when he said certain chlorinated phenols. For example --

23 Q You don't know what the word "chlorinated phenol"
24 means?

1 A We didn't know what he meant when he wrote that.
2 If he had put down a specific process, or a specific product
3 perhaps, that might have been different. But he didn't. He
4 said certain chlorinated phenols.

5 Q Certain chlorinated phenols included all, doesn't
6 it, sir?

7 A No.

8 Q So if you have chlorinated phenols that have
9 dioxins, that's what he's talking about, isn't he, sir?

10 A I don't think so.

11 Q What do you think he's talking about if he's not
12 talking about chlorinated phenols?

13 A I guess the group with the advice of counsel
14 concluded that this was ambiguous and, therefore, should be
15 denied at this time. The same is true --

16 Q How can it be ambiguous? Look at number 32. You
17 admit that you're aware of spills of chlorinated phenols
18 manufactured there. You admit number 32, and they used the
19 word "chlorinated phenols."

20 A Well, the word "certain chlorinated phenols"
21 raises the question.

22 Q So the word "certain." So now it's not "Chlorinated
23 phenols," it's the word "certain."

24 A Chlorinated phenols.

1 Q Weren't certain chlorinated phenols, didn't they
2 contain dioxins?

3 A Then the terms --

4 Q Excuse me. Didn't certain chlorinated phenols
5 contain dioxins?

6 A For purposes of this, we denied that.

7 Q Excuse me. I know you denied it. You're telling
8 me what you did. I'm asking you didn't certain chlorinated.

9 A I don't know that.

10 Q You don't know that. Aren't these chlorinated
11 phenols that are shown here in Exhibit 1249-A?

12 A Is that, what, penta chlorinated phenol?

13 Q PCP, 2,4-Dichlorophenol, aren't they chlorinated
14 phenols?

15 A Yes.

16 Q And don't they contain dioxins according to this
17 exhibit?

18 A Yes, they appear to.

19 THE COURT: I didn't hear that answer.

20 THE WITNESS: Yes, they appear to.

21 THE COURT: Could you please try to keep your
22 voice up.

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

1 Q (By Mr. Carr) You denied it here, didn't you, sir?

2 A For purposes of this document, yes.

3 Q Knowing it to be the truth?

4 A No.

5 Q Where is it untrue, sir? What part of it is

6 untrue?

7 A The statement was vague.

8 Q What part of it is untrue, sir?

9 A I'm telling you that the statement in our opinion

10 was not sufficiently, totally correct, as to warrant --

11 Q What part of it is incorrect?

12 A -- an acceptance.

13 Q What part of it is incorrect?

14 A Certain chlorinated phenols is vague.

15 Q We went through that already, sir. It's not

16 vague.

17 A We concluded that it was.

18 Q Sir?

19 A We concluded that it was at the time.

20 Q No. What you said was we're going to deny that

21 and we'll do that by saying that chlorinated phenol is vague,

22 But you use the words chlorinated phenols throughout your

23 documents all the time, don't you, sir?

24 A No.

1 Q Look at this document right here, chlorinated
2 phenol. That's chlorinated phenol. Chlorophenol, chlorinated
3 phenol. They're synonymous, aren't they, sir? There's no
4 vagueness about that. You use that word. They use that word.
5 What else are they going to --

6 MR. MUSGRAVE: Object to the question. It's
7 got multiple parts. Request that it be stricken.

8 THE COURT: Objection is overruled.

9 Q (By Mr. Carr) What about the next one, TCDD,
10 there's no question that you knew that there were TCDD's present
11 in your chlorinated phenols, in certain of them.

12 A Not all of them.

13 Q No, it doesn't say all of them, does it, sir? It
14 says certain of them. There's no question it is. You knew
15 that.

16 A If we --

17 Q Excuse me, Mr. Park, would you answer that
18 question.

19 A I have to answer no, then, Mr. Carr.

20 Q You didn't know it?

21 A Not the way you phrased the question.

22 Q The person that works for Monsanto, that prepared
23 these documents, 1135, do you reckon that he knew it?

24 A I have no idea what he knew, Mr. Carr.

1 Q Well, you do have an idea because you've seen
2 the document. You've seen 1135 and it shows chlorinated phenols
3 and it shows the tetras, and it shows the dioxins, so he knew
4 it, didn't he, sir?

5 A I can see the document.

6 Q And he knew it, didn't he, sir?

7 A I guess the person that prepared the document knew
8 what he put on the document.

9 Q And he knew that there was dioxin and TCDD's in the
10 chlorinated phenols, didn't he, sir?

11 A Maybe not for this purpose, Mr. Carr.

12 Q How can you have truth for one purpose and a lie
13 for another, Mr. Park? Could you explain that to me?

14 MR.MUSGRAVE: Object to the question, improper
15 question.

16 Q (By Mr. Carr) The truth is the truth is the
17 truth.

18 THE COURT: The objection is overruled.

19 THE WITNESS: I've been trying to explain why
20 you're limited to this document, Mr. Carr.

21 Q (By Mr. Carr) I've been listening to your
22 explanation, Mr. Park, so far I haven't seen any reason, nor
23 do you, I submit to you, why you would deny the truth of the
24 statement that dioxins and TCDD's and 2,3,7,8 TCDD are

1 potentially present in your chlorinated phenols?

2 A Because all TCDD's were not present, and that term
3 was defined, it certainly could be taken to be defined earlier
4 to include all of the isomers in TCDD.

5 Q How on earth could you get that?

6 A This is too vague to accept.

7 Q Too vague?

8 A Yes.

9 Q These are words that you yourself used in documents
10 everyday, and we discussed those the last --

11 A Not in that context, we don't, Mr. Carr.

12 Q We discussed those the last time you were here.
13 All your chemists use these terms, your executives use these
14 terms, scientists write scientific articles using these terms.
15 We've got lots of them in evidence. Every witness that's come
16 on the stand here has used these terms. Now, Mr. Park, how can
17 you as an attorney sit down there and say that terms that
18 scientists use, that the doctors use, and the chemists use to
19 describe certain things are vague? Where do you in the law
20 get that right to say these words that the scientists use
21 are vague? Can you tell me that, sir?

22 A Yes, because they're used by someone else here.

23 Q They're used by someone else?

24 A "es. Not by your scientists.

1 Q And you don't consider that the person that
2 prepared this was asking questions of the people that he
3 thought were scientists, he thought he was addressing questions
4 to scientists, didn't he, sir?

5 A Mr. Carr, the person that asked me these questions
6 were several very capable attorneys with OSHA. They would
7 take ever omission that we made here and use it against us.

8 Q Indeed they would.

9 A So we had to be careful, and be accurate in the
10 way we responded.

11 Q Exactly right, and that is the point, sir. What
12 you had to do, Mr. Park, because OSHA has the responsibility
13 for the safety and health of your workers, doesn't it, sir?
14 That's the only responsibility, isn't that right, sir?

15 A I would say that Monsanto is primarily responsible.

16 Q I'm talking about OSHA. It has its sole functio,
17 it's sole obligation is to protect the health and safety of the
18 workers that work throughout the United States.

19 A That's correct.

20 Q Not just at Monsanto; isn't that correct?

21 A That's correct.

22 Q They're not in it to make money, they're not in it
23 to make glory, or to make a profit or to make a product. They
24 have one function, and one function only, that's to protect the 133

1 workers; isn't that correct, sir?

2 A The Occupational Safety and Health Administration,
3 yes, sir.

4 Q And when they submitted these questions to you,
5 these requests to admit, they were attempting to perform their
6 sole function, that is to protect the health and safety of
7 your workers, weren't they, sir?

8 A Well, these were Department of Labor attorneys,
9 to be specific, Mr. Carr.

10 Q And they were working for OSHA. It was their job,
11 their sole job in this instance to protect the health and
12 safety of your workers; isn't that correct, sir?

13 A They were representing OSHA with respect to
14 some citations which had been issued.

15 Q For the purpose of protecting the health and
16 safety of your workers; isn't that correct, sir?

17 A Yes.

18 Q And in that regard, in that respect, they asked
19 certain questions of you so that they can present the evidence
20 to a hearing board and determine whether or not you are
21 properly protecting the health and safety of your workers;
22 is that correct, sir?

23 A Not totally, Mr. Carr.

24 Q That is their function. That was the function and

1 the sole and only function that they have; isn't that right,
2 sir?

3 A No, Mr. Carr.

4 Q What other function do they have other than
5 protecting the health and safety of the workers?

6 A That wasn't the question you asked, Mr. Carr.

7 Q That was exactly the question I asked.

8 A No, it wasn't.

9 Q In what they were doing here, they were executing
10 the mandate given them by Congress, signed by the President,
11 it's their job to go out into the plant and discover areas
12 where the health and safety of the workers might be jeopardized;
13 isn't that correct, Mr. Park?

14 A OSHA inspectors do that --

15 Q Isn't that their job, sir?

16 A You're switching-- I'm trying to follow you --
17 from attorneys with the Department of Labor, now to OSHA
18 inspectors.

19 Q They're different. The entire OSHA personnel,
20 from lawyers to investigators, to scientists. They have one
21 job and one job only, that is to protect the health and safety
22 of the workers; isn't that correct, sir?

23 MR. MUSGRAVE: He's now arguing with the witness.
24 The witness already answered the question. He's now arguing

1 with the witness.

2 THE COURT: Objection is overruled.

3 THE WITNESS: The function of the agency is to
4 protect the health of workers.

5 Q (By Mr. Carr) And the way that agency functions
6 is through its employees, through its lawyers, through its
7 scientists, through its investigators, through its inspectors;
8 isn't that correct, sir? Through the secretaries, through
9 their scientists.

10 A Yes.

11 Q Through their nurses.

12 A To be accurate, OSHA, I believe, does not -- it
13 uses Department of Labor attorneys.

14 Q And those attorneys, when they're representing
15 OSHA are performing the Congressional mandate of protecting the
16 health and safety of workers, aren't they, sir?

17 A They're supporting OSHA.

18 THE COURT: I didn't hear your answer. I'm sorry.

19 THE WITNESS: They are supporting OSHA on its
20 function. The lawyers are supporting OSHA in its function.

21 Q (By Mr. Carr) Mr. Park, there are thousands and
22 thousands of employers in this country, aren't there, sir?

23 A Yes.

24 Q And OSHA is a finite, that is a limited -- there 136

1 are limits to their manpower, limits to their lawyers, aren't
2 there, sir?

3 A High limits, yes.

4 Q And you in the manufacturing end, you are aware
5 of the fact that if you make it difficult enough for OSHA and
6 its' attorneys to prove their case, if you will deny elementary
7 things that they will have to go in and do a lot of things,
8 subpoena records, do as we did, dig out these things from these
9 records, if you don't admit those things, you know that you
10 can make it so difficult that they will withdraw their complaint
11 and spend their manpower more efficiently on other things.
12 You know that, don't you, Mr. Park?

13 MR. MUSGRAVE: Objection. That calls for specula-
14 tion, conjecture, improper questio.

15 THE COURT: Objection is overruled.

16 THE WITNESS: No, I don't, Mr. Carr.

17 Q (By Mr. Carr) You don't know that, Mr. Park?
18 You don't know that if you -- if you admitted the truth of
19 those things, the things that you know to be true, then they
20 don't have to prove it, do they, sir? If you admit the truth
21 of it.

22 A What things, Mr. Carr?

23 Q The things that they requested that you admit to
24 be true.

1 A It's not clear what they requested.

2 Q Would you direct the witness to answer my question?

3 THE COURT: Mr. Park, you have to answer the
4 question.

5 THE WITNESS: I have to answer no then to the way
6 you phrased it, Mr. Carr.

7 Q (By Mr. Carr) They have to prove it, if you don't
8 admit the truth of it, sir. The whole idea, isn't it, Mr.
9 Park, of a Request to Admit a fact is so it need not be proven?

10 A Mr. Carr, OSHA's lawyers normally rely on their
11 inspectors.

12 Q Isn't that the whole idea, sir?

13 A Yes. That's contrary to general experience.

14 Q Excuse me. What is the purpose of a Request to
15 Admit a fact, sir?

16 A It's to avoid being required to prove it in a
17 court.

18 Q Isn't that exactly what I asked you, sir?

19 A No, I think you phrased it different, Mr. Carr.

20 Q It's to avoid to prove it. They don't have to
21 prove it if you admit it; isn't that right, sir?

22 A That's right.

23 Q But if you deny it, they then have to prove it,
24 don't they, sir?

1 A That's correct.

2 Q And to prove it, they have to go into your plant,
3 they have to get records, they have to subpoena your records,
4 they have to analyze your records, they have to spend the
5 months as we have spent here, they have to cross examine
6 witnesses at length, witnesses like yourself, witnesses like
7 Dr. Wilson, witnesses like Dr. Roush, who deny these things,
8 who take that position, that's what they have to do, if you
9 deny those things, they have to prove them, then, don't they,
10 sir?

11 A Not at all, Mr. Carr.

12 Q They don't have to prove them?

13 A No, Mr. Carr, no. This was highly unusual --

14 Q Then how do they get a decision against you, if
15 they don't prove them?

16 A This isn't -- most of what's covered in these
17 requests for admissions is not even part of the OSHA regulations.
18 All they have to do is --

19 Q My question, Mr. Park --

20 A -- is to go in and prove that there was some
21 violation of a standard.

22 Q My question, Mr. Park, if you don't admit it,
23 they have to prove it, don't they, sir?

24 A Yes.

1 Q And to prove it they then have to subpoena the
2 records, don't they, sir?

3 A No.

4 Q How do they prove it without subpoenaing the
5 records?

6 A Prove violation? They show, say, a concentration
7 level of some chemical is above OSHA limitation in the work
8 place. That's how they do it. No subpoenaing of records at
9 all.

10 Q In order to fine Monsanto, how do they prove
11 that Monsanto knew these things and make a wilful violation?
12 It's a wilful violation that they're trying to prove on you,
13 isn't it, Mr. Park?

14 A Which violation are you --

15 Q Mr. Park, you were cited not for an accidental
16 violation of the OSHA regulations, but for the deliberate wil-
17 ful violation.

18 MR. MUSGRAVE: Object, your Honor, the reference
19 to allegations. That's totally improper. Request that it be
20 stricken, and the jury instructed to disregard it, and Counsel
21 admonished and instructed to refrain from referring to unproven,
22 unsubstantiated allegations that were withdrawn.

23 THE COURT: Object⁴on is overruled. It is a
24 proper question. It is a proper area of inquiry.

1 mean Monsanto, characterized it on page four of your summary
2 of the citations, the citation is in evidence, but I don't
3 have the number in front of me right now. Do they not categor-
4 ize it as wilful and serious, sir?

5 A This is what is said.

6 Q- And to prove something is wilful, you know as an
7 attorney, Mr. Park, that you have to prove that you had know-
8 ledge, don't you, sir?

9 A I would suppose so.

10 Q And by denying that you had knowledge of these
11 things, that is that dioxin comes along with making, or poten-
12 tially comes along with your chlorinated phenols, just as it
13 has been denied in this case, you seek to avoid being found
14 guilty on the wilful charge, don't you?

15 A We're not seeking to avoid a just charge, Mr.
16 Carr. We're trying to avoid an improper one.

17 Q By denying the truth of things that you know to
18 be a fact you're setting yourself up as the judge of whether
19 or not it's a just charge when there are other persons that are
20 given that obligation, aren't you, sir?

21 A No.

22 Q Well, in any event, you know to prove wilful
23 they've got to go into your records and prove what you knew
24 at a point in time; isn't that correct, sir?

1 A But --

2 Q Isn't that correct, Mr. Park?

3 A No.

4 Q Mr. Park, just as in this case, we are suing
5 Monsanto for punitive damages, the whole 6 -- 4 months have
6 been spent now putting in evidence on punitive damages trying
7 to prove that you had knowledge that dioxin was there, and that
8 you did nothing about it. You did not tell your customers.
9 You didn't tell the people at Sturgeon. You didn't tell your
10 workers. Just as OSHA charged --

11 MR. MUSGRAVE: Object to the speech and request
12 that it be stricken, your Honor. It has nothing to do with
13 this questioning. Request that the jury be instructed to
14 disregard it.

15 THE COURT: The objection is overruled. It's a
16 proper analogy.

17 Q (By Mr. Carr) Mr. Park, to finish my question,
18 you are aware of the fact that there were wilful charges,
19 where knowledge has to be proven in the OSHA citations just as
20 you are aware of the fact that there are wilful charges in this
21 case requiring that we prove knowledge that you had; isn't
22 that correct, sir?

23 A I'm really not familiar with the proceedings in
24 this case, Mr. Carr.

1 Q You're not aware of the fact that we are suing
2 for punitive damages?

3 A I think I'm aware of that.

4 Q And a wilful charge is brought for the -- and
5 under OSHA is brought for the purpose of punishing you; isn't
6 that correct? Isn't that what they're trying to do, punish
7 you for your violations, for your wilful violations of the law?

8 A Any charge under OSHA is punishment for violation.

9 Q There's different punishments for deliberate,
10 intentional violations, wilful violations, and for accidental
11 violations where wilful isn't a part of it; isn't that correct,
12 sir?

13 A The term wilful is just not used that much, Mr.
14 Carr. It's serious and non-serious.

15 Q Excuse me. Could you answer my question, sir.

16 A I'm not sure, Mr. Carr.

17 Q Well, you've used the word, your documents use
18 the word "wilful", didn't they, sir?

19 A Mr. Aley used it.

20 Q Yes. And you got no punishment in that instance,
21 did you, sir?

22 A No, we did not. There was no violation.

23 Q Because they withdrew the case, didn't they,
24 sir?

1 A Yes, they did.

2 Q They didn't subpoena your records as we did in
3 this case, did they, sir?

4 A No.

5 Q They didn't take depositions of important executives
6 and chemists and scientists and Dr. Wilson to prove the presence
7 of dioxin, did they, sir?

8 A No.

9 Q Mr. Park, you even denied in this request question
10 number 54, didn't you, sir, where they asked you whether or not
11 an industrial accident involving chlorinated phenols occurred
12 at Respondent's plant in Nitro, West Virginia. You even
13 denied that, didn't you, sir?

14 A Yes.

15 Q Sir? I didn't hear your answer.

16 A Yes. The answer is yes.

17 Q And you know that it did involve -- that there
18 was an industrial accident involving chlorinated phenols,
19 didn't you, sir?

20 A I recall there was an industrial accident. I
21 would have to question the term "chlorinated phenols". I'm
22 trying to recollect why this would have been denied. It must
23 have been.--

24 Q Well, look at Exhibit 1548, look at the P.S. that 145

1 Dr. Wilson puts on there with regard to question 54, that it
2 involved 2,4,5-Trichlorophenol processed as stated. We've
3 had studies done by Dr. Suskind in which he describes it as a
4 Trichlorophenol accident.

5 A Wilson says, "I think that accident --"

6 Q We know because we've seen the documents.

7 A Okay.

8 Q It was a Trichlorophenol process, and the process
9 for making Trichlorophenol, they're going to go on and make
10 it on the 2,4,5-T, another product. Wilson tells you that,
11 and you knew that, and yet you denied it; isn't that correct,
12 sir?

13 A I would have to -- the way you phrase it, I would
14 have to answer no, Mr. Carr.

15 Q You didn't deny it, or you didn't know it?

16 A I didn't know it, sir.

17 Q Sir?

18 A I would have to say that to the best of my
19 recollection, I am not in the position to say that I did know
20 that, no. There were others involved here --

21 Q I'm not talking about whether you knew it. I'm
22 asking about Monsanto knew that they were making 2,4,5-Trichloro-
23 phenol in the accident of 1949.

24 A Mr. Carr, I'm assuming that if Monsanto had known

1 that the correct response to 54 was different, we would have
2 answered it differently.

3 Q Wilson told you it was different.

4 A I have to assume it was answered correctly.

5 Q Wilson told you in 1548 that it was --

6 A There were others than Wilson who provided infor-
7 mation that went into the response here.

8 Q Well, what other information was there, sir?

9 A I cannot remember at this time.

10 MR. CARR: I have no further questions of this
11 witness, your Honor.

12 THE COURT: Mr. Musgrave.

13 MR. MUSGRAVE: Thank you, your Honor.

14
15 CLARIFICATION EXAMINATION

16 BY MR. MUSGRAVE:

17 Q Mr. Park, while we're on this very question, with
18 regard to the Nitro questions that were asked, in these
19 Requests for Admissions, and the responses that were given --

20 MR. CARR: One moment. Did I offer 1549? It
21 needs to be offered into evidence.

22 THE COURT: 1549?

23 MR. CARR: 1549 and 1548.

24 THE COURT: No. 1549. 1548 has been admitted

1 over objection.

2 MR. CARR: 1549 I'd like to offer.

3 MR. MUSGRAVE: The same objection as to 1548.

4 THE COURT: I'll incorporate them. 1549 is
5 admitted over objection.

6 Q (By Mr. Musgrave) Mr. Park, as I was about to
7 ask you, with regard to this question that Mr. Carr was just
8 questioning you on, I'd also like to refer you to admission
9 number -- well, Request for Admission number 50 up there. Do
10 you see that one?

11 A Yes.

12 Q And ask you if 2,4,5-T is a chlorinated phenol,
13 and that was denied.

14 A Yes.

15 Q And do you know why that was denied?

16 A I assume because it's not fully correct.

17 Q 2,4,5-T is not 2,4,5-TCP, trichlorophenol, 2,4,5-T
18 is 2,4 trichlorophenoxia acetic acid. Do you know whether
19 what's commonly referred to as 2,4,5-T, the herbicide --

20 A I believe that that is correct.

21 Q So 2,4,5-T, that is trichlorophenoxia acetic
22 acid, is not a chlorinated phenol, and that was denied for
23 that reason?

24 A Yes.

1 Q Now do you know --

2 MR. CARR: Are you leading the witness, there,
3 Counsel? They didn't ask about 2,4,5-Trichlorophenol, they
4 asked about chlorinated phenols which is 2,4 trichlorophenol.
5 Aren't you aware of the fact that the accident did not involve
6 2,4,5-T?

7 MR. MUSGRAVE: I'm referring to question 50,
8 Mr. Carr, which is 2,4,5-T --

9 MR. CARR: The denial of that would be proper.

10 MR. MUSGRAVE: That's fine, sir. Thank you.

11 MR. CARR: But 54, to deny that is not proper.

12 MR. MUSGRAVE: Mr. Carr, I haven't asked a
13 question yet on that. Do you want to wait?

14 MR. CARR: Well, sure, go ahead.

15 MR. MUSGRAVE: Well, thank you, sir.

16 Q (By Mr. Musgrave) Now, with regard to 54, 2,4-TCP,
17 2,4,5-Trichlorophenol is a chlorophenol to your knowledge?

18 A 2,4,5-T?

19 Q 2,4,5-TCP.

20 A 2,4,5-Trichlorophenol?

21 Q As opposed to 2,4,5-T.

22 A I would think 2,4,5-TCP would be --

23 Q A chlorophenol?

24 A A chlorophenol.

1 Q And is 2,4,5-TCP involved in the making of 2,4,5-T,
2 phenoxia herbicide?

3 A I'm sorry, I just don't know.

4 Q You don't know. Do you know whether any other
5 chlorinated phenols are involved in the making of 2,4,5-T?

6 A No.

7 Q This question 54, does it not state, sir --
8 MR. CARR: Object to the leading form of the
9 question.

10 THE COURT: Objection is sustained.

11 MR. MUSGRAVE: I'm simply asking him if it doesn't
12 state something.

13 THE COURT: You'll have to rephrase it.

14 Q (By Mr. Musgrave) Let me ask you whether or not
15 question 54 reads as follows -- is that right?

16 MR. CARR: Sure.

17 Q (By Mr. Musgrave) "In 1949, an industrial accident
18 involving chlorinated phenols occurred at Respondents Nitro,
19 West Virginia plant."

20 A Yes, it does.

21 Q Is the phenols plural there, sir?

22 A Yes.

23 Q Now with regard to these Requests for Admissions,
24 these were served upon you by the attorneys representing the

1 Occupational Safety and Health -- or actually I guess repre-
2 senting the Secretary of Labor; is that correct --

3 A That's correct.

4 Q -- of the United States?

5 A Yes.

6 Q Who was representing essentially the OSHA; is that
7 correct?

8 A Yes.

9 Q And each question they asked you stated something
10 about if any part of it was not true, you would not admit it.

11 A Yes.

12 Q Is that correct?

13 A That's correct.

14 Q And why was that, sir?

15 A As our counsel whom we retained because of his
16 extensive experience in OSHA matters advised us this is the
17 common practice in pleading of cases which go before the
18 Review Commission, that when Requests for Admissions are
19 submitted, if they are not totally correct, they're denied.
20 And then the obligation goes back to the other party to
21 rephrase them, resubmit them if he so elects, or whatever.

22 Q This is a proceeding where OSHA is attempting --
23 MR. CARR: Object to the leading form of the
24 question.

1 THE COURT: Objection is sustained.

2 Q (By Mr. Musgrave) Is this a proceeding where OSHA
3 is attempting to establish a violation of an OSHA regulation
4 and post a fine?

5 A Yes.

6 Q Is that what that was?

7 A Yes.

8 Q And in connection with that, if they use a vague
9 term, which you consider a vague term, do you have any way in
10 reading this document of knowing what they mean by a term that
11 you consider vague?

12 A There's no way we could know what they meant.

13 Q If you were to admit to a term that you thought
14 had one meaning and they thought had another meaning, could
15 that have any adverse consequences in this proceeding?

16 A It certainly could.

17 Q And in an improper fashion?

18 A Yes.

19 Q Where you might admit something that really you
20 didn't have any intention of admitting because it wasn't true?

21 A That's correct.

22 Q Now, Mr. Park, as opposed to the use of language
23 in these documents, and these are lawyers, are they, sir,
24 that prepared this document?

1 A Yes, indeed.

2 Q And knew of how Requests for Admissions should
3 be formed to get appropriate answers?

4 A Yes.

5 Q But as opposed to the use of a document in this
6 type of a proceeding, that's attempting to assert violation of
7 an OSHA regulation and a penalty, as opposed to language used
8 in this type of document, Mr. Carr referred you to these
9 documents here, that are -- are these documents that are going
10 from one Monsanto employee to another Monsanto employee?

11 A Generally, yes.

12 Q Where the use of terms might be something that
13 they both know what they're talking about?

14 A Yes.

15 Q So if Monsanto analytical chemists were to use
16 the term dioxin in connection with the chlorophenol analysis
17 in talking to another analytical chemist, do you suppose that
18 that other analytical chemist with Monsanto might understand
19 what he means by the term "dioxin"?

20 A Yes.

21 Q But on the other hand, sir, if dioxin is in fact
22 a term that other people could use to mean not only tetra-
23 chlorodibenzo-para-dioxin, but nitrated dioxins -- do you take
24 a chance as to what OSHA might really be saying with these

1 attorneys when they say dioxin that they're saying the same
2 thing you are, or do you deny it?

3 A No, we have to be more specific.

4 Q And, Mr. Park, this problem that Mr. Carr alludes
5 to about how or suggested to you that OSHA withdrew this
6 complaint because we denied these questions -- did he suggest
7 that to you, sir?

8 A I--

9 Q Is that what you understood him to suggest?

10 A I think at one point he did.

11 Q And because they didn't have enough manpower,
12 something like that, he talked about not having manpower, or
13 didn't have enough help to do this.

14 A Resources.

15 Q How many lawyers names appear on these Requests
16 for Admissions?

17 A There are five lawyers names. Three lawyers were
18 working very actively on the matter.

19 Q They've got Clauss, the Solicitor of Labor, whose
20 name appears on this pleading. Herman Grant, the Regional
21 Solicitor, whose name appears on this pleading, Steven E.
22 Walanka, an attorney, whose name appears on this pleading on
23 behalf of the plaintiff in this case, OSHA, James L. Bowers,
24 another attorney, and then Gerald C. Moton. They've got five

1 lawyers whose names appear on here. And you say three that
2 you're aware of that were actively working on it.

3 A Yes.

4 Q Is that right?

5 A That's correct. The last three were quite active
6 in working on this case.

7 Q And when you first started working on this matter
8 were you handling it by yourself?

9 A Yes.

10 Q And did you yourself hire this outside counsel,
11 Mr. Pellegrini; is that correct?

12 A Yes, I did.

13 Q And why was that, sir?

14 A When I learned that three capable attorneys were
15 representing OSHA in this matter, I figured that I should
16 bring -- retain someone who really was more familiar with the
17 OSHA practice than I was.

18 Q And you hired Mr. Pellegrini?

19 A Yes.

20 Q And the first thing that happened was the filing
21 of this Request for Admissions by these OSHA attorneys?

22 A That came pretty early, yes.

23 Q And you responded to these?

24 A Yes.

1 Q And Mr. Carr has gone over that with you; is that
2 right?

3 A Yes.

4 Q And one of the responses in here that Mr. Carr
5 asked you about, did deal with the sample in question that
6 OSHA said their inspectors had found and analyzed and had
7 found a level of TCDD; isn't that correct?

8 A Yes, I believe.

9 Q I believe it's number 40, isn't it, sir?

10 A Yes.

11 Q Number 40 does it not read as follows: "Respondent
12 analyzed the chemical referred to in Request No. 33 for the
13 presence of dioxin: (a) prior to the cleanup of the spill,
14 (b) subsequent to the cleanup of the spill." Is that how
15 it reads?

16 A Yes, that relates to the Sturgeon spill.

17 Q All right. The chemical referred to in Request
18 number 33 is the Sturgeon spill. Allright. I've got the
19 wrong one here. Which one is it that I wanted to refer you
20 to?

21 A Number 20.

22 Q Okay. Thank you. Yes. Number 25, does it not
23 read as follows: "Respondent's analysis referred to in Request
24 No. 24 disclosed the presence of dioxin;" and you answered (b)

1 "with respect to Request No. 24(b)" that there was a trace
2 amount; is that correct?

3 A Let's see, we're at 24(b)?

4 Q Yes. Let's go back to Request number 20. Request
5 number 20 talks about a spill occurring on February 21, 1979;
6 is that correct?

7 A That's correct.

8 Q A tank car in the vicinity of Departments 236
9 and 236 and 237.

10 A Yes.

11 Q And then Number 24 asks if Monsanto analyzed
12 the chemical referred to in number 20, the one we just talked
13 about.

14 A Yes.

15 Q And we answered that we did, subsequent to the
16 clean-up.

17 A Yes.

18 Q And then 25 says with regard to that analysis,
19 subsequent to the clean-up, did it disclose the presence of
20 dioxin.

21 A Yes.

22 Q And we said it did in a trace amount; isn't that
23 correct?

24 A Yes.

1 Q One of the violations or alleged violations that
2 OSHA was pursuing was that this spill material contained
3 sufficient quantities of contaminants that were potentially
4 harmful to the workers.

5 A I can't remember the exact citations wording.

6 Q And in response to these admissions, we told them
7 that we had found a trace level, is that right?

8 A Yes.

9 Q And this was one of the first things that happened
10 in this lawsuit?

11 A Yes.

12 Q In fact, did anything else happen in this
13 allegation brought by OSHA after you responded to these, after
14 you told them that our analysis had found a trace amount?

15 A Well, there was some general things I remember.
16 There were conferences with the OSHA lawyers. The OSHA lawyers
17 I know reviewed with their personnel a number of matters.

18 Q Did they request any samples of anything from you?

19 A I can't recall any additional requests.

20 Q Did they ask any interrogatories, written
21 questions that we had to write answers to?

22 A No.

23 Q Did they take any depositions?

24 A No.

1 Q Did they ever say that they weren't doing it
2 because they didn't have a big enough work staff, these five
3 lawyers?

4 A No.

5 Q Did they ever say that they weren't pursuing this
6 matter because they were violating the very duty that Mr. Carr
7 says they have to protect the health of workers?

8 A No.

9 Q That they were going to ignore that and not
10 pursue this matter?

11 A No.

12 Q Did they ever say that to you?

13 A No.

14 Q Did they ever give you the results of their
15 analysis?

16 A No.

17 Q Of this spill material? Sir, did they?

18 A I can't remember with clarity, but I don't --
19 I'm sorry, I just don't remember whether we received any or
20 not.

21 Q Don't you think, sir, if they felt they had a
22 case, a sample of this spilled material, they claimed they
23 had it, they put it in the paper, don't you think if they
24 thought they had a case, that they had a violation of OSHA

1 don't you think that they would have pursued it?

2 A Yes.

3 Q Has Mr. Carr showed you one piece of evidence
4 to suggest that they wouldn't have?

5 A No.

6 Q That these give gentlemen are just fair-do-well
7 lawyers, that don't care about doing their job, and their
8 responsibility in following up?

9 A No.

10 Q Or don't have the time because they're playing
11 golf?

12 A Right.

13 Q Did he tell you that he's brought one piece of
14 evidence in this courtroom to substantiate that suggestion, sir?

15 A No.

16 MR. CARR: Your Honor, I'm prone to interrupt,
17 Counsel has been going on for sometime. All of these questions
18 for the last two or three minutes have been leading and
19 suggestive, and argumentative, and I object to them, and ask
20 that Counsel not do it anymore.

21 THE COURT: They have been leading. They haven't
22 been objected to up to this point, but you will have to
23 rephrase future questions.

24 Q (By Mr. Musgrave) Let's talk some more about

1 these requests, Mr. Park, just a bit. Referring you to
2 request 11, 12 and 13 that Mr. Carr asked you about. You'll
3 recall he asked you about 12.

4 A Yes.

5 Q And why that was denied.

6 A Yes.

7 Q That the term tetrachlorodibenzo-p-dioxin, herein-
8 after referred to as TCDD, refers to 22 potential isomers.

9 A Yes.

10 Q That was denied.

11 A Yes.

12 Q Now, the very next question uses the same term
13 that was in quote before, does it not?

14 A Yes.

15 Q TCDD?

16 A Yes.

17 Q Now in that question, that is request number 13,
18 does it refer to it there in as being 22 potential isomers?

19 A No.

20 Q What does it refer to as TCDD, or TCDD --

21 A As a compound.

22 Q As a compound.

23 A Yes.

24 Q Used in the singular, a compound.

1 A Yes.

2 Q And, sir, referring you to the one immediately
3 in front of that, request number 11, up there it refers to 75 --
4 that dioxin refers to 75 different compounds; is that right?

5 A That's correct.

6 Q Now, do you recall Mr. Carr asking you a question
7 about there being 75 isomers of chlorodibenzo-para-dioxins?

8 A I think there was a question along those lines.

9 Q He said some people say 75, some people say 72,
10 but 75 isomers has generally been talked about in this court-
11 room.

12 A That's right.

13 Q Of the chlorodibenzo-para-dioxin?

14 A Yes.

15 Q Is that right?

16 A Yes.

17 Q So up in 11 the OSHA lawyers are now referring
18 to dioxin as being 75 different compounds; is that right?

19 A That's what the statement says there.

20 Q And there are 75 isomers of chlorodibenzo-para-
21 dioxin, we just talked about that; isn't that right?

22 A Yes.

23 Q So these three questions put together, could they --
24 did they create confusion as to just what the heck the government

1 wanted to know here?

2 A Yes.

3 Q Or what they said they were saying?

4 A Yes, they did.

5 Q In 12 they said TCDD is 22 isomers, or 22 compounds
6 because they say that the isomers in 12 are different compounds;
7 don't they?

8 A Yes.

9 Q Or up in 11, they say that they're different
10 compounds, and in 13 they're saying TCDD is a toxic compound;
11 isn't that right?

12 A That's correct.

13 Q Toxicity, sir, is to your way of thinking a
14 couple of grains of salt toxic if you eat it?

15 A No.

16 Q If you eat a quart of salt, to your knowledge could
17 it be toxic?

18 A Yes.

19 Q Is there the same distinction to be made, sir,
20 in your mind when you're talking about toxicity of different
21 compounds, or toxicity of the same compounds, even 2,3,7,8,
22 one part per quadrillion as opposed to a glass of it?

23 A Yes, I think that applies to everything.

24 Q Did the government, and lawyers in any of these

1 questions when they talked about toxicity, give you a level or
2 a dose that somebody was exposed to get --

3 A No.

4 Q -- to have you determine whether it was toxic or
5 not?

6 A No.

7 Q And if you would have answered 13 that TCDD is a
8 toxic compound in the affirmative, would that mean or could
9 that have been construed by the government lawyers that any
10 level of TCDD is toxic?

11 A I think it could have.

12 Q Did that have anything to do, sir, with the
13 reasons that you denied some of these answers?

14 A I'm sure it did.

15 Q Or questions that were requested that dealt with
16 toxicity?

17 A Yes.

18 Q Now, Mr. Park, Dr. Wilson wrote some memos about
19 by-product, and what he thought a by-product was; is that
20 correct?

21 A Yes.

22 Q Did you agree or disagree with those, or do you
23 recall?

24 A I frankly cannot recall my own view.

1 Q Do you know whether the government lawyers in
2 preparing this document were distinguishing between a by-product
3 and a contaminant?

4 A I don't know what the government meant when they
5 put that term in.

6 Q Well, they talked about dioxin or polychlorinated
7 dibenzo-p-dioxin as a by-product in number 8, didn't they?

8 A Yes.

9 Q Did you notice in number 46, sir, that when they
10 talked about dioxin there, that they talked about it as a
11 contaminant?

12 A Yes.

13 Q Did you notice then in 47, sir, they started
14 talking about dioxin again and they called it a contaminant
15 or a by-product?

16 A Yes.

17 Q And, sir, with regard to this 46, that's where
18 it was denied that the manufacturing process of certain
19 chlorinated phenols produced at the Krimmrich Plant potentially
20 contained the following contaminants, the first thing they say
21 is dioxins; right?

22 A Yes.

23 Q Now in other places in this document do they not
24 use the term polychlorinated dibenzo-p-dioxin, like in number 8?

1 A That's correct.

2 Q And hadn't you previously denied that the term
3 dioxin referred --

4 THE COURT: Mr. Musgrave, rephrase the question.
5 The last three, at least, have been leading, and I told you
6 to rephrase the leading questions. Do so immediately.

7 Q (By Mr. Musgrave) Number 11, sir, what does that
8 say?

9 A "The term dioxin refers to 75 different compounds,
10 dependent upon the location of the chlorine atoms within the
11 dioxin molecular structure."

12 Q You were requested to admit that?

13 A That's right.

14 Q Did you admit or deny it?

15 A We denied it.

16 Q And did you give an explanation as to why you
17 denied it?

18 A No.

19 Q Pardon me, sir?

20 A No.

21 Q I think you might look at your answer, sir.

22 A I'm sorry. I'm sorry. I was looking at the wrong
23 one. We did explain that.

24 Q And what was the explanation?

1 A We said dioxin refers to a broad class of compounds
2 estimated to exceed 10,000 in number.

3 Q All right. And so you denied it.

4 A Yes.

5 Q And so back in 46, sir, did the response that you
6 gave in 11 have anything to do, sir, with your denial of 46(a),
7 that is that certain chlorinated phenols produced at the plant,
8 the Krummrich Plant, contained potential contaminants such as,
9 quote, dioxin, close quote?

10 A I think that's correct.

11 Q And did Mr. Carr show you any documents here, sir,
12 with regard to the denial of 46(b), and did he show you any
13 documents here where any of these chlorophenols are shown to
14 contain all 22 --

15 A No.

16 Q -- of the TCDD isomers?

17 A No.

18 Q And does 46(b) specify which isomer it's talking
19 about when it says TCDD?

20 A It implies 22, all of them.

21 Q And handing you what's been previously marked as
22 Plaintiff's Trial Exhibit 1119, which is the OSHA citations,
23 sir, I'd like you to read through that and tell me if you see
24 in that any place the word "wilful" or "deliberate."

1 A I do see right at the top of Citation 2 the
2 phrase or term "Wilful/Serious."

3 Q Anyplace else, sir?

4 A Nowhere else.

5 Q Do you know whether that "wilful/serious" means
6 either one, or both, or do you know?

7 A I think it means either one, and it's generally
8 taken to be serious.

9 MR. CARR: Counsel, so we don't have to go through
10 this on recross, why don't you point out that there's a half
11 a dozen pages at least of this 10 page citation that have the
12 word "wilful/serious."

13 MR. MUSGRAVE: Wilful/serious?

14 MR. CARR: Yes.

15 THE WITNESS: Yes.

16 MR. CARR: You said nowhere else. One, two, three,
17 four, five, six, seven, eight pages of the -- one, two -- of
18 the fourteen page document contain the words "wilful/serious."

19 Q (By Mr. Musgrave) And that is a wilful-slash-
20 serious?

21 A Yes.

22 Q And is it contained anywhere in the body of the
23 document describing the alleged allegations?

24 A I don't think so.

1 Q It's just wilful/serious at the top; is that
2 right?

3 A Yes.

4 Q Mr. Park, you saw Mr. -- or Mr. Carr asked you
5 about the one Request for Admission about the -- whether we
6 had analyzed orthochlorophenol. Do you recall that?

7 A Yes.

8 Q And he showed you the Dr. Wilson memo where he
9 talked about analyzing orthochlorophenol?

10 A Yes.

11 Q Have you ever heard of orthochlorophenol crude?

12 A Yes.

13 Q Do you know whether there's a distinction between
14 orthochlorophenol, the product, and orthochlorophenol crude,
15 the product?

16 A I think there's a distinction.

17 Q Let me show you Plaintiff's Trial Exhibit 1138,
18 as well as Plaintiff's Trial Exhibit 1135, it was marked twice,
19 it's also a memo by Dr. Wilson that Mr. Carr put into evidence,
20 is it not?

21 A Yes.

22 Q And does Dr. Wilson in there refer to these same
23 analyses that were done in '78 that were referenced in the
24 other exhibit he showed you where he talked about the ortho-

1 chlorophenol?

2 A He calls these samples OCP crude.

3 Q Do you know whether he knew or understood at the
4 time he wrote these memos possibly the distinction between
5 orthochlorophenol and orthochlorophenol crude?

6 A I would think he should know the difference.

7 Q Mr. Park, Mr. Carr also showed you, I believe it
8 was Plaintiff's 1543. This was preparedness question and
9 answer on soil sampling that was prepared by Sarah Collins.
10 Do you have that, sir?

11 A Yes, I do.

12 Q And he asked you about the finding of a level of
13 dioxin in one of the locations there in the sampling that was
14 done. This is on page 2 of this exhibit.

15 A Yes.

16 Q And you recall that he asked you a question
17 about -- question 8 -- pardon me, question 6 and answer 6.
18 Do you have that?

19 A Yes.

20 Q About what Monsanto was going to do about the
21 potential exposure.

22 A Yes.

23 Q And it was indicated that the area was going to
24 be paved.

1 A Yes.

2 Q What does question 7 and answer 7, the ones
3 immediately next to it, what do those read, sir?

4 A Question 7 says, "Are you paving the lot just
5 because of the dioxin?" Answer, "No. We planned to extend the
6 parking lot prior to the sampling program."

7 Q And question 6, would you read that, sir.

8 A Question 6, "Don't you consider the one near the
9 fence area a health hazard?"

10 Q And the answer to that.

11 A The answer reads, "No. The dioxin was detected
12 a couple of inches below the surface in an area where there
13 has been a low potential for exposure, and with the parking
14 lot extension this area will be paved over, eliminating any
15 exposure."

16 Q Now, Sarah Collins, sir, the author of this,
17 do you know when she started with Monsanto?

18 A No, I don't really. Several years ago.

19 Q Do you know whether she was employed in 1979?

20 A I frankly don't remember.

21 Q Now, in question 10, it is asked, is it not, sir,
22 "Had you ever tested for TCDD before now?"

23 A Yes.

24 Q And would you read the answer to us.

1 A The answer reads, "We have tested for TCDD by
2 taking wipe samples and found it not to be present. In taking
3 the wipe samples, we tested the surface of equipment and furni-
4 ture in the chlorophenol units and their control areas."

5 Q Do you know whether Sarah Collins was familiar
6 with that June, 1979 wipe sample exhibit that Mr. Carr showed
7 you that had one finding of a contaminant in Department 237?

8 A I don't know.

9 Q That was some four and a half years earlier,
10 wasn't it, sir?

11 A That's correct.

12 Q From this document dated November of 1983.

13 A Yes.

14 Q Do you know, sir, whether any wipe samples were
15 taken at the Krummrich Plant in the interim, between June of
16 '79 and November of '83 when Sarah Collins prepared this memo?

17 A I think there were a number of wipe samples taken.

18 Q Do you know which results Sarah Collins might have
19 been referring to when she said "We tested for TCDD by taking
20 wipe samples"?

21 A She's probably referring to some more recent in
22 time.

23 Q Do you think, sir, she would have gone all the way
24 back to 1979 if the sample testing for the last couple of years

1 had shown that there were no findings of TCDD in wipe samples?

2 A I think it's quite possible she might have gone
3 back just a few years and found that none had been detected,
4 and then stopped.

5 MR. CARR: Your Honor, I object to this as pure
6 speculation.

7 MR. MUSGRAVE: Well, your Honor, he's asking --

8 MR. CARR: And Counsel knows it.

9 MR. MUSGRAVE: He's asked the witness to speculate
10 about all kinds of things. I think this is just as clearly
11 admissible speculation as to what he's asked the witness to
12 speculate about.

13 THE COURT: You made the objection as to specula-
14 tion. It's my opinion that they haven't been speculation.
15 They've been proper questions. This witness is a lawyer. This
16 particular question that you're talking about is speculation,
17 and the objection will be sustained. I see it's a couple minutes
18 after four, so we'll terminate proceedings for the day at this
19 point in time.

20 Ladies and gentlemen, we will adjourn for the day
21 at this time. We will resume again Monday at 9:00. I want to
22 remind you, besides the regular admonishments over any break,
23 that you're not to read, listen to or watch anything about this
24 case in particular, or subject matter in general in any of the

1 media, or electronic. Thank you for your attention and
2 cooperation. Have a good weekend. We'll see you on Monday.

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4 (Court adjourned.)
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1 STATE OF ILLINOIS

2 TWENTIETH JUDICIAL CIRCUIT

SS.

3 COUNTY OF ST. CLAIR

4
5 I, Kathleen Watson Brunsmann, one of the Official Court
6 Reporters, do hereby certify that the foregoing transcript is
7 a true and correct copy of said transcript.

8
9 DATED: August 12, 1985.

10
11 Kathleen Watson Brunsmann
12 Kathleen Watson Brunsmann, CSR, RPR
13 Official Court Reporter
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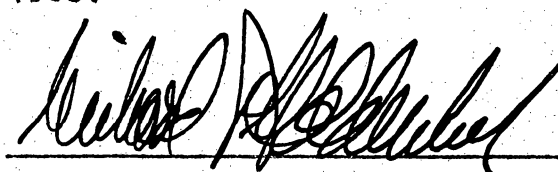
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STATE OF ILLINOIS
TWENTIETH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR

SS.

I, RICHARD P. GOLDENHERSH, Circuit Judge, do
hereby certify that the foregoing transcript is a true and
correct copy of said transcript.

DATED: August 12, 1985.



RICHARD P. GOLDENHERSH, CIRCUIT JUDGE

1 IN THE CIRCUIT COURT
2 TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
 ST. CLAIR COUNTY

3 FRANCES E. KEMNER, et al.,)
)
4 Plaintiffs,)
)
5 vs. NO. 80-L-970
)
6 MONSANTO COMPANY,)
)
7 Defendant.)

8 Before the HON. RICHARD P. GOLDENHERSH, Judge
9
10
11

12
13 JURY TRIAL

14 August 5, 1985
15

16
17
18 APPEARANCES:

19 MR. REX CARR and MR. JERRY SEIGFREID, Attorneys at Law
 Appeared on Behalf of the Plaintiffs

20 MR. JOHN R. MUSGRAVE and MR. JOSEPH NASSIF, Attorneys at Law
21 Appeared on Behalf of the Defendant
22

23 MARSHA SCHNIPPER
 Official Court Reporter
24

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PHOCIAN PARK

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1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: Monday, August 5, 1985, being one of the regular
3 judicial days of this Court, the matter as hereinbefore set
4 forth came on for hearing before the HON. RICHARD P. GOLDEN-
5 HERSH, Circuit Judge in and for the Twentieth Judicial Circuit,
6 State of Illinois, St. Clair County Building, Belleville, St.
7 Clair County, Illinois, and the following was had of record,
8 to-wit:

9 * * * * *

10 PHOCION PARK,

11 resuming the witness stand, having been previously sworn,
12 testified further as follows:

13 CLARIFICATION (Continued)

14 BY MR. MUSGRAVE:

15 Q Mr. Park, I believe when we recessed Friday, we were
16 talking about the Requests for Admission and Monsanto's Responses
17 in connection with that EPA proceeding that was ultimately
18 withdrawn. Are those --

19 A OSHA.

20 Q Pardon?

21 A OSHA.

22 Q OSHA, excuse me, yes. I want to ask you a couple more
23 questions about that. Now, questions or requests, if you will,
24 to admit certain facts with regard to the Sturgeon spill

1 occurring in January of '79 were posed in these Requests, is
2 that correct, sir?

3 A Yes, they were.

4 Q And what Requests were those, what numbers where they
5 touched upon that subject?

6 A It appears that Questions No. 33, and then several
7 thereafter, 34, 35, 36, 37, 38, 39, 40, I guess it looks like
8 it carries on to 41.

9 Q All right.

10 A I believe that's it.

11 Q And all those deal with the topic of the Sturgeon
12 spill occurring in January of 1979?

13 A Yes.

14 Q And what was the date of the OSHA investigation at
15 the Krummrich facility?

16 A I believe that was February.

17 Q All right.

18 A Of '79.

19 Q Now, with regard to the first of those questions
20 dealing with the Sturgeon spill what was the response that was
21 given?

22 A The Response reads respondent -- which was Monsanto
23 -- objects to complainant's -- which was OSHA -- Request
24 for Admission No. 33 on the grounds that matters which may have

1 occurred away from respondent's premises and at a time and place
2 remote from the inspection and citation herein are immaterial
3 and beyond the scope of the pleadings herein and therefore,
4 denies the same.

5 Q Okay. With regard to the remainder of those Requests
6 dealing with the Sturgeon spill as opposed to the OSHA inspection,
7 was that same objection, if you will, incorporated by reference
8 and remade in the same fashion?

9 A Yes, it was.

10 Q And if OSHA didn't agree with Monsanto's position that
11 those -- that that type of question dealing with the Sturgeon
12 spill was immaterial and not an appropriate question to be asked
13 in connection with the OSHA complaint and the OSHA inspection,
14 was there a mechanism by which they could have that disagreement
15 decided?

16 A Oh, yes. It was our view that this was clearly beyond
17 OSHA's jurisdiction, but had OSHA elected to contest this issue,
18 it could have gone before the administrative law judge and raised
19 the issue, argued the point. Certainly if it elected to go
20 through the hearing on this matter, it could have cross examined
21 the witnesses or brought on its own witnesses or whatever.
22 There was a number of mechanisms it could have used had it so
23 desired.

24 Q OSHA could have had the issue of whether or not the

1 Request was properly objected to or not determined before the
2 hearing?

3 A Had it so elected.

4 Q Did it even bother to take up that issue with the
5 administrative law judge?

6 A No, in our view it was clearly beyond OSHA's juris-
7 diction.

8 Q But did OSHA or any lawyer from OSHA even bother to
9 take the issue up?

10 A No, they did not.

11 Q Now, Mr. Park, Mr. Carr asked you some questions about
12 Plaintiffs' 1542. Do you have that, sir?

13 A No, I don't.

14 Q That is a memo dated June 6th, 1979 dealing with a

15 --

16 A It's June 9th, 1979.

17 Q Pardon me, June 9, 1979, and that deals with, if you
18 will, a report on a discussion conference with Roy Malone of
19 the Post-Dispatch about dioxin and the chlorophenol unit at the
20 Krummrich Plant, isn't that correct, sir?

21 A Yes.

22 Q And does it reflect that other than what the reporter
23 was specifically told in the second sentence, does it reflect
24 that there was other discussions or other questions answered?

1 A Yes.

2 Q And does it indicate how many other questions were
3 answered or what the topic of those questions were other than
4 generally dioxin at the chlorophenol plant?

5 A No, the type and number of the questions is not
6 indicated.

7 Q It does say a number of questions though, does it not?

8 A Yes.

9 Q All right. So there were other matters obviously
10 answered or other questions obviously answered in connection
11 with this meeting with Roy Malone or this conversation with
12 Roy Malone about dioxin at the chlorophenol unit at the Krummrich
13 Plant?

14 A That's correct.

15 Q Now, with regard to that second sentence where it is
16 reported the reporter was specifically told that our analysis
17 of a recent product sample did not indicate the presence of
18 2,3,7,8 dioxin, Mr. Carr was showing you, I believe, the results
19 from some samples that were tested and reported in Plaintiffs'
20 1135. Do you have Plaintiffs' 1135 there?

21 A 1135C.

22 Q No, you want the entire report, sir.

23 A Okay.

24 Q There it is.

1 A Yes, I do.

2 Q Now, he referred to a sample which was identified as
3 MB654. Would you turn to Page 7, sir, of Plaintiffs' 1135 where
4 MB654 is identified.

5 A Yes, I have it.

6 Q Yes. And what is it identified as, sir?

7 A The description on sample label column says that it
8 is -- was parachlorophenol, Lot KL02-5021.

9 Q Are you aware of the fact, sir, that --

10 MR. CARR: Objection to the leading form of the ques-
11 tion, your Honor.

12 THE COURT: Objection sustained.

13 Q Do you know, sir, what the lot number assigned to
14 that parachlorophenol, what date that lot was produced?

15 A I believe that the L means 1979, and I believe that
16 the 2 would mean February.

17 Q All right. And if that belief is correct, then that
18 lot would have been produced in February of '79?

19 A That's correct.

20 Q And, of course, again --

21 MR. CARR: Objection to the leading form of the ques-
22 tion, your Honor.

23 THE COURT: Objection sustained.

24 Q Would you tell us again, sir, what is the date on

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1 Plaintiffs' Exhibit 1342 as to the conversation with Mr. Malone?

2 A This press query memorandum is dated June 9th, 1979.

3 Q And is June 9 after February of '79, sir?

4 A Yes, that would be some four months later.

5 Q And, sir, Mr. Carr also referred to Sample 697, and
6 if you would, sir, can you find that in Plaintiffs' 1135 in the
7 identification table?

8 A Yes. Let's see, I have MB697, and it indicates it
9 was re-labeled MB696.

10 Q All right.

11 A And so now moving to MB696 --

12 Q Yes.

13 A Under description --

14 Q All right.

15 A It reads 93 percent 2,4 DCP finished product, KL03-
16 7009.

17 Q All right. And in this particular instance, sir, does
18 Plaintiffs' Exhibit 1135 as to that particular sample give a
19 date as to when that sample was produced?

20 A On the same basis this number would indicate that
21 this would have been done in 1979 in March.

22 Q As a matter of fact, is there a date of sample column
23 also?

24 A Yes, there is.

1 Q All right.

2 A And that is clearly March 1, 1979.

3 Q So not only the lot number indicates that, but in this
4 particular case they even have the date there?

5 A Yes.

6 Q And that does correspond with the way you've inter-
7 preted the lot number designation?

8 A Yes.

9 Q And, sir, is March before or after June 9, 1979, the
10 date of the conversation with Roy Malone of the Post-Dispatch?

11 A March would be some three months prior to this press
12 query.

13 Q Now, sir, I'd like to direct your attention to Sample
14 MB708 in Plaintiffs' Exhibit 1135.

15 A Yes.

16 Q Can you tell us what that product is or what that
17 sample is described as in this Plaintiffs' Exhibit?

18 A It's described as PCB -- excuse me, PCP product cut.

19 Q And do you know what PCP stands for?

20 A Pentachlorophenol.

21 Q Were you making penta in 1979 in Monsanto, sir?

22 A I'm sorry, I just am not sure.

23 Q Have you ever heard of para --

24 MR. CARR: Just a few minutes ago he said PCP stands

1 for parachlorophenol, and it does. It doesn't stand for penta.
2 He just said on 654 PCP there stands for parachlorophenol. Now
3 he's saying PCP stands for pentachlorophenol.

4 MR. MUSGRAVE: Well, 654 says parachlorophenol, Mr.
5 Carr. He didn't have to interpret PCP. It reads parachloro-
6 phenol, Mr. Carr, if you'll see that, sir.

7 Q This uses the word, the letters PCP, doesn't it?

8 A Yes.

9 Q The prior exhibit you read from in fact spelled out
10 parachlorophenol, didn't it?

11 A Yes, I did not say before that the letters PCP meant
12 parachlorophenol.

13 Q Do you know whether Monsanto was making penta in 1979?

14 A I'm sorry, I'm just not sure.

15 Q PCP, this does indicate PCP and product cut as an
16 identification, correct?

17 A Yes.

18 Q And what is the date of that sample of PCP, sir?

19 A The sample was taken April 17, 1979.

20 Q Now, is that more, is that closer to June 9, 1979 than
21 those other two samples that Mr. Carr alluded to, sir?

22 A Yes, this would only be about two months prior to
23 June.

24 Q And going on down, sir, to MB715, do you find that on

1 this?

2 A Yes, I do.

3 Q And is that identified, sir, as to what type of sample
4 that was?

5 A Yes, it indicates it was 2,4 DCP.

6 Q Do you know what 2,4 DCP is?

7 A Yes, that stands for dichlorophanol.

8 Q What date was that sample taken?

9 A It was taken April 20th, 1979.

10 Q And is that sample more recent in time to June of '79
11 than the two samples that Mr. Carr referred to?

12 A Yes, it is only two months to June.

13 Q Now, if you would, with regard to both of these
14 samples I've just had you look at, MB708 and MB715, if you would
15 look at the analytical results that are also in Plaintiffs'
16 Exhibit 1135, I'll believe you'll find that at Page 10. MB708,
17 which was the sample of April 17, 1979, do you find that, sir?

18 A Yes, I do.

19 Q And what does it show under the TCDD column in the
20 analysis for that?

21 A Okay, that would be the column headed CL4, I believe.

22 Q That's right, sir.

23 A And it shows none detected.

24 Q All right, sir. And with regard to MB715, the sample

1 taken April 20, 1979, what was the finding as shown in Plaintiffs'
2 Exhibit 1135 under the tetra column?

3 A It also shows none detected.

4 Q And those two samples are more recent, sir, to June,
5 '79, than the two Mr. Carr showed to you on his examination?

6 A Yes, they are.

7 Q And the June 9, 1979 memorandum, the conversation with
8 Roy Malone, does it refer to several samples or a single sample,
9 sir?

10 A It indicates a single sample. It says a recent pro-
11 duct sample.

12 MR. MUSGRAVE: That's all the questions I have, your
13 Honor.

14 THE COURT: Mr. Carr, do you have any further questions?

15 MR. CARR: Yes, your Honor.

16 RECROSS EXAMINATION

17 BY MR. CARR:

18 Q Look at Sample 727, Mr. Park, which is later --
19 it bears a date of April 27th, '79, does it not?

20 A Yes, it does.

21 Q And that's later than the samples which Mr. Musgrave
22 discussed with you?

23 A Yes. Now, it indicates it's -- it says duplicate,
24 I'm not sure what that means.

1 Q And has a date of sample, does it not --

2 A Yes.

3 Q -- April 27th, '79?

4 A Yes.

5 Q That's later than the samples discussed with you by

6 Mr. Musgrave, is it not?

7 A Yes.

8 Q How much TCDD, how many parts per billion is in that
9 later sample of PCP or parachlorophenol?

10 A Apparently there were two samples. One shows none
11 detected, one shows 14 parts per billion.

12 Q Now, that was just slightly more than a month before
13 this press release, wasn't it, sir?

14 A A month and a half or so, yes.

15 Q Now, would you refer back, if you would, to the
16 Responses to Queries or Requests for Admissions 10, 11, 12, and
17 13?

18 A Yes.

19 Q You recall you discussed with Mr. Musgrave or with me
20 and Mr. Musgrave Friday that he didn't have 75 isomers that was
21 technically incorrect and therefore, you could not admit that
22 there were 22 -- 75 different compounds and 22 isomers; do
23 you recall that, sir?

24 A Yes, that it was not, the statement was not wholly

1 correct and, therefore, was admitted.

2 MR. CARR: Would you mark this exhibit please.

3 (At this time Plaintiffs' Exhibit 1550 was marked for
4 identification.)

5 Q I hand you what's been marked Plaintiffs' Exhibit
6 1550 and ask you if you recognize that as a Monsanto memo dealing
7 with Tetrathal?

8 A I don't recognize the name of the writer. I do recog-
9 nize the name of the recipient.

10 Q I asked you whether or not you recognize that as a
11 Monsanto exhibit dealing with Tetrathal?

12 A Well, I'd have to say I don't recognize it, Mr. Carr.

13 Q Does it have on it a Monsanto letterhead on the second
14 page?

15 A Yes, it does.

16 Q Do you recognize your name on the second page as one
17 of the recipients?

18 A Well, I was one of those to whom --

19 Q Do you see Mr. Joseph Nassif on there, Joe Nassif
20 also one of the recipients?

21 A I was copied in.

22 Q Do you see Dr. Wilson on there, Dr. Rousch on there,
23 do you see all those people on there? Do you see Dr. Misure on
24 there?

1 A Yes, some are addressees, some are copy-ees (sic.)

2 Q You see Mr. Nair on there, Mr. Bishop, McCarville,
3 you see all those people on there?

4 A Yes.

5 Q You recognize those as Monsanto people, don't you,
6 sir?

7 A Yes.

8 Q And you see there's a draft letter there, it starts
9 out Dear Tetrathal Customers, Monsanto Company has recently --
10 MR. MUSGRAVE: Object to counsel reading from it
11 until it's admitted.

12 THE COURT: Objection sustained.

13 Q Now, do you recognize this as a Monsanto document,
14 sir?

15 A Yes.

16 Q Thank you.

17 MR. CARR: Now I'll offer it into evidence if it
18 please the Court.

19 THE COURT: Any objection?

20 MR. MUSGRAVE: Yes, I object to it, your Honor, it's
21 irrelevant and immaterial to any issue in the lawsuit, it deals
22 with Tetrathal. It's a document created in February of 1985.
23 It has no materiality or relevance to what may have been in
24 Mr. Park's mind in connection with these Responses in August of

1 1979, some four, almost five years after the fact. It's --
2 it is too remote in time to any incident in this lawsuit or
3 issue in this lawsuit for this Court or jury to decide, and I
4 object to it on those grounds, sir.

5 THE COURT: Objection is overruled. I think it is
6 relevant and material.

7 (At this time the exhibit was passed to the jury.)

8 MR. MUSGRAVE: Your Honor, may I also note for the
9 record that I object to it being passed to the jury. It's been
10 introduced into evidence, I realize that, but now the entire
11 document is being passed to the jury, and I believe that again
12 much of this is irrelevant and immaterial, and counsel hasn't been
13 selective with regard to the document in connection with what
14 is either permitted to the jury to be read or seen, and I object
15 to it being passed because of that.

16 THE COURT: Objection is noted. It's been admitted
17 into evidence. It can be passed to the jury unless otherwise
18 ordered in its entirety.

19 Q Mr. Park, part of this exhibit that I wish to draw
20 your attention to is primarily that found on Page -- it's in
21 the lower right-hand corner C21340. At the top of the page
22 it's numbered 3.

23 A Yes, I have it.

24 Q Now, that's a question and answer form prepared by

1 Collins. You and a number of others, including Mr. Nassif here
2 got copies of it. It was prepared in February or January of
3 -- I'm sorry, February, 1985, and the Answer No. 13 on the
4 page that I referred you to says there are 75 isomers or types
5 of dioxin. 2,3,7,8 tetrachlorodibenzo-p-dioxin (TCDD) is the
6 most toxic dioxin isomer and is the compound associated with
7 Agent Orange.

8 Now, Mr. Park, you on your Responses, your denials
9 of Requests to Admit No. 11, No. 11 says the term dioxin refers
10 to 75 different compounds, and you said you denied that because
11 of the use of the word compounds. Do you see in the exhibit
12 that I have just handed you that the word compound is used there
13 to describe one of the dioxin isomers?

14 A Miss Collins is not a technical person.

15 Q Excuse me, Mr. Park, please answer my question.

16 A And your question was do I see the term 75 isomers
17 here in this A. 13?

18 Q No, Mr. Park, that wasn't my question.

19 A I'm sorry.

20 Q Do you see the word compound used there with reference
21 to 2,3,7,8 TCDD or a dioxin isomer?

22 A Yes, I see that second sentence.

23 Q And you told us last week that the reason you didn't
24 admit that dioxin refers to 75 different compounds was because

1 it wasn't a compound. Now Monsanto in this document does call
2 it a compound --

3 MR. MUSGRAVE: Object to that --

4 Q Does it not, sir?

5 MR. MUSGRAVE: Object to that. That's a misrepresen-
6 tation of the testimony. The reason that it was denied is set
7 forth, Mr. Carr, in the Response, and it clearly states what the
8 witness' testimony was as well as what in fact the Response was,
9 and it was not denied that dioxin was a compound, sir.

10 THE COURT: Objection is overruled. You may proceed,
11 Mr. Carr.

12 A No, it does not, Mr. Carr.

13 Q And you also testified that your denial was also be-
14 cause there were 10,000 types of compounds known as dioxin; you
15 remember that also, sir?

16 A Yes.

17 Q And it says here in this Exhibit 1550 that there are
18 75 isomers or types of dioxin, doesn't it, sir?

19 A That statement is made.

20 Q It doesn't say that there's 10,000 compounds known as
21 dioxin, does it, sir?

22 A No, it does not.

23 Q And you also stated last week that the term tetra-
24 chlorodibenzo-p-dioxin herein referred to as TCDD was vague and

1 indefinite. You see tetrachlorodibenzo-p-dioxin (TCDD) used in
2 this Exhibit 1550, don't you, sir?

3 A Yes.

4 Q You also object or said you denied the request that
5 TCDD is a toxic compound. Do you see where the answer to Quas-
6 tion 13 in 1550 calls it the most dioxin -- most toxic dioxin
7 isomer and is a compound; do you see that, sir?

8 MR. MUSGRAVE: Object to that, that's a misrepresen-
9 tation of the document. The document does not say TCDD is the
10 most toxic dioxin isomer. It says 2,3,7,8 TCDD is the most toxic
11 dioxin isomer.

12 THE COURT: Objection sustained.

13 Q You do see where Question 14 you deny that 2,3,7,8 TCDD
14 is generally recognized to be the most toxic of the tetra isomers?

15 A Question 14?

16 Q Question 14 in Exhibit 15 -- in the Requests to
17 Admit, Question No. 14.

18 A Yes.

19 Q You see where it says 2,3,7,8 TCDD is generally recog-
20 nized to be the most toxic of the tetra isomers?

21 A Yes.

22 Q And you see in Exhibit 1550 where it also says 2,3,7,8
23 tetrachlorodibenzo-p-dioxin, TCDD, is the most toxic dioxin
24 isomer?

1 A Yes.

2 Q Now, Mr. Park, OSHA was using these terms in exactly
3 the same way you at Monsanto, lawyers and scientists combined,
4 used these terms, isn't that correct, sir?

5 A I'd have to answer no.

6 Q Doesn't this Exhibit 1550, didn't it -- wasn't it
7 prepared by Sarah Collins, a press relations person and distri-
8 buted to lawyers and scientists?

9 A For correction, correct.

10 Q And did anybody correct it?

11 A I have no idea. I assume that some did.

12 Q Well how do you, why do you make that assumption?
13 Where is your --

14 A She sent it out for corrections --

15 Q Yes.

16 A -- additions or so forth.

17 Q And where is your knowledge, sir, that it was ever
18 corrected?

19 A I'm merely guessing.

20 Q Well, Mr. Park, you've been a lawyer long enough to
21 know that as a witness you're not allowed to guess unless I
22 ask you to guess. I asked you for knowledge. You said it was
23 corrected, and it wasn't corrected to your knowledge, was it,
24 sir?

1 A I would assume that it was.

2 Q To your knowledge it wasn't corrected, was it, Mr.
3 Park?

4 A I don't even know if it was ever used.

5 Q Mr. Park, my question is specific, you understand it.
6 To your knowledge it was never corrected, was it, sir?

7 A At the moment off the top of my head I cannot recall
8 corrections.

9 Q Then is the answer to my question that it's correct,
10 sir, to your knowledge it was never corrected?

11 A I don't feel that I can answer that way, Mr. Carr.
12 With all these recipients --

13 Q Mr. Park, do you have any knowledge that it was corrected?

14 A Not specific knowledge.

15 Q All right. Mr. Park, if you have no knowledge that it
16 was corrected, then my statement is true and accurate, is it not
17 --

18 A Mr. Carr, not necessarily.

19 Q -- to your knowledge -- listen carefully, Mr. Park
20 -- to your knowledge -- first of all, you have no knowledge,
21 do you, sir?

22 A I have knowledge of experience, Mr. Carr --

23 Q I understand that, Mr. Park.

24 A -- gained in many matters like this.

1 Q Mr. Park, you know which draft this was? This was
2 the final draft. It's dated February 15th, it's going to go out
3 on Monday, February the 18th, sir. Comments are requested today.
4 We've asked for copies of all comments, we've asked for copies
5 of final drafts. This is it, Mr. Park, unless you have specific
6 knowledge that there's something other than this was prepared
7 and sent out to the customers. Do you have such specific
8 knowledge, Mr. Park?

9 A I have -- I cannot at this moment recall specific
10 knowledge of such.

11 Q Then is my answer to my question that you have no such
12 specific knowledge at this moment?

13 A No, but I do have general knowledge that there would
14 have been responses.

15 Q Is the answer to my question, sir, that you have no
16 specific knowledge?

17 A I cannot recall.

18 Q Do you know that your attorneys and your president of
19 Monsanto Corporation is going to sign an Affidavit that this is
20 the full, complete compliance with our Request and that this is
21 the latest document that we have in our file on this point, do
22 you know that, sir?

23 A I'm not sure, but --

24 Q Do you have any knowledge to the contrary, Mr. Park?

1 A I have business knowledge gained in receiving these
2 things.

3 Q Mr. Park, what you're telling us is that you know that
4 first drafts get changed. Do you know which draft this is?

5 A No, I don't.

6 Q First, last, in between?

7 A No, I don't know.

8 Q This could be the 30th draft so far as you know,
9 couldn't it, sir?

10 A It certainly could be.

11 Q It could be the final draft as far as you're concerned
12 with no changes made?

13 A I doubt it's the final draft because of the way Miss
14 Collins worded her transmittal letter. It implies strongly
15 that it's not the final draft. She says she needs --

16 Q If there's going to be additional changes she wants
17 them now --

18 A Yeah.

19 Q She wants a feedback by this afternoon?

20 A She doesn't say this will be published on the 18th.
21 She merely says the plant is planning to discuss with employees.

22 Q Look at the first page of the exhibit. What does it
23 say? We intend to send it out on Monday, February the 18th.

24 A That's the customer letter, Mr. Carr. We were looking

1 at the question and answer part.

2 Q Yes. Mr. Park, so that we can move on from this, it
3 is true that you have no specific knowledge and no knowledge on
4 this memo whatsoever dealing with this memo, dealing with these
5 questions and answers that this was changed in any fashion, isn't
6 that correct, sir?

7 A I cannot recall at the moment any specific changes.

8 Q Would you answer my question, Mr. Park. You can say
9 yes, that's correct, or you can say no, that isn't correct.

10 A At the moment, yes, that's correct.

11 Q Thank you, sir. And in this draft she uses and sends
12 to you and scientists these very terms that you denied were
13 correctly used in your Response to the OSHA's Request, isn't
14 that correct, sir?

15 A That's correct.

16 Q Now, Mr. Park, you also discussed the various wipe
17 tests. You suggested that there were some later samples that
18 were tested and that somehow or other the findings and --
19 referred to in the June 12th, 1979 memo were incorrect, do you
20 recall that, sir?

21 MR. MUSGRAVE: Objection, that's a misstatement of
22 his testimony. He never said they were incorrect, he said they
23 were later samples.

24 THE COURT: Objection is overruled.

1 Q Would you answer my question, Mr. Park.

2 A I'm not sure I remember that, Mr. Carr.

3 Q I'm sorry?

4 A I'm not sure I remember that.

5 MR. CARR: Would you get Exhibits 1170 and 1175 please.

6 Q The Exhibit 1170, Mr. Park, there's a date of January
7 17th, 1980, doesn't it, sir, on the very first page of it?

8 A Yes, it does.

9 Q And if you look at Exhibit 1170, you'll find a Table
10 2, will you not, sir?

11 A Yes.

12 Q And 1170A already in evidence is a blowup of Table
13 2, is it not, sir?

14 A Yes, it does appear to be that.

15 Q And this table and -- made in 1980, six months after
16 the one that's referred to in June of '79, shows Samples 1A and
17 5A and 6A to have nanograms per milliliter of extract, doesn't
18 it, sir?

19 A Yes.

20 Q And it also shows using the hexane extract, it shows
21 170 nanograms of dioxin per milliliter extract, doesn't it, sir?

22 A Yes.

23 Q Now, if you'll look at Table 1 in Exhibit 1175, sir.
24 First of all, 1175 is dated 4th of May, 1981, isn't it, sir?

1 A Yes.

2 Q And it's referring to wipe samples at the Krummrich
3 Plant, isn't it, sir?

4 A Yes.

5 Q And it shows, does it not, sir, that in May of '81,
6 two years after the memo that you referred to there were CL4,
7 that is, tetra dioxins detected at the column, at the register
8 port, at the top of the column walls and in the open top wall
9 of the column, doesn't it, sir?

10 A Yes.

11 (At this time Plaintiffs' Exhibit 1551 was marked for
12 identification.)

13 Q Handing you now Plaintiffs' Exhibit 1551, see if you
14 recognize that as a Monsanto document dealing with wipe samples
15 inside Department 237?

16 A Yes.

17 MR. CARL: Offer 1551, your Honor, into evidence.

18 THE COURT: Any objections?

19 MR. MUSGRAVE: I believe this is the same information
20 as contained in Plaintiffs' 1175A, your Honor. I would incor-
21 porate the same objections I made before as to wipe samples as
22 a general topic.

23 THE COURT: Fine. They're incorporated. It's admitted
24 over objection.

1 (Exhibit passed to the jury.)

2 Q Mr. Park, this is a memo signed by Mr. Buckley, and
3 it went to Mr. Phil Kirk, didn't it, sir?

4 A Mr. P. Kirk, whatever --

5 Q Sir?

6 A It's addressed to a P., initial P. Kirk. The name is
7 not familiar to me.

8 Q You don't know that that stands for Mr. Phil Kirk?

9 A That's correct.

10 Q Well, that's not important, but in any event, it shows
11 the results of some tests on this, on a column at a level at
12 the top of the column and in the open, doesn't it, sir?

13 A Yes.

14 Q And it shows those three tests that they found the
15 tetra dioxins in all three tests, that is, at 12 nanograms per
16 100 square centimeters, 8 nanograms per 100 square centimeters
17 and 15 nanograms per 100 square centimeters.

18 A Yes.

19 Q And then at the -- it also says "These levels are
20 lower than OSHA would expect to find in the workplace area,
21 not inside a process vessel. Fred Heileman thinks you did an
22 excellent cleaning job." Do you see that, sir?

23 A Yes.

24 Q Would that suggest to you that the equipment that had

1 been reported on in 1979 as having significantly higher levels
2 of dioxin were cleaned?

3 A Mr. Carr, I'm not sure I can tie in -- I have dif-
4 ficulty with the question, because I'm not --

5 Q Well, does it --

6 A -- tie that equipment to this.

7 Q Does it suggest to you that sometime before April,
8 1981 the equipment in 237 was cleaned or at least this particular
9 equipment that was being tested?

10 A That's correct.

11 Q But even notwithstanding the cleaning they still found
12 dioxin, didn't they, sir?

13 A This apparently was inside a process vessel.

14 Q Could you answer my question, Mr. Park.

15 MR. MUSGRAVE: I'm sorry. I didn't hear what you
16 said, Mr. Park.

17 THE WITNESS: It was inside the process vessel, not
18 where there would be exposure.

19 Q Would you answer my question, Mr. Park.

20 A Yes, they -- apparently a tiny amount was found.

21 Q And the statement that was made to the public in 1983
22 had you ever -- in response to the question have you ever
23 tested for TCDD before now, we had tested for TCDD by taking
24 wipe samples and found it not to be present is untrue, isn't it.

1 sir?

2 A Can you give me -- I can't read --

3 MR. MUSGRAVE: I believe you need to read the rest of
4 the answer, Mr. Carr.

5 A Number of the exhibit, Mr. Carr.

6 Q 1543.

7 MR. MUSGRAVE: I would request, your Honor, that Mr.
8 Carr be required to read the rest of the answer which makes it
9 fully explanatory as to what the response of this question was.
10 Otherwise, it is misleading and it is an inappropriate, incorrect
11 representation of what the answer was.

12 MR. CARR: Your Honor, we've gone into this exhibit
13 with the witness already. The jury has it. They have seen it.
14 I don't think it's necessary for me to go through every point
15 that has been established earlier.

16 THE COURT: I don't have -- which number is that,
17 1543?

18 MR. CARR: 1543, your Honor.

19 MR. MUSGRAVE: Question 10 and Answer 10, your Honor.

20 THE COURT: Just a minute. I've found it. Objection
21 is overruled, and the jury does have it.

22 A As I remember the question I believe I would have to
23 answer no.

24 Q Mr. Park, we've gone through a number of exhibits

1 from June of '79 through 1981 in which TCDD was tested for and
2 found, have we not, sir?

3 A Yes, we have.

4 Q And the statement Answer 12, we had tested for TCDD
5 by taking wipe samples and found it not to be present isn't
6 correct, isn't true, is it, sir?

7 A Your Answer 10 you mean?

8 Q That's correct.

9 A There's nothing in here to indicate that this is not
10 a correct answer. I would assume this is correct. I guess on
11 the basis of some of the information that we have just looked
12 at it is correct that we had tested for TCDD by taking wipe
13 samples and found it not to be present. On the face of it
14 that appears to be a correct statement.

15 Q Oh, you mean if you tested once, you found, for
16 instance, Wipe Sample 2A, 3A, and 4A there wasn't any tetra
17 present in those wipe samples, and therefore, you take, you say
18 because there were three wipes taken where TCDD was not found,
19 therefore, the statement in Answer A10 in 1543 where they say
20 we had tested for TCDD by taking wipe samples and found it not
21 to be present is therefore a true statement?

22 A That would be --

23 Q Is that your reasoning, Mr. Park?

24 A That would appear to be --

1 Q Is that your reasoning, Mr. Park?

2 A Not all of it, no, Mr. Carr.

3 Q Well, what's the rest of it?

4 A The rest of it would be that Q and A 10 obviously
5 refers to areas where there would be worker exposure, and samples
6 taken from inside chemical equipment where there could not
7 possibly be worker exposure would not be relevant to this.

8 Q Well, these samples here in June of '79 and '81 and
9 after are on top of the column walls, column open top wall,
10 isn't that correct, sir?

11 A I'm not familiar with the equipment, Mr. Carr.

12 Q Well then, how can you say there's not exposure, sir,
13 if you're not familiar with the equipment? A register port,
14 you know what that means, don't you, sir?

15 A No, I don't.

16 Q A register that opens up.

17 A Okay.

18 Q Column walls and plate on the top and open top wall,
19 you know what that is, don't you, sir?

20 A No, I don't.

21 Q Control room table, you know what that is, don't you,
22 sir?

23 A I assume it's a table in the control room.

24 Q There is worker exposure there, is there not, sir?

1 A I don't know based on personal experience, Mr. Carr.

2 Q Well, Mr. Park, then you don't know from personal
3 experience that they don't have exposure, do you, sir?

4 A My common sense tells me --

5 Q Excuse me, Mr. Park. Doesn't your common sense tell
6 you that a control room table there is worker exposure?

7 A I don't know about that.

8 Q Doesn't your common sense tell you that in the control
9 room there -- first of all, there is workers in the control
10 room, aren't there, sir?

11 A Yes, if it's --

12 Q And, Mr. Park, in that control room is a table. Now,
13 that table is there for the purpose of the workers using it,
14 isn't it, sir? Doesn't your common sense tell you that?

15 A If it's a regular table, yes.

16 Q Any kind of table. If there's a table there, it's
17 in the control room where people go, there's exposure, isn't
18 there, sir?

19 A If it's -- by table is meant what's normally meant
20 by the word table answer yes.

21 Q Well, you don't know anything to the contrary? Then
22 there is worker exposure, isn't there, sir?

23 A Could be.

24 Q And then this statement isn't true, is it, sir, even

1 with regard to the way you would modify it?

2 A Mr. Carr --

3 Q We had tested for TCDD by taking wipe samples and
4 found it not to be present. That is a falsehood, isn't it, sir?

5 A I can't say --

6 MR. MUSGRAVE: I object to counsel's representation
7 because it's taken out of context. It has to be read in con-
8 nection with the second sentence. He modified it.

9 THE COURT: Objection is overruled. It's not out of
10 context.

11 A My answer is to be no.

12 Q Did they find it on furniture, on the control room
13 table?

14 A According to that table, yes.

15 Q And did they, did Monsanto say here that they didn't
16 find it?

17 A Four years later --

18 Q Did Monsanto say here that they didn't find it, that
19 they found it not to be present?

20 A It doesn't say they never found it.

21 Q Sir?

22 A It doesn't say it was never found. It says we had
23 tested for TCDD by taking wipe samples and found it not to be
24 present.

1 Q Now you're saying then if they took a sample on one
2 occasion and it wasn't there, then that makes it a truthful
3 statement. You're back to that now, aren't you, sir?

4 A No. For one thing it -- it would have to be more
5 than one, because it's used in the plural.

6 Q No, the question is had you ever tested for TCDD
7 before. That means one time or a thousand times. Had you ever
8 did it before the time you found it in your parking lot. That's
9 what was asked, and the answer was we had tested by taking wipe
10 samples and found it not to be present. That's a plain out and
11 out falsehood, isn't it, sir?

12 A No, Mr. Carr, as I have stated.

13 Q Did you take wipe samples before '83?

14 A Yes.

15 Q Did you find it present in those samples taken before
16 '83?

17 A Apparently in a few samples.

18 Q Did you find it present in the samples taken before
19 '83?

20 A In a few, yes.

21 Q Then what is true is that you did find it in a few
22 samples before '83, isn't that correct, sir?

23 A Yes.

24 Q Then it is untrue to say that you did not find it

1 before '83, isn't it, sir?

2 A Mr. Carr, as I have stated --

3 Q Excuse me, Mr. Park. Could you answer that question

4 --

5 A No, I have -- as you phrased it, no, Mr. Carr.

6 Q It is true that you found it before '83, isn't it,
7 sir? That isn't the truth, sir?

8 MR. MUSGRAVE: Objection. Asked and answered.

9 THE COURT: Overruled.

10 Q And if you say that wasn't found before '83, that's
11 a lie, isn't it, sir?

12 MR. MUSGRAVE: Object, that's been asked and answered.

13 THE COURT: Overruled, it has not.

14 A No, Mr. Carr, because that was apparently the case.

15 Q Well, Mr. Park, you just agreed that it was true that
16 you had found it. Now, if it's true that you found it, it's a
17 lie to say that you didn't find it, isn't it, sir?

18 MR. MUSGRAVE: Object, it's been asked and answered.
19 in that context.

20 THE COURT: Overruled.

21 A Not as this statement is written, Mr. Carr.

22 Q Sir, would you please answer my question. If it is
23 true that you found it before '83, isn't it a lie to say that
24 you didn't find it?

1 MR. MUSGRAVE: Object, it's been asked and answered
2 in this context.

3 THE COURT: It has not been answered. Overruled.

4 A That statement is not in here.

5 Q Would you answer that question, Mr. Park.

6 A I would have to --

7 Q If it's true that you found it before '83, isn't it a
8 lie to say that you didn't find it before '83?

9 A That statement I would say would be incorrect.

10 Q Is incorrect?

11 A Yes.

12 Q Mr. Park, it's a lie, isn't it?

13 MR. MUSGRAVE: Object, it's been asked and answered.

14 THE COURT: Overruled.

15 Q If the truth is it was found before '83, it's a lie
16 to say that it wasn't found before '83, isn't it, sir?

17 A I think a lie is knowing --

18 MR. MUSGRAVE: Object, it's been asked and answered.

19 THE COURT: Overruled.

20 A Incorrect statement.

21 Q Yes, if you know the truth, if Monsanto knows or I
22 know the truth to be, you asked me did I take your tie clip
23 from your tie, I know whether I took the tie clip from your tie
24 or not, and if I say, no, I didn't take your tie clip, I'm

1 telling a lie, aren't I, sir?

2 A If you knew you had taken it, yes.

3 Q Yes.

4 A But if it had inadvertently become attached to your
5 clothing and you were not aware of it, then that would be an
6 incorrect statement.

7 Q Absolutely, no question about it.

8 A -- and not a lie.

9 Q There's no question but what Monsanto knew that it
10 had taken wipe samples before '83 and knew that there was TCDD
11 in those wipe samples; there's no question about that, is there,
12 sir?

13 A Sarah Collins did not know --

14 Q Excuse me, could you answer that question, Mr. Park.

15 MR. MUSGRAVE: He did, your Honor, object.

16 THE COURT: The objection is overruled.

17 A Monsanto is not a person, Mr. Carr.

18 Q Monsanto as far as the law is concerned is a person,
19 Mr. Park, and you know that as well as I know it. It's an
20 entity, it's responsible for the actions of those people that
21 work for it and can only be responsible. It's not anything
22 other than a collection of employees and stockholders and
23 executives and board of directors and presidents and --

24 MR. MUSGRAVE: Object to the speech. It's not a

1 question. Request that it be stricken and the jury instructed
2 to disregard it.

3 THE COURT: Objection is overruled. It's proper
4 preparatory to the question that's trying to be asked.

5 Q Mr. Park, there is no question but what Monsanto
6 knew that its wipe samples taken before '83 had found TCDD,
7 isn't that correct, sir?

8 A I don't know that every Monsanto employee can be
9 charged with knowledge --

10 Q I didn't ask you that, sir.

11 A -- with every other Monsanto employee.

12 Q I'm not asking you that, Mr. Park, and you know I'm
13 not asking you that. Every Monsanto employee is not held
14 responsible for anything. The employees are not held responsible.
15 It's the corporation that's held responsible. My question is
16 Monsanto knew before 1983 that wipe samples were taken and
17 that the wipe samples contained 2,3,7,8 or contained TCDD,
18 isn't that correct, sir?

19 A Certainly those who analyzed those samples that we
20 looked at and those to whom they communicated would have been
21 aware of it.

22 Q You were one of the ones that -- well, strike that.
23 They knew then the truth was that TCDD was found in those wipe
24 samples, didn't they, sir?

1 A Yes.

2 Q And it is a lie then to say that it was not found,
3 isn't it, sir?

4 MR. MUSGRAVE: Object, it's been asked and answered.

5 Q -- if you know the truth?

6 THE COURT: Overruled.

7 A If one knowingly makes an incorrect statement --

8 Q That's correct.

9 A -- that would be a lie.

10 Q Yes.

11 MR. CARR: I have no further questions, your Honor.

12 RECLARIFICATION

13 BY MR. MUSGRAVE:

14 Q Mr. Park, Mr. Carr continually failed to mention to
15 you the second sentence of this question and answer here that
16 Sarah Collins gave. Would you read this to us, sir, the second
17 sentence in Answer No. 10.

18 A The second sentence of Answer 10 reads "In taking the
19 wipe samples we tested surface of equipment and furniture in
20 the chlorophenol unit and their control areas."

21 Q Does it say when that test or tests that she's
22 referring to were taken?

23 A No, it does not.

24 Q Do you know what she had in mind, sir?

1 A No.

2 Q Did you see all the wipe samples that were ever taken
3 after 1979, sir?

4 A No.

5 Q The document Mr. Carr showed you, Wipe Test inside
6 Department 237, April 21, 1981, do you know when those samples
7 were actually taken? That's Plaintiffs' Exhibit 1551.

8 A No, I do not.

9 Q Is there any reference on Plaintiffs' 1551 as to
10 whether any of these samples referred to in there are the
11 surface of equipment, furniture?

12 A It appears that they are not equipment -- or not
13 furniture.

14 Q What does the last paragraph say, sir?

15 A These levels are lower than OSHA would expect to find
16 in the workplace area, not inside a pressure vessel.

17 Q Do you know if these were inside a vessel of some
18 kind?

19 A That statement, I think, implies that they were taken
20 inside a pressure vessel -- a process vessel, I'm sorry,
21 process vessel.

22 Q As a matter of fact, Plaintiffs' 1551, sir, and
23 Plaintiffs' 1175, are they the -- he hasn't got a blowup of
24 Plaintiffs' 1551, does he, but could you tell us whether they're

1 talking about the same analysis in 1551 and 1175? 1551 says
2 what, sir, as far as the identification of the first -- of
3 Sample No. 1?

4 A Column, third level.

5 Q Column, third level?

6 A Yes.

7 Q All right. Do you see the words column, third level
8 on Plaintiffs' 1175?

9 A Yes, I do.

10 Q And Sample 2, what is it, how is it described in
11 Plaintiffs' 1551?

12 A Top of column.

13 Q Do you see the words column, top of on Plaintiffs'
14 1175 here, sir?

15 A Yes, it says column, open top wall. No, no, column,
16 top of walls and plate. Yes, umhm.

17 Q And the third sample on Plaintiffs' 1551, what does
18 it say?

19 A It says column at open.

20 Q Do you find these words in connection with any sample
21 on Plaintiffs' 1175?

22 A Yes.

23 Q Where are those, sir?

24 A Same words on Table 1.

1 Q Does it appear to you, sir, that 1175 and 1551 are
2 in fact the same samples, just reported at different times and
3 different fashions, different formats?

4 A Well, it certainly appears that it could be, yes.

5 Q And if that is in fact the case, that Plaintiffs'
6 1175 here is the same as Plaintiffs' 1551, then we're talking
7 about the same samples that were all from inside some type of
8 a vessel?

9 A Yes.

10 Q And now, sir, the surface of equipment, furniture in
11 the chlorophenol unit and their control areas?

12 A Yes.

13 Q And these samples we're talking about, sir, represented
14 in Plaintiffs' 1551, do you know the date they were taken?

15 A The date the samples were taken does not appear.

16 Q Sometime before April of '81 though?

17 A Yes.

18 Q You don't know how much prior to that date they were
19 taken, do you, sir?

20 A No.

21 Q Mr. Park, getting back to -- getting back to the
22 Requests for Admission and Responses, sir, and in connection
23 with that --

24 THE COURT: Before you get back into that, is this a

1 good point for a short break?

2 MR. MUSGRAVE: Yes, it would be, your Honor.

3 THE COURT: Ladies and gentlemen, we'll take a short
4 break at this time. I would remind you, and this would go for
5 any other breaks that we take during the day, that you're not
6 to discuss this matter among yourselves or with anyone outside
7 the jury panel or as of yet form any opinions or conclusions
8 about the matters on trial. Court will be in a short recess.

9 (At this time a short recess was taken.)

10 PHOCIAN PARK,

11 resuming the witness stand, having been previously sworn,
12 testified further as follows:

13 RECLARIFICATION (Continued)

14 BY MR. MUSGRAVE:

15 Q Mr. Park, we were about to refer to again these
16 Requests for Admissions and the questions in connection with
17 those that Mr. Carr asked you with regard to Plaintiffs' 1550,
18 the February, 1985 document generated some four years plus later.
19 In the Requests for Admissions would you look at No. 13.

20 A Yes.

21 Q First of all, is the document, Plaintiffs' 1550, is
22 that a legal proceeding, any of those documents involve a legal
23 proceeding?

24 A No, no. 1550 is just an internal effort to develop

1 a questions and answers.

2 Q Questions and answers. When these questions and
3 answers on a particular topic are prepared, sir, and put in
4 final form, are they circulated outside of Monsanto? Is that
5 their purpose, to be sent out to people outside Monsanto on an
6 unsolicited basis without someone asking for them?

7 A No, they're not. They're developed to try to --
8 by people in the Public Relations Department to try to develop
9 information that they can use in dealing with the news media.

10 Q So these questions that are posed in these question
11 and answer documents such as Plaintiffs' 1550, are those questions
12 that have been asked or questions that are expected to be asked
13 or just what, or do you know?

14 A It would -- my perception would be that these are
15 questions dealing with information that public relations
16 personnel might anticipate might be asked.

17 Q All right. Then getting back to the Requests for
18 Admissions, the legal document, at No. 13 there, what reference
19 is made to TCDD in the question that is posed there?

20 A The question is TCDD is colon: And lower case (a)
21 in parenthesis, toxic compound; lower case (b) in parenthesis,
22 generally recognized to be the most toxic dioxin compound.

23 Q All right. And that was denied?

24 A That's correct.

1 Q All right. Now in the question and answer that was
2 prepared some four and a half years later, Mr. Carr referred you
3 to Page 3 of that, where isomers of dioxin are discussed. Is
4 there any statement there that TCDD is a compound as opposed to
5 a specific TCDD being a compound?

6 A No, the reference here is to the specific 2,3,7,8
7 tetrachlorodibenzo-p-dioxin.

8 Q With regard to the question quote "Is TCDD a toxic
9 compound", is there anything inconsistent between the legal
10 document and Plaintiffs' 1550, the question and answer?

11 A Let's see. Well, yes, the Q and A put together earlier
12 this year refers to -- well, it refers to the specific 2,3,7,8
13 TCDD isomer whereas Question 13 of the OSHA Requests for
14 Admissions of 1979 merely refers to just the whole group of
15 TCDD's.

16 Q All right, sir. Now, this question and answer was
17 put together by Sarah Collins, is that correct?

18 A Yes, that's right.

19 Q And in Answer No. 13, sir, to Question No. 13 would
20 you read the first sentence?

21 A Of the question?

22 Q Yes.

23 A How can you say there is --

24 Q No, no, sir. I'm sorry, the answer.

1 A Oh, yes, sir. The first sentence of the answer is
2 there are some 75 isomers or types of dioxin.

3 Q And dioxin there is not then --

4 MR. CARR: Object to the leading form of the question.

5 THE COURT: Objection sustained. Rephrase it.

6 MR. MUSGRAVE: Let me rephrase it.

7 Q In using the term dioxin in Answer No. 13 is there
8 any reference therein, sir, to the potential for there being
9 -- let me rephrase the question. In Answer No. 13 is there
10 any reference to dioxin possibly referring to a broad class of
11 compounds estimated to exceed 10,000 in number?

12 A I don't see that in Answer 13.

13 Q All right. Now, let me hand you what's been previously
14 identified as Defendant's Exhibit 905. That is a memorandum
15 from Dr. Wilson dated April 1, 1982, is that correct?

16 A Yes, it is.

17 Q Which is a couple months before or a couple --
18 pardon me, couple -- two or three years before this 1985
19 memorandum or question and answer we've been going through was
20 written?

21 A That's right.

22 Q And who is that memorandum sent to?

23 A It's addressed to S. G. Collins and L. J. O'Neal.

24 Q S. G. Collins, is that Sarah Collins?

1 A That's Sarah Collins.

2 Q The same one that wrote this 1985 question and answer?

3 A Yes, sir, it is.

4 Q I'd like to refer you to the second page of that, sir,
5 third page actually, the second paragraph of that memorandum
6 to Sarah Collins from Dr. Wilson. Would you read that to us
7 please.

8 A The second paragraph reads counting out the two
9 monochloro isomers, nine dichloros, thirteen trichloros, twenty-
10 two tetrachloros, etc., yields a total of 75 numbers of the
11 family called chlorodibenzo-dioxin. There are also 75 fluoro-
12 dibenzo-dioxins, 75 bromodibenzo-dioxins, a large number of
13 chlorobromodibenzo-dioxins, etc., etc. Without much effort we
14 can count more than 10,000 compounds named as dioxins.

15 Q And that's Dr. Wilson to Sarah Collins back in 1982
16 telling her about the possibility of the term dioxin referring
17 to more than just chlorodibenzo-para-dioxin?

18 A That's correct.

19 Q Some 10,000 potential compounds easily?

20 A Yes.

21 Q What does he say in the next sentence after he tells
22 her about that back in 1982?

23 A He says, given all the above, it would be entirely
24 proper for you to ask anyone who calls inquiring about dioxin

1 to be more specific.

2 Q All right, sir. Now, going back to this question and
3 answer, we've read the answer that she gave there on Page 3 as
4 Answer 13, but would you now read the question, sir, that she
5 anticipates would be being asked to which she responds talking
6 about 75 isomers or types of dioxin without saying, gee, dioxin
7 could be 10,000 compounds. Read the question that she was
8 anticipating?

9 A Question 13 reads --

10 Q Yes.

11 A How can you say there is no health threat with the
12 dioxins found in the product? Dioxin was the material in
13 Agent Orange.

14 Q So she was anticipating a question, sir, identifying
15 dioxin as that dioxin found in Agent Orange?

16 A Apparently so, yes.

17 Q And then she responded with this question in response
18 to it about 75 isomers of that dioxin, right, is that right?

19 A Yes.

20 Q So did she have information posed in the question
21 narrowing the type of dioxin that the proposed or this hypo-
22 thetical question was asking about, the type found in Agent
23 Orange?

24 A Well, that apparently was what structured her thinking.

1 Q So she would be anticipating a question that would
2 identify the type of dioxin?

3 A Yes.

4 Q And then she would respond to it as she did?

5 A Yes.

6 Q Now, Mr. Park, going back to Plaintiffs' 1135 --
7 before we do that in Sara Collins' question and answer document
8 put together in 1985 Mr. Carr asked you about the reference
9 therein in Answer 13 to 2,3,7,8 TCDD, and it is stated there,
10 is it not, sir, that that is quote "is the most toxic dioxin
11 isomer and is the compound associated with Agent Orange"?

12 A Yes.

13 Q In fact, she answered the question that was posed
14 right above, didn't she?

15 A Yes,

16 Q Saying that that's the kind of dioxin associated
17 with Agent Orange?

18 A Yes.

19 Q But are the words in this answer quote "generally
20 recognized" included in that statement about it being the most
21 toxic?

22 A No.

23 Q And again back in the Response or the Requests for
24 Admissions were the words generally recognized placed before

1 that reference to 2,3,7,8 being the most toxic? It would be
2 Response or Request No. 14.

3 A Yes, they were.

4 Q Now, turning to Plaintiffs' 1135, sir, you recall that
5 Mr. Carr identified yet another sample that bore a date after
6 the samples that I had you identify, isn't that correct?

7 A Yes.

8 Q If you would, sir -- and I believe that was MB727,
9 is that correct?

10 A I believe so.

11 Q Dated 4/22, April 22, 1979, is that right?

12 A I believe it was.

13 Q Look, if you would, sir, at MB736.

14 A Yes.

15 Q MB736 is identified as what, sir, in Plaintiffs' 1135?

16 A Fresh PCP.

17 Q Fresh PCP?

18 A Yes.

19 Q And the date of that sample?

20 A May 7, 1979.

21 Q So that's a week or so after the 727 sample that Mr.
22 Carr referred you to, is that correct?

23 A That's correct.

24 Q And the analysis of that, sir, MB736, if you would

1 look at the table and tell us what the findings were under the
2 CL4 column.

3 A None detected.

4 Q All right. And is MB736 even closer in time to
5 June 9 that MB727?

6 A Yes, it is.

7 Q And MB727, I believe you said there were two tests
8 on that, and one was none detected?

9 A Yes.

10 Q And one was 14?

11 A Yes.

12 Q But MB736 on May 7, '79 was none detected?

13 A That's correct.

14 MR. MUSGRAVE: No other questions, your Honor.

15 THE COURT: Mr. Carr, do you have any further questions?

16 MR. CARR: No, your Honor.

17 THE COURT: Mr. Park, you may step down. Thank you.

18 MR. CARR: I'd call John McPhillips now as an adverse
19 witness under the appropriate Supreme Court Rules.

20 JOHN MCPHILLIPS,

21 being called as a witness under Section 2-1102 of the Civil
22 Practice Act, having been first duly sworn, testified as follows:

23 CROSS EXAMINATION

24 BY MR. CARR:

1 Q Would you state your name please, sir.

2 MR. CARR: I'm sorry, were you ready, Counsel?

3 MR. MUSGRAVE: Just a moment, if I could, Mr. Carr.

4 (Pause) Okay. Thank you.

5 Q Would you state your name please, sir.

6 A John McPhillips.

7 Q And where do you live, Mr. McPhillips?

8 A Cincinnati, Ohio.

9 Q And how long have you lived there?

10 A Almost five years or five years.

11 Q And what is your present occupation?

12 A I'm currently a key account director for Monsanto
13 Company.

14 Q And how long have you been employed by Monsanto
15 Company?

16 A Sixteen years, sixteen and a half.

17 Q That meant you would start sometime about 1969?

18 A '69, early '69.

19 Q And directing your attention to 1978, '79, and '80,
20 where were you at that time?

21 A I was in St. Louis.

22 Q And working in the what, the International Headquarters
23 for Monsanto?

24 A Yes, sir.

1 Q That would be located in Crave Coeur?

2 A Yes, sir.

3 Q How long had you been there, physically there at that
4 time?

5 A I was there in 1976.

6 Q And you had been there some three years before the
7 Sturgeon spill took place more or less, is that correct?

8 A Yes, sir.

9 Q And your position in 1979 was what, sir?

10 A Market manager of antimicrobials.

11 Q And could you tell us just exactly what that involves?

12 A Primarily you're responsible for the marketing of
13 a whole list of chemicals under the antimicrobial group that we
14 have that accounts for about ten products.

15 Q And --

16 A Sir?

17 Q That would include chlorinated phenols manufactured
18 at the Krummrich Plant?

19 A Yes, sir.

20 Q How long had you been responsible for marketing the
21 chlorinated phenols that were being manufactured at the Monsanto
22 Plant as of January of '79?

23 A I came in in April of '76, so it would be a little
24 over two years.

1 Q All right. And how long after January of '79 did you
2 continue to have the responsibility of marketing the chlorinated
3 phenols?

4 A A year and a half.

5 Q So you were -- did you then in 19 --

6 A '80.

7 Q -- '80 then go to a completely different position?

8 A Yes, sir.

9 Q No longer associated with the chlorinated phenols?

10 A Yes, sir.

11 Q And what was that position then in 1980?

12 A Currently the same very similar job to which I have
13 now. It was called key account manager and then with change
14 and responsibilities and what have you, I went to district
15 sales manager and then to key account director, so essentially
16 I've been in the same position.

17 Q Now, did you in '79 and in '78 have responsibility for
18 passing on information to customers of Monsanto's who might
19 purchase chlorinated phenol output of Monsanto?

20 A Oh, yeah, I'd have maybe some indirect responsibility
21 at times. Yes, I did have direct contact with the customers,
22 but primarily we have a sales force that handles those responsi-
23 bilities.

24 Q Did the sales force work under you?

1 A No, sir.

2 Q What contact did you have with the sales force or
3 what relationship?

4 A Well, I worked in the marketing function, which I
5 reported to a manager of marketing products, who reported to a
6 director of marketing. The field sales force would work
7 through regional managers who'd report to a director of field
8 sales, who'd report to the same director of marketing so we
9 were eventually all under the sales-marketing organization, but
10 I had no authority over them or responsibility for them. All I
11 did was give them assistance in terms of the marketing of the
12 various chemicals that I handled. They handled probably 60
13 other chemicals besides mine.

14 Q Would it be fair to say that the efficacy and the
15 safety with regard to health hazards of the chlorinated phenols
16 was one of your concerns or responsibilities to deal with those
17 problems or problems that would arise in that area?

18 A No, sir.

19 Q Did you have a responsibility in that respect?

20 A I don't have responsibility in health and safety at
21 all, I mean, it's -- my background is hardly capable to handle
22 any of the technical nature of that stuff. Now what the
23 technical people who would have that responsibility may advise
24 me that this information that is necessary for the field sales

1 force to pass on, to which I would do it, and in fact, some
2 cases they would do it themselves and copy me in.

3 Q Well, perhaps my question wasn't broad enough for
4 you, Mr. McPhillips. Is it fair to say that the customers
5 would be affected by hazards relating to health associated with
6 chlorinated phenols in making a determination whether to use
7 your product or to buy your product, and by that I mean Monsanto's
8 product.

9 MR. MUSGRAVE: Is that a question?

10 A Is that a question? That's a statement, I think you
11 just made.

12 Q It is a question. Is that fair to say that, sir?

13 A No, I don't think so. No, you know, primarily if there
14 was a question of safety in environmental toxicity or anything
15 of that nature I was hardly an expert in that area to which I
16 would immediately defer a question to the appropriate people.

17 Q Again you misunderstood my question. From the
18 customer's viewpoint, Mr. McPhillips, is it fair to say that
19 they would be affected by the health aspects of Monsanto's
20 chemicals in making a determination as to whether to buy
21 Monsanto's chemicals? Is that something that they look at
22 when they decide whether to buy or not to buy a chemical?

23 A Sure, they look at it.

24 Q All right. That's -- and you had and you, of course,

1 were aware of the fact that whether or not customers buy
2 Monsanto's products would be determined or at least affected
3 in some degree by how they viewed Monsanto's products with
4 regard to health hazards and safety effects, isn't that correct,
5 sir?

6 A I'm sure it's a small piece of it.

7 Q A small piece of it?

8 A It's a piece of it. I mean, yeah, it's a very
9 important piece, don't get me wrong. That's one of --
10 pricing and performance of the product, the availability of
11 the product, you know, it's mostly when you sell, you sell the
12 chemical. You're over-emphasizing -- you're not over-
13 emphasizing, you're making that as the driving force of the
14 purchase of the product --

15 Q Well, Mr. McPhillips --

16 A And it is a very important part of it, yes.

17 Q It is the threshold part of it. You could have the
18 best price on earth --

19 A I'm talking from my perspective.

20 Q May I finish my question, sir -- and all the
21 quantities and good relationships with the customers, and if
22 the customers believe that the product that you put out were a
23 health hazard to them, to their employees, to their prospective
24 customers, they would indeed make a decision not to buy those

1 products?

2 A That's a potential, but they also have the responsi-
3 bility to check the safety of the product themselves in terms
4 of their usage of the product also. It's a dual responsibility.

5 Q I'm sorry, Mr. McPhillips, but I didn't ask you that.

6 A Oh, okay.

7 Q I'm not thrusting my question in that respect. The
8 customers would want to be satisfied that the product is safe
9 within the means or the confines of the area that they're going
10 to use it before they would even consider your product, wouldn't
11 they, sir?

12 A Yes, sir.

13 Q And if they found that it was unsafe for what they
14 were going to use it for, they would decide no matter how
15 pleasant the price might be, they would decide or could decide
16 not to use that product, couldn't they, sir?

17 A Sure.

18 Q And that's something, of course, that you were aware
19 of all during the time you did your job insofar as chlorinated
20 phenols is concerned, isn't that right, sir?

21 A Yes.

22 Q Sir?

23 A Yes.

24 (Plaintiffs' Exhibit 1552 was marked for identification

1 at this time.)

2 Q I hand you now what's been marked as Plaintiffs'
3 Exhibit 1552 and ask you if you recognize that as a memo that
4 deals with a suggestion or recommendation rather than that you made
5 to Mr. Clayton Callis. (Pause)

6 (Plaintiffs' Exhibit 1552A was marked for identification.)

7 Q Would you answer my question, sir?

8 A Sir, I didn't understand you asking me a question,
9 I'm sorry. I was reading the memo.

10 Q Do you recognize that as a memo dated March 3rd, 1978
11 by Mr. Kellis that dealt with a recommendation made by you?

12 A Yes, I recognize it as a recommendation I made by me,
13 but I don't know what --

14 Q Well, that's all I asked you now.

15 MR. CARR: And I'll offer that exhibit into evidence,
16 if it please the Court.

17 THE COURT: Any objections?

18 MR. MUSGRAVE: Object to the extent, your Honor, that
19 it deals with penta, irrelevant and immaterial to the lawsuit.

20 THE COURT: It's admitted over objection.

21 Q If you would look at 1550 -- is that 1552? I put
22 55 on mine I think I referred to it as 55. Ask you to look at
23 1552A and agree with me that is a blowup of 1552?

24 A Yes, it is.

1 MR. CARR: Offer 1552A if it please the Court.

2 MR. MUSGRAVE: Same objection.

3 THE COURT: Same ruling.

4 Q Now, Mr. McPhillips, this memo deals with an issue
5 along the line of the questions I just asked you earlier, that
6 is, a concern relating to health effects or safety of one of
7 Monsanto's chlorinated phenols, isn't that correct, sir?

8 A Yes, sir.

9 Q And the particular chlorinated phenol being discussed
10 at this time is the pentachlorophenol, isn't it, sir?

11 A Yes, sir.

12 Q And this memo of March 3rd, 1978, better than a year
13 before the Sturgeon spill took place, shows that in the market-
14 place you're competing with Dow?

15 A Yes.

16 Q And because Dow has -- has made an issue of the
17 dioxin content of penta, that it's considered by Monsanto inas-
18 much as your product has more dioxin in it that you then are
19 going to have to prove to your customers that dioxins are
20 acceptable? Do you see that, sir?

21 A Yes, but Dow's product still has dioxin in it also.

22 Q Mr. McPhillips, I'm not asking you to tell me whether
23 Dow does or does not --

24 A Oh.

1 Q The point is that your product had a higher dioxin
2 content --

3 A Yes, it did.

4 Q And the monkey according to this memo is on Monsanto's
5 back to prove that dioxins are acceptable, isn't that correct,
6 sir?

7 A I don't know if the monkey's on our back, but yes.

8 Q Well, isn't that what the memo says?

9 A Yeah, but that -- you're reading -- taking a memo,
10 and you know, expounding on it a little bit, but that's what it
11 says, yes.

12 Q Well, I didn't expound on it, I just quoted exactly
13 what it said.

14 A Okay.

15 Q And what it means is is that Mr. Callis, he was, oh,
16 I forgot, what was his position at that time? He was either a
17 -- he was on the board or vice president or --

18 A Oh, no, Clayton Callis, no.

19 Q Well, what was his position?

20 A I don't know. He had so many -- I don't know, I
21 really don't recall.

22 Q Well, whatever his position was it was his thought --

23 A He was no vice president or on the board of Monsanto.

24 Q It was his thought that Monsanto now has to undertake

1 the task or has the burden to prove that dioxins don't present
2 a health hazard.

3 MR. MUSGRAVE: Object to the question --

4 Q Would that be correct, sir?

5 MR. MUSGRAVE: Object to the question. The document
6 is not authored by this individual, therefore, he cannot comment
7 on the thoughts of the writer beyond what is in the face of the
8 document, and the document speaks for itself, and I object to
9 counsel now attempting to ask questions as to what the document
10 says other than what it says in speaking for itself and specu-
11 lating and going to the mind of the author as to what he meant
12 or didn't mean beyond what is stated in the document.

13 THE COURT: Objection is overruled. That's not what
14 the question asks.

15 A Sir, can you repeat the question. I didn't hear it.
16 I heard a statement, I didn't hear the question.

17 MR. CARR: Could you read the question to him please.

18 (At this time the court reporter read back the last
19 question.)

20 A On the basis of the way you asked that question I
21 would have to say the answer is yes.

22 Q Now, according to this memo that means that Monsanto
23 is going to undertake to study toxicology of the dioxins;
24 would that be a fair statement, sir?

1 A No, sir. Sir, if I can ask --

2 Q Well, what -- excuse me, this --

3 A I don't recall even what my -- it says I agree with
4 McPhillips' recommendation. I don't even know what my recom-
5 mendation -- I don't understand the reference to this memo.

6 Q That may be, Mr. McPhillips, but I'm not asking you
7 about that. I'm asking you about this memo, whether or not
8 this memo means that Monsanto is going to have to undertake to
9 study the toxicology of the dioxins in order to prove that
10 dioxins are acceptable?

11 A The dioxins in penta?

12 Q Yes.

13 A Well, I don't know, because we were out of the business
14 already. We were out of the penta business in March, 1978.

15 Q Well, your penta -- you had a -- you were out of
16 the business of manufacturing it --

17 A Yes, sir.

18 Q -- but you were still selling it, were you not?

19 A Oh, in March?

20 Q Yes.

21 A I'm not too sure about that.

22 Q Well, why would you be making a -- perhaps this memo
23 deals with the fact that you're not out of the chlorinated
24 phenol business and you're still making chlorinated phenols and

1 selling them. Penta was just --

2 A Sir, we were talking penta and penta was a totally
3 different product from the other chlorophenols, you know, and
4 you're speculating also, and I don't agree with that.

5 Q Well, whether you agree with it or not this memo
6 points out that dioxins -- well, you did know or did you know,
7 Mr. McPhillips, that there are dioxins in all the chlorinated
8 phenols and that was found in 1979 that there were dioxins in
9 all the chlorinated phenols?

10 A No, sir, that's not a true statement.

11 Q You didn't know that, sir?

12 A I don't think there were. There are dioxins in penta-
13 chlorophenol, and that was known for a long time. The type of
14 dioxins that were in there were from what my understanding was
15 of the situation, and I'm no toxicologist, were less toxic or
16 less hazardous than the chemical itself. As far as the other
17 chlorophenols --

18 Q Mr. McPhillips, maybe you didn't hear --

19 A The parachlorophenol and orthochlorophenol there was
20 no dioxins in it at that time.

21 Q Maybe you didn't hear my question. I said in '79,
22 Mr. McPhillips. I don't know.

23 A I don't know if I would agree with that statement,
24 sir.

1 Q You're not aware of the fact that in 1979 after the
2 Sturgeon spill Monsanto undertook to analyze --

3 A Yes, sir.

4 Q -- the chlorophenols and found that dioxins were
5 present in all the phenols?

6 A In all?

7 Q All the chlorinated phenols.

8 A There was some misrepresentation of data, there was
9 some data that showed some, but it was very conflicting in
10 terms of yes, there was some in there, and yes, there was not.
11 We were analyzing samples in the early part of '79, if I recall,
12 and we found, yes, we found some in the sample but sometimes
13 reanalyzed and found none.

14 Q Mr. McPhillips, are you suggesting that you are not
15 as the man marketing chlorinated phenols or have a responsi-
16 bility, that you're not aware of the fact that the -- that
17 you found dioxins in your chlorinated phenols, in all of them
18 in analysis conducted in the first six months of 1979 by your
19 competent chemists?

20 A Yes, I'm aware that we found some traces of dioxins
21 in them, yes, sir.

22 Q Then what you said a moment ago --

23 A But --

24 Q You are aware of the fact that dioxins were found,

1 thousands of parts per billion found in all of your chlorinated
2 phenols in 1979; you are aware of that, aren't you, sir?

3 A Sir, I recall that there was various levels of dioxin.
4 Exactly what they were there, I don't recall, sir.

5 Q Well then, you were aware of it?

6 A Yes, sir.

7 Q Now, back to this memo, sir. As far as the proof
8 that dioxins are acceptable, do you know whether or not Monsanto
9 undertook in the first part of 1978 a plan aimed at proving
10 that dioxins are acceptable?

11 A Am I aware of one?

12 Q Yes.

13 A No, sir, I'm not. That doesn't mean it wasn't done.

14 Q Were you ever at any meeting after March of '78
15 where it was discussed that Monsanto now has got to undertake
16 a campaign to show that dioxins have no health hazards, that
17 they are acceptable in chlorinated phenol products?

18 A But this is talking about dioxin in penta.

19 Q Yes, indeed, Mr. McPhillips.

20 A And that --

21 Q Could you just answer my question please. I'm
22 perfectly aware of what it's talking about. Could you answer
23 my question, sir.

24 A You have to repeat the question.

1 MR. CARR: Could you read the question to him again.

2 A I hate to be a nuisance --

3 Q If you could, just listen to my questions.

4 A I'm listening to you, but I think you -- go ahead.

5 (At this time the court reporter read back the last
6 question.)

7 A I was involved in some meetings, yes, sir.

8 Q All right. Now at that time you were out of the
9 penta market, but you had as an important part of your market
10 Santophen, didn't you, sir?

11 A Yes, sir.

12 Q And that's a chlorinated phenol, isn't it, sir?

13 A Yes, sir.

14 Q You also had orthochlorophenol-crude?

15 A Yes, sir.

16 Q And you also had 2,4 dichlorophenol, which you were
17 selling to others?

18 A Yes, sir.

19 Q Now, do you know whether or not with regard to a --
20 this study or this attempt to show that dioxins are acceptable,
21 do you know whether at that point in between March of '78 and
22 February of '79, do you know whether or not Monsanto engaged
23 in any kind of testing program of its chlorinated phenols?

24 A Yes, sir.

1 Q All right. What program did it undertake?

2 A When we had orthochlorophenol -- this is a continued
3 reference, I think this memo is referencing to penta but after
4 -- right about that same time, sir, we -- when we were
5 embarking on the sales of orthochlorophenol, we analyzed the
6 orthochlorophenol for dioxins and found none detectable.

7 Q All right. Now that's in March of '78?

8 A Sir, I don't recall. It was in '78 sometime. I can't
9 recall that.

10 Q Now, was there -- and that was orthochlorophenol-
11 crude?

12 A Yes, sir.

13 Q And you anticipated --

14 A I think we also looked at parachlorophenol and
15 Santophen, parachlorophenol. We didn't have to look at Santophen.
16 If there was none detectable in para, there wouldn't be any in
17 Santophen.

18 Q Oh, you have some tests of parachlorophenol?

19 A I think there was some tests run or there was some
20 -- you would have to talk -- you're getting me out of my
21 field, sir, but you'd have to talk to our environmental people.

22 Q Well, we have --

23 A -- the people that ran these tests.

24 Q Mr. McPhillips, let me play fair with you. We have

1 all the evidence in as to all the testing that was done. All
2 right. All right?

3 A Yes, sir.

4 Q I'm asking you whether or not you have any knowledge
5 of whether or not there was any testing that went on of the
6 products, the chlorinated phenols after this memo was written
7 to find out what dioxins were or were not in your products?

8 A And we found, we analyzed --

9 Q Excuse me. Do you have such knowledge, sir?

10 A Yes.

11 Q All right. And when --

12 A And that was the ortho, I made reference to that.

13 Q Do you have any knowledge other than the ortho?

14 A I thought during that same time -- now maybe they
15 -- in the analysis of the data they looked at the PCP and
16 there's considerable amount of parachlorophenol in the ortho,
17 and there was none detectable, so I think maybe the assumption
18 -- again, you're getting me out of my arena.

19 Q Well, I just want to ask you whether or not you know
20 of anything other than the two samples of OCP.

21 A I don't recall how many samples there were.

22 Q Now -- well, do you know anything other than --
23 according to this memo --

24 A I don't recall.

1 Q All right.

2 A Let me rephrase that.

3 Q According to this memo you know that the dioxins are
4 higher in your penta, and I'm asking you whether or not you
5 have any knowledge other than the Reichhold and Vulcan, and
6 they specifically requested to find out; do you recall that,
7 sir?

8 A Yes.

9 Q It wasn't something that Monsanto did on its own
10 initiative?

11 A Not on its own.

12 Q I want to know because that was a specific customer
13 request at that time.

14 A No, sir. We analyzed already and one customer requested
15 it and then subsequent, when we tried to talk to another customer,
16 another customer requested it.

17 Q Mr. McPhillips, do you have any knowledge that you
18 had analyzed already, because the only exhibit that we have in
19 evidence --

20 A Prior to --

21 Q May I finish my question. The only exhibit that we
22 have in evidence is that it was analyzed at the customer's
23 request. Do you have some --

24 A Sir, I don't recall --

1 Q All right.

2 A -- whether it was per their request or what.

3 Q That's the reason I'm asking, because you're making
4 a statement that's contrary to the evidence that we have, and
5 I'm wondering if you have such knowledge.

6 MR. MUSGRAVE: I object. The statement the witness
7 made if Mr. Carr would have listened, I don't think is contrary
8 to any evidence.

9 THE COURT: Objection is overruled.

10 Q Now, do you have any knowledge, Mr. McPhillips, that
11 any testing was done other than at the specific request of a
12 customer from the date of this memo up until 1979?

13 A From the date of this memo?

14 Q That's correct, sir.

15 A Sir, I don't recall, but that doesn't mean whether I
16 know there was or not.

17 Q I'm aware of that. I'm asking whether or not you know
18 it, sir. If you don't know it, it could have taken place a
19 thousand times and you don't necessarily have to have knowledge
20 of it.

21 A That's true.

22 Q But I'm asking whether or not you have any such knowl-
23 edge.

24 A No, sir.

1 Q All right.

2 A I don't recall.

3 Q Now, there wasn't any program that you're aware of
4 then, as I understand it, that you have knowledge of today that
5 was undertaken in '78 to find out whether or not your chlorinated
6 phenols did or did not have dioxin levels other than the customer
7 requests on the instances we just discussed, isn't that correct,
8 sir?

9 A The way you phrased that question, I got to answer
10 yes, but I don't agree with the way you asked me that question.

11 Q You don't agree with the -- with what part of it?

12 A Because we analyzed earlier prior to '78 for dioxins
13 in the various chlorophenols and found none. We analyzed in
14 '78 and we found none. Why do you continue to analyze when
15 you don't find anything? It's not there, we didn't expect it
16 to be in there. It was much to our surprise when we found some
17 in there as a result of the Sturgeon spill.

18 Q Mr. McPhillips --

19 A You just don't keep looking at something at least my
20 thinking is --

21 Q Let me give you one reason why you wouldn't continue
22 testing. If you don't find it there, you don't have the knowledge
23 that it's there, do you, sir?

24 A If you don't find it, you don't find it.

1 Q And if you don't find it there, you don't have the
2 knowledge that it is there, do you, sir? If it's -- if you
3 --

4 A I don't -- you're not asking --

5 Q If you tested something --

6 A You're making a statement to me.

7 Q If you tested something --

8 A I disagree with the statement that you keep saying to
9 me.

10 Q Mr. McPhillips, do you think that the chemistry of
11 making penta -- making chlorinated phenols remained the same
12 in all batches?

13 A Sir, I can't answer that question.

14 Q Don't you know --

15 A I don't know that question, sir.

16 Q Or do you know --

17 A I wished I could, but I don't know.

18 Q Mr. McPhillips, do you know that it can depend upon
19 how much caustic was added or whether caustic was added, it can
20 depend upon temperature, it can depend upon the accuracy of the
21 operator in taking out the particular cut that he wants to take
22 out; do you know all those things?

23 A Not to be an expert on it like you are, sir, no.

24 Q Well, Mr. McPhillips, I'm certainly not an expert.

1 What I know about it is what I've learned from the documents
2 that are in evidence here and from the testimony of the witnesses,
3 and that's the reason I'm asking you, sir, whether or not you
4 simply because you test for it on one day, it doesn't necessarily
5 mean that it won't be there the next month, does it, sir?

6 A Well, I think there's more to it than that. You're
7 asking me a question totally out of my field, sir.

8 Q Well, if you don't know, Mr. McPhillips, just simply
9 say you don't know, sir.

10 A I don't know.

11 Q All right. But if you don't test for it, you obviously
12 won't find out that it's there, will you, sir? You don't know
13 it's there without testing.

14 A I disagree with the way you're putting that statement
15 to me.

16 Q Sir?

17 A I disagree with how you're making -- you're making
18 a statement, you're not --

19 Q All right. To find something is there you have to
20 test it, analyze it, don't you, sir?

21 A Well, you test it --

22 Q Excuse me. Would you answer that question.

23 A Yes.

24 Q If you don't test, then you can't find that it's there.

1 can you, sir?

2 A I assume that's correct, sir.

3 Q So if you've got a product that's manufactured in
4 August of 1978 and you don't test it, you don't whether that
5 does or does not have dioxin, do you, sir?

6 A The way you have asked me that question, I would have
7 to say yes, but I disagree with the way you're asking me that
8 question.

9 Q Well, let's bring it down to date. You do know that
10 you did discover to your surprise that dioxin was in the tank
11 car in Sturgeon; you do know that, don't you, sir?

12 A Yes, sir.

13 Q Now, was there anything you believe happened with that
14 one particular batch to cause dioxin to be in that tank car?

15 A I don't know, sir.

16 Q As far as you know, it was being made the same way
17 that orthochlorophenol was being made all throughout '78, wasn't
18 it, sir, so far as you know?

19 A I don't know, sir. I don't know.

20 Q Well, that's my question. As far as you know, it was
21 being made the same way, wasn't it, sir?

22 A I don't know that. I would not have any knowledge
23 as to how it was exactly made.

24 Q That's correct, sir, and it would -- and we did

1 know that it was there in January of '79, don't we, sir?

2 A From the analysis of, I guess it was EPA, and I guess
3 some subsequent analysis, we found some dioxin in there, yes,
4 sir.

5 Q You do know that it was found in the 2,4 dichlorophenol
6 in February '79; you know that, too, don't you, sir?

7 A Yeah, but wasn't there some conflicting data --

8 Q Excuse me, could you answer that question please, sir.

9 A On one analysis there probably was, sir, yes.

10 Q Is it your belief that it was just one analysis?

11 A I think we embarked -- if I recall, sir, we embarked
12 on a very thorough analysis of trying to find the levels of
13 dioxins in the product and see if they represented a hazard,
14 and studies went on for great length, sir. I don't know the
15 details.

16 Q I'm asking you whether or not you -- whether you
17 know that it was just one analysis that found the TCDD --

18 A Yes, there was some analysis, yes, sir.

19 Q You do know that Nebraska found it and you do know
20 that your laboratory found it in 2,4 di --

21 A They found some, yes, sir. There was some levels,
22 but wasn't there was discrepancies of data? I don't recall.

23 Q Well, you can see in the -- you are aware of the
24 fact that some of your 2,4 DCP spilled in the plant in February

1 of '79?

2 MR. MUSGRAVE: Could you identify that exhibit, Mr.
3 Carr?

4 MR. CARR: 1121A.

5 MR. MUSGRAVE: 1131?

6 MR. CARR: 1121 and 1168 and 1169.

7 A You say a spill in February?

8 Q A spill took place in February of '79 at the plant.

9 A 2,4 dichlorophenol?

10 Q Yes.

11 A I didn't know that, sir.

12 Q And you didn't know that Nebraska analyzed it, that,
13 first of all, OSHA analyzed it and said it's got 300 parts per
14 billion, half of which is 2,3,7,8 TCDD?

15 A When did they analyze this?

16 Q Excuse me Mr. McPhillips. Do you know that, sir?

17 A OSHA analyzed it?

18 Q Yes.

19 A I don't recall that, sir.

20 Q Are you aware of the --

21 A It's been a long time. I'm not saying I didn't know
22 it, but I don't recall it.

23 Q Are you aware of the fact that your own laboratories
24 at Dayton analyzed it and found 479 parts per billion of TCDD,

1 657 parts per billion of TCDD, 494 parts per billion of TCDD,
2 and 489 parts per billion of TCDD?

3 A That's what it says, sir.

4 Q I'm asking you, sir. I know what it says, and it's
5 been in evidence for some time. I'm asking you whether or not
6 you in marketing were aware of the fact that your own laboratory
7 found that in your 2,4 dichlorophenol?

8 A We found some levels --

9 Q My question is are you aware --

10 A Yes, sir.

11 Q Now you know that this was or do you know that this
12 is what was spilled in February of '79?

13 A No, I was not aware of the spill in February of '79
14 in the plant, sir.

15 Q Are you aware of the fact that it was found not only
16 in the orthochlorophenol-crude, not only in the 2,4 dichlorophenol,
17 but it was also found in the Santophen?

18 A Of tetras?

19 Q Yes.

20 A There's various levels, yes, sir, but I think we
21 quickly changed the process to solve that.

22 Q Mr. McPhillips, if you don't mind, just limit your,
23 if you could, --

24 A It's difficult, sir.

1 Q Because you told me --

2 A I'm in marketing. I have a tendency to talk a lot.

3 Q You told me earlier that you didn't know that you
4 found dioxin in your -- all your chlorinated phenols in '79.

5 A Sir, you know --

6 Q Excuse me, Mr. McPhillips.

7 A Go ahead.

8 Q And you do in fact know that dioxin was found in all
9 of your chlorinated phenols in '79, don't you, sir?

10 A Yes, there was some analysis of that, but there was
11 also some analysis of some samples, weren't there, that said
12 there wasn't none in there, too, right? You're giving half the
13 story probably.

14 Q Mr. McPhillips, believe me, we have thousands of
15 exhibits here, the full story has -- if I am asking a question
16 that you think gives half the story, your lawyer here has the
17 opportunity to clarify it.

18 A Yeah, but why do you only give me half the story.

19 Q Because, Mr. McPhillips --

20 A I mean, it's been six years.

21 THE COURT: Mr. McPhillips, answer the question.

22 Don't make any comments about that or your opinions about that.

23 They are not relevant, they are not part of the question, they

24 are not proper. Your attorney will have an opportunity to ask

1 any questions when he in his professional judgment feels need
2 to be clarified from this cross examination. It's not your
3 judgment to make. Now just answer the questions.

4 THE WITNESS: My apologies.

5 Q Now, Mr. McPhillips, are you aware of the fact that
6 in 1979 -- this is 1301 that I'm showing to the jury now --
7 analysis of products in 1979 showed total dioxins in some
8 products to be in the thousands parts per billion of dioxins?

9 MR. MUSGRAVE: Let my objection be renewed to showing
10 that exhibit to the jury on the same basis as before, that is,
11 it reflects interferences and reflects them as being findings.

12 THE COURT: Objection is overruled as it was before.

13 A Yeah, there's a whole bunch of dioxins, yes, sir, but
14 there's --

15 Q My --

16 A But there is convoluted data, if I recall it, there
17 was some problems in the analysis, a question of how we were
18 analyzing the material, sir, if I recall during that -- if
19 you're talking early '79 especially.

20 Q Now these are samples, Mr. McPhillips, for your
21 information taken from data from tests as late as 1982 on pre-
22 existing manufactured products. These are not to suggest that
23 these were the tests -- these are the dates the products was
24 manufactured, not the date of the test, sir.

1 A Oh.

2 Q Now, Mr. McPhillips, if these products that were being
3 manufactured in '79 had levels of tri and tetra dioxins and
4 total dioxins in them, is it not a possibility, sir, if you
5 didn't examine your product or test your products in between
6 March of '78 or April of '78, I think is the latest, and
7 February of '79, isn't it possible, sir, that you had dioxins
8 in all of those products being manufactured in '78?

9 MR. MUSGRAVE: Objection.

10 Q In view of the fact if this exhibit is correct, in
11 view of the fact that you found them in '79?

12 MR. MUSGRAVE: Object, speculation and conjecture,
13 no foundation that this witness would have the expertise even
14 to speculate as to that.

15 THE COURT: Objection is overruled. It does not call
16 for that.

17 A The way you're asking that question I got to --
18 the way you're leading me down the path, I got to answer that
19 question yes, but I disagree with it, sir.

20 Q No, you disagree --

21 A You're making --

22 Q Mr. McPhillips, may I ask you the question. You
23 disagree, do you not, sir, that these are true figures, don't
24 you, sir?

1 A Do I disagree?

2 Q You disagree, you're saying --

3 A I don't know if they are or not, sir.

4 Q Isn't that --

5 A I assume if we generated them, sir --

6 Q Assume that they are correct.

7 A Yes, sir.

8 Q And your knowledge tells you that if it was found
9 there in 1979, that it could have been there in '78, and if
10 we didn't test in '78, it could have been there and we would
11 never have known it, isn't that correct, sir?

12 A Not totally, sir. I can reverse that for you.

13 Q Excuse me, could you answer that question.

14 A The way you've asked that question you could assume
15 that, yes, sir.

16 Q Now, Mr. McPhillips, inasmuch as you had not done
17 testing with your products in -- prior to February of '79
18 you personally were surprised by the fact that it was found
19 there, weren't you, sir?

20 MR. MUSGRAVE: Object to that. The question assumes
21 that there was no testing prior to January of '79, and that's
22 contrary to all the evidence.

23 Q Other than what we've mentioned.

24 THE COURT: With that addition, overruled.

1 MR. MUSGRAVE: That's also contrary to the evidence,
2 your Honor, Other than what this gentleman might remember I
3 think would be the appropriate question. I object to it.

4 THE COURT: Objection is overruled.

5 Q Would you answer the question, sir.

6 A Sir, there is no dioxins in 19 -- when we analyzed
7 for the product in 1976 -- in '78.

8 Q Mr. McPhillips, you didn't listen to my question.
9 Would you listen to my question please.

10 A I'll listen to your question.

11 MR. CARR: Could you read the question to him.

12 (At this time the court reporter read back the last
13 question.)

14 MR. MUSGRAVE: Repeat the same objection as previously
15 made.

16 THE COURT: Same ruling.

17 A Well, I disagree with your statement, sir.

18 MR. CARR: Your Honor, would you direct the witness

19 --

20 A And I will --

21 THE COURT: Mr. McPhillips --

22 A -- but to answer the question, yes.

23 THE COURT: Wait a second. Mr. McPhillips, I have
24 told you, and I'm not going to tell you again. Answer the

1 question. Your disagreement with the question, the way you
2 been stating the disagreement --

3 THE WITNESS: The way he asked me the question --

4 THE COURT: -- is not proper. Just answer the ques-
5 tion.

6 Q Matter of fact, you wrote a memo expressing surprise,
7 didn't you, sir?

8 A Yes, sir.

9 Q And I didn't make up this memo, did I, sir?

10 A What memo, sir?

11 Q You prepared the memo.

12 A What memo?

13 Q The memo that you said that you wrote expressing your
14 surprise.

15 A I didn't say I wrote a memo of surprise.

16 Q You didn't say that you just wrote a memo expressing
17 surprise?

18 A You said that, sir.

19 Q No, I said you wrote one, didn't you, sir?

20 A Yeah, I guess I did, sir, yes.

21 Q Yes, you did.

22 MR. CARR: Would you mark that as a Plaintiffs'
23 Exhibit?

24 (At this time Plaintiffs' Exhibit 1553 and 1553A was

1 marked for identification.)

2 Q Mr. McPhillips, I'll hand you now what's been marked
3 Plaintiffs' Exhibit 1553 and ask you, first of all, is 1553A
4 a blowup of 1553, sir?

5 A It looks that way, sir.

6 MR. CARR: Offer --

7 Q Oh, do you recognize that as a memo made by you dated
8 February 20th, 1979, sir?

9 A Yes, sir.

10 MR. MUSGRAVE: This is 1553?

11 MR. CARR: It is. Offer 1553 and 1553A into evidence
12 if it please the Court.

13 THE COURT: Any objections?

14 MR. MUSGRAVE: No objection.

15 THE COURT: Admitted without objection.

16 (Exhibit passed to the jury.)

17 Q Mr. McPhillips, this -- in this memo -- first of
18 all, you make one inadvertent error. You say 800 parts per
19 million. In fact, you meant 800 parts per billion, did you
20 not, sir?

21 A Sir, I don't know. I mean I don't recall. I mean,
22 this is 1979, sir, and I -- I don't recall.

23 Q Well, let me refresh your --

24 A The only reason is somebody gave me that information.

1 sir.

2 Q Well, you might have heard it million. In fact, you
3 can see according to Exhibit 1301A the total dioxins in that
4 tank car is 824 parts per billion. You see that, don't you,
5 sir?

6 A I see 824, but I don't see any reference to the parts
7 per billion.

8 Q Right up there, ppb.

9 A Oh, okay. There it is. I'm sorry.

10 Q So while your memo describes it as 800 parts per
11 million in that tank car, in fact I want you to assume that you
12 were in error, that in fact it was 800 parts per billion.
13 Would you do that, sir?

14 A Thank you, sir.

15 Q I'm sorry?

16 A Yes, sir.

17 Q Now, in this --

18 A My grammar has never been the best.

19 Q I'm sorry?

20 A My grammar has never been the best.

21 Q Mr. McPhillips, in 1553 you state that it's a surprise
22 finding, don't you, sir, of dioxin?

23 A Yes, sir.

24 Q And by that I take it to mean that you were, that you

1 at Monsanto, not just you, that you say here that you were
2 surprised, isn't that right, sir?

3 A That's what I said, yes, sir.

4 Q And now, you make the suggestion that you ought to
5 analyze for dioxin in PCP and 2,4 dichlorophenol and Santophen-
6 1, don't you, sir?

7 A Yes, sir, I do say that.

8 Q And they accepted, whether they did it because you
9 recommended it or did it for some other reason, they did indeed
10 re-analyze their product, didn't they, sir?

11 A Sir, I think they already started before -- by the
12 time I wrote this memo that was already started.

13 Q Well, in any event, they did analyze it, didn't they,
14 sir?

15 A Yes, sir.

16 Q Now, Mr. McPhillips, you point something out here
17 that I asked you of earlier, that is, the selling of your
18 chlorinated phenols to your customers would be adversely affected
19 if they can see that there were health effects in the chlorinated
20 phenols that they bought from Monsanto; do you see that, sir?

21 A Yes, sir, I see that.

22 Q Now --

23 A I didn't say health effects though, sir.

24 Q Well, what other reason would they not want to buy

1 your material with -- if they found out that dioxin was in it
2 other than health effects?

3 A Sir, they could just be just emotional, just emotional
4 reaction.

5 Q Their emotions would be associated --

6 A Whether it's founded or not, sir.

7 Q Their emotion would be associated with the fact that
8 their instincts would tell them, their emotions would tell them
9 they don't want to be contaminated with dioxin. That makes it
10 emotional, doesn't it, sir, but it's dealing with health effects,
11 isn't it, sir?

12 A If there is a health effect --

13 Q If there is --

14 A -- but just because there's dioxin in it --

15 Q Excuse me, Mr. McPhillips. If there is a health effect

16 --

17 A If there is a health effect.

18 Q Your customers, and whether there is --

19 A I would be concerned also, sir.

20 Q Mr. McPhillips, would you let me finish my question.

21 A I apologize, sir.

22 Q You believe that because of the way the customers look
23 at dioxin and health effects on dioxin that this could seriously
24 damage the sale of your products, don't you, sir, as stated in

1 this memo?

2 A The way you asked that question, yes, sir, yes.

3 Q Is there any other way? You meant that -- you said,
4 but I am afraid --

5 A Sir, you're asking --

6 Q Mr. McPhillips, let me finish my question please.

7 A Yes.

8 Q You said in this memo, did you not, but I am afraid
9 this is not the case with our PCP, 2,4 DCP, S-1 customers and
10 the reaction could be detrimental to our business from a sales
11 environmental standpoint, period, end of quote; you say that,
12 don't you, sir?

13 A Yes, sir, I say that.

14 Q And you're making that statement in this memo because
15 you at that time believed that the customer's perception of
16 dioxin in your product would make them not want to buy it be-
17 cause of possible adverse health effects, isn't that correct,
18 sir?

19 A The potential existed, sir, but I think --

20 Q Isn't that correct, sir?

21 A Yes, sir, the way you asked me that question, yes, sir.

22 Q And you because of that recommended that the entire
23 chlorophenol complex be looked at to avoid another surprise and
24 also to take necessary action, if any, isn't that correct, sir?

1 A Yes, sir.

2 Q Now, was one of the possible actions that might be
3 taken, would that be notifying customers that dioxins were in
4 the product?

5 A That that would be one of the actions?

6 Q Yes.

7 A That would be one of the actions if the dioxins in
8 the product represented a hazard in the use of the safety of
9 the product, yes, sir, only if it was a human safety or eminent
10 hazard.

11 Q Another one of the actions might be to change the
12 manufacturing process as it existed in order to eliminate as
13 much as possible by that change the formation of dioxin?

14 A Yes, sir.

15 Q Any other action that you think of that you might
16 have meant by the words "take necessary action"?

17 A I can't think of any right now, sir.

18 Q Now, at this point in time Lane and Fink, Sterling
19 Drug Company, one of their divisions, you were having a difficult
20 time with Lane and Fink convincing them that they should stick
21 with Santophen, weren't you, sir?

22 A Yes, sir.

23 MR. MUSGRAVE: Point in time being?

24 Q In '79, early '79 at the period of time we're talking

1 about.

2 (Plaintiffs' Exhibit 1554 was marked for identification.)

3 Q Handing you Plaintiffs' Exhibit 1554 and ask do you
4 recognize that -- first of all, is what will be 1554A a
5 blowup of 1554?

6 A It looks that way, sir, yes, sir.

7 (Plaintiffs' Exhibit 1554A was marked for identification.)

8 MR. CARR: Offer 1554 and 1554A if it please the Court.

9 THE COURT: Any objections?

10 MR. CARR: I haven't given you a copy. I'm sorry,
11 I got diverted.

12 MR. MUSGRAVE: We would object on the basis that it
13 deals with Santophen, that it's after the spill, your Honor,
14 it's irrelevant and immaterial and not probative on any issue
15 when weighed against other considerations.

16 THE COURT: It's admitted over objection.

17 (Exhibit passed to the jury.)

18 Q Now, Mr. McPhillips, in the exhibit that we just
19 looked at, 1553, the one dated February 20th, '79 --

20 A Yes, sir.

21 Q You recognize that your business could be, your
22 chlorinated phenol business could be hurt quite badly if the
23 customers learned -- if there was in fact dioxins in your
24 chlorinated phenols and if your customers learned of the presence

1 of dioxins in the chlorinated phenols, didn't you, sir?

2 A That was a potential concern, sir, yes, sir, but it
3 wasn't something we were going to hide.

4 Q Well, I question --

5 A You're representing --

6 Q My question specifically is you recognized at that
7 time in February of '79 that if dioxins were present in your
8 chlorinated phenols and if the customers learned of that
9 presence your business would be hurt?

10 MR. MUSGRAVE: It says could be, Mr. Carr.

11 Q Could be hurt.

12 A Could be. That was a position that I felt was potential,
13 yes, sir. Not all customers, but a potential threat, yes, sir.

14 Q Well, one important customer is discussed in Exhibit
15 1554, that is, Lane and Fink.

16 A Yes, sir.

17 Q Lane and Fink was a very important customer of your
18 Santophen-1 process, wasn't it, sir?

19 A Santophen-1 product, yes, sir.

20 Q And they here or in 1554 are concerned with the pos-
21 sible safety of the germicides made in the -- from a phenol
22 base, aren't they, sir?

23 A Phenolic, yes, sir.

24 Q As a matter of fact, you point out --

1 A It's more environmental, sir, not health.

2 Q Well, the environmental --

3 A They're concerned for environmental.

4 Q -- environmental aspect, when you talk about environ-
5 mental safety, you're only talking about it insofar as it's
6 going to affect the ultimate health of human beings, aren't
7 you, sir?

8 A Eventually, yes, sir, but it's --

9 Q Yes. So when one wants to -- when one is talking
10 about the environment that he lives in, he's wanting to live
11 in an environment that doesn't have harmful toxic substances
12 in it. That's the reason you're trying to protect the environ-
13 ment, isn't that correct, sir?

14 A That's part of it, sir.

15 Q Well, an important part of it, isn't it, sir?

16 A Yes, sir.

17 Q Matter of fact, the very name, the EPA is Environ-
18 mental Protection Agency, isn't that correct, sir?

19 A Yes, sir.

20 Q And you mentioned the importance of that issue and
21 the safety on the environmental issues when you mentioned
22 dioxins, don't you, sir?

23 A Say that again.

24 Q You recognized the importance of the environment and

1 safety in the environment when you mentioned dioxins and put
2 it under the category of environmental issues, don't you, sir?

3 A Yes, sir, but I have a question mark behind it, too,
4 sir.

5 Q Well, the question mark at that point --

6 A Question marks.

7 Q The question mark at that point is you're not yet
8 sure at that time that dioxins are in your products other than
9 the OCP that was tested, isn't that right, sir?

10 A I think that was, yes, in that time table, yes, sir.

11 Q At that point in time there's still a question mark?

12 A A question mark.

13 THE COURT: Mr. Carr, is this a good point to break
14 for lunch?

15 MR. CARR: Yes, your Honor, it is.

16 THE COURT: Ladies and gentlemen, we'll break at this
17 time. We will resume again at one o'clock, and I will remind
18 you that you're not -- the admonishments that I gave you
19 earlier will apply during this break also. Gentlemen, could I
20 see you at the bench for just a moment please.

21 (At this time the jury left the courtroom and the
22 following proceedings were had at the bench.)

23 THE COURT: Okay. I would suggest that you discuss
24 with this witness something about courtroom etiquette and

1 waiting until a question is asked to respond and answering the
2 question that's asked.

3 MR. MUSGRAVE: Okay.

4 THE COURT: I think it would be in his interests and
5 it would be in your interests since there is a motion pending
6 about asking that you be held in contempt for this type of
7 action before.

8 MR. MUSGRAVE: I will talk with him.

9 THE COURT: Okay, fine.

10 (At this time Court recessed for lunch.)

11 JOHN McPHILLIPS,

12 resuming the witness stand, having been previously sworn,
13 testified further as follows:

14 CROSS EXAMINATION (Continued)

15 MR. CARR: Give the witness Exhibit 1326 please,
16 Plaintiffs' Exhibit.

17 Q Mr. McPhillips, could I have --

18 MR. CARR: The jury has been passed this exhibit once
19 during the examination of Mr. Edwards, and I don't think they
20 have their exhibits with them, so I have another copy made for
21 them.

22 THE COURT: Which number is that?

23 MR. CARR: 1326.

24 THE COURT: Thank you.

1 (Exhibit passed to the jury.)

2 Q Now, Mr. McPhillips, this exhibit is a memo that went
3 from Mr. Edwards, who has testified here earlier, to Dr. Wilson,
4 who has also testified here, and you received a copy of it, is
5 that correct, sir?

6 A That's what it states, yes, sir.

7 Q And it addresses the point that we had discussed
8 earlier with you, that is, the fact that the presence of TCDD
9 in the chlorophenols is of very high importance to the con-
10 tinuation of those chlorophenols, doesn't it, sir?

11 A It states that, yes, sir.

12 Q And it points out that any dioxins present in
13 Santophen-1 may be sufficient to discourage a customer, even
14 though it does not present any health hazard; do you see that,
15 sir?

16 A I see that, yes, sir.

17 Q Now, you understood that to be the case, did you not,
18 sir?

19 A That was part my belief, yes, sir.

20 Q Well, did you or did you not believe that any dioxins
21 present in Santophen-1 might be sufficient to discourage the
22 customer from using it?

23 A Some customers, yes, it could be, yes, sir.

24 Q And what they would do, even though you might think

1 that it doesn't represent a health hazard, they would use their
2 own judgment and could decide, even though it may not be true,
3 they could decide that they don't want that product because it
4 has dioxins in it, isn't that correct, sir?

5 A Oh, I don't know if I could agree to that.

6 Q Well, why would the presence of dioxin discourage a
7 customer under such circumstances then?

8 A It could be just clearly an emotional issue.

9 Q Well, again it's emotions connected with health and
10 safety of their employees and their customers, isn't that correct,
11 sir?

12 A Yes, sir.

13 Q It is a -- it is them or the customer exercising
14 its or his right not to use something that might have, even
15 though it would be extremely remote, that might have a health
16 hazard associated with it, is that correct, sir?

17 A The way you state that, yes, sir.

18 Q And do you believe, Mr. McPhillips, that your customers
19 are entitled to know whether or not there are dioxins present
20 so that they can exercise their judgment as to whether or not
21 it's something they want to use and be exposed to?

22 A Not really, sir, no.

23 Q You believe that they don't have the right to make
24 that decision, is that correct, Mr. McPhillips?

1 A I don't know if I would put it that way, sir, but if
2 you let me expand --

3 Q Well, that's the way I'm putting it, Mr. McPhillips.
4 Do you believe that they have the right to make the judgment
5 for themselves as to whether or not they want to be exposed to
6 dioxin?

7 A In my opinion, no, sir, I don't think it's totally
8 necessary.

9 Q Well, in your opinion -- whether it's necessary or
10 not, I'm asking you whether or not you believe that they have
11 the right to make the decision, yes, I'm willing to be exposed
12 to dioxin or no, I'm not willing to be exposed to dioxin? Do
13 you believe they have the right to make that decision for them-
14 selves?

15 MR. MUSGRAVE: Object, this question has been asked
16 and answered.

17 THE COURT: Overruled.

18 A I think I answered it, yes, sir.

19 Q And you're saying is that they don't have this right,
20 isn't that what you're saying, Mr. McPhillips?

21 A Yeah, I guess. It's not a question of right.

22 Q Is that -- is your belief that the customers don't
23 have that right, is that a belief that is adhered to or accepted
24 by others at Monsanto that you have knowledge of?

1 A I don't know, sir.

2 Q Are you speaking then just for yourself?

3 A I'm speaking for myself, sir.

4 Q All right. Now, and in your judgment the people
5 that buy the product from you do not have the right to know
6 whether or not there are dioxins in that product?

7 A They have the right to know if it -- I believe they
8 have a very firm right to know if the product and if the level
9 of dioxin represents a hazard to them, to their employees or
10 to their customers.

11 Q Well, do they have the right --

12 A I definitely agree with it. Our position and all our
13 analyses we felt that it was not a hazard or eminent hazard,
14 that the product itself -- we had 30 years or 20 years of
15 safety data and 30 years of sale of the product, the customer
16 has sales of the product, they had EPA registrations of their
17 formulations, which required safety data and human safety data,
18 and they had to get the approval of the EPA before they sent it,
19 so they were fully aware of the safety of the product and in
20 their belief obviously they felt it was safe because they con-
21 tinued to use it. I'm assuming they're continuing to use
22 orthobenzochlorophenol, sir.

23 Q Mr. McPhillips, what you did though, what you related
24 was that you made the judgment that the dioxin present doesn't

1 represent a health hazard.

2 A I did not make that, my people did, sir.

3 Q Well, do you believe that your customer has the right
4 to determine for himself whether or not whatever dioxin might
5 be there represents a health hazard or is that something that
6 Monsanto makes for him?

7 A Well, the customer has the right to test the product
8 fully and ask the fully questions in terms of safety data. We
9 supplied all the safety data that they historically requested
10 of the product. We did not hide a thing, sir.

11 Q Are you saying then that they have -- if they want
12 to know if dioxin is present, that they should do the testing
13 themselves?

14 A No, sir.

15 Q Sir?

16 A No, sir, I didn't say that.

17 Q Well, let me ask it again then. Do you not believe --
18 well, take yourself, for instance, don't you believe that you
19 have the right to decide whether or not you want to expose
20 yourself to the risks of whatever chemicals might be in a
21 product that you're buying?

22 A Do I have the right?

23 Q Yes.

24 A I have the right to feel if it's a safe chemical, yes.

1 I do.

2 Q That's what I'm asking. Now --

3 A What the impurity is -- do they have the right for
4 an impurity, and I'm saying I don't necessarily agree that they
5 have the right I don't know if -- that's a strong word, sir.

6 Q Mr. McPhillips, are you saying that you don't have
7 the right to know what's in a product that you're buying?

8 A The right?

9 Q Yes, the right.

10 A Oh, I don't know if I need a right. I guess --

11 Q Excuse me. Do you believe that you have the right to
12 know what's in the product that you're buying?

13 A The way you're phrasing that question, yes.

14 Q Now, if you believe that you have the right to know
15 what's in the product that you're buying, then you must also
16 believe that the customer has the right to know what's in the
17 product that your customers are buying, isn't that correct, sir?
18 You wouldn't take a right to yourself and deny it to the cus-
19 tomer, would you, sir?

20 A Sir --

21 Q Could you answer that question, Mr. McPhillips.

22 A I disagree with you, sir --

23 Q Are you saying that --

24 A With the way you're asking me that question.

1 Q -- you believe that you have the right to know, but
2 yet your customers do not have a right to know, is that what
3 you're saying?

4 A I'm saying if I want to have --

5 Q Could you answer that --

6 A -- the right to know, sir, I'll ask for the right to
7 know. If I don't have the right -- just because I have the
8 right, doesn't mean I asked for it, sir.

9 Q I'm not asking you that, Mr. McPhillips. My question
10 is you believe that you have the right to know what's in the
11 chemicals that you're buying and being exposed to, don't you,
12 sir?

13 A If I ask for it, yes, sir.

14 Q Oh, you have the right only if you ask for it?

15 A If I ask for it. I'm assuming --

16 Q Excuse me. Is that the only time that you consider
17 that one has a right is when he asks for it?

18 A Or when it represents an eminent hazard to health,
19 safety to the employees or my employees or to the consumers,
20 what have you.

21 Q Then if you don't know that there's a possibility of
22 dioxin in a product, you would never ask, would you, sir, if
23 you don't know that's it there, and if you never ask, then you
24 have no right by your definition of the right to know, is that

1 correct, sir? Did I understand that correctly?

2 A I don't know if I understood the question right.

3 Q Well, let me start over again. Do you believe that
4 you have a right to know what's in the chemicals that you're
5 buying and that you're using?

6 A If I ask for the right, yes, sir.

7 Q All right. Then it's a conditional right? You have
8 the right to know only if you ask the question, is that correct,
9 sir?

10 A If that's the way you want to state it, yes, sir.

11 Q It's not the way I want to state it. Is it correct,
12 sir, that you believe the right exists only if you ask the
13 question?

14 A The right exists if it represents an eminent hazard
15 also.

16 Q That's another question, sir. Aside from whether
17 or not it's a hazard or not a hazard, do you believe that you
18 have the right to know what's in the chemicals that you're
19 buying from a given source?

20 A Yes, if I ask for it, yes, sir.

21 Q Then it's still a conditional right.

22 A Yeah.

23 Q If you don't ask for it, then you don't have the
24 right to know, if I understand you correctly?

1 A I have the right to know if the chemicals that I'm
2 buying, the food I eat, if it represents an eminent hazard or
3 potential health to me, to my employees, to the consumers --
4 excuse me -- I have the right to know that also, sir, but to
5 sit there and ask for every little impurity in a product, what
6 have you, I don't know if I, you know, have to -- I don't
7 think I want to be that hyper in this society.

8 Q I'm not asking you whether or not you want to be that
9 hyper. I'm simply asking you whether or not you believe you
10 have a right, even though you may not ever use that right and
11 may believe that it's foolish to use that right, I'm just asking
12 whether or not you believe that you have the right to know?

13 A I have the right to know --

14 MR. MUSGRAVE: Object, this has been asked and
15 answered several times.

16 Q All right. Then you do believe --

17 A I don't know how many times I've got to answer that.

18 Q Yes, but now you're saying it differently. You have
19 the right to know --

20 A I have the right to know if I ask for it, yes, sir.

21 Q So --

22 A You interrupted me.

23 Q Do you believe you have the right to know if the
24 seller has the knowledge that's in it and that seller knows

1 that if you knew that dioxin was in it that you would then
2 decide not to buy that product, do you believe that the customer
3 has the right to know under those circumstances?

4 A No, sir, I don't.

5 Q All right.

6 A Cause that the judgment we made.

7 Q What you're saying then is that --

8 A It's not a question of right.

9 Q -- you and you at Monsanto have the right to decide

10 --

11 A You're asking me my opinion and I gave you my answer
12 to my opinion. I'm not -- you know, I represent -- I work
13 for Monsanto, but you might ask that question of somebody else

14 --

15 Q Oh, I have asked it of others, Mr. McPhillips, as I'm
16 asking it of you, and I'm just trying to find out if there is
17 a variance between what you say and what Dr. Wilson says and
18 Dr. Rousch or Dr. Paget or if you're all saying the same thing.
19 And is your belief that a customer, what they don't know won't
20 hurt them?

21 MR. MUSGRAVE: Object to that, that's not what the
22 witness has said.

23 Q I'm asking, is that correct, sir?

24 THE COURT: Objection is overruled.

1 A I didn't say that, sir.

2 Q All right. Then they have to know enough about the
3 product then to be able to design a question to ask whether or
4 not there are dioxins in it, is that correct, sir, before they
5 -- before they have the right to know?

6 A No, sir. If we felt they represented it an eminent
7 hazard to the customer, I assure you, sir, we would immediately
8 tell the customer that.

9 Q But, Mr. McPhillips, that's not what I'm asking you.
10 You understand in this memo of March 19th, you recognized that
11 some customers would not buy your Santophen even though in your
12 judgment it doesn't present any health hazard. That's recognized
13 by Monsanto, isn't it, sir?

14 A That was a potential threat in my opinion. I think
15 Don Edwards agreed to that in that memo, yes, sir.

16 Q All right. What I'm saying then, that this -- you
17 acknowledge that some customers would buy it even if it's got
18 dioxin in it, and you know that.

19 A Yes, sir.

20 Q And so your solution or is it -- you consider an
21 appropriate solution -- if you know that I'm not going to buy
22 a retreaded tire, then I'm a person that I'm just against
23 retreaded tires, but you know as a manufacturer, a person that
24 retreads that, that it's a good safe carcass and that the tread

1 was put on right and you've got it painted real good so that it
2 doesn't show that it's retreaded, if I come in there and buy
3 that tire and you know that I won't buy the tire if you tell me
4 it's a retread, do you consider that you under those circumstances
5 have the right to keep from me the information that it's a
6 retread?

7 A That particular case you just talked to me?

8 Q Yes.

9 A I don't know. I guess if I walk in as a consumer,
10 I'd ask some questions.

11 Q But assume you didn't ask the questions. You're going
12 in there --

13 A I would ask -- you'd ask me what I would do and I'd
14 ask some questions.

15 Q -- it looks like a new tire, it's painted like a new
16 tire, but you, the seller of it, you know it's a retread, and
17 you do know that some people won't drive a retread tire or use
18 one, you know that, don't you, sir?

19 A I think in those particular cases there's a law that
20 requires it.

21 Q Excuse me. Do you not know, Mr. McPhillips, that some
22 people won't put on their car a retreaded tire? Even though
23 they're a third of the price of new tires and may be just as
24 good, you know that, don't you, sir?

1 A That's a possibility, sir.

2 Q Well, as the seller of those tires, do you think that
3 the customer has the right to know that you're selling him a
4 tire, a retreaded tire?

5 A The customer has the right? I think there's laws
6 that probably require him to do that.

7 Q Aside from the laws, Mr. McPhillips, I'm asking you
8 aside from the laws, do you think the customer has the right to
9 know and that you have the obligation to tell him that that's
10 a retreaded tire aside from the law?

11 A If you're talking about the tire, I guess it would be
12 a tire. You tell me a car, put it on a car and I disagree with
13 you about a car, because half the time we all buy used cars and
14 they're lemons.

15 Q Mr. McPhillips, could you confine your answers to the
16 questions.

17 A The question regarding your tire, I guess you have the
18 right to know about a retreaded tire.

19 Q There's no question in your mind that he would have
20 the right to know that that's not a new tire, that that's a
21 retreaded tire?

22 A Well, I think if it's a third the price --

23 Q Excuse me, there is no question in your mind about
24 that, is there, Mr. McPhillips?

1 A Yes, there is.

2 Q There is a question in your mind?

3 A I would think if it's one third the price of a regular
4 tire, I think you would have to start asking some questions,
5 and I think that was the example you gave me, that it was one
6 third the price.

7 Q No, I didn't say that --

8 A -- of a normal tire.

9 Q I didn't say, Mr. McPhillips, that you were selling
10 the tire at that time for one third the price. I didn't suggest
11 that at all. You're selling it for the price that you would
12 get for any tire. I didn't suggest that.

13 A Okay.

14 Q The customer thinks he's getting a tire that isn't
15 retreaded and you know that he is getting a tire --

16 A If he gave me the same warranties of a --

17 Q Excuse me. Do you have the right to know that it's
18 a retreaded tire?

19 MR. MUSGRAVE: It's been asked and answered, your
20 Honor.

21 THE COURT: I don't think so from that last answer.
22 Overruled.

23 A Would you ask the question again?

24 Q Simply does the customer have the right to know that

1 he's buying a retreaded tire?

2 A The way you're asking me the question, yes, sir.

3 Q Is there any circumstances under which he would not
4 have the right to know that he's buying a retreaded tire?

5 A I don't know if it's a question of right, sir.

6 Q No, my question is of right, sir. Is there any
7 question in your mind but under all circumstances that you can
8 think of a customer coming into a tire shop has got the right
9 to know whether or not he's buying a retreaded tire?

10 MR. MUSGRAVE: Object to this line of questioning,
11 your Honor. It's calling for speculation and conjecture as to
12 any set of circumstances, some imaginary person might not have
13 the right to know and this could go on forever, ad infinitum
14 as to potential circumstances. This is pure speculation and
15 conjecture, beyond the competency of any witness to testify to.

16 THE COURT: Objection is overruled. It's a proper
17 analogy and a view of the area that this witness is in, it's a
18 proper question.

19 A I guess -- you're asking my question -- I don't
20 know if I have to have the right every time that it's a retreaded
21 tire, sir --

22 Q All right. What --

23 A Because I think there's some cases probably somewhere,
24 somehow, I can think about it long enough I can up with a case

1 where you don't need the right.

2 Q Think about it please, and if you can think of a
3 single episode where the customer does not have the right to
4 know that he's buying a retreaded tire, please tell me of the
5 circumstances.

6 A Sir, I can't think of one.

7 Q Well, think as much as you can.

8 A If the product has the same warranty or warranties
9 that satisfy me and the price is right and I -- and the warranty
10 satisfies my needs of what I want to do, then it's my responsi-
11 bility, it's my money. He's just selling it to me, I mean,
12 that's the case as far as I'm concerned. I mean, if he's giving
13 me the warranty to satisfy me and the price is correct, I'll
14 buy the tire. I mean, I don't care if it's retreaded or not.

15 Q No, I didn't ask you that, sir. I just asked you --

16 A Well, you gave me a case where I don't think I need
17 the right and there's a case I say I don't need the right.

18 Q I asked you whether there's any circumstance under
19 which you believe the customer would not have the right to know
20 that he's buying a retreaded tire?

21 A And I gave you that case, sir.

22 Q And what is that circumstance?

23 A I just gave it to you, sir.

24 Q What is it?

1 A If I walked into a --

2 Q No, no, you're adding if I walked in, but I'm talking
3 about a customer now.

4 A I'm a customer. You're asking me if I was a customer
5 --

6 Q Mr. McPhillips, could you just limit your answers to
7 what I'm asking you.

8 A I'm trying to, sir, really.

9 Q Is there any circumstances under which a customer
10 would not have the right to know that he's buying a retreaded
11 tire?

12 A And I'm telling you in the case personally, if you're
13 asking me my opinion --

14 Q No, I'm asking you your opinion whether there's any
15 circumstance under which a customer, a third person coming into
16 the store. You're the tire dealer.

17 A I just described a case where I think he has a legiti-
18 mate right.

19 Q Well, I understand he has a legitimate right. I'm
20 asking you where in your mind he does not have the right to know.

21 A I can't think of any right now, Mr. Carr, I'm sorry.

22 Q Now, Mr. McPhillips, the customers, your customers,
23 would they --

24 A They're Monsanto's customers.

1 Q Would they have the right to know that your product
2 has something in it that they might consider to be unsafe even
3 though you know, like the retreaded tires, it's a perfectly
4 good tire? Do you think that --

5 A No, sir.

6 Q They don't have the same right that the customer of
7 a retreaded tire has?

8 A I didn't agree with you about the retreaded tire
9 customer.

10 Q I thought you did. Let's back up. I thought sure
11 that you said that you couldn't think of a single circumstance
12 --

13 A I gave you a case, sir. I gave you a case where a
14 person who walks in fully understands the warranties and every-
15 thing else. If they're satisfactory, why does he have to know
16 they're retreaded?

17 Q No, you're asking me a question, but I'm asking you
18 the question, Mr. McPhillips.

19 A I'm telling you there's a case --

20 THE COURT: Mr. McPhillips, you're not answering the
21 questions. You're not -- you're not asking the questions.

22 THE WITNESS: Honest to God, I'm trying to.

23 THE COURT: Mr. McPhillips, don't talk while I'm
24 talking. It makes it sort of rough for you to hear, and I want

1 you to hear what I'm saying. You're not asking the questions,
2 you're answering the questions. Two things will help. Number
3 one, if you quit interrupting the attorney when he's asking you
4 the questions, and number two, when you listen to the questions,
5 answer that question and that question only, and I think it
6 might improve things, because so far you aren't doing either
7 one, and I'm ordering you to do so now. You may proceed, Mr.
8 Carr.

9 Q Mr. McPhillips, is what you're saying that you believe
10 if you, the dealer, if you give that customer a new tire warranty,
11 that he doesn't then need to know that he's not buying a new
12 tire, that he's buying a retreaded tire? Is that what you're
13 saying, sir?

14 A That's a good example, sir.

15 Q So when you go in to buy a new tire, you consider it
16 -- or when anybody goes in to a tire store to buy a new tire,
17 it's perfectly proper in your judgment for that dealer to sell
18 him a tire that is a retread even though he thinks he's getting
19 a new tire? Did I interpret your statement correctly?

20 A That's potentially the statement, yes, sir.

21 Q All right. And now do you know whether or not that
22 belief of yours is shared by others that have responsibility or
23 had responsibility in the customer relationship of Monsanto
24 insofar as the chlorinated phenols were concerned?

1 A As it relates to the chlorophenols, I think all of us
2 at the time came to the same conclusion that we went with, sir.

3 Q Well, Mr. McPhillips, that isn't answering the question
4 that I asked you. I asked you whether or not --

5 A Sir, I don't know -- you have to --

6 Q Could you please wait until I ask the question, sir.
7 I'm asking you whether or not the belief that you have just
8 stated about the customer not having the right to know that he's
9 buying a retread when you give him a new tire warranty, I'm
10 asking you whether or not that belief that you have just stated
11 is shared by others to your knowledge in the -- at Monsanto
12 that deal with selling chlorinated phenols to customers?

13 A No, sir, I don't know.

14 Q All right. What you have stated then as far as you
15 know is just your belief?

16 A In regards to the tire, yes, sir.

17 Q Well, and is it also your belief then with regard to
18 Santophen, it is your belief that even though the customer won't
19 buy your Santophen if he knows there's any dioxin in it, it is
20 your belief that you can sell him that Santophen without telling
21 him that dioxin is in it?

22 A Sir, there is only dioxin --

23 Q Excuse me, could you answer that question.

24 A The way you phrased that question -- the way you

1 phrased the question, I guess I have to answer no, they don't
2 have the right.

3 Q All right. And if you told them that it had it in it,
4 they would immediately quit using the product, and therefore,
5 you did not tell them, isn't that correct, sir?

6 A No, sir.

7 Q Well, let's see.

8 A That's not the reason why we didn't tell them, no,
9 sir.

10 Q Well, let's see that, sir. Let's explore that.

11 MR. CARR: Would you give the witness Plaintiffs'
12 Exhibit 1247.

13 (At this time Plaintiffs' Exhibits 1247A, B, and C
14 were marked for identification.)

15 Q Now, Mr. McPhillips, you have in front of you --

16 MR. CARR: Oh, your Honor --

17 Q Well, do you recognize 1247A, B, and C as blowups of
18 the memo 1247?

19 A Yes, sir.

20 MR. CARR: Offer 1247A, B, and C, your Honor.

21 MR. MUSGRAVE: Object to it to the extent that it
22 deals with products other than orthochlorophenol-crude as being
23 irrelevant and immaterial. I'd also object to it in point of
24 time being after the spill and as to the issues contained

1 therein no probative value when weighed against other consider-
2 ations.

3 THE COURT: It's overruled. All three are admitted
4 over objection.

5 MR. MUSGRAVE: Could you tell me what the --

6 MR. CARR: It's the three pages --

7 MR. MUSGRAVE: What Pages A, B, and C is? Yeah, I
8 understand that, but what page --

9 MR. CARR: In chronological order.

10 MR. MUSGRAVE: Chronological order, A, B, and C?

11 MR. CARR: Yes.

12 Q Now, Mr. McPhillips, do you recognize that, of course,
13 as a memo written by you, although on the copy that I have
14 your signature has not been reproduced?

15 A Yes, sir.

16 Q Is it on the original?

17 A Yes, sir.

18 Q All right. My copy machine apparently cut it off.
19 And you do recognize that as your memo?

20 A Yes, sir.

21 Q Now, to put it in proper perspective, there was a
22 memo written by Mr. Wilson in which he pointed out on April the
23 10th, '79 that there were dioxins found in your chlorophenols.
24 Do you recall that, sir? The memo has been introduced into

1 evidence. I'm just asking --

2 A I recall the gist of the April 10th meeting, April
3 10th memo, yes, sir.

4 Q And you make --

5 A It talks about inconclusive findings.

6 Q I'm sorry, sir?

7 A The tentative findings in the -- that's one --
8 one of the purposes, sir, if I can explain --

9 Q Excuse me, Mr. McPhillips. You're volunteering state-
10 ments that are beyond my questions. I'm sure counsel has told
11 you to limit your answer to what I'm asking so we don't have
12 to go into the volunteered statement.

13 A Okay.

14 Q My question simply was that Wilson read a memo in
15 April of '79 in which he stated that there had been dioxins
16 found in your chlorophenols, is that correct, sir?

17 A Yes, sir.

18 Q And there were other samples sent to Dayton for
19 analysis. That's pointed out here.

20 A Yes, sir.

21 Q And, of course, we have those other results of these
22 other samples in evidence, but one thing that you mentioned
23 here is that these analyses are in conflict with earlier dioxin
24 tests made insofar as Santophen-1 is concerned, correct, sir?

1 A Repeat the question again, sir.

2 Q You point out the bottom of this first --

3 A Yes, sir. You're talking about the bottom, I'm sorry.
4 I was still looking under the purpose of the meeting, I'm
5 sorry.

6 Q You point out at the bottom of the page that the first
7 results showed that there were no 2,3,7,8 TCDD isomers in the
8 Santophen although there were 25 parts per million of the mono,
9 di, and trichlorodibenzos, don't you, sir?

10 A That's what it states, yes, sir.

11 Q Now, at that point in time, Mr. McPhillips, were you
12 personally aware of the fact that the trichlorodibenzo-p-dioxins
13 are at least one of the isomers of that is considered to be
14 very toxic?

15 A Sir, I don't recall.

16 Q All right. The second page points out, doesn't it,
17 sir, that in the 2,4 DCP you found 200 parts per billion of the
18 TCDD isomer, of something that could be the TCDD isomer?

19 A Yes, sir, that's what it states.

20 Q And you recognize that the 100 parts per billion for
21 the 2,4,5 T is exceeded by the findings on the 2,4 dichlorophenol,
22 do you not, sir?

23 A Yes, sir.

24 Q And you also recognize that they're going to eliminate

1 the caustic to see if that helps?

2 A Yeah, down below, yes, sir.

3 Q Now, there -- as far as you were concerned,
4 there were two very important marketing concerns that these
5 findings brought to the surface, isn't that correct, Mr.
6 McPhillips?

7 A Findings, sir?

8 Q Yes, these findings.

9 A There were two marketing concerns, yes, sir.

10 Q That came to light because of the findings set out
11 in Dr. Wilson's memo of April 10th, 1979, that is, that there
12 were dioxins in the chlorophenols?

13 A The two marketing concerns, sir, was the question
14 asked by my management.

15 Q Mr. McPhillips, you're not listening to my question.
16 My question is these two concerns arose because of the findings
17 of April the 10th, '79, isn't that correct, sir?

18 A It is prompted by the memo, yes, sir, in 1979.

19 Q Now, one of these concerns dealt with Santophen and
20 the other dealt with 2,4 dichlorophenol, isn't that correct,
21 sir?

22 A Yes, sir.

23 Q Insofar as Santophen is concerned, Lane and Fink,
24 they buy something like 24 or at that time they were buying 24

1 percent of your Santophen output more or less, were they not,
2 sir?

3 A I don't think it was that high, sir.

4 Q I have a memo that says it was, and we'll get to that
5 in a moment.

6 A That's fine. I agree with you if you've got a memo.

7 Q Sir?

8 A It's been six, seven years.

9 Q All right. It's not that important whether it is
10 that much or not.

11 A World wide, you're probably right.

12 Q All right. And Lane and Fink is -- you already
13 pointed out before that they're concerned about the environment
14 and issues on the phenolics, isn't that right?

15 A Environment issue of the phenolics, yes, sir.

16 Q Yes.

17 A Plural.

18 Q That's correct, sir.

19 A Yes, sir.

20 Q And you say here that everybody in the meeting agreed
21 that if there are any detectable dioxins in Santophen-1, once
22 we notified Lane and Fink they would discontinue the use of
23 Santophen almost immediately in Lysol Deodorant Cleaner.

24 A That was our belief based on the circumstances at the

1 time, yes, sir.

2 Q And you knew that the people at Lane and Fink would
3 do that based upon the relationship that you had with the
4 marketing or buying people at Lane and Fink, isn't that correct,
5 sir?

6 A It was on the basis of the overall relationship and
7 problems we had at the account in terms of the performance of
8 the formulation that we had with Lane and Fink, yes, sir, so
9 it was not just the buying department, but research and other
10 disciplines.

11 Q All right. There was other base material that they
12 could buy which did not contain dioxin?

13 A Well, sir --

14 Q Isn't that correct, sir?

15 A The Santophen -- sir, I don't know that. I don't
16 know what quats had, sir.

17 Q Sir?

18 A I don't know if the other products have dioxin in
19 them or not, sir.

20 Q Well, you know they were considering using quats --

21 A They were using quats.

22 Q Matter of fact, they were using quats?

23 A Yes, sir.

24 Q Isn't that correct?

1 A Yes, sir.

2 Q And that's not a chlorinated phenol, is it, sir?

3 A No, sir.

4 Q And you have absolutely no knowledge that any quat
5 ever had anything close to dioxin in it, isn't that correct,
6 sir?

7 A I would not know, sir.

8 Q Isn't that correct what I said to you, sir?

9 A I don't know, sir. I really don't know what -- in
10 fact, I can't recall what -- it does not have a chlorophenol,
11 sir. To answer your question it does not have a chlorophenol.

12 Q No, that isn't my question. My question is you have
13 absolutely no knowledge that the quats contain anything, any
14 dioxin whatsoever, isn't that correct, sir?

15 A I have no knowledge, yes, sir.

16 Q All right. And so you point out here, and matter of
17 fact, everybody at that meeting from Edwards down through Wilson,
18 about 15 of you -- I'm sorry, your meeting was six --

19 A Yes, sir.

20 Q And another 10, another half a dozen or so got copies
21 of your memo, but all six of you, Miller, Wilson, Roman, Edwards,
22 and Matcalf and McPhillips, it was a unanimous agreement at
23 that point in time that if Lane and Fink learned that there's
24 any detectable dioxins in Santophen, they're not going to use

1 it?

2 A That was our belief, sir, yes, sir.

3 Q And, of course, you didn't notify Lane and Fink that
4 there were any detectable dioxins in Santophen, did you, sir?

5 A Sir, at that time --

6 Q Excuse me, my question is specific and it's simple,
7 Mr. McPhillips.

8 A We did not notify Lane and Fink.

9 Q Now, you also discussed then whether or not you should
10 notify them now, that is, on April the 18th or wait until mid-
11 May, didn't you, sir?

12 A That's what it states there, sir, yes, sir.

13 Q And you decided you wanted to wait until mid-May to
14 see whether or not the dioxins were produced when you quit
15 using caustic, didn't you, sir?

16 A That was one of the reasons, yes, sir.

17 Q Well, was there any other reason that you decided not
18 to notify Lane and Fink at this time?

19 A Yes, sir. Mr. Wilson's memo, if I recall, on April
20 10th, it's been a while, but when we analyzed the Santophen
21 for dioxins, we got, from what I understand or what I was told,
22 there was some very interrupted inconsistencies in the data
23 where, where the same sample was nondetectable and some were
24 detectable, and our research people came and said, hey, we are

1 very -- we're not too sure this analytical method we have is
2 really a correct method, and we've got to refine it a little
3 bit to make sure that indeed there are dioxins. There are blips
4 to indicate that there might be, but yet there's data that shows
5 there might not be, and they went on about a twelve month study
6 to try to develop a method to determine if there is dioxins or
7 to determine how to find dioxins in products like Santophen.

8 Q What was -- your thought then that these results
9 might not be correct and that perhaps there are no dioxins in
10 Santophen, is that it, sir?

11 A Sir, you got to ask Jim Wilson --

12 Q Excuse me, is that it, sir?

13 A That was a potential, yes, sir.

14 Q Then I take it then that you decided you've got to
15 wait until it's confirmed that there are dioxins in Santophen,
16 isn't that correct, sir?

17 A Yes, sir.

18 Q All right. And you're talking here about dioxins,
19 you're not talking about 2,3,7,8 TCDD, are you, sir? You're
20 talking about dioxins?

21 A We were primarily talking at the time, sir, I think
22 of the tetrachloro -- the 2,3,7,8 tetra, primarily the tetras.

23 Q Excuse me, you're talking in this memo just about --
24 you're talking about all dioxins in this memo, aren't you, sir?

1 A I mentioned that there were other dioxins in there,
2 but the primary concern, I think, was the tetras.

3 Q Mr. McPhillips --

4 A Yes, sir.

5 Q My question is specific. You are in this memo under
6 Lane and Fink under Santophen-1 you are talking about all dioxins,
7 aren't you, sir?

8 A I'm talking about mono, di, and tri and tetras, sir.
9 That's what it states here, sir. All dioxins is a very --
10 I think very broad, because there's a lot of dioxins. I don't
11 know how many, but from what I understand there's a lot of them,
12 a lot of types.

13 Q If you could direct your attention to the -- and
14 that's to be sure you're -- that's mentioned on Santophen-1
15 that there is no 2,3,7,8 TCDD in Santophen-1, and that there
16 are 25 parts per million mono, di, and tri, but over on the
17 second page you're talking about dioxins, aren't you, sir?

18 A That's what the letter states, sir --

19 Q Yes.

20 A -- but I think I'm inferring tetras.

21 Q Where do you say tetras in that memo, sir?

22 A Sir, I say tetras throughout the memo, because the
23 primary concern was the tetras.

24 Q Where do you say that --

1 A TCDD.

2 Q No, excuse me. Where do you say that Lane and Fink
3 will quit using it only if there is detectable 2,3,7,8 TCDD in
4 Santophen-1? They, you say --

5 A I didn't state that in the memo, no, sir.

6 Q Sir?

7 A I did not state that in the memo.

8 Q You specifically say if there are any detectable
9 dioxins in Santophen-1, they're going to discontinue using it,
10 don't you, sir?

11 A That's what I state there.

12 Q Yes.

13 A I don't know if I agree with that statement now, but
14 --

15 Q That's what you said then?

16 A Yes, sir.

17 Q Now, you also made the decision not to notify your
18 customers in the hospital disinfectant market, didn't you, sir?

19 A At the time, yes, sir.

20 Q And again you're talking about, and you say, if we
21 find any dioxins in Santophen, and you emphasize dioxins as all
22 inclusive there by putting it in quotes, don't you, sir?

23 A Yes, that's what I put, I put it in quotes, yes, sir.

24 Q And you say if any dioxins is found in the hospital

1 disinfectant that's based upon Santophen -- I'm sorry, if any
2 is found in Santophen, that this would lead to discontinuance
3 to the hospital disinfectant market, don't you, sir?

4 A Eventually.

5 MR. MUSGRAVE: It says eventually, Mr. Carr.

6 A That's what it states, yes, sir.

7 Q And again you decided not to notify your hospital
8 disinfectant customer of your Santophen findings, didn't you,
9 sir?

10 A The nonconclusive findings, yes, sir, we did not
11 notify them.

12 Q Of course, now, if they are conclusive and you do
13 find dioxins, I take it from your answer there that you are for
14 sure going to notify these customers, is that right, sir?

15 A No, sir.

16 Q Oh, well then, it really makes no difference then. If
17 these are tentative findings you're not going to notify your
18 customer. If you confirm these findings, you're not going to
19 notify your customers. Is that what you're saying, Mr. McPhillips?

20 A If they do not present an eminent hazard and we are --
21 and at the same time we discontinue or no longer get the dioxins
22 out of the product, yes, sir, that is correct.

23 Q Then what you did here, you said we're not going to
24 notify them yet, we got to await the test results of mid-May to

1 see about the use of caustic, but actually what you ultimately
2 decided, because you did find out that eliminating caustic did
3 not eliminate all the dioxins, didn't you, Mr. McPhillips?

4 MR. MUSGRAVE: Object to the question as a multiple
5 question.

6 THE COURT: The objection is overruled.

7 A I think we eliminated the tetras, sir.

8 Q You didn't even eliminate the tetras, Mr. McPhillips,
9 and I'll get to that in a moment, but what you decided there
10 after you learned that the caustic did not eliminate all the
11 dioxins, you decided not to notify the customers anyway, didn't
12 you, sir?

13 A At that time, sir, yes.

14 Q You didn't ever notify the customers of the dioxins
15 in your Santophen product, did you, sir?

16 A Up until 1980, no, sir.

17 Q You didn't notify them in 1980 either, did you, sir?

18 A No, sir, we notified the EPA.

19 Q No, you notified the EPA that in latest batches that
20 you could not detect any 2,3,7,8 TCDD. That's what you told the
21 EPA, Mr. McPhillips. We went into that with Mr. Wilson at
22 great length to point out that there was a lot of batches after
23 April that he used as a cutoff date where there was 2,3,7,8 TCDD,
24 and we'll get to that in a moment. But what you did do after

1 it was confirmed, what you made a decision about was that you
2 were not going to tell the people that make Lysol, and you're
3 not going to tell the people that make the hospital disinfectant
4 that there's any dioxins in the product; you made that decision,
5 didn't you, sir?

6 A In this letter at the time, yes, sir.

7 Q And you made it after that, not just then, you made
8 it after that, Mr. McPhillips, as well, did you not, sir?

9 A After we found that it -- we felt that it did not
10 present an eminent hazard to the product, yes, sir.

11 Q Yes, so what you did you decided even after it was
12 confirmed that dioxin was there that you're not going to tell
13 Lane and Fink, isn't that correct, sir?

14 A Up until that time -- when I was there, yes, sir.

15 Q And as a matter of fact, the only time Lane and Fink
16 learned up to this date that the Lysol that they were manu-
17 facturing from your Santophen was this past, just this summer,
18 this very summer when they learned of it because of documents
19 filed in this case, isn't that correct, sir?

20 A I don't know, sir.

21 Q You don't know that, sir?

22 A No, I don't know that.

23 Q Did you ever get any -- have you ever had any
24 document whatsoever, any phone call memo whatsoever, any

1 dictated memo of any sort that indicates that Lane and Fink or
2 Sterling Drug was told that it's possible that their Lysol that
3 they're sending into every home in the United States nearly,
4 that their Lysol contains dioxin?

5 MR. MUSGRAVE: Object to the question as posing facts
6 not in evidence and testimony of counsel, every home in the
7 United States.

8 MR. CARR: That is too strong, your Honor, because
9 I don't have that knowledge, and I will rephrase the question.

10 THE COURT: Fine.

11 Q Mr. McPhillips, so far as you know there is no document,
12 no letter, no memo in existence where Monsanto ever notified
13 Lane and Fink that Santophen, which is used to manufacture
14 Lysol, which is sold throughout the United States and perhaps
15 through a part of the world as well contained dioxin, isn't
16 that correct, sir?

17 MR. MUSGRAVE: Object to counsel's use of the word
18 perhaps. If he doesn't know, then --

19 THE COURT: Overruled.

20 MR. MUSGRAVE: -- then he can't use it.

21 A Sir, I am not aware of any memo, no.

22 Q And when you were making this memo of April the 18th
23 about going to notify the -- you're going to wait until mid-
24 May -- well, actually you made a decision there that you were

1 going to notify Lane and Fink, but the question was are you
2 going to do it now or wait until mid-May, isn't that correct,
3 sir?

4 A It was the position of the attendees to wait until
5 the test results in mid-May.

6 Q The statement right before that, sir, isn't that
7 right, sir?

8 A The way you state that question, yes, sir.

9 Q So actually you were going to notify Lane and Fink,
10 but then you changed your mind about it, is that right, sir?

11 A No, sir, that's not correct.

12 Q Well, wasn't the question as you put it quote "The
13 question discussed in the meeting was whether or not we should
14 notify L and F now or wait until mid-May" end of quote.

15 A That was the question.

16 Q That was the key question --

17 A That was the question as a marketing person I asked
18 of my research people, who included in that meeting -- or my
19 technical people, who included Mr. Wilson, Dr. Wilson, Dr.
20 Roman, Don Edwards and Joe Metcalf that these are things that
21 I felt at the time I sat there and said gee, do we have to
22 notify the customers. That was the purpose of this meeting is
23 to ask them the question of whether I have to notify the
24 customers. It wasn't a question for me to say I don't want to

1 notify them. The question -- the purpose of this meeting was
2 hey, guys, do I have to notify the customers, to which my
3 technical people told me, hey, number one, the product, the
4 findings are very tentative, we still got to resolve the analysis,
5 number one. Number two, even if they were in there at those
6 various levels, it did not pose any eminent hazard to the
7 product, and number three, we have reams of safety data on the
8 safety of the product that was registered with the EPA and at
9 that point in time we decided to sit back and wait to see what
10 the mid-May result, if the then analysis of the dioxins presented
11 an eminent hazard and if it did present an eminent hazard, I
12 assure you, sir, I would write a letter or I would recommend
13 we write a letter.

14 Q Mr. McPhillips, of the attendees of that meeting
15 there wasn't a single doctor nor a single toxicologist that
16 attended that meeting, was there, sir?

17 A There was a Dr. Wilson, a Dr. Roman.

18 Q Dr. Wilson is a Doctor of Chemistry --

19 A You said doctor, sir.

20 Q -- not an M.D., medical doctor, Mr. McPhillips.
21 There was not a toxicologist nor was there a medical doctor
22 that attended that meeting, was there, sir?

23 A Sir, I don't recall what Dr. Roman's background was,
24 might be microbiology.

1 Q What you were discussing then, sir, was whether you
2 were going to notify -- you knew that if you did tell them,
3 they're going to quit using it. What you were hoping is that
4 your results in mid-May would allow you to send them a legiti-
5 mate letter saying, yes, we did detect dioxins in our Santophen,
6 but our later tests now in mid-May show that we're not currently
7 producing anything with detectable dioxins; that's what you
8 were hoping, wasn't it, sir?

9 A No, sir, I don't think I stated that.

10 Q No, sir? Well, why else would you want to wait until
11 you get the results in mid-May of --

12 A Because the data --

13 Q Why even bring up the point?

14 A Because the data that was presented, if I recall, the
15 data that was being presented was not very conclusive. Some
16 samples analyzed dioxin, level of dioxin in it and some did not,
17 from what I understand, sir, and at the time they were seriously
18 questioning the methodology in terms of how we analyzed the
19 dioxins in the Santophen. The mid-May results were the hope
20 that they would find a better way to analyze it. In the mid --
21 from what I recall the May result they came back and found out
22 that the test was not working very well, and at that point in
23 time --

24 Q Mr. McPhillips, where on earth did you hear that the

1 test wasn't working very well? Who told you that?

2 A They weren't very conclusive. They were getting inter-
3 ferences, sir.

4 Q Who told you that, sir?

5 A I don't recall. Probably Jim Wilson and Joe Metcalf.

6 Q Have you seen the exhibits that they've prepared?

7 A Exhibits?

8 Q Yes, the reports that they prepared showing the levels
9 of not just dioxins but the 2,3,7,8?

10 A Well, sir --

11 Q The tetras in this, sir?

12 A Sir, the 2,3,7,8, if I recall, at that time could not
13 be analyzed. We could not be isomer specific, if I recall, sir.

14 Q My question, Mr. McPhillips, have you not seen the
15 memo of October of '79, which they confirmed the presence of
16 the TCDD, and they're not even talking about total dioxins,
17 they're talking about the TCDD isomer. Have you not seen that
18 memo, sir, the analysis of October 15th, 1979?

19 A Sir, I can't be --

20 MR. MUSGRAVE: Mr. Carr, are we talking about October
21 now or back in May, which was what the question was referring to?

22 MR. CARR: Did you hear me say May or did you hear me
23 say October?

24 THE COURT: Go ahead, Mr. Carr.

1 MR. CARR: I said October.

2 MR. MUSGRAVE: But I don't know what relevance that
3 has to the question that you're making, and I would object to
4 that, sir.

5 THE COURT: Objection is overruled.

6 MR. CARR: Could you give the witness Exhibit 1285.

7 (Pause)

8 Q Have you ever seen that before?

9 A Sir, I would not see memos like this probably, because
10 I -- one, I'm not technically oriented.

11 Q Well, have you ever seen it before, sir?

12 A I've seen it. In recent weeks they've showed me a
13 bunch --

14 Q They showed it to you in preparation for your testimony
15 in this case?

16 A They showed me this stuff, yes, sir.

17 Q And of course, you were discussed and you have dis-
18 cussed how to handle that particular memo, didn't you, sir?

19 MR. MUSGRAVE: Object to counsel referring to dis-
20 cussions with other counsel.

21 THE COURT: Objection sustained.

22 Q Mr. McPhillips, you see that that exhibit shows that
23 2,3,7,8 TCDD et al, the 1,3,6,8 et al, the 1,3,7,9 TCDD et al,
24 don't you, sir?

1 A I see that.

2 Q And the exhibit that you have is a three page exhibit,
3 isn't it, sir?

4 A Yes, sir.

5 Q Now, you see also this exhibit --

6 MR. CARR: Give him 1195 also, would you please.

7 (Pause)

8 Q Mr. McPhillips, you see in Memo 1195A, which is after
9 your April 18th memo, you see there Santophen-1 dioxinalysis?

10 A Yes, sir.

11 Q And do you see that they report here, sir, that they
12 the 35 and 65, that's 110 parts per billion of TCDD isomer in
13 that Santophen, sir?

14 A I see that in one lot, yes, sir.

15 Q Do you see immediately above it they've got 4800,
16 that's 4,800 parts per billion of trichlorodibenzo-p-dioxin in
17 it, in that lot?

18 A Does it state that, sir?

19 Q Can you add up the --

20 A It looks like two different analyses, two different
21 results, if I -- if you're asking me for my interpretation.

22 Q All right. I think you're right.

23 A Looking at the differentials it shows that their
24 methodology probably wasn't all that great.

1 Q You are correct, and I shouldn't be adding those two
2 together. You see the 3,000 in the one analysis of the tri and
3 1800 in another analysis of tri?

4 A Yes, sir.

5 Q And this is information that somehow or other came to
6 you in June of 1979?

7 A I don't know, sir. I wouldn't state that, sir.

8 Q It has the date on it, doesn't it, sir?

9 A It has the date, but would I get this data? No, sir,
10 I probably would not.

11 Q These are the results that you were waiting for in
12 the mid-May results, you got them in June; you see that, sir?

13 A Monsanto got them, sir.

14 Q Yes.

15 A Yes.

16 Q Now, after you got these results that you said you're
17 going to wait for, and it confirmed that there were 10,000 --
18 or no, 14,000 or 19 or 20,000 parts per billion of dioxins in
19 your Santophen did you then discuss whether or not you're going
20 to tell Lane and Fink these facts that's now been confirmed to
21 you?

22 A I don't recall it, me discussing it, sir, not me. I
23 would not make the decision whether we notify the customer, sir.

24 Q Well, but you are part of it, you were in the --

1 A That was the April 18th meeting, yes, sir.

2 Q Yes, and you were in the meeting where you said let's
3 wait until we get the mid-May results, you got the mid-May
4 results, the mid-May results confirmed the dioxins, but you
5 didn't tell the customer, and you see the October results con-
6 firmed the dioxins, and they're getting more specific here now
7 2,3,7,8 et al, but you didn't tell the customer, did you, sir?

8 A No, sir.

9 Q And later on in January of 1980, I think it is, on
10 Exhibit 1286 you got more confirmation of your Santophen results.

11 MR. MUSGRAVE: What's the exhibit number, Mr. Carr?

12 MR. CARR: Could you give him Exhibit 1286 please.

13 Q The date of that exhibit is what, Mr. McPhillips?

14 A August 7th, 1980.

15 Q And that August 7th of 1980 shows dioxin in your
16 Santophen, doesn't it, sir?

17 A Looks like it's right at the detection limits, which
18 questions whether there is any in there.

19 Q Mr. McPhillips, does it show 7 parts per billion of
20 something that looks like 2,3,7,8 TCDD in your Santophen?

21 A It says 2,3,7,8 et al, yes, sir.

22 Q Does it show that, does it show 3 parts per billion?

23 A Yes, sir.

24 Q Does it show 2 parts per billion and 2 parts per

1 billion?

2 A Yes, sir.

3 Q Does it show that, sir, even as late as August of 1980
4 and September of 1980 of one part per billion?

5 A That's what it states, yes, sir.

6 Q Of something that coelutes with 2,3,7,8 TCDD?

7 A I don't know if it states that.

8 Q Well, it says --

9 A I wouldn't know.

10 Q You wouldn't know that? Well, take it from me that
11 the exhibit says that that coelutes with 2,3,7,8 TCDD. Now,
12 Mr. McPhillips --

13 MR. CARR: Could you hand him Exhibit 1245 also please.

14 (Pause)

15 Q And before you look at that, direct your attention
16 back to Page 3 of Exhibit 1247, which is your memo of April 18th,
17 1979. You also are concerned about losing 2,4 dichlorophenol
18 as a product, aren't you, sir?

19 A It's a concern, yes, sir, it was --

20 Q And, of course, you understand, understood then and
21 you understand now that there was that which coelutes with
22 2,3,7,8 found in the 2,4 dichlorophenol in multiple tests since
23 then and up till '82, don't you, sir?

24 A I don't know about '82, sir.

1 Q You don't know that, sir? Didn't you see Exhibit
2 1301 a little earlier, 1982, September, 1982, 65 parts per
3 billion in the tetras for your 2,4 dichlorophenol, 140 parts
4 per billion in your tetras for 2,4 dichlorophenol?

5 A I see that.

6 Q It is apparent, Mr. McPhillips, that you did not
7 eliminate the 2,3,7,8 isomer in your 2,4 dichlorophenol, isn't
8 it, sir, if that exhibit correctly states the findings in
9 September of '82?

10 A September of '82? Which one --

11 Q Yes.

12 A That's September '82?

13 MR. MUSGRAVE: Mr. Carr, you said 2,3,7,8 --

14 MR. CARR: Exhibit 1301.

15 MR. MUSGRAVE: -- isomer. This is tetras, it does
16 not say 2,3,7,8. Object, your Honor, to Mr. Carr's question.

17 A It says tetras, it doesn't say 2,3,7,8, sir.

18 Q That's true, but the exhibit says it coelutes with
19 2,3,7,8 and we have shorthanded it here.

20 THE COURT: Wait a second, gentlemen. Go ahead, Mr.
21 Carr.

22 Q Now, Mr. McPhillips, you did not eliminate the dioxins
23 from your 2,4 dichlorophenol, the tetra dioxins or that which
24 coelutes if that in fact is an isomer that coelutes with 2,3,7,8,

1 isn't that correct, sir?

2 A I guess that's what the data says, sir.

3 Q The next paragraph says that you're going to have to
4 notify Fallek-Lancro, who has asked you a question whether or
5 not it contains. Now, here's a customer that is exercising
6 the right, and you say you're going to notify them when he
7 asks the question. Did you notify him, sir? I see down below
8 there that Mr. Metcalf is to write a letter to Fallek-Lancro
9 and a review is to be made by legal. Do you see that, sir?

10 A Yes, sir, I see it.

11 Q So was that customer ever notified? They asked --

12 A I think they were, yes, sir --

13 Q Oh --

14 A Not a letter.

15 Q Oh, where is the memo that they were told? Where is
16 the --

17 A I said not a letter, sir.

18 Q Well, here it is they're going to write a letter to
19 Fallek-Lancro. Isn't that what it says?

20 A That's what is stated, sir. Just because the letter
21 states that doesn't mean it was done, sir.

22 Q Did Mr. Metcalf write the letter?

23 A Sir, I don't know. You've got to ask Mr. Metcalf
24 that. If I recall, he did put a draft of a letter together.

1 Q And it went to legal?

2 A No, sir.

3 Q But it didn't get any farther than legal, did it, sir?

4 A Sir, I don't know if it went to legal or not, sir.

5 I really don't know.

6 Q And Mr. McPhillips, you have no firsthand knowledge
7 of yours that Fallek-Lancro was ever told, even by telephone,
8 isn't that correct, sir?

9 A Yes, sir, they were.

10 Q You have firsthand knowledge of that?

11 A We talked the issue of dioxin --

12 Q You talked to them yourself, did you?

13 A We talked dioxins with them.

14 Q Did you talk dioxins yourself, sir?

15 A Yes, sir, I think so.

16 Q And when was that, sir?

17 A Oh, God, in was in that summer. Because --

18 Q Did you make a memo of it, sir?

19 A Sir --

20 Q My question was did you make a memo of it, sir?

21 A A memo that I --

22 Q That you talked to them and what you told them.

23 A Sir, I don't recall.

24 Q Did anybody make a memo?

1 MR. MUSGRAVE: Of what, sir?

2 Q If you talked to them, sir, what did you tell them
3 about the dioxin in your product?

4 A I don't recall what we told them, but --

5 Q I'm not asking you what you told them, Mr. McPhillips.
6 I'm not asking -- I want --

7 A Sir, it's been a long time. I'm trying to --
8 if I recall what we talked to them --

9 Q Again you're saying we. My question specifically --

10 A I.

11 Q Mr. McPhillips, do you have any independent recollection
12 today that you ever talked to anybody at Fallek-Lancro following
13 this memo of April 18th, 1979 and before January 1st, 1980?

14 A Yes, sir, I recall discussing with them the issue of
15 dioxins, yes, sir.

16 Q And when was that to the best of your memory?

17 A Sometime in the summer of 1979.

18 Q And what did you tell them, sir?

19 A Because --

20 Q Excuse me, what did you tell them, sir?

21 A I think I told them about our surprise findings. I
22 think I told them that we were in the throws of trying to
23 eliminate, we modified the process to eliminate, try to eliminate
24 the tetras to a point where they wouldn't be a hazard, and if

1 I recall, they were also asking for information because on 2,4
2 dichlorophenol the USDA or something was talking to them, and
3 I put them in contact with our technical people to help answer
4 some of their questions, I think the government was asking them.

5 Q That's a situation that came up some time later, Mr.
6 McPhillips.

7 A Summer -- I think it was right after that, sir.
8 You know, it's been six years.

9 Q I think we have a memo dealing with that and I'll --
10 I don't have it immediately available, but we'll get to that,
11 I'm sure if one exists. Was that a memo made by you?

12 A Sir, now I don't think it was a memo.

13 MR. MUSGRAVE: He's not talking about a memo.

14 A I didn't say a memo.

15 MR. MUSGRAVE: You asked him about what he discussed
16 with them and he's just repeated that.

17 A And I'm repeating what I discussed with them.

18 MR. MUSGRAVE: Can you identify the memo?

19 A There was no memo, sir. You know, not everything is
20 done by memos, especially in sales and marketing.

21 Q No, we do have a memo about a discussion with Dr.
22 Carney of the USDA in which he says Fallek-Lancro is asking him
23 if there is any dioxins in the 2,4 dichlorophenol.

24 A I don't --

1 Q And you -- it's in evidence here, I don't have the
2 number of it -- and you're telling Dr. Carney to be sure and
3 tell us what Fallek-Lancro finds out about dioxin in 2,4 di-
4 chlorophenol.

5 MR. MUSGRAVE: Well, Mr. Carr, -- I object to
6 counsel's paraphrasing a document, your Honor. The document
7 speaks for itself. The document is in evidence and I object
8 to counsel paraphrasing the document.

9 THE COURT: Objection is overruled.

10 MR. MUSGRAVE: It's incorrect paraphrasing of it.

11 THE COURT: Objection overruled.

12 Q Mr. McPhillips, what you told Fallek-Lancro, if any-
13 thing, was not reduced to writing in any way, was it, sir?

14 A Probably not, sir, no.

15 Q And if you told them anything, you told them that
16 you're going to eliminate it because of the process change,
17 isn't that correct, sir?

18 A I don't know if I would state it that strong, sir,
19 but I'd say that we were making a conscientious effort to
20 reduce the levels of it, yes, sir, where it wouldn't be a
21 problem or an eminent hazard.

22 Q Well, did you consider --

23 A Obviously your objective is always to reduce anything
24 in terms of any kind of impurity.

1 Q That's not what I'm asking you, Mr. McPhillips. Did
2 you consider it an eminent hazard at that time when you dis-
3 covered that it was in your 2,4 dichlorophenol?

4 A Sir, I don't --

5 MR. MUSGRAVE: What time?

6 Q In '79 when you discovered that it was in your 2,4
7 dichlorophenol.

8 A Sir, I don't think we did. You know, like I said, I
9 don't make that decision.

10 Q You were at a meeting when it was discussed, Mr.
11 McPhillips.

12 A Yes, sir, and I don't recall. It doesn't specifically
13 state -- let's see -- sir, all I was doing is writing the
14 minutes of what the meeting was. I maybe missed it. I was low
15 man on the totem pole in this meeting here and I was writing
16 the minutes and I might not have covered every issue in this
17 letter, sir, everything that was discussed in this meeting.

18 Q Do you have Exhibit 1245?

19 A I got it.

20 Q Do you have it? 1245 is a summary of a -- or is a
21 monthly report, is it not, dated May of '79?

22 A Yes, it says May of '79, yes, sir.

23 Q Would you turn to the second page of that, sir.

24 A Yes, sir.

1 Q Now, this is not written by you, but it is written by
2 Cross, Kilbourne, Matzner, McEwan, and J. D. -- Dr. J. D.
3 Wilson, isn't it, sir?

4 A That's what it states, sir.

5 Q If you turn to page numbered two of that exhibit.
6 Would you do that, sir.

7 A Yes, sir.

8 MR. CARR: And, your Honor, this has been previously
9 in evidence as 1245A.

10 THE COURT: Fine.

11 A Sir, you mean No. 2 --

12 Q No. 2.

13 A Or Page 2 or Page 2 of distribution.

14 Q Page numbered 2.

15 A Okay.

16 Q At the top of the page the number 2.

17 A Yes.

18 Q You see that that discusses the fact that you elimi-
19 nated the caustic, and you suppressed the dioxin formation?

20 A Samples, each step purification of PCP -- where an
21 analysis -- no chlorinated dibenzo dioxins could be detected
22 in any of the samples. Thus it was clear that the elimination
23 of the caustic from the stillpot effectively suppresses dioxin
24 formation in the process --

1 Q Is the answer to my question --

2 A It also says but analytical methods are not --

3 THE COURT: Mr. McPhillips --

4 THE WITNESS: Yes, sir, I'm sorry.

5 THE COURT: The question was asked. Now listen --

6 Q Is the answer to my question you do see that this
7 memo does deal with the fact that you've suppressed the formation
8 of dioxins by eliminating the use of caustic?

9 A I don't know if it says suppressed.

10 Q It uses in about the sixth -- thus we conclude that
11 eliminating caustic from the spillpot effectively suppresses
12 dioxin formation in the process. Do you see that?

13 A That's what it states, yes, sir.

14 Q And would you go down to the third paragraph on that
15 page where it discusses from practical toxicological considerations
16 that limit is probably about one part per billion. This we can
17 measure with present equipment, with improved methodology.
18 However, because it is now such an extremely emotional issue
19 that may not be acceptable to our customers. We expect to
20 resolve the question in consultation with DMEH early in June.
21 Do you see that, sir?

22 A Yes, sir.

23 Q Now, this, of course, is what you said, have said in
24 court and what you said in effect in your earlier memo, that is

1 that dioxin in the product may not be acceptable to your customers
2 even if it goes down to one part per billion of dioxins, isn't
3 that correct, sir?

4 A That's what that states there, sir, yes, sir.

5 Q They're not talking about 2,3,7,8 TCDD, they're talking
6 about, this memo is talking about any dioxins in the chlorinated
7 phenols, isn't it?

8 A I don't know about that, sir.

9 Q Isn't that what it says?

10 MR. MUSGRAVE: Object --

11 Q We can never say that our chlorophenols contains no
12 dioxin or dibenzo furans, only that they are below some small
13 limiting concentrations. From practical toxicological consider-
14 ations that limit is probably about one part per billion. This
15 we can measure with present equipment with improved methodology.
16 However, because it is now such an extremely emotional issue
17 that may not be acceptable to our customers. Do you see that,
18 sir?

19 A I see that, sir.

20 Q And that's talking about dioxins period, isn't it,
21 sir?

22 MR. MUSGRAVE: Object to the question, your Honor.
23 The document speaks for itself.

24 THE COURT: Objection is overruled. Mr. Carr, is this

1 a good point for a short break?

2 MR. CARR: Sure, your Honor.

3 THE COURT: We'll take a short break at this time.
4 The admonishments that I've given you earlier will apply during
5 this break also. Court's in recess.

6 (At this time a short recess was taken.)

7 JOHN McPHILLIPS,

8 resuming the witness stand, having been previously sworn,
9 testified further as follows:

10 CROSS EXAMINATION (Continued)

11 BY MR. CARR:

12 THE COURT: Okay. Mr. Carr.

13 Q I don't think I asked you with regard to the exhibit
14 that you have in your hand now if that report of -- R and D
15 report of May of '79 did conclude with regard to customers that
16 you acknowledge that one part per billion may not be acceptable
17 to the customers -- by you, I don't mean you, you didn't write
18 the memo, but you at Monsanto acknowledged that one part per
19 billion in your chlorophenols would not necessarily be accepted
20 by your customers, isn't that correct, sir?

21 A Because of the extremely emotional issue, yes, sir.

22 Q Your customers have the right to be emotional and have
23 the right to make their own decisions about their health and
24 their customers' health, don't they, sir?

1 A Sir, the emotional -- you're talking about emotional
2 health safety and I'm talking emotional in terms of marketing
3 or consumers or what have. People hear something and they
4 react whether it's a viable complaint or not, sir.

5 Q Well, they have the right --

6 A Just a reaction and that was -- we were concerned
7 more -- when we mentioned emotional, it's not from a health
8 and safety. We were more concerned even if it was health and
9 safety, there's a lot of emotionalism because of the press,
10 what have you, especially of an issue like dioxin. It's --

11 Q Well, they -- you acknowledge and you recognize
12 in that R and D report of May of '79 that some customers would
13 not be satisfied with the chlorophenol that has one part per
14 billion of any dioxin in it because of their emotional feeling
15 about dioxin, isn't that right, sir?

16 A That's the statement by these authors, yes, sir.

17 Q And you do recognize that -- that these customers,
18 if they feel that way about something, they've got the right to
19 feel that way and they have the right to allow their emotions
20 to control their reactions to whether they will or will not use
21 their products, don't they, sir?

22 A I don't think we agreed to that earlier, sir.

23 Q No, I'm talking about --

24 A We discussed that issue earlier.

1 Q We were talking about whether or not they had the
2 right to know, and you said they don't have the right to know.
3 I'm now asking you whether or not they have the right to their
4 own emotions is the way they feel about things.

5 A Their own emotions in regard to marketing concerns?

6 Q Their own emotions as to how they feel about dioxin,
7 whether or not they --

8 A Everybody has, sir, their own emotions, sir.

9 Q They have the right to those emotions, don't they,
10 sir?

11 A They have the right, the way you phrase it, yes, they
12 have the right.

13 Q Is there any way that they don't have the right to
14 their own emotions? Don't I have the right to feel afraid of
15 heights if I want to be? It might be irrational, don't I have
16 the right to be afraid of a dog that slobbers at the mouth?
17 I might be irrational, it might be an emotion. That dog might
18 just be thirsty, but don't I have the right to that emotion,
19 to that feeling?

20 A You have the right but --

21 Q To that fear?

22 A Yes, sir, you have the right, but you also mention
23 the word irrational, too.

24 Q I'm not even concerned with that. Don't we have the

1 right -- if I want to be a health nut and say that I'm not
2 going to eat anything that has an additive put in it, don't I
3 have the right to decide, emotionally it may be, because there
4 may not be enough evidence to convince a rational person like
5 yourself that adding dye and food coloring and phosphates and
6 all kinds of things to food, while you may rationally think
7 that it's silly for me to believe that I don't want to eat those
8 things and it's emotional for me, but I'm asking you, Mr.
9 McPhillips, don't I have the right to be governed by my emotions
10 if I want to in determining what food I'm going to eat, what
11 medicines I'm going to use, what chemicals I'm going to be
12 exposed to?

13 A The way you state the question, yes, sir.

14 Q Is there any other way to state it? Don't we all
15 have --

16 A Sir, we all --

17 Q Excuse me. Let me finish my question. Don't we all
18 have the right to guide our destiny by our belief not what some
19 big man in a corporation thinks might be good for me? He might
20 be right, it might be best for me, but don't I have the right
21 to decide for myself, stupid as I might be, irrational as I
22 might be, as emotional as I might be, don't I have the right
23 to decide for myself?

24 A The way you state that, sir, I disagree with you.

1 Q You disagree with me?

2 A Yes, sir.

3 Q All right. You believe that you and the corporation
4 can overrule my feelings about things, and whether I want them
5 or not you have -- you have the power to do it and so you
6 also say you've got the right to do it regardless of how I
7 feel about a product or a thing or a chemical or an additive,
8 is that right, Mr. McPhillips?

9 A Sir, yes, I guess so.

10 Q All right. If that's your belief --

11 A Yes, sir. As a corporation --

12 Q Is that view that you have about my rights, is it
13 shared by others to your knowledge at Monsanto?

14 A You'd have to ask them, sir.

15 Q I'm asking you so far as you know, sir.

16 A As far as I'm concerned, when you talk in terms of
17 impurities and an eminent hazard of the product, as long as we
18 feel the product is completely safe --

19 Q Now, Mr. McPhillips, what I asked you --

20 A -- that is our belief.

21 Q I didn't ask you that. What I asked you was is your
22 view of my rights to be emotional versus the corporation's right
23 to be -- expose me to something, is your view the same as
24 the view of others at Monsanto Corporation so far as you have

1 knowledge of their view?

2 A The way you ask that question, I guess so, sir.

3 THE COURT: I'm sorry, I didn't hear your answer.

4 A I guess so, sir.

5 (Plaintiffs' Exhibit 1555 was marked for identification.)

6 Q Now, I'll hand you now Exhibit 1555 and let me back
7 up a moment. Isn't your present view of your customers' right,
8 isn't it a view that you arrived at after you learned that your
9 chlorinated phenols continued to have dioxin levels even after
10 you did additional testing in point of time?

11 A My view on dioxin --

12 Q Could you -- my question is did you arrive at that
13 view after or before you discovered that dioxins were present
14 in your chlorinated phenols on your confirmatory backup tests?

15 A Sir, I never really thought about it before.

16 Q Then it has to be then after?

17 A If the situation, the situation as presented to you,
18 you think out what your position is. In terms of my position
19 I don't make the position --

20 Q Well, matter of fact, you do. Let me show you some-
21 thing, 1555, and ask you if you did not before it was confirmed
22 -- let me back up a moment. Weren't you sometime in June or
23 late May asked by Wilson and Edwards and others to send out
24 letters to Sterling Drug and to other PCB customers that a

1 recent sample of Santophen revealed no TCDD in PCP or Santophen?

2 A No, sir.

3 Q Look at Exhibit 1555 and see if you don't recognize
4 that as a memo of yours dated June 14, 1979. Is it, sir?

5 A Yes, sir.

6 MR. CARR: Offer 1555 into evidence if it please the
7 Court.

8 MR. MUSGRAVE: Object to it, your Honor. It deals
9 with Santophen, para, relevant and immaterial. It's remote
10 in time from the spill so as to have any probative value when
11 weighed against other considerations.

12 THE COURT: It's admitted over objection.

13 (Exhibit passed to the jury.)

14 Q This memo dated June 14th, 1979 was written by you,
15 wasn't it, Mr. McPhillips?

16 A Yes, sir.

17 Q And it did go to Dr. Wilson, didn't it, sir?

18 A Yes, sir.

19 Q And it mentions a prior discussion that you had with
20 Wilson in which it was contemplated that you were going to send
21 customers to Sterling Drug and two other PCP customers based
22 upon his statement to you that one sample of Santophen or PCP
23 and/or PCP found no TCDD in it, isn't that correct, sir?

24 A No, sir.

1 Q Did you not have a discussion with Dr. Wilson about
2 sending such a letter?

3 A Yes, I had such a discussion with him.

4 Q And did you not, did he not tell you that at that
5 discussion that you found no TCDD either -- in neither
6 Santophen nor in PCP?

7 A He told me that in one sample, yes, sir, but I told
8 him what my position --

9 Q Excuse me, Mr. McPhillips, if you don't mind, I got
10 the answer to that one, and now I want to ask you this. Did
11 you not discuss with him about sending letters to the customers
12 regarding the Santophen and the PCP findings?

13 A Yes, I did.

14 Q And did you not tell him that you don't want to send
15 such letters because you, as you say here, I hardly believe one
16 sample each is representative of our recent production, end of
17 quote?

18 A That is correct, sir.

19 Q Didn't you tell him that because you did not want to
20 send out this letter until you got confirmation that it was true,
21 that there is no TCDD in either product?

22 A Sir, it's not a question I did not want. I disagreed
23 with the statement that you said to me I did not want to send
24 a letter. I had no problems sending a letter to the customers.

1 but our previous analysis and some analysis on dioxin we found
2 some in there, and it wasn't conclusive; therefore, I took the
3 position hey, we've got to generate more data. In this case
4 it's just the reverse, Mr. Carr, to which I state we've only
5 got one representative sample where it's no. If we used the
6 logic before whether there's some before and not now, hey,
7 this -- it's a two-way street, so let's get some more data,
8 so that's what I did.

9 Q Indeed, and that's been the thrust of my question.
10 You did not want to send a letter to the customers telling them
11 that there was no TCDD in the product until you got confirmation
12 of that, until you could back it up with more tests, isn't that
13 correct, sir?

14 A I wanted to get more confirming data, yes, sir.

15 Q Yes, because --

16 A Whether -- and if it was an eminent hazard also.

17 Q Well, you don't say that in here, do you, sir?

18 A No.

19 Q Excuse me, Mr. McPhillips, you don't say that, do
20 you, sir?

21 A That's correct, I did not state that.

22 Q You're discussing whether or not you're going to send
23 a letter to the customers telling them, aha, we've checked our
24 product, our recent samples, and we find no TCDD. You're saying

1 we're not going to send that letter until we get additional
2 verification?

3 A That's correct, sir.

4 Q And then you say once we have additional verification
5 I will forward the customer letter; you see that, sir?

6 A Yes, I see that.

7 Q You say here we owe these customers a response. What
8 do you mean by saying that we owe these customers, Sterling
9 Drug, Lane and Fink and your other PCP customers a response?

10 A Sterling Drug and the two PCP, because they requested
11 the information, sir.

12 Q Oh, they didn't request any information. There is not
13 memo one in which they -- Sterling Drug requested of you the
14 information?

15 A I don't recall -- sir, I don't recall the Sterling
16 Drug inquiry at all, but the two PCP customers -- sir, they're
17 probably verbal.

18 Q No, sir, there wasn't. I have asked for and Monsanto
19 has produced every document dealing with customer requests and
20 dealing with customer notice. There is not any, Mr. McPhillips,
21 and in view of that what do you mean when you say we owe these
22 customers a response?

23 A Because the customers, the two PCP customers, if I
24 recall, were Givaudan and an outfit called Tennessee Eastman,

1 who by the way, I don't think we ever sold PCP to ever, and
2 they asked questions of whether there was any dioxins in PCP
3 and is there dioxins in parachlorophenol -- I don't remember
4 the exact question -- to which we were going to give them a
5 response.

6 Q I've got those letters. You responded by telling
7 them that there wasn't any.

8 A I --

9 Q So let me ask about this, sir. Those are -- if
10 those are the customers you're talking about, I have those
11 letters right there, and I'll be showing your letters to them,
12 I'll be showing those to you in a moment. But you've got
13 Sterling Drug included in there, sir.

14 A Umhm.

15 Q And you owe those customers a response?

16 A Umhm.

17 Q And it is your belief that you should not tell them
18 based upon just one sample, isn't that right, sir?

19 A That's what I state there, sir, yes, sir.

20 Q Now, you changed your mind about that, Mr. McPhillips,
21 and you changed your mind about whether or not you owed --
22 what you owed to customers, didn't you, sir?

23 A No, sir.

24 Q Well now, Mr. McPhillips, you've never notified them.

1 Mr. McPhillips, you've never notified them that there was TCDD
2 in these PCP or in Santophen, have you, sir?

3 A I forget exactly what I stated. I think at that time
4 --

5 Q No, you told him there wasn't any in it.

6 A From the previous results --

7 Q My question is you've never notified them that you
8 have found TCDD in your PCP or in your Santophen, have you,
9 sir?

10 A Not that I recall, sir.

11 Q Matter of fact, you told him just the opposite, didn't
12 you, sir?

13 A Well, sir, I don't recall. I mean, you've got to
14 dig out some of those analyses on PCP, what have you on whether
15 we found dioxins.

16 Q Well, we have the analysis of the PCP we went through
17 with the witness just in front of you that as late as May of
18 '79, and this is a result that came in in June 26th, '79, there
19 was dioxin in your Santophen and in your PCP. We have those
20 results here already.

21 A But those results were very tentative and they were
22 not conclusive, because if I recall, we were --

23 Q Excuse me. Who says that they were tentative?

24 A Not tentative -- well, we --

1 Q The table -- could you get 1135? It might be here
2 from the prior witness. It is here. There's nothing tentative
3 about those findings, is there, sir?

4 A Sir, I -- I would have to ask my technical people
5 whether this is tentative or not. You're taking me out of my
6 field.

7 Q The technical people have been fully examined about
8 it, fully examined, and they didn't call it tentative, sir.
9 There's nothing in the document that calls them tentative, is
10 there, sir?

11 A Sir, I haven't read the full document.

12 Q Did somebody tell you before you testified here today
13 that these in fact were tentative findings?

14 A Well, I don't know if the word tentative --

15 MR. MUSGRAVE: Object to counsel --

16 Q Did somebody tell you before you testified here today
17 that these were tentative findings?

18 MR. MUSGRAVE: Object to that calling for hearsay.

19 THE COURT: Objection is overruled.

20 A No, sir. I -- what I recall --

21 Q Then did you see a document where all these -- oh,
22 it's a long list of findings that were described as tentative?

23 A It says here TCC was reported as two groups, isomers
24 which elute at a retention of 2,3 and those who elute to other

1 retention times.

2 Q They're talking about TCDD, aren't they, sir?

3 A These levels do not imply --

4 Q Excuse me, sir. They're talking about TCDD, aren't
5 they, sir?

6 A Those -- part of the sentence I just read you, yes,
7 sir.

8 Q And they're not talking about any tentative findings,
9 are they, sir?

10 A I guess if you want to use the word --

11 Q No, I'm not guessing -- is there any word in there
12 where they describe these as tentative findings?

13 A No, sir, not that I can see.

14 Q Now, you've said at this time, if I understand the
15 thrust of your 1555 memo, you really didn't want to misrepresent
16 something to your customers until you were sure, you wanted
17 verification before you're going to tell them that there's no
18 TCDD, isn't that right, sir?

19 A We --

20 Q Isn't that right, sir?

21 A The way you phrased that question, yes, sir.

22 Q Yes. Now, you got the document -- 1135 is dated
23 what date, sir?

24 A It's June 26th.

1 Q And you wrote a letter to your customers on July the
2 12th, didn't you, sir?

3 A I don't recall the date, sir.

4 Q Well, we have it right here, and it won't be any
5 problem to show it to you.

6 (Plaintiffs' Exhibit 1556 was marked for identification.)

7 Q Handing you Plaintiffs' Exhibit 1556 and ask you if
8 you recognize the second page of that exhibit as being a letter
9 that you wrote dated July the 12th, 1979.

10 A That's my letter, sir.

11 Q I didn't hear your answer.

12 A That's my letter, yes, sir.

13 MR. CARR: Offer 1556 into evidence.

14 THE COURT: Any objection?

15 MR. MUSGRAVE: Yes, your Honor, we object to it on
16 the grounds that it deals with parachlorophenol and it's also
17 remote in time from the time of the spill to be probative on
18 the issues here and when weighed against other considerations.

19 THE COURT: Objection is overruled. It's admitted.

20 MR. CARR: And could I have 1556A please.

21 (At this time Plaintiffs' Exhibit 1556A was marked
22 for identification.)

23 Q Do you recognize 1556A as a blowup of the second page
24 of that exhibit?

1 A Yes, sir.

2 MR. CARR: Offer 1556A into evidence.

3 MR. MUSGRAVE: Same objection as to 1556.

4 THE COURT: Same ruling.

5 Q Now, Mr. McPhillips, 1556A is a letter that apparently
6 is from one of the customers that you referred to in the Exhibit
7 1555, where you didn't want to give a response, isn't that
8 right, sir?

9 A Those two letters correlate together, yes, sir.

10 Q And your memo dated 1555 where you don't want to send
11 this report until you get more confirmatory data, that memo is
12 dated June 14th, '79. Now, what's the date on Plaintiffs'
13 Exhibit 1135, sir?

14 A June 26th.

15 Q June 26th, 1979 you got the exhibit that contained,
16 among other things, Table 3 showing the results of tests on
17 various chlorophenols, isn't that correct, sir?

18 A There's some results, yes.

19 Q Now, having that letter -- and this Exhibit 1135
20 on June 26th specifically shows levels of TCDD in PCP, doesn't
21 it, sir?

22 A I don't know, sir. I haven't looked at this closely.

23 Q Well, let me help you. 654 if you're turning -- if
24 you look at Table 3 is PCP --

1 A 654?

2 Q And it shows levels of TCDD, doesn't it, sir?

3 A Yes, sir, and it shows some none detectable also, sir.

4 Q On 654? Better read that again.

5 A None detectable, less than 60. Sir, you're asking me

6 --

7 Q What I'm asking, Mr. McPhillips, if you look at
8 Sample MB654, all of those tests show detectable levels in the
9 hundreds to 130 parts per billion of TCDD, doesn't it, sir?

10 A I don't know, sir. I guess so.

11 Q CL4, if you're not aware of it, stands for TCDD.

12 A What page are you on?

13 Q Table 3, Page 9.

14 A That's the problem. I see it, yes, sir.

15 Q And it shows levels of from 100 to 130 parts per
16 billion of CL4, TCDD, doesn't it, sir?

17 A Yes, sir.

18 Q And look to the last page for Sample 726, last page
19 of Table 3, that's Page 11 of PCP at Sample 727. Do you see
20 that, sir?

21 A Yes, sir.

22 Q Two tests, one there at 14 parts per billion of tetra
23 and the other duplicate sample did not detect it at 10. Do
24 you see that, sir?

1 A Umhm.

2 Q Now, you tell Mr. Getz or Mr. VonEssen that you did
3 work that was done over a year ago in testing your parachloro-
4 phenol, and you found no TCDD in the work done over a year ago.
5 Do you see that, sir?

6 A Yes, sir.

7 Q Now, this work that you have here is work that was
8 done in 1979, June, 1979. You see that, sir?

9 A Yes, sir.

10 Q And you're giving this man information on tests that
11 were conducted, old tests that were conducted in 1978, in the
12 spring of '78 apparently, and you're not telling the man about
13 tests that were conducted in 1979, are you, sir?

14 A I guess not, sir, no.

15 Q Well, Mr. McPhillips, you are in essence lying to
16 this man, aren't you, sir?

17 A No, sir. Sir, I was not --

18 Q He's -- Mr. McPhillips, isn't he wanting to know
19 whether or not there's TCDD in your product? You have the
20 exhibit that shows there is TCDD in your product, in your
21 parachlorophenol, and you're telling him that your data shows
22 no TCDD in your product. You told him that specifically. Our
23 data shows no TCDD in our product at a detection limit of 10
24 parts per billion. You tell him that specifically.

1 A I specifically tell him that.

2 Q And that is a lie, isn't it, sir?

3 A Of over a year ago.

4 Q Excuse me. That statement is a lie, isn't it, Mr.
5 McPhillips?

6 A No, sir, it's not.

7 Q Do you have data that shows that you did have TCDD
8 in your product in front of you, Exhibit 1135?

9 A Sir, 1135 might say that, sir, but that doesn't mean
10 that I saw this data. June 26th, you got the 4th of July
11 weekend, and I never was copied in on a memo like this so that
12 doesn't necessarily mean that I lied, sir.

13 Q Well, Monsanto lied, didn't they?

14 A Sir, I don't see any advantages to lying.

15 Q You don't see any advantage if a customer is told
16 that there's no TCDD in a product, it might continue to use
17 that product, whereas if they know emotionally they're going
18 to react to it, if they know there's TCDD in the product, they
19 might emotionally react and decide that they don't want to use
20 that product. You know there is an advantage to misrepresenting
21 the facts, don't you, Mr. McPhillips?

22 A No, sir, I disagree with how you misrepresent the
23 facts, sir. Sir, this data -- before I'd make any conclusive
24 statements, I would have to talk to my technical people. Maybe

1 they had a position that I -- which wasn't conclusive, and I
2 don't know what it was. Maybe in this case the June 12th memo,
3 I did not discuss it with them, because I still was waiting for
4 the results and was unaware of any data generated and whether
5 the data was generated represented any problem.

6 Q Oh, let's explore that a little bit. Your letter of
7 June 14th, 1979, Mr. McPhillips, goes to Wilson who is the person
8 that's in charge of all these chemical analyses according to
9 his testimony. He gets a copy of this, and there's handwritten
10 notes down there. You got four to six additional PCP samples
11 at Dayton awaiting analysis. Is that your handwriting there,
12 sir?

13 A No, sir.

14 Q Well, we probably got this from Wilson, so it may be
15 his handwriting. So you're in contact with your people and you
16 tell him you're going -- you're not going to send out anything
17 until you get additional verification, so presumably you got
18 some further information before you sent out this letter of
19 July 12th, isn't that correct, Mr. McPhillips?

20 A No, sir, I wouldn't necessarily agree with that.

21 Q Well, Mr. McPhillips --

22 A I could give you a scenario, sir, that would --

23 Q In your letter of June 12th --

24 A I did not say that at all.

1 Q In your letter of June 12th you acknowledged that
2 there is a test of recent production, you say it specifically.

3 A June 14th, sir.

4 Q Your June 14th letter you acknowledge that there is
5 a recent product test.

6 A Although we have found no TCDD --

7 Q Don't you, sir?

8 A -- in our product --

9 Q Don't you, sir?

10 A Yes, I see that.

11 Q You know that there is a recent test, you know that
12 there was a test from February that -- where they found this,
13 you've seen the Santophen tables yourself, sir, where they
14 found the parts per billion in the Santophen --

15 A We're talking PCP.

16 Q PCP is a predicate -- is a preparatory chemical
17 to Santophen, is it not, sir?

18 A Yes, sir.

19 Q And we're talking about PCP Sample 654 was nothing
20 but PCP.

21 A I guess so.

22 Q You guess so? Look and see, Mr. McPhillips.

23 A Yes, sir. It's prior to caustic, yes.

24 Q So you say you're not going to send that letter out

1 but what do you do? You send him a letter out talking about a
2 sampling done over a year ago.

3 A That's correct.

4 Q When you have a recent sample that shows no TCDD in
5 the PCP. Why don't you refer him to the recent sample, Mr.
6 McPhillips?

7 A Because I felt that data was not conclusive. They
8 were still generating additional data, and you just don't
9 analyze one sample and go off the cuff.

10 Q Why would your --

11 A You've got to look at your general production, not a
12 given lot.

13 Q Why would your data that's over a year old on PCP be
14 more reliable than your more recent data?

15 A Sir, I guess my position at the time, and this is
16 going back six years --

17 Q Would you answer my question, sir. I'm not asking
18 you --

19 A I'm trying to, sir, if you'd let me finish.

20 Q I'm asking you why you believe that --

21 A Sir --

22 Q -- your data from a year before July of '79 is more
23 reliable than your data in '79? That's what I'm asking you,
24 sir.

1 A I was trying to answer that, sir, but you interrupted
2 me this time. I'm sorry. May I explain that?

3 Q You can answer that question --

4 THE COURT: Mr. McPhillips, if the attorney who's
5 asking the question feels that the answer is not responsive,
6 he has a right to interrupt and draw the witness to a responsive
7 answer.

8 MR. MUSGRAVE: Well, your Honor --

9 THE COURT: Just wait a second.

10 MR. MUSGRAVE: I thought you were finished.

11 THE COURT: In the future just answer the questions
12 of the attorney.

13 MR. MUSGRAVE: Your Honor, may I now, your Honor --
14 I believe the witness was trying to respond. The question was
15 asked why he would believe something as opposed to something
16 else. He got about four words out of his mouth before counsel
17 interrupted. No one could be sure whether he was responding
18 or not, and I believe that he has got a right to explain his
19 answer when he's asked a question in that fashion, and I believe
20 that he was interrupted and that he was trying to respond to
21 the question, your Honor, and when Mr. Carr interrupts, it's
22 for the Court to decide I believe, whether he was being responsive,
23 and I object to Mr. Carr interrupting and not permitting the
24 witness to finish his answer.

1 THE COURT: I don't think he was responsive. I think
2 the interruption was proper. It was not -- from the start
3 one could see if one is experienced in these matters it's not
4 responsive to the question. Your specific objection to the
5 action taken by Mr. Carr is overruled. You may proceed, Mr.
6 Carr.

7 Q Mr. McPhillips, why do you believe, if you believe it,
8 that your data on the tests of a year before -- over a year
9 before July of '79 is more reliable than your data developed
10 in '79?

11 A Sir, the data -- I'll try to answer it -- the
12 data in 1979 or '78 was analysis that we had. The '79 data
13 from what I recall the situation was a mass in terms of trying
14 to put all this stuff together, and there were bits and pieces
15 coming out, and I was still awaiting some feedback from research.
16 Granted, a June 26th memo might be out. That doesn't necessarily
17 mean that I get it at all. In fact, just because it's June 26th
18 doesn't mean it goes in the hands --

19 Q Mr. McPhillips, I'm not even asking you about that
20 memo.

21 A Sir --

22 MR. MUSGRAVE: Your Honor, may the witness finish
23 please. He's trying to answer Mr. Carr's question, and I believe
24 he's entitled to finish without being interrupted at this point.

1 THE COURT: Objection is overruled. Mr. Carr, you
2 may proceed.

3 Q What I'm asking, Mr. McPhillips, if you can confine
4 yourself to what I'm asking, you have said in your memo, earlier
5 memo of June 14th that you don't want to rely upon the recent
6 sample that says there's no TCDD.

7 A Umhm.

8 Q -- in your product, but in your July, '79 memo you
9 disregard that recent product sample test and go back to over
10 a year before to use that as the example of and support to say
11 to your customer there's no TCDD in the product. My question
12 is why didn't you use and rely upon the recent sample that you
13 knew of before June 14th, '79, why didn't you rely upon that,
14 sir, instead of telling him about a sample that's tested in
15 1978?

16 A Sir, I wish I could answer that, but I just don't
17 recall my thinking.

18 Q Let me help you a little bit. If you referred to the
19 old test and didn't tell the people that you had more recent
20 tests, you could be technically correct by telling them that
21 there was no TCDD in the old, more than a year old test, but
22 you could not tell them that if you used a more recent test,
23 because you knew at that time that your more recent tests
24 showed TCDD in one or two or three of them, whereas one test

1 did not show it, and for that reason, Mr. McPhillips, you
2 decided to ignore both the good and the bad results of 1979 in
3 order to be technically correct by referring only to the 1978
4 results, isn't that correct, Mr. McPhillips?

5 A No, sir, I don't think so.

6 Q Mr. McPhillips --

7 A I said I don't recall my thinking, sir, and you're
8 putting -- speculating, and I really don't recall my thinking
9 process at the time.

10 MR. MUSGRAVE: May my -- may I object to counsel's
11 question which is obviously a speech, not intended to be a
12 question, because the witness has said he doesn't recall his
13 thinking and request that it be stricken and the jury instructed
14 to disregard it.

15 THE COURT: Objection is overruled. It was a proper
16 question.

17 Q Let's look at the second paragraph of Exhibit 1556.
18 You tell the customer there that you decided to analyze all
19 the chlorophenols for TCDD using the most current methods and
20 equipment available. Now, of course, that's true, you did
21 decide to do that, and you have that result there in front of
22 you dated June 26th, 1979. So you told them that, but now you
23 say here, we'll be developing these data over the next several
24 months. If there is any change from our previous finding, we

1 will notify you accordingly; don't you, sir?

2 A That's what I state, sir, yes, sir.

3 Q So what you're doing is you're telling them that
4 you're going to look at it and if you find anything that's
5 different, even if there is any change from the previous finding,
6 they're going to be notified when in fact you have the data
7 in front of you, you had in June of 1979, a good two weeks
8 before this letter was written, and you tell them that if there's
9 any change, we're going to let you know.

10 A I did not have this data, sir.

11 Q Well, let's --

12 A You said I, and I did not, sir.

13 Q Let's just suppose that data did percolate down sooner
14 or later, didn't it, sir?

15 A I'm sure -- well, to me? Not necessarily to me,
16 sir, no.

17 Q Well, did you go out and ask --

18 A I wouldn't know how to interpret all this data, sir.

19 Q Did you go out and ask whether or not there was any
20 change from the previous findings?

21 A If I recall, almost all our -- after the spillpot
22 caustic change and what have you, sir, we found -- I don't
23 think we found any more PCP, and if we did, it didn't present
24 any hazard at all.

1 Q Well, I'm not even asking you whether or not it
2 presented a hazard, but you did find, sir, that there was a
3 change when you came up with -- you're telling this man now
4 back in '78 we've got nothing, but we're going to check, and if
5 we find any change from those previous findings, we're going to
6 tell you. And you did find a change in your '79 product has
7 got TCDD in it, doesn't it, sir?

8 A The analysis of one lot, yes, sir.

9 Q No, of more than one lot. We've pointed out two to
10 you in February of '79 and in May of '79. Two lots has TCDD.
11 Don't you see that, sir?

12 A I see that, sir.

13 Q So there was a change, wasn't there, sir, from your
14 '78 findings?

15 A Sir, I would have to ask my research people what the
16 change, what the significance --

17 Q Well, Mr. McPhillips --

18 A -- of the data is, sir.

19 Q Mr. McPhillips, if you find TCDD in your samples
20 tested from February of '79 and if you find TCDD in your samples
21 tested May 27th of '79, there is TCDD in your product, isn't
22 there, sir?

23 A The way you phrase it, yes, sir.

24 Q And that is a change from your 1978 findings, where

1 there was no TCDD in the product, isn't it, sir?

2 A At the time, yes, sir.

3 Q But you did not notify the customer of that change,
4 did you, sir, of that finding, did you, sir?

5 A I don't recall, no, sir. I don't think they were a
6 customer of ours after, sir, because, as I said before, Tennessee
7 Eastman was not a customer and Givaudan wanted a higher assay
8 product and I don't think we ever supplied them again, sir.

9 Q Mr. McPhillips, they returned products to you because
10 they were unacceptable. I have a memo written to Gatz from the
11 Givaudan Corporation in which they referred to Purchase Order
12 No. 22983 and they send back unacceptable drums to you.

13 A Yes, sir.

14 MR. MUSGRAVE: That's not Tennessee Eastman, is it,
15 Mr. Carr?

16 MR. CARR: No, the exhibit I have given him does not
17 refer to Tennessee Eastman. It refers to Givaudan.

18 Q You see that letter, sir?

19 A Givaudan.

20 Q You see that letter, sir?

21 A I see it.

22 Q They were a customer of yours, weren't they?

23 A I said after, in May they were not a customer of ours.
24 I said in July, after July they were never a customer of ours.

1 Q Did they learn --

2 A That's a May letter. I said July.

3 Q Oh, I see. So you were technically correct in that
4 as of July they were not a customer, is that right, sir?

5 A In fact, it was before that, sir.

6 Q I'm sorry?

7 A In fact, if I recall, it was even before that. That
8 material was quite old when they sent it back to us.

9 Q Let me propose something to you, Mr. McPhillips.

10 A Yes, sir.

11 Q Do you think it's possible that Givaudan or however
12 you pronounce their name was inquiring about dioxins because
13 they don't want to use something or expose their employees or
14 expose their customers to something that's got TCDD in it? Do
15 you think that might possibly be the reason they asked you the
16 question?

17 A Sir, that letter there is an expression of --

18 Q Could you answer that question please, sir.

19 A I can't speculate of why they asked the question, sir,
20 but it's a potential, yes.

21 Q And they have the material on hand that you sold them,
22 some of which may be the batches that were created in February
23 of '79 that has 230 parts per billion of TCDD in it; that's
24 possible, isn't it, sir?

1 A I don't know, sir. It's possible, I guess.

2 Q It is indeed possible, and it is also possible that
3 if there is TCDD in the product, that they would send it back
4 to you as being unacceptable; that's possible, isn't it, sir?

5 A The reason they sent that material --

6 Q Excuse me, could you answer that question, sir.

7 A That could be possible, sir.

8 Q Yes.

9 A The way you asked the question.

10 Q If they sent it back to you because it's got TCDD in
11 it, it would not then be exposed to their workers, would it,
12 sir?

13 A The way you speculate, sir, that's right.

14 Q And it would not then be incorporated in their
15 products, their hospital disinfectant and would not then be --
16 or whatever they're using it for and would not then be exposed
17 to their customers, isn't it, sir?

18 A That's a scenario, sir, to which you can draw that
19 conclusion, but you did not put that letter in evidence, and
20 that letter is asking about assays.

21 Q Mr. McPhillips, do you understand the way that this
22 case goes? Mr. Musgrave, if he wants that letter in evidence,
23 he can put it in. He talks about impurities in other lots
24 that is not relevant to the TCDD question, and therefore, I'm

1 not asking you about that. If he thinks it's relevant, he can
2 bring it up. He's got a copy of it, it's open, so, Mr. McPhillips,
3 you don't need to make the case. If he thinks it's important
4 to bring up, he'll bring it up. I'm asking you now specifically,
5 Mr. McPhillips, as to whether or not isn't it a fact that if
6 they don't use the PCP that has the TCDD in it, that their
7 customers won't be exposed to it?

8 A If the -- obviously if they turned it back, they're
9 not exposed to nothing, but that was not the reason they turned
10 it back, sir.

11 Q Mr. McPhillips, I'm not asking you that. They didn't
12 know that it was in there, so obviously they could not have
13 turned it back for that reason. You didn't tell them it was
14 in there. How can they turn it back if you don't tell them,
15 sir? They asked you specifically about it and you didn't tell
16 them. How can they turn it back, sir?

17 A Sir, you don't have to yell at me. You know, I'm
18 right here. Rephrase the question. You're a little too loud.
19 Say it again, sir.

20 THE COURT: Gentlemen, approach the bench for a minute.

21 (The following proceedings were had at the bench out
22 of the hearing of the jury.)

23 THE COURT: I've had it with this guy, and I'm going
24 to hold him in contempt. I'm going to have the jury taken out

1 now, we're done for the day, and we're going to do it now.

2 MR. MUSGRAVE: What for, sir? For Mr. Carr yelling
3 at him telling him not to yell at him?

4 THE COURT: No. He has been so insolent, and he has
5 violated everything I've told him to do. I have had it with
6 the games that these witnesses --

7 MR. CARR: Your Honor, let me suggest here that his
8 insolence hasn't been to the Court, it's been to me, and I'm
9 willing at this point to put up with it, and I would ask the
10 Court that we not recess for that purpose, because I -- I
11 would like to get through with this witness and not to have
12 another pathway that would go down that would take up our time,
13 and I would ask that the Court hold that in abeyance and see if
14 there is any more like it instead of at this time --

15 THE COURT: Okay. At your request I'll hold it in
16 abeyance.

17 MR. MUSGRAVE: Could I have a moment to talk with
18 the witness in view of the Court's --

19 THE COURT: After court you may.

20 (The following proceedings were had in the hearing
21 and presence of the jury.)

22 Q Mr. McPhillips, you never notified the customer that
23 there was TCDD in the product, did you, sir?

24 A No, sir.

1 Q And therefore, they could not use that as a reason to
2 send it back, could they, sir?

3 A No, sir.

4 Q Now, you told us earlier, Mr. McPhillips, that the
5 customer has a right to know if they ask if there was TCDD in
6 the product. Do you recall that --

7 A Yes, sir.

8 Q -- telling us that earlier?

9 A Yes, sir.

10 Q Now here is a customer that asked, he's saying, he's
11 meeting your definition of his rights, not mine and not anybody
12 else's, but your definition, but you didn't tell him about the
13 TCDD in the product, did you, sir?

14 A Not after July, sir, no, sir.

15 Q And not before July either, did you, sir?

16 A No, sir.

17 Q So it is entirely possible that he has part of that
18 654 that he's working with at that very time that he's asking
19 you the question, isn't that possible?

20 MR. MUSGRAVE: Object to the speculation.

21 Q If that batch was manufactured in February of '79?

22 THE COURT: Objection is overruled.

23 A I guess it's possible, sir, yes.

24 Q So now here's a man or a company that's concerned

1 enough about PCP as to ask you whether or not there's any TCDD
2 in it and he's wanting to know --

3 A Umhm.

4 Q You know that there is TCDD in PCP --

5 A Not when I wrote that letter.

6 Q Oh, now you have that --

7 A I stated June 26th, 1979 I did not necessarily say
8 that prior to July 12th letter.

9 Q Well, what report did you have indicating that there
10 was no TCDD in your parachlorophenol?

11 A Sir, it probably was verbal from -- to Joe Metcalf
12 and Wilson.

13 Q Well --

14 A I don't get raw data like that. I primarily rely on
15 the people, sir.

16 Q Mr. McPhillips, if you would look at the memo, you
17 will see that there is a later batch of parachlorophenol that
18 does not have detectable levels of TCDD in it, two later batches
19 as a matter of fact. Direct your attention to Batch No. 662,
20 not detected in that although there is trichlorodibenzo dioxin,
21 there is not detected at tetra; do you see that, sir? 662 is
22 parachlorophenol.

23 A Parachlorophenol cut. I don't know if that's the
24 finished product or not, sir, I don't know. It says PCP cut.

1 Q Well, you see that it has got it in it whether it's
2 a cut or not?

3 A I see that.

4 Q And if you look down at PCP at No. 671 you see there's
5 another chlorophenol, that is, parachlorophenol without detec-
6 table levels of TCDD; you see that, sir?

7 A Yes, sir.

8 Q If you look down at MB67A that's a para rich cut,
9 it has detectable levels of TCDD, 21 parts per billion, doesn't
10 it, sir?

11 A It's right at the detection limit, sir, I think.

12 Q 21 parts per billion is twice detection limits, Mr.
13 McPhillips.

14 MR. MUSGRAVE: Object to reference to that in this
15 context. There's no evidence that para rich cut is a product.

16 THE COURT: Objection is overruled.

17 MR. MUSGRAVE: There is evidence to the contrary is
18 the only evidence in the case.

19 THE COURT: Objection is overruled.

20 Q And you look at PCP 708, MB708, another batch that
21 hasn't got detectable levels of TCDD in it; you see that, sir?

22 A I see the MB, and it says none detectable. What it
23 is, I don't know.

24 Q Now, what you see there is if you leave out the PCP

1 that you call a cut, that is, 662, and we won't go through that
2 at all, you see two batches tested without detectable levels,
3 don't you, sir?

4 A Yes, sir.

5 Q Now presumably it's one or both of those batches Mr.
6 Wilson told you about that is -- that caused your June 14th
7 memo 1555, is that correct, sir?

8 A Sir, I don't know. I don't know what his position --
9 where he -- his position came from and where the PCP. I would
10 not know the details -- he told me an analysis -- a sample
11 had no TCDD, one sample, to which I responded. Where he got
12 that data, sir, I would not know.

13 Q Well, he had the information on the earlier -- if
14 he's in charge of that business, he had that information earlier,
15 did he not, about the February of '79?

16 A February? I would imagine he would have February of
17 '79 data, yes.

18 Q Mr. McPhillips, if he had it, you should have it,
19 should you not, sir?

20 A On a technical paper like this?

21 Q No, not in a technical paper, anyway, however you got
22 your information. If he had it --

23 A I probably was told it verbally, yes, sir.

24 Q But you told your customer that you didn't have it,

1 didn't you, sir?

2 A Over a year ago, yes, sir.

3 Q And yet you had it. Mr. McPhillips, this customer,
4 exercising the only right that you'll give him, that is, the
5 right to ask, asks the question, and you don't tell him, do you,
6 sir?

7 A Sir, at the time I wrote the July 12th memo I might
8 not have been aware, I probably was not aware of the June 26th
9 data or any data.

10 Q When you became aware of it, did you ever send him
11 another letter?

12 A Sir, I don't know if I would ever become aware of it.

13 Q Did you ever send him another letter?

14 A No, sir. I said after that time he was probably not
15 a customer. I really don't recall.

16 (Plaintiffs' Exhibit 1557 was marked for identification.)

17 Q Handing you Plaintiffs' Exhibit 1557, I'll ask you if
18 you recognize that along with this blowup as a letter written
19 to the Tennessee Eastman Company?

20 A Yes, sir.

21 (At this time Plaintiffs' Exhibit 1557A was marked for
22 identification.)

23 MR. CARR: Offer both of those exhibits -- I'm
24 sorry --

1 MR. MUSGRAVE: This is 1557?

2 MR. CARR: Yes.

3 Q 1557A is a blowup of 1557, is it not?

4 A Yes, sir.

5 MR. MUSGRAVE: I'll object --

6 MR. CARR: Offer 1557 and 1557A into evidence.

7 MR. MUSGRAVE: We would object on the same basis as
8 we objected to 1556, your Honor.

9 THE COURT: Same ruling. It's admitted over objection.

10 (Exhibit passed to the jury.)

11 Q Now, Mr. McPhillips, this is a letter very close to
12 the language used in the Exhibit 1555, isn't that right, sir?

13 A Yes, sir.

14 Q This time though, he has read in the Chemical Week
15 that the material that spilled in Sturgeon had TCDD in it
16 apparently, is that correct, sir?

17 A He referred to the May 23rd article, yes, sir.

18 Q And that is the article that mentioned that there was
19 TCDD in the chemical that spilled at Sturgeon; do you recall
20 that, sir?

21 A I don't recall exactly what it said, sir.

22 Q Well, this person in any event wants to know, that
23 makes them think is there possibly TCDD in your parachlorophenol,
24 correct, sir?

1 A Yes, sir.

2 Q And you tell him again the data shows no TCDD at work
3 that was done over a year ago?

4 A Yes, sir.

5 Q But you don't mention the work done more recently,
6 sir?

7 A No, sir.

8 Q Now, are there any other -- as far as I know, Mr.
9 McPhillips, I'll represent to you that these are the only
10 letters that were given to us in -- that would bear a date
11 of '79. We have some 1981 letters written to Diamond Shamrock,
12 and they're getting ready to go into Canada with 2,4 dichloro-
13 phenol, but in '79 these two letters, so far as I am presently
14 aware, are the only two letters sent to customers of Monsanto
15 relating to the chlorinated phenols. Do you have any knowledge
16 of any other letters, Mr. McPhillips?

17 A Letters?

18 Q Yes.

19 A No, sir.

20 Q Do you have any knowledge of any memos relating to
21 telephone conversations?

22 A Memos, no, sir. Well, yeah, there's a memo in terms
23 of a conversation, I think, with regard to Fallek-Lancro.

24 Q And where is that memo?

1 A Well, after a conversation or discussion I had with
2 Fallek-Lancro some summer and they were talking about dioxin
3 in 2,4 DCP and the USDA, and I remember talking to Jim Wilson
4 and telling Jim Wilson that Fallek is getting some questions
5 from a --

6 Q Well then, you do recall the memo that I mentioned
7 to you, don't you, sir?

8 A What memo?

9 Q About the USDA.

10 A USDA, I don't know who it was --

11 Q Sir?

12 A I don't know who it was, but I recall a conversation
13 when I called to talk to Jim Wilson.

14 Q That he told you about?

15 A I told Jim about the inquiry. Now, what he did after
16 that, sir, I don't know what he did, whether he called Fallek
17 or talked further to USDA --

18 Q That's a notation that another customer had been
19 making some inquiries some time of the USDA as to whether or
20 not your product contained TCDD.

21 A But other than that I can't recall any other --

22 Q That's a memo about an inquiry. My question is do
23 you have any memo, any letters, any report indicating that you
24 told any customers that your chlorinated phenols contained

1 dioxin or TCDD?

2 MR. MUSGRAVE: Is this in 1979 or '80?

3 MR. CARR: In '79.

4 A I don't recall as to levels and everything else of
5 dioxin the way you stated that, but I don't recall any other
6 letters going to customers, sir.

7 MR. CARR: Your Honor, this is a convenient place for
8 us to stop.

9 THE COURT: All right. Ladies and gentlemen, we'll
10 break for the day at this point in time. We will resume again
11 tomorrow morning at nine o'clock. I would remind you, as I do
12 for any overnight breaks that you're not to read, listen to,
13 or watch anything about this case in particular or subject
14 matter in general in any of the media, print or electronic.
15 I want to thank you for your attention and cooperation. Court
16 is adjourned. Gentlemen could I see you at the bench for a
17 minute please.

18 (The following proceedings were had in chambers
19 following the dismissal of the jury.)

20 THE COURT: I would note that I have at this time
21 given an Order, copy of an Order to all counsel indicating
22 what matters on incamera inspection are to be produced and
23 what are not, and this, I believe, completes all incamera
24 documents given to me for inspection, and I don't have a

1 specific count, but just note the general amount of documents,
2 I would think that -- I have ordered that it be done and I
3 understand that it could reasonably be done by end of business
4 tomorrow.

5 There are two discovery motions and one to shorten
6 time, and I believe they're all yours.

7 MR. CARR: Before we got to that I'd like to know
8 when we're going to get the Affidavits of Compliance that were
9 due from Mahoney and from Heineman, because I do not want to
10 rest until we get those Affidavits of Compliance.

11 THE COURT: Assuming that these are produced the end
12 of business tomorrow, when can you get the Affidavits?

13 MR. NASSIF: Well, your Honor, gee, I'd really like
14 to talk to Mr. Heineman about that but I know -- I think we
15 could get it if you just -- without talking to him if I could
16 sort of preparatory on my remarks, reasonably soon thereafter,
17 your Honor.

18 THE COURT: Well, you don't know what reasonably soon
19 is at this point in time?

20 MR. NASSIF: Well, I mean --

21 THE COURT: They're both in St. Louis. There's no
22 reason it can't be a day.

23 MR. CARR: I want to rest no later than Wednesday,
24 and I don't want to rest until --

1 MR. NASSIF: I don't know the status of Heineman
2 Affidavit, and I think I know the status of the Mahoney Affidavit.

3 THE COURT: I think since I'm ordering that this be
4 produced Tuesday, it's now Monday afternoon, I think Wednesday
5 is not a -- not an unreasonable time for those Affidavits to
6 be presented.

7 MR. NASSIF: Okay. We may have it. Can I get to you
8 tomorrow? But I think Wednesday -- I'm not disagreeing with
9 you --

10 THE COURT: Okay.

11 MR. NASSIF: I'm just without knowledge of what their
12 status is.

13 THE COURT: I understand the situation. I'm expressing
14 my opinion that Wednesday around noon or one o'clock would not
15 be an unreasonable time to have those presented in terms of
16 what has been indicated to me as to the status of production,
17 what has been indicated to me as to the status of documents
18 for incamera inspection and at the time table for production
19 of those matters which I have ordered produced, so I'm suggesting
20 that that's a reasonable time.

21 MR. CARR: Your Honor, in regard to both motions of
22 Monsanto, we have no objections to their motions.

23 THE COURT: Okay. What about the Motion to Shorten
24 Time?

1 MR. CARR: We have no objection to that.

2 MR. MUSGRAVE: Rex, with regard to the Motion to
3 Produce the Medical Records --

4 MR. CARR: We don't have any medical records. I mean
5 you want documents -- we may not be able to comply within
6 seven days on that because we have to contact all of our people,
7 but I have expectations that we will comply.

8 MR. MUSGRAVE: Okay.

9 MR. CARR: And if I don't we already -- we last week
10 already asked our people to gather the material, so I expect
11 to comply, and if I don't, it's -- well, I'm doing the best
12 that I can.

13 MR. MUSGRAVE: I understand.

14 MR. SEIGFREID: Well, for instance, if a letter --

15 MR. CARR: We ought to be able to get this stuff just
16 as soon --

17 MR. MUSGRAVE: But you're going to have your people
18 go to their doctors and get the records?

19 MR. CARR: Of course not.

20 MR. MUSGRAVE: Oh, you're not?

21 MR. CARR: Of course not.

22 MR. MUSGRAVE: Then you're only going to get records
23 that they might perchance have?

24 MR. CARR: That they have a copy of.

1 MR. MUSGRAVE: Well, I think that we would request
2 that this motion include that they be required to go and obtain
3 these records which are within their control since they are
4 their doctors that they've seen in the same fashion that Monsanto
5 was required to get these records from Suskind.

6 MR. CARR: Your Honor, that's a completely different
7 connection between our doctors and Suskind. We've already given
8 them everything that they need to get the records, and they have
9 used those authorizations to get records.

10 THE COURT: Oh, you've given them all the authorizations?

11 MR. CARR: Your Honor, they have all the authorizations
12 they need. We're not about to go out and produce these records
13 for them. They have all the authorizations they need.

14 THE COURT: You've got the authorizations.

15 MR. CARR: If you want more authorizations, why, just
16 give us more authorizations.

17 THE COURT: If you've got the authorizations, you
18 don't need a motion.

19 MR. MUSGRAVE: Are there any other doctors they've
20 seen we're not aware of though, new doctors?

21 MR. CARR: I have no way of knowing, Counsel. I'm
22 not about to inquire of them, but once we get the bills from
23 them, anything in their possession, it will surely show whether
24 or not there are new doctors. You'll have all the information

1 that our people have.

2 MR. MUSGRAVE: Well, you will give us new authori-
3 zations?

4 MR. CARR: Any time you want them we'll be glad to
5 give them to you.

6 MR. MUSGRAVE: And all records that they have of any
7 kind would you be -- well, we'll just probably have to file
8 an Interrogatory on the new doctors then. We'll just have to
9 do it in that fashion, I suspect.

10 THE COURT: If you've got authorizations --

11 MR. MUSGRAVE: Well, we may not have for new doctors
12 they've seen.

13 THE COURT: No, I understand what you're saying, but
14 I'm talking about the old ones as far as updates are concerned.
15 I didn't know, I had forgotten that you had authorizations or
16 I was never told that.

17 MR. MUSGRAVE: Well, these authorizations are old,
18 and many times doctors, as the Court knows, will not honor
19 authorizations that are too old, so in view of Mr. Carr's --

20 MR. CARR: Any time you've sent us an authorization
21 we have executed it. If you want more, just send it in.

22 THE COURT: Fine. Good.

23 MR. CARR: And insofar as the Answers to Interrogatories
24 that you sent us, we've already answered it. So we have the

1 Motion to Produce outstanding and we'll comply just as soon as
2 we can.

3 THE COURT: Fine, great. Anything else since we're
4 back here?

5 MR. CARR: Not from us, Judge.

6 THE COURT: Very good. Okay. See you tomorrow
7 morning.

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