

3/19/02
(Kaley continued)

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1 (Anniston, Alabama, March 19, 2002)

2

3 (1:25.)

4 (Jury is not present.)

5 (All parties are present.)

6

7 THE COURT: Back on the record.

8 Mr. Stewart, have you got

21 This consultant that y'all had, it was
22 a gentleman named Costello.
23 THE COURT: Let me ask a question
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1 before we get started.

2 Dr. Kaley, can you tell me
3 the date that the plaintiffs'
4 properties were contaminated?

5 THE WITNESS: Well, I -- not
6 specifically, no, sir.

7 THE COURT: Okay.

8 THE WITNESS: I mean, I think it
9 would vary among the plaintiffs
10 depending on the circumstances of
11 when PCB impacted materials
12 reached their properties but...

13 THE COURT: Is there a way that you
14 can determine when the properties
15 were contaminated?

16 THE WITNESS: Not really, no.

17 THE COURT: Okay. All right. Thank
18 you. Well, a couple of more

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9 any further questions?

10 MR. STEWART: Yes, sir, I do.

11

12 EXAMINATION RESUMED

13

14

15 BY MR. STEWART:

16 Q. I want to go back and ask you some specific
17 questions about this risk assessment that
18 y'all are to do under the work plan. But
19 before I do that, I want to ask you a
20 number of questions if I can.

19 questions.

20 If the soil test results on
21 Jane Smith's property showed that
22 Jane Smith's personal residence
23 -- the property on her personal
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1 residence had a PCB level of
2 16.564 parts per million, in your
3 opinion, would that need to be
4 cleaned up or remediated?

5 THE WITNESS: Well, under the terms
6 of the consent order or the
7 consent order we're working, yes
8 it would be, because it's greater
9 than ten parts per million.

10 THE COURT: Okay. So anything
11 greater than ten parts per
12 million you agree needs to be --

13 THE WITNESS: Under the current --
14 well, under the current consent
15 order it would need to be
16 remediated, yes.

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17 THE COURT: Okay. I think that's
18 all.
19 Q. (By Mr. Stewart) What if you didn't have a
20 consent order?
21 A. Then I think we would eventually reach a
22 cleanup level based on risk assessment
23 that would determine what properties
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1 needed to be cleaned up or not.
2 Q. So if you didn't have a consent order
3 telling you that you should clean
4 something up if it was above ten, you
5 wouldn't clean it up until you reached
6 some kind of agreement with somebody?
7 A. That's probably correct, yes, sir.
8 Q. Even if the property owners wanted you to
9 clean it up?
10 A. Well, I think it depends on the
11 circumstances. Certainly there have been
12 some properties in the Anniston area where
13 we have cleaned up at levels that were
14 below ten because the property owner did

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13 before EPA stepped in with their
14 CERCLA phase of the investigation
15 or the remediation, that is the
16 approach we were taking.
17 THE COURT: Okay. Well, let me ask
18 you then under the consent order
19 is Solutia going to still contest
20 whether or not -- let's just take
21 Ms. Venia Etoy House. Her
22 property shows 16.564 parts per
23 million. Is Solutia going to
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1 contest whether or not the PCBs
2 on her property came from
3 Solutia's plant?
4 THE WITNESS: Under the terms of the
5 consent order?
6 THE COURT: Well, I don't know. Is
7 her property contained under the
8 consent order? Would the consent
9 order cover her property?
10 THE WITNESS: I don't know where her

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15 want us to clean it up. So I think it --
16 in general it would depend on the
17 individual property owner and some of
18 their desires.
19 Q. So you would just clean that up based on
20 whatever property owner you were dealing
21 with and how y'all felt about that given
22 particular property owner?
23 A. Well, I think it would depend on whether
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1 we were comfortable with the fact that the
2 PCBs on that property were associated with
3 our former manufacturing processes and
4 that if the position of the property in
5 the drainage pathways and potential other
6 routes for PCBs to that property. I think
7 there are a number of considerations.
8 THE COURT: Okay. Well, let me --
9 THE WITNESS: That was before EPA --
10 go ahead. I'm sorry.
11 THE COURT: No. You go ahead.
12 THE WITNESS: I was going to say

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11 property is and whether it's one
12 of the properties that's being
13 sampled under the terms of the
14 consent order.
15 THE COURT: Okay. So --
16 THE WITNESS: Certainly if it is and
17 it has that level of property
18 then, no, we are not going to
19 contest it.
20 THE COURT: Okay. Well --
21 THE WITNESS: If it's outside that
22 range then I think it's really
23 yet to be determined based on
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1 investigation.
2 THE COURT: What is the range or
3 scope of the testing under the
4 consent order?
5 THE WITNESS: There are -- at this
6 point there are six areas under
7 which Solutia is required to do
8 testing to establish whether the

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9 properties there contain ten or
10 more parts per million. Those
11 are --
12 THE COURT: What areas?
13 THE WITNESS: What areas are they?
14 THE COURT: Yes. Tell me where
15 those six areas are.
16 THE WITNESS: They're largely
17 northwest and east of the plant
18 and then some down Snow Creek.
19 THE COURT: I mean, how far do they
20 go? Let me tell you, Ms. House's
21 property is located at 608 North
22 Marshall Street. Do you know
23 where that is?
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1 THE WITNESS: I do not.
2 THE COURT: Does anybody have a map?
3 MR. COX: I can help.
4 THE COURT: Do we have a map of the
5 six areas?
6 MR. STEWART: Judge, we would just

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5 documents and they cover two
6 separate things.
7 THE COURT: Well, I thank you for
8 clearing that up. I thought the
9 consent decree and the consent
10 order were two different -- I
11 mean, two -- the same thing.
12 THE WITNESS: No. No, sir.
13 THE COURT: I didn't realize they
14 were two different things.
15 THE WITNESS: Yes, sir.
16 THE COURT: Do you have a consent
17 order?
18 THE WITNESS: We have a consent
19 order. We do not have a consent
20 decree.
21 THE COURT: What's the difference?
22 THE WITNESS: Well, a consent order
23 is the order under which we are
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1 sampling and remediating
2 properties now that was

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7 prefer that the witness answer.
8 I mean, I know this is an
9 informal proceeding but I would
10 prefer that the witness answer
11 the question if he knows.
12 THE COURT: Well, I would prefer to
13 get an answer from somebody. So
14 I would like to have a map that
15 has those six areas on it if one
16 exists.
17 THE WITNESS: Well, it certainly
18 exists. I don't know whether
19 it's present in the courtroom.
20 THE COURT: Okay.
21 MR. STEWART: You mean, Dr. Kaley,
22 y'all have a map here of the area
23 that's going to be covered by
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1 this consent order?
2 MR. COX: Objection. He's mixing
3 consent order with consent decree
4 and there's two different

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3 originally signed in October of
4 2000 and was revised in October
5 of 2001.
6 THE COURT: Okay. And --
7 MR. STEWART: That's the
8 administrative order.
9 THE WITNESS: Administrative order on
10 consent.
11 THE COURT: And the consent decree is
12 what you have now entered into
13 with EPA?
14 THE WITNESS: Well, as far as I know,
15 we have not entered into it. We
16 have negotiated an agreement and
17 hope to enter into it.
18 THE COURT: Okay. So the proposed
19 consent decree?
20 THE WITNESS: Yes.
21 THE COURT: Now, do you have a map
22 showing the six areas? And,
23 again, I think I phrased my
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1 questions using the term "consent
2 order." So the six areas you're
3 speaking of, are they under the
4 consent order or the proposed
5 consent decree?
6 THE WITNESS: They are under the
7 administrative order on consent,
8 the AOC.
9 THE COURT: Okay. Then I'm concerned
10 about --
11 THE WITNESS: The signed document.
12 THE COURT: I'm concerned about the
13 proposed consent decree.
14 THE WITNESS: Okay.
15 THE COURT: Is there an area in the
16 proposed consent decree which
17 Solutia is required to test?
18 THE WITNESS: I don't know that
19 there's -- it -- there is a
20 general definition. But my
21 understanding -- and I could be
22 wrong. But my understanding is
23 that we would be required to test

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22 THE COURT: Okay.
23 THE WITNESS: As would all of the
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1 activities that we're required to
2 perform under the consent or the
3 order on consent. That would
4 also -- that will become part of
5 the consent decree.
6 THE COURT: Okay. Can you look on
7 the map that contains those six
8 areas -- Does this map contain
9 those six areas?
10 MR. COX: This map contains the
11 outline of the six areas.
12 THE COURT: Okay. Can you look on
13 that map and determine whether or
14 not 608 North Marshall Street is
15 in any of those areas?
16 THE WITNESS: If someone -- I don't
17 know Anniston well enough to know
18 where Marshall Street is located.
19 Given enough time and someone who

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1 to the satisfaction of the EPA
2 that we have identified all of
3 the PCB impacted properties in
4 the Anniston area.
5 THE COURT: Okay. Does the consent
6 decree change anything that's
7 already contained in the -- its
8 administrative order of the
9 Court?
10 THE WITNESS: No. One of the terms
11 of the consent decree is to roll
12 this AOC into the consent decree.
13 That was the intent from word
14 go --
15 THE COURT: Okay.
16 THE WITNESS: -- two and a half or a
17 year and a half ago.
18 THE COURT: So this -- these six
19 areas under the order would be
20 contained in the consent decree?
21 THE WITNESS: Yes, sir. Yes, sir.

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20 could point me to where Marshall
21 Street is I could do that.
22 THE COURT: Mr. Stewart, do you know
23 where North Marshall Street is?
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1 MR. STEWART: I have a clue where
2 North Marshall Street.
3 THE COURT: Okay. Could you assist
4 Dr. Kaley --
5 MR. COX: It's actually on the --
6 it's on the map, Your Honor.
7 THE COURT: Okay. Is it --
8 MR. COX: I don't know where 608
9 falls out on this map. But North
10 Marshall is designated on the map
11 and I assume that's the right
12 position.
13 THE COURT: Okay. Is it within any
14 of the six areas?
15 THE WITNESS: May I?
16 THE COURT: Certainly.
17 (Whereupon the witness leaves

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18 the witness stand.)
19 THE WITNESS: My guess -- it would
20 -- it's very close to the
21 borderline. My guess would be
22 that it is in one of the areas,
23 yes. But it could be right on
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1 the borderline.
2 (Whereupon the witness returns to
3 the witness stand.)
4 THE COURT: But that's only a guess?
5 THE WITNESS: Well, because I don't
6 know unfortunately the 1098
7 avenues don't go far enough west.
8 THE COURT: Right.
9 MR. PECK: On the map.
10 THE WITNESS: On the map.
11 THE COURT: What about Ms. Wilson,
12 Rosa Bell Marshall Wilson? Her
13 property has 13.374 parts per
14 million. She's located at 1116
15 West Sixteenth Street. Do you

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14 decree will extend the area and
15 EPA will, under the -- the
16 guidelines they have established,
17 require us to remediate at this
18 point every property which has
19 greater than ten. If it's, you
20 know, if either they, we, they or
21 we have data which indicate that
22 that is an appropriate analysis
23 of soil on that property.
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1 THE COURT: "They or we" I know who
2 you are referring to --
3 THE WITNESS: EPA's samples or
4 Solutia's sampling.
5 THE COURT: Okay. But you're not
6 going to accept any of the
7 plaintiffs' samples?
8 THE WITNESS: Well, I believe the EPA
9 has the plaintiffs' data and
10 would use that as an indicator
11 whether additional sampling might

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16 know whether or not that's in any
17 of those six areas?
18 MR. STEWART: It's not. Judge, I
19 don't think that's in that area.
20 THE WITNESS: That one would appear
21 to be -- based on my guess,
22 Sixteenth Street is near the
23 northern boundary of the most
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1 northern area.
2 THE COURT: Well, let's go back to
3 Ms. House. You said that your
4 best guess is that it is but.
5 Let's assume that Ms. House is
6 not living within the six areas
7 under the order, is Solutia then
8 going to contest that it has no
9 duty to test Mrs. House's
10 property?
11 THE WITNESS: I don't believe that
12 would be the case, no. As I
13 said, I believe the consent

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12 be necessary or not. That was
13 largely the data on which these
14 areas were drawn, as I understand
15 it.
16 THE COURT: Okay. Mr. Stewart?
17 Q. (By Mr. Stewart) Really as a practical
18 matter, what you all would do in
19 connection with those two properties is
20 because it's the plaintiffs' data you
21 would insist on, and EPA would do it, a
22 retesting of those properties. Which is
23 what you've done in other instances, isn't
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1 it?
2 A. We would retest those properties, yes. We
3 retested some of the properties that EPA
4 did.
5 Q. And y'all's testing techniques are such
6 that you can find it or not find it, can't
7 you, Dr. Kaley?
8 A. Well, if it's there we'll find it. If
9 it's not there we won't find it.

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10 Q. That's sort of like what Mr. Cunningham
11 said, We'll just let the fox in the hen
12 house and you all are out there checking
13 to see whether or not there is PCBs on the
14 property and to determine whether or not
15 you should actually clean it up, isn't
16 that correct?
17 A. I don't know.
18 MR. COX: Objection. Argumentative
19 THE COURT: Overruled.
20 A. I don't know what Mr. Cunningham was
21 referring to. But in any case our
22 laboratory's as are EPA laboratory's
23 required to maintain rigorous records of
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1 their quality assurance to assure the
2 quality of the data. So we have
3 confidence in the data we are generating.
4 Q. And so y'all have generated not only an
5 upper level figure but you've already
6 generated a lower level figure which is
7 two parts per million, isn't it? Y'all

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6 you clean that piece of property
7 up you're cleaning it down to
8 nondetect?
9 THE WITNESS: Yeah. Basically --
10 we're not taking off a little bit
11 of soil and testing and saying,
12 Oh, that's seven; we're below
13 ten, we can quit. We're
14 basically in all cases taking off
15 a foot of soil, testing to verify
16 that it is well below two, which
17 it always is, and then replacing
18 that foot of soil. We're not
19 trying to, you know, slice things
20 real closely.
21 THE COURT: Okay.
22 THE WITNESS: If the property needs
23 to be cleaned up we're going in
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1 and cleaning it up.
2 THE COURT: Okay.
3 Q. (By Mr. Stewart) So you are cleaning it

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8 have agreed to that, haven't you? Ten to
9 two on the cleanup on the emergency?
10 A. There is a cutoff level at two. But that
11 is --
12 Q. Right.
13 A. There is a cutoff level for the purpose of
14 verifying the analysis but that is not a
15 cleanup level. That is just a
16 verification level.
17 Q. So am I to understand --
18 A. We are cleaning up the properties that we
19 are cleaning up to well below two.
20 Q. Well, Dr. Kaley --
21 A. And I don't remember exact terms. I'm not
22 even sure if it's two in there. But I
23 believe that's correct.
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1 THE COURT: You said you're cleaning
2 it up to well below two?
3 THE WITNESS: Yes, sir.
4 THE COURT: So what you're saying is
5 if it's 11 parts per million when

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4 down to nondetect basically?
5 A. The detection limit. I don't know what
6 the detection limit is, Mr. Stewart. It's
7 well below two.
8 Q. But under this new consent order y'all are
9 establishing new emergency levels, aren't
10 you?
11 A. No. This will establish final -- the
12 consent order -- the consent order itself
13 does not address a final cleanup level.
14 The consent order addresses the
15 investigations and requirements, the
16 information necessary for what under
17 CERCLA is called a record of decision
18 which will establish a final cleanup
19 level.
20 Q. So that's basically what this new deal is
21 supposed to be?
22 A. Well, that's one part of it, yes.
23 Q. Right. Okay. But you're not saying that
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1 under this emergency thing that you all

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2 cleaned down to nondetect, are you?
 3 A. We are cleaning an appropriate -- I don't
 4 know what the particular levels are and I
 5 don't know what the verification sampling
 6 is set. I don't know whether there are
 7 low levels of PCBs detected or not. But
 8 the detection limit depends on a number of
 9 things. So --
 10 Q. Detection what?
 11 A. I said the detection limit depends on a
 12 number of things and that's why you can't
 13 basically pick nondetect as a cleanup
 14 level because that depends on the
 15 analytical method. You need to agree --
 16 if you're going to do that you need to
 17 agree upon an analytical method and it's
 18 particular detection limit which
 19 essentially sets a cleanup level. There's
 20 always going to be a method which can get
 21 you to a lower detection limit.
 22 Q. Well, who is it that sets that detection
 23 limit on your analytical data? You?
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23 consent order as to how y'all are arriving
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 1 at those kinds of detection limits and
 2 picking the lab and that type stuff?
 3 A. I don't understand the question. I mean,
 4 the laboratory is required as part of its
 5 ongoing daily operations to analyze
 6 samples among which are samples to
 7 establish the detection limit.
 8 Q. Do you recall when you all took tests of
 9 13 properties that were made available to
 10 you or access was made available to y'all
 11 prior to a settlement conference in this
 12 case?
 13 A. I recall that, yes.
 14 Q. And do you remember what you did with that
 15 data?
 16 A. I specifically did with it?
 17 Q. Yeah?
 18 A. I don't know --
 19 Q. Didn't you write the EPA a letter about
 20 it, Dr. Kaley?

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 1 A. It's based on the method that the
 2 laboratory is using and their ability to
 3 carry out that method. It's an
 4 experimentally determined value.
 5 Q. You pick the lab, don't you?
 6 A. Certainly we've chosen the lab to do our
 7 analyses, yes.
 8 Q. And that lab is a lab that y'all have paid
 9 over time a fairly substantial amount of
 10 money?
 11 A. I presume so. I don't know specifically.
 12 Q. And you're aware of their detection limit,
 13 are you not?
 14 A. I don't know what it is specifically on
 15 soils, no.
 16 Q. Who would know that with your outfit?
 17 A. A --
 18 Q. Mike Price?
 19 A. Mike may know. Craig may know. Craig
 20 Branch -- Mr. Branchfield might know.
 21 Q. Okay. But that's just something y'all
 22 tell EPA once you select that under this

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21 A. I don't recall that.
 22 Q. You don't recall taking the data that
 23 y'all got from those tests and writing to
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 1 the people at EPA and Region 4 and telling
 2 them that this shows that the
 3 contamination in Anniston is not as
 4 widespread as the plaintiffs have
 5 indicated?
 6 A. I recall some terms around not widespread.
 7 I don't recall exactly if that were that
 8 data or not. I know that all of the data
 9 that we've gathered on any analyses,
 10 whether on plaintiffs' properties or any
 11 property, have been reported to the EPA
 12 and to ADEM. You know, what specific
 13 letter and which specific language you're
 14 referring to, I don't know.
 15 Q. What I'm talking about, Dr. Kaley, is
 16 there were 13 properties that were made
 17 available to Monsanto or Solutia for
 18 testing in connection with some settlement

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19 conferences that we had.
20 A. I do recall that.
21 Q. And y'all tested those?
22 A. Yes, we did.
23 Q. And y'all sent the data, you did, over to
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1 EPA Region 4, and indicated to them in a
2 letter that accompanied that data that
3 your analysis of the soil samples
4 indicated that the contamination in the
5 area here in Anniston was not as
6 widespread as the plaintiffs had
7 originally indicated that it was?
8 A. I do not recall that letter or that
9 language.
10 Q. Okay. You don't recall sending a letter
11 to them?
12 A. Not specifically on those 13 properties.
13 I may have. I do not recall that letter
14 specifically.
15 Q. Okay. Who is it that you did correspond
16 with, if you recall, about anything about

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15 agreement in connection with the past
16 costs?
17 A. I believe that is correct, yes.
18 Q. What is it y'all have agreed to pay EPA to
19 get them to work out this deal with y'all?
20 A. We are not paying them to work --
21 MR. COX: Objection. Argumentative.
22 THE COURT: Overruled.
23 A. We are not paying them to work out a deal.
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1 We are paying past costs under their legal
2 ability to recover past costs from us from
3 their investigations.
4 Q. I understand that. But what is it that
5 you are paying them? How much money are
6 y'all paying EPA to get them to enter into
7 this agreement?
8 A. I believe the number is five point -- we
9 are not paying them to enter into this
10 agreement. We are paying them under the
11 terms of their legal ability to recover
12 those monies from us and that money is

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17 those tests at that time?
18 A. Well, as I said, all of the data that we
19 have collected have been communicated both
20 to ADEM and to EPA. So at some point that
21 data was communicated to both of those
22 agencies. What accompanying letter I may
23 have written, I don't recall.
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1 Q. Okay. All right. Tell me, Dr. Kaley, who
2 Mr. Costello is. What is his area of
3 expertise who attended this last meeting
4 with y'all?
5 A. He was hired as a consultant to look over
6 the request for past costs recovery that
7 the EPA had submitted to us.
8 Q. What's his area of expertise?
9 A. I would assume he's an accountant, but
10 that is an assumption. I don't know
11 specifically.
12 Q. And do you know where he's from?
13 A. I do not.
14 Q. Okay. Have y'all worked out your final

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13 approximately 5.7 million dollars.
14 THE COURT: Well, would they enter
15 into this agreement if you didn't
16 agree to pay it -- if you didn't
17 pay it to them?
18 THE WITNESS: We would have to pay it
19 whether we entered into the
20 agreement or not.
21 THE COURT: Okay.
22 THE WITNESS: They have a legal right
23 to recover that money from us,
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1 agreement or no agreement.
2 THE COURT: Okay.
3 THE WITNESS: If they didn't do it
4 under this agreement, they would
5 do it under Superfund.
6 Q. (By Mr. Stewart) Well, at some point in
7 time it was a little above six, wasn't it?
8 A. I believe that's correct.
9 Q. I mean, I've looked at this draft. So
10 y'all have negotiated the deal down to 5.7

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11 million; is that right?
 12 A. We didn't negotiate a deal. We challenged
 13 some of their additional costs and they
 14 agreed that there would be -- that those
 15 costs were not our responsibility.
 16 Q. And I noticed in the agreement that this
 17 was not going to be listed as a National
 18 Priority List site. It wasn't going to
 19 make it on the NPL. Y'all negotiated that
 20 deal with them too, didn't you?
 21 A. No, sir. That is part of the process.
 22 The process is that if the agency is able
 23 to negotiate and work with the potentially

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1 responsible parties that there's no need
 2 to go through the listing process and put
 3 it on the NPL site. Although I'm not sure
 4 it says that in this agreement that that
 5 is the case.
 6 Q. Oh, it don't?
 7 A. That's the way the process works whether
 8 it's this site or any other site in the

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7 you have a copy of that Mr. --
 8 MR. COX: I do.
 9 THE WITNESS: I have a copy of
 10 something which has something
 11 about human health risk
 12 assessment on page 17 so...
 13 Q. He gave it to you. Right. Right. And
 14 this indicates on paragraph two y'all used
 15 data collected during the site
 16 characterization to refine actual and
 17 potentially exposure points and pathways.
 18 And it talks about a Phase I Conceptual
 19 Site Model Report?
 20 A. Yes.
 21 Q. Who put all that together?
 22 A. Who put all what together?
 23 Q. The Phase I Conceptual Site Model Report.

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1 A. It has not been put together yet. That is
 2 one of the first phases of this
 3 investigation.
 4 Q. That's what y'all have to do?

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9 country.
 10 Q. Now, "process" has gotten to be a fairly
 11 strange word. It covers up a lot of stuff
 12 here. But when you say "process," what
 13 are you talking about?
 14 A. I'm talking about the law.
 15 Q. The law?
 16 A. That is my understanding of the CERCLA
 17 legislation, the CERCLA regulations; that
 18 if there is no potentially responsible
 19 party who is willing and able to step up
 20 and pay for the investigations and the
 21 corrective measures, then a listing
 22 process is applied.
 23 Q. Okay. Now, on page 18 of the program of

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1 work y'all are setting out how y'all are
 2 going to -- on page 17. It begins, "The
 3 Human Health Risk Assessment." And that's
 4 a document that's entitled in this
 5 process, A Statement of Work Remedial
 6 Investigation and Feasibility Study. Do

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5 A. Yes. One of the things we have to do,
 6 yes.
 7 Q. Okay. So you'll use data that you have
 8 already collected or data that you will be
 9 collecting?
 10 A. Both.
 11 Q. Both?
 12 A. I think. The most -- the preliminary I
 13 think this conceptual site model will rely
 14 primarily on data that has already been
 15 collected. But there may be some what are
 16 called "data gaps" which will need to be
 17 filled to do that.
 18 Q. All right. And who makes the
 19 determination as to the data gaps?
 20 A. It will be Solutia and the EPA.
 21 Q. Okay. Now, y'all are going to take a look
 22 at fish, the levels of PCBs in fish?
 23 A. Not -- I don't believe that is included in

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1 this particular site conceptual model.
 2 Because in the -- most of the area covered

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3 by this fish is not an issue. I could be
4 wrong. But I believe groundwater, surface
5 water, air, et cetera here. I don't
6 believe that fish are included in this but
7 I could be wrong. I think part of it will
8 be where the data lead us. If it turns
9 out that fish is a pathway covered by this
10 consent decree, then we will do fish. I
11 mean, we are doing fish sampling
12 continually anyway. So that data are
13 available or those data are available if
14 we need to do that.
15 Q. Let me see if I understand what you just
16 got through saying. In performing the
17 human health risk assessment, you all will
18 not include fish or the level of PCBs in
19 fish?
20 A. Yeah. As I think about it, I'm probably
21 wrong on that. Because now I believe this
22 does include Choccolocco Creek. So if
23 that's the case, certainly fish will be
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1 included where appropriate.
2 Q. Wouldn't you admit, Dr. Kaley, that --
3 what do you mean now by "where
4 appropriate"?
5 A. Well, where there is a pathway for fish to
6 provide exposure to humans, then I believe
7 that would be included.
8 Q. Would that be only for those people who
9 perhaps lived on Choccolocco Creek?
10 A. I think that's yet to be determined. I
11 don't know.
12 Q. Who would determine that?
13 A. The EPA and us. Depending on the, you
14 know, how the risk assessment is carried
15 out.
16 Q. Well, based on the way they negotiated
17 what you owed them, can we really depend
18 on them, Dr. Kaley? We're really probably
19 left with y'all, aren't we?
20 MR. COX: Objection, argumentative.
21 Speculative.

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1 included. I may have misspoke.
2 Q. Well, we thought it included Choccolocco
3 Creek.
4 A. I believe that may be correct at this
5 point.
6 Q. Are you thinking it may not?
7 A. I think it may -- I think you are correct
8 at this point.
9 Q. Did y'all concede that back to the state
10 overnight or is that something that y'all
11 have left in your --
12 A. As I said, I believe that the creek is now
13 included in the area covered by the
14 consent decree.
15 Q. Well, it says here, groundwater, surface
16 water, air and so on and it doesn't
17 mention that. But is that an exclusive or
18 do you think as you sit there today that
19 fish was included in that?
20 A. Well, it says "et cetera." And I -- fish
21 would be a normal -- the one thing I could
22 think of that would be included under that
23 et cetera. So I believe it probably is

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22 THE COURT: Overruled.
23 A. I believe you can depend on the EPA and Mr.
031802B 7738
1 Aiken to do a very fine job in reviewing
2 this risk assessment, yes.
3 Q. Yeah. We feel good about that.
4 MR. COX: Objection. Move to
5 strike.
6 THE COURT: Sustained. Strike Mr.
7 Stewart's last comment.
8 Q. Let me ask you if you can tell us what -- I
9 asked you some questions about this just
10 the other day and you indicated that you
11 thought maybe that the exposure that a
12 child might be faced with at these sites
13 or through these media were probably used
14 as a test or a beginning point. I don't
15 know that much about this. You wouldn't
16 use an adult to determine what the
17 exposure level should be in soil or any of
18 this other media. But I looked through
19 this agreement and I didn't find that in

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20 here.
21 A. Well, as I said yesterday, when that -- or
22 the other day, whenever you elicited that
23 testimony, that Mr. Aiken and the EPA have
031802B

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1 assured us that there will be several
2 pathways to be considered in the risk
3 assessment, and exposure to children will
4 be one of those.
5 Q. Well, what are the others?
6 A. Well, adults. There will be dermal adult,
7 dermal child, inhalation adult, inhalation
8 child. All of those pathways are
9 considered in the risk assessment.
10 Q. So you --
11 A. I mean, that's standard risk assessment.
12 And the EPA now has their federal
13 guidelines requiring the EPA to include
14 exposure routes for children among those
15 risk assessments.
16 Q. Exposure routes to children?
17 A. Yes.

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16 Q. Okay. And didn't the administration -- I
17 mean, didn't the chemical industry fight
18 that pretty hard?
19 A. I don't re -- I don't know.
20 Q. Sir?
21 A. I don't know whether they did or not.
22 Q. Didn't y'all make a concentrated effort to
23 try to get set at adult levels?
031802B

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1 A. I don't know.
2 Q. Sir?
3 A. I do not know.
4 Q. Isn't it a fact, Dr. Kaley, that y'all
5 have attempted to get the people who were
6 doing health consultations in this case
7 and at this site to use the exposure that
8 an adult -- the PCBs that an adult would
9 be exposed to as opposed to a child to
10 interpret what the risk would be at this
11 site?
12 A. I don't believe that to be the case, no.
13 Q. Do you know an Andrew Wargo?

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18 Q. But there's nothing in the statute or in
19 the rules or the regulations that require
20 them to consider that for adults, is
21 there?
22 A. Well, that's been the normal procedure.
23 That was -- has -- was the -- what
031802B

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1 prompted the EPA and other federal
2 agencies to add specific language adding
3 children is because the complaint had been
4 that all risk assessments only addressed
5 adults and there was a need to be sure
6 that children were addressed in those risk
7 assessments.
8 Q. Okay. And that was legislation that was
9 passed that required that?
10 A. I don't know whether it was legislation.
11 I believe it was an executive order.
12 Q. And who entered that executive order; do
13 you remember?
14 A. I believe President Clinton's
15 administration.

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14 A. Yes.
15 Q. Do you know a Glenn Ruskin?
16 A. Yes.
17 Q. Didn't Mr. Ruskin work for Solutia in
18 Washington?
19 A. He still does.
20 Q. And do you know him to be a truthful
21 person?
22 A. As far as I know, yes.
23 Q. And if he said that y'all contacted the
031802B

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1 representatives of ATSDR and also the
2 State Health Department and attempted to
3 get them to accept an adult as opposed to
4 a child in that situation, would you think
5 that would be true or untrue?
6 MR. COX: Objection to the extent
7 he's asking Dr. Kaley to comment
8 upon what somebody else outside
9 the context of these proceedings.
10 THE COURT: Overruled.
11 A. If I understood your question, I do not

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12 believe that Mr. Ruskin or any
13 representative of Solutia made that
14 request to ATSDR. And if Mr. Ruskin said
15 that we did so, then I would think that he
16 made a mistake.
17 Q. Made a mistake? Do you know the lady who
18 was involved in the health consultations,
19 Cheryl Browder, at the State Health
20 Department?
21 A. I know Ms. Browder, yes.
22 Q. And do you know whether or not you and Mr.
23 Ruskin and others were involved in

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1 conversations with Ms. Browder and
2 representatives from ATSDR in an attempt
3 to get them to modify their health
4 consultation based on the exposure that an
5 adult would be facing? Do you remember
6 those conversations that y'all had with --
7 A. I don't -- certainly don't know that Mr.
8 Ruskin has ever talked with Ms. Browder.
9 Q. I'm asking if you -- I'm asking if you

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8 applying a child's level to the
9 plant site areas.
10 THE COURT: Overruled.
11 Q. I'm talking about applying it to the
12 cleanup at a piece of property?
13 A. Well, a number --
14 Q. If you use an adult.
15 A. Well, in the first place, to answer the
16 first -- the predicate to your question,
17 we would not and as far as I know did not
18 request them to not use exposure routes
19 for children in their risk assessments.
20 Q. So you --
21 A. Secondly, it may or may not, if children
22 were used versus adults -- depending on
23 the exposure scenario and the particular

031802B

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1 end point, it may or may not cause a
2 higher level or a lower level of eventual
3 cleanup to be determined.
4 Q. What about PCBs in soil at residential
5 properties? What effect would using a

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10 remember that, Dr. Kaley.
11 A. No, I do not. I do not believe that we
12 have ever asked either agency to modify
13 the approach they take to doing risk
14 assessments, whether on children or
15 adults.
16 Q. Okay. Now --
17 A. But certainly they're a regulatory
18 requirement to include children's routes
19 of exposure in risk assessments, and there
20 was no reason we would ask them to not use
21 that route of exposure.
22 Q. Well, one of the reasons that you would
23 ask them to use that route of exposure or

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1 use an adult in that setting would be it
2 would raise the level of cleanup number
3 y'all could leave at the plant site,
4 couldn't it? The level of PCBs either on
5 property or in the air.
6 MR. COX: Objection. Speculative to
7 the extent he's talking about

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6 child as opposed to an adult have on the
7 cleanup level there, as you understand it,
8 Dr. Kaley?
9 A. Until the end point -- the appropriate end
10 point is determined, that is not a
11 question that could be answered in the
12 abstract. It could be higher; it could be
13 lower.
14 Q. So you have -- well, generally though with
15 a child it would be lower, won't it?
16 A. I don't know that that's generally true,
17 no. It depends on the end point.
18 Q. In other words -- all right. I'll leave
19 that.
20 Now, when y'all talk about doing an
21 ecological or ecological, however you want
22 to pronounce it, study, what animals are
23 y'all going to consider would be effected

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1 by PCBs in the drainage basins?
2 A. I don't know specifically what's intended
3 to be used.

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4 Q. Well, have you ever considered or have
5 y'all ever tested water foul?
6 A. I don't believe we have tested water foul,
7 no.
8 Q. Well, why not?
9 A. I don't know. I -- I wasn't the one
10 making the decisions on which species were
11 to be tested. My assumption is that that
12 was one that was considered and it was
13 determined not to be appropriate.
14 Q. Who determined that was not to be
15 appropriate?
16 A. Our risk assessment consultant, I assume.
17 Q. Y'all's?
18 A. Yes.
19 Q. And who was that?
20 A. Mr. Schell.
21 Q. Mr. who?
22 A. John Schell, S-C-H-E-L-L.
23 Q. So he said that there were no water foul
031802B
7747
1 on the Choccolocco or around Lake Logan

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1 tests should be or constitute, shouldn't
2 you? What kind of tests you should take?
3 A. I -- I don't know -- not that I know of.
4 I mean, we have --
5 Q. Well, who decided that you --
6 A. At this point we have a work plan at ADEM
7 which parts of have been approved that
8 determine the investigation -- the terms
9 in the investigation along Choccolocco
10 Creek and we are carrying out that
11 investigation.
12 Q. Well, does that include testing fish at
13 all?
14 A. Fish, yes. We certainly are testing fish.
15 Q. Does that include all fish or all aquatic
16 life or just certain fish?
17 A. I believe we are testing -- I think a half
18 a dozen species or so on a routine basis.
19 Q. Of fish?
20 A. Yes.
21 Q. And who made the determination as to which
22 fish you should test, John Schell? Did he

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2 Martin that should be considered at
3 danger, at risk because of their exposure
4 to PCBs?
5 A. No. I don't believe he said that at all.
6 Number one, if we're talking about this
7 particular document, the species that are
8 going to be considered have not been
9 determined.
10 Q. Sir?
11 A. If we're talking about the consent decree
12 and the risk assessment that is going to
13 be done under the terms of this consent
14 decree, the species that are going to be
15 used have not been determined.
16 Q. Well, y'all have been doing tests on
17 Choccolocco Creek for a period of time,
18 haven't you?
19 A. We have done some testing along the creek,
20 yes.
21 Q. And y'all have been required as a result
22 of the request by EPA to provide them with
23 some kind of definition of what those
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23 make that recommendation to y'all?
031802B
7749
1 A. I'm sure -- I don't know. I think it was
2 partly him and partly -- we are also using
3 a consultant from Auburn University and he
4 had some input into --
5 Q. Who was that?
6 A. David Bayne.
7 Q. Okay. David Bayne told you in addition to
8 John Schell? Is that B-A-Y-N-E?
9 A. Yes, it is. Thank you.
10 Q. Is that Dr. David Bayne?
11 A. Yes.
12 Q. Okay. Now, is it Dr. John Schell?
13 A. Yes, it is.
14 Q. Where does Dr. Schell come from? What's
15 his background?
16 A. He's a toxicologist. He works for BBL
17 Sciences in Tallahassee, Florida.
18 Q. Is that that group that's doing y'all's
19 study on the creek?
20 A. They are doing some of it, yes.

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21 Q. Okay. Is that BBL?
22 A. Yes.
23 Q. Okay. In addition to those half dozen
031802B
7750
1 species of fish, what other aquatic
2 animals are y'all testing to make a
3 determination as to whether or not the
4 exposure to PCBs cause them some problem?
5 Anything else you're checking?
6 A. We have not tested anything else -- any
7 other animal species to this point that I
8 know of.
9 Q. Is there any plan to check any other
10 animals or species?
11 A. We haven't -- as I said, we haven't
12 designed the parameters of this risk
13 assessment. So I don't know whether there
14 is or not.
15 Q. For instance, have y'all determined or
16 made a determination to test animals that
17 perhaps live around the water?
18 A. Well, certainly they will be considered in

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17 combine those two pieces of information to
18 do the risk assessment.
19 Q. Are you familiar with the Hudson River
20 study?
21 A. Well, there have been a number of studies
22 done along the Hudson River. I don't know
23 specifically what you're referring to.
031802B
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1 Q. The risk assessment, the ecological risk
2 assessment that they did there?
3 A. I know there is one. I've not read it.
4 Q. You've not read it?
5 A. No, I haven't.
6 Q. Do you know who conducted that study?
7 Didn't EPA conduct that study?
8 A. I don't know specifically.
9 Q. If -- just say for the sake of this next
10 question I'm going to ask you, if they did
11 conduct that study up there in the Hudson,
12 why is it that EPA, if they told you, Dr.
13 Kaley, chose to allow you all, the
14 polluter, to do this risk assessment here?

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the risk assessment. I don't know that they will be tested. They will probably -- my understanding would be that in most cases because the fish are the primary route of PCBs to those animals, that the

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1 fish data are used to do the risk
2 assessment for those fish eating animals.
3 But certainly that is yet to be determined
4 finally.
5 Q. Well, how is it that you would determine
6 whether or not those animals were affected
7 adversely by PCBs if you didn't test some
8 of them, make the determination as to how
9 much?
10 A. Well, much like you do with a human risk
11 assessment, you -- you use actual
12 environmental data such as fish levels,
13 and then you use experimental data from
14 laboratories on the variety of species
15 that have tested, variety of animals,
16 response to PCBs or other chemicals, and

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15 A. It was part of the negotiations. We
16 believe we could do a good job at that and
17 then during the negotiations they agreed
18 that it -- that that would be appropriate.
19 Q. So on the Hudson the EPA decided that they
20 would do it. And then when it got down
21 here to Alabama and what they considered
22 to be sort of a different kind of
23 locality, they decided that they would let
031802B
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1 y'all do it; is that correct?
2 A. I certainly cannot address what the EPA
3 thought.
4 Q. Do y'all have a better relationship with
5 the EPA than perhaps GE does? Is that the
6 way y'all worked the situation out?
7 MR. COX: Objection. Speculation.
8 THE COURT: Sustained.
9 Q. What is it that y'all -- what is it that
10 they indicated to you for the difference?
11 Why did they tell you that they would make
12 that difference, if you know, Dr. Kaley?

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13 MR. COX: Objection. Speculation.
 14 THE COURT: Overruled.
 15 A. They certainly -- that issue never came
 16 up.
 17 Q. It just never came up?
 18 A. That's correct.
 19 Q. Well, now they had insisted on doing it to
 20 begin with in some of the early
 21 correspondence but they gave that up?
 22 A. Well, Mr. Stewart, I believe the word was
 23 "we would prefer." I don't believe that
 031802B 7754
 1 is insistence.
 2 Q. Oh, we would prefer.
 3 A. And they said it was open for negotiation.
 4 And we negotiated -- we discussed that
 5 with them and they agreed that we could do
 6 the risk assessment.
 7 Q. Weren't PCBs a contaminant that was of
 8 interest in the Hudson River thing?
 9 A. Yes, they are.
 10 Q. Right. And wasn't it about a million

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9 an opportunity to comment or suggest or
 10 change that risk assessment, which
 11 opportunity they certainly will have. And
 12 if they believe that it's appropriate to
 13 do whatever may have been done at the
 14 Hudson, and I don't know what that is, I'm
 15 sure they will tell us.
 16 Q. Pardon me, Dr. Kaley, for not being
 17 concerned about what they give you or take
 18 away from you. What my questions were
 19 aimed at was what they give and what they
 20 take away from the people down here in
 21 Alabama.
 22 Now, back to this human health
 23 assessment --
 031802B 7756
 1 MR. COX: Move to strike.
 2 Q. -- didn't the folks at EPA --
 3 THE COURT: Overruled. Denied.
 4 Q. -- didn't the folks at EPA do the human
 5 health assessment on the Hudson?
 6 A. I don't know.

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11 pounds of PCBs that had gotten out up
 12 there into the Hudson?
 13 A. I don't know.
 14 MR. COX: Objection, relevance.
 15 THE COURT: Overruled.
 16 Q. And if they tested those animals that I
 17 mentioned earlier in the Hudson that you
 18 all don't choose to test those, is there
 19 some reason that y'all are given less than
 20 what they do up there as a standard to
 21 follow in performing your ecological risk
 22 assessment?
 23 MR. COX: Objection, Your Honor,
 031802B 7755
 1 speculation.
 2 THE COURT: Overruled.
 3 A. I'm sorry. I don't remember what the
 4 question was. But basically they
 5 haven't -- they haven't given us or taken
 6 anything away from us at this point. We
 7 have not designed nor proposed the terms
 8 of the risk assessment. They have not had

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7 Q. Do you know what their view was, those
 8 people up there on the Hudson who did that
 9 particular study, was of the
 10 epidemiological study that apparently has
 11 been accepted by this jury in this case?
 12 Do you have an idea?
 13 A. No.
 14 MR. COX: Objection, speculation.
 15 He's already testified he doesn't
 16 even know who did the risk
 17 assessment.
 18 THE COURT: Well, overruled. If he
 19 doesn't have an idea he can
 20 simply say no.
 21 Q. Sir?
 22 A. I believe I said no.
 23 Q. Okay. You have indicated from the witness
 031802B 7757
 1 stand the other day that your feeling was
 2 that PCBs don't cause any adverse health
 3 effects in humans, didn't you?
 4 A. Aside from, as I think I've said other

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5 places, dermatological effects and
6 potentially elevations of some liver
7 enzymes, that's correct.
8 Q. Elevations of what?
9 A. Some liver enzymes.
10 Q. Some liver enzymes. And is that the
11 position of your company?
12 A. I believe it is, yes.
13 Q. Okay. And that's the position that you
14 put forth in this trial, is it not?
15 A. Yes, it is.
16 Q. And that's the position that you put forth
17 in discussions with EPA, is it not?
18 A. I don't know that we have specific
19 discussions about what the health effects
20 of PCBs may or may not be with the EPA.
21 Q. Is it your testimony here today that you
22 and old Elmer haven't talked about the
23 fact that PCBs don't cause anything but
031802B

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1 dermal effects and dermatological effects
2 in humans and perhaps some elevated liver

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1 That's exactly correct.
2 Q. Well who's going to help y'all with this,
3 good old Dr. Renate Kimbrough? Is she the
4 one y'all are going to call on to come
5 down here and wave that wand over this
6 site and say that it doesn't cause any
7 problems?
8 MR. COX: Objection, argumentative.
9 THE COURT: Overruled.
10 Q. Is Dr. Kimbrough going to come down here
11 and --
12 A. Where?
13 Q. -- and help y'all perform this risk
14 assessment? She came earlier for a day's
15 period of time. Is Dr. Kimbrough going to
16 be one of the experts y'all are going to
17 use to assist you in performing this?
18 A. No. Risk assessment is not one of Dr.
19 Kimbrough's areas of expertise. She is
20 not going to do the risk assessment. I
21 believe I told you Mr. Schell is going to
22 do the risk assessment.
23 Q. What company does he work for?

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3 enzymes?
4 A. Well, he may very well know that that's
5 what our position is. But I certainly
6 don't recall any discussions with him
7 about that, no.
8 Q. Well, how could he know that that's what
9 your position is?
10 A. Well, I've made that comment and comments
11 to ATSDR and other groups.
12 Q. Right. Well, isn't that what's going to
13 drive a part of this engine on assessing
14 what threats PCBs pose to human health?
15 A. No.
16 Q. That view?
17 A. No.
18 Q. Well, don't you consider the potential
19 toxicity of PCBs and the possibility that
20 those things can cause adverse health
21 effects?
22 A. Certainly. That's how you do a risk
23 assessment. You consider that potential.
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1 A. He works for BBL Sciences.
2 Q. And he's a toxicologist?
3 A. Yes.
4 Q. Well, will he not review a study that was
5 done by Dr. Renate Kimbrough for GE on the
6 Hudson?
7 MR. COX: Objection. Speculation to
8 what Dr. Kaley knows Dr. Schell's
9 going to review.
10 THE COURT: Sustained.
11 Q. Do you know whether or not he will review
12 that? Are y'all going to ask him to take
13 a look at that, Dr. Kaley?
14 MR. COX: Same objection to the
15 first part of the question.
16 THE COURT: Okay. Sustained as to
17 the first part. And since that
18 was a two part question, you can
19 answer the second part if you can
20 remember what it was.
21 THE WITNESS: Which I don't.

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22 THE COURT: Okay.
23 THE WITNESS: I'm sorry. What was
031802B 7761
1 the second part of the question?
2 THE COURT: Are you going to ask him
3 to take a look at that?
4 A. I'm sure he's already taken a look at it
5 but that will not impact the risk
6 assessment. That is not -- those are not
7 the guidelines that EPA uses to do the
8 risk assessments.
9 Q. So, in other words, the toxicity and --
10 you won't look at epidemiological studies
11 then, either Dr. Kimbrough's or anybody
12 else?
13 A. Well, we may very well. But those -- and
14 they may be included. But those are not
15 going to be the determining factors
16 because that is not the kind of data the
17 EPA rely on for their risk assessments.
18 We wish they would, frankly. But they
19 tend to rely on animal data and that's

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18 study.
19 THE COURT: Well, it doesn't
20 necessarily -- he doesn't
21 necessarily need to be familiar
22 with the study to know whether or
23 not EPA considered it. But I
031802B 7763
1 don't know that he knows whether
2 or not EPA considered it or would
3 have the availability to even
4 have that knowledge. And if he
5 doesn't he can say. So I'm going
6 to overrule.
7 THE WITNESS: And I don't know
8 whether they considered it
9 specifically or not.
10 Q. Did they discount -- Do you know whether
11 or not they just basically discounted that
12 study and said that it shouldn't be
13 considered because of its flaws?
14 A. I don't know.
15 MR. COX: Same objection.

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20 what we rely on also to determine those
21 values.
22 Q. Now, is it true that they just rely on
23 animal data or in fact didn't they discuss
031802B 7762
1 Dr. Kimbrough's study in the risk
2 assessment that was done in connection
3 with the Hudson --
4 MR. COX: Objection. He's already
5 said he's not familiar with the
6 risk assessment they did on the
7 Hudson.
8 THE COURT: What was your question
9 again?
10 MR. STEWART: I just asked didn't
11 they just look at Dr. Kimbrough's
12 study on the Hudson.
13 THE COURT: And you're talking about
14 -- who is "they"?
15 MR. STEWART: EPA
16 MR. COX: Objection. He didn't -- he
17 says he's not familiar with the

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16 THE COURT: Sustained.
17 Q. Now, on the date this trial started or
18 maybe the day afterwards, January 7th of
19 this year, didn't certain individuals in
20 your company have a conference call at
21 which time -- and that would be John
22 Hunter and Mr. Clausen and Mr. Barnacle,
23 at which time they discussed certain
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1 positions that your company was taking in
2 connection with this case?
3 A. Sometime in that -- sorry, Buddy.
4 MR. COX: Wait for me.
5 THE WITNESS: I'm sorry. I'm
6 looking over here.
7 MR. COX: I'm sorry. Objection, Your
8 Honor. We would object to the
9 question about these I guess
10 transcripts or audio
11 transcriptions of the conference
12 calls that Solutia
13 representatives had with the

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14 investors on the grounds of
15 relevance. We would also object
16 under Section 6-11-23(b) of the
17 Alabama Code regarding discovery
18 of financial information because
19 a lot of the information that's
20 on those tapes has to do with
21 financial information and other
22 responses to investors. And
23 under that section of the Alabama
031802B

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1 Code that material is irrelevant
2 until a punitive verdict is
3 returned and then it becomes
4 relevant to determine whether --
5 if then it can assess those. But
6 certainly the specific status
7 says, "Such information talking
8 about the financial viability of
9 a company and other financial
10 information should not be subject
11 to discovery unless otherwise

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10 this dispute, going to fight it to the
11 bitter end?
12 A. I don't recall that being said, no.
13 Q. They made the statement that they were
14 going to fight this through the courts,
15 did they not?
16 MR. COX: Objection to the extent
17 he's asking Dr. Kaley to comment
18 on -- and foundation, and also
19 objection to him commenting on
20 statements without giving an
21 opportunity here to read the
22 statement.
23 THE COURT: Okay. Sustained.
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1 Q. Do you know what position they took? Did
2 you listen to that conference?
3 A. I listened to a conference. The one on or
4 about the 7th of January I listened to,
5 yes.
6 Q. Okay. Was there another conference that
7 also took place between the same three

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12 discoverable until after a
13 verdict of punitive damages has
14 been rendered."
15 THE COURT: Did you obtain this
16 through discovery or did you just
17 obtain it off the Internet?
18 MR. STEWART: No, sir, we did not.
19 They made it public. They told
20 the world.
21 THE COURT: Overruled.
22 MR. STEWART: We did not obtain it
23 through discovery.
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1 THE COURT: Overruled.
2 Q. (By Mr. Stewart) Didn't they have those
3 conversations with the analyst where they
4 stated what the position of the company
5 was?
6 A. There was a conversation with the analyst,
7 yes.
8 Q. And didn't they indicate at that time that
9 they had no intentions of ever resolving

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8 parties and analysts on the 25th of
9 February, after the jury verdict was
10 rendered?
11 A. I don't know that.
12 Q. You didn't remember that one?
13 A. I don't know about it.
14 Q. Okay. Is Mr. Hunter a CEO of Solutia?
15 A. Is he?
16 Q. Yes?
17 A. Yes, he is.
18 Q. He's the gentleman that came down and
19 didn't know a whole lot about this
20 situation -- previously that came down and
21 testified for a little short period of
22 time, didn't know much about the
23 situation?
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1 MR. COX: Objection to the extent
2 he's asking Dr. Kaley what Mr.
3 Hunter knows or testified about.
4 THE COURT: Sustained.
5 Q. Came down here with Mr. Barnacle and Mr.

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6 Clausen and some other people on a Tuesday
7 a few weeks ago?
8 A. That's my understanding, yes.
9 Q. Okay.
10 THE COURT: It was only last week.
11 MR. STEWART: Last week.
12 THE COURT: It seems like a few weeks
13 ago.
14 MR. STEWART: Seems like a few weeks
15 to me.
16 Q. You are familiar with those gentlemen's
17 voices, are you not, and know who was who
18 in that particular --
19 A. Generally, yes, except for Mr. Clausen. I
20 really don't know Mr. Clausen hardly at
21 all. Mr. Hunter and Mr. Barnacle I --
22 Q. If he was identified as a CFO of your
23 corporation, you know only one Mr.
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1 Clausen?
2 A. Oh, I clearly know who he is. I just may
3 not recognize his voice.

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2 stipulate to that then we don't
3 need to do that.
4 MR. STEWART: That's fine with me.
5 MR. COX: I think we can if we can
6 just confirm that the contents of
7 the audio tape that they're going
8 to offer is a complete copy.
9 THE COURT: Okay.
10 MR. COX: And we can -- I've
11 certainly offered to do that on
12 at least two occasions.
13 THE COURT: Well, why don't I take a
14 break and let y'all do that?
15 MR. COX: Well, it's about -- the
16 first one's 45 minutes to an hour
17 long. The second one's I don't
18 know how long but --
19 MR. STEWART: Judge, I would submit
20 to the Court as an offer to the
21 Court that if Mr. Cox is claiming
22 that we manipulated or in some
23 fashion changed this, all we've
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4 MR. STEWART: Could we play the tape
5 for him at this time? Judge, we
6 would like to offer the tape to
7 see if he can authenticate --
8 MR. COX: Your Honor, if they're
9 going to offer the tape and we
10 can confirm that it's a complete
11 transcription of the presentation
12 that was made on January 7th, we
13 don't have any trouble with the
14 authenticity if it would speed
15 things along. I'm not sure if
16 it's appropriate to have Dr.
17 Kaley comment upon what somebody
18 else says on that tape.
19 MR. STEWART: I'm not asking him to
20 comment, Judge. I just want to
21 play the tape and ask him to
22 authenticate that these are in
23 fact --
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1 THE COURT: Well, if y'all can

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1 done is got a recording of the
2 conference that took place.
3 MR. COX: And, Your Honor, I'm not
4 suggesting or even trying to
5 imply --
6 MR. STEWART: I hope not.
7 MR. COX: -- that that's something
8 that would be done. I just want
9 to make sure that if the Court's
10 presented with a transcription
11 that we have an opportunity to
12 make sure that that transcription
13 is complete.
14 THE COURT: Okay. We can certainly
15 have that opportunity. Now
16 whether we need to just sit here
17 and listen to it all now, I don't
18 know. I think you can probably
19 authenticate to it and then
20 verify it later and if it's not
21 unauthenticated --
22 MR. COX: If I could just reserve my

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23 right to either supplement what
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1 they provide or after having an
2 opportunity to hear or listen to
3 what they provide or reserve my
4 objections to it until such time
5 as we can authenticate it, I
6 think that would move things
7 along.
8 THE COURT: Okay. I think you're
9 right. And I will allow you to
10 reserve that right.
11 MR. COX: Thank you, Your Honor.
12 MR. STEWART: Judge, if we could, we
13 would like to play the tape at
14 this time.
15 THE COURT: Okay. So what time have
16 we saved?
17 MR. COX: I don't know, Your Honor.
18 THE COURT: I mean, I'll be glad to
19 listen to it at some point. But
20 do we need to listen to it with

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19 like to ask the Court's indulgence and Dr.
20 Kaley's indulgence. I was not here
21 yesterday so I didn't hear all the
22 testimony. And I was going to go --
23 THE COURT: We can play it back for
031802B 7774
1 you if you want us to.
2 MR. LITTLE: That's okay.
3 MR. COX: I object.
4 THE COURT: But you do have my
5 indulgence.
6 Q. What I was going to say, I have some
7 questions about the discussions and the
8 negotiations between EPA and Solutia and I
9 -- if -- please, if it's something that
10 you've already been over before and you
11 feel like there's enough information about
12 it, please let me know and I'll be glad to
13 skip over things. I don't want to waste
14 anybody's time.
15 But, as I said, Dr. Kaley, I'm very
16 interested in discussions between Solutia

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21 Dr. Kaley sitting here, or can we
22 move on with questions and then
23 listen to it later?
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1 MR. STEWART: No. I mean, I'm
2 through with Dr. Kaley for all
3 intents and purposes, Judge.
4 THE COURT: Okay. Then I know you're
5 going to want to ask questions
6 but I'll allow ADEM.
7 MR. WRIGHT: No, sir.
8 THE COURT: The State?
9 MR. LITTLE: We have a few questions,
10 Your Honor.
11 THE COURT: Okay. Go ahead.
12
13 EXAMINATION
14
15 BY MR. LITTLE:
16 Q. Dr. Kaley, my name's Bill Little. I'm from
17 the attorney general's office and I
18 represent the State of Alabama. I would

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17 and EPA over a period of time,
18 particularly those that have resulted in
19 these -- the two administrative orders
20 that we are talking about, consent --
21 administrative consent orders. And then
22 the discussions that have resulted in --
23 so far in the negotiated agreement that
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1 was -- is part of this proposed consent
2 decree.
3 Let me first ask you about these
4 consent orders. In those consent orders
5 there was a definition of the site to
6 which they apply; is that correct?
7 A. I believe that's correct, yes.
8 Q. Let me first -- let me, for my own
9 purposes, were you present at the
10 negotiations -- all the negotiations that
11 resulted in these consent orders?
12 A. I was present at many of them. I don't
13 know that I was present at all of them.
14 But I was present at many of them.

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15 Q. Okay. Do you feel like you have an
16 understanding of the terms of those?
17 A. I believe I do, yes.
18 Q. All right. As far as the site goes, the
19 definition of the site wasn't in the
20 consent orders, both the consent orders --
21 the administrative consent orders that are
22 now in effect, wasn't -- didn't they in
23 effect exclude the RCRA areas?

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1 A. Generally, yes.
2 Q. Okay. Not explicitly, but when they were
3 written they excluded those areas?
4 A. Yes. Correct.
5 Q. Okay. And is it not true that in the --
6 let's call it judicial consent decree,
7 make the reference to that, in that the
8 RCRA area is specifically included in the
9 site area?
10 A. In the most recent draft that is correct.
11 Q. Okay. When did that change? At what
12 point in the negotiations did that change?

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11 discussed that the definition of the site
12 needed to change?
13 A. Well, part of it was, again, based -- my
14 understanding is it was based on
15 discussions between EPA and ADEM about who
16 had responsibility for what and EPA felt
17 that they needed to extend some of their
18 responsibilities to some extent.

19 Q. What were -- and they communicated to you
20 the need to extend those responsibilities?
21 A. No, not necessarily. It's just at various
22 drafts of the consent order we would note
23 that the areas had -- some definitions of

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1 site had changed.
2 Q. In other words, this would just be
3 interjected into the negotiations? You
4 would just simply see a different
5 definition of the site appear in the
6 documents?
7 A. In some cases, yes.
8 Q. Was there -- did you question that?

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13 A. Well, I think it's been an ongoing change
14 for several months. I think the most
15 recent change was within the period of the
16 last several weeks.
17 Q. Okay. When did -- when did there -- was
18 there -- when was the beginning of the
19 discussion about changing the definition
20 of the site?
21 A. Well, I'm not sure because I think part of
22 those discussions were between EPA and
23 ADEM, and I don't know the substance of

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1 those discussions. So --
2 Q. Well, I'm just talking about the
3 discussions between Solutia and EPA?
4 A. Well, primarily, I guess, in the last --
5 as I said, in the last two or three
6 months.
7 Q. Since the second administrative consent
8 ordinary was entered?
9 A. Yes. Primarily, yes.
10 Q. What were the reasons that it was

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9 A. Yes.
10 Q. Okay. What was -- what were the
11 discussions about the reasons for that,
12 for their position?
13 A. Primarily was based on ongoing
14 discussions. My understanding was that
15 EPA and ADEM were attempting to reach what
16 was called a memorandum of understanding
17 about basically those issues, which agency
18 and which regulatory authority had
19 responsibility for which parts of the site
20 and that those changes were based on those
21 ongoing discussions. I don't know the
22 substance of those and that was basically
23 all that was discussed.

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1 Q. Wasn't it your understanding that there
2 was at least an informal understanding
3 between these agencies as to dividing the
4 site up?
5 A. At some points in time, yes.
6 Q. All right.

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7 A. I mean, certainly during the time that the
8 administrative orders on consent were
9 being negotiated and implemented we
10 certainly had that understanding, yes.
11 Q. All right. What was Solutia's response to
12 that change in the definition of the site?
13 A. Well --
14 Q. That suggested change?
15 A. I mean, I guess somewhat a little bit of
16 confusion. And then basically I think our
17 position has been all along, we, you know,
18 we want to get the work done. Whatever
19 the agencies agreement come to, to be sure
20 that the work gets done and that we know
21 to which agency we're reporting our
22 progress and our work, then that's --
23 that's suitable to us.

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1 Q. So would it be correct to say you just
2 pretty much went along with their
3 suggestions in this area?
4 A. Well, pretty much, yeah. I think -- I

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3 that we saw any real particular reason to.
4 Q. With regard to this change, was there any
5 discussion as to the effect that that
6 change would have on this lawsuit?
7 A. Not that I recall.
8 Q. Was there any discussion about this
9 lawsuit at all with regard to that
10 particular term?
11 A. Well, I think, as I told Mr. Stewart, I
12 mean, there was an understanding that this
13 lawsuit was going on. But there was -- I
14 don't recall any particular, you know,
15 discussions which focused on how that
16 might affect this consent decree.
17 Q. Well, I'm talking about that -- that term.
18 A. The site definition?
19 Q. Yes.
20 A. No. I don't believe -- I don't recall
21 that.
22 Q. Doesn't the judicial -- the proposed
23 judicial consent decree include an

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5 think -- I mean, certainly at some point
6 we -- I think we encouraged the EPA and
7 ADEM to both be signatories to this draft
8 consent decree, and my understanding is
9 that ADEM preferred or decided not to do
10 that. But other than that, I don't know
11 that we have a lot of choice. I mean,
12 we're subject to the regulatory
13 authorities and really can't argue with
14 however those agencies determine how to
15 split up the site.
16 Q. Well, regardless of how the agencies
17 agreed to split up the site, you were
18 presented with a term and an agreement and
19 you could have objected to that term or
20 being in the agreement, could you not
21 have?

22 A. I suppose --
23 MR. COX: Objection, speculation.
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1 THE COURT: Overruled.
2 A. I suppose we could have. I don't know

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1 agreement on the remedial investigation
2 feasibility study?
3 A. That is one of the terms of the consent
4 decree, yes.
5 Q. Okay. And that's not part of the
6 administrative consent orders?
7 A. No. That is correct.
8 Q. They just concern what's called removal;
9 is that correct?
10 A. Primarily, yes.
11 Q. And let me just for the purposes of my
12 clarification, removal is just the
13 immediate response -- the first response
14 to contain the pollution, and it does not
15 involve any kind of final cleanup?
16 A. That's correct. It involves -- right.
17 Exactly. It's an investigation phase and
18 removal phase where appropriate for
19 properties in these six areas that we've
20 defined.
21 Q. Okay. And this -- well, I think it's
22 called RI/FS that involves the
23 investigation and exploration of various

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1 options for remediation to final cleanup;
2 is that correct?
3 A. That is correct.
4 Q. Okay. So, in other words, that being in
5 the consent decree, the proposed judicial
6 consent decree, incorporates something
7 that clearly was not involved at all in
8 these administrative orders?
9 A. That's true. And that was the intent from
10 the very beginning.
11 Q. Okay.
12 A. The administrative orders were put in
13 place to deal with what the EPA felt was a
14 need to apply their emergency removal
15 authority. And then it was understood
16 from the very beginning that those would
17 be rolled in eventually into a consent
18 decree that would include the RI/FS.
19 Q. Okay. When was that -- when did the
20 discussions begin on placing that RI/FS in
21 the consent decree?

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20 the table through all our negotiations and
21 interactions with the EPA once they
22 entered in with their CERCLA authority.
23 Q. Have you been involved in any kind of
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1 other discussions with -- well,
2 negotiations -- you're kind of the
3 the environmental compliance officer for
4 Solutia; is that correct?
5 A. That's, I guess, a fair characterization
6 with regard to PCBs, yes.
7 Q. Okay. Have you been involved in other
8 negotiations with EPA regarding CERCLA
9 cleanups?
10 A. I have not.
11 Q. This is the only one you've been involved
12 in?
13 A. Yes.
14 Q. So it's the only one you have personal
15 knowledge of?
16 A. Yes, that's correct.
17 Q. Do you have knowledge from other sources

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22 A. A year and a half, two years ago. I mean,
23 that was an understanding -- as I said,
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1 that was an understanding and the
2 discussions about that were present from
3 the very beginning of our discussions with
4 the EPA on the administrative orders on
5 consent. I mean, we all knew when we
6 signed -- and we negotiated and signed
7 those administrative orders of consent
8 that we were eventually working towards a
9 consent decree which would include those
10 orders on consent and extend to the RI/FS.
11 Q. Okay. Well, let me move into my next
12 question then. I guess this is -- when
13 was then -- maybe you've already answered
14 this, but when was the first discussion
15 about a judicial consent decree, putting
16 this in a court consent decree?
17 A. As I said, sometime, I guess, prior to
18 August of, I think, 2000. I mean, that
19 has been our goal through all our -- on

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18 of other ones?
19 A. Not -- not anything specific, no.
20 Q. Do you have any general knowledge at what
21 point an agreement folded into a judicial
22 consent decree in general with EPA?
23 A. Not in general, no.
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1 Q. I want you to remember as specifically as
2 possible what discussions there were about
3 -- in the course of these negotiations,
4 about this proceeding that's going on
5 right now in circuit court.
6 A. My recollection is that just basically as
7 we would meet with the EPA in the --
8 during the time that this trial has been
9 going on just basically updates of where
10 we were in that process.
11 Q. Now, you say -- I say "during the trial,"
12 you mean just since the trial started in
13 January, it actually came to court?
14 A. Has that been the discussions?
15 Q. Yes?

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16 A. Primarily, yes. I believe all -- I
17 believe that -- that we knew all along
18 that there was an injunctive phase of this
19 trial that could or would occur at some
20 point. But there was nothing more
21 specific other than the fact that that was
22 one of the -- the items in the plaintiffs'
23 complaint.

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1 Q. Well, is it your testimony that it was
2 ever -- never any discussions as to how --
3 the fact that this trial was going on,
4 this legal proceeding, would eventually --
5 this matter would come to trial, how that
6 could be affected by the various terms
7 that were negotiated between Solutia and
8 EPA?

9 A. Not that I recall. Not that I was
10 involved in.

11 Q. The proposed judicial consent decree
12 involves another party besides Solutia; is
13 that correct?

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12 Q. Between Solutia and Pharmacia; is that
13 correct?

14 A. Well, at the time it was Solutia and
15 Monsanto -- yes. Solutia and Monsanto.
16 And then Solutia and Pharmacia merged
17 whatever the proper characterization of
18 that joint was -- or that activity was and
19 then Pharmacia stood for Monsanto at that
20 point.

21 Q. Well, what I'm saying though and my
22 question is isn't that agreement simply
23 between Pharmacia -- present Pharmacia and
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1 Solutia? Isn't that a negotiated deal,
2 contract between Pharmacia and Solutia?

3 A. I'm not sure I know the answer to your
4 question. I don't know the -- all the --
5 the legal and the financial interactions
6 of that deal. I hate to answer something
7 which I would be answering naively and
8 mean something else to you as an attorney.
9 But --

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14 A. I believe it does, yes.

15 Q. Pharmacia?

16 A. I believe that's correct.

17 Q. Okay. Pharmacia was not a party in the
18 administrative consent orders; is that
19 correct?

20 A. I don't recall specifically. I mean, I
21 don't know. I just don't recall
22 specifically. I believe -- I mean, I
23 believe I recall discussions about that

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1 and I, you know, I mean, we basically are
2 Pharmacia for the purposes of PCB issues
3 so --

4 Q. Explain what you mean by that, you are
5 Pharmacia for --

6 A. Well, when -- my understanding of the
7 terms of the spin off is that when
8 Monsanto spun off Solutia as an
9 independent company, issues revolving
10 around PCBs were the responsibility of
11 Solutia.

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10 Q. Well, do you know whether or not if EPA
11 wanted to look to Pharmacia directly to be
12 responsible for these cleanup costs
13 because Pharmacia used to be Monsanto and
14 Monsanto was in charge of this site, owned
15 this site, operated this site at the time
16 of these releases, do you know whether or
17 not that would be binding on EPA?

18 MR. COX: Objection. Calls for
19 possibly a legal conclusion,
20 speculation, and he's asking what
21 EPA's position is on something.

22 THE COURT: All right. Overruled.

23 A. I don't know.

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1 Q. So you don't know whether under CERCLA EPA
2 would be bound by your agreement? Or do
3 you have an understanding of whether EPA
4 would be bound under CERCLA by your
5 agreement?

6 MR. COX: Objection, calls for legal
7 conclusion.

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8 THE COURT: Overruled.
 9 A. I don't know.
 10 Q. Was Pharmacia -- was a representative of
 11 Pharmacia present at these meetings?
 12 A. No.
 13 Q. So there was nobody there representing the
 14 shareholders of Pharmacia?
 15 A. Not that I know of, no.
 16 Q. But yet Pharmacia ended up or is in this
 17 proposed judicial consent decree; isn't
 18 that correct?
 19 A. I believe that's correct, yes.
 20 Q. How did Pharmacia come to be named as a
 21 party if there was nobody there even to
 22 say one way or another?
 23 A. Well, my -- my understanding is that EPA
 031802B
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 1 wanted them to be a signatory and that
 2 Solutia representatives had the authority
 3 to negotiate on the behalf of Pharmacia.
 4 Q. So it was your understanding that Solutia
 5 representatives had to -- had the response

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4 authority, yes.
 5 Q. Well, you were a negotiator on behalf of
 6 Solutia, right?
 7 A. I was at the meetings. I wouldn't say I
 8 was a negotiator. I was at the meetings
 9 and participated in negotiations but as a
 10 technical representative, not as a person
 11 who understands the financial and legal
 12 ramifications. We had lawyers doing that.
 13 Q. So you didn't have the authority to make
 14 decisions for Solutia in this -- with
 15 regard to agreeing to terms?
 16 A. I did on technical issues, yes.
 17 Q. Can you remember when it first was
 18 discussed that Pharmacia should be a party
 19 in this judicial consent decree?
 20 A. No. I don't know when that one, no.
 21 Q. Do you see any significance in the -- I
 22 mean, do you understand that it might be
 23 significant that Pharmacia is or is not a
 031802B
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 1 party?

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6 -- had the authority to essentially put --
 7 negotiate an agreement for Pharmacia?
 8 A. I would say they had the authority to
 9 negotiate the agreement. I don't know
 10 that they had the authority to sign it.
 11 But I believe they had the authority to
 12 negotiate. But, again, you're stretching
 13 my ability to -- knowledge very, very
 14 thinly at this point.
 15 Q. Well, your understanding --
 16 A. I don't really understand all the -- as I
 17 said before, I don't understand or know
 18 all the legal and financial ins and outs
 19 of the agreement -- various agreements
 20 between Monsanto and Solutia, Monsanto and
 21 Pharmacia. My understanding, though, as I
 22 said, is that at the time the negotiations
 23 were going on Solutia had -- has the
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 1 responsibility for PCB issues for Solutia
 2 and subsequently for the -- for the former
 3 parent organizations and that we had that

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2 MR. COX: Objection, relevance and
 3 speculation.
 4 THE COURT: Overruled.
 5 A. I don't know what the significance is.
 6 It's my understanding that Solutia is the
 7 responsibility party for the negotiations
 8 and for carrying out the terms of the
 9 agreement. That's -- I don't understand
 10 necessarily what having Pharmacia on there
 11 means, no.
 12 Q. Well, I'm referring to Plaintiff's
 13 Exhibit, I guess it's I-21, which is the
 14 proposed judicial consent decree.
 15 A. I understand.
 16 Q. Okay. Are you familiar with this in any
 17 way?
 18 A. I've read -- I haven't read this specific
 19 draft. I've read previous drafts of it,
 20 yes.
 21 Q. And in your understanding -- well, let me
 22 just read from page five. It says,
 23 "Defendants shall mean Pharmacia
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1 Corporation, PKA, Monsanto Company and
2 Solutia, Inc." In your understanding does
3 this decree run equally between Pharmacia
4 and Solutia as defendants?
5 MR. COX: Objection, foundation;
6 calls for legal conclusion
7 THE COURT: Overruled.
8 A. I don't know what the legal implications of
9 that statement are.
10 Q. Do you, of your own knowledge, know
11 whether or not an agreement like this has
12 been signed by Pharmacia -- whether this
13 agreement has been signed by Pharmacia? I
14 know this exhibit has not been but --
15 A. This particular -- I don't know.
16 Q. Well, a final version of this has been
17 signed by Pharmacia?
18 A. I do not know.
19 Q. Do you know whether -- assuming Pharmacia
20 signs this, it will be signed by an
21 official of Pharmacia, whether that is
22 contemplated?

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21 THE COURT: Do you expect them to
22 sign this document?
23 THE WITNESS: Well, I expect someone
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1 representing Pharmacia in some
2 form or another to sign the
3 document, if it's signed, yes.
4 THE COURT: Okay. You stated
5 earlier that you don't know the
6 legal implications of this
7 agreement.
8 THE WITNESS: I don't know the legal
9 implications of the statement
10 that both Solutia and Pharmacia
11 are defendants.
12 THE COURT: Okay. Well, do you have
13 an understanding from Solutia's
14 point of view as to the
15 implications -- or the extent of
16 responsibility financially on
17 behalf of both Solutia and
18 Pharmacia?

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23 MR. COX: Objection, speculation.
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1 THE COURT: As -- what was your
2 question again?
3 MR. COX: He asked him if he knows --
4 Dr. Kaley testified he doesn't
5 know if the agreement's been
6 signed. He asked him then if he
7 knows whether the agreement's
8 going to be signed by an official
9 of Pharmacia.
10 THE COURT: Dr. Kaley, again, you're
11 a negotiator as to this
12 agreement, aren't you?
13 THE WITNESS: I was present at the
14 negotiations and was involved in
15 technical discussions, yes. So to
16 that extent --
17 THE COURT: Well, has anyone from
18 Pharmacia stated that they're
19 going to sign this document?
20 THE WITNESS: Not that I know of.

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19 THE WITNESS: My understanding is
20 that Solutia is the
21 responsibility party.
22 THE COURT: And what if Solutia were
23 to fail to comply with their
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1 responsibility?
2 THE WITNESS: Well, I -- I -- because
3 it's a legal document and
4 assuming Pharmacia has signed
5 that document I would, you know,
6 not being a lawyer, but I would
7 guess they have the
8 responsibility to follow-up and
9 be sure that that's done.
10 THE COURT: Who from Solutia would be
11 able to come into this court and
12 testify as to Solutia's complete
13 understanding of the legal
14 ramifications as they apply to
15 Solutia and Pharmacia in this
16 document?

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17 THE WITNESS: I would assume that I
18 -- I -- my first name would be
19 Mr. Bistline.
20 THE COURT: Okay. Any further
21 questions, Mr. Little?
22 MR. LITTLE: I don't think I have any
23 more questions. Let me --

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1 that's all I have.
2 THE COURT: Okay. Mr. Monk?
3 MR. MONK: Just a few, Judge.

EXAMINATION

6 BY MR. MONK:
7 Q. Dr. Kaley, the previous drafts of what is
8 now I-21, you've seen those, I take it?
9 A. Yes.
10 Q. And is it my understanding that sometime
11 that the human health assessment formed a
12 part of previous drafts to what is now
13 I-21?
14 A. Well, there was -- there was language

13 and doctor --
14 THE COURT: Dr. Monk?
15 MR. MONK: That's all right. I am a
16 doctor.
17 MR. COX: And Dr. Monk is talking
18 about the community health
19 surveillance or health clinic
20 that was put forth in one of the
21 draft letters.
22 MR. MONK: No, I'm really not.
23 MR. COX: Okay.

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1 MR. MONK: I'm talking about human
2 health assessment.
3 MR. COX: Okay.
4 Q. That was a part of the previous draft that
5 is now I-21, correct?
6 A. The human health risk assessment.
7 Q. Yes, sir.
8 A. Has been a part of every draft. It was
9 always -- I mean, there is a risk
10 assessment -- a human health risk

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15 regarding the fact that it would be done,
16 yes.
17 Q. All right, sir. And where I'm coming to
18 is I want to find out about this community
19 input. I keep hearing that community
20 input caused some changes that, for
21 instance, resulted in the trust fund being
22 established?

23 A. Yes.

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1 Q. Is that correct?
2 A. Yes.
3 Q. Well, at what stage did the human health
4 assessment studies -- were the human
5 health studies removed from any of the
6 drafts? When in the process of the
7 development of I-21?
8 MR. COX: Objection. I think
9 they're talking about two
10 different things. I think Dr.
11 Kaley's talking about risk
12 assessment now. And doctor --

11 assess --
12 Q. I'm talking about human health studies. I
13 apologize.
14 A. Okay. And that's the point Mr. Cox was
15 trying to make.
16 Q. I'm sorry.
17 A. And I think I said yesterday that that
18 early on was, you know, basically the EPA
19 presented us a list of, as I recall, 14
20 items that were to be considered as part
21 of a consent decree, of a negotiated
22 settlement between EPA and Solutia. And
23 that was on that list. And very early on

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1 Solutia felt that it was not appropriate
2 that monies be -- Solutia's monies be used
3 for that.
4 Q. You folks had protested that, had you not?
5 A. Well, I don't know -- you use the term
6 "protest." We felt that that was not
7 appropriate and suggested that there were
8 other more useful things -- ways such

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9 monies could be used.
10 Q. Well, back to my question. When was it
11 removed from any of the prior drafts?
12 A. Well, it was never in any of the drafts as
13 I recall. Because the EPA wish list was
14 presented very early on in this process,
15 as I recall.
16 Q. In letter form maybe?
17 A. In a letter, yes. And at that point
18 basically we said, Well, the first thing
19 we need to do is get these orders on
20 consent to get this removal practice --
21 this removal program in place. We're
22 going to do that first. We're going to
23 table all these other discussions. And
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1 then once that's in place then we'll move
2 on to the consent decree discussions. And
3 that health study was always intended to
4 be part of the consent decree discussions.
5 By the time we got the drafts of those
6 consent decree discussions, the health

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5 for some reason you guys aren't permitted
6 to talk to the community about these
7 issues; is that right?
8 A. We're not permitted to talk to Mr.
9 Stewart's clients; that's correct.
10 Q. Well, who is the "community"? I mean I
11 keep hearing that the community wanted
12 this and the community wanted that and the
13 EPA apparently talks to the community.
14 A. Yes.
15 Q. And I'm sort of unaware of those
16 discussions.
17 A. My understanding is that it is the two --
18 basically the two groups in west Anniston.
19 The community -- Citizens Against
20 Pollution, which is my understanding,
21 largely Mr. Stewart's clients, and the
22 Cobb Town Sweet Valley Environmental
23 Justice group which was largely the
031802B

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1 plaintiffs in the other litigation.
2 Q. But the community --

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7 study was no longer one of the terms we
8 had agreed that, yes, we would contribute
9 monies for community foundation or
10 something but that would be focused on
11 education. So it was never -- as I
12 recall, never in any of the drafts of this
13 consent decree.
14 Q. Okay. Well, you said it was very early on
15 that these discussions occurred. It was
16 as late as January of 2001 by Plaintiffs'
17 Exhibit I-3. Do you recognize that?
18 That's the letter from the EPA wherein
19 they suggest these human health studies?
20 A. Okay. I was -- that may very well be.
21 The -- initial letter from the EPA was
22 August 31, 2000. That's what I was
23 thinking of. But that's fine.
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1 Q. As of just over a year ago this was still
2 an issue the EPA was insistent upon. And
3 I heard you say I thought yesterday or
4 some day prior, whatever day it was, that

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3 A. And those were the two groups that the EPA
4 was focussing its discussions with, as I
5 understand it.
6 Q. Is it your understanding from discussions
7 with EPA that either or both of those
8 groups consented to the removal of
9 comprehensive community environmental
10 health program or health studies?
11 A. I don't know whether they have consented
12 to that or not.
13 Q. Well, did you -- the EPA -- anyone with
14 EPA tell you that they had even been
15 advised that that was going to come out of
16 the eventual draft decree?
17 A. I don't know -- I don't recall them
18 telling us that specifically, no.
19 Q. Do you recall any discussion -- that there
20 was discussion with those two groups that
21 you've mentioned or any other aspect of
22 the community about removal of the
23 community health studies?
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1 A. I don't know what EPA has or has not
2 discussed with either of those groups.
3 Q. So they may not have?
4 A. I don't know.
5 MR. COX: Objection, speculation.
6 THE COURT: Overruled.
7 THE WITNESS: I'm sorry.
8 A. I don't know.
9 Q. So you're telling me that, for instance,
10 when this foundation was to be
11 established, that you think that was a
12 result of the discussions with these two
13 small groups that you've made reference to
14 and that that constitutes the community?
15 A. No. Well, I believe that EPA had been in
16 communication with those two groups who
17 they believe represent the community in
18 west Anniston where most of the PCB
19 impacts have been determined. I believe
20 that they solicited from those groups this
21 list of things that those groups would
22 find desirable in any sort of an agreement
23 with Solutia. And I believe that there

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22 representatives of the community?
23 A. I do not know.
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1 Q. Well, in the November draft of what is now
2 I-21, an earlier draft, I noticed that
3 this foundation was to serve two purposes,
4 one to provide some educational benefits,
5 which we've already discussed --
6 A. Yes.
7 Q. -- and to provide primary health care. Do
8 you recall that in an earlier draft?
9 A. That may have been in there. But we -- at
10 the time we believed that that was a
11 reversion back to things that had been
12 discussed and that we would not agree to.
13 Q. Well, primary -- provision of primary
14 health care is not a human health study,
15 is it?
16 A. Not necessarily, no.
17 Q. It's not a comprehensive community
18 environmental health program, is it?
19 A. That's correct. No.

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031802B 7806
1 have been ongoing communications, although
2 I can't specify that, about the potential
3 terms of those agreements. With one group
4 or the other I don't know; I don't know
5 who EPA is talking to in those groups.
6 Q. And y'all fund those groups under your
7 administrative order on consent? Y'all
8 provide some funding to them?
9 A: Well, no. Under the proposed -- on the
10 order of consent?
11 Q. On the order of consent?
12 A. Oh, no, sir. No, sir.
13 Q. How are they funded?
14 A. I don't have any idea.
15 Q. But not by you folks?
16 A. Certainly not.
17 Q. How are they selected?
18 A. How are they selected?
19 Q. Is it an ad hoc committee?
20 A. I don't know.
21 Q. Do you have any idea how they become

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20 Q. Is was just to provide funds for folks to
21 go to the doctor?
22 A. Well, there were -- there have been --
23 there were -- during the years there have
031802B 7808
1 been many things discussed. I think one
2 of the things in the very early draft was
3 construction of a community health center
4 or something. And, again, like the health
5 study, we believed that that was not
6 something appropriate for Solutia to be
7 providing monies for. So --
8 Q. Why? Why?
9 A. Well, primarily for the reasons we
10 discussed yesterday. I don't believe that
11 -- that, number one, that from our point
12 of view that there are severe health risks
13 associated with exposures to PCBs in the
14 community. Number two, a health study or
15 provision of health care by Solutia I
16 don't believe would contain credibility.
17 And I think we believe that an educational

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18 fund or something would provide immediate
19 benefits to the community rather than a
20 health study which would be a
21 long-term outcome unknown exercise.
22 Q. Well, do you know whether the health
23 concerns were the concerns of the EPA or
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1 of these community groups?
2 A. My understanding is it's primarily the
3 community groups. It's EPA's desire to
4 deal with those concerns.
5 Q. Is it your understanding that the
6 community groups were advised that in the
7 revision of what is now I-21 that even the
8 provision for the foundation to provide
9 for primary health care for west Anniston
10 residence was removed?
11 A. I don't know -- as I said, I don't know
12 what EPA has communicated to the local
13 community groups.
14 Q. Well, y'all objected to it or y'all took
15 issue with it as being part of the plan,

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14 discussing its interrelated nature to the
15 Owens settlement that reference was made
16 to. Why is it that there's no funding in
17 years -- what is it, four and five?
18 A. Well, I wasn't involved in those -- the
19 specifics of those negotiated payments.
20 But I believe Mr. Stewart's
21 characterization was basically correct,
22 that we have substantial obligations under
23 the Owens settlement during those years.
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1 And, frankly, trying to spread out more --
2 you know, equalize the payments to the two
3 groups over the time period that they will
4 both be funded.
5 Q. And do you know if these -- the community
6 as you've referred to it as, is aware of
7 the details of this foundation and how it
8 would be funded over the 12 years?
9 MR. COX: Objection, speculation.
10 MR. MONK: I just asked him if he
11 knew.

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16 correct?
17 A. That's correct.
18 Q. And no one with EPA has told you one way
19 or the other as to whether they
20 communicated that to the community groups?
21 A. Not that I recall, no.
22 Q. So you certainly don't know their reaction
23 to it?
031802B

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1 A. That's correct.
2 Q. I didn't understand -- well, strike that.
3 This foundation that you have made
4 reference to, y'all sat that up? I mean,
5 I know you fund it. But do y'all set up
6 who sits on that foundation?
7 A. I would have to go back and look at the
8 specifics of that. I think we have some
9 input on -- of that subject to the
10 approval of the EPA. But I don't recall
11 specifically. I would have to look at the
12 terms of that.
13 Q. I didn't understand -- I think we were

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12 THE COURT: Overruled.
13 A. I don't know specifically. I mean, I would
14 assume that EPA has been communicating
15 this back to the community as this moves
16 along but I don't know that.
17 Q. Y'all don't ask them, Have y'all talked to
18 the community about this?
19 A. No.
20 Q. You don't even so much as ask that?
21 A. Not that I recall.
22 Q. Something that's not been discussed
23 recently in the last few days is the
031802B

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1 conservation corridor. When y'all go
2 about doing a risk assessment, which I
3 understand is part of this process --
4 A. Yes.
5 Q. -- under I-21; is that correct?
6 A. Yes.
7 Q. Do y'all have plans to utilize a
8 conservation corridor?
9 A. I don't know that it goes so far as to

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10 plans. But we -- that has certainly been
11 among the discussions of things that we
12 would like to consider as an appropriate
13 response along Choccolocco Creek, yes.
14 Q. Well, if you are to -- if you were to fund
15 do you recall the fund that was -- there
16 has been previous testimony that maybe Mr.
17 Branchfield testified that there was some
18 money that was to go to the Chattowah Land
19 Trust?
20 A. I know the general details of that, yes.
21 Q. If you were to fund that at any point that
22 this risk assessment study was going on,
23 it would change the nature of the use of a
031802B

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1 significant amount of property that's been
2 impacted by PCBs, correct?
3 A. My understanding is it could have that
4 impact, yes.
5 Q. And if it does that, does that not start
6 the whole risk assessment process over?
7 What I'm trying to get to is if land use

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6 conservation corridors, right?
7 A. I don't know specifically whether it would
8 or not. It may very well, yes.
9 Q. Well, I understood Mr. Branchfield -- you
10 weren't here for his testimony, were you?
11 A. I was not.
12 Q. I understood his testimony to be that that
13 was one of the benefits that it -- it
14 affects land use such that there is not as
15 much contact between humans and the soil,
16 the soil is not disturbed through the
17 easement. There are restrictions placed
18 upon the property within the easement
19 which would decrease the risk.
20 MR. COX: Objection to the extent
21 he's asking Dr. Kaley to comment
22 upon Mr. Branchfield's testimony.
23 It's improper.
031802B

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1 THE COURT: Overruled.
2 Q. Is that your understanding of why you would
3 take the conservation easement or purchase

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8 is changed by virtue of actions that are
9 within your control, does that not have
10 the potential of slowing down all of these
11 studies that we want to get through to get
12 to the remedy phase?
13 A. No. I don't believe it does. I believe
14 it -- it will not change the risk
15 assessment. It may change what are
16 appropriate corrective measures. So it
17 could have an effect on what Solutia and
18 the agencies and the community would agree
19 to are appropriate corrective measures for
20 portions of the creek. But I don't
21 believe it would slow anything down.
22 Q. Corrective measures are dependent upon the
23 risk assessment?
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1 A. The proposals are, yes.
2 Q. And risk assessment's dependant upon land
3 use?
4 A. To some extent, yes.
5 Q. And land use would be changed by

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4 one?
5 A. That is one aspect of it, yes.
6 Q. And as we are here today, you don't know
7 whether that is a plan that Solutia has?
8 A. I don't know. I mean, it's -- it is being
9 discussed as a potential option. I don't
10 think that there's necessarily a plan to
11 go forward with that, no, as I sit here
12 today.
13 Q. No money is budgeted in the neighborhood
14 of four million dollars for that?
15 A. I don't know.
16 Q. Have you heard that figure?
17 A. No, I haven't.
18 Q. To be set aside for a conservation
19 corridor?
20 A. No. But I'm assuming he didn't make it
21 up. So for Mr. Branchfield -- Mr.
22 Branchfield has had the lead on that and
23 he's the appropriate person to ask about
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1 that.

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2 Q. Have you been in any discussions with any
3 land trust members?
4 A. I have not.
5 Q. Have you seen any communications between
6 any representatives, Solutia and any land
7 trust?
8 A. I think I've seen some draft documents,
9 but I don't recall any specifics.
10 Q. And what are those draft documents?
11 A. I believe they were documents that the --
12 one was the Chattowah Land Trust or
13 something suggested might be used with
14 with property owners along the creek.
15 Q. Do you know who the Chattowah Land Trust
16 is?
17 A. Other than I've heard Craig talk about it,
18 no.
19 Q. I mean, who are the people associated?
20 We've heard some people that aren't
21 associated. I'm trying to figure who is
22 associated with it.
23 A. I don't know.

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23 of the property? I didn't know whether it
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7818
1 was asked before. We got close.
2 A. I guess I'm not sure what you mean. I
3 mean, we sample a property and the result
4 is what it is. If it is at a level that
5 such that we are required to do removal
6 action then there's further action. Other
7 than that --
8 Q. All right. That's an action level maybe.
9 That's a removal action level.
10 A. Yes.
11 Q. But my question is is that -- in the
12 course of your investigation do you have
13 sampling levels that if a piece of
14 property once sampled falls below a
15 certain level, no further investigation is
16 done of that property or maybe the
17 property immediately surrounding it?
18 A. I -- well, I mean, once we've sampled a
19 property we believe we've done everything
20 appropriate to sample that property so we

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1 Q. You've not seen anything?
2 A. No.
3 Q. Given the extent of this pollution into a
4 significant portion of this municipality,
5 the City of Anniston, is there any reason
6 that elected officials aren't -- don't
7 form a part of the community that you
8 would report to or that would have any
9 input in the community issues related to
10 this pollution and this remediation?
11 A. No. I know of no reason why they wouldn't
12 be included.
13 Q. Are they in other areas of the country?
14 A. I don't know.
15 Q. Would that be something that would be
16 objectionable in your mind, to you, as a
17 representative of Solutia?
18 A. No. I think it would be preferable.
19 Q. Just one last question. Do y'all have
20 sampling thresholds; that is, that if
21 property is sampled and it is at a level
22 or below you do no further investigation

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21 don't continue to sample that property.
22 Now, whether further action of some kind
23 or another may be appropriate based on
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1 that number, that's a separate question
2 and that's partly what's being addressed
3 by the consent decree. But I guess I
4 really don't understand what your question
5 means. I mean, once we've done the
6 sampling we've done the sampling.
7 THE COURT: Well, let me try to ask
8 it a different way. If John
9 Doe's property had 2.11 parts per
10 million of PCBs in the soil,
11 would Solutia argue that no
12 further cleanup needed to be
13 considered?
14 THE WITNESS: I would --
15 THE COURT: Or that cleanup does need
16 to be considered?
17 THE WITNESS: I think that's partly
18 what's going to be -- I mean

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19 that's why we've entered into
20 that consent decree is to working
21 with the regulatory agencies and
22 community inputs into this, that
23 the level at which that decision
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1 will be made is the output of
2 this process.
3 THE COURT: Okay. But does Solutia
4 not have a predetermined level at
5 which -- or a target level at
6 which it wants to concentrate?
7 THE WITNESS: No, I don't believe we
8 do. I mean, we're in this
9 process to determine that level
10 with the appropriate science.
11 THE COURT: What science do you need
12 in order to take a look at the
13 level? I mean --
14 THE WITNESS: Well, it says -- it's
15 the risk assessment process.
16 THE COURT: Okay.

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15 exposure scenarios, don't you, as
16 to the plaintiffs' property in
17 this case?
18 THE WITNESS: To some extent. I
19 would -- not necessarily totally.
20 But to some extent, yes.
21 THE COURT: To a great extent, don't
22 you?
23 THE WITNESS: To a large extent.
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7822
1 I'll go along with that, yes.
2 THE COURT: Okay. And what else was
3 it you said you needed?
4 THE WITNESS: Those are primarily --
5 I'm not a risk assessor but I
6 think those are primarily the
7 components we need.
8 THE COURT: Okay. Would you agree
9 that the risk assessment could be
10 done on the plaintiffs'
11 properties in this case within a
12 two month period?

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17 THE WITNESS: It's looking at
18 sampling level, exposure
19 scenarios, land use, and those
20 kinds of things to --
21 THE COURT: Don't we already know a
22 great deal of that information
23 already?
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7821
1 THE WITNESS: On some properties we
2 may very well.
3 THE COURT: On all the properties
4 involved or owned by the
5 plaintiffs in this case we
6 already know that data, don't we?
7 THE WITNESS: We know data, yes.
8 THE COURT: Okay. And you know the
9 use of that property?
10 THE WITNESS: Yes.
11 THE COURT: What else was it you said
12 you needed to know?
13 THE WITNESS: Exposure scenarios.
14 THE COURT: You already know the

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13 THE WITNESS: No, I would not.
14 THE COURT: So if Mr. Woodyard said
15 that it could be you would
16 disagree with him?
17 THE WITNESS: Right. And the primary
18 reason for that is because in the
19 discussions with EPA, the EPA
20 risk assessors have made it clear
21 that they are going to require
22 risk assessments of a much more
23 sophisticated nature requiring
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1 kinds of analytical data that we
2 don't have right now.
3 THE COURT: Okay.
4 THE WITNESS: Looking at the specific
5 congeners of PCBs and things like
6 that. And we don't have those
7 kind of data to do that risk
8 assessment.
9 THE COURT: And when you use the term
10 "congener" --

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11 THE WITNESS: Yes.
 12 THE COURT: -- what do you mean?
 13 THE WITNESS: Okay. There are --
 14 PCBs are a large mixture of
 15 compounds and there are two
 16 hundred --
 17 THE COURT: You're talking about the
 18 different Aroclors?
 19 THE WITNESS: No. Talking about
 20 there are 209 different specific
 21 chemicals that are PCBs.
 22 Aroclors are mixtures of
 23 congeners.
 031802B 7824
 1 THE COURT: Right.
 2 THE WITNESS: All right. And the
 3 current science is that to do an
 4 appropriate risk assessment for
 5 PCBs you need to look at one or
 6 more of these specific 209
 7 chemicals to determine the
 8 appropriate end point and how to

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7 it done very routinely is it's
 8 very expensive. Because instead
 9 of running say four Aroclor
 10 standards, as you may have seen
 11 the fingerprint that Mr. Bonner
 12 put up, you would literally run
 13 depending on how many -- you
 14 wouldn't run the whole 209
 15 classic but you run about 150.
 16 So it's a much more time
 17 consuming and expensive process.
 18 But there is a -- Professor
 19 Hermanson, all of his data is
 20 congener specific, all of the air
 21 data is congener specific.
 22 THE COURT: I thought someone's had
 23 it.
 031802B 7826
 1 THE WITNESS: Yeah. Dr. Hermanson
 2 was talking about the need to do
 3 that congener specific analyses
 4 and then subsequently there would

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9 do a risk assessment around that
 10 end point. And EPA has told us
 11 that that's one of the things
 12 they're going to focus on in this
 13 risk assessment and neither the
 14 agencies nor Solutia has those
 15 data. And it's going to take
 16 some time to collect those data.
 17 THE COURT: Do you know whether or
 18 not the plaintiffs have that
 19 data?
 20 THE WITNESS: I don't know whether
 21 they do or not.
 22 THE COURT: Do the plaintiffs have
 23 that data?
 031802B 7825
 1 MR. CUNNINGHAM: Both sides
 2 conducted, I believe, some
 3 congener specific data at Mars
 4 Hill. We went and bought the
 5 complete set of standards.
 6 That's the reason you don't see

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5 be presumably risk assessment on
 6 the air data also. So that's
 7 consistent with what he said.
 8 MR. COX: And I think other than the
 9 Mars Hill data, I don't believe
 10 any of the other plaintiffs' data
 11 was recorded on a congener by
 12 congener basis.
 13 THE COURT: Would you have to go back
 14 and retest or could you take the
 15 data or the -- I assume there are
 16 still some samples out there that
 17 could be analyzed; could you take
 18 those samples that have already
 19 been taken?
 20 THE WITNESS: I'm afraid the answer's
 21 probably not.
 22 THE COURT: I was afraid the answer
 23 might be probably not too.
 031802B 7827
 1 THE WITNESS: If the samples have
 2 been -- of soil have been frozen

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3 and cared for carefully, you
4 might be able to do it. But
5 these analyses require in the --
6 in the what they call the cleanup
7 stage of the analysis additional
8 cleanup. So you couldn't just
9 take the same data that we've
10 already got and rerun the samples
11 and get the kind of information
12 we want.
13 THE COURT: Okay. Is this a
14 requirement within the proposed
15 consent decree that has been
16 added recently?
17 THE WITNESS: It is not written into
18 the consent decree. But it is --
19 we have been informed by Mr.
20 Aiken of EPA or Dr. Aiken, I
21 guess, of EPA that it will be a
22 requirement as we move forward
23 with the specific details of the

031802B

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031802B 7829
1 Alabama and stuff like that. So
2 that's why you can't do it in two
3 months. It takes a long time to
4 generate numbers --
5 THE COURT: I assume you are going to
6 have somebody to testify to that
7 rather than just --
8 MR. CUNNINGHAM: Yes.
9 MR. COX: I would move to strike Mr.
10 Cunningham's testimony.
11 MR. MONK: I didn't ask the question.
12 THE COURT: I'm not going to strike
13 it but I'm not going to consider
14 it as testimony either.
15 Mr. Monk, do you have any
16 further questions?
17 MR. MONK: Just one last one.
18 Q. (By Mr. Monk) This risk assessment really
19 is at a snapshot point in time because it
20 does take into consideration land use,
21 correct? When you come out with your risk

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1 risk assessment. This is mostly
2 -- it's a -- it's a -- a scope of
3 work kind of document rather than
4 the details of how the work is
5 going to be done.
6 THE COURT: So that's not something
7 that's going to be written into
8 the document?
9 THE WITNESS: Not the consent decree
10 itself, no.
11 THE COURT: Okay. Mr. Monk?
12 MR. CUNNINGHAM: This is just -- Dr.
13 Lee did a risk assessment up in
14 Kentucky on the Mudd River.
15 They're going to come out with a
16 number around 250 parts per
17 million as an acceptable number
18 that you could have. So to do
19 that you've got to find all kinds
20 of funky things to do like this
21 soil congener analysis and come
22 out and assume that people wear
23 long sleeves in the summer in

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22 assessment it's based upon a snapshot of a
23 -- at a point in time as to when the
031802B 7830
1 testing took place obviously based upon
2 land usage and other variables you
3 discussed?
4 A. Well, not so much land usage as exposure
5 scenarios. But to get -- I mean land
6 usage is a part of the exposure scenario
7 and I think the answer to your question is
8 basically yes. But -- but you project
9 forward on -- on how -- what the exposure
10 scenarios may look like after that point
11 in time and that's how you determine what
12 action is appropriate.
13 Q. And in your answer it seems to hint to me
14 that there will be different tolerable
15 levels of PCBs based upon the risk
16 assessment, based in part upon land usage?
17 A. That's clearly true. The classic example
18 of that is residential versus industrial.
19 Q. Well, if, for instance, the City has a

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20 passive part, green space, for lack of a
21 better word and it's -- that would have a
22 different risk assessment than a school
23 yard or a public housing authority piece
031802B

7831

1 of property?
2 A. It very well might, yes.
3 Q. But then taking into account the risk
4 assessment that's done in the year 2002,
5 2003, does that not lock in land usage,
6 i.e., the City might not be able to use
7 that property in the future for a public
8 housing authority because of the tolerable
9 levels that were permitted to remain as an
10 a result of the 2002, 2003 risk
11 assessment?
12 A. Well, part of that depends on how finely
13 you slice and dice. I think there's that
14 possibility. I mean, that's basically the
15 concept of what's called brown fields. Is
16 that if an area is known to be an
17 industrial area then maybe you can use

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16
17
18
19
20
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1 (3:30 p.m.)
2 THE COURT: Back on the record.
3 Mr. Cox?
4 MR. COX: Yes.
5
6 EXAMINATION
7 BY MR. COX:
8 Q. Dr. Kaley, the administrative order on
9 consent included areas -- or included
10 requirements in areas that formerly were
11 part of the RCRA permit, did they not?
12 A. That's correct.
13 Q. Those included the Eleventh Street

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18 that area for industrial applications
19 rather than cleaning it up to a
20 residential standard. That's the whole
21 purpose of brown fields. So clearly you
22 are correct.

23 Q. Brown fields are not passive parts.
031802B

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1 A. I understand. Areas where -- and I think
2 Mr. Stewart brought out, where children
3 are going to be potentially have exposure,
4 I think there's enough conservatism built
5 into the risk assessment process that it's
6 not going to limit the City and its
7 ability to use the land the way it wants
8 to.

9 MR. MONK: Thank you.

10 THE COURT: Let's go ahead and take
11 a short break.

12 (Break at 3:07.)
13
14
15

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14 ditch?
15 A. Yes.
16 Q. The Oxford Park?
17 A. Yes.
18 Q. And then the dirt that was removed from
19 the mall property?
20 A. That's correct.
21 Q. All those were formally under RCRA, but
22 they ended up being put into this first
23 or second administrative order on
031902B

7834

1 consent?
2 A. Yes.
3 Q. Prior to receiving what has been marked
4 as Plaintiffs' Exhibit I-21, did you
5 have an understanding, as to other areas
6 that were formerly under the RCRA
7 program, that you all were going to be
8 managed by the EPA under CERCLA before
9 you received that document?
10 A. Yes.
11 Q. What were those areas?

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12 A. Snow Creek and Choccolocco Creek.
 13 Q. Where did you gain that understanding?
 14 A. From an earlier draft of this document,
 15 from the EPA.
 16 Q. And that information came from EPA to
 17 you?
 18 A. Yes. That's correct.
 19 Q. Prior to the administrative orders on
 20 consent and then the work that was
 21 developed in connection with the
 22 drafting of the consent decree, what was
 23 your understanding of the EPA role with
 031902B 7835

1 respect to the presence of PCBs in
 2 residential areas.
 3 A. Before the area of concept discussions?
 4 Q. Yes.
 5 A. Basically I don't know -- I mean, they
 6 had oversight over the whole project,
 7 but I don't believe they had any direct
 8 involvement in PCBs on those residential
 9 areas?

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8 Q. Now, there was some discussion the other
 9 day about the stipulated penalties. Is
 10 it Solutia's intention of ever incurring
 11 a stipulated penalty in connection with
 12 the work performed under the consent
 13 decree?
 14 A. No. It is our intention to perform the
 15 work in such a manner that those penalty
 16 clauses are never invoked.
 17 Q. And the amounts of those penalties, were
 18 those amounts negotiated, or are those
 19 the ones that were specified by EPA?
 20 A. My recollection is they were negotiated.
 21 I don't recall specifically.
 22 Q. There was also some discussion on
 23 another matter regarding medical
 031902B 7837

1 surveillance of employees who worked
 2 with PCBs. What is your understanding
 3 of the program that was done in Anniston
 4 to perform medical tests of employees
 5 who worked in the Aroclor department?

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10 Q. Had they not established the emergency
 11 action level prior to the entry of the
 12 first administrative order on consent in
 13 October 2000?
 14 A. That is correct. Yes. I'm sorry. That
 15 is correct.
 16 Q. In the first administrative order on
 17 consent, were there not six properties,
 18 or the identification of six properties
 19 for which the removal would already be
 20 applied once the agreement was signed?
 21 A. That's correct, based on the sampling
 22 that they had done. In their sampling
 23 and analysis program they had identified
 031902B 7836

1 six properties which they felt were
 2 appropriate for removal action. That's
 3 correct.
 4 Q. And those six properties and the removal
 5 for those properties were specified in
 6 the first consent order?
 7 A. That's correct.

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6 A. My understanding is that the employees
 7 who worked in the Aroclor department at
 8 Anniston were given the same physicals
 9 as all the other workers at the plant.
 10 Q. Were there any special tests given to
 11 non PCB workers?
 12 A. I don't know that specifically.
 13 Q. Okay. But you do know that the PCB
 14 workers did not have any special medical
 15 tests?
 16 A. That is my understanding, yes.
 17 Q. There has been some discussion in this
 18 case about the report that was prepared
 19 by the emergency response team by EPA.
 20 A. Yes.
 21 Q. And did Solutia have an opportunity to
 22 provide comments on that report?
 23 A. Yes. We did prepare comments and submit
 031902B 7838

1 comments on that report.
 2 Q. Let me show you what I have marked as
 3 Defendants' Exhibit 1097.

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4 Let me ask you if you would to
5 identify for the record Defendants'
6 1097.
7 A. Yes. This is a cover letter, and then
8 specific comments that Solutia's
9 prepared and sent to the U.S. EPA on the
10 ERT report.
11 Q. Now, were there items in the ERT report
12 that Solutia believed were erroneous?
13 A. Definitely, yes.
14 Q. Are those comments about the errors that
15 Solutia believes were in the ERT report,
16 are they set forth in Defendants'
17 Exhibit 1097?
18 A. Yes, they are, in detail.
19 Q. Can you give the Court some examples of
20 some of the errors that Solutia pointed
21 out in the ERT report when you submitted
22 your comments?
23 A. I think one of the ones that most jumped
031902B
7839
1 to my mind, because Dr. Ellis reminded

7840
1 threshold. So that is the only sniff
2 analyses that were ever done. That was
3 never done by Solutia or its contractors
4 for PCBs and never would be done. It is
5 just silly to even think so.
6 There were also errors on
7 calculations of groundwater movement
8 where the contractor for EPA estimated
9 groundwater movement based on a hundred
10 year movement of groundwater on a
11 landfill that had only been used since
12 1960. They also had errors in their
13 reporting of the air data. So there are
14 a number of factual and conceptual
15 errors in this report.
16 Q. And those things are pointed out in your
17 response to the EPA regarding the
18 report; is that correct?
19 A. Clearly pointed out, yes.
20 Q. Isn't that how the process works, that
21 one entity will do a report and will
22 provide an opportunity for comment, and

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2 me of it during his testimony, was the
3 fact the ERT report suggested that
4 Solutia had done analyses for PCBs by
5 smelling various samples. And that --
6 At the time it was incredible that
7 scientists through the contract with EPA
8 had had that misconception; it was even
9 more incredible that Mr. Ellis would
10 have bought into that misconception,
11 because as he pointed out, PCBs
12 basically have no odor, and they would
13 not be detectable by sniffing samples.
14 That whole issue is a
15 misunderstanding, based on the fact that
16 when contractors and employees of
17 Solutia were drilling wells for the
18 groundwater capture system, they
19 actually would sniff those to test -- or
20 to see if they could smell
21 organophosphate herb -- pesticides,
22 because those have a very distinctive
23 odor, and they have a very low
031902B

23 other entities can provide comments to
031902B
7841
1 it and make it a better product at the
2 end of the day?
3 A. Yes. That is the way the process works.
4 It is my understanding that ADEM also
5 made comments on this report so that
6 there is an interaction among various of
7 the stakeholders on these technical
8 documents, yes.
9 Q. They also made a substantial error in
10 terms of reporting the levels in air
11 that had been detected in Anniston;
12 isn't that correct?
13 A. That's correct.
14 Q. In fact, they missed it by --
15 A. Basically they missed it by a factor of
16 a thousand, because they reported the
17 units in micrograms per cubic meter
18 instead nanograms per cubic meter.
19 Q. And that makes a significant difference
20 in the terms of the level?

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21 A. Absolutely. It is a thousand times
22 higher.
23 Q. The ERT report also, though,
031902B 7842
1 specifically recommended that the
2 landfills not be dug up, did it not?
3 A. That's correct.
4 Q. And does Solutia concur with that
5 conclusion reached in the ERT report?
6 A. Yes. We agree with that conclusion.
7 MR. COX: Your Honor, we would
8 offer Defendants' Exhibit
9 1097.
10 THE COURT: It is a admitted.
11 (Whereupon Defendants'
12 Exhibit 1097 was offered and
13 admitted into evidence.)
14 Q. In connection with the process where one
15 group or entity will develop a report or
16 draft a report and solicit public
17 comments, Solutia has also had an
18 opportunity to comment on various health

17 wasn't marked, but I think I
18 remember the number. So I'm
19 going to just write it on
20 there, if that is all right.
21 THE COURT: That's fine.
22 MR. COX: 701.
23 Q. Dr. Kaley, let me show you what I have
031902B 7844
1 marked as Defendants' Exhibit 701 and
2 ask if you can identify that for the
3 record.
4 A. Yes. This is a copy of the information
5 we provided to ATSDR in response to
6 their request for comments on the draft
7 health consultation that you mentioned
8 earlier.
9 Q. And just -- I understand this is a
10 fairly lengthy document. And we won't
11 go through it all. But in general what
12 were some of the significant comments
13 that Solutia had regarding the February
14 14th, 2000, health consultation?

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19 consultations that have been performed,
20 either by EPA or ATSDR, has it not?
21 A. Yes, we have.
22 Q. And one of those health consults -- I
23 think it has previously been admitted
031902B 7843
1 into evidence in this case -- was from
2 February 14th of 2000. It is the health
3 consult that was the evaluation of the
4 blood, soil and air data?
5 A. Yes. I'm familiar with that.
6 Q. You are familiar with that document, and
7 it has previously been admitted before
8 the Court for purposes of this
9 proceeding.
10 Did Solutia provide comments in
11 connection with the draft of that report
12 that was issued by ATSDR?
13 A. Yes. We made extensive comments on that
14 report.
15 MR. COX: Your Honor, I think my
16 secretary gave me one that

15 A. There were a number of areas of
16 particular concern. In the first place,
17 we believe that some of their
18 conclusions with regard to exposures to
19 -- or potential exposures to children
20 were based on errors in the data set
21 that they were using to try to
22 understand the potential levels of PCB
23 body burdens in Anniston residents. We
031902B 7845
1 believe that there were some
2 misconceptions and the discussions on
3 dioxin and furans were inappropriate
4 based on the levels that had been
5 reported. Those are the ones I recall
6 specifically.
7 Q. And specifically can you give some
8 examples to the Court on errors that you
9 found in the blood results they were
10 using that led to their conclusion about
11 the exposure to PCBs in children?
12 A. Yes. They had reached a conclusion that

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13 there was ongoing exposure in Anniston
14 based on the fact that they believed
15 that there were blood levels detected in
16 four children in the Anniston area.
17 And based on information that had
18 been provided that we had, we were able
19 to show the agency that in fact of those
20 four children I believe two were
21 actually adults, and that there were
22 errors in the birth dates of those in
23 the data set that ATSDR was using, that
031902B 7846

1 one of the children had spent his whole
2 life in California.
3 And I believe there was one child
4 whose blood level was, as far as we
5 could tell, reported correctly, but we
6 felt it significant that that child's
7 siblings had nondetect blood levels. So
8 those were some specific errors we
9 pointed out on that case.
10 Q. After ATSDR received your comments that

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9 admitted into evidence.)
10 Q. Let me show you what I have marked as
11 Defendants' Exhibit 789 and ask you if
12 you can identify this document.
13 A. Yes. This is the cover letter in the
14 specific information that we provided to
15 ATSDR with regard to the specifics of
16 those four children, or four alleged
17 children, I guess.
18 Q. The February 14th, 2000 health consult,
19 to your knowledge, has it ever been put
20 in final form?
21 A. No. It has not been finalized, no.
22 That is correct.
23 Q. Do you have any information to indicate
031902B 7848

1 that ATSDR believes that some of the
2 information they relied upon for that
3 February 2001 health consult is in fact
4 erroneous?
5 A. Yes. They do refer to it in their
6 responses to comments on an exposure

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11 are reflected in Defendants' Exhibit
12 701, did they request additional
13 information from Solutia to back up your
14 comments.
15 A. Yes. Our initial comments were more
16 general in nature. Then they requested
17 that Solutia provide the specifics which
18 I just discussed with regard to those
19 four children.
20 Q. And did you provide that specific
21 information in writing?
22 A. Yes, I did.
23 Q. And let me show you what I have marked
031902B 7847

1 as Defendants' Exhibit --
2 MR. COX: Your Honor, while we are
3 at it, I will move for the
4 admission of Defendants'
5 Exhibit 701.
6 THE COURT: It is admitted.
7 (Whereupon Defendants'
8 Exhibit 701 was offered and

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7 evaluation, which was put out by the
8 agency in October of 2001.
9 Q. Let me just show you for the record --
10 This is already in; it is Defendants'
11 Exhibit 1080 -- and ask you if that is
12 the document you are referring to where
13 ATSDR responded to comments in that
14 study indicating that they believe there
15 were some errors in the February 2000
16 study?
17 A. Yes, it is.
18 Q. Can you specifically find the comment?
19 A. Yes.
20 Q. Can you read that into the record?
21 A. Yes. This is on page three of the
22 response to comments, appendix A of the
23 health consultation exposure
031902B 7849

1 investigation from October of 2001.
2 And there was a question submitted
3 or a comment submitted to ATSDR, were
4 results compared to results from

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5 community data used with ATSDR PCB
6 health consultation, parenthesis,
7 February 2000, close parenthesis.
8 And ATSDR's response was, This
9 report, meaning the present report,
10 evaluated only the data generated by
11 ATSDR in its exposure investigation.
12 The previous draft health consultation
13 included an evaluation of data that was
14 provided by an attorney who is
15 representing residents of the area.
16 Information provided to ATSDR during the
17 public comment period for this health
18 consultation suggests that some of the
19 information in the attorneys' data base
20 is incorrect. The final health
21 consultation will be revised in
22 accordance with the new information
23 received.

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1 Q. Just so the record is clear, I think the
2 errors in the data were in -- There were

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1 manufacture of PCBs?
2 A. Yes. Chlorinated dibenzofurans can be
3 associated with the manufacture of PCBs
4 in two ways. In one way low levels,
5 about one two parts per million of
6 chlorinated dibenzofurans were present
7 as unintended byproducts of the
8 manufacturing process. So some PCBs did
9 contain low levels of furans as they
10 were manufactured and distributed.
11 Also, I think it was Dr. Ellis mentioned
12 the other day, low levels of furans can
13 be produced by incomplete combustion of
14 PCBs, but that occurs only in a very
15 limited range of temperatures in the
16 combustion process.
17 Q. And if furans are associated with the
18 manufacture of PCBs, there has been
19 testimony from Mr. Branchfield that we
20 are not -- or that Solutia is not
21 looking for it.
22 A. That's correct.
23 Q. Why not?

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3 some transposition errors in the data
4 table that had been provided to ATSDR?
5 A. I'm not sure we know exactly what the
6 source of the errors were. The most
7 specific errors were, for instance,
8 errors in birth dates for some of the
9 persons whose blood data were reported.
10 Q. Dr. Kaley, are dioxins associated with
11 the manufacture of PCBs?
12 A. No, they are not.
13 Q. Why not?
14 A. The chemistry is such that to form
15 dioxins from PCBs is basically a
16 physical impossibility. I think it
17 would require -- without going into too
18 much detail -- the breaking and
19 recombination of bonds in such a way
20 that it is extremely unlikely if not
21 impossible that it could happen at
22 measurable levels.

23 Q. Are furans associated with the

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7852

1 A. Well, number one, if they were -- They
2 were present at about a part per million
3 in the PCBs as manufactured. So if PCBs
4 were present in a soil sample at, say, a
5 hundred parts per million, then the
6 furans would be present at a hundred
7 parts per trillion, which is an
8 extremely low level. The second reason
9 is that anything that is done to
10 remediate the PCBs in the Anniston area
11 will also remediate whatever trace
12 levels of furans might be present.
13 So we do not feel that there is an
14 advantage to doing those analyses.
15 Q. Do those analyses for dioxins and furans
16 cost more money than PCB analysis?
17 A. Well, they are much more expensive, and
18 they are very much more time consuming.
19 Q. That was my second question. Do they
20 take more time?
21 A. Yes. Both more expensive and more time

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22 consuming.
23 Q. Now, are you familiar with the process
031902B 7853
1 under the RCRA facility investigation
2 that identified constituents of
3 potential concern?
4 A. I have general information of that
5 process, yes.
6 Q. Can you generally describe that process
7 for the Court?
8 A. Well, basically the process started by
9 looking at a list of every chemical that
10 had ever been manufactured, used, or
11 generated at the Anniston plant
12 during -- throughout the lifetime of the
13 plant. And then that list was compared
14 with available analytical data to
15 determine whether throughout the
16 lifetime of the plant any of those
17 particular constituents had been
18 detected in samples. And at that point
19 a process was developed to basically

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18 Q. Will that same process be used to
19 determine what areas in or around
20 Anniston are covered by the consent
21 decree, and downstream will be sampled
22 for what constituents?
23 A. Yes. That's correct.
031902B 7855
1 Q. Are all of those decisions, as far as
2 the extent of the investigation in terms
3 of the types of chemicals and materials
4 that you look for, is all that subject
5 to review and approval by EPA?
6 A. Yes. As a matter of fact, we had
7 suggested that the entire investigation
8 be focused on PCBs, and they were
9 uncomfortable with that and requested
10 that we expand it to include other
11 potential constituents.
12 Q. There was some discussion between you
13 and Mr. Stewart regarding laboratories.
14 Can you tell the Court what a CLP
15 laboratory is?

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20 compare those two lists and come up with
21 a list of chemicals that we knew were
22 associated with operations at the plant,
23 but that there weren't enough data
031902B 7854
1 either to rule in or rule out. So
2 that's how that list was generated.
3 Q. And that also -- that list is the list
4 of chemicals that you used -- or that
5 Solutia uses to do their analysis when
6 they go out and take samples in
7 different areas, whether they are on the
8 plant site or off the plant site?
9 A. When we are doing a general. If the
10 investigation isn't focused specifically
11 on PCBs, yes, that is the list of
12 analyses we do.
13 Q. Is that concept of developing lists of
14 constituents of potential concern, is
15 that concept carried over or picked up
16 in the consent decree?
17 A. Yes, it is.

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16 A. Yes. A CLP laboratory is a certified
17 lab. CLP stands for the certified
18 laboratory program. It is a program
19 instituted by EPA and overseen by EPA,
20 which requires laboratories that analyze
21 samples that would be submitted to EPA
22 to meet certain performance standards.
23 Q. Under the consent decree draft -- I
031902B 7856
1 think you have it, Plaintiffs' Exhibit
2 I-21. If you turn to page seven of the
3 statement of work, which is the last
4 document, if a laboratory is not a CLP
5 lab, can you tell the Court what has to
6 be done before EPA will agree to approve
7 the work by that laboratory?
8 A. Okay. There is a sentence in this draft
9 that says if a laboratory -- I'm sorry.
10 It's contract laboratory program, not
11 certified. "If a laboratory not in the
12 Contract Laboratory Program is selected,
13 methods consistent with CLP methods that

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14 would be used at this site for the
15 purposes proposed and the QA/QC" --
16 which stands for quality assurance,
17 quality control -- "procedures approved
18 by EPA will be used." So if a
19 laboratory is not already CLP certified,
20 it will essentially have to go through
21 the same process that it would have to
22 go through to become CLP certified.

23 Q. And does that process -- Back Up.
031902B

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1 Are the laboratories that Solutia
2 is using for this project and proposes
3 to use for the work under the consent
4 decree CLP laboratories?

5 A. Yes, they are.

6 Q. And if the laboratories that were
7 proposed for this project were not CLP
8 laboratories, would that delay the
9 activities called for in the consent
10 decree?

11 A. Yes. Because they would have to

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10 when the work could start under the
11 consent decree?

12 A. I believe it would, yes. My
13 understanding is that it takes months to
14 a year to generate that body of data.
15 So obviously we couldn't submit real
16 samples to that laboratory until they
17 were able to demonstrate their
18 performance.

19 Q. So any laboratory even after if was
20 established, there would be some delay
21 before you could submit samples that
22 could be used under the consent decree
23 that were analyzed by it?

031902B

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1 A. That would be my understanding.

2 Q. Do you have an estimate of how long that
3 would take?

4 A. I would think, as I said, six months to
5 a year, possibly.

6 Q. Dr. Ellis also testified regarding --
7 and I criticized Solutia for the use of

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12 generate this entire body of quality
13 assurance, quality control information
14 to show to the agency and to Solutia
15 that they were capable of performing
16 analyses under certified methods.

17 Q. And you were in here for Dr. Hermanson's
18 testimony, were you not?

19 A. Yes, I was.

20 Q. You heard him suggest that it would be a
21 good idea to establish a dedicated
22 laboratory for purposes of this project?

23 A. Yes, I did.

031902B

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1 Q. Would that laboratory have to be
2 accepted by EPA or become a CLP
3 laboratory before the data could be used
4 under the consent decree?

5 A. To be used under the consent decree, it
6 certainly would have to meet those
7 criteria, yes.

8 Q. Would such a laboratory or the
9 establishment of such laboratory delay

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8 what I will call a team approach to the
9 various projects that have been
10 undertaken in the Anniston area and
11 suggested it would be better to have one
12 company do everything. And I think the
13 phrase is used "from soup to nuts."

14 MR. STEWART: Judge, I would
15 object to that as
16 mischaracterizing Dr. Ellis'
17 testimony. I don't believe
18 he said that. But just to
19 put the objection on the
20 record.

21 THE COURT: Overruled.

22 Q. Go ahead.

23 A. I'm sorry, what was the question?

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1 Q. Why hasn't Solutia taken -- Why hasn't
2 Solutia taken a single entity to perform
3 all the work in Anniston?

4 A. We believe that in Anniston and other
5 places that a better approach is to get

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6 the best people available for every
7 specific discipline so that rather than
8 hiring company XYZ, which may have an
9 excellent hydrogeologist or an excellent
10 groundwater person and a so-so
11 remediation technology person, we can
12 take the best from all those consulting
13 firms, put them together as a team, put
14 them under a management group and get
15 the most data and the best data and the
16 most usable data in that manner.

17 I think the ERT report, where they
18 basically did buy an off-the-shelf kind
19 of contractor to do that report is an
20 example of what can happen when you
21 don't do that, when you don't have
22 strict oversight and all that expertise.
23 I think you need to be sure you have the

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1 best people available for the job.
2 Q. Has Solutia gone out and retained
3 experts in the specific fields to

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2 Q. A couple of other issues, Dr. Kaley,
3 will the community have an opportunity
4 to be involved in the consent decree
5 process?

6 A. Yes. They certainly will. I think
7 there is -- There are two aspects to
8 that. Number one, there is a community
9 -- a comment period which will run after
10 this consent decree is entered, as I
11 understand it. But even more
12 importantly, the consent decree has
13 specific provisions for Solutia to fund,
14 number one, a technical advisory panel
15 -- or devise. Excuse me. To devise a
16 technical advisory program which will
17 allow the community to hire a technical
18 expert to advise them on the technical
19 aspects of the consent decree and the
20 work done under the consent decree, and
21 also, the program -- or the consent
22 decree has provisions for establishing a
23 community advisory group or a community
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4 address the particular project in
5 Anniston?

6 A. Yes, we have.

7 Q. And is there someone providing overall
8 oversight for Solutia of the activities
9 that have been undertaken in Anniston?

10 A. Yes. There are inside people.
11 Mr. Branchfield is the inside point
12 management person. Then he also has an
13 additional contractor who provides
14 overall project management and makes
15 sure that the work is being done on
16 time, makes sure that the requirements
17 are being met, et cetera.

18 Q. Who is that person, the outside
19 consultant?

20 A. Well, there are actually two. Richard
21 Williams provides that support. And
22 then there is a man named -- A professor
23 named John Loper, who also provides that

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1 overall management.

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1 advisory panel at the Solutia plant at
2 the site, to have ongoing interactions
3 with Solutia, the project people at
4 Solutia and the regulatory agency.

5 Q. And there are two parts of that. There
6 are what is called the TAP, or the
7 technical assistance plan?

8 A. Right.

9 Q. And then there is also what is referred
10 to a CAG, the Community Advisory Group?

11 A. That's correct.

12 Q. Look at page eight of Plaintiffs'
13 Exhibit I-21. I think that is where the
14 information is provided regarding the
15 TAP process.

16 A. Okay. Which part?

17 Q. On page eight of the statement of work.

18 A. Okay. Statement of work. Okay.

19 Q. And just explain for the Court -- and I
20 think it is set forth in paragraph two
21 -- how the TAP process works?

22 A. Well, basically this is a process

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23 . analogous to what is called the TAG
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1 program, for the Technical Assistance
2 Grant. If the site is an officially
3 listed Superfund site, the EPA can
4 provide up to fifty thousand dollars a
5 year to a qualified group for that group
6 to go out and hire an expert to advise
7 them on the technical aspect of the work
8 plan and the work.

9 One of the requirements of this
10 consent decree, since it is not a
11 Superfund site officially, EPA can't
12 institute that TAG program. So one of
13 the constituents here is for Solutia to
14 fund for a technical assistance plan and
15 provide fifty thousand dollars a year to
16 a qualified community group to hire such
17 an advisor.

18 Q. Let's step through that one piece at a
19 time. The first product that will be
20 created is this technical assistance

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19 fifty thousand dollars each year at the
20 discretion of EPA.

21 Q. In fact, it say at EPA's sole
22 discretion, to require the renewal of
23 the TAP?

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1 A. That is the language, sole discretion.
2 Q. Then there are also criteria listed on
3 page eight and nine of the statement of
4 work for the qualifications of the
5 recipient of the TAP money?

6 A. Yes.
7 Q. And do you have an understanding of
8 whether those are consistent or
9 inconsistent with EPA's requirement for
10 TAG grants if they were going to be the
11 ones to pay the money?

12 A. My understanding is they are essentially
13 identical.
14 Q. Let's talk a little about the community
15 advisory group and how that process
16 works.

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21 plan?

22 A. That's correct.
23 Q. Which is a written document?

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1 A. Yes.
2 Q. Is that plan subject to EPA approval?
3 A. It says subject to EPA approval. Yes,
4 it is.

5 Q. And then is there a time limit from the
6 time the consent decree is effective to
7 the date when Solutia has to provide
8 this technical assistance plan to the
9 EPA for its review?

10 A. Yes. We have forty-five days after the
11 effective date of the decree to submit
12 that plan.

13 Q. Are there provisions for the renewal of
14 the TAP?

15 A. Yes. As I said, the TAP is for --
16 initially for fifty thousand dollars for
17 the first year, and then that may be
18 renewed subsequently for an additional

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17 A. Okay.
18 Q. And I believe that is reflected on page
19 ten?

20 A. That's correct.
21 Q. Okay. And does the document, the
22 statement of work, require Solutia to
23 submit a community advisory group plan

031902B 7867

1 to EPA for approval?
2 A. Yes. That's the first step of that
3 process.

4 Q. And is there a time limit for the
5 submission of that plan?

6 A. Yes. Again it is forty-five days from
7 the effective date of the decree.

8 Q. What are the purposes, in your
9 understanding, for the establishment of
10 a community advisory group?

11 A. Well, I think it is basically a way to
12 perform -- or to establish a
13 communication route for the company, the
14 agencies, the other stakeholders in this

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15 investigation and remediation process to
16 have a dialogue or a discussion about
17 things as they go along.
18 It requires generally their
19 monthly meetings. Solutia will be
20 required to provide a meeting space.
21 And it is basically a time for
22 discussion, as it says, completely
23 through the final acceptance of the
031902B

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1 record of decision on this site.
2 Q. And that is not specified, is it?
3 A. No. That could go on however long it
4 takes to do the investigations and get
5 to that final record of decision.
6 Q. And during that entire time the
7 community advisory group is going to
8 have a role to play at this site?
9 A. Yes. They will certainly be involved in
10 discussions and have opportunity to make
11 inputs into the ongoing work and the
12 interpretation of that work.

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11 those members of the community that we
12 couldn't talk to would be seen as a
13 farce. But we couldn't include them
14 because we weren't allowed to have
15 direct communications with those people.
16 So it just never seemed to be a feasible
17 way to move forward.
18 Q. Okay. And will Solutia try to expedite
19 the processes outlined in the consent
20 decree?

21 A. Well, we will certainly try to expedite
22 those processes, but the time lines that
23 are established in the decree itself are
031902B

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1 quite expedited as they exist now. We
2 will certainly try to even beat some of
3 those deadlines. But it is an expedited
4 process.
5 Q. And while the conceptual site model plan
6 is developed and while the RI/FS is
7 scoped and the other documents that are
8 called for, the technical assistance

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13 Q. There was some prior discussions about
14 community advisory panels, which I think
15 it is actually a term of art that
16 Mr. Stewart referred to in connection
17 with other Solutia sites.
18 A. Yes.
19 Q. Why is there no community advisory panel
20 at Anniston already?
21 A. Well, we have been discussing that for a
22 number of years. That has been a
23 priority of our company, to have
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1 community advisory panels at all our
2 sites. As those discussions turned to
3 Anniston, we have made efforts a couple
4 of times to get that going, but the
5 problem we have, as I mentioned earlier,
6 we are under restraints on who we can
7 and can't communicate with in the
8 neighborhood around our plant. And we
9 have always felt that to have a group, a
10 community action panel which excluded

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9 plan, the community advisory group plan,
10 while those are going on, will Solutia
11 maintain its obligations to conduct
12 removal actions in the area identified
13 by EPA as qualifying for removal under
14 the administrative order of consent?
15 A. Well, we will certainly do that. But
16 that is specifically -- as I mentioned
17 earlier, those orders on consent will be
18 rolled into the consent decree, and we
19 will be required to perform those in
20 accordance with the terms of the consent
21 decree itself.

22 Q. And with respect to the West Anniston
23 Community Foundation, is there a
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1 mechanism by which the money set aside
2 in the consent decree itself could be
3 provided to an existing entity as
4 opposed to the creation of a new entity?
5 A. Yes. I believe that is one of the
6 possibilities, yes.

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7 Q. And is any portion of the money that has
8 been agreed to fund the West Anniston
9 Community Foundation going to pay any
10 attorneys' fees in the Owens/Adams or
11 any other litigation?
12 A. No, it is not.
13 Q. In connection with the Dyer settlement,
14 there was some discussion about the
15 twenty-one million dollar remediation
16 fund.
17 A. Yes.
18 Q. What is your understanding of how
19 Solutia gets credit for monies spent
20 against the remediation fund?
21 A. We have to make a report to an
22 accountant or someone who has been
23 designated by the Court to basically
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1 audit our submissions and determine
2 whether those costs that we have
3 submitted will be credited toward that
4 fund.

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3 FURTHER EXAMINATION
4
5 BY MR. STEWART:
6 Q. Let me just ask you, Dr. Kaley, if y'all
7 have ever analyzed still bottoms for
8 furan contamination?
9 A. No, not that I know of.
10 Q. Why not?
11 A. We don't believe there is any need to do
12 that.
13 Q. Have you ever been required to do that
14 by EPA?
15 A. No, sir.
16 Q. If you found furans in the still
17 bottoms, that millions of pounds of that
18 stuff that y'all have created on your
19 plant site, would that in effect add the
20 risk?
21 A. No. Not if they are in secure
22 landfills, no, sir.
23 Q. You mean the dump y'all have over on
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5 Q. And do you know -- We have provided --
6 or do you know that Solutia has
7 submitted one report on those costs to
8 the Court under the Dyer settlement?
9 A. Yes. I have seen that submission.
10 Q. Has the Court approved that submission?
11 A. No. I don't believe they have approved
12 it to date.
13 Q. If the Court doesn't approve any of
14 those expenditures, then is it your
15 understanding that those monies cannot
16 be credited against the remediation fund
17 created by that settlement?
18 A. Correct. That is the whole purpose of
19 that review process.
20 MR. COX: That's all I have, Your
21 Honor.
22 THE COURT: Mr. Stewart, do you
23 have any further questions?
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7873
1 MR. STEWART: Yes, I do.
2

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1 your plant site you say is a secure
2 landfill?
3 A. Secure landfills, no, it would not.
4 Q. What if they were found on the
5 properties that are owned by the
6 plaintiffs in this case or the people
7 who live around your plant site?
8 Wouldn't that add to the risk if you
9 found furans?
10 A. We do not believe so, not at the levels
11 that would be associated with PCBs, no.
12 Q. What do you base that on?
13 A. The fact that they are -- would be there
14 at such very low levels based on the PCB
15 levels.
16 Q. How do you know that they are there in
17 such very low levels that they don't
18 need even testing?
19 A. Because we know the levels that were
20 present in the PCBs that were
21 manufactured at the site.
22 Q. So you are saying that there were furan
23 contamination of PCBs that y'all

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1 manufactured at this plant site?
2 A. Yes. One to two parts per million.
3 Yes.
4 Q. Well, that is just testing that y'all
5 did at one specific brief time period,
6 isn't it?
7 A. Well, we were only able to do those
8 analyses after about 1976. So the data
9 were only available after that time
10 period. Is that what you meant by your
11 question?
12 Q. I'm just asking you if the testing that
13 y'all did for furans in your product
14 occurred on only one occasion.
15 A. No. They have been tested by us on
16 several occasions, or a number of
17 occasions.
18 They have also been tested by a
19 number of other scientists and have been
20 reported in the public literature.
21 Q. Y'all have never tested those still

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20 effectively as possible.
21 Q. To work out this agreement, no
22 difference in y'all's interest in that
23 agreement and EPA's interest --
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1 MR. COX: Objection. Asking him
2 to speculate what EPA's
3 interest may be --
4 THE COURT: Overruled.
5 A. I don't know what EPA's interests are
6 specifically.
7 Q. Sir?
8 A. I don't know --
9 Q. They are no different --
10 A. Their interests are to clean up the area
11 in an appropriately designated program.
12 And that is what our interests are.
13 Q. No different than y'all's?
14 A. There may very well be differences. I
15 don't know.
16 Q. No suit was no filed, obviously. And no
17 fine was levied against you all by them?

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22 bottoms up there that are located on
23 your plant site, have you?
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7876
1 A. No, sir. The ones -- Those were buried
2 in the landfills prior to the time that
3 we were able to perform that analysis.
4 It is a very complicated and difficult
5 analysis and wasn't available and
6 reported until the mid 1970s.
7 Q. And EPA never asked you all to do that?
8 A. No, they have not.
9 Q. And didn't discuss this at all in
10 conjunction with this consent decree
11 that y'all have entered into?
12 A. Not that I recall, no.
13 Q. Okay. Let me ask you if in fact Solutia
14 and EPA have basically the same interest
15 in this consent decree that y'all have
16 entered into? You do, don't you?
17 A. I believe our interest is to address the
18 PCB impacts in the areas surrounding our
19 plant as expeditiously and as

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18 A. No suit has been filed that I know of.
19 Q. No fine has been levied against you all
20 by EPA?
21 A. No. We have not been fined by EPA.
22 Q. In fact, you all were not even regulated
23 on the plant site and other areas prior
031902B

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1 to the time this consent decree was
2 entered by EPA?
3 A. I don't understand that question.
4 Q. ADEM regulated the activities there on
5 that --
6 A. Yes. That's correct. RCRA was -- We
7 were operating under our RCRA
8 post-closure permit with regard to the
9 PCBs, yes.
10 Q. Now, you indicated, have you not, that
11 the first time that -- I mean, that
12 there had been some ongoing discussions
13 between EPA and ADEM about this consent
14 decree when in fact the first time that
15 they saw this consent decree -- and by

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16 they, I mean ADEM and the officials from
17 ADEM -- that y'all had entered into with
18 EPA, which there are previous drafts of
19 it but just kind of wound up as
20 Plaintiffs' I-21, was after the Court
21 case in Gadsden where the jury rendered
22 a verdict, a liability verdict. That is
23 the first time you showed those people

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1 at ADEM this particular agreement.
2 Isn't it?

3 A. My recollection and my testimony was
4 that I said that ADEM and EPA were
5 having discussions about their
6 respective responsibilities with regard
7 to the site.

8 Q. Carefully, if you would, Dr. Kaley,
9 listen to my question.

10 The first time that EPA and
11 Solutia showed ADEM this agreement, this
12 consent decree or whatever y'all want to
13 call it, I-21 or the predecessor to it,

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12 Solutia was involved in was really
13 basically trying to wrest jurisdiction
14 of this particular matter from this
15 Court. And that is what you wanted ADEM
16 to participate with you. Isn't it
17 correct?

18 MR. COX: Objection to the extent
19 of what EPA is doing.

20 THE COURT: Overruled.

21 A. My understanding was that it was our
22 feeling, certainly, that EPA agreed that
23 it would be better to be sure that all

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1 of the responsibilities for the
2 investigation and remediation of the
3 site were handled under one specific
4 consent decree. And that was the
5 purpose of suggesting that they
6 participate in that process.

7 Q. Suggesting who participate in the
8 process?

9 A. All three groups, Solutia, EPA, and

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14 was after the liability verdict was
15 entered in this case that has been filed
16 by the plaintiffs here, the one we are
17 in right now.

18 A. I don't know specific --

19 MR. COX: Objection as to what EPA
20 may have shared with ADEM.

21 THE COURT: Overruled.

22 Q. I'm talking about the decree. That is
23 the first time y'all showed this thing

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1 to them and basically asked them to join
2 in. Isn't that correct?

3 A. I think that is the first -- I don't
4 know whether they had been shown drafts
5 of the decree before or not. I believe
6 that may be the first time that we
7 believed that it was appropriate for all
8 three parties to be parties to the
9 consent decree.

10 Q. So what y'all were doing at that time
11 and what EPA was involved in and what

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10 ADEM.

11 Q. What y'all were trying to do was to
12 wrest jurisdiction of this particular
13 issue -- that is what EPA was trying to
14 do and that is what Solutia was trying
15 to do -- from this Court, because all of
16 this took place after the liability
17 verdict in this case. Isn't that right?

18 MR. COX: Objection to what EPA
19 was trying to do.

20 THE COURT: Overruled.

21 A. My understanding, my feeling is that we
22 were trying to reach an agreement to
23 investigate and develop remediation

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1 plans for this site under the terms of
2 the consent decree, discussions of which
3 had been going on for a year and a half.

4 Q. Isn't it a fact that there were
5 conversations had between you and
6 Mr. Weinischke and other people who were
7 involved, including Mr. Cox, about the

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8 fact that if you got this consent decree
9 signed, you would take jurisdiction of
10 this particular issue away from this
11 Court? Isn't that what y'all talked
12 about?
13 A. I'm not aware of such discussions.
14 Q. You are saying that Mr. Weinischke never
15 made that statement in your presence or
16 someone from your group never told you
17 that Mr. Weinischke didn't make that
18 statement?
19 A. Not that I recall.
20 Q. So he didn't say that their effort,
21 EPA's effort in this case, was to take
22 jurisdiction from this Court?
23 A. Not that I recall.
031902B 7883
1 Q. Never did discuss the injunctive relief
2 part of this case?
3 A. Other than the fact that it was going --
4 Would be going on early in those
5 discussions and then later in the

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4 think he said EPA had those
5 discussions with the
6 community group and he didn't
7 know what was said.
8 Q. Well, is it your understanding that they
9 were notifying these community groups
10 including the Community Against
11 Pollution, or CAP, as y'all moved
12 through this process? Is that your --
13 A. Is was my understanding they were having
14 communications with whatever group
15 during this negotiation process, yes.
16 That is my understanding.
17 Q. Was CAP one of those groups?
18 A. I believe it was.
19 Q. Who is it from EPA that told y'all they
20 were communicating with CAP, keeping
21 that community group that they funded in
22 part informed?
23 A. Primarily Phyllis Harris.
031902B 7885
1 Q. Phyllis Harris? Did old Dustin Minor

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6 discussions I believe was going on, no,
7 I don't know of any other discussions.
8 Q. Now, you have indicated that the
9 community groups were notified by EPA
10 all along, didn't you?
11 A. That is my understanding, that they were
12 in communication with those groups, yes,
13 Q. And that they agreed that y'all ought to
14 do away with this health component of
15 this deal?
16 A. I didn't say that.
17 Q. Well, let me show you Plaintiffs' --
18 A. I mean, the EPA in the negotiations did
19 not keep that -- Are you talking about
20 the community agree or the EPA agree?
21 Q. The community. You indicated earlier
22 that --
23 A. I don't know what the community says or
031902B 7884
1 hasn't said.
2 MR. COX: I don't think that is
3 Dr. Kaley's testimony. I

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2 say anything about it? Did he say they
3 were keeping them informed?
4 A. I don't recall him specifically saying
5 anything about it.
6 Q. Did Mr. Weinischke say that they felt
7 like they needed to be informed?
8 A. I don't recall him saying anything.
9 Q. Don't they have to under an executive
10 order that was entered by Clinton that
11 wasn't rescinded by Bush?
12 A. I don't know anything about that.
13 Q. You don't know anything about the
14 requirements that you keep people in a
15 community surrounding the plant if there
16 are minorities informed about what you
17 are doing to their community?
18 A. No. I don't know about that.
19 Q. Okay. So then is it your testimony that
20 Mr. Harris told you that they were
21 informing CAP?
22 A. That is my recollection.
23 Q. And that they went along with it or
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1 what?

2 A. I don't know that we were ever told what

3 the community's reaction was.

4 Q. Let me show you Plaintiffs' Exhibit I-24

5 and ask you if you would to read that

6 into the record, please, sir.

7 MR. COX: Your Honor, I object.

8 It is not a document that he

9 is familiar with or has ever

10 even identified as having

11 seen before. And he is

12 asking him to read it into

13 the record. I think that is

14 improper.

15 THE COURT: Sustained. I sustain.

16 MR. STEWART: Okay.

17 Q. Do you know David Baker to be the

18 president of the Community Against

19 Pollution?

20 A. I know he is associated with it. I

21 don't know what his title is.

22 Q. Do you know who Richard Shelby is?

21 recall it.

22 MR. STEWART: We will call him if

23 we have to.

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1 THE COURT: Sustained.

2 Dr. Kaley, I think your

3 testimony was earlier that

4 EPA has not administered any

5 fines against Solutia. Is

6 that correct?

7 THE WITNESS: At the Anniston site

8 for PCB-related issues,

9 that's correct.

10 THE COURT: Has ADEM administered

11 any fines against Solutia?

12 THE WITNESS: Not for PCB-related

13 issues, no.

14 THE COURT: For anything else?

15 THE WITNESS: I believe they have,

16 yes. I don't know

17 specifically, but I believe

18 they have, yes.

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23 A. Yes, I do.

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1 Q. Is he a Senator from the State of

2 Alabama?

3 A. It is my understanding, yes.

4 Q. You know who Christie Todd Whitman is?

5 A. Yes.

6 Q. Do you recognize Mr. Baker's signature?

7 A. Not really.

8 Q. Take a look at that and see if that is

9 in fact the signature of David Baker.

10 A. I don't know.

11 Q. You don't have any idea as to whether or

12 not that is Mr. Baker's signature?

13 A. I don't.

14 Q. If he says in a letter that they didn't

15 know y'all were entering into this

16 agreement, you don't know anything about

17 that?

18 MR. COX: Your Honor, same

19 objection to having Dr. Kaley

20 read it. He said he didn't

19 THE COURT: How recently?

20 THE WITNESS: Well, there is one

21 on the table now that is

22 under discussion, but I don't

23 know what the outcome of that

031902B

7889

1 has been.

2 THE COURT: And what would that be

3 for?

4 THE WITNESS: We had some sort of

5 a discharge of what

6 apparently I think was

7 para-nitrophenol impacted

8 water from -- I believe it

9 was a ditch on our property.

10 I don't know a lot of the

11 specifics.

12 THE COURT: Do you know the amount

13 of the fine?

14 THE WITNESS: I've heard it. I

15 don't know that I recall it

16 specifically. I believe the

You may have up to 3 Header and 3 Footer Lines

WATER_PCB-SD0000067021

ProTEXT Transcript Condensing for Windows

SHEET 52 PAGE 205

17 proposed fine was like a
18 hundred and forty-five
19 thousand dollars. I think
20 that's the number I heard.
21 THE COURT: So has EPA
22 administered any fines
23 against Solutia for this
031902B
7890
1 plant here in Anniston that
2 does not involve PCBs?
3 THE WITNESS: Not that I know of.
4 THE COURT: All right.
5 Mr. Stewart?
6 Q. (By Mr. Stewart) You indicated earlier
7 that there was going be a TAP grant and
8 a TAG grant or community thing. One of
9 them was fifty thousand dollars for
10 somebody who was going to serve as a
11 technical advisor to a community group.
12 I don't know which one of those it was.
13 How does that compare to what y'all
14 spend, Dr. Kaley, on experts to advise

PAGE 207

13 A. That is again consistent with the EPA's
14 TAG grant program, so they set that
15 figure.
16 Q. Would it be fair to say that a group
17 that was supposed to be overseeing or at
18 least giving some community input in
19 connection with the technical aspects of
20 this case would be somewhat limited in
21 their capability, because of the numbers
22 and amounts, to hire adequate technical
23 advisors to raise questions about what
031902B
7892
1 you all are doing?
2 MR. COX: Objection, speculation.
3 THE COURT: Overruled.
4 A. I don't know.
5 Q. You can't get a whole lot in the field
6 we are talking about for fifty thousand
7 dollars or even a hundred thousand, can
8 you, Dr. Kaley?
9 A. Yeah. I think you can get substantial
10 technical input for that, yes.

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15 y'all or assist y'all in characterizing
16 this site? What for instance would you
17 estimate y'all have spent on consultants
18 over the past year?
19 A. I don't know.
20 Q. It would certainly be well in excess of
21 fifty thousand dollars, wouldn't it?
22 A. I'm sure it would be, yes.
23 Q. Might be as much as a half million
031902B
7891
1 dollars or maybe a million?
2 A. I don't know.
3 Q. But it could be substantially larger
4 than the fifty thousand dollars?
5 A. I believe I said that.
6 Q. Who set the figure of fifty thousand
7 dollars?
8 A. That is consistent with the EPA's TAG
9 grant program. They clearly set that
10 figure.
11 Q. And the hundred and fifty thousand
12 dollars, who set that figure?

PAGE 208

11 Q. For fifty thousand?
12 A. For what the purpose of the TAG grant
13 is, yes.
14 Q. Is the purpose of the TAG grant just to
15 sort of bless it and kiss it --
16 A. No.
17 Q. -- and send it on its way?
18 A. No.
19 Q. Or do they actually technically raise
20 issues and questions about what y'all
21 are --
22 A. The intent is to technically raise
23 issues and questions and help the
031902B
7893
1 community address those issues.
2 Q. There was a forty-five day period within
3 which you all had to give them some
4 information about that technical
5 assistance; is that correct?
6 A. That's the date in the draft, yes.
7 Q. And that is from the date the consent
8 order is entered until the time -- The

You may have up to 3 Header and 3 Footer Lines

WATER_PCB-SD0000067022

ProTEXT Transcript Condensing for Windows

SHEET 53 PAGE 209

9 forty-five days begins to run then?
 10 A. At the effective date of the decree,
 11 yes.
 12 Q. If you can, tell me what the comment
 13 period is for the general public.
 14 A. I don't know. I believe it is thirty
 15 days, but I may be wrong.
 16 Q. Let's say they disagree with who y'all
 17 put up, how in the world -- If you wait
 18 the forty-five days, how would they have
 19 any way to comment on who y'all pick?
 20 A. Well, the thirty day comment period is
 21 on the entrance of the consent decree,
 22 not on the plans that are going to be
 23 developed that they would be commenting
 031902B
 7894
 1 on.
 2 Q. Oh, so they don't comment on the plans;
 3 they just comment on the entering of the
 4 consent decree?
 5 A. During that thirty day period, that is
 6 my understanding, yes.

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5 documents, the actual work plans
 6 themselves and the data as it comes in,
 7 et cetera.
 8 Q. I'm not talking about the TAP grant.
 9 I'm talking about the comment period for
 10 the general public. If the general
 11 public doesn't know what work plan y'all
 12 are going to be proposing under this
 13 consent decree, what in the world are
 14 they going to be commenting about,
 15 the --
 16 A. I guess on the sufficiency --
 17 Q. -- secret meetings y'all --
 18 A. -- of the consent decree.
 19 Q. The secret meetings y'all had to put
 20 this thing together?
 21 MR. COX: Objection,
 22 argumentative.
 23 THE COURT: Overruled.
 031902B
 7896
 1 A. There were no secret meetings. They
 2 were open meetings. And they have the

PAGE 210

7 Q. What time frame do y'all have, for
 8 instance, to provide EPA with a work
 9 plan?
 10 A. I'd have to look in here. I don't know
 11 exactly what the date is. But it is
 12 specified in there.
 13 Q. If it is within thirty days and y'all do
 14 it on the thirtieth day, how in the
 15 world would a community group have an
 16 opportunity, Dr. Kaley, to comment about
 17 or raise questions about validity or
 18 invalidity of that work plan or --
 19 A. Well, my understanding is the thirty day
 20 comment period is to comment on the
 21 three documents that are included in the
 22 consent decree, the consent decree
 23 itself, the RI/FS plan, and the
 031902B
 7895
 1 statement of work. Those are not
 2 documents which contain specific
 3 move-forward kinds of activities. The
 4 TAP grant is to advise on the subsequent

PAGE 212

3 right to -- I don't know what
 4 specifically -- They can comment. They
 5 can comment on the sufficiency and the
 6 appropriateness of this consent decree
 7 as I understand.
 8 Q. Do you know who is head of the Council
 9 on Environmental Quality --
 10 THE COURT: Let me ask a question
 11 before you finish that one.
 12 Okay? They weren't secret
 13 meetings. Did you say they
 14 were open meetings?
 15 THE WITNESS: They weren't secret.
 16 THE COURT: All the open meetings
 17 you are having with -- I
 18 mean, all of the meetings you
 19 are having with the EPA are
 20 open meetings?
 21 THE WITNESS: Well, I wouldn't --
 22 Yes. I don't think they were
 23 secret meetings.
 031902B
 7897

You may have up to 3 Header and 3 Footer Lines

ProTEXT Transcript Condensing for Windows

SHEET 54 PAGE 213

1 THE COURT: So you don't mind
2 letting me know of all the
3 future meetings y'all have
4 with EPA and allowing me to
5 be there.
6 THE WITNESS: I guess not. I
7 don't know.
8 THE COURT: Okay. Then I'd --
9 THE WITNESS: I guess that is up
10 to EPA.
11 THE COURT: I guess if they are
12 open, we can all be there,
13 can't we?
14 THE WITNESS: I guess. I don't
15 know.
16 THE COURT: Well, you please
17 inform me of all the future
18 meetings so that I can be in
19 attendance?
20 THE WITNESS: Okay. I'll ask that
21 that be done.
22 THE COURT: Thank you.
23 Mr. Stewart?

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22 know. I assume I would if they had
23 occurred. I don't know.
031902B
7899
1 Q. Do you understand that discussions have
2 been had with a judge?
3 A. No, I do not understand that.
4 Q. In response to Mr. Little's questions
5 earlier, you were talking about whether
6 or not -- He was asking you whether or
7 not it had been signed. I understood
8 you to say that Pharmacia hasn't signed
9 this document yet or some signatory for
10 them hasn't signed it. Is that correct
11 or incorrect?
12 A. It is correct to my knowledge. I do not
13 know that anyone has signed that
14 document.
15 Q. Solutia hasn't?
16 A. As far as I know.
17 Q. Pharmacia hasn't?
18 A. As far as I know.
19 Q. EPA hasn't?

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031902B
7898
1 Q. (By Mr. Stewart) I guess what I was
2 asking you is what they could comment
3 on, and you were telling me. And I
4 didn't understand all the things. Just
5 the consent decree itself?
6 A. That's my understanding, yes. Whatever
7 is in these three documents.
8 Q. And who do you understand they are
9 making their comments to?
10 A. I guess the Court in which it is filed.
11 Q. The court. And have y'all picked the
12 Court in which this is to be filed?
13 A. I don't understand -- It is a federal
14 court. I don't know.
15 Q. Have there been discussions with a
16 particular judge?
17 A. Not to my knowledge.
18 Q. Sir?
19 A. Not to my knowledge.
20 Q. Who would know that?
21 A. I don't know that there is anything to

PAGE 216

20 A. As far as I know.
21 Q. Why not?
22 A. Why haven't they signed it?
23 Q. Why have they not signed the agreement
031902B
7900
1 yet?
2 A. I don't know.
3 Q. Still negotiating some final deal?
4 A. I don't know where the process is.
5 Q. Who would know that, Dr. Kaley, where
6 that process is?
7 A. I would assume Mr. Topol knows. I don't
8 know whether he knows or not.
9 Q. Mr. Topol knows?
10 A. He has led our negotiations. I assume
11 he would know.
12 Q. To your knowledge has Mr. Topol talked
13 to anybody from the Council on
14 Environmental Quality?
15 A. Not to my knowledge.
16 Q. Has anybody from Solutia or Pharmacia
17 talked to anyone from the Council on

You may have up to 3 Header and 3 Footer Lines

ProTEXT Transcript Condensing for Windows

SHEET 55 PAGE 217

18 Environmental Quality, like the
19 chairperson?
20 A. Not that I know of.
21 Q. Who would have acquainted that person
22 about the Anniston site out of Solutia
23 if you know?
031902B 7901
1 A. I don't know?
2 Q. Would Glenn Ruskin have been the one
3 that arranged the meeting for somebody
4 from Pharmacia to explain that site,
5 this --
6 A. I don't know.
7 Q. -- site here in Anniston, that
8 particular individual?
9 A. I don't know.
10 Q. Are you saying that those discussions
11 didn't take place, or you don't know who
12 it was that had those discussions?
13 A. I don't know whether those discussions
14 took place, and if they did, I don't
15 know who would have had that discussion,

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14 A. Yes.
15 Q. In the last paragraph of that document
16 he talks about the fact that the site
17 has been fully characterized and pending
18 approval of our RCRA facility
19 investigation report by ADEM.
20 A. That's correct.
21 Q. Now, that letter was written on October
22 8, 2001; is that right?
23 A. Yes.
031902B 7903
1 Q. And y'all were talking about the fact
2 that the RCRA facility investigation
3 report was going to be approved by ADEM?
4 A. We were hoping it would be approved,
5 yes.
6 Q. How is that different from what y'all
7 are now proposing to do with EPA in this
8 order on consent?
9 A. Well, at the time the letter was written
10 the site -- the plant site itself was
11 under RCRA authority. I don't know the

PAGE 218

16 either one?
17 Q. Since we last met have you talked to
18 anyone -- And I asked you last time
19 about whether or not Linda Fisher. And
20 the reason I asked you this question is
21 I noticed in the newspaper -- you can't
22 always believe everything you read
23 there, but a lot of times you can --
031902B 7902
1 said the highest levels of EPA were
2 interested in this particular matter.
3 Has anybody to your knowledge talked to
4 Linda Fisher about this site --
5 A. Not to my knowledge.
6 Q. -- the former Monsanto employee?
7 A. Not to my knowledge.
8 Q. Now, I notice in this document that was
9 offered -- and I don't know which one it
10 was, but is it the final summery report
11 of technical review and evaluation of
12 potential PCB releases by Solutia signed
13 by Mr. Branchfield.

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12 full impact of what this particular
13 draft consent decree means, but I would
14 assume that this will still be an
15 important part of whatever process is
16 involved at the plant site itself.
17 Q. Well, isn't it a fact that what we are
18 talking about is one and the same?
19 A. No. The RCRA report is focused on the
20 plant site itself. The consent decree
21 covers a much broader area.
22 Q. Aren't you doing the same kind of
23 testing, et cetera, and didn't you under
031902B 7904
1 that RCRA assessment, on the plant site?
2 A. Well, most of that has been done. And
3 that is what is reported in the report,
4 is that characterization of the plant
5 site itself. That is specifically what
6 was included in that reference.
7 Q. Isn't it a sham to say to this Court
8 that that consent -- this consent decree
9 is something y'all are starting off new

You may have up to 3 Header and 3 Footer Lines

ProTEXT Transcript Condensing for Windows

SHEET 56 PAGE 221

10 and afresh when in fact you had already
11 done some of the same kind of things on
12 your plant site and frankly on a good
13 portion of the area around that plant
14 site, hadn't you --
15 MR. COX: Objection --
16 Q. -- for ADEM as opposed to EPA?
17 MR. COX: Argumentative.
18 THE COURT: Overruled.
19 A. I'm not sure I understand the whole
20 issue. But I think -- No. It is not a
21 sham, and we believe that our plant site
22 has been fully characterized, and that
23 is reflected in that report. Now, I
031902B
7905
1 know that based on this very ERT report
2 that this was made in response to, EPA
3 has some additional concerns, and those
4 will need to be addressed.
5 Q. But isn't it a fact that y'all are just
6 starting the game all over again with
7 this program?

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6 withdraw our objection if
7 they provide a complete copy
8 of the twenty-seven pages off
9 the Internet to the Court.
10 MR. STEWART: Well, the part that
11 we offered, Judge, I think is
12 the pertinent part. But we
13 can get the other pages.
14 MR. COX: I just don't think it is
15 complete, and it cuts off in
16 midsentence. And we would
17 just object on the ground it
18 is incomplete.
19 THE COURT: Okay. Both are
20 admitted with -- What is that
21 last number?
22 MR. COX: I-23, which is the
23 excerpt from the Bloomington,
031902B
7907
1 Indiana site.
2 THE COURT: I-23 is admitted upon
3 the entire document being

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8 A. No, sir. It will be built on things
9 that have already been done. We are
10 certainly not starting over.
11 MR. STEWART: Judge, I believe
12 that is all I have. I would
13 like to move for the
14 admission of Plaintiffs'
15 Exhibit I-22 and Plaintiffs'
16 Exhibit I-23, which were not
17 formerly moved for admission
18 earlier.
19 MR. COX: This was during
20 Mr. Woodyard's testimony. We
21 don't really have an
22 objection to I-22 other than
23 possible relevance. But on
031902B
7906
1 I-23, which is the excerpt
2 from the Bloomington ATSDR
3 study, we would just object
4 on the grounds it is
5 incomplete. We would

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4 admitted. Otherwise, the
5 objection is sustained.
6 (Whereupon Plaintiffs'
7 Exhibit I-22 was offered and
8 admitted into evidence.)
9 (Whereupon Plaintiffs'
10 Exhibit I-23 was offered and
11 admitted into evidence
12 subject to the above
13 provisions of the Court.)
14 THE COURT: Mr. Wright?
15 MR. WRIGHT: A few questions.
16
17 EXAMINATION
18 BY MR. WRIGHT:
19 Q. Dr. Kaley, I'm James Wright with ADEM.
20 In Mr. Cox's direct examination, he was
21 asking you some questions about the
22 Eleventh Street ditch and the
23 administrative order on consent with
031902B
7908
1 EPA.

You may have up to 3 Header and 3 Footer Lines

WATER_PCB-SD0000067026

ProTEXT Transcript Condensing for Windows

SHEET 57 PAGE 225

2 A. Yes.
3 Q. I believe Mr. Cox said that that
4 Eleventh Street ditch and the affiliated
5 floodplains were formerly under the RCRA
6 program, and you said yes. Is that
7 correct?
8 A. Yes.
9 Q. Isn't it true they are still under the
10 RCRA program?
11 A. Well, I don't know the answer. Yes, I
12 think they are still under the RCRA
13 program; although, we are currently
14 submitting work plans to the EPA to
15 address the remediation of that ditch.
16 Q. But at the moment they are still under
17 the RCRA program, are they not? If you
18 had a release out there, for example,
19 your RCRA permit would obligate you to
20 report to ADEM?
21 A. Yes, sir, absolutely.
22 Q. So as of this moment they remain under
23 the RCRA program?
031902B

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23 days to submit a couple of things,
031902B 7910
1 something like that.
2 A. I believe that's correct. I mean, I
3 know there are those submission
4 deadlines, yes.
5 Q. One of those documents you have to
6 submit is a work plan; is that correct?
7 A. I believe that's correct, yes.
8 Q. Most of those documents you will be
9 required to submit will be set out --
10 the submittal dates, the deadlines, will
11 be set out in that work plan, will they
12 not?
13 A. Many of them will, I believe, yes.
14 Q. And you will generate the work plan?
15 A. That's correct.
16 Q. Subject to EPA review?
17 A. Yes.
18 Q. And in generating that work plan, you
19 will submit most of the due dates for
20 the submittal of major and minor

PAGE 226

7909
1 A. Yes, sir.
2 Q. So it is not entirely accurate to say
3 they were formerly under the RCRA
4 program?
5 A. I would agree with that.
6 Q. Now, you said in discussing I-21,
7 which is the draft, I guess you would
8 call it --
9 A. Yes, sir.
10 Q. -- or proposed agreement, that you had
11 no intention to incur stipulated
12 penalties.
13 A. That's correct.
14 Q. And those stipulated penalties are due
15 when you miss document submittal dates;
16 is that correct?
17 A. I believe that is correct for some of
18 them, yes.
19 Q. And some of those document submittal
20 dates are set out in here? In other
21 words, when this is finally executed and
22 entered, et cetera, you will have thirty

PAGE 228

21 documents?
22 A. I believe we will propose them, yes.
23 Q. And those are the deadlines you will
031902B 7911
1 have to accrue stipulated penalties?
2 A. I think that's a fair characterization,
3 for the ones that are so designated,
4 yes.
5 Q. Now, as you submit these documents to
6 EPA, they have some period of time in
7 which to review them, do they not?
8 A. I believe that's correct, yes.
9 Q. And then they have -- After that they
10 can make comment to you, and you have
11 some period of time in which to revise
12 them and resubmit them?
13 A. That's correct.
14 Q. Okay. Now, EPA, under this agreement,
15 their review of those documents is their
16 cost, is it not?
17 A. Yes, it is.
18 Q. You will reimburse them for reviewing

You may have up to 3 Header and 3 Footer Lines

ProTEXT Transcript Condensing for Windows

SHEET 58 PAGE 229

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19 those documents as you generate them?
 20 A. I believe that is correct. I believe
 21 there is provision for future oversight
 22 costs, yes.
 23 Q. And I believe you said that you had
 031902B
 7912
 1 already agreed to reimburse them for
 2 five point eight million dollars in
 3 costs they have incurred to date?
 4 A. I believe the number is five point seven
 5 million, but that's correct.
 6 Q. And they began to incur those costs in
 7 the year 2000, did they not?
 8 A. I believe that is correct.
 9 Q. So that is about two point eight million
 10 a year, average?
 11 A. Yes.
 12 Q. Since -- for the past couple of years?
 13 A. Yes.
 14 Q. Are you aware, Dr. Kaley, that ADEM's
 15 entire RCRA budget for a year for that
 16 entire program is two and a half million

15 oversight of ADEM's RCRA program
 16 currently?
 17 A. That is my understanding, yes. I know
 18 everything we submit to ADEM gets
 19 submitted to EPA.
 20 Q. The consent decree, the RI/FS agreement,
 21 and the statement of work set forth in
 22 Plaintiffs' Exhibit I-21, is it your
 23 understanding that those are based upon
 031902B
 7914
 1 model documents prepared by EPA and
 2 published on their website?
 3 A. That is my understanding. It is largely
 4 based on that, yes.
 5 Q. And the process under which those
 6 agreements are submitted to federal
 7 court, that's all part of the standard
 8 process that happens at every site where
 9 a consent decree is reached?
 10 A. That's my understanding. That is how
 11 CERCLA works, yes.
 12 Q. And just so this is clear, is it

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17 dollars?
 18 A. No.
 19 MR. WRIGHT: No further questions.
 20 THE COURT: Anything from the
 21 state?
 22 MR. LITTLE: No.
 23 THE COURT: Anything from the
 031902B
 7913
 1 city.
 2 MR. MONK: No, sir.
 3 THE COURT: Mr. Cox?
 4 MR. COX: A few.
 5
 6 FURTHER EXAMINATION
 7 BY MR. COX:
 8 Q. Dr. Kaley, has ADEM ever requested that
 9 Solutia test still bottoms for the
 10 presence of furan?
 11 A. No.
 12 Q. You indicated that the plant site was
 13 regulated by RCRA. Is it also your
 14 understanding, though, that EPA has

13 Solutia's intention to use all of the
 14 data collected at the site under the
 15 RCRA program to help develop and assist
 16 the expedition of the work called for
 17 under Plaintiffs' Exhibit I-21?
 18 A. Absolutely, yes. That data and the EPA
 19 data generated, yes.
 20 Q. Now, the five point seven million
 21 dollars that EPA has requested
 22 reimbursement for, that included a lot
 23 of things, did it not?
 031902B
 7915
 1 A. Yes, it did.
 2 Q. It included their sampling of
 3 residential properties for the presence
 4 of PCBs?
 5 A. Yes, sir.
 6 Q. Do you know how many residential
 7 properties they sampled in Anniston?
 8 A. I think I have heard the number of about
 9 seven hundred. Several hundred for sure
 10 at least.

You may have up to 3 Header and 3 Footer Lines

ProTEXT Transcript Condensing for Windows

SHEET 59 PAGE 233

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11 Q. It included several million dollars to
12 reimburse ATSDR for the costs they have
13 incurred in developing the various
14 consultations, did it not?
15 A. That's correct.
16 Q. It also included the work ERT did in
17 connection with their review of the
18 plant site?
19 A. Yes.
20 Q. And it also included EPA's oversight of
21 all of Solutia's activities under the
22 administrative order on consent, did it
23 not?

031902B

7916

1 A. I believe that's correct, yes.
2 MR. COX: That's all I have.
3 THE COURT: The testimony was
4 earlier that originally EPA
5 has requested over six
6 million dollars in
7 reimbursement.
8 THE WITNESS: Yes.

7 involved in those
8 discussions. I know some of
9 them had to do with costs for
10 analyses for lead and things
11 like that.

THE COURT: Okay. Anything else?

MR. STEWART: Judge, I would just
14 like to make an offer of
15 proof that a letter was --
16 I-24, and we can get
17 Mr. Baker in here to -- I
18 would prefer not to if we
19 don't have to, but we can get
20 Mr. Baker in here to verify
21 the letter.

22 But he is the president
23 of CAP, and he wrote Senator
031902B

7918

1 Richard Shelby on March 18th,
2 2002, and indicated that they
3 were not aware of the fact
4 that the U.S. Environmental

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9 THE COURT: And after reviewing
10 those costs, Solutia felt
11 some of those costs weren't
12 related to the efforts in
13 this case, or what was your
14 testimony?
15 THE WITNESS: Well, I don't
16 recall. But they weren't
17 appropriate charges for
18 Solutia to pay.

19 THE COURT: While they may have
20 been related to the case,
21 they weren't appropriate for
22 Solutia to pay?

23 THE WITNESS: Or they may have
031902B

7917

1 been related to Anniston and
2 not --

3 THE COURT: Do you know what those
4 costs related or what type of
5 costs they were?

6 THE WITNESS: I wasn't deeply

5 Protection Agency and
6 Monsanto/Solutia had reached
7 an agreement.

8 They were concerned
9 that the agreement might
10 adversely impact recent court
11 decision and asked Senator
12 Shelby to raise that with
13 Administrator Whitman when
14 she testifies before the
15 Veterans Affairs, Housing and
16 Urban Development, and
17 independent agencies this
18 Wednesday, March 20th, 2002.

19 And they were concerned
20 about the effect that this
21 agreement would have on this
22 Court's ability to order
23 cleanup in this area. They
031902B

7919

1 also were very much concerned
2 about the fact that there

You may have up to 3 Header and 3 Footer Lines

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SHEET 60 PAGE 237

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3 wasn't funding provided for
4 health studies and medical
5 monitoring for the people of
6 Anniston.
7 So apparently they
8 didn't get the message or
9 weren't communicated with
10 according to this particular
11 letter, and we make an offer
12 of proof of that. And at the
13 appropriate time I'd like to
14 authenticate the letter and
15 make it a part of the record.
16 THE COURT: You may need to get
17 Mr. Baker here to do that.
18 MR. COX: Your Honor, of course,
19 we object certainly on
20 relevance grounds to whatever
21 this has. But in terms of
22 requiring Mr. Baker to come
23 testify solely for the
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1 THE COURT: I don't remember, but
2 you do now, and they are
3 admitted.
4 MR. COX: Thank you, Your Honor.
5 (Whereupon Defendants'
6 Exhibits 701, 1097, and 789
7 were offered and admitted
8 into evidence.)
9 THE COURT: Okay. We will be in
10 recess until sometime
11 tomorrow.
12 MR. COX: Well, are y'all going to
13 rest now, or are y'all going
14 to have anybody else that you
15 are going to call first?
16 MR. STEWART: Well, I don't know
17 of anybody that we are going
18 to call, but we had these
19 tapes we want to make a part
20 of the record. And I would
21 certainly like to play them

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1 purpose of authenticity, we
2 don't object.
3 THE COURT: Okay. Well, then it
4 is admitted as an offer of
5 proof.
6 MR. COX: As offer of proof?
7 THE COURT: Right.
8 MR. COX: Thank you, Your Honor.
9 (Whereupon Plaintiffs'
10 Exhibit I-24 was offered and
11 admitted into evidence.)
12 THE COURT: Dr. Kaley, when is the
13 next meeting between Solutia
14 and EPA?
15 THE WITNESS: I don't know if
16 there is one.
17 THE COURT: Okay. Anything else?
18 MR. COX: Not from Dr. Kaley.
19 THE COURT: You can step down.
20 (Witness excused.)
21 MR. COX: Did I offer -- I think I
22 did -- offer 701, 1097 and
23 789?

22 for the record.
23 THE COURT: Audio or video?
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1 MR. STEWART: Audio. I think they
2 are interesting, and I'd like
3 for the Court to hear them.
4 I think they pretty well
5 state this company's
6 position, and I'm not kidding
7 or being facetious, Judge.
8 THE COURT: We will do that first
9 tomorrow then, before the
10 plaintiffs rest.
11 MR. COX: Is ADEM or the state or
12 the city going to call any
13 additional witnesses in the
14 plaintiffs' cases in chief?
15 I think I got all my words
16 right.
17 MR. HUBBARD: We don't anticipate
18 that.
19 MR. WRIGHT: We are going to call

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20 Mr. Cobb on rebuttal.
 21 THE COURT: Okay.
 22 MR. PECK: That would be following
 23 our case. We just want to
 031902B
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 1 make sure we have our
 2 witnesses lined up.
 3 THE COURT: It looks like we are
 4 going to probably have about
 5 an hour and a half worth of
 6 tape tomorrow and then y'all.
 7 And I hate to say one
 8 o'clock, because I could have
 9 started at ten thirty today.
 10 MR. STEWART: Judge, we may have
 11 some preliminary relief we
 12 are going ask for too when we
 13 get through with that.
 14 THE COURT: So let's just say --
 15 MR. LITTLE: Judge, since we were
 16 going to come from
 17 Montgomery, is there any kind

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16 him from going out of town
 17 for spring break. I may keep
 18 the attorneys from going out
 19 of town.
 20 MR. PECK: I was getting curious
 21 about that, Your Honor. Do
 22 you have spring break plans?
 23 THE COURT: Yes, I do, right here
 031902B
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 1 in this courtroom. My
 2 children and my wife already
 3 know it. So they have
 4 planned a trip without me and
 5 have invited other people to
 6 go along. So even if I'm not
 7 here, I'm not going with
 8 them.
 9 Mr. Cox?
 10 MR. COX: I was just going to say
 11 if there is a way we can
 12 accommodate having that tape
 13 admitted so we don't have to

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18 of indication you can give us
 19 -- you said one o'clock and
 20 ten thirty. Is there -- I
 21 can just call Mr. Hubbard in
 22 the morning.
 23 THE COURT: I can just say one
 031902B
 7924
 1 o'clock. It won't hurt me to
 2 have an extra hour and a half
 3 breather tomorrow.
 4 MR. PECK: And everybody else
 5 should be in Gadsden at nine?
 6 THE COURT: Nine. Mr. Wright?
 7 MR. WRIGHT: Mr. Cobb informs me
 8 he has to be out Thursday and
 9 that next week is spring
 10 break and he is scheduled to
 11 be out of town for AEA.
 12 THE COURT: Well, we will work
 13 around any further testimony
 14 of his. We will work around
 15 that. I'm not going to keep

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14 sit here and listen to it, I
 15 will certainly be more than
 16 happy, as I have offered
 17 before, to authenticate it
 18 after it is in and just
 19 reserve a right to come back
 20 and add anything or
 21 supplement as needed. But
 22 having twelve of us sit
 23 around here and listen to an
 031902B
 7926
 1 audio tape I think is a waste
 2 of our time.
 3 THE COURT: Well, it won't be the
 4 first time we have wasted in
 5 this case. So y'all be here
 6 at one o'clock and we will
 7 start listening to those two
 8 tapes.
 9 (Court adjourned at 4:50 p.m.)
 10
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