

1 IN THE CIRCUIT COURT OF ST. CLAIR COUNTY, ALABAMA
PELL CITY DIVISION

2

THOMAS C. and CHARLOTTE)

3 G. DYER,)

)

4 Plaintiffs,) CIVIL ACTION NUMBER

)

5 VS.) CV-93-250 consolidated

) with CV-94-50-PH for

6 MONSANTO COMPANY, a) discovery only

Delaware corporation,)

7 et al.,) DEPOSITION OF:

)

8 Defendants.) BRUCE ELEY

9 SHELTER COVE MANAGEMENT,)

INC., et al.,)

10)

Plaintiffs,) CIVIL ACTION NUMBER

11)

VS.) CV-94-50-PH

12)

MONSANTO CORPORATION,)

13 et al.,)

)

14 Defendants.)

15

16 S T I P U L A T I O N S

17 IT IS STIPULATED AND AGREED, by and between

18 the parties through their respective counsel, that the

19 deposition of:

20 BRUCE ELEY,

21 may be taken before Dana Gordon, Commissioner and

22 Notary Public, State at Large, at the Law Offices

23 of Burr & Forman, 3100 SouthTrust Tower, Birmingham,

BAIN & ASSOCIATES

1 Alabama 35203, on the 10th day of September 1998,
2 commencing at approximately 9:12 a.m.

3

4

5 IT IS FURTHER STIPULATED AND AGREED that the
6 signature to and reading of the deposition by the
7 witness is NOT waived, the deposition to have the same
8 force and effect as if full compliance had been had
9 with all laws and rules of Court relating to the
10 taking of depositions.

11

12 IT IS FURTHER STIPULATED AND AGREED that it
13 shall not be necessary for any objections to be made
14 by counsel to any questions, except as to form or
15 leading questions, and that counsel for the parties
16 may make objections and assign grounds at the time of
17 the trial, or at the time said deposition is offered
18 in evidence, or prior thereto.

19

20 * * * * *

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1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS:

4 Peter A. Grammas

5 E. Clayton Lowe, Jr.

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8 3100 SouthTrust Tower

9 Birmingham, Alabama 35203

10

11 FOR THE DEFENDANTS:

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13 Attorney at Law

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1 I, Dana Gordon, a Court Reporter of
2 Birmingham, Alabama, and a Notary Public for the State
3 of Alabama at large, acting as commissioner, certify
4 that on this date, pursuant to Rule 30 of the Alabama
5 Rules of Civil Procedure and the foregoing stipulation

6 of counsel, there came before me on the 10th day of
7 September 1998, at the Law Offices of Burr & Forman,
8 3100 SouthTrust Tower, Birmingham, Alabama 35203,
9 commencing at approximately 9:12 a.m., BRUCE ELEY,
10 witness in the above cause, for oral examination,
11 whereupon the following proceedings were had:

12 BRUCE ELEY,
13 being first duly sworn, was examined and testified as
14 follows:

15 THE REPORTER: Usual stipulations?

16 MR. COX: He, like the other ones, I think
17 will read and sign.

18 MR. GRAMMAS: All right.

19 MR. COX: That shouldn't delay anything.

20 EXAMINATION BY MR. GRAMMAS:

21 Q Could you state your full name for the
22 record, please? Is it Mr. Eley?

23 A Yes, Mr. Eley.

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6

1 Q Could you state your full name, please?

2 A Bruce W. Eley, E-l-e-y.

3 Q And where do you currently reside, Mr. Eley?

4 A 1729 Karman Valley Drive, K-a-r-m-a-n, St.
5 Louis, Missouri.

6 Q You've recently given a deposition on behalf

7 of Monsanto and Solutia in a case that involves this

8 Anniston plant; is that correct?

9 A That's correct.

10 Q Who are you currently employed by?

11 A Solutia, Inc.

12 Q And is that a spinoff corporation of

13 Monsanto?

14 A That's correct.

15 Q What's your current title, Mr. Eley?

16 A Manager, environmental affairs.

17 Q So, the buck stops at your desk with respect

18 to environmental issues relating to Solutia. Is that

19 a correct statement?

20 A No, sir.

21 Q You have bosses?

22 A Yes.

23 Q Who are your bosses?

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7

1 A My immediate boss is Dr. Bob Kaley,

2 K-a-l-e-y. His boss is Mr. Mike Foresman. His boss

3 is Mike Pierle, P-i-e-r-l-e.

4 Q Mike Pierle?

5 A Mike Pierle.

6 Q Is that the chain of command for Solutia

7 with respect to environmental management?

8 A No.

9 Q Why don't you go through that for me real
10 quick. Let's start from the top.
11 You understand this is a lawsuit about PCB
12 contamination, correct?
13 A Correct.
14 Q You understand that a court here in Alabama
15 has certified a class of plaintiffs in a lawsuit
16 against Monsanto and now also Solutia regarding PCB
17 contamination in Choccolocco Creek and in Lake Logan
18 Martin, correct?
19 A That's my understanding.
20 Q Have you ever visited those bodies of
21 water?
22 A Yes, I have.
23 Q And that would have been in your official

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8

1 capacity with either Monsanto or Solutia depending on
2 the time of your visit, correct?
3 A Correct.
4 Q Now, would you agree with me that PCB
5 contamination is an environmental issue?
6 A Yes.
7 Q And therefore, it would come under the
8 auspice of your department, correct, PCB issues? Is
9 that a difficult question?

10 A Some issues -- well, the only thing is when
11 you say department, our group, which is a relatively
12 small group, is a part of remediation management.
13 Remediation management is managed by Mike Foresman.
14 I'm not that familiar with all the scope of jobs
15 involved in remediation management, but this is a
16 group of engineers that are involved in remediating a
17 number of different sites that come under the
18 responsibility of Solutia, Inc. There's also another
19 department which deals with environmental issues.
20 Q What is that department?
21 A I'm trying to think exactly what it -- that
22 department is called.
23 Q Why don't we do this.

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9

1 A Compliance and policy, I believe.
2 Q Why don't we do this. I'm going to mark a
3 blank piece of paper as Exhibit 1 and ask if you would
4 in sort of a --
5 MR. COX: What do you want, a --
6 MR. GRAMMAS: What's the word I'm looking
7 for? Hierarchy --
8 MR. COX: Organizational chart?
9 Q Organizational chart.
10 A Organizational chart.
11

12 (Plaintiff's Exhibit
13 Number 1 was marked for
identification.)
14 Q Do me an organizational chart with Monsanto
15 or Solutia who is responsible for in your opinion
16 PCB-related issues including remediation cleanup, that
17 type stuff.
18 A Okay. I'll do the best job I can here.
19 Q Sure. And just so the record is clear, you
20 are a part of that organization, correct?
21 A That's correct.
22 Q As the manager of environmental affairs?
23 A Yes.

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1 Q And there are only two people that are
2 directly your bosses, correct?
3 A Well, there's one person that I directly
4 report to.
5 Q And that person only has one person that he
6 directly reports to?
7 A That's correct.
8 Q Are you done?
9 A Yes.
10 Q Let me see if I can -- Mr. Eley, you've
11 handed me Plaintiff's Exhibit 1 which is what appears
12 to be a rough schematic of an organizational chart for

13 Monsanto -- or is this Solutia?

14 A This is Solutia.

15 Q This is for Solutia dealing with PCB-related
16 issues, correct, environmental issues?

17 A It's an organizational chart of the overall
18 department which is called environment, safety and
19 health. That's our organization.

20 Q I'm going to step around here, not to stand
21 over your shoulder, but it will just be easier.

22 A Okay. We abbreviate environment, safety and
23 health by ESH.

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11

1 Q Okay. And Mr. Mike Pierle -- P-i-e-r-l-e?

2 A Correct.

3 Q Heads the whole organization?

4 A That's true.

5 Q The buck stops with him on environmental
6 issues?

7 A Well, actually, the buck probably goes
8 further up on the chain of command to the CEO, but in
9 most cases, you're correct.

10 Q Underneath him we have what appears to be
11 three boxes. One is written remediation. We have
12 four -- well, we have many boxes. Seven. Of the
13 boxes underneath the ESH head box, you have what's
14 called remediation management?

15 A Correct.

16 Q ESH compliance and policy?

17 A Compliance and policy, correct.

18 Q Product and safety toxicology?

19 A Correct.

20 Q I can't read that.

21 A Medical and epi, epidemiology.

22 Q Okay. Western region, eastern region and a

23 question mark?

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12

1 A A question mark region. I'm not sure

2 exactly. There are three regions and there are three

3 team leaders for each region. And I believe it's a

4 western, eastern and I'm not quite sure exactly what

5 that third region is called.

6 Q Do you know who --

7 A Northern, southern.

8 Q Anniston falls I would assume in the eastern

9 region?

10 A I believe so.

11 Q Do you know who the team leader is over that

12 region?

13 A I believe it's Max McCoombs,

14 M-c-C-o-o-m-b-s.

15 Q And I just wrote that under eastern region

16 and drew an arrow?

17 A Correct.

18 Q And he heads the eastern region which in

19 your understanding includes Anniston?

20 A I believe so.

21 Q What is this word above product safety and

22 toxicology?

23 A Felder, F-e-l-d-e-r.

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13

1 Q Is that a man's name?

2 A Correct.

3 Q What's his first name?

4 A Jeff.

5 Q Is he the head of product safety and

6 toxicology?

7 A He would be what we call our team lead for

8 product safety and toxicology.

9 Q How about the medical and epidemiology

10 group, who heads that?

11 A It's a new physician, Dave Shepperly,

12 S-h-e-p-p-e-r-l-y. That's close.

13 Q And I wrote his name above there. Did I

14 write it correctly?

15 A Correct.

16 Q There's a name before ESH compliance and

17 policy, but I can't read it. What does that say?

18 A Fort, F-o-r-t.
19 Q And what's his first name?
20 A Garth, G-a-r-t-h.
21 Q And then we've got a box called remediation
22 management. I assume that's an entire division within
23 the ESH?

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14

1 A That will be one of the departments or one
2 of the larger groups reporting up to Mike Pierle.
3 Q And Mike Foresman heads the Remediation
4 Management Department?
5 A Correct.
6 Q And under him there are a couple of empty
7 boxes. What are these boxes?
8 A Those are some managers of remediation that
9 report up to Mike.
10 Q Do these managers of remediation have a
11 responsibility relating to PCBs?
12 A There's one. Alan Faust would be in one of
13 those boxes.
14 Q Does it matter which box we put him in?
15 A It doesn't matter at all.
16 Q Alan Faust?
17 A Faust, F-a-u-s-t.
18 Q Do you report to Mr. Faust?

19 A No.

20 Q Mr. Faust -- what role does he have with PCB

21 remediation issues for Solutia?

22 A He is the on-site project manager at the

23 Anniston plant who manages the overall remediation

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15

1 project.

2 Q Okay. Now, Anniston -- I mean, Monsanto

3 made PCBs from the late 1920s to 1971, correct?

4 A I believe we -- at Anniston?

5 Q No. In general, Monsanto manufactured PCBs

6 from the 1920s to 1971? Actually --

7 A I think we manufactured PCBs from 1935 to

8 approximately 1976.

9 Q And from 1971 to 1976, that was manufactured

10 in Illinois?

11 A PCBs being -- yes.

12 Q Monsanto stopped making PCBs in Anniston in

13 1971, correct?

14 A That's my understanding, correct.

15 Q Does anyone -- does Mr. Faust have any

16 responsibility for remediation cleanup at the plant in

17 Illinois?

18 A Not to my knowledge.

19 Q Or remediation?

20 A Not to my knowledge.

21 Q Is that plant situated similarly to the
22 Anniston plant in terms of creeks passing through it
23 or river systems or lakes or anything like that around

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16

1 it?

2 A I'm familiar with the Krummrich plant, but
3 not to that extent to know exactly what the drainage
4 patterns and topography of the plant site are.

5 Q Is there any reason to expect that only the
6 Anniston plant has PCB contamination issues within
7 Monsanto's company?

8 A If you would repeat that, please.

9 Q Yes, sir. Sitting here today, is there any
10 reason you believe that Monsanto only has PCB
11 contamination issues at its Anniston plant and not at
12 its Illinois plant?

13 MR. COX: Object to the form. Do you
14 understand the question?

15 THE WITNESS: I believe I do.

16 A Well, now that I think about it -- excuse
17 me. I'm sorry, but you'll have to repeat it again.

18 Q You will admit to me here today under oath
19 that Anniston, the Anniston plant has what I'm calling
20 PCB contamination issues that it's dealing with as we
21 sit here today?

22 A There are issues surrounding PCB and PCB
23 remediation at our Anniston, Alabama plant.

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1 Q And is there something wrong with me
2 characterizing that as PCB contamination issues in
3 your mind?

4 A I'm just not sure whether -- how you define
5 PCB contamination.

6 Q Well, PCBs aren't supposed to be on other
7 people's property near the Monsanto plant, are they?

8 A Any level of PCBs?

9 Q There should not have been one single PCB at
10 any level that left Monsanto's property in Anniston
11 and got on somebody else's property. You would
12 certainly agree with that statement, would you not?

13 A Not necessarily, no.

14 Q Is it your position that Monsanto had a
15 right to discharge PCBs on its neighbor's property at
16 any time during manufacturing?

17 MR. COX: Object to the form. You can
18 answer that, if you can.

19 A And that pertains to any time in the past?

20 Q Correct.

21 A Okay.

22 MR. COX: Well, I think your question was
23 limited to the manufacturing time period.

1 Q Well, let me just say this: Tell me what
2 you're aware of, Mr. Eley, that allowed Monsanto to
3 discharge PCBs from its manufacturing facility whether
4 it was manufacturing them at the time or not on to
5 neighboring property.

6 MR. COX: Same objection.

7 A I'm generally aware that there have been
8 environmental and occupational requirements by various
9 state and local governments. I'm not that versed in
10 various requirements surrounding PCBs either now or in
11 the past. I'm a bit more knowledgeable of
12 requirements in the occupational area.

13 In that area, for example, I do know that
14 there are occupational exposure limits.

15 Q You're talking about employees?

16 A I'm talking about releases of PCBs into the
17 air.

18 Q For employees who are working around them,
19 right?

20 A For employees.

21 Q Now, this lawsuit doesn't really have
22 anything to do with employees who worked at the
23 Monsanto plant, does it?

1 A I think your question, though, dealt
2 generally with releases of PCB.

3 Q No, sir. My question was more specific. My
4 question to you said tell me what you believe gave
5 Monsanto the right to discharge PCBs it manufactured
6 on to its neighbor's property. And if you're not
7 aware of anything, I would like to know that.

8 MR. COX: Object to the form.

9 A The only thing I'm aware of is that there
10 have been for many years federal and state regulations
11 that Monsanto would have to abide by from the
12 standpoint of any releases, discharges or otherwise of
13 chemicals that we manufacture.

14 Q In any event, back to my original question,
15 you will agree with me that if Monsanto allowed PCBs
16 to discharge on its neighboring property, that it
17 contaminated that property with PCBs at some level?

18 MR. COX: Object to the form.

19 MR. GRAMMAS: What's your objection?

20 MR. COX: I think it's -- you're asking him
21 questions about levels without being specific as to
22 where the property is located and what level and what
23 level they're being measured and when they were

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1 discharged. It's just incomplete. That's what my
2 objection is.

3 MR. GRAMMAS: Okay.

4 Q You can answer the question.

5 A If you would repeat that, please.

6 Q Yes, sir. You will agree with me that if
7 PCBs escaped Monsanto's property and got on to
8 property that neighbors Monsanto's property that at
9 some level Monsanto contaminated the neighbor's
10 property --

11 MR. COX: Same objection.

12 Q -- with PCBs?

13 A At some level?

14 Q Right.

15 A But we're not specifying any particular
16 level.

17 Q Correct.

18 A You're just saying at some level.

19 Q That is correct.

20 A And that level could be one molecule or --
21 then no, I don't agree with you.

22 Q So, it's your position -- in any event,
23 let's get back to this chart. The plant in Illinois

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21

1 is in a city called Monsanto, Illinois, isn't it?

2 A It used to be. It's called Sauget,

3 Illinois.

4 Q Sauget?

5 A Sauget.

6 Q Could you spell that, please?

7 A S-a-u-g-e-t.

8 Q Did Monsanto get its name from that city or

9 did the city get its name from Monsanto?

10 A When the city was named Monsanto?

11 Q Correct.

12 A It's my understanding that the city got its

13 name from Monsanto.

14 Q And that's because the plant was so big in

15 that area and employed so many people the city felt

16 indebted to name its entire city after Monsanto,

17 correct?

18 A I don't know that, no.

19 Q Is that what you think?

20 A No, I really have no opinion on that.

21 Q You just think the city decided to name it

22 Monsanto and it's purely coincidence that there was a

23 plant there?

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22

1 A There could have been maybe other reasons.

2 There could have been a charitable gift, any number of

3 reasons why the city's fathers may have named it

4 Monsanto.

5 Q But it is related to the fact that there was

6 a Monsanto plant there in some form?

7 A I would think so.

8 Q Mr. Faust heads PCB remediation here in

9 Anniston, correct?

10 A Yes. He heads up the remediation project

11 there at Anniston that is -- where PCBs are at issue.

12 Q Right. And there is not a person at that

13 level at the plant in Illinois, correct?

14 A I don't know.

15 Q Well, you would know that in your job as the

16 -- let me get the title correct -- manager of

17 environmental affairs, wouldn't you?

18 A No.

19 Q So, you think sitting here today there may

20 be someone at Mr. Faust's level in Illinois dealing

21 with PCB contamination or PCB issues in general?

22 A No, I don't know.

23 Q You don't know one way or the other?

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1 A I don't know.

2 Q And you're not testifying here under oath

3 that there is such a man or woman?

4 A That's correct.

5 Q How is it that you know about Mr. Faust in

6 Anniston?

7 A Because I have been working with Mr. Faust
8 and other people on that project personally since
9 about 1996.

10 Q Okay. And when you say "that project," you
11 mean the PCB remediation project, right?

12 A Correct.

13 Q And isn't it logical to assume, Mr. Eley,
14 that if Monsanto had such a project at the Illinois
15 plant, you would be working on that project, also?

16 A No.

17 Q Who would be working on that, if not you, at
18 your level?

19 A It's likely that if they had a project
20 underway, that they would have a remediation manager.

21 Q Like Mr. Faust?

22 A Like Mr. Faust heading up that project.

23 Q I understand that. But you're working with

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24

1 Mr. Faust here in Anniston, aren't you?

2 A I and a number of other people.

3 Q Well, I understand that.

4 A Yes.

5 Q But you are, in fact, working with Mr. Faust
6 here in Anniston on PCB remediation issues, correct?

7 A Certain aspects of the PC -- or the
8 remediation project, yes, I'm working with Mr. Faust.
9 Q And isn't it logical to assume that if
10 Monsanto had such a remediation project at the
11 Illinois plant, you would be working with that manager
12 who heads that remediation, if there was one, with the
13 same aspects that you're dealing with here in
14 Anniston?
15 A Not necessarily.
16 Q Okay. That's where we left off. Who would
17 that person be if it's not you?
18 A It possibly could be somebody else in the
19 remediation management group.
20 Q Monsanto, now Solutia, takes the
21 remediation -- the PCB remediation issues within the
22 entire company very seriously. Is that a fact?
23 A That's my understanding.

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1 Q And that's because PCBs are carcinogenic,
2 correct, among other things?
3 A I don't think I would agree with that.
4 Q You don't think PCBs are carcinogenic to
5 humans?
6 A Oh, no.
7 Q You do not think that?
8 A I don't think that.

9 Q Have you ever testified before, Mr. Eley,
10 that you do believe that PCBs are carcinogenic to
11 humans?

12 A No.

13 Q Do you agree that PCBs cause some type of
14 liver problems in humans?

15 A It's been reported in the literature that
16 PCBs can cause liver dysfunction.

17 Q Is that one of the reasons why Monsanto
18 takes PCB remediation issues very seriously?

19 A That may be one of a number of factors.

20 Q Tell me all the factors why Monsanto, now
21 Solutia, takes PCB remediation seriously.

22 A Well, it's my understanding the primary
23 reason is because PCBs are controlled substances. And

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1 when I say controlled substances, there are
2 environmental regulations governing PCBs.

3 Q Any other --

4 A Or controlling PCBs.

5 Q Any other reasons?

6 A I think that's the primary reason.

7 Q Any other reasons, primary or not?

8 A I think the other factor is there are
9 environmental issues surrounding PCBs given their

10 persistence and stability in the environment.

11 Q What does that mean?

12 A Persistence and stability?

13 Q Yeah. What does that -- why would there be

14 environmental issues relating to PCBs because they're

15 persistent and stable in the environment?

16 A Well, it's my understanding -- and please

17 keep in mind, I'm certainly not an expert in PCBs and

18 certainly not an expert in the ecology of the

19 environmental effects of PCBs. But it's my

20 understanding that PCBs have been known for some time

21 to have the capacity to persist in the environment and

22 build up or bioaccumulate in various aquatic and avian

23 species.

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1 Q And they're also mobile, are they not,

2 adhering to the sediment and traveling around water

3 systems?

4 A Mobile -- I wouldn't characterize PCBs as

5 being particularly mobile.

6 Q You said you're not an expert on PCBs?

7 A That's correct.

8 Q There are people at Monsanto that know a

9 heck of a lot more about PCBs, the toxicity of PCBs to

10 humans, the environmental problems relating to PCBs

11 than you?

12 A Correct.

13 Q But yet, you were the man that Monsanto sent
14 down to talk to property owners around the plant about
15 buying their property because it was PCB contaminated,
16 correct?

17 A No.

18 Q That's incorrect?

19 A That's incorrect.

20 Q Why is that not a correct statement?

21 A I came down to the Anniston plant on the
22 project in -- in or around March of 1996 to coordinate
23 the off site soil sampling for PCBs.

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1 Q But you're the man that dealt with all the
2 people regarding sampling their property and buying
3 their property back. You're the man at Monsanto, now
4 Solutia, that those individuals dealt with, correct?

5 A From the standpoint of sampling, but not
6 from the standpoint of buying property.

7 Q Who did they deal with about buying the
8 property back?

9 A As part of the project, there was a purchase
10 property program that was coordinated by Prudential
11 Relocation Specialists.

12 Q Is that somebody -- that's not even related

13 to Monsanto, is it?

14 A When you say related to --

15 Q That's a contractor?

16 A -- Monsanto --

17 Q That's a contractor?

18 A Correct.

19 Q And those people to your knowledge don't

20 know anything about PCBs, do they, to your knowledge?

21 A Well, I can't say that. I don't know what

22 they know.

23 Q Monsanto, and now Solutia, sent you down to

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1 discuss these sampling issues or to handle the

2 sampling issues on the property next to Monsanto's

3 plant, right?

4 A Some of the sampling that was done adjacent

5 to the Monsanto plant or the Solutia plant.

6 Q And you were the point man that had

7 conversations with these people about their sampling,

8 right?

9 A I had conversations with a number of people,

10 certainly not all people regarding sampling on their

11 property.

12 Q You were the point man?

13 A Later on in time, I was a point man.

14 Q You wrote letters asking for permission to

15 come on the property, right? You authored letters to

16 these people?

17 A In some cases I did.

18 Q And you also wrote letters to them telling

19 them the results of the sampling that -- with the PCBs

20 on their property, right?

21 A I authored some of those letters.

22 Q And you're sitting here today saying you're

23 not an expert on PCBs?

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1 A That's correct.

2 Q And you don't know what those levels mean,

3 if anything, correct?

4 A That's correct.

5 Q Don't you think it would have made more

6 sense if Solutia would have sent someone down to

7 communicate with these people that knew something

8 about what they were sampling?

9 MR. COX: Object to the form.

10 A Not necessarily, no.

11 Q And the reason you say no, Mr. Eley, is

12 because Solutia wanted to have plausible denial on the

13 questions that these people asked you about the health

14 effects of PCBs, isn't that correct?

15 MR. COX: Object to the form.

16 A No.

17 Q It's not a true statement to say that

18 someone selected you as opposed to more knowledgeable

19 people about PCB issues to deal with these people so

20 that you could play ignorant and deny any information,

21 knowledge or expertise about PCB-related issues? Is

22 that what you're saying?

23 MR. COX: Object to the form.

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1 A No, that's not my understanding at all.

2 Q But even though that's not your

3 understanding, that was certainly one of the effects

4 of sending you down there and talking with these

5 people, wasn't it, in Anniston?

6 A No, I wouldn't characterize it that way.

7 Q They ask you a question about whether or not

8 these levels will harm them and you say, I don't know,

9 I'm not an expert, correct?

10 A I'm not sure -- I'm not sure that I ever

11 said it that way.

12 Q If you told them anything about health

13 effects, you would be speaking outside of your

14 expertise and understanding, right?

15 A That's correct.

16 Q And if you assured them when they asked you

17 oh, don't worry, nothing is wrong here, everything is

18 fine, you're not going to be hurt or there's no harm
19 here, you wouldn't have the basis or the facts to
20 discuss those types of things with these people, isn't
21 that true?

22 MR. COX: You're asking him to assume that
23 he said that to somebody? I'm sorry. I just want

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1 to --

2 Q I'm saying if you would have said things
3 like that to these people when they asked you
4 questions about the health effects of PCB
5 contamination on their bodies, if you gave them
6 answers other than referring them out to somebody
7 else, you wouldn't have the expertise or the knowledge
8 to support those answers, right?

9 A Specific effects on their bodies? I believe
10 that's correct.

11 Q Right.

12 A That's right.

13 Q And there are certainly people at Monsanto
14 that can answer those questions, right, or Solutia?
15 When I say Monsanto, I'm using these interchangeably
16 with Solutia.

17 A I'm not sure there's people in Solutia that
18 could answer specific health-related questions that

19 people might have.

20 Q About PCBs?

21 A Correct.

22 Q Okay. Monsanto is the only company in the

23 United States that ever manufactured PCBs, correct?

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1 A To my knowledge, that's correct.

2 Q And there is substantial literature out that

3 discuss very serious potential health effects of PCBs

4 for human beings, correct? I'm not saying you agree

5 with it. I'm just saying there are many medical

6 doctors who have written on this subject and have

7 concluded that PCB exposures cause health -- adverse

8 health effects in human beings.

9 A Not that I'm aware of.

10 Q Is it your testimony -- have you ever

11 testified in the past, Mr. Eley, that PCBs are a

12 potential human carcinogen? I'm going to ask you one

13 more time. Because I'm going to take a break, I'm

14 going to go through this deposition and I'm going to

15 find it. Have you ever done that?

16 A I think that in deposition I may have

17 indicated that PCBs were classified by some group such

18 as the EPA and IARC as either a possible or probable

19 carcinogen.

20 Q Right. And that's what I asked you earlier

21 and you said no.

22 MR. COX: No, that's not what you asked him

23 earlier.

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1 Q You will agree with me sitting here today
2 that there are knowledgeable people in this area of
3 science and, in fact, people more knowledgeable than
4 you that have concluded that PCBs are a potential
5 human carcinogen?

6 A It's my understanding there are scientists
7 that have concluded that.

8 Q And you were asked in a prior deposition
9 about whether you had an opinion on the human hazards
10 of PCBs. Do you recall that?

11 A I believe so.

12 Q And in your testimony --

13 MR. COX: Just for the record, is that in
14 the Massey case?

15 MR. GRAMMAS: It's in the Massey case.

16 Q In your testimony on July 17th, 1998, do you
17 recall testifying that it all depends on the
18 concentration of PCBs?

19 A I don't recall specifically saying that,
20 but --

21 Q Do you not agree sitting here today, sir,

22 that hazardous -- strike that.

23 Do you not agree sitting here today that at

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1 certain concentrations PCBs are hazardous to humans?

2 A It's my understanding that at certain

3 concentrations PCBs can cause or have been reported to

4 cause health effects in humans.

5 Q And you agree with that, don't you?

6 A I agree with that.

7 Q So really when we're talking about these PCB

8 contamination issues, Monsanto will agree that at

9 certain levels PCBs are going to have adverse health

10 effects on human beings who are exposed to it, right?

11 A Like most compounds I'm aware of that would

12 be true.

13 Q I'm going to ask you again because I don't

14 want to talk about other compounds. I want to talk

15 about PCBs.

16 Monsanto knows that at certain levels PCBs

17 are hazardous to human health, correct?

18 A There are people, scientists in Solutia that

19 know that at high concentrations of PCBs you could

20 have health effects in humans.

21 Q No. Will have health effects -- adverse

22 health effects in humans. There's no guesswork here,

23 Mr. Eley. If human beings are exposed to high

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1 concentrations of PCBs, bad things are going to happen

2 to them, correct?

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

4 Q You don't know that for a fact?

5 A No, I do not.

6 Q Do you know who Dr. Kelly is?

7 A Yes.

8 Q He's a medical doctor, isn't he?

9 A Correct.

10 Q He's dead now, correct?

11 A That's correct.

12 Q He was employed by Monsanto back in the '50s

13 and '60s and '70s to explore these issues more fully,

14 wasn't he?

15 A He was employed by Monsanto as the medical

16 director of Monsanto.

17 Q He was the head medical doctor for the

18 company, correct?

19 A That's correct.

20 Q Did he treat any patients?

21 A I don't know whether he treated patients or

22 not.

23 Q Did Monsanto employees come to Dr. Kelly and

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1 say hey, I don't feel good today, I think I have a
2 cold, I may have the flu, can you prescribe some
3 medicine for me, tell me what's wrong with me? Was he
4 that kind of doctor for Monsanto?

5 A He may or may not have been. I don't know.

6 Q But your understanding of his -- the primary
7 thrust of his employment was to look at toxicology
8 issues relating to chemicals and in particular PCBs
9 that Monsanto was manufacturing, right?

10 A Well, he was hired by Monsanto as the
11 medical director and his overall responsibility would
12 be in occupational medicine and as a part of that,
13 clearly he would have knowledge of and keep abreast of
14 toxicology of chemicals.

15 Q Do you have any reason or do you have any
16 expertise to disagree with Dr. Kelly's conclusions
17 that Monsanto Chemical Company's position can be
18 summarized in this fashion: "We know Aroclors are
19 toxic, but the actual limit has not be precisely
20 defined?" Do you have any basis or expertise to
21 disagree with his conclusion?

22 A No.

23 MR. COX: Can you show him the entire

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1 document?

2 MR. GRAMMAS: I will in a moment. We'll
3 make it an exhibit.

4 Q So, it is true then at least as early as
5 September 20th, 1995 -- and that's the date of the
6 document, right?

7 MR. COX: 1955.

8 Q 1955?

9 A That is correct.

10 Q It is true at least as early as that date
11 Mr. -- or excuse me. Dr. Kelly on behalf of Monsanto
12 stated that Monsanto knew that PCBs were toxic to
13 humans and it was just a matter of degree?

14 A Well, I believe it states here that we know
15 Aroclors are toxic.

16 Q Aroclor is a market name for PCBs, isn't it?

17 A Yes, it is.

18 Q So, when he says Aroclor, you can take
19 Aroclor right out of there and substitute PCB, right?

20 A Correct.

21 Q Okay. And he says he knew they were toxic,
22 right?

23 A That's what he states here.

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1 Q And now he's saying in that letter it's just
2 a matter of degree?

3 MR. COX: Huh-uh.

4 Q That's his next statement, isn't it? We
5 don't know what levels right now, but we know they're
6 toxic to human beings?

7 A I don't see that --

8 Q Okay. Well, let me read it for you.

9 A -- anywhere in there.

10 Q "We know Aroclors are toxic, but the actual
11 limit has not been precisely defined."

12 A Okay.

13 Q I mean, we're talking about degrees when we
14 talk about limits, aren't we?

15 A The only thing I can state is what Dr. Kelly
16 put in there. I don't know what he meant by limit and
17 whether he referred that to mean degrees.

18 Q By 1955, Monsanto knew at some level PCBs
19 were toxic to human beings, correct?

20 A It's my reading of Dr. Kelly's memo that
21 that is correct.

22 Q That's not the only information you've ever
23 come across in your 30 some odd years of employment

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1 with this company that would indicate to you that
2 Monsanto knows that PCBs are toxic to human beings, is
3 it? I mean, you're the environmental manager.

4 A I don't recall right now exactly what all
5 memos I've read in the past that deal with PCBs.

6 Q Okay. Mr. Eley, some time ago I asked you
7 the -- what the factors were to your knowledge as to
8 why Monsanto takes PCB remediation seriously. Do you
9 recall that question?

10 A Yes.

11 Q One of the factors that you listed was that
12 the PCBs are known to cause liver damage and you said
13 there are others and I asked you to list them. Do you
14 remember that?

15 A Correct.

16 Q And one of the things you said is -- and you
17 said the primary reason why you take remediation of
18 PCB seriously is that it is listed as a controlled
19 substance, correct?

20 A Correct.

21 Q If PCBs were not listed as a controlled
22 substance, would Monsanto not seek to remediate PCB
23 contamination issues that it's responsible for?

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1 MR. COX: You're asking him to assume
2 that --

3 MR. GRAMMAS: Absolutely.

4 MR. COX: -- all the regulations --

5 Q I'm asking you to assume that every single

6 regulation you're aware of that says clean up -- first
7 of all -- strike that.

8 The regulations are there because it has
9 known adverse human health effects, right? It being
10 PCBs.

11 A I'm not that familiar with the origination
12 of the regulations on PCBs.

13 Q The federal government is not going to stop
14 a company from manufacturing a product that doesn't
15 have any health effects like this, are they? I mean,
16 are we going to sit here today and dispute the fact
17 that the federal government outlawed the manufacture
18 of PCBs because it's known to have adverse human
19 health effects? Are you going to dispute that?

20 MR. COX: If you know why the EPA banned the
21 manufacture of PCBs, you can tell him. If you don't
22 know, you don't know.

23 A Well, it's my understanding that the EPA

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1 banned PCBs because of the environmental effects or
2 environmental persistence in the environment.

3 Q Okay. Well, if they banned the production
4 for whatever reason, is it your position that Monsanto
5 wouldn't do anything to remediate the past harms that
6 PCB contamination -- that they caused with PCB

7 contamination?

8 MR. COX: Object to the form.

9 A I'm sorry. I don't understand your

10 question.

11 Q What I'm trying to get at is you gave as a

12 reason as to why Monsanto, now Solutia, is remediating

13 the PCBs in the Anniston area is because PCBs are a

14 controlled substance. Did I hear you correctly?

15 A That was one of the factors that I suggested

16 that perhaps was a reason for remediation.

17 Q All right. My question to you is if the EPA

18 had not listed PCBs as a controlled substance, would

19 Monsanto have any -- would it undertake any efforts to

20 remediate the PCBs in this area?

21 A I don't know.

22 Q Is it safe to say then that the only reason

23 y'all are doing it is because the government is making

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1 you do it?

2 A I don't know that either.

3 Q How long have you been employed with

4 Monsanto, now Solutia?

5 A Since 1969.

6 Q Let me ask you a question. How in the world

7 can the manager of environmental affairs with Solutia

8 not be familiar with federal regulations regarding

9 PCBs? How is that possible?

10 A Because I ordinarily don't deal with PCB
11 issues.

12 Q You only deal with PCB issues when people
13 around the plant start asking questions and Monsanto
14 sends you down to answer them. Is that a fair
15 statement?

16 A No, not at all.

17 Q The only time you've ever dealt with PCB
18 issues, sir, outside of the area of employee
19 contamination or whatever exposure --

20 MR. COX: Occupational exposure.

21 Q Occupational exposure is on this issue here
22 at the Anniston plant, isn't that right?

23 A I believe that's true.

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1 Q You didn't think it was odd -- who selected
2 to send you down there to talk to these people and to
3 head up this sampling?

4 A I think it may have been my boss --

5 Q Mr. Kaley?

6 A -- Bob Kaley.

7 Q Didn't you tell him hey, wait a minute, Bob,
8 I don't know anything about PCBs, send somebody who
9 knows so they can address these people's concerns more

10 directly? Did that ever occur to you to say that?

11 A No, it didn't.

12 Q Is that because you knew why you were asked

13 to go down there?

14 A No.

15 Q Why didn't you say that?

16 A Because it didn't occur to me.

17 Q In hindsight, do you think that would have

18 been a good thing to do?

19 A No.

20 Q You think it's good that Monsanto sent

21 someone who doesn't know anything about PCB toxicity

22 down to talk to these people about PCBs and PCB

23 sampling? If that's your testimony, fine. I want to

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1 hear either a yes or no on that.

2 A I don't think that was the purpose of why I

3 went down to Anniston.

4 Q Back to your Plaintiff's Exhibit 1, this

5 chart you prepared. Under remediation management, we

6 have Mike Foresman who heads it. Underneath him we

7 have R. Kaley. Is that Mr. Bob Kaley who you just

8 talked about?

9 A Correct.

10 Q And his position is what?

11 A I believe his position is director,

12 environmental affairs.

13 Q And underneath Mr. Kaley is who?

14 A That is Bruce Eley, myself, and my title,
15 manager, environmental affairs.

16 Q Who is the man that I need to swear under
17 oath and ask questions in a deposition either on
18 behalf of Monsanto or now Solutia that can talk to me
19 about exactly what it is Monsanto knows about PCB
20 contamination, PCB remediation, PCB health effects on
21 humans, PCB adverse effects in the environment and
22 those types of PCB issues? Who is that person?

23 A I would think that that person would be

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1 either and/or Bob Kaley, Alan Faust or Mike Foresman.
2 I'm not familiar with Dr. Dave Shepperly's knowledge
3 of PCBs.

4 Q Now, Dr. Shepperly is the head of the
5 Department of Medical and Epidemiology for Solutia,
6 right?

7 A That's correct, he is the -- as I would
8 term, the medical director.

9 Q And his responsibilities in part are to
10 determine to what extent the chemicals that Solutia
11 manufactures or that Monsanto manufactured in the past
12 affect the environment and human beings, right?

13 A No.

14 Q Who at Monsanto was charged with the
15 responsibility to see exactly what it is that PCBs can
16 do to human beings either now or in the past?

17 A The person charged in Monsanto?

18 Q Right. Or Solutia.

19 A I think that the person would have been Dr.
20 Emmet Kelly.

21 Q And after he died, Monsanto just closed
22 their eyes to the issues that relate to health effects
23 of PCB contamination on human beings?

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1 A I don't think Monsanto closed their eyes to
2 anything.

3 Q When did Mr. Kelly die?

4 MR. COX: Dr. Kelly.

5 Q Dr. Kelly.

6 A Dr. Kelly died within the last couple of
7 years, I believe. I'm not sure exactly what the date
8 was.

9 Q When did his employment with Monsanto end?

10 A I think it was in or around 1974.

11 Q Who replaced him on the PCB issue for
12 Monsanto from a medical doctor's perspective?

13 A Well, the person that replaced him as
14 medical director was Dr. George Roush.

15 Q Where is he today?

16 A Dr. Roush, as I understand, still lives in

17 and around St. Louis.

18 Q When did he stop working for Monsanto?

19 A I believe it was in the early 1980s.

20 Q Do you know if he was charged with the

21 responsibility of human health effects relating to PCB

22 exposure?

23 A He was charged with directing occupational

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1 medicine in Monsanto.

2 Q Okay. I'm going to ask you my question

3 again. Do you know if he was in charge of potential

4 human health effects relating to PCB exposure?

5 A No.

6 MR. COX: No, you don't --

7 Q No, he was not or no, you don't know?

8 A No, I don't know whether he was in charge of

9 --

10 MR. COX: Can we take a break?

11 MR. GRAMMAS: Yeah.

12 (A break was taken.)

13 Q (By Mr. Grammas) Sitting here today as the

14 manager over environmental affairs, Mr. Eley, you

15 cannot identify a single medical doctor who is charged

16 with the responsibility of monitoring or overseeing or
17 studying the potential adverse human health effects of
18 PCB exposure, can you?

19 MR. COX: Employed by Monsanto or Solutia?

20 MR. GRAMMAS: Or Solutia.

21 A At this point in time?

22 Q Right.

23 A Correct.

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1 Q And the only other person you can identify
2 is Dr. Kelly, right?

3 A Dr. Kelly and then we talked about Dr.
4 Roush who took over as medical director from Dr.
5 Kelly.

6 Q Do you know if he had any human exposure to
7 PCB issues?

8 A Well, I am aware of Dr. Kelly retiring in
9 and around 1974. It's my understanding that at that
10 time we were still manufacturing PCBs at one of our
11 facilities. We had a medical director then that
12 assumed responsibility for occupational medicine.
13 So, in that capacity, he would have
14 responsibility for occupational medicine related to
15 all compounds that Monsanto handled at that time which
16 would have included PCBs.

17 Q And again, when you say occupational

18 medicine, that's really limited to the occupational
19 people, right, the workers, Monsanto's employees who
20 are working around the PCBs?

21 A Not necessarily. I think that in
22 occupational medicine the primary focus is workers or
23 the primary focus is humans as compared with perhaps

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1 toxicologists or epidemiologists that are charged with
2 different fields of study.

3 Q Monsanto didn't have anybody in charge of
4 neighbors' health, potential health effects, did they,
5 neighbors to the plants where they were making PCBs?

6 A I don't think we specifically had a
7 physician that was on call for neighbors to call in
8 to.

9 Q My question really wasn't that limited. My
10 question was there was not a single person employed by
11 Monsanto and even now Solutia who is responsible for
12 monitoring the potential health effects of humans who
13 have been exposed to PCB. Isn't that a true
14 statement?

15 A I believe that would have been a part of Dr.
16 Kelly's and Dr. Roush's responsibility.

17 Q And since Dr. Roush's retirement, there is
18 no such person with that description, right, at

19 Monsanto or Solutia?

20 A I believe that would be correct.

21

22 (Plaintiff's Exhibit
23 Number 2 was marked for
identification.)

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1 Q I'm going to present to you what we have
2 marked as Plaintiff's Exhibit 2. Is this not the
3 September 20th, 1955 letter of Dr. Kelly regarding
4 toxicity of PCBs?

5 MR. COX: He can testify as to what the
6 document says.

7 MR. GRAMMAS: Right.

8 MR. COX: But he obviously -- I mean, you
9 don't know this yet, but he was not employed at the
10 time. But to the extent he can identify it from
11 looking at Dr. Kelly's signature or testifying to the
12 date, he can do that, but as far as authenticating the
13 document, I don't think that's proper.

14 Q I'm just asking you if that's the letter he
15 wrote. I want the record to be clear.

16 A This is a letter that appears to be written
17 by Dr. Kelly.

18 Q Do you recognize his signature?

19 MR. COX: It's not signed.

20 A Yes, it is not signed.

21 Q But that's the letter that I showed you
22 earlier where you agreed that Dr. Kelly on behalf of
23 Monsanto took the position that the Aroclors are

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1 toxic, right?
2 A Have you got the other letter that -- or
3 memo?
4 MR. COX: It's the same letter.
5 A It appears to be the same memo, correct.
6 Q PCBs adhere very strongly to soil, correct?
7 A That is my understanding.
8 Q Soil is washed along creek bottoms and moved
9 around depending on water flows, correct?
10 A Soil or sediment?
11 Q Sediment, soil.
12 A That's my understanding.
13 Q So, if sediment is moving, the PCBs attached
14 to the sediment are also moving, correct?
15 A Yes.
16 Q Moving is another word for mobile, correct?
17 MR. COX: Object to the form.
18 A If something is moving, I would consider
19 that to be mobile.
20 Q So, it is a fair statement then to say that
21 PCBs are mobile when they are in the environment?

22 A In the context that you've just described,
23 that would be true, but generally if you were to read

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1 in the literature under the mobility of PCBs, I think
2 you would find that PCBs are not mobile, not
3 particularly mobile in the environment.

4 Q What literature are you talking about?

5 A I think if you were to look at various
6 textbooks on the environmental characteristics of
7 PCBs. I have no specific textbooks in mind.

8 Q Do you have -- let's talk about for a moment
9 your educational background.

10 A Okay.

11 Q I got diverted initially from my plan when
12 I got you to draw that organizational chart.

13 You have a master's degree in environmental
14 engineering, correct?

15 A The master's degree is in civil engineering
16 and the sanitary or environmental engineering function
17 or discipline was a part of the civil engineering
18 department at the University of Arkansas.

19 Q Okay. You took the words out of my mouth.
20 Are you from Arkansas?

21 A Yes.

22 Q You also have a civil engineering degree?

23 A My BS is in civil engineering and as I said,

1 the MS on the diploma actually says MS civil
2 engineering.

3 Q Do you have a chemical background?

4 A I've studied chemistry as a part of my
5 master's program.

6 Q Did part of that study involve PCBs?

7 A I don't believe so.

8 Q And when did you obtain these degrees, sir?

9 A I believe I got the BS in 1967, the master's
10 in 1969.

11 Q And after that, you were employed by
12 Monsanto?

13 A Correct.

14 Q And you have been employed by Monsanto ever
15 since then except when Solutia was formed?

16 A That's correct.

17 Q I mean, you're a company man, right?

18 A I guess you would refer -- yes, I've been
19 with one company for a long period of time.

20 Q Do you consider yourself to be a company
21 man?

22 A No.

23 Q Why not?

1 A Because when you say a company man, I don't
2 know what you refer to as a company man.

3 Q Well, what is --

4 A When I think of company man, I don't think
5 of it in terms of that.

6 Q What do you think of when I say company man?

7 A I don't know what you mean by company man or
8 what you think.

9 Q I'm asking you what you think company man
10 means.

11 A A man that works for a company.

12 Q Okay. You have already agreed, sir, that
13 because PCBs adhere to sediment and because sediment
14 moves within a water system, the PCBs stuck to that
15 sediment are mobile, correct? Did I hear you say
16 that?

17 A Yes. I think the way that we were
18 describing it while ago, that's correct.

19 Q And you certainly agree that PCBs are
20 persistent?

21 A It's my understanding that PCBs are
22 persistent in the environment.

23 Q What does persistent mean?

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1 A Tends to stay around in the environment

2 without a significant degree of biodegradation.

3 Q And it does so for decades, does it not?

4 A I'm not that knowledgeable of the half-lives

5 of PCBs. I recognize that different PCBs have

6 different half-lives and different degrees of

7 persistence.

8 Q When you were down here in Anniston

9 conducting soil samples for PCB contamination, your

10 testing produced positive readings of PCBs, correct?

11 A I guess in the first place I didn't conduct

12 the soil sampling.

13 Q You were the head of the project?

14 A I coordinated the sampling of PCBs in soil

15 -- some of the sampling that was done.

16 Q And the work that was done was done under

17 your direction and control as the environmental

18 manager -- or the manager of environmental affairs for

19 Solutia and Monsanto? Now, I know you weren't out

20 there with a shovel, Mr. Eley.

21 A Yeah.

22 Q I mean, when we come in here today, we don't

23 have to leave our common sense at the door. We can

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1 use our common sense and it will make the process go

2 much quicker. Okay? I know you weren't digging

3 dirt. The people were digging dirt because you were
4 telling them to do it and you were in control of this
5 sampling project, right?

6 A Well, see, that's where it may be just an
7 issue of semantics. When we say direct and control,
8 I'm not so sure I was direct and control as much as
9 just coordinating. Clearly we had sampling experts.

10 Q But you had enough direction and control
11 over this sampling project to actually author many
12 letters sent to people of soils that y'all sampled,
13 right?

14 A I did author a number of letters that were
15 sent out.

16 Q And you were telling these people what the
17 sampling results were, were you not?

18 A That's correct.

19 Q And on some of these, if not a lot of these,
20 you were getting some pretty high readings of PCB
21 contamination, weren't you?

22 A There were some areas where PCBs were
23 detected at higher levels than others, than at other

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1 locations.

2 Q Those PCBs came from Monsanto's plant,
3 didn't they?

4 A I don't know.

5 Q How in the world can you sit here today

6 under oath, Mr. Eley, and honestly tell me you don't

7 know that?

8 A I'm afraid I don't know how to respond to

9 that.

10 Q Well, you can respond by telling me how

11 you're denying it, your knowledge of it.

12 A Well, I guess primarily when we would go out

13 and sample, I would sample at a particular location.

14 Q They were right next to the plant, weren't

15 they?

16 A In certain -- there were some sample

17 locations that were next to the plant, other locations

18 were not next to the plant.

19 Q Well, let me ask you this: Will you agree

20 with me that Monsanto is at least a potential source

21 for that PCB contamination on these people's

22 properties that y'all were sampling?

23 A In some cases we were a potential or

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1 possible source.

2 Q And would you go so far as to even say you

3 were a likely source in some of these cases you want

4 to talk about?

5 A There are some areas where we would be the

6 likely source.

7 Q So, is it also fair to say that in these
8 areas Monsanto's responsibility for a PCB source was
9 fairly established?

10 MR. COX: Object to the form. I just don't
11 understand the question, Pete. I'm sorry. If Bruce
12 does, he can answer it.

13 A I'm not sure I know or understand what
14 fairly established means. Fairly established in what
15 way or fairly established by whom?

16 Q Well, it was fairly established by Monsanto
17 that Monsanto was responsible for a PCB source in
18 those areas that you've said you were likely
19 responsible before.

20 A There were some areas where sampling was
21 conducted that I'm familiar with where the source of
22 PCB-containing sediment probably was derived from
23 Monsanto.

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1 Q Does that mean that it is fairly established
2 in your mind that Monsanto was the cause of that PCB
3 being placed there?

4 A I think in my mind that in certain cases it
5 was established that it's likely that Monsanto was a
6 source.

7 Q Tell me, sir, your personal knowledge of and
8 experience with PCBs.

9 A I have some knowledge of PCB manufacturing
10 from approximately 1972 to 1976 as an industrial
11 hygienist and then a very general familiarity with
12 PCBs in what reading I've done in literature over the
13 many past years.

14 Q Anything else?

15 A No. I think that would characterize my
16 knowledge of PCBs.

17 Q Did you receive any formal education or
18 training regarding PCBs either through universities,
19 seminars, Monsanto or Solutia?

20 A No.

21 Q You have taken some type of toxicology
22 courses in the past, have you not? You've taken some
23 type of toxicology courses in the past and in

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1 particular, industrial toxicology courses?

2 A I've had some seminars in industrial
3 toxicology, correct.

4 Q Were some of those at Wayne State?

5 A Yes.

6 Q Were PCBs discussed there?

7 A PCBs may have been. I don't recall.

8 Q It certainly doesn't stand out in your mind?

9 A No.

10 Q What about your personal involvement with
11 the toxicology of PCBs? Do you have any experience or
12 involvement with those issues?

13 A In terms of doing any testing or in terms of
14 deriving any toxicological experiments?

15 Q No.

16 A No.

17 Q I don't care -- I know you're not sitting
18 over a test tube pouring chemicals in or whatever
19 people do on these type issues. I'm talking about
20 sitting at your desk as a responsibility imposed upon
21 you as the manager of environmental affairs, do you
22 have any responsibility or involvement with toxicology
23 issues of PCBs?

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1 A No.

2 Q You know even absent that understanding
3 based on the literature that you've read that PCBs
4 cause chloracne or may cause chloracne?

5 A It's my understanding that that has been
6 reported in the literature.

7 Q You wrote a thesis, did you not, regarding
8 how chemicals travel in water?

9 A I wrote a master's thesis on eutrophication

10 and specifically material balances or inflows,
11 outflows of phosphorous and nitrogen.
12 Q Could you spell eutrophication for my court
13 reporter, please?
14 A Eutrophication, e-u-t-r-o-p-h-i-c-a-t-i-o-n.
15 Q That's a lot of technical stuff you just
16 gave me in your answer. The bottom line is in
17 laymen's terms, your thesis dealt with how chemicals
18 traveled from a plant to a water source, correct?
19 A No.
20 Q It didn't have anything to do with that?
21 A It had nothing to do as far as I knew with
22 any plant or chemical operation.
23 Q Tell me your involvement with remediation of

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1 PCBs in the past, all of the remediation projects
2 regarding PCBs that you've worked on.
3 A The only project that I personally have been
4 involved with that dealt with the remediation of PCB
5 material or PCBs in general has been at the Anniston,
6 Alabama plant starting approximately March 1996.
7 Q No other remediation projects?
8 A I don't believe so, no.
9 Q And if you would, tell me the details of
10 your involvement in this project. What were you asked
11 to do and what did you do?

12 A I was involved in coordinating the off site
13 sampling as called for in a consent agreement or
14 consent order which was entered into by at the time
15 Monsanto and the Alabama Department of Environmental
16 Management. I was involved in the offering to various
17 residents in the area a temporary relocation and house
18 cleaning or cleaning of rugs, furniture, if they so
19 chose. I have been involved in the raising or tearing
20 down of various structures on Monsanto-acquired
21 properties.

22 I have had some involvement in discussions
23 with a number of our local neighbors on possible

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1 acquisition of some properties.

2 I have had some involvement in contacting
3 some of the -- some people that owned property
4 adjacent to Snow Creek to gain permission to do kind
5 of a walk survey and -- identification and
6 characterization of any dredge material along the bank
7 of Snow Creek.

8 I have been involved in contacting Monsanto
9 neighbors or Solutia neighbors. It may have been
10 Monsanto at the time. Our neighbors directly south of
11 our plant communicating to them the activity that we
12 had underway in or around our south landfill. I think

13 that's the areas of involvement that come to mind.

14 Q Why did Monsanto pick you to do all this if

15 you don't have any understanding of PCBs and health

16 effects of PCBs and the toxicology of PCBs?

17 A I specifically don't know why I was chosen.

18 Q You never asked anybody why you were chosen?

19 A No.

20 Q And you will agree with me sitting here

21 today that there are certainly people within Monsanto

22 or Solutia that are much more familiar with these

23 issues than you?

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1 A There may be a couple of people.

2 Q Faust, Mr. Faust is one, right?

3 A I think Mr. Faust is certainly knowledgeable

4 -- much more knowledgeable on the total issues of

5 remediation -- of remediation of land.

6 Q Mr. Kaley or Kaley? What's his name, Bob --

7 A Bob --

8 MR. COX: Dr. Kaley.

9 A Dr. Kaley.

10 MR. LOWE: Ph.D. Kaley.

11 Q Ph.D. K-a-l-e-y? Dr. Kaley?

12 A Dr. Kaley.

13 Q He's one, right?

14 A That's correct.

15 Q Who else?
16 A A person that certainly is very
17 knowledgeable again of remediation, remediation
18 practices and remediation technology is Mike Foresman.
19 Q Anybody else? What about this doctor, Dr.
20 Shepperly, head of the Medical and Epidemiology
21 Department? Was he employed at Monsanto in the 1995,
22 '96 time frame when you were doing this work or
23 Solutia?

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1 A I don't believe so.
2 Q Is there anybody that -- he's a medical
3 doctor, right?
4 A Correct.
5 Q And where did he get his degree?
6 MR. COX: If you know.
7 Q And every question I ask you is premised on
8 the fact that you know. If you don't know, just say I
9 don't know.
10 A I think he got his degree at -- in Colorado.
11 Q At an accredited medical school?
12 A I believe that's so, yes.
13 Q Were there any medical doctors in the '95,
14 '96 time frame employed by either Monsanto or Solutia
15 that may have known more about PCB-related issues

16 including toxicology, human health effects,
17 environmental problems than you?
18 A There was a medical director at Monsanto. I
19 don't recall what his name -- what his name is and I'm
20 not familiar with really what his knowledge of PCBs
21 were.
22 Q And you never talked to him before, during
23 or after you were given this responsibility to come

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1 down and handle these issues on the remediation here
2 in Anniston relating to PCBs, did you?
3 A I've never met him.
4 Q But you certainly could have picked up the
5 phone and called him and asked him any questions you
6 wanted about these types of issues and determined his
7 knowledge of PCBs and PCB exposure during that period
8 of time?
9 A I assume I could.
10 Q But you didn't do that?
11 A No.
12 Q We have focused primarily on people who are
13 above you in the chain of command. How many people
14 are employed by Monsanto in general, do you have any
15 idea, or Solutia?
16 MR. COX: That's two different answers
17 now.

18 Q When I say Monsanto, I meant the Monsanto
19 that had the plant, discharged the PCBs and now became
20 Solutia. How many people are employed in that
21 organization?

22 A Solutia?

23 Q I guess.

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1 A Solutia, Inc. has approximately a little
2 over 8,000 employees worldwide.

3 Q And of those 8,000, you're pretty darn close
4 to the top, wouldn't you agree?

5 A I don't consider myself to be close to the
6 top.

7 Q Well, you drew me a chart here, Plaintiff's
8 Exhibit 1, didn't you? Didn't you?

9 A Yes.

10 Q So, we've got one, two, three people above
11 you that are below the CEO of the company, right?

12 A Below the CEO?

13 Q Between you and the CEO, there are three
14 people?

15 A No.

16 Q Well, this is a chart you drew me, right?

17 A Correct.

18 MR. COX: He also told you it didn't include

19 the people above Mr. Pierle.

20 Q You've got Mr. Kaley. He's above you,

21 right?

22 A Right.

23 Q And you've got Mr. Foresman. He's above

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1 you?

2 A Correct.

3 Q And you've got Mr. Pierle?

4 A Correct.

5 Q That's three?

6 A That's three.

7 Q Who is above him that's between him and the

8 CEO?

9 A I think it's a person named Ferguson.

10 Q What is his job title?

11 A I believe that Ferguson is the vice

12 president of shared services and supply chain.

13 Q He doesn't have anything to do with the

14 environment, PCBs, that type stuff, exposure levels?

15 A On a day-to-day basis, probably not.

16 Q Who is above him? Is that when we get to

17 the CEO?

18 A That would be our president and chief

19 operating officer, John Hunter.

20 Q And above Mr. Hunter?

21 A That would be Bob Potter who is the CEO.
22 Q So, there are five people between you and
23 the CEO? My only point in all this -- I mean, we're

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1 splitting hairs. Okay? We're splitting hairs because
2 I'm asking you questions and you're either hesitant to
3 answer them quickly or you don't understand my
4 question. In any event, I've got to go through this
5 tedious process of step by step by step to get to
6 where I'm going.

7 So, my point in all of this, Mr. Eley, is
8 there are five people between you and the chairman and
9 chief executive officer of Solutia above you?

10 A Correct.

11 Q And there are 8,000 employees of Solutia?

12 A Correct.

13 Q So --

14 A A little over 8,000.

15 Q -- on the chain of command, you are over
16 7,995 people from just a chain of command issue,
17 right?

18 A No.

19 Q Okay. And it's because you don't consider
20 many of these people to be in your department; is that
21 right? When you say no, you mean --

22 A Most of the people are not in this
23 department.

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1 Q And that's why you say no?
2 A Correct.
3 Q Now, of those people who are below you, sir,
4 do any of these people have to your knowledge job
5 responsibilities relating to PCB remediation
6 contamination issues or whatever you want to call it?
7 In other words, is there anybody below you in the
8 chain of command that knows more about PCBs and these
9 issues that we've been discussing than you?
10 A In our group?
11 MR. COX: No. He's talking about
12 company-wide in Solutia.
13 A Oh, company-wide in Solutia?
14 Q Right.
15 A Well, in the first place, I don't -- I'm not
16 really knowledgeable of who is below me. I mean, I
17 personally know what my grade level is, but I don't
18 know the grade level of a lot of the other individuals
19 in our organization.
20 Q You don't know whether or not people below
21 you are more knowledgeable about PCB issues than you.
22 Fair statement?
23 A No, I don't know who is above or below me

1 the way that we've described it.

2 Q You've named several individuals who you
3 felt had more knowledge than you about these. And the
4 individuals were Mr. Foresman, Mr. Kaley and I don't
5 -- Mr. Faust. Can you think of anybody else
6 regardless of whether they're above or below you?

7 A There may be other people that have more
8 knowledge than I on issues of -- related to PCBs.

9 Q Well, I understand that.

10 MR. COX: Do you know who they are, Bruce?

11 Q I'm asking do you know who they are.

12 A For a fact, no.

13 Q Okay. In part of your remediation in
14 Anniston regarding PCBs -- which is I believe you said
15 the only project you've ever worked on as far as
16 remediating PCBs, right?

17 A I believe that's correct.

18 Q I mean, you say you believe that's correct.

19 Is it because you're uncertain? I mean, is there some
20 other project out there that you may have been
21 involved with relating to PCB remediation?

22 A I don't believe there has been.

23 Q Again, you're saying believe. Are you

1 trying to hedge your bets here? I mean, either you
2 have or you haven't. It's not a trick question, but
3 when you use those kinds of words, it makes me think
4 maybe there's something out there he's not talking
5 about. Maybe that's just how you want to be very
6 careful in your testimony and that's okay, but did you
7 do anything with any other PCB remediation project?
8 Sitting here today, can you recall another remediation
9 project that you worked on other than the one in
10 Anniston?

11 A No, I cannot.

12 Q Now, as part of your job responsibilities,
13 did you have anything to do with the removal of
14 sediment from Snow Creek?

15 A No.

16 Q Do you know anything about that?

17 A No.

18 Q Is today the first time you became aware
19 that Solutia removed sediment from Snow Creek that
20 contained PCBs?

21 MR. COX: Solutia or Monsanto?

22 MR. GRAMMAS: Whoever did it. I mean, I
23 don't know which one did it.

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1 Q They're interchangeable, aren't they?

2 Solutia and Monsanto with this Anniston plant are
3 interchangeable?

4 MR. COX: Well, except if you talk about
5 Solutia, you're really talking about an entity that
6 didn't exist until September 1st, 1997. So, if you're
7 talking about something that happened before September
8 1st, 1997, it could not have physically involved
9 Solutia. That's my only point.

10 Q Do you know whether or not Monsanto or
11 Solutia removed sediment in and around Snow Creek
12 because it was contaminated with PCB levels high
13 enough to remove it? Yes or no?

14 A No.

15 Q You never heard that before this question
16 that I just asked you; is that correct?

17 A That's correct.

18 Q And again, you're the manager of
19 environmental affairs, right?

20 A Manager of environmental affairs.

21 Q And PCBs in the environment come under
22 environmental affairs, doesn't it? It comes right
23 within your department, doesn't it?

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1 A Generally the issue of PCBs are -- if
2 there's an issue, then that issue is directed to my

3 supervisor, Dr. Kaley.

4 Q Okay. I'm going to ask you my question

5 again, sir.

6 A Uh-huh.

7 Q PCBs in the environment come squarely within

8 the Environmental Affairs Department. True or false?

9 A I think that would be true because those

10 issues would be directed to Dr. Kaley and Dr. Kaley

11 happens to be our director of environmental affairs.

12 Q Well, if that's true, then why did Dr. Kaley

13 send you down to talk to all these people given your

14 lack of knowledge relating to all these PCB issues

15 rather than simply go himself?

16 A I think you would have to ask Dr. Kaley

17 that. I don't know.

18 Q When you were involved in the sampling, did

19 Monsanto agree to sample these properties because the

20 Alabama Department of Environmental Management forced

21 you to do it?

22 A It's my understanding that the sampling was

23 done because that was addressed in the consent

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1 agreement or consent order.

2 Q The consent order was entered into as a way

3 to resolve an adversarial proceeding between the

4 Alabama Department of Environmental Management and

5 Monsanto, correct?

6 A I'm not really familiar with the origin of

7 that consent order.

8 Q Who authored the letters that you sent to

9 these people that you sampled their properties for

10 PCBs?

11 A Those letters?

12 Q I'm not talking about these in particular.

13 The letters that you sent to people saying dear so and

14 so, with your permission Monsanto came out and we

15 sampled some soil samples, we've now obtained the

16 results, we've determined that your soil samples had X

17 amount of PCBs per million.

18 A There were some letters that I authored.

19 Q You actually physically chose the words to

20 write on those letters?

21 A And type them into a PC.

22 Q Did anybody sign off, for a lack of a better

23 word, on these letters that you wrote to these people?

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1 A Those letters were generally approved by my

2 supervisor, Dr. Kaley.

3 Q You didn't send a single letter to any

4 neighbor of Monsanto's whose property you tested for

5 PCB contamination without Dr. Kaley looking over it

6 and approving the form and the content, correct?

7 A I believe that's correct.

8 Q Did he change anything in what you said?

9 A As I recall, there were some changes, minor
10 wording changes.

11 Q Like what?

12 A I believe that there was a reference to an
13 analytical technique, gas chromatography, and there
14 may have been a modification by Dr. Kaley to better
15 explain what that meant or explain that procedure.

16 Q Any other changes that come to mind?

17 A No, that's the -- I think that's the
18 principal change I recall.

19 Q I've read a sample of your letters. I'm not
20 representing that I've read them all. I've read what
21 Monsanto has produced to me. And nowhere in these
22 letters do I read where you warn these property owners
23 of the potential adverse human health effects of them

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1 being exposed to PCBs on their property. Is that a
2 fair statement?

3 A That's correct.

4 Q But you are aware that at some of these
5 parts -- for example, I've picked this one right here,
6 an October 9th, 1996 letter by Mr. Zanzig. I'm going

7 to mark it as Plaintiff's Exhibit 3.

8 MR. COX: Can you read out the Bates number?

9 MR. GRAMMAS: Yes. DSW046816.

10 MR. COX: Thank you.

11

12 (Plaintiff's Exhibit
13 Number 3 was marked for
identification.)

14 Q That's a letter that bears your signature;
15 is that correct?

16 A That's correct.

17 Q And in that letter there are extremely high
18 levels of PCB found on this man's property. Would you
19 agree with that statement?

20 MR. COX: Object to the form.

21 A Some of those levels are high.

22 Q You don't think they're what I would call
23 extremely high?

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1 A I don't know what extremely high means.

2 Q Okay. Well, y'all had a threshold when you
3 were out there sampling, didn't you, Mr. Eley?

4 A We used a screening technique that
5 screened at a certain level.

6 Q The screening was five parts per million,
7 wasn't it?

8 A That's correct.

9 Q Five?

10 A Five.

11 Q 05? One, two, three, four, five parts per

12 million, right?

13 A Correct.

14 Q And y'all wanted to know PCB contamination

15 at anything over five parts per million, right?

16 A No. The purpose was to determine what the

17 levels of PCB were on the property.

18 Q Over five parts per million?

19 A Over five, under five.

20 Q Well, what does the level five parts per

21 million mean?

22 A That was a screening level that was used by

23 the Alabama Department of Environmental Management.

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1 Q Well, you understand that if it came in at

2 under five at that screening level it would show it

3 nondetect, wouldn't it?

4 A It would show it as being nondetectable or

5 below the screening level of five ppm.

6 Q Right. So, you very well may have tested

7 some soil that showed up based on your screening level

8 as nondetect and there was in fact PCBs there, right?

9 A At any level, that's correct.

10 Q So, when you say nondetect on some of these
11 test results, you're not saying that it isn't there,
12 are you? You're saying simply that at the screening
13 level you chose to implement you didn't detect it
14 there?

15 A That's generally the way that a level of
16 detection would be expressed, that's correct.

17 Q And an analogy is if a man is driving a
18 vehicle down the road going 90 miles an hour in a 70
19 mile an hour speed zone and a police officer is
20 sitting on the side of the road but doesn't have his
21 radar gun on him, the police officer did not detect
22 his speed to be 90 miles an hour, right?

23 A That's correct, because he didn't have his

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1 radar gun on him.

2 Q But that does not mean that the man wasn't
3 going 90 miles an hour, does it?

4 A That would be correct.

5 Q It just means that the cop didn't know he
6 was going 90 miles an hour, right?

7 A That's correct.

8 Q Okay. So, when you check at a detectable
9 level of five parts per million, you don't want this
10 jury to think that when those tests results came back
11 nondetect that there wasn't any PCBs necessarily on

12 the property, do you?

13 A Repeat that, please.

14 Q Yes, sir. You don't want the jury to think

15 if you get up on the stand and swear under oath that

16 on some of these results based on a five parts per

17 million detection level the results were nondetect.

18 You don't want them to take from that that there were

19 no PCBs on that property?

20 A Above that level, that would be correct.

21 Q Below the level. Do you see what I'm

22 saying? I'm talking about the other side. If you're

23 testing at five parts per million, there very well may

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1 be PCBs below five parts per million that you'll never

2 pick up, right? It's a simple concept.

3 A If we're testing below the level of five

4 ppm.

5 Q No, sir. If the test result level is five

6 parts per million, for whatever reason.

7 A Okay.

8 Q If you're testing a piece of soil that has

9 PCBs below five parts per million, your test results

10 aren't going to pick that up, are they?

11 A The test results would not determine

12 specifically if it were 2.5 ppm or 3 ppm. It would

13 indicate that the result is less than your screening
14 level or less than the level of detection you used for
15 that particular analyses.

16 Q Right. It would say nondetect at five parts
17 per million?

18 A Nondetect at -- nondetectable at a
19 particular level.

20 Q Five parts per million is the one y'all
21 chose, right? So, there very well may be samples that
22 came up as nondetect in y'all's test results that
23 actually did contain PCBs, you just didn't know it,

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1 right?

2 A That may have contained lesser amounts of
3 PCB, that's correct.

4 Q Now, why did Monsanto select five parts per
5 million as the level?

6 A I believe we chose that level because that
7 was the testing procedure that had been used by, I
8 believe, both the Alabama Department of Environmental
9 Health and the Alabama Department of Environmental
10 Management.

11 Q Okay. Well, you know and Monsanto knows
12 that one part per million is the standard that the EPA
13 recommends for -- is the absolute maximum standard the
14 EPA allows for residential property which is

15 contaminated with PCBs, don't you?

16 A No, I don't know that.

17 Q And you don't know that because you don't

18 have any of those responsibilities at Monsanto, now

19 Solutia, right?

20 A Any of what responsibilities?

21 Q To know what detection -- what levels the

22 EPA says you can't exceed and residential property you

23 can't exceed and industrial property. You don't know

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1 anything about PCB contamination anywhere, do you?

2 A Anywhere? I've got a general

3 familiarization with the PCB remediation project at

4 Anniston.

5 Q But before then, you've never had any work

6 experience with PCB remediation, have you?

7 A PCB remediation, no, I don't believe so.

8 Q And after that you've never had any, have

9 you?

10 A After the -- after what?

11 Q After -- well, are you still involved in the

12 remediation in Anniston?

13 A Yes.

14 Q Other than this one you've already testified

15 to, you have never done any PCB remediation?

16 A Correct.

17 Q You've never been charged with the
18 responsibility at Monsanto to remediate PCBs?

19 A That is correct.

20 Q And that's why you don't know what the EPA
21 recommends. Is that what you're telling me?

22 A I'm not familiar with the EPA regulations on
23 PCBs.

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1 Q Who dealt with the Alabama Department of
2 Environmental Management at Monsanto on determining
3 what level they would test at for these people's
4 property?

5 A That may have been Dr. Kaley.

6 Q Did he tell you why he chose five parts per
7 million or suggested five parts per million or how
8 that came about?

9 A As I recall, the only knowledge I've got of
10 that is that screening level was chosen because that
11 was the screening level that had been used by the
12 state regulatory authorities.

13 Q In any event, Mr. Eley, nondetect under your
14 testing criteria simply means that any PCBs, if there,
15 are less than five parts per million?

16 A In many cases, that's true.

17 Q Now, I showed you Plaintiff's Exhibit 3 and

18 there is a letter to Mr. Zanzig about some of the test
19 results that y'all obtained on the property, right?
20 On his property, right?
21 A That is correct.
22 Q And you tested it at seven different spots,
23 right?

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1 A Correct.
2 Q And one of those spots contained 990 parts
3 per million PCBs, right?
4 A That was the analytical result, correct.
5 Q And you're not disagreeing with the result,
6 are you?
7 A No.
8 Q And the lowest -- that was the highest one,
9 right?
10 A That's correct.
11 Q The lowest one is 26.3 parts per million,
12 right?
13 A That's correct.
14 Q Now, would you not consider over 900, close
15 to a thousand parts per million an extremely high
16 level of PCB contamination on Mr. Zanzig's property?
17 A I would consider that to be a high level of
18 PCBs.

19 Q But not extremely high? You wouldn't want
20 to live on property that had almost a thousand parts
21 per million of PCB contamination in your soil, would
22 you?
23 A I don't believe Mr. Zanzig lives on this

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1 property.
2 Q You, sir, would not want to live on property
3 that has 990 parts per million contamination of PCB in
4 the soil, would you?
5 A I personally might.
6 Q It wouldn't bother you at all?
7 A It might not.
8 Q Do you have any grandchildren?
9 A No.
10 Q Do you have any children?
11 A No.
12 Q Do you have a wife?
13 A No.
14 Q Have you ever been married?
15 A No.
16 Q Nephews, nieces, younger family members?
17 A Some younger cousins.
18 Q And you said it might not bother you. Is
19 that an indirect way of saying it might bother you?
20 A No. I think I would have to consider that a

21 little bit further.

22 Q What would you consider?

23 A I think that the things I would be looking

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1 at is -- you said on my property. I would have to
2 look at where on the property, what the potential for
3 exposure was and those types of factors other than
4 just a number.

5 Q Well, let's assume that it was very near
6 your home and you were exposed to it on a daily basis,
7 perhaps a sidewalk, a dirt sidewalk or a gravel
8 driveway or a garden that you liked to spend a lot of
9 time in. Let's assume that the PCB levels were in
10 those types of areas. Would you want to get it off
11 your property?

12 A You mean in those soils?

13 Q Yes. These are soil samples you were
14 taking, aren't they?

15 A Right. But I just wanted to make sure in
16 the scenario you discussed we were still talking about
17 PCBs in soil.

18 Q We are. And it's a hypothetical question.

19 A Because you mentioned something about a
20 gravel driveway or some type of --

21 Q Okay. It's a hypothetical question, Mr.

22 Eley.

23 A Okay.

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1 Q And the question is if you owned property
2 where there was a thousand parts per million or here,
3 990 parts per million of PCB contamination in your
4 soil and it was soil that you came into contact with
5 on a daily basis either through gardening or cutting
6 your grass or playing in the yard with your dog or
7 whatever it is that you do, would you want to either
8 move from that house or remove this contaminated soil
9 from your property based on what you know about PCBs?

10 A Probably not.

11 Q It still wouldn't bother you?

12 A Huh-uh.

13 Q Is that why you didn't warn Mr. Zanzig about
14 these levels because it doesn't personally bother you?

15 A No.

16 Q Do you think Mr. Zanzig is reasonable in
17 worrying about these levels?

18 MR. COX: If you know. Are you asking him
19 to assume Mr. Zanzig is worried or are you asking --

20 MR. GRAMMAS: Right.

21 Q Do you think it would be reasonable for a
22 property owner to be concerned about these levels
23 given the EPA standard at a maximum one part per

1 million for residential property?

2 MR. COX: Object to the form.

3 A Is that a -- well, I guess I earlier said I

4 am not fully aware of exactly what those --

5 Q Regardless of whatever the standard is, you

6 have testified that that 990 parts per million is even

7 in your estimate a high level of PCB contamination,

8 right?

9 A That's a high level of PCBs in soil.

10 Q And again, you're hesitant to use the word

11 "contamination," but it isn't there naturally, is it?

12 A No.

13 Q It's a manmade chemical, right?

14 A Correct.

15 Q And the men that made this chemical were

16 employed by Monsanto, right?

17 A At one time, we were a producer of PCBs.

18 Q You said a producer. You were -- Monsanto

19 was the only producer of PCBs in the entire United

20 States, isn't that true?

21 A Correct, yes.

22 Q And certainly the only producer in Anniston?

23 A That's correct.

1 Q So, if it's not there naturally and it's
2 there now and you're the only one that made it, how
3 can you sit here under oath and tell this jury that
4 it's not there because of Monsanto?

5 A What, in this specific case?

6 Q In the entire area that we're talking about,
7 this entire class area. Monsanto is the most likely
8 source of PCB contamination, true?

9 A I wouldn't say that, no.

10 Q Why not?

11 A Well, I think up until now we've just talked
12 about manufacturing. We really haven't talked about
13 use. If you have someone that uses PCB in various
14 products, formulations, then I don't know where those
15 particular products came from.

16 Q Well, if Monsanto is the only company that
17 makes it, didn't it come from Monsanto?

18 A We're not the only person that ever made
19 PCBs.

20 Q Y'all made 98 percent of the PCBs in the
21 world. Are you aware of that?

22 A No, I'm not aware of that.

23 Q Does that come as a surprise to you?

BAIN & ASSOCIATES

1 A Yes.

2 Q Name all the companies that you're aware

3 of that have made PCBs.

4 A I'm not aware of the specific companies. I

5 believe PCBs were made in Poland, Russia,

6 Czechoslovakia, France, Italy, perhaps England. There

7 may have been PCB manufactured in South America, but

8 I'm not sure of all of those companies and that's why

9 I --

10 Q Did Monsanto attempt to identify these

11 companies and determine whether those companies were

12 responsible for putting the PCBs on these properties

13 that y'all are sampling?

14 A Not to my knowledge.

15 Q And that's because common sense tells you

16 that when you've made hundreds of thousands -- how

17 many pounds of PCBs did Monsanto make in Anniston over

18 the years?

19 A I don't know.

20 Q Hundreds of millions?

21 A I have no idea.

22 Q Would that be an overexaggeration?

23 A Hundreds of millions?

BAIN & ASSOCIATES

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1 Q Yeah.

2 A I really don't know.

3 Q Does that sound like too big of a number or
4 does that sound about right to you?
5 A I really -- I have no knowledge of exactly
6 what our production was.
7 Q Millions of pounds?
8 A It could have been millions of pounds.
9 Q Somewhere between millions of pounds and
10 hundreds of millions or maybe -- you just don't know.
11 At a minimum, we're talking about millions of pounds
12 of PCBs, okay? Right?
13 A I would think over that long a period of
14 time it would be millions of pounds.
15 Q And given the fact that y'all made millions
16 of pounds of this stuff over what, a 40-something year
17 period, are you telling --
18 A '35 to '71, I believe -- or '76.
19 Q Are you telling this jury that it is your
20 opinion that Monsanto is not the likely source of PCB
21 contamination in this area?
22 A No. I think I'm saying that I don't know.
23 Q I'm asking you what your opinion is. Based

BAIN & ASSOCIATES

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1 on all of the facts as you know them, based on the
2 fact that Monsanto is the only manufacturer of this
3 chemical in the United States, based on the fact that

4 Monsanto made millions of pounds of it, based on the
5 fact that they used to sewer -- do you know what that
6 is, sewerage PCBs and sewerage --

7 MR. GRAMMAS: What type of acid was it,
8 sulfuric?

9 MR. LOWE: Muric acid.

10 Q Muric acid? You knew that they would take
11 millions -- or hundreds of thousands of pounds of this
12 stuff and sewer it, flush it right down the sewer?

13 Did you know that?

14 A No, I didn't know that.

15 Q Does that bother you to know that?

16 MR. COX: Object to the form.

17 Q Does that bother you to know that you worked
18 for a company for over a 35-year period which was
19 flushing PCBs in a pipe in a ditch into Snow Creek?

20 MR. COX: Object to the form.

21 A No.

22 Q Doesn't bother you at all?

23 A No.

BAIN & ASSOCIATES

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1 Q How can that not bother you, sir?

2 A It just doesn't.

3 Q Is it because you don't care about the
4 people that live in and around that area?

5 A No.

6 Q Do you care about them?

7 A Yes.

8 Q Do you think that Monsanto should care about
9 their health?

10 A I believe Monsanto and Solutia certainly
11 does.

12 Q And do you think that if Monsanto and
13 Solutia were responsible for dumping all these PCBs
14 into Snow Creek, Choccolocco Creek and Lake Logan
15 Martin they should clean it out?

16 MR. COX: Object to the form.

17 A Is that a hypothetical?

18 Q No. That's not a hypothetical.

19 A But I personally don't know of past --

20 Q I understand you don't know. I understand
21 that, Mr. Eley.

22 A -- discharge or environmental practices
23 surrounding the Anniston plant.

BAIN & ASSOCIATES

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1 Q I understand that. I understand perfectly.

2 Now, if Monsanto dumped PCBs off of its property in
3 sewer systems into Snow Creek, Choccolocco Creek and
4 Lake Logan Martin and those PCBs are still there
5 today, don't you think that they have the obligation
6 to remediate that?

7 MR. COX: Object to the form. Go ahead and
8 answer.

9 A I would think they would certainly have an
10 obligation to work with the Alabama Department of
11 Environmental Management to determine what actions
12 would be necessary under those regulations.

13 Q Isn't that the very reason why Monsanto
14 right now as we sit here today is doing that, Mr.
15 Eley? That's a question. Isn't that the reason why
16 they're doing it? Solutia is working with the Alabama
17 Department of Environmental Management right now about
18 possible remediation, right?

19 A I'm aware that we are working with and I
20 think are our whole project is being coordinated
21 through the Alabama Department of Environmental
22 Management.

23 Q And you're also aware of the lawsuit that

BAIN & ASSOCIATES

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1 you're testifying under oath today about, aren't you?

2 A I don't have a great deal of knowledge about
3 the lawsuit, but I'm --

4 Q But you understand, sir -- one of the first
5 things you testified to was this is a lawsuit about
6 PCB contamination in Snow Creek, Choccolocco Creek and
7 Lake Logan Martin, right?

8 A I believe that I indicated that I'm

9 generally aware of the lawsuit that deals with PCB
10 issues surrounding Choccolocco --
11 Q Are you aware --
12 MR. COX: Let him finish.
13 MR. GRAMMAS: I'm sorry.
14 A Surrounding Choccolocco Creek and Lake Logan
15 Martin.
16 Q You're aware that as part of this lawsuit
17 the plaintiffs have asked for injunctive relief, are
18 you not?
19 A No.
20 Q Do you know what that means?
21 A I do not.
22 Q Injunctive relief means the plaintiffs are
23 asking the court to issue an order requiring

BAIN & ASSOCIATES

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1 remediation. Were you not aware of that before today?
2 A I don't believe so, no.
3 MR. COX: Can I have another break?
4 MR. GRAMMAS: Yeah.
5 (A break was taken.)
6 Q Mr. Eley, tell me, if you would, please,
7 sir, who Monsanto competed with in selling PCBs from
8 the 19 -- early 1930s until 1976 when it stopped
9 manufacturing it here in the United States.

10 A Who they competed with, other manufacturers
11 in the United States?

12 Q Right.

13 A As I understand, Monsanto was the only
14 manufacturer of PCBs in the United States.

15 Q I understand that, but --

16 MR. COX: He's talking in terms of sales.

17 Q Does that mean that no other manufacturers
18 sold PCBs in the United States?

19 A Oh, I don't know. I don't know. I'm aware
20 of generally that PCBs were manufactured ex-U.S. in a
21 number of different countries. I'm not familiar with
22 the import of PCBs or the distribution of PCBs, the
23 marketing of PCB or PCB formulations in the U.S.

BAIN & ASSOCIATES

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1 Q So, sitting here today, you can't identify
2 one competitor Monsanto had inside the continental
3 United States for PCB sales?

4 A That's correct, I cannot.

5 Q Why did Monsanto stop manufacturing PCBs?
6 First of all, it was profitable, was it not, very
7 profitable?

8 A I don't know how profitable it was. I
9 assume that it was profitable because we continued to
10 make, manufacture PCBs for a long period of time.

11 Q Close to 40 years, right?

12 A I believe that's correct.

13 Q Why did Monsanto stop making it?

14 A As I understand, we voluntarily discontinued

15 the manufacture of PCBs in -- I believe it was around

16 1976. Exactly what the basis of that decision was, I

17 personally don't know.

18 Q I'm not sure when you say you voluntarily

19 surrendered -- I think that's the word you used.

20 Discontinued?

21 A Voluntarily. I believe we voluntarily

22 discontinued the manufacture of PCBs.

23 Q Why did you do that?

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1 A I personally don't know.

2 Q Why did you use the word "voluntary" there?

3 It seems to me like any time a company makes the

4 decision to stop manufacturing something it's a

5 voluntary decision. Is that not true in this case?

6 A Well, I think anything -- it can be

7 voluntary or involuntary.

8 Q Well, I understand that, but generally when

9 somebody stops making something, a company stops

10 making something, it's because they choose not to,

11 right?

12 A Not in all cases.

13 Q And the reason you used the word "voluntary"
14 here is because Monsanto knew at that time that the
15 EPA regulations were around the corner and in
16 particular, congressional regulations were right
17 around the corner that were going to require you to
18 stop -- Monsanto to stop making PCBs, right?

19 A I really haven't got a good understanding of
20 exactly what occurred during that period of time.

21 Q Could Monsanto make PCBs today if it wanted
22 to?

23 A I don't believe so.

BAIN & ASSOCIATES

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1 Q And why is that, sir?

2 A I think because of TSCA regulations.

3 Q What does that stand for?

4 A Toxic Substances Control Act.

5 Q Monsanto could not make PCBs today and sell
6 commercially because the federal government has
7 outlawed that -- the manufacture of PCBs under the
8 Toxic Substances Control Act. Is that what I'm
9 hearing you say?

10 A I believe that the EPA under TSCA has banned
11 the manufacture and use of PCBs.

12 Q And the EPA did that because it's bad --
13 PCBs are bad for the environment and are labeled as
14 potential human carcinogens, right?

15 A I specifically don't know that.

16 Q Do you have a general understanding of that
17 as the environmental manager -- as the manager of
18 environmental affairs at Solutia?

19 A I have an understanding that those
20 regulations were put in place and that requirements
21 came forth from TSCA because of environmental issues
22 and it may have been -- another factor may have been
23 the animal studies done in the 1970s.

BAIN & ASSOCIATES

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1 Q Animal studies conclude that exposure to PCB
2 causes cancer, do they not?

3 A In certain animal species at certain levels,
4 that's correct.

5 Q And you're not disputing that those are --
6 those test results are a good comparison to whether or
7 not these same compounds, PCBs, will have the same
8 effects in human beings, are you?

9 A That's really outside of my expertise.

10 Q But Monsanto has guidelines where it
11 recognizes that it is necessary for animals to be
12 tested, correct?

13 A I don't know whether we've specifically
14 got -- Solutia has specifically got guidelines that
15 say that it's necessary for animals to be tested.

16 Q When you were employed with Monsanto, did
17 you ever become aware of any guidelines where they
18 said in essence we, Monsanto, know that animals are
19 necessary to be tested or utilized in studies to
20 determine the potential toxic effects of the chemicals
21 we're making but that we will use these animals in a
22 method that's humane and proper or whatever else they
23 were trying to -- the other message they were trying

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1 to convey? Are you aware of that?
2 A I don't recall any guidelines of that sort.
3 There may have been, but not to my knowledge.
4 Q What does the phrase "PCB-free" mean to you?
5 A PCB-free?
6 Q Yes, sir.
7 A To me that means that you have an entity of
8 a specific compound or something of that sort that has
9 no detectable levels of PCB.
10 Q If Monsanto said we want our sites to be
11 PCB-free and now Solutia, one of our goals is to have
12 our sites to be PCB-free, that means to invoke a
13 process to make sure that the property in that site
14 has no detectable levels of PCB, right?
15 A That's the way I would interpret that, yes.
16 Q Do you believe that PCBs are a hazardous
17 compound?

18 A Yes.

19 Q Do you believe that they are acutely
20 hazardous?

21 A At high enough concentrations, yes.

22 Q And how do you define hazardous, sir, in
23 answering those last two questions?

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1 A Generally hazardous in my way of thinking is
2 defined under the OSHA hazardous communication
3 standard where if something is hazardous, that it is
4 shown to be a -- either a health hazard or a physical
5 hazard in any studies that show statistically
6 significant health effects or physical parameters,
7 explosivity, flammability. So, there's a number of
8 categories of hazard.

9 Q And PCBs in your mind are hazardous because
10 at certain levels they are -- they have adverse health
11 effects on human beings, correct? Is that what you
12 mean when you say health effects, you're talking about
13 human beings?

14 A Well, under the OSHA definition of hazard,
15 it can either be effects on humans or if you've got
16 statistically significant studies in animals, then
17 those compounds could possibly carry the same hazard.
18 And so, I think that you can have criteria that

19 pertain to both humans and animals under the OSHA
20 definition of hazard.
21 Q And PCBs fit within that?
22 A Correct.
23 Q You've testified earlier in a deposition --

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1 and I'm going to ask you if you still hold that
2 position -- that PCBs pose a hazard to aquatic
3 systems, wildlife and to human beings?
4 A That's my understanding, correct.
5 Q You also testified earlier -- and I want to
6 make sure that's still your testimony -- that Monsanto
7 accepts responsibility for putting the PCBs on the
8 areas of property that you are seeking to now
9 remediate? Is that a fair statement?
10 A I believe that's true, correct.
11 Q Part of that, sir, is buying these
12 neighbor's property around the plant, right? Correct?
13 MR. COX: You need to answer yes or no.
14 Q Yeah. If you say uh-huh or huh-uh --
15 MR. COX: She can't write that down very
16 well.
17 Q You have to say yes or --
18 A What?
19 Q I thought you said uh-huh.
20 A Oh, no, I didn't. I'm sorry. I didn't

21 mean to say that. You misunderstood me. If you could
22 repeat that, please.
23 Q Sure. The property that Monsanto

BAIN & ASSOCIATES

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1 purchased --
2 A Yes.
3 Q -- near the site in Anniston was
4 contaminated with PCBs, correct?
5 A Correct. There's a number of areas on the
6 east side, the north side areas that had detectable
7 levels of PCBs in soils and sediment.
8 Q And in the past you've testified that
9 Monsanto accepts responsibility for those PCBs and
10 even here today you just said that Monsanto accepts
11 responsibility for those PCBs, right?
12 A In certain areas we do, correct.
13 Q Right. In the areas of the property that
14 you've purchased?
15 A Adjacent to the plant where those properties
16 were impacted by the drainage system or drainage
17 patterns, that's correct.
18 Q Why is it, sir, that you -- that Monsanto
19 purchased this property?
20 A Principally the property both on the east
21 side and the north side were purchased so that we

22 could put in the remediation construction that either
23 has been placed in or is currently being placed in

BAIN & ASSOCIATES

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1 those areas.

2 Q Did Monsanto trace the drainage systems
3 through these properties that you purchased?

4 A We had hydrologists that looked at the
5 drainage patterns and which drainage ditches handled
6 the storm water runoff of our location. And I would
7 say yes, that would fit into that definition.

8 Q And you concluded that the drainage started
9 at the Monsanto plant, left Monsanto's plant and went
10 on to this property, right?

11 A Went from the drainage -- went directly from
12 the Monsanto property on to --

13 Q The property that you bought.

14 A The properties on the east side -- not all
15 properties we bought, but on to the east side and some
16 of the north side properties, correct.

17 Q And in history those drainage systems
18 contained PCBs that left Monsanto's property and got
19 on to these properties, right?

20 A Well, they would have left Monsanto property
21 as a part of those ditch systems and then those ditch
22 systems ran through some of the adjacent properties
23 and some of those properties did have detectable

1 levels of PCBs, other properties did not.

2 Q I understand that. I didn't ask you about
3 detectable levels of PCB. What I said was the
4 drainage system that you're talking about left
5 Monsanto's property carrying PCBs from Monsanto's
6 property on to neighboring properties, right?

7 A And I'm saying that --

8 Q Is that yes or no?

9 A It's partially correct.

10 Q And the reason it's partially correct is
11 because some areas were nondetect and some were
12 detect, right?

13 A That's correct.

14 Q And you've already testified earlier -- I
15 thought you did -- when it shows nondetect, that
16 doesn't mean it isn't there; it just means you didn't
17 detect it, right?

18 A That's correct.

19 Q Because it could be there at lower than five
20 parts per million on the sample that y'all tested,
21 right?

22 A The areas, though, that we're now talking
23 about on the east side -- well, on the east side I was

1 not involved in that sampling, nor am I aware of
2 specifically what screening level was used on the east
3 side of -- the properties on the east side.

4 Q Monsanto would not have bought property from
5 people who had their property contaminated with PCBs
6 if it did not feel like it was the source of those
7 PCBs, would it have?

8 A Perhaps it would have.

9 Q Under what --

10 A Maybe.

11 Q -- scenario, sir?

12 A If the property we felt was needed to
13 design some type of engineering basin, containment
14 system or some other edifice.

15 Q Tell me one site in the country, sir, that
16 you're aware of that Monsanto went out, purchased
17 property relating to PCB contamination in which it did
18 not feel at least in some part responsible for the
19 contamination. Tell me one single site which you're
20 aware of.

21 A Are we talking about -- when you say site,
22 are we talking about sites other than the Anniston
23 location?

BAIN & ASSOCIATES

1 Q Right.

2 A I'm not familiar with PCB remediation at any
3 other sites other than Anniston.

4 Q Are you familiar with any sites at all
5 either through any of the literature or anything? Are
6 you aware of a single occasion where Monsanto thought
7 to itself well, I'm going to go out and buy up
8 property and try to remediate some PCB contamination
9 even though we're not responsible for it at least in
10 part?

11 A Well, I think I just said earlier, I'm not
12 really familiar with any remediation projects other
13 than Anniston involving PCBs.

14 Q Well, let's talk about Anniston then.

15 A Okay.

16 Q You are aware of that remediation project
17 because you've had substantial contact and work on
18 that project, right?

19 A Most of the --

20 Q Is that correct?

21 A Yeah, most of it -- yes.

22 Q That's a correct statement?

23 A Uh-huh.

BAIN & ASSOCIATES

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1 Q And you know, sir, as the manager of
2 environmental affairs that Monsanto embarked on a

3 remediation effort to remove the PCBs and contain the
4 PCBs on these neighboring properties around the plant
5 because Monsanto believed it was responsible for
6 putting them there, correct?

7 A Excuse me. If you would, repeat that,
8 please.

9 Q You know as the manager of environmental
10 affairs for Monsanto at the time that Monsanto agreed
11 to purchase these neighboring properties around its
12 Anniston plant and to remediate the PCB problem there
13 because Monsanto was the responsible party for putting
14 them there?

15 MR. COX: Object to the form.

16 A I think in certain cases we were the
17 contributor in all likelihood to PCBs on our adjacent
18 properties.

19 Q Do you recall being asked this question in
20 your July -- or a question similar to this in your
21 July 17th, 1998 deposition? Do you recall that?

22 A Similar to what?

23 Q In which cases, sir -- strike that last

BAIN & ASSOCIATES

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1 question. In which cases was Monsanto not a
2 contributor of the PCB contamination on these
3 properties that you purchased?

4 A In which cases. You mean in which specific
5 properties?

6 Q Right.

7 A I think that there were some properties
8 where -- that we did purchase that had no detectable
9 levels of PCB. There were other pieces of property
10 we've purchased that I don't believe that we
11 contributed in any way to the PCBs.

12 Q How did they get there?

13 A It may have been through fill dirt or fill
14 material brought in from outside that particular
15 property.

16 Q Why do you think dirt was brought in from
17 outside the property?

18 A Because there are certain areas that in my
19 view are obviously fill material.

20 Q Do you know where the dirt came from?

21 A No.

22 Q It could come from Monsanto's landfill,
23 couldn't it?

BAIN & ASSOCIATES

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1 A Well, I guess right now our landfills I
2 believe are fenced in, so I don't know how people
3 would have come and got dirt out of there.

4 Q Do you know how long the landfills have been
5 fenced in?

6 A No, I do not.

7 Q Do you how long this dirt that you think
8 wasn't the original dirt there and that was brought in
9 as fill has been there?

10 A No, I do not.

11 Q So you don't know sitting here today whether
12 that came from the landfill or not, do you, regardless
13 of the fence?

14 A That's correct.

15 Q So, you don't know -- first of all, you're
16 not here testifying that this was dirt that was not
17 original on this property, are you? That's just your
18 speculation, correct?

19 MR. COX: You're asking for his opinion.
20 He's giving it to you.

21 A There are certain cases where I'm pretty
22 sure that --

23 Q You believe it was brought in?

BAIN & ASSOCIATES

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1 A -- the material that's on certain properties
2 certainly is not native soil to Alabama.

3 Q What is that?

4 A Your native soil typically is a clay type
5 material.

6 Q What properties are we talking about here?

7 Can you identify them by name, location?

8 A Of fill material or what?

9 Q Sure. I want to know -- you said that

10 Monsanto takes responsibility for PCB contamination on

11 some of these properties, right?

12 A I think I said that Monsanto I think is the

13 likely contributor of PCBs on some of the properties.

14 On some of the properties I'm convinced we are not.

15 Q And that's the ones I'm talking about right

16 now.

17 A Correct.

18 Q Which properties are you convinced that

19 Monsanto --

20 A This is one property.

21 Q Oh, Mr. Zanzig's?

22 A Correct.

23 Q The one with the 990 parts per million. You

BAIN & ASSOCIATES

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1 don't think Monsanto put that on there. Is that what

2 I'm hearing you say?

3 A I'm convinced we did not that I'm aware of.

4 Q And the reason for that is why, sir?

5 A Because this property is located at the

6 highest elevation north of the plant. And after

7 talking with hydrologists and reviewing the drainage

8 patterns, there's no way water could have drained over

9 portions of this property without flooding out the --
10 several blocks surrounding it.

11 Q Your conclusion then is based on the old
12 adage that water flows downhill. Is that a fair way
13 to summarize it?

14 A And water really doesn't flow uphill, that's
15 correct.

16 Q Right, water flows downhill. So, PCB
17 contamination leaving Monsanto's plant would be
18 expected on property that flows down from Monsanto,
19 right?

20 A That would be in the drainage pattern of the
21 two ditches, the east ditch and the west ditch, that's
22 correct.

23 Q You would expect to find PCBs leaving

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1 Monsanto's plant in those areas, correct?

2 A If you found PCBs --

3 Q You did find PCBs in those areas and you are
4 accepting responsibility for them in those areas.
5 You've already said that, right?

6 MR. COX: Pete, let him finish. Quit --

7 Q Isn't that what you said?

8 MR. COX: Just let him finish. If you ask
9 him a question, it's fair to let him finish.

10 A I guess I would have to go back to your
11 original question. I was just trying to respond
12 specifically to it and not to other issues or
13 questions that have been asked.

14 Q So, the only reason you believe that
15 Monsanto is not responsible for the PCB contamination
16 on Mr. Zanzig's property is because there was no way
17 absent a flood of biblical proportions for water to
18 leave Monsanto's property and come up to that level of
19 his property?

20 MR. COX: Object to the form.

21 Q Is that a fair statement?

22 A I don't know about a flood of biblical
23 proportions, but I don't believe that PCBs were

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1 contributed by the drainage patterns in that
2 particular neighborhood, either this property or
3 several other properties adjacent to it.

4 Q Right. And that's very limited to the fact
5 -- your opinion that Monsanto is not responsible for
6 PCB contamination on these properties is your
7 conclusion that it could not have drained naturally
8 from Monsanto's property on to this property, right?

9 A That's my opinion.

10 Q And no other reason why, correct?

11 A In this case and a couple of other cases,

12 there are other factors.

13 Q Where I'm going to, Mr. Eley, is you don't
14 know whether or not during some part of the years when
15 Monsanto was manufacturing these PCBs that Monsanto
16 didn't dump some of its landfill on this property, do
17 you?

18 A No, I personally don't know that.

19 Q And you're not aware of any source of PCB
20 contamination above this man's property, are you?

21 A Above this man's property?

22 Q Right. In other words --

23 MR. COX: Are you talking upstream or are

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1 you talking --

2 Q Sure, upstream.

3 A Upstream, no, I'm not. Upstream the
4 property, not above the property, but upstream the
5 property.

6 Q Right. How far away is this property from
7 the plant?

8 A Less than a quarter of a mile.

9

10 (Plaintiff's Exhibit
11 Number 4 was marked for
identification.)

12 Q I'm going to mark Plaintiff's Exhibit 4 a

13 document entitled Cleaning Access Permission and
14 Cleaning Guidelines for 810 Montrose Avenue. Have you
15 ever seen those documents before today?

16 A Yes, I have.

17 Q Is that what Monsanto agreed to do as far as
18 cleaning up the neighbor's properties around the plant
19 that may have had PCB contamination on them?

20 A This was a part of our temporary relocation
21 and house cleaning.

22 Q Tell me what procedures in that second page
23 are designed to remove potential PCB contamination.

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1 A Carpets will be vacuumed, hard surface
2 floors will be damp mopped, furniture will be removed
3 to vacuum or mop under it, doors and walls will be
4 damp wiped, pictures will be wiped; light fixtures,
5 ceiling fans and air conditioner vents will be damp
6 wiped; closet floors will be vacuumed, upholstery
7 furniture will be vacuumed, hard surfaces will be damp
8 wiped.

9 Q It sounds to me --

10 A Curtains, drapes, blinds and windows will be
11 vacuumed. Windowsills will be damp wiped.

12 Q It sounds to me like that's just what a
13 house cleaning service might do. Does that sound
14 about like to you what happens when somebody -- a maid

15 or someone comes in to clean house?

16 A I guess it would depend upon what kind of
17 equipment one uses.

18 Q Do you have a home, sir?

19 A Yes, I do.

20 Q You testified earlier you're not married.

21 Do you do your own housework?

22 A Yes, I do.

23 Q Are these the very things you do in cleaning

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1 your house?

2 A I do some of these, not all. I also use
3 different pieces or different types of equipment to
4 vacuum.

5 Q Are you aware of any procedures -- let me
6 ask you this: Are these the same types of procedures
7 Monsanto follows if it has chemical spills in its own
8 plants?

9 A I'm not really familiar with the spill
10 cleanup procedures at the individual plants.

11 Q Were the people who received this cleaning
12 service told by Monsanto that this was going to remove
13 any PCBs in their house to your knowledge?

14 A To my knowledge, I believe it may have been
15 indicated to residents that that would remove dirt

16 that might contain PCBs.

17 Q So, Monsanto is out there telling people

18 we're going to follow these guidelines and remove PCBs

19 from your house if they're in there, weren't y'all?

20 A What? Is that --

21 Q That's a question. Y'all were out there

22 telling the people that lived around the plant that

23 when we come in here and perform these cleaning

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1 guidelines that are listed here as Plaintiff's Exhibit

2 4, we're going to remove PCBs from your house.

3 A I don't recall anyone ever saying that.

4 Q You certainly left with these people -- you

5 being Monsanto left with these people the impression

6 that after these cleaning guidelines were followed

7 they weren't going to have any PCB problems in their

8 home. Isn't that a fair statement?

9 A No, I don't think so.

10 Q So you told them that despite all the

11 cleaning, whatever we're going to do with this 401 or

12 409 or Endust or however we cleaned it, it wasn't

13 going to have anything to do with whether or not the

14 property still had PCB contamination? Did you tell

15 them that?

16 A No, I don't believe we did.

17 Q Well, which one is it, sir? Didn't you want

18 them to be left with the impression after your little
19 cleaning team left that there were no more PCB
20 contamination problems on their property?
21 A No, I don't believe that was the intent.
22 Q You just felt like you wanted to clean these
23 people's houses out of the goodness of your own heart,

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1 you being Monsanto? Is that what you're telling me?
2 A No.
3 Q You cleaned it because you thought PCBs were
4 in there from your plant?
5 A No.
6 Q Why did you clean their house?
7 A I believe that the cleaning referenced in
8 the -- in these documents I believe may have been a
9 part of the consent order or consent agreement with
10 the Alabama Department of Environmental Management.
11 Q You cleaned it because the government --
12 A But I'm not sure of that.
13 Q Well, if you're not sure of it, then why are
14 you saying that that's your belief?
15 A I said I thought or it's my belief, but I'm
16 not positive.
17 Q So, if your belief is true, then what you're
18 really saying is the only reason Monsanto even did

19 this if you would call it remedial work, I certainly
20 would not, is because ADEM made you?
21 A The reason if that were the case and the
22 reason that we instituted this is because of our
23 agreement with the agency ADEM.

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1 Q But you don't know that to be true or not.
2 You're just saying that's what you think?
3 A I don't know that -- whether that in fact is
4 true.
5 Q Just so we understand your position today,
6 sir, you are not disputing the fact that during the
7 course of Monsanto's manufacture of millions of pounds
8 of PCBs over the past 30 -- over a 35, 40-year period,
9 some of those PCBs escaped Monsanto's property, got
10 into the drainage systems around the property and
11 traveled downstream from those drainage systems? You
12 will agree with everything I just said, correct?
13 A I think you indicated in your question that
14 as a part of that that Monsanto discharged PCBs?
15 Q No. I said allowed it to escape.
16 A Allowed it to escape.
17 Q I was being gracious in my language because
18 I wanted you to agree with something. Okay? I did
19 that for a reason. Monsanto during that 35 to 40-year
20 period allowed PCBs to escape that found their way

21 into the drainage ditches leaving its property that
22 found their way into the downstream receiving streams,
23 right?

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1 A I don't know that to be true.

2 Q Have you ever heard of a document called
3 Environmental, Safety and Health Guidelines by
4 Monsanto?

5 A Yes.

6 Q When was the first time you ever saw such a
7 document?

8 A The original document that was similar to
9 that -- I don't know whether it was called the same,
10 but it seemed like we had some worldwide guidelines in
11 perhaps the early '80s and then there were I think
12 several revisions.

13 Q I understand. Your initials are BW,
14 correct?

15 A Correct.

16 Q And what does that stand for?

17 A Bruce Wayne.

18 Q Bruce Wayne Eley. What does C2SB stand for
19 if that comes after your name?

20 A That would have been the mail zone that I
21 would have been -- that I would have had in C

22 building.

23 Q Is that where you are today?

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1 A No.

2 Q When were you at C2SB? What time period?

3 A I was in C building from 1981 until about

4 1991. 1981 until 1991. While I was in C building, I

5 think I was in three or four different areas.

6 Q When were you in 2SB? Is that like an

7 address?

8 A That would be the second floor of the south

9 wing and I'm not sure when I was in the second floor

10 of the south wing of C building.

11 Q Just give me your best estimate. That's

12 like an address. Like if somebody said where do I

13 live, I can tell them, 3801 Buckingham. This is your

14 Monsanto address right here next to your name C2SB,

15 isn't it?

16 A It's not an address. It's a mail zone.

17 It's -- if you were to mail me a package, that would

18 be specific. Like if you're at your house, it would

19 be the specific room that you were in at your house.

20 Q Right. I understand. But there's 8,000

21 employees at this company. So, there aren't 8,000

22 rooms in my house.

23 A At that time, of course, it would have been

1 I believe Monsanto Company and we would have had on
2 the order of perhaps 40 some odd thousand.

3 Q It's absolutely necessary for Monsanto to
4 know exactly where each person is to be able to get
5 information to them?

6 A It would have been at that particular
7 address sometime in that ten-year period C2 south. I
8 don't really recall between that.

9

10 (Plaintiff's Exhibit
11 Number 5 was marked for
identification.)

12 Q I have named -- I have labeled a document
13 entitled Environmental, Safety and Health Guidelines
14 as Plaintiff's Exhibit 5; is that correct?

15 A That's correct.

16 Q And on this document -- and we're going to
17 talk about it in a minute. I just want to set it up
18 so the record is clear -- your name B. W. Eley appears
19 on the first page after the title page, right?

20 A That's correct.

21 Q And that name is there as someone who
22 received a copy of this document, right?

23 A Correct.

1 Q And it's in alphabetical order and there's a
2 number C2SB out by your name?

3 A That's correct.

4 Q What I'm trying to do -- because there's not
5 a date on this document, on the top page or
6 anything -- is to determine about what period of time
7 it was you received this. And if you can tell me
8 where you were in the building at what period of time,
9 then that will give me a pretty good estimate of about
10 when this document was sent to you. Does that make
11 sense to you?

12 A Yes. I'm surprised there are not dates on
13 the documents.

14 Q There are dates within the document, but
15 there's not a date on when that document was made.
16 Well, there is a date. May 22nd, 1989. Does that
17 sound about right to you?

18 A That would have been within that time frame.

19 Q Who is Mr. H. J. Corbett?

20 A H. J. Corbett I believe at that time would
21 have been the vice president of environment, safety
22 and health and maybe manufacturing.

23 Q Why was he concerned with keeping a copy of

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1 your environmental, safety and health guidelines

2 confidential to outside sources?

3 A I don't know why.

4 Q Do you recall receiving a copy of this

5 document and studying it, looking at it?

6 A I have received those documents.

7 Q And you know, sir, that a substantial amount

8 of work went into developing these Monsanto guidelines

9 for environmental, safety and health, don't you?

10 A I would expect there was different degrees

11 of the amount of work that went into those, yes.

12 Q But it was a substantial amount of work over

13 a period of years that went into developing these

14 guidelines, right?

15 A I don't know how long it took to develop

16 those guidelines.

17 Q The words contained in these guidelines have

18 meaning, correct?

19 A The words have meaning?

20 Q The words in these guidelines telling

21 environmental -- telling employees at Monsanto

22 worldwide what to do, how to react, how to respond to

23 certain issues and events have meaning, right?

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1 A Yes, they have meaning.

2 Q And they're not just empty promises, are

3 they? These guidelines aren't just Monsanto's empty
4 promises about the environmental, safety and health,
5 are they?

6 A Guidelines and promises? These aren't empty
7 promises? I don't --

8 Q These guidelines, sir, that tell Monsanto
9 employees -- dictate how to respond to environmental
10 issues are not just empty promises that Monsanto wants
11 to sell to the world, are they? Do you have a problem
12 answering that question?

13 A Well, I have a problem with empty promises.
14 I mean, I think this is a series of statements. These
15 are a series of we will do these types of things. I
16 guess where I have a little problem is those evolved
17 into a series of pledge statements and pledge
18 guidelines which I equate personally more with a
19 promise than a guideline.

20 Q There are statements contained within the
21 environmental, safety and health guidelines that sound
22 like promises to me. I've read them. You've read
23 them, too, haven't you? You've read this Plaintiff's

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1 Exhibit 5 in the past certainly?

2 A I read that -- parts of that document.

3 Q My only point is, sir, these things are

4 telling Monsanto employees how to act, how to respond,
5 what to do in certain events, right? That's what this
6 thing is all about, isn't it?

7 A I would have to review all of those
8 documents, but generally, I think that's correct, yes.

9 Q So the words contained in here aren't just
10 empty promises, aren't just -- we'll just put this
11 down and you can stick it on a shelf and not ever
12 follow it, right?

13 A That's correct.

14 Q And it's not just mere rhetoric in these
15 words?

16 A That's correct.

17 Q This is certainly not a public relations
18 ploy that Monsanto intended to pull over on the public
19 by enacting these guidelines, is it?

20 A No.

21 Q It's not something Monsanto did in an effort
22 to enhance its image with the Wall Street folks, is
23 it?

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1 A Not that I'm aware of.

2 Q Monsanto would certainly never confuse
3 environmental issues with profitability, would it?

4 A No. I think the issues are intertwined.

5 Q A more accurate way of saying what the

6 environmental, safety and health guidelines are is

7 standards that the company self-imposed, correct?

8 A Some may be standards, others may not be

9 standards, but guidelines.

10 Q The words contained in the environmental,

11 safety and health guidelines manual are intended to

12 impose duties, responsibilities and obligations on the

13 employees at Monsanto in how they respond to

14 environmental, safety and health issues, right? Isn't

15 that right?

16 A Oh, is that a question?

17 Q Yes, sir.

18 A Excuse me.

19 Q Isn't that right?

20 A That's my understanding, that's correct.

21 Q As a matter of fact, on the May 22nd, 1999

22 -- excuse me. 1989 letter by Mr. H. J. Corbett to the

23 distribution list, one of whom is you, he states in

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1 here that actions taken by all employees of Monsanto

2 should be consistent with the tone and direction of

3 this vision, doesn't he?

4 MR. COX: You're asking him if you just

5 accurately stated what's in Mr. Corbett's letter?

6 MR. GRAMMAS: Right.

7 Q Isn't that what he says in there?

8 A That's the statement that he makes, actions

9 taken by all employees of Monsanto should be

10 consistent with the tone and direction of this vision.

11 Q And then he says in here just above that,

12 while requirements vary across different units of the

13 corporation and worldwide guidelines require some

14 compromise to permit application to all operating

15 units, compliance with the spirit of the guidelines is

16 not optional.

17 A That's what that document says.

18 Q That means you've got to follow what's in

19 here, doesn't it?

20 A I think that means that you've got to follow

21 the spirit of what's in that document.

22 Q The spirit of this document is to make sure

23 that Monsanto's manufacturing operations do not

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1 adversely impact the environment and the health of

2 wildlife and human beings, right?

3 A Today I'm not sure I know exactly what the

4 spirit of that document is.

5 Q Well, we're going to talk about the Monsanto

6 pledge in a little bit. I'm sure you're familiar with

7 that, aren't you?

8 A Yes, I have familiarity with the Monsanto

9 pledge.

10 Q That's something that the company is
11 extremely proud of, isn't it?

12 A At the time that I was with Monsanto, that's
13 correct.

14 Q It was touted on the Internet and it was
15 implemented by the chairman and CEO, Mr. Richard J.
16 Mahoney in January of 1990, isn't that about right?

17 A That's correct. I didn't know that it was
18 on the Internet, though.

19 Q One of the perspectives that -- tell me
20 again who Mr. Corbett was.

21 A Mr. Corbett I believe was the vice president
22 of environment, safety and health and perhaps
23 manufacturing.

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1 Q He was a fairly bigwig within the company at
2 the time he --

3 A That's correct.

4 Q And he certainly had the authority to set
5 policies and perspectives and things like that that
6 are in this manual, did he not?

7 A Yes, he did.

8 Q One of the things he said he wants Monsanto
9 to be is a company which as a matter of policy

10 separates the issues of "the right thing to do" from
11 the issues of cost or affordability. Isn't that what
12 he said to do?

13 MR. COX: Do you want to look at the -- do
14 you need to look at the --

15 A I am familiar --

16 Q And that's all I asked you to do is --

17 MR. COX: Well, what I'm saying is if he
18 wants to look -- flip through some of the other
19 documents --

20 MR. GRAMMAS: Well, we'll get to
21 that, believe me.

22 MR. COX: -- to familiarize himself with
23 them --

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1 Q That's one of the things --

2 A We were talking, I think, about a bullet
3 point that was under the vision and I guess what I was
4 looking at is just the opportunity to look at the
5 vision.

6 Q We're going to look to that in a moment.

7 All I'm asking you, sir, right now is one of the
8 things Mr. Corbett said is he wants Monsanto to be a
9 company which as a matter of policy separates the
10 issue of the right the thing to do from the issue of
11 cost or affordability, right?

12 A That's correct.

13 Q That means if Monsanto is responsible for
14 some type of environmental problem or health and
15 safety problem, he wants this company as a matter of
16 policy to separate the problem as compared to how much
17 it costs, doesn't it?

18 A That is the way I would interpret that
19 statement, that's correct.

20 Q And that means he expects as a policy that
21 he implemented for this company to correct the
22 environmental problems it has caused regardless of how
23 much it may cost, right?

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1 A I'm not --

2 MR. COX: Object to the form.

3 A -- so sure that I would interpret that to be
4 that far reaching.

5 Q We just want to separate it to a point?

6 A Well, I don't know that either. The only
7 thing I know is what I read.

8 Q And you read this, didn't you?

9 A I just read that, correct.

10 Q You read it before. You read it in 1989.

11 A Yes, I am familiar with that vision.

12 Q This man told you -- Mr. Corbett told you

13 that following this was not optional on your part,
14 correct? That's what he told you, following these
15 guidelines is not optional. Isn't that the words he
16 used?

17 A I think he said the spirit of those
18 guidelines was not optional.

19 Q That's right.

20 A Yes.

21 Q That means if you as an individual disagreed
22 with them, too bad, follow them anyway. Isn't that
23 what he's telling you?

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1 A The only thing that I can -- I don't know
2 whether he told me anything. I mean, that's the way I
3 interpret that statement.

4 Q Do you recall reading this 1989 guideline,
5 sir, worldwide guideline number two? By the way,
6 worldwide, that means he expected this to be done
7 everywhere in the entire world, right?

8 A That's correct.

9 Q Every plant, every facility Monsanto had all
10 over the globe had to follow these guidelines, right?

11 A I believe that it said that they had to
12 follow the guidelines or the spirit of those
13 guidelines.

14 Q You keep saying that. In your mind, is

15 there a difference between following the guidelines

16 and the spirit of the guidelines?

17 A There may be. I only reference that because

18 that's what Mr. Corbett -- that's the way he

19 distinguished it in his cover letter.

20 Q So that gives Monsanto employees a little

21 wiggle room to not comply with what they're being told

22 to comply with and then when they get caught not doing

23 it, they can say well, we were complying with the

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1 spirit of them? Is that the reason that --

2 A I don't know what the reason was.

3 Q Is that why you keep using that word

4 "spirit"?

5 A No.

6 Q Are you concerned that perhaps Monsanto

7 didn't follow all these guidelines down here at

8 Anniston?

9 A No, that's not a concern of mine at all.

10 Q You think Monsanto followed them all, don't

11 you? Strike that.

12 Let me ask it this way: As the manager of

13 environmental affairs, you expected Monsanto employees

14 to follow these guidelines back in 1989, didn't you?

15 A At that particular point in time in 1989, I

16 was not environmental manager. I was manager of
17 product labeling, safety and health. There were some
18 of those guidelines that I was more familiar with.
19 Q And some of these -- the bottom line, sir,
20 is the people at Anniston were required to follow
21 these environmental, safety and health guidelines just
22 like every other employee at Monsanto all over the
23 world, right?

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1 A In the United States, that would be correct.
2 Q Well, this says worldwide guidelines. It
3 doesn't say anything about the United States, does it?
4 A That's correct, but I think that the letter
5 -- the cover letter where Mr. Corbett talks about we
6 will either follow these specific guidelines or the
7 spirit of those guidelines is meant to be relayed to
8 certain operations outside the United States where you
9 may have a particular plant in an ex-U.S. area that
10 following those guidelines would be in conflict with
11 local regulations.
12 Q That doesn't have anything to do with
13 Anniston, does it?
14 A No, but --
15 MR. COX: You asked him why he made the
16 distinction.
17 MR. GRAMMAS: I don't care.

18 Q But it doesn't have anything to do with
19 Anniston?
20 A Well, we talked about worldwide.
21 Q Okay. What you're saying is in some
22 countries the environmental regulations may be less
23 stringent than they are in the United States and if

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1 that's the case, don't worry about these guidelines,
2 follow the less stringent regulations? Is that what
3 you're saying?
4 A No. It's my understanding that in certain
5 countries outside the United States the environmental
6 regulations may in fact conflict with those
7 guidelines. That being the case, then we could not in
8 good conscious tell a location to follow these
9 guidelines if in fact it did conflict with local
10 regulations.

11 Q The only way it's going to conflict is if
12 the guidelines are more stringent, right?

13 A I don't know.

14 Q Excuse me. If the regulations are more
15 stringent than the guidelines?

16 A No, I wouldn't think so.

17 Q If the local regulations are less stringent
18 than the guidelines and you follow the guidelines, how

19 is that in conflict with the regulations?
20 A I think that you could have certain
21 requirements or provisions within those guidelines in
22 front of you that conflicted with environment, safety
23 or health regulations in certain countries outside the

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1 United States.
2 Q All right, whatever. In any event, however
3 you want to explain it, there's a document right here
4 that says worldwide guideline number two entitled
5 waste management, right?
6 Now, under paragraph two of this guideline
7 it says, "Landfill of acutely hazardous wastes and
8 incinerables will not be practiced." Did I read that
9 correctly?
10 A That's correct.
11 Q Now, you already testified, sir, that PCBs
12 are acutely hazardous materials. Do you recall that
13 testimony?
14 A That's correct.
15 Q Now, Mr. --
16 A They would be acutely hazardous in my view
17 under the OSHA hazardous communication standard.
18 Q Mr. Eley, how many pounds of PCBs are
19 landfilled in Anniston as we sit here today?
20 A I have no idea.

- 21 Q But you know they're there, don't you?
- 22 A I personally do not know they're there.
- 23 Q Sitting here today, you're not aware that

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- 1 Monsanto has covered PCBs with dirt at one of its
- 2 locations on the plant site?
- 3 A I have been told and I'm under the
- 4 understanding that there are PCB wastes in the
- 5 landfills. I personally have no knowledge of any
- 6 PCB-containing wastes in those landfills.
- 7 Q The worldwide guideline says that Monsanto
- 8 is not to practice landfilling acutely hazardous
- 9 materials, doesn't it? Didn't I read that right?
- 10 A I believe that's what it states in there.
- 11 Q It also says here, sir -- and you are
- 12 aware -- just so we're clear, you are aware that
- 13 Monsanto has landfilled PCBs in Anniston, right?
- 14 A As I understand, we have PCB wastes that are
- 15 landfilled in Anniston.
- 16 Q The next thing it says is fixation of
- 17 particularly mobile persistent or bioaccumulative
- 18 waste will be accomplished whenever warranted and
- 19 feasible or where required by regulation. Did I read
- 20 that correctly?
- 21 A That's correct.

22 Q Now, you've already testified earlier today
23 that PCBs are mobile, they are persistent and they are

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1 bioaccumulative, correct?

2 A Incorrect. I don't believe that I stated
3 that they were mobile. In fact, I suggested I did not
4 consider them to be mobile, but I did indicate that I
5 did think they were persistent and they
6 bioaccumulated.

7 Q You don't recall that testimony we went
8 through about PCBs sticking to dirt, dirt getting into
9 water, dirt moving and under that definition you said
10 they were mobile? Did you forget that?

11 A I think we were talking about movable versus
12 mobile, but then I clarified that in my terminology I
13 still didn't consider them mobile. But if, in fact,
14 we're talking about PCBs adhering very tightly to
15 sediment in a ditch system and then the water carrying
16 that and moving those and if one wants to consider
17 that to be mobile, then I would say yes.

18 Q Okay. But even with that qualification, you
19 have no qualms with admitting that PCBs are persistent
20 and bioaccumulate?

21 A It's my understanding that would be true.

22 Q Bioaccumulation means that it gets -- PCBs
23 begin to accumulate in biological organisms, right?

1 A Correct.

2 Q And because they're persistent, that means
3 that even though you eat a small amount each day over
4 time, the amount continues to grow and grow and grow
5 because they don't leave the biological system, right?

6 A Well, I think it could better be said that
7 because they don't metabolize in that particular
8 biological system. When I spoke of persistence -- we
9 can talk about it like that, but I really meant
10 persistence from the standpoint of natural breakdown
11 in the environment.

12 Q Okay. That's fair enough. When a fish eats
13 PCBs, it isn't going anywhere. It's going to
14 accumulate. And the more PCBs that they eat, the
15 higher levels of PCB detection you expect to find in
16 the fish, right?

17 A I'm certainly not an expert in that area,
18 but that's my understanding.

19 Q And the same is true for the human beings
20 who are eating the fish?

21 A I think the metabolism is different.
22 Biologically you're talking about a difference.

23 Q But PCBs bioaccumulate in human beings?

1 A It's my understanding they bioaccumulate,
2 but perhaps there is a difference.

3 Q Monsanto's worldwide guideline on waste
4 management says that we have to fixate these
5 chemicals. And I looked in the dictionary about
6 fixation and it said to fix it. That's what it
7 means. So, when Monsanto's guidelines tell you that
8 fixation of mobile, persistent or bioaccumulative
9 wastes will be accomplished whenever warranted, that
10 tells me that when Monsanto knows that it's
11 responsible for dumping PCBs in this environment, they
12 need to go out there and clean it up. Is that your
13 understanding of that statement?

14 A No.

15 Q What's your understanding of it?

16 A Could I see the statement again?

17 Q Sure.

18 A I guess several issues. We started out or
19 you started out with the question of talking about
20 acutely hazardous.

21 Q No. I'm talking about fixation.

22 MR. COX: Well, just let him finish.

23 A I'm just trying to --

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1 Q That question about acutely
2 hazardous doesn't have anything to do with what I
3 asked you. You've answered it. I was content with
4 your answer. If your lawyer wants to talk to you
5 about it, that's fine.

6 A I answered acutely hazardous, but not in the
7 context of waste regulations.

8 MR. GRAMMAS: Strike that from the record.
9 If you want to ask him questions about it, you're more
10 than welcome to ask him.

11 MR. LOWE: We object to being nonresponsive
12 to the question.

13 MR. GRAMMAS: I adopt his objection.

14 Q (By Mr. Grammas) My point is, sir, I want
15 to ask you questions. And if you feel like you need
16 to explain something, feel free to talk to your lawyer
17 about it.

18 MR. COX: If you need to explain something
19 to Mr. Grammas, you can explain something to Mr.
20 Grammas.

21 Q I'm not asking you anything about acutely
22 hazardous right now.

23 MR. COX: You're asking him about one of the

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1 guidelines?

2 Q I'm asking you, starting with the word

3 "fixation" of particularly mobile, persistent or
4 bioaccumulative wastes will be accomplished, that's a
5 guideline that Monsanto imposed upon itself, right? I
6 mean, did I read it right?

7 A That -- you've read it correctly.

8 Q And that's a guideline -- those are the
9 words Monsanto put down there, not me, isn't that
10 right?

11 A Correct.

12 Q So Monsanto is telling you to fix it. If
13 you put PCBs in a river, fix it. I mean, these words
14 aren't stated in a vacuum, are they? That's a
15 question. Are these words written in a vacuum?

16 A No.

17 Q They mean something, don't they?

18 A Yes. Like all words, they mean something.

19 Q And what other chemical are you aware of
20 sitting here today that is more bioaccumulative than
21 Monsanto manufactured than PCBs?

22 A I'm not aware of all the chemicals that
23 Monsanto has manufactured and the relative

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1 bioaccumulative properties of those chemicals.

2 Q I understand that. Monsanto has made
3 thousands and thousands of chemicals over the years.

4 That would be an unfair question for me to ask of you.

5 What I asked of you is sitting here today,

6 sir, what chemicals are you aware of that are more

7 bioaccumulative than PCBs that Monsanto manufactured

8 over the course of its history? And if you're not

9 aware of any, that would be a fine answer.

10 A I'm not aware of any.

11 Q Okay. So, one could argue that this

12 particular guideline was written almost verbatim for

13 PCBs?

14 MR. COX: Object to the form.

15 Q It's certainly a bioaccumulative

16 chemical, right?

17 A PCBs to my understanding do bioaccumulate.

18 Q Monsanto says when we are responsible for

19 putting in a chemical that bioaccumulates, fixation is

20 the remedy, fixation means to fix, I looked it up.

21 That means take it out of the system, doesn't it?

22 MR. COX: Object to the form.

23 A I would have to get the dictionary and look

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1 at the definition of fixation.

2 MR. LOWE: Well, let's get it. Let's

3 take a break.

4 (A break was taken.)

5 Q (By Mr. Grammas) All right. We have in my

6 hands a Random House Dictionary and I have for your
7 convenience turned to page 340 of the dictionary and I
8 will draw your attention to the word "fixation".

9 Could you read the first definition out loud, please,
10 sir?

11 A The act of fixing or state of being fixed.

12 Q Okay. Fixation means to fix, right?

13 A To fix. So, perhaps what we need to do then
14 is discuss the word "fix". Because I also read on the
15 same page, 340, the definition of fix is to make firm,
16 stable or stationary. That is the way that I
17 interpret fix and that's the way that I interpret
18 fixation is the process of doing that.

19 Q So, when you're reading this that PCBs are
20 getting into the environment and bioaccumulating,
21 you're saying you want to stabilize that, you want to
22 make sure that they continue to get into the
23 environment and bioaccumulate. Is that what you're

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1 saying?

2 MR. COX: Object to the form.

3 Q I'll take that definition if that's what you
4 mean. I don't think it is.

5 A The way that I -- well, I'm not quite sure
6 exactly what Mr. Corbett had in mind when he wrote

7 this or whoever did write this.

8 Q When you take your car -- when you get a
9 flat tire, you fix your flat tire, don't you? I mean,
10 we're going to talk about the word "fix" now. It
11 means to repair in that context if you have a flat
12 tire and you fix it.

13 A To repair it in that context, yes.

14 Q Now, when you've got an environmental
15 problem like a persistent chemical, one that's flowing
16 within an environmental system like bodies of water
17 and one known to bioaccumulate, if you factor all
18 those things in, those three things have meaning,
19 sir. What's happening, correct me if I'm wrong, is
20 that they're moving around the system, that they're
21 staying there a long time and that they're finding
22 their way into the food chain. That's what PCBs do in
23 the water environment, don't they?

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1 A PCBs in a water environment would be
2 available either in -- to some extent in the water,
3 but more so in the sediment and as a part of the
4 sediment, it would be available for aquatic life and
5 then bioaccumulate.

6 Q Everything I said was true. PCBs in the
7 water system adhere to the sediment, move around as
8 sediment moves around because they're stuck to it,

9 stays in the environment a long time because they're
10 persistent and bioaccumulates in the food chain,
11 right? We've already talked about all that. That's
12 an easy one. You can say right on that and we can go
13 to the next one.

14 A That's correct.

15 Q Okay. So, when you've got all those factors
16 happening and the guy -- whoever wrote this as a
17 worldwide guideline here for waste management says the
18 way to resolve this problem is fixation, tell me if
19 I'm reading it wrong, sir. To me it means fix it,
20 repair it, resolve it. Am I reading it wrong?

21 A Yes.

22 Q And the only way to fix a persistent
23 chemical that doesn't break down naturally in the

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1 environment is to remove it from that system, right?

2 A Incorrect.

3 Q Okay. Tell me the ways to do it.

4 A Well, I'm certainly not an expert on
5 remediation or remediation technology.

6 Q Well, let's stop right there then. If
7 that's true, sir, why did you tell me I was wrong?

8 And then once you've committed to the fact that my
9 question is wrong, when I ask you why, you basically

10 say I don't have the expertise to tell you why it's
11 wrong.
12 MR. COX: No, he is qualifying his answer if
13 you'll let him finish his answer.
14 A I'm just giving you my opinion.
15 Q Which isn't based on fact or experience or
16 knowledge; is that correct?
17 A Right. I think that I have adequately
18 attested to that many times today.
19 Q So really then to cut all this line of
20 questioning short is when it says fixation, you don't
21 know if that means to suck it out of the river or not
22 because you don't have any experience with PCBs?
23 A No. My interpretation of fixation and the

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1 way I would look at that is I would go back to reading
2 a definition of fixed which, as I said, is to make
3 firm, stable or stationary.
4 There's also another definition of fix in
5 this dictionary and that is to repair or mend. Those
6 two are not synonymous in my view.
7 Q Well, I agree.
8 A You just discussed fixing your car or
9 repairing it.
10 Q Uh-huh. How are you going to make this
11 firm, stable or -- what was the other word?

12 MR. COX: Stationary.

13 Q How are you going to make PCBs out here in
14 Logan Martin and Choccolocco Creek and Snow Creek
15 firm, stable and stationary?

16 A That's not within my expertise or
17 discipline.

18 Q Would it be easier to make them firm, stable
19 or stationary or to suck them out of the system with a
20 dredging machine and get rid of them?

21 A I don't know.

22 Q In any event, regardless of the definition,
23 you'll agree that in your guidelines, in Monsanto's

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1 guidelines you're supposed to do one of those two
2 things when PCBs are in our water system, right?

3 A What two things?

4 Q Well, the two definitions you chose to focus
5 on on fixed, either to stabilize them, make them firm
6 or whatever or alternatively to repair it? The two
7 definitions you gave me.

8 A And I think it's the former definition that
9 that particular statement applies to when it talks
10 about fixation of persistent and whatever type of
11 compounds.

12 Q And what facts, experience, courses,

13 training, education do you have to draw that

14 conclusion?

15 A In terms of the interpretation of that word

16 "fixation"?

17 Q Yeah.

18 A I guess just my experience and education in

19 environmental engineering.

20 Q Okay. But you don't have any experience,

21 education, blah, blah, blah with PCBs other than this

22 one project here in Anniston?

23 A That's correct.

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1 Q Now, I left during the break and I went to

2 go get a dictionary which occupied some of our

3 discussion. While I was gone, did you have an

4 opportunity to look at some of the tabs that I have

5 put on this document, Plaintiff's Exhibit Number 5?

6 A Did I have the opportunity?

7 Q Yeah.

8 A I guess I had the opportunity, but I did not

9 take -- I did not look at any tabs.

10 Q So, the first questions you're going to

11 have -- the first -- when I point now to this section

12 of the same -- I guess it's page two of the waste

13 management number two worldwide guideline on this

14 document, section four entitled Corrective and

15 Remedial Action, have you read this section? Did you
16 read this section while I was gone at the break?
17 A No.
18 Q But you've read it before because you
19 received a copy of this document?
20 A I'm not sure I've read it before.
21 Q What's ground water?
22 A Ground water is water that would be or be
23 contained in the subsurface of the earth's crust.

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1 Q That's not water that travels on the ground?
2 A No. That would be subsurface water.
3 Q What do you call the water that leaves
4 Monsanto's plant, gets into a ditch and then flows
5 into Snow Creek and then into Choccolocco Creek and
6 then into Lake Logan Martin? What do you call that --
7 A Storm water or storm water runoff.
8 Q What's Monsanto's policies, procedures
9 regarding cleaning up PCB contaminated sites that it
10 is responsible for contaminating, if there is such a
11 policy?
12 A I have not seen, nor I am aware of any
13 policy on the part of Solutia, Inc.
14 MR. COX: Can we take a break? I'm sorry.
15 (A break was taken.)

16 Q Isn't it true, sir, that a policy Monsanto
17 has or had at least in 1989 was that at sites where it
18 felt it was the major contributor, it would seek a
19 leadership role it says when appropriate -- and we'll
20 talk about that -- to facilitate resolution? Did I
21 read that correctly?
22 A Yes. That's exactly what is states there.
23 Q Now, again, these words have meaning, don't

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1 they?
2 A Yes.
3 Q They aren't just written there just for the
4 sake of somebody to spend some time during an office
5 day to fill up some hours, are they?
6 A That's my understanding, that's correct.
7 Q Now, Monsanto at the Anniston plant for
8 close to 40 years manufactured millions of pounds, if
9 not more, of PCBs, right?
10 A I believe I said that I thought it was
11 probably in the order of millions of pounds or more,
12 correct.
13 Q Isn't it fair to say then, sir, at the
14 Anniston site Monsanto is a major contributor of PCB
15 contamination issues both on site and off site in that
16 area?
17 MR. COX: Object to the form.

18 A On site I think I would agree with you. Off

19 site I haven't got -- I don't know. I haven't got all

20 that information.

21 Q You mean you don't know what other potential

22 sources there are out there?

23 A Correct.

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1 Q But whatever those sources are, they got the

2 PCBs from Monsanto assuming they even exist?

3 A Not necessarily.

4 Q Here in the United States?

5 A They may have imported them.

6 Q For the sources to -- these other sources

7 that you think may exist -- now, for the record, you

8 haven't identified a single source that's contributed

9 to this problem other than Monsanto, have you?

10 A That's correct.

11 Q And you're talking -- when you say there may

12 be others, you're not saying you know of any. You're

13 just saying you don't know that there aren't any?

14 A That's correct.

15 Q For them to be a contributor of this problem

16 equal to or greater than Monsanto, they would need to

17 use millions of pounds of PCBs in their operations

18 around this area. Would you not agree with that?

19 A Not necessarily, no.

20 Q Tell me how come not.

21 A Well, again, this would just be a

22 theoretical issue.

23 Q Sure.

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1 A If I'm a user of a PCB formulation -- for
2 example, if I were going to import in Decachlor --
3 which I know there was a lot of importation I believe
4 in the United States of Decachlor for the use in
5 investment casting, for example. Then if I were a
6 significant user, certainly not millions of pounds per
7 year or whatever, but if I had a substantial quantity
8 on site and then something happened where I lost a
9 substantial amount of material in a number of
10 different drums, then it's conceivable in my mind that
11 under that scenario you could have a significant
12 contribution of PCBs into a water body.

13 Q Even compared to a company that for 40 years
14 was manufacturing millions of pounds and sewerage
15 thousands and thousands and thousands of pounds of
16 this every year into this system? You would think in
17 that scenario you gave they could compare to the
18 contribution of Monsanto?

19 A I don't know whether they could compare or
20 not. It seems like to me it's kind of an apples and

21 oranges situation.

22 Q It does to me too.

23 A But I just don't -- that's why I say I don't

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1 have all the information, all the data to really say

2 definitively one way or the other.

3 Q Fair enough. Assume for me, if you will,

4 that Monsanto was the major contributor here. You

5 would not disagree with me under your own self-imposed

6 rules that in that situation you would have to take a

7 leadership role in remedying the problem?

8 MR. COX: Object to the form.

9 MR. GRAMMAS: Note for the record that Buddy

10 has directed him to a portion of the document.

11 MR. COX: No. I'm just directing him to

12 look at the whole section that you're pointing at

13 instead of just the one sentence you're taking out of

14 context.

15 MR. GRAMMAS: I'm not taking anything out of

16 context.

17 MR. COX: Note my objection.

18 A And we had a -- and you say we had a

19 hypothetical that we were a major contributor?

20 Q Right. Just assume that the jury finds that

21 Monsanto's manufacture of these millions of pounds of

22 PCBs right there in the middle of Anniston and

23 Monsanto's release of not telling how many thousands

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1 and thousands of pounds of PCBs into this system made

2 Monsanto a major contributor. Just assume that to be

3 true. I'm not saying it is in your mind. I'm saying

4 just assume it to be true.

5 A Uh-huh.

6 Q If that were true, under Monsanto's very own

7 self-imposed guidelines, it would need to take a

8 leadership role to resolve that problem?

9 MR. COX: Same objection.

10 Q Correct?

11 A That's correct.

12 Q Okay. Now, that means that Monsanto has an

13 obligation to determine if it's a major contributor,

14 doesn't it? Again, these words aren't written in a

15 vacuum. That says hey, if there's some problems

16 around our plant, we need to find out if we are a

17 major contributor, doesn't it?

18 MR. COX: Same objection.

19 A I don't see that here.

20 MR. COX: Excuse me.

21 (A break was taken.)

22 Q If Monsanto requires itself to take a

23 leadership role in fixing an issue that it is

1 determined to be a major contributor, Mr. Eley,
2 doesn't that necessarily mean that before they can
3 even do that Monsanto needs to find out if it is a
4 major contributor?

5 MR. COX: Object to the form.

6 A One would seem to precede the other one, but
7 this right here does not speak in my view to the issue
8 of determining to what extent you are a contributor.

9 Q Right. Monsanto got these guidelines up in
10 place because it wanted the world to know that it was
11 an environmentally conscientious company, right, among
12 other reasons?

13 MR. COX: Excuse me.

14 (A break was taken.)

15 MR. GRAMMAS: Can you read back the last
16 question?

17 MR. COX: And I again apologize. My phone
18 is now off and we will have no further interruptions.

19 (Record read.)

20 A I think at that particular point in time in
21 1989 the environmental stewardship of Monsanto was
22 well established.

23 Q Part of the stewardship was this document,

1 wasn't it?

2 A Yes. When I speak of environmental
3 stewardship, it's in a broad sense covering both -- or
4 covering environment, safety and health. And I think
5 that we may have published some guidelines even prior
6 to this. And so I think again in my view our
7 stewardship and practices were well established and I
8 don't know whether that was, in fact, an overriding
9 factor for -- to let the world know or for publicity
10 or whatever that these particular documents were
11 developed.

12 Q Was Monsanto just going to sit around and
13 wait for somebody to tell them that they're a major
14 contributor before they "take a leadership role"?

15 A I don't know.

16 Q That seems inconsistent with being a leader,
17 doesn't it?

18 A No opinion on that.

19 Q When you're a leader on something, that
20 means to take the forefront, to be the driving force,
21 doesn't it?

22 A That would be one characteristic of
23 leadership, yes.

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1 Q To "do the right thing" as Mr. Corbett said

2 earlier in this guideline, right?

3 A You would expect your leaders to do the

4 right thing, correct.

5 Q And doing the right thing, Mr. Eley, in a

6 situation that Monsanto faces in Anniston regarding

7 PCBs is to find out exactly how much they contributed

8 -- it contributed to the PCB problem compared to any

9 other potential people, right?

10 A When, in 1989?

11 Q Right.

12 A I don't know because I'm not -- prior to

13 1996, I'm not really knowledgeable of the PCB

14 situation at the Anniston plant.

15 Q Here it is 1998 and you're being sworn under

16 oath to give a deposition about PCB remediation in

17 Anniston and you cannot identify one other source of

18 PCB contamination in the Anniston area, can you?

19 A I have not so far.

20 Q Now, certainly to be a leader Monsanto

21 before now should have already done that, shouldn't it

22 have?

23 MR. COX: Object to the form.

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1 Q In your opinion?

2 A Should have done what?

3 Q Should have determined if they are in fact
4 the major contributor so that they can go out and
5 fixate it as their other regulations require.

6 A I believe --

7 MR. COX: Same objection.

8 A Are we talking specifically about -- under
9 this guideline?

10 Q Sure.

11 A I guess my interpretation is knowing the
12 history of the Anniston location and the PCB issues,
13 that the way I interpret and define the word
14 "fixation," that's something that was practiced there
15 at that plant well before 1989.

16 Q What does all that mean? Monsanto is not
17 going to do anything about it? Because to date,
18 Monsanto hasn't done a single thing to remediate
19 Choccolocco Creek and Lake Logan Martin, true?

20 A I don't know.

21 Q Well, are you aware of any dredging that
22 Monsanto has performed in these areas to remove PCB
23 from the sediment?

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1 A No, I'm not aware of any dredging.

2 MR. COX: That Monsanto has done?

3 A That Monsanto has done or I'm not

4 specifically aware of any dredging that other people
5 have done.

6 Q Monsanto according to this document required
7 itself and imposed upon itself -- Monsanto imposed an
8 obligation upon itself to take a lessened legalistic
9 approach to site cleanup negotiations; is that right?

10 A I don't know.

11 Q Did I read that right?

12 A That sentence reads, "We intend a lessened
13 legalistic approach to site cleanup negotiations."

14 Q Right. Isn't that what I said?

15 A I believe that's what you said, yes.

16 Q It says, "Where Monsanto's responsibility is
17 fairly established, we will not delay cleanup
18 unnecessarily by legal, yet negatively perceived
19 litigious steps," doesn't it?

20 A That's what that document states.

21 Q Now, Mr. Eley, that means in spite of the
22 fact that Monsanto can go through all sorts of legal
23 proceedings with the federal government, with the

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1 Alabama Department of Environmental Regulations, with
2 the Alabama Department of Public Health, with the
3 plaintiffs who are now suing them and with the
4 hundreds of plaintiffs who have sued them in the past
5 over these issues, in spite of all that Monsanto is

6 supposed to fix the problems that it has caused in
7 this river system, right, and to not delay the
8 fixation by engaging in protracted litigation? Isn't
9 that what that says?

10 MR. COX: Object to the form.

11 A No, that's not what this says.

12 Q It doesn't say that?

13 A No.

14 Q Okay. We'll let the jury determine what
15 that says. Now, you testified earlier, sir, that it
16 is fairly established -- and you used those words and
17 I made sure you used those words -- that Monsanto was
18 responsible for the PCB contamination on the
19 neighboring property. Do you recall that testimony?

20 A I believe so, and there were certain
21 properties where I think we -- or I agreed with that,
22 other properties which I did not.

23 Q Okay. And in your deposition you gave in

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1 July of this year, sir, you were asked why Monsanto
2 bought the property it did and your answer was to
3 control PCB movement downstream. Do you recall that?

4 A I believe I stated to control, minimize or
5 contain the possibility of PCB release off site.

6 Q Right, off site. In other words, you bought

7 PCB contaminated property so you can now -- so
8 Monsanto can now take the position that that property
9 belongs to it and it will do with the PCBs what it
10 wishes to do, right?

11 A No, absolutely not.

12 Q Let me ask you this: Have y'all removed the
13 sediment on this property?

14 A Which property?

15 Q On the property you bought.

16 MR. COX: And the reason he is -- I'm sorry
17 to interject. The reason he's having trouble is that
18 there are different properties in different areas that
19 he bought -- that Monsanto bought, not Bruce, and
20 Solutia now owns and there have been different
21 remediations on the different properties. So, you're
22 painting with a little too broad of a brush, Pete.
23 I'm sorry.

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1 Q In any piece of property that y'all bought
2 as a result of the remediation efforts relating to
3 PCBs at the Monsanto plant, have y'all removed any
4 dirt?

5 A Yes, I believe so.

6 Q Did you take that dirt to Emelle?

7 A Not that I'm aware of.

8 Q Are you aware, sir, that in samples that

9 exceed 50 parts per million that the PCBs must be
10 taken to a hazardous waste landfill?
11 A That's my understanding, yes.
12 Q Well, I showed you a document that was 990
13 parts per million. Did y'all remove any of the dirt
14 on that piece of property?
15 A No.
16 Q It's still there?
17 A It's still there.
18 Q PCBs are still there?
19 A That's correct.
20 Q Do you believe, sir, that Monsanto has
21 delayed cleanup by unnecessary legal action on this
22 particular site?
23 A Do I believe that?

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1 Q Yeah.
2 A Certainly not.
3 Q Now, Monsanto knew that it manufactured PCBs
4 and that those PCBs were getting in the environment
5 since the '50s, right?
6 A I don't know.
7 Q Tell me, sir, when it is you believe
8 Monsanto first learned, the first time ever that PCBs
9 it manufactured at its Anniston plant escaped its

10 property and got into neighboring property.

11 A I have no idea.

12 Q Well, has it been more than ten years?

13 A I have no idea.

14 Q It was before you got involved in this deal,

15 wasn't it?

16 A Yes, I believe so.

17 Q And you got involved in 1995, right?

18 A My active involvement started in -- I

19 believe it was March 1996.

20 Q Well, what remediation action has Monsanto

21 taken to clean up Choccolocco Creek and Lake Logan

22 Martin?

23 A I'm not familiar with the remediation

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1 projects either on Choccolocco or Snow Creek.

2 MR. COX: He said Logan Martin.

3 A Logan Martin. Excuse me.

4 Q Are you aware, sir, that there are fish

5 advisories posted on these bodies of water?

6 A I have a general knowledge that there are

7 fish advisories.

8 Q And do you know what the fish advisories

9 tell people?

10 A No.

11 Q Would it shock you to know that the fish

12 advisories tell people to not eat the fish contained
13 in these bodies of water because the fish contain
14 levels of PCB in excess of EPA regulations?

15 A No. I think that --

16 MR. COX: Object to the form. That's not
17 what he said.

18 A I think that's -- well, am I surprised? Is
19 that the question?

20 Q Shocked was the word. Surprised is --

21 A Oh, shocked that the wording would say that?

22 Q Yes.

23 A No, not in the least. That's, I believe,

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1 typical of a fish advisory.

2 Q Right. And it's warning people not to eat
3 fish that have two parts per million or more of PCBs
4 in them, right?

5 A I don't know if that's what the fish
6 advisory says.

7 Q The fish advisory is saying don't eat any
8 fish at all out of this creek and out of this lake.
9 Are you aware of that?

10 A No, I don't know what the fish advisory
11 specifically states.

12 Q Do you believe that Monsanto is responsible

13 for that fish advisory being in place?

14 A Not that I'm aware of we're not responsible.

15 Q You don't think you are, do you?

16 A No.

17 Q Why?

18 A The fish advisory pertains to you say Lake

19 Logan Martin?

20 Q Choccolocco Creek, Lake Logan Martin.

21 A Different fish advisories or the same fish

22 advisory?

23 Q It's changed over the years. It's

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1 progressively gotten more restrictive. At one point

2 in time it's my understanding --

3 MR. GRAMMAS: And, Buddy, if I state this

4 wrong, correct me.

5 Q -- it warned against pregnant women eating

6 fish. At another point in time it warned against

7 eating a certain amount of fish at certain locations,

8 species of fish. Now it just says don't eat the fish

9 in Choccolocco Creek and in a large part of Lake Logan

10 Martin because of PCB contamination.

11 A Uh-huh.

12 Q That's what it says.

13 A Okay.

14 Q Now, you're saying --

15 MR. COX: More or less.
16 Q More or less. I don't know the exact words,
17 but that's in essence what it says. You're saying
18 Monsanto is not at least in part responsible for that
19 fish advisory being placed up there in this area
20 immediately below their plant?
21 A Are you asking for my opinion?
22 Q Right.
23 A Yeah. My opinion is I haven't got

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1 sufficient information to know all the contributors
2 and possible contributors of PCB in these particular
3 areas.
4 Q I understand that. But you know --
5 A And to me --
6 MR. COX: Wait. Let him finish.
7 Q I'm sorry.
8 A And to me proximity is irrelevant because --
9 Q Why is that?
10 A -- we're talking proximity of manufacture
11 when actually there's a lot of other sources that
12 conceivably could be along both those stretches of
13 water that entail use.
14 Q But you haven't been able to identify any.
15 A But I have not been out looking for use. My

16 involvement in this particular project I think was
17 summarized earlier which included a number of
18 different aspects of the project.

19 Q I understand that, sir.

20 A None of that responsibility dealt with me
21 personally going out to determine other sources or
22 possible contributors of PCB.

23 Q I understand that. So, why do you keep

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1 saying there may be others out there when you have no
2 basis in fact to make that statement?

3 A Because PCBs were used as general,
4 commercial and industrial chemicals from the 1920s
5 until the 1970s. I think we stated earlier that
6 perhaps millions of pounds of PCBs were manufactured.
7 Those PCBs would in turn have been used in a number of
8 different applications including electrical
9 transformers, capacitors, plasticizers, heat transfer
10 fluids, hydraulic fluids, carbonless copy paper.

11 I know that in the Anniston area there is or
12 has been a fairly good sized industrial base. I don't
13 know the experience of all the industry in the
14 Anniston area, nor do I know the experience of the
15 industry up and along the Coosa River.

16 Q Right. So, since you don't know, it's just
17 as likely, sir, that there are no other sources of PCB

18 contamination in this system?

19 MR. COX: Object to the form.

20 Q I'm not saying that's a fact. I'm just
21 saying based on what you know, it's just as likely
22 that there aren't any?

23 A No. I would say it's possible. I wouldn't

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1 put it in the domain of likelihood.

2 Q Okay. Worldwide guideline number six to
3 Plaintiff's Exhibit 5 --

4 MR. COX: Pete, I don't mean to interrupt
5 you, but is that a complete copy of that package as
6 far as you know?

7 MR. GRAMMAS: As far as I know, it is. I
8 mean, I have no idea. It's what y'all gave us and I
9 haven't --

10 MR. COX: It's all been produced in bulk,
11 so --

12 MR. GRAMMAS: I assume it is, Buddy.
13 There's all kind of crap jammed in it all over the
14 place, but I don't know for sure if it is or isn't.

15 Q Okay. World guideline number six, product
16 stewardship. It says here that Monsanto products will
17 not present an unreasonable risk of harm to human life
18 or health or to the environment when they are properly

19 handled, transported, used or disposed. Did I read
20 that correctly?
21 A That's correct.
22 Q And then it says right after that sentence,
23 "Stakeholders will be provided information regarding

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1 handling, storage, use and disposal of Monsanto
2 products."
3 A That's correct.
4 Q Did I read that correctly?
5 A That's correct.
6 Q Now, under the introduction, sir, a
7 stakeholder is defined to include customers, employees
8 and the community at large around the plants, right?
9 A That's true. And specifically that reads,
10 "Employees, customers and the community are all
11 important stakeholders that are directly affected by
12 Monsanto's product stewardship programs."
13 Q And when I said community around the plant,
14 I was trying to be fair to Monsanto. Does Monsanto
15 take the position in this worldwide guideline number
16 six regarding product stewardship that the community
17 is the entire United States?
18 A I don't know how the word "community" is
19 defined or what the scope or breadth of it would be.
20 Q But it would certainly include the folks

21 around the Anniston plant?

22 A Yes, it would.

23 Q And it would include the class members that

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1 I represent in this lawsuit, wouldn't it?

2 A I don't know if that would be true or not.

3 Q You think they're too far away to be part of
4 the community?

5 A Again, that would be my interpretation, but
6 I don't know how it's defined here and what the
7 breadth of the community would be.

8 Q Well, let's assume that it's included, that
9 these class plaintiffs are included in the community.
10 According to Monsanto, they're supposed to provide
11 information to these people about the disposal of its
12 products, right? Because they're a stakeholder,
13 correct?

14 A Assuming that the people in these
15 communities that you discuss are the same as the
16 people in this community, that would be correct.

17 Q How in the world -- you tell me what that
18 means then, the community. It means my plaintiffs to
19 me. You tell me why I'm wrong if you think I am.

20 A The way I interpret community here would be
21 those people that would be adjacent to Monsanto or in

22 the neighborhood of the Anniston plant or the plant --

23 let's see. In 1969, I was in the ag department, so I

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1 used to frequent Muscatine, Iowa and the Muscatine,
2 Iowa community.

3 Q Am I unreasonable in defining community as
4 any person who may be affected by products that
5 Monsanto produced at the Anniston plant? Would that
6 be unreasonable?

7 A Absolutely.

8 Q That would be unreasonable?

9 A Yeah.

10 Q Do you really think so?

11 A Sure.

12 Q You think that -- let me get this straight.

13 A Okay.

14 Q Monsanto is sewerage thousands of pounds of
15 PCB right out of a pipe, right into a ditch that goes
16 into Snow Creek into Choccolocco Creek and into Lake
17 Logan Martin. You'll agree with everything I just
18 said, right?

19 MR. COX: You want him to assume that --

20 MR. GRAMMAS: No, that's a fact.

21 A Is that an assumption?

22 Q No. I'm asking you. I mean, you as the
23 environmental manager of this entire company who you

1 come here today representing, you're not telling me
2 that you're unaware of that practice that went on for
3 40 years at your company, are you?

4 A I am unaware of that practice prior to
5 certainly 1969 and probably up until about 1995 or
6 '96.

7 Q When you say you're unaware of it, are you
8 saying you didn't know it was happening or it was not
9 happening?

10 A The only thing I can say is what I know and
11 so, I cannot speak to what I don't know and so, when I
12 say I'm not aware, then I don't know.

13 Q That didn't answer my question. Are you
14 testifying here under oath, Mr. Eley, that Monsanto
15 employees did not sewer intentionally thousands and
16 thousands of pounds of PCBs off of its site into this
17 eco system?

18 A And I'm saying I don't know.

19 Q And so that means you're not in the position
20 to dispute that fact, correct?

21 A I think it means what I state and that is
22 that I don't know.

23 Q Well, let's just assume that that is a

1 fact. Let's assume that Monsanto did that, sewered
2 PCBs that floated into Snow, Choccolocco Creeks and
3 into Logan Martin. Okay? Those PCBs because of their
4 persistent characteristics and their bioaccumulative
5 characteristics are now in Lake Logan Martin, in
6 Choccolocco Creek bioaccumulating in fish that people
7 eat, causing fish advisories on Choccolocco Creek and
8 Logan Martin. Assume all those facts to be true.
9 Okay? Are you with me?

10 A And we are the contributor?

11 Q And you're the contributor.

12 A We're the contributor. Okay.

13 Q With all those facts assumed, sir, are the
14 people who are members of this class who live on
15 Choccolocco Creek and Lake Logan Martin in your
16 opinion considered part of the community that this
17 product stewardship guideline is telling to us?

18 A No, I don't believe so.

19 Q They're still not. So, in your opinion
20 then, Mr. Eley, these people don't have a right to
21 know what Monsanto dumped in this river system. Is
22 that a fair statement?

23 A No, not at all.

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1 Q According to this guideline in your opinion
2 Monsanto doesn't have any obligation to disclose to
3 these people how they dispose of these PCBs. Is that
4 what you're saying?

5 A No, that's not what I'm saying.

6 Q Does Monsanto have an obligation to tell
7 these people what they did with their PCBs?

8 MR. COX: Object to the form.

9 Q In your opinion?

10 A Under the hypothetical situation that you
11 just discussed where you have -- and your question is
12 do we have an obligation to tell that community as you
13 defined them what?

14 Q How they disposed of PCBs.

15 MR. COX: How who, Monsanto?

16 MR. GRAMMAS: Of course.

17 A I don't know whether we had that obligation
18 or not.

19 Q Well, under your worldwide guideline number
20 six --

21 A Okay.

22 Q -- read to the jury starting with the word
23 "stakeholder" what Monsanto required you and all of

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1 its employees to do.

2 A "The stakeholders will be provided

3 information regarding handling, storage, use and
4 disposal of Monsanto products." And the way that we
5 have done that for many years is through the use of
6 our material safety data sheets which fall under the
7 domain of the product safety or product stewardship
8 group.

9 Q Just so the record is clear, Mr. Eley, PCBs
10 were in fact a Monsanto product?

11 A PCBs I believe were contained in a series of
12 Monsanto products and formulations.

13 Q You know, that brings up an interesting
14 point. In these testing letters that you sent to
15 these people -- we've identified one as an exhibit.

16 MR. COX: Here it is.

17 Q Just so you'll know what type of letters I'm
18 talking about.

19 A Correct.

20 Q On some of these people's property that
21 tested above five parts per million, you went and did
22 further testing, didn't you? Monsanto or Solutia,
23 whoever it was, not you personally, but your company

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1 that you were working for tested the products further
2 at that point when they learned that PCBs were present
3 in over five parts per million in the soil?

4 A I think we did further analysis.

5 Q Right. And that further analysis was done

6 to tell you what type of Aroclor you were finding,

7 right?

8 A The analysis was to confirm analytically

9 what the level of PCBs were. The particular

10 analytical procedure was the one that I believe ADEM

11 requested us to use. Now, as a part of using that

12 analytical procedure, the analytical results are

13 reported in mixtures of PCBs, but the purpose of

14 actually doing the further analysis was not to

15 discriminate the various PCB mixtures.

16 Q But that was one of the results of the

17 further testing, right?

18 A The data was reported in that fashion using

19 that EPA analytical method.

20 Q Right. In other words -- let's break it

21 down so I can understand this in laymen's terms.

22 After Monsanto did its testing, it knew exactly which

23 Aroclors were in these people's properties, didn't it?

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1 A I'm not an expert in analytical chemistry

2 and certainly not in the analysis that was done, but

3 the analytical results as reported by the laboratory

4 to our sampling people, as I understand, did

5 differentiate various Aroclor mixtures based on an

6 analytical fingerprint --

7 Q That's right.

8 A -- of the sample results.

9 Q And a fingerprint -- if I stick my thumb

10 right here and lift it off and I walk away and even

11 though nobody is here anymore, somebody can come by

12 and dust that spot and match it and say Pete Grammas

13 was here. That's what a fingerprint is, right?

14 A Correct.

15 Q In other words, after y'all got through with

16 all this testing, Monsanto knew that the PCBs it put

17 on these people's property were in fact from Monsanto,

18 not from any other source in the whole world because

19 it was fingerprinted right to your Aroclors, right?

20 A The samples of -- we sampled soil. You just

21 stated that PCBs that we put on the soil or we put in

22 those properties --

23 Q Look, I don't want to put in any statements

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1 in this question that you're not happy with or that

2 you may take issue with. So, I'm going to reword it.

3 I'm going to word it very carefully.

4 Monsanto was able to determine that the PCBs

5 found on this property were PCBs manufactured at its

6 Anniston plant based on the fingerprint analysis you

7 got from these test results, correct?

8 A I don't believe so, no.

9 Q You don't think that's right?

10 A I don't believe so.

11 Q Monsanto could tell -- when we say Aroclor,

12 we mean the PCB, right?

13 A Aroclor --

14 Q Aroclor is PCB?

15 A -- is a trade name for Monsanto PCB

16 formulations.

17 Q Right. And there are different types of

18 Aroclors, right?

19 A There are different formulations --

20 different Aroclors, that's correct.

21 Q Some have more chlorine molecules than

22 others, right?

23 A That's correct.

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1 Q And after all this fancy testing, you were

2 able to determine which Aroclors were present on the

3 property, correct?

4 A Not really. We were able to determine by

5 this fingerprint, this profile which types or mixtures

6 of PCBs matched the analytical standards that were

7 used by the laboratory, the source of the standards

8 being various Aroclor mixtures.

9 Q Right. In other words, I leave a
10 fingerprint on a table, the FBI has a fingerprint in
11 its computer system, they dust it, my fingerprint and
12 they compare it and the two match. That's really what
13 you're saying.

14 A They've got a -- I think there is a fairly
15 close match. Analytically how that is carried out,
16 I'm not really sure.

17 Q I know you're not an expert on PCBs. You've
18 fairly disqualified yourself. But the fact remains,
19 sir, that after this testing Monsanto knew that the
20 PCBs that were being found on this property were PCBs
21 that were generated out of its Anniston plant or more
22 fairly, PCBs that were manufactured by Monsanto,
23 right?

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1 A I don't know that, no.

2 Q As of October 12th, 1990, Monsanto had a
3 policy of manufacturing only those products that did
4 not represent an unreasonable risk of harm when
5 properly handled, true?

6 A I believe we had a product stewardship
7 guideline or document that spoke to that issue.

8 Q And the reason y'all had that product
9 stewardship guideline is because in the past you had

10 manufactured products that posed an unreasonable risk
11 of harm to human beings, right?
12 A Incorrect.
13 Q Like PCBs, right?
14 A Incorrect.
15 THE WITNESS: Could we take just a couple
16 minute break to get some more coffee?
17 MR. GRAMMAS: Yeah.
18 (A break was taken.)
19 Q Back to this guideline. Do you recall
20 earlier I asked you about whether you were aware of
21 Monsanto using research animals to test the safety of
22 their products?
23 A Correct. I remember we -- you asked several

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1 questions regarding that.
2 Q You didn't recall whether that was ever
3 discussed or talked about to you or with you?
4 A Yeah. I didn't recall whether we had a
5 specific position or guideline on that issue.
6 Q Now, this environmental, safety and health
7 guideline that you did receive and have read before
8 has a bulletin entitled Research Animal Care, right?
9 A Correct.
10 Q And it talks about Monsanto Company
11 recognizing that animals must be used in research both

12 to determine the effects of various biological active
13 materials and the safety of its products, right?
14 A Where are you?
15 Q Right up there at the top.
16 MR. COX: He sort of paraphrased it.
17 A Right here?
18 MR. COX: The italicized words.
19 Q Now, that's what this document talks about,
20 right?
21 A That's correct.
22 Q In other words, Monsanto is aware that it
23 has in the past and may in the future manufacture

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1 products, chemicals that are dangerous to people,
2 right? I mean, that implicitly recognizes that?
3 A This implicitly recognizes that we may in
4 the future or currently manufacture materials that are
5 toxic.
6 Q Exactly. That's a better way of saying it.
7 Toxic is poisonous, right?
8 A No.
9 Q When I think of toxic, I think of a skull
10 and cross bones.
11 A That's not toxic.
12 Q What is toxic?

13 A Usually when you've got a Class B poison you
14 have to carry a skull and cross bones. Also, there
15 are specific criteria of acute toxicity and if you're
16 above that specific criteria, then it would be, I
17 believe, extremely toxic and then I think there would
18 have to be some skull and cross bones or carry the
19 danger signal word. If it carries a danger signal
20 word, then I would agree the product is dangerous.
21 Q Okay. Monsanto has in the past, currently
22 is and more likely than not will in the future
23 manufacture products that may have an adverse impact

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1 on human health if ingested?
2 A At sufficient concentrations, yes.
3 Q And to get to that level of concentrations
4 that you're wanting to distinguish -- because in your
5 opinion I guess some levels are so low it's not going
6 to have any health effects on human beings, right?
7 A I think that's a generally recognized
8 principle of toxicology.
9 Q Right. Of which you have no education,
10 training, experience or whatever?
11 A No. Just as we discussed, some seminars and
12 some training at Wayne State University.
13 Q You have a generalized familiarity of these
14 principles, but --

15 A Of industrial toxicology, correct.

16 Q Now, Monsanto knows that at certain levels

17 some of its products, including PCBs, right, have an

18 adverse impact on human health at certain levels?

19 A Could have, correct. That's right.

20 Q And the reason Monsanto uses research

21 animals is to try to figure out where that level is

22 based on rodents or mice or whatever it is they're

23 testing, correct?

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1 MR. COX: Are you asking --

2 A Yes, in a way you would use animals in order

3 to determine the toxicity of a particular chemical

4 either acute, subchronic, chronic using specific

5 protocols that have been developed in the field of

6 toxicology over the last 50 some odd years.

7 Q And you're trying to test -- what you're

8 doing is you're putting quantities in the animals,

9 determining the toxicity levels and then drawing an

10 analogy of the toxicity levels of the animal to that

11 of a human being in part because you're not going to

12 test human beings?

13 A In a way that would -- that's correct.

14 Q So, Monsanto uses animals to determine

15 potential human toxicity and has in the past and will

16 in the future, right?

17 A Yes. You would use animals to conduct your
18 toxicology experiences -- or experiments in order to
19 be able to get a better appreciation or an idea of the
20 possible toxic effects on humans, correct.

21 Q That's right. And there's nothing wrong
22 with those procedures and doing that, is there? I
23 mean, Monsanto does it.

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1 A In my view, there's nothing wrong with those
2 procedures.

3 Q Tell me what the Monsanto pledge was as of
4 January 30th, 1990, Mr. Eley, in your own words.

5 A The Monsanto pledge was a series of pledge
6 statements that Dick Mahoney came out with in or
7 around 1990. I think he came out with these
8 particular points at an environmental conference or a
9 conference hosted by the National Wildlife Fund or
10 some organization which spoke to the pledge or a
11 series of pledges that Monsanto had committed to
12 regarding environment, safety and health.

13 Q This was a pledge that the chairman and
14 chief executive officer of Monsanto made to the public
15 and in particular to the National Wildlife Federation,
16 correct?

17 A That's correct. That's -- I guess that's

18 the organization that I alluded to.

19 Q Right. And a pledge is a promise, isn't it?

20 A In my view, a pledge gets awfully close to a
21 promise.

22 Q Have you in your experience with Monsanto
23 and Solutia been required to read this pledge and

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1 follow the dictates of the pledge?

2 A I think after the pledge guidelines or the
3 pledge came out along with the pledge guidelines, it
4 was the expectation that all the employees would read
5 those -- the pledge documents and follow the intent of
6 those documents.

7 Q And that expectation was announced by Mr.
8 Richard Mahoney, the chairman and chief executive
9 officer, right?

10 A That's correct.

11 Q Now, he was the top dog at Monsanto at that
12 time, right?

13 A Yes.

14 Q And he expected everybody underneath him to
15 follow the Monsanto pledge, right?

16 A That's correct.

17 Q And Solutia adopted that pledge as its own,
18 right?

19 A I don't believe so.
20 Q You don't?
21 A No, not -- I think that we have at this
22 juncture the series of Solutia's commitments. Some of
23 those commitments may be similar to some of the pledge

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1 points, but I don't think it's the same document or
2 series of statements.
3 Q Is it because Solutia does not agree with
4 some of the pledges that Mr. Mahoney adopted that day?
5 A I don't know.
6 Q No one has ever told you as a Solutia
7 employee there's no way we're going to adopt that
8 pledge because we'll never comply with it all?
9 A No one has said anything about the origin of
10 the documents or the commitments that we have in the
11 environmental area.
12 Q Are you aware of any of these pledges that
13 Solutia refuses to adopt as its own because it will
14 not be able to comply with the pledge once it does
15 adopt it?
16 A I'm not familiar with any particular pledge
17 points of that sort.
18
19 (Plaintiff's Exhibit
20 Number 6 was marked for
identification.)

21 Q I'm going to show you what I have marked as
22 Plaintiff's Exhibit 6. The top of that document on
23 the right-hand corner says what, sir?

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1 A Solutia.com/Community/Monsanto pledge.
2 Q That's an Internet site, correct?
3 A Correct.
4 Q Right underneath that there's the Solutia
5 trademark?
6 A Correct.
7 Q And underneath that it says the Monsanto
8 pledge?
9 A Okay.
10 Q All right?
11 A Yes, it does.
12 Q Did I read all that right?
13 A Uh-huh.
14 Q Now, you're telling me that that doesn't
15 mean Solutia has adopted that pledge as its own?
16 A It seems like to me -- because in the top
17 left we have what's also called environmental
18 commitments and it seems like that Solutia has come
19 out with environmental commitments that do differ from
20 the specific pledge statements that are found in this
21 document. And those commitments I believe are not

22 called the Monsanto pledge, nor are they called the
23 Solutia pledge.

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1 Q But in 1990, when this pledge was made,
2 Monsanto was the company down here in Anniston that
3 was -- that owned the plant, right?

4 A Correct.

5 Q And it owned that plant until September of
6 1997?

7 A That's correct.

8 Q So, there was a seven-year period that
9 Monsanto's plant in Anniston was operating under this
10 pledge that you have in your hands, right?

11 A That's correct.

12 Q Third from the bottom, sir, would you read
13 to the jury what -- I'm sorry. His name has slipped
14 my mind.

15 MR. COX: Mahoney.

16 Q Mr. Mahoney promised to the world?

17 A Third from the bottom?

18 Q Uh-huh.

19 A "We must rectify the mistakes of the past
20 while we continue to develop and introduce the new
21 technologies to provide the essentials for mankind in
22 the future."

23 Q Rectify the mistakes of the past. If

1 Monsanto is proven to have discharged, dumped,
2 released, whatever word you want to select thousands
3 and thousands of pounds of PCBs into Snow Creek,
4 Choccolocco Creek and Lake Logan Martin, Mr. Eley, in
5 your opinion, does Mr. Mahoney's pledge to rectify the
6 mistakes of the past cover that conduct?

7 MR. COX: Object to the form. You can
8 answer it.

9 A Could I read the statement again?

10 Q Yes, sir.

11 A And this statement -- is this -- this
12 statement is not part of the Monsanto pledge?

13 Q It's my understanding that it is.

14 MR. COX: Isn't that a speech?

15 Q It was printed off of the Internet site as
16 part of the Monsanto pledge. I read it yesterday.
17 Let me ask you this: Do you feel that should not be
18 part of the Monsanto pledge?

19 A No. This is part of the -- it appears like
20 part of the speech and not part of the specific
21 pledge.

22 Q Well, let me show you something real quick
23 before we answer the question. The top part of this

1 document says Monsanto pledge in boldface, correct?

2 A Yes.

3 Q And then it says -- there's a paragraph

4 talking about who this Mr. Mahoney is, where he was

5 talking, who he was talking to and then it says -- and

6 on what date. And then it says, "Here is the pledge

7 announced by Mr. Mahoney." Did I read that correctly?

8 A Correct.

9 Q And then there are a series of quoted

10 paragraphs that start on that page and continue

11 uninterrupted through the end of this document,

12 right? Did I read all of that correctly?

13 A Yes, you did, but that is not part of the

14 Monsanto pledge.

15 Q Okay. Hold on just a second, Mr. Eley.

16 A I don't believe.

17 Q Part of this document -- one of the

18 pledges that -- right underneath this it says here is

19 the pledge and one of the pledges starts on page one

20 of two with a quote and it continues uninterrupted to

21 the second page, correct?

22 A Correct.

23 Q So, it's not like I took out one page and

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1 stuck it in there. I mean, these two were -- these
2 two pages flow together.
3 A Well, I'm not suggesting you did that. The
4 only thing is, as I recall, in reading over the
5 pledge -- because the pledge was a series of either
6 eight or nine bullet points, and as I recall reading
7 those specific bullet points that we call the Monsanto
8 pledge, I don't recall those -- or several of these
9 paragraphs, latter paragraphs as being the pledge
10 statements. That's the only thing I'm saying.

11 Q Well, I understand what you're saying and
12 that raised some concern in my mind. And I'll show
13 you this document. We'll go ahead and mark it.

14

15 (Plaintiff's Exhibit
16 Number 7 was marked for
identification.)

17 Q This is Plaintiff's Exhibit 7. It's a
18 letter dated November 11th, 1992 from Mr. Pierle.

19 A Mike Pierle, and that's the individual that
20 we spoke of earlier.

21 Q Now, in this letter he talks about a number
22 of things. One of the things that is cited is this
23 Monsanto pledge again, right?

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1 A This is the Monsanto pledge, right.

2 Q Right. That's your understanding of the

3 Monsanto pledge, right?

4 A No. This is the Monsanto pledge.

5 Q But if I go on the Internet and I read --

6 MR. LOWE: And look under Solutia.

7 Q If I go under the Internet and look under

8 Solutia and I pull up a document that's entitled

9 Monsanto pledge, it has a few more promises to the

10 public, doesn't it?

11 A I don't know whether I would call that a

12 promise or a statement.

13 Q Well, we're calling it a pledge and you told

14 me earlier that a pledge is mighty close to a promise.

15 A Yeah, but as I said, though, there are

16 several paragraphs in here that I don't believe were

17 part of the pledge and now I'm pretty well convinced

18 of it now that I see the Monsanto pledge.

19 Q From what you've seen as a Monsanto/Solutia

20 employee, you don't believe that these statements that

21 are stuck on the Internet are really part of the

22 pledge, right?

23 A That's correct, not the pledge that I -- as

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1 I understand the pledge and its various parts.

2 Q But anybody, including myself, who is

3 surfing the web and runs across the Solutia home page

4 and pulls down the Monsanto pledge is going to believe
5 that that entire document makes up the Monsanto
6 pledge. I mean, isn't that a fair statement?

7 A I guess as I read this certainly if you look
8 at the original one, two, three, four, five, six,
9 seven and eight, then I would say that looks to me
10 like it's part of the pledge because it says it is our
11 pledge or our commitment is.

12 Q Okay. That's not what I asked you. That
13 document says below is the pledge and then it has
14 about nine or ten items, bullets --

15 A Paragraphs.

16 Q Paragraphs --

17 A Uh-huh.

18 Q -- below it. Let's don't mix words. Do you
19 have a problem sitting here today under oath
20 testifying in this case as to committing right here
21 today as part of the pledge to rectify past harms?
22 Let's assume that it's not part of the pledge even
23 though it says it in this document. Can you think of

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1 a reason why that wouldn't be part of the pledge?

2 A It's not part of the pledge.

3 MR. COX: I think you've established that.
4 I think the problem is one of definitions and I think
5 what Pete is trying to get at now is if it's not a

6 part of the pledge, should it be. Is that your

7 question?

8 Q My question is if it's not a part of the

9 pledge, why isn't it?

10 A I don't know why it isn't part of the pledge

11 if it's not.

12 Q Don't you think that would be something good

13 for Monsanto to pledge?

14 A I guess that it would be my opinion that

15 there's probably thousands and thousands of statements

16 that a person could choose to be a part of the

17 Monsanto pledge.

18 Q But, Mr. Eley, I didn't choose these

19 statements. What I did is I got on the Internet and

20 drew down what somebody at your company wrote as this

21 being the pledge. If I were writing the pledge, I

22 would say we pledge to clean up all the PCBs in the

23 environment that we've stuck in there. So you know I

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1 didn't write this pledge, don't you?

2 A Yes. I believe that you did not write that

3 pledge.

4 Q And you also know -- I mean, there are

5 quotes around this thing.

6 MR. COX: It's a speech.

7 Q Mr. Mahoney gave a speech to these people
8 and that's when he said that and that's not part of
9 the pledge? Is that the problem we're dealing with
10 here?

11 A I don't know what problem we're dealing
12 with. I do know that Mr. --

13 Q Was that speech recorded?

14 A -- Mahoney did give a speech to the National
15 Wildlife Federation on the pledge. I believe that
16 I've heard him give two presentations on the Monsanto
17 pledge. In addition, he's given a presentation on the
18 Monsanto pledge numerous times.

19 Q Okay.

20 A Whether he interpreted all of his remarks to
21 be meant to be a part of the Monsanto pledge, I really
22 don't know.

23 Q Okay. As the chairman and chief executive

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1 officer of Monsanto, Mr. Mahoney certainly had the
2 right to set policy for Monsanto, correct?

3 A He certainly did.

4 Q Right. And one of the ways of setting
5 policies for the company is to stand up in public and
6 represent that this company is going to do certain
7 things, isn't that true?

8 A Would you repeat that, please?

9 Q Sure. Mr. Mahoney set a policy for Monsanto
10 to rectify the mistakes of the past when he stood up
11 before the National Wildlife Federation in Washington,
12 D.C. and said that Monsanto would rectify the mistakes
13 of the past. Would you not agree with that?

14 A I would not agree with that necessarily.

15 Q So, you don't have a problem with Mr.
16 Mahoney, the top dog at Monsanto, getting up in public
17 and saying we must rectify the mistakes of the past
18 when he never intended for the company to do that?

19 A No, that's not what I said.

20 Q So, when he stands up there and says we're
21 going to rectify the mistakes of the past, do the
22 people who are hearing those words have a right to
23 believe him?

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1 A I don't know. You would have to really --

2 Q Ask them, right?

3 A Ask them. I can't speak for them.

4 Q Do you think that he is a man that should be
5 believed?

6 A Oh, yes, knowing Mr. Mahoney and not very
7 well, but I certainly think he is a credible
8 individual.

9 Q Why in the world, sir, would Monsanto or

10 Solutia publish this document on the Internet if it's
11 not part of their policy? Do you have any reason?
12 A I think there's probably parts of that that
13 is part of their policy and part of the pledge.
14 Q Where does it say in this document this is
15 no longer our policy? Here is the pledge, but now
16 there is no pledge. Tell me where from a reader's
17 standpoint I can learn where the pledge starts and
18 where the pledge ends.
19 A I guess on the first point right now it's my
20 understanding that in Solutia we do not have a
21 Monsanto pledge. We have a series of environmental
22 commitments. Most of those I believe mirror or are
23 similar to the pledge points that Mr. Mahoney brought

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1 out in 1990.
2 Q All I'm asking you, sir, is when I read that
3 I thought hey, Monsanto has made a pledge, a promise,
4 a statement, a policy, however you want to define it
5 to rectify mistakes of the past. Now you're telling
6 me under oath that that's not something Monsanto wants
7 to do?
8 A No. I'm telling you that what you've just
9 stated is not the Monsanto pledge.
10 Q I don't care if it's the pledge or not,
11 sir. Is it a policy of Monsanto's to rectify mistakes

12 of the past as Mr. Mahoney said on January 30th, 1990

13 in his speech to the National Wildlife Federation?

14 A I don't know because I haven't really seen

15 that policy.

16 Q Do you think that would be a good thing for

17 Monsanto to do --

18 A I don't know.

19 Q -- and Solutia to do?

20 A I don't know.

21 Q Would you agree, sir, that if Monsanto

22 allowed thousands of pounds of PCBs to escape its

23 property and get into this eco system that we have

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1 been talking about all day that that would be a

2 mistake?

3 MR. COX: Object to the form.

4 A Not necessarily. I don't know what you mean

5 by mistake or how you define mistake.

6 Q I define mistake as something that shouldn't

7 happen.

8 A Then I would not agree with you.

9 Q You think it was perfectly proper for

10 Monsanto to dump PCBs off of its property into Snow,

11 Choccolocco Creeks and Lake Logan Martin?

12 A I'm saying that under the environmental

13 statutes and requirements that existed in the past 50
14 years that it may have been perfectly permissible,
15 permitted and acceptable to do that.

16 Q Are you testifying under oath that assuming
17 it were permissible in the past to do that and it's
18 having an adverse effect today that Monsanto can
19 simply close its eyes to this problem?

20 A I don't know that it's having an adverse
21 effect today.

22 Q Well, Monsanto has spent about \$30 million
23 cleaning the PCBs off of its own property, hasn't it?

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1 A I've seen the \$30 million or \$30 billion
2 reported in the paper, which I didn't think it was 30
3 billion and it may have been 30 million. I'm not sure
4 of exactly what sum of money, how much money Monsanto
5 spent on its remediation project on or adjacent to
6 properties in Anniston.

7 Q And the reason that Monsanto is spending the
8 money or has spent the money to clean up its own
9 property is because of the environmental guidelines
10 that were enacted by Mr. Pierle on November 11th,
11 1992?

12 A I don't know that to be true.

13 Q Well, in the guideline entitled Monsanto
14 pledge guideline for pollution prevention under bullet

15 number 1.4 it talks specifically about polychlorinated

16 biphenyls, doesn't it?

17 A That is the title of that paragraph, section

18 1.4.

19 Q And PCBs are a shorthand of polychlorinated

20 biphenyls, right?

21 A Correct.

22 Q And right next to that it says "PCB-free"?

23 A Correct.

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1 Q It says PCB-free?

2 A Correct.

3 Q Well, read to me what the paragraph says.

4 A The paragraph states, "All company-owned

5 sites, for example, warehouses, plants, offices

6 located in the United States will minimize the

7 potential for releases of polychlorinated biphenyls

8 (PCB) by becoming "PCB-free" of Toxic Substances

9 Control Act (TSCA) - contaminated articles by the end

10 of 1994."

11 Q In other words, we will become a PCB-free

12 company by the end of 1994 and any PCBs we have on our

13 property will be removed by that date, right?

14 MR. COX: Object to the form.

15 A I don't know whether that's right or not.

16 Q Well, when the laymen reads something that
17 is PCB-free, do you think it's unreasonable for
18 somebody to say hey, it means there aren't any PCBs
19 there?

20 A No. It's generally -- the way that I
21 interpret quoted or quotations, particularly things
22 within quotations -- and again, I reiterate quoted or
23 quotation PCB-free -- then one has to look at that and

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1 say PCB-free then has some type of special meaning.

2 Q Right.

3 A Now, what is the special meaning?

4 Q You're the one who worked for Monsanto, Mr.
5 Eley. I'm just reading the guideline that says you're
6 going to become PCB-free. And now you're telling me
7 that I can't read that to mean that there won't be any
8 PCBs on your plant sites.

9 A No, I don't believe that's true. I think
10 that I would interpret that -- and I would ask you to
11 read this particular document or this particular
12 paragraph with an understanding that PCB-free probably
13 has a specific meaning and I would suggest that that
14 meaning and the usage of PCB-free might have a
15 particular definition within the context of the Toxic
16 Substances Control Act itself and the regulations
17 underneath that.

18 Q Are you finished?
19 A Uh-huh.
20 Q You are the manager of environmental affairs
21 for Solutia, right?
22 A Manager, environmental affairs, that's
23 correct.

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1 Q And they picked you to go down there and
2 deal with PCB remediation issues, right?
3 A They picked me to go to the plant or go into
4 that area and coordinate the PCB sampling of soils as
5 called for under the consent order agreement. That
6 would be my responsibility at that time.
7 Q Which was a remediation issue?
8 A It was a remediation issue.
9 Q Now, tell me what PCB-free means. With all
10 of that knowledge, experience, titles, all whatever
11 you come to this table with, tell me what it means.
12 A I think in this context PCB-free is I think
13 a term of art that's used in the regulations in the
14 Toxic Substances Control Act, but I'm not really sure
15 because I am not that familiar with those regulations.
16 Q What do you think it means? Don't tell me
17 it's a term. I want to know what the term means in
18 your opinion.

19 A You mean in the context of that particular
20 --
21 Q Right.
22 A That would I believe mean that when a plant
23 is PCB-free that means that it no longer uses

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1 PCB-containing formulations specifically closed system
2 applications like transformers and capacitors.
3 Q So, in other words, it's not using
4 transformers that have PCBs in them?
5 A Transformers or electrical capacitors.
6 Q And it doesn't mean that -- in other words,
7 as long as the Monsanto plant in Anniston isn't using
8 a transformer that has some volume of PCBs in it, it
9 can call itself PCB-free even though it's storing
10 thousands of pounds of PCBs in unlined landfills on
11 its site?
12 A I believe in the context of the way that
13 PCB-free is used in that paragraph -- I believe you're
14 absolutely right.
15 Q Okay. So, you can -- in your opinion you
16 can legally and accurately state that the Monsanto
17 plant in Anniston is PCB-free?
18 A No. I don't suggest to legally imply
19 anything. What I indicated is as best I understand
20 that paragraph when you read PCB-free, it relates to a

21 particular site that is free of any PCB-containing
22 electrical transformers, capacitors or other articles
23 that may contain PCB.

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1 Q Including --

2 A And the term of art is specific to
3 regulations under the Toxic Substances Control Act.

4 Q So, in Monsanto's opinion, there is not a
5 single problem with storing all these PCBs in an
6 unlined landfill?

7 A I don't know what Monsanto's opinion is. I
8 just gave you my opinion, my interpretation of that
9 paragraph.

10 Q Right underneath this PCB-free paragraph,
11 Mr. Eley, there's another paragraph entitled Land
12 Disposal. And it says that landfills of acutely
13 hazardous wastes will not be practiced. Did I read
14 that correctly?

15 A Let's see.

16 Q The first sentence, "Landfills of acutely
17 hazardous wastes will not be practiced."

18 A Well, it says, landfills of acutely
19 hazardous wastes with a footnote, and that footnote
20 here indicates as listed in 40 CFR 261.33(e), plus any
21 mixtures containing greater than five percent, and

- 22 incinerables with a footnote, hazardous wastes or
23 wastes managed as hazardous, with a heat of combustion

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1 greater than 6,000 BTUs per pound located --

2 MR. COX: No. Wait.

3 A Will not be practiced.

4 MR. GRAMMAS: Let's go off the record for a
5 second.

6 (Discussion off the record.)

7 Q (By Mr. Grammas) All right. I'm going to
8 give you section 261.33. Are PCBs or any form or
9 portion thereof contained in there?

10 MR. GRAMMAS: And, Buddy, you may be able to
11 help him.

12 (Discussion off the record.)

13 MR. GRAMMAS: I'm not trying to hold y'all
14 to it and whatever it is, it is, but off the record we
15 had a discussion where basically I was informed by the
16 environmental expert over here to your left that PCBs
17 aren't contained in this CFR regulation and they're
18 contained in the Toxic Substances Control Act.

19 MR. COX: They are regulated under the
20 regulations implemented in the Toxic Substances
21 Control Act which is at 40 CFR 760, I believe.

22 Q (By Mr. Grammas) So basically what Monsanto
23 has done in this guideline is it has said we will not

1 tolerate acutely hazardous wastes in any landfills and

2 then it defines it to exclude PCBs, right?

3 A No, I don't think that's what this has done

4 at all.

5 Q Does it include PCBs?

6 A Based on the conversation I just heard, it

7 does not.

8 Q But it does in your own definition of a

9 toxic -- of an acutely toxic compound. PCBs are

10 acutely toxic under your understanding in the field of

11 industrial hygiene, right?

12 A Under the field of industrial hygiene, but

13 again, I would indicate that here you're talking about

14 a term of art. Both -- in fact, you've got two terms

15 of art, acutely hazardous and incinerable that are

16 defined specifically under a particular regulation.

17 Q I hear you.

18 A And that regulation is not OSHA.

19 Q And you don't know if it does or does not

20 contain -- that definition contains PCBs?

21 A I personally do not.

22 Q If it does, then Monsanto is violating its

23 own guideline in landfilling all the PCBs out there in

1 Anniston, right?

2 A The way I would read that particular
3 paragraph is that if PCB -- PCB waste or PCBs fell
4 within acutely hazardous or whatever that other
5 combustible is, that it should not be landfilled.

6 Q Okay. In this cover letter of November
7 11th, 1992 by Mr. Pierle to the employees at Monsanto,
8 he states that in support of a commitment towards the
9 environment and safety of human beings that Monsanto
10 developed the Monsanto pledge guidelines.

11 A Okay.

12 Q And that these new guidelines replace our
13 environmental, safety and health guidelines, which is
14 Exhibit 5 that we've been reading, right?

15 A I believe that's correct.

16 Q Now, you will admit that in 1989 through
17 1992 the environmental, safety and health guidelines
18 controlled what Monsanto should or should not do at
19 the Anniston plant regarding environmental issues,
20 right? And then starting in November of 1992 this
21 document kicked in.

22 A I believe that's correct.

23 Q Now, on the Monsanto pledge guideline number

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1 four, sir, it's entitled Product Stewardship; is that

2 correct?

3 A Yes, it is.

4 Q We had a similar guideline in the older one

5 that was entitled Product Stewardship, right?

6 A As I recall, I believe we did.

7 Q And that was the one where we had some

8 discussion about how a community is defined, right?

9 A Correct.

10 Q And in that product stewardship,

11 stakeholders, if you will recall, were defined as

12 employees, customers and the community?

13 A Correct.

14 Q Now, in this 1992 Monsanto pledge guideline

15 under product stewardship it defines stakeholders a

16 little bit differently, doesn't it?

17 A Well, among the stakeholders that it has in

18 parentheses after that word is suppliers, employees,

19 distributors, customers, consumers and disposers.

20 Q Right. And when a word follows -- when

21 parentheses follow a word, isn't that really defining

22 what that word is in this context? When you see the

23 word "stakeholder" and parentheses after that, this

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1 man, Mr. Pierle, is telling you what stakeholder

2 means, right?

3 A Well, what he's telling me is this is the

4 type of stakeholders I'm talking about.

5 Q Right. He's defining it to include those

6 people and only those people, correct?

7 A Well, I don't know that to be the case.

8 Q That's what it says right there,

9 stakeholders paren.

10 A No. It just tells me that it is included.

11 It doesn't tell me what's excluded.

12 Q It doesn't tell you what's excluded, but you

13 can tell me unequivocally that communities are not

14 included in his new definition of stakeholder, right?

15 A That word does not appear in that particular

16 sentence.

17 Q Okay. Now, in here on this product

18 stewardship pledge guideline, in the new one he

19 doesn't say that these stakeholders even though

20 they're not defined to include communities are

21 entitled to be provided with information regarding the

22 disposal of Monsanto products, does he?

23 A You mean -- where, under the --

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1 Q Right.

2 A The caption, the header of this

3 particular --

4 Q Correct.

5 A -- pledge guideline?

6 Q That's correct.

7 A And your question again was?

8 Q He doesn't say that stakeholders will be

9 provided information regarding among other things the

10 disposal of Monsanto products?

11 A No, but what is stated is that the company

12 will work with product stakeholders to understand and

13 reduce risks associated with life cycle. And what

14 you've just described is life cycle. It now is a term

15 of art.

16 Q There's a lot of terms of art.

17 A Well, it's the cradle to grave and life

18 cycle -- in fact, life cycle analysis is a new concept

19 in product stewardship.

20 Q But it certainly doesn't state it as clearly

21 as the product stewardship worldwide guideline where

22 it just said quite simply we'll provide your

23 stakeholders information about the disposal of our

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1 products.

2 A Well, to me life cycle -- associated with

3 life cycle is quite clear.

4 Q Okay. So that --

5 A And I interpret that to mean all of that.

6 All of that is included under life cycle.

7 Q And another thing we know then -- even

8 assuming your interpretation to be the correct one, we

9 know that the new Monsanto pledge does not feel any

10 responsibility to communicate the disposal of its

11 product to the community because the community is not

12 listed as a stakeholder anymore.

13 A The community is not listed in that first

14 paragraph. I would agree with that.

15 Q That means they are no longer stakeholders

16 under the official Monsanto pledge guideline, correct?

17 A I don't know whether that is correct or not.

18 Q Well, under that -- they're not included in

19 the definition of it. You'll agree with me at least

20 that far, won't you, Mr. Eley?

21 A They're not included as examples. I don't

22 know whether they're excluded.

23 Q I understand that. I didn't ask you about

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1 exclusion. I said they're not included. I said that

2 on purpose so your answers can be shorter. They are

3 not included on the definition provided in the

4 paragraph right under product stewardship, right?

5 A Again, I would suggest that there is no

6 definition.

7 Q What do you mean you would suggest there is
8 no definition?

9 A Well, you had indicated earlier that where
10 you see a word and then parentheses afterwards that
11 defines what that means. I don't fully agree with
12 that concept. Where you've got a particular word and
13 then you've got a parenthetical series of examples,
14 then to me that is for example and those are examples
15 of stakeholders, but I couldn't say specifically or
16 definitively whether that excludes other possible
17 stakeholders like community.

18 Q All right. Well, let me ask you this then:
19 In his November 11th, 1992 letter to you and all the
20 other Monsanto employees, Mr. Pierle states that these
21 guidelines, this new pledge is going to replace the
22 old pledge, correct?

23 A No. This pledge guideline replaces the

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1 environment, safety and health guidelines. These were
2 never called pledge guidelines.

3 Q All right. The Monsanto pledge guidelines
4 that are attached to the November 11th, 1992 letter to
5 you and all the other Monsanto employees by Mr.
6 Pierle, he says that these pledge guidelines replace
7 the worldwide guidelines that we've already talked
8 about that's marked as Exhibit 5.

9 A Replace and supersede, correct.

10 Q Well, this man is a very bright gentleman,

11 isn't he?

12 A I've known Mr. Pierle for a number of years,

13 he certainly is.

14 Q And he's certainly capable of looking up and

15 comparing definitions, situations and selecting and

16 choosing which words will go in which documents, is he

17 not?

18 A Yes.

19 Q And you've already testified when we first

20 started talking about these guidelines that a lot of

21 work went into producing these guidelines, didn't you?

22 A No. I think I indicated I'm not sure how

23 much work went into the guidelines. And I think you

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1 said that it looks like there's apparently a lot of

2 work that went into the guidelines.

3 Q And you agreed with that.

4 A I said that may be the case with some.

5 Q But you certainly agreed that the words have

6 meanings, that they were selected for a purpose,

7 right?

8 A Yes.

9 Q Well, if community is used in the definition

10 of stakeholders in the old one, specifically used,
11 along with employees and customers and then we come to
12 the new one on product stewardship and community is
13 not used, but employees and customers and suppliers
14 are used, doesn't that tell you that employees -- that
15 community is no longer considered a stakeholder?

16 A No, not necessarily. It tells me that what
17 we have is a series of pledge documents that were
18 developed in 1992. These documents, by the way, were
19 developed to supersede the environment, safety and
20 health guidelines that we discussed earlier.

21 Q I don't want to know all that. I really
22 don't.

23 A And also, the guidelines that the Chemical

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1 Manufacturers Association had come out with. So, I
2 think that probably a lot of the wording was chosen to
3 be consistent with the new pledge guidelines and also
4 the guidelines or the -- I think it's a series of
5 guidelines under the CMA.

6 Q I'm going to ask you a very simple question.
7 It calls for a very simple short answer. In the old
8 worldwide guidelines community was included as a group
9 of people who had a right to know about how Monsanto
10 disposed of its products and in the new guidelines the
11 community is not included at least in this document as

12 it appears under Exhibit 6 as a group of people who
13 have a right to know about how Monsanto disposes of
14 its products, correct?

15 MR. COX: Object to the form. I think
16 you've got -- I'm not trying to testify, but --

17 MR. GRAMMAS: Well, let him answer. Just
18 object to the form.

19 MR. COX: I'll object to the form, but I
20 think there's a specific guideline for the community
21 that's not -- was not in the worldwide guidelines that
22 is in the second document.

23 Q Is it here?

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1 A I know there is.

2 Q Is it here?

3 A No.

4 MR. COX: It's not under the product
5 stewardship.

6 A The word "community" does not appear in that
7 heading underneath that paragraph.

8 MR. COX: Under product stewardship.

9 Q Right, which means that -- well, we've been
10 through it a thousand times. The jury is going to
11 know exactly what I'm asking.

12 All right. Monsanto pledge number eight, I

13 bet you that's what Mr. Cox was talking about, wasn't

14 it?

15 MR. GRAMMAS: Buddy, is that it?

16 MR. COX: Yeah.

17 Q Monsanto pledge, Community Awareness at

18 Manufacturing Sites. Is that what you're talking

19 about, Mr. Eley, the guideline?

20 A That is one of the pledge guidelines where

21 the word "community" is found.

22 Q Tell me where in this guideline does it say

23 that Monsanto, and now Solutia, will tell the

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1 community -- will voluntarily disclose to the

2 community information regarding product disposals

3 including PCBs?

4 A Could I read this?

5 Q Sure.

6 A Okay.

7 (A break was taken.)

8 Q (By Mr. Grammas) Where in there, sir, does

9 it tell that the community -- and just so the record

10 is clear, during the break, you were reading Monsanto

11 pledge guideline number eight which is the community

12 awareness --

13 A At manufacturing sites.

14 Q Right. Tell me in there where it says that

15 the community will be provided information by Monsanto
16 about PCB disposal or product disposal?
17 A I think that there are probably several
18 paragraphs, but the paragraph that caught my attention
19 was the one that reads -- and this is under section
20 8.1 that reads, community outreach programs will be
21 implemented at each manufacturing plant to inform key
22 audiences -- and those key audiences are listed as an
23 example, emergency responders, community officials,

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1 the media, employees and other businesses and the
2 community -- about the facility's emergency response
3 program, chemical inventory, impact evaluation and
4 potential risks to the community associated with the
5 facility. The information provided will include
6 details on such topics as waste minimization,
7 emissions reduction, health effects of chemicals and
8 efforts to ensure safe transport of chemicals.

9 Now, while the word "disposal" is not
10 specifically a part of that, in my view, waste
11 minimization, emissions reduction, all of that
12 includes chemical handling, use, disposal. It even
13 talks in here about inventory. It talks about safe
14 transport of chemicals. We may be dealing with
15 semantics, but to me this right here is certainly a

16 broader and more effective communication than the last
17 document I saw where we talked about that one
18 communication I think that you had in there.
19 Q Are you finished?
20 A Yes.
21 Q I'm going to ask you the same question, but
22 I'm showing you Exhibit 5, worldwide guideline number
23 six. Tell me, sir, where in this document does it say

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1 that the community, which is defined here as
2 stakeholders, will be provided information about
3 disposal? This document.
4 A Where in here?
5 Q Yeah. It says it in one sentence, doesn't
6 it?
7 A It says up at the top as the leader or the
8 header of the guideline underneath product stewardship
9 that stakeholders will be provided information
10 regarding handling, storage, use and disposal of
11 Monsanto products.
12 Q It says it right off the top before you get
13 into any of the paragraphs. It's one of the first
14 things that Monsanto is going to do toward product
15 stewardship. And before 1992, Monsanto had a pledge
16 to give all of its stakeholders, which are defined as
17 community people, information about product disposal,

18 correct?

19 A No. It had a guideline, but no pledge

20 existed prior to -- in 1989.

21 Q Guideline, policy, pledge, you can call it

22 whatever you want, but we know that following these

23 things was not an option. Do you recall that

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1 testimony we talked about earlier?

2 A I think when we talked about the spirit of

3 these, that's correct.

4 Q Yeah. And in the spirit of this document,

5 Mr. Eley, isn't it a fact that at least as of 1992

6 people at Monsanto should have told the community that

7 it was storing PCBs in a landfill? Lord knows how

8 many thousands of pounds.

9 A I believe this document was 1989.

10 Q I understand that, but it was in effect

11 until 1992.

12 A Oh, excuse me. Okay.

13 Q So, up until 1992, Monsanto according to its

14 own guidelines, according to its own procedures in

15 place that were nonoptional as far as following it or

16 not, you had to follow them, they were requirements,

17 they were mandatory, Monsanto was supposed to tell the

18 community about the disposal of PCBs in its landfill,

19 true?

20 MR. COX: Object to the form.

21 A It says that stakeholders -- and is this the

22 document where stakeholders --

23 Q That's the document that you said the

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1 community is not broad enough to include my
2 plaintiffs. But however you want to define community,
3 Monsanto had a non-negotiable mandatory obligation to
4 tell the community that it was disposing of PCBs in an
5 unlined landfill at its site in Anniston, correct?

6 MR. COX: Object to the form. Monsanto
7 wasn't disposing of PCBs in 1989 or 1991.

8 MR. GRAMMAS: No. They had already been
9 disposed of, Buddy. They had been there for years
10 and years and years. That's a good point.

11 Q And during all the course of -- answer my
12 question, Mr. Eley. Y'all had to tell them that,
13 didn't you?

14 A No, I don't interpret this guideline with
15 the same degree of meaning that you do.

16 Q Right. It doesn't mean anything to you,
17 does it?

18 A I'm not sure exactly what the original
19 question was.

20 Q The original question was this document

21 requires you and all the other Monsanto employees to
22 provide stakeholders with information about PCB
23 disposal. That's what it said, isn't it?

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1 MR. COX: Object to the form.

2 Q I mean, how can you dispute that, Mr. Eley?

3 That's what the bullet says. That's what it says
4 before we even get into the meat of it. How can you
5 tell me that I'm reading it wrong?

6 A The bullet does not state that at all. That
7 is a general paragraph under the title product
8 stewardship within the document itself after the
9 introduction. Then you've got the program elements
10 and these particular program elements then are the
11 meat of this particular document.

12 Q What I'm reading here, Mr. Eley, is this
13 statement. It's the second sentence on highlighted
14 type face below full capital words that say product
15 stewardship that says stakeholders will be provided
16 information regarding among other things the disposal
17 of Monsanto products. I mean, I didn't read that
18 wrong, did I?

19 A No, I think you read that sentence
20 correctly.

21 Q We've read it a hundred times.

22 A That's correct.

23 Q And that includes PCBs?

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1 MR. COX: Object to the form.

2 Q Did Monsanto produce PCBs?

3 A Monsanto produced PCBs from 1971 until 19 --

4 excuse me. From 1935 to 1971.

5 Q That's right. Well, until 1976 actually,

6 but it stopped in Anniston in '71.

7 A '71.

8 Q But you've already told me that PCBs are one

9 of y'all's products. You've already said that. You're

10 not disputing that, are you?

11 A No. We manufactured PCBs and formulated

12 from those a number of products.

13 Q So PCB is a product, right?

14 A That was one of our past products as of this

15 particular point in time.

16 Q Right. And as of this particular point in

17 time and up to 1992, there was a worldwide guideline

18 in place that the Anniston plant came under that said

19 you have an obligation to provide information to

20 stakeholders about disposal of your products including

21 PCBs, right?

22 MR. COX: Object to the form.

23 A Incorrect.

1 Q That's not right?

2 A Or I don't -- excuse me. Let's just say

3 that I don't agree with the way that you've

4 characterized that particular guideline.

5 Q See, I didn't characterize it. I read it.

6 MR. COX: No. You --

7 Q Stakeholders will be provided information

8 regarding handling, storage, use, and disposal of

9 Monsanto products. That's what it says. I'm not

10 characterizing anything.

11 A That's what it says under the preface of the

12 guideline.

13 Q Right.

14 A And then one has to go to the specific

15 program elements of the guideline.

16 Q And in your opinion when you do that, it

17 relieves any obligation on the part of Monsanto to

18 tell the community around Anniston that they disposed

19 of PCBs in an unlined landfill at their site?

20 A No. I'm just telling you how I interpret

21 that particular guideline as the one that came out in

22 1989.

23 Q But the one that replaced it does not

1 specifically state -- however you interpret the old
2 one or the new one, the one that replaced it, which is
3 this new one attached to the November 11th letter in
4 Exhibit 6 to your deposition does not -- Exhibit 7
5 does not mention product disposal anywhere in the
6 community awareness section. And I know you've read
7 into it, but it doesn't have the words "product
8 disposal information will be provided".

9 A It does not have those specific words as
10 I've read it. But it has instead waste minimization
11 and a number of other issues that deal with the
12 handling of products.

13 Q So let's go with your definition then.
14 Under your definition, sir, and the way you read into
15 this, as we are sitting here today, Monsanto and
16 Solutia had the obligation to tell the people in the
17 community around the Anniston plant that there are
18 thousands of pounds of PCBs stored in a landfill
19 that's not lined right there on their site, right?
20 Because the way you read it includes product disposal.

21 A What, this guideline?

22 Q Sure.

23 A Well, let's see exactly what that guideline

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1 does state, shall we?

2 Q Well, you've already read it, sir.

3 MR. COX: Let him see the document.

4 A Well, could I see it, please?

5 Q You've already read it and you already told

6 me it includes the obligation to disclose product

7 disposal. I recall you saying that. Why haven't you

8 done it if it's a part of your guideline?

9 A The issue deals with community outreach

10 programs, and then it states, the information provided

11 will include details on such topics as waste

12 minimization. And so I don't read it the way that

13 you've just interrupted the guideline.

14 Q So, in other words, you read it the way I

15 read it that this guideline doesn't say anything about

16 telling the community about products that are disposed

17 of in your site in the Anniston plant, right? It

18 doesn't require the employees of Monsanto and/or

19 Solutia to talk to the community about PCBs being

20 disposed of at the Anniston site the way I read it.

21 A I think you're exactly right. I don't see

22 the word "PCBs" anywhere in where.

23 Q Products. I'm using PCBs because that's

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1 what this lawsuit is about. The word "products" is

2 used throughout this document. And you've already

3 said the products include PCBs, remember?

4 A Yes. This is a document in 1992? I don't

5 believe PCBs were a product of Monsanto in 1992.

6 Q They were a product of Monsanto when they

7 made them for 40 years, weren't they?

8 A They were a product prior to or back before

9 this particular document came out.

10 Q And they're a product that's disposed of at

11 the landfill on the site, aren't they?

12 A I'm not so sure that we had disposal of

13 those particular products at that particular point in

14 time.

15 Q Well, let's assume that there are PCBs

16 stored in a landfill on that site. Would you not

17 agree with me -- and that they've been there for years

18 including '89 through to date when these documents

19 were made and apparently are under the obligations

20 that you're being imposed to follow.

21 A Uh-huh.

22 Q If the products are there and disposed of

23 there, you should tell the people around the community

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1 that, shouldn't you, according to your own guidelines?

2 A I'm not so sure that I interpret the

3 guidelines in that way.

4 Q Look, you can't have your cake and eat it
5 too. Either the guidelines require you to tell
6 community people about product disposal or they
7 don't. Now, which one is it?

8 A Well, frankly, I'm not so sure that at the
9 Anniston plant -- I'm not that familiar with all the
10 outreach programs, nor am I familiar with any
11 activities they've had where community people have
12 come into the plant.

13 Q What you're saying is what they don't know
14 won't hurt them and don't say a word until they come
15 and ask us about it?

16 A Certainly that's not what I said. Certainly
17 not. Excuse me.

18 Q Have you spoken to Mr. Kaley since he gave
19 his deposition last week?

20 A Yes, I have.

21 Q Have you spoken to him about this lawsuit?

22 A Not specifically about the lawsuit. The
23 only thing I asked him -- or he noted that he had been

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1 at a deposition and just got out because I was under
2 the impression he was out of town.

3 Q Did he tell you that he testified that he is
4 aware that PCBs are still being released in the storm
5 water at the Monsanto plant?

6 A No.

7 Q Do you know that to be the case?

8 A No.

9 Q And again, you're the manager of

10 environmental affairs sent down here in part to work

11 on PCB remediation and you don't even know that's

12 happened. Is that what you're testifying to?

13 A That's correct.

14 Q All right. Now, was the Anniston plant part

15 of the Monsanto Company in 1992 when these guidelines

16 went into effect?

17 A Yes.

18 Q You're saying that you don't think these

19 guidelines that we've marked as Exhibit 7 to your

20 deposition applied to the Anniston plant?

21 A No, I don't believe I've stated that at all.

22 Q Well, we're splitting hairs here and that's

23 what is taking this process so long. But in one

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1 document it says that stakeholders who are community

2 people should be provided information about product

3 disposal and in another document it doesn't say that.

4 A No. It says waste minimization and other

5 aspects of chemical operations.

6 Q And you interpret that to mean product

7 disposal?

8 A Waste minimization to me encompasses your
9 disposal practice.

10 Q Your interpretation then requires Monsanto
11 to disclose to the community the fact that the PCBs
12 that it manufactured over that 40-year period, some of
13 which are now being stored in a landfill and being
14 disposed of in a landfill on its site without a liner
15 in it. Yes or no?

16 A I don't know exactly what the design of that
17 landfill is and whether it in fact has a liner or does
18 not have a liner.

19 Q Strike that part of the question. Do you
20 think that the people who live below the mill based on
21 Monsanto's guidelines, pledges, promises, policies
22 have a right --

23 A The people below what?

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1 Q The people who live in the community --

2 A Oh, okay.

3 Q -- should be informed of the fact that
4 Monsanto stores quantities of PCB in a landfill on its
5 site in Anniston? Do they have that right? And let
6 me limit it. As defined in the pledges,
7 environmental, safety and health guidelines and pledge
8 guidelines?

9 A No, I don't read any of these documents to
10 indicate that there's a right that's due.

11 Q Even though one of them clearly says
12 stakeholders will be given information about the
13 disposal of Monsanto products?

14 A Given that, yes, correct.

15

16 (Plaintiff's Exhibit
17 Number 8 was marked for
18 identification.)

18 Q I'm going to show you what's been marked as
19 Plaintiff's Exhibit 8. Have you ever seen that
20 document before?

21 MR. COX: You mean this document that you
22 printed off a web site?

23 MR. GRAMMAS: Right.

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1 A No, I have not.

2 Q Have you ever been on your web site?

3 A I've been on the web site.

4 Q Have you ever looked at the information
5 contained in that web site?

6 A Some of the information I have looked at.

7 Q And you certainly want the information on
8 that web site to be accurate and complete?

9 A One would hope that the information on our

10 web site would be accurate and complete.

11 Q Who is responsible for posting the
12 information on that web site?

13 A I'm afraid I don't know.

14 Q I'm going to draw your attention, sir, to a
15 particular paragraph. First of all, this is a 1997
16 ES&H annual report for Solutia, Inc., correct?

17 A That is the heading of that document.

18 Q And that ESH stands for environmental,
19 safety and health?

20 A But this is not the '97 ESH annual report.

21 Q No. That's what this document refers to?

22 A Correct.

23 Q Thank you for pointing that out. In this

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1 document -- do you know who wrote this document? I
2 can't tell by reading it. Do you know who authored
3 it?

4 A No. I'm -- no, I can't. I'm not able to
5 tell by looking at that document.

6 Q Well, whoever authored it notes that
7 Solutia has the former chemical business of Monsanto,
8 right?

9 A Correct.

10 Q And that it has extensive manufacturing
11 operations around the world with its largest

12 concentration of facilities here in the U.S., right?

13 A That is correct.

14 Q When Solutia was created, management clearly

15 stated that the workplace safety and environmental

16 stewards must remain a key responsibility and integral

17 business value. Did I read that right?

18 A That's correct.

19 Q The company had 96 years of experience from

20 which to benefit, right?

21 A That's what this document says.

22 Q In other words, Solutia could rely on the 96

23 years of Monsanto experience to draw upon as far as

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1 product stewardship, environmental issues, things like

2 that?

3 A Well, I think what it refers to is -- that's

4 right, the chemical operations of Monsanto that were

5 spun off certainly at about a 96-year history.

6 Q And to accomplish a smooth transition, Mr.

7 Eley, doesn't this document state that a decision was

8 made at Solutia to leave in place the environmental,

9 safety and health management system practices which

10 had served the Monsanto Company so well?

11 A That's what the document states.

12 Q So, what we're saying then is this document,

13 which is Plaintiff's Exhibit 7 which is attached to
14 Mr. Pierle's November 11th, 1992 letter, is the
15 Solutia pledge guidelines?

16 A I don't think, again, that we called them
17 the Solutia pledge guidelines.

18 Q Oh, I understand that.

19 A I think they're called the Solutia
20 environmental commitments.

21 MR. COX: Can I help a minute?

22 MR. GRAMMAS: Yeah.

23 MR. COX: Bruce, didn't Solutia come up with

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1 its own ESH commitments that were adopted in 1998 that
2 replaced the Monsanto pledge?

3 THE WITNESS: Yes.

4 Q Well, until 1998 --

5 MR. COX: Between September 1st, 1997 and
6 sometime in the first half of 1998, I believe the
7 Monsanto pledge guidelines were still basically
8 followed or used until Solutia's commitments could be
9 formalized.

10 THE WITNESS: But I recall seeing --

11 MR. GRAMMAS: We need a copy of these
12 commitments.

13 MR. COX: I know. They -- we haven't
14 produced them yet in any of the cases and they were

15 not out when we produced these.

16 MR. GRAMMAS: Can you get us a copy of those
17 before our depositions next week?

18 MR. COX: Who is that, Alan and --

19 MR. GRAMMAS: Faust. We definitely need it
20 for him.

21 (Discussion off the record.)

22 Q (By Mr. Grammas) Now, in any event, this
23 document, Plaintiff's Exhibit 8, on behalf of Solutia

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1 adopts and incorporates the Monsanto pledge guideline
2 that was attached to Mr. Pierle's November 11th, 1992
3 letter, correct?

4 A It does indicate that we are incorporating
5 the set of guidelines in 1992 and I believe it's
6 probably these guidelines, yes.

7

8 (Plaintiff's Exhibit
9 Number 9 was marked for
identification.)

10 Q I'm going to show you what's been marked as
11 Plaintiff's Exhibit Number 9, Mr. Eley. Could you
12 identify this for me, please, sir?

13 A These are Solutia's commitments to
14 environment, safety and health.

15 Q Now, where -- are these the guidelines that

16 y'all are now operating under?

17 A I believe these are the commitments that we
18 are currently operating under.

19 Q Now, tell me where in these commitments does
20 it say we are no longer following the 1992 guidelines
21 that Monsanto enacted under Mr. Pierle's instruction.

22 A You mean in the document?

23 Q Sure.

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1 A In this document, I find no such wording to
2 that effect.

3 Q Is that in fact true to your understanding?

4 A It's my understanding that that is true.

5 Q So, it's your understanding that Solutia at
6 one point had a set of comprehensive guidelines that
7 is over two inches thick roughly that's attached as
8 Exhibit 7 to your deposition, and then in 1998, it
9 threw all that out the window, for lack of a better
10 word, and now adopted as its new guidelines these six
11 bullets that's contained in -- that are contained in
12 Plaintiff's Exhibit Number 9?

13 A No, that's not my understanding.

14 Q If these guidelines that were in effect in
15 1992 required Monsanto/Solutia to do certain things
16 and they are not inconsistent with these new
17 guidelines under Plaintiff's Exhibit Number 9, would

18 Solutia still follow these 1992 guidelines?

19 A I'm not exactly sure what our policy is
20 right now concerning these particular guidelines.

21 Q Wait a minute now. You have no idea what
22 policies are in effect right now concerning Solutia's
23 guidelines relating to the environment, health and

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1 safety? Is that what I'm hearing you say?

2 A We have -- in fact, in 1992 what you have
3 here is you've got the -- I believe the Monsanto
4 pledge and the series of guidelines. When Solutia
5 split or was spun off by Monsanto, I believe that at
6 that particular point in time we continued to operate
7 within these particular guidelines. More recently,
8 Solutia under the auspices of Mike Pierle has come out
9 with a series of Monsanto commitments and --

10 MR. COX: Excuse me. Correct yourself.
11 Solutia commitments.

12 A Solutia commitments and we will have a
13 series of guidelines under these Solutia commitments.

14 Q When?

15 A I don't know -- that's what I was saying. I
16 don't know where that step is.

17 Q Who is working on this?

18 A I would think it would be the people in ESH

19 policy and compliance, Garth Fort, I believe some of
20 these individuals. In addition, there are team leads
21 for the three regions and they may be working on some
22 of these. In addition, you have Jeff Felder who may
23 be developing or modifying, if required, some

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1 guideline on product stewardship.

2 Q All right. But in the meantime, until this
3 document gets produced, this is what Solutia is going
4 by, what I have in my hand, Plaintiff's Exhibit Number
5 9, right? This dictates the environmental policies of
6 Solutia, Plaintiff's Exhibit Number 9?

7 A Not in total.

8 Q Well, it says in here that Solutia will
9 search worldwide for new technologies that will bring
10 environmental, safety and health value to all of our
11 stockholders. Who does Solutia consider to be --
12 excuse me. Stakeholders. Who does Solutia consider
13 its -- what groups of people are considered
14 stakeholders according to Solutia?

15 A I don't know.

16 Q Does that include the communities?

17 A I don't know that.

18 Q It says here that Solutia will keep its
19 operations open to the community and foster open
20 communications with all of its stakeholders. Again,

21 that doesn't necessarily mean the community. Is that
22 what you're saying?
23 A Could I read that, please?

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1 Q Yeah, under the bullet that says open.
2 A Which one is that?
3 MR. COX: This one.
4 A Okay.
5 Q The one that says open.
6 A "We will keep our operations open to our
7 communities and foster open communications with all of
8 our stakeholders." To me I read that that communities
9 are part of the stakeholders.
10 Q Okay. Open door policy, right? Ask and we
11 will tell. Is that what that document says?
12 A No. It says, "We will keep our operations
13 open to our communities and foster open communications
14 with all of our stakeholders." That's what the
15 document says.
16 Q So that means if somebody calls up Monsanto,
17 now Solutia, and says hey, where are these PCBs coming
18 from, y'all are going to openly and honestly respond
19 to them, right?
20 A I would think we would, yes.
21 Q And what would your answer be?

22 A Well, I guess number one, I would have to
23 say -- if someone called up, I would say what PCBs are

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1 we talking about?

2 Q The PCBs in Snow Creek, Choccolocco Creek
3 and Lake Logan Martin.

4 A I personally would probably have that person
5 contact someone that's more knowledgeable of the PCBs
6 that may or may not be present in Snow Creek,
7 Choccolocco Creek or Lake Logan Martin.

8 Q Who would that person be, Mr. Faust?

9 A I would probably in this case direct them to
10 either Mr. Faust or Dr. Kaley.

11 (A break was taken.)

12 Q Tell me, Mr. Eley, if you know, what a
13 sustainable environment means. I've read many
14 articles from Mr. Pierle -- Mr. Pierle has written
15 many articles about a sustainable environment. What
16 does that mean?

17 A It probably means different things to
18 different people. A sustainable environment. I guess
19 to me it means an environment that is able to sustain
20 itself and its ability for human or animal habitat
21 from generation to generation to generation.

22 Q Unchanged?

23 A Not necessarily, no.

1 Q So, if PCBs are bioaccumulating in fish, but
2 the fish aren't just dropping dead because of it and
3 they're able to reproduce from generation to
4 generation and over time the bioaccumulation levels
5 continue to increase, is that considered a sustainable
6 environment?

7 A I don't know. I don't know what kind of
8 environment that would be and whether that would be
9 what I would call a sustainable environment as --

10 Q Well, under your definitions --

11 A As implied or --

12 Q Well, you said it means a lot of things to a
13 lot of people. What it means to you, would that be
14 considered a sustainable environment?

15 A I don't know. The way I described it while
16 ago was in a very macro sense and I think most people
17 do describe sustainable environment in a macro way.

18 Q What I want to --

19 A And the example that you just brought forth
20 is very specific, and so I don't know whether I have
21 an opinion right now on whether I call that
22 sustainable environment or not.

23 Q And again, you're one of the head

1 environmental guys at Solutia?

2 A My title is environmental manager, but
3 certainly, there are far more people than I that
4 understand or are knowledgeable of environmental
5 operations and regulations.

6 Q Tell me a single permit, regulation,
7 whatever that allowed Monsanto to allow PCBs to leave
8 its property, get into Snow Creek, Choccolocco Creek
9 and Lake Logan Martin.

10 A I'm not knowledgeable of environmental
11 permits or those types of requirements.

12 Q So, in other words, sitting here today, you
13 can't identify one single permit, regulation, EPA
14 standard, ADEM requirement, whatever that allowed
15 Monsanto to let PCBs leave its property?

16 A That's correct, I'm not able to do that.

17 Q Well, earlier I asked you if you thought it
18 was wrong that Monsanto would have let PCBs leave its
19 property and deposit into this eco system. And you
20 told me, no, not at that time because the
21 environmental standards at that time allowed them to
22 do it. Now, which ones were you drawing upon?

23 A No, I think you didn't use the word

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1 "wrong". I think we were talking about whether it was
2 a mistake and how we defined mistake and whether any
3 releases or discharges of PCBs in past years would be
4 considered a mistake. I don't think there was an
5 issue of wrong or right.

6 Q So, you do think it's wrong that Monsanto
7 did that?

8 A I didn't say that at all.

9 Q A mistake, wrong. Again, we're splitting
10 hairs. When I asked you if it was a past mistake, you
11 said no, given the then current environmental
12 standards. Tell me what they were that allowed them
13 to do it that would support your answer.

14 A I think in that context we would have to
15 read back the prior testimony and see exactly what was
16 stated. I don't think that I said that in that way.

17 Q Do you feel that way?

18 A Feel that it was a mistake?

19 Q That it was not a mistake because of
20 whatever regulations were in place at the time or lack
21 of regulations?

22 A I don't know whether it was a mistake or
23 not.

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1 Q Well, earlier when you testified that it was
2 not a mistake -- and you do recall that. Are you now

3 retracting that and saying you don't know?

4 A No. That's when I suggested that perhaps we
5 would have to go back and read the prior testimony.

6 Q Well, let me ask you this: Was it or was it
7 not in your opinion a mistake for Monsanto to allow
8 these PCBs to leave its property and get into this eco
9 system?

10 A It was my opinion no, it was not a mistake.

11 Q Is that still your opinion?

12 A Yeah, that's my opinion.

13 Q I thought you just said you didn't know if
14 it was a mistake or not?

15 A It's my opinion that -- I don't believe it
16 was a mistake because it's my understanding that there
17 were permitted or regulatory requirements that allowed
18 the discharge of certain amounts of chemicals --

19 Q Including PCBs?

20 A -- from chemical operations.

21 Q Including --

22 A Chemicals including PCBs.

23 Q And if that understanding is wrong -- just

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1 assume for me for a moment that there is nothing, that
2 there never was anything that allowed Monsanto to
3 discharge PCBs into this eco system. Under that

4 scenario, sir, would the discharge of these chemicals

5 in your opinion be considered a past mistake?

6 A Not necessarily.

7 Q Why not?

8 A Unless you had something that would prohibit

9 the release of the material. And if then you did

10 release it in conflict with requirements that you

11 should not, then I would term that a mistake.

12 Q What is responsible care? Is that a term of

13 art for you?

14 A Responsible care is a term of art that was

15 -- I think it's a registered trademark or trademark of

16 a program or series of programs sponsored by the

17 Chemical Manufacturers Association, CMA, located in

18 Washington, D.C.

19 Q Solutia is a member of that association?

20 A We are a member and have been a member --

21 well, we are a member and certainly when we were part

22 of Monsanto, we were a member of CMA for many years.

23 Q Part of the commitment or pledge that

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1 Solutia has as a member of the Chemical Manufacturers

2 Association is to work with others to resolve problems

3 created by past handling and disposal of hazardous

4 substances, isn't that right?

5 A I'm not sure whether that is right or not.

6 Q Well, would you agree that that should be
7 something Solutia does?

8 A Would you read that back or repeat that,
9 please?

10 Q Would you agree that Solutia should work
11 with others to resolve problems created by past
12 handling and disposal of hazardous substances?

13 MR. COX: He's asking if you agree with that
14 statement. If those problems were directly created by
15 or caused by Solutia, but not just problems in the
16 world?

17 Q Right. Problems that Solutia is responsible
18 for causing.

19 A That's what -- I don't think we said that,
20 did we?

21

22 (Plaintiff's Exhibit
23 Number 10 was marked for
identification.)

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1 Q I'm going to show you Plaintiff's Exhibit 10
2 which is a document I pulled off the Internet entitled
3 Responsible Care. And at the top it says Solutia is a
4 member of this association you talked about, right?

5 A Correct.

6 Q Now, in this document it says that we -- and

7 that's Solutia, correct? It's a Solutia document.

8 It's using the word "we". I imagine it's Solutia.

9 A It appears to be, that's correct.

10 Q It says, "We pledge to manage our business

11 according to these principles." Did I read that

12 correctly?

13 A Yes, you did.

14 Q And then it says, "To work with others to

15 resolve problems created by past handling and disposal

16 of hazardous substances." Did I read that correctly?

17 A Yeah. It appears that that's the eighth

18 bullet point down, to work with others to resolve

19 problems created by past handling and disposal of

20 hazardous substances.

21 Q And it doesn't limit that commitment to

22 problems that Solutia caused, does it?

23 A I think in the context here it did talk

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1 about resolved problems created by past handling and

2 disposal of hazardous substances, past handling and

3 disposal. So, I would interpret that to be on the

4 part of Solutia.

5 Q Right. Would that include PCBs being

6 allowed into a water system traveling down creeks and

7 getting into lakes, sediment, fish?

8 A I don't know whether that would include

9 that or not.

10 Q What do you think? In your opinion, should
11 it include that?

12 A To resolve problems created by past handling
13 and disposal of hazardous substances. And your
14 question was?

15 Q Does that include PCBs being dumped out into
16 the system that we're suing y'all over? When I say
17 "we," my plaintiffs.

18 A If we had PCBs that were in fact contributed
19 by Monsanto that did result in a problem, then it
20 appears that that statement would be applicable.

21 Q Well, do you consider it a problem that
22 Choccolocco Creek and parts of Lake Logan Martin have
23 fish advisories up and down that system because of PCB

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1 contamination? Would that be the type of problem that
2 you would consider to fit within this definition?

3 A Personally I would not consider that a
4 problem when I read this.

5 Q Why is that?

6 A Resolve problems created.

7 Q It isn't natural for fish advisories to be
8 posted --

9 A I don't really know --

10 Q Let me finish my question.

11 MR. COX: Wait. Let him finish the
12 question.

13 Q It's not natural for fish advisories to be
14 posted on healthy streams and lake systems, is it?

15 A I don't know. I'm not really familiar with
16 health advisories and the criteria used to establish
17 them or post them along riverways.

18 Q All right. If Monsanto is responsible for
19 those fish advisories, that's something you want to
20 know, isn't it?

21 A When you say responsible for the fish
22 advisories, you mean --

23 Q Right. There are fish advisories all over

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1 this system, Mr. Eley. You're aware of that.

2 A No, I don't know the extent of the fish
3 advisories all over the system.

4 Q Well, just assume for me that there are fish
5 advisories for the entire length of Choccolocco Creek
6 and over a large portion of Lake Logan Martin. Assume
7 that to be the case.

8 A Okay.

9 Q Don't you want to know if Monsanto is a
10 party responsible for those fish advisories being
11 posted? First of all, you don't even know that, do

12 you?

13 A That's correct.

14 Q You have no idea as Solutia's

15 environmental -- manager of environmental affairs

16 whether it's responsible for the necessity of having

17 fish advisories posted on Choccolocco Creek and parts

18 of Lake Logan Martin, true?

19 A That's correct.

20 Q Is that your definition of taking a

21 leadership role in caring for this environment?

22 A Given my responsibility in this particular

23 project, I see no reason to assume that it's not a

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1 leadership role.

2 Q In other words, somebody else at Solutia can

3 handle those problems, not you?

4 A No. In other words, my responsibilities on

5 the remediation projects at Anniston, as I've

6 discussed earlier, have generally surrounded project

7 work there at the plant or adjacent to the plant and

8 have not included any work or any involvement on

9 Choccolocco Creek or Lake Logan Martin.

10 Q Let's go back to Plaintiff's Exhibit 9. The

11 third topic down says, we, being Solutia, will keep

12 our operations open to communities and foster open

13 communications with all of our stakeholders, right?

14 A That's what that statement says.

15 Q Now, assume for me that your company

16 conspired or agreed with the Alabama Department of

17 Environmental Management to keep the PCB contamination

18 issue in this area a secret from the local community

19 people. Would that be inconsistent with that policy

20 of -- the open door policy right there that I just

21 read?

22 MR. COX: Object to the form. You can

23 answer that.

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1 A If we did what?

2 Q If you convinced the State of Alabama not --

3 that neither Monsanto, nor you, nor the state should

4 disclose these problems of PCB contamination to the

5 community, would that be consistent or inconsistent

6 with this policy of keeping an open flow of

7 communication?

8 MR. COX: Same objection.

9 Q It's a simple question.

10 A It was a hypothetical, though, wasn't it?

11 Q Sure, it's a hypothetical.

12 A Hypotheticals are not real simple.

13 Q Well, it's not really -- it's not a

14 hypothetical. I'm asking you to assume the facts to

15 be true.

16 A But that is hypothetical.

17 MR. COX: Don't argue with him or we'll be
18 here until midnight.

19 THE WITNESS: Okay.

20 MR. GRAMMAS: I'm not the one who is
21 arguing, Buddy.

22 MR. COX: I'm instructing Bruce not to argue
23 with you.

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1 MR. GRAMMAS: That's a good instruction.

2 MR. COX: Just answer the question the best
3 you can, Bruce.

4 Q I mean, come on, Mr. Eley. The bottom -- I
5 mean, it's a simple question. If you work for a
6 company that had a policy to keep an open door to its
7 customers, its neighbors, its community about
8 information, wouldn't it be inconsistent with that
9 policy if secretively y'all were meeting with state
10 agencies that said hey, let's don't tell these people
11 about PCB contamination?

12 A And never tell the people about PCB
13 contamination?

14 Q Right.

15 A Then I would think that would be

16 inconsistent with the policy or the particular
17 commitment stated here.
18 Q Would it bother you to work for a company
19 that felt like the course of action to take when it
20 learned that there may be a PCB contamination problem
21 that it's responsible for is to keep that a secret
22 from the community? Would that bother you to work for
23 a company like that?

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1 MR. COX: Same objection.
2 A I guess it depends upon -- under the context
3 that we decided to keep a secret from the community
4 and if they were never going to tell the community, I
5 think that would be inconsistent with how I think a
6 community would operate in 1998 under these
7 commitments.
8 Q I didn't say anything about commitments,
9 time frames. I didn't mention any of that stuff. I
10 just want to know from a common sense answer, from
11 your own sense of morality, your own personal sense of
12 right and wrong. That's what I want to know, Mr.
13 Eley. Would it bother you to work for a company that
14 at any time in the past, present or in the future
15 would try to agree with the state agency to conceal
16 PCB contamination of a particular site from the people
17 who may be affected by it?

18 A I think I would have to know a little bit
19 more information under -- for example, the context of
20 this scenario and exactly what happened.
21 Q What they don't know won't hurt them. Is
22 that what I'm hearing you say?
23 A No, not at all.

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1 Q Well, I mean, why should you be the one who
2 decides what these people know and don't know? Why
3 not have an open door policy to let it all out, to say
4 hey, there is PCB contamination here? We don't think
5 it's a problem, but we won't y'all to know about it
6 and you can hire your own experts or you can do
7 whatever you want to do to satisfy yourself whether
8 it's a problem or not. What's wrong with that policy?
9 A That sounds like a perfectly good policy.
10 Q Doesn't that sound like a better policy than
11 to have a bunch of people sitting around in a board
12 meeting saying hey, this could really hurt us if this
13 gets out, we don't want people in the community to
14 know that we've contaminated property with PCBs,
15 let's enter into an agreement with the State of
16 Alabama to keep it a secret from them, to conceal
17 these facts from them so there won't be widespread
18 panic among the community? Doesn't the first one

19 sound like a better policy than the second one?
20 A I guess the way that you've outlined that
21 scenario, the first situation sounds like it's more
22 consistent with the commitment I just read.
23 Q I'm not talking about that commitment.

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1 Doesn't that make better policy?
2 MR. COX: He's asking you for your personal
3 opinion about which is the better policy.
4 MR. GRAMMAS: Exactly.
5 Q Full disclosure or active concealment?
6 What's a better policy regardless of the effects?
7 A Oh, I think given that, I think full
8 disclosure.
9 Q Right. And that's because Monsanto doesn't
10 have the right to substitute its judgment regarding
11 PCB contamination with that of the people it's -- the
12 property it's contaminating, does it?
13 A Are you asking me --
14 Q Yes, I am.
15 A -- the -- what Monsanto -- excuse me.
16 You're going to have to ask that again.
17 Q Monsanto should not in your opinion
18 substitute its judgment about the dangers of PCB
19 contamination and exposure on property that it doesn't
20 own for that of the judgments of those persons who own

21 that property?

22 A No. I think in that context Monsanto or any

23 chemical operation would work with the state and local

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1 authorities in dealing with those types of community

2 issues.

3 Q Tell me a scenario in your mind, Mr. Eley,

4 that would justify Monsanto conspiring or agreeing

5 with the State of Alabama to conceal the fact that it

6 may have been responsible for PCB contamination in

7 this eco system in Anniston, Alabama.

8 A There's no particular scenario that comes to

9 mind right now.

10 Q And no matter how you characterize that, it

11 would be wrong in your opinion, it would be immoral to

12 do that?

13 A I didn't say that.

14 Q I'm asking you.

15 MR. COX: Pete, that's --

16 A I don't really have an opinion one way or

17 the other just on the basis of what you've said.

18 Q You could care less one way or the other

19 whether you work for a company or worked for a company

20 when you were employed with Monsanto that had an

21 agreement with the State of Alabama back in the early

22 '70s to keep PCB contamination a secret from the
23 neighbors and the community around the Anniston

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1 plant? You don't care one way or the other about
2 that. Is that what I'm hearing you say?

3 MR. COX: Object to the form.

4 A At this stage -- or the way that you've just
5 characterized it, do I -- I'm not so sure that I've
6 got an opinion one way or the other as we sit here
7 right now.

8 Q Well, I'm asking you for your opinion.

9 MR. COX: He doesn't have to have an
10 opinion.

11 Q And you might not. If you don't have one,
12 that's fine.

13 A I don't.

14 Q Does it bother you that Monsanto did that?

15 MR. COX: Object to the form.

16 A Again, are we talking a hypothetical?

17 Q No.

18 MR. COX: He's asking you to assume they did
19 that, I think.

20 Q Does it bother you --

21 A Is that an assumption?

22 Q Yeah. It's an assumption that has been
23 submitted as evidence in other cases and it is

1 undisputed by Monsanto.

2 MR. COX: Well, that's not true exactly.

3 MR. GRAMMAS: Well, it is true, Buddy, and
4 you know that Monsanto had an agreement with the State
5 of Alabama to keep this problem a secret. And we can
6 sit here and pretend like it's an assumption and --

7 MR. COX: You can ask him --

8 MR. GRAMMAS: -- facts aren't in evidence
9 and all that kind of junk.

10 Q (By Mr. Grammas) The bottom line is your
11 company, sir, had an agreement with the State of
12 Alabama to keep this issue a secret in order to avoid
13 what they perceived to be a potential panic so they
14 say in the area. Now, what I'm asking you is do you
15 agree with that decision?

16 A I think I would have to have a little bit
17 more information than what you've just described to
18 tell you how I feel about that particular situation.

19 Q Well, based on the information that I have
20 provided you, tell me how you feel about that.

21 A Based on the information that you have
22 provided, I really have no opinion one way or the
23 other.

1 Q You don't think you're any smarter than the
2 people who live around the plant, do you?

3 A No, not at all.

4 Q And you don't think that Monsanto had any
5 more information as far as potential health effects
6 about PCBs, do you?

7 A Than whom?

8 Q Than anybody in the world. Monsanto didn't
9 know anything more about PCB contamination exposure
10 issues than anybody, did they? Is that what you're
11 telling me?

12 A That Monsanto didn't know more about PCBs
13 than anyone else in the world?

14 Q Right, than the average person walking
15 around on the street.

16 A Oh, I think that in general the manufacturer
17 of the product has more knowledge than a lot of other
18 people.

19 Q Right. Exactly. Y'all knew in 1950 that
20 PCBs were toxic to human beings, didn't you?

21 A I believe that we saw a document earlier in
22 1955 that stated that that was authored by Emmet
23 Kelly. So, on the basis of that, I would say that

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1 Emmet Kelly was aware of that in 1955.

2 Q And Dr. Kelly was a medical doctor who was
3 employed by Monsanto at that time, right?

4 A That's correct.

5 Q And he was writing that letter on behalf of
6 Monsanto Chemical Company, right?

7 A Correct.

8 Q He certainly knew more about the dangers of
9 PCBs than the people around the plant, didn't he?

10 A I presume that Dr. Kelly knew more about the
11 effects of Aroclors in people in general and knew more
12 about chemicals in general and our plant operations.

13 Q And it's your position that despite that
14 superior knowledge, y'all didn't have any obligation,
15 moral or otherwise, to tell these people when y'all
16 learned that PCBs were leaving your plant and getting
17 on their property that they may have health effects
18 related to this exposure?

19 A Well, I'm not aware of number one, what
20 people we're talking about and number two, the
21 specific scenario or release of PCBs. I have no
22 knowledge of that.

23 Q Let me ask you this, Mr. Eley: If Monsanto

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1 is found to have been a substantial or partial
2 contributor of PCBs in Choccolocco Creek, Snow Creek

3 and Lake Logan Martin and is also responsible for the
4 fish advisories that are posted along those creeks, is
5 it your position that Solutia now should remove the
6 PCBs in this system to a level where at least the fish
7 advisories can be removed?

8 A No. It's my opinion right now that given
9 that scenario Solutia ought to be working actively
10 with the Department of Environmental Management and
11 the Department of Health to determine what actions may
12 be necessary.

13 Q Well, let's assume again that Monsanto is a
14 substantial or partial contributor to the PCBs and is
15 also substantially or partially responsible for the
16 fish advisories that are posted on these bodies of
17 waters. Okay?

18 A Okay.

19 Q And the Alabama Department of Environmental
20 Management says it doesn't matter, we're not going to
21 make y'all clean up anything, we're not going to ask
22 you to clean up anything, do whatever you want,
23 Solutia. Assume those things.

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1 Is it your position that the PCBs should or
2 should not be removed from that system to at least get
3 it to a level where the fish advisories can be

4 removed?

5 A I frankly at this stage have no position one
6 way or another. I've got very little knowledge of the
7 fish advisories, nor the level, concentration of PCBs
8 in those particular water bodies you talked about.

9 Q I understand all that.

10 A Therefore, given that, I hate to come out
11 with a particular position.

12 Q I'm going to ask you to assume certain
13 things and I'm going to ask you to come out with a
14 position.

15 MR. COX: If you can.

16 A If I can.

17 Q Well, you certainly can. I mean, you --

18 MR. COX: Well, it depends on what you ask
19 him, but go ahead.

20 Q Assume Monsanto -- if you want to write
21 these down, we can. Assume Monsanto is responsible in
22 part for PCBs in Snow, Choccolocco Creeks and Lake
23 Logan Martin. Assumption number one.

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1 A Okay.

2 Q Assume that those levels, the PCB levels are
3 high enough in this eco system that fish advisories
4 must be posted because the levels of PCBs in the fish
5 exceed EPA standards.

6 A The levels of PCB are high enough in what,
7 the soil or sediment?
8 Q In the fish.
9 A Oh, in the fish.
10 Q In the fish. That the Alabama Department of
11 Public Health puts a fish advisory on these bodies of
12 water and says don't eat the fish because of PCB
13 contamination in the soil. Okay? Are you with me?
14 A They say don't eat the fish because of the
15 PCBs in the soil?
16 Q Right. That's how it works. You dump PCBs
17 in the soil, it gets in the food chain, the fish eat
18 what's in the soil and it bioaccumulates in them.
19 People come and throw hooks in, pull the fish out,
20 they eat them and it bioaccumulates in them. That's
21 how this whole process works. You certainly
22 understand that after working with this company for 30
23 years, don't you?

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1 A Okay. It was just a point of trying to
2 clarify specifically what you said when you said
3 soil. I usually think of sediment. If we're talking
4 about soil in a ditch, it's called sediment.
5 Q Whatever you want to call it, Mr. Eley, and
6 if we would stop mixing words, splitting hairs, this

7 process would go a lot faster.

8 A I realize that. I just wanted to assure
9 myself that what I respond to is done accurately.

10 Q Okay. Fair enough. Let's go through it
11 again because I want the record to be clean on this.

12 Assume for me Monsanto is in part
13 responsible for PCB contamination in Choccolocco
14 Creek, Snow Creek and Lake Logan Martin. Okay?

15 A Okay.

16 Q Assume for me that that contamination is
17 causing fish levels -- PCB levels in fish to exceed
18 EPA recommendations which in turn caused the Alabama
19 Department of Public Health to post fish advisories on
20 this system.

21 A Okay.

22 Q And assume for me that Monsanto negotiates
23 with ADEM about what to do on this system and ADEM

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1 refuses or fails to take any position one way or the
2 other.

3 MR. COX: So they take no position that --
4 no action is appropriate and they take no position
5 that certain actions are appropriate?

6 MR. GRAMMAS: Right.

7 MR. COX: Is that right?

8 MR. GRAMMAS: Right.

9 Q They just take no position. They don't say
10 anything.

11 A But they do take a position that certain
12 actions are --

13 Q No. They don't do anything.

14 MR. COX: They don't take any position one
15 way or the other.

16 A One way or the other.

17 MR. COX: They don't take the position that
18 action is necessary or that action is not necessary.

19 MR. GRAMMAS: Right.

20 A And I guess you would assume then --

21 MR. COX: No. Let him finish his question
22 now.

23 Q Based on those assumptions, sir, do you

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1 believe that Monsanto should remove the PCBs in this
2 system and reduce it to a level where the fish
3 advisory is removed?

4 MR. COX: I'll object to the form, but you
5 can answer, if you can.

6 A When -- under that assumption that ADEM has
7 said that nothing is necessary --

8 MR. COX: No. They haven't said that. I
9 think you're misunderstanding the question.

10 Q ADEM --

11 A Isn't that the assumption?

12 Q No.

13 A Didn't you --

14 MR. COX: No. ADEM doesn't take a position

15 one way or the other. That's the third assumption in

16 his hypothetical. They don't say anything one way or

17 the other regarding what, if anything, is necessary or

18 what, if anything, is not necessary in the water

19 bodies. Is that --

20 MR. GRAMMAS: That's correct.

21 Q They don't say anything.

22 MR. COX: Make sure you understand that

23 part. They just don't take a position one way or the

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1 other.

2 A That ADEM is not taking a position?

3 Q Their formal position is we're not going to

4 take a position.

5 A Okay. And then the fish advisories in this

6 case are set by, I believe, the Alabama Department of

7 Public Health? What is their position?

8 Q That's not part of the assumption. The fish

9 advisories are still there.

10 A Okay. So that means --

11 Q Because the PCBs are still there. You see,

12 that's how it works.

13 A Okay.

14 Q As long as the PCBs are there, the
15 fish advisories are going to be there, right?

16 MR. COX: Object to the form.

17 A I don't know that.

18 Q You don't know that either. Okay.

19 Whatever. Tell me, sir, should Monsanto, now Solutia,
20 remove the PCBs to a level such that we can take these
21 fish advisories down from our water streams here in
22 Alabama.

23 A I'm afraid I don't know.

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1 Q Why not? Why don't you know that? You've
2 worked for this company for 30 years. You don't feel
3 any sense of responsibility to the community around
4 you?

5 A That's not the issue. I said that I didn't
6 know whether we would do what you just said we would
7 do. And I don't know whether technically it makes any
8 sense because I'm not that knowledgeable of PCBs and
9 waterways, much less those particular systems.

10 Q The beautiful thing about assumptions, Mr.
11 Eley, is you don't have to be. I'm asking you to
12 assume the people who are obviously more knowledgeable

13 than you and I on these issues have already found
14 these things to be true. Okay?
15 MR. COX: Well --
16 Q The PCBs in part are being deposited in this
17 body system because of Monsanto, that these levels are
18 causing elevated levels in fish to such a degree that
19 there has to be a fish advisory and that ADEM never
20 does anything and their official position is we're not
21 going to take a position.
22 Is it your position at Solutia based on all
23 of these environmental guidelines and pledges and I

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1 pledge allegiance to the flag and I pledge that I'll
2 rectify and all these things y'all do, all these
3 commitments y'all make, all these statements you make
4 to the public about how you've got all these great
5 things going for y'all -- put your money where your
6 mouth is. Is it your position that you should clean
7 up this system so the fish advisories can be removed?
8 MR. COX: Object to the form, but go ahead.
9 A And based on the scenarios I've had or that
10 you've just said, I really don't have a position.
11 Q Why is that? What information do you need
12 to have a position?
13 A Because I don't have a position, sir.
14 Q What information do you need to have a

15 position on that issue that's not in my hypothetical?

16 A I'm not sure. That's just not in my area of
17 expertise.

18 Q Who is Mr. Cheaver?

19 A Bob Cheaver?

20 Q Who is he?

21 A Bob Cheaver works at the Queeny plant, and

22 I'm not sure exactly what his title is.

23 Q Do you know him?

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1 A Yes, I know Bob Cheaver.

2 Q Do you know him?

3 A I know Bob Cheaver.

4 Q How long have you known him?

5 A I think I may have met Bob Cheaver in the
6 1970s.

7 Q Have you maintained contact with him
8 throughout the years?

9 A No.

10 Q Is he a friend of yours?

11 A I know him and we see each other perhaps --
12 I may have seen him a couple of years ago.

13 Q Do you trust his opinions?

14 A I would say generally from what I know about
15 Bob.

16 Q Do you find him on what you know about this
17 gentleman to be a man of integrity and honesty?
18 A Based on my knowledge of Mr. Cheaver, yes.
19 Q Now, let me ask you something, Mr. Eley.
20 How can an environmental manager at Monsanto, and now
21 Solutia, not have an opinion on the hypothetical that
22 I just posed to you about whether Monsanto, now
23 Solutia, should clean up the PCBs under those -- under

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1 the scenario I posed?
2 MR. COX: Object to the form.
3 A Well, I don't have a particular opinion on
4 that because I'm not that knowledgeable of PCBs as I
5 stated earlier. I'm not that knowledgeable of the
6 dynamics of any type of relationship between PCB and
7 soil or sediment as you indicate, fish advisories,
8 Choccolocco Creek or Lake Logan Martin.
9 Q And with all of your ignorance that you
10 bring in here today through no fault of your own, just
11 inexperience in the areas, Monsanto chose to send you
12 down here to talk to the people about sampling a
13 chemical that you don't have any knowledge about to
14 speak of, correct?
15 A Sampling PCBs in soil, that's correct.
16 Q And you don't have any knowledge of that.
17 You don't have any experience in that, right?

18 A This is the first time I think that I've
19 been involved in sampling of soil containing PCBs.
20 Q You went door to door in your
21 responsibilities here and talked to these people,
22 correct?
23 A Correct.

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1 Q You knocked on their door and you said hey,
2 I'm Mr. Eley at Monsanto, we would like permission to
3 come on to your property and test your soil, right,
4 words to that effect?
5 A Yeah, words to that effect.
6 Q Those people must have said what for, true?
7 A Very few as I recall.
8 Q Nobody cared why you were on their
9 property testing their soil? Is that your testimony?
10 A Very few. I can't -- no, very few.
11 Q Well, some of them wanted to know. Some of
12 them were curious enough to want to know why you were
13 down there for Monsanto wanting to dig up their soil
14 and test it, right?
15 A No. I think that people were more of -- had
16 more of an interest of what the results would show or
17 am I going to see the results.
18 Q Oh, so they knew you were down there

19 checking for PCBs?
20 A People in the community where we did the
21 sampling for the most part that I can recall all knew
22 that we had been sampling for PCBs on our property and
23 along the ditch systems on each side of our property.

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1 Q And they're sending you to knock on these
2 people's doors, get their permission to sample for
3 PCBs, write them letters regarding the levels of PCBs
4 that were found in their property, correct?
5 A That's correct.
6 Q And you didn't know anything about PCBs, how
7 it transfers in the environment, how it moves in the
8 environment, what kind of effects it's going to have
9 on people, what kind of effects it's going to have on
10 the eco system, what kind of effects it's going to
11 have on fish or what's necessary to remediate. You
12 don't know anything of those things?
13 A I think as I said earlier, I had a general
14 familiarization with the physical and chemical
15 properties of PCBs. If issues surrounding health or
16 toxic effects came up, then there were I believe three
17 individuals that I could refer those people to for any
18 questions specific to health or toxicity.
19 Q And none of those people worked for
20 Monsanto, did they? Not a single person you're

21 referring to, right? One was a doctor in Washington,
22 correct?
23 A That I -- oh, Dr. Kimbrough.

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1 Q Yeah. You had a script to tell these
2 people, didn't you? And part of the script was if
3 they ask you any questions about PCBs, play ignorant
4 and refer them out to these people. And you had three
5 names to give them, right?
6 A No, sir, I did not have a script and the
7 scenario was not portrayed like that at all.
8 Q But in any event, when they asked you
9 questions, you didn't have the experience to answer
10 them, right? That's why you referred it out, correct?
11 A Unless there were certain questions
12 regarding the issues like solubility or volatility of
13 PCB.
14 Q But if there were questions about hey, is
15 this stuff bad for me as a person, you were not
16 qualified to answer that?
17 A Certainly not. Not being a physician, I
18 would never try to deal with those issues.
19 Q Well, all of the people that were on that
20 list of referrals, these three people, only one of
21 them was a medical doctor, isn't that right?

22 A That's correct. And where I had questions
23 specific to the human health effects of PCB, I would

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1 generally refer those to the physician or to the State
2 Department of Public Health, Brian Hughes. Dr. Hughes
3 I believe also used a consultant -- I can't remember
4 his name -- that was affiliated with the Environmental
5 Health or Occupational Health Department at UAB.

6 Q Did you give them a telephone number to
7 call?

8 A Yes.

9 Q Was it a 1-800 number?

10 A Yes.

11 Q Do you have that number today somewhere,
12 those numbers?

13 A I may have those numbers.

14 Q Could you --

15 A I have not got those numbers with me.

16 MR. COX: I think we produced you the piece
17 of paper that Bruce used.

18 Q You also handed them a brochure when you
19 were out there talking to them, didn't you?

20 A There were a number of people I handed out a
21 brochure to, a blue bulletin.

22 Q And none of those brochures said anything
23 about PCB contamination, problems with PCBs or

1 anything like that, right?

2 A No. I think those were general information

3 brochures or bulletins on the current Anniston

4 Monsanto site, products it manufactured.

5 Q Now, just so I understand your testimony

6 correctly, when issues were asked of you that related

7 to personal human health effects, you felt those

8 questions should have been referred to this medical

9 doctor in Washington?

10 A No. I believe that if you're talking about

11 the health effects in humans, then there was a

12 physician at UAB, a Dr. Forrester, I believe his name

13 was.

14 Q A medical doctor?

15 A Yeah, he's a medical doctor.

16 Q I misunderstood you. There was also a

17 medical doctor that you referred these questions to

18 out of Washington?

19 A No. That was a Ph.D., Dr. Kimbrough.

20 Q Okay. You did not refer those types of

21 personal injury -- you know, a human exposure harm

22 type question to the Ph.D.'s. You referred those

23 directly to the medical doctor here at UAB, right?

1 A That's correct. Either to the medical
2 director at UAB or through the director of toxicology
3 and epidemiology, a Dr. Brian Hughes. Because it was
4 my understanding that Dr. Hughes also used a Dr.
5 Mueller or someone affiliated to handle those kinds of
6 issues.

7 Q But you felt that the only people that were
8 really qualified to answer these health -- human
9 health effect issues would have been these medical
10 doctors?

11 A That's the way that I handled those
12 referrals, that's correct.

13 Q Did you do that on your own or were you
14 instructed to do that by someone?

15 A I think I did that.

16 Q Common sense told you that if it dealt with
17 personal injury type questions, personal harm type
18 questions, you needed to be talking to a physician, a
19 medical doctor as opposed to a Ph.D.?

20 A That's the way that I went about referring
21 those.

22 Q Let me ask you this: I'm going to -- I
23 guess it's just stapled this way, sir, and I don't

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1 think there is any particular reason why it is. I'm
2 going to show you a collective exhibit here. They're
3 in no particular order. We'll call it Exhibit 11.

4

5 (Plaintiff's Exhibit
6 Number 11 was marked for
identification.)

7 Q It is what appears to be a collection of
8 letters all signed by you to various people whose
9 property you sampled and then wrote letters to about
10 your conclusions -- the company's conclusions on
11 PCBs. Is that in fact what that is?

12 A That's correct.

13 Q Does that appear to be a complete list of
14 the letters -- and I'm not going to hold you to it.
15 There may be one or two missing. The only reason I
16 ask you, is that the approximate number of people you
17 wrote to?

18 A I believe so.

19 Q And there may be one or two that aren't in
20 there.

21 A There might be.

22 Q There may be even more than that, but I'm
23 just -- okay. I think you've answered my question.

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1 Let me ask you this: Who at Solutia has
2 final authority to approve remediation cleanup issues

3 at Choccolocco Creek and Lake Logan Martin?

4 A In terms of exactly what actions or monies
5 or anything of that sort, I would expect that that
6 would be Mike Foresman and Mike Pierle.

7 Q Collectively, individually, how does that
8 work?

9 A Well, I would think that it would be kind of
10 a collaborative effort.

11 Q Do they have to go to the board of
12 directors or anything like that?

13 A I don't know exactly what the protocol is.
14 I think it would depend upon the authorization
15 request, request for monies. I'm not sure exactly
16 what they've set up.

17 Q Have they set up anything like this for the
18 Anniston plant to your knowledge?

19 A Not to my knowledge.

20 Q Is that because they don't plan on doing any
21 remediation work at Choccolocco Creek and Lake Logan
22 Martin to your knowledge?

23 A No. It's just because I wouldn't be aware

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1 of it.

2 Q Can you think of any other individuals who
3 would have final authority to approve a

4 remediation/cleanup of this area?

5 A No. I think it would be those two

6 individuals that I mentioned.

7 MR. GRAMMAS: Thank you, sir.

8 (END OF DEPOSITION)

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1 C E R T I F I C A T E

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3 S T A T E O F A L A B A M A)

4 J E F F E R S O N C O U N T Y)

5

6 I hereby certify that the above and
7 foregoing deposition was taken down by me in
8 stenotype, and the questions and answers thereto were
9 reduced to computer print under my supervision, and
10 that the foregoing represents a true and correct
11 transcript of the deposition given by said witness
12 upon said hearing.

13

14 I further certify that I am neither of
15 counsel nor of kin to the parties to the action, nor
16 am I in anywise interested in the result of said
17 cause.

18

19

20

21 Dana Gordon, Commissioner

22

23

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1 SIGNATURE OF WITNESS

2

3 I, _____, do hereby

4 certify that on this _____ day of

5 _____ 1998, I have read the foregoing

6 transcript and to the best of my knowledge it

7 constitutes a true and accurate transcript of my
8 testimony taken by oral deposition on September 10th,
9 1998.

10

11

12 _____
WITNESS

13

14

15 Subscribed and sworn to

16 before me this _____

17 day of _____,

18 1998.

19

20

21

22 _____
NOTARY PUBLIC

23 DG

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1 E R R A T A S H E E T

2 PAGE LINE CORRECTION REASON

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