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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TRANSWESTERN PIPELINE COMPANY,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	NO. B C 026959
	)	
MONSANTO COMPANY AND DOES 1-200, INCLUSIVE,	)	
	)	
DEFENDANT.	)	

DEPOSITION OF ROGER E. HATTON, PH.D.
JANUARY 22, 1992

VOLUME II

G O R E R E P O R T I N G C O M P A N Y
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241-6750

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Deposition of Roger E. Hatton, taken on behalf of the Plaintiff, at the law offices of Bryan, Cave, McPheeters and McRoberts, 500 North Broadway, in the City of St. Louis, State of Missouri, on the 22nd day of January, 1992 before Sandra L. Ragsdale, Registered Professional Reporter and Notary Public.

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EXAMINATION

QUESTIONS BY MS. WELCH:

Q. Back on the record. Good morning, Dr. Hatton.

A. Good morning.

Q. This is a continuation of the deposition that we adjourned temporarily last night. Dr. Hatton, you understand that you're still under oath, do you not?

A. Yes, I do.

Q. Okay. I believe -- and maybe you can confirm this for me, Mr. Zimmer -- that we finished with Exhibit 35?

MR. ZIMMER: That's what I have.

Q. So I would request that this be marked as Exhibit 36 and to read the inside page of the deposition transcript. By the way Exhibit 36 is a one-page excerpt of the deposition transcript of Roger Hatton taken on March 15th, 1990 in litigation that's captioned: In re: Texas Eastern Transmission Corporation PCB Contamination Insurance Coverage Litigation. Dr. Hatton; do you recall giving testimony in this deposition?

A. Yes, I gave this deposition.

Q. And if I could direct your attention to

lines 13 through 20 on page 583 of the deposition transcript. Does this refresh your recollection that any of the past deposition testimony that you've given related to litigation concerning PCB's?

A. No. Any such depositions that were in my mind at that time, remembering back a couple years ago, had to do with things that were -- occurred while I was still with the company and I have no records of those and I don't remember specifically what the cases were.

Q. Do you know if those depositions that you referred to in these lines involved PCB's?

A. They involved Pydrauls, yes.

Q. And do you recall what the names of those litigations were?

A. No, I do not.

Q. Do you recall what the time period of those depositions were, each one?

A. They were prior to 1982 at the time that I was still employed by the company.

Q. Were they between 1970 and 1982?

A. I don't know.

Q. Approximately how many if you can recall of those depositions involved Pydrauls?

A. Since I don't remember the names and so

on I don't know that I can give you an exact number but it was one or two. Most of the depositions that I gave while I was still working were on other products than PCB's.

Q. I would like to focus on those one or two depositions that involved Pydrauls. Do you recall if either of those lawsuits or litigations that you testified in related to any allegations of damage from PCB products?

MR. ZIMMER: Objection. It calls for a legal conclusion. You can answer, Doctor.

A. No, I don't. As I've already indicated I don't remember these cases. I just vaguely remember that this type of operation went on while I was working and when the legal department called me over whatever they asked I gave and I did not follow up on the cases afterwards nor did I get very much involved in what was going on.

Q. Do you recall who represented you at these depositions?

A. Somebody from the law department.

Q. Do you recall the individual's name in the law department?

A. No.

Q. Do you recall the name of Mr.

'Biceline'?

A. Certainly. I talked to Tom many times over the past few years.

Q. Do you know if Mr. 'Biceline' represented you in these depositions?

A. No, I do not.

Q. Do you have any idea where these transcripts are located?

A. I can only state with certainty that I don't have them.

Q. Okay. Do you know if Monsanto has them?

A. There's no way I would know whether Monsanto's files contain things that I put in them those many years ago.

Q. I'd like to turn back to Exhibit 35 if we could for a minute. I have a few more follow-up questions on this exhibit. This exhibit is a letter if you recall, Doctor, from -- or a memo from Jack Garrett of the medical department to Mr. Papageorge. I'd like to refer you to the second page and ask you whether you know whether at that time in February 1970 or any time around that period Texas Eastern was informed about the danger of PCB's by any general PCB information program from Monsanto?

A. I do not know.

Q. Do you have any idea who would know about that?

MR. ZIMMER: Calls for speculation. I assume you can start with maybe either the author or recipient of this exhibit.

A. I don't have any -- I don't remember seeing this memo until yesterday and I don't remember exactly.

MR. ZIMMER: That's fine.

Q. I'd like to have this marked as Exhibit 37 please. Dr. Hatton, Exhibit 37 is a memorandum from the State of Indiana State Board of Health dated February 6, 1950 and it's addressed to the toxicology department. My question to you is whether you have any recollection at the time about hearing about the incident that's described in this document, in other words, the fact that several workers have reportedly become ill due to the inhalation of vapor from Aroclor 1258?

MR. ZIMMER: Assumes facts as you put them not in evidence as to the truth of what was in this letter which is directed to the toxicology department of which Dr. Hatton is not a member. But if you have heard about any of these things discussed please tell her.

A. May I ask is this 1950 or 1960?

Q. I believe that it's 1950.

MR. ZIMMER: It's not clear from the date on there but with that assumption, fine.

A. No. I would not have -- I do not remember this specific incident and I was not involved in heat transfer fluids at that time.

Q. You testified yesterday that you visited Dr. Kelly in his office or had discussions with Mr. Wheeler. Do you have any recollection of hearing from either of those two gentlemen about this incident?

MR. ZIMMER: Let me just object. The question is argumentative as phrased because it's a quantum leap that just because he did on occasion visit Dr. Kelly or Mr. Wheeler that automatically he would know about anything they learned. And so I find that an unfair question in that regard. But if you're asking him did he discuss this issue with them.

Q. I think the question speaks for itself.

A. I don't know. I don't remember.

Q. I'd like to have this marked as Exhibit 38. If you could, Dr. Hatton, please take a few minutes to read this. This is a letter to a Dr. Hunt

at Monsanto Company from the Department of Health, Education and Welfare, Food and Drug Administration, dated January 5th, 1967. Dr. Hatton, could you tell me if you know who Dr. Hunt is?

A. Yes, Dr. Hunt had joined the medical department and I believe he was trained as a toxicologist but I'm not sure of his exact background. But he did become a member of that group.

Q. Do you recall approximately when he became a member of that group?

A. No, I do not.

Q. And did you have much contact with Dr. Hunt?

A. No.

Q. Do you know if Dr. Hunt is still alive?

A. I do not know.

Q. In or around 1967 did you ever hear about this toxicology study that was performed by the FDA at Monsanto's request?

A. I do not --

MR. ZIMMER: The question assumes facts not in evidence. She's asking you about the subject matter of this letter if this is indeed true.

A. I have no recollection of this.

Q. You have no recollections of any study on chicks of the various formations of Aroclors and the incidence of deaths and what the causes of deaths were?

MR. ZIMMER: Asked and answered and I'll object, the document speaks for itself and the characterization of it is not necessarily accurate.

Q. You can answer.

A. I've never seen the document before.

Q. And you've never heard of this particular study?

A. Not that I can remember.

Q. This will be Exhibit 39. This is a document apparently authored by you, Dr. Hatton, dated June 29th, 1964, a document entitled MCS-153, Transfer to Marketing and Recommended Product Strategy. Do you recognize this document, Dr. Hatton?

A. Yes.

Q. Could you tell me what the document is?

A. The document is a report which was required to be put together before a product could be transferred to the marketing department. Prior to this time the handling of MCS-153 had been primarily as a development product. This was to transfer into

the marketing department and to make them completely responsible for the product from then on.

Q. If you know could you tell me why the product was transferred to the marketing department at this point?

A. Any product that development ever worked on that was going to be sold as a commercial product eventually and hopefully large scale had to have a transfer to a report to the marketing department and this is the one for this particular product.

Q. So 1964 marked the approximate time when the product was transferred from development to marketing; is that correct?

A. That is correct, some time after this because the document had to be prepared before the exact date of transfer.

Q. I'm just going to ask you two questions about this document. If you could turn to page 8 of the document, the Bates stamp is TRANS 001347 please. Read the section under the description of toxicity.

A. Yes.

Q. Is this paragraph correct, that the toxicity statement for OS-81 was used for the handling of MCS-153?

MR. ZIMMER: THE question asks for a

medical opinion as to the accuracy of the toxicity.

Q. I asked for the use. Is it correct that the statement was transferred -- I'm not asking if the statement is correct, if the toxicity statement is correct -- but just was the same statement used?

A. What I wrote says that the medical department has agreed to that statement and since I wrote it my memory says yes, I remember that the medical department supplied it.

Q. So there were no changes in the toxicity statement when the product was changed from OS-81 to MCS-153 to the best of your recollection?

MR. ZIMMER: Before you answer, Doctor, please let me object that that mischaracterizes his statement. He didn't say anything at all about changes. He referred to the medical department's agreement to do that as stated here. His answer also evidences that he has no recollection of it other than what is written in the document. The document speaks for itself. I think you're asking him another unfair question about whether there were changes in something that he didn't supply. If you recall, Doctor, whether there were any changes in the document or not please tell her but don't assume something just because it's written here.

Q. The question stands. Do you recall any changes?

A. No, I do not recall. The complete statement is attached to the document that was given out to the customers.

MR. ZIMMER: You've answered her question which was do you recall any changes.

A. And I don't recall whether they were changed from one bulletin to the other.

Q. Let's turn to the statement which is attached as Appendix VI, Bates stamp Tran 001380 and please if you could read that. To the best of your recollection, Dr. Hatton, is this the statement that was given -- the toxicity statement that was given for both OS-81 and MCS-153?

A. I don't recall. The indications in this document are that it was but I do not recall it specifically.

MR. ZIMMER: Let me caution you again. She's not asking you to interpret a document. She's asking you for your recollection. And so please just tell her whether you recall or not and give her an answer to her specific question.

A. I do not recall whether the exact words her are the same ones that were used in the MCS-153

bulletin.

Q. Do you have any reason to doubt that they were?

MR. ZIMMER: Don't answer that.

Q. Are you instructing him not to answer?

MR. ZIMMER: I'm asking him to let me state my objection here. That was pausing him.

Q. If I might state something for the record at this point, counsel. The record is going to be replete with monologues from you basically coaching the witness on how to answer a question. I have no objection to you objecting, stating the basis of your objection, but basically you're answering my questions before the witness gets a chance to answer them.

MR. ZIMMER: I think the record is also going to be replete with questions from you about documents that the witness neither authored nor was copied on nor had anything to do with, that this is one of the first documents that he had anything to do with. However, you're focusing on a section that he did not author. You're asking him whether he has any doubt in his mind that that was not the same appendix that accompanied two separate reports when he didn't prepare the appendix. That's completely unfair,

calls for obvious speculation.

Q. The question stands.

MR. ZIMMER: Fine.

Q. The question stands.

MR. ZIMMER: I am compelled to make my objection on that basis, Doctor. You can answer. It's obviously so argumentative.

A. I'll answer it this way, the statements that were included with both products were approved by the medical department and much of the wording in there was -- in fact almost all that wording is theirs, not mine, and what they supplied for 153, I don't remember the exact word by word interpretation of it.

Q. Okay. But you attached what they worded to your product study?

A. Yes, I did.

Q. Mark this as Exhibit 40 please and I'd like you to take a few minutes to read this complete document. Dr. Hatton, have you ever seen this document before?

A. No, I have not.

Q. Can you tell me to the extent that you recall which individuals in approximately 1970 were responsible for the marketing of Pydraul products?

A. And the year you were referring to was 1970?

Q. That's correct.

A. I cannot remember the specific individuals involved who would have worked at that time in a product group who would have been responsible for all Pydrauls.

Q. How about individuals who would have been responsible for the Pydrauls that are included in this document, in other words, Pydraul 625, Pydraul AC, Pydraul AC Winter Grade, Turbinol 153; those in particular?

A. Your question was, was the marketing department and the marketing department product group would have handled all Pydraul products, whatever their number?

Q. Okay. Do you have any recollection of any of those individuals?

A. No. I've already answered that.

Q. Do you have any recollection of who within the Monsanto organization would have been responsible for the decision to terminate sales to Pydraul customers?

A. There's no name on this document and I can't remember one.

Q. I'm not asking you for the author of this document, I'm asking you to tell me who was responsible for the termination of Pydraul products?

A. Same answer.

Q. You have no idea who that person would be?

MR. ZIMMER: Asked and answered twice.

Q. If you could turn to the page Bates stamped TRAN 002542, the headline on that page or heading on the page is Major Customers and focus on the dates that are mentioned there, 1969 sales and 1970 sales through March. This document is not only unauthored, it's undated. And would you agree with me that the indication where it says 1970 sales through March places this document some time in early 1970?

MR. ZIMMER: That's your interpretation of the document. I mean he doesn't have to comment on a document that speaks for itself without an author indicated and without a date.

Q. Again you're coaching the witness.

MR. ZIMMER: No, I'm not coaching the witness and I wasn't coaching the witness before. I'm objecting to the objectionable portions of your question and when they're unfair I'm going to point

that out. So I don't appreciate your colloquy on the record about how I'm coaching the witness. He doesn't have to agree with your interpretation. You can save it for the jury.

Q. It's up to the doctor to tell me whether he agrees with me, not for you to tell him not to agree with me.

MR. ZIMMER: I told you to ask a fair question which is what you're supposed to be doing.

Q. I think that's a fair question. Do you agree with me this places the document some time in early 1970, Doctor?

MR. ZIMMER: Objection that the document speaks for itself, calls for speculation.

A. I have no additional comment.

Q. Okay. I'd like you to turn to the page that's Bates stamped TRAN 002540 under the section Turbinol 153. Do you know if in early 1970 Texas Eastern -- Strike that. Do you know if in early 1970 Monsanto was still selling Turbinol 153 to Texas Eastern?

A. Your date was early 1970?

Q. That's correct.

A. Yes.

Q. Until March 1970?

A. Yes.

Q. Do you know from your recollection whether Monsanto had informed Texas Eastern at this point that it would terminate sales of Turbinol 153?

A. The date I remember of the meeting that announced this which was preceded by some negotiations was 1972. I believe sometime in January.

Q. So your testimony is that as of this point there had been no information given to Texas Eastern that there would be termination of the sales?

MR. ZIMMER: Let me object. That completely mischaracterizes what he just said. He didn't comment at all on whether there was any information given to them or not.

Q. Then I'll restate the question. To your knowledge was any information given to them prior to March 1970 that sales of Turbinol 153 would be terminated?

A. I do not know.

Q. Your only knowledge of the termination stems from that January 1972 meeting; is that correct?

MR. ZIMMER: That also mischaracterizes his testimony. He specifically referenced

negotiations that preceded that date.

A. I was aware that there were discussions going on before the official meeting was held.

Q. Do you have any recollection of the time of those discussions?

MR. ZIMMER: Asked and answered.

A. A few months. I think I answered before and that's my memory.

Q. But certainly it wouldn't have been as early as early 1970, would it have?

MR. ZIMMER: Argumentative, asked and answered?

A. I do not remember.

Q. I'd like you to turn to the page that's Bates stamped 002545 under the heading Summary, the second sentence: We hope to have a straight phosphate ester in 1971. Could you explain to me what a straight phosphate ester is?

MR. ZIMMER: You're asking him to comment on what this undated and unsigned document refers to as a straight phosphate ester, what that term, if it's one that means something to him, means.

Q. What does the term mean to you, Dr. Hatton?

A. Straight phosphate ester was commonly

accepted by people working in these fields at that time as being a material which contained only chemically phosphate esters plus minor amounts of additives. Phosphate esters is a chemical class of materials which have been known since -- at least for a hundred years -- and you can prepare phosphate esters of many different chemical types. And the term straight phosphate ester just means that you did not put anything else in the fluid, you didn't add a PCB to it, you didn't add petroleum to it, nothing else other than minor additives.

Q. To your knowledge in 1970 was Monsanto working on a straight phosphate ester?

A. Yes, they were.

Q. In 1970 did Monsanto have a commercially viable straight phosphate ester?

MR. ZIMMER: For what application, counselor? For any application?

Q. For any application?

A. We sold phosphate esters. They were part of the product line when I came with the company in 1946 and they were being sold commercially.

Q. Was there a straight phosphate ester for the application that would have been used for Texas Eastern gas turbines?

MR. ZIMMER: That calls for speculation as to what would have been used for that purpose.

A. I can only indicate that the people who were doing the research program at that time decided that they needed a specific group of straight phosphate esters for the Pydraul and similar applications and were doing the work. Why the decision was made not to take what was on the shelf I do not know.

Q. Okay. Do you know who those people were?

A. They were members of Bill Richard's activities. I do not know the specific people. I know they were in his group.

Q. I might have asked you this yesterday but is Bill Richards still alive?

A. No, unfortunately within the last eight or -- eight to ten months.

Q. Is there anybody else who you remember who headed that group or had contact with the group?

A. I don't remember the organization that well. I just don't remember organization charts that well.

Q. Please turn to the last page of the document. And I'd like you to turn your attention to

the paragraph that begins with: Replacement of remaining Aroclor 1242 is continuing. Did you ever have any discussions with anyone at all about the three alternatives that are presented in this paragraph to the replacement of remaining Aroclor 1242?

MR. ZIMMER: Object, the question lacks foundation in that you haven't even asked him whether he ever saw this document.

Q. I did ask him that and he answered that he didn't. I'm asking him about discussion, not the document.

A. I do not remember such a discussion.

Q. Did you know that Monsanto was considering different alternatives for the replacement of remaining Aroclor 1242?

MR. ZIMMER: In this time frame being --

Q. Early 1970?

A. Yes.

Q. What's your recollection of the various choices that faced Monsanto?

A. That any logical program that you would develop for the replacement of any given product were all being considered by those who were responsible.

Q. Do you know what the possibilities that

were being considered were?

A. I do not remember outlining these before. If you want me to sit here and speculate on what they -- you might do if you had to take a product off the market I can.

Q. I don't want speculation. I want your recollection from that time period.

A. I do not have a recollection of all the points of the replacement programs.

Q. Do you remember -- again I'm not asking you to speculate, I'm asking for your recollection -- any problems that Monsanto faced in supplying a replacement fluid?

A. I don't remember holding such discussions.

Q. Do you remember in your general knowledge of any problems that Monsanto might face?

A. No.

Q. From the time period early 1970?

A. No.

Q. I'd like to mark this as Exhibit 41 please. Dr. Hatton, can you tell me who C. L. Bradford is?

A. That's Larry Bradford, usually referred to. He at that point was my supervisor.

Q. And what was his official position?

A. In '71 he was in the marketing activity. I'm not sure that I know his title but he had several people working for him who did similar things to what I did in terms of service and support products that were in marketing.

Q. Do you know who else he had working for him?

A. I think Jerry Davidson was in the group at that time and maybe -- I won't say maybe -- there was one or two others and I'm not sure of the organization pattern within that group.

Q. Did Jerry Davidson have responsibility for different products than you did?

A. Yes.

Q. Do you recall which products he had responsibility for?

A. On February 23rd, 1971, no, I do not remember which products fell under which person.

Q. Do you recall when Larry Bradford came to Monsanto?

A. No.

Q. Who did Larry Bradford report to?

A. Again you're asking for my memory of that organization chart at the time and I am not

certain. I believe it was Cumming Paton but I am not certain.

Q. Okay. This letter refers to a product called Santovac 2; is that correct?

A. Right.

Q. Was that one of the products that you were responsible for at this time?

A. At this particular point in time I was assigned the responsibility of introducing Santovac 1 and 2.

Q. And so at this time in 1971 Monsanto was still selling and promoting Santovac 2; is that correct?

A. Yes. I would like to point out that Santovac 1 and 2 were very short-lived products. We had not sold them as trade name products for only a matter of months before they were removed from the market.

Q. When did you first start selling them to the best of your recollection?

A. Some time in 1970.

Q. And when did you stop selling them to the best of your recollection?

A. Very shortly after the date of this letter, early '71 -- no, may I retract my --

Q. Certainly.

A. I just remembered it was more like Christmastime of '71.

Q. So you sold them for approximately a year?

A. Yes.

Q. And what was the application of Santovac 2, in this letter?

A. It is a vacuum pump fluid, a working fluid in a vacuum pump system.

Q. And referring back to our discussion yesterday of closed and open systems, what kind of system is a vacuum pump?

A. I think I indicated then that my example of a closed system, the most closed system I knew of was a vacuum pump application. A vacuum pump is used to remove air and gases from a system. So that the pressure within the system is quite low.

Q. And forgive me if I sound crude and layman like but this again refers back to the discussion of closed and open systems. Yesterday you stated that you considered -- and today -- that you would consider a vacuum pump the most closed system?

A. Yes.

Q. I believe yesterday you stated -- and

correct me if I'm wrong -- that it was even more closed than a gas compressor?

A. Yes.

Q. Could you tell me why it's more closed, what about it makes it more closed? To the best of your ability?

A. That is a very difficult question because of the complexity of the two systems. I'll see if I can --

Q. If you can reduce it to its most explainable?

A. In a vacuum pump system the fluid is actually boiled, turned into vapor. The vapor then passes through certain parts of the system and as it does it drags the gases out of the system. The working fluid in the system is then condensed, turned back to liquid form, and goes through the system and repeat that. So that the amount of exposure to the atmosphere is extremely small.

Q. And could you contrast that with a gas compressor?

A. In a gas compressor system you are first dealing with much larger systems to begin with and you are also circulating the fluid by pumps at atmospheric pressure around through the system.

Atmospheric pressure and above in most cases. In a vacuum pump you are dealing mostly under vacuum.

Q. So the difference -- I'm getting two differences from what you're stating, the size of the system and the atmospheric pressure of the system; is that correct?

A. Yes, those are two significant differences. Another one is that in one case you're using it as a vapor in a completely closed system from which it can't escape and in the other you are circulating it out at atmospheric pressure.

Q. Can it escape in that kind of system, the second system you described?

MR. ZIMMER: Calls for speculation as to the type of maintenance observed, what application is used. I mean we're getting a little far afield here. The Doctor is not an engineer nor an expert in either of these two types of systems. I've let you get a fair amount of free expert advice from him but I think that's who you ought to be consulting. The question calls for speculation. You're not entitled to his opinion on everything. I'm going to cut it off will soon.

Q. I'm not asking for an expert opinion. To the extent that you know?

A. In a vacuum system, the use of a vacuum system, if you get any exposure to the atmosphere it means you've broken the system and it's no longer useful. It takes a major type of leak in a vacuum system to get material out into the atmosphere. In a circulating system of any type, breakage of a line, a connection that isn't tight, things like that will give leaks.

Q. Thank you. Correct me if I'm wrong but I believe yesterday you testified that or you looked at some documents from 1969, 1970 time period, that there had been a decision at the corporate management level to withdraw products that contained Aroclor 1254 and 1260. Am I wrong in that characterization?

MR. ZIMMER: Do you want to refer him to a specific document that you looked at yesterday? Or if you remember, Doctor.

A. I don't remember the dates that well.

Q. Certainly previously to 1971. We can take a minute and look at the previous documents if you want.

(A brief recess was taken.)

Q. Back on the record. Dr. Hatton, I found two exhibits that I would like you to look at that we referred to yesterday that talk about the termination

of PCB Aroclor 1254 and 1260. One is Exhibit 29 and one is Exhibit 25 and if you could -- I'm sorry to disturb your exhibits, Mr. Zimmer, thank you for letting me use them -- under recommendations -- this is the recommendation of the Aroclor ad hoc committee, and this is the report, we're unclear who the author was. But if you could read just the recommendations about 1254 and 1260 and the first paragraph of this report to refresh your recollection about the testimony yesterday.

MR. ZIMMER: I'll just object that both of these exhibits obviously lack foundation in that he had neither seen them before nor authored either of them. So to that extent, Doctor, you can read this section again then respond to her questions.

A. And the specific question again please?

Q. The specific question was do you recall that as you testified yesterday -- I believe I'm correctly characterizing your testimony -- that around this time period which is the end of 1969 that there had been a decision to terminate sales of Aroclor 1254 and 1260?

MR. ZIMMER: Doctor, if you recall that that's what you should tell Miss Welch. If you're only responding to confirm what these documents say

which have yet to be established as true, that's not what you should do.

A. I remember that 1254 and 1260 were singled out from the rest of the Aroclors.

Q. Okay. Do you recall ever being told as this document states that there should be a notification of all -- and the document underlines all -- Aroclor 1254 and 1260 customers of the environmental contamination problem?

A. I do not remember the last part of that was true. I just remember that 54 and 60 were considered to be different than the rest of the products.

Q. Back to Exhibit 41 then. Do you recall if Santovac 2 contained Aroclor 1254?

A. Yes, it did.

Q. I can't read the name of this client here. It's Howmet Corporation. Do you recall this client?

A. Not specifically.

Q. Do you recall if there was any notification of this client of the hazards of Aroclor 1254 at this time, 1971?

A. Certainly the second paragraph puts him on notice as to what the product is and what the

potential hazards may be.

Q. Let's review what paragraph two says. It says that it contains PCB's --

Which some studies have shown to be an environmental contaminant and that extreme care should be taken to prevent any entry into the environment through spills, leakage, use, disposal, vaporization or otherwise.

Do you recall if there was any other notification of any other possibilities, for instance, of liver damage?

A. No, I do not.

Q. Do you recall if there was any other notification of the possibility of environmental damage beyond what was included in this letter?

A. I do not know. I do know that any such questions would have been referred over to the people involved and if this raised any questions he would have come back to us.

Q. Do you have any recollection of why, given the singling out of 1254 and 1260, this product was still being sold as of February 1971?

MR. ZIMMER: He hasn't given you any time frame as to when that singling out occurred.

Q. I believe he did.

MR. ZIMMER: The record will speak for itself on that. I think your exhibits did and your interpretation of them did. But the question is argumentative.

A. I'd like to make this statement, during the time period that we're talking about my functions were extremely broad. I was primarily concerned about aviation hydraulic fluids and that was where I spent 95 percent of my time. Projects such as the Turbinols, the Santovac's and these other things were handled on an assignment basis, the boss would come in and say will you take a day or two days and work on this. So they were not my full-time responsibility. The types of products I was working with contained no PCB's at all, they were different types of products and that's where I spent my time and most of my intellectual curiosity was involved in those products. And these other things were handled on an assignment basis. I was assigned both the product, that is of handling Santovac 2 in this type of letter, any type of inquiry, getting it started, and I was eventually handed the problem of getting -- telling people they couldn't buy them any more.

Q. Who was your boss who gave you these assignments?

A. The man I sent the copy to.

Q. And were there any other products besides Turbinol 153 and Santovac 2 that you were responsible for on an assignment basis during this period that contained PCB's?

A. I can't remember all the assignments that I had. These two I have cited because I remember those two.

Q. Okay, fair enough. Mark this as Exhibit 42 please.

(A brief recess was taken.)

Q. Back on the record. Dr. Hatton, do you recall contacts with this client, American Hospital Supply Corporation?

A. Only as triggered by the letter I wrote.

Q. Does that trigger your recollection or just --

A. It just indicates that they were one of many people that I talked to at this time period.

Q. Do you recall discussing with either Jack O'Connell or David Swendson the composition of Santovac 2?

A. I do not recall doing it but the letter says I did.

MR. ZIMMER: Doctor, when a letter says

something you don't need to respond that that is a true statement unless it jogs your memory that that occurred. Her question to you was do you recall talking to them about it, not what the letter said.

A. The direct answer to that is no, I do not recall these names.

Q. Do you recall any concern being raised by this client about the composition of Santovac 2?

A. No.

Q. Do you recall discussing with them anything further beyond what's indicated in this letter about the hazards of PCB's?

A. No.

Q. Now I want to apologize for the next exhibit and we're going to have to take some time to read it. It is extremely difficult to read it. And I have been able to decipher it so if we need reading out loud again I'll be glad to do it. That's just the way it was produced to us. This is Exhibit 43. I think perhaps I should read it because it takes a while.

MR. ZIMMER: I just want the record to indicate we're not necessarily accepting the reading. I appreciate your efforts in deciphering it but it is virtually illegible.

Q. This is dated March 30th, 1970. The names in the upper right hand corner are H. S. Bergen, M. L. Minckler, P. S. Park and J. E. Springate. And on the left hand or left hand corner it says W. D. Papageorge. The text of the letter reads:

> We have been in communication with a Dr. Hill of the Ohio State Board of Health. He has found PCB, particularly Aroclor 1254, in samples of milk from at least three herd in Ohio. He has traced this contamination back to silos from three different -- to silage -- from three different silos. Dr. Hill reported concentrations of 0.2 PPM of PCB in the silage in the center of the silo and up to 20 PPM in the material next to the walls. He also stated that concentrations in the milk were between 0.1 PPM and 0.6 PPM and that some of the milk had been destroyed. The silos are concrete silos whose interior surfaces were painted in 1967 using a formulation that contained 1254. I don't know if there was any other Aroclor in the formulation nor do we know the coating manufacturer although this could be found out if important. The presence

of PCB in the silage came from flaking off of the material and possibly from leaching out during the silage storage. At present they would have to destroy about 150 tons of silage which is valued at about $30 per ton. As a rough guess they consider there may be 50 other silos involved in Ohio that were painted with the same formulation. They are also looking into the fat contamination of the cows themselves. All in all this could be quite a serious problem having legal and publicity overtones. This brings us to a very serious point. When are we going to tell our customers not to use any Aroclor in any paint formulation that contacts food, feed or water For animals or humans. I think it is very important that this be done. It may be that some of the customers will assure themselves on the basis of non-extractability that a particular formulation might be safe but I think we should make a blanket recommendation against these uses.

And it's signed R. Emmet Kelly, M.D. Again you're not agreeing with the rendition but did you note any differences in what you could decipher

from the document than what I read?

A. I wasn't even sure it was Hill. I thought it was Mill.

MR. ZIMMER: Let me note there's a couple of places too where there might be either something redacted from the document but there's some blank spaces in between paragraphs that I can't tell are just white space otherwise because of the fashion in which it's blotted out but I'm not sure that's significant. I also want to note for the record that as to this document and the one that came up yesterday which on its face referred to legal advice and/or recommendations, that we're not waiving the privilege even if such things were inadvertently produced. This one has such a reference in it and it also notes a copy to an attorney named Park at the top that I think was identified yesterday as such. So.

Q. Okay. Did you ever hear about this incident in 1970 of leakage into silos?

MR. ZIMMER: If that indeed occurred.

A. I do not remember hearing about it.

MR. ZIMMER: Assumes facts not in evidence.

Q. Were you aware in 1970 whether there had

been disclosure of the hazards of PCB's to customers who used Aroclors in these kinds of applications?

MR. ZIMMER: In paint?

Q. That's correct.

A. I don't remember. I'm not sure.

Q. Do you remember any concern being raised about disclosure to customers who used Aroclors in paint application? This is 1970.

A. I have no specific memory.

Q. Do you recall who the individuals were at Monsanto who were responsible for these kinds of products at this point in time, 1970?

A. I can only indicate that paint is not considered a functional fluid if I may and therefore it would not have fallen under the group of people that I dealt primarily with. It would have been another application group. I think we mentioned plasticizers, for example. But I do not really know who would handle paints.

Q. Okay. This is Exhibit 44. If you could, Doctor, take a few minutes to read this document. This document is the Minutes of a meeting of the corporate management committee dated March 8, 1971. My first question -- I believe that most of the individuals here have been previously

identified -- can you identify J. Mason for me?

A. I believe it refers -- the only J. Mason that I know is a man by the name of Jay Mason -- John Mason, I'm sorry. And he was -- may or may not have been in St. Louis at this time but was heavily involved in Monsanto Chemicals Limited in London and that is where I first met him.

Q. Did you have any contact with him in St. Louis?

A. No direct contacts other than personal.

Q. Do you know if he was responsible for any aspect of the PCB program in 1971?

A. I do not remember what his assignments were.

Q. This document refers to the six point program which was previously approved by the committee and I believe we discussed that six point program yesterday.

MR. ZIMMER: We didn't establish that it was approved by the committee, however. You've shown him documents that refer to that which he had not seen before nor participated in.

Q. This document states it was a six point program previously approved by the committee.

MR. ZIMMER: This document can state

whatever it wants. He doesn't have any foundational information to establish that for you, that's all I'm saying.

Q. Referring to those six points I'd like to ask you if you were involved in any of those -- any aspect of this program? Were you involved in the first point which is termination of sales of non-biodegradable PCB's to non-controllable end uses?

A. No.

Q. Were you involved in the discontinuation of the sale of Aroclor 1242 to NCR?

A. No.

Q. Were you involved in closing the loop on heat transfer applications where fire retardancy is essential?

A. No.

Q. Were you involved in replacing non-biodegradable PCB's in hydraulic applications?

A. This is in March of '71?

Q. That's what this document says.

A. I believe previously I indicated that at that point in time I took whatever assignments would be added to my list of projects and certainly the Santovac and the Therminol we've talked about were included.

Q. Do you mean Turbinol or Therminol?

A. Turbinol, I'm sorry. Therminol is the previous one which I didn't have any contact with, Therminol.

Q. So we're speaking of Turbinol and Santovac?

A. Yes.

Q. Here it says that conversion has been completed through substitution of phosphate esters and terphenyls. Was conversion completed as of March '71 with respect to Turbinol?

MR. ZIMMER: As you use that term, Doctor, not reacting to whatever the author of this had in his or her mind.

A. I do not know.

Q. Had there been conversion at Texas Eastern to phosphate esters at this point in 1971 to your knowledge?

A. No.

Q. Had there been conversion to terphenyls at Texas Eastern to this point?

A. I have no specific knowledge as to what that statement means.

Q. What is a terphenyl?

A. A chemical compound which has three

benzene rings instead of two like a biphenyl.

Q. Were you involved in closing the loop on non-biodegradable PCB's in transformer applications?

A. No.

Q. Were you involved in closing the loop on capacitors?

A. No.

Q. This is Exhibit 45. This is a letter apparently from you dated May 10th, 1971 to a Mr. Galbraith of the Tennessee Valley Authority. First of all, who is Mr. Benignus?

A. Paul at this time period was working in one of the product groups in marketing which would have been responsible for dielectric fluids.

Q. Do you know if he's still alive?

A. The last I heard he was still alive.

Q. Was he on the same level of supervisor as Mr. Bradford?

A. I believe so.

Q. Did you report to him?

A. No.

Q. Would it be safe to say that as of May 10, 1971 that Monsanto was still promoting Turbinol 153?

A. Yes.

Q. Do you recall any discussions with Mr. Galbraith or anybody else at Tennessee Valley Authority about the possible hazards of PCB's?

A. No.

Q. This is Exhibit 46. Take a few minutes to read this, Dr. Hatton. Exhibit 46 is a memorandum apparently authored by you, Dr. Hatton, and it's to Mr. Bradford. First of all, who is P. D. Fowlkes?

A. Fowlkes. If I can just correct pronunciation.

Q. Fowlkes, okay. If you recall. If you don't recall.

A. The question is whether I remember this document?

Q. No, no, no. Could you tell me who Mr. Fowlkes is?

A. Research chemist that worked for Stark in research. I thought I'd answered your question, I'm sorry.

Q. Turn to page 2 and could you tell me if you know what Fyrquel 150 was?

A. Yes, Fyrquel 150 was a competitive straight phosphate ester fluid marketed at this time I think by Stauffer Chemical. The reason I cannot answer this exactly is that the business was

transferred from Celanese Chemical to Stauffer and I do not recall the exact dates.

Q. By straight phosphate ester do I take it to mean that there were no PCB's in this product?

A. Straight phosphate ester does not mean no PCB's in the product. But yes, there were no PCB's in this product.

Q. Do you know -- if you do please tell me -- when Fyrquel 150 first came on the market if you know?

A. No, I do not know.

Q. When were you first aware of Fyrquel 150?

A. Early fifties.

Q. Referring to the last paragraph, in this memorandum you refer to the deep seated prejudice of turbine OEM's toward chlorine containing lubricants.

A. On page 2, okay. I had the wrong page, I'm sorry.

Q. What were you referring to?

A. There was a phenomenon that was found in turbines, both gas turbines and steam turbines, which involved a bearing problem. This bearing problem was eventually related back to a chlorine additive that was used in petroleum base lubricants. An example in

the laboratory did show that OS-81 could cause the same phenomenon under certain circumstances, test procedures. This whole field then led the manufacturers of these turbines to be concerned about anything that contained any kind of chlorine, either as a major component or as an additive.

Q. So that's what that refers to is the bearing problem?

A. Yes.

Q. On the last page of the document, page 3, under Recommendation you recommend that Monsanto follow option 2 which is: Run field test and sell fluid at same price as MCS-974. Can you tell me, do you recall what you were recommending that there be a field test run of, of what fluid?

A. No, I don't remember.

MR. ZIMMER: Don't speculate, Doctor.

A. I don't remember what specific fluid I was referring to here.

Q. The last line says:

It will also provide us with an alternate if Turbinol 153 must be discontinued due to the PCB situation.

Do you recall what that alternate was?

A. No, I do not recall.

Q. Do you recall whether it was a straight phosphate ester that you were referring to?

MR. ZIMMER: Asked and answered. If he doesn't recall what it was --

A. I can only speculate so.

Q. Referring back to the first page where it refers to MCS-979 and MCS-974, are those PCB-containing lubricants?

A. I do not remember.

Q. Referring to New Formulation, under the paragraph New Formulation, please read that paragraph. This paragraph says that this formulation does not contain PCB's. Does that help you understand what option 2 refers to on the last page?

MR. ZIMMER: She's asking you if this refreshes your recollection as to what the last page option 2 means.

A. It still does not refresh my memory completely so I cannot answer what option 2 really meant.

Q. Does it refresh your memory partially?

MR. ZIMMER: He's indicated he can't answer what option 2 is so he would be speculating.

Q. Do you recall at this time which was May of 1971 if Monsanto was actively considering non-PCB

lubricants for at least AGTL?

A. Yes.

Q. Exhibit 47. If you could please read this document. This is a call report dated 6-28 '71. First of all, I note, Dr. Hatton, that there are initials here that are crossed out. The initials are REH. Are those your initials?

A. Yes. I assume so. My initials are REH.

Q. Okay. Have you ever seen this call report before?

MR. ZIMMER: Except as it may have been shown you by counsel.

A. I do not recall this one at all.

Q. Have you ever seen a document with initials crossed off before, a call report?

MR. ZIMMER: At any point in time?

A. At any --

Q. I'm just wondering what it means that your initials are crossed off if you know. Does it mean that you saw the document or didn't see the document if you know?

MR. ZIMMER: The question is if you know what that means, that there are initials REH here that are crossed out, tell her. How could you possibly know that?

Q. Don't coach the witness please.

MR. ZIMMER: I'm not coaching the witness. I'm talking about how silly your question is.

Q. I'm entitled to ask whatever questions I want and if it's silly it's silly and the record will show that. Please answer the question.

A. I do not know specifically what it means in this case.

MR. ZIMMER: That's it, the question has been answered, Doctor.

Q. Did you ever have any discussions with anyone listed on this document about this call to Texas Eastern Transmission Company?

A. I do not recall discussions on this specific call, no.

Q. Who is Mr. Ford if you know?

A. At that point the Shreveport location fell under the Atlanta office in the Monsanto organization and Mr. Ford was in charge of the Atlanta office.

Q. And by the Shreveport location you're referring to Texas Eastern's office there I assume?

A. Yes.

Q. And who is Mr. Regold if you know?

A. That does not ring a bell.

Q. Do you by any chance know when Mr. Stegen started working at Monsanto?

A. No, I do not.

Q. Would it be safe to say that as of this date which is May 28th, 1971 that Monsanto was still selling Turbinol 153 to Texas Eastern?

A. What was the premise of your question?

Q. Would it be safe to say that as of this date of the call report --

A. Yes.

Q. It was still being sold?

A. Yes.

Q. Turn to page 2 please. Did you ever hear that a competitor, possibly Stauffer, had discussed Monsanto's position on the PCB problem as of this date?

MR. ZIMMER: Discussed it with whom?

Q. Apparently Texas Eastern.

A. I was generally aware that our competitors were discussing the problem.

Q. Did you hear any specifics of what they had said about the PCB problem?

A. No.

Q. Do you know how you were aware of that?

A. Reports back from field salesmen.

Q. Would those field salesmen include Mr. Stegen?

A. Might have.

Q. How about Mr. Frederiksen?

A. I talked to all our field salesmen.

Q. What other field salesmen to your knowledge had contact with Texas Eastern?

A. Based on documents that counsel has shown us in the past I think I've seen some from Carl Clay.

Q. Was this of concern to Monsanto?

MR. ZIMMER: Was what of concern, Carl Clay was having contact --

Q. The discussion about the PCB problems coming from competitors.

MR. ZIMMER: Hang on a second before you answer that, Doctor. The question is incredibly argumentative. It implies that there was more than one discussion about that. All he has told you that he knows so far is that he was generally aware that competitors brought that issue up.

Q. My question is perfectly legitimate, which is, was this of concern to you, you --

A. To me personally, yes.

Q. Why was it of concern to you?

A. Anything any competitor said about any products of ours I would be concerned about.

Q. Were you aware of anything that was done in response to these discussions --

A. No.

Q. -- with customers? Are you aware of whether there was any discussion with Texas Eastern in response to these discussions?

A. I was not present at this meeting so I do not know what the response was.

Q. Did you hear what the response was after the meeting?

A. No.

Q. Okay. Did you hear about the concern that was expressed apparently by Mr. Woods that Turbinol 153 had been reformulated without Texas Eastern's knowledge?

MR. ZIMMER: The question assumes facts not in evidence.

A. This I do remember being of concern and being raised by John Frederiksen and that my answer back to him was that we would not formulate any product with any of our customers without informing them and specifically we would not reformulate 153

without informing Texas Eastern.

Q. So to your knowledge there had been no such reformulation to this date?

A. That's right.

Q. Doctor, this document as it came to us includes two call reports. I'm just going to ask you about the first call report on the first page and we'll talk about the second call report later in another document. So if you could just read the first page. This is Exhibit 48. This is a call report dated July 1st, 1971 and it is from apparently Don Stegen and once again your initials appear crossed out. Do you recall ever seeing this call report?

A. Not specifically.

Q. Did you do you recall ever hearing a report of this call?

A. I believe I received an invitation to come to Houston to visit with Ollie Fletcher.

Q. Did you in fact do that? In response to this?

A. And we're talking about this time period?

Q. Yes.

A. No, I did not make a special call to

Houston.

Q. Did you at any time during the summer of 1971 make a special visit to Houston to have dinner with Mr. Fletcher?

A. Unfortunately, no.

Q. Or to meet with him?

A. No.

Q. So you had no contact -- no direct contact with him during this time period?

A. We're talking the summer of 1971?

Q. Yes.

A. No.

Q. Did you ever have contact with Ted Harrison?

A. No, I did not.

Q. This is Exhibit 49. Please read the document. Actually I'm most interested in paragraph 4 on the second page. You can scan the rest and just get to paragraph 4. This is a document dated September 16th, 1971 from Mr. Bradford to Mr. Papageorge and you're cc'd on the top. Do you recall ever seeing this document before?

A. Yes.

Q. Directing your attention to paragraph 4, is it true that there was a decision made not to

approach Texas Eastern until Monsanto received approval from General Electric for the use of the new NC esters in gas turbines?

MR. ZIMMER: I'll object that the question misstates what the document says but you can answer, Doctor.

A. The next step in the program would have been to have gotten General Electric approval and that would have been important at that point.

Q. Prior to contacting Texas Eastern?

A. Prior or coincident with.

Q. To this date which was September 1971 do you know if that contact had been made?

A. With whom?

Q. General Electric?

A. I'm having very much problems with dates by month. We're talking about here many years ago.

Q. It's a long time ago.

A. And whether it was just before, just after or during I cannot pin down without further documents.

Q. Okay, that's fair. Do you have any recollection of when General Electric if ever approved the use of the NC esters?

A. No, I do not remember the date that we

were given permission to use them in turbines.

Q. Do you recall if you were given permission?

A. Yes, we were.

Q. Do you recall who the individuals who contacted General Electric were?

A. I made at least one visit there. In this time period, yes.

Q. Anybody else?

A. I do not remember who was with me at that time.

Q. Why was it important to receive approval from General Electric for the use in gas turbines?

A. In doing functional fluids work it is extremely important that the people who make the machinery in which you are going to put the fluid know that you're doing it and why you're doing it and what may happen. Therefore the manufacturers of equipment were always contacted by us with regard to any new products we were trying to introduce. On that basis then since GE sells the turbines we would go see them.

Q. Why would you not go see Texas Eastern first?

A. We had long -- many years before -- seen

Texas Eastern on the lubrication of gas turbines back in the early fifties. We had discussed with Ollie Fletcher the fire-resistant turbine lubricants and reports are available indicating this. So they were well aware that we were working in the area of lubricants for these turbines. So they knew what was going on in general terms and specifics in most cases.

Q. But in this document which is dated September 1971, which is as we'll see close to the termination of this product, it states that there's no plan to approach Texas Eastern until approval is received from General Electric. So the question is time specific.

MR. ZIMMER: Right. And the question assumes facts not in evidence, that that was the plan that was adopted. And since once again he didn't author the document nor make that decision as he's already told you, it's argumentative.

Q. So the extent you know why was the decision made?

A. No, I don't know.

MR. ZIMMER: If that decision was made.

A. Both had to be done. I have no reference as to which was due when.

Q. Do you recall visiting General Electric before you visited Texas Eastern with respect to this issue?

A. I think I indicated before that the visit to General Electric was to discuss approval of a new product, therefore -- period.

Q. Do you recall whether that occurred before there was a discussion with Texas Eastern about the termination of Turbinol 153?

A. Any discussion with anybody?

MR. ZIMMER: Any discussion?

Q. That's correct.

A. No, I do not recall.

Q. Do you recall if it was in the fall of 1971 that you visited GE?

A. The visit to GE?

Q. Yes.

A. Somewhere around that time, yes.

Q. I apologize again. This document is hard to read but again this was the way it was produced to us. This is a Customer Problem Report dated October 4th, 1971 and apparently authored by you, Dr. Hatton. So if you could take a minute to read it please. Dr. Hatton, do you recall this customer, Columbia Gulf Transmission?

A. I remember a trip down to Louisiana in which I visited with them.

Q. Is it safe to say that as of this date, October 4th, 1971 that Monsanto is still selling Turbinol 153?

MR. ZIMMER: To whom?

Q. To Columbia Gulf Transmission.

MR. ZIMMER: You haven't established that they ever sold it to them. But if you know, Doctor.

A. I am not really aware that they were a customer at this time or I don't remember that they were.

Q. This is Exhibit 51. I'd like to direct your attention on this report which is dated October 6, 1971 and which you're cc'd on to the two paragraghs that refer to Columbia Gulf Transmission and to Solar Engineering and ask this if that refreshes your recollection that indeed Columbia Gulf Transmission was a customer for Turbinol 153 in at least September 1971 as was Solar Engineering?

MR. ZIMMER: Do you understand the question, does this document refresh your recollection if they were? You don't need to assume this document is true.

A. I still do not remember that Columbia Gulf was an actual customer.

Q. Have you ever seen this document before? Do you remember seeing this document before?

A. I do not recall ever seeing this document before.

Q. Do you have any doubt that the cc reflects that the document was sent to you?

MR. ZIMMER: Calls for speculation as to whether it was or not.

Q. I asked him if he had any doubt.

MR. ZIMMER: It's argumentative too.

A. My name's on it. I assume I saw it.

Q. Do you have any recollection of whether Columbia Gulf or Solar Engineering were told about the hazards of PCB's at this time?

MR. ZIMMER: Argumentative since he doesn't even remember them being customers.

A. I have no memory.

Q. Do you have any knowledge of why the decision was made to continue to sell at this time Turbinol 153 to new customers?

MR. ZIMMER: Again that assumes facts not in evidence. If you're aware of such a decision, Doctor, you can answer.

A. As long as the product was still being sold we would sell it to anyone.

(A brief recess was taken.)

Q. Back on the record. This is Exhibit 52. The first page other than a little bit of the handwriting is completely illegible but I'd like to focus on the second page. Just turning to the first page for a minute. Dr. Hatton, is this your handwriting on the first page?

A. Yes.

Q. So I take it that -- do you recall seeing this document before?

A. No, I do not.

Q. This is a document dated October 12th, 1971 from Larry Bradford to Don Stegen and Dr. Hatton and Mr. Ford are cc'd on it. The front page has a handwritten note by Dr. Hatton. Turning your attention to the first paragraph, Mr. Bradford states that the economics of Turbinol 153 have been severely damaged in recent months. Do you remember during this time period of knowing that that was a concern of Monsanto?

MR. ZIMMER: Calls for speculation as to what Mr. Bradford meant by that. You can respond.

A. No, I don't recall that.

Q. Do you recall any worries about the success in terms of marketability of Turbinol 153 at this time?

A. Your question was regarding the marketability?

Q. The marketability of Turbinol 153?

A. What do you mean by marketability?

Q. The ability to sell the product at the time. Let me rephrase that. The receptivity of customers to the product at this time.

A. No.

Q. Do you recall whether Monsanto was actively promoting the product at this time, October 1971?

MR. ZIMMER: Objection, it's vague and ambiguous as to what actively means. You can answer, Doctor.

A. The product was still in our line. I do not know.

Q. Do you recall any discussion with either Mr. Bradford, Mr. Stegen or Mr. Ford about what is referred to in this paragraph about the long and good history on this product with Texas Eastern in reference to sales to Columbia Gulf?

A. I'm quite aware of the past history. I

was involved in much of it. The past history was also reported in the public record at that time in some papers by Ollie Fletcher in the technical literature and by Earl Farmer in 1970 that related to the successful use by Texas Eastern of these products.

MR. ZIMMER: I think her question was do you recall discussing that history.

Q. I'll rephrase the question. Do you recall any of these gentlemen discussing that history with Columbia Gulf at the time of 1971?

A. No, I do not recall discussing it.

MR. ZIMMER: Do you recall any of these gentlemen doing that which calls for speculation.

Q. Do you recall them discussing it with you?

A. I do not, no.

Q. Did any of them come to you and ask for that history that it so that it could be conveyed to Columbia Gulf?

A. I don't know.

Q. Does this help refresh your recollection about sales to Columbia Gulf at this time?

A. No.

Q. This is Exhibit 53. I just want you to

look at the front page which appears to be a letter from you to a Mr. David Moy at Columbia Gulf Transmission Company on October 25th, 1971. Dr. Hatton, does this help refresh your recollection about any contacts with Columbia Gulf during this period?

MR. ZIMMER: About any contacts with them?

Q. Yes.

A. I still do not remember other than the documents you've given me.

Q. Do you recall telling them that all the lab data which are attached point to good fluid performance?

A. I do not recall telling them that.

Q. So you similarly don't recall telling them about any of the hazards of PCB's; is that correct?

MR. ZIMMER: Asked and answered. Assumes facts not in evidence. The document speaks for itself.

Q. You can answer.

A. The answer is no.

Q. This is Exhibit 54. This is a letter dated October 26th, 1971 from Mr. Papageorge to Mr.

Mason. Have you ever seen this document before?

A. No.

Q. Were you aware in October of 1971 that samples were being sent of Aroclor 1254?

A. No.

Q. Were you aware in October 1971 that Aroclor 1232 was no longer being manufactured?

MR. ZIMMER: Assumes facts not in evidence.

A. No.

Q. I think we established yesterday that Aroclor 1232 was one of the components of Turbinol 153; is that correct?

A. I would have to refer to the earlier documents to confirm that but I believe we --

Q. Let's refer to them. Referring to Exhibit 3 which you testified yesterday accurately referred to the composition. Is Aroclor 1232 still part of the composition?

A. Yes.

Q. Okay. My question to you, if you know, was Turbinol 153 still being manufactured as of October 1971 given that at least this document states that Aroclor 1232 was no longer being manufactured? If you know.

MR. ZIMMER: Now you made it argumentative. The question is defective in that sense. If you know.

A. I do not remember specific manufacturing details.

Q. Who would know whether Turbinol 153 was still being manufactured at this time; do you know?

A. The manufacturing department.

Q. Would that be Mr. Springate who would be responsible for that?

A. I do not know who it was at that time.

Q. This is Exhibit 55. Just take a few minutes to read this which is a document to T. L. Gossage from C. L. Bradford and N. T. Johnson. You might scan it and I'm going to ask you questions about the section on Turbinol 153. Who is N. T. Johnson?

A. N. T. Johnson was in the marketing area primarily working on Pydrauls.

Q. And what was his -- was he the same level as Bradford or did he report to Bradford if you know?

A. I don't know.

Q. Okay. Do you remember knowing that Texas Eastern would require 5,000 hours of running

time before agreeing to the switch, to a replacement for Turbinol 153?

MR. ZIMMER: It assumes facts not in evidence.

A. I don't remember the exact time but I'm sure that -- I do not know -- remember the exact time that would be required for testing.

Q. Do you know if any time was required for testing?

A. Certainly, always, by the manufacturer.

Q. And would it be -- to your knowledge was it an extensive time or a short time?

MR. ZIMMER: The question is vague and ambiguous as to what extensive or short mean. He's told you he doesn't know what the time required is or was.

A. The time varied by manufacturer.

Q. Do you know in particular what GE's time was?

A. No. As I've indicated before no, I don't.

Q. Okay. On the second page these authors recommend that Monsanto absorb the cost to incinerate the current charge of Turbinol 153. Do you know if in fact Monsanto did absorb that charge?

A. I do not know.

Q. Do you know if at this time which is November 1971 that it was accurate that there was no approved fire-resistant lubricant that can directly replace Turbinol 153?

A. I do not know exactly what they mean by the term approved in this case.

Q. Do you know if there was no GE-approved fire-resistant lubricant that could replace Turbinol 153?

A. I can't remember.

Q. This is Exhibit 56. This document has many attachments to it. I would just like you to take some time and read the print part of the documents rather than the attachments. This appears to be a document dated December 8th, 1971 and appears to be written by Tom Gossage or maybe it was written by Bradford and Davidson to Tom Gossage and you're cc'd on it. I think that's correct. Have you ever seen this document before?

A. I don't remember seeing it.

Q. Do you have any recollection of when you first heard about the decision to terminate sales of Turbinol 153 to Texas Eastern?

A. No, I do not have a specific date.

Q. Do you have a general date, general time frame?

A. In about the time of this memo.

Q. So some time late fall 1971 would be accurate?

A. Yes.

Q. Where it refers to -- let me back up. Do you recall who told you of that decision?

A. No.

Q. Do you recall a meeting you were at where the decision was announced?

A. No.

Q. Do you have any recollection of any communication about the decision?

A. No.

Q. Did the decision come as a surprise to you?

A. I cannot remember.

Q. Turning to the paragraph under Objective where it states that the objective is to be out of PCB's, PCT's by June 30th, 1972. Do you recall agreeing with that plan, that there would be termination within six months?

MR. ZIMMER: Objection, that it was up to Dr. Hatton to agree or otherwise.

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A. I was asked --

MR. ZIMMER: Let me finish, Dr. Hatton, before you go on.

A. My temper got mad at this one.

MR. ZIMMER: The point is this is not authored by him as you already pointed out and whether he agreed or disagreed the implication is that somehow that was requested of him. Go ahead, Dr. Hatton.

A. I worked for Monsanto, Monsanto made the decision and I have my choice of leaving or abiding by their decision.

Q. Okay. That's fair. Did you have any personal feelings about the six-month termination plan?

A. I do not remember specific feelings.

Q. Were you worried about your relationship with Texas Eastern given this plan?

A. Of course.

Q. Why were you worried?

A. I was worried about all of my customers.

Q. What made you worried?

A. Any time I would change relations or products with a customer you worry until you get it accomplished.

Q. Were you worried that Monsanto would lose the business?

A. That would be part of the concern.

Q. What was the other part of the concern?

A. Inconvenience to a customer and to their customers if it affected production or some other reason. For example, if they were pumping gas up north and they suddenly had to change all of that that would be of concern to me. If it was a hydraulic area and they were selling die cast parts I would be concerned about their customers as well.

Q. So in the Texas Eastern case were you worried that it would cause a shut down of the pipelines?

A. Yes.

Q. Turn to page 4 of the document please. I want to direct your attention to the section under Field Sales/Product Group Relationship. Reference is made to a meeting that will be held in St. Louis which will focus on strategic salesmen and their managers who will be in attendance. Do you know if such a meeting was held?

A. No, I don't remember.

Q. So you've no recollection of attending such a meeting?

A. No.

(A brief recess was taken.)

Q. Back on the record. This is Exhibit 57. Would you know take a few minutes to read this exhibit. Let the record reflect that there's consultation and conversation between Mr. Zimmer and Mr. Hatton.

MR. ZIMMER: So stipulated. I thought that since I represented him I could do that.

Q. You can. I just want the record to reflect it. Could you tell me if you know who Don Olson is?

A. Yes, and the title given for him is correct.

Q. He is director of sales?

A. He was director of field sales at this time period.

Q. Do you know if he's still alive?

A. Yes.

Q. Did you report to him or have any relationship, business relationship, with him?

A. No, I think Larry Bradford's boss would have been on an equivalent level with him but I can't remember for sure who Larry's boss was. But it was up in the management ladder at Monsanto, above where

I was in the functional fluids activities.

Q. Have you ever seen this letter before? Except in the context of your deposition dated 1-25 '90. It's noted that it was Exhibit 23 to that deposition. But other than that have you seen this document before?

A. Yes, I have. I received copies of all of the withdrawal letters.

Q. Directing your attention to numbered paragraphs 1 and 2 at the bottom of the first page. Is it fair to say or is it accurate to say that Turbinol 153 has a chlorine content of less than 54 percent?

A. Yes, it is.

Q. Do you recall Monsanto saying or stating at this time, which is February 18th, 1970, that PCB's with a chlorine content of less than 54 percent which would include Turbinol 153 have not been found in the environment and appear to present no potential problem to the environment?

MR. ZIMMER: Saying or stating in what context, in this letter?

Q. In any context do you recall that?

A. No. I read the letter. But recalling it other than from the letter, no, I don't. I do not

remember that.

Q. But you testified earlier that you recall getting this letter?

A. Yes.

Q. But you don't recall that statement as part of the letter?

MR. ZIMMER: That's not what he said. He said he didn't recall the statement independently of the letter.

A. So I received the letter, I just accept it.

Q. Does this refresh your recollection about that statement having been made at that time?

MR. ZIMMER: Asked and answered. He says he doesn't remember the statement except for reading it in the letter.

Q. But I'm trying to understand the time period that he understands.

A. The letter was dated February 18th. We were undoubtedly -- I was supplied a copy either at that time or within days.

MR. ZIMMER: Don't start guessing, Doctor. You don't know -- unless you remember when you got it?

A. I don't remember the day that the letter

arrived in my office, no, but I do remember having received the letter.

Q. Do you remember ever telling anybody at Texas Eastern or showing them this letter or a letter like this?

A. I do not remember showing it to them, no.

Q. Do you remember ever telling Texas Eastern that Turbinol 153 had not been found in the environment and appeared to present no potential problem to the environment?

A. I do not remember making such a statement.

Q. Do you know if any such statement was ever made to Texas Eastern?

A. I do not.

Q. This is Exhibit 58. This is a memo from Dr. Hatton to Mr. Bradford dated December 13th, 1971. Could you please take a little bit of time to read this document. Do you recall writing this memorandum?

A. Yes.

Q. Was this memorandum written if you recall at Mr. Bradford's request?

A. Yes.

Q. And what did he ask you to do that prompted this memorandum?

A. He asked me to assist him in the withdrawal of the PCB-containing Turbinols at Texas Eastern. And in formulating the steps that might be required to do this.

Q. Do you have any recollection of how quickly you generated this memo after his request?

A. No, I do not.

Q. Do you have any recollection of when he first asked you to formulate this program?

A. No.

Q. Do you recognize the handwriting over to the left, the marginalia?

A. No.

Q. It's not your handwriting?

A. That is not my handwriting.

Q. Does this help refresh your recollection at all to any more specific date about when you were first told about the termination of Turbinol 153 sales?

A. No, it does not.

Q. Were there any meetings that were held in this time frame that involved a large group of people besides you and Mr. Bradford about the

termination program?

MR. ZIMMER: That implies that there were meetings between him and Mr. Bradford about the termination program.

Q. He just testified that Mr. Bradford asked him.

MR. ZIMMER: He didn't say he had a meeting with him, he said he was asked to do a memo. That's different. But you can answer, Doctor.

A. I do not recall any meetings.

Q. Do you recall if it was your recommendation that Texas Eastern be given six months regardless of whether they had a hold harmless agreement in which to stop using Turbinol 153?

A. I do not recall the source of that statement.

Q. Okay. Referring to point A, what were you referring to when you wrote about the general Monsanto PCB announcements?

A. My reference was with regard to I think the previous exhibit that was sent out by Don Olson.

MR. ZIMMER: Doctor, when you say I think, remember that she's not asking you to guess or speculate. If you have a recollection that that's what you mean please tell her. If not --

A. I recollect receiving that as being the general announcement to the world that we were withdrawing and I think that's what we were referring to.

Q. This document, the previous exhibit, if you might look at it, is dated February 18, 1970 and still promotes Turbinol 153.

MR. ZIMMER: I completely disagree with that characterization, counsel. It doesn't promote Turbinol 153. That's your read on it.

Q. It says that Turbinol appears to present no potential problem to the environment. This cannot be a termination --

MR. ZIMMER: Save your argument for the jury. There's not a pending question.

Q. There is a pending question.

MR. ZIMMER: So this could not be a termination document, is that the question?

Q. The question is do you recall what the general Monsanto PCB announcement referred to?

A. I do not -- I am not sure what this memo would include in that.

Q. Do you know if there was any general Monsanto PCB announcement that postdated this letter?

A. Postdate means after, doesn't it?

Q. Yes.

A. I can't recall the specific.

Q. Do you recall if management agreed to the cut-off date of June 1st, 1972?

A. Would you define what you mean by management?

Q. Whoever had the ultimate decision-making authority about the sale of this product?

A. And the question then was whether I remember any other documents?

Q. No, do you know --

A. Would you rephrase the question or I mean not rephrase it, wrong word. Would you repeat the question please?

Q. The question was whether you knew whether management agreed with the cut-off date that's stated in this document of June 1st, 1972?

A. That date was supplied to me by management.

Q. Can you tell me what you understood about why Monsanto wanted a hold harmless agreement from Texas Eastern?

A. I was not involved in that negotiation so I do not understand all of the implications.

Q. When was a hold harmless agreement first

first presented to you?

A. It was not presented to me. This was handled by others in my group. Specifically I believe Larry Bradford.

Q. When did you first learn about the hold harmless agreement?

A. I do not remember.

Q. Do you recall if at this time which was December 1971 MCS-1223 was available?

A. MCS-123 was available in quotation marks meaning that samples and data had been developed on the product.

Q. In what sense was it not available then?

A. I do not have a specific date on manufacturing startup and I cannot say on quantities, I can only talk about the data.

Q. Do you know if it was contemplated that MCS-1223 would be the replacement fluid for Turbinol 153?

A. We contemplated that a straight phosphate ester would be the replacement fluid. MCS-1223 and MCS- --I think you said 1122, you referred to both products -- were straight phosphate esters in different viscosity ranges.

Q. Those were the two products that were

considered replacement fluids for the Turbinol 153?

A. Yes.

Q. Exhibit 59. This appears to be a letter dated December 15th, 1971 by you, Dr. Hatton, to a Mr. K. Flanagan at Industrial Hydraulics Department. Would it be fair to say that Turbinol 153 was still being marketed as of December 15th, 1971?

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A. Yes.

Q. Do you know why this was, given that there were already plans to withdraw it, according to the last document, from sale to Texas Eastern?

A. No.

Q. Did this raise certain concerns in your mind?

MR. ZIMMER: If he doesn't know why it was then how can he comment on your argumentative question?

Q. He knew that it was being marketed and he also knew that it was being withdrawn.

MR. ZIMMER: There were discussions about its withdrawal.

Q. I'm wondering whether he was concerned about this seeming contradiction.

MR. ZIMMER: That's a problem, it's a contradiction to you perhaps but he hasn't given you

any --

Q. We'll find out if it's a contradiction to him.

MR. ZIMMER: My objection stands.

A. I cannot remember personal feelings from twenty years ago so I do not know how I felt about it right then.

Q. Did you raise any questions with anybody about why it was still being marketed to one customer when it was being withdrawn from another?

A. I don't remember.

Q. Do you recall ever telling anybody at Industrial Hydraulics Department that there were concerns about the product and in fact it was being withdrawn from use with Texas Eastern?

A. I recall no discussions with them.

Q. Do you know who would have made the decision to sell the Turbinol 153 to this customer?

MR. ZIMMER: Objection. That lacks foundation incredibly because there was no such decision either evidenced in this letter or anything else that you've shown him. You can answer, Doctor, if you know that such a decision was made.

A. I think your specific question related to if I knew who made the decision, I do not.

Q. Did anybody ask you to take care of this customer, Industrial Hydraulics Department?

MR. ZIMMER: Same objection. It implies that it's a customer. This letter indicates on its face that it relays information.

Q. Customer or potential customer?

A. I'm not aware of the source of this inquiry.

Q. By the way do you have any recollection about whether Industrial Hydraulics Department ever bought the Turbinol 153?

A. I have no information.

Q. This is Exhibit 60. This is a memorandum dated January 7th, 1972. I'm not sure who wrote this but the -- oh, C. L. Bradford wrote this, Larry Bradford, and your name is on here, Dr. Hatton, as is Tom Gossage's. So could you take a minute to review this. Do you recall seeing this document before?

A. No.

Q. This document states that it's -- or it mentions the REH memo to CLB of 12-13 '71 and the CLB memo to TLG of 12-15 '71. Exhibit 58 is the 12-13 '71 memo to CLB. So is it a fair assumption that this is referring to that memo?

MR. ZIMMER: Whether it's an assumption or not this memo was not authored by Dr. Hatton and so asking him what's in the mind of someone else and what he referred to is an impossibility. You can deduce that for yourself.

Q. You can respond to the question.

MR. ZIMMER: No, actually I'm going to instruct him not to answer it because --

Q. If he can't determine it he can say that.

A. I can't -- I don't know.

Q. Thank you for coaching the witness.

MR. ZIMMER: I didn't coach the witness. You don't need to tell me how to handle the witness. And, Doctor, if I instruct you not to answer something please don't do so.

Q. My understanding under California law is the only time a witness should not answer is when the material is privileged and if you have a new interpretation of California law I'll be happy to take that up to the judge. Your understanding should be in accord with mine because you've attended many depositions.

MR. ZIMMER: Thank you for noting that I have indeed and I can instruct my witness to answer

when I feel it's appropriate or not to answer when I feel it's appropriate.

Q. Do you recall, Dr. Hatton, that there was at this point, January 7, 1972, that there had been a decision made not to sell Turbinol 153 to Texas Eastern after January 15th, unless they signed a hold harmless agreement?

A. I was aware that such a program was proposed. I do not remember when it was approved, when it was started and what the dates specifically were.

Q. Do you remember disagreeing with the termination as of January 15th, 1972 unless the hold harmless agreement was signed?

MR. ZIMMER: He just gave you an answer that said he did not remember when the dates were. So the question is just -- we keep doing this, you keep trying to insert language, either words in his mouth or have him assume what somebody else meant in a particular document. That is argumentative, calls for speculation and it completely flies in the face of what his prior answer was.

Q. If you can answer.

A. Larry Bradford was in charge of this withdrawal program. I did the items on the dates

told.

Q. Referring back to your December 13th, 1971 memo which was Exhibit 58, you recommended termination as of June 1st, 1972. And it seems irrespective of the hold harmless agreement. I'm just wondering if you know did Larry Bradford ever tell you why that recommendation was not accepted?

A. I do not remember.

Q. Okay. Did Larry Bradford ever tell you why the hold harmless agreement was necessary?

A. I do not remember discussion on that question.

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Q. Anyone else besides Larry Bradford ever tell you?

A. Not to the best of my memory.

Q. Exhibit 61 is a letter dated January 7th, 1972 to Ted Harrison signed by Larry Bradford and enclosing a hold harmless agreement or a proposed agreement that's entitled Special Undertaking. If you could briefly review the cover letter which is what I'm going to ask you questions about.

A. Yes.

Q. Do you remember seeing this letter before?

A. No.

Q. Do you know whether the date of January 7th, 1972 is the first time that anyone at Texas Eastern was informed of the withdrawal of Turbinol 153?

A. I do not know.

Q. Did you ever inform anybody else prior to that date?

A. I do not remember.

Q. Did anyone ever tell you why Larry Bradford wrote that if you or Ollie Fletcher would like to bring our lawyer with us please phone me. Do you ever recall any discussion about a lawyer being present?

A. No, I do not.

Q. Do you know if there were lawyers present at the meeting that's referred to?

A. No, I do not.

Q. It states here that the meeting is set up for January 14th which is one week subsequent to this letter. Do you recall any discussions with Larry Bradford about the immediacy of the meeting after the letter?

A. I do not recall anything in that specific time frame that you spelled out. Larry Bradford was my boss and as as such we discussed the

general things to be discussed at such a meeting.

Q. Did you yourself have any concerns about having a meeting one week subsequent to this notification?

A. Since I didn't know about this notification I don't know as to how I could have any concerns about it.

Q. When did you first hear that you were supposed to be present at a meeting on January 14th?

A. The specific date I can't tell you the first time I knew that the meeting was set for the 14th of January.

Q. Was it in 1971 that you first knew about the meeting?

A. The assignment that Larry Bradford gave said I should be prepared to get involved in a meeting with Texas Eastern and as to the preparation of the document which you've already put in that I wrote for the program I do not know when he said we were going to be at a certain place at a certain time.

Q. Do you remember any concerns that you had about the meeting?

MR. ZIMMER: Like what, whether there would be lunch served, what time of day it would be?

Q. Whatever comes to his mind.

A. No.

Q. Were you worried about your relationship with Texas Eastern?

A. I've already testified that I was concerned about withdrawal of any product from any customer. That would include Texas Eastern.

Q. Say the week before the meeting were you particularly concerned about the meeting?

A. I can only answer no.

Q. You felt completely confident about the meeting?

MR. ZIMMER: Don't answer that.

A. Wait a minute.

MR. ZIMMER: Don't answer that. That is completely argumentative and you can call the judge to see if he'll make him answer that or not. Don't harass him, just ask him questions.

Q. I'm trying to determine whether he was worried or his anxieties increased as the meeting approached.

MR. ZIMMER: And he told you he did not think they did so. He said --

Q. So you felt completely confident of that.

MR. ZIMMER: Don't say anything else, Doctor. Let her ask you a question.

Q. What kinds of preparation did you make for the meeting during the week of January 7th?

MR. ZIMMER: January 7th, 1972 what preparation did you make, Doctor?

A. I don't know.

Q. This is Exhibit 62. This appears to be a call report from Don Stegen and you are cc'd on this, Dr. Hatton. Could you take a few minutes to read it. Who is Joe Kleffner; do you know?

A. Joe Kleffner worked in marketing services.

Q. What were his responsibilities to the extent that you know?

A. Scheduling deliveries, handling orders, handling direct customer complaints and such similar things. I don't know all his functions by any means.

Q. Did Mr. Stegen ever tell you why he was not prepared to discuss replacement products for 153 as of this date on January 7th?

MR. ZIMMER: The question assumes facts not in evidence, that that is indeed how Mr. Stegen felt.

Q. That's what he stated in his memo.

MR. ZIMMER: That may be and of course you can ask him tomorrow when you take his deposition.

Q. You can answer the question.

A. I do not remember.

Q. Did he ever tell you what he explained to Ted about the action he was preparing to take or Monsanto was taking regarding PCB's?

A. I don't remember that direct conversation.

Q. Do you remember any discussions about this call report or the discussion between Mr. Stegen and Mr. Harrison?

A. I do recall being told that some drums delivered down to Texas Eastern were leaking and I -- since this was not my area I just indicated to whoever called that they should contact somebody in marketing services which they did.

Q. Okay. Any other discussion that you recall about this pertaining to the upcoming meeting?

A. All I remember from this, from the call that I received, was that the drums were leaking. I do not remember any of the rest of that.

Q. This is Exhibit 63. This is a call report dated February 8th, 1972 about a call on

January 14th, 1972. And the author of the report appears to be you, Dr. Hatton. And if you could I'd like you to take some time and read it. Okay?

A. Yes.

Q. Have you seen this document before or do you remember authoring this document?

MR. ZIMMER: Which question do you want him to answer?

Q. The second question, do you remember authoring this document?

A. Yes.

Q. And is this a report of a January 14th meeting which is mentioned in the previous letter, January 7th letter?

A. Yes.

Q. Just some identification. Who is Mr. Herber?

A. February '72, a group leader in research.

Q. Why would he have been on this cC List?

A. The letter refers to providing data on phosphate ester replacement fluids and John would have been my source of such data.

Q. Do you know if he was at least partially responsible for developing the phosphate esters?

A. He reported to Bill Richard and I do not know what John's specific assignment was at this time.

Q. How about Mr. Slayton?

A. In 1972 the United States was divided into four geographical sales territories or districts or some such title. And they were headed by various people. And I believe at that time that Slayton had the New York office.

Q. Why would he have been copied on this document?

A. I don't know.

Q. How about Mr. Hansen?

A. Hansen worked -- Doug Hansen worked out out of the -- I believe the office was in Santa Clara, it was the West Coast office, and I believe that's where it was at that time.

Q. Was he in the sales group?

A. Yes.

Q. And do you have any idea why you cc'd him on this document?

A. Same answer as with Slayton, that list was obviously provided by the department.

Q. How about Mr. Shimley?

A. I do not remember what his position was

in this.

Q. Do you recall why it fell to you to write this report?

A. I was the lowest man on the totem pole at the meeting.

Q. That answers it. That means that in terms of responsibility that you were lower than Mr. Stegen or Mr. Frederiksen?

A. They were in a completely different operation than I was. They were in field sales where I was working out of the product groups in St. Louis and I do not know the relationship of members between the two groups.

Q. Okay. Do you recall who did most of the speaking in this meeting for Monsanto if anyone did?

A. I discussed the new products, the new products and their potentials, and that was my part of the meeting. Mr. Bradford did most of the discussion of the problems.

Q. And how about Mr. Stegen or Mr. Frederiksen?

A. I do not remember specifically their inputs.

Q. And if you recall do you recall who did most of the speaking for Texas Eastern?

A. No, I do not remember.

Q. Did you expect that there would be as many as the nine people from Texas Eastern present as were present?

A. Did I expect that there would be that many?

Q. Was the meeting larger than you had expected?

A. I can't answer that question. I don't remember my expectations at the time.

Q. Do you recall the general tenor of the meeting?

A. Somewhat strained but generally business like.

Q. Turning to the part on Summary, the statement that Texas Eastern will not sign such a letter and has sufficient material to finish out the current season. Do you recall what was said if anything by Texas Eastern about why they would not sign the special letter?

A. I do not recall.

Q. Do you recall any discussion after the meeting with anybody from the Monsanto group about this decision by Texas Eastern?

A. I do not recall a specific conversation.

Q. Do you recall generally conversations?

A. Two people from St. Louis would not have traveled to Shreveport and back again without discussing something. So I do not remember what we discussed.

Q. Do you remember being disappointed that they wouldn't sign the special letter?

A. I do not remember being disappointed.

Q. Turning to the second page, first full paragraph: The environmental situation with the PCB-containing Turbinol 153 was discussed in detail. To the extent you can recall could you relate for us what was said concerning the environmental situation with PCB-containing Turbinol 153?

A. That part of the meeting was handled by Larry Bradford and I do not remember what was -- what he said.

Q. Do you have any recollection -- and I know the answer is you don't recall but I'm going to mention some things to see if they jog your memory -- do you recall whether he mentioned that there was danger to wildlife?

A. I do not recall.

Q. Do you recall whether he mentioned that there was some evidence that PCB might cause liver

damage?

A. I do not remember.

Q. Do you recall whether he talked about the biodegradability of PCB's?

A. I do not remember.

Q. Okay, fair enough. Do you recall whether anybody at Texas Eastern raised questions during this discussion?

A. I do not recall any specific questions or people.

Q. Do you recall whether there was a lively give and take or whether it was primarily a presentation about this specific issue?

A. Which?

Q. The environmental situation with the PCB-containing Turbinol 153?

A. No, I do not recall that portion of it.

Q. Do you recall whether any portion of the meeting was a lively give and take or was it just a presentation?

A. I recall some questions, some general questions being asked me about the replacement products.

Q. Do you recall --

A. And the reason I remember that they were

there is because I made such notes so that I could take care of the specific questions later.

Q. Did you retain those notes or did you throw them away?

A. Threw them away as soon as I did this.

Q. Do you recall any of those questions?

A. Yes. They asked for more properties on the replacement products, general compatibilities of the replacement products and such questions. And requested that I come back as soon as I had the data and give them a detailed presentation on the products.

Q. Did you have the data with you?

A. No, I did not.

Q. And by replacement products are we referring to the two formulations that you referred to earlier?

A. MCS-1122 and MCS-1223.

Q. Referring to the last paragraph on the page. Was there discussion about GE approval of the product?

A. Yes.

Q. Can you relate for us what that discussion was?

A. Questions related to when, if and how

such approvals would be given.

Q. Were you able to supply any answers?

A. The answer supplied at the time was that we were working with General Electric in that area.

Q. This is Exhibit 64. This is a call report dated February 3rd, 1972 by Mr. Stegen to Mr. Bradford and you're cc'd on it. Do you recall seeing this document before?

A. No, I do not recall it.

Q. Do you remember ever being asked for your position on mixing Turbinol 153 with MCS-1223?

A. Yes.

Q. And do you recall what your response was?

A. My response to the first time it came up was that we would run some data and that I would be back to Texas Eastern with it when it was obtained.

Q. And that was approximately this time period?

A. Approximately is correct.

Q. Do you remember what your ultimate response to that question was?

A. That they were mixable and compatible.

Q. That they were?

A. Yes.

Q. And what was that based on?

A. Based on laboratory tests.

Q. Do you know if that decision was reported to Texas Eastern?

A. Yes, it was.

Q. This is going to be Exhibit 65. This is a call report dated February 4th, 1972 which I guess is a call to Texas Eastern at Shreveport in which you appeared to be present at this meeting. Can you take a minute to look at this. And you appear to be the author as well. Dr. Hatton; do you recall authoring this document?

A. I recall the visit to Texas Eastern.

Q. Can you tell me the purpose of the visit?

A. To provide further information on the potential replacement products.

Q. Was anything else discussed besides the replacement products at this meeting that you can recall?

A. After reading the document things were brought to mind but not prior to that.

Q. Anything else that's not reflected in the document, for instance --

A. No.

Q. Were there any discussions about why Turbinol 153 had been terminated?

A. I do not remember specific discussions.

Q. I'd like to turn your attention to the second page, the second full paragraph that begins: The results of the undersigned's visit. It says it was pointed out that this group -- meaning General Electric -- will probably not give approval but will hopefully indicate no objections to running actual turbine tests on MCS-1223 or other synthetic phosphate esters. Do you know why, was it ever stated to you why the GE gas turbine group would not give approval?

A. The explanation given by the General Electric people was that this was a change in their policy and that instead of approving products for use they would give a no objection to using the various fluid suppliers and I do not know why General Electric changed their positively.

Q. I'm not asking for that, just whether it was product specific or as you seemed to indicate an across the board change?

A. This was a general change.

Q. So I take from that that you could proceed to use the MCS-1223 in GE turbines from this

point forward, am I wrong?

A. No, that is correct.

Q. The next page, page 3, the paragraph that begins with Walter Woods, the first full paragraph, there's a reference to the opposition by certain units of GE to chlorinated materials. Is this referring to the bearing problem that you mentioned before?

A. Yes.

Q. Does it refer to anything else?

A. No.

Q. Do you know where things stood at the end of this meeting in terms of the decision by Texas Eastern with respect to the new product?

A. I don't have any specific recollection.

Q. Exhibit 66. I apologize. This Exhibit is very hard to read. Dr. Hatton, Exhibit 66 is a letter dated May 11th, 1972 apparently to Mr. Colvin and Mr. Hughes from an E. L. Riall and it talks about an incident in 1972 of apparent liver damage to a Mr. Gordon Wood who was a station attendant at the Huntsville station. Do you have any recollection of any communication regarding this incident?

A. No, I do not.

Q. Have you ever had any contact with Mr.

Riall?

A. Yes.

Q. Can you tell me who he was?

A. Works for Texas Eastern and I think primarily in a supervisory type of function over stations, gas pumping stations.

Q. Have you ever heard of a Mr. Gordon Wood?

A. I do not remember that specific name.

Q. Were you ever contacted by anybody at Texas Eastern about any personal injury that they claim may have stemmed from PCB's?

A. I do not remember beyond this document. And again we're back to the same place. I'm sorry.

MR. ZIMMER: I just don't want you to take as true what's in this document, Doctor, since you didn't write it. That's my only point. He's already said he didn't remember.

Q. Do you recall seeing this document before this time?

A. No.

Q. Do you recall any discussions with Dr. Kelly about any personal injury at Texas Eastern?

A. No, I don't recall any.

Q. Would it have been out of the ordinary

or was it out of the ordinary for you to be contacted about a personal injury with a product that you were involved with? Was it unusual?

MR. ZIMMER: Don't answer anything yet. To be contacted did you say about personal injury?

Q. Regarding a personal injury stemming from a product you were involved with.

MR. ZIMMER: It's vague and ambiguous as to what out of the ordinary means. Go ahead, Doctor, if you have an answer.

A. My contacts at various companies would have referred -- may have referred the question to me since I was the one they knew within Monsanto and any such question would have immediately been either transferred or the number given so that they could contact the medical department because I would not attempt to answer such questions.

Q. Okay. This is Exhibit 67. This is a call report dated July 24th, 1972 or the date of the call is that. The memo was dated August 2nd, 1972. It appears to be authored by Dr. Hatton. If you could take a minute to read it please, Doctor. I want to direct your attention to page 3 of this document. First before that do you recall authoring this document?

A. Yes.

Q. Do you recall the visit to Texas Eastern that it describes?

A. Yes.

Q. I want to direct your attention to the first paragraph and particularly to Walter Woods's question as to what Monsanto's responsibility would be along with Texas Eastern if the EPA banned PCB's and told Texas Eastern that they would have to change out all the remaining units. Do you recall that question from Mr. Woods?

A. Yes.

Q. Do you recall indicating that you'd have to take that question back to management?

A. Yes.

Q. And did you take the question back to management?

A. Yes.

Q. Did management ever respond to the question?

A. I do not know.

Q. Did they ever respond to you?

A. I do not recall such a response but --

Q. Do you recall ever providing Texas Eastern with a response to the question?

A. No.

Q. Was the question ever asked to you again subsequent to this time?

A. I don't remember.

Q. By the way who did you convey this question to in management?

A. To Bill Papageorge although he is not copied in on this. That was the gentleman to whom I talked.

Q. So you actually had a face-to-face discussion with him when you got back to Monsanto?

A. Yes.

Q. Do you recall what he said to you in response to the question?

A. He'd take care of it.

Q. Did you have any subsequent discussions with him about that question?

A. No.

Q. Or about the status of the question?

A. No.

Q. This is Exhibit 68. This is a memorandum dated August 28th, 1972 authored by Mr. Davidson to Mr. Paton and you appear to be cc'd on this document. And if you could please take a minute to look at it.

Q. Have you ever seen this document before?
A. I do not recall.
Q. Do you recall the call report or the meeting that you had some time in August with Texas Eastern?
A. No.
Q. Do you recall a decision some time that summer around August by Texas Eastern that they would not use Turbinol 1122 in the gas turbine?
A. Yes, I recall that decision but I do not remember who told me or if I heard it in a meeting.
Q. What was the impact of that decision on Monsanto as far as you know?
MR. ZIMMER: The question is very vague and ambiguous. If you have any understanding of that, Doctor, you can tell her. Do you mean economically, I mean it could be anything.
A. My only memory here is that I was really not handling this project and I think it resulted in somebody being assigned to it full time.
Q. By this project you mean the change over?
A. I mean the development of new turbine lubricants.
Q. I know you didn't author this but Mr.

Davidson states that we are essentially dead in the water for six to eight months until we are able to convince TransCanada Pipeline or another gas pipeline to test Turbinol 1122 this fall. I don't want you to tell me what was in Mr. Davidson's mind but I would like to know whether to you there was a serious impact by Texas Eastern not using the Turbinol 1122?

A. What do you mean by serious?

MR. ZIMMER: Yes, the document speaks for itself. The question is vague and ambiguous, calls for speculation.

Q. I want to know if there was any -- why it was so critical or whether it was critical for Turbinol 1122 to be used by Texas Eastern?

MR. ZIMMER: Same objections. Whenever we start using words like that that are argumentative and thrust your interpretation of a particular event into the question it makes it objectionable.

Q. He can tell me if it was not critical.

MR. ZIMMER: What do you mean by critical. That's vague and ambiguous in and of itself. He's just told you that he wasn't even involved in this program to get the other lubricants started.

A. If you'll define what you mean by

critical then I will --

Q. How important was it to Monsanto to have Texas Eastern use Turbinol 1122?

A. In terms of product development, having some customer use the product was quite important.

Q. And why was that so?

A. Because future application of the product would depend upon how the first customer's equipment worked.

Q. At this approximate point in time which is August 1972 was any customer using Turbinol 1122 to your knowledge?

MR. ZIMMER: Using -- do you mean that to include testing, trialing?

Q. Yes, in use.

A. 1122 or 1223 or both?

Q. First 1122?

A. We had a field trial at TransCanada and I am not -- I cannot remember the exact dates. That would have been 1122.

Q. How about 1223?

A. I can remember none.

Q. I want to refer you to the paragraph that's numbered 2. It starts with residual bad feeling on the part of Texas Eastern toward Monsanto

due to our precipitous withdrawal of Turbinol 153. Did anyone at Monsanto tell you that they had bad feelings about the withdrawal of Turbinol 153?

MR. ZIMMER: This they being Texas Eastern?

Q. Yes.

A. I do not remember a specific reference to that.

Q. Did you think that there were residual bad feelings at Texas Eastern?

A. First the definition of what bad feelings means obviously depends on a wide range from minor irritation to complete irritation.

MR. ZIMMER: I think she's asking for your opinion, Doctor.

A. In my opinion based on attending the meeting which we've already described in one of the attachments was that they were not enthused about the decision.

Q. Did anyone ever say to you that they viewed the withdrawal as precipitous?

MR. ZIMMER: When you say they once again --

Q. I mean Texas Eastern. Did Texas Eastern ever say to you this withdrawal was precipitous?

A. I do not remember that phrase.

Q. Did anyone ever use a phrase which was synonymous with precipitous?

A. I do not remember.

Q. Did you ever have any contact with Roland Moore?

A. If you look at attachment 63 you will notice that an R. E. Moore attended the meeting of January 14th, 1972. He was an attendee at the meeting.

Q. Was that your first contact with Mr. Moore?

MR. ZIMMER: We're looking at Exhibit 63.

A. I do not know.

Q. Do you recall any discussions in between January and August of 1972 with Mr. Moore that you may have had?

A. I do not recall any.

Q. This is Exhibit 69. This appears to be a call report based on a December 6th, 1972 call. The report was written by Mr. Frederiksen. It's of a contact with Walter Woods and you are cc'd on it. Do you recall ever seeing this call report before?

A. I do not recall seeing this specific

call report, no.

Q. Do you recall any of the events that are described in this call report?

A. I recall a request and I do not know how it was related from Texas Eastern that I prepare a presentation on the Turbinol 1122 and that it be given to Vice-president Moore.

Q. And did you prepare that?

A. Yes, I did.

Q. And did you give that presentation to Vice-president Moore?

A. Yes, and others at the same meeting.

Q. I'd like to refer you to the last paragraph on that page. The sentence where it says:

Texas Eastern was put in a very difficult position by our rapid exit of Turbinol 153. We were sole supplier and we gave them very little time to choose a replacement fluid.

Did anyone at Texas Eastern ever convey this to you, what these two sentences say?

A. I do not remember a specific instance when this happened.

Q. Were you under the impression that there was a rapid exit of Turbinol 153?

A. My opinion was that it was a timely

series of events based on the development of information as it came about.

Q. Did you feel that Texas Eastern was given adequate notice about the withdrawal of Turbinol 153?

MR. ZIMMER: Objection, vague and ambiguous as to adequate. It calls for a legal conclusion. But you can answer, Doctor, if you have an opinion about that.

A. I really don't remember an opinion at that time.

Q. You had a long history that you've testified to in both days of relations with Texas Eastern that had built up through the years and I gather good feelings between the two companies?

A. Yes.

Q. Did the events in January 1972 and subsequent change that relationship?

A. Not as far as I know. I was no longer responsible for such products and therefore the contacts with Texas Eastern became less and less. But the ones I did have were not unfriendly or --

Q. Okay. This is Exhibit 70. Exhibit 70 appears to be a memorandum dated December 14th, 1972 from Mr. Davidson to Mr. Frederiksen and you are cc'd

on this. Do you recall ever having seen this document before?

A. No.

Q. This document refers to a meeting that it states that you had in August at Texas Eastern with Mr. Davidson and Mr. Woods. Do you recall that meeting?

A. No, I don't recall that specific meeting.

Q. Do you recall ever hearing from Mr. Woods or anybody else at Texas Eastern that Mr. Moore was very upset with not having any notice on the discontinuance of Turbinol 153?

A. No, I do not remember.

Q. Turning your attention to the first paragraph, the sentence that says that:

Texas Eastern, because of their standardization fluids, is virtually our only opportunity to get into a GE turbine in the near future.

Do you recall a concern at Monsanto about the necessity to get into a GE turbine?

MR. ZIMMER: She's not asking you whether you agree with that statement.

A. The start of your question is what's

bothering me. Would you repeat it?

MS. WELCH: Can we have that read back?

(Reporter read from the record as directed.)

A. Yes.

Q. What was the basis of that concern as far as you know?

A. It was necessary to get a field test somewhere and relations with Texas Eastern were better than any other potential customer at that time.

Q. And was the necessity for a field test as you stated before for future product development?

A. Yes. And to obtain the GE -- to get GE to say something beyond it's okay to do it.

Q. What was the end result of that attempt, in other words, did you ever get into a GE turbine?

A. Yes.

Q. And where was that GE turbine?

A. Texas Eastern.

Q. Which turbine; do you know?

A. No, I don't remember which station it was in.

Q. Let me just ask you if you remember whether it was at the Corona station, New Mexico?

A. Until the time of this deposition I

didn't know there was a Corona station.

MS. WELCH: Okay, that's all I have so that concludes the deposition unless you have any questions for Dr. Hatton.

MR. ZIMMER: I don't.

COMES NOW THE WITNESS, ROGER E. HATTON, and having read the foregoing transcript of the deposition taken on the 21st and 22nd days of January, 1992 acknowledges by signature hereto that it is a true and accurate transcript of the testimony given on the date hereinabove mentioned.

_____

ROGER E. HATTON

SUBSCRIBED AND SWORN to before me this _____ day of _____, 1992.

My Commission expires: _____

_____

[Notary Public]

State of Missouri)
)
City of St. Louis)

I, Sandra L. Ragsdale, a Registered Professional Reporter and Notary Public within and for the State of Missouri, duly commissioned, qualified and authorized to administer oaths and to certify to depositions, do hereby certify that pursuant to Notice in the cause now pending and undetermined in the Superior Court of the State of California for the County of Los Angeles, to be used in the trial of said cause in said jurisdiction, I was attended at the law offices of Bryan, Cave, McPheeters and McRoberts, 500 North Broadway, in the City of St. Louis, State of Missouri, by the aforesaid witness; and by the aforesaid attorneys; on the 21st and 22nd days of January, 1992.

The said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing transcript, said testimony being by me reported in shorthand and caused to be transcribed

into typewriting, and that the foregoing pages correctly set forth the testimony of the aforementioned witness, together with the questions propounded by counsel and remarks and objections of counsel thereto, and is in all respects a full, true, correct and complete transcript of the questions propounded to and the answers given by said witness.

I further certify that I am not of counsel or attorney for either of the parties to said suit, not related to nor interested in any of the parties or their attorneys.

Witness my hand and notarial seal at St. Louis, Missouri, this 27th day of January, 1992.

My commission expires June 4, 1992.

Notary Public in and for the State of Missouri