

1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

2 ST. CLAIR COUNTY, ILLINOIS

3 FRANCES E. KEMNER, ET AL.,

4 Plaintiffs,

5 vs.

Case No. 80-L-970

6 MONSANTO COMPANY,

7 Defendant.

8
9
10 REPORT OF PROCEEDINGS

11 August 2, 1985

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

14
15
16 **APPEARANCES:**

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

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

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

22
23 Kathleen Watson Brunsmann
24 Official Court Reporter

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1 BE IT REMEMBERED AND CERTIFIED, that heretofore,
2 on to-wit, August 2, 1985, the matter as hereinbefore set
3 forth came on for hearing before the Honorable Richard P.
4 Goldenhersh, Circuit Judge in and for the Twentieth Judicial
5 Circuit, and the following was had of record, to-wit:

6
7
8 JOSEPH METCALF,

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

12
13 CLARIFICATION EXAMINATION (Continued)

14 THE COURT: Okay, gentlemen.

15 BY MR. HEINEMAN:

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

20 A Yes.

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

23 A Yes.

24 Q And by whom were they prepared?

1 A By Region 7 EPA.

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

4 A Yes.

5 Q And did you receive a copy of them?

6 A Yes.

7 Q And did you review them?

8 A Yes.

9 Q And did you approve them?

10 A Yes.

11 MR. HEINEMAN: Would you mark that please.

12
13 (Defendant Monsanto Exxhibit 931 was marked
14 for identification by the court reporter.)
15

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

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

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

24 A Yes.

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

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

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

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

8 Q And the first page is what, sir?

9 A I beg your pardon?

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

11 A The Internal Monsanto Distribution.

12 Q That you had made --

13 A Yes.

14 Q -- of this report?

15 A That's correct.

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

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

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

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

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

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

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

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

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

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

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

15 MR. HEINEMAN: All right. Thank you.

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

20 A Yes, sir.

21 Q And why did you add those comments?

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

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

4 A Yes.

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

8 A Yes.

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

12 A Yes.

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

19 A Yes.

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

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

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

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

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

8 A Yes. About two weeks.

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

13 A Yes.

14 Q Whose purpose was that?

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

16 Q The purpose of the meeting?

17 A Yes.

18 Q And this meeting was called by the EPA?

19 A Yes.

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

23 A Yes.

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

Environmental Services?

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

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

A Yes.

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

A Yes.

Q Who had been doing it?

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

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

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

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

A Yes.

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

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

4 A Yes.

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

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

10 Q All right.

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

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

17 A EPA.

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

20 A That's correct.

21 Q Now, what does that mean, sir?

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

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

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

9 A Yes.

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

12 A Yes.

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

18 A Yes.

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

21 A Yes.

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

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

A Yes, sir.

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

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

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

A Yes, there was discussions.

Q All right. Now what was that discussion?

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

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

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

2 A Yes.

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

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

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

17 A I believe so.

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

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

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

24 A Yes, sir.

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

A I believe 13.

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

A I think there were 12 others.

Q All right.

A All total.

Q Now --

A Twenty-five at the meeting.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

Q -- were made?

A Yes.

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

A Yes.

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

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

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

A Yes.

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

1 A That's correct.

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

4 A Of the exhibit?

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

6 A Oh, I'm sorry.

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

9 A Yes.

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

13 A Yes.

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

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

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

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

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

1 THE COURT: Objection is sustained. It is hearsay.

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

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

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

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

12 A One of the Western Environmental Services people.

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

15 A Yes.

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

19 MR. CARR: Your Honor, I object.

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

22 MR. CARR: Would you wait until I finish my
23 objection. He is now saying the same thing indirectly again
24

that he cannot do directly.

THE COURT: Objection is sustained.

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

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

A Yes.

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

A Yes.

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

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

THE COURT: Objection is sustained.

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

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

1 Q And Western?

2 A Well, Western proposed them.

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

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

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

11 A Yes.

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

16 A Yes.

17 Q Whose activity is being referred to there?

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

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

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

24 Q If I can direct your attention to the page

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

6 A Yes.

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

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

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

14 A Yes.

15 Q And demanded 200?

16 A Yes.

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

21 A Yes.

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

24 A Yes.

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

3 A Yes.

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

6 A Yes.

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

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

11 Q Yes.

12 A Yes, they knew.

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

15 A Apparently.

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

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

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

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

24 A They indicated that at the meeting.

1 Q So clearly --

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

4 THE COURT: Rephrase it please.

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

8 A I don't recall.

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

11 A Yes.

12 Q Of the material that remained in the track?

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

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

17 A No.

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

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

22 MR. CARR: Nothing, your Honor.

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

24 THE WITNESS: Thank you.

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

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

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

10 CROSS EXAMINATION

11 BY MR. CARR:

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

16 THE COURT: 1102.

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

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

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

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

24 A Yes.

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

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

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

17 THE COURT: You may proceed. Go ahead.

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

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

21 A Yes, I do see that.

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

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

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

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

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

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

27 Q Yes.

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

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

6 A All right.

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

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

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

13 A Yes.

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

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

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

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

one of the batches described?

A Yes.

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

A Yes, I do.

Q That are all joined in one column?

A Yes.

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

A Yes.

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

A Let me see, Mr. Carr.

Q Could you get 1135 out.

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

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

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

MR. CARR: That's correct.

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

A These two columns in this first document --

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

A I'm sorry.

1 Q Could you erase your marks, please.

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

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

11 A I do see these numbers.

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

15 A Only in these two cases.

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

17 A Yes, I do see those numbers.

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

A I see that.

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

1 A Yes.

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

5 A That does appear to be, yes.

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

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

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

13 A Yes.

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

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

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

A I do.

1 Q Don't you recall we spent --

2 A Yes.

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

4 A We did manufacture 2,4-Dichlorophenol.

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

6 A I recall that, yes.

7 Q And -

8 A The other was para?

9 Q Parachlorophenol.

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

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

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

14 Q Well, Mr. Park --

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

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

20 A Which document are you speaking of?

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

23 A Well, it speaks of chlorophenols.

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

1 A I'm sorry. --

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

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

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

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

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

16 A Yes.

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

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

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

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

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

4 A Yes.

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

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

13 A Yes, I am.

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

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

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

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

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

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

2 A I believe it is, yes.

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

5 MR. MUSGRAVE: Same objection.

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

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

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

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

16 A Yes, they did.

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

19 A Yes.

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

1 all put out in June?

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

4 THE COURT: Objection is overruled.

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

8 A No, I do not.

9 Q Never met him?

10 A Not that I can recall.

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

15 A Yes, I do.

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

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

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

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

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

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

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

7 MR. CARR: No, your Honor.

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

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

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

13 MR. MUSGRAVE: February, March exhibit.

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

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

17 THE COURT: The objection is overruled.

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

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

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

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

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

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

11 THE COURT: Objection is overruled.

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

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

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

18 A That is correct.

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

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

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

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

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

10 THE COURT: Objection is overruled.

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

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

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

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

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

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

3 A Yes.

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

7 A The statement would still be correct.

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

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

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

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

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

9 THE COURT: Objection is overruled.

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

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

19 A That may have been the question.

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

24 MR. MUSGRAVE: Same objection.

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

2 THE COURT: Same ruling.

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

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

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

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

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

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

3 MR. MUSGRAVE: Object to the question --

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

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

6 THE COURT: Go ahead, Mr. Carr.

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

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

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

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

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

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

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

3 THE COURT: Objection is overruled.

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

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

9 THE COURT: Objection is overruled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Objection is overruled.

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

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

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

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

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

A He may have told him the rest.

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

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

THE COURT: Objection is overruled.

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

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

THE COURT: Objection is overruled.

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

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

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

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

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

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

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

14 THE COURT: Objection is overruled.

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

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

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

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

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A I see nothing improper in that.

Q Is that correct, sir?

A I see nothing improper.

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

A Yes.

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

A No.

Q -- behind it?

THE COURT: What is that exhibit number?

MR. CARR: 1233, your Honor.

THE COURT: Thank you.

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

A Yes.

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

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

1 Q Yes, that's where I am.

2 A Okay.

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

5 A Yes.

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

8 A It says Cl₄.

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

10 A I suppose that's what he means.

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

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

16 Q On Building 237, the Control Room Table.

17 A Yes.

18 Q Cl₄ .175 nanograms.

19 A Yes.

20 Q Or the u.g.

21 A Whatever, yes. I see the numbers.

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

24 MR. MUSGRAVE: Mr. Armstrong.

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

A I see the statement there, yes.

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

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

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

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

THE COURT: You may proceed. Objection is overruled.

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

A If we take the Cl_4 to refer to the tetra dioxins, than that would be correct.

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

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

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

10 A Yes.

11 Q Do you see that, sir?

12 A Yes, I do.

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

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

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

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

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

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

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

2 A Yes, I do.

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

4 MR. MUSGRAVE: Same objection.

5 THE COURT: Same ruling.

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

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

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

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

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

24 A I would not state it quite that way.

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

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

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

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

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

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

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

3 A Yes.

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

5 A Yes.

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

8 A Sure, one can make that conversion.

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

15 A That's what she states.

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

19 A Yes.

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

22 A You're referring back to

23 Q The June of '79 --

24 A Yes.

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

A Mr. Carr--

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

A No. All we have is this document here.

Q Yes. And that June 12th document is a Monsanto

document, isn't it, sir?

A Yes. But one --

Q And it is discussing testing done by Monsanto,

of equipment and furniture in the chlorophenol units and isn't it, sir?

A That's correct.

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

A The document indicates that there was -- that

they did find, whatever it is, a quantity of Cl₄.

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

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

Q You tell the public here "We had tested for TCDD

by taking wipe samples and found it not to be present. In taking the wipe samples, we tested the surface of equipment

and furniture in the chlorophenol units and their control

areas." Isn't that what you say, Mr. Park?

A Some of what you said is expressed in 810.

Q Didn't I read it exactly as it was said in the

answer to number 10?

Do you see where it says "we had tested for TCDD"

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

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

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

7 A That's correct.

8 Q It's addressed to him.

9 A Yes.

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

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

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

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

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

22 A Yes.

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

1 A Yes.

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

4 A It appears to indicate that.

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

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

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

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

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

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

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

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

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

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

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

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

7 A That's correct.

8 Q It's addressed to him.

9 A Yes.

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

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

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

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

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

22 A Yes.

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

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

3 Q No, I'm saying --

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

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

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

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

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

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

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

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

18 THE COURT: Overruled.

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

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

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

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

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

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

6 Q That's all we've established?

7 A Yes.

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

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

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

15 A I remember Brian Ward.

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

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

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

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

1 Environmental Health.

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

6 A Yes.

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

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

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

12 A I don't see that last part.

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

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

16 Q You see the 1.75 u.g.?

17 A Yes.

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

20 A Yes. That's different from this.

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

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

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

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

2 Q The Control Room Table.

3 A Yes.

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

6 A That's what the document indicates.

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

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

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

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

14 Q Is that right, Mr. Park?

15 A As I recall.

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

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

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

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

24 Q Is there some document they said they withdrew?

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

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

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

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

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

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

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

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

18 THE WITNESS: I would say no.

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

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

3 A I recall the admission, yes.

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

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

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

10 A Much after.

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

13
14 (Plaintiff's Exhibits 1544 and 1545 were marked
15 for identification by the court reporter.)
16

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

22 A Yes, I do.

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

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

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

8 MR. CARR: Yes, your Honor.

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

13
14 (Lunch recess.)

15
16 THE COURT: Mr. Carr.

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

20
21 Q (By Mr. Carr) Mr. Park, I hand you what's now
22 been marked Plaintiff's Exhibit 1546, and ask you if that is
23 not a memo of January 5, 1981 referring to wipe samples.
24 Could you answer the question?

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

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

4 A Yes.

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

8 A Yes.

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

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

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

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

21 THE COURT: It's admitted over objection.

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

1 it, sir?

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

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

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

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

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

15 THE COURT: The objection is overruled.

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

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

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

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

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

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

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

4 THE WITNESS: I would assume that it is.

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

9 A Yes, that's the first sentence.

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

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

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

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

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

22 A Yes.

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

1 A Yes.

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

4 A Yes, we were.

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

8 A Yes.

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

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

13
14 Q (By Mr. Carr) I hand you now what's been marked
15 Plaintiff's Exhibit Number 1547, and it's the only copy I
16 have, so let me show it to Counsel first. Let me ask you if
17 you recognize that as a Monsanto document dealing with Build-
18 ings 236 and 237, and describing the same samplings that we
19 have previously discussed as attached to Exhibit 1233, only
20 1233 is handwritten and the document you have now, 1547, has
21 the results typed.

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

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

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

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

6 A Is there a page to this document --

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

9 A It doesn't say which location --

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

12 A Yes..

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

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

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

19 A Yes, sir.

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

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

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

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

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

11 A I see these numbers across here.

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

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

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

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

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

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

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

1 there is on the other.

2 A There's different information.

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

9 A I see that.

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

12 A Yes.

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

15 A That appears to be what it says.

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

20 A That's correct.

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

24 A Yes, I do.

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

5 THE COURT: Continuing objection noted.

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

9 A I see that number.

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

13 A Yes.

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

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

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

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

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

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

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

12 A Well, as a result of discussions.

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

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

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

20 A Well, not me personally.

21 Q Sir?

22 A No. Not me personally.

23 Q I said he prepared.

24 A Yes, he prepared them.

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

3 A Yes.

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

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

12 A This Request for Admissions?

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

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

18 Q That we're currently in trial on.

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

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

1 A No.

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

7 A Yes.

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

10 A Yes.

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

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

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

22 MR. MUSGRAVE: Thank you.

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

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

2 Q Number 7, sir.

3 A Yes. We admitted 7-b.

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

9 A Yes.

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

11 A Yes.

12 Q Sir?

13 A That's correct.

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

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

19 Q Well, what was it, a product?

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

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

RECALL BOOK

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

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

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

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

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

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

22 A Not intentionally.

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

1 plant?

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

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

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

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

9 A Not intentionally.

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

11 A In a sense it was produced.

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

13 A No.

14 Q Was it a by-product then?

15 A No.

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

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

19 Q Oh, is it an end product?

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

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

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

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

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

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

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

THE COURT: It has been answered in the affirmative, yes.

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

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

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

THE COURT: Go ahead and answer it.

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

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

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

THE COURT: No, it has not.

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

1 Carr.

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

4 A Mr. Carr --

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

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

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

11 A No.

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

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

17 Q Isn't produce the verb, sir?

18 A The verb of what?

19 Q Isn't produce a verb, sir?

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

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

22 A In a context it would be.

23 Q In any context.

24 A No.

Q Product is a result of producing.

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

THE COURT: It has not. Overruled.

THE WITNESS: Semantics, Mr. Carr.

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

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

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

THE WITNESS: No.

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

A No.

Q Was it a product?

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

MR. MUSGRAVE: Objection.

THE COURT: Objection is overruled.

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

1 court has confirmed if it was a product.

2 MR. MUSGRAVE: Object.

3 THE COURT: Objection is overruled.

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

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

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

10 THE COURT: Objection is overruled.

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

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

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

16 A It is an unwanted contaminant.

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

18 A No, it is not.

19 Q What is a product?

20 A A product is something we produce and market.

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

22 A And market as a product.

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

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

For example, as a result of production --

Q What is a by-product, sir?

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

MR. CARR: No.

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

THE COURT: No.

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

THE COURT: I said it was overruled.

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

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

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

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

Q By-products are marketed?

A Yes.

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

A We do not.

Q Do you sell it, however?

1 A No, not intentionally.

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

5 A Mr. Carr --

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

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

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

11 A Not as a product.

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

14 A In tiny amounts.

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

16 A We're marketing the product.

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

20 A It may have trace amounts of unwanted impurities.

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

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

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

5 A Yes.

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

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

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

14 A Well, it was denied.

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

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

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

23 A Yes.

24 Q Why do you deny that, sir?

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

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

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

7 THE COURT: Number 11?

8 MR. MUSGRAVE: Yes.

9 THE COURT: Overruled.

10 MR. MUSGRAVE: Number 11?

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

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

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

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

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

21 THE WITNESS: No, Mr. Carr.

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

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

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

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

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

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

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

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

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

20 Q Well, did you admit that, sir?

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

23 Q That question is not --

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

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

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

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

5 Q You tell me.

6 A You left out the paren statement --

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

8 A Yes.

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

11 A I think you did.

12 Q How so, sir?

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

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

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

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

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

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

1 what is TCDD?

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

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

7 A Yes.

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

10 A Yes.

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

13 A It's not a compound.

14 Q What is it, sir?

15 A That's a question --

16 Q It is a compound --

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

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

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

24 Q Where, sir?

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

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

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

6 Q What is a compound, sir?

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

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

10 A As defined in this document.

11 Q In any document, anywhere.

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

14 Q Is compound defined in this document?

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

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

19 A No, we wouldn't, because --

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

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

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

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A Yes, I'm trying to say.

Q What is the meaning of the word compound?

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

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

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

Q What does it mean to you, sir?

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

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

A I'm not sure what it would mean.

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

A I don't know, Mr. Carr.

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

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

Q They told you --

A They were confused by it.

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

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

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

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

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

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

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

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

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

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

17 A No, not a compound.

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

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

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

24 A That could have been a reason right there.

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Q That could have been?

A Yes.

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

A Some are relatively non-toxic as I understand.

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

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

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

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

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

A No.

Q Well, why did you deny it?

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

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

A Recognized by whom, Mr. Carr?

Q By you, sir.

A No, sir.

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

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

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

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

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

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

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

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

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

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

21 Q Sir?

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

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

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

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

4 A Generally recognized, no.

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

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

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

9 A No.

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

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

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

14 A Yes.

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

17 A Mr. Carr --

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

19 A Okay.

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

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

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

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

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

6 A Okay.

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

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

11 A That's correct.

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

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

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

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

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

10 A Yes.

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

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

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

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

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

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

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

24 A Yes, I do.

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

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

6 A Yes, sir.

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

9 A Yes.

10 Q You can read those together?

11 A Yes, sir.

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

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

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

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

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

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

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

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

2 Q Yes, it is.

3 A No, it isn't.

4 Q It's exactly the point.

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

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

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

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

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

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

1 don't you, Mr. Park?

2 A Counsel advised to answer it as we did.

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

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

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

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

18 THE COURT: Objection is overruled.

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

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

21 A I would have to answer no.

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

24 A That's correct.

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

5 A Yes.

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

9 A No.

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

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

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

15 MR. MUSGRAVE: In what, Mr. Carr?

16 MR. CARR: In orthochlorophenol.

17 MR. MUSGRAVE: Crude?

18 Q (By Mr. Carr) Isn't that correct, sir?

19 A I think that was a different product, Mr. Carr.

20 Q You don't know that you're selling orthochloro-
21 phenol to Vulcan and Reichhold Chemical?

22 A I would assume that orthochlorophenol means the
23 final product. I believe the other might be the crude, not
24 the final product.

1 Q Do you have a product that you sell at the plant
2 in '79 called orthochlorophenol? Not the product you sell
3 as orthochlorophenol crude. You don't sell anything other than
4 that, are you, sir?

5 A I'm sorry, I just don't know the answer to that.

6 Q Well, if you sell anything other than the ortho-
7 chlorophenol crude, it's not shown by the documents, and you
8 admitted in request number 7 that you manufactured orthochloro-
9 phenol, and they're talking about the orthochlorophenol produced
10 at that plant, aren't they, sir?

11 A Request number 15 was a statement or number 15
12 was simply incorrect, Mr. Carr, and I'm assuming that it was
13 because samples of this particular product, the orthochloro-
14 phenol itself had not been analyzed.

15 Q But you know that it's not the case. You know
16 that you've seen --

17 A No.

18 Q -- you've seen the documents where they've
19 analyzed. I've seen them to you, where they analyzed the
20 orthochlorophenol.

21 A Crude?

22 Q They're not even talking about orthochlorophenol
23 crude, and neither are you. You call it OCP in all of your
24 documents, don't you, sir?

1 A I don't know, Mr. Carr.

2 Q You don't know that. The people that you went
3 to for these responses knew, though, didn't they, sir?

4 A I would assume so.

5 Q Over on page -- the next page on question 17, you
6 deny -- well, that's not airborne concentration of dioxin.
7 The next question, 18, you deny that chloracne is a symptom
8 of dioxin exposure, don't you, sir?

9 A Yes.

10 Q And you know that it is a symptom of dioxin
11 exposure, don't you, sir?

12 A No. Not as limited by this document.

13 Q Mr. Park, do you understand that the witness,
14 two witnesses preceding you, Dr. Roush, took the position that
15 chloracne is the only symptom of dioxin poisoning, none others.
16 He spent weeks here testifying to that. Do you understand,
17 sir?

18 A Yes. All right.

19 Q And he swore under oath that it is --

20 MR. MUSGRAVE: Is what?

21 Q (By Mr. Carr) -- caused by dioxin poisoning.
22 And here you're saying in this document that it's not --

23 MR. MUSGRAVE: Object.

24 Q (By Mr. Carr) -- a symptom of dioxin exposure.

1 MR. MUSGRAVE: Object. That's contrary to what
2 the question asked. There's two different questions.

3 THE COURT: Objection is overruled.

4 THE WITNESS: No. We're merely denying this
5 Request for Admission, Mr. Carr.

6 Q (By Mr. Carr) Well, in this request, it is asking
7 you to agree that chloracne is a symptom of dioxin exposure.

8 A Not in the context of this document. I guess a
9 couple of things come through to me as possible reasons why
10 this was considered not to be a totally correct statement.

11 Q Well, you must not agree with what the word
12 "symptom" means, or what the word "chloracne" meant.

13 A No.

14 Q Or what the word "dioxin" meant, or what the word
15 "exposure" meant.

16 A Yes.

17 Q Is that it, Mr. Park, one of those words you don't
18 know what it means?

19 A No. We feel the statement as written was not
20 totally correct.

21 Q Okay.

22 A And, therefore, not subject to being admitted.

23 Q Where is it not correct, sir?

24 A For one thing, it's the dose that may --

1 Q There's no mention about --

2 A That's right, there isn't.

3 Q There's no mention about dose.

4 A That's right. Mere exposure to a small amount
5 may not result in chloracne.

6 Q Yes. So --

7 A A large amount may.

8 Q Yes, that's right.

9 A We don't know. But chloracne can be caused by
10 other things.

11 Q That's true. No doubt about that.

12 A So the statement as written is not wholly correct.
13 At least that was the conclusion drawn six years ago.

14 Q It doesn't say it's the only symptom, and it
15 doesn't ask you to say that it's only dioxin that can cause
16 it. It doesn't ask you to say the amount that can cause it.
17 It's a simple little statement that you had witnesses here
18 testifying under oath for a considerable period of time that
19 chloracne was a symptom of dioxin exposure.

20 MR. MUSGRAVE: Objection, that's not the testimony.
21 Not exposure, dose.

22 MR. CARR: It's not the testimony?

23 MR. MUSGRAVE: Dose. Not exposure.

24 THE COURT: Objection is overruled. You may

1 proceed, Mr. Carr.

2 Q (By Mr. Carr) Here in order to stop this
3 proceeding that was going on, you undertook to deny the truth
4 of something that Dr. Roush has pointed out document after
5 document, chloracne is the hallmark of dioxin exposure.
6 Chloracne is generally recognized as being caused by dioxin
7 exposure. Yet here you deny it, don't you, sir?

8 A It's totally false, Mr. Carr.

9 Q That's totally false?

10 A That was not the stopping proceeding at all. This
11 was merely as you see, this was the first set of interroga-
12 ries. Those that were not totally correct, we would deny,
13 actually expecting that the plaintiff, OSHA, would come back
14 with some more detailed and more clear requests for admissions.

15 Q Did you tell them somewhere, did you write them
16 a document saying that number 18, we don't know what you mean
17 by that, we don't agree. We don't know what chloracne is, or
18 be more precise about what you mean by symptoms, or be more
19 precise what you mean by exposure. You've got the right, and
20 you understand that you have the right, don't you, Mr. Park,
21 if you believe it's ambiguous, and you don't understand it,
22 you have the right to object to it? You have the right to
23 say we cannot answer that question because it's ambiguous,
24 because we don't understand what it means. You have the right

1 to do that, you know that, don't you, Mr. Park?

2 A Yes.

3 Q But you didn't do that with these questions, did
4 you, sir?

5 A We denied those that were not totally correct.

6 Q And you didn't tell them that you were denying
7 it because it was ambiguous, or you didn't know what it meant,
8 you just out right denied it, didn't you, sir?

9 A Yes, if it was not totally correct.

10 Q Now, don't you reckon that they could have given
11 you more questions if you said, "Hey, we really don't under-
12 stand what you mean by that. Give us more detail, because we
13 don't understand what you mean by symptom, or by dioxin, or
14 by exposure."

15 MR. MUSGRAVE: Object to the speculation and
16 conjecture.

17 THE COURT: Objection is overruled.

18 THE WITNESS: What we followed was the common
19 method of practice, Mr. Carr, advised by a counsel experienced
20 in OSHA matters. We fully expected OSHA would come back with
21 several series of questions that would define themselves.

22 Q (By Mr. Carr) But they didn't, did they, sir?

23 A I don't believe they did.

24 Q Sir?

1 A No.

2 Q They took your denials at face value, didn't they,
3 sir?

4 A No.

5 MR. MUSGRAVE: Object to that. Objection, specula-
6 tion as to what anyone at OSHA did upon reviewing and receiving
7 these. There's no foundation for that. It's totally specula-
8 tion and conjecture. I object to it.

9 THE COURT: Objection is overruled.

10 Q (By Mr. Carr) Did you write them a letter saying
11 to them that if you'll send us some more questions, more
12 precise questions, and define every word in your document, or
13 the words like compound and symptom, and TCDD, define those
14 for me, we can give you another set of answers?

15 A No.

16 Q Did you say that to them?

17 A No.

18 Q No. Now on question number 20 you did admit that
19 a chemical spill took place, didn't you, sir?

20 A Yes.

21 Q But you promptly denied question number 21 because
22 it didn't consist of orthochlorophenol, did it, sir?

23 A I think that's correct.

24 Q The spill consisted of 2,4-Dichlorophenol that

1 took place in February, 1979; isn't that right, sir?

2 A Yes.

3 Q But then they get a little more precise. They
4 say the spill referred to in request number 20, the spill
5 from rail car number ACFX 23376, don't they, sir?

6 A Yes.

7 Q And it did spill from that rail car, did it not,
8 sir?

9 A No.

10 Q What rail car did it spill from?

11 A I think it was another rail car.

12 Q With a different number?

13 A Yes.

14 Q What numbers were different, sir?

15 A I don't recall the number.

16 Q Well, they also say then that approximately 3,000
17 gallons spilled, and you denied that as well, didn't you, sir?

18 A Yes.

19 Q Why did you deny that one, sir?

20 A Because it's incorrect.

21 Q What is incorrect about it?

22 A The quantity that the statement says was spilled
23 is incorrect.

24 Q Well, what's incorrect about it, sir? Was it more

1 than 3,000 gallons or less than 3,000 gallons, or what was it?

2 A I think it may --

3 Q Sir?

4 A I believe it was more actually.

5 Q So because it was more you denied it, even though
6 they used the word "approximately," is that correct?

7 A The statement was incorrect. We would have been
8 wrong to have confirmed an incorrect statement.

9 Q Oh, but why couldn't you say it wasn't 3,000
10 gallons that spilled, but it was 5,000 gallons that spilled?
11 Why couldn't you have answered that way?

12 A Mr. Carr, because that's not the practice.

13 Q Mr. Park, it's not the practice at Monsanto that
14 way. But I assure you it is the practice in many, many other
15 places to respond just exactly as I've suggested.

16 A That's before the OSHA Review Commission.

17 MR. MUSGRAVE: Object to Mr. Carr's statement.
18 Request that it be stricken.

19 THE COURT: Objection is overruled.

20 Q (By Mr. Carr) Mr. Park, now you state there that
21 you -- well, you do admit that you analyzed subsequent to
22 the clean-up of the spill, and that is a true statement, you
23 had not analyzed it prior to the clean-up of the spill, had
24 you, sir?

1 A That's right.

2 Q Now you do admit that you did find the presence
3 of dioxin in your analysis, didn't you, sir?

4 A Are you in item 25, Mr. Carr?

5 Q Yes.

6 A Yes.

7 Q And the next few questions deal with the protective
8 measures given for the workers, which you admit were correct.
9 But over on question 33 you object because it's something
10 that occurred at Sturgeon, and you deny what was said there,
11 don't you, sir?

12 A Yes. This was on advice of counsel.

13 THE COURT: Mr. Carr, before you get into that,
14 is this a good point for a short break?

15 MR. CARR: Sure.

16 THE COURT: Ladies and gentlemen, we'll take a
17 short recess at this time, and then resume again. Court is
18 in recess.

19
20 (Short recess.)
21

22 (The following proceedings were had at the bench out
23 of the hearing of the jury:)

24 THE COURT: When can you get me the response to

1 that motion?

2 MR. NASSIF: I talked with Bruce, he said he
3 could have it by next week.

4 THE COURT: Sometime next week?

5 MR. NASSIF: Would that be early enough?

6 THE COURT: Can you make it early next week?

7 MR. NASSIF: I'll try.

8 THE COURT: That's probably okay.

9 MR. NASSIF: And the experts you're talking about.

10 THE COURT: That will be okay. Thank you.

11
12 (The following proceedings were had in the presence
13 and hearing of the jury:)

14
15 (Plaintiff's Exhibit 1548 was marked
16 for identification by the court reporter.)

17
18 Q (By Mr. Carr) Mr. Park, in response to the
19 request to admit 8a, as I recall your reasoning to that
20 response, you said that you were denying it because, or
21 should be denied because it's not a by-product. That is the
22 dioxin is not a by-product. Do you recall that, sir?

23 A Yes.

24 Q Now do you consider that you might be guilty of

1 deceit in denying that it is a by-product?

2 A No.

3 Q I would like to show you Plaintiff's Exhibit
4 1548 and see if you recognize that as an exhibit written by
5 Wilson on the subject of deceit, if you deny that that is the
6 by-product.

7 THE COURT: Is this 1548? Is that the number?

8 COURT REPORTER: Yes.

9 THE WITNESS: Yes, this is a memorandum from
10 James Wilson.

11 Q (By Mr.Carr) It's a memorandum to you in
12 response to your request that he and others, that they give
13 you information so that you can respond to these OSHA citation --
14 OSHA requests made in the citation.

15 A Yes.

16 MR. CARR: I offer 1548 into evidence, if it
17 please the Court.

18 MR. MUSGRAVE: Object on the same basis as the
19 last exhibit. It's irrelevant, immaterial, no probative value
20 and weight of the considerations to the issues in this lawsuit.

21 THE COURT: Overruled. It's admitted over objec-
22 tion.

23 Q (By Mr. Carr) Dr. Wilson in this memo dated
24 October the 9, 1979, it states with reference to the request

1 that dioxin is a by-product in the synthesis of chlorinated
2 phenols by saying, does he not, quote, My dictionary defines
3 "by-product" as "something produced in addition to the principal
4 product." To contaminate is "to make impure by admixture."
5 There's no disputing the fact that the aforementioned "dioxins"
6 were contaminants in our chlorophenols. However, I'm afraid
7 we will be guilty of deceit if we deny that they might not
8 also be by-products. Certainly the fact that TCDD concentra-
9 tions declined following certain changes in operating procedures
10 at WGK argues that they were being formed as by-products of
11 manufacture. Especially since those changes were designed to
12 eliminate TCDD formation.

13 Isn't that what he says, sir?

14 A That's correct.

15 Q And you did deny that it was a by-product, didn't
16 you, sir?

17 A Yes.

18 Q And Dr. Wilson would characterize that -- well,
19 as a matter of fact, he said, "We will be guilty of deceit if
20 we deny that," didn't he, sir?

21 A It appears to be what he said. He was overruled
22 by the group as to the meaning of the word "by-product," as I
23 recall it.

24 Q Someone can be overruled as to the meaning of words?

1 Words have meanings. You can't overrule someone as to the
2 meaning of the word, can you, sir?

3 A The meaning was his understanding of the term
4 "by-product," was different from the way the others would
5 commonly understand it.

6 Q He's referring to a dictionary. He says it's
7 something produced in addition to the principal product. That's
8 exactly what it is, isn't it, sir?

9 A Well, it's an unwanted contaminant is what it is.
10 It's not a by-product --

11 Q Whether it's a contaminant or not. It's produced
12 in addition to the product, isn't it, sir?

13 A Mr. Carr, as I said earlier, many people, if not
14 most, use the term "by-product" to mean something that is
15 produced and is sold. It would not be the principal --

16 Q The precise dictionary definition Dr. Wilson gave
17 you. He pointed out to you that you would be guilty of deceit
18 if you denied it, but nevertheless you denied it; isn't that
19 correct, sir?

20 A In our response to OSHA we denied that.

21 Q Yes. Now on number 15 -- I'm sorry, on question
22 number 15, that we've already passed by, and you said that it
23 was correct to deny that you had analyzed samples of ortho-
24 chlorophenol produced at the W.G. Krummrich Plant for the

1 presence of dioxin prior to February the 7th, '79. Do you see
2 that, sir?

3 A Yes, I see that.

4 Q And I suggested to you that you had, indeed, tested
5 two samples in 1978. Do you recall that I suggested that to
6 you?

7 A Yes, I think I do.

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

10
11 (Plaintiff's Exhibit 1549 was marked
12 for identification by the court reporter.)
13

14 Q (By Mr. Carr) It's the only copy I have, so I
15 show it to you first, Counsel. 1549.

16 I hand you what's been marked Plaintiff's Exhibit 1549
17 and see if you recognize that as another memo written earlier
18 in point in time by James Wilson, to you, again on the subject
19 of 8a and now also on the subject of 15a. And on 8a he again
20 tells you that by-product is properly in the process there,
21 does he not, sir? 8a.

22 A Oh, I'm sorry. Yes, he repeats that.

23 Q And what does he say about by-product there?

24 A He says "As chemists use the word 'by-product',

1 dibenzodioxins can be manufactured as by-products during
2 chlorophenol manufacture. Dibenzofurans cannot so be made."

3 Q What does he say about 15a where OSHA has asked
4 you whether or not it's true that you've analyzed samples of
5 orthochlorophenol for the presence of dioxin prior to February
6 7, 1979?

7 A He says, "Two samples produced in 1978 were analyzed
8 and found to contain no dioxins."

9 Q And he suggests the answer to that question
10 should be yes?

11 A Yes.

12 Q But nonetheless, you answered it no, knowing that
13 in fact what Dr. Wilson pointed out to you that you had
14 analyzed it; isn't that correct, sir?

15 A The response went in denying that. I cannot
16 recollect exactly why. Perhaps Dr. Wilson was incorrect and we
17 had not. Perhaps it was a different product. I don't know.
18 Perhaps there was a mistake made. I don't remember.

19 Q Mr. Park, as I advised you already, we have
20 exhibits in evidence that shows that you requested in 1978 to
21 analyze for dioxins, and you did. They're in evidence. That's
22 exactly what Dr. Wilson is telling you. But nevertheless --

23 A Yes.

24 Q -- having those facts you denied the truth of the 118

1 statement, didn't you, sir?

2 A Dr. Wilson was one of a number of people who
3 participated in this.

4 Q Excuse me. Mr. Park, that isn't what I'm asking.

5 A I understand.

6 Q Nevertheless, having knowledge of those facts,
7 people can't overruled facts.

8 A These are statements coming from Dr. Wilson.

9 Q Those facts, he told you were facts, and they
10 were indeed facts, but yet you denied the truth of them, didn't
11 you, sir?

12 MR. MUSGRAVE: Objection, it's contrary to the
13 evidence, your Honor, as to what the facts were. It's 1978
14 OCP crude was analyzed, not the CP.

15 THE COURT: Objection is overruled.

16 Q (By Mr. Carr) Would you answer the question.

17 A I'd have to say no, Mr. Carr.

18 Q All right. On the -- I think we were to -- you
19 denied that the chemical in number 33, you denied that the
20 chemical spill -- you denied the truth of the fact that the
21 newspaper article attached there was fully identifying it. You
22 denied all those matters from 33 down through 41 all together,
23 didn't you?

24 A Yes. This was a procedural thing, Mr. Carr. It

1 was felt that was not relevant to the OSHA proceeding. We
2 objected to it, and since it was felt that we either had to
3 admit or deny it, we denied it.

4 Q Well, at least here you give the reason for the
5 denial, don't you, sir?

6 A Yes.

7 Q You're letting them know that you are denying it
8 on technical grounds, wherein in these other instances of
9 denial, you didn't let them know that you were denying on
10 technical grounds, did you, sir?

11 A I guess we felt it would be understood.--

12 Q Excuse me. Would you answer that question..

13 A We just denied it.

14 Q And you didn't let them know that you were denying
15 on technical interpretation of these various words, did you,
16 sir?

17 MR. MUSGRAVE: Well, I object to that. That's
18 contrary to what the answer says. The objection says that the
19 basis for it is immaterial and irrelevant, not some technical
20 basis, Mr. Carr. That's a misrepresentation of what the
21 document says.

22 Q (By Mr. Carr) Could you answer my question,
23 please.

24 THE COURT: The objection is overruled.

1 THE WITNESS: We didn't state we were -- we just
2 denied them, Mr. Carr.

3 Q (By Mr. Carr) And you didn't give any reason
4 for denying, did you?

5 A No, that's correct.

6 Q As you did give a reason for denying 33 through
7 41, didn't you?

8 A Yes.

9 Q Now, directing your attention to number 42a and
10 b, you deny 42 a and b, don't you, sir? 42 says, "Prior to
11 OSHA's February 7, 1979 inspection, Respondent's employees in
12 the areas of its W.G. Krummrich Plant where chlorinated phenols
13 were manufactured, handled, or stored were not advised of the
14 hazards of dioxin contamination." You denied that, didn't you,
15 sir?

16 A Yes.

17 Q By denying that, you mean to say that they were
18 advised of the hazards of dioxin contamination, don't you, sir?

19 A Yes.

20 Q Now, did you ever see a document or a memorandum
21 of any sort dated before February the 7th, 1979 which any
22 employee was advised at any time that they were handling
23 dioxin, other than the laboratory employees, and of the hazards
24 associated with dioxin handling, other than the laboratory

1 employees?

2 A Mr. Carr, I cannot recall with great specificity,
3 but I believe that some employees in the pentachlorophenol
4 operation would have been advised concerning chloracne. This
5 would have been in writing and I think that there were verbal.

6 Q You think that?

7 A Yes.

8 Q But my question did you ever see any memo, any
9 writing, any document.

10 A I think there was some writing on the chloracne.

11 Q In the pentachlorophenol department?

12 A Yes.

13 Q That writing was dated December of '79. The only
14 hazard they were told that was possible was chloracne. There
15 was some reversible liver changes is what they said. That's
16 the only document that Dr. Roush could find, according to his
17 testimony, in which employees were told of the hazards, or
18 possible hazards of dioxin contamination. Do you have any
19 knowledge of anything else, other than that?

20 A Not specifically. I just -- I think --

21 Q Well, you think.

22 A Yeah, uh-huh.

23 Q Now question number 46, would you look at that,
24 please.

1 A Yes.

2 Q In number 46 they ask you to admit that, quote,
3 During the manufacturing process of certain chlorinated phenols
4 produced at Respondent's W.G. Krummrich Plant the following
5 contaminants are potentially present: (a) dioxin, (b) TCDD,
6 and (c) 2,3,7,8 TCDD, do they not, sir?

7 A Yes.

8 Q And you deny the truth of that, don't you?

9 A Yes.

10 Q Now you do know that dioxins were present in
11 those -- found in the manufacturing process of these chlorinated
12 phenols, don't you, sir?

13 A Not personally. I assume that there are documents
14 here that might so indicate.

15 Q Well, look at this dated 6/6/79. It talks about
16 dioxin concentration, doesn't it, sir? And in parts per
17 million, doesn't it, sir? And look at document 1135, there's
18 all kinds of dioxins present under all these columns here,
19 dealing with dioxins, all eight dioxins are dealt with. There's
20 thousands and thousands of dioxins -- thousand parts per billion
21 of dioxins in your product, according to 1135, aren't there,
22 sir?

23 MR. MUSGRAVE: You want to show me which one says
24 that as far as a product, Mr. Carr, as a part of the process --

1 Q (By Mr. Carr) Would you answer the question, sir?

2 MR. MUSGRAVE: Object to Counsel's representation
3 of documents incorrectly, request that it be stricken from
4 the record as improper characterization of the evidence.

5 THE COURT: Objection is overruled. You may
6 proceed, Mr. Carr.

7 Q (By Mr. Carr) You know this document, 1135,
8 refers not just to processing, but to products, not as Mr.
9 Musgrave thinks.

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

11 MR. MUSGRAVE: That's not what I said. I said
12 I want the one that's got thousands of parts in a product, not
13 in a process stream.

14 THE COURT: Mr. Carr, go ahead with your question
15 please.

16 Q (By Mr. Carr) You do know that dioxins are
17 produced and have been found in your products, don't you, sir?

18 A Which dioxin, Mr. Carr?

19 Q I don't care about dioxin. (a) is dioxin. It's
20 talking about all dioxins.

21 A Okay.

22 Q Any dioxin. You denied that, and yet you had
23 all the evidence, all the findings these products contained
24 dioxins. You don't have any question about that in your mind,

1 do you, sir?

2 A This item number 46 --

3 Q 46(a).

4 A It's not totally correct, Mr. Carr.

5 Q Where is it incorrect?

6 A It's vague in some areas.

7 Q Where is it incorrect, sir?

8 A All right. Certain chlorinated phenols.

9 Q Yes. Now certain chlorinated phenols were
10 included parachlorophenol, Santophen, 2,4-Dichlorophenol,
11 orthochlorophenol, isn't that correct, sir?

12 A No.

13 Q That wasn't?

14 A No.

15 Q Those are not --

16 A We are limited to this document. We're trying
17 to respond to it. The customary thing is then the complainant
18 would come back with another document.

19 Q Mr. Park, please don't get off on that again.
20 They're asking you for things outside the document. They're
21 wanting to know -- they're wanting you to tell them that it's
22 true.

23 A We can admit or deny.

24 Q Excuse me. You deny, and you're guilty of deceit

1 if you deny something that you know to be the truth. Sure,
2 you're capable of denying everything, as you did. But it's
3 deceitful to do that. OSHA --

4 A No, sir, not when it's incorrect.

5 MR. CARR: It's a speech, your Honor. Request
6 that it be stricken. It's not a question. It's an insinuation
7 and an attack on the witness. I ask that it be stricken and
8 the jury be instructed to disregard it.

9 THE COURT: It's overruled. It was a proper
10 question.

11 Q (By Mr. Carr) Mr. Park, I agree with you, if it
12 is incorrect, you should deny it. But now I'm asking you, sir,
13 where is it incorrect that certain of your chlorinated
14 phenols contain dioxin as a contaminant?

15 A Okay. The vague -- the places where the statement
16 is unclear --

17 Q No, let's say where it's incorrect.

18 A I said it's not a totally correct statement.

19 Q Okay. Where isn't it totally correct that certain
20 chlorinated phenols produced at the Krummrich Plant had dioxins?

21 A We had no way of knowing what the writer meant
22 when he said certain chlorinated phenols. For example --

23 Q You don't know what the word "chlorinated phenol"
24 means?

1 A We didn't know what he meant when he wrote that.
2 If he had put down a specific process, or a specific product
3 perhaps, that might have been different. But he didn't. He
4 said certain chlorinated phenols.

5 Q Certain chlorinated phenols included all, doesn't
6 it, sir?

7 A No.

8 Q So if you have chlorinated phenols that have
9 dioxins, that's what he's talking about, isn't he, sir?

10 A I don't think so.

11 Q What do you think he's talking about if he's not
12 talking about chlorinated phenols?

13 A I guess the group with the advice of counsel
14 concluded that this was ambiguous and, therefore, should be
15 denied at this time. The same is true --

16 Q How can it be ambiguous? Look at number 32. You
17 admit that you're aware of spills of chlorinated phenols
18 manufactured there. You admit number 32, and they used the
19 word "chlorinated phenols."

20 A Well, the word "certain chlorinated phenols"
21 raises the question.

22 Q So the word "certain." So now it's not "Chlorinated
23 phenols," it's the word "certain."

24 A Chlorinated phenols.

1 Q Weren't certain chlorinated phenols, didn't they
2 contain dioxins?

3 A Then the terms --

4 Q Excuse me. Didn't certain chlorinated phenols
5 contain dioxins?

6 A For purposes of this, we denied that.

7 Q Excuse me. I know you denied it. You're telling
8 me what you did. I'm asking you didn't certain chlorinated.

9 A I don't know that.

10 Q You don't know that. Aren't these chlorinated
11 phenols that are shown here in Exhibit 1249-A?

12 A Is that, what, penta chlorinated phenol?

13 Q PCP, 2,4-Dichlorophenol, aren't they chlorinated
14 phenols?

15 A Yes.

16 Q And don't they contain dioxins according to this
17 exhibit?

18 A Yes, they appear to.

19 THE COURT: I didn't hear that answer.

20 THE WITNESS: Yes, they appear to.

21 THE COURT: Could you please try to keep your
22 voice up.

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

1 the sole and only function that they have; isn't that right,
2 sir?

3 A No, Mr. Carr.

4 Q What other function do they have other than
5 protecting the health and safety of the workers?

6 A That wasn't the question you asked, Mr. Carr.

7 Q That was exactly the question I asked.

8 A No, it wasn't.

9 Q In what they were doing here, they were executing
10 the mandate given them by Congress, signed by the President,
11 it's their job to go out into the plant and discover areas
12 where the health and safety of the workers might be jeopardized;
13 isn't that correct, Mr. Park?

14 A OSHA inspectors do that --

15 Q Isn't that their job, sir?

16 A You're switching-- I'm trying to follow you --
17 from attorneys with the Department of Labor, now to OSHA
18 inspectors.

19 Q They're different. The entire OSHA personnel,
20 from lawyers to investigators, to scientists. They have one
21 job and one job only, that is to protect the health and safety
22 of the workers; isn't that correct, sir?

23 MR. MUSGRAVE: He's now arguing with the witness.
24 The witness already answered the question. He's now arguing

1 Q (By Mr. Carr) You denied it here, didn't you, sir?

2 A For purposes of this document, yes.

3 Q Knowing it to be the truth?

4 A No.

5 Q Where is it untrue, sir? What part of it is
6 untrue?

7 A The statement was vague.

8 Q What part of it is untrue, sir?

9 A I'm telling you that the statement in our opinion
10 was not sufficiently, totally correct, as to warrant --

11 Q What part of it is incorrect?

12 A -- an acceptance.

13 Q What part of it is incorrect?

14 A Certain chlorinated phenols is vague.

15 Q We went through that already, sir. It's not
16 vague.

17 A We concluded that it was.

18 Q Sir?

19 A We concluded that it was at the time.

20 Q No. What you said was we're going to deny that
21 and we'll do that by saying that chlorinated phenol is vague.
22 But you use the words chlorinated phenols throughout your
23 documents all the time, don't you, sir?

24 A No.

1 Q Look at this document right here, chlorinated
2 phenol. That's chlorinated phenol. Chlorophenol, chlorinated
3 phenol. They're synonymous, aren't they, sir? There's no
4 vagueness about that. You use that word. They use that word.
5 What else are they going to --

6 MR. MUSGRAVE: Object to the question. It's
7 got multiple parts. Request that it be stricken.

8 THE COURT: Objection is overruled.

9 Q (By Mr. Carr) What about the next one, TCDD,
10 there's no question that you knew that there were TCDD's present
11 in your chlorinated phenols, in certain of them.

12 A Not all of them.

13 Q No, it doesn't say all of them, does it, sir? It
14 says certain of them. There's no question it is. You knew
15 that.

16 A If we --

17 Q Excuse me, Mr. Park, would you answer that
18 question.

19 A I have to answer no, then, Mr. Carr.

20 Q You didn't know it?

21 A Not the way you phrased the question.

22 Q The person that works for Monsanto, that prepared
23 these documents, 1135, do you reckon that he knew it?

24 A I have no idea what he knew, Mr. Carr.

1 Q Well, you do have an idea because you've seen
2 the document. You've seen 1135 and it shows chlorinated phenols
3 and it shows the tetras, and it shows the dioxins, so he knew
4 it, didn't he, sir?

5 A I can see the document.

6 Q And he knew it, didn't he, sir?

7 A I guess the person that prepared the document knew
8 what he put on the document.

9 Q And he knew that there was dioxin and TCDD's in the
10 chlorinated phenols, didn't he, sir?

11 A Maybe not for this purpose, Mr. Carr.

12 Q How can you have truth for one purpose and a lie
13 for another, Mr. Park? Could you explain that to me?

14 MR.MUSGRAVE: Object to the question, improper
15 question.

16 Q (By Mr. Carr) The truth is the truth is the
17 truth.

18 THE COURT: The objection is overruled.

19 THE WITNESS: I've been trying to explain why
20 you're limited to this document, Mr. Carr.

21 Q (By Mr. Carr) I've been listening to your
22 explanation, Mr. Park, so far I haven't seen any reason, nor
23 do you, I submit to you, why you would deny the truth of the
24 statement that dioxins and TCDD's and 2,3,7,8 TCDD are

1 potentially present in your chlorinated phenols?

2 A Because all TCDD's were not present, and that term
3 was defined, it certainly could be taken to be defined earlier
4 to include all of the isomers in TCDD.

5 Q How on earth could you get that?

6 A This is too vague to accept.

7 Q Too vague?

8 A Yes.

9 Q These are words that you yourself used in documents
10 everyday, and we discussed those the last --

11 A Not in that context, we don't, Mr. Carr.

12 Q We discussed those the last time you were here.
13 All your chemists use these terms, your executives use these
14 terms, scientists write scientific articles using these terms.
15 We've got lots of them in evidence. Every witness that's come
16 on the stand here has used these terms. Now, Mr. Park, how can
17 you as an attorney sit down there and say that terms that
18 scientists use, that the doctors use, and the chemists use to
19 describe certain things are vague? Where do you in the law
20 get that right to say these words that the scientists use
21 are vague? Can you tell me that, sir?

22 A Yes, because they're used by someone else here.

23 Q They're used by someone else?

24 A Yes. Not by your scientists.

1 Q And you don't consider that the person that
2 prepared this was asking questions of the people that he
3 thought were scientists, he thought he was addressing questions
4 to scientists, didn't he, sir?

5 A Mr. Carr, the person that asked me these questions
6 were several very capable attorneys with OSHA. They would
7 take ever omission that we made here and use it against us.

8 Q Indeed they would.

9 A So we had to be careful, and be accurate in the
10 way we responded.

11 Q Exactly right, and that is the point, sir. What
12 you had to do, Mr. Park, because OSHA has the responsibility
13 for the safety and health of your workers, doesn't it, sir?
14 That's the only responsibility, isn't that right, sir?

15 A I would say that Monsanto is primarily responsible.

16 Q I'm talking about OSHA. It has its sole function,
17 it's sole obligation is to protect the health and safety of the
18 workers that work throughout the United States.

19 A That's correct.

20 Q Not just at Monsanto, isn't that correct?

21 A That's correct.

22 Q They're not in it to make money, they're not in it
23 to make glory, or to make a profit or to make a product. They
24 have one function, and one function only, that's to protect the 133

1 workers; isn't that correct, sir?

2 A The Occupational Safety and Health Administration,
3 yes, sir.

4 Q And when they submitted these questions to you,
5 these requests to admit, they were attempting to perform their
6 sole function, that is to protect the health and safety of
7 your workers, weren't they, sir?

8 A Well, these were Department of Labor attorneys,
9 to be specific, Mr. Carr.

10 Q And they were working for OSHA. It was their job,
11 their sole job in this instance to protect the health and
12 safety of your workers; isn't that correct, sir?

13 A They were representing OSHA with respect to
14 some citations which had been issued.

15 Q For the purpose of protecting the health and
16 safety of your workers; isn't that correct, sir?

17 A Yes.

18 Q And in that regard, in that respect, they asked
19 certain questions of you so that they can present the evidence
20 to a hearing board and determine whether or not you are
21 properly protecting the health and safety of your workers;
22 is that correct, sir?

23 A Not totally, Mr. Carr.

24 Q That is their function. That was the function and

1 with the witness.

2 THE COURT: Objection is overruled.

3 THE WITNESS: The function of the agency is to
4 protect the health of workers.

5 Q (By Mr. Carr) And the way that agency functions
6 is through its employees, through its lawyers, through its
7 scientists, through its investigators, through its inspectors;
8 isn't that correct, sir? Through the secretaries, through
9 their scientists.

10 A Yes.

11 Q Through their nurses.

12 A To be accurate, OSHA, I believe, does not -- it
13 uses Department of Labor attorneys.

14 Q And those attorneys, when they're representing
15 OSHA are performing the Congressional mandate of protecting the
16 health and safety of workers, aren't they, sir?

17 A They're supporting OSHA.

18 THE COURT: I didn't hear your answer. I'm sorry.

19 THE WITNESS: They are supporting OSHA on its
20 function. The lawyers are supporting OSHA in its function.

21 Q (By Mr. Carr) Mr. Park, there are thousands and
22 thousands of employers in this country, aren't there, sir?

23 A Yes.

24 Q And OSHA is a finite, that is a limited -- there

1 are limits to their manpower, limits to their lawyers, aren't
2 there, sir?

3 A High limits, yes.

4 Q And you in the manufacturing end, you are aware
5 of the fact that if you make it difficult enough for OSHA and
6 its' attorneys to prove their case, if you will deny elementary
7 things that they will have to go in and do a lot of things,
8 subpoena records, do as we did, dig out these things from these
9 records, if you don't admit those things, you know that you
10 can make it so difficult that they will withdraw their complaint
11 and spend their manpower more efficiently on other things.

12 You know that, don't you, Mr. Park?

13 MR. MUSGRAVE: Objection. That calls for specula-
14 tion, conjecture, improper questio.

15 THE COURT: Objection is overruled.

16 THE WITNESS: No, I don't, Mr. Carr.

17 Q (By Mr. Carr) You don't know that, Mr. Park?
18 You don't know that if you -- if you admitted the truth of
19 those things, the things that you know to be true, then they
20 don't have to prove it, do they, sir? If you admit the truth
21 of it.

22 A What things, Mr. Carr?

23 Q The things that they requested that you admit to
24 be true.

1 A It's not clear what they requested.

2 Q Would you direct the witness to answer my question?

3 THE COURT: Mr. Park, you have to answer the
4 question.

5 THE WITNESS: I have to answer no then to the way
6 you phrased it, Mr. Carr.

7 Q (By Mr. Carr) They have to prove it, if you don't
8 admit the truth of it, sir. The whole idea, isn't it, Mr.
9 Park, of a Request to Admit a fact is so it need not be proven?

10 A Mr. Carr, OSHA's lawyers normally rely on their
11 inspectors.

12 Q Isn't that the whole idea, sir?

13 A Yes. That's contrary to general experience.

14 Q Excuse me. What is the purpose of a Request to
15 Admit a fact, sir?

16 A It's to avoid being required to prove it in a
17 court.

18 Q Isn't that exactly what I asked you, sir?

19 A No, I think you phrased it different, Mr. Carr.

20 Q It's to avoid to prove it. They don't have to
21 prove it if you admit it; isn't that right, sir?

22 A That's right.

23 Q But if you deny it, they then have to prove it,
24 don't they, sir?

1 A That's correct.

2 Q And to prove it, they have to go into your plant,
3 they have to get records, they have to subpoena your records,
4 they have to analyze your records, they have to spend the
5 months as we have spent here, they have to cross examine
6 witnesses at length, witnesses like yourself, witnesses like
7 Dr. Wilson, witnesses like Dr. Roush, who deny these things,
8 who take that position, that's what they have to do, if you
9 deny those things, they have to prove them, then, don't they,
10 sir?

11 A Not at all, Mr. Carr.

12 Q They don't have to prove them?

13 A No, Mr. Carr, no. This was highly unusual --

14 Q Then how do they get a decision against you, if
15 they don't prove them?

16 A This isn't -- most of what's covered in these
17 requests for admissions is not even part of the OSHA regulations.
18 All they have to do is --

19 Q My question, Mr. Park --

20 A -- is to go in and prove that there was some
21 violation of a standard.

22 Q My question, Mr. Park, if you don't admit it,
23 they have to prove it, don't they, sir?

24 A Yes.

1 Q And to prove it they then have to subpoena the
2 records, don't they, sir?

3 A No.

4 Q How do they prove it without subpoenaing the
5 records?

6 A Prove violation? They show, say, a concentration
7 level of some chemical is above OSHA limitation in the work
8 place. That's how they do it. No subpoenaing of records at
9 all.

10 Q In order to fine Monsanto, how do they prove
11 that Monsanto knew these things and make a wilful violation?
12 It's a wilful violation that they're trying to prove on you,
13 isn't it, Mr. Park?

14 A Which violation are you--

15 Q Mr. Park, you were cited not for an accidental
16 violation of the OSHA regulations, but for the deliberate wil-
17 ful violation.

18 MR. MUSGRAVE: Object, your Honor, the reference
19 to allegations. That's totally improper. Request that it be
20 stricken, and the jury instructed to disregard it, and Counsel
21 admonished and instructed to refrain from referring to unproven,
22 unsubstantiated allegations that were withdrawn.

23 THE COURT: Object-ion is overruled. It is a
24 proper question. It is a proper area of inquiry.

1 THE WITNESS: I don't think that's correct, Mr.
2 Carr.

3 Q (By Mr. Carr) You don't think that it's correct
4 that you were charged with a wilful violation?

5 A I'm trying to remember the way -- I think there
6 are serious and non-serious is the way that they read. I
7 don't remember.

8 Q You don't recall --

9 A I don't recall.

10 Q You don't recall that they were called wilful
11 violations, sir?

12 A If you have it there --

13 MR. MUSGRAVE: May my objection be continuing to
14 this entire line of questioning?

15 THE COURT: Sure. So noted as a continuing objec-
16 tion.

17 Q (By Mr. Carr) Sir?

18 A I'm sorry. I cannot recall the way they were
19 phrased. In any event, we felt they were improper.

20 Q That isn't what I'm asking you, sir. They charged
21 you with wilful violation, did they not, sir?

22 A I said, Mr. Carr, I cannot remember how they were
23 phrased.

24 Q Well, look how you characterize it, and by you, I 141

1 mean Monsanto, characterized it on page four of your summary
2 of the citations, the citation is in evidence, but I don't
3 have the number in front of me right now. Do they not categor-
4 ize it as wilful and serious, sir?

5 A This is what is said.

6 Q And to prove something is wilful, you know as an
7 attorney, Mr. Park, that you have to prove that you had know-
8 ledge, don't you, sir?

9 A I would suppose so.

10 Q And by denying that you had knowledge of these
11 things, that is that dioxin comes along with making, or poten-
12 tially comes along with your chlorinated phenols, just as it
13 has been denied in this case, you seek to avoid being found
14 guilty on the wilful charge, don't you?

15 A We're not seeking to avoid a just charge, Mr.
16 Carr. We're trying to avoid an improper one.

17 Q By denying the truth of things that you know to
18 be a fact you're setting yourself up as the judge of whether
19 or not it's a just charge when there are other persons that are
20 given that obligation, aren't you, sir?

21 A No.

22 Q Well, in any event, you know to prove wilful
23 they've got to go into your records and prove what you knew
24 at a point in time, isn't that correct, sir?

1 A But --

2 Q Isn't that correct, Mr. Park?

3 A No.

4 Q Mr. Park, just as in this case, we are suing
5 Monsanto for punitive damages, the whole 6 -- 4 months have
6 been spent now putting in evidence on punitive damages trying
7 to prove that you had knowledge that dioxin was there, and that
8 you did nothing about it. You did not tell your customers.
9 You didn't tell the people at Sturgeon. You didn't tell your
10 workers. Just as OSHA charged --

11 MR. MUSGRAVE: Object to the speech and request
12 that it be stricken, your Honor. It has nothing to do with
13 this questioning. Request that the jury be instructed to
14 disregard it.

15 THE COURT: The objection is overruled. It's a
16 proper analogy.

17 Q (By Mr. Carr) Mr. Park, to finish my question,
18 you are aware of the fact that there were wilful charges,
19 where knowledge has to be proven in the OSHA citations just as
20 you are aware of the fact that there are wilful charges in this
21 case requiring that we prove knowledge that you had; isn't
22 that correct, sir?

23 A I'm really not familiar with the proceedings in
24 this case, Mr. Carr.

Q You're not aware of the fact that we are suing for punitive damages?

A I think I'm aware of that.

Q And a wilful charge is brought for the -- and under OSHA is brought for the purpose of punishing you; isn't that correct? Isn't that what they're trying to do, punish you for your violations, for your wilful violations of the law?

A Any charge under OSHA is punishment for violation.

Q There's different punishments for deliberate, intentional violations, wilful violations, and for accidental violations, where wilful isn't a part of it; isn't that correct, sir?

A The term wilful is just not used that much, Mr. Carr. It's serious and non-serious.

Q Excuse me. Could you answer my question, sir.

A I'm not sure, Mr. Carr.

Q Well, you've used the word, your documents use the word "wilful", didn't they, sir?

A Mr. Aley used it.

Q Yes. And you got no punishment in that instance, did you, sir?

A No, we did not. There was no violation.

Q Because they withdrew the case, didn't they, sir?

1 A Yes, they did.

2 Q They didn't subpoena your records as we did in
3 this case, did they, sir?

4 A No.

5 Q They didn't take depositions of important executives
6 and chemists and scientists and Dr. Wilson to prove the presence
7 of dioxin, did they, sir?

8 A No.

9 Q Mr. Park, you even denied in this request question
10 number 54, didn't you, sir, where they asked you whether or not
11 an industrial accident involving chlorinated phenols occurred
12 at Respondent's plant in Nitro, West Virginia. You even
13 denied that, didn't you, sir?

14 A Yes.

15 Q Sir? I didn't hear your answer.

16 A Yes. The answer is yes.

17 Q And you know that it did involve -- that there
18 was an industrial accident involving chlorinated phenols,
19 didn't you, sir?

20 A I recall there was an industrial accident. I
21 would have to question the term "chlorinated phenols". I'm
22 trying to recollect why this would have been denied. It must
23 have been.--

24 Q Well, look at Exhibit 1548, look at the P.S. that 145

1 Dr. Wilson puts on there with regard to question 54, that it
2 involved 2,4,5-Trichlorophenol processed as stated. We've
3 had studies done by Dr. Suskind in which he describes it as a
4 Trichlorophenol accident.

5 A Wilson says, "I think that accident --"

6 Q We know because we've seen the documents.

7 A Okay.

8 Q It was a Trichlorophenol process, and the process
9 for making Trichlorophenol, they're going to go on and make
10 it on the 2,4,5-T, another product. Wilson tells you that,
11 and you knew that, and yet you denied it; isn't that correct,
12 sir?

13 A I would have to -- the way you phrase it, I would
14 have to answer no, Mr. Carr.

15 Q You didn't deny it, or you didn't know it?

16 A I didn't know it, sir.

17 Q Sir?

18 A I would have to say that to the best of my
19 recollection, I am not in the position to say that I did know
20 that, no. There were others involved here --

21 Q I'm not talking about whether you knew it. I'm
22 asking about Monsanto knew that they were making 2,4,5-Trichloro-
23 phenol in the accident of 1949.

24 A Mr. Carr, I'm assuming that if Monsanto had known

1 that the correct response to 54 was different, we would have
2 answered it differently.

3 Q Wilson told you it was different.

4 A I have to assume it was answered correctly.

5 Q Wilson told you in 1548 that it was --

6 A There were others than Wilson who provided infor-
7 mation that went into the response here.

8 Q Well, what other information was there, sir?

9 A I cannot remember at this time.

10 MR. CARR: I have no further questions of this
11 witness, your Honor.

12 THE COURT: Mr. Musgrave.

13 MR. MUSGRAVE: Thank you, your Honor.

14
15 CLARIFICATION EXAMINATION

16 BY MR. MUSGRAVE:

17 Q Mr. Park, while we're on this very question, with
18 regard to the Nitro questions that were asked, in these
19 Requests for Admissions, and the responses that were given --

20 MR. CARR: One moment. Did I offer 1549? It
21 needs to be offered into evidence.

22 THE COURT: 1549?

23 MR. CARR: 1549 and 1548.

24 THE COURT: No. 1549. 1548 has been admitted

1 over objection.

2 MR. CARR: 1549 I'd like to offer.

3 MR. MUSGRAVE: The same objection as to 1548.

4 THE COURT: I'll incorporate them. 1549 is
5 admitted over objection.

6 Q (By Mr. Musgrave) Mr. Park, as I was about to
7 ask you, with regard to this question that Mr. Carr was just
8 questioning you on, I'd also like to refer you to admission
9 number -- well, Request for Admission number 50 up there. Do
10 you see that one?

11 A Yes.

12 Q And ask you if 2,4,5-T is a chlorinated phenol,
13 and that was denied.

14 A Yes.

15 Q And do you know why that was denied?

16 A I assume because it's not fully correct.

17 Q 2,4,5-T is not 2,4,5-TCF, trichlorophenol, 2,4,5-T
18 is 2,4 trichlorophenoxia acetic acid. Do you know whether
19 what's commonly referred to as 2,4,5-T, the herbicide --

20 A I believe that that is correct.

21 Q So 2,4,5-T, that is trichlorophenoxia acetic
22 acid, is not a chlorinated phenol, and that was denied for
23 that reason?

24 A Yes.

1 Q Now do you know --

2 MR. CARR: Are you leading the witness, there,
3 Counsel? They didn't ask about 2,4,5-Trichlorophenol, they
4 asked about chlorinated phenols which is 2,4 trichlorophenol.
5 Aren't you aware of the fact that the accident did not involve
6 2,4,5-T?

7 MR. MUSGRAVE: I'm referring to question 50,
8 Mr. Carr, which is 2,4,5-T --

9 MR. CARR: The denial of that would be proper.

10 MR. MUSGRAVE: That's fine, sir. Thank you.

11 MR. CARR: But 54, to deny that is not proper.

12 MR. MUSGRAVE: Mr. Carr, I haven't asked a
13 question yet on that. Do you want to wait?

14 MR. CARR: Well, sure, go ahead.

15 MR. MUSGRAVE: Well, thank you, sir.

16 Q (By Mr. Musgrave) Now, with regard to 54, 2,4-TCP,
17 2,4,5-Trichlorophenol is a chlorophenol to your knowledge?

18 A 2,4,5-T?

19 Q 2,4,5-TCP.

20 A 2,4,5-Trichlorophenol?

21 Q As opposed to 2,4,5-T.

22 A I would think 2,4,5-TCP would be --

23 Q A chlorophenol?

24 A A chlorophenol.

1 Q And is 2,4,5-TCP involved in the making of 2,4,5-T,
2 phenoxia herbicide?

3 A I'm sorry, I just don't know.

4 Q You don't know. Do you know whether any other
5 chlorinated phenols are involved in the making of 2,4,5-T?

6 A No.

7 Q This question 54, does it not state, sir --
8 MR. CARR: Object to the leading form of the
9 question.

10 THE COURT: Objection is sustained.

11 MR. MUSGRAVE: I'm simply asking him if it doesn't
12 state something.

13 THE COURT: You'll have to rephrase it.

14 Q (By Mr. Musgrave) Let me ask you whether or not
15 question 54 reads as follows -- is that right?

16 MR. CARR: Sure.

17 Q (By Mr. Musgrave) "In 1949, an industrial accident
18 involving chlorinated phenols occurred at Respondents Nitro,
19 West Virginia plant."

20 A Yes, it does.

21 Q Is the phenols plural there, sir?

22 A Yes.

23 Q Now with regard to these Requests for Admissions,
24 these were served upon you by the attorneys representing the

1 Occupational Safety and Health -- or actually I guess repre-
2 senting the Secretary of Labor; is that correct --

3 A That's correct.

4 Q -- of the United States?

5 A Yes.

6 Q Who was representing essentially the OSHA; is that
7 correct?

8 A Yes.

9 Q And each question they asked you stated something
10 about if any part of it was not true, you would not admit it.

11 A Yes.

12 Q Is that correct?

13 A That's correct.

14 Q And why was that, sir?

15 A As our counsel whom we retained because of his
16 extensive experience in OSHA matters advised us this is the
17 common practice in pleading of cases which go before the
18 Review Commission, that when Requests for Admissions are
19 submitted, if they are not totally correct, they're denied.
20 And then the obligation goes back to the other party to
21 rephrase them, resubmit them if he so elects, or whatever.

22 Q This is a proceeding where OSHA is attempting --

23 MR. CARR: Object to the leading form of the
24 question.

1 THE COURT: Objection is sustained.

2 Q (By Mr. Musgrave) Is this a proceeding where OSHA
3 is attempting to establish a violation of an OSHA regulation
4 and post a fine?

5 A Yes.

6 Q Is that what that was?

7 A Yes.

8 Q And in connection with that, if they use a vague
9 term, which you consider a vague term, do you have any way in
10 reading this document of knowing what they mean by a term that
11 you consider vague?

12 A There's no way we could know what they meant.

13 Q If you were to admit to a term that you thought
14 had one meaning and they thought had another meaning, could
15 that have any adverse consequences in this proceeding?

16 A It certainly could.

17 Q And in an improper fashion?

18 A Yes.

19 Q Where you might admit something that really you
20 didn't have any intention of admitting because it wasn't true?

21 A That's correct.

22 Q Now, Mr. Park, as opposed to the use of language
23 in these documents, and these are lawyers, are they, sir,
24 that prepared this document?

1 A Yes, indeed.

2 Q And knew of how Requests for Admissions should
3 be formed to get appropriate answers?

4 A Yes.

5 Q But as opposed to the use of a document in this
6 type of a proceeding, that's attempting to assert violation of
7 an OSHA regulation and a penalty, as opposed to language used
8 in this type of document, Mr. Carr referred you to these
9 documents here, that are -- are these documents that are going
10 from one Monsanto employee to another Monsanto employee?

11 A Generally, yes.

12 Q Where the use of terms might be something that
13 they both know what they're talking about?

14 A Yes.

15 Q So if Monsanto analytical chemists were to use
16 the term dioxin in connection with the chlorophenol analysis
17 in talking to another analytical chemist, do you suppose that
18 that other analytical chemist with Monsanto might understand
19 what he means by the term "dioxin"?

20 A Yes.

21 Q But on the other hand, sir, if dioxin is in fact
22 a term that other people could use to mean not only tetra-
23 chlorodibenzo-para-dioxin, but nitrated dioxins -- do you take
24 a chance as to what OSHA might really be saying with these

1 attorneys when they say dioxin that they're saying the same
2 thing you are, or do you deny it?

3 A No, we have to be more specific.

4 Q And, Mr. Park, this problem that Mr. Carr alludes
5 to about how or suggested to you that OSHA withdrew this
6 complaint because we denied these questions -- did he suggest
7 that to you, sir?

8 A I--

9 Q Is that what you understood him to suggest?

10 A I think at one point he did.

11 Q And because they didn't have enough manpower,
12 something like that, he talked about not having manpower, or
13 didn't have enough help to do this.

14 A Resources.

15 Q How many lawyers names appear on these Requests
16 for Admissions?

17 A There are five lawyers names. Three lawyers were
18 working very actively on the matter.

19 Q They've got Clauss, the Solicitor of Labor, whose
20 name appears on this pleading. Herman Grant, the Regional
21 Solicitor, whose name appears on this pleading, Steven E.
22 Walanka, an attorney, whose name appears on this pleading on
23 behalf of the plaintiff in this case, OSHA, James L. Bowers,
24 another attorney, and then Gerald C. Moton. They've got five

lawyers whose names appear on here. And you say three that you're aware of that were actively working on it.

A Yes.

Q Is that right?

A That's correct. The last three were quite active in working on this case.

Q And when you first started working on this matter were you handling it by yourself?

A Yes.

Q And did you yourself hire this outside counsel, Mr. Pellegrini, is that correct?

A Yes, I did.

Q And why was that, sir?

A When I learned that three capable attorneys were representing OSHA in this matter, I figured that I should bring -- retain someone who really was more familiar with the OSHA practice than I was.

Q And you hired Mr. Pellegrini?

A Yes.

Q All right. The chemical referred to is... And the first thing that happened was the filing

of this Request for Admissions by these OSHA attorneys?

A That came pretty early, yes.

Q And you responded to these?

A Yes.

1 Q And Mr. Carr has gone over that with you; is that
2 right?

3 A Yes.

4 Q And one of the responses in here that Mr. Carr
5 asked you about, did deal with the sample in question that
6 OSHA said their inspectors had found and analyzed and had
7 found a level of TCDD; isn't that correct?

8 A Yes, I believe.

9 Q I believe it's number 40, isn't it, sir?

10 A Yes.

11 Q Number 40 does it not read as follows: "Respondent
12 analyzed the chemical referred to in Request No. 33 for the
13 presence of dioxin: (a) prior to the cleanup of the spill,
14 (b) subsequent to the cleanup of the spill." Is that how
15 it reads?

16 A Yes, that relates to the Sturgeon spill.

17 Q All right. The chemical referred to in Request
18 number 33 is the Sturgeon spill. Allright. I've got the
19 wrong one here. Which one is it that I wanted to refer you
20 to?

21 A Number 20.

22 Q Okay. Thank you. Yes. Number 25, does it not
23 read as follows: "Respondent's analysis referred to in Request
24 No. 24 disclosed the presence of dioxin:" and you answered (b)

1 "with respect to Request No. 24(b)" that there was a trace
2 amount; is that correct?

3 A Let's see, we're at 24(b)?

4 Q Yes. Let's go back to Request number 20. Request
5 number 20 talks about a spill occurring on February 21, 1979;
6 is that correct?

7 A That's correct.

8 Q A tank car in the vicinity of Departments 236
9 and 236 and 237.

10 A Yes.

11 Q And then Number 24 asks if Monsanto analyzed
12 the chemical referred to in number 20, the one we just talked
13 about.

14 A Yes.

15 Q And we answered that we did, subsequent to the
16 clean-up.

17 A Yes.

18 Q And then 25 says with regard to that analysis,
19 subsequent to the clean-up, did it disclose the presence of
20 dioxin.

21 A Yes.

22 Q And we said it did in a trace amount; isn't that
23 correct?

24 A Yes.

Q One of the violations or alleged violations that OSHA was pursuing was that this spill material contained sufficient quantities of contaminants that were potentially harmful to the workers.

A I can't remember the exact citations wording.

Q And in response to these admissions, we told them that we had found a trace level; is that right?

A Yes.

Q And this was one of the first things that happened in this lawsuit?

A Yes.

Q In fact, did anything else happen in this allegation brought by OSHA after you responded to these, after you told them that our analysis had found a trace amount?

A Well, there was some general things I remember. There were conferences with the OSHA lawyers. The OSHA lawyers I know reviewed with their personnel a number of matters.

Q Did they request any samples of anything from you?

A I can't recall any additional requests.

Q Did they ask any interrogatories, written questions that we had to write answers to?

A No.

Q Did they take any depositions?

A No.

1 Q Did they ever say that they weren't doing it
2 because they didn't have a big enough work staff, these five
3 lawyers?

4 A No.

5 Q Did they ever say that they weren't pursuing this
6 matter because they were violating the very duty that Mr. Carr
7 says they have to protect the health of workers?

8 A No.

9 Q That they were going to ignore that and not
10 pursue this matter?

11 A No.

12 Q Did they ever say that to you?

13 A No.

14 Q Did they ever give you the results of their
15 analysis?

16 A No.

17 Q Of this spill material? Sir, did they?

18 A I can't remember with clarity, but I don't --
19 I'm sorry, I just don't remember whether we received any or
20 not.

21 Q Don't you think, sir, if they felt they had a
22 case, a sample of this spilled material, they claimed they
23 had it, they put it in the paper, don't you think if they
24 thought they had a case, that they had a violation of OSHA

1 don't you think that they would have pursued it?

2 A Yes.

3 Q Has Mr. Carr showed you one piece of evidence
4 to suggest that they wouldn't have?

5 A No.

6 Q That these give gentlemen are just fair-do-well
7 lawyers, that don't care about doing their job, and their
8 responsibility in following up?

9 A No.

10 Q Or don't have the time because they're playing
11 golf?

12 A Right.

13 Q Did he tell you that he's brought one piece of
14 evidence in this courtroom to substantiate that suggestion, sir?

15 A No.

16 MR. CARR: Your Honor, I'm prone to interrupt,
17 Counsel has been going on for sometime. All of these questions
18 for the last two or three minutes have been leading and
19 suggestive, and argumentative, and I object to them, and ask
20 that Counsel not do it anymore.

21 THE COURT: They have been leading. They haven't
22 been objected to up to this point, but you will have to
23 rephrase future questions.

24 Q (By Mr. Musgrave) Let's talk some more about

1 these requests, Mr. Park, just a bit. Referring you to
2 request 11, 12 and 13 that Mr. Carr asked you about. You'll
3 recall he asked you about 12.

4 A Yes.

5 Q And why that was denied.

6 A Yes.

7 Q That the term tetrachlorodibenzo-p-dioxin, herein-
8 after referred to as TCDD, refers to 22 potential isomers.

9 A Yes.

10 Q That was denied.

11 A Yes.

12 Q Now, the very next question uses the same term
13 that was in quote before, does it not?

14 A Yes.

15 Q TCDD?

16 A Yes.

17 Q Now in that question, that is request number 13,
18 does it refer to it there in as being 22 potential isomers?

19 A No.

20 Q What does it refer to as TCDD, or TCDD --

21 A As a compound.

22 Q As a compound.

23 A Yes.

24 Q Used in the singular, a compound.

1 A Yes.

2 Q And, sir, referring you to the one immediately
3 in front of that, request number 11, up there it refers to 75 --
4 that dioxin refers to 75 different compounds; is that right?

5 A That's correct.

6 Q Now, do you recall Mr. Carr asking you a question
7 about there being 75 isomers of chlorodibenzo-para-dioxins?

8 A I think there was a question along those lines.

9 Q He said some people say 75, some people say 72,
10 but 75 isomers has generally been talked about in this court-
11 room.

12 A That's right.

13 Q Of the chlorodibenzo-para-dioxin?

14 A Yes.

15 Q Is that right?

16 A Yes.

17 Q So up in 11 the OSHA lawyers are now referring
18 to dioxin as being 75 different compounds; is that right?

19 A That's what the statement says there.

20 Q And there are 75 isomers of chlorodibenzo-para-
21 dioxin, we just talked about that; isn't that right?

22 A Yes.

23 Q So these three questions put together, could they --
24 did they create confusion as to just what the heck the government

1 wanted to know here?

2 A Yes.

3 Q Or what they said they were saying?

4 A Yes, they did.

5 Q In 12 they said TCDD is 22 isomers, or 22 compounds
6 because they say that the isomers in 12 are different compounds;
7 don't they?

8 A Yes.

9 Q Or up in 11, they say that they're different
10 compounds, and in 13 they're saying TCDD is a toxic compound;
11 isn't that right?

12 A That's correct.

13 Q Toxicity, sir, is to your way of thinking a
14 couple of grains of salt toxic if you eat it?

15 A No.

16 Q If you eat a quart of salt, to your knowledge could
17 it be toxic?

18 A Yes.

19 Q Is there the same distinction to be made, sir,
20 in your mind when you're talking about toxicity of different
21 compounds, or toxicity of the same compounds, even 2,3,7,8,
22 one part per quadrillion as opposed to a glass of it?

23 A Yes, I think that applies to everything.

24 Q Did the government, and lawyers in any of these

1 questions when they talked about toxicity, give you a level or
2 a dose that somebody was exposed to get --

3 A No.

4 Q -- to have you determine whether it was toxic or
5 not?

6 A No.

7 Q And if you would have answered 13 that TCDD is a
8 toxic compound in the affirmative, would that mean or could
9 that have been construed by the government lawyers that any
10 level of TCDD is toxic?

11 A I think it could have.

12 Q Did that have anything to do, sir, with the
13 reasons that you denied some of these answers?

14 A I'm sure it did.

15 Q Or questions that were requested that dealt with
16 toxicity?

17 A Yes.

18 Q Now, Mr. Park, Dr. Wilson wrote some memos about
19 by-product, and what he thought a by-product was; is that
20 correct?

21 A Yes.

22 Q Did you agree or disagree with those, or do you
23 recall?

24 A I frankly cannot recall my own view.

1 Q Do you know whether the government lawyers in
2 preparing this document were distinguishing between a by-product
3 and a contaminant?

4 A I don't know what the government meant when they
5 put that term in.

6 Q Well, they talked about dioxin or polychlorinated
7 dibenzo-p-dioxin as a by-product in number 8, didn't they?

8 A Yes.

9 Q Did you notice in number 46, sir, that when they
10 talked about dioxin there, that they talked about it as a
11 contaminant?

12 A Yes.

13 Q Did you notice then in 47, sir, they started
14 talking about dioxin again and they called it a contaminant
15 or a by-product?

16 A Yes.

17 Q And, sir, with regard to this 46, that's where
18 it was denied that the manufacturing process of certain
19 chlorinated phenols produced at the Krimmrich Plant potentially
20 contained the following contaminants, the first thing they say
21 is dioxins, right?

22 A Yes.

23 Q Now in other places in this document do they not
24 use the term polychlorinated dibenzo-p-dioxin, like in number 8?

1 A That's correct.

2 Q And hadn't you previously denied that the term
3 dioxin referred --

4 THE COURT: Mr. Musgrave, rephrase the question.
5 The last three, at least, have been leading, and I told you
6 to rephrase the leading questions. Do so immediately.

7 Q (By Mr. Musgrave) Number 11, sir, what does that
8 say?

9 A "The term dioxin refers to 75 different compounds,
10 dependent upon the location of the chlorine atoms within the
11 dioxin molecular structure."

12 Q You were requested to admit that?

13 A That's right.

14 Q Did you admit or deny it?

15 A We denied it.

16 Q And did you give an explanation as to why you
17 denied it?

18 A No.

19 Q Pardon me, sir?

20 A No.

21 Q I think you might look at your answer, sir.

22 A I'm sorry. I'm sorry. I was looking at the wrong
23 one. We did explain that.

24 Q And what was the explanation?

1 A We said dioxin refers to a broad class of compounds
2 estimated to exceed 10,000 in number.

3 Q All right. And so you denied it.

4 A Yes.

5 Q And so back in 46, sir, did the response that you
6 gave in 11 have anything to do, sir, with your denial of 46(a),
7 that is that certain chlorinated phenols produced at the plant,
8 the Krummrich Plant, contained potential contaminants such as,
9 quote, dioxin, close quote?

10 A I think that's correct.

11 Q And did Mr. Carr show you any documents here, sir,
12 with regard to the denial of 46(b), and did he show you any
13 documents here where any of these chlorophenols are shown to
14 contain all 22 --

15 A No.

16 Q -- of the TCDD isomers?

17 A No.

18 Q And does 46(b) specify which isomer it's talking
19 about when it says TCDD?

20 A It implies 22, all of them.

21 Q And handing you what's been previously marked as
22 Plaintiff's Trial Exhibit 1119, which is the OSHA citations,
23 sir, I'd like you to read through that and tell me if you see
24 in that any place the word "wilful" or "deliberate."

1 A I do see right at the top of Citation 2 the
2 phrase or term "Wilful/Serious."

3 Q Anyplace else, sir?

4 A Nowhere else.

5 Q Do you know whether that "wilful/serious" means
6 either one, or both, or do you know?

7 A I think it means either one, and it's generally
8 taken to be serious.

9 MR. CARR: Counsel, so we don't have to go through
10 this on recross, why don't you point out that there's a half
11 a dozen pages at least of this 10 page citation that have the
12 word "wilful/serious."

13 MR. MUSGRAVE: Wilful/serious?

14 MR. CARR: Yes.

15 THE WITNESS: Yes.

16 MR. CARR: You said nowhere else. One, two, three,
17 four, five, six, seven, eight pages of the -- one, two -- of
18 the fourteen page document contain the words "wilful/serious."

19 Q (By Mr. Musgrave) And that is a wilful-slash-
20 serious?

21 A Yes.

22 Q And is it contained anywhere in the body of the
23 document describing the alleged allegations?

24 A I don't think so.

1 Q It's just wilful/serious at the top; is that
2 right?

3 A Yes.

4 Q Mr. Park, you saw Mr. -- or Mr. Carr asked you
5 about the one Request for Admission about the -- whether we
6 had analyzed orthochlorophenol. Do you recall that?

7 A Yes.

8 Q And he showed you the Dr. Wilson memo where he
9 talked about analyzing orthochlorophenol?

10 A Yes.

11 Q Have you ever heard of orthochlorophenol crude?

12 A Yes.

13 Q Do you know whether there's a distinction between
14 orthochlorophenol, the product, and orthochlorophenol crude,
15 the product?

16 A I think there's a distinction.

17 Q Let me show you Plaintiff's Trial Exhibit 1138,
18 as well as Plaintiff's Trial Exhibit 1135, it was marked twice,
19 it's also a memo by Dr. Wilson that Mr. Carr put into evidence,
20 is it not?

21 A Yes.

22 Q And does Dr. Wilson in there refer to these same
23 analyses that were done in '78 that were referenced in the
24 other exhibit he showed you where he talked about the ortho-

1 chlorophenol?

2 A He calls these samples OCP crude.

3 Q Do you know whether he knew or understood at the
4 time he wrote these memos possibly the distinction between
5 orthochlorophenol and orthochlorophenol crude?

6 A I would think he should know the difference.

7 Q Mr. Park, Mr. Carr also showed you, I believe it
8 was Plaintiff's 1543. This was preparedness question and
9 answer on soil sampling that was prepared by Sarah Collins.
10 Do you have that, sir?

11 A Yes, I do.

12 Q And he asked you about the finding of a level of
13 dioxin in one of the locations there in the sampling that was
14 done. This is on page 2 of this exhibit.

15 A Yes.

16 Q And you recall that he asked you a question
17 about -- question 8 -- pardon me, question 6 and answer 6.
18 Do you have that?

19 A Yes.

20 Q About what Monsanto was going to do about the
21 potential exposure.

22 A Yes.

23 Q And it was indicated that the area was going to
24 be paved.

1 A Yes.

2 Q What does question 7 and answer 7, the ones
3 immediately next to it, what do those read, sir?

4 A Question 7 says, "Are you paving the lot just
5 because of the dioxin?" Answer, "No. We planned to extend the
6 parking lot prior to the sampling program."

7 Q And question 6, would you read that, sir.

8 A Question 6, "Don't you consider the one near the
9 fence area a health hazard?"

10 Q And the answer to that.

11 A The answer reads, "No. The dioxin was detected
12 a couple of inches below the surface in an area where there
13 has been a low potential for exposure, and with the parking
14 lot extension this area will be paved over, eliminating any
15 exposure."

16 Q Now, Sarah Collins, sir, the author of this,
17 do you know when she started with Monsanto?

18 A No, I don't really. Several years ago.

19 Q Do you know whether she was employed in 1979?

20 A I frankly don't remember.

21 Q Now, in question 10, it is asked, is it not, sir,
22 "Had you ever tested for TCDD before now?"

23 A Yes.

24 Q And would you read the answer to us.

1 A The answer reads, "We have tested for TCDD by
2 taking wipe samples and found it not to be present. In taking
3 the wipe samples, we tested the surface of equipment and furni-
4 ture in the chlorophenol units and their control areas."

5 Q Do you know whether Sarah Collins was familiar
6 with that June, 1979 wipe sample exhibit that Mr. Carr showed
7 you that had one finding of a contaminant in Department 237?

8 A I don't know.

9 Q That was some four and a half years earlier,
10 wasn't it, sir?

11 A That's correct.

12 Q From this document dated November of 1983.

13 A Yes.

14 Q Do you know, sir, whether any wipe samples were
15 taken at the Krummrich Plant in the interim, between June of
16 '79 and November of '83 when Sarah Collins prepared this memo?

17 A I think there were a number of wipe samples taken.

18 Q Do you know which results Sarah Collins might have
19 been referring to when she said "We tested for TCDD by taking
20 wipe samples"?

21 A She's probably referring to some more recent in
22 time.

23 Q Do you think, sir, she would have gone all the way
24 back to 1979 if the sample testing for the last couple of years

1 had shown that there were no findings of TCDD in wipe samples?

2 A I think it's quite possible she might have gone
3 back just a few years and found that none had been detected,
4 and then stopped.

5 MR. CARR: Your Honor, I object to this as pure
6 speculation.

7 MR. MUSGRAVE: Well, your Honor, he's asking --

8 MR. CARR: And Counsel knows it.

9 MR. MUSGRAVE: He's asked the witness to speculate
10 about all kinds of things. I think this is just as clearly
11 admissible speculation as to what he's asked the witness to
12 speculate about.

13 THE COURT: You made the objection as to specula-
14 tion. It's my opinion that they haven't been speculation.
15 They've been proper questions. This witness is a lawyer. This
16 particular question that you're talking about is speculation,
17 and the objection will be sustained. I see it's a couple minutes
18 after four, so we'll terminate proceedings for the day at this
19 point in time.

20 Ladies and gentlemen, we will adjourn for the day
21 at this time. We will resume again Monday at 9:00. I want to
22 remind you, besides the regular admonishments over any break,
23 that you're not to read, listen to or watch anything about this
24 case in particular, or subject matter in general in any of the

1 media, or electronic. Thank you for your attention and
2 cooperation. Have a good weekend. We'll see you on Monday.

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4 (Court adjourned.)
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1 STATE OF ILLINOIS

2 TWENTIETH JUDICIAL CIRCUIT

SS.

3 COUNTY OF ST. CLAIR

4
5 I, Kathleen Watson Brunsmann, one of the Official Court
6 Reporters, do hereby certify that the foregoing transcript is
7 a true and correct copy of said transcript.

8
9 DATED: August 12, 1985.

10 *Kathleen Watson Brunsmann*

11 Kathleen Watson Brunsmann, CSR, RPR
12 Official Court Reporter

1 STATE OF ILLINOIS

2 TWENTIETH JUDICIAL CIRCUIT

SS.

3 COUNTY OF ST. CLAIR

4
5 I, RICHARD P. GOLDENHERSH, Circuit Judge, do
6 hereby certify that the foregoing transcript is a true and
7 correct copy of said transcript.

8
9 DATED: August 12, 1985.

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11 _____
12 RICHARD P. GOLDENHERSH, CIRCUIT JUDGE
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