STATE OF NORTH CAROLINA | IN THE OFFICE OF

COUNTY OF BLADEN | ADMINISTRATIVE HEARINGS

WILLIAM BARRY FREEDMAN, Petitioner, vs. NC DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER QUALITY, Respondent.	Case No. 05 EHR 0905

Elizabethtown, North Carolina
August 22, 2007
9:00 a.m.
Volume I - Pages 1-251

ADMINISTRATIVE HEARING
TRANSCRIBED FROM AN OPEN-MICROPHONE RECORDING

The above-entitled matter came on for hearing before The Honorable Donald W. Overby, Administrative Law Judge Presiding, on the 22nd day of August, 2007, in Room 223 of the Bladen County Courthouse, Elizabethtown, North Carolina, commencing at 9:00 a.m.

1 APPEARANCES

2

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22 Reporter's Note: Quoted material is reproduced as read or

23 quoted by the speaker. Proper names are spelled

24 phonetically unless spelled into the record.

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1 Thereupon, the following proceeding was held:
2 THE COURT: This is the matter of
3 Freedman Farms versus the North Carolina
4 Department of Environment and Natural
5 Resources, the Division of Water Quality,
6 05 EHR 0905. My name is Don Overby. I'm the
7 Administrative Law Judge assigned to preside
8 over this hearing.
9 Present for the Petitioner is the
10 Petitioner Mr. Freedman and his lawyer Gary
11 Grady. For the Respondent, Jane Oliver from
12 the Attorney General's Office.
13 Are there any other preliminary matters
14 or anything we need to resolve prior to
15 getting started?
16 MS. OLIVER: We have - one of our
17 primary witnesses is Larry Baxley, and he was
18 available, you know, two years ago for the
19 hearing. He was there. He was available the
20 13th of August when the hearing was
21 scheduled. And he works for Progress Energy
22 and he arranged his schedule to be there on
23 the 13th, but he's in Florida this week.
24 So I would like to leave the record open
25 so that he can testify later, and it might

1 just take an hour or so, but he's the one who
2 found the discharge so I would like - and was
3 there that morning so I would like him to be
4 able to testify.
5 MR. GRADY: Well, Your Honor, I mean I
6 told Jane that I had no problem taking a
7 telephone deposition if she wanted to do that
8 prior to the hearing. So he's not here and
9 we haven't had the telephone deposition. I
10 would object to the record staying open.
11 However, if the Court elects to do that, then
12 I would want it to be open for me to offer
13 rebuttal witnesses.
14 MS. OLIVER: That's fine. Or any that
15 you've listed in your prehearing statement.
16 I mean I don't have a problem with that
17 because he was - I mean I don't think the
18 client in my case should suffer because of a
19 professional courtesy of letting---
20 MR. GRADY: There's no question you gave
21 me a professional courtesy.
22 MS. OLIVER: I mean so that's the issue
23 really. He was available that morning and
24 had scheduled - was scheduled to be there, so
25 it only seems fair to me, but it's up to the

1 Judge.
2 THE COURT: All right. I'll hold it
3 open, and we'll try to get it scheduled as
4 quickly as possible. I don't know exactly
5 how fast you-all are thinking about doing it,
6 but I'd like to get it done as quickly as we
7 can.
8 MS. OLIVER: He's available next week.
9 THE COURT: Is that all right with you
10 sometime next week?
11 MR. GRADY: That's fine.
12 MS. OLIVER: It's up to you.
13 THE COURT: And then the other question
14 would be, is it going to be here or Raleigh?
15 MR. GRADY: Here.
16 THE COURT: Here.
17 MS. OLIVER: That's fine. Is that okay
18 with you?
19 THE COURT: It's all right with me. If
20 I can get out of Raleigh, I'm doing good.
21 MS. OLIVER: There are a couple of other
22 matters---
23 THE COURT: And the other thing too,
24 along that same vein, that I would give him
25 an opportunity to continue to hold the record

1 open for rebuttal.
2 MS. OLIVER: I understand. Okay.
3 THE COURT: But also that would be not
4 open-ended as well, so we'll deal with that
5 one when we get through with the rest of it.
6 MS. OLIVER: I think we need to change
7 the caption on the case so we would make a
8 motion to amend the caption. The penalty was
9 issued against Barry Freedman, and when
10 Mr. Freedman filed his petition, he
11 identified himself as - the Petitioner as
12 Freedman Farms.
13 THE COURT: For some reason, I was
14 thinking I had seen an order---
15 MS. OLIVER: Well, that was - that was a
16 different---
17 THE COURT: ---amending the petition?
18 Was that something different?
19 MS. OLIVER: Yeah. That was the
20 Defendant or the Respondent was named as
21 the--
22 THE COURT: Oh, okay.
23 MS. OLIVER: ---yeah.
24 THE COURT: So do we need to amend it to
25 show Freedman Farms or---

1 MS. OLIVER: Barry Freedman.
2 THE COURT: ---Barry Freedman. Okay.
3 And the penalty was assessed against
4 Mr. Freedman as opposed to the farm, correct?
5 MS. OLIVER: Exactly. That was my
6 concern.
7 THE COURT: Okay. Any objection?
8 MR. GRADY: No, Your Honor. I recognize
9 what the consequence might be if I object.
10 MS. OLIVER: What?
11 MR. GRADY: I said I recognize what the
12 consequence might be if I do object, so no
13 objection.
14 THE COURT: All right. Motion to amend
15 is allowed. His name is William Barry
16 Freedman? All right. So we'll let the
17 caption be amended to reflect William Barry
18 Freedman, Petitioner. Is that all?
19 MS. OLIVER: We might talk about the
20 burden of proof. There's a - I have a recent
21 Court of Appeals case that's an environmental
22 case that makes it clear that the Petitioner
23 bears the burden of proof to show that the
24 violations did not occur and that the agency
25 erred in assessing the penalty.

1 THE COURT: Holly Ridge?
2 MS. OLIVER: It's actually - well, I do
3 have Holly Ridge. This one is more recent.
4 It's Ronald Overcash versus DENR, but yes,
5 the same---
6 THE COURT: I remember Overcash too.
7 MS. OLIVER: The same is true with Holly
8 Ridge. I can give you---
9 MR. GRADY: Judge, I haven't read the
10 case, but that just absolutely flies in the
11 face of due process, that they can issue a
12 penalty without him having an opportunity to
13 be heard, and then he bears the burden of
14 proof if he contests it. That flies in the
15 face of due process and we object to that.
16 We think they bear the burden, and that's our
17 position.
18 THE COURT: Well, the reason why I'm
19 hesitating is back when I was first sworn in,
20 in 1988, the first time on the District Court
21 bench, one of the older lawyers around Wake
22 County, Mr. Robert McMillan thought the less
23 you say, the better off you are. So I always
24 get real cautious about opening my mouth too
25 much and then I commence to doing it.

1 What I was pondering in whether - how
2 far I ought to run my mouth is, I'm always
3 very cautious about any intrusions on due
4 process - very cautious. But I also have to
5 recognize what the Court of Appeals has said,
6 and Holly Ridge, I think, was the first big
7 one where they just really laid it out, and
8 it does put the burden on the - I mean -
9 well, in this instance, the Petitioner to
10 move forward.
11 There is some more instances under the
12 administrative law that I think that are more
13 egregious than these scenarios, but it's - it
14 does put the burden on him to go forward and
15 present his evidence. So---
16 MR. GRADY: Just note my exception.
17 THE COURT: Noted.
18 MS. OLIVER: I mean I think this is his
19 due process, his opportunity to be heard
20 today, so---
21 MR. GRADY: I'm sure you do.
22 MS. OLIVER: Well, I mean---
23 THE COURT: One thing that we do
24 periodically - and, Ms. Oliver, I'll kind of
25 leave it up to you - is to allow the

1 Respondent to assume the burden of going
2 forward, not the burden of proof ultimately,
3 but to basically establish a prima facie
4 case. Do you want to do that?
5 MS. OLIVER: Well, you know, if I do,
6 I'm calling Mr. Freedman as my first witness.
7 He is not denying that the event occurred,
8 but he has a defense. So this is not one of
9 those situations where, you know, he's
10 alleging, you know, trying to prove a
11 negative. So I would prefer him to go first.
12 THE COURT: Okay. Call your first
13 witness.
14 MR. GRADY: Barry Freedman, Your Honor.
15 THE COURT: All right. Step around and
16 place your left hand on the Good Book and
17 raise your right hand.
18 - - - - - - - -
19 WILLIAM BARRY FREEDMAN,
20 the Petitioner, being first duly sworn in the above-
21 entitled matter, was examined and testified on his
22 oath as follows:
23 THE COURT: Have a seat, please. And if
24 you would, for the record state your name and
25 spell your name.

1 THE WITNESS: William Barry Freedman.
2 Spelling might be a problem. W-i-l-l-i-a-m
3 B-a-r-r-y F-r-e-e-d-m-a-n.
4 THE COURT: Thank you, sir.
5 **DIRECT EXAMINATION**
6 **BY MR. GRADY:**
7 Q. If you'd just go ahead and repeat your name for me
8 and tell me what your current address is.
9 A. William Barry Freedman, 1282 Jordan Road,
10 Clarkton, NC 28433.
11 Q. And tell me what your age is, Barry.
12 A. Forty-two years.
13 Q. Tell me what education you have.
14 A. Got a degree - a high school education and a
15 degree from UNCW in history and political science.
16 Q. Are you married?
17 A. Yes.
18 Q. Children?
19 A. Yes.
20 Q. How many?
21 A. Two children.
22 Q. Tell me, since you've graduated from college, what
23 kind of business you've been in.
24 A. I've been in the ag industry, farming.
25 Q. How long have you been in the ag industry?

1 A. Since I graduated from UNCW in 1989.
2 Q. And what type of agricultural businesses have you
3 been in since 1989?
4 A. 1989. We farm, you know, four thousand and some
5 acres of row crops, and then we've got twenty-five
6 hog facilities or finishing farms.
7 Q. How long have you been in the swine business?
8 A. Since nineteen - February of 1997.
9 Q. Other than this particular notice of noncompliance
10 or penalty - environmental penalty - have you ever
11 had any other environmental penalty issued against
12 you personally?
13 A. We've never had a sanction imposed upon us, and
14 we've never had a discharge from any farms - any
15 of the farms - never had a discharge until this
16 morning on any facility in Greene County, Columbus
17 County, or Bladen County.
18 Q. So your farms are located in three different
19 counties?
20 A. In three different counties.
21 Q. Now in January of 2005, tell me how many farms -
22 swine farms you were operating at that time.
23 A. I owned two at that time, one in Columbus and one
24 in Bladen.
25 Q. And as of today, you own how many?

1 A. Four.
2 Q. Four. Now when you say you owned two, does that
3 mean two houses?
4 A. No, no, no, no. There were six houses in Columbus
5 County and four in Bladen County.
6 Q. So January of 2005, you were operating ten
7 finishing houses?
8 A. Ten finishing houses.
9 Q. Okay. Now how many different lagoons would you
10 have for those ten finishing houses?
11 A. Three.
12 Q. Are each of those lagoons permitted?
13 A. Yes, they are.
14 Q. And were they permitted in January of 2005?
15 A. Yes, they were.
16 Q. Now Freedman Farms - can you tell me what type of
17 entity that is?
18 A. It's a corporation.
19 Q. In January of 2005, who were the owners of the
20 stock of that corporation?
21 A. Both my parents, Wilbur B. Freedman and Pearl W.
22 Freedman.
23 Q. At that point in time, did you own any stock
24 whatsoever in Freedman Farms?
25 A. Zero.

1 Q. Now the Ronald Davis farm, tell me where that is
2 located.
3 A. On Highway 210 near Garland in Bladen County.
4 Q. Now is that farm operated - when did you acquire
5 that farm? Let's start there.
6 A. I think - I think the year would be 1999. I'm
7 guessing. I may be off by one year on that.
8 Q. Okay. Now since the farm sale, who owns the dirt?
9 Who owns the real estate where the farm is
10 located?
11 A. I did at the time.
12 Q. So the farm was in your individual name?
13 A. It was in mine and my wife's name, the finishing
14 houses and the actual land.
15 Q. And your wife is? Who is your wife?
16 A. Lisa Snider Freedman.
17 Q. And what does she do?
18 A. She's assistant district attorney in Bladen and
19 Columbus County.
20 Q. Now did you at some point apply for a permit - a
21 discharge - waste discharge permit for that lagoon
22 located at the Ronald Davis farm?
23 A. No, I did not.
24 Q. Okay. Did someone apply for a permit or was a
25 permit issued?

1 A. Not to discharge into the ditches, if that's what
2 you're asking, no.
3 Q. Okay. What type of permit was issued for that
4 farm, if any?
5 A. Just to apply the waste on the spray fields.
6 Q. Okay. So this would be to take the waste out of
7 the lagoon and put it on your fields?
8 A. That's correct.
9 Q. And that's - and did you apply - what's the type -
10 what's that permit called?
11 A. I might need a little help.
12 Q. A spray effluent permit of some kind.
13 A. I'm not sure exactly what the permit is called.
14 It's a North Carolina permit to - I guess to run
15 a--- Help me out here.
16 Q. You can't ask questions.
17 A. Okay. I got you.
18 Q. But, anyway, the practical effect of that permit
19 was to allow you to apply waste to the fields?
20 A. Onto the fields and not in the ditches.
21 Q. And did you apply for that permit?
22 A. We - me and my wife applied for it when we bought
23 the farm from Ronald Davis, Jr.
24 Q. Do you know in whose name the permit was issued?
25 A. It should - in William Barry and Lisa Freedman -

1 the Bladen County farm.
2 Q. Okay. Do you have a copy of that permit?
3 A. Not - I've got a copy, but not with me on me
4 today.
5 Q. Okay. Lisa Freedman had not been made a party to
6 this action?
7 A. No.
8 Q. Now from 1999 until November of - to January of
9 2005, were you the primary operator of the Ronald
10 Davis farm and the lagoon located on that farm?
11 A. I was the sole operator.
12 Q. Sole operator. Along with your wife?
13 A. Right.
14 MS. OLIVER: Objection, Your Honor. He
15 said he was the sole operator.
16 THE COURT: Overruled.
17 Q. Tell me, in November of 2005, were there some
18 issues regarding ponding of effluent in a field?
19 A. There were some issues, and basically, they came
20 out there to do a biannual inspection, which
21 there's a spring inspection and there's a fall
22 inspection. They were coming out there to do the
23 fall inspection, and there was a damp area around
24 the irrigation reel that had came in. And there
25 was no ponding in my opinion. Of course, they're

1 of a different opinion. The ground was a little
2 damp, and so they issued - I guess it would be an
3 NOV because there was ponding, but there was no
4 ponding, in my opinion, on the field area. It was
5 just damp. It wasn't like there was a lake of
6 water. There was no lake of water out there -
7 effluence.
8 Q. Did they request some information as a result of
9 that ponding?
10 A. They did. I told them that Gino Kennedy of
11 Agriment Services, who is the consultant that
12 keeps my hog records, would provide them any and
13 all information they needed. And the next thing I
14 heard - I thought they were working in conjunction
15 with Gino Kennedy, who was the record-keeper for
16 all of our farms. The next thing I was made aware
17 of that we hadn't provided the information in a
18 timely manner.
19 Q. But you contacted them in a timely manner?
20 A. I contacted them and they - all---
21 MS. OLIVER: Objection to leading, Your
22 Honor.
23 A. (continuing) All the guys knew that Gino Kennedy
24 was my consultant---
25 MS. OLIVER: Objection.

1 A. (continuing) ---and record-keeper for the farm.
2 MR. GRADY: I'll withdraw the question.
3 Q. When did you contact them about the ponding?
4 A. About the ponding?
5 Q. Or the alleged ponding.
6 A. That was - that was - the alleged ponding was on
7 the date of inspection. And Gino Kennedy, who is
8 the record-keeper and the consultant for the farm,
9 was out there that day, and of course, the letter
10 that was sent to me asking for the records - I
11 called - I can't remember - I believe it was
12 Mr. Baxley, the man who's not here today, and told
13 him Gino would provide him any and all information
14 that he needed on - it wasn't that we were trying
15 withhold or anything.
16 Q. When did you call this individual?
17 A. Oh, it was probably several weeks after this
18 alleged ponding occurred.
19 Q. Would it have been prior to January 1st, 2005?
20 A. Yes.
21 Q. Okay. In January of 2005, did there arise - did
22 circumstances arise which resulted in some
23 discharge of waste from the Ronald Davis farm into
24 a ditch?
25 A. In January on the date of the alleged - of course,

1 not alleged - the offense occurred, I received a
2 call, I believe, from the gentleman who is not
3 here today sometime around, I believe, nine or ten
4 a.m. in the morning, told me that he was - might
5 have been perhaps earlier because he told me that
6 he was on the way to work, and he observed some
7 discharging of wastewater into the ditch.
8 And I told him that was news to me because we
9 weren't doing any pumping, and the lagoons were at
10 an extremely safe level as far as the amount of
11 freeboard required by law at the time. So there
12 was - we were in no need to pump at that time.
13 And so I drove to the farm, and I had a man by -
14 Ronald Davis---
15 Q. Well, before you drove to the farm, what
16 conversation did you have with Mr. Baxley?
17 A. I asked Mr. Baxley if there was a discharge
18 occurring to cut the pump off, and he refused to
19 do so. So I had to contact a man who lived in the
20 community and ask him to go over and cut the pump
21 off because all we were - if there was a problem,
22 all that was being done by allowing the pump to
23 keep pumping was compounding the problem. There
24 was no reason---
25 MS. OLIVER: Objection. Nonresponsive.

1 THE COURT: Overruled.
2 Q. Go ahead. You can finish.
3 A. Okay. If there was - when I spoke to Mr. Baxley,
4 he called me and he told me that there was
5 discharge of wastewater going into the ditches on
6 Highway 210 and going toward a branch, and I asked
7 him - it was news to me because there was no
8 pumping being done by me or any member of my
9 family or any member of the farming operation that
10 works for me.
11 And I asked him - I said, "Well, go cut the
12 pump off." He refused to cut the pump off, and if
13 we're trying to protect the water quality, why not
14 cut the pump off, I mean, because---
15 Q. Just tell me what happened. What happened after
16 that?
17 A. He refused to cut the pump off, and then I called
18 Ronald Davis, who resides directly across the road
19 from the hog facility, and Ronald Davis went over
20 and cut the farm [sic] off but not without the
21 instruction of Mr. Baxley. Mr.---
22 Q. Ultimately, did you go to the site where the
23 lagoon is located?
24 A. About forty-five minutes later, I arrived at the
25 site.

1 Q. How far do you live from the site?
2 A. About forty-eight miles.
3 Q. Okay. So you left immediately and went to the
4 site?
5 A. I went directly to the site.
6 Q. Tell me what you observed when you got to the
7 site.
8 A. Well, what Mr. Baxley told me was correct, that
9 there was wastewater. The irrigation gun was
10 aimed directly at a ditch. It was not
11 oscillating. It was not revolving back and forth,
12 which a one-eighty oscillation is the normal
13 pattern for the wastewater, and it was---
14 Q. Will you describe for the Court the irrigation gun
15 and how it works?
16 A. All right. The irrigation gun is just like a big
17 sprinkler nozzle that revolves back and forth at a
18 hundred and eighty degrees - back and forth. It
19 just revolves. It oscillates, but not at a
20 three-sixty, at a one-eighty. And when I got
21 there, of course, by that time, the pump had been
22 cut off. There was no pumping going on when I
23 drove up to the farm, but the pump - the gun was
24 locked - and, of course, we got this in the
25 sheriff department's record - the gun was locked

1 in one position, aiming directly at a ditch, and
2 the timer on the irrigation pump had been bypassed
3 because there's a timer---
4 Q. Let's talk about - tell me how this - the gun was
5 locked. In what manner?
6 A. All right. There's little locks where you can
7 lock - where you can let the gun revolve at a
8 three-sixty, a one-eighty, or a ninety-degree
9 pattern.
10 Q. That's similar to a water sprinkler?
11 A. Right. It can go all the way around or one-eighty
12 or ninety degrees. And the gun was locked in
13 place with locks. And, of course, that's on
14 record right there in the sheriff's department in
15 Bladen County. And it was locked and it was
16 shooting effluent directly at the ditch which took
17 the effluent out to the ditch at the highway.
18 Q. Now you say the timer had been bypassed. Explain
19 that to the Court.
20 A. There's a timer which is no more than a clock on
21 an irrigation pump, and when me and the deputy - I
22 would not walk up to the pump until the deputy
23 sheriff got there. The timer had - if the timer -
24 which is a clock - if it's working properly,
25 you've got a switch that says enabled. And then

1 if you want to bypass the clock, it was pushed up
2 to bypass which would allow the pumping unit to
3 keep pumping until it ran out of fuel.
4 Q. When you - when was the last time that you had
5 observed the spray gun prior to this incident?
6 A. It would be - going back so far, I would have to
7 look at my pumping records. I cannot recall that
8 right off the top of my head.
9 Q. And at the time that you last observed it, was the
10 spray gun pointed towards the ditch?
11 A. No. No.
12 Q. At any point in time, did you ever point the spray
13 gun toward the ditch?
14 A. No.
15 Q. At any point in time, did any of your agents or
16 employees ever point the spray gun towards the
17 ditch?
18 A. No.
19 Q. Do you know how it got pointed toward the ditch
20 personally?
21 A. I've got a theory---
22 Q. No speculation. Do you know how it got pointed
23 toward the ditch?
24 A. Nothing I could substantiate.
25 Q. Ultimately, the last time that you observed a

1 timing problem on the clock - on the timer - was
2 it on bypass?
3 A. No. When we're pumping, the timer is always on
4 enabled, and that's the wording, "enabled."
5 Q. And did any of your agents, employees, to your
6 knowledge, flip the timer on bypass?
7 A. No.
8 Q. Do you know how the timer got put on bypass?
9 A. Nothing that I could substantiate.
10 Q. Ultimately, did you make a report to the Bladen
11 County Sheriff's Department that your timer and
12 spray gun had been tampered with?
13 A. The morning when I drove up to the place, we
14 immediately called the sheriff's department, and
15 before I even walked up to the irrigation gun or
16 the irrigation pump, I waited until a deputy was
17 there to escort me to it.
18 Q. Now you indicated that your lagoon was at a safe
19 level, is that correct?
20 A. To my knowledge, it was at twenty-six or
21 twenty-seven inches. Again, I would have to look
22 back at the records, but it was - it was in danger
23 of overrunning or in any danger of being in
24 violation of state and federal---
25 Q. Well, I don't know what a violation would be. How

1 much room would you need?
2 A. You have to maintain nineteen inches from the top
3 of the dam by state law on most lagoons, not all,
4 and that one would be nineteen inches of
5 freeboard, is what it's called. That lagoon was
6 at twenty-six or seven. There was no reason to be
7 pumping at that point, unless a hurricane or some
8 kind of storm was coming, which was not the case.
9 Q. So there was no danger of any overflow---
10 MS. OLIVER: Objection to leading.
11 THE COURT: Sustained.
12 MS. OLIVER: Motion to strike.
13 THE COURT: Allowed.
14 Q. Did you have any concerns about any overflow on
15 that lagoon?
16 A. No.
17 Q. Okay. After you went to the farm and viewed what
18 happened, what did you do then?
19 A. We immediately began a process of damming up the
20 ditches to keep the effluent from escaping and
21 getting into the branch, which if it got into the
22 branch, it would carry it on to the rivers. So we
23 immediately, physically with shovels, dammed the
24 ditch up. Then I hired a company out of Clinton
25 to come back and clean the effluent out of the

1 ditches and put it back in the lagoons.
2 Q. Okay. Were you able to dam the ditches up in a
3 manner which totally prevented any effluent from
4 reaching---
5 MS. OLIVER: Objection to leading, Your
6 Honor.
7 THE COURT: Overruled.
8 A. We dammed - we dammed the ditches up in a manner
9 where I won't say not a single gallon escaped, but
10 it was very minimum. Most of the effluent was put
11 back in the pond, and of course, the drop and the
12 rise - the record will show that we trapped, in my
13 opinion, ninety to ninety-five percent of
14 everything that escaped.
15 I won't sit here and say we trapped every
16 gallon because that would be misleading, but
17 ninety percent, in my opinion, was trapped and put
18 back in the holding pond, and we hired a company
19 to do that.
20 Q. Now what company did you hire?
21 A. It seemed like - I can't recall the name of it,
22 but I believe it's S&S - it was a service that -
23 Brown's and Smithfield Foods contacted the
24 company, and we hired them and paid them
25 approximately twenty-seven hundred dollars. I

1 can't recall the actual name of the company that
2 did the cleanup, but I paid for the cleanup that I
3 did not - that I did not create.
4 Q. And you paid how much?
5 A. It was approximately twenty-seven hundred dollars.
6 It was less than three thousand dollars.
7 Q. Did you save any money - did you obtain or gain
8 any monetary benefit as a result of the effluent
9 being sprayed into the ditch?
10 A. No. I lost almost three thousand dollars and a
11 day's hard work over there, and now I'm imposed
12 with a sanction - with a sanction on an alleged
13 offense that I didn't create.
14 Q. Do you know how long the effluent had been sprayed
15 into the ditch?
16 A. From what I saw, it appeared to me that it had
17 been pumping at least three or four hours. The
18 pump was turned on sometime during the a.m. hours
19 of the morning, in my opinion.
20 Q. Now after - after this happened or subsequent to
21 this, have you received any other sanctions or
22 penalties for violating any water quality laws?
23 A. No. No sanctions or penalties for discharges.
24 MR. GRADY: Your witness.
25 MS. OLIVER: Okay.

1 CROSS-EXAMINATION

2 BY MS. OLIVER:

3 Q. You testified that your address is 18 - is 1282
4 Clarkton Road, is that correct?
5 A. That's correct.
6 Q. Is that your business address as well?
7 A. No.
8 Q. What is your business address?
9 A. 1127 Jordan Road, Clarkton.
10 Q. Okay. And you say that your family owns hog
11 farms. How many do they own now?
12 A. I've got the ones in Greene County, which is in an
13 LLC. Brown Marsh. Ten houses in Bladen County on
14 Highway 242 and six in Columbus.
15 Q. So is that three farms?
16 A. It's three different operations.
17 Q. Three - that's what I mean.
18 A. Yeah. All finishing.
19 Q. Okay. And when you owned the Ronald Davis farm,
20 what years was that? You don't currently own
21 that?
22 A. No. I sold the farm when I bought the other farm
23 in Bladen County. I would say from 1999 to
24 February of 2006 - probably - almost five years,
25 give or take a few months.

1 Q. And during 2004 and 2005, what sort of work were
2 you doing - or how many farms did you own then?
3 A. Just two at the time. Just Ronald Davis - the
4 Bladen County farm and the Columbus County farm.
5 Two farms during that period.
6 Q. And do you live in Columbus County?
7 A. I live in Columbus County, but we're right there
8 on the line - right there on the Columbus-Bladen
9 line, but I do reside in Columbus County.
10 Q. So you're approximately forty-eight miles from the
11 Ronald Davis farm, is that correct?
12 A. That's correct.
13 Q. And how far are you from the Columbus County farm?
14 A. Three-tenths of a mile. It's behind the home.
15 Q. Okay. Were you the operator-in-charge for the
16 Ronald Davis farm during the period you owned the
17 farm?
18 A. Yes.
19 Q. Okay. And so you were both the owner and operator
20 of the farm?
21 A. Yes.
22 Q. And during your ownership, how many hogs did you
23 keep on the farm?
24 A. Well, we're permitted for thirty-two hundred.
25 Sometimes there would be a few less, and sometimes

1 there would be - there was eight - there were four
2 houses with an eight-hundred permit per house.
3 Thirty-two hundred permitted.
4 Q. And is the technical name for the type of
5 operation - you may have referred to it earlier,
6 CAFO or Concentrated Animal Feeding Operation?
7 A. I think that would be correct. Intensive - we
8 always make reference to it as Intensive Livestock
9 Operation, an ILO.
10 Q. Okay. And do you know whether the Ronald Davis
11 farm was considered during your ownership - was
12 considered a large operation?
13 A. That would be more medium. No, it wouldn't be
14 large. Medium to small.
15 Q. Medium to small?
16 A. Thirty-two hundred head. No, thirty-two hundred
17 would not be considered large.
18 Q. Okay. And on what are you basing that
19 characterization?
20 A. Because some of these pork-producing meetings I've
21 went to, they had some categorizations like up to
22 five thousand head would be like medium and over
23 five thousand permitted head would be a large
24 farm. Some of the information that I don't
25 probably remember as well as I should - just

1 information from meetings I've been to.
2 Q. Okay. Well, do you know whether under state and
3 federal laws a thirty-two-hundred-animal farm is
4 considered a large farm?
5 A. No, I would not know that.
6 Q. What are the responsibilities of an operator-in-
7 charge?
8 A. The responsibilities of an operator-in-charge are
9 to look after the animals and make sure the waste
10 is applied on the field, and if you'll look at our
11 record, we've never had a discharge up to this one
12 on any farm, then or today.
13 MS. OLIVER: Your Honor, the answer is
14 nonresponsive. I just want a list of the
15 responsibilities of the operator-in-charge.
16 THE COURT: Sustained.
17 A. (continuing) To make sure the waste is
18 responsibly applied to the land and to look after
19 the animals.
20 Q. Okay. And so during the period 2004 and 2005, did
21 you have any employees on the farm?
22 A. When we went to that farm, usually, one gentleman
23 would ride with me, my father, perhaps, or one of
24 the migrant workers would ride with me from time
25 to time.

1 Q. Okay. But my question, again, is, did you have
2 any employees who worked on that farm?
3 A. No. The employees on the farm was a company
4 called ABC. They looked after the animals or the
5 care for the animals, and I did the pumping. No
6 employees other than myself and maybe perhaps my
7 father and one other migrant ever did any pumping.
8 We had a company called ABC Swine that looked
9 after the care of the animals. That was the only
10 employees that were ever on the farm other than
11 myself and my father.
12 Q. And the migrant workers?
13 A. And one migrant worker from time to time.
14 Q. And so the migrant worker did some of the pumping?
15 A. No.
16 Q. I thought you just testified that he did.
17 A. No, I did not testify. He said he went with me.
18 I cut the pump on. He just went with me. He
19 might take - he might take a tractor and pull the
20 reel out, but I did the pumping.
21 Q. And your father did the pumping sometimes?
22 A. No. I did the pumping. I always - when you go on
23 a two- to three-hour ride from home, I'd always
24 let - usually let somebody ride with me because
25 you're spending a half a day in--- I was solely

1 responsible for the pumping, not my father, not
2 the migrant worker.
3 Q. Okay. So you did all pumping---
4 A. Right. They would help me, with a tractor, pull
5 the reel out into the field, but when it come time
6 to cut the pump on, I did the pumping.
7 Q. Okay. And how often - once you start the pumping,
8 how often - are you required to check on it?
9 A. Yes. You're required to stay there.
10 Q. And how often do you have to check on it?
11 A. If you're staying there, you're pretty much
12 required - be on top of it every minute. But you
13 can leave, I think, for twenty or thirty minutes,
14 but you can't just leave and drive off and come
15 back three or four hours later. Somebody, when
16 you're pumping, has to be on the site, and someone
17 was always on the site when we were pumping.
18 Q. Okay. And as an operator-in-charge, do you have
19 to take any training to become familiar with the
20 regulations?
21 A. You have to go get so many hours every so many
22 years, and of course, my hours are up-to-date.
23 Q. And is there a requirement about how often you
24 have to check the land application system while
25 you're pumping?

1 A. You have to check it - if you're there, you're
2 checking it all the time that you are there.
3 Q. But I'm not asking what happens when you're there,
4 but I'm asking whether you are aware of a
5 regulation that requires---
6 A. There is a regulation that you check it, I
7 believe, every thirty minutes or so. I may be
8 incorrect on that, but we had someone on-site,
9 myself and someone else, the whole time the
10 pumping process went on. So---
11 Q. Okay. And when you say "on-site," were you
12 sometimes at the barn or were you in the field
13 or---
14 A. No. We were, most of the time, sitting in the
15 truck because we didn't go in the barns or the
16 facilities. The only barns on the place contained
17 the animals that were on the farm.
18 Q. Okay. So you were present during all - other than
19 January 2005, you were present during all spray
20 applications at the farm?
21 A. That would be correct.
22 Q. And you are responsible for those?
23 A. I'm a hundred percent responsible.
24 Q. Okay. And you actually conduct the operation -
25 the application?

1 A. I did it all.
2 Q. So just for the record, in May of 2005, you were
3 assessed a civil penalty, is that correct?
4 A. Is the penalty you're speaking about the one that
5 occurred with this discharge?
6 Q. That's right.
7 A. That would be correct.
8 MS. OLIVER: Your Honor, I'm trying to
9 find the original for the Court and give
10 Mr. Grady mine. Well, I'll find it later.
11 MR. GRADY: Could we go off record for
12 just a second?
13 (Thereupon, a brief recess was taken.)
14 THE COURT: Further questions,
15 Ms. Oliver?
16 Q. (by Ms. Oliver) So the evidence that you contend
17 supports - are you saying - what is your theory
18 about why this discharged occurred?
19 A. There's no theory. Someone other than - there's
20 no theory. It's fact. Someone other than myself
21 or a member of my family went over and cut that
22 pump on during the middle of - during the a.m.
23 hours of the morning.
24 Q. Okay. And you don't recall when you first
25 learned - the time that you first learned there

1 was a problem?
2 A. I recall the time because I believe Larry Baxley
3 called me, I believe, on my mobile phone and told
4 me there was a problem, and that's when I asked
5 him - if there was a problem, it was news to me
6 and to please cut the pump off, which he refused
7 to do so, which was only compounding the problem.
8 Q. Okay. And what time was that?
9 A. It was sometime - I believe I received the call
10 about eight forty-five a.m. He was on his way to
11 work at federal - the Division of Water Quality
12 Office is what Mr. Baxley told me when he
13 discovered the effluent leaving the field and
14 going into the ditches.
15 Q. Okay. And you said you arrived approximately
16 forty-five minutes later, is that correct?
17 A. Forty, forty-five, fifty minutes later because
18 that was about as fast as I could drive that
19 distance.
20 Q. Okay. And you were coming forty-eight miles?
21 A. Uh-huh. I was moving.
22 Q. Okay. What did you observe when you got there?
23 A. I observed exactly what he told me. The ditches
24 were full of effluent.
25 Q. What about the fields?

1 A. The fields where the gun was actually locked in
2 place - the fields were saturated in one place
3 because the gun was not oscillating.
4 Q. And when you say "effluent," do you mean
5 wastewater---
6 A. That's right, uh-huh.
7 Q. ---processed water?
8 Okay. And do you recall the temperature when
9 you arrived?
10 A. Extremely cold. Extremely cold. Probably, I
11 would say, thirty-eight, forty degrees, and the
12 wind was blowing. It was extremely cold that
13 morning.
14 Q. And who was present when you arrived?
15 A. When I first arrived, Mr. Baxley was there, and
16 then later on, this gentleman beside me arrived, I
17 believe would be correct.
18 Q. Anyone else?
19 A. Later on there were a whole host of people out
20 there involved in the cleanup process. People
21 from Brown's of Carolina, Smithfield Foods, and
22 then the company we hired to literally clean the
23 ditches out and put the effluent back into the
24 wastewater pond.
25 Q. Okay. So the only people present - was Larry - I

1 mean was Mark Brantley there when you arrived?
2 A. Not to my recollection. When I first arrived,
3 Mr. Baxley was the - to my recollection, was the
4 only gentleman on the site.
5 Q. Okay. You said the ground was saturated. Was
6 wastewater all--- You said it was in the ditches.
7 How far did it flow from the field?
8 A. It left the field and went all the way to Highway
9 210 and then went through a tile under Highway 210
10 to the back part of Ronald Davis' farm, which is
11 where we constructed the dam.
12 Q. And did it go into some wetlands back there?
13 A. I would think a small amount did enter the
14 wetlands - I would think that. I would think
15 that.
16 Q. Okay. And where did you construct the dam?
17 A. It was on the back - it was across the road from
18 the farm on the back part of Ronald Davis' farm.
19 It was in a ditch because a tile carried the
20 effluent under Highway 210 across the road, and
21 then it hit - it then went to a farm ditch and
22 started heading toward the branch.
23 Q. Okay. And by "the branch," you mean a creek or
24 what?
25 A. Well, what you're making reference to. It's just

1 kind of a low area - what you were making
2 reference to as wetlands. It was heading in that
3 direction.
4 Q. And some actually reached the wetlands?
5 A. In my opinion, it did.
6 Q. Okay. Did you see any frozen waste while you were
7 there on the site - frozen?
8 A. I saw some frozen waste right there around where
9 the reel was locked in place, and I did see that.
10 Yes, I did.
11 Q. Okay. And this was - even though the temperature
12 was thirty-eight to forty degrees?
13 A. Yeah. It was probably in the twenties that night.
14 Q. Okay.
15 A. But when I got there, it was probably - I'm
16 guessing around nine-thirty a.m. the following
17 morning - I would imagine the temperature had
18 probably got up to thirty-eight, forty degrees,
19 above freezing at that point, but it was below
20 freezing that night.
21 Q. Okay. How far would you estimate the difference
22 from the spray field that the gun was--- Where
23 was the gun positioned?
24 A. Going down the highway - the gun was positioned on
25 the farm in one of the spray fields, and if you're

1 asking the distance from where it went in the
2 ditch at to where we dammed it up, probably a good
3 fifteen - a good fifteen hundred feet is where we
4 stopped from - because it went all the way across
5 from the spray field across the highway to the
6 farm ditch.
7 Q. Okay. And how deep was the waste in the ditch?
8 A. I would say a good eighteen, twenty inches. It
9 was in there. Too deep.
10 Q. Do you know approximately how much wastewater was
11 discharged off the pond?
12 A. No, I do not.
13 Q. Okay. Could you not determine the volume based on
14 the size of your lagoon and the number of inches
15 that the--- If I may finish my question.
16 A. Okay.
17 Q. Could you not determine the volume based on the
18 size of your lagoon and the number of inches the
19 lagoon had dropped?
20 A. Gino Kennedy, the record-keeper - my---
21 Q. If you could answer the question first, I'd
22 appreciate it, and then you can explain your
23 answer.
24 A. I did not try to determine the gallons because
25 that's what Gino Kennedy, the person I hired to

1 keep the records - that was his job, not mine.
2 Q. Do you know how to determine how much waste is
3 discharged?
4 A. Oh, yes. It's just a matter of simple
5 mathematics. But, again, that's not a job I'm
6 involved in.
7 Q. As the operator-in-charge, you're not involved in
8 that?
9 A. I'm involved in pumping. The record-keeper Gino
10 keeps records for hog farms all over the state,
11 not just mine. He keeps the numbers.
12 Q. So how does he get the information to keep the
13 records?
14 A. We provide him, like, the time we start pumping,
15 and all the pulls are numbered like 1A, 1B, 2A -
16 all the pulls - all the hydrants are numbered. We
17 provide him the information, what time, the day,
18 the date that we start the pull and we stop the
19 pull, and then he puts the numbers together and
20 provides it to the Division of Water Quality
21 members that come out on their biannual
22 inspections.
23 Q. So he doesn't come out to the farm and---
24 A. Not on a day-to-day basis when pumping. He may
25 drop by occasionally, but basically, he comes out

1 on the biannual inspections, two, three times a
2 year.
3 Q. Okay. So are you not supposed to keep a record of
4 the rain level---
5 A. Yes.
6 Q. ---rainfall?
7 A. Yes.
8 Q. Okay. And he doesn't do that?
9 A. No. We keep the record of the rainfall.
10 Q. And so you would have to provide him with that
11 information, is that correct?
12 A. That's correct.
13 Q. And what about the lagoon levels?
14 A. We have to record the lagoon levels on a weekly
15 basis.
16 Q. Okay. And what about - what are the requirements
17 for the waste itself; are there any requirements
18 about analyzing the waste?
19 A. It's sent off for sampling to see if you need to
20 put lime - or the concentration of it twice a year
21 on our farm.
22 Q. And you testified that the agency asked you for
23 records. Did you ever provide those records?
24 A. When I spoke with Mr. Baxley, I told him that Gino
25 Kennedy would provide him any and all information,

1 and he had worked with Gino Kennedy on numbers of
2 farms in Bladen and Columbus and in his area, and
3 that's the last I had heard of him. I gave him
4 Gino's number, which he had Gino's number. And
5 the next thing I know, they're sending me a letter
6 they don't have the information that they need.
7 Well, Gino would have provided them any
8 information that they needed.
9 Q. Okay. But you're the operator-in-charge?
10 A. Right.
11 Q. And you're the permittee?
12 A. Right.
13 Q. And you have a responsibility as the operator-in-
14 charge and permittee to provide records, is that
15 correct?
16 A. That is true.
17 Q. And you never provided those records?
18 A. I provide the---
19 MS. OLIVER: Your Honor, if he could be
20 answering yes or no.
21 THE COURT: Answer the question.
22 A. (continuing) No, I did not in a timely manner.
23 The records were provided, but not in the time
24 they wanted. That was due one hundred percent
25 point of Mr. Baxley, not Barry Freedman.

1 Q. Pardon me?
2 A. Mr. Baxley and me had a telephone conversation. I
3 did not provide the records in a timely manner.
4 The records were provided - maybe not in a timely
5 manner, but the last conversation me and
6 Mr. Baxley had, that he would get---
7 MS. OLIVER: Objection to any hearsay.
8 THE COURT: Well, objection overruled,
9 subject to corroboration.
10 A. (continuing) Okay. Well, Mr. Baxley will
11 probably be here at a later date. Anyway,
12 Mr. Baxley, when I spoke with him on the
13 telephone, told me that him and Gino would - he
14 would assess Gino and get the information because
15 Gino is the number-puncher on the gallons that go
16 in and out of the lagoon.
17 Q. Do you know if records were ever provided on Gino?
18 A. I know records were provided. I don't know if I
19 eventually provided them or Gino provided them,
20 but the records were eventually provided because I
21 went to the Systel building and met with these
22 guys in person up there in Fayetteville, North
23 Carolina.
24 Q. And what records were provided?
25 A. I don't recall the exact detail of which records

1 were provided or were not provided at this point.
2 Q. What records were you required to provide?
3 A. I do not recall the records that were - we're two
4 and a half years later at this point, and I didn't
5 have the question put before me so I could bring -
6 I do not know the answer to the question at this
7 point.
8 Q. So you don't know what records you were providing?
9 A. I don't know what records they were asking for at
10 this point two and a half years later.
11 Q. You don't know what records were provided?
12 MR. GRADY: Objection. He's answered---
13 THE WITNESS: I've answered the
14 question.
15 THE COURT: Sustained. Sustained.
16 MS. OLIVER: He said he didn't know what
17 was asked for. I'm asking if---
18 THE COURT: He said he doesn't know what
19 was provided as well.
20 MS. OLIVER: I'm sorry?
21 THE COURT: He said he does not what was
22 provided. He said he did not what was asked
23 for nor what was---
24 A. At the time, I knew two and a half years ago. Two
25 and a half years later, I don't remember exactly

1 what was asked of me two and a half years ago -
2 which records were asked of me at the time.
3 Q. Okay. And when you say they weren't provided in a
4 timely manner, when were they provided?
5 A. Two and a half years later, I don't remember the
6 date or the time they were provided.
7 Q. Okay. Were they - did you receive a notice of
8 violation regarding the records?
9 A. I believe - my recollection is, I received a
10 notice of violation, but I don't believe I
11 received a civil penalty at that point.
12 Q. Okay. And did the notice of violation indicate a
13 time period in which you were to provide the
14 records?
15 A. Yes, it did.
16 Q. And did you provide the records within that time
17 period?
18 A. I immediately got on the phone with Mr. Baxley and
19 told him that Gino would provide any and all
20 information, and he was in agreement that that
21 would be okay with the Division of Water Quality.
22 Q. Okay. And do you know whether the records were
23 provided in a timely manner?
24 A. I know initially they were not provided in a
25 timely manner, but they were provided.

1 Q. Okay. And did you receive a second notice of
2 violation regarding the records?
3 A. Not to my recollection, but I may have.
4 Q. Okay. Did the wastewater continue to flow off the
5 property after January 28th?
6 A. In my opinion, no.
7 Q. What do you mean?
8 A. In fact, I know it didn't because we - if the
9 lagoon fell one inch, when we got through the
10 cleanup, there was an inch put back into the
11 lagoon. So, no, the waste didn't continue to flow
12 because we stopped the flow.
13 Q. But my question was--- Okay. You saw it flowing
14 on the morning of the 28th, correct?
15 A. That's correct.
16 Q. And how did you stop the flow?
17 A. We dammed the ditch up and---
18 Q. But that was off the property?
19 A. That was - well, that was - my property was on
20 this side - on one side of 210 and Ronald Davis -
21 it was on Ronald Davis' property at that point.
22 Q. So you testified earlier you put a dam on Ronald
23 Davis' property?
24 A. Uh-huh.
25 Q. And what else did you do to---

1 A. We hired that company - it seems like the name of
2 the company was S&S, but I could be incorrect -
3 out of Clinton to come in there and basically suck
4 out the ditches, vacuum out the ditches, and then
5 take all the wastewater, fresh and effluent, and
6 put it back in the lagoon.
7 Q. And where were you sucking it up?
8 A. Well, we started where the dam was at and worked
9 back towards the spray fields. We started where
10 the dam - we started where the dam was at and then
11 worked back to where the gun was locked in place
12 at.
13 Q. You started on Ronald Davis' property?
14 A. On Ronald Davis' property with his permission.
15 Q. Okay. And how long did it take to get it back
16 into the lagoon?
17 A. I'd say a good six, seven, maybe seven and a half
18 hours.
19 Q. And so you just pumped that one day - or whoever
20 you hired, the contractors pumped---
21 A. They worked - by the time they got there, it was
22 probably four o'clock in the afternoon and didn't
23 leave until about ten-thirty p.m. that night. So
24 they worked on into the night cleaning the ditches
25 out because, by the time we discovered the

1 problem, dammed the ditches up, and the company
2 got on-site, the cleanup didn't begin until three
3 or four-thirty p.m. and it went on until about
4 ten-thirty, eleven o'clock that night.
5 Q. Okay. And did you - did you ever - I mean you
6 didn't have to pump the next day; you cleaned it
7 up that first day, is that correct?
8 A. We cleaned everything that we could possibly
9 capture that one day.
10 Q. Okay. And didn't have to do anything the next
11 day?
12 A. We went back over there the next day, and I
13 believe we took a tractor and a disk and disked
14 around the fields just to keep any from seeping
15 out of the fields into the ditch. We did some
16 additional work ourselves, but we didn't hire any
17 custom work done after the first day.
18 Q. Okay. I believe you testified that the timer on
19 the pump itself was bypassed; is that what you
20 said?
21 A. Yes. There is two wordings. One is "enabled,"
22 which means the clock works on the pump, and one
23 is "bypass." And when the deputy got there and me
24 and him went up there, I showed him that the timer
25 had been bypassed because I wouldn't even

1 physically go to the pump until the deputy
2 arrived.
3 Q. Okay. And how often did you visit the farm in
4 2004 and 2005?
5 A. About once a week unless we were pumping, you
6 know, back to back, which - about once a week.
7 Q. How often would you spray or pump?
8 A. We'd pump during - during - like before we planted
9 the wheat - we'd pump before we planted the wheat,
10 and then we'd plant - you know, during - it was
11 related to what types of crops we had on the land.
12 If we were going to plant wheat, we'd pump some
13 effluent out there before we planted the wheat,
14 and then we'd pump some more after it.
15 So it - it varied with the crops we had out
16 there. And, of course, the records in the record
17 book would reflect what times and dates and days
18 we pumped.
19 Q. In a given year, how frequently did you pump?
20 A. Oh, in a year? You mean how many hours I would
21 pump on that farm?
22 Q. No. How many - how many---
23 A. How many days?
24 Q. Yes.
25 A. I'd say probably twelve to fifteen days a year.

1 Q. So once a month?
2 A. No. It wouldn't be once a month because there
3 would be some dormant - you know, some dormant
4 seasons when you - we're not allowed to pump by
5 your permit. It would not be once a month. It
6 would be before - before and after you planted
7 crops.
8 Q. Okay. So you pumped in November of 2004?
9 A. Without looking back at my records from then, I
10 would not be able to answer those questions.
11 Without having the waste management book, which is
12 now held by Ronald Davis, I would not be able to
13 answer those questions.
14 Q. Okay.
15 A. I'd have to look back at the records.
16 Q. But you testified, I believe, that Mr. Brantley
17 came out in November, and there was some ponding,
18 is that correct?
19 A. That was on our fall - our fall inspection. We
20 normally have inspections, spring and - and he
21 claimed there was some ponding, and in my opinion,
22 there was no ponding. The ground was a little
23 damp. Anyway, there was just a difference of
24 opinion. is the best way I know to word it.
25 Q. So you did pump - how long before that day had you

1 pumped?
2 A. How long before that day?
3 Q. Yeah. Had you pumped that day or---
4 A. I had pumped two days - about two days earlier
5 than that - the best of my recollection - and I'm
6 not looking at my records, and it's hard for me to
7 remember exactly what days I did and did not pump
8 back in 2004 and five.
9 Q. Okay. Would you open the book in front of you?
10 A. I can open the book, but I don't have my glasses.
11 I won't be of much assistance. I didn't know I
12 was going to be required to read anything.
13 MS. OLIVER: Your Honor, I have to have
14 him look at his documents. We can - you can
15 run to the drug store and get reading glasses
16 for all I care, but I've got exhibits.
17 THE COURT: You can't read the
18 documents?
19 THE WITNESS: I can't read but not
20 without my glasses on.
21 THE COURT: Do you have to have glasses
22 to drive?
23 THE WITNESS: All I have is just like
24 little Wal-Mart reading glasses - I buy at
25 Wal-Mart to read with, and I didn't know I

1 was going to be required to read anything
2 here today and---
3 THE COURT: But my question is, do you
4 need glasses to drive to get here? Is that a
5 restriction on your driver's license?
6 THE WITNESS: No, no, no, no, no. All I
7 need is a little two-dollar pair of glasses
8 from Wal-Mart. She might have a pair or
9 somebody might have a pair. I'm not trying
10 to get out of reading anything, but I might
11 need to borrow somebody's glasses for a
12 moment.
13 MR. GRADY: I may have a pair in my
14 desk, Your Honor. I can go look.
15 THE COURT: Why don't we take about ten,
16 fifteen minutes?
17 THE WITNESS: And look. I may have a
18 pair in my truck.
19 MS. OLIVER: Can you try to read this---
20 THE WITNESS: I can try. I'll try.
21 I'll do my best, but I---
22 MS. OLIVER: Just - he may be able to---
23 MR. GRADY: I don't want him guessing.
24 I want him to know what he's looking at.
25 MS. OLIVER: Okay. All right. All

1 right.
2 THE COURT: Why don't we take about a
3 ten-minute break and you can check your truck
4 and see---
5 (Thereupon, a brief recess was taken.)
6 THE COURT: Further questions? Further
7 questions?
8 Q. (by Ms. Oliver) Mr. Freedman, would you turn to
9 what's behind Tab 1 and is marked as Respondent's
10 Exhibit 1?
11 (RESPONDENT'S EXHIBIT NO. 1
12 (MARKED FOR IDENTIFICATION
13 A. Respondent's Exhibit 1?
14 Q. Yes.
15 A. Okay.
16 Q. Would you take a chance to review that document?
17 It should be in the front of the book.
18 A. Okay.
19 Q. Do you recognize the document?
20 A. Oh, yes.
21 Q. What is it?
22 A. It's just a - basically, it's a permit and it's
23 basically stating you're not allowed to discharge
24 water from the lagoon into the surface waters of
25 the State.

1 Q. Okay. What is - first of all, what is the
2 document?
3 A. It's says it's a Swine and Waste Management System
4 General NPDES Permit.
5 Q. Okay. Have you ever seen it before?
6 A. Have I seen this one before? No. Not this one in
7 front of me, no. I've seen one before, though.
8 Q. Have you seen a copy of this before?
9 A. A copy of this one? No, I haven't seen a copy of
10 this. I've seen one that's in my records at the
11 house.
12 Q. Is it the same as this one?
13 A. As far as I know. I haven't read it word for
14 word. I'm assuming it's the same.
15 Q. Okay. So how many copies of this - of your permit
16 do you have?
17 A. I would say I have a copy of this for the Bladen
18 County farm, the Columbus County farm, and the
19 Greene County farms.
20 Q. Okay. And is there any difference that you can
21 see between this and the copy that you have?
22 A. Without having the copy that I have at my home, it
23 appears to be the same.
24 Q. Okay.
25 A. It appears to be the same.

1 Q. All right. And is this the general permit for
2 managing swine waste?
3 A. To the best of my knowledge, this is a general
4 permit. To the best of my knowledge.
5 Q. Okay. And - but you're saying you don't know
6 whether this is the permit that you operated
7 under?
8 A. I think this is the permit I operated under with
9 Ronald Davis' farm.
10 Q. Okay.
11 MS. OLIVER: Your Honor, I move to admit
12 this as the permit under which he operated.
13 THE COURT: Well, it's still his
14 evidence so a little premature.
15 MS. OLIVER: Oh, okay. All right.
16 That's right.
17 Q. Would you turn to Respondent's Exhibit 2?
18 (RESPONDENT'S EXHIBIT NO. 2
19 (MARKED FOR IDENTIFICATION
20 A. 2. Okay. I've seen this before.
21 Q. Okay. What is it?
22 A. It's my certificate of coverage number, and it's
23 the date my permit was issued for this farm.
24 Q. Okay. And what was the purpose of this document?
25 A. The purpose of this document is to allow you to

1 spray effluent onto the spray fields.
2 Q. Does the document - does this document give you
3 coverage under the general permit?
4 A. I would say it does.
5 Q. And the address on the document is 1282 Jordan
6 Road?
7 A. That's my home.
8 Q. Okay. And you're testifying that that is not your
9 business address?
10 A. No, it's not.
11 Q. Okay. All right. Would you turn to Respondent's
12 Exhibit 3?
13 (RESPONDENT'S EXHIBIT NO. 3
14 (MARKED FOR IDENTIFICATION
15 A. Okay.
16 Q. Do you recognize that document?
17 A. Yes, I do.
18 Q. Certainly review it. What is it?
19 A. It's just your - you know, the amount - the
20 agronomic rates that the waste would be applied to
21 each section of the spray fields. You can't put
22 more waste out there than the crop can utilize.
23 You can't overapply.
24 Q. Okay. But what is this document itself - just the
25 document itself - not what it says?

1 A. It says, "Nutrient Management Plan."
2 Q. Okay. Is it your nutrient management plan?
3 A. It was that farm's nutrient management plan. It's
4 Ronald Davis' son's nutrient management plan now
5 because I no longer own the farm, but it was my
6 nutrient management plan at the time I owned the
7 farm.
8 Q. Okay. So you were - were you required to comply
9 with the provisions in this plan?
10 A. I was required, and I did abide by the provisions
11 in this plan at all times that I owned the farm.
12 Q. Okay. And what crops were you authorized to - or
13 did you--- Did you develop the plan?
14 A. No. Gino Kennedy with Agriment Services, the
15 consultant that keeps the records, in conjunction
16 with the Division of Water Quality and their
17 regulations put this plan together for me.
18 Q. Okay. So it was prepared on your behalf, is that
19 correct?
20 A. It was. That would be correct.
21 Q. Okay. And did you submit this plan to the
22 Division of Water Quality?
23 A. I would think that Gino submitted it, and it was
24 approved.
25 Q. Okay. So it was submitted on your behalf?

1 A. On my behalf.
2 Q. Okay. And what crops were you allowed to - or did
3 you say that you were going to grow under the
4 plan?
5 A. Under the plan - the whole time I was farming, it
6 was always wheat and soybeans. There could have
7 been, with some modifications, other crops grown,
8 but we always stayed with a wheat and soybean
9 crop.
10 Q. Okay. And how many spray fields did you have on
11 the Ronald Davis farm?
12 A. I'm thinking about how many hydrants we had.
13 There was approximately eight to nine hydrants,
14 and that would be eight to nine different sections
15 or spray fields, and I'm guessing - going back,
16 there were - on the farm, there was only three
17 what you call fields, but there was a series of
18 hydrants and each hydrant would be, you know, a
19 different - a different pull which would kind of
20 be a different section you sprayed.
21 But when you pull it, there was only three
22 fields - that there was a field that you saw
23 beside the highway, then the field going into the
24 farm, and then the field in the back. There's
25 only three fields, but there was a series of

1 hydrants in those fields that we pulled from, and
2 each - you know---
3 Q. Okay. And would you look at the last page of the
4 document?
5 A. Are you talking about section 3?
6 Q. The last page, yes, Respondent's---
7 A. I'm there.
8 Q. Is that your signature?
9 A. That is my signature and Sonya Barbour's and I'll
10 give you - Sonya Barbour was the one that prepared
11 it, not Gino, because Gino took over - he bought
12 Sonya's business back. So Sonya would be the one
13 that prepared this plan, not Gino. So I was a
14 little incorrect there. Sonya used to be the
15 consultant we used before Gino bought her
16 business.
17 Q. Okay. And by your signature, did you certify that
18 you would be responsible for all the land
19 application?
20 A. I certified and I am responsible for all land
21 applications but not acts of sabotage, in my
22 opinion.
23 Q. Okay. And I wanted you to explain a little bit
24 about the setup of the---
25 MR. GRADY: Your Honor, for the purposes

1 of the record, I will stipulate to save time
2 that Exhibits 1 through 3 can be introduced
3 out of order.
4 THE COURT: All right.
5 MS. OLIVER: Thank you.
6 THE COURT: They are admitted into
7 evidence.
8 (RESPONDENT'S EXHIBIT NOS. 1-3
9 (RECEIVED INTO EVIDENCE
10 Q. All right. Can you describe the system for us of
11 how the waste management system works? What are
12 the components?
13 A. Well, basically, there's only two components.
14 Well, there's more than two components. You've
15 got underground irrigation pipe with hydrants just
16 like a fire hydrant that you hook an irrigation
17 reel up to. That's one part of it. The hydrants
18 and underground pipe. Then you've got a pumping
19 unit that draws the effluent out of the lagoon and
20 sends it underground through those series of
21 pipes, and it's discharged out of a traveling -
22 out of an irrigation gun, which is nothing but a
23 big sprinkler that oscillates. There's three
24 components: a pump, the irrigation sprinkler or
25 irrigation reel, and then your underground pipe

1 and your hydrants. It's A, B, C, three parts.
2 Q. Pump, underground pipes---
3 A. You've got underground pipe that goes underground.
4 and there's hydrants that's tapped - just like a
5 fire hydrant - that's tapped into this pipe where
6 the effluent travels, and when you open the
7 hydrant, the effluent comes out and goes through
8 the - out through the irrigation gun.
9 Q. Okay. Just to be clear for the record so I
10 understand, you have a pump. Is that beside the
11 lagoon?
12 A. That's on the side of the lagoon.
13 Q. And the waste goes from the pump to---
14 A. To the underground pipe.
15 Q. ---the underground pipes, and then it goes where?
16 A. It goes to the hydrant and you open the valve on
17 the hydrant, and then the irrigation reel,
18 basically, oscillates and it goes out the
19 irrigation reel onto the - onto some farm fields.
20 Q. Okay. So it goes from the hydrant through some
21 sort of piping to an irrigation reel?
22 A. It goes through the pipe to a hydrant. Of course,
23 you open the valve on the hydrant, and the
24 irrigation reel is coupled to the hydrant.
25 Q. Okay. And there's some sort of pipe, is that

1 correct?
2 A. Pipe underground.
3 Q. To the spray gun?
4 A. Well, it's a big - it's kind of like a garden
5 hose. You pull it out and then it's reeled back
6 in slowly as the sprinkler oscillates and puts the
7 effluent on the fields. Kind of like you cast a
8 reel out, and at the end of the line, there's a
9 sprinkler and it sprinkles out, but it slowly
10 comes in spraying the effluent in agronomic rates
11 on the fields.
12 Q. Okay. And so I guess what I'm not understanding
13 is, you said the pipes are underground, so - and
14 there's a reel. What is between - are the pipes
15 underground between the hydrant and the reel?
16 A. There is--- Okay. If I'm following you
17 correctly, at the lagoon, there's pipes that go
18 under the ground. And these underground pipes are
19 teed up - a hydrant comes - they're teed down into
20 the underground pipe where the effluent travels,
21 and then you hook - you couple the reel onto the
22 hydrant and then pull the reel out just like you
23 cast a rod and reel out, and then it slowly comes
24 in as the sprinkler is oscillating back and forth
25 sprinkling the land, so to speak.

1 Q. Okay. And between the reel and the sprayer, is
2 that the pipe underground?
3 A. No, no, no. Because the reel is right there - the
4 reel is right there butting up to the hydrant
5 coupled with a piece of hose to the hydrant. The
6 reel is right there at the hydrant, and then you -
7 it's like pulling out a little garden hose, only
8 it's much larger. You pull it out with a tractor
9 into the field, and then it slowly comes in and it
10 sprinkles the field. It oscillates back and
11 forth. I hope I'm articulating this as well as I
12 can.
13 Q. All right. So what does it take to start the
14 pump?
15 A. Basically, just go there and prime it - you have
16 to prime it with a primer just like you used to
17 prime an old water pump back in the old days and
18 cut the key on and boom. It's pumping.
19 Q. How long does it take to prime it?
20 A. Pardon?
21 Q. How long does it take to prime the pump?
22 A. One to two minutes.
23 Q. Okay. About how many pulls do you have to do to
24 prime it?
25 A. Oh, God. Depending on, hey, what kind of luck,

1 anywhere from ninety strokes to a hundred and
2 fifty strokes.
3 Q. And that takes one to two minutes?
4 A. One to two minutes.
5 Q. What kind of--- Now you say you have a key. What
6 kind of fuel does the---
7 A. Diesel.
8 Q. Diesel fuel. Okay. And do you always leave the
9 key in the pump?
10 A. We did till that day. We don't - we do not
11 anymore.
12 Q. So the key was in the pump?
13 A. The key was in the pump. And even - if I may
14 elaborate - if the key had not been in the pump,
15 they could have took a screwdriver and ground out
16 the starter and cranked it just like you would do
17 with a tractor or something if you didn't have the
18 key. It still could have been cranked without -
19 if the key had been pulled out. If someone
20 intentionally went there to crank the pump, it
21 could have been cranked without a key.
22 Q. Okay. You keep saying they or someone. Do you
23 have any idea, you know, based on your claim that
24 this was sabotage, do you have any idea who did
25 this?

1 A. I know exactly who did it, but I can't prove it.
2 I know exactly the person who did it.
3 Q. Who did it?
4 MR. GRADY: Well, objection. Objection.
5 Q. Who did it?
6 MS. OLIVER: This is his defense.
7 MR. GRADY: Your Honor---
8 THE COURT: Overruled.
9 MR. GRADY: May I be heard on my
10 objection? My concern is here that she's
11 requiring the witness to engage in
12 speculation. I am concerned about that
13 because it is speculation, and it subjects
14 him to potential slander liability.
15 THE COURT: Objection overruled.
16 Q. Who do you think did this?
17 A. I'm not prepared to answer that question at this
18 point because it could expose me to a liability
19 suit. I cannot substantiate it or prove it. In
20 my mind, I know who did this.
21 MR. GRADY: Your Honor, go off record.
22 (Thereupon, a brief recess was taken.)
23 THE COURT: Ask the question again.
24 Q. (by Ms. Oliver) Who do you think did this?
25 A. In my opinion - and I cannot prove it - Linny -

1 Linwood Shirley.
2 THE COURT: Shirley?
3 THE WITNESS: Yes.
4 A. (continuing) We had some problems with Mr.
5 Shirley. He removed an irrigation reel from our
6 farm one time and put it on his property, and we
7 had to call the Bladen County Sheriff's Department
8 out there to retain access to our reel. But
9 that's my - again, that's my opinion. I cannot
10 prove or substantiate that. I know.
11 Q. Why would Mr. Shirley want to do this?
12 A. Because Mr. Shirley had wanted to buy - this farm
13 was going to be sold, and he, in my opinion - and
14 this is only my opinion - he had approached me
15 several times of wanting to buy this property from
16 me. And to make a long story short, I sold the
17 farm back to Ronald Davis' son, and Ronald Davis
18 and Linny Shirley were always bad neighbors. They
19 just did not get along.
20 And this infuriated Mr. Shirley when I
21 finally told him I was going to sell the property
22 back to the gentleman's son who I had purchased
23 the property from.
24 Q. When did you tell him that?
25 A. I can't remember the exact date, but I told him

1 before I sold the farm - several months prior to
2 selling the farm that I was going to sell the
3 farm.
4 Q. So you told him several months prior?
5 A. Yes. I mean I'm guessing. You're asking me to
6 recollect days or times of stuff that happened two
7 and a half years ago.
8 Q. Well, I'm just - you don't have to say the day or
9 time, but could you approximate approximately
10 when---
11 A. Let's say two to six months before I sold it
12 because we had the farm out there for sale
13 probably six, eight months before we sold the
14 farm. So two to six months. I mean I'm doing the
15 best I can here.
16 Q. And you sold the farm in 2006?
17 A. Sold it back to Ronald Davis, Jr., which is the
18 fellow's son that I purchased the property from
19 initially.
20 Q. So it was two to six--- When did you sell it?
21 What month did you sell it?
22 A. Gary, you did the closing. I mean I sold - I
23 bought the farm on 242 which would be in February
24 of 2006, so I sold it - because we did a 1031
25 exchange on it, Gary. I sold it, I believe, in

1 January of 2006. I'm not sure to be exact. I
2 think I sold it in January of - hey, a few days
3 before I bought the other farm.
4 Q. So you told Mr. Shirley that you were going to
5 sell the farm to Ronald Davis' son either - I
6 guess sometime between July and October of 2005?
7 A. I think so. I think so.
8 Q. And this event occurred in January of 2005?
9 A. I guess. I mean I don't know. There was always
10 bad community politics between Davis and
11 Mr. Shirley.
12 Q. Okay. Did you ever tell the sheriff's department
13 you thought it was Mr. Shirley?
14 A. Yes, I did, on the morning of.
15 Q. Is that in the report?
16 A. I don't know. Basically, I gave the report - to
17 the best of my knowledge, I signed it, but I don't
18 remember the exact details of the report.
19 Q. Okay.
20 A. But Mr.---
21 Q. Did you get a copy of the report?
22 MR. GRADY: Objection. I'm asking to
23 let him finish his answer.
24 MS. OLIVER: Okay.
25 A. Mr. Davis and the other party of the community as

1 well as myself - they assumed it was Mr. Shirley,
2 and Ronald Davis---
3 MS. OLIVER: Objection, Your Honor.
4 THE COURT: Sustained.
5 Q. Would you turn to the document behind Tab
6 Number 4?
7 (RESPONDENT'S EXHIBIT NO. 4
8 (MARKED FOR IDENTIFICATION
9 A. Section 4?
10 Q. Yes.
11 A. All right. Which document are we - the front part
12 or the back part where my signature is at?
13 Section 4?
14 Q. I was saying the document behind Tab Number 4.
15 A. The document behind tab. To Jane Oliver from
16 Barry Freedman. Okay. Got you.
17 Q. Do you recall that I asked you for information
18 earlier in this case?
19 A. I do recall that, but again, you don't go out
20 naming people that you can't prove did something.
21 And I mean I was very reluctant to start a - I
22 mean because I've got a family, and this is a
23 gentleman who I was concerned about in more ways
24 than one. And I didn't want to start naming
25 people as part of the actions that had occurred

1 that I couldn't prove in a court of law.
2 Q. Okay. Do you recognize this document?
3 A. Are you talking about Exhibit A right here?
4 Q. Exhibit 4.
5 A. I'm at 4. It says to Jane Oliver from Barry
6 Freedman, and then the next page---
7 Q. Okay. I should have taken that Exhibit A off. It
8 was used - just ignore the Exhibit A. Do you
9 recognize the document?
10 A. Which document are we speaking about? The one on
11 the following page?
12 Q. The document between Tab 4 and Tab 5.
13 A. You mean in between Section 4 and Section 5?
14 Q. Yes.
15 A. Yes, I do, and I recognize my handwriting being on
16 the front of this document.
17 Q. Okay. What is it?
18 A. It's some questions that were submitted to me, and
19 I answered them to the best of my ability.
20 Q. Okay. And did you understand that you had a duty
21 to be truthful in this document?
22 A. I was truthful in the document.
23 Q. Okay. All right. So this is your handwriting.
24 Did anyone help you prepare this?
25 A. Not at all.

1 Q. Okay. And would you turn to page 12 of the
2 document? And under item 23, you - it says -
3 would you read the item 23?
4 A. It says, "Admit that on January 28th, 2005, waste
5 from the Ronald Davis farm was applied to frozen
6 land."
7 Q. You testified and you did not admit to that, is
8 that correct?
9 A. I did not admit that I had applied waste to a
10 frozen land.
11 Q. But that's not what it - it says, "Waste was
12 applied to frozen land."
13 A. Again, I didn't have counsel at that time, and I
14 answered this question to the best of my ability.
15 Q. Okay. So but your statement at the time was that
16 no waste had been applied on Ronald Davis' farm to
17 frozen land?
18 A. I stated no waste had been applied by me or any
19 member of my family or any member of my farm on
20 frozen land.
21 Q. Is that what the document says?
22 A. We're going in circles here. I've answered the
23 question to the best of my ability. We're going
24 in circles.
25 Q. All right. And item 24, could you read that?

1 A. "Admit that on or about January, an estimated
2 volume of one thousand gallons of waste from
3 Ronald - one thousand gallons of waste was
4 discharged." Again, no admission. That means
5 Barry Freedman or any member of his family or
6 farming operation discharged any waste on this
7 property.
8 Q. Okay. So you're not denying that more than one
9 thousand gallons of waste was discharged?
10 A. I'm not - no, I'm not denying that it was
11 discharged, but not by me, myself, or a member of
12 my family.
13 Q. Okay. And item 25, could you read that?
14 A. "Admit that on or about January 28th, discharge of
15 swine waste from the Ronald Davis entered several
16 drainageways that flowed to unnamed tributaries."
17 Again, that's no admission by - the same as I
18 spoke - I had spoken to you before on the other
19 two items.
20 Q. Could you explain that answer?
21 A. Basically, I just - I was not willing to admit to
22 anything at that point, because I had not retained
23 counsel at that point, that I or any member of my
24 farming operation had created this problem, and we
25 did not create the problem.

1 Q. Okay. So did swine waste from the farm enter
2 several drainageways?
3 A. It entered some ditches, but I would say, in my
4 opinion, it never entered any tributaries.
5 Q. Okay. Item 26, could you read that?
6 A. "Admit that on or about January 28th, 2005,
7 wastewater from the spray gun on the Ronald Davis
8 farm flowed into wetlands." And no admission
9 again. I'm saying no, that - and I still believe
10 this is correct. No admission. I don't believe
11 that it flowed in the wetlands.
12 Q. Okay. Did you testify earlier that it flowed into
13 wetlands?
14 A. I said it may have. It may have. But I meant I
15 didn't never visibly see any of this effluent in
16 these wetlands.
17 Q. And turn to page 14.
18 A. Okay.
19 Q. And I'll just shorten the time. In this, you were
20 asked to provide a full and complete explanation
21 of all facts supporting your contention that the
22 discharge was the result of unauthorized tampering
23 with irrigation equipment. And there's no mention
24 of Mr. Shirley in this, is there?
25 A. At the time, Mr. Shirley was not - I didn't come

1 until later to believe and know by information I
2 received from Ronald Davis on a later date that
3 Linny Shirley was probably the culprit in this
4 [inaudible].
5 MS. OLIVER: Objection to any hearsay or
6 anything that Mr. Davis told him.
7 THE COURT: Overruled. Objection
8 overruled.
9 A. (continuing) At this time, I did not know who, in
10 my opinion, and still don't - can't prove who did
11 it. In my mind, I know who did it, but at this
12 time, I did not have a suspect.
13 Q. And you do say the information was documented by
14 the Bladen County Sheriff's Department?
15 A. That is correct. It should be on file.
16 Q. And was that based on your report?
17 A. That was based on my report, and I don't know if
18 they spoke with this gentleman or Mr. Baxley.
19 They had an opportunity - they were there to speak
20 with the sheriff's department - I don't know if
21 they provided any additional information other
22 than the one that I provided to the deputy
23 sheriff. They had the opportunity to do so.
24 Q. All right. And on page 15, you state that - I
25 asked you for a full and complete explanation of

1 facts and reasons supporting your contention that
2 the discharge was the result of a malfunction of
3 the irrigation equipment?
4 A. Malfunction, like I said, was never an issue or a
5 reason.
6 Q. Okay. And so you testified that you were without
7 counsel. Did you prepare all the documents, the
8 petition, the prehearing statement in this case?
9 A. I believe Gary - I didn't prepare anything. I
10 mean I - basically - I mean I didn't - how do I
11 know how to prepare anything on something I didn't
12 create - a problem that I did not create or cause.
13 How do you prepare for an act of vandalism or
14 sabotage?
15 Q. That's not my question, though. Did you prepare
16 the - you filed an appeal in this case, correct?
17 A. Are you talking about against the fine you
18 imposed?
19 Q. Right.
20 A. I think Gino Kennedy, to the best of my - would
21 have helped prepare that, Agriment Services.
22 Q. Okay.
23 A. And then, at some point, I turned this over to
24 Gary.
25 Q. All right. Was that after the case had been

1 dismissed by the Office of Administrative
2 Hearings?
3 MR. GRADY: Objection to---
4 MS. OLIVER: I'm just trying to work
5 on---
6 MR. GRADY: There's no relevance.
7 THE COURT: Sustained.
8 Q. Was that in August of 2005?
9 A. In August of 2005, this thing hadn't been
10 dismissed, had it? The notice - this thing wasn't
11 dismissed until last year.
12 Q. So it's your testimony that you never asserted
13 that malfunction was an issue or reason for the
14 discharge?
15 A. No malfunction. The deputy substantiated that.
16 It was clear - he got right up to it, and the
17 timer was bypassed on it, which meant it would
18 have sat there and ran until it ran out of fuel.
19 Q. And on page 17, I asked you to identify everyone
20 who had been paid for work on the Ronald Davis
21 farm, and you said there were none, is that
22 correct?
23 A. Well, do you mean that were looking out for the
24 animals or the cleanup? I mean I didn't know how
25 to answer the question. What do you mean, the

1 cleanup - where we hired to clean up the discharge
2 or do you mean the people looking out for the
3 animals in the facility or---
4 Q. I mean anyone who received compensation for work
5 on the farm.
6 A. Okay. Well, ABC Swine looked after the animals on
7 the farm. They didn't have anything to do with
8 pumping. So they received compensation for their
9 monthly care of the animals.
10 Q. Okay. And what about the migrant worker?
11 A. The migrant worker - well, if he rode over there
12 with me, he's on the payroll, so he received pay -
13 he received pay every time he rode over there with
14 me.
15 Q. Okay. But at the time you answered these
16 questions, you said no one, is that correct?
17 A. Well, I didn't know exactly what - exactly how -
18 the specifics of this question, so I didn't know
19 how to answer it. So I put none. I didn't know
20 if you were talking about the compensation for the
21 cleanup, compensation for the people looking after
22 animals, compensation for a person who
23 occasionally rode with me over to do the pumping.
24 Q. And on page 21, could you read item number 8?
25 A. "Identify all persons who were responsible during

1 the period of January 1st, 2004, to January
2 [inaudible] preparing and maintaining records
3 [inaudible] the Ronald Davis farm." I got myself,
4 and it should be also included - which is not
5 included - Gino Kennedy and Agriment Services.
6 Q. And why didn't you include that?
7 A. Just lapse of thought. I just didn't - I thought,
8 you know, basically, even if Gino prepares - helps
9 me in preparing the documents, all the liability
10 falls back on me. So I put the person who was
11 solely liable for the operation and the record-
12 keeping at the end of the day.
13 Q. Okay. But would you agree that the request asked
14 for all persons who were responsible for preparing
15 and maintaining records and any other
16 documentation?
17 A. Right, I'll agree to that. And I'll agree that
18 maybe I should have put Gino Kennedy down there
19 because he did assist me, but basically, I was
20 answering it for the person who - putting myself
21 being liable and responsible for all the work that
22 was submitted.
23 Q. Okay. And on page 23, you identify the only
24 evidence - the documentary evidence you intend to
25 offer is - was the Bladen County Sheriff's report.

1 Do you have a copy of that?
2 A. Not with me. I do not.
3 Q. Okay. And do you plan to call Mr. Shirley as a
4 witness?
5 A. I don't plan to be involved with Mr. Shirley,
6 period. I had to have the sheriff's department
7 out on his property to remove my reel. I don't
8 intend to have any dealings now or in the future
9 with Mr. Shirley.
10 Q. Why did you identify him as a person you expected
11 to call as a witness?
12 A. I spoke with some members of the community, Ronald
13 Davis being one and his wife, and then this is
14 merely speculation that can't be substantiated.
15 Q. Okay. Would you turn to page 25? Could you read
16 the request?
17 A. "Identify each person who you have retained or
18 employed or who has otherwise assisted in any way
19 Petitioner's preparation for the contested case
20 but who Petitioner does not expect to call as a
21 witness."
22 Q. And you said there was no one, is that right?
23 A. If I understood what this was asking for, no one I
24 was going to call as a witness on my behalf - if I
25 understood what this was asking for correctly.

1 Q. Okay. And would you agree that the request asked
2 for you to identify everyone who you had retained
3 or employed or who had assisted in preparing for
4 your contested case?
5 A. Well, at this time, I don't - at this time, I
6 don't believe I had retained Gary. Maybe I'm
7 incorrect in that assumption. And, basically, at
8 this time, I was just going at it on my own, so to
9 speak.
10 Q. Was it your earlier testimony that Gino Kennedy
11 prepared the petition?
12 A. I thought my testimony was that he had prepared
13 the appeal of the fine.
14 Q. Okay.
15 A. Of course, you may be correct in that. I don't
16 know if I'm answering the way you were asking it
17 correctly or not.
18 Q. Would you turn to the document behind Respondent's
19 Exhibit 6?
20 (RESPONDENT'S EXHIBIT NO. 6
21 (MARKED FOR IDENTIFICATION
22 A. What section?
23 Q. Or the tab. I'm sorry. 6.
24 A. Number 6?
25 Q. Yes.

1 A. Okay.
2 Q. Do you recognize that document?
3 A. Yes, I do.
4 Q. What is it?
5 A. It's a notice of violation issued to myself.
6 Q. Okay. And did you receive this notice?
7 A. I don't know if I received it. Do you mean by
8 certified mail? I don't know if we picked it up.
9 It seems to indicate that I picked it up. That's
10 my signature on it, so it appears that I did pick
11 it up certified mail. I would say yes.
12 Q. Okay. And in the document, the Division of Water
13 Quality is asking you to provide all pumping
14 records, lagoon records, rainfall records, waste
15 analysis by on or before December 8th, 2004. Did
16 you do that?
17 A. Again, this is going back to a question we've
18 already answered earlier. I called Mr. Baxley up.
19 Mr. Baxley told me that - I told him Gino had the
20 records, and the next thing I knew I get this
21 because the records weren't provided in a timely
22 manner. I think I've answered this question on an
23 earlier occasion today.
24 Q. Okay.
25 A. And Mr. Baxley didn't have any problem when I

1 spoke with him on the phone about being - in
2 conjunction working with Gino to get him the
3 necessary information because - I need to
4 elaborate here, if I may. I farm other crops. I
5 mean this is just one small part of my operation.
6 That's why I've got people to assist me. And I
7 wasn't trying to duck or get out of my
8 responsibility, but Gino had the information he
9 needed and more accessible than I did at the time,
10 Q. Okay. So you feel you're not responsible for
11 turning in the records, is that correct?
12 A. No. I feel I'm solely responsible for turning in
13 the records, but Mr. Baxley and me had a
14 conversation and he was in agreement that this
15 would be a correct way of handling this matter. I
16 told him Gino had all my records at the time, and
17 he had worked well with Gino in the past on
18 numerous farms, and he stated he would work in
19 conjunction with Gino. And the next thing I know,
20 here comes this letter here.
21 Q. And the letter references the date November 3rd,
22 2004, and the ponding that we talked about
23 earlier. Was Mr. Baxley at your property on
24 November 3rd, 2004?
25 A. I can't remember if it was Mr. Baxley or this

1 gentleman here. I think both of the guys were
2 there, but I could be incorrect in that
3 recollection.
4 Q. Okay. And you don't remember, I suppose, when you
5 talked to Mr. Baxley about the records?
6 A. No, not today. I can't hardly remember what I did
7 last week, much less two and a half years ago.
8 Q. Okay. And what about - I'm not asking for the
9 date, but I'm asking - try for the month and the
10 year.
11 A. The month and the year of what?
12 Q. Of when you had a conversation with Larry Baxley
13 about---
14 A. About the alleged - about the alleged ponding or
15 the discharge?
16 Q. About the records.
17 A. Which records are we speaking about? The ponding
18 records that were requested after this alleged
19 ponding occurred or the discharge?
20 Q. The records that were requested in this document
21 dated November 22nd, 2004.
22 A. I would say within - I don't remember - sometime -
23 five, six weeks after - I don't know the answer to
24 your question. I cannot recall back that far, so
25 I can't give a correct assessment when the

1 conversation occurred.
2 Q. Okay. And does your signature indicate that you
3 received the document on November 29th, 2004?
4 A. That is my signature.
5 Q. But your best recollection is that you did not
6 talk to Mr. Baxley about the records until five or
7 six weeks later?
8 A. I'm guessing. I just don't remember a - I know we
9 spoke, and we spoke about Agriment Services
10 providing - I don't know when, and I just can't
11 answer the question. I mean I'm sorry.
12 Q. Okay. And your testimony was that the records
13 were eventually provided?
14 A. I think that would be correct - eventually. But,
15 again, I'm trying to guess back two years ago.
16 Q. Okay. You were responsible for maintaining the
17 records, is that correct, as the operator-in-
18 charge?
19 MR. GRADY: Your Honor, object. He's
20 already testified that all of the liability
21 regarding that comes back to him. We're just
22 going over the same thing.
23 THE COURT: Sustained.
24 Q. Okay. But my point is, you do not recall whether
25 the records were provided?

1 A. Not at this point, I do not. That's just going
2 back further than my recollection will allow me.
3 Q. Would you turn to the document behind Tab 7?
4 (RESPONDENT'S EXHIBIT NO. 7
5 (MARKED FOR IDENTIFICATION
6 A. What page?
7 Q. Behind Tab 7.
8 A. Okay. Certified mail, return receipt requested.
9 Q. Do you recognize this document?
10 A. Yes - yes, I recognize this.
11 Q. Okay. What is it?
12 A. It basically says I didn't provide the records in
13 a timely manner, but again, I'm going to point
14 this thing straight to the person who is not here
15 today and let me answer, hey, because me and him
16 had a conversation and he had agreed to work - him
17 and Gino work together on getting the records
18 together. I'm responsible. That's been answered,
19 but I was operating on what he told me would be a
20 correct format to solve this issue here.
21 Q. Would you turn to the document behind Tab 8?
22 (RESPONDENT'S EXHIBIT NO. 8
23 (MARKED FOR IDENTIFICATION
24 A. Yes.
25 Q. Do you recognize that document?

1 A. Are you talking about where it's got a fax?
2 Q. The document identified as Respondent's Exhibit 8,
3 do you recognize the document? It's two pages.
4 A. Is this where it says, "Attention Stephen
5 Barnhardt," January 12th, 2005?
6 Q. The document with the label Respondent's
7 Exhibit 8. Do you recognize it?
8 A. I don't know if I'm looking at the same one you
9 are or not. I'm looking---
10 Q. Let me see. I'll show you the one.
11 MS. OLIVER: May I approach the witness,
12 Your Honor?
13 THE COURT: Yes, ma'am.
14 A. Is that the one you're speaking about?
15 Q. The two-page document, yes. These two pages. Do
16 you recognize it?
17 A. That right there? Yes, I mean I guess I recognize
18 it. It was a fax that was sent to Stephen
19 Barnhardt.
20 Q. Did you send the fax to Mr. Barnhardt?
21 A. I think the letterhead will reflect that I did not
22 send that fax to Stephen Barnhardt. I had my wife
23 to do so.
24 Q. Okay. Is that your handwriting?
25 A. What? On this page?

1 Q. On the first page.
2 A. No, that's not my handwriting.
3 Q. Okay. And on the second page, what is that
4 document?
5 A. Do you want me to read it?
6 Q. No. I would like for you to identify it, if you
7 can.
8 A. This is a response to the notice saying, "The
9 violation occurred and that the person at the pump
10 was probably -" which means me - "inside the
11 facility working with the animals. The reel came
12 off approximately thirty minutes before the
13 pumping unit shut off." And that's my signature
14 there, William Freedman.
15 Q. Okay. And the address at the top of the page is
16 1282 Jordan Road?
17 A. That's my home address.
18 Q. Okay. And you list Freedman Farms as the name of
19 your business?
20 A. That was an oversight perhaps - Freedman Farms
21 is - hey, all the businesses eventually, I guess -
22 it's just called Freedman Farms, but there's
23 different entities. We've got LLCs and different
24 entities, but everybody, when they make reference
25 to us, refers to us as Freedman Farms, even though

1 there's different entities owned by myself, my
2 father, and my wife.
3 Q. And you listed the address for Freedman Farms as
4 1282 Jordan Road?
5 A. I listed the address - that's my home address, but
6 the address for Freedman Farms would be 1127
7 Jordan Road.
8 Q. Okay. I don't know if I said this right, but I
9 meant 1282. So what is the document?
10 A. It's just a document that was typed up and I
11 signed and I sent to Stephen Barnhardt. It was
12 pretty - it's two paragraphs. It's pretty much
13 self-explanatory.
14 Q. Okay. Was this your response to the notice of
15 violation, Mr. Freedman?
16 A. This was one of my responses. I don't know if it
17 was my only response. I had conversations with
18 Mr. Baxley, but this would be one of my responses.
19 Q. Okay. And in this document, you referenced the
20 ponding as a violation, is that correct?
21 A. The alleged ponding - the alleged ponding. In my
22 opinion, there was no ponding there. The ground
23 was a little soft. When I say "a pond," I mean a
24 lake of water out there. I never saw a lake of
25 water out there.

1 Q. Okay. And you've referenced a person who is
2 watching the pump. Didn't you testify earlier
3 that you were responsible for all spray events on
4 the farm?
5 A. Right. And that person would be me.
6 Q. So you were probably inside the swine facility?
7 A. Again, looking back, I may have been walking
8 inside. I may have been sitting in my truck.
9 Probably - that means maybe. I mean I don't know,
10 and I don't know how to answer this question any
11 better than what is put there on the paper.
12 Q. Okay. And could you read the sentence that starts
13 "I have"?
14 A. "I have addressed this with my personnel, and they
15 will be on-site and more alert during the time
16 that the lagoon pump is to be shut off. We have
17 placed a timer on the pumping unit."
18 Q. Okay. So you had had a problem with the timer?
19 A. No. We hadn't had a problem with the timer, but
20 we put a new timer on it just as a safeguard. And
21 we may have replaced the timer that needed to be
22 replaced, but we replaced one just as a safeguard
23 for these - to stymie any future problems that may
24 occur.
25 Q. Okay. And you state that you "addressed this with

1 my personnel"?
2 A. That means the people that ride over there with
3 me, and I'm making reference to my father - even
4 though he's not my personnel - the migrant worker
5 who occasionally rides with me over there. That
6 would be my personnel.
7 Q. So you were telling your father and the migrant
8 worker they needed to be more - they needed to be
9 on-site and more alert---
10 A. Yes.
11 Q. ---during pumping events?
12 A. Yes. And, of course, we were all over there and
13 we all needed to be more alert. But, again, we
14 were looking at - he sees ponding. I do not see
15 ponding. And, basically, I'm just trying to go
16 along with the program and assist him, hey, in any
17 way I can. I didn't see any - when I say
18 "ponding," I mean lake of water. I saw some land
19 that was a little damper than maybe they thought
20 it should be.
21 Q. Okay. Well, you have testified that you were
22 responsible for all the pumping, is that correct?
23 A. Yes.
24 Q. All right. And do you consider your father your
25 personnel?

1 A. No, I do not consider my father my personnel.
2 Q. Okay. You state that the reel came in
3 approximately thirty minutes before the pumping
4 unit at the lagoon cut off. Can you explain what
5 that means?
6 A. No. When the reel comes - it's slowly coming in,
7 just like your [inaudible] fishing, so to speak,
8 in general terms. And it came in and stopped and
9 the pump was still pumping which allowed it to
10 pump in one place instead of coming in gradually
11 and spraying - it sat there and pumped in one
12 place instead of gradually spraying the effluent
13 as it was coming in. The pump came in - the reel
14 came in before the pump - in a perfect world, the
15 reel comes in and the timer shuts off at the same
16 time. And I'm guessing thirty minutes. It may
17 have been fifteen or twenty minutes on that.
18 Q. But you state thirty minutes?
19 A. I'm guessing thirty minutes.
20 Q. Okay. And you - this was - what is the date of
21 this document?
22 A. January 12th, 2005.
23 Q. So this was closer in time to the event that
24 occurred on November 3rd, is that correct?
25 A. It may be closer in time, but one event didn't

1 have anything to do with the other.
2 Q. Okay. This is referencing ponding on the - on
3 your farm, correct?
4 A. Pardon?
5 Q. This is referencing ponding on your farm, correct?
6 A. Ponding in a spray field.
7 Q. Okay. And you received a notice of violation in
8 November for ponding on the farm, is that correct?
9 A. Right.
10 Q. Okay. So this would not have related to the
11 discharge that occurred in January - late January?
12 A. No. No. This - if there was ponding - and the
13 ground was damp. There was no lake of water out
14 there. There was no pond of water on the spray
15 fields, and I think, if there are pictures, the
16 pictures will reveal there was no lake and water
17 or ponding. And, of course, this was an issue
18 that basically between myself - because I was the
19 person responsible for pumping, as we've stated
20 numerous times - is a difference of opinion
21 between me and the Division of Water Quality.
22 Q. So you didn't take responsibility in this letter
23 for the pumping, is that correct?
24 A. No. I'm taken responsibility right here because
25 we were doing pumping. We were doing pumping. I

1 just don't believe there was ponding.
2 Q. Okay. So the reel came in, and your estimate at
3 the time was that it pumped for thirty minutes---
4 A. Before the pump shut off.
5 Q. So it was in one place pumping for thirty minutes,
6 is that correct?
7 A. That's an assumption.
8 Q. Okay. And how many gallons and what frequency -
9 what's the volume of pumping?
10 A. That thing's putting out probably a hundred and
11 seventy-five, a hundred and eighty gallons a
12 minute. But during this time period, when it came
13 in, part of this fifteen, twenty, thirty minutes -
14 part of that time period would have been normal
15 for it to be wetting that ground.
16 It wasn't like it was sitting there in an
17 area off limits for thirty straight minutes. Part
18 of this area would have been sprayed by it
19 normally coming in anyway. It wasn't like it was
20 in an area of thirty straight minutes that
21 shouldn't have any effluent applied to the place.
22 Q. Okay. But it stopped?
23 A. It stopped.
24 Q. And it stopped for approximately thirty minutes?
25 A. Approximately.

1 Q. Okay. And it's how many gallons per minute? I'm
2 sorry.
3 A. I'm guessing a hundred and seventy-five gallons a
4 minute.
5 Q. Okay. All right. And you're saying that it
6 sprayed in one spot for thirty minutes at a
7 hundred and seventy-five gallons per minute, and
8 there was no ponding?
9 A. Well, in my - the land was soft like after you
10 have a big rain, but there was no - there was no
11 ponding. Hey, there was no water standing, in my
12 opinion, from the effluent because the ground had
13 absorbed the water. I mean I'm not saying - I'm
14 just saying that there was no ponding or lake of
15 effluent on that field, and I think their pictures
16 will substantiate what I'm saying, if they have
17 pictures.
18 Q. Okay. Do you have a copy of the police report?
19 MR. GRADY: Objection. She's asked that
20 and he's answered it.
21 MS. OLIVER: No. I don't mean here
22 today. I mean, does he - did he get a copy.
23 A. I can get a copy.
24 Q. No. Did you get a copy of the police report?
25 A. What, when they did it when they came out on the

1 scene?
2 Q. At any time, did you get a copy of the police
3 report?
4 A. No. They didn't offer to provide me one, and I
5 didn't ask for one because what we - our attention
6 and our focus that day was damming the ditch and
7 stopping the discharge of the wastewater. I mean
8 the police report was just a second thought that
9 day. We were trying to contain the discharge at
10 that point.
11 Q. Would you turn to the document behind Respondent's
12 Exhibit 12?
13 (RESPONDENT'S EXHIBIT NO. 12
14 (MARKED FOR IDENTIFICATION
15 A. Okay.
16 Q. Do you recognize that document? You're welcome to
17 look through it.
18 A. And is this the discharge that occurred in
19 January?
20 Q. If you could just review the document and tell me
21 if you know what it is.
22 A. Yes. I recognize this document.
23 Q. What is it?
24 A. It's where they issued me a notice of violation
25 for a discharge that occurred on Ronald Davis farm

1 that day that wasn't created by me.
2 Q. And did you receive a copy of the document?
3 A. I would say that would be correct.
4 Q. Okay. Do you recall how you received the
5 document?
6 A. I can't - I don't - at this point, I don't know if
7 Gino personally brought me the document or it was
8 sent certified mail. I don't remember the
9 details, but right here is - I don't remember.
10 Q. Do you - did the sheriff serve this document on
11 you, Mr. Freedman?
12 A. He may have. I don't recollect. Maybe he did. I
13 don't know. It says right here Sheriff Chris
14 Batts, so I'm assuming a deputy delivered this
15 document to me.
16 Q. Okay. And on the third page of the document,
17 could you tell us what's on the third page? Or
18 let me just ask you, is that the correct - your
19 correct address, 1292 Jordan Road?
20 A. That's my correct home address but not the
21 business address.
22 Q. Okay. Would you turn to the document behind
23 Tab 13?
24 (RESPONDENT'S EXHIBIT NO. 13
25 (MARKED FOR IDENTIFICATION

1 A. Behind 13? It's got William Freedman?
2 Q. Would you take a minute to look through this
3 document?
4 A. S&S Farm - I recognize that. That was the
5 cleaning company that did the cleanup that was
6 hired.
7 Q. What is the document?
8 A. That was the document that was prepared and sent
9 to Mr. Baxley stating what we did, which was we
10 hired - after the event occurred, we hired people
11 to clean up and basically just documented
12 everything that we did to contain--- We paid and
13 contained the cleanup that we did not create, and
14 I honestly believe we went above and beyond the
15 call of duty in this situation. What more can we
16 do with an act of vandalism?
17 Q. Okay. Do you - what is the document? What are
18 the four pages?
19 A. The document - you mean the first page where it
20 just - paragraph 1, 2, 3, 4, 5 - what is that?
21 Q. As a whole, what is the document?
22 A. It's just a letter to Mr. Larry Baxley with my
23 signature on it.
24 Q. Okay. All right. And are these records that you
25 provided to Mr. Baxley?

1 A. These are records that me or either Gino Kennedy
2 would have provided him, I think, following the
3 event.
4 Q. Okay. And on the morning of January 28th, did the
5 Division of Water Quality staff help to contain
6 the waste?
7 A. Yes, they did. Mr. Baxley was right out there
8 with a shovel in his hand helping dam the ditch
9 up. They did all they could do under the
10 circumstances. The only thing he did not do was
11 cut the pump off for me, which was compounding the
12 problem, and he said he was - he could not do so
13 and Mr. John College, who is a member of the
14 Division of Water Quality out of the Wilmington
15 Office, stated that they were allowed to do so.
16 THE COURT: Don't tell me anything that
17 somebody else said who is not going to be
18 here to testify.
19 THE WITNESS: Okay. Okay.
20 Q. And under the paragraph identified as 2, could you
21 read the last sentence?
22 A. "The waste was pumped back into the waste
23 structure or into the spray field with a suction
24 truck. As of 1/29, we were still pumping the sump
25 areas as needed." Yeah.

1 Q. And earlier this morning, you testified that you
2 did all the pumping on the 28th, is that correct?
3 A. I stated - I believe what I stated was that the
4 S&S cleanup crew left there at about ten-thirty
5 p.m. that night, and I testified also that we did
6 additional work ourselves the following day. What
7 I made reference to was S&S cleanup.
8 Q. All right. And so your testimony is that you did
9 continue pumping on the 29th?
10 A. Yeah. There were some little damp spots - hey,
11 some little damp spots that were in the ditches,
12 if we would find them, we would go put a pump down
13 there and try to pump it into a nurse tank and
14 carry it back. We did some additional work.
15 There wasn't much work to be done after S&S left
16 there at ten-thirty p.m. on the evening the event
17 occurred.
18 Q. Okay. And what is - you referenced the sump
19 areas. What does that mean?
20 A. The sump areas - I was making reference to that as
21 some areas in the ditch where - a little low spot
22 in the ditch where it didn't suck all the effluent
23 out of the ditch - is what I'm making reference
24 to.
25 Q. Could you explain that? I don't understand that

1 answer.
2 A. Well, when we hired S&S, they came in there and
3 literally vacuumed the ditches out, literally
4 sucked all the effluent, all the freshwater, all
5 the wastewater out of the ditches, and put it back
6 in the lagoon. But then there's always one or two
7 little pockets - like a little pocket - maybe they
8 missed, and we continued on our own getting the
9 little pockets that were missed.
10 Q. And what equipment did you use to do that?
11 A. We used a pump - a pump from our farm and a nurse
12 tank, and we'd take a pump and suck it out of the
13 ditch and put it into our thousand-gallon tank and
14 then take the tank and carry it to the lagoon and
15 put it back in the lagoon.
16 Q. And on the second page, what is that document?
17 A. You mean these irrigation records right here?
18 Q. I'm asking you what the document is.
19 A. That would be irrigation records.
20 Q. Okay. And did you prepare this document?
21 A. Me with the assistance of Gino Kennedy prepared
22 this.
23 Q. Okay. Is that your handwriting at the top of the
24 page?
25 A. No, it is not my handwriting at the top of the

1 page.
2 Q. Okay.
3 A. That's my initials in the right corner, though.
4 Q. Okay. And the record indicates that you pumped
5 for two hundred and ten minutes, is that correct?
6 A. That's what it indicates.
7 Q. All right. And this was on November 2nd, 2004?
8 A. That's what it states.
9 Q. What is the third page of the document?
10 A. That's the calculation of the agronomic rates of
11 how many gallons per acre was applied.
12 Q. Okay. And did you come up with that figure from
13 the total volume?
14 A. Me, with the assistance of Gino Kennedy and
15 Agriment Services - we came up with this together.
16 Q. Okay. And what was - how did you figure that -
17 the total volume?
18 A. It says flow rate, a hundred and ninety-three;
19 total volume gallons per minute is - multiply six
20 times five by four, and it's just a matter of
21 going right down the line and putting the numbers
22 together with a calculator.
23 Q. Okay. What does the six refer to?
24 A. That's part of a formula for the total volume of
25 gallons that are being applied to the spray areas.

1 Q. Can you explain how you calculated it?
2 A. With a calculator. You've got right here, total
3 minutes you pumped, your flow rate, and then your
4 formula, six times five times four.
5 Q. I'm sorry. The method again - just the method,
6 not that you used the calculator.
7 A. Okay. You've got your two hundred and ten total
8 minutes of pumping, and you've got your flow rate,
9 your gallons per minute, which says one
10 ninety-three. That's your gallons per minute
11 you're pumping. Then you've got your formula
12 right here, total volume, gallons - which comes to
13 six times five times four. You put all this
14 together and you come up with a - roughly the
15 volumes of gallons you put on that area, and
16 that's the best I can do.
17 Q. Okay.
18 MS. OLIVER: If i could have just a
19 minute, Your Honor.
20 THE COURT: Yes, ma'am.
21 (Thereupon, there was a pause in the
22 proceeding.)
23 Q. So the actual flow rate was a hundred and
24 ninety-three gallons per minute?
25 A. Approximately. Approximately. You know, we test

1 this equipment annually to make sure that - you
2 know, this is approximately a hundred and
3 ninety-three. It may have been a hundred and
4 ninety-one. It may have been a hundred and
5 ninety. Approximately a hundred and ninety-three.
6 Q. Okay. And you testified that the reel stayed in
7 one place for approximately thirty minutes, is
8 that correct?
9 A. And that was a guess - a guess at best.
10 Q. Okay. And the fourth page of the document?
11 A. Okay. You're talking about notice of discharge of
12 animal waste?
13 Q. Yes.
14 A. Yes.
15 Q. What is that?
16 A. It says it's just a notice of discharge greater
17 than one thousand gallons was discovered - it's
18 making reference back to the discharge that was an
19 act of vandalism that occurred on that day.
20 Q. Okay. And does the record - did you provide this
21 to the Division of Water Quality?
22 A. Did I provide this page? I would think - I would
23 think that was provided by Gino Kennedy on my
24 behalf of Agriment Services.
25 Q. Okay. Is there anything in this paragraph in the

1 document that's untrue?
2 A. It says the waste entered several drainage areas
3 that flowed - I would say that would be correct
4 because, in my opinion, it never got to the
5 tributaries.
6 Q. Okay. But it entered drainage areas?
7 A. It entered ditches that were dammed and contained.
8 Q. Okay. And is that your address at the top of the
9 page?
10 A. That's my home address.
11 Q. Is this a business document?
12 A. It's a business document, personal document. I
13 mean it's just a document. I mean it's part of
14 the business of the farming operation.
15 Q. Why would you provide that document to the
16 Division of Water Quality?
17 A. Because - I don't know why I provided it at the
18 time, but it was under the advice of my consultant
19 Gino that we should just address the problem, and
20 we addressed it. I don't know why we did it or
21 why we didn't do it back then, but it was just
22 something we did during this situation.
23 Q. Okay. And what were you required to do as a
24 result of the discharge as the operator-in-charge?
25 A. What I was required to do was basically try to

1 contain it and clean it up, which I did, and then,
2 you know, they wanted some records and all that
3 stuff, which we provided. I mean I did everything
4 that I could do, in my opinion, paying for a
5 cleanup I didn't create.
6 Q. Okay. What records were you required to submit?
7 A. I believe they wanted all the pumping records, and
8 again, I don't remember exactly what I was
9 required at that point looking back that far, but
10 they may have wanted to look back at the pumping
11 records and all from the previous inspection. To
12 answer your question, I don't know at this point.
13 Q. Are you still an operator-in-charge?
14 A. Yes.
15 Q. Are you a certified operator-in-charge?
16 A. Yes.
17 Q. And can you tell me what the requirements are for
18 an operator-in-charge after any discharge of the
19 farm?
20 A. After any discharge, upon discovery, you're
21 supposed to call the Division of Water Quality
22 immediately. When you discover a discharge,
23 whether you - if you created it or someone else
24 or - any discharge into the ditches or wet areas,
25 you're supposed to, by law - not just go out and

1 clean it up and not call anybody - you're supposed
2 to call the Division of Water Quality and notify
3 them immediately.
4 Q. Are there any other requirements?
5 A. Well, the other requirements would be you would
6 assist and pay for the cleanup and provide them
7 records if they call for records, and that's
8 basically the whole gist of it, in my opinion.
9 Q. So you're saying that you're not aware of any
10 other requirements?
11 A. Oh. I'm not saying I'm not aware of any, but I'm
12 saying that's the requirements: notify the proper
13 authorities, assist in the cleanup, and provide
14 the records. That's the - I'm not saying there's
15 not any, but that's basically the sum total of
16 what's expected for you to do in a situation of
17 discharge.
18 Q. And what records are you required to provide?
19 A. Any record they call for on your storage, your
20 rainfall records, any records that you have
21 maintained - what rainfall has occurred, your
22 freeboard records, your pumping records, all - any
23 records that you maintain in your book.
24 Q. And did you ever provide those records to the
25 Division of Water Quality?

1 A. I provided those records every time they asked -
2 maybe not in a timely manner because we had - we
3 were working through Gino and Larry Baxley, but I
4 always provided the records to them.
5 Q. Were you not required to publish a notice of the
6 discharge in the paper?
7 A. No. No. It depends on the amount of the
8 discharge.
9 Q. And so, in this case, you were not required to?
10 A. And Gino - Gino did publish it. He put - Gino did
11 publish it.
12 Q. So are you required to publish a notice in the
13 record?
14 A. I believe it's on the amount. I may not be
15 correct on this, but you are required to if it's a
16 big discharge, if it hits the wetlands, to publish
17 it.
18 Q. Okay. And---
19 A. And Gino Kennedy with Agriment Services did the
20 proper publishing of that. I believe there's two
21 or three different forms of publication. I don't
22 know if it has to necessarily go in the newspaper,
23 but it was posted.
24 Q. Okay. So [inaudible]?
25 A. It was posted.

1 Q. And the document that's page 4 that's titled,
2 "Notice of Discharge of Animal Waste," is that the
3 document that was put in the paper - a notice?
4 A. No, no, no. Gino put together something - put
5 together something that stated approximately how
6 many gallons and--- Where are - are we back -
7 section 4 again?
8 Q. Page 4, Respondent's Exhibit 13.
9 A. Is this section 4 or page 4?
10 Q. Respondent's Exhibit 13---
11 A. 13.
12 Q. ---behind Tab 13.
13 A. You're talking about Respondent's Exhibit 13?
14 Q. Yes.
15 A. No. I do not believe this was what was posted.
16 This was a letter that was sent to Mr. Baxley just
17 addressing how we aggressively tackled the problem
18 and tried to contain the environmental impact
19 during the situation.
20 Q. Okay. And on the fourth page of that document,
21 I'm asking you---
22 THE COURT: The last page.
23 Q. The last page. ---is that the notice that was put
24 into the newspaper?
25 A. Again, it was posted. I don't know if Gino posted

1 it in the newspaper, but that's what was posted.
2 That's what was posted.
3 Q. Okay. Do you know whether you provided these
4 documents to the Division of Water Quality?
5 A. I do not know.
6 Q. So in this set of documents, there is - how many
7 pumping records are there in the document? How
8 many events are documented?
9 A. The only pumping records I see is on this one
10 page. It says two hundred and ten minutes.
11 Q. And if you'd turn to Respondent's Exhibit 15
12 behind Tab 15. Do you recognize that document?
13 (RESPONDENT'S EXHIBIT NO. 15
14 (MARKED FOR IDENTIFICATION
15 A. Yes, I do.
16 Q. What is it?
17 A. It's just where they're assessing me a sanction or
18 a penalty for a discharge.
19 Q. Okay. So did you receive a copy of this civil
20 penalty?
21 A. Yes, I received a copy, but again, I don't know
22 exactly at this point how or when I received it.
23 But I do have a copy of this at my home.
24 Q. All right. And is this the penalty that you've
25 appealed today?

1 A. Yes. I mean I had no choice but to appeal it.
2 Q. Okay. All right. And I'm going to hand you a
3 document that I will mark as Respondent's
4 Exhibit 20, which is a copy--- Well, I'll have
5 him identify it. Do you recognize that document?
6 (RESPONDENT'S EXHIBIT NO. 20
7 (MARKED FOR IDENTIFICATION
8 A. I recognize that being my signature on the second
9 page.
10 Q. Do you know what the document is?
11 A. Yes. That's where we're basically appealing the
12 sanction that was imposed upon us.
13 Q. Okay. And in the document, is it fair to say that
14 you indicate that you are appealing the penalty
15 for the discharge?
16 A. Yes.
17 Q. Is that all you're appealing in this document?
18 MR. GRADY: Well, Your Honor, I object.
19 The document speaks for itself.
20 THE COURT: Sustained.
21 MS. OLIVER: Okay.
22 Q. Well, I'll make it clear later. So there are no
23 mention of the records in this document, are
24 there?
25 A. No, I do not see any.

1 MS. OLIVER: Your Honor, I move to admit
2 this exhibit. I mean it's his - it's in the
3 record. It's already---
4 (RESPONDENT'S EXHIBIT NO. 20
5 (OFFERED INTO EVIDENCE
6 THE COURT: I'll take official notice of
7 it. I don't think it has to be introduced.
8 MS. OLIVER: Okay.
9 Q. Would you turn to the document behind Tab 16, and
10 I'm going to ask you---
11 (RESPONDENT'S EXHIBIT NO. 16
12 (MARKED FOR IDENTIFICATION
13 A. Are you talking about Respondent's Exhibit 16?
14 Q. Yes. And please review it, and I'll ask you -
15 please review it and tell me when you're finished.
16 A. Yes. I understand what this is.
17 Q. What is it?
18 A. It's basically just a - addressing that we want
19 a - request a - we are appealing the penalty
20 imposed upon us. We want a hearing.
21 Q. Okay. And is that your signature on the second
22 page?
23 A. Yes, it is.
24 Q. Okay. Did you prepare this document?
25 A. No, I did not.

1 Q. Okay. Who did?
2 A. I did with the assistance of Gary.
3 Q. Okay. And did you review the document before you
4 signed it?
5 A. I'm certain I did. I hope I did anyway. I hope I
6 did.
7 Q. Okay. Was this filed with the Office of
8 Administrative Hearings?
9 A. It says in the Office of Administrative - was it
10 filed there? I can't answer - I don't know. I
11 don't know how to answer the question.
12 Q. All right. And on page 2, do you list your
13 business address as 1282 Jordan Road?
14 A. Well, again, that's my home address, and my home
15 and the office is right there side-by-side, but
16 that's my home address.
17 Q. Okay. And when you signed this, are you
18 certifying that everything in the document was
19 true?
20 A. Yes.
21 Q. Okay. Under paragraph 2 of the document, could
22 you read the first sentence?
23 A. Paragraph 2, "A civil penalty has been assessed
24 against the Ronald Davis farm for an act that
25 occurred from unauthorized tampering with or

1 malfunction of irrigation equipment resulting in
2 an unintentional discharge. Freedman Farms
3 maintains the position that we were in no way
4 responsible for the discharge that occurred. A
5 police report has been filed with the Bladen
6 County Sheriff's Department documenting the event,
7 and witnesses are available to dispute liability.
8 "In addition, once notified of the discharge,
9 Freedman Farms cooperated fully with the cleanup
10 efforts and has paid approximately two thousand
11 seven hundred and fifty dollars toward the cleanup
12 costs that were incurred by no fault of Freedman
13 Farms."
14 Q. Okay. And in this document, you do reference
15 malfunction of irrigation equipment as a possible
16 cause of the discharge, is that correct?
17 A. The malfunction was when the timer was bypassed
18 and unabled [sic] where it would allow the pump
19 not to shut off without running out of fuel, but
20 it wasn't like a malfunction like they cut a wire
21 or something in that regards.
22 Q. The document does not read that it occurred from
23 unauthorized tampering as a result of
24 malfunctioning of the equipment, does it?
25 A. "A civil penalty has---"

1 MR. GRADY: Your Honor, again, I object.
2 The document speaks for itself.
3 THE COURT: Overruled. Answer the
4 question.
5 A. (continuing) Okay. The way I read the document,
6 which may be incorrect, it's stating that, hey,
7 the unauthorized tampering, which was what was
8 done when the pump was cut off, perhaps created a
9 malfunction, and I may be reading this
10 incorrectly. But to address this two or three
11 words we're talking about, there was no like
12 malfunction with the equipment. The only
13 malfunction, hey, that happened was when the
14 switch cut the timer off which allowed the pumping
15 to sit there and run until it ran out of fuel or
16 the event - it was discovered by someone and
17 reported.
18 Q. Okay. And would you turn back to Respondent's
19 Exhibit 4 and turn to page 15? Can you read your
20 response to that request?
21 A. "Malfunction was never an issue or reason."
22 Q. How do you reconcile those two statements?
23 A. I reconcile that we're sitting here playing with
24 words. I mean I stated right here in open court
25 that it was an act of vandalism. Somebody

1 bypassed the timer, and we're sitting here going
2 around with words at this point instead of looking
3 at what happened. It was an act of vandalism.
4 Q. And could you tell me all the facts that support
5 your defense that it was an act of vandalism?
6 A. I gave testimony under oath. I filed a police
7 report. I mean that's all I can do. I gave the
8 person who we feel - we later feel that's
9 responsible for the event. And that's all I can
10 do at this point.
11 Q. You testified earlier that you have to prime the
12 pump. Do you prime it by hand?
13 A. Uh-huh. Just like an old pump like you used to
14 pump water with back in the old days.
15 Q. Okay. And are there any valves or anything you
16 have to turn when you turn on the pump?
17 A. No. Basically, when you're priming the pump, you
18 just hit one little lever which allows the
19 effluent to fill the well in the pump, and then
20 you shut it off, just cut the pump off. It's
21 between a minute and a two-minute process. It's
22 just pumping an old-timey water pump.
23 Q. So you can prime it a hundred and fifty times by
24 hand within one or two minutes?
25 A. Oh, yes. One or two - it's just a stroke per

1 second. It depends on how aggressive you are with
2 it, and sometimes it primes faster than others.
3 Q. Other than starting and priming the pump, like
4 turning the key, the valve, and priming the pump,
5 is there anything - any other mechanism or piece
6 of equipment that you have to turn on to get the
7 system working?
8 A. Just cut the pump on, and what occurred that
9 night, you'd have to go open the hydrant - the
10 hydrant - just think of a fire hydrant. It's got
11 a valve in it, and when you open the valve, it
12 allows the effluent to come out of the underground
13 pipe up through the hydrant. You'd have to go
14 open the valve.
15 Q. Okay. And is there any other piece of equipment
16 that has to be started up?
17 A. No.
18 Q. What about the reel?
19 A. Well, if you're pumping properly, the reel would
20 have to be pulled out into the spray fields, and
21 then a little Honda engine which reels the reel in
22 would have to be cranked up as well.
23 Q. So you do have to crank up the reel?
24 A. You have to crank up a little Honda -
25 three-and-a-half-horsepower Honda engine up which

1 allows the reel to be kind of driven in.
2 Q. And what kind of fuel does the engine on the reel
3 use?
4 A. Gasoline.
5 Q. Okay. Do you know how big the tank is on the
6 reel?
7 A. On the reel? Approximately a gallon and a half.
8 Q. And how long will that flow - how long will that
9 keep the reel going?
10 A. A good twelve hours.
11 Q. What about with this spray gun; do you have to do
12 anything to get that started?
13 A. No. When the effluent is discharged through the
14 end of the sprinkler, it just oscillates back and
15 forth.
16 Q. And how do you move the - well, do you move the
17 gun and the reel from one field to another?
18 A. You move it by tractor.
19 Q. By tractor?
20 A. Uh-huh. It's kind of like - it's on a little
21 trailer you pull. The reel sits on a trailer, and
22 you just back the tractor and drop the pin in it
23 and move it to the next hydrant.
24 Q. And so you move both the reel and the gun, is that
25 correct?

1 A. Yeah. It's all there on - you know, on one little
2 trailer, yeah.
3 Q. Where was the reel and gun the last time you had
4 seen it?
5 A. If you're asking for the number of which hydrant,
6 I can't identify a number. It was in the back
7 field. There's three fields on the farm. The
8 farm [sic] beside the highway, the one on the left
9 going into the farm, and it was in the back field.
10 That's where the discharge occurred at, in the
11 back field.
12 MR. GRADY: Can we go off the record?
13 MS. OLIVER: Sure.
14 MR. GRADY: I've got two other courts
15 that I'm supposed to be in. I need to call
16 my office and let them know to have those
17 cases continued. I didn't realize this was
18 going to take this long.
19 THE COURT: Okay. We'll take about a
20 ten-minute break.
21 MR. GRADY: Thank you.
22 (Thereupon, a brief recess was taken.)
23 Q. (by Ms. Oliver) I believe you had testified that
24 the last time you saw the spray gun was in the
25 back field?

1 A. Uh-huh.
2 Q. And where was it on the morning of January 28th?
3 A. It was in that back field.
4 Q. Okay. And are there any other reasons for pumping
5 to lower the lagoon level--- What are the reasons
6 that you pump?
7 A. Just to keep the - well, to use the effluent in
8 there for like fertilizer for growing crops and to
9 keep the lagoon from getting to the point that it
10 can overflow.
11 Q. And is there - there's a requirement for the
12 number of inches you have to maintain the lagoon
13 level, is that correct?
14 A. Right. In most of them, it's nineteen inches.
15 Q. And is that called a freeboard?
16 A. That's correct.
17 Q. Okay. So you lower the lagoon, in part, to keep
18 the level within the authorized range, is that
19 correct?
20 A. That's correct.
21 Q. Okay. And do you also - is your farm a
22 Murphy-Brown farm?
23 A. It's a Brown's of Carolina farm.
24 Q. Okay. And do they have requirements for how low a
25 lagoon level must be in order to get more animals?

1 A. Nineteen inches. And I believe they've increased
2 that - I believe they've increased it now on
3 certain farms to as much as you have to maintain
4 twenty-four inches.
5 Q. And wasn't that requirement in place at the time
6 of this discharge?
7 A. Uh-huh.
8 Q. So you have to maintain - you have a lagoon. Is
9 it an earthen berm - sort of earthen around it?
10 A. Uh-huh.
11 Q. And you have to maintain, by your permit, nineteen
12 inches---
13 A. Approximately. Most farms are nineteen. I have a
14 lagoon in Columbus County where you have to
15 maintain twenty-seven inches. That was built at a
16 later date right before the moratorium in 1997,
17 but most lagoons are nineteen inches - it's kind
18 of a rule of thumb.
19 Q. Okay. And do you get your animals from Brown's?
20 A. Yes.
21 Q. And as the operator-in-charge, you are responsible
22 for the maintenance of the equipment, correct?
23 A. Yes.
24 Q. Okay. I'm going to hand you what has been marked
25 as Respondent's Exhibit 21, and do you recognize

1 that from---

2 (RESPONDENT'S EXHIBIT NO. 21

3 (MARKED FOR IDENTIFICATION

4 A. Yes, I do.

5 Q. What is it?

6 A. That's the Ronald Davis farm.

7 Q. Okay. And this is an aerial view of the farm?

8 A. Uh-huh.

9 Q. Okay. And can you mark where - prior to

10 January 28th where you saw the spray gun and what

11 field you were in?

12 A. Right there in the back field.

13 Q. Can you mark where the spray gun was?

14 THE COURT: Why don't you let him mark

15 all of the copies. It might make it easier.

16 Q. Would you mark all of those copies?

17 A. Okay.

18 Q. And where was the spray gun on the morning of

19 January 28th when you arrived at the farm?

20 A. It was right in that position with the - where

21 the X is at, Gary. Right there.

22 THE COURT: Let the record reflect that

23 he's marked photographs - all of the

24 photographs with a green X.

25 Q. And referring you again to Respondent's

1 Exhibit 21, can you mark where the waste flowed at
2 the time of the discharge when you---
3 A. Yes. The reel was kind of aimed in that direction
4 which was shooting it into these ditches right
5 here. It was shooting it because it was not
6 oscillating, and then it was going down here right
7 on across the road over here to Ronald Davis'
8 farm.
9 Q. Can you mark the flow line?
10 A. Yes. Right here. Right on down the line here,
11 going down to the ditch, and at some point, it
12 crossed under the road - under the road right
13 there to another farm ditch that was across the
14 highway.
15 Q. Can you draw that one in too?
16 A. I think this is the ditch right here. Okay. I
17 think that's the ditch after it passed under the
18 highway.
19 Q. Okay. And where did it stop?
20 A. We dammed it somewhere approximately right here in
21 this area - is where the dam was constructed.
22 Q. Okay. Where did the flow stop?
23 A. The flow stopped somewhere further back. I don't
24 know exact - to answer your question, I don't know
25 exactly where the flow stopped.

1 Q. Okay. So you didn't go back to see where it - how
2 far it flowed---
3 A. I walked - yeah, I walked back there, but I didn't
4 see any signs of effluent in those - and this
5 would be the wet areas or wetlands you're speaking
6 about. I didn't see any visible signs of hog
7 waste.
8 Q. Okay. But it did pass from where you dammed it up
9 or did it stop there?
10 A. I think it stopped right in this area. There may
11 have been some, but we stopped, let's say, ninety,
12 ninety-five percent of it right here at the dam.
13 We started right here with the S&S cleaning system
14 and literally vacuumed the ditch out and put it
15 back in the lagoon.
16 Q. Okay.
17 MS. OLIVER: I can have him mark it at a
18 break as long as we all get the same thing.
19 Is that okay?
20 THE COURT: Yes.
21 MS. OLIVER: All right.
22 Q. Had you ever had security problems at the farm?
23 A. No, not any problems.
24 MS. OLIVER: I'm almost finished. If I
25 could just review.

1 (Thereupon, there was a pause in the
2 proceeding.)
3 MS. OLIVER: That's all the questions I
4 have.
5 THE COURT: Redirect?
6 MR. GRADY: Yes, Your Honor.
7 **REDIRECT EXAMINATION**
8 **BY MR. GRADY:**
9 Q. If you would take Ms. Oliver's book and turn to
10 Exhibit Number 5.
11 A. Uh-huh.
12 Q. And I believe Exhibit Number 5, what does that
13 appear to be?
14 A. It's got my facility number, our name, mailing
15 address, contact person, which was Gino Kennedy,
16 who is a record-keeper for numerous hog farms in
17 the state of North Carolina.
18 Q. And does that show the date of the visit?
19 A. Date of visit: 11/3/04.
20 MS. OLIVER: Your Honor, if he could
21 just ask if he knows what the document is. I
22 don't know - I mean he's just reading off the
23 form - if he recognizes it.
24 Q. Do you recognize this document?
25 A. Yes, I do.

1 Q. And what is it?
2 A. It's a facility document stating it's a feeder to
3 finish house and the number of permitted head,
4 which is thirty-two hundred dollars [sic], the
5 owner of the facility. It is permitted. It is
6 certified. It's got my facility number.
7 Q. Was this generated as a result of an alleged
8 ponding on 11/3/2004?
9 A. Yes.
10 Q. And is this the document generated by the Division
11 of Water Quality?
12 A. Yes.
13 MS. OLIVER: Your Honor, the leading - I
14 would object to the leading.
15 THE COURT: Sustained.
16 MS. OLIVER: Because I'm not sure he
17 knows what the document is.
18 Q. Okay. Let's go through the document. Is
19 Respondent Exhibit Number 5 signed?
20 MS. OLIVER: Your Honor, this document
21 has not been admitted in evidence, and it's
22 not a document that was generated by the
23 Petitioner, and I don't know if he even knows
24 what it is. I don't know if he's ever seen
25 it before. You're welcome to---

1 THE WITNESS: I have seen this document
2 before.
3 MS. OLIVER: You're welcome to, you
4 know, on rebuttal, after it's been admitted
5 into evidence---
6 MR. GRADY: Your Honor, I have to know
7 the legal basis for her objection, and then I
8 can respond to it.
9 MS. OLIVER: It hasn't been admitted
10 into evidence.
11 MR. GRADY: It doesn't matter, Your
12 Honor. He can still refer to the document
13 even though it hasn't been admitted into
14 evidence. There's nothing in the Rules of
15 Evidence that prevents that. I can then
16 later admit the documents if I want to.
17 MS. OLIVER: Are you going to admit it
18 into evidence?
19 THE COURT: Objection overruled. Go
20 ahead and answer the question. But let him
21 identify it, and let's see what he knows
22 about it first.
23 Q. Go through the document and tell me - I'd ask you
24 to look at each page of it and tell me whether or
25 not you recognize---

1 A. Yes. This was the document that was done when
2 they did their fall inspection, and I have seen
3 this document.
4 Q. When who did their fall inspection?
5 A. This gentleman right here and Mark Brantley came
6 out there and did their biannual inspection which
7 occurred during the fall.
8 Q. Why is contained - is there a signature on that
9 document?
10 A. There's Mark Brantley's signature on this
11 document.
12 Q. Do you know who Mark Brantley is?
13 A. I believe Mark is the gentleman sitting beside me.
14 Q. In the burgundy shirt?
15 A. I think that's correct.
16 Q. And is this document that's generally prepared as
17 a result of an inspection---
18 A. Yes. Yes, it is.
19 MS. OLIVER: Objection, Your Honor.
20 THE COURT: Overruled.
21 Q. And what was the date that this document was
22 prepared?
23 MS. OLIVER: Objection. I'm not sure
24 that he knows what date it was prepared.
25 THE COURT: Sustained.

1 MR. GRADY: Okay.
2 Q. Is there a date of visit listed on the document?
3 A. It says, "Date of Inspection: 11/3/04," so I'm
4 assuming that's the date of the visit.
5 Q. Are there comments in the document?
6 A. "Very little pumping has been done on this farm
7 this year. Some ponding of wastewater in the
8 spray - small area. Please avoid waste
9 applications that results in ponding. All
10 wastewater must be soaked in the ground within
11 four hours of application."
12 Q. Is there a facility contact person listed on the
13 document?
14 A. On this document I'm looking at?
15 Q. Uh-huh. On the first page of the document.
16 A. On the first page? Yes. Myself.
17 Q. If you go---
18 A. Or Gino Kennedy. On-site representative, Gino and
19 myself.
20 Q. Okay. Now you had mentioned that subsequent to
21 the January 28th incident, you learned from Ronald
22 Davis or began to suspect that Mr. Shirley was
23 involved in this, is that correct?
24 A. Yes.
25 Q. And this was information you got from Ronald

1 Davis?
2 A. Well, just---
3 MS. OLIVER: Objection, Your Honor.
4 THE COURT: Overruled.
5 A. (continuing) Yes. Me and Mr. Davis began - you
6 know, we were always good friends and - we weren't
7 neighbors, but it is information that me and
8 Mr. Davis shared together.
9 Q. Okay. And what the information he shared with
10 you?
11 MS. OLIVER: Objection.
12 THE COURT: Sustained.
13 MR. GRADY: Can I be heard, Your Honor?
14 THE COURT: Yes, sir.
15 MR. GRADY: Your Honor, she asked him
16 the reasons for his speculation, the reasons
17 for his decision. His reasons are based on
18 hearsay. She has opened the door.
19 MS. OLIVER: Your Honor, he can bring
20 Mr. Davis here to testify, and I can cross-
21 examine him on his testimony.
22 THE COURT: Objection sustained.
23 MR. GRADY: Thank you.
24 Q. I ask you to look at Exhibit Number 12. I believe
25 you previously testified that this is a notice of

1 violation that you received from the Division of
2 Water Quality, is that correct?
3 A. It's a notice of violation of intent.
4 Q. Okay. When you look at violation - well, starting
5 with violation number 1, would you read that.
6 A. "Discharge of animal waste to surface waters and
7 wetland as prohibited by your facility's permit
8 number."
9 Q. Did you ever discharge animal waste---
10 A. I never---
11 Q. ---to surface waters?
12 A. Never on this farm or any farm that I own in the
13 state of North Carolina.
14 Q. Now if you look at violation number 2, would you
15 read that.
16 A. "Failure to notify the Fayetteville Regional
17 Office of the Division of Water Quality with a
18 written description of the discharge, time of the
19 discharge, and cause of the discharge."
20 Q. And then if you go down to the next paragraph,
21 will you read the first sentence of the next
22 paragraph?
23 A. "DWQ staff made Mr. Freedman aware of these
24 conditions on January 28th, the day of the
25 discharge. DWQ staff also encouraged Mr. Freedman

1 to review his permit. As of this date, the
2 Fayetteville Regional has not received any of the
3 above information."
4 Q. So based upon their own letter, they already knew
5 the time and date of the discharge, is that
6 correct?
7 MS. OLIVER: Objection, Your Honor. He
8 can ask - he doesn't know what my client
9 knew.
10 THE WITNESS: They called and notified
11 me of the discharge.
12 THE COURT: Overruled. Go ahead.
13 Q. Well, on the day of the discharge, January 28th,
14 did - who was at the site?
15 A. Larry Baxley.
16 Q. And who does he work with?
17 A. Division of Water Quality.
18 Q. On that date, did you tell him - did he personally
19 observe the discharge?
20 MS. OLIVER: Objection.
21 A. Yes.
22 MS. OLIVER: Objection.
23 THE COURT: Overruled. He's already
24 testified to that, but go ahead.
25 Q. Did you advise him on that date that you did not

1 cause the discharge?
2 MS. OLIVER: Objection to leading.
3 THE COURT: Asked and answered as well.
4 Sustained.
5 Q. Was he aware of the time of the discharge?
6 A. Yes, he was.
7 MS. OLIVER: Objection.
8 MR. GRADY: I think she objected to
9 that, Your Honor.
10 THE COURT: Overruled.
11 Q. Now if you'll turn to Exhibit 13---
12 A. Okay.
13 Q. ---what is Exhibit 13?
14 A. It's just a letter that we - I can't remember if
15 we mailed it or - I believe we mailed it to
16 Mr. Baxley - just stating to our knowledge
17 what had - basically what had occurred, which was
18 a discharge, and what we had aggressively done to
19 correct the problem that we did not create.
20 Q. Now in that letter, which was three days after you
21 had been notified by the Division of Water
22 Quality, did you tell them the date of the
23 discharge - the date?
24 If you'll look at the letter, in the first
25 sentence of the letter, did you tell them when it

1 occurred?
2 A. You're talking about the first paragraph?
3 Q. I am.
4 A. It says, "Upon first knowledge of the discharge, a
5 contractor was hired to clean - contain the spill
6 and---"
7 Q. I'm asking you to read the first paragraph of
8 Respondent's Exhibit 13.
9 A. Are you talking about "Upon first knowledge"?
10 Q. Uh-huh. Beginning with the portion "This memo."
11 A. Oh, okay. "This memo is to address a complaint
12 inspection that occurred on 1/28 and resulted in a
13 notice of violation for my farm."
14 Q. Okay. So on that paragraph, you advised them in
15 writing of the date that this occurred, did you
16 not?
17 A. Yes.
18 Q. You also advised - if you'd read subparagraph 4.
19 A. "The Bladen County Sheriff's Department was
20 notified to conduct an official investigation
21 [inaudible] report will be made available to DWQ
22 upon completion."
23 Q. At that point, was Larry Baxley aware - did you
24 make him aware that you did not cause the
25 discharge?

1 MS. OLIVER: Objection to leading.
2 THE COURT: Overruled.
3 A. Larry Baxley was aware because he was right there
4 on-site when the Bladen County Sheriff's
5 Department came up, but he didn't get involved
6 with it.
7 Q. And why did you tell them in this letter that the
8 Bladen County Department - Sheriff's Department
9 was notified to conduct an official investigation?
10 A. Basically, just stating the fact that, hey, we did
11 not create the problem or the discharge and
12 letting them know there was an ongoing
13 investigation, which, in my opinion, they
14 completely disregarded.
15 Q. And did you feel like that complied with your
16 obligation to tell him how the discharge was
17 caused?
18 A. That's all I could do.
19 Q. Now talking about the engine - the reel engine,
20 was that reel engine on when you got there?
21 A. No. No, it was not.
22 Q. So the reel engine, which is the engine that pulls
23 the---
24 A. Reel in.
25 Q. ---reels in the hose---

1 A. Right.
2 Q. ---had not been turned on like it normally would
3 be if you're spraying effluent on a field?
4 A. No, it had not.
5 MS. OLIVER: Objection, Your Honor. All
6 he can testify is it was off when he arrived.
7 THE COURT: Sustained.
8 Q. Okay. Was the--- Strike that.
9 MR. GRADY: That's all.
10 THE COURT: Recross?
11 **RECROSS-EXAMINATION**
12 **BY MS. OLIVER:**
13 Q. In your document that you referred to,
14 Respondent's Exhibit 13, you indicated that you
15 would make a report of the investigation available
16 to the Division of Water Quality. Did you ever do
17 that?
18 A. No. They have never requested that of me. I mean
19 I offered to do it, but it's like the Division of
20 Water Quality was totally disregarding everything
21 I stated on that morning.
22 Q. On what basis are you making that statement?
23 A. Because they weren't disregarding it. Why
24 wouldn't they call me or call the sheriff's
25 department and ask what fact-gathering was going

1 on? It was like I was a liar upon arrival.
2 Q. Okay. Doesn't the permit require you to provide
3 the explanation?
4 A. I offered it, but they - it was - hey, you can
5 offer someone something - you can lead a horse to
6 water, but you can't make him drink when he gets
7 there.
8 Q. Okay. And there was no - the investigation was
9 never completed, was it?
10 A. Was anybody arrested? No.
11 Q. My question is, was the investigation completed?
12 A. You'd have to ask the sheriff's department about
13 that.
14 Q. Okay.
15 A. I would not have an answer.
16 Q. And beyond January 28th, 2005, when you made the
17 report of the sheriff's department never contacted
18 you afterwards, did they?
19 A. No. They contacted my wife, and my wife kind of
20 coordinated what was being done in the
21 investigation [inaudible].
22 Q. Okay. And so is it your testimony that you don't
23 have a copy of the police report?
24 A. I think I've answered that. I do not have---
25 MR. GRADY: Objection, Your Honor.

1 Asked and asked and asked.
2 THE COURT: Overruled.
3 A. (continuing) I do not have one on me. I think my
4 wife has one somewhere in the file at the house,
5 but I do not have one on me here today, but I'm
6 sure there's one still on file.
7 Q. Okay. So you don't know the results of the
8 investigation?
9 A. I don't know if the investigation---
10 Q. Please answer yes or no.
11 A. No, I don't know the results of the investigation.
12 No one was arrested.
13 MS. OLIVER: I have no further questions
14 of this witness.
15 THE COURT: I've got a couple of
16 questions for you now, and I'll let these
17 folks have an opportunity to ask questions
18 based solely on the questions that I've
19 asked.
20 Look again at Number 12, please, sir,
21 the second page. It says, "If you do not
22 believe enforcement is appropriate for this
23 violation, please indicate - or please
24 include a detailed written justification."
25 Is that what you're contending Number 13 is,

1 is your written justification?
2 THE WITNESS: Are you asking me?
3 THE COURT: Yes, sir.
4 THE WITNESS: Are you asking me my
5 response that I gave him---
6 THE COURT: Well, this notice that you
7 received at some point is asking for a
8 written justification of why there ought not
9 to be some enforcement action, and my
10 question is, did you do that?
11 THE WITNESS: I feel I have done that.
12 THE COURT: And then the next question
13 is, by doing that, are you contending that
14 the letter behind Tab 13 - is that your
15 written justification?
16 THE WITNESS: That's my answer - my
17 response.
18 THE COURT: You prepared that response
19 or it's dated January 31st, correct?
20 THE WITNESS: January 31st, '05.
21 THE COURT: And the letter from - under
22 Tab 12 was actually dated February the 7th,
23 so your response actually was prepared prior
24 to even receiving the notice of violation,
25 right?

1 THE WITNESS: Yes.
2 THE COURT: Number 13 actually does not
3 mention any sort of tampering, does it?
4 THE WITNESS: Are you talking about
5 Respondent's Exhibit 13?
6 THE COURT: Right.
7 THE WITNESS: Now which paragraph are we
8 talking about?
9 THE COURT: Anywhere from the top to
10 bottom, the word "tampering" is not used, is
11 it?
12 THE WITNESS: No, but I - you're saying,
13 in this letter, I don't indicate that there
14 was tampering or sabotage - however you want
15 to word it - involved.
16 THE COURT: Right.
17 THE WITNESS: But in paragraph 4, I mean
18 I stated that day and it was involved in the
19 Bladen County Sheriff's Department.
20 THE COURT: But that could have been for
21 any number of reasons, correct?
22 THE WITNESS: Yes.
23 THE COURT: All right. Aside from this
24 letter, which would have been prepared prior
25 to the notice even going out, did you do

1 anything else to offer a written explanation
2 to the Division of Water Quality?
3 THE WITNESS: No, but - no, I did not.
4 Basically, I had a conversation - because I
5 had gotten to know Mr. Baxley fairly well
6 over the years from inspection to inspection.
7 I had talked with him, you know, not numerous
8 times, two or three times about what had
9 happened and kind of let him know what we
10 believed happened, even though we didn't have
11 a person at that moment that we thought was
12 responsible for the event.
13 THE COURT: That kind of gets back to
14 sort of an answer you gave to Ms. Oliver's
15 question a moment ago in that you were giving
16 various and sundry people information at the
17 Division of Water Quality - I guess primarily
18 Mr. Baxley - and they were not following up
19 on it, is that - I'm not trying to put words
20 in your mouth, but is that---
21 THE WITNESS: Maybe I didn't articulate
22 that correctly. I'm not saying they weren't
23 following up. It might not have been their
24 responsibility to follow up, but I mean all I
25 can do is just - at that point, I mean this

1 was a crisis to me when all that effluent
2 that was in the ditch. All I knew to do -
3 and I knew at some point I could be held
4 liable for it. All I needed to do was
5 contact the sheriff's department, and if they
6 wanted to speak with the authorities, to
7 provide them with a copy of what I stated, I
8 mean---
9 THE COURT: Well, that kind of gets to
10 my point because, again, you were saying that
11 you would give them information and your
12 assumption was that you were lying before
13 anything was done, so---
14 THE WITNESS: Well---
15 THE COURT: ---was your position just
16 that you would give them - perhaps more
17 particularly Mr. Baxley - some piece of
18 information, and they weren't following up on
19 it and then that generated the notice of
20 violation?
21 THE WITNESS: Well, let me do this -
22 answer this the best I can. I was
23 basically - I'm not going to say astounded,
24 but I was upset when I received - I had done
25 everything humanly and financially possible

1 to pay for a cleanup that I did not create,
2 and which it was costing me and my family
3 almost three thousand dollars.
4 And then after I done that and gave a
5 statement to the police, and my wife was an
6 Assistant DA and she was working with the
7 police in this matter. Hey, then to get an
8 eight-thousand-dollar fine on something I did
9 not create, after I done everything humanly
10 and financially possible to slow down and
11 stop the environmental impact of this
12 situation that occurred, it was like adding
13 insult to injury at that point.
14 THE COURT: Let me maybe get a little
15 bit more specific because, for example, I
16 think you told Mr. Baxley that Gino had all
17 the records.
18 THE WITNESS: No. I have got the
19 records. Gino, he's kind of like your
20 accountant of the hog farm. I have records
21 and he has the same records I do. He just
22 makes sure what we put together is -
23 basically, he's the grader. He makes sure
24 what you've done is correct with the
25 environmental regulation of the state and

1 federal government.
2 THE COURT: Well, maybe I didn't
3 understand your original testimony correctly
4 because my understanding was, when you were
5 asked about providing the records, especially
6 like the depths of the lagoons and the
7 various and sundry items, that you kept
8 directing them to talk to Gino.
9 THE WITNESS: When I go out there and
10 pump - like, if I'm pumping today, I mark
11 down the time we start with the pumping
12 process, when we cut the pump on, and I write
13 that down, and then it will be faxed to Gino
14 at a later date before our biannual
15 inspection occurs.
16 THE COURT: Well, I understand that, but
17 again, I'm trying to get to the point that
18 you would direct them to talk to Gino rather
19 than you producing the records, making the
20 assumption that the Division of Water Quality
21 was going to get the records from Gino.
22 THE WITNESS: Well---
23 THE COURT: And then you were astounded
24 by the fact that they didn't get the records
25 from the November incident, I believe.

1 THE WITNESS: Well, the conversation me
2 and Mr., I think, Baxley had had, I told him
3 that Gino would provide him - and, of course,
4 he agreed that would be - as long as he got
5 what he was requesting, that would be an
6 appropriate form of relief or what he was
7 after, so to speak. And---
8 THE COURT: At the time, did you also
9 have the records yourself?
10 THE WITNESS: I have the records, but
11 Gino punches in the numbers. Let's say I
12 pump on the day for three hours on hydrant
13 number 12. Gino punches in where we pumped
14 for three hours there, so many gallons are
15 in. He punches in all the numbers. He's
16 kind of like the accountant of the hog farm.
17 He's the number cruncher, so to speak.
18 THE COURT: Did you ever - did you feel
19 that you had some duty yourself to call Gino
20 and tell him to get that information to the
21 Division of Water Quality?
22 THE WITNESS: I did call Gino. Yes, I
23 mean I was on top of this thing, in my
24 opinion, and I'm not saying I had every
25 situation correct, but I was on top of it as

1 much as humanly possible.
2 THE COURT: So you did call Gino?
3 THE WITNESS: Yes, I did.
4 THE COURT: And tell him to provide
5 those rates?
6 THE WITNESS: Yes. And Gino was---
7 THE COURT: And Gino didn't have any---
8 THE WITNESS: And Gino was on the site
9 the day this event occurred. He was out
10 there as well when this discharge occurred.
11 THE COURT: Well, then, to the best of
12 your knowledge, Gino did not provide those
13 records in a timely fashion from the November
14 incident?
15 THE WITNESS: To the best of my
16 knowledge, when I last spoke to Mr. Baxley -
17 and I can't answer that question [inaudible]
18 the records may have not gotten there in
19 timely manner.
20 THE COURT: Okay. But you had directed
21 Gino in a timely manner to get those records?
22 THE WITNESS: Yes, I had. I had spoken
23 with Mr. Baxley as well about it.
24 THE COURT: Do you still use Gino's
25 services?

1 THE WITNESS: Yes, I do. I mean
2 everybody in this part of the state - I mean
3 hog farm after hog farm, Murphy-Brown - the
4 company Murphy-Brown uses Agriment Services.
5 I mean---
6 THE COURT: The pump has a timer,
7 correct?
8 THE WITNESS: Yes, sir.
9 THE COURT: And you always have it in
10 the enable position rather than the bypass
11 position?
12 THE WITNESS: That is correct.
13 THE COURT: So that someone comes up
14 and - or if it's going to be in the enable
15 mode, it would be set for a specific date and
16 time where when it clicks around to that
17 time, then the pump comes on; is that fair to
18 say?
19 THE WITNESS: No, no. It's like a
20 little clock up there with numbers one
21 through twelve.
22 THE COURT: I understand.
23 THE WITNESS: And let's say it's a
24 three-hour pull. You know, you pull the reel
25 out and it's going to take it three hours to

1 come in. You put it on three hours. When it
2 comes in three hours later, it shuts the pump
3 off automatically.
4 THE COURT: How about cutting it on
5 automatically?
6 THE WITNESS: No. You have to
7 physically cut it on. It cannot cut it on.
8 THE COURT: So the timer is only for the
9 cutoff---
10 THE WITNESS: To shut the engine down.
11 THE COURT: ---not to start it up?
12 THE WITNESS: That's correct.
13 THE COURT: Okay. And it takes a manual
14 prime to get it going?
15 THE WITNESS: It takes a manual prime
16 and to turn the key to get the pumping
17 process started, and as I kind of told you
18 earlier, the pump will sit there and run, if
19 it's bypassed, indefinitely until it runs
20 completely out of fuel before it shuts the
21 engine down.
22 THE COURT: How much diesel does it
23 hold?
24 THE WITNESS: One hundred gallons.
25 THE COURT: Okay. It will run a long

1 time?
2 THE WITNESS: Twenty hours, five gallons
3 per hour.
4 THE COURT: When did you contract with
5 ABC Swine?
6 THE WITNESS: The day after I purchased
7 Ronald Davis' farm, they went on-site the
8 next day - I owned the farm for four and a
9 half to five years. ABC Swine, all they did
10 was just look after the care of the animals.
11 They went to work the very day after I
12 purchased the farm from Ronald Davis, which
13 to answer your question, the actual date - it
14 would have been four and a half to five years
15 ago when I purchased the farm, and I can't
16 remember the exact date we purchased the
17 farm.
18 THE COURT: Look at Number 5 again,
19 please.
20 THE WITNESS: Which section are we in?
21 THE COURT: Under Tab 5 - Respondent's
22 Exhibit Number 5, third page. In the
23 handwritten portion of the notes down at the
24 bottom, it says, "Number 32. Planning to
25 install rain gauges. Contracts with ABC

1 Swine. Plans to have ABC Swine report
2 rainfall inspections - perform the one-inch
3 rainfall inspections."
4 Does that mean that you were already
5 contracted with ABC Swine or you were going
6 to do that prospectively?
7 THE WITNESS: No. ABC Swine was on the
8 facility every day, seven days a week going
9 in and out of the houses, and I told David
10 Nixon, who was the owner - and we had several
11 rain gauges on different parts of the farm.
12 I told him if it ever rained on the farm, go
13 look at the gauge and write it down on a
14 piece of paper so when I come over there once
15 a week, I can record it because I didn't go
16 over there seven days a week.
17 And David Nixon - and his only purpose
18 on the farm was just looking after the
19 animals, which he did assist me if it rained,
20 he'd write it down for me - the amount of
21 rainfall.
22 THE COURT: So ABC Swine is a completely
23 separate entity that you have no ownership
24 interest in at all?
25 THE WITNESS: That's right. He's just a

1 gentleman - a contractor that looks after
2 people's hog facilities.
3 THE COURT: How many employees does he
4 usually have on the site on the farm?
5 THE WITNESS: Two to three a day.
6 THE COURT: Where does Mr. Shirley live
7 in relation to this farm?
8 THE WITNESS: He lives right on
9 Highway 210 right beside the farm.
10 THE COURT: Right beside it?
11 THE WITNESS: Right beside the farm, and
12 Mr. Davis lives directly across the road.
13 THE COURT: Does he have any sort of hog
14 farm operations currently?
15 THE WITNESS: No. He's got a few cows,
16 but to answer your question, no.
17 THE COURT: Does he do any kind of
18 farming?
19 THE WITNESS: He used to work for
20 Brown's of Carolina in the hog business.
21 THE COURT: Okay. How much land does he
22 have, roughly, if you know?
23 THE WITNESS: I'd say Mr. Shirley has
24 probably two to three acres.
25 THE COURT: Okay. So he's just got a

1 little small family plot there?
2 THE WITNESS: A little plot that he
3 purchased from the Davis family - the home
4 and the little plot.
5 THE COURT: So he doesn't have any sort
6 of farming operation or anything else going
7 on other than maybe a family garden or
8 something like that?
9 THE WITNESS: No, he does not. No, he
10 does not.
11 THE COURT: All right. ABC is
12 responsible for taking care of all the
13 animals?
14 THE WITNESS: They're just responsible
15 basically for working inside the buildings,
16 providing the medications, just making sure
17 the hogs have got food and water.
18 THE COURT: And do you do any taking
19 care of the animals?
20 THE WITNESS: Not - when I first got in
21 the business in '97, I used to, but now I do
22 not anymore.
23 THE COURT: Okay. Why would you have
24 been in one of the hog buildings while the
25 pump was running?

1 THE WITNESS: The only reason I would
2 have been in there was just to look at -
3 there's a door chart that would have the
4 animals that are in the house, how many had
5 died from day to day and from week - just
6 checking the door chart would be the only
7 reason I would be in there.
8 THE COURT: Would you have been in there
9 for any extended period of time while the
10 pump was running?
11 THE WITNESS: Now which day are we
12 talking about?
13 THE COURT: Anytime.
14 THE WITNESS: No more than, hey,
15 fifteen, twenty minutes, just looking at the
16 door chart to see how many animals were in
17 each building and how many had died,
18 basically what kind of production we had.
19 THE COURT: On the photograph - do you
20 still have one down there with you? I may
21 have them all gathered up, up here actually.
22 If you turn it on its side so that the legend
23 is on the bottom of the page and, actually,
24 the typing reads correctly, there's a
25 notation that says, "lagoon." And then to

1 the right of where it says "lagoon," there
2 appears to be four structures. Are those
3 where the---
4 THE WITNESS: Those are the buildings---
5 THE COURT: Those are the buildings.
6 THE WITNESS: ---where the animals are
7 kept.
8 THE COURT: And that's where the - yeah,
9 that's where the animals would be kept. So
10 from your X, you would have been - well, this
11 is the November violation, though, so - the
12 November violation, where would the---
13 THE WITNESS: The November violation, I
14 believe, occurred---
15 THE COURT: Where would the sprayer have
16 been at that time?
17 THE WITNESS: I believe the November
18 violation had occurred right at the hydrant
19 directly to the right of the initial X. It
20 was in the same field.
21 THE COURT: Okay. So how far - what
22 distance would that have been on the ground?
23 A hundred yards maybe to walk over to that?
24 THE WITNESS: It wouldn't have been any
25 more than a hundred yards, three hundred

1 feet, no. That would probably be about the
2 stretch of it.
3 THE COURT: Okay. So if you just walked
4 over to check on the numbers in the door---
5 THE WITNESS: Pardon me?
6 THE COURT: If you had just walked over
7 from where the pump just to check on the
8 numbers of the animals that was posted on the
9 door, it would have been only a matter of ten
10 to fifteen minutes?
11 THE WITNESS: Fifteen to twenty minutes
12 at the most.
13 THE COURT: Looking at Exhibit Number 8,
14 it says the violation occurred due to the
15 fact that the person watching the pump was
16 probably inside the swine facility working
17 with the animals, but that would have been
18 you, right?
19 THE WITNESS: That would have been me,
20 and basically, I didn't put a big defense
21 just because the land was a little soft. I
22 mean there was no lake or effluent out there.
23 The land was - if you stepped in it, there
24 was not a lake out there, but I didn't - we'd
25 always worked well with the guys, so I didn't

1 put up a big - I didn't grandstand on it, so
2 to speak.
3 THE COURT: Well, you've really kind of
4 thrown it off on what appears to be somebody
5 else by the way it's written. I mean you
6 didn't say, "I was in - I was responsible for
7 watching the pump and I was inside the swine
8 facility working on th animals," did you?
9 THE WITNESS: Now say that one more time
10 to me, sir.
11 THE COURT: Well, what you wrote is that
12 the person watching the pump was probably
13 inside the swine facility working with the
14 animals. You didn't say, "I was inside the
15 swine facility working with the animals," did
16 you?
17 THE WITNESS: No, I did not.
18 THE COURT: And, again, the reel came in
19 at approximately thirty minutes before the
20 pumping unit at the lagoon cut off. So it
21 would have been pumping probably at a minimum
22 of fifteen extra minutes after the ground was
23 soaked?
24 THE WITNESS: That would be probably
25 correct because part of the time it came in,

1 you know, it would be allowed to oscillate
2 and pump in that little area. It wouldn't be
3 the whole thirty minutes.
4 THE COURT: But even trying to minimize
5 it and work with them, you didn't say, "I
6 made a mistake. My fault"?
7 THE WITNESS: I'll say in that situation
8 right there - the only thing I'm saying, if
9 there was more effluent there than should
10 have been, it was my fault, but there was no
11 ponding or lake of effluents is what I'm
12 saying. It wasn't like you walked out there
13 and saw a big hole full of effluent.
14 THE COURT: But you didn't even contest
15 the ponding?
16 THE WITNESS: I didn't contest it at the
17 time, you know, no, because I mean these
18 guys - I mean you have to work with - you
19 have to work with them. We had worked well
20 with them. Sometimes you don't always go
21 against the grain. Even if you think you're
22 right, you have to sometimes kind of try to
23 go with the flow, is what I'm saying.
24 THE COURT: I understand. I understand.
25 But you also kind of throw it off that you're

1 going to make sure that all your personnel
2 understands not to do this again, that
3 personnel being you?
4 THE WITNESS: Right. And, you know, the
5 migrant worker that goes with me and my
6 father sometimes. That's - there was only
7 three of us that went over there on the farm.
8 THE COURT: Do you have any idea why the
9 notice of violation was not picked up at the
10 post office and had to be served by the
11 sheriff?
12 THE WITNESS: The only reason I can give
13 you without giving you an actual - is
14 maybe perhaps - I believe they bring it out
15 to you three times before they return it, and
16 we farm all over three counties and my wife
17 works, and if they drive up to the house at
18 any time, hey, we might not have - we could
19 have been out of town and just didn't go pick
20 it up.
21 I can't answer - give you probably the
22 answer you're looking for on that, to be
23 honest with you. We didn't pick it up and it
24 was returned, and then I guess the sheriff -
25 the Columbus County Sheriff Department

1 brought me the letter out after that fact.
2 THE COURT: Further questions,
3 Mr. Grady?
4 MR. GRADY: Yes, Your Honor.
5 THE COURT: All right. Yes, sir.
6 **FURTHER REDIRECT EXAMINATION**
7 **BY MR. GRADY:**
8 Q. Going back to Exhibit Number 12---
9 A. Okay.
10 Q. ---do you have that in front of you?
11 A. I do.
12 Q. And the Court pointed out that that letter was
13 sent on February 7th, 2005, is that correct?
14 A. That's right.
15 Q. At that point, there were already notices
16 notifying you that you had been found in violation
17 for failing to provide information, is that
18 correct?
19 A. That's - yes, sir.
20 Q. But what they told you is that you failed to
21 violate it for failing to report it within five
22 days of January 28th, 2005, is that correct?
23 A. That's what they're saying, but---
24 Q. And if you'll look at Exhibit 13, I'm asking you
25 if Exhibit 13 was your five-day - is that what you

1 felt like your five-day response was?
2 A. That was my response, yes.
3 Q. And, generally, you wouldn't advise them that you
4 had reported this to the sheriff's department, I
5 would assume---
6 MS. OLIVER: Objection, Your Honor, to
7 the leading.
8 THE COURT: Sustained.
9 MR. GRADY: I haven't finished the
10 question.
11 MS. OLIVER: I know, but you're leading.
12 THE COURT: Making an assumption
13 already.
14 Q. Okay. Would you report anything - any noncriminal
15 violation to the sheriff's department?
16 A. Would I report any non---
17 Q. Noncriminal violations to the sheriff's
18 department.
19 A. What would be an example? I mean I'm kind of---
20 Q. If this was a result of just a simple malfunction,
21 is that something you would have reported to the
22 sheriff's department?
23 A. If this was due to malfunction, none of us would
24 be sitting here today. I would have paid the fine
25 and went on and moved on. I wouldn't be sitting

1 here.
2 Q. Would you report it to the sheriff's department if
3 it was an intentional act?
4 A. Yes, I would and did.
5 Q. And the employees of the Division of Water Quality
6 were aware that you did that on January 28th,
7 2005, weren't they?
8 A. The sheriff's department?
9 Q. That's correct.
10 A. That is correct.
11 Q. They were aware that the sheriff - that the report
12 that you gave to the sheriff - the explanation to
13 the sheriff was that it was an act of sabotage?
14 A. Yes, they were.
15 MR. GRADY: Okay. That's all.
16 THE COURT: Questions?
17 **FURTHER RECROSS-EXAMINATION**
18 **BY MS. OLIVER:**
19 Q. Do you know from personal--- Well, I'm looking at
20 Respondent's Exhibit 13. Do you know from
21 personal knowledge when this exhibit was submitted
22 to the Division of Water Quality?
23 A. Are you talking about this Exhibit 13?
24 Q. Yes.
25 A. It says 1/31/05.

1 Q. Do you know when it was submitted to the Division
2 of Water Quality?
3 A. No, I do not.
4 Q. Okay. And you testified that - well, first of
5 all, you testified that your wife followed up with
6 the sheriff's department. You never followed up
7 with the sheriff's department, did you?
8 A. The information I was receiving from her - have
9 you - have they done anything.
10 Q. My question is, you never followed up with the
11 sheriff's department, did you?
12 A. No. Only through her.
13 Q. And what personal knowledge did she have of the
14 event, if any?
15 A. She had the knowledge that she knew that I was at
16 home that night. We did not go over there and
17 pump, and she will testify that in a court of law.
18 She knew that nobody - she can't testify that my
19 father was home, but she knew I was home the night
20 that the event occurred.
21 Q. Okay. And your testimony that this was most
22 likely Mr. Shirley is purely speculative, isn't
23 it?
24 A. It cannot be proven. Sometimes you know things
25 you can't prove. It cannot be proven.

1 Q. It's based on your speculation?
2 MR. GRADY: Your Honor, I object. We've
3 stated that---
4 THE COURT: Sustained.
5 Q. And would you turn to Respondent's Exhibit---
6 THE COURT: Which one, Ms. Oliver?
7 MS. OLIVER: I'm sorry. Respondent's
8 Exhibit 7.
9 Q. Okay. And that's a notice of violation received
10 by you, is that correct?
11 A. It's a notice of violation of intent.
12 Q. Right. And this was received by you?
13 A. Yes.
14 Q. And it asks for copies of all pumping records,
15 lagoon levels, rainfall records, and waste
16 analysis, is that correct?
17 A. Yes.
18 Q. And your testimony is that you don't know if this
19 information was ever provided?
20 A. Well, I think we've already went through this, and
21 I stated that I spoke with Mr. Baxley - and I'm
22 stating again - and he said - and I told him Gino
23 had everything he needed, and he told me him and
24 Gino would work together, and if they had any
25 questions, I would be called. We've already been

1 through this right here.
2 Q. My question was, you don't know whether the
3 records were provided?
4 A. No, no, no. But I had to operate on the
5 assumption, because I didn't hear back from
6 Mr. Baxley, that they were.
7 Q. And this was the second notice you had to provide
8 the records, is that correct?
9 A. Yes.
10 Q. Would you turn to--- Do you have copies of the
11 records that were requested that you provided? Do
12 you have copies of the lagoon levels, the
13 rainfall, the waste analysis for that period
14 January 2004 to---
15 A. Do you mean do I still have copies?
16 Q. Do you have them, yes.
17 A. Well, I have them, but not with me today.
18 Q. Okay. Why didn't you bring them?
19 MR. GRADY: Objection.
20 ` THE COURT: Sustained.
21 Q. And as the - as the permittee and the operator-in-
22 charge, you are responsible for providing the
23 records?
24 MR. GRADY: Objection.
25 THE COURT: Sustained.

1 MS. OLIVER: I'm sorry, Your Honor. I'm
2 trying to find---
3 Q. Okay. Could you turn to Respondent's Exhibit 8?
4 On the second page, you reference the notice of
5 violation that was issued due to the ponding,
6 correct?
7 A. Yes.
8 Q. And in ths second sentence, you admit that the
9 violation occurred, correct?
10 A. I admit it. As I told the Judge, I was trying to
11 work with these guys. There was no ponding on the
12 field. There was no ponding. I was trying to
13 work with these guys in a diplomatic manner
14 because they were on my farm twice a year.
15 MS. OLIVER: I have no further
16 questions, Your Honor.
17 THE COURT: All right. Thank you, sir.
18 It's almost one o'clock, so why don't we take
19 a lunch break and come back at two.
20 (Thereupon, a luncheon recess was
21 taken.)
22 **AFTERNOON SESSION**
23 **2:00 P.M.**
24 THE COURT: All right. So far we have
25 discussed admitting 4 - Respondent's Exhibits

1 Number 4 and 8, and they are admitted without
2 objection.
3 (RESPONDENT'S EXHIBIT NOS. 4
4 (AND 8 RECEIVED INTO EVIDENCE
5 MS. OLIVER: Okay. And, Your Honor, we
6 would move to admit Respondent's Exhibit 13.
7 (RESPONDENT'S EXHIBIT NO. 13
8 (OFFERED INTO EVIDENCE
9 MR. GRADY: No objection.
10 THE COURT: All right. It's admitted.
11 (RESPONDENT'S EXHIBIT NO. 13
12 (RECEIVED INTO EVIDENCE
13 MS. OLIVER: And 16.
14 (RESPONDENT'S EXHIBIT NO. 16
15 (OFFERED INTO EVIDENCE
16 THE COURT: 16 is, again, the prehearing
17 statement, and I'll just take official notice
18 of that. It's not necessarily reintroduce
19 it, I don't think.
20 MS. OLIVER: Okay. All right. Your
21 Honor, we call Mark Brantley.
22 THE COURT: All right. Place your left
23 hand on the Good Book and raise your right
24 hand.
25 - - - - - - - -

1 KENNETH MARK BRANTLEY,
2 a witness called on behalf of the Respondent, being
3 first duly sworn in the above-entitled matter, was
4 examined and testified on her oath as follows:
5 THE COURT: Have a seat, please, sir.
6 **DIRECT EXAMINATION**
7 **BY MS. OLIVER:**
8 Q. Would you state your name and spell your name for
9 the Court?
10 A. Kenneth Mark Brantley. Kenneth, K-e-n-n-e-t-h,
11 Mark, M-a-r-k, Brantley, B-r-a-n-t-l-e-y.
12 Q. And you work for the Division of Water Quality?
13 A. Yes.
14 Q. What is your current position?
15 A. I'm an environmental chemist.
16 Q. How long have you been in that position?
17 A. Since August of 2005.
18 Q. A brief educational background?
19 A. I've got a four-year degree from Campbell
20 University with a chemistry major.
21 Q. And what was your position before you became an
22 environmental chemist?
23 A. I was an environmental specialist with the
24 Division of Water Quality.
25 Q. What were your job responsibilities?

1 A. At that time, I was to inspect CAFO, Concentrated
2 Animal Feeding Operations, farms.
3 Q. How long were you in that position?
4 A. I started in January - late January of 2004.
5 Q. All right. And can you just briefly explain the
6 overview of the permit process and how permits to
7 issue swine waste management systems are - I can't
8 think of the word - I'm sorry - what the procedure
9 is for coverage?
10 A. They have to apply with the central office in
11 Raleigh, stating what they have. There are no
12 more hog farm permitted today, but just when they
13 were permitted. They'd have a land waste
14 management plan, a certified operator. I don't
15 know the exact details of the permitting. I never
16 worked on the permitting side.
17 Q. Does the permit specifically prohibit discharge of
18 waste to surface waters or wetlands?
19 A. I can't hear you.
20 Q. Does the permit specifically prohibit discharge of
21 waste to surface water or wetlands?
22 A. Yes.
23 Q. And did you conduct a compliance inspection on the
24 Ronald Davis farm on November 3rd?
25 A. Yes.

1 Q. Was Mr. Freedman present?
2 A. Yes, ma'am.
3 Q. And who else was present?
4 A. Gino Kennedy and, I believe, Mr. Freedman's dad.
5 They all - they were there together.
6 Q. Okay. And what did you find during your
7 inspection?
8 A. After I reviewed his records, I did the site visit
9 and I found an area in a field that had some
10 ponding of waste and some evidence of where waste
11 had moved off of the original application site
12 into a neighboring field.
13 Q. When you say "neighboring field," do you mean the
14 field of a neighbor or just an adjacent field?
15 A. I believe Mr. Freedman told me that corn field was
16 Mr. Ronald Davis' field.
17 Q. All right. Did you talk with him - Mr. Freedman
18 about the ponding?
19 A. Yes, I did, but it was not on the day of the
20 inspection. They had left before I completed my
21 field inspection, so I gave him a phone call the
22 very next morning to discuss what I had found.
23 Q. And what - what did he say?
24 A. He admitted they did have a problem with the
25 irrigation gun like his letter stated, that when

1 they irrigated, that he had ditched up an area to
2 try to get it to soak in the ground a little bit
3 further. It was a mistake. He hated that it had
4 happened, but he would take steps to prevent it
5 from happening in the future.
6 Q. Did he say what steps he would take?
7 A. They would be more careful with the gun - the
8 irrigation equipment.
9 Q. All right. You said you did a records review.
10 What did you determine after your records review?
11 A. May I see the inspection report?
12 Q. It's Respondent's Exhibit 5.
13 (RESPONDENT'S EXHIBIT NO. 5
14 (MARKED FOR IDENTIFICATION
15 A. Number 5?
16 Q. Yes. I'll go ahead and ask you, did you prepare
17 this document?
18 A. Yes, ma'am, I did.
19 Q. Do you recall when you prepared it?
20 A. When I prepared it?
21 Q. Uh-huh.
22 A. On-site during the inspection.
23 Q. Okay.
24 A. In his records, I asked him to have - he stated he
25 had a permit and a certificate of current coverage

1 at his home office. I asked him to please keep a
2 copy of it on the farm site for future reference.
3 Q. Is that a permit requirement?
4 A. I would have to look at the permit to answer that
5 question.
6 Q. Okay. All right.
7 A. He had a form stating he would be present during
8 all waste applications, but he planned to install
9 a rain breaker.
10 Q. Planned to install---
11 A. Install a rain breaker. That would allow him to
12 leave the farm for a small period of time. When
13 making a waste application event, they're supposed
14 to inspect their field every hundred and twenty
15 minutes, but if he has no rain breaker, he has to
16 be on-site the whole time.
17 Q. So he didn't have a rain breaker on November 3rd,
18 2005?
19 A. Correct.
20 Q. Okay. And I direct you to item 21.
21 A. Yes, ma'am.
22 Q. Is that the area where you documented the---
23 Well, I'll withdraw that. Okay. I'm sorry.
24 Item 35.
25 A. Okay. Yes. It's where he needs to keep his

1 rainfall records improvement and inspection after
2 a one-inch rain.
3 Q. Okay. And did he have the records that are
4 referenced in 35 on the farm?
5 A. No, ma'am.
6 Q. Have you ever received those records?
7 A. No, ma'am.
8 Q. And did you take any pictures on the day of your
9 inspection?
10 A. Yes, ma'am.
11 MS. OLIVER: I didn't know this was
12 going to be an issue, so I only have two
13 copies today that I can find. I might be
14 able to find the other one.
15 THE COURT: Okay.
16 Q. I'm handing you what's been marked Respondent's
17 Exhibit 22A through D. Do you recognize those
18 events? Do you recognize them?
19 (RESPONDENT'S EXHIBIT NOS. 22A-22D
20 (MARKED FOR IDENTIFICATION
21 A. Yes, ma'am.
22 Q. What are they?
23 A. They are pictures of the ponded area and where the
24 water moved off the application site into the
25 neighboring agricultural field.

1 Q. Okay. And on what day did you take these
2 pictures?
3 A. They day of the inspection, November 3rd.
4 Q. Okay. And---
5 MR. GRADY: Can I ask a question?
6 MS. OLIVER: Sure.
7 MR. GRADY: Has this been marked as an
8 exhibit? If it's marked, what exhibit number
9 is it.
10 MS. OLIVER: 22A.
11 MR. GRADY: 22A. Okay. Excuse me. Go
12 ahead.
13 Q. So do these pictures fairly - are they a fair and
14 accurate representation of what you saw that day?
15 A. Yes, ma'am.
16 Q. Do they help illustrate your testimony?
17 A. Yes, ma'am.
18 MS. OLIVER: Your Honor, we'd move to
19 admit for---
20 MR. GRADY: Illustrative.
21 MS. OLIVER: ---illustrative purposes.
22 Thank you.
23 (RESPONDENT'S EXHIBIT NOS. 22A-22D
24 (OFFERED INTO EVIDENCE
25 THE COURT: All right.

1 (RESPONDENT'S EXHIBIT NOS. 22A-22D
2 (RECEIVED INTO EVIDENCE
3 Q. And can you quickly go through and show - and tell
4 us what each--
5 A. What each picture is?
6 Q. Yes.
7 A. Okay. It may help if I have the map that
8 Mr. Freedman had earlier that he pointed to where
9 the irrigation gun was.
10 THE COURT: Are you talking about the
11 aerial photo?
12 THE WITNESS: Yes.
13 THE COURT: I've got one. I don't know
14 where the rest of them went.
15 MS. OLIVER: I can't put my hands on
16 mine right now.
17 A. (continuing) On the pull right here that
18 Mr. Freedman noted this morning where the
19 irrigation system was set up on November 3rd--
20 Q. Can you mark that with a blue pen?
21 A. Yes, ma'am. The same area basically. It's where
22 the irrigation equipment was. This is where the
23 ponded area was. These two pictures here are
24 behind the hydrant in the corner of the trees
25 here. Water had pooled around the hydrant and run

1 along the edge of the field to the tree line,
2 turned to the left, and went maybe another
3 hundred, seventy-five feet before soaking
4 completely in the ground.
5 This picture here shows the flow of the
6 wastewater going through as it has moved the dirt
7 and eroded an area where it was flowing and where
8 it turned.
9 This picture here was taken in the corner
10 where it turned and went to the left about another
11 hundred feet, seventy-five feet.
12 This picture here is where the waste had been
13 sprayed on the corn field which is not in his
14 plan. He has the wheat-soybean rotation.
15 This is the area here that we - that
16 Mr. Freedman said they had ditched it up where the
17 ground was the oversaturated, trying to get it to
18 soak in a little better.
19 This picture here is just a broad overview of
20 the water that had come - the hydrant is right
21 there, and the water had moved this way to the
22 corner here and turned and went along the tree
23 line. Again, it's just a close-up showing where
24 the water movement was, dry ground and the wet
25 ground.

1 This picture right here is a grassy area
2 between his wheat-soybean field, which is in his
3 waste management plan, and the corn field that's
4 on this side. In the center, you can see ponds of
5 wastewater where it was still soaking, still
6 standing in the field.
7 Q. Did you talk with Mr. Freedman about when was the
8 last time he had applied waste?
9 A. Yes, ma'am.
10 Q. What did he say?
11 A. And that was in his response letter this morning
12 that we - I'm not sure what - I believe it was the
13 day - the day before the inspection, November 2nd.
14 It had been most likely the 1st or the 2nd of
15 November.
16 Q. All right.
17 MS. OLIVER: Your Honor, we'd move to
18 admit Respondent's Exhibit 5.
19 (RESPONDENT'S EXHIBIT NO. 5
20 (OFFERED INTO EVIDENCE
21 THE COURT: Any objection?
22 MR. GRADY: No, Your Honor.
23 THE COURT: All right. Admitted.
24 (RESPONDENT'S EXHIBIT NO. 5
25 (RECEIVED INTO EVIDENCE

1 Q. And did you - were you at the Ronald Davis farm on
2 the morning of January 28th, 2005?
3 A. Yes, ma'am.
4 Q. When was the last time before that day that you
5 had seen the farm?
6 A. Larry Baxley and I had driven by the farm the
7 evening before on the way back to the office.
8 Highway 210 is a major thoroughfare for us getting
9 to Bladen County and southern Sampson County. We
10 were returning from a farm the afternoon before
11 and noticed the irrigation gun cart was pulled all
12 the way out, which is typical for a farmer when
13 they're ready to do an irrigation. It's already
14 set up and ready to go whenever they decide to
15 irrigate.
16 Q. And when you say "all the way out," can you mark
17 with a blue pen on the aerial?
18 A. Depending on how many feet of hose was on the
19 reel, it was toward the end of its pull. I would
20 say it was probably back in this area.
21 MR. GRADY: I can't see it. I'd ask you
22 to mark mine as well.
23 MS. OLIVER: Okay. I'm sorry. Yes.
24 THE COURT: Mr. Freedman has got another
25 copy over there as well.

1 Q. So you've done a little dash---
2 A. Yes, ma'am.
3 Q. ---where you saw the reel?
4 Can you tell us what the purpose of the
5 record-keeping requirements are?
6 A. It's to ensure proper management of the wastewater
7 from the lagoon, to make sure the fields are not
8 overapplied mainly so nitrogen application and
9 heavy metals and stuff aren't applied on the field
10 in rates detrimental to the crop land or any
11 groundwater below the field.
12 Q. Okay. And can you explain that? I mean the
13 nitrogen - make sure it's applied at a rate---
14 A. Certain crops take up nitrogen faster or at
15 different rates than other crops. [Inaudible]
16 agronomic rate set forth in the waste management
17 plan as to how to apply it.
18 Q. Would you tell the Court what you recall--- Let
19 me go back. When you saw the farm or drove past
20 on the 27th, was this during daylight hours?
21 A. Yes, approximately three-thirty in the afternoon.
22 Q. Okay. And would you please tell the Court about
23 what you recall about January 28th, 2005.
24 A. It was a very cold morning. Mr. Larry Baxley was
25 on - had checked the farm we had been on Thursday

1 Friday morning before he came to work. As he was
2 passing Mr. Freedman's farm - the Ronald Davis'
3 farm - he noticed the irrigation equipment was
4 going and wastewater in the ditch. He called me
5 to - I was in the office already. He called me in
6 the office to get Mr. Freedman's cell phone number
7 and to notify Mr. Freedman that his irrigation
8 equipment was running and a discharge was in
9 progress.
10 Q. Did you notify Mr. Freedman?
11 A. Yes. I called Mr. Freedman immediately.
12 Q. And then what happened next?
13 A. He had Larry's cell phone number or Larry had
14 Mr. Freedman's contact number. I left the office
15 to go onto the farm also with sampling equipment.
16 Q. With what?
17 A. Sampling equipment.
18 Q. And what did you observe when you got there?
19 A. When I got there, there was wastewater in the
20 ditch. The field was saturated, and in parts of
21 it, there was frozen wastewater on the ground.
22 The best way to describe it, it was like a
23 moonscape around the irrigation gun. Water was
24 flowing out of field into the ditch, running along
25 a ditch along the driveway to the farm, paralleled

1 210, and then it went under 210 through a drain
2 tile and went through a farm ditch to a wetland
3 area behind Mr. Davis' residence, I believe.
4 Q. Okay. And you followed the waste all the way
5 down?
6 A. Yes.
7 Q. Okay. How far would you estimate the waste had
8 traveled?
9 A. Approximately three-quarters of a mile.
10 Q. Did you see anything irregular about the way the
11 system was set up - the spray system?
12 A. No, ma'am.
13 Q. Did you take any photographs that day?
14 A. Yes, ma'am, I did.
15 Q. I hand you what's been marked Respondent's
16 Exhibit A [sic].
17 (RESPONDENT'S EXHIBIT NO. 11
18 (MARKED FOR IDENTIFICATION
19 MS. OLIVER: I'm sorry for this, Your
20 Honor. I had three sets.
21 Q. Tell me if you recognize these documents.
22 A. Yes, ma'am. These are the pictures I took the
23 morning of the discharge.
24 Q. And do they fairly and accurately represent what
25 you saw that morning?

1 A. Yes. These pictures were taken in the wetland
2 area approximately three-quarters of a mile away.
3 Q. Okay. Will they help illustrate your testimony?
4 A. Yes.
5 MS. OLIVER: Your Honor, I move to admit
6 these for illustrative purposes.
7 (RESPONDENT'S EXHIBIT NO. 11
8 (OFFERED INTO EVIDENCE
9 MR. GRADY: No objection.
10 THE COURT: All right. Admitted.
11 (RESPONDENT'S EXHIBIT NO. 11
12 (RECEIVED INTO EVIDENCE
13 Q. Can you go through the photographs and tell me
14 what they show to you?
15 A. These two pictures here were entering the woodland
16 area from the farm ditch. The water flowed
17 through natural waterways toward the wetlands.
18 These pictures - these two here are pictures of
19 the wetlands where the contract cleaning crew had
20 dug holes to get it to pull and pump out.
21 And the remaining pictures also show the
22 water flow. This flow here is through a natural
23 waterway. It's kind of dammed up here in the
24 twigs and leaves. You can tell the dark-colored
25 water here, and it's flowing through on toward the

1 wetland area. The last page is also hog waste
2 flowing toward the wetland area here.
3 Q. And Mr. Freedman testified earlier that he dammed
4 up the ditch on - I believe it's on Ronald Davis'
5 farm by this [inaudible]?
6 A. Yes.
7 Q. Had the waste gone beyond that?
8 A. Yes.
9 Q. And you testified that the sump pump was actually
10 in the wetlands at one point?
11 A. Yes.
12 Q. And what is - what did you do while you were out
13 there other than take pictures and---
14 A. We also took samples.
15 Q. Okay. What time - do you remember what time you
16 got there?
17 A. I arrived between eight-thirty and eight
18 forty-five.
19 Q. Okay. And what were the results of your sampling?
20 Well, I'm not going to even go there.
21 MS. OLIVER: Sorry, Your Honor.
22 Q. Do you recall whether you had anything scheduled
23 for that day on January 28th?
24 A. Yes, we did. We had a show cause meeting with
25 Mr. Freedman in the office scheduled for that

1 morning.
2 Q. Okay. And what time was that supposed to take
3 place?
4 A. Around nine, nine-thirty that morning.
5 Q. Okay. And what was the purpose of that?
6 A. We were going to discuss the inspection reports of
7 November 3rd and his record-keeping issues at that
8 time.
9 Q. All right. And did you ever have that meeting
10 later?
11 A. Yes, we did. Approximately the middle of
12 February.
13 Q. Okay. Tell us about that meeting.
14 A. Mr. Freedman came to the office, and we talked
15 about the inspection in November, helped him on
16 his record-keeping issues, told him what we - what
17 he needed to keep and how he needed to keep them,
18 and we also talked about the discharge and what he
19 needed to do to file any reports with us or any
20 information we needed.
21 Q. And what does Mr. Freedman say that he was going
22 to do, or did he say - what was he going to do, if
23 anything, after the meeting?
24 A. Yes, ma'am. He took good notes that morning in a
25 composition book he brought with him, and he was

1 very open to our suggestions and the way to do
2 things, and he did commit to doing them.
3 Q. And did he follow through his commitment?
4 A. On submitting the records, no, ma'am, just what we
5 saw this morning. But I believe there was another
6 inspector that went out later on in the year and
7 said his record-keeping issues were improving.
8 Q. Was that after the civil penalty was assessed?
9 A. It was around the same time. I'm not sure.
10 Q. All right. And would you turn to Respondent's
11 Exhibit 9 - I'm sorry - Respondent's Exhibit 14?
12 (RESPONDENT'S EXHIBIT NO. 14
13 (MARKED FOR IDENTIFICATION
14 A. Okay.
15 Q. And do you recognize that document?
16 A. Yes, ma'am. It's a follow-up inspection or a
17 compliance inspection we did in March after our
18 show cause called meeting with Mr. Freedman.
19 Q. Okay. And was Mr. Freedman present?
20 A. Yes.
21 Q. What did you find during your inspection?
22 A. We went over things he needed to do on the farm.
23 We had some - we were actually able to point to
24 things he needed to do in his record-keeping on
25 the farm better than we could in the show cause

1 meeting. We asked him to place a copy of his
2 certificate of coverage and permit with the farm
3 records on the farm and to keep the following
4 records, IR-1 and IR-2, which is waste application
5 records, weekly freeboards, waste analysis. We
6 went over waste analysis, when they were valid.
7 Rainfall records, crop yield records, his
8 hundred-and-twenty-minute inspections, and monthly
9 and one-inch rain inspections of his lagoon. All
10 these were required by his NPDES permit.
11 He did not have a rain gauge at that time.
12 He stated he was present for all waste application
13 events, and we asked him to put up a copy of his
14 calibration - calibration of the irrigation
15 records - the irrigation equipment - and his
16 sludge survey and farm records for future
17 inspections.
18 Q. And why does the agency require weather coded
19 records?
20 A. Part of the NPDES permit - the federal EPA
21 requirement - that they monitor the weather code.
22 The weather code dictates when they can and cannot
23 pump.
24 Q. And does the permit allow something to be done
25 when the ground is frozen?

1 A. No, ma'am.
2 Q. All right. What did you observe about the
3 conditions of the ground on January 28th?
4 A. Cold, parts were frozen.
5 Q. Pardon me?
6 A. Cold, parts were frozen where the wastewater had
7 been sprayed.
8 Q. Okay. And what did the wastewater look like?
9 A. The best way to describe it is a moonscape.
10 You're talking about the wastewater on the ground?
11 Where it froze, it looked like a moonscape. Other
12 wastewater where it had not froze and was still
13 moving was grayish to black in color.
14 MS. OLIVER: Your Honor, I'd move to
15 admit Respondent's Exhibit 14.
16 (RESPONDENT'S EXHIBIT NO. 14
17 (OFFERED INTO EVIDENCE
18 THE COURT: Any objection?
19 MR. GRADY: No, Your Honor.
20 THE COURT: All right. Admitted.
21 (RESPONDENT'S EXHIBIT NO. 14
22 (RECEIVED INTO EVIDENCE
23 MS. OLIVER: I have no other questions.
24 THE COURT: Questions?
25 MR. GRADY: Yes, Your Honor. Just a

1 few.

2 CROSS-EXAMINATION

3 BY MR. GRADY:

4 Q. Going back, Mr. Brantley, to your November - I
5 think it's under Exhibit 5 - your November
6 inspection, there are certain notes that on that
7 or comments. Are those comments that you made?
8 A. Yes, sir.
9 Q. And on those comments, does it indicate the degree
10 of ponding of wastewater?
11 A. No, sir. Just ponding.
12 Q. I'll ask you if on page 2 - if you'd look at
13 page 2.
14 A. Okay.
15 Q. Does it not indicate there that there is just a
16 small area of ponding?
17 A. Yes, sir.
18 Q. Now did you take samples on that day?
19 A. No, sir.
20 Q. So the ponding - when was the last rain that
21 occurred before November 3rd?
22 A. I do not know, but it was not recently. The rest
23 of the fields were dry. His irrigation pulls on
24 both sides were dry.
25 Q. But you can't testify, then, that you conducted a

1 test to determine whether or not this was, in
2 fact, wastewater, can you?
3 A. No, I can't. No, sir. Just in---
4 Q. Is it not true---
5 MS. OLIVER: Do you want to explain your
6 answer?
7 THE WITNESS: Just in color and the
8 direction of the way the wastewater from the
9 irrigation equipment had moved across the
10 ground.
11 Q. But I take it there's a reason that you do test?
12 A. Yes, sir.
13 Q. And the purpose of the test is to verify that it
14 is, in fact, wastewater?
15 A. Yes, sir.
16 Q. And you didn't do that?
17 A. No, sir.
18 Q. Now have these photographs been altered?
19 A. No, sir.
20 Q. I notice that there is Wite-Out that's been---
21 MS. OLIVER: There was words on it and I
22 didn't think it was [inaudible].
23 Q. Well, you did that, didn't you?
24 A. Yes, sir.
25 MS. OLIVER: What?

1 MR. GRADY: The Wite-Out.
2 MS. OLIVER: I did the Wite-Out.
3 THE WITNESS: That's the Wite-Out I did
4 this morning.
5 MS. OLIVER: Oh. You did that one this
6 morning. I'm sorry.
7 THE WITNESS: Yes, ma'am.
8 Q. Okay. What were - generally, were those notes
9 that you had made about what had happened?
10 A. Yes, sir.
11 Q. Okay. And you directed to remove those notes from
12 the photographs?
13 A. Yes, sir.
14 Q. Now this area here, which is on the first page of
15 Exhibit 22A, if you'll look at the first
16 photograph on the top, that's actually not water,
17 is it?
18 A. No.
19 Q. That shows the flow of water?
20 A. Yes, sir.
21 Q. And did you test the water that flowed through
22 there to determine whether or not it was
23 wastewater?
24 A. No, sir.
25 MS. OLIVER: Asked and answered.

1 THE COURT: Overruled.
2 Q. Now going to Plaintiff's Exhibit Number 22D, the
3 top photograph, you did not remove your notes on
4 that photograph, did you, by Wite-Out? 22D.
5 A. 22D. Yes, sir. There is Wite-Out.
6 MS. OLIVER: I'm sorry. That's my
7 fault.
8 Q. Where is the property line on that photograph?
9 A. There is no property line. I'm going on what
10 Mr. Freedman has told me.
11 Q. Okay. Where did he tell you the property line
12 was?
13 A. Well, he stated the corn field adjacent was
14 Mr. Ronald Davis' corn field.
15 Q. This is the corn field at the top - this is -
16 where is the corn field located?
17 A. In the bottom picture, top right, that would be
18 the corn field.
19 Q. Okay. So there is no evidence in this photograph
20 to show that that water, whatever it was, was on
21 the Ronald Davis farm, is there?
22 A. Just movement of water through the grassy area and
23 the pictures of---
24 Q. But you can't see that going into the corn field
25 in this photograph, can you?

1 A. Not that photograph, but on this one here, you
2 can.
3 Q. What photograph is that? Is that 22C?
4 A. 22C, yes, sir.
5 Q. Well, 22C doesn't show any wastewater, does it, or
6 water of any kind?
7 A. No.
8 Q. It simply shows where the flow of some kind of
9 water had been, doesn't it?
10 A. Yes, sir.
11 Q. Now on the report - when you went out there on
12 November 3rd, Gino Kennedy was there?
13 A. Yes, sir.
14 Q. Who was listed as a contact person for
15 environmental [inaudible]?
16 A. Either Gino Kennedy or Mr. Barry Freedman.
17 Q. Okay. Well, if you'd look at Exhibit Number 5.
18 A. Yes, sir.
19 Q. There is a facility contact person listed, is that
20 correct?
21 A. Yes, sir.
22 Q. And who is that?
23 A. Gino Kennedy.
24 Q. And is Gino Kennedy somebody that you regularly
25 deal with?

1 A. When I was doing hog farms, yes, sir.
2 Q. And he does, in fact, do the reporting for many
3 hog farms in North Carolina?
4 A. Several. I don't know how many, but several.
5 Q. And does he on a regular basis provide reports to
6 environmental quality?
7 A. When inspectors asked for it. If they request
8 him - from him, but most of the time, we contact
9 the owner or the permittee.
10 Q. As the facility contact person, did you contact
11 Gino Kennedy and request a report?
12 A. No, sir.
13 MS. OLIVER: What kind of a report?
14 Q. While Barry and his father and Gino were there,
15 did they cooperate with you during the inspection?
16 A. Yes, sir.
17 Q. And have they generally done that? When you've
18 been out there, they'd stay?
19 A. Yes, sir.
20 Q. Now going to - you've indicated that the last time
21 that waste was applied, you thought it was
22 November the 2nd or November the 1st. Would you
23 point out the document that reflects that?
24 A. There is no document to show when the last
25 application was done.

1 Q. Now you've indicated - going to the incident on
2 January 28th, 2005, you've indicated that at some
3 point on the afternoon of January 27th, you rode
4 by the home?
5 A. Yes, sir.
6 Q. Were you by yourself?
7 A. No, sir.
8 Q. Who was with you?
9 A. Larry Baxley.
10 Q. And during that point, you noticed the reel at
11 some location in the field?
12 A. Yes, sir.
13 Q. Was that reel in a different location the
14 following day?
15 A. Yes, sir. The gun part was.
16 Q. Okay. So between the time you were there at
17 three-thirty on November the 27th and eight-thirty
18 in the morning on November the 28th, somebody had
19 moved that reel?
20 A. There was an irrigation application event that had
21 occurred.
22 Q. Okay. So we can narrow it down, we feel like, to
23 that point in time?
24 A. (No audible response from witness.)
25 Q. You indicated that you didn't notice anything

1 unusual about the gun - the spray gun, is that
2 correct?
3 A. That's correct.
4 Q. Mr. Freedman talked about the gun being in a
5 bypass and an enabled position. Is that correct?
6 Is there a clock of some kind?
7 A. It varies from farm to farm. There are different
8 types.
9 Q. Was there on this one?
10 A. I do not recall on that pump.
11 Q. If it had been in the bypass position, would that
12 have been something unusual?
13 A. It would depend on the farm, and they may have it
14 off to where - whatever reason they have. I mean
15 it varies from farm to farm.
16 Q. Was the spray gun oscillating?
17 A. The irrigation equipment was off when I arrived.
18 Q. Okay. So you don't know whether or not it was
19 oscillating appropriately like it normally would
20 or not?
21 A. Judging from the spray pattern, at some time, it
22 was oscillating due to the frozen part of the
23 ground on the pull.
24 Q. Okay. Was it oscillating in three hundred and
25 sixty degrees, a hundred and eighty?

1 A. No, sir. It would have been a one-eighty -
2 one-eighty [inaudible].
3 Q. Did you take a picture of the reel?
4 A. I did not. My partner Larry Baxley did.
5 Q. So he has possession of those photographs?
6 A. No, sir. We have a set of them here.
7 Q. Okay. Was the gun pointed toward the ditch?
8 A. To the best of my knowledge, the gun was toward
9 the right, which shows a series of ditches behind
10 the gun. So, yes, the ground kind of slopes
11 toward that area so any water could have flowed to
12 the ditch.
13 Q. Did the sheriff's department come out there that
14 day?
15 A. Yes, sir.
16 Q. Did Barry Freedman make a report to the sheriff's
17 department?
18 A. Yes, sir.
19 Q. What did he tell the sheriff's department
20 happened?
21 A. My memory, he told them that someone had turned
22 the irrigation system on sometime the night
23 before.
24 Q. And were you present when that---
25 A. I was on the farm, but I was not standing there

1 when he was communicating with the deputy.
2 Q. Did you talk to the deputy?
3 A. No, sir.
4 Q. Did Larry talk to the deputy?
5 A. I do not recall. I do not think so, but I do not
6 recall.
7 Q. Well, did you talk to Barry? Did you ask Barry
8 whether or not he was responsible for the
9 discharge of the waste - whether or not---
10 A. They asked Barry what had happened.
11 Q. What did he tell them?
12 A. That someone had been by and, you know, started
13 his irrigation equipment up sometime during the
14 night.
15 Q. Now the photographs that are shown on Exhibit 11A
16 and 11D, if you'd refer to those, what time were
17 these photographs taken?
18 A. Around, I'd say, late morning. Ten to eleven-
19 thirty.
20 Q. What time did the cleaning crew arrive?
21 A. Shortly after I arrived that morning, some
22 representatives from the Murphy-Brown Company
23 showed up, and they started work and then the
24 contract company that they contract with arrived
25 on the scene.

1 Q. So some of these photographs actually were made
2 after the work had already begun to withdraw - to
3 clean up the spill?
4 A. Yes, sir, where they had dug the catch basin.
5 Q. And the purpose of digging the hole was simply to
6 get the water to pond more, wasn't it - to pond it
7 in one place?
8 A. To - easier to recover and to carry back to the
9 lagoon.
10 Q. And that photograph represents that, doesn't it?
11 A. Yes, sir.
12 Q. Would you say that Barry responded immediately as
13 far as getting someone there to clean up this
14 problem?
15 A. Yes, sir.
16 Q. Where did you take samples at? Did you take them
17 the full three-quarters mile?
18 A. We took them in the wetland area.
19 Q. Okay. Was that the only place?
20 A. I would have to look at the - we've got a label on
21 the sample results, but I believe we did take them
22 at the very end, yes, sir.
23 Q. At the very end?
24 A. At the end - three-quarters of a mile away as far
25 as we tracked it.

1 Q. Where is the closest tributary to the wetlands?
2 A. This is a wetland area. It kind of flattens out
3 and water just kind of stayed and soaked in the
4 ground.
5 Q. Is there a creek or a river near there?
6 A. None that we saw that day.
7 Q. Now you indicated that you had a show cause
8 meeting to discuss your - the problems on November
9 the 3rd, that day. Do you have a letter notifying
10 him of that?
11 A. Yes, sir.
12 Q. Okay. Do you have that with you?
13 A. Give me a second to find it, please, or it may be
14 in our file.
15 Q. Okay. But you did notify him in writing?
16 A. Yes, sir. Yes, sir.
17 Q. Okay. And did you-all discuss the fact that you
18 had the meeting - when you went out there on the
19 28th - about what to do about that meeting?
20 A. We said we would reschedule it.
21 Q. Okay. And did you reschedule it?
22 A. Yes, sir.
23 Q. And did he appear?
24 A. Yes, sir.
25 Q. And you had a fruitful discussion on that day?

1 A. I think so, yes, sir.
2 Q. And then in March, you had another inspection?
3 A. Yes, sir. Mr. Freedman asked us to come out and
4 go over another inspection with him on the farm.
5 Q. So he voluntarily asked you to come out to the
6 farm?
7 A. Yes, sir.
8 Q. And was he there?
9 A. Yes, sir.
10 Q. Was anyone else there?
11 A. No, sir. Just Larry Baxley and myself and
12 Mr. Freedman.
13 Q. And what was the purpose of that visit?
14 A. To go over his compliance issues and to help him
15 to maintain compliance.
16 Q. And did he cooperate with that inspection?
17 A. Yes, sir.
18 Q. I notice that on the report, it indicates - it
19 says, "Is there evidence of a past discharge
20 [inaudible] operation," and that's marked "No."
21 A. Which one are you on?
22 Q. I'm on exhibit 14, subparagraph 2 at the bottom
23 under "Discharges and Stream Impacts."
24 A. Okay.
25 Q. Does that mean a recent discharge or what does

1 that mean?
2 A. Any discharge that's occurred in the recent past -
3 is there any evidence of it - discharge of waste
4 from the application fields [inaudible].
5 Q. I assume, then, at that point in time, there was
6 no evidence of the discharge that occurred on
7 January 28th?
8 A. That's correct.
9 Q. And you've also got, "Were there any adverse
10 impacts or potential adverse impacts to waters of
11 the State," and you've got that marked "No," is
12 that correct?
13 A. That's correct.
14 MS. OLIVER: Are you talking about March
15 22nd?
16 MR. GRADY: Exhibit 14.
17 Q. Now, ultimately, moving forward from March
18 forward, you indicated that his record-keeping had
19 improved?
20 A. Yes. According to a third DWQ inspector that was
21 impartial - had never been on the farm before -
22 performed that inspection.
23 Q. And how did that go?
24 A. From that inspection, he said he was improving on
25 his record-keeping.

1 Q. And since that day, has there been any violations
2 on any of his farms?
3 A. I do not know because I have switched jobs since
4 then.
5 Q. What was your relationship with Barry before
6 November 4th, 2004?
7 A. I had never met him.
8 Q. You had never met him?
9 A. Never met him.
10 MR. GRADY: Okay. That's all.
11 **REDIRECT EXAMINATION**
12 **BY MS. OLIVER:**
13 Q. Would you turn to Respondent's Exhibit 13? And is
14 that information you received from Mr. Freedman?
15 A. Yes.
16 Q. And would you turn to page 2? What is that
17 document?
18 A. That is the irrigation sheet/record from
19 November 2nd when he applied to his wheat crop,
20 the day before my November 3rd inspection.
21 Q. Okay. So he had reported to you that he had
22 sprayed on November 2nd, is that correct?
23 A. Yes. Correct.
24 Q. And on page 3---
25 MR. GRADY: What exhibit are we on?

1 MS. OLIVER: 13, pages 2 and 3.
2 MR. GRADY: Thank you.
3 Q. And what was it about the color and the direction
4 of the flow - the liquid that made you think it
5 was wastewater?
6 A. The liquid in the grassy area was kind of pink and
7 black in color. It had a smell of hog waste to
8 it. The gnats you see sometime present on a
9 lagoon were also present there in that area.
10 Q. The what?
11 A. The gnats.
12 Q. Gnats.
13 A. In the direction of the water movement from the
14 hydrant to the grassy area through the adjacent
15 corn field.
16 Q. And do you routinely test wastewater on every
17 inspection on what you found ponding?
18 A. No.
19 Q. Have you ever done that?
20 A. Not with ponding, no.
21 Q. What do you test wastewater for? When do you test
22 it?
23 A. When we went to test it - most of the time we
24 tested it when it was in discharge to waters of
25 the State or a wetland area.

1 Q. And did you ever talk with Gino Kennedy about the
2 records from the Ronald Davis farm?
3 A. During the day of the inspection.
4 Q. Okay. And did he ever provide you with any
5 records?
6 A. This is all we've got here. All records that we
7 received in the office is right here.
8 Q. All right. And you testified that the spray gun
9 was - I think you said pulled in from the place
10 you had seen it the day before, is that correct?
11 A. That's correct.
12 Q. Did you see any evidence of spraying from where it
13 had been the day previously to where it was pulled
14 in?
15 A. Yes, ma'am.
16 Q. And is a wetland considered a surface water of the
17 State? Do you know?
18 A. Not - no.
19 MS. OLIVER: That's all the questions I
20 have.
21 THE COURT: Further questions?
22 MR. GRADY: A couple of follow-up, Your
23 Honor.
24 - - - - - - - -
25

1 RECROSS-EXAMINATION

2 BY MR. GRADY:

3 Q. If you'd go to Exhibit 12.

4 A. Okay.

5 Q. Exhibit 12 is the notice of violation and notice

6 of intent which was sent to Barry Freedman, is

7 that correct?

8 A. Correct.

9 Q. And that's relating to the November - excuse me -

10 January 28th, 2005 incident, is that correct?

11 A. That's correct.

12 Q. Two alleged violations - two violations, one is

13 the discharge, you say?

14 A. Uh-huh.

15 Q. And the other one was specifically some - you

16 requested a written description of the discharge,

17 the time of the discharge, and the cost of the

18 discharge, is that correct?

19 A. Yes, sir.

20 Q. The environmental - you actually found the

21 discharge, is that - or Larry Baxley did, is that

22 correct?

23 A. Correct.

24 Q. So you knew what the timing was and the date was?

25 A. Yes, sir.

1 Q. And he's required to respond to that within five
2 days?
3 A. Yes, sir.
4 Q. In other words, you gave him Notice on
5 January 28th of the discharge, and he is required
6 within five days of that to respond, is that
7 correct?
8 A. According to his NPDES permit, yes, sir.
9 Q. But the February 7th letter was simply a notice to
10 him that he had not timely responded?
11 A. Yes, sir.
12 Q. Now if you'll go to Exhibit 13. He does in that
13 exhibit advise you that it occurred on
14 January 28th, 2005, is that correct?
15 A. Yes, sir.
16 Q. And he did that in writing, and it's dated
17 January 31st of 2005?
18 A. Yes, sir.
19 Q. He also indicates that he had given notice to
20 Bladen County Sheriff's Department and they were
21 conducting an investigation, is that correct?
22 A. Yes, sir.
23 Q. And on that day, you knew that he had reported it
24 as vandalism to the sheriff's department, didn't
25 he?

1 A. That's right.
2 Q. Okay. So you knew, based upon that, that the
3 sheriff's department was, in fact, inspecting it
4 as a sabotage or vandalism incident?
5 A. Yes, sir.
6 MR. GRADY: That's all.
7 THE COURT: I had a couple of questions.
8 Hold on one second.
9 MS. OLIVER: Can I ask some follow-up
10 from his?
11 THE COURT: Let me ask a couple, and
12 then I'll give both of you a chance to ask
13 more questions.
14 Do you know what the Colonel Wayne
15 Snyder farm is?
16 THE WITNESS: That is the same - the
17 name on the sign at the entrance of the
18 drive - Colonel Wayne Snyder.
19 THE COURT: Okay. So that's still the
20 same property?
21 THE WITNESS: Same property.
22 THE COURT: Okay.
23 THE WITNESS: Just a different - two
24 different numbers.
25 THE COURT: And you said too that from

1 when you went by the farm on January 27th
2 until you came back on the 28th, the gun had
3 been moved?
4 THE WITNESS: Yes, sir.
5 THE COURT: Did it appear to have been
6 moved by the normal course of the operation
7 from the reel pulling it back in?
8 THE WITNESS: Yes.
9 THE COURT: So that was a movement not
10 as though somebody had come up with a tractor
11 and physically moved to a different spot?
12 THE WITNESS: Correct. Correct.
13 THE COURT: Simply the reel pulling it
14 in through the normal course of operation?
15 THE WITNESS: Yes, sir.
16 THE COURT: All right. Further
17 questions, Ms. Oliver?
18 MS. OLIVER: Just a couple, Your Honor.
19 **FURTHER REDIRECT EXAMINATION**
20 **BY MS. OLIVER:**
21 Q. Would you turn to Respondent's Exhibit 7.
22 A. 7?
23 Q. Uh-huh.
24 A. Okay.
25 Q. And what is this notice of violation for?

1 A. This is a notice of violation for failure to
2 supply records from the November 3rd inspection.
3 Q. Okay. And are the records listed in the document?
4 A. Yes.
5 Q. So this notice of violation was not for any sort
6 of report after the discharge?
7 A. Correct.
8 Q. And by the time you met with Mr. Freedman on
9 March 22nd at the farm, had you provided any of
10 those records?
11 A. No.
12 Q. So the records that are contained in Respondent's
13 Exhibit 13---
14 A. That was a one-day event. We had asked for a
15 year's worth of rainfall records, lagoon levels,
16 pumping records.
17 Q. And do you know - do you know from personal
18 knowledge when this - when Respondent's Exhibit 13
19 was received?
20 A. Number 13? No, ma'am, I do not recall.
21 MS. OLIVER: All right. I have no
22 further questions.
23 THE COURT: Further questions?
24 MR. GRADY: Just a couple of follow-ups.
25 - - - - - - - -

1 FURTHER RECROSS-EXAMINATION

2 BY MR. GRADY:

3 Q. The reel at three-thirty on the afternoon of the
4 27th - the reel will not pull the hose in unless
5 the motor is primed, is that correct?

6 A. Right.

7 Q. Was the motor cranked at three-thirty?

8 A. No, sir. The system - there was no water---

9 Q. Okay. So somebody between three-thirty that
10 afternoon and eight-thirty the following morning
11 would have had to go that farm and crank that
12 machine up to pull that reel to where it
13 eventually wound up, is that correct?

14 A. That's correct.

15 MR. GRADY: That's all.

16 THE COURT: All right. Thank you, sir.
17 Further evidence?

18 MS. OLIVER: All right. Your Honor,
19 we'd call Art Barnhardt.

20 THE COURT: Come around, please. Left
21 hand on the Good Book and raise your right
22 hand.

23 MS. OLIVER: Actually, may we take a
24 five-minute, ten-minute - five-minutes.

25 THE COURT: About ten minutes. Eight

1 minutes.
2 (Thereupon, a brief recess was taken.)
3 - - - - - - - -
4 STEPHEN ARTHUR BARNHARDT,
5 a witness called on behalf of the Respondent, being
6 first duly sworn in the above-entitled matter, was
7 examined and testified on his oath as follows:
8 THE COURT: Before we get to his
9 testimony, let's put on record, because I'm
10 not sure we did awhile ago, that there are
11 stipulations that are numbered 1 through 15
12 on two pages that both parties are agreeing
13 to admit. All right. I've got those.
14 MS. OLIVER: And, Your Honor, during the
15 break, Mr. Grady and I discussed admission of
16 certain exhibits that have been testified to,
17 and I believe he's willing to stipulate to
18 Exhibit - admission of Exhibit 6, 7, 12, and
19 15.
20 (RESPONDENT'S EXHIBIT NOS. 6-7, 12,
21 (AND 15 OFFERED INTO EVIDENCE
22 MR. GRADY: That's correct.
23 THE COURT: All right. Those are
24 admitted.
25 - - - - - - - -

1 (RESPONDENT'S EXHIBIT NOS. 6-7, 12,
2 (AND 15 RECEIVED INTO EVIDENCE
3 **DIRECT EXAMINATION**
4 **BY MS. OLIVER:**
5 Q. Would you please state your name.
6 A. Yes. My name is Stephen Arthur Barnhardt.
7 Q. Would you spell your last name?
8 A. B-a-r-n-h-a-r-d-t.
9 Q. And that's Stephen with a p-h?
10 A. Yes. S-t-e-p-h-e-n.
11 Q. Okay. And what is your occupation?
12 A. I'm the environmental program manager at the
13 Division of Water Quality's Aquifer Protection
14 Section.
15 Q. And does your - does the Aquifer Protection
16 Section oversee the animal waste program?
17 A. Yes. We see - we oversee the animal program as
18 well as other ways of discharging-type facilities,
19 nonanimal-type facilities, and other minor program
20 areas such as well construction and resource
21 evaluation.
22 Q. Okay. Can you explain briefly the scheme for
23 becoming permitted - at this time - permitted to
24 operate an animal waste management system in North
25 Carolina?

1 A. Let me make sure I understand your question
2 directly, so if you would repeat it.
3 Q. Could you explain the scheme--- And I'm referring
4 to - we have three exhibits admitted, something
5 called a General Permit, a Certificate of
6 Coverage, and the Nutrient Management Plan.
7 Can you explain how - or rather if they fit
8 together and how they fit together?
9 A. Yes. Yes. A farm is issued a certificate of
10 coverage to operate a farm and spray waste onto
11 land. The conditions of the permit are a general
12 permit, and so the certificate of coverage and the
13 general permit go together, companion documents,
14 and the general permit refers to a waste
15 management plan which specifies the specifics of
16 how waste is supposed to be applied on that
17 particular piece of property.
18 Q. And do you know whether the Ronald Davis farm,
19 when Mr. Freedman owned it, was considered a large
20 animal feeding operation?
21 A. I would just categorize it as sort of a medium-
22 large, medium - somewhere in that range.
23 Q. And just - I forgot to ask you this: How long
24 have you worked for DWQ?
25 A. I've been with DWQ since 1989.

1 Q. Okay. And how long have you been in the position
2 you're currently in?
3 A. I became supervisor of this group in 1996.
4 Q. And what did you do before?
5 A. I was a hydrogeologist with the Division of Water
6 Quality, a staff level position, and the position
7 I'm currently is management. I do hiring and
8 supervising the program delivery.
9 Q. All right. Are all the - are the requirements for
10 operating a waste management system contained in
11 the documents that have been admitted as
12 Exhibits 1 through 3? I just want to make sure
13 the record shows---
14 A. Yes. And I would like to add that there are
15 guidance documents that our permittees are
16 referred to. Like 1217 guidance that - some
17 additional fill-in-the-blank kinds of information
18 specific to crops and land applications or
19 application windows and things like that, how to
20 manage your crops a little bit better. So this is
21 probably ninety-five percent of everything that a
22 farmer would use.
23 Q. Okay. And do you know - would Mr. Freedman have
24 been provided a copy of the general permit along
25 with the certificate of coverage?

1 A. Generally, he would have been.
2 Q. Okay. Would you look at Respondent's Exhibit 2,
3 page 1, and the last paragraph, could you read the
4 first sentence?
5 A. "Please carefully read this COC and the enclosed
6 general permit."
7 Q. And the first part of the underlined---
8 A. "Please pay careful attention to the record-
9 keeping and monitoring conditions in this permit."
10 Q. Okay. And this was issued on what date?
11 A. April 9, 2003.
12 Q. And are the record-keeping and monitoring
13 requirements set forth in the permit?
14 A. Yes, they are.
15 Q. Would you turn to Respondent's Exhibit 6. And is
16 that your signature on the second page?
17 A. Yes, it is.
18 Q. Okay. And was it your decision to issue this
19 notice of violation?
20 A. Yes, it was.
21 Q. And what is the purpose of the notice of
22 violation?
23 A. It's to put the permittee on notice that,
24 according to his permit, he is in violation of, in
25 this case, one condition, and he was specified a

1 corrective action to follow in order to comply
2 with the terms of his permit.
3 Q. All right. So in this document, you only cited
4 him for the ponding, is that correct?
5 A. That is correct.
6 Q. And do you know if he was ever assessed a penalty
7 for the ponding?
8 A. He was not.
9 Q. Okay. All right. And would you turn to
10 Respondent's Exhibit 7? Would you - I guess - I
11 mean that's your document, correct? You sent that
12 out?
13 A. Yes.
14 Q. And it's labeled "Notice of Violation Notice of
15 Intent." What's the difference between a notice
16 of violation and notice of intent? What's the
17 difference between this document and just a simple
18 notice of violation?
19 A. The previous document we discussed and this one
20 differ with the notice of intent being shown in
21 the subject line. That notice of intent is
22 relative to putting the permittee on notice that
23 it is our intention, if we don't get the issue
24 resolved, that we would proceed with an
25 enforcement case which the potential outcome would

1 be a civil penalty.
2 Q. And what is the maximum civil penalty that the
3 Division has authority to assess per day for
4 violations?
5 A. Twenty-five thousand dollars per day per
6 violation.
7 Q. And in this document, you set forth a compliance
8 day for the provisions of all the documents listed
9 in 1, 2, and 3 above, is that correct?
10 A. That's correct.
11 Q. And did Mr. Freedman provide all the records
12 requested before - on or before January 4th, 2005?
13 A. No, ma'am, he did not.
14 Q. Okay. Are you aware of any other records that
15 he's provided with regard to any of the notices of
16 violation that are not - that you have not seen
17 today presented in this notebook?
18 A. None that I have not seen today.
19 Q. And you didn't go out to the site on January 28th,
20 2005, did you?
21 A. No.
22 Q. Okay. Would you turn to Respondent's Exhibit 12?
23 Did you issue that document?
24 A. Yes, I did.
25 Q. And what was the purpose of this document?

1 A. This, again, is a notice of violation with intent.
2 This was a document that was dated after the
3 discharge event, and the violations in this
4 document incorporated the discharge as well as a
5 violation for failing to do the required reporting
6 after the discharge had occurred on the
7 January 28th date.
8 Q. Okay. So this violation 2 does not relate to the
9 records that were requested in November and
10 December, is that correct?
11 A. That is correct. It's a requirement - this
12 violation pertains to a requirement that full
13 disclosure of what caused the discharge - provide
14 us with every detail that's available that would
15 help us reconstruct what happened.
16 Q. And did you - how did you attempt to communicate
17 this with Mr. Freedman?
18 A. Through certified mail.
19 Q. Okay. And did you get a signed return receipt
20 from him?
21 A. No, ma'am.
22 Q. Did you receive anything back?
23 A. We received - we received the letter back
24 unclaimed.
25 Q. And that's a copy of the letter on page 3 of

1 that--- I'm sorry.
2 A. Yes. It's page 3.
3 Q. All right. And so how did you ultimately have him
4 served?
5 A. We contacted Columbus County Sheriff's Department
6 and requested service.
7 Q. Would you turn to Respondent's Exhibit 13? Do you
8 recognize that document?
9 A. Yes.
10 Q. Do you know when this information was received by
11 the Division of Water Quality?
12 A. Normally, a document that comes through the US
13 mail has a date stamp on it. This one does not.
14 I have looked in the file and did see where this
15 document was faxed to us - and I'm going to have
16 to refer to my file record to get that cover page.
17 If I could have just a second.
18 (Thereupon, there was a pause in the
19 proceeding.)
20 A. (continuing) I'm having trouble locating it, but
21 it was sometime in March of 2005. Gino Kennedy
22 did fax it to us. And there was a header at the
23 top of the page that indicated date and time
24 stamp, and it is somewhere in my file. In the
25 interest of time, I'd be happy to either continue

1 looking for it or we can move on.
2 Q. Okay. Well, the page 2 - or 3 and 4 - 2, 3, and 4
3 indicate January 28th, 2005. Is that the date you
4 received it?
5 A. No, ma'am. It was a different date than that.
6 Q. Is that your fax number at the top of the page?
7 A. Page 2?
8 Q. 252/568---
9 A. No. I believe that's the number of the Agriment
10 Services where it came from - the source number.
11 Q. Okay. Did your office - other than - in this
12 case, did your office receive any other reports of
13 vandalism or sabotage at a hog farm during the
14 period 2004 and 2005?
15 A. No.
16 Q. Did you participate in the decision to assess the
17 civil penalty?
18 A. Yes. As my role as program manager, the staff
19 will bring me the factual information and the
20 information that they gather through there routine
21 activities, and the final decision whether or not
22 to proceed with enforcement relies on my
23 shoulders. So it was, in fact, my decision to
24 move ahead with the evidence that we had.
25 Q. Okay. And can you explain--- We've admitted

1 Respondent's Exhibit 15. Can you explain what the
2 penalty was based upon?
3 A. There were three items assessed in this document.
4 The discharge was assessed four thousand dollars.
5 One thousand dollars was assessed for condition 2-
6 20 of the permit for applying waste to the land
7 that was frozen. And a thousand dollars was
8 assessed for condition number 3, number 19 for
9 failing to provide information upon request. That
10 relates back to the November 3rd inspection.
11 Q. And is that information identified in paragraphs G
12 and - sorry - in paragraphs H and I on page 3?
13 A. That is correct.
14 Q. And do you - can you just tell us what--- He was
15 charged investigative costs. Do you know the
16 basis of that?
17 A. Investigative costs pertain to how much it takes
18 us to investigate in terms of staff hours and any
19 expenses we incur in the laboratory for running
20 samples, mileage, certified mail, tangible
21 expenses.
22 Q. And based on anything you've heard today, if you
23 had the decision to make over again today, would
24 you make a different decision?
25 MR. GRADY: Objection.

1 THE COURT: Sustained.
2 THE WITNESS: That means I need to
3 answer, right?
4 THE COURT: It means you do not.
5 Q. Why did you believe that Mr. Freedman should be
6 assessed a penalty for making an outlet to waters
7 of the State without a permit?
8 A. Well, that is a program expectation of every DWQ
9 office. We enforce on all discharges. If it's an
10 act of God, a hurricane condition, those are the
11 types of things that would be exempted, but
12 whenever we have a permit-prohibited discharge
13 that reaches waters or wetlands of the State, then
14 our administrative management expects us to do
15 enforcement on those types of activities. That's
16 sort of a core program value.
17 Q. Core program value?
18 A. Yes.
19 Q. And do you know if that--- Let's go back to
20 Exhibit 1. On page 1, would you read the - under
21 the performance standard, the first sentence of
22 that paragraph---
23 MR. GRADY: What exhibit are you on?
24 MS. OLIVER: 1.
25 A. Okay. "Any discharge of waste which reaches

1 surface water or wetlands is prohibited except as
2 otherwise provided in this permit and associated
3 statutory or regulatory provisions."
4 Q. And go on.
5 A. "Waste shall not reach surface waters or wetlands
6 by runoff, drift, manmade conveyance, direct
7 application, direct discharge, or through ditches
8 not otherwise classified as state waters."
9 Q. And are you aware of any exemptions or exceptions
10 to that rule? You mentioned hurricanes---
11 A. Right. There is a threshold storm event called a
12 twenty-four-hour, twenty-five-year storm which
13 would provide an exemption for a discharge to
14 waters of the State. That's primarily the only
15 exemption that I can think of.
16 Q. And are these requirements in the general permit -
17 are they issued pursuant to the Clean Water Act -
18 Federal Clean Water Act?
19 A. Yes. They all originated in the Clean Water Act
20 legislation.
21 Q. What about the other requirements in the document;
22 do you know?
23 A. Some of the requirements are state requirements.
24 Most of the structure of an NPDES permit is based
25 on the Clean Water Management Act, and so - I'm

1 not sure if I answered your question.
2 Q. You've answered it the way you answered it.
3 That's fine.
4 And under the scheme - the general permit
5 certificate of coverage, who is responsible for
6 providing or maintaining and providing records to
7 the Division?
8 A. The permit holder is the responsible party that
9 we're allowed to interact with on a regulatory
10 stance.
11 Q. Okay. All right. And did you do any calculations
12 to determine how much waste was discharged that
13 day?
14 A. Yes, I did. In fact, after the event had
15 occurred, used the ag engineering formula for a
16 trapezoid-shaped lagoon to estimate how many
17 gallons was in a lagoon drop the size and shape of
18 the Ronald Davis farm of four inches, and I
19 provided some calculations in a worksheet format.
20 Q. Will you turn to Respondent's Exhibit 18? Do you
21 recognize that document?
22 (RESPONDENT'S EXHIBIT NO. 18
23 (MARKED FOR IDENTIFICATION
24 A. Yes. This is my handwriting and the work that I
25 did.

1 Q. Can you tell us, based on your own calculations,
2 how many gallons were discharged that day?
3 A. The two numbers that I have circled is the range
4 that I would estimate was removed from the lagoon.
5 A four-inch drop - the way my calculations came
6 out - is equal to about two hundred - two hundred
7 and eight thousand gallons rounded off. And the
8 other number circled at the top of the page is
9 just one hundred and eighty gallon per minute
10 times sixty minutes times an estimated fourteen
11 hours. That was an estimate based on the time
12 that staff saw the gun not running and when they
13 got back and what the maximum window of time would
14 have likely been, and so that was sort of an
15 estimate. And the larger number is actually the
16 volume based on a four-inch drop in the lagoon.
17 Q. And the top number - you have one-eighty GPM. Is
18 that gallons per minute?
19 A. Those are units, gallon per minute.
20 Q. Okay. And is that within the range that - did you
21 hear Mr. Freedman's testimony?
22 A. Yes. And for estimation purposes, that's close
23 enough.
24 MS. OLIVER: And, Your Honor, I move to
25 admit Respondent's---

1 (RESPONDENT'S EXHIBIT NO. 18
2 (OFFERED INTO EVIDENCE
3 THE COURT: I don't have a copy of it.
4 MS. OLIVER: Oh, you don't? All right.
5 THE COURT: Any objection, Mr. Grady?
6 MR. GRADY: No, Your Honor.
7 THE COURT: All right. Then it's
8 admitted.
9 (RESPONDENT'S EXHIBIT NO. 18
10 (RECEIVED INTO EVIDENCE
11 Q. Okay. And Mr. Brantley testified that he had a
12 meeting scheduled July 28th - I mean January 28th,
13 2005. Were you going to participate in that
14 meeting as well?
15 A. I think actually Mr. Freedman was coming to the
16 office to talk about two different things that
17 morning, a show cause meeting which had to do with
18 his permit compliance, and I was probably not
19 going to sit in on that one.
20 Mr. Freedman did want to talk with me
21 personally about my knowledge of another farm
22 called the Ray Reeden farm he was looking at
23 purchasing and the compliance history associated
24 with that, and I was going to get the file out for
25 Mr. Freedman and go over the goods and the bads

1 about that particular farm and how - the track
2 record we had on it.
3 Q. Okay. All right.
4 MS. OLIVER: I have no further
5 questions, Your Honor.
6 THE COURT: All right. Questions?
7 MR. GRADY: Thank you.
8 **CROSS-EXAMINATION**
9 **BY MR. GRADY:**
10 Q. So how many, in the last two years, instances of
11 sabotage have you assessed a penalty for?
12 A. None.
13 Q. How many reports of sabotage have you had in the
14 last few years?
15 A. None. Let me rephrase that. Two years? Well,
16 the only report that I've had of sabotage is
17 Mr. Freedman's.
18 Q. How about in the McQueen Campbell farm?
19 MS. OLIVER: Where?
20 MR. GRADY: McQueen Campbell farm.
21 A. I don't recall anyone indicating sabotage. If it
22 was prior to 2004, I would not have been involved
23 in the animal waste program at that time.
24 Q. So it's your position that you would assess
25 penalty even if you had proof of sabotage?

1 A. No, that is not my testimony. I would take into
2 account all factors relating to the facts
3 surrounding the case, and that's---
4 Q. So the four thousand---
5 MS. OLIVER: If he could finish his
6 answer.
7 MR. GRADY: I'm sorry. I apologize.
8 I'll withdraw it.
9 A. In this case, that's what I did. I evaluated the
10 statements that Mr. Freedman made to staff, and we
11 came to the obvious conclusion that we still
12 needed to go with an assessment.
13 Q. So, therefore, you came to the conclusion that it
14 was not sabotage?
15 A. I came to the conclusion that the evidence did not
16 support anything other than a failed irrigation
17 attempt that went wrong.
18 Q. So it was your opinion that this was caused by
19 Mr. Freedman?
20 A. There was no indication that this was caused by a
21 third party. I'm not sure if Mr. Freedman
22 personally started the pump or somebody that he
23 had authorized to do it started the pump, but it
24 just looked like a failed irrigation. And I'm not
25 sure of all the details on who did his irrigation.

1 That was primarily one of the reasons we were
2 wanting to know - to gain more details, we were
3 asking for his records and trying to get familiar
4 with his operation. So---
5 Q. So the four-thousand-dollar fine was based upon
6 the premise that either Mr. Freedman caused the
7 discharge or his employee or his agent?
8 A. That is correct.
9 Q. And if, in fact, there was evidence - you felt
10 like there was sufficient evidence that a third
11 party had done it, this amount of fine would not
12 have been assessed?
13 A. If my conclusion had been that it would have been
14 sabotage and there was clear evidence of a
15 discharge, the fine may have been substantially
16 different.
17 Q. And, in fact, there have been occasions where
18 fines were not assessed for sabotage by your
19 agency; is that not true?
20 A. I'm not personally aware of them, but I can't
21 dispute that as a fact.
22 Q. You've come up with investigative costs of nine
23 hundred and sixty-eight dollars, I think. Do you
24 have a list of how you calculated that?
25 A. I don't believe I saw that in the file material.

1 Generally, staff will calculate it out and submit
2 it as part of the enforcement package that goes up
3 to our section chief who signs the assessment
4 document. So the original copy of that worksheet
5 would be with that paperwork in our central
6 office.
7 Q. You don't have a copy of it?
8 A. No. Whenever it left our regional office to go to
9 Mr. Ted Bush, who signed the assessment document,
10 the official file for - well, he evidently kept
11 that part of the written record in Raleigh.
12 Q. Have you seen the actual man-hours?
13 A. I did at the time that I sent the package up.
14 Q. How many were used?
15 A. I don't recall now. It's been way too long to
16 remember the specifics.
17 Q. Okay. So as of today, you can't recollect the
18 formula that was used to determine the
19 investigative costs?
20 A. I can tell you the process.
21 Q. I'm talking about the formula - the number of
22 hours times the dollar amount.
23 A. Each staff person has a dollar amount based on his
24 salary, and he'll multiply the number of hours he
25 spent addressing this release, and then they'll

1 add in things like certified mail receipts,
2 laboratory costs. And so we had time for Mark and
3 time for Larry and an hour or so of my time
4 reviewing the document, But the specifics, I do
5 not remember.
6 Q. You don't have any - you can't testify to that
7 formula because you don't know the number of hours
8 as you sit here today, do you?
9 A. That is correct.
10 Q. Have you provided that formula to anyone?
11 A. It's in the documents supporting the enforcement
12 case.
13 Q. Has a copy of those been given to Mr. Freedman?
14 A. Mr. Freedman would have gotten only a portion of
15 those documents relating to the assessment
16 paperwork.
17 Q. Now if you look at Plaintiff's Exhibit Number 6.
18 Is that the actual notice--- Well, excuse me.
19 Let's go to Number 7. That's the notice of your
20 intent to assess a penalty due to the recording
21 issues on the November incident, is that correct?
22 A. That is correct.
23 Q. Is there a return receipt to show where
24 Mr. Freedman received that?
25 MS. OLIVER: Number 6?

1 MR. GRADY: 7.
2 MS. OLIVER: I'm sorry. I have one. Do
3 you not?
4 MR. GRADY: It's not in mine.
5 MS. OLIVER: I've done a bad job. I'm
6 sorry. I have---
7 A. To answer your question, there's not one in this
8 document here.
9 Q. You do not have one either?
10 MS. OLIVER: I'm sorry. I can provide
11 those.
12 THE COURT: Is that showing where has
13 actually signed for one? Have I got the
14 right thing or not?
15 MS. OLIVER: Yes.
16 THE COURT: It shows just - I don't
17 think I have where he signed for it.
18 A. I do have a copy in my office file - a copy of the
19 return receipt.
20 Q. Do you have that with you now?
21 A. Yes, sir.
22 Q. And does that show it was received - mine shows it
23 was received on January 3rd, 2004.
24 A. That is what mine shows as well.
25 Q. Well, that was significantly before the event even

1 occurred, wasn't it? Didn't the event occur in
2 November of 2004? Maybe I'm reading it wrong.
3 A. I believe what we're seeing here is Mr. Freedman
4 accidentally dating the receipt incorrectly.
5 January - it should have been probably
6 January 3rd, 2005. That's my guess of what
7 happened here.
8 Q. Well, do you know if Mr. Freedman dated that?
9 A. I do not, but that's my estimation of what
10 happened there.
11 Q. The reality is, the receipt shows a date of
12 delivery of January 3rd, 2004, does it not?
13 A. That is exactly correct.
14 Q. Then if you would look at Exhibit Number 12. Now
15 this exhibit is basically a notice of intent for
16 failing to notify you as to giving you written
17 descriptions of the discharge, the time of the
18 discharge, and the cause of the discharge, is that
19 correct? That's violation 2?
20 A. That's violation number 2.
21 Q. The fact is, you already knew the answer to those
22 questions, but you didn't have it in writing to
23 your satisfaction?
24 A. We knew the answer to some of those questions. We
25 did not have an adequate answer to the cause

1 and--- Let's see.
2 Q. Well--- Go ahead.
3 A. Just a second while I catch up on some reading
4 here.
5 (Thereupon, there was a pause in the
6 proceeding.)
7 A. (continuing) Yeah. The cause of the discharge is
8 primarily what we were interested in here. We
9 basically knew the time.
10 Q. Well, Mr. Brantley had already testified that he
11 knew on the day - on January 28th, 2005, that -
12 what Mr. Freedman's explanation was for the
13 discharge, that it was caused by a third party,
14 isn't that true?
15 A. It was - it was stated to Mr. Brantley or
16 Mr. Baxley at some point in time.
17 Q. So on the same day it happened, it's fair to say
18 that you knew what his position was and the cause
19 of the discharge?
20 A. I'm not sure at what time I was relayed the
21 information.
22 Q. Now you say that Exhibit Number 13 was sent to you
23 sometime in March, is that correct?
24 A. That is correct.
25 Q. So is it your position, then, that--- When did

1 you actually serve or get service of the notice of
2 intent dated February 7th, 2005, on Mr. Freedman?
3 When was he served by the sheriff?
4 A. I'd say that service was delivered the 21st of
5 March, 2005.
6 Q. So the letter that you received from him could
7 have come within a few days after - even if you're
8 correct, you got it sometime in March - it could
9 have come either before or after - shortly after
10 that?
11 A. Yeah. I believe that's - that is true or that is
12 an assumption at this point I am willing to go
13 with.
14 Q. Okay. And the fact is that by the time he
15 received Exhibit Number 12, he had already
16 voluntarily requested you to come on-site and do a
17 complete inspection of his premises; is that not
18 true?
19 A. I don't recall the invitation.
20 Q. Well, let's look at Exhibit Number 14. I'll
21 rephrase that question. On the day after he got
22 his notice, there was an on-site inspection which
23 he fully cooperated with, wasn't there?
24 A. It appears so, yes.
25 MR. GRADY: That's all.

1 REDIRECT EXAMINATION

2 BY MS. OLIVER:

3 Q. Do you have any personal knowledge as to whether
4 he cooperated? Do you have any personal
5 knowledge?
6 A. Not firsthand. The feedback that I get comes from
7 my staff and my knowledge of his level of
8 cooperation - what I've heard today in testimony
9 and what I was told during the time that these
10 events were taking place.
11 Q. Okay. And the date on the return receipt for the
12 first notice of violation and notice of intent, do
13 you have that in front of you?
14 MS. OLIVER: I think you gave that back
15 to me, didn't you, Gary?
16 MR. GRADY: Huh?
17 MS. OLIVER: Did you give that back to
18 me?
19 MR. GRADY: Uh-huh.
20 THE COURT: Is it this one?
21 MS. OLIVER: Yes.
22 Q. What is the date that Mr. Freedman indicated that
23 he signed that?
24 A. January 3rd, 2004.
25 Q. Okay. Was that three days into the new year?

1 MR. GRADY: Well, objection. There is
2 no evidence that Mr. Freedman signed - dated
3 that document. In fact, the only evidence is
4 that he didn't know who dated the document.
5 MS. OLIVER: I can recall Mr. Freedman
6 and ask him. He did testify he received it.
7 MR. GRADY: Is this testimony of yours?
8 MS. OLIVER: No. I'm just discussing it
9 with you.
10 THE COURT: The document shows somebody
11 signed for it and dated it that day, so---
12 Q. Okay. Other than Mr. Freedman's statements that
13 there was sabotage, have you found any other
14 evidence to support that conclusion?
15 A. Well, from the time that the event occurred till
16 today, I tried to keep an open mind on could that
17 be a possibility, and what I have to rely on is
18 the feedback I get from my staff and what their
19 gut feeling on it is, and I am comfortable in the
20 decision I made to not accept tampering as a - as
21 a plausible explanation for this.
22 Everything else appears like it was an
23 ordinary application event that was left
24 unattended and a discharge occurred. And I would
25 have been, as long as this case has gone on, open

1 to reexamining any evidence, but none credible has
2 come forth for me to act on or to evaluate.
3 Q. And could the - could the pipe from the hydrant or
4 from the pump to the hydrant have been uncoupled?
5 I believe Mr. Freedman said it was coupled. Could
6 someone disengage the pipe that leaves the pump to
7 the hydrants and cause a discharge?
8 A. Conceivably, yes. If sabotage were the aim of
9 someone, they could have configured this event to
10 make more damage than it did. I'm not sure on
11 this particular hardware whether or not his pump
12 would operate or not. But if the pump was
13 disengaged from the hydrant, obviously, it would
14 pump a lot more than one hundred and eighty
15 gallons per minute. It would throw a lot more
16 water than that. It would create a much bigger
17 mess. But some of these pumps have safeguards
18 against that.
19 Q. And before today, has anyone requested a copy of
20 the methodology and the calculation that you
21 used - that the agency uses to determine
22 investigative costs?
23 A. No, that was the first time I've been asked that.
24 Q. Okay. And the penalty was assessed in May of
25 2005?

1 A. That sounds correct.
2 MS. OLIVER: I have no further
3 questions.
4 THE COURT: Further questions?
5 MR. GRADY: A couple of follow-ups, Your
6 Honor.
7 THE COURT: All right, sir.
8 **RECROSS-EXAMINATION**
9 **BY MR. GRADY:**
10 Q. Now I think you've established that on
11 January 27th, 2005, through your employee, the
12 reel was in the field, the motor was not running,
13 and the reel had been moved sometime between
14 three-thirty and between eight-thirty the next
15 morning, is that true?
16 A. Yes.
17 Q. The reel - to be moved - the pump would either
18 have to be primed - the motor would have to be
19 primed or somebody would have to physically move
20 it in some other manner, is that true?
21 A. That is true.
22 Q. And Mr. Freedman had advised your agency that he
23 didn't do it, that it was an act of sabotage, is
24 that true?
25 A. That is what he did state.

1 Q. What investigation have you done to determine
2 where Mr. Freedman was between three thirty-five
3 p.m. on January 27th, 2005, and eight-thirty a.m.
4 on January 28th, 2005?
5 A. We requested Mr. Freedman to provide us with any
6 and all information relating to this discharge,
7 and if he wanted to provide that, he could have
8 done so.
9 Q. Would you provide me the document that you gave to
10 him which requested his whereabouts during that
11 time period?
12 A. There is no such document. There's a general
13 statement in the notice of violation asking for
14 information relating to the cause of the
15 discharge.
16 Q. It's fair to say that you did no independent
17 investigation as to his whereabouts?
18 A. That is true.
19 Q. You did no independent investigation as to
20 sabotage, did you?
21 A. That is true.
22 Q. So the only evidence that you had was
23 Mr. Freedman's statement, is that true?
24 A. That is true.
25 MR. GRADY: That's all.

1 THE COURT: Let me ask a couple of
2 questions and maybe some more.
3 Look at Number 6, I think - yeah, 6 -
4 Exhibit 6. That notice of violation is dated
5 November 22nd, correct?
6 THE WITNESS: Yes, sir.
7 THE COURT: Number 7 should have
8 followed that letter, correct?
9 THE WITNESS: Yes, sir. And it did.
10 THE COURT: Dated November 17th?
11 THE WITNESS: There is a typographical
12 error on that document. That was sent out on
13 or about December the 28th.
14 THE COURT: And Number 7 was sent---
15 THE WITNESS: Exhibit 7.
16 THE COURT: ---sent on or about
17 December the 28th?
18 THE WITNESS: Yes, sir.
19 THE COURT: But you're asking for him to
20 supply items before December the 8th.
21 THE WITNESS: That was phrased - that
22 was a - if you'll read the line before that,
23 "The notice of violation received by you on
24 November 29th, '04, requested the following
25 information." That part of the letter was

1 clipped from the old letter and inserted, so
2 that date remained. That's just a recaption
3 of what the former letter asked for.
4 THE COURT: Okay. How do you know that
5 this went out about December 28th?
6 THE WITNESS: Let's see. I believe what
7 we had to do in this case was - we log our
8 incoming and outgoing mail. If my memory
9 serves me correctly, we checked with our
10 administrative assistant that logs that, and
11 that's where we got the date from. There
12 would have been a return receipt, which is
13 the one that's dated 2004 that's in dispute,
14 which if that had had the five on the end of
15 the receipt, those dates would make - that
16 would follow logically - late December date.
17 THE COURT: Further questions,
18 Ms. Oliver?
19 **FURTHER REDIRECT EXAMINATION**
20 **BY MS. OLIVER:**
21 Q. With regard to that document, Respondent's
22 Exhibit 7, would you look at the third page?
23 There's a copy of a certified mail receipt at the
24 top of the page - I mean---
25 A. Yes.

1 Q. What is the postmark date on that document?
2 A. That's December 29, '04.
3 Q. Okay. And is that information kept in the
4 ordinary course of business by your office?
5 A. Yes.
6 Q. Okay. And on the next page that I have, when does
7 it indicate that your office received a return
8 receipt signed by Mr. Freedman?
9 A. January 5, 2005. That's our date stamp that we
10 use in our office.
11 Q. All right.
12 MS. OLIVER: And, Your Honor, the only -
13 well, I know this is not on direct, but I
14 would like to have this admitted. It's been
15 used by all the witnesses to---
16 (RESPONDENT'S EXHIBIT NO. 21
17 (OFFERED INTO EVIDENCE
18 MR. GRADY: No objection.
19 THE COURT: Okay. Was it---
20 MS. OLIVER: It's Respondent's Exhibit
21 21.
22 THE COURT: 21. Okay.
23 MS. OLIVER: It's not in the book.
24 THE COURT: All right. That's admitted.
25 - - - - - - - -

1 (RESPONDENT'S EXHIBIT NO. 21
2 (RECEIVED INTO EVIDENCE
3 MS. OLIVER: And I'll get copies of the
4 things that are missing. But I have - I
5 don't know - I have no further questions of
6 this witness.
7 THE COURT: Any more questions,
8 Mr. Grady?
9 MR. GRADY: Yes, Your Honor. Just
10 probably one or two.
11 **FURTHER RECROSS-EXAMINATION**
12 **BY MR. GRADY:**
13 Q. Going back to Exhibit Number 7, going to the
14 statute and dealing with December the 8th, just to
15 make it easy for you, are you with me?
16 A. Yes, sir.
17 Q. Well, when you say "The Division of Water Quality
18 requests as you submit the following items before
19 December the 8th," that's using the future tense,
20 is it not?
21 A. That is correct.
22 Q. So it doesn't say that you requested it? I've
23 seen your prior notice, and that was the date in
24 the prior notice, but you didn't use the past
25 tense in that part of the letter, did you?

1 A. That's correct.
2 Q. And that makes the compliance issue confusing,
3 does it not?
4 A. I guess it could very well.
5 MR. GRADY: Thank you. That's all.
6 MS. OLIVER: I have a question. This is
7 the last one, Your Honor.
8 THE COURT: No. We've got enough.
9 MS. OLIVER: Well, okay. The document
10 will speak for itself. The sentence above
11 says, "The notice of violation---"
12 MR. GRADY: Your Honor, I object to her
13 testifying---
14 THE COURT: Sustained.
15 MS. OLIVER: Okay.
16 THE COURT: Sustained. Further
17 evidence?
18 MS. OLIVER: I would like to call Larry
19 Baxley after - when we can arrange a time for
20 him to testify.
21 THE COURT: Let me go over the - let me
22 go over the permit - I mean the exhibits. I
23 have 1 through 8. 9 and 10, I do not have
24 either identified or admitted. 11 through
25 15. 16 was the prehearing statement, which I

1 excluded. 17, I do not have identified or
2 admitted. 18 is in. 19, no. and then 21
3 through 22. Is that correct?
4 MS. OLIVER: And - yes.
5 THE COURT: Okay. All right. And do
6 you want to see about setting up a time
7 convenient with everyone to examine
8 Mr. Baxley?
9 MR. GRADY: Your Honor, this is what
10 we're dealing with. He is in the middle of
11 taking in tobacco.
12 THE COURT: And bless his heart, I swear
13 I'd never do that again. The last time I
14 tried, I was twenty-four years old, but it
15 was different then.
16 MR. GRADY: We're wondering if the Court
17 would consider a mid September date.
18 THE COURT: By the time we could
19 coordinate everything, that probably would
20 work out better anyway. I know that the last
21 week--- Well, let me think. Yeah, mid
22 September will probably work because I think
23 the first week I'm scheduled for hearings
24 around the Asheville area - Asheville and
25 Morganton, and then the last week, I'm gone.

1 So somewhere in that range, and if you-all
2 just want to coordinate with Vickey and---
3 MS. OLIVER: Can you tell me - the third
4 week you'll be in Asheville, is that correct?
5 THE COURT: I think it's the second
6 week.
7 MS. OLIVER: Second week in Asheville.
8 THE COURT: It might be the first -
9 actually, somewhere in there. I just wake up
10 and ask them where I'm supposed to go.
11 MS. OLIVER: I think it's the week after
12 Labor Day is when the docket is being
13 scheduled in [inaudible].
14 THE COURT: There should be at least two
15 weeks in there that I think we would have
16 some available dates.
17 MS. OLIVER: We'll contact Vickey
18 Bullock; is that what we do?
19 THE COURT: Uh-huh.
20 MS. OLIVER: And we'll also have to talk
21 with Mr. Baxley anyway about making sure he's
22 in town.
23 THE COURT: Okay. Were you going to
24 want to put on some rebuttal evidence at the
25 same time, or are we going to have to look at

1 yet another date beyond that?
2 MR. GRADY: I think we could do it at
3 the same time. I just anticipate that we'll
4 probably have two rebuttal witnesses that
5 would be brief.
6 THE COURT: All right.
7 MS. OLIVER: Okay. I would like the---
8 Are we off the record?
9 THE COURT: We're off the record now.
10 (Thereupon, at 4:00 p.m., the proceeding
11 was recessed to be reconvened at a later
12 time.)
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1 **CERTIFICATE**

2

3 I, REBECCA P. SCOTT, State-Certified
4 Verbatim Reporter, do hereby certify that the
5 foregoing pages numbered one (1) through two hundred
6 fifty (250), inclusive, constitute a transcript of
7 Volume I of a hearing that was tape-recorded; that I
8 was not in the courtroom at the time of the hearing;
9 that I did listen to the tape recording with
10 diligence; and that the transcript produced is a
11 verbatim record of what is on the tape recording, to
12 the best of my knowledge and belief.
13 I further certify that I am not of
14 counsel for, or in the employment of, either of the
15 parties in this action, nor am I interested in the
16 results of this action.
17 Certified this 19th day of August, 2008.
18
19
20
21 _____
22 REBECCA P. SCOTT
23 STATE-CERTIFIED VERBATIM REPORTER
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