STATE OF NORTH CAROLINA

COUNTY OF DUPLIN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
NO. 10-EHR-5508

| | |
|---|---|
| HOUSE OF RAEFORD FARMS, INC., Petitioner, | |
| v. | TRANSCRIPT OF HEARING |
| NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, Respondent. | |

Before Honorable Augustus B. Elkins II

Administrative Law Judge

FRIDAY, DECEMBER 2, 2011

Courtroom B

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh, North Carolina

9:30 a.m.

Volume 6 of 8

Pages 950 through 1165

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1 **F U R T H E R  P R O C E E D I N G S** 9:31 a.m.
2 The Court: This hearing will come to
3 order. It's now 9:30 on December the 2nd, 2011 and all
4 parties present when we recessed are again present with the
5 exception of our last witness, who completed her testimony.
6 Your next witness, Ms. LeVeaux.
7 Ms. LeVeaux: Yes, Your Honor.
8 (Pause.)
9 Mr. Jones: Your Honor, I just want to
10 insert--okay, I'm sorry. Strike that.
11 Ms. LeVeaux: Your Honor at this time we
12 would call Kenneth Rhame to the stand, please.
13 The Court: Mr. Rhame, if I can have you
14 approach the witness stand, which is here to my right. As
15 you do so, it's our normal practice to swear you in unless
16 you prefer to be affirmed.
17 Mr. Rhame: I'm fine with swearing.
18 The Court: Okay. If you'll place your
19 left hand on the bible, raise your right, and if you'll face
20 the court reporter, please?
21 (Whereupon,
22 **KENNETH RHAME**
23 was called as a witness, duly sworn, and testified as
24 follows:)
25 The Court: Make yourself comfortable, and

1 if you would state your first and last name and spell them
2 both?
3 The Witness: My name is Kenneth Rhame,
4 K-e-n-n-e-t-h R-h-a-m-e.
5 The Court: Thank you. You may direct your
6 attention to Ms. LeVeaux.
7 Ms. LeVeaux: Thank you.
8 **D I R E C T E X A M I N A T I O N** 9:37 a.m.
9 By Ms. LeVeaux:
10 Q Mr. Rhame, could you tell the Court a little bit
11 about yourself, your current employment and a little bit of
12 your background, please?
13 A I'm a federal on scene coordinator for the United
14 States Environmental Protection Agency. I'm currently out-
15 posted in North Carolina. I report to Region 4 in Atlanta.
16 My job duties involve pollution response to hazardous
17 substance and oil spills.
18 Q And is that your current employment as well?
19 A Yes, ma'am.
20 Q And how long have you been doing that?
21 A For USEPA about ten years.
22 (Interruption by noise from computer.)
23 Q I apologize. About ten years, did you say?
24 A Ten years for USEPA, and I was a state on scene
25 coordinator in the state of Indiana for about six years.

1 Q Mr. Rhame, have you testified before?
2 A Yes.
3 Q And let me ask you this. Are you familiar with a
4 discharge that occurred on or about September the 10th or the
5 9th, 2009?
6 A Yes.
7 Q And have you had an occasion to work with the
8 Department of Environment and Natural Resources, particularly
9 the Division of Water Quality and Aquifer Protection?
10 A I have.
11 Q And on or about September the 15th, 2009 did you
12 have the occasion to go out to the House of Raeford?
13 A I did.
14 Q And will you explain to the Court the reason for
15 your going out to the House of Raeford and what happened on
16 or about that date?
17 A I was requested to assist NC DENR in response to a
18 release that impacted Beaverdam Creek.
19 Q You can go on and tell the Court exactly what
20 happened when you went out to assist and about the time of
21 day that you went out.
22 A I don't recall the time of day I got there.
23 Basically there was a report that there was a release to
24 Beaverdam Creek and---
25 Q (interposing) Do you know who made that report?

1 A I talked to NC DENR, but I believe they got the
2 report from a private citizen. I never talked to the private
3 citizen myself, but---
4 Q And you indicated you were called to assist. Can
5 you tell us who asked you to assist?
6 A I talked to Linda with NC DENR out of the
7 Wilmington office and I talked to Rick. And basically we
8 were going to assist them, evaluate, collect samples,
9 determine whether or not more resources needed to be brought
10 in as far as the cleanup, and try to identify a source.
11 Q Okay. And so if you will, explain to the Court
12 what occurred, if you could just take us through what you did
13 on or about September the 15th, to the extent that you can
14 remember, of 2009.
15 A Right. We assessed the creek. We did see a
16 sludge in the creek. There was a fish kill involved. The
17 impact on the creek went for miles. We spoke with House of
18 Raeford, some of their personnel, and asked them if they'd
19 had any upsets, any problems with their system, if they were
20 aware of the sludge that was in the creek, and later asked
21 them to--to mitigate the release.
22 Q Okay. And so when you asked them, if you'll just
23 tell me what their response was? And I can ask you what
24 their response was, but I'd like you to just tell me by you
25 telling your story, if you don't mind.

1 A Well, it depends on who with House of Raeford, you
2 know---
3 Q (interposing) Let me back up, then.
4 A ---I talked to. Okay.
5 Q When you first got to the scene on or about--when
6 you first got to House of Raeford, I'm sorry, on or about
7 September the 15th--how did you get out to the 2B location?
8 A We drove.
9 Q And when you say "we," who are referencing to?
10 A Myself and one of my contractors.
11 Q And who was that contractor?
12 A It was a contractor from OTIE Solutions, a
13 contractor who works for what we call the START contract.
14 They provide---
15 Q (interposing) Is that Mr. Salgado?
16 A No, it was Mr. Rufino.
17 Q Okay.
18 A And they provide technical support to--to response
19 work.
20 Q Okay. I think Mr. Rufino's first name is Salgado.
21 I'm not certain.
22 A Oh.
23 The Reporter: Is it opposite of what you guys
24 have been calling him---
25 Ms. LeVeaux: (interposing) Well, I don't

1 know. And I don't have the name before me, but in any
2 event---
3 A (interposing) I call him--I call him Rufino.
4 Q Okay.
5 A I don't know---
6 Q (interposing) It may be Rufino Salgado. I'm not
7 certain, but I don't want to confuse you.
8 A Okay.
9 Q So you and Mr.--you and this contractor were in
10 the car and you arrived. You said you don't know what time
11 it was that you arrived. So if you'll tell the Court what
12 you did when you arrived?
13 A The first person that we spoke to with House of
14 Raeford, I think, was Joe Teachey.
15 Q Do you recognize him as the operator in charge?
16 A I don't know if he's in charge. I know him--he
17 did say that he was the operator at the facility.
18 Q And then tell the Court what happened.
19 A We questioned him as to if he had seen the sludge
20 in the creek, asked him if they had any upsets with their
21 system. We observed a--some work that had been done on one
22 of the dams, one of the dikes between the primary and
23 secondary lagoon that, you know, drew attention.
24 Q Why did that--why did that draw your attention?
25 A It looked like it had been freshly excavated.

1 They had a trackhoe on the dike, so it was obvious that they
2 did some work. And the work had been done on a culvert that
3 drains the primary lagoon to the second lagoon. And the cut,
4 the excavation, the fresh dirt you could see was below the
5 level that was in the primary lagoon.
6 Q And what significance did that have, if any?
7 A Well, they wouldn't have been able--I don't know
8 that it has significance other than we wanted to know how
9 they were able to do that without having a release, without
10 pumping it down first or without taking some sort of measures
11 to prevent a release.
12 Q And then what happened?
13 A Joe Teachey basically responded that he wasn't
14 aware of any spill that they had. He wasn't aware of any
15 problems or upsets. And we basically continued our assess-
16 ment of the creek and looked at downstream areas as well as
17 upstream.
18 And based on what I saw, my visual observations
19 and, you know, some field screening that we conducted, I felt
20 like that was the likely source. And I went to talk to one
21 of the managers in the facility and---
22 Q (interposing) Do you remember who that was?
23 A Mr. Howard--and explained to him what I saw and
24 asked them to---
25 Mr. Jones: (interposing) Your Honor, for

1 the record, I'm going to object for the reasons that we
2 stated in our motion in limine. And I'm just rehashing this.
3 We made every effort to speak with Mr. Rhame in advance, if
4 necessary--if possible to depose Mr. Rhame. We did that
5 aggressively. We were--and you know the frustration you have
6 trying to get discovery from a federal employee.
7 We received a copy of a letter sometime before the
8 hearing started dated February 25th, 2011 to Anita LeVeaux
9 from Gwendolyn Keyes Fleming. I think we attached this to
10 the motion in limine, so it's in the record.
11 And it says, "Under the circumstances of this
12 case, you have no need to do this discovery. I've talked to
13 Mr. Rhame." "As a fact witness, Mr. Rhame will limit his
14 testimony to his knowledge of the sludge release that he
15 observed in Beaverdam Creek...he will not offer an opinion or
16 conclusion as to the origin of that release."
17 That was the ground rules we were operating as we
18 approached today. If Mr. Rhame, who I respect highly, is
19 going to give opinions about the origin of the release, I
20 think it violates the spirit of this entire thing.
21 The Court: Ms. LeVeaux, your response?
22 Ms. LeVeaux: Your Honor, my response is I'm
23 in the middle of my question. We've had this discussion
24 before. That discussion is on the record. I'm in the middle
25 of asking my--this witness questions. And I think the proper

1 juncture, even if Mr. Jones wanted to put this on the record,
2 would have been before I began my examination of the witness.
3 And certainly I would object. I've objected to it
4 when it was raised before this trial--before this hearing
5 began. And Your Honor, certainly I would object right now.
6 Mr. Jones: Your Honor, I'm glad she said
7 that. That's exactly what we tried to do. That's the reason
8 we made this in the form of a motion in limine at the last
9 session. We knew this was going to arise and we wanted to
10 take care of it in advance, and that was the reason for this.
11 And again, it's an unusual situation. We don't usually run
12 into this, but, you know, the rules we were operating is this
13 (indicating).
14 The Court: And this is the right time when
15 he first starts to do that. I'll give you an opportunity to
16 voir dire the witness before I make a decision, Mr. Jones---
17 Ms. LeVeaux: (interposing) Thank you, Your
18 Honor.
19 The Court: ---and Ms. LeVeaux. So we're
20 going to have some voir dire now about the letter that was
21 sent and the parameters of which you're testifying.
22 The Witness: Okay.
23 The Court: I'll let you begin, Mr. Jones.
24 **V O I R D I R E** 9:48 a.m.
25 By Mr. Jones:

1 Q Mr. Rhame, do you know Gwendolyn Keyes Fleming?
2 A I do not.
3 Q Did you receive a copy of a letter dated February
4 the 25th, 2011 to Anita LeVeaux about the scope of your
5 testimony?
6 A I may have.
7 Q Okay.
8 A I don't recall.
9 Q If I showed you a copy, do you think you'd recall?
10 A Possibly.
11 Q Let me try that.
12 Mr. Jones: May I approach the witness?
13 The Reporter: I have a copy right here. It's
14 right there (indicating).
15 (Witness peruses document.)
16 A No. I don't recall seeing this.
17 Q Did you receive a subpoena from the petitioner in
18 this case, House of Raeford Farms, dated June 22nd, 2011?
19 A Yes.
20 Q Okay. And what did that subpoena instruct you to
21 do?
22 A I don't--I didn't read it. I sent it directly to
23 my legal representation in Atlanta.
24 Q Do you recall that it asked you to be present at a
25 deposition?

1 A Yes.
2 Q And did you appear at that deposition?
3 A No, I did not.
4 Q Why not?
5 A I was directed not to by my legal attorney at EPA.
6 Q And who is that?
7 A John Sheesley.
8 Q Is he the assistant regional counsel in Atlanta?
9 A Yes.
10 Q So did you travel to Raleigh for that deposition?
11 A My office is in Raleigh.
12 Q Okay.
13 A I'm here.
14 Q But you did not--you did not appear at that
15 deposition?
16 A I did not.
17 Q Were you aware of efforts by the petitioner to
18 speak with you informally by telephone or by conference
19 without the necessity of a deposition?
20 A I was not aware of that.
21 Q Okay. Did you receive an e-mail from either me or
22 my associate, Lori Jones, attempting to set up some sort of
23 informal conference to discuss this matter?
24 A Possibly.
25 Q Okay. When would that have occurred? Do you

1 recall?
2 A I don't.
3 Q Did you contact Ms. Jones in response to your
4 receipt of that?
5 A I spoke with someone. I don't know if it was Ms.
6 Jones, but I did speak with someone.
7 Q Would that have been someone in our office or
8 someone with the government?
9 A I believe it was someone from your office that
10 called me directly.
11 Q And what did you tell that person?
12 A That they would need to speak with my legal repre-
13 sentation in Atlanta.
14 Q Do you know whether or not that did occur?
15 A I don't know.
16 Q After that point were you instructed by your
17 attorney to call Ms. Jones?
18 A No.
19 Q Did you receive--look at Petitioner Exhibit A-3.
20 The Reporter: A-3?
21 Mr. Jones: I'm sorry. That's on the
22 motion in limine.
23 The Reporter: I have that.
24 Mr. Jones: You've got that? You do?
25 The Reporter: Is it also one of your notebook

1 exhibits?
2 Mr. Jones: No. It's part of the motion.
3 The Reporter: Let me see if I can find it, or
4 maybe--here's A-2. Is it a July 21, 2011 letter to you from
5 Ms. Wilkes?
6 Mr. Jones: From Ms. Wilkes to me.
7 The Reporter: Yes.
8 Mr. Jones: Yes.
9 (Document handed to witness.)
10 By Mr. Jones:
11 Q Just take a minute and look at that, Mr. Rhame.
12 (Witness peruses document.)
13 Q Did you receive a copy of this letter?
14 A Not that I recall.
15 Q Do you recognize the person who signed it, Mary
16 Wilkes?
17 A Yes.
18 Q And you don't remember receiving a copy of this?
19 A I do not.
20 Mr. Jones: Ms. McGovern, would you hand
21 him from the same in limine A-1, Exhibit A-1?
22 (Pause.)
23 The Court: For the record, what relation
24 is Mary Wilkes to you? Is she your supervisor or---
25 The Witness: No. She's regional counsel in

1 Atlanta.
2 The Court: Okay. And are you bound in
3 your employment to follow her instructions?
4 The Witness: I don't know that I'm bound,
5 but I think that it would be highly recommended.
6 The Court: Okay.
7 The Reporter: And Mr. Jones, this Exhibit A-1
8 is a letter from you to Ms. Wilkes dated January 31, 2011?
9 Mr. Jones: That's the one.
10 (Document handed to witness.)
11 By Mr. Jones:
12 Q Have you seen this letter before, Mr. Rhame?
13 A Not that I recall.
14 Q But the addressee, Ms. Wilkes, is the same person
15 you were talking to the judge about?
16 A Right.
17 Q And that is her address?
18 A Yes.
19 Mr. Jones: Ms. McGovern, would you hand
20 him Exhibit A-2 from that motion?
21 The Reporter: Which is a letter to Nancy
22 Tommelleo from you---
23 Mr. Jones: (interposing) Correct.
24 The Reporter: ---dated June 22nd, 2011.
25 Mr. Jones: Correct.

1 (Document handed to witness.)
2 By Mr. Jones:
3 Q Did you receive a copy of this letter, Mr. Rhame?
4 A No.
5 Q Well, the cc on page 2 shows a copy to Kenneth
6 Rhame. Are you saying you never saw this letter?
7 A I don't recall seeing it.
8 Q Do you know who Nancy Tommelleo is?
9 A No, but I mean by looking at the letter, I know
10 that she's regional counsel, deputy regional counsel, at EPA
11 in Atlanta.
12 Q Remind me, what position does Ms. Wilkes have?
13 A She's director, I believe.
14 Q Is the director beneath the office of--well,
15 according to our correspondence, regional counsel and
16 director is what Ms. Wilkes is?
17 A Right.
18 Q Do you happen to know--does the deputy regional
19 counsel work for Ms. Wilkes or does Ms. Wilkes work for the
20 deputy regional counsel?
21 A I think that the deputy regional counsel works for
22 Ms. Wilkes.
23 Q Okay. Have you ever worked with Ms. Tommelleo
24 before?
25 A Not that I can recall.

1 Q Do you recall receiving any instructions from or
2 through the office of Ms. Tommelleo?
3 A I remember receiving a lot of instructions from
4 various folks within the office of regional counsel.
5 Q When you were instructed not to attend the
6 deposition at our office in June, or whatever it was, in
7 Raleigh, who was the specific person that gave you that
8 instruction?
9 A Mr. Sheesley.
10 Q Okay. And you've dealt with Mr. Sheesley before?
11 A Yes. Before the incident or before receiving this
12 letter?
13 Q Before receiving this letter.
14 A No. Mr. Sheesley at that point was assigned to
15 deal with this case.
16 Q Is Mr. Sheesley a member of the United States
17 attorney's office in Raleigh?
18 A No.
19 Q Does he work out of Atlanta?
20 A Yes.
21 Q And he's with EPA?
22 A Yes, sir.
23 Mr. Jones: I think that's all I have, Your
24 Honor.
25 The Court: Okay. Ms. LeVeaux?

1 Ms. LeVeaux: No questions, Your Honor.
2 Mr. Jones: Could I be heard briefly, Your
3 Honor?
4 The Court: Yes. Point to me the
5 parameters that were given to this witness.
6 Mr. Jones: I beg your pardon?
7 The Court: Point to me that first letter
8 you read that laid out the parameters that he could testify
9 to.
10 Mr. Jones: If you look at the letter dated
11 February the 25th from Gwendolyn Keyes Fleming---
12 The Court: And which attachment to your
13 motion in limine is that?
14 Mr. Jones: It's A-3, Attachment A-3.
15 The Court: Okay.
16 (The Court peruses document.)
17 The Court: And what--I mean I've read
18 the--I'm reading the part about how it's not in the interest
19 of EPA.
20 Mr. Jones: Right. You notice at the
21 beginning it says, "The purpose of this letter is to respond
22 to your request on behalf of the State of North Carolina for
23 testimony... . You have indicated that you would like
24 testimony on behalf of the State...deemed by you to be
25 essential for defense," et cetera.

1 Then on page 2 it says, the next to the last
2 paragraph, "As a fact witness, Mr. Rhame will limit his
3 testimony to his knowledge of the sludge release that he
4 observed in Beaverdam Creek, and he will not offer an opinion
5 or conclusion as to the origin of that release." This was
6 sent to us in response to the subpoena we sent to Mr. Rhame
7 asking him to appear at a deposition.
8 The Court: Okay.
9 Mr. Jones: July the 21st is when we
10 received it.
11 The Court: And again, for the record, who
12 is Ms. Fleming?
13 Mr. Jones: She is the regional adminis-
14 trator in Atlanta.
15 The Court: Okay.
16 Mr. Jones: Region 4.
17 The Court: And I take it based on their
18 directions and advice, that is the direction that you have
19 taken in this particular matter; is that correct?
20 Ms. LeVeaux: Your Honor, I'd like to briefly
21 be heard?
22 The Court: Okay.
23 The Witness: Yes, sir.
24 The Court: Okay. Ms. LeVeaux?
25 Ms. LeVeaux: Your Honor, I would just point

1 out that if you'll note that two documents which have been
2 objected to to be admitted into evidence are Respondent's
3 Exhibit 4B and Respondent's Exhibit--no, just Respondent's
4 Exhibit 4B, which, again, entails two documents that were put
5 in there together.
6 This is information that was secured off of
7 Google. This is information that's within the--is
8 disseminated to the public. And if it is a document prepared
9 by Mr. Rhame, I certainly would like to ask him about this
10 document, which is within the public purview.
11 More importantly, Your Honor, I have no problems
12 with limiting Mr. Rhame's opinion to what he observed
13 personally and the basis for his personal opinion. Certainly
14 I can ask any witness what their personal opinion is and
15 their basis for that opinion. And the weight to be given
16 that opinion is entirely up to Your Honor.
17 But my understanding in speaking with EPA was that
18 they will not allow him to tender an opinion for EPA or as it
19 relates to--in his official capacity, but that I was allowed
20 to ask questions as it relates to what he personally observed
21 and the basis for his personal opinion.
22 Mr. Jones: Your Honor, I---
23 The Court: (interposing) Based on the
24 directions that you have been given--it says, "As a fact
25 witness, Mr. Rhame will limit his testimony to the knowledge

1 of the sludge release," and certainly any questions you want
2 to regarding that. "He will not offer an opinion or
3 conclusion as to the origin of that release."
4 So I would--my decision there is he's not to be
5 asked that question. He certainly could be asked every other
6 question you want to, and certainly he knows what he is bound
7 to follow and what he has chosen to follow as well based on
8 advice of his counsel. So I don't want to put him in a
9 conflict of going against his particular counsel's directions
10 that he's indicated that he feels compelled to follow.
11 Ms. LeVeaux: Your Honor, I think he did talk
12 with his--if you could take him on further voir dire and ask
13 him if he did talk with his counsel about whether or not he
14 could render his own personal opinion.
15 The Court: Well, at this particular moment
16 I would have to have something in writing to refute--or to
17 retract what they said in this particular letter. If you
18 have anything to that effect, I certainly would be willing to
19 accept that now.
20 The Witness: I was told by my counsel that I
21 could give a personal opinion.
22 The Court: Do you have anything in writing
23 to that effect?
24 The Witness: No, I do not.
25 The Court: Okay. I think at that point,

1 then, I'm not going to be able to do that. I certainly--if
2 your counsel wants to put something in writing to basically
3 retract this letter, that would be fine. And then we could
4 deal with it, even a continuance and a deposition if we need
5 to, that sort of thing. But I think until I have something
6 in writing that basically retracts what they said in this
7 letter, I'd be hard pressed and you'd be hard pressed,
8 actually, to do that.
9 So with that in mind, you certainly can ask him
10 questions, and the same with you, Mr. Jones, on cross-
11 examination as well, any--the knowledge he has of the sludge
12 release. But it very adamantly says he will not offer an
13 opinion or conclusion to the origin of that release.
14 Mr. Jones: Your Honor, I feel
15 professionally compelled--I appreciate that--going back on
16 the record to move to strike any answer he would have given
17 that did express an opinion. I wanted to make sure I heard
18 that clearly and kind of jumped in there. But since I'm
19 doing this sort of after the fact, I have to move to strike
20 any testimony where he does express an opinion as to the
21 source of the release, because I think it is in the record.
22 The Court: I think it was stated mildly to
23 a certain extent and I can appreciate a witness trying to
24 give his best testimony. But since your counsel and regional
25 coordinator and supervisor along the chain have limited your

1 testimony and I don't have anything in writing that undoes
2 that, we will strike any part that mentions that. You can
3 continue Ms. LeVeaux.
4 Ms. LeVeaux: Thank you, Your Honor.
5 **D I R E C T E X A M I N A T I O N** 10:04 a.m.
6 (resumed)
7 By Ms. LeVeaux:
8 Q Mr. Rhame, could you please describe for the Court
9 what occurred on that date? And if you'll just take the
10 Court--again, I don't know where we were and so I'll take you
11 back from the beginning.
12 You said that you were with a contractor and you
13 arrived on site on or about September the 15th, 2009. So if
14 you'll just take us--and if someone said something to you, to
15 the extent that you recall what they said, just go ahead and
16 tell us what they told--what they said in response to what
17 you may have asked.
18 A Sure. After assessing the creek and speaking with
19 Mr. Teachey, I asked to speak with the plant manager, one of
20 the managers within the facility. And that's when I met Mr.
21 Howard. I explained to him, you know, why I was there, on
22 behalf of NC DENR investigating a release to the creek.
23 I asked him if he was aware of the release and
24 again, you know, went through the same questions--did they
25 experience an upset, was he knowledgeable about the release,

1 had he seen anything strange, you know, going on, if he
2 noticed the release, was there any trucks or anything in the
3 area that may have come through their facility--and asked him
4 if he would walk down to the creek with us.
5 Q Well, let me just stop you. So you said you asked
6 Mr. Howard all of these questions, and what was his response?
7 A He was not aware of any upsets or any releases
8 that occurred.
9 Q Did you have the opportunity to talk with Mr.
10 Howard in person?
11 A Yes, I did.
12 Q Did you have the opportunity to observe Mr.
13 Howard?
14 A I did.
15 Q Did he seem to be--did he seem honestly surprised
16 about that, in your opinion?
17 A When I talked to him, he was not--I wouldn't say
18 that he was surprised. He didn't know what was going on. He
19 had no idea that there had been a release, that there was any
20 incident involving the creek behind their facility.
21 Q When you spoke with Mr. Teachey, did you have that
22 same--did you have an opportunity to observe Mr. Teachey?
23 A I did.
24 Q Did you--did you have an opinion as to whether or
25 not he was surprised by the release?

1 A I didn't get the perception that he was surprised.
2 After speaking with Joe Teachey, I thought that there was
3 some inconsistencies, and that was one of the reasons why I
4 asked to speak with one of the managers within the facility.
5 Q Okay. So you spoke with Mr. Howard. And what did
6 you do after having spoken with Mr.--well, before you left
7 his office, did you show him anything?
8 A I don't recall that I showed him anything.
9 Q Did you take pictures of the--of what you observed
10 out there at House of Raeford on or about September the 15th,
11 2009---
12 A (interposing) I did.
13 Q ---with your phone?
14 A I did.
15 Q And do you remember or do you recall whether or
16 not you showed these pictures on your phone to Mr. Howard?
17 A I don't recall if I showed him the pictures, but I
18 did ask him to walk down to the creek with us.
19 Q Okay. And then what did you do?
20 A Well, we went--we went to the creek, and at that
21 point I felt like he was surprised.
22 Q What did you observe?
23 A Basically it was a sludge that went for miles. It
24 was a significant release. It was--I couldn't put a volume
25 on it, but it was several hundred thousand gallons in my

1 estimation. And I felt that Mr. Howard was concerned, and he
2 was concerned to the point that he agreed to take mitigative
3 steps.
4 Q And you said at least hundreds of thousands of
5 gallons of sludge. Do you know what sludge looks like?
6 A I do.
7 Q And so describe for the Court, if you will, what
8 you observed and what is--first, what is sludge and tell the
9 Court what it looked like.
10 A Well, in this particular case it was--it appeared
11 to be the same sludge that was in the primary lagoon.
12 There's a--sort of a solid mat that forms on the top of the
13 primary lagoon. It almost looks like a floating island. The
14 sludge in the primary lagoon had vegetative growth, so it
15 appeared that, you know, it's been there awhile.
16 There was--and that same looking floating island
17 material is what appeared to be in Beaverdam Creek, although
18 there was no vegetative growth growing on the sludge matter
19 in the creek.
20 Q Did the sludge appear to be fresh or something
21 that had been sitting for a while?
22 A It appeared to be fresh.
23 Q And how did you discern that it was fresh?
24 A There was an odor. There was--and when you say
25 fresh, I don't know if you mean like a day, two days, a week.

1 I don't know what---
2 Q (interposing) I don't know.
3 A ---fresh is.
4 Q That would probably be my next question. Can you
5 quantify the days?
6 A I could not. I would say that probably within--
7 and I'm just going off of I guess professional judgment
8 here--probably within a week.
9 Q And you said you observed an odor. Describe the
10 odor, if you will, please.
11 A It was--you know, it's hard when you're next to a
12 chicken plant to know where the odor is coming from, you
13 know, whether it's the chicken plant or the sludge in the
14 creek. But the--it had a similar odor near the creek as it
15 was near the lagoon, the primary lagoon.
16 Q And so what happened next? What did you do?
17 A Well, Mr. Howard agreed to take mitigative steps.
18 They agreed to put in a small aerator. I mean it wasn't
19 designed to mitigate the entire creek, but it was something
20 to try to get some oxygen levels back into the creek. And
21 they agreed to start pumping the creek, the sludge, and
22 recovering it.
23 Q And then what happened?
24 A They had a contractor that typically works for
25 them that has a vac truck or septic hauler to start

1 recovering the material out of the creek.
2 Q And do you remember if they did that?
3 A They did.
4 Q And do you remember what they did with that?
5 A They pumped it to the lagoon.
6 Q Do you remember which lagoon they pumped it to?
7 A The secondary lagoon.
8 Q And did you observe any of that pumping?
9 A I did.
10 Q And what did you see them do?
11 A They pumped from the area that was directly behind
12 the secondary lagoon. There's very little flow in that
13 creek. They actually reversed the flow of the creek using
14 that vac truck and---
15 Q Did they use a hose or did they--I mean did they
16 pump--tell me what they--I mean to the extent that you
17 remember, to the extent that you recall, tell me if they put
18 a pump in or if it was a hose or if it was---
19 A (interposing) It was a hose that was connected to
20 the truck.
21 Q Do you know about how long that hose was?
22 A I don't recall.
23 Q Do you remember or do you recall how many loads?
24 A I don't. I wasn't--I wasn't there every day of
25 the recovery.

1 Q Okay. Let me back you up a bit. Did you have the
2 occasion to talk to Mr. Teachey---
3 A (interposing) I did.
4 Q ---alone?
5 A I don't recall talking to him alone. I recall
6 having conversations with him.
7 Q And if you will, please, turn to--you have a
8 notebook in front of you. Now, this would be Respondent's
9 Exhibit Number 4B.
10 The Court: Say that number again, Ms.
11 LeVeaux.
12 Ms. LeVeaux: Respondent's Exhibit 4B.
13 The Court: Thank you.
14 (Witness peruses document.)
15 Ms. Jones: Your Honor, I'm sorry. At this
16 point I'm going to have to renew my objection to this
17 exhibit. It does have information regarding the origin of
18 the release and Mr. Rhame's opinion as to that, which the
19 Court has ruled is inadmissible.
20 The Court: Okay. I think at this point if
21 you can point out the line or anything--I'm certainly not
22 going to--I see there's not a need to not admit the entire
23 exhibit. The exhibit is fine, but if you'll point out what
24 needs to be redacted to stay in compliance with the
25 directions that he's been given.

1 Ms. Jones: Yes, Your Honor. On the first
2 page of Exhibit 4B, the last sentence in the second paragraph
3 talks about a belief in the source of the sludge.
4 The Court: So it says, "US EPA believes
5 the source of the sludge release is the House of Raeford
6 based on field"--okay, so we'll redact that last sentence.
7 Ms. Jones: Your Honor, that same sentence
8 appears on the next page, the second paragraph under
9 Section 1.1.2, the very last sentence. It reads, "US EPA
10 believes that the source of the sludge release is the House
11 of Raeford."
12 The Court: Okay.
13 Ms. Jones: There is an opinion in
14 Section 2.1.3 on the next page, Your Honor.
15 The Court: Okay.
16 Ms. Jones: And Your Honor, there is a
17 second EPA report that begins on the next page in Section
18 1.1.2, again the last sentence in that section and on the
19 next page, Section 2.1.3.
20 The Court: Okay.
21 Ms. LeVeaux: If we could be heard briefly?
22 The Court: Okay.
23 Ms. LeVeaux: Your Honor, we would like to--
24 just for the record and because we're trying to preserve the
25 record, we'd like to make an offer of proof of that

1 unredacted--those unredacted portions so that we can protect
2 the record and consistent with the public records, that this
3 is something that you would see in the public records.
4 The Court: That will be fine.
5 Ms. LeVeaux: Thank you, sir.
6 The Court: What I'll do is seal the offer
7 of proof and attach it. I will not consider it for purposes
8 of the hearing, but certainly---
9 Ms. LeVeaux: Thank you, Your Honor.
10 Mr. Jones: Thank you, Your Honor.
11 The Reporter: What do I do about that? Is
12 this just--the exhibit is the offer of proof and there's
13 no---
14 The Court: (interposing) She's going to
15 submit the entire exhibit as an offer of proof including--
16 without any redaction whatsoever.
17 The Reporter: So it really has nothing to do
18 with the transcript itself?
19 The Court: No.
20 The Reporter: Thank you.
21 The Court: You can make mention of it in
22 the transcript.
23 The Reporter: Well, I'm going to report this
24 conversation right here.
25 The Court: Okay.

1 The Reporter: Thank you.
2 The Court: Was that all that you found?
3 Ms. Jones: I believe so, Your Honor.
4 The Court: Of course it's the same state-
5 ment being repeated over.
6 Mr. Jones: Can we take just one minute to
7 make sure we've got all these excerpts?
8 The Court: Sure, sure.
9 (Pause.)
10 Mr. Jones: I believe that's all we found.
11 The Court: Okay. With that being said,
12 then, Respondent's Exhibit 4B is admitted with the redaction.
13 (Respondent Exhibit 4B was
14 received in evidence as
15 redacted.)
16 Ms. LeVeaux: Thank you, Your Honor.
17 By Ms. LeVeaux:
18 Q Mr. Rhame, if you'll look at Respondent's
19 Exhibit 4B---
20 A (interposing) Uh-huh.
21 Q ---and tell the Court what you have before you.
22 And I'm going to ask that you--I don't know that you've
23 marked your copy at all, but I'm going to ask that you not
24 include the line beginning, "US EPA"---
25 A Okay.

1 Q ---in any discussion that you--or any testimony
2 that you give us today.
3 A Okay.
4 Q So please describe for the Court, if you will,
5 what you have before you.
6 A This is a pollution report. It's a--you know, any
7 field responses that we conduct we're asked to do a pollution
8 report, not only for personnel management back in Atlanta,
9 but for public record.
10 Q Okay. And you've dated this report September the
11 14th. Why did you select that date?
12 A That was the date we mobilized to the site.
13 Q Okay. And can you explain to the Court the nature
14 of progress of the sludge that you observed?
15 A The nature of the progress?
16 Q What waters of the state did this sludge go to?
17 A Well, it went to Beaverdam Creek.
18 Q Before Beaverdam Creek where did you find it?
19 A Cabin, Cabin Creek, and I'm just reading this from
20 my report. We went out there--you know, I think when I was
21 out there I had to ask Linda what creeks these were.
22 Q And you did prepare this report; correct?
23 A I did, yes.
24 Q Okay. And then where did it flow to from Cabin
25 Branch or Cabin Creek?

1 A Well, we observed the sludge downstream of the
2 House of Raeford adjacent to both Cabin Creek and Beaverdam
3 Creek.
4 Q Did you do anything as relates to samples?
5 A We did. We collected samples. We did some stream
6 monitoring, water quality monitoring. We walked the creek
7 both upstream and downstream.
8 Q Okay. Tell me about your observations upstream.
9 A Everything appeared to be normal and there was no
10 evidence of any sludge upstream.
11 Q Okay. And when you say normal, explain to the
12 Court what you mean by that.
13 A Based on the field screening and field monitoring,
14 dissolved oxygen levels were what you would expect to see
15 that time of year. Downstream they were not.
16 Q And that time of year being the fall; correct?
17 A Correct.
18 Q Are you familiar at all with the area?
19 A No.
20 Q Do you recall whether or not--do you recall
21 whether there were drought-like conditions?
22 A I do not recall.
23 Q Okay. And are you familiar with Carolina
24 By-Products?
25 A I am not.

1 Q And if you'll turn the page?
2 (Witness complies.)
3 Q This is also a report you prepared; correct?
4 (Witness peruses document.)
5 A Yeah. My pages I think might be out of order
6 maybe. Yes, it is.
7 Q And does this report pretty much track what you've
8 already testified to?
9 A It does.
10 Q And without--without rendering an opinion, can you
11 tell the Court what you have--what you have set out in this
12 report?
13 A Sure; the impacts to water quality, you know,
14 relative to Cabin Creek and Beaverdam Creek. Impacts were
15 visible adjacent to House of Raeford facility downstream and
16 was not evident either through visual, through samples, or
17 through water quality monitoring upstream.
18 Q Would you--if it did come from upstream, in your
19 experience have you seen--when you have discharge from
20 upstream, what do you usually see?
21 A You normally can see some evidence. If it were--
22 if it were to flow from upstream past the House of Raeford,
23 typically there's choke points, crossings under bridges,
24 logjams, maybe a bathtub ring type stain, you know, along the
25 bank, dead fish that raccoons would drag out of the creek.

1 Things of that nature you would see.
2 Q And when you were inspecting the area on or about
3 September the 15th, 2009, did you happen to observe the
4 twists and turns of Cabin Branch or Cabin Creek?
5 A Yes. I understand kind of the general direction
6 of the creek. I probably walked maybe a quarter mile
7 upstream from House of Raeford and checked several crossings,
8 road crossings, both upstream and downstream.
9 Q So you walked upstream and downstream?
10 A I did.
11 Q And tell me--could you describe for the Court what
12 you observed, the nature of what you observed upstream and
13 downstream, to the extent that you recall?
14 A Yeah. I saw sludge. I saw impacts downstream:
15 dead fish, low DO---
16 Q (interposing) You did see dead fish?
17 A We did see a few dead fish downstream. There was
18 none upstream. And the DO readings, you know, with the water
19 quality instruments indicated the same thing.
20 Q But the low DO didn't surprise you for this swamp-
21 like water, did it?
22 A Well, with the DO upstream of being 4, it--yeah,
23 you wouldn't normally see the DO levels that we saw down-
24 stream in a creek.
25 Ms. LeVeaux: Okay. Thank you. No further

1 questions.
2 The Court: Cross-examination, Mr. Jones.
3 **C R O S S - E X A M I N A T I O N** 10:26 a.m.
4 By Mr. Jones:
5 Q Mr. Rhame, you reside in Wake County?
6 A I do.
7 Q Where is your office?
8 A North Carolina State University.
9 Q Which building?
10 A New Jordan addition.
11 Q What sort of work do you do, Mr. Rhame?
12 A I respond to pollution incidents involving
13 releases of hazardous substances and oil.
14 Q The particular substance that you inspected behind
15 House of Raeford in September of 2009, was that an oil
16 substance?
17 A It could be. There was---
18 Q (interposing) But was it?
19 A We did not sample for oil at that time.
20 Q When you say oil, do you mean like gasoline or---
21 A Oils can be vegetable oil. It can be animal fats.
22 It can be petroleum products such as gasoline, diesel, crude.
23 Q Did you find any oils in this particular matter?
24 Ms. LeVeaux: Objection.
25 The Court: Basis?

1 Ms. LeVeaux: He said he didn't test for
2 oils.
3 The Court: It's overruled.
4 By Mr. Jones:
5 Q Did you find any oils in this particular matter
6 behind the House of Raeford?
7 A We didn't sample for oil.
8 Q Did you see any other objective evidence that
9 there was oil in the water?
10 A We--I talked to Mr. Howard specifically about the
11 oil and the animal fat issue. And based on their treatment
12 process, Mr. Howard said there may be a small percentage of
13 oil or animal fat in their sludges in the primary lagoon.
14 So without sampling, without analytical results of
15 the creek water, I couldn't tell you if there was any oil
16 there. But with several hundred thousand gallons of sludge,
17 even a percent of oil would be a significant amount of oil
18 present. But we didn't--I don't have any analytical data to
19 back that statement up.
20 Q Is there some reason why you didn't check for oil?
21 A Yes. There--at the time that Mr. Howard agreed to
22 take mitigative steps and recover the material, that was
23 pretty much my objective and my goal, was to get the stuff
24 out of the creek.
25 Q You weren't really interested in developing more

1 evidence? You were interested in getting remediation?
2 A That was my goal.
3 Q How about hazardous material? Did you find any
4 hazardous materials in the creek?
5 A No, sir. I didn't sample for any, but I wouldn't
6 suspect that there was any hazardous materials there.
7 Q In the ten years with EPA, have you been assigned
8 in North Carolina that whole time?
9 A No, sir.
10 Q Where were you before North Carolina?
11 A Before North Carolina I was in Atlanta, Georgia.
12 Q Did you ever investigate cases of spills or dis-
13 charges like this that were not hazardous materials?
14 A There has been. There's--under CERCLA, our
15 authority is hazardous materials--or hazardous substances,
16 oils, or pollutants or contaminants that threaten public
17 health. So there's kind of a caveat to it, but we didn't
18 deem this as a contaminant or a pollutant at this particular
19 time. I didn't take it that far. Since the facility was
20 willing to step up and take appropriate actions, I kind of
21 just left it at that.
22 Q Had you done many investigations before dealing
23 with waste material of this type?
24 A I wouldn't say many, no.
25 Q How many?

1 A I was at a House of Raeford facility in Rose Hill
2 on a release of animal fat.
3 Q I mean this is Rose Hill.
4 A I mean--it's closer to Wilmington. I'm not sure
5 what that---
6 Q (interposing) Okay, maybe Wallace or Teachey
7 or---
8 A (interposing) Teachey; that's it, yeah.
9 Q But I mean any other other than that?
10 A For EPA, no.
11 Q So this kind of material is not in your typical
12 bailiwick in terms of oils and hazardous waste, is it?
13 A For oils--I mean animal fats are considered an
14 oil. But when you're talking about sludge from a chicken
15 processing plant, no, I wouldn't say that it's--it's not
16 normal or a routine response.
17 Q For you?
18 A For me.
19 Q What day was it specifically that you went to the
20 site?
21 A I don't recall, but I'm looking at my report and
22 September 14th is what I documented.
23 Q Do you remember what day of the week that was?
24 A I do not.
25 Q Was that the first time you met Clay Howard?

1 A It is.
2 Q Okay. What time of day was it?
3 A I don't recall.
4 Q Well, do you recall whether it was before lunch or
5 after lunch?
6 A I don't.
7 Q Did you meet with Mr. Teachey before you met with
8 Mr. Howard?
9 A Yes.
10 Q How much time did you spend with Mr. Teachey?
11 A It could have been an hour maybe.
12 Q How much time did you spend with Mr. Howard?
13 A Probably an hour or so, I mean somewhere in that
14 time range, an hour or two.
15 Q Was that in his office?
16 A It was both in his office and in the field at the
17 creek. And he even went downstream, so it may have been a
18 little longer than an hour, but they did--both him and I
19 think Mr. Teachey traveled with us to a bridge crossing
20 downstream.
21 Q When you went to the creek with Mr. Howard, is
22 that the first time you discussed remediation?
23 A I don't believe it is. I believe I mentioned to
24 him that we would be looking for them to take an action when
25 I was sitting in his office.

1 Q So it was on September the 14th that you discussed
2 remediation?
3 A Yes.
4 Q What was his response to that?
5 A He was not willing to say that, you know, it came
6 from them. He--Mr. Howard, I believe, honestly didn't know
7 anything about that sludge being in the creek, didn't offer
8 any explanation as to how it got there, but he was willing to
9 take mitigative steps.
10 Q So even though he didn't admit that it came from
11 the plant, he was willing to undertake remediation?
12 A That's right.
13 Q Immediately?
14 A Yes.
15 Q Even before he saw the material in the creek?
16 A No.
17 Q He did see the material in the creek and then he
18 said, "We will remediate"?
19 A Yes.
20 Q Now, you said the material went downstream. How
21 far downstream did you inspect?
22 A It was multiple miles. I don't know if it was
23 three or four miles, but it was a few miles.
24 Q Is there any landmark you remember where you
25 stopped?

1 A A bridge.
2 Q Could it have been the Sheffield Road bridge?
3 A I remember that name. I know that I was there. I
4 don't know that that was the last point.
5 Q If you saw an aerial photograph of the area, would
6 that help you, do you think?
7 A Possibly.
8 Mr. Jones: Could I ask the witness to come
9 down---
10 The Court: (interposing) Well, if you can
11 point it out---
12 Mr. Jones: (interposing) Okay.
13 The Court: ---we'll have him stay right
14 here and---
15 Mr. Jones: (interposing) It might be hard
16 to see it.
17 By Mr. Jones:
18 Q Mr. Rhame, I'm going to point to the areas that I
19 show as being the lagoons for House of Raeford (indicating).
20 Does that come back to you?
21 A Yes.
22 Q The plant being here (indicating), the lagoons
23 being behind the plant, Cabin Branch running behind the
24 lagoons; correct?
25 (No audible response.)

1 Q This is the big pond that was behind Parker Bark.
2 Do you recall that?
3 A I do.
4 Q Did you go past that pond or lake, an open area
5 with water in it?
6 A Yeah. And it appears that Sheffield is the first
7 crossing downstream---
8 Q (interposing) Okay.
9 A ---so we did go beyond that.
10 Q Did you go beyond this bridge (indicating)?
11 A Yes.
12 Q Okay. Did you continue what's now, I guess,
13 Beaverdam Creek--how far down did you go?
14 A It was a couple of miles.
15 Q Could it have been to this area here (indicating)?
16 There's another bridge it looks like here (indicating).
17 A Could have been.
18 Q But you don't recall the name of the bridge---
19 A (interposing) I do not.
20 Q ---or the crossing. What was the appearance of
21 the material in the creek or the creek itself at the point
22 that you stopped?
23 A It wasn't as thick as the material that was behind
24 the plant, but the low dissolved oxygen levels were still
25 evident downstream that far.

1 Q Now, you said you saw some dead fish. How many
2 dead fish did you see?
3 A There wasn't a lot, and I don't remember the
4 count, but it wasn't--wasn't significant. There was a few
5 dead fish. I'm not sure how many fish are in that creek.
6 Q Well, if you can remember, was it two, three, 20?
7 Could you approximate?
8 Ms. LeVeaux: Objection. He indicated he
9 didn't know how many fish were in the creek.
10 The Court: It's overruled.
11 A I couldn't---
12 The Court: (interposing) Do you have a
13 range, a guess by any chance?
14 A It was at least double digits, but that's probably
15 all I could say. I don't remember if it was 20, 30. It
16 wasn't a huge fish kill.
17 Q It wasn't--you said it was not significant?
18 A Right.
19 Q Now, when you discussed remediation with Mr.
20 Howard, did you make any suggestions as to how that creek
21 could be remediated?
22 A We asked them to recover the sludge using vac
23 trucks, pumps, whatever and to also install some aeration
24 units, try to restore the dissolved oxygen.
25 Q Did he agree to do that?

1 A He did.
2 Q Okay. And did you give him specific examples of
3 how that could be done?
4 A I don't recall.
5 Q Did he seem to be knowledgeable about how to do
6 that?
7 A He didn't, but the contractor that he used seemed
8 knowledgeable about the vac truck, the septic truck, and had
9 the resources and the equipment to do what we were asking him
10 to do.
11 Q I think there's been testimony that that was a Mr.
12 Register. Do you recall that?
13 A I don't.
14 Q Do you recall kind of a slow talking guy with a
15 Duplin County drawl? Do you remember that?
16 (No verbal response.)
17 Q Never mind. Did you meet with Mr. Register
18 yourself?
19 A I met with the contractors that were operating the
20 vac truck. I don't recall their names.
21 Q Was that on the 14th or later?
22 A I believe it was either the 14th or 15th.
23 Q Did they pump the day you were there?
24 A They did, but I was there both days, so I don't
25 recall if it was the first or second day.

1 Q But they did pump both days?
2 A I don't remember what day they started on.
3 Q But two days in a row?
4 A Yeah. They pumped for a few days, yes.
5 Q All right. Now, you were there the 14th. Were
6 you there also the 15th?
7 A I believe I was.
8 Q Were you there September the 16th?
9 A I don't believe I was, but I don't have a lot of
10 confidence in answering that question.
11 Q Would you have anything in your records that would
12 indicate whether or not you were there the 16th?
13 A No, I wouldn't. But I don't--I had several sites
14 going. My contractor may have been there. A lot of times
15 we'll leave our contractors on site to conduct oversight and
16 continue to monitor progress and we'll go to another site.
17 Q Did you actually see the pumping occurring?
18 A Yes.
19 Q What did you observe when you saw the pumping
20 occurring?
21 A They started pumping the sludge and, you know, the
22 creek--it began to clear probably after the first day. You
23 could tell that the flow was reversing and coming back
24 towards the vac truck from their pumping location. And then
25 on the second day when we arrived back on site, the sludge

1 reappeared. It was--basically the stuff on the bottom was
2 resurfacing.
3 Q Now, how do you explain that? Why would that
4 occur?
5 A It's just the--I've seen that before on other
6 spills. I don't know the chemical process or--I don't have
7 an explanation for it, but it's common.
8 Q But that would indicate that there was material on
9 the--beneath the surface as well---
10 A (interposing) Yes.
11 Q ---in addition to the material on the surface?
12 A There was. Walking the creek, you could tell that
13 there was material on the bottom.
14 Q Now, you said that as you were at the creek--or
15 did you actually go in the creek?
16 A I did.
17 Q Did you have waders or something?
18 A I had waders.
19 Q You noticed an odor from the creek; correct?
20 A Well, I noticed an odor from the creek. It was
21 difficult to tell, you know, being next to the chicken plant
22 what the odor was.
23 Q But you did detect an odor at the creek?
24 A Yes.
25 Q Was it a strong odor?

1 A No. It wasn't as strong as the odor that was
2 associated with the lagoons next to the plant.
3 Q So when you went to let's say the primary lagoon
4 and you were in the vicinity of that, did you smell an odor
5 there too?
6 A Yes.
7 Q How about at the secondary lagoon?
8 A There was an odor, but not--again, not as--not as
9 strong.
10 Q Now, you said on direct exam that you felt like
11 the material in the creek had been there for a week?
12 A I don't know exactly. It could have been up to a
13 week maybe.
14 Q Could it have been more than a week?
15 A It's possible.
16 Q Could it have been three weeks?
17 A I doubt it.
18 Q What do you base that on?
19 A Just because of, like I said, the observations.
20 You would have seen a lot more impact. You would have seen I
21 think a lot more fish. You would have seen--dead fish. Even
22 the fish seemed to be fairly recent. You know, they weren't
23 decomposed. They were what I would think would be in the
24 last couple of days, not within a week or two weeks. You
25 would have seen a little more decomposition.

1 Q How close to the plant did you notice dead fish?
2 A I noticed them at the Sheffield crossing for sure,
3 and I don't recall other locations.
4 Q So the area you would have seen them would have
5 been---
6 A (interposing) The next bridge downstream.
7 Q ---the bridge here at Sheffield crossing
8 (indicating)?
9 A I know I definitely saw them there, and I believe
10 they were between Sheffield crossing and the House of Raeford
11 as well, but my level of confidence is not as strong as it is
12 at the Sheffield crossing.
13 Q You don't recall between Sheffield and the
14 company, but you do recall seeing them at Sheffield bridge?
15 A I do.
16 Q Did you get in the water there at Sheffield
17 bridge?
18 A I did not.
19 Q You watched from the bridge?
20 A I did.
21 Q When you were at the creek behind the plant, do
22 you recall the flow characteristics of the creek at that
23 point?
24 A To what extent?
25 Q Well, was it flowing or was it not flowing or was

1 it slow or fast or---
2 A (interposing) It was very slow.
3 Q Okay. Was it moving at all?
4 A If it was, it was very--it was minimal.
5 Q When you went upstream, was the creek flowing
6 upstream?
7 A I don't recall the creek flowing fast in any of
8 the locations we checked. It was a very slow moving creek.
9 Q How far upstream did you go in this investigation?
10 A I know that I went to at least the next crossing
11 upstream as far as vehicle, you know. As far as walking the
12 creek upstream, I probably walked about a quarter of a mile
13 upstream.
14 Q Did you go past the next bridge walking?
15 A No, I did not.
16 Q So let me think. That would have been like the
17 Brooks Quinn Road crossing?
18 A I don't remember the names of the roads, but I
19 know that I didn't go past that bridge walking.
20 Q So the next bridge upstream that you ran into from
21 the plant?
22 A I didn't go past there walking for sure.
23 Q Okay.
24 A I went beyond a pasture between the facility and
25 that bridge, and that was to the extent of my wading.

1 Q So you were in the water at that point?
2 A Yes, sir.
3 Q Did you take water samples, any water samples in
4 connection with this investigation?
5 A My contractor did.
6 Q Mr. Salgado or Mr. Rufino, whatever?
7 A Right.
8 Q Now, did you see him doing that?
9 A I did.
10 Q Okay. And he took those samples?
11 A Yes, sir.
12 Q What happened to them then?
13 A They're submitted to a laboratory for analysis.
14 Q Okay. And do you know what laboratory that would
15 have been?
16 A I don't recall.
17 Q Did you see the results of that?
18 A I did--I have seen the results.
19 Q How quickly did you see the results after he took
20 the samples?
21 A I don't recall what the turnaround time was on the
22 analysis.
23 Q When he was taking the samples, could you get
24 immediate readings then or did you have to wait?
25 A For lab analysis we had to wait.

1 Q Were there any flash results, though, anything you
2 could detect at the time?
3 A Through field screening equipment, stream
4 monitoring equipment, yes.
5 Q Okay. And is that where you were getting your DO
6 readings?
7 A Yeah, DO, temperature, pH, that sort of thing.
8 Q So while you were doing your investigation on the
9 14th and the 15th, were you actually getting DO readings
10 those days?
11 A My contractor was, I believe.
12 Q Was he conveying that information to you?
13 A He was conveying the information to myself and to
14 NC DENR.
15 Q Were you evaluating those results as you were
16 investigating on those days?
17 A Yeah. I took an interest in the results, but as I
18 said, you know, my goal when I responded to this incident
19 wasn't really to establish evidence or--you know, once House
20 of Raeford agreed to do the cleanup or the mitigative steps,
21 it was pretty much--I was pretty much done at that point.
22 Q Let me ask you, did you interview anybody other
23 than Mr. Howard and Mr. Teachey?
24 A In regards to?
25 Q The spill or---

1 A I didn't personally interview anyone that I can
2 remember associated with the facility. That's not to say
3 that someone else from EPA didn't.
4 Q Do you know whether or not a Kevin LaPointe
5 visited the site as well?
6 A He did visit the site, although I'm not allowed to
7 discuss what his purpose of being there was.
8 Q Okay, sure. Was he there at the same time you
9 were there?
10 A He was.
11 Q Did he interview people?
12 A I don't know that I can--I don't really know what
13 I can discuss on what his actions were.
14 Q Has anyone instructed you that you could not
15 discuss that?
16 A I've been instructed on multiple occasions that I
17 can't discuss criminal investigations.
18 Mr. Jones: I guess, Your Honor, I'm just
19 asking did he interview any human beings, not what was said,
20 but did he interview people.
21 Ms. LeVeaux: Your Honor, we would object
22 because I think he said--I think Mr. Jones was talking about
23 Kevin LaPointe and I think he was asking questions about what
24 he did. And then he asked his next question. So if we're
25 going to some other area of what Mr. Rhame did, then fine. I

1 think he might think that we're still talking about Kevin
2 LaPointe here.
3 The Court: So you know one of your
4 colleagues from EPA was there by the last name of LaPointe?
5 The Witness: Right.
6 The Court: And he had a specific purpose
7 that was very different from yours?
8 The Witness: Yes, sir.
9 The Court: And do you know if he went
10 about his purpose separate from yours?
11 The Witness: Yes, he did.
12 The Court: Okay. I don't know that you
13 need anything else.
14 Mr. Jones: Okay. Okay.
15 By Mr. Jones:
16 Q Now, Mr. Rhame, did you go around in the area and
17 discuss the spill with any of the other people in the
18 community?
19 A Not that I can recall.
20 Q Did you discuss the conditions in the creek--or
21 the material in the creek with any of the service providers
22 or vendors in the area?
23 A Other than the people who pumped out the creek?
24 Q Correct.
25 A I was involved--or was witness to a--some

1 questions that were directed at a contractor who was reported
2 to have done some work on the dike where the pipe was
3 replaced.
4 Q Mr. Cavenaugh?
5 A I don't know his name, and I didn't--I didn't
6 interview him. There was someone else interviewing him, and
7 I was in the presence of that.
8 Q Did you speak with anybody else, though, sellers
9 or renters of equipment in that area or close by?
10 A I did not, not that I can recall.
11 Q Would that have assisted you in evaluating the
12 responsibility of the company in terms of whether or not they
13 were responsible for this discharge?
14 The Court: That question, I'm not sure--
15 that borders on his opinion. If you want to ask it---
16 By Mr. Jones:
17 Q (interposing) All I asked was would it have
18 helped you to interview any of the other service providers in
19 the area?
20 A The interest in the contractor that did the work
21 on the dike may have helped us determine whether or not the
22 House of Raeford was a potential source based on how they
23 would have done the work, how they would have prevented the
24 water from the primary lagoon from releasing while installing
25 the pipe between the two, primary and secondary.

1 Q So that fellow, Mr. Cavenaugh, whatever his name
2 was, would have provided useful information?
3 Ms. LeVeaux: Your Honor, we're going to
4 object because we are bordering on his opinion and we're
5 bordering on--he would ask these questions to formulate an
6 opinion. So if Mr. Jones doesn't want me to ask him about
7 his opinion, then we would ask that he--because he would talk
8 to these people to formulate an opinion. So the next
9 question is "And what is your opinion and what was your
10 basis," or "What was your lack of basis?" And this would be
11 lack of basis or his basis.
12 Mr. Jones: Your Honor, that is not my next
13 question. I would not dare ask that next question. I would
14 ask the question would that person have provided useful
15 information. As a practical matter, two days ago he came in
16 here and testified under oath with that information, and I'm
17 just trying to establish that basis.
18 The Court: I'll overrule that.
19 By Mr. Jones:
20 Q Would that person have provided useful information
21 about---
22 The Court: (interposing) Not about
23 anything, just useful information.
24 A Possibly.
25 Q Now, in conjunction with your investigations, do

1 you sometimes assist in charges, civil or criminally, of
2 these violators, if you find them?
3 A Definitely not criminally.
4 Q But civilly?
5 A Civilly, the enforcement folks can use my
6 documentation or analytical--our findings to assist them in
7 their enforcement action, sure.
8 Q In this particular case the company was not cited
9 civilly; correct?
10 A No, not by EPA.
11 Q Were you--go back and remind me, do you recall how
12 many days it took for the company to remediate the creek?
13 A I don't remember exactly how many days, but it was
14 multiple days.
15 Q It was more than two?
16 A Sure.
17 Q Now, you came out the 15th--excuse me, the 14th
18 and the 15th. Do you remember how much later you were at the
19 site?
20 A I don't believe I was there much later, but my
21 contractor was there periodically to check on progress and to
22 conduct stream monitoring.
23 Q Did he discuss progress of the remediation efforts
24 to you?
25 A Yes.

1 Q Do you remember the last time he made a report
2 about that?
3 A I don't.
4 Q Do you recall--when the remediation was going on,
5 you said you saw the pumping activity in the creek. Did you
6 witness the transmission of the material that was pumped from
7 the creek to the lagoons?
8 A I don't recall actually visually seeing the
9 transfer from the creek to the lagoon.
10 Q And you didn't see it pumped from the truck to the
11 lagoon?
12 A I don't recall that I actually saw it being pumped
13 from the truck to the lagoon.
14 Q So you never actually saw the material pumped from
15 the truck to the secondary lagoon?
16 A I don't believe--I don't recall that I actually
17 saw it, no.
18 Mr. Jones: Okay. Your Honor, I think
19 that's all the questions I have, but I just want to say it's
20 been a pleasure to meet Mr. Rhame after all this discussion
21 through the months. I've enjoyed meeting you.
22 The Witness: Thank you; nice meeting you.
23 The Court: Redirect, Ms. LeVeaux?
24 **R E D I R E C T E X A M I N A T I O N** 10:57 a.m.
25 By Ms. LeVeaux:

1 Q Mr. Rhame, you indicated that you didn't actually
2 see the pump from Register to the secondary lagoon, but your
3 earlier testimony referenced to the fact that the pumping was
4 to the secondary lagoon. On what do you base that statement?
5 A It was an understanding that that's where that
6 they were going to pump it. And I might have had conversa-
7 tions with my contractor that indicated that they were
8 pumping from the creek to the secondary lagoon.
9 Q Okay. And you indicated--a question was asked to
10 you whether or not an enforcement action was brought by you.
11 But the fact of the matter is you don't have any enforcement
12 authority as it relates to this site, do you?
13 A That is correct.
14 Q And DENR would be the lead agency on this
15 violation; is that not correct?
16 A As far as I know.
17 Q And you indicated that Mr. Howard did--after
18 seeing the sludge in the creek, that he did immediately take
19 up a response to initiate mitigation. If he had not taken up
20 that response, what would have been your response?
21 A I think we would have been more thorough with the
22 collection of sampling, determining if there was any oil in
23 the sludge to basically give us a means to spend federal
24 money to conduct the cleanup.
25 Q And would you ever try to recoup those costs?

1 A Yes.
2 Q And from whom would you try to recoup those costs?
3 A Well, we have had to have, you know, done a
4 thorough investigation. And depending on who the PRPs were,
5 those would be the folks that we looked at recovering. And
6 for oil money, EPA doesn't oversee the cost recovery. That's
7 done by the Coast Guard.
8 Ms. LeVeaux: Thank you.
9 The Court: Redirect (sic)?
10 **R E C R O S S - E X A M I N A T I O N** 10:59 p.m.
11 By Mr. Jones:
12 Q What is a PRP?
13 A A potentially responsible party.
14 Mr. Jones: No further questions.
15 Ms. LeVeaux: Your Honor, before we release
16 this witness, we would move the Exhibit 4B into evidence with
17 the redaction.
18 The Court: Okay.
19 Mr. Jones: With those limits.
20 The Court: Let me make mention--I think
21 I've admitted it, but I'll make sure it's admitted. And the
22 purpose of the redaction stems from--just so we can have it
23 on the record--Mr. Rhame, you can help me with these people,
24 if I need help. Stand tight a second.
25 It stems from a July 21st, 2011 letter to Mr.

1 Jones from Mary J. Wilkes, Regional Counsel and Director,
2 Office of Environmental Accountability. In that letter Ms.
3 Wilkes cites, "'As a fact'"--and it's a quote. She's
4 actually quoting from someone else named Ms. Fleming. And
5 again, who is Ms. Fleming?
6 The Witness: She's the regional adminis-
7 trator---
8 The Court: (interposing) Okay.
9 The Witness: ---for Region 4.
10 The Court: Okay. So the regional
11 administrator has stated that "'As a fact witness, Mr. Rhame
12 will limit his testimony to his knowledge of the sludge
13 release that he observed in Beaverdam Creek, and he will not
14 offer an opinion or conclusion as to the origin of that
15 release.'" And then a copy of Ms. Fleming's letter was also
16 enclosed. So that's the basis of the redaction in the--but
17 in all other regards, Respondent's Exhibit 4B is admitted.
18 Anything further from this witness by either party?
19 Ms. LeVeaux: No, Your Honor.
20 Mr. Jones: No, Your Honor.
21 The Court: You may step down. Thank you
22 very much. With that, let's take about a 15 minute break,
23 please.
24 The Reporter: Off the record. 11:02 a.m.
25 (A brief recess was taken.)

1 The Reporter: On the record. 11:18 a.m.
2 The Court: This hearing will come to
3 order. It's now 11:17 on December the 2nd, 2011. All
4 parties present when we recessed are again present with the
5 exception of our last witness, who completed his testimony.
6 Your next witness, Ms. LeVeaux.
7 Ms. LeVeaux: Your Honor, at this time may I
8 approach the bench to make my offer of proof?
9 The Court: Yes, you may.
10 (Pause.)
11 Mr. Jones: That's it?
12 Ms. LeVeaux: Yes. Lori looked at it.
13 Ms. Jones: Okay. Okay.
14 Ms. LeVeaux: But you--did you need to see
15 it?
16 Mr. Jones: I wasn't sure if we were going
17 to converse or what?
18 Ms. LeVeaux: I just wanted the judge to see
19 that I was offering--what I was offering, and I'll hand it to
20 the court reporter.
21 The Court: What I'd actually like you to
22 do, if you don't mind, Ms. LeVeaux, is to just simply put it
23 in a sealed envelope and label it as Offer of Proof and I'll
24 attach it to the record.
25 Ms. LeVeaux: Okay.

1 The Reporter: Off the record. 11:19 a.m.
2 (Discussion off the record.)
3 The Reporter: On the record. 11:25 a.m.
4 The Court: This hearing will come to
5 order. It's now 11:25 on December the 2nd, 2011. All
6 parties present when we recessed are again present with the
7 exception of our last witness, who completed his testimony.
8 Your next witness, Ms. LeVeaux.
9 Ms. LeVeaux: Thank you, Your Honor. Your
10 Honor, at this time we would call Mr. Poindexter to the
11 stand.
12 The Court: Okay. Mr. Poindexter, as you
13 approach the stand here on my right, it would be our normal
14 procedure to swear you in unless you prefer to be affirmed.
15 Swearing is using the bible.
16 (Witness indicates.)
17 The Court: Okay. If you'll step up to the
18 bible, place your left hand on the bible, and raise your
19 right and face the court reporter, please, sir.
20 (Whereupon,
21 **ROBERT POINDEXTER**
22 was called as a witness, duly sworn, and testified as
23 follows:)
24 The Court: Make yourself comfortable and
25 if you would state your first and last name and spell them

1 both?
2 The Witness: Robert, R-o-b-e-r-t,
3 Poindexter, P-o-i-n-d-e-x-t-e-r.
4 The Court: Thank you, sir. If you'll
5 direct your attention to Ms. LeVeaux?
6 **D I R E C T E X A M I N A T I O N** 11:28 a.m.
7 By Ms. LeVeaux:
8 Q Thank you, Mr. Poindexter. Can you hear me okay?
9 A Yes, ma'am.
10 Q And Mr. Poindexter, you're not here voluntarily,
11 are you?
12 A No, ma'am.
13 Q You're here as a result of a subpoena that my
14 office issued; is that correct?
15 A Yes, ma'am.
16 Q And Mr.---
17 The Court: (interposing) So you wish you
18 weren't here; right?
19 Ms. LeVeaux: He does not want to be here,
20 Your Honor.
21 The Court: We'll make you as comfortable
22 as possible, Mr. Poindexter. Thank you.
23 By Ms. LeVeaux:
24 Q Mr. Poindexter, I'm going to take you to a date
25 and time. And to the extent that you can remember what

1 occurred on or about that date, I'd like you to answer, and
2 you've been sworn to answer truthfully. Are you familiar
3 with a facility known as the House of Raeford?
4 A Yes, ma'am.
5 Q Good. Before I get to that, will you explain to
6 the Court what it is that you do?
7 A I'm the environmental manager for Valley Proteins
8 in Rose Hill, North Carolina. I've over the wastewater and
9 the air quality, irrigation, land app, treating all the water
10 and recycle. And we use the water--recycled water through
11 the plant.
12 Q And when you say land app, is that an abbreviation
13 for land application?
14 A Yes, ma'am.
15 Q You said Carolina By-Products. Is that also
16 Valley Proteins or did you say Valley Proteins?
17 A I said Valley Proteins because January the 1st of
18 this year--in '99 or 2000, they changed it to Carolina
19 By-Products.
20 Q Okay.
21 A But the first of this year it went back to Valley
22 Proteins.
23 Q Okay. It went to Valley Proteins. Okay. And I'm
24 just--to the extent that you can remember and to the extent
25 that you recall, I'm going to take you to a point in time,

1 September--about September the 9th, 2009. Do you recall if
2 your facility had a discharge?
3 A No, ma'am.
4 Q You can't recall?
5 A What do you mean about a discharge?
6 Q Do you recall whether or not your facility had a
7 discharge on or about September the 9th, 2009?
8 A Not that I'm aware of.
9 Q Okay. And I'm going to ask you to speak up
10 because I think the court reporter is having difficulty--
11 instead of shaking your head "yes" or shaking your head "no,"
12 just answer verbally.
13 A All right.
14 Q So to answer that question just one more time---
15 A (interposing) No.
16 Q ---do you recall whether or not you had a
17 discharge on or about September the 9th, 2009?
18 A No, ma'am.
19 The Court: Does no mean---
20 Q (interposing) No, you don't recall or you didn't
21 have a discharge?
22 A I didn't have one.
23 Q Okay. And if you will, describe for the Court
24 your facility as it relates to your lagoons. Do you have
25 lagoons?

1 A Yes, ma'am. I have four.
2 Q You have four?
3 A I have one--the first one is my aerated lagoon. I
4 have 14 aerators in it. The water from the plant that we get
5 from offal trucks and so forth, it goes to a Sweco--it goes
6 into a big tank called an FEB. It's got a Sweco screen, what
7 I'm talking about, a tank above it.
8 The meats drop into the meat bin--or any solids.
9 The liquid goes into the FEB tank. From the FEB tank, we
10 pull it out and it goes to a first stage DAF system. The
11 effluent off of that goes into my number 1 pond.
12 Number 1 pond I feed to an oxidation tank, a 1.7
13 million gallon tank that has blowers on it. We control the
14 DO. It feeds to my secondary clarifier, which is my final
15 DAF. That water goes into number 3 pond. Number 2 pond we
16 put nothing in but rainwater. We had it cleaned out one
17 time. But number 3 pond or number 4 pond is what we irrigate
18 out of, use water for the plant, and so forth.
19 Q Do you have any vegetation on top of any of your
20 lagoons?
21 A Yes, ma'am. We keep rye grass planted.
22 Q Where's the rye grass?
23 A It's all around the ponds, plus you keep it on
24 your slopes too, to keep from having erosion.
25 Q And do you have any vegetation on top of your

1 lagoons?
2 A No, ma'am.
3 Q And can you tell me to the extent that you know--
4 or describe for the Court the terrain around your lagoons.
5 And I don't know if---
6 Ms. LeVeaux: And Your Honor, if I may
7 approach with this exhibit?
8 The Court: Sure, you may.
9 Q I don't know if you can see this exhibit, but if
10 you can, I'd ask you to--and maybe I can help. Well, I ask
11 you to identify if you see your facility anywhere on this
12 map.
13 A I think that's it down at the bottom.
14 Q Right here (indicating)?
15 The Court: You can step down and help out.
16 (Witness approaches photograph.)
17 The Court: And counsel can point out the
18 House of Raeford.
19 Ms. LeVeaux: I did.
20 The Court: That's---
21 Ms. LeVeaux: (interposing) I did, Your
22 Honor. I did.
23 The Court: Yes.
24 The Witness: Right here (inaudible).
25 By Ms. LeVeaux:

1 Q Okay. And you can have a seat and describe it so
2 the court reporter can hear you.
3 The Reporter: I did not hear what he just
4 said.
5 A No. I just said this is my plant right here
6 (indicating).
7 The Reporter: Thank you, sir.
8 The Witness: Yes, ma'am.
9 (Witness returns to stand.)
10 Q So Mr.---
11 The Court: (interposing) And the
12 location--I'll let you lead this witness a bit if you want to
13 describe the map---
14 Ms. LeVeaux: (interposing) Okay.
15 The Court: ---for him just to verify what
16 you're saying.
17 Ms. LeVeaux: Yes, sir.
18 By Ms. LeVeaux:
19 Q So Mr. Poindexter, am I in fact pointing to your
20 facility (indicating)?
21 A Yes, ma'am. Uh-huh, that's it.
22 Q And this chart says this is north here
23 (indicating), so here's House of Raeford here (indicating).
24 Is it fair to say that you're south of House of Raeford, or
25 do you know?

1 A Yes, ma'am.
2 Q Okay. And are you familiar with the water systems
3 around your facility?
4 A Yes, ma'am.
5 Q And if you will, describe---
6 Ms. LeVeaux: Did you say something?
7 Mr. Jones: Go ahead.
8 Q If you will, describe for the Court the water
9 facilities around your facility, the water systems, to the
10 extent that you know?
11 A Like I say, I've got four lagoons. I've got two
12 big tanks. The number 1 lagoon holds a little over two
13 million gallons. The number 2 pond holds roughly--because
14 it's a little bigger pond, so we'll say two and a half.
15 Number 3, it holds like two and three quarter.
16 Number 4 holds over three million, but 3--what I want
17 everybody to understand is 3 and 4 is clean water. I mean we
18 turn out good water. My ammonia today was less than 2 point
19 milligrams per liter.
20 The only time--what she was asking me while ago
21 about do I have any growth on top of my water, summertime
22 you're going to have algae. You can't help it. Sunlight
23 creates algae. But other than that, I've got a good plant.
24 It's come a long ways. With DWQ helping me get it and my
25 main people in Winchester, my plant runs the best it's ever

1 run since '05.
2 And the main thing is we try to keep everything
3 clean. If we have a spill, we do what we've got to do to get
4 it cleaned up and handle it. I've been to HAZWOPER training,
5 spill prevention. I've got a physical/chemical license, a
6 Grade 2 wastewater license and irrigation and land app. We
7 don't land app no more. We send our sludge to McGill-Delway,
8 which is a composter.
9 Q Do you know if Cabin Branch creek or wetlands are
10 near your facility?
11 A It's better than 3 mile, probably closer to 4.
12 Q And is that the only water system near your
13 facility?
14 A We've got Taylor's Creek, and that's where most of
15 my water flow--my stormwater would go would be to Taylor's
16 Creek.
17 Q And you talked about a DAF. What's a DAF?
18 A Diffused air flocculation system.
19 Q In fact you showed me your system, did you not?
20 A Yes, ma'am.
21 Q And how many D-A-Fs or DAFs do you have?
22 A Two.
23 Q And why do you have two?
24 A Because I have one that treats what you call raw
25 wastewater. And then I have one over there at my office. It

1 treats some treated water and condensate water. But on that
2 being said, it takes all your solid particles out, and what
3 you're left with is clean water.
4 Q And in the past the Department of Water Quality or
5 DENR has cited you for stormwater violations, have they not?
6 A Yes, ma'am.
7 Q And you've remedied those situations, have you
8 not?
9 A Yes, ma'am.
10 Ms. LeVeaux: No further questions, Your
11 Honor.
12 The Court: Okay. Cross-examination, Mr.
13 Jones.
14 Mr. Jones: Just briefly.
15 **C R O S S - E X A M I N A T I O N** 11:38 a.m.
16 By Mr. Jones:
17 Q Mr. Poindexter, I'm Henry Jones. I represent
18 House of Raeford Farms, and I'll just ask you a question or
19 two. Did you say--were you the operator in 2008?
20 A I took the operator in responsible charge December
21 '03.
22 Q So you would have been there in 2008?
23 A Yes, sir.
24 Q Did you have the occasion to clean out one of your
25 lagoons in 2008?

1 A It was somewhere around that time, yes, sir.
2 Q Do you remember why?
3 A Yes, sir.
4 Q Why was that?
5 A Because in the past I'm going to say that lagoon
6 was mistreated.
7 Q What do you mean by that?
8 A They were doing things against the law. I have to
9 leave it at that.
10 Q So you had to clean out the lagoon?
11 A I kind of pushed that issue.
12 Q Was one of the problems that there was too much
13 junk on the top?
14 A No, sir, too many solids in the bottom.
15 Q Too many solids in the bottom. When you clean out
16 a lagoon like that, how do you clean out a lagoon like that?
17 A I contacted Triple S Farms out of Beulaville and
18 got a quote. And then I contacted a company I found out
19 about in Arkansas, TRS. TRS give me the best quote. I
20 helped line up some farmers. Bob Branch was the engineer.
21 He went and done all the work doing the land. We had to get
22 a permit from the State of North Carolina, DENR.
23 Everything went good. We had no odor complaints,
24 how to round it up, how to trap it and go to the fields, how
25 to handle it, everything. And Geoff Kegley will tell you he

never heard a complaint. I showed him what we done. Everything was fine.

Q What did you do with the solid material that you took out of the lagoon?

A That's what I'm talking about. We hauled it to the farmers.

Q Hauled it to the farmers and land applied it?

A Yes, sir. They were responsible for all that. All I had to do was oversee it.

Q Do you remember how many loads it took?

A Oh, good God. You're talking about 5 million gallons of solids.

Q Of solids?

A Yes, sir.

Q And which lagoon did that come out of?

A Sir?

Q Which lagoon did---

A (interposing) Number 2.

Q Number 2?

A Number 2.

Q And that's one of the lagoons adjacent to your plant there near Rose Hill; correct?

A That's the one I said while ago there's nothing goes in that pond but Mother Nature rainwater.

Q Now nothing goes in it but rainwater?

1 A Since we had it cleaned out; that's correct.
2 Q You've got another lagoon, though, where solids do
3 go, don't you?
4 A I've got an aerated lagoon.
5 Q It's aerated to deal with the solids?
6 A Yes, sir.
7 Q How many DAF units do you have?
8 A Two.
9 Q Two. And you have you said an FEB tank. Is that
10 a float equalization basin?
11 A Yes, it is.
12 Q Is that what that stands for?
13 A Uh-huh.
14 Q What happens in the FEB?
15 A Every quarter we run the water down low and open
16 it up and check for buildup of solids.
17 Q Do you develop solids in the FEB?
18 A You got to remember now, in this plant I work at,
19 it's a rendering plant. You have a lot of chicken scraps.
20 You have feathers get down in the drain. The Sweco is not
21 going to catch everything even though you've got like a 40
22 mesh screen, a small screen, but you're not going to catch
23 all of it.
24 You have to check your FEB tank every quarter.
25 The main reason is if you got 6 inches of buildup or you've

1 got 3 inches, you need to get them solids out. And what we
2 do with those solids is put it in the meat bin and it cooks
3 with the meat.
4 Q The solids build up in the FEB?
5 A Yes, sir.
6 Q Do you ever have problems where material escapes
7 from the FEB and is carried by stormwater?
8 A No, sir.
9 Q No. In 2009 was Valley Proteins cited by the
10 state for stormwater violations?
11 A I don't really know how to answer that because my
12 memory is not that good.
13 Q You don't recall following inspections in April of
14 2009 getting some stormwater violations from the state?
15 A There's been no fine as far as money-wise goes. I
16 could have got a notice or a warning or however you might
17 want to put it.
18 Q Do you get notices of violation from time to time?
19 A No, sir. I told you we keep a clean plant.
20 Q Okay. You don't remember getting one in 2009?
21 A Not right off the top of my head.
22 Q When--you mentioned that you at Valley Proteins
23 have a rendering operation?
24 A Yes, sir.
25 Q All right. Do you get material from House of

1 Raeford?
2 A Yes, sir, the Rose Hill plant and the Wallace
3 plant.
4 Q Rose Hill and Wallace. What kind of---
5 A (interposing) We take the feathers. The meat
6 goes to the Fayetteville plant because they do pet food. All
7 we take from the plants, Rose Hill and Wallace, is the
8 feathers.
9 Q But you get that material from Rose Hill, and how
10 does it go to your plant?
11 A In an open trailer. I've got a tarp that goes
12 across it.
13 Q And what other material do you get in the area?
14 A We get so many loads from Butterball, which is--I
15 still call it Carolina Turkey. We get Warsaw Pork out of
16 Warsaw. We get some from Lakeview Packing. What's that,
17 Case---
18 Q Case Farms---
19 A (interposing) Yes, sir.
20 Q ---out of Hillsborough?
21 A Uh-huh. And every now and then if our other plant
22 is filled up, we'll call it, we take some from Lumber Bridge.
23 Q Lumber Bridge is Mount Aire Farms?
24 A Uh-huh. But that's not every day or whatever.
25 Q And Mount Aire farms is a chicken plant?

1 A Yes, sir.
2 Q Case Farms is a chicken plant?
3 A Yes, sir.
4 Q Butterball is a turkey---
5 A (interposing) Right.
6 Q ---operation?
7 A Yes, sir.
8 Q Carolina Turkeys is a turkey operation. Any other
9 chicken operation?
10 A I've got to be honest with you. My main concern
11 is water. I can't sit here and name all the customers we've
12 got. Them I named is the ones basically.
13 Q But you get chicken offal from those various
14 places---
15 A (interposing) Yes, sir.
16 Q ---in and around Duplin County?
17 A Yes, sir.
18 Q And when you get that, you send--your company
19 sends trucks out to get it; correct?
20 A Yes, sir.
21 Q And then your trucks bring it back to Carolina---
22 A (interposing) They take an empty trailer and get
23 the full trailer, leave them an empty and bring back the full
24 one.
25 Mr. Jones: I don't believe I have any more

1 questions.
2 The Court: Anything further, Ms. LeVeaux?
3 Ms. LeVeaux: Just two questions.
4 **R E D I R E C T E X A M I N A T I O N** 11:46 a.m.
5 By Ms. LeVeaux:
6 Q Mr. Poindexter, your offal staging area drains to
7 which creek?
8 A No, ma'am. It don't go to a creek.
9 Q I'm sorry?
10 A We had a curbing like a speed bump built around it
11 to contain it. So we don't have no runoff from there, no,
12 ma'am.
13 Q And just one final question: have you ever had
14 the occasion to borrow any pumps from House of Raeford?
15 A Not that I recall.
16 Ms. LeVeaux: Okay, thank you.
17 The Court: Anything further, Mr. Jones?
18 **R E C R O S S - E X A M I N A T I O N** 11:47 a.m.
19 By Mr. Jones:
20 Q Mr. Poindexter, one thing: you said you put a
21 speed bump up?
22 A Yes, sir.
23 Q When did you do that?
24 A We built a new office building. They started on
25 it, I think it was '09--'08, end of '08. And then we--me and

1 Ms. Linda Willis had talked about it before, fixing a dike or
2 something around it.
3 So when they were pouring all this concrete and
4 building the new building--I'm trying to think--Loren King
5 (phonetic) come and poured the asphalt. And that's exactly
6 what it is. It's like a speed bump about this high
7 (indicating), where if for some unknown reason the pump would
8 knock off or the heaters kick out before somebody got to it,
9 you wouldn't have it running across the yard. And it works
10 real well.
11 Q Do you remember when that was put in?
12 A I want to say '9.
13 Q 2009?
14 A Because those people that were building the
15 building, they were there way too long. They couldn't even
16 build a doghouse for me.
17 Mr. Jones: I think I'm through, Your
18 Honor.
19 **E X A M I N A T I O N** 11:48 a.m.
20 By the Court:
21 Q One more clarification, Mr. Poindexter. You had
22 said that--you were talking about the creeks and their
23 location. You said Cabin Branch was about 4 miles from you.
24 How far is Taylor's Creek from you?
25 A Taylor's Creek is about--probably the same

1 distance.
2 Q Okay, so both are about 4 miles.
3 (Witness nods affirmatively.)
4 The Court: Thank you. Any more questions
5 for Mr. Poindexter?
6 Ms. LeVeaux: Just a clarification as a
7 result of what you said.
8 **F U R T H E R R E D I R E C T E X A M I N A T I O N**
9 11:49 a.m.
10 By Ms. LeVeaux:
11 Q But you did say the majority of anything would
12 drain to Taylor's Creek; correct?
13 A Yes, ma'am. I ain't never seen water run uphill.
14 The Court: Anything further?
15 Ms. LeVeaux: Nothing from the state.
16 The Court: That wasn't so bad, was it?
17 The Witness: No.
18 The Court: Okay, thank you.
19 (Pause.)
20 The Court: Your next witness, Ms. LeVeaux.
21 Ms. LeVeaux: Yes, Your Honor. We call Mr.
22 Kegley to the stand.
23 The Court: And I've seen you sitting
24 there, so I know you know my next question. Do you have a
25 preference for swearing?

1 Mr. Kegley: Swearing is fine.
2 The Court: Okay. If you'll place your
3 left hand on the bible, raise your right, and face the court
4 reporter?
5 (Whereupon,
6 **GEOFFREY KEGLEY**
7 was called as a witness, duly sworn, and testified as
8 follows:)
9 The Court: If you'll have a seat, please,
10 sir, and make yourself comfortable? Give us your first and
11 last name and spell them both.
12 The Witness: It's Geoffrey Kegley, spelled
13 G-e-o-f-f-r-e-y. Last name is Kegley, K-e-g-l-e-y.
14 The Court: Thank you very much. You may
15 direct your attention to Ms. LeVeaux.
16 Ms. LeVeaux: Thank you, Your Honor.
17 **D I R E C T E X A M I N A T I O N** 11:51 a.m.
18 By Ms. LeVeaux:
19 Q Mr. Kegley, if you will, please, tell the Court
20 what it is that you do and for whom you work.
21 A I'm a hydrogeologist with the Division of Water
22 Quality, Aquifer Protection Section.
23 Q And how long have you been working in that
24 capacity?
25 A In that capacity for approximately seven years.

1 I've been with the department for 15.
2 Q If you will, please, will you go over your
3 education from college and bring us to date as it relates to
4 employment?
5 A Sure. I received a bachelor of science from
6 University of South Carolina in geology as a major. After
7 that I did some geophysical surveying for the university in
8 Aiken, South Carolina, the Savannah River site.
9 After that I took a job with the department, DENR,
10 with the Groundwater Section. I worked for a couple years
11 with the Division of Environmental Health, Public Water
12 Supply Section. And then I returned to DWQ, which has been
13 renamed to the Aquifer Protection Section since. I've been
14 there ever since.
15 Q And I'm going to ask, Mr. Kegley, you to speak up
16 just a little bit.
17 A Sure.
18 Q I'm having a hard time hearing you.
19 A Okay. Sorry.
20 Q And again, as opposed to nodding or shaking your
21 head, if you could just answer yes or no?
22 A Okay.
23 Q You've been in the courtroom throughout these
24 proceedings; correct?
25 A Yes.

1 Q And if you would just describe for the Court
2 generally what your job responsibilities entail?
3 A I do permitting and compliance for the non-
4 discharge wastewater treatment systems, wells, monitoring
5 wells, underground injection control. The majority is
6 permitting for nondischarge wastewater systems.
7 Q Are you familiar with the facility that's the
8 matter before this Court, the House of Raeford?
9 A Yes.
10 Q And you've also sat through the testimony of Mr.
11 Poindexter. Are you familiar with a facility by the name of
12 Carolina By-Products or Valley Proteins?
13 A Yes, I am.
14 Q And are you familiar with the operation of that
15 facility, Carolina By-Products/Valley Proteins, including the
16 lagoons?
17 A Yes. I've been to that facility several times in
18 the past during compliance inspections.
19 Q And if you would describe for the Court Carolina
20 By-Products. That's the gentleman, the operator, who just
21 spoke here. Could you just describe for the Court that
22 facility and what you observe when you go to that facility
23 and also the areas that you would inspect?
24 A Okay. It's a rendering facility, as we know.
25 Q What does it mean by rendering?

1 A They take offal from dead animals and boil them
2 down and cook them and turn it into a product, as far as I
3 understand. There's wastewater involved with that. They
4 have a wastewater treatment system. Mr. Poindexter has
5 described it in further detail than I can, but I know they
6 have a DAF unit, four lagoons, a very large spray irrigation
7 system. And I know they send their sludge by-products off
8 site to a composting facility.
9 Q Have you or did you cite this facility for any
10 discharges on or about September 2009?
11 A No.
12 Q And if there were a discharge, what would you
13 expect to see, since you've been to that facility?
14 A In general when we do inspections, we look for any
15 overtopping of lagoons, breaches. We look at the spray
16 irrigation sites. We look for any ponding or runoff, none of
17 which I've seen at Carolina By-Products.
18 Q And you sat through the testimony of Petitioner's
19 expert, Mr. Holley, who is also a hydrogeologist. And he
20 explained that a lot would go to Cabin Branch. Do you agree
21 with that testimony?
22 A I can't quantify a lot. Where the lagoons are
23 situated if they were to have a problem, I think it has a
24 potential of going either way.
25 Q How would you describe the operations at Carolina

1 By-Products/Valley Proteins in or about September of 2009?
2 A I've worked with Mr. Poindexter on several issues,
3 relocating some monitoring wells into the site. I worked
4 extensively with him on the lagoon cleanout. We visited all
5 the farms that were going to take the stabilized sludge as it
6 was removed from the lagoon. That was in 2008.
7 And I think--I consider Mr. Poindexter a
8 conscientious operator and he likes to do the right thing.
9 So I've never really had any issues with their operation.
10 Q Okay. I'm going to take you to a point in time
11 and to the extent that you can remember it, I'd like you to
12 testify to that. And of course if you don't remember, just
13 let the Court know that you don't.
14 A Okay.
15 Q On or about September the 10th or the 9th, 2009
16 did you have an occasion to receive a call as it relates to
17 the House of Raeford?
18 A I did not receive the call. I believe Linda
19 Willis did.
20 Q Okay. And so that I don't constantly stop you,
21 what I'd like you to do is explain--did you work with that
22 particular call that was received?
23 A Yes, I did.
24 Q So I'll have you, if you will, please, describe to
25 the Court when you became aware of it and what you did as it

1 related to that call.
2 A Okay. I was informed of it on September 9th later
3 in the afternoon, so we discussed going out to the site on
4 the 10th. On September 10th, we prepared to go in the field.
5 Linda prepared the sampling equipment and got the truck
6 together and our equipment, and we went to investigate the
7 incident on September 10th.
8 Q What did you observe?
9 A We started with the location of the complaint at
10 the bridge, and I believe that's Beaverdam at that point.
11 And from that point we took stream statistics. We--I relied
12 on Linda's knowledge of upstream and downstream. I'm
13 familiar with the two facilities, but not with the river
14 network at that point.
15 Q But you could see the flow, could you not?
16 A Yes. We could see--we could see the stream very
17 well. It's a low flow stream. It may be moving slowly at
18 the point, but we did see an impact to the creek. The DO was
19 really low. We realized we had a problem and there was a
20 basis to the complaint. So at that point we decided we'd
21 work our way upstream looking for depressed dissolved oxygen.
22 Q And so, if you will, turn to Respondent's Exhibit
23 Number 14.
24 (Witness complies.)
25 Q And I'm going to have you go to Respondent's

1 Exhibit Number--Figure L in that--in 14.
2 (Witness complies.)
3 Q And I'm going to ask if you recognize Respondent's
4 Exhibit 14L?
5 A Yes. This appears to be the sludge in the creek
6 of Cabin Branch directly behind House of Raeford.
7 Q Is this what you saw--I mean just tell me--I'm
8 trying to take you a point of---
9 A (interposing) Sure.
10 Q ---exactly your involvement with---
11 A (interposing) Okay.
12 Q ---Ms. Willis.
13 A As we work our way upstream, we are finding low
14 dissolved oxygen. We came to a point at one point located on
15 the stream where we found a normal dissolved oxygen for that
16 time of year. Per the notes I think it was a 4.9. So we
17 realized---
18 Q (interposing) Was that upstream or downstream?
19 A From House of Raeford that is upstream. So we
20 realized the DO was all right. The creek appeared clean at
21 that point. So we thought we had narrowed it down to an
22 upstream and a downstream location, and we investigated what
23 was between those two points. It was Parker Bark and House
24 of Raeford.
25 We went to Parker Bark first and were denied

1 access, so we went to House of Raeford next door. And we had
2 to be let into the facility. We met Mr. Teachey and we went
3 to investigate House of Raeford.
4 Q Okay. And so you said you went to Parker Bark.
5 What you saw in the creek, did it look like a waste that
6 could be produced by Parker Bark?
7 A We could not see the creek at Parker Bark from
8 that facility.
9 Q Have you had an occasion to see the waste that's
10 produced by House of Raeford?
11 A Yes, I have. I've been there several times.
12 Q And did you subsequently have an occasion to see
13 what was in the creek?
14 A On that day we did. We drove past the facility to
15 the lagoons with Mr. Teachey. We walked down to the ditch
16 that was on the south side, walked down to the ditch. We
17 noticed something in the creek, but we were unsure what it
18 was. It was--it was not obvious at that point.
19 And we got up to the berm, and as we walked
20 around, there's a clearing where you can see the creek. And
21 that's when we realized we had found an issue.
22 Q And did you say anything to Mr. Teachey at that
23 juncture?
24 A I had conversations with him while we were there.
25 Linda was, you know, doing most of the talking, but I did

1 speak with Mr. Teachey.
2 Q And in fact without going through all of what Ms.
3 Willis testified to or what she observed on that day, do your
4 observations vary from--you sat here through her testimony,
5 did you not?
6 A Yes, I did.
7 Q Do your observations vary from her testimony to
8 the extent that you were with her on or about September the
9 11th, 2009?
10 A That's correct.
11 Q Is your testimony--do you disagree with anything
12 she said?
13 A No, I do not.
14 Q Describe for the Court, if you will, the sludge
15 that you observed in the creek versus the sludge in the
16 lagoon. Were there any similarities or dissimilarities?
17 A They were very similar, you know. We looked at
18 the creek. We were right there on the bank. We had prior to
19 and subsequently after looked at the lagoon. The sludges
20 appear almost identical.
21 Q What about the lagoon maintenance? That would be
22 something within your purview, freeboard. Did you make an
23 observation as to House of Raeford's maintenance of their
24 primary lagoon including freeboard?
25 A The primary lagoon in all of my visits to House of

1 Raeford prior to this and on this day have always appeared
2 high. There's no freeboard marker to measure it, but there's
3 a low point on the berm that you drive right past on your way
4 in, and it has always appeared high.
5 Q And what about vegetation on the lagoon?
6 A Every visit I've been to there has been vegetation
7 growing on the sludge blanket in the lagoon. We've asked
8 them to remove that several times in the past. They have
9 since.
10 We recommended lagoon cleanout. Part of the
11 operation and maintenance of a lagoon is remove solids. As
12 those solids build up in time, you lose effective treatment
13 capacity to that lagoon. As we heard Carolina By-Products,
14 it's a big process to undertake cleaning out those solids.
15 You need to find farm fields. You need to stabilize the
16 sludge. It's an expensive and time consuming process. This
17 lagoon to my knowledge has never been cleaned out.
18 Q You indicated that on the berm you could see the
19 creek. Is there also a ditch alongside the lagoon?
20 A There's a ditch that follows the--what appears to
21 be a property boundary from Highway 117 all the way to the
22 creek. On September 10th I walked down that ditch.
23 Q Did you notice anything in that ditch?
24 A I did. It was when we had first arrived there.
25 It looked like an organic matter or a sludge. We were sort

1 of unsure. There wasn't enough of it as there was around the
2 corner behind the lagoon to make it, you know, evident what
3 we were dealing with.
4 But I did notice something that basically--it was
5 a red flag to investigate further. I would have liked to
6 have taken a picture of it. The camera that we had with us
7 that day, the batteries were dead. So if you notice, all the
8 pictures are from September 11th. We don't have pictures
9 from the day that I was there.
10 Q And that was September 11th?
11 A Yes.
12 Q Did you ever ask Mr. Teachey to pump the waste
13 from the creek back into the lagoon?
14 A No.
15 Q Tell me--you've sat through the testimony and
16 you're aware that there was some valve construction and
17 replacement; correct?
18 A Yes. And I observed that the day that I was
19 there, the fresh dirt, the newly constructed valve.
20 Q Okay. And without talking about that day, what
21 would you expect--prior to the valve construction, what would
22 you expect to happen to prep for that valve construction?
23 A The biggest thing they would have to do is to
24 lower that lagoon level for performing that, building the
25 check dam around it to stop the flow. You're going to

1 have--unless you shut down the plant, you're going to
2 continue to have a wastewater influent coming into that
3 lagoon, so you would need the capacity for that lagoon to
4 take that incoming wastewater.
5 It would make it easier for the construction to
6 lower that lagoon. So I would imagine they'd want that
7 lagoon basically as low as they could get it prior to that
8 construction.
9 Q I asked you to look at Figure L, but really what
10 I'd like you to do is compare Figure L to--14L to 14Q and
11 describe for the Court what you have before you in 14L versus
12 14Q.
13 (Witness peruses photographs.)
14 A 14Q appears to be the corner or the edge of the
15 primary lagoon. The vegetation in the back is marsh grass or
16 vegetation that's growing on that sludge blanket, and the
17 sludge is in the foreground. In my observations on September
18 10th, those two appeared to be very similar in appearance.
19 Q And do you have an opinion satisfactory to
20 yourself based upon your education and your observations on
21 or about September 11th, 2009 as to what occurred as it
22 relates--as to the source of the sludge that you saw in the
23 Cabin Branch creek?
24 A I believe through our investigation with the
25 stream, finding depressed dissolved oxygen downstream,

1 clean--you know, higher dissolved oxygen upstream, no
2 appearance of sludge, and the--finding the sludge directly
3 behind the lagoon in Cabin Branch led me to believe that the
4 source was the House of Raeford.
5 Ms. LeVeaux: Thank you. No further
6 questions, Your Honor.
7 The Court: Cross-examination, Mr. Jones.
8 **C R O S S - E X A M I N A T I O N** 12:09 p.m.
9 By Mr. Jones:
10 Q Mr. Kegley, you said you have a degree in hydro-
11 geology?
12 A In geology.
13 Q In geology?
14 A That's correct.
15 Q Did you do any graduate work?
16 A I took some graduate level courses, one of which
17 was in hydrogeology, but I do not have a master's degree.
18 Q You do not have a master's. And you are involved
19 in permitting for nondischarge systems?
20 A That's correct.
21 Q You're not an enforcement kind of person, though,
22 are you?
23 A No. I do do compliance inspections, but that's
24 not my--the majority of my responsibilities.
25 Q Now, you said at Valley Proteins they deliver

1 sludge. And how did you say they dispose of it, by
2 composting?
3 A Yes. They have a sludge permit to dispose of--
4 they have a dedicated spray irrigation field for some of
5 their sludge. They have not used that in at least three or
6 four years, to my knowledge right now. They have hauled that
7 sludge by-product from their wastewater plant to McGill
8 Environmental. That's a composting facility.
9 Q Do you know how much sludge they produce in a day?
10 A No.
11 Q Is it much?
12 A I have no idea.
13 Q Do you know how many truckloads leave there on a
14 daily or weekly basis of sludge?
15 A No idea.
16 Q Where is McGill?
17 A I don't know. Mr. Poindexter mentioned Delway.
18 But it is a facility that's permitted by our division.
19 Q Mr. Poindexter referred to some problems they had
20 in 2008. Were you on the scene when that occurred?
21 A Some problems?
22 Q When they had to clean out their lagoon.
23 A I was involved with the lagoon cleanout. I wasn't
24 there on site when they were doing the physical cleanout. I
25 was there prior to and worked with him on the permitting of

1 that project. They got a separate permit for that.
2 They hired a company out of Arkansas. I met with
3 Robert and their consultant and their soil scientist. We
4 investigated all the fields--there's rules and regulations
5 for land application setbacks, that kind of thing--and
6 reviewed the permit application, provided my comments to the
7 permit writers in Raleigh.
8 Q Did they have to remove solids from the lagoon?
9 A They did.
10 Q Was that supposed to be a clean water lagoon?
11 A It was a wastewater lagoon that they were cleaning
12 out.
13 Q But were solids supposed to be in that lagoon?
14 A Solids accumulate in wastewater treatment lagoons,
15 so yes, you would expect to find solids in the bottom of the
16 lagoon.
17 Q Were solids disposed in that lagoon unlawfully?
18 A I don't know.
19 Q Was there a--in connection with that lagoon was
20 there a breach or an overtopping?
21 A Not that I'm aware of.
22 Q Why did they have to remove the solids from the
23 lagoon?
24 A It's--part of the proper operation and maintenance
25 is to periodically clean out lagoons.

1 Q Did they have to remove solids from any of their
2 other lagoons?
3 A I permitted the source, Carolina By-Products
4 wastewater treatment facility, for lagoon cleanout. I can't
5 say which lagoons the solids came out of.
6 Q So it could have been one or more?
7 A It could have been one. It could have been all
8 four of them.
9 Q On September the 10th, you said you investigated
10 the complaint. Do you remember who the complainant was?
11 A It was anonymous.
12 Q Is there some sort of legal standard that you know
13 of for the freeboard level in the primary lagoon?
14 A The House of Raeford's permit provides for
15 requiring 2 feet of freeboard in all lagoons. The permit
16 requires 2 feet of freeboard in all of their lagoons, which
17 would mean lagoon 1, 2, and 3.
18 Q Doesn't that only apply to the spray irrigation
19 lagoon, the storage lagoon?
20 A It does not. They're only required to record for
21 lagoon number 3, the storage lagoon.
22 Q Okay.
23 A But the permit requires 2 feet of freeboard in all
24 of their lagoons.
25 Q But they only have to record for the storage

1 lagoon?
2 A They only have to record, but they're required to
3 maintain 2 feet.
4 Q Have you cited House of Raeford for any freeboard
5 violations in the primary lagoon between--say during 2009?
6 A I personally have not. I know---
7 Q (interposing) Did you inspect them during---
8 Ms. LeVeaux: (interposing) Excuse me.
9 Objection, Your Honor. I think he was still answering the
10 question before--and he went on to his next question.
11 The Court: It's overruled.
12 A I personally have not written notices of violation
13 or filled out compliance inspections. I have been in
14 attendance on several of those inspections where that has
15 been mentioned.
16 Q Well, isn't it true that if there is a closeness
17 to the top of the lagoon, it's over on the Parker Bark side?
18 A Uh-huh.
19 Q Where the Parker Bark has driven down the---
20 A (interposing) Yes.
21 Q ---rim of the thing because of their traffic and
22 whatnot? Is---
23 A (interposing) Yes.
24 Q ---that true? And they've since built a fence
25 there to keep that traffic out of there, haven't they?

1 A Right.
2 Q So they've attempted to address the cause of that
3 problem?
4 A That's correct.
5 Q And there was adequate freeboard in the secondary
6 lagoon at all times, wasn't there?
7 A On my day on the 10th and in prior visits, I have
8 not observed a freeboard problem in lagoon 2.
9 Q And in order to reduce the water level in the
10 primary lagoon, they turn the valve and by gravity the water
11 flows into the secondary lagoon; correct?
12 A That's correct.
13 Q So there's no pumping necessary? It's just a
14 gravitational--water flows downhill?
15 A That's correct.
16 Q And there was adequate freeboard at all times in
17 the secondary lagoon?
18 A That's correct.
19 Q You mentioned that there was vegetation on the
20 primary lagoon when you were there in 2009. Has that
21 material been removed now?
22 A So I've heard.
23 Q When you visited the site on September the 10th--
24 did you go back on September the 11th?
25 A No, my only involvement was on September 10th.

1 Q On the 10th, okay. Now, you mentioned the ditch
2 area that you said was a red flag. Are you talking about--
3 are you talking about the structure or what have you, the
4 land feature, to the south of the property that runs on the
5 south side of the lagoons? Is that what I'm outlining right
6 there (indicating)?
7 A Yes. If you'd like me to point out where I
8 observed it?
9 Q Yes, please.
10 (Witness approaches photograph.)
11 A On the 10th we drove into the facility. We passed
12 the DAF unit, drove down the road and crossed over the berm.
13 And there's a pump house area about mid-way on the south side
14 of lagoon number 2. That's where we parked and got out.
15 From that point you can walk down the hillside
16 into the ditch. It was dry on that day. And about the area
17 where Cabin Branch comes in is where we started to observe
18 something. We weren't sure what that was.
19 Q So it was the area where the ditch meets the
20 creek?
21 A That's correct.
22 Q Okay. It wasn't further up here (indicating)
23 where the lagoons are?
24 A No.
25 (Witness returns to stand.)

1 Q And there was buildup in the creek at the mouth of
2 the ditch. Is that what you're saying?
3 A There was something present at the mouth of the
4 ditch.
5 Q Now, Mr. Kegley, I deposed you on January the 5th
6 in Wilmington; correct?
7 A That's correct.
8 Q Do you remember that?
9 A Yeah.
10 Q At that time I asked you, "Did you see on
11 September the 10th any evidence of a breach?"
12 A No.
13 Q You did not?
14 A No.
15 Q You did not see it. And I also asked you if there
16 was any evidence of an overflow.
17 A I did not see one.
18 Q Okay. And I asked a specific question, "Was there
19 any evidence on the ground of water having--or wastewater
20 having migrated from the primary lagoon to the creek?" And
21 you answered, "By overflow?" Question, I said, "By any
22 means." You said, "Speculative. There was a hose there that
23 could have been a means to pump it there, but other than
24 that," and you dropped off. Do you remember that testimony?
25 A That sounds familiar, yes.

1 Q So in other words to recast that, there was no
2 evidence on the ground of any evidence of an overflow or
3 wastewater from the primary lagoon, was there?
4 A That's correct.
5 Q On the Rose Hill property?
6 A That's correct.
7 Q The House of Raeford property. Mr. Kegley, look
8 at Respondent's exhibit book, number--is it--14J.
9 (Witness complies.)
10 Q Are you there?
11 A Yes.
12 Q Is that the area you're talking about where the
13 ditch is?
14 A I can't say for sure.
15 Q Look at Figure 14I of the respondent's book,
16 please.
17 (Witness complies.)
18 A Okay. I'm there.
19 Q Is that the area you're talking about?
20 A It may be close by. I can't tell for sure. It
21 might be slightly downstream.
22 Q This might be slightly downstream or the ditch
23 might be slightly downstream?
24 A This picture, if I'm correct, is slightly down-
25 stream of where the ditch enters Cabin Branch.

1 Q So this area of the map where that brown material
2 is showing in the creek is you're saying downstream from the
3 ditch?
4 A Yes.
5 Q Where the outlet is to the ditch?
6 A Yes.
7 Q Mr. Kegley, if---
8 The Court: And for the record too,
9 describe the ditch. Is it concrete, a mixture, just grass?
10 The Witness: It's grass, a mix of vegeta-
11 tion. It was probably an improved swale, and it drops off
12 towards the creek.
13 The Court: How big and deep is it, wide---
14 The Witness: Next to the secondary lagoon,
15 it's--at the top it's probably 10 or 15 feet wide. It
16 narrows down. It's easy to walk down into it. It's a mix of
17 vegetation and trees.
18 The Court: Okay. Thank you.
19 Mr. Jones: Thank you, Your Honor.
20 By Mr. Jones:
21 Q But when you were there on the 10th, was that
22 ditch dry?
23 A Yes.
24 Q Did you walk up and down the ditch?
25 A We walked down from the pump house to where Cabin

1 Branch starts to make the ground soggy.
2 Q Did you view the ditch further in this--would this
3 be west (indicating), west?
4 A I only walked from the pump house down towards the
5 creek.
6 Q And you didn't notice any residue or anything in
7 the area from the pump house until you got down to the
8 creek---
9 A That's correct.
10 Q ---in the ditch?
11 (No audible response.)
12 Q Mr. Kegley, when you went there on the 10th, did
13 you notice a pump in the area of the primary lagoon?
14 A No.
15 Q If the company had pumped wastewater from the
16 primary lagoon to the creek, directly to the creek, that
17 would have required a distance, according to previous
18 testimony, like 650 feet; is that true?
19 A That sounds about right.
20 Q Okay. Did you see any evidence at that time of a
21 means of conveyance with a pump or a hose or anything else
22 that would go 650 feet?
23 A Not that distance. I did see a hose on the berm
24 near the clearing to the creek. It appeared to be maybe a 25
25 foot hose with couplings. It was a discharge hose, meaning,

1 you know, it lays flat when it's not under pressure.
2 Q You heard testimony earlier from Mr. Cavenaugh
3 that they used a hose to clear out the residue when they
4 built the berm in the primary lagoon when they were changing
5 that out? They---
6 A (interposing) Yes.
7 Q They did use one for that. Could it have been for
8 that purpose?
9 A Possibly.
10 Q Did you--since the time of the complaint, did you
11 ever learn the name of the complainant?
12 A No.
13 Mr. Jones: No further questions.
14 The Court: Redirect?
15 Ms. LeVeaux: Just a few, Your Honor.
16 **R E D I R E C T E X A M I N A T I O N** 12:25 p.m.
17 By Ms. LeVeaux:
18 Q Mr. Kegley, in cross-examination you were asked
19 whether that ditch was dry--whether that ditch--how was that
20 ditch, and you said it was dry. Did you--did you feel the
21 ditch?
22 A I walked down--like I said, from the pump house
23 down to where the ground becomes soggy. It's right where it
24 meets Cabin Branch. So the bottom of the ditch may be damp.
25 It's been a dry period.

1 Q And from your observations on that date was lagoon
2 number 1 well maintained?
3 A No.
4 Q And it was referenced to you that lagoon levels
5 can be controlled by the valve. And theoretically lagoon
6 levels can be controlled by the valve, but what impact, if
7 any, would the lack of maintenance in this instance of lagoon
8 number 1 at the House of Raeford, as you observed it, have on
9 this process of opening and closing the valve and lowering
10 the level?
11 A You would not want any of that material from
12 lagoon 1 to reach lagoon 2. It would cause maintenance
13 issues. The oils and grease in that sludge you do not want
14 in lagoon number 2. It can cause problems for your spray
15 irrigation equipment. It can be built up in the lines.
16 You pump 2 plus miles to the spray field, so that
17 water stays in the lines. As you pump water over there and
18 then stop, that water is sitting in there. So you don't want
19 oils and grease in that. So it's imperative from a main-
20 tenance point of view to keep as much of those solids in the
21 primary lagoon as you can, which really shouldn't be there in
22 the first place. The DAF should be taking those out.
23 Q Because what happens to the aeration process with
24 all the vegetation on lagoon number 1?
25 A As the solids fill up from the bottom and you have

1 a sludge mat and vegetation on top, you're losing effective
2 treatment in that lagoon.
3 Q And do you have an opinion, based upon what you
4 observed and your familiarity with the House of Raeford
5 lagoon number 1, as to whether or not there's any sludge in
6 lagoon number 1 at the bottom?
7 A Considering the fact that they've never cleaned
8 that lagoon out, I'm positive it's full of solids.
9 Ms. LeVeaux: Thank you. No further
10 questions.
11 The Court: Recross?
12 **R E C R O S S - E X A M I N A T I O N** 12:28 p.m.
13 By Ms. Jones:
14 Q Mr. Kegley---
15 Ms. Jones: If I may?
16 The Court: Sure.
17 Q ---you mentioned that there was vegetation growing
18 on the sludge mat; is that correct?
19 A That's correct.
20 Q And so between that vegetation and sludge mat and
21 the bottom of lagoon number 1, there would be an area of
22 liquid--of water; is that correct?
23 A That's correct.
24 Q And when the valve is open between lagoon number 1
25 and lagoon number 2, the water that's underneath that

1 vegetation mat is what flows by gravity to lagoon number 2?
2 A That's correct.
3 Mr. Jones: I'm going to try to find a
4 picture.
5 The Court: All right.
6 (Pause.)
7 By Ms. Jones:
8 Q All right. If you'll direct your attention to
9 Respondent's Exhibit 15, LW22?
10 (Witness complies.)
11 A I'm there.
12 Q I'm sorry. You're there?
13 A I'm there.
14 Q Do you see that pipe that's in the center of that
15 photo?
16 A Yes, I do.
17 Q Does that connect to the transfer pipe that runs
18 from lagoon 1 to lagoon number 2?
19 A Yes, it does.
20 Q And is lagoon number 2 in the foreground of that
21 picture?
22 A Yes.
23 Q And lagoon number 1 is off to the right above the
24 berm that's in that photograph?
25 A Yes.

1 Q And there is free flow of water into lagoon
2 number 2 in this picture?
3 A Yes.
4 Q And that picture date is September 15th, 2009?
5 A Yes.
6 Ms. Jones: I don't have any further
7 questions.
8 The Court: Anything further, Ms. LeVeaux?
9 Ms. LeVeaux: No, Your Honor.
10 **E X A M I N A T I O N** 12:29 p.m.
11 By The Court:
12 Q I just have a couple. It sounds like you go to
13 lagoons?
14 A Yes.
15 Q You're pretty familiar with lagoons?
16 A Yes, I am.
17 Q Is it proper or legal--can you put a substance
18 into a lagoon that you don't know what it is, in other words
19 by pumping stuff from the creek that didn't belong there, if
20 it wasn't there?
21 A The way our permits are---
22 Q (interposing) Are you allowed to do that?
23 A The way our permits are written is those
24 wastewater lagoons, treatment systems, are only permitted for
25 waste that has originated from that facility. So pumping an

1 unknown substance into a lagoon is in violation of the permit
2 unless that waste had originated from their facility.
3 Q Okay. So---
4 A We wouldn't give permission to pump an unknown
5 substance into a lagoon.
6 Q Okay. So would you have stopped the pumping if
7 you thought that it came from the winery or someplace else or
8 different?
9 A I was not asked about the pumping back into the
10 lagoon. The remedial efforts that Ken Rhame was conducting
11 sort of was outside of my scope. If House of Raeford had
12 asked, "Can we pump that into our lagoon," it would have--it
13 would have, one, been in violation of the permit, or two,
14 been an admission that it is their waste from the creek that
15 originated from there.
16 Q And you had mentioned too a pump house---
17 A (interposing) Yeah.
18 Q ---and something being pumped 2 miles. Do you
19 want to describe---
20 A (interposing) Yeah.
21 Q ---what that is?
22 A From lagoon number 2 there is a pump house. And
23 those pumps pump to--it's a buried pipeline that goes out to
24 lagoon number 3, which is on that other map. And that's a
25 very large storage lagoon. And from that lagoon they spray

1 irrigate onto a lot of acres of fields.
2 Q Is that piping underground?
3 A Yes, it is.
4 The Court: Okay. Any questions based on
5 my questions by either party?
6 Ms. LeVeaux: Yes, Your Honor, one.
7 **F U R T H E R R E D I R E C T E X A M I N A T I O N**
8 12:32 p.m.
9 By Ms. LeVeaux:
10 Q The fact of the matter is, Mr. Kegley, is while
11 you are with Aquifer Protection, you are not the compliance
12 person as it relates to the sludge for this system, are you?
13 A For the House of Raeford?
14 Q Yes, sir.
15 A I do receive the annual reports that they're
16 required to submit. House of Raeford does have a permit to
17 apply sludge if they were to clean out their lagoons. They
18 have not used that permit for those land application fields,
19 as far as I know, ever.
20 In my compliance duties with the sludge, they're
21 required to submit an annual report every year whether they
22 apply it or not. And they send in a report that says "no
23 application." So that is one of my compliance duties, yes.
24 Ms. LeVeaux: Thank you.
25 The Court: Anything further, Mr. Jones?

1 **F U R T H E R  R E C R O S S - E X A M I N A T I O N**
2 12:33 p.m.
3 By Mr. Jones:
4 Q For what it's worth, since your agency had already
5 concluded that this material had come from House of Raeford,
6 you really had no reason to object to their pumping the
7 material into one of the lagoons, did you?
8 A It would have been a question that needed to be
9 clarified before we gave permission. I was never asked that.
10 Q You were never asked?
11 A I was never asked that, no.
12 Q Do you know whether someone else was?
13 A As far as I know, they were not.
14 Q Well, you heard Ms. Willis---
15 A (interposing) But I don't know--from Aquifer
16 Protection.
17 Q Okay. From Aquifer---
18 A (interposing) From Aquifer Protection.
19 Q You don't know whether Ms. Willis or someone else
20 was asked?
21 A I don't know.
22 Q And just knowing the site, the condition of the
23 creek, was there any other place within reason where it could
24 have been pumped to get it out of the creek?
25 A Probably within discussions after that and then

1 clarified, considering the remedial effort that was being
2 undertaken, the potential would be to agree to that.
3 Mr. Jones: Thank you.
4 The Court: Anything further?
5 Ms. LeVeaux: No, Your Honor.
6 The Court: You may step down. Your next
7 witness?
8 Ms. LeVeaux: Your Honor, it's 12:33; your
9 pleasure?
10 The Court: I'd like to get started because
11 I want to take us to about 12:50 or so.
12 Ms. LeVeaux: I'm going to need a break,
13 then, a bathroom break.
14 The Court: Oh, okay. Well, in that case
15 we'll make it just a tad longer, then. We might as well to
16 not stop the flow. So we'll be in recess for lunch till
17 2 o'clock.
18 (The hearing was recessed at 12:35 p.m. to
19 reconvene at 2:00 p.m. this same day.)

1 **F U R T H E R  P R O C E E D I N G S** 2:01 p.m.
2 The Court: This hearing will come to
3 order. It's now 2 o'clock on December the 2nd, 2011 and all
4 parties present when we recessed are again present with the
5 exception of our last witness, who completed his testimony.
6 Ms. LeVeaux: Your Honor, at this time we
7 call Stephanie Garrett to the stand.
8 The Court: As you approach, do you have a
9 preference? We normally would swear you in using the bible.
10 (Witness indicates.)
11 The Court: If you'll step forward, place
12 your left hand on the bible, raise your right, and face the
13 court reporter?
14 (Whereupon,
15 **STEPHANIE GARRETT**
16 was called as a witness, duly sworn, and testified as
17 follows:)
18 The Court: If you would state your first
19 and last name and spell them both?
20 The Witness: Stephanie Garrett,
21 S-t-e-p-h-a-n-i-e G-a-r-r-e-t-t.
22 The Court: Thank you. You may direct your
23 attention to Ms. LeVeaux.
24 Ms. LeVeaux: Thank you, Your Honor.
25 **D I R E C T  E X A M I N A T I O N** 2:01 p.m.

1 By Ms. LeVeaux:
2 Q Stephanie, there have been some reports generated
3 and some slight confusion. Is Garrett your last name, your
4 only last name?
5 A Yes.
6 Q Have you ever been known--gone by the name--by any
7 other name?
8 A My maiden name is Petter.
9 Q Is what?
10 A Petter, P-e-t-t-e-r.
11 Q So then would you put it together and sometime
12 that would PetterGarrett?
13 A In my e-mail it is together, yes.
14 Q Okay. If you will, please, Ms. Garrett, explain
15 to the Court for whom you work and what you do.
16 A I work for the Division of Water Quality, the
17 Surface Water Protection Section. My primary duties are to
18 monitor area waters, conduct special studies, follow up on
19 complaints, staff training of how to use the meters and
20 collect samples. And I've been there for 20 years, almost
21 21.
22 Q And you said you'd been there for more than 20
23 years. Has it always been in the same capacity?
24 A It has.
25 Q So I'm going to take you and ask you please to,

1 starting with college, explain to the Court what your
2 education is and your background and any papers or
3 publications you may written and then talk about your job
4 duties and responsibilities to the extent that they've
5 changed and to where you are right now--bringing you to where
6 you are right now.
7 A I have a bachelor's of science with the University
8 of--UNCW and I have a master's of science from Ohio
9 University. And I worked with a consulting firm prior to
10 this position and I've been with this job, as I said, almost
11 21 years. I've done several special studies, evaluating
12 fecal coliform levels in larger watersheds, smaller water-
13 sheds. I do a lot of complaint work, following up, that type
14 of thing.
15 Q And to whom do you report with--are you with the
16 Division of Water Quality or Aquifer Protection?
17 A The Division of Water Quality covers both Aquifer
18 and Surface Water. I'm with Surface Water.
19 Q Okay. And to whom do you report directly?
20 A It used to be Rick Shiver and now it's Jim
21 Gregson.
22 Q Ms. Garrett, I'm going to take you to Respondent's
23 Exhibit Number 18. And you should have a notebook that's
24 entitled Respondent's Exhibits in front of you and I'll ask
25 you if you will turn to Respondent's Exhibit Number 18?

1 (Witness complies.)
2 A I'm there.
3 Q Do you have that before you?
4 A Uh-huh.
5 Q Do you recognize that exhibit?
6 A I do.
7 Q And so why don't you describe for the Court what
8 you have before you and how it is that you recognize it?
9 A This is a chain of custody form that we typically
10 use when we think there may be something that goes to court
11 or there's enforcement on it. Three of us went out sampling
12 that day. It was follow-up sampling to the complaint that we
13 had of sludge in the creek. And we returned back to the
14 office after 5:00 with the samples.
15 You fill out the form as far as what station it
16 was, what you collected, the date and the time, the number of
17 containers. And this is a form that is a part of our
18 standard operating procedures. The state has a quality
19 assurance plan that actually is designed by the Environmental
20 Protection Agency and has to be approved by them. And this
21 is one of our procedural forms that we use for chain of
22 custody.
23 Q But you're not wedded to that procedure in all the
24 chain of custody proceedings that you undertake, are you?
25 A The samples that I collect in my position are not

1 chain of custody samples.
2 Q Okay. And how would you distinguish your samples
3 from any other chain of custody sample?
4 A I'm not sure I understand---
5 Q (interposing) You said---
6 A ---the question.
7 Q Well, you just said in the capacity in which you
8 work--you said these samples as opposed to the capacity in
9 which you work, which are not chain of custody samples. So
10 what kind of samples are they?
11 A The samples that I collect are regular ambient
12 monitoring samples. I sample in seven counties monthly, and
13 they're sent up to our central lab in Raleigh. And there's
14 no chain of custody required. We leave them for the courier
15 to pick up and they pick them up and they analyze them. But
16 it's not used for enforcement. It's just to have a greater
17 understanding of what the water quality is in our region.
18 Q So there's no concern about contamination or
19 tampering?
20 A No. Our building is secure. It's got keypad
21 access. The laboratory--I'm the primary one that works in
22 our lab. That's where we keep all of our equipment and our
23 coolers and our meters and our sample bottles. There's never
24 been any issue with security or any concerns that there's
25 been any contamination of any of the samples.

1 Q Okay. And referring to Respondent's Exhibit
2 Number 18, the first thing I want to direct your attention to
3 is the date sampled. Could you explain that date to me,
4 please?
5 A Well, it was the ninth month and the 2009th year
6 and the date was the 23rd. So apparently I was having some
7 mental issues with that, so it's 9/9/23.
8 Q But it's not 2023? It's actually 2009.
9 A Correct.
10 Q Correct?
11 A Well, the way we do it on our field sheets, it's
12 the year, the month, and the date.
13 Q Okay. And if you will, explain to the Court--in
14 big bold letters it says "COC dropped," underlined. Do you
15 know why they wrote "COC dropped"?
16 A Well, the chain of custody form has a number of
17 spaces for you to fill in and they build in a certain amount
18 of redundancy in that. So when they looked at the form,
19 there's an area where you would sign who it was sealed by,
20 and I'm the person that sealed it.
21 When I seal the cooler, you take tape and you
22 close the cooler and you seal that so that if it's opened or
23 tampered with in any way, you would know that that had been
24 done. And you also have to date and sign that, which I did
25 on the tape on the cooler. And when they reviewed this form,

1 saw that I had not signed it there, they did see that I had
2 signed and sealed the tape, which was the most important
3 thing to do.
4 Q And so--and how did they indicate, if it's
5 referenced to in that document, that everything was okay?
6 A Well, in smaller, not bold letters to the right,
7 it says the COC was okay because I had signed it, the tape
8 outside.
9 Q And directing your attention to on or about
10 September the 18th, 2009, do you remember talking with Ms.
11 Willis on September 17th, 2009 as it related to some samples
12 that she had pulled for Dr. Song's review?
13 A I do.
14 Q And could you just describe for the Court whether
15 you secured those samples on the 17th or the 18th and exactly
16 what you did as it related to those samples?
17 A Well, Linda had been out in the field on the 17th.
18 She got in later in the afternoon, I'm guessing probably
19 after 5:00 because I think her sample--last sample was
20 collected around 4:00.
21 She was the one, to the best of my recollection,
22 that handled the samples, put them in the cooler, left them
23 in the laboratory. And I'm imagining by the time she left it
24 was well after 5:00. And there's hardly anybody ever that's
25 left--staying after 5 o'clock. So in was in our lab, which

1 is secure. The building has a keypad, so you can't access it
2 unless you're an employee there.
3 And then she asked me the next morning--she asked
4 me the next morning if I would deliver them to UNCW. And we
5 have on several occasions brought samples to UNCW, so I
6 carried them over there that morning and left them--when you
7 walk into the lobby of the Marine Science Center, there's a
8 receptionist area back in the corner in their office. And so
9 I brought the samples back there, told them that I was
10 delivering them for Dr. Song, and left them with the recep-
11 tionist there.
12 Ms. LeVeaux: Thank you. No further
13 questions.
14 The Court: Cross-examination, Mr. Jones--
15 Ms. Jones?
16 Ms. Jones: Thank you, Your Honor.
17 **C R O S S - E X A M I N A T I O N** 2:11 p.m.
18 By Ms. Jones:
19 Q Ms. Garrett, you said that you have a B.S. from
20 UNCW. What was that degree in?
21 A Environmental science.
22 Q And your master of science at Ohio University; is
23 that correct?
24 A Environmental science also.
25 Q If you look at Exhibit 18, you said I believe that

1 those samples were collected on September 23rd, 2009?
2 A Correct.
3 Q Were you involved at all in the sampling by Ms.
4 Willis on September 17th?
5 A I was not.
6 Q You were not? And you said that this chain of
7 custody documentation is something that is modeled after an
8 EPA plan for quality assurance?
9 A Correct.
10 Q And you were the individual that sealed the
11 samples that are represented in this Exhibit 18; is that
12 correct?
13 A That's correct.
14 Q And that's because those samples were going to be
15 used for enforcement purposes?
16 A No. The samples themselves weren't going to be
17 used for enforcement purposes, but it was part of the whole
18 process where we were doing the investigation and there may
19 have been some enforcement. So we didn't want there to be
20 any question on the safety of the samples or how they'd been
21 handled for nutrients or the BOD.
22 Q And the ambient monitoring samples you collect on
23 a monthly basis, those are not for enforcement purposes?
24 A Correct.
25 Q And they're not done in the course of any sort of

1 investigation?
2 A Correct.
3 Q And for that reason you don't do chain of custody
4 like is represented in Exhibit 18?
5 A That is correct.
6 Q Are you aware that there are chain of custody
7 documentation that is required when samples are sent to
8 Environmental Chemists, for example?
9 A Yes.
10 Q And is that to ensure the safety and adequacy of
11 the sample?
12 A That's part of their paperwork and it does help to
13 ensure that, but that isn't necessarily our purpose for that.
14 That's just so they know where the sample was collected, who
15 collected it, what the date was, and who delivered it, what
16 time it was delivered, because a lot of times the samples are
17 for fecal coliform bacteria and they have to be handled in a
18 certain amount of time.
19 Q So it's important to know when the samples were
20 taken and how they've been stored; is that accurate?
21 A Yes, uh-huh.
22 Q You mentioned that Ms. Willis brought in samples
23 after 5:00 p.m. on the 17th of September; is that correct?
24 A As far as I know.
25 Q So you didn't speak with her that day?

1 A No, I did not.
2 Q And you did not see the samples when they came in?
3 A No, I did not.
4 Q When is the first time that you spoke to Ms.
5 Willis regarding those samples that had been taken on
6 September 17th?
7 A The best of my recollection it was the following
8 morning when she asked me if I would deliver them.
9 Q And where were the samples when you first saw the
10 samples?
11 A In her laboratory.
12 Q And what were they inside?
13 A A cooler.
14 Q Where was the cooler?
15 A To the left of the ice machine.
16 Q Did it have any sort of tape around it?
17 A No.
18 Q Was there any written documentation with it?
19 A I don't honestly know that. I didn't look inside
20 the cooler. We have a sleeve inside the top of the cooler
21 where we put our laboratory sheets. And so I don't honestly
22 know.
23 Q So you did not look inside the cooler at all?
24 A Not that I recall.
25 Q And you don't know if there was any ice inside the

1 cooler or anything to---
2 A (interposing) By the weight of it, I mean you
3 could tell. It didn't slosh.
4 Q And it had been left in the lab overnight?
5 A Correct.
6 Q Not in a refrigerated area; is that correct?
7 A It was on ice. It didn't need to be in a
8 refrigerated area.
9 Q And how big was the cooler?
10 A 54 quarts.
11 Q And so then sometime that morning, I believe you
12 said, you took it to UNCW?
13 A Uh-huh.
14 Q Do you remember what time that was?
15 A I do not.
16 Q And you left the cooler with the receptionist.
17 What building did you say you left it at?
18 A It's the Marine Science Center. I'm not sure if
19 there's an official name to it, but---
20 Q Do you know who the receptionist was?
21 A I do not.
22 Q Did the receptionist sign any sort of receipt or
23 other documentation that---
24 A (interposing) She did not.
25 Q ---those samples had come in? I'm sorry?

1 A She did not.
2 Q And where were the samples placed when you left
3 them?
4 A With the receptionist in their office.
5 Q Was it refrigerated?
6 A It didn't need to be. No, it was not.
7 Q Did you see anyone move the cooler from where the
8 receptionist left it?
9 A I did not.
10 Q Do you know what happened to the cooler after that
11 point in time?
12 A I know it eventually got to B.K. Song, but I don't
13 know.
14 Q You don't know the method of delivery to Dr. Song?
15 A I do not.
16 Q Do you know how long it took for those samples to
17 get to Dr. Song?
18 A I do not. Well, actually, Matthew McKeever
19 (phonetic), who works there, not with Dr. Song but at UNCW,
20 said he picked them up after lunch to deliver them. But
21 that's hearsay, I guess, so--I did not personally observe it.
22 Ms. Jones: I don't have any further
23 questions.
24 The Court: Redirect?
25 Ms. LeVeaux: Yes; one question.

1 **R E D I R E C T  E X A M I N A T I O N** 2:16 p.m.
2 By Ms. LeVeaux:
3 Q It is true, Ms. Garrett, is it not, that the time
4 that a fecal sample is taken is crucial, so that's one
5 element that must be--the time and the date must be on that
6 sample; is that correct?
7 A That's correct.
8 Q Why is that?
9 A They need to be processed within six hours if
10 you're going to go to enforcement. My ambient samples, they
11 process them, you know, within 24.
12 Ms. LeVeaux: Thank you. No further
13 questions.
14 The Court: Anything further?
15 Ms. Jones: Nothing further, Your Honor.
16 The Court: You may step down. Thank you
17 very much. Your next witness, Ms. LeVeaux.
18 Ms. LeVeaux: Yes, Your Honor. At this time
19 I would call Rick Shiver to the stand.
20 The Court: Well, I've seen you sitting
21 back there, Mr. Shiver, so I know you know my next question.
22 Do you have a preference---
23 Mr. Shiver: (interposing) I do. I would
24 prefer to swear, Your Honor.
25 The Court: Okay. If you'll place your

1 left hand on the bible and raise your right and face the
2 court reporter?
3 (Whereupon,
4 **RICHARD SHIVER**
5 was called as a witness, duly sworn, and testified as
6 follows:)
7 The Court: If you'll step up, please, sir,
8 and have a seat? If you would state your first and last name
9 and spell them both?
10 The Witness: My first name is Richard,
11 R-i-c-h-a-r-d, last name Shiver, S-h-i-v-e-r.
12 The Court: Thank you. You may direct your
13 attention to Ms. LeVeaux.
14 **D I R E C T E X A M I N A T I O N** 2:17 p.m.
15 By Ms. LeVeaux:
16 Q Mr. Shiver, could you explain to the Court exactly
17 what your occupation was on or about September--well, no, let
18 me back you up. Could you just explain to the Court what
19 your occupation is and then, if you will, go through your
20 educational history and forward.
21 A Well, I'm currently experiencing my best
22 occupation now, as I'm retired as of four months ago. But
23 prior to that, I worked for the Division of Water Quality for
24 38 years. And about half of my career was spent working with
25 the various groundwater programs, and the other half was

1 spent working with the various surface water programs.
2 Ms. LeVeaux: Just one minute.
3 (Pause.)
4 Q And if you will, Mr. Shiver, direct your attention
5 to---
6 Ms. LeVeaux: Your Honor, if you'll just
7 indulge me a minute, I'm trying to find his CV. I know it's
8 an exhibit that was---
9 The Court: (interposing) Exhibit 30?
10 Ms. LeVeaux: ---objected to.
11 The Court: 30.
12 Ms. LeVeaux: 30?
13 By Ms. LeVeaux:
14 Q And if you will, Mr. Shiver, I'd like you to
15 direct your attention to Respondent's Exhibit 30. And if
16 you'll tell the Court whether or not you recognize this
17 exhibit?
18 A I do.
19 Q And if you will describe this exhibit for the
20 Court, please?
21 A This--Exhibit 30 is my résumé for my educational
22 and work experience. And what it does say my educational
23 experience is, is that I received a B.S. in geology from the
24 University of North Carolina at Chapel Hill in 1970. And
25 then I received a master's of science from N.C. State

1 University in 1974.
2 And while I was a graduate student, I both taught
3 geology at N.C. State at their laboratory in their environ-
4 mental programs, and I also worked part time as a consultant
5 to look for a source of aggregate for a company in the
6 coastal plains there.
7 Thereafter I accepted a job with the--what is now
8 the North Carolina Division of Water Quality as a groundwater
9 hydrogeologist and basically worked that until about 1992,
10 when I accepted a higher management position and did that
11 until 1998, when I went to the surface water programs and
12 worked that for a period of time until I took another
13 management position in 2005.
14 And at the end of 2008, I got tired of the
15 traveling and so was basically deciding whether or not to
16 retire. And then the position became open in the Wilmington
17 regional office, the regional supervisor's position. So I
18 asked my boss to let me take that position, and I took it and
19 retired July 31st of this year.
20 Q And you are a licensed geologist?
21 A Yes, ma'am.
22 Q And have you made any presentations or
23 participated in any publications?
24 A I have a master's thesis. I wrote a master's
25 thesis. And I have several small publications for which one

1 I was the principal author and several others I was the
2 contributing author.
3 Q What is this training record? What is this---
4 A (interposing) Well, the training record is just a
5 listing of the training courses that I have received with the
6 North Carolina Division of Water Quality since I began
7 employment there in 1973.
8 Q And you've also referenced to other publications
9 that you participated in?
10 A Yes. The other publications--the first one is
11 simply a master's thesis to meet the requirements of the
12 master's of science from N.C. State. And then the rest of
13 the publications are small publications that have to do with
14 various groundwater and surface water sources that were
15 intensively studied during my career.
16 Q And what has been your total years in groundwater
17 and surface water?
18 A It's hard to say. The easy way to do is just to
19 basically split it up, half groundwater and half surface
20 water, and then overlay on that all that time I was a
21 supervisor of some description, the whole 38 years.
22 Q What is the difference--you were here during the
23 course of Mr. Holley--Petitioner's expert testimony, were you
24 not?
25 A Yes.

1 Q And he was tendered and accepted as an expert in
2 hydrogeology; correct?
3 A Yes.
4 Q And how do you differentiate--his degree was also,
5 though, in geology; is that correct? Is that---
6 A (interposing) That's correct.
7 Q ---your recollection?
8 A Yes.
9 Q And so how do you differentiate between hydro-
10 geology and geology?
11 A Well, first of all I think his bachelor's degree
12 was in anthropology, if I remember, and his master's degree
13 was in geology. And back in the dark ages when I started
14 work as a hydrogeologist with the state, there was only one
15 program that had a hydrogeology degree associated with it,
16 and that was with Arizona State University.
17 And then the rest of the hydrogeologists at that
18 time became hydrogeologists through their work experience in
19 hydrogeology. And I think--in listening to Mr. Holley's
20 testimony, I think he had a course in hydrogeology and I
21 think he did it basically the same way as the rest of it,
22 which is through the work experience.
23 Ms. LeVeaux: Thank you. Your Honor, at this
24 time we would tender Mr. Shiver as an expert in hydrogeology.
25 The Court: Do you wish to voir dire?

1 Ms. Jones: Yes, Your Honor, we do.
2 The Court: Okay.
3 **V O I R D I R E** 2:24 p.m.
4 By Ms. Jones:
5 Q Mr. Shiver, what types of hydrogeology programs or
6 fieldwork have you performed?
7 A If you read my résumé, it touches on that. When I
8 first started work in 1973 in the Wilmington region, my job
9 consisted of basically following our drill rig, the state's
10 drill rig, from one location to the other throughout south-
11 eastern North Carolina.
12 Actually at the time we were doing work in
13 Columbus County. And it was my job to stand behind the drill
14 rig and catch the cuttings over 10 feet and describe them
15 geologically and interpret the geophysical log that was run
16 on that particular hole. And our well depths would be
17 anywhere from basically a couple of hundred feet down to 1500
18 feet.
19 Q If I can just stop you so I make sure I understand
20 you. That had to do with describing the out pull from these
21 wells?
22 A Well, describing--describing the aquifer materials
23 in the confining beds.
24 Q So the rocks for---
25 A (interposing) Well, basically what we were trying

1 to do through describing the cuttings and interpreting the
2 geophysical logs is delineate aquifers from confining beds.
3 Q So your job there was to follow the drill rig and
4 the cuttings or what they pulled out from these wells? You
5 were identifying materials that were pulled out?
6 A That's right. And what we were looking for is we
7 were looking for materials that comprised aquifer such as
8 sands, gravels, and carbonates versus the confining beds,
9 which would be essentially clays.
10 Q And do you have any other field experience that
11 you would classify as---
12 A (interposing) I do.
13 Q ---hydrogeological?
14 A I do.
15 Q What is that?
16 A When we would finish with that, then we would go
17 down to the bottom of the bore hole. We'd come up the bore
18 hole. We'd collect water samples from the aquifer zones. We
19 would measure water levels in the aquifer zones. And then at
20 the completion of the testing program, we would then complete
21 monitor wells there. There would be anywhere from a couple
22 to five.
23 And then I would take that data and I would
24 basically piece together the hydrogeologic framework at the
25 other stations where we had done similar work. And we would

1 put together what was the framework between this location and
2 the other location.
3 Q Did---
4 A (interposing) Then we would basically perform an
5 aquifer test on the principally used aquifer. And we would
6 interpret the aquifer--we would interpret the aquifer test
7 with the hydraulic characteristics, that is how productive
8 was the aquifer.
9 Q That was done, I believe you said, in the 1970s?
10 A That was done in '73. We began really to get
11 really heavily involved in pollution sources beginning in the
12 late '70s. We did the--we did the testing program throughout
13 most of my career, up until about '92 when I took more of a
14 management position there.
15 But throughout that whole time we were also
16 beginning to go to pollution sources that were impacting
17 wells. And we were beginning to chase down the pollutant
18 plumes and we were beginning to try and hold the people
19 responsible for the pollution to do something about it, to
20 correct it.
21 Q Is it fair to say that the majority of your hydro-
22 geological experience has been based on well studies and
23 well---
24 A (interposing) No.
25 Q ---work?

1 A No, ma'am.
2 Q Have you done any hydrogeologic work related to
3 stream mapping and water flow of surface waters?
4 A No, ma'am, and I didn't see that Mr. Holley did
5 either. I didn't hear it anywhere in his testimony or his
6 résumé.
7 Q I believe you mentioned that in 1992 you took over
8 a more managerial position?
9 A That's right. I basically oversaw the air quality
10 program, the surface water program, and the groundwater
11 program in the Wilmington region.
12 Q And would that involve supervision of field
13 personnel?
14 A It would.
15 Q And during that time period you were not on the
16 ground doing actual fieldwork, were you?
17 A I--actually, I did some fieldwork.
18 Q Explain to me--or describe the fieldwork that you
19 did.
20 A Well, the fieldwork was basically I would still do
21 some work in the groundwater program and I'd still do some
22 work in the surface water program. And what you have to
23 remember for this time period between 1992 and--when I moved
24 to the surface water program permanently in 1998--in 1995,
25 that was the busiest time in the state in terms of a number

1 of things.
2 The first big thing, of course, was the so-called
3 hog wars. It was all the problems that were associated with
4 the hog farms in coastal North Carolina. And of course, the
5 big thing that pushed it off then was the big spill at
6 Oceanview in Onslow County, and then we had several other big
7 spills that we had to deal with.
8 So that was mostly a surface water. We were
9 responsible for assessing the causes of it, the impacts of
10 it, and assigning responsibility as to whether or not we were
11 going to move forward with enforcement or not.
12 Q Did you have people that were working under---
13 A (interposing) I did have people, and I was out in
14 the field with them. And then there was several historical
15 groundwater sites. The Conoco site in New Hanover County is
16 one that comes to mind. It happened about the same time,
17 1995.
18 Then we had the hurricanes from basically '96 to
19 '99, which brought on mostly surface water impacts, but there
20 were also some groundwater impacts that we had to deal with
21 as well.
22 Q Okay. And when you say---
23 A (interposing) And then in 1998, I took on a
24 position of doing nothing but surface water, the surface
25 water program.

1 Q And when you say "we," you're talking about the
2 department that you were working for at the time?
3 A The division.
4 Q The division?
5 A Yes.
6 Q And looking at your résumé, from 1992 to 1998 it
7 looks like your job was to manage three supervisors and a
8 total staff of 45 professionals?
9 A That's right.
10 Q Then '98 to 2005, the same type of managerial
11 duties except it looks like you had a reduced staff at that
12 point; is that right?
13 A Had a reduced staff, that's right. And then from
14 '98 to 2005, that was working mostly with surface water
15 programs to include ambient monitoring, which Stephanie
16 worked for, NPDES permitting, NPDES compliance, chemical
17 spills, oil spills, fish kills, algae blooms, and also the
18 wetland program and also the state stormwater program.
19 Q So since 1992 you have primarily been in a
20 management role working---
21 A (interposing) Since 1973 I have always been a
22 supervisor of one sort of the other.
23 Q Okay. And the hydrogeologic work you described
24 was for the most part done in the 1970s and had to do with
25 wells; is that correct?

1 A No, it did not. The work that I did as a hydro-
2 geologist--and at the time that I started with the
3 department, there were two of us in the Wilmington region.
4 And I was the hydrogeologist and also the supervisor, and
5 then I had a technician.
6 And so for roughly a period of about five years,
7 most of the work we did revolved around drilling these test
8 wells, doing the testing in it, putting together a hydro-
9 geologic framework from one to the other. And at the time--
10 at that time we were working in Columbus County, then
11 Brunswick County. Then we moved to Pender County, then to
12 Onslow County, then to Carteret County.
13 And then the--as we moved into the late '70s, then
14 we started encountering a large number--or a significant
15 number of contaminated wells that we had to chase down the
16 plume and find out what the cause of it was and then to get
17 that remediated, plus we started a regulatory program in the
18 Groundwater Section in 1984 and then we started reviewing
19 permits and making permit decisions there, plus dealing with
20 pollution sites at all the industrial sites that we would
21 deal with.
22 Q Mr. Shiver, did you prepare an expert report for
23 the division and for this proceeding?
24 A I did not.
25 Ms. Jones: Your Honor, we do object to the

1 qualification of this witness as an expert on several
2 grounds. First and foremost, his hydrogeologic experience
3 that he's described for the most part had to do with well
4 water and wells in the 1970s, which is not in any way related
5 to what we're dealing with here today. Since 1992, he's been
6 pretty much in a managerial position. He does not have any
7 experience with stream mapping or with surface water flow of
8 streams.
9 Added to that, Your Honor, Mr. Shiver was not
10 designated as an expert. There's been no expert report
11 provided to us by counsel for the state. The only expert
12 identified by the state was Dr. Song. And for that reason we
13 do object to Mr. Shiver's designation as an expert and
14 tender.
15 **E X A M I N A T I O N** 2:34 p.m.
16 By The Court:
17 Q Let me ask--taking Mr. Holley's--some of the
18 questions from him, how many years--and I guess presuming his
19 expertise to help me assumed around his years of experience
20 of interaction--or hydrogeology being the interaction of
21 water and earth materials, how many years of experience do
22 you believe you've had in---
23 A (interposing) Well---
24 Q ---the interaction of water and earth materials?
25 A Well, as I said, it's--when I worked primarily as

1 a hydrogeologist from 1973 to 1992, that's essentially what I
2 did. I was studying where did groundwater occur.
3 Q And how many years would you say that's been?
4 A That was from '73 to '92 when that was the
5 principal work that I did. Now, beginning with the late '70s
6 and particularly in the mid-'80s, a lot of our focus shifted
7 to pollution sites, the assessment of pollution sites.
8 So when I started off there, it was my job to
9 basically delineate the aquifers from the confining beds,
10 find out what quality of water was in it, particularly what
11 was the saltwater-freshwater interface, and determine how
12 productive the aquifers were.
13 And so again, as I said, Your Honor, beginning in
14 the late '70s, particularly by the mid-'80s, a lot of the
15 work we were doing there was chasing contaminant plumes of
16 one sort or the other as well as having a great deal of work
17 in the nondischarge permitting program, which are waste
18 disposal sites where waste is put on or into the ground as
19 opposed to a stream.
20 Q And how many years of experience do you have in
21 working with lagoons?
22 A Well, I basically one way or the other have worked
23 with lagoons from 1973.
24 Q Until your retirement?
25 A Until my retirement.

1 The Court: Okay. I'll accept Mr. Shiver
2 as an expert in hydrogeology.
3 Ms. LeVeaux: Thank you, Your Honor.
4 Ms. Jones: Your Honor, if I can just for
5 the record add that there was an order entered in this case
6 that said that within seven days of entry of the order, the
7 parties were to exchange information regarding any and all
8 experts that may be tendered at the hearing.
9 Besides identity and qualifications, the parties
10 were also to include a brief summary of the subject matter
11 and the opinion on which the expert is expected to testify.
12 We did not receive that on behalf of Mr. Shiver, and again we
13 would object.
14 The Court: Your response to that?
15 Ms. LeVeaux: Your Honor, I was---
16 The Court: That I'm unaware of because
17 I---
18 Ms. LeVeaux: (interposing) I was adamant at
19 that time and I continue to be adamant that I have the option
20 always--and I pointed to law at the time. It was presented
21 at that argument that I can always tender my client's--
22 persons with the division as experts and would submit them at
23 any time, and I made reference to that.
24 So my understanding is these are outside folks
25 that I'm supposed to submit that information for and that's

1 what I did, because if my--and then you yourself even said
2 that I would have to reserve that for the particular time and
3 the particular circumstance under which I would allow a
4 tender of an employee of the state.
5 So that was my understanding. And my under-
6 standing was these are outside people outside the division.
7 And that was my response as it related to outside experts
8 outside of the division, meaning outside of my client's
9 realm.
10 Ms. Jones: Your Honor, there---
11 The Court: (interposing) But you did not
12 submit Mr. Shiver as---
13 Ms. Jones: (interposing) I did not tender
14 any experts with the--any folks that I proposed to tender as
15 experts with the state. I did not identify them in any
16 document. That's correct.
17 Ms. Jones: Your Honor, there are rules of
18 evidence about identification of experts, whether they be
19 with the state or outside the state. We requested in
20 discovery identification of all experts. And one of the
21 reasons we ended up before you was on a motion to compel
22 because experts had not been identified.
23 I have a copy of the order that was filed August
24 3rd, 2011, which, again, gave a time frame for the parties to
25 respond. If I may approach, Your Honor?

1 The Court: Yes, you may.
2 (Document handed to the Court.)
3 Ms. Jones: Paragraph 3, Your Honor.
4 (The Court peruses document.)
5 The Court: I think with this, I--certainly
6 to uphold the integrity of my own order, I'm going have to
7 retract that as an expert--the accepting Mr. Shiver as an
8 expert. However, as both parties know, the rules with the
9 Office of Administrative Hearings certainly talk about--how
10 do we word it these days--due regard to the expertise of
11 individuals within the department, so that I certainly will
12 in Mr. Shiver's place with 38 years certainly place a large
13 focus on, but not tender or receive him as an expert at this
14 time.
15 Ms. LeVeaux: Thank you, Your Honor.
16 The Court: Thank you. You may continue.
17 **D I R E C T E X A M I N A T I O N** 10:40 a.m.
18 (resumed)
19 By Ms. LeVeaux:
20 Q Mr. Shiver, if you will, please--if you'll turn to
21 Respondent's Exhibit Number 27?
22 (Witness complies.)
23 Q Do you have that exhibit before you?
24 A Yes.
25 Q And have you sat through---

1 The Court: (interposing) I will too--I
2 hate to interrupt you, but this is as good time as any. I
3 will--actually, I think Number 28 was one of the exhibits
4 tendered that I said I would withhold ruling on; is that
5 correct--or 30, I mean.
6 Ms. LeVeaux: 30 was, as far as his CV is
7 concerned.
8 The Court: Okay. I am going to accept 30
9 as an exhibit.
10 Ms. LeVeaux: Thank you, Your Honor.
11 (Respondent Exhibit 30 was
12 received in evidence.)
13 By Ms. LeVeaux:
14 Q And Mr. Shiver, if you will, turn to Exhibit
15 Number 27. You've sat through these proceedings, have you
16 not?
17 A Yes.
18 Q Could you describe that exhibit before you?
19 A This exhibit is Mr. James Holley's, quote,
20 Evaluation of Cabin Branch and Beaverdam Branch Near the
21 House of Raeford Farms Facility, Rose Hill, Duplin County,
22 North Carolina.
23 Q And are you familiar with that area?
24 A Yes.
25 Q Okay, and---

1 The Court: (interposing) Could you direct
2 that exhibit number for me again?
3 Ms. LeVeaux: I'm sorry, Your Honor. It's
4 27A.
5 The Court: Thank you.
6 By Ms. LeVeaux:
7 Q And are you familiar with that area?
8 A Yes.
9 Q And going to--and this is a document entitled 27A.
10 There's certain areas which have been designated. To the
11 extent that you know, are these areas properly designated?
12 A Are these areas--please---
13 Q (interposing) Properly designated.
14 A ---rephrase your question.
15 Q There's labels in 27A.
16 A Oh, 27A; I'm sorry. I just heard 27. I'm deaf in
17 one ear, so I don't always hear properly. In Exhibit 27A
18 there are some features which are not on there that should be
19 and there are other features that need revision.
20 For example, Mr. Holley wanted to do a good job of
21 pointing out where the streams were located and where the
22 possible pollution sources were located. I'd just make the
23 comment that when he shows the area of sludge, he puts that
24 area of sludge a little too far upstream. As I recall, the
25 area of sludge began right at the--at Cabin Branch at the

1 secondary lagoon. So he's gone a little bit too far
2 upstream.
3 The other thing that I would point out to you is
4 that there's a--he's tried to identify the sources that he
5 talks about, which is House of Raeford, he's done that;
6 Valley Proteins, which he's done that; Duplin Winery, which
7 he's done that; and the Magnolia school, which he's done
8 that.
9 But I notice that he's not identified Nash
10 Johnson's turkey facility, Nash Johnson's chicken facility.
11 I don't see that he's identified the lagoon and spray field
12 across the road as being owned by House of Raeford. And I
13 also note that he did not identify Big Ed as a potential
14 source.
15 So it's deficient in that it talks about other
16 sources--it talks about sources other than House of Raeford.
17 And also it's also very helpful where the streams have been
18 located, but some of these streams are intermittent. They're
19 not--they're not perennial streams and in fact---
20 Q (interposing) And he's identified those blue
21 lines having---
22 A (interposing) Well, he has blue lines, but the
23 accepted symbol for intermittent is a dash dot dash line, if
24 I recall correctly.
25 Q And on his map is it fair to say that he's just

1 identified as water--he's identified all water features; is
2 that correct?
3 A He's--yeah, he has. He's identified the surface
4 water features.
5 Q Okay. And if you will, please, if you will go to
6 Exhibit 27B?
7 A 27B?
8 Q Yes. And if you will just--27B, the next page.
9 (Witness complies.)
10 A Okay.
11 Q Have you seen this before?
12 A I have.
13 Q Is this correct? Is this accurate as far as you
14 know?
15 A It's pretty accurate. I do note though, again,
16 he's not identified where it's intermittent and not. And I
17 notice that for the unnamed tributary going up to the House
18 of Raeford's spray field and storage lagoon, he's declined to
19 give an arrow that shows that it too flows into Cabin Branch
20 across US 117. But again, you know, he's not identified the
21 other sources, which happen to be sources that are basically
22 owned by House of Raeford.
23 Q Okay. And if you will, go to Exhibit Number 27E?
24 A 27E.
25 Q E as in earth.

1 A E as in--okay.
2 (Witness complies.)
3 Q Have you seen that exhibit before?
4 A Yes, ma'am.
5 Q And do you agree with the characterization of that
6 exhibit?
7 A I do not. The--it--I understand what Mr. Holley
8 was trying to show here, but really if you wanted to make a
9 point, you would have to apply science. And typically the
10 way you look at DO data is that you look at it synoptically.
11 You look at it at the same time that the DO data is taken.
12 And so what I'm accustomed to seeing are maps that
13 show a dissolved oxygen on a certain day that's taken roughly
14 around the same time. So--and also, whatever map you see
15 also has to note that--for example, if you take them all at
16 the same time and they're low and they're a pollution source,
17 it ought to be identified as well.
18 So this map would have served better had it been
19 for--for example for the DO data that was collected on
20 September 10th, it would have been a great deal more useful
21 in terms of trying to show where the pollution sources
22 actually were and where they weren't.
23 Q And could you point to the Court, if you can see
24 it on this map, the wetlands that are associated or have been
25 previously identified as the headwaters of Cabin Branch?

1 A Well, yes, I can. If you--although there's no
2 legend to it there--and it becomes important when you start
3 talking about Duplin Winery and you also talk about Carolina
4 By-Products, also Valley Proteins. You'll see on Exhibit 27E
5 that there's a big blue area just north of the lagoons at
6 Valley Proteins. And I think what Mr. Holley was trying to
7 portray is those are wetland areas.
8 Now, he has other wetland areas there. If you
9 look at Johnson Lake further north, he has delineated a lake
10 there. He's not identified it. And then if you look all the
11 way to the west--and I don't know how to give you a symbol
12 for that--he has delineated the wetlands that are riparian to
13 a creek, which I guess is Maxwell Creek. It's not
14 identified, so I'm not certain.
15 Q But has he identified it as a wetlands or has he
16 identified--has he just---
17 A (interposing) No, he's just identified it as
18 blue. I said--you know, I do know from the USGS topographic
19 map that that is a wetland area there. And as well, we had
20 our wetland expert, who is Joanne Steenhuis go out and
21 evaluate this same area. And she concurred that it was a
22 wetland.
23 Q And how are wetlands usually depicted on a USGS?
24 A Well, they're usually depicted as a wet area that
25 has a series of slashes with vegetation that goes like that

1 (indicating), a series of slashes and---
2 Q If you'll turn to the next map, which is 27F?
3 (Witness complies.)
4 A Yes.
5 Q And tell the Court whether you recognize it and
6 whether you agree with the depictions set out in that
7 exhibit.
8 A Yes, I do recognize it and I'd just make the same
9 point. If you really wanted to evaluate the data and have it
10 make some scientific meaning, then you would do it
11 synoptically.
12 In other words, what would have been very useful
13 would have been for example the dissolved oxygen on September
14 10th, all of it taken around the same time, all of it taken
15 around the same conditions because DO does change. DO
16 changes in response to three things: temperature of the
17 water, the barometric pressure where it's taken--in this case
18 it's in the central coastal plain, so that's not much of an
19 issue to deal with, but DO would be different, for example,
20 up in the mountains where the barometric pressure would be
21 different--and also according to the salinity of the water.
22 So all things considered, what is important here
23 is basically what is the temperature of the water, so for
24 example in the summertime we would expect dissolved oxygen to
25 be low, particularly in Class C swamp waters. And we'd

1 expect it to almost double in the wintertime.
2 But this data is not taken synoptically. It's
3 simply the worst--the worst data that was detected during
4 September 2010. And I'm not sure what September 2010 has to
5 do with September 9--September 10, 2010 when the state began
6 its investigation.
7 Q If you look at 27G, that is the fecal coliform for
8 September 2009.
9 A Yes.
10 Q And do you have any--are you looking at that?
11 A Yes.
12 Q And do you agree with that?
13 A Well, it's the same--it's the same issue.
14 Q Okay, and---
15 A (interposing) The data is not synoptic.
16 Q I'm sorry.
17 A It's the same thing. The data is not synoptic.
18 Q And 27H?
19 A Same comment: I don't know what fecal coliform
20 taken a year later has to do with, you know, what happened on
21 September 10, 2010 (sic). I will point out that I did go to
22 Google and what I found was is that the state--the day that
23 this sample was taken, which I think is Jay Baker's sample
24 taken on September 28th, 2010, was taken during a time
25 period--there was I think a five day time period where it was

1 the second worst rainfall event in 500 years.
2 And the article I was looking at referenced
3 Wilmington particularly. It did not particularly address
4 what was going on at Rose Hill, although I then Googled
5 another map that showed during the same time period that this
6 area received 11 inches of rainfall.
7 And then I looked at the nondischarge monitoring
8 reports that were submitted by Joe Teachey and signed by Bob
9 Johnson that had the rainfall amounts for the time period in
10 which this sample was taken. And the day before this sample
11 was taken, the rainfall was 2 inches. The day the sample was
12 taken it was 4 inch. There was less than an inch the next
13 day, and I think there was 4 inches the next day. So during
14 that time period, 11 inches of rainfall had occurred.
15 So of course we do expect to see high fecals with
16 samples taken during a rainfall. And as a matter of fact,
17 our SOP to take samples for ambient is that we will not take
18 samples 24 hours--in less than 24 hours from a rainfall
19 event.
20 So this data is--I expect to see high fecals. I
21 don't have any of the background when Jay Baker took the
22 samples. I only have the date. I only have the sample
23 results. I only had the DOs. I had no information on, you
24 know, was it raining, was it not, what were the other
25 conditions, you know. So I don't find this data--all I can

1 do is I can look at this data and I can say it's bad, but I
2 can't tell you whether or not it means anything that's valid.
3 Q But you do have the date of September 28th, 2010,
4 do you not?
5 A It doesn't say here, but I recall this is the
6 data--this is the data set from Jay Baker---
7 Q (interposing) Which was---
8 A ---for samples collected on September 28th---
9 Q (interposing) 28th.
10 A ---during the second worst rainfall event in North
11 Carolina history. They were---
12 Q (interposing) Okay, Mr.---
13 A ---calling it---
14 Q (interposing) Okay. Just a minute.
15 A ---the second 500 year event.
16 Q Okay. Just one minute, Mr. Shiver.
17 Ms. LeVeaux: If I might approach the
18 witness, I have another exhibit, Your Honor.
19 The Court: Yes, you may.
20 Ms. LeVeaux: And I think this is Exhibit
21 Number 31 for respondent?
22 The Court: I believe it is. 30 is the
23 last one that I have.
24 Ms. LeVeaux: That's what I had too, Your
25 Honor. Will you mark this as 31, please?

(Respondent Exhibit 31 was marked for identification.)

By Ms. LeVeaux:

Q Mr. Shiver, could you please describe what you have before you?

A What I have before me is Exhibit 31, and it is the nondischarge application report that was submitted by House of Raeford to the North Carolina Division of Water Quality. And the particular page I have is page 7 of 14 of the report. And it was for data that was reported for September 2010 at their spray field.

Q And what do you have for September--what do you show--can you read this?

A Yes. It's not a great copy, but I can read it.

Q Okay. And can you describe for the Court what is indicated for the 28th of September 2010?

A The precipitation in inches was reported by the House of Raeford as 4.1 inches.

Q And--okay, and going from that, is this consistent with what you found on Google?

A Yes. What I found on Google was two Google sites. The one Google site talked about how bad it was around the Wilmington area. Then I went to a separate National Weather Service Google that had Doppler for the Duplin County area and it showed rainfall around 11 inches. And that comports

1 with what I'm seeing on the nondischarge application report
2 here. If my math is right, we're I think a little over
3 11 inches for a four day period.
4 Q And actually the day before there was a rainfall
5 event as well; is that correct?
6 A That's correct. The day before the samples were
7 taken the rainfall was 2.2 inches. And I'd like to make
8 another comment about the DO data and the fecal coliform
9 data, if I may, which is it's all useful data. It has to be
10 properly interpreted, but what we've done on our restoration
11 project and what we've done during our investigation is we've
12 not relied just on DO data and we've not relied just on fecal
13 coliform data. They're very useful data.
14 The field parameters and the analytical data that
15 we get back from the lab is very helpful, but to put together
16 a complete picture of what's happening, you also have to
17 take--if you suspect you have a sludge or a wastewater spill
18 or if you have other sites where there's wastewater--the
19 potential for them to be wastewater spills there, you also
20 need to look at other parameters such as BOD, biological
21 oxygen demand. You need to look at total Kjeldahl nitrogen.
22 You need to look at ammonia, nitrate plus nitrate, and total
23 phosphorus. And that's what we've looked at in our
24 investigation to help us piece together the evidence, and I
25 see none of this has been done by Mr. Holley.

1 Looking at the DO data, looking at the fecal
2 coliform data, if you use it properly can be helpful. But
3 you need additional data to figure out what's happening in
4 the stream at that point.
5 Q Thank you, sir. If you will, turn to Exhibit
6 Number 27J.
7 (Witness complies.)
8 A Okay, 27J.
9 Q Yes. Now, there was a lot of nutrients--is it
10 fair to say that there are a lot of nutrients in the stream
11 at this juncture?
12 A Yes, there is, and--I mean it's a very nice
13 picture, but what it's showing me that--if I remember, this
14 photo was taken in January or April of 2010, a year or so--a
15 year later after the September 2009 event. And it's what I
16 would expect to see after a wastewater or a sludge spill.
17 Basically what's happened is that the nutrients in
18 the wastewater and sludge have been assimilated by the
19 sediment, particularly phosphorus, particularly phosphorus.
20 And that phosphorus is released over time and it's a nutrient
21 for the growth of aquatic vegetation and algae. And so it's
22 exactly what I'd expect to see a year or later after the
23 event.
24 And we've seen like events, for example, at Vesco
25 (phonetic), where there was a 5 million gallon per day hog

1 spill that was basically caught up behind a beaver dam about
2 a mile downstream. And when we flew over after the spill,
3 there was all pink wastewater behind it, and the wastewater
4 was being slowly released through the dam. And a year later
5 we flew over and it was all green, all algae and aquatic
6 vegetation. So I expect we're seeing the same thing here.
7 Q Okay. And if you will look to Exhibit 27K, would
8 you expect to see, again, this duckweed right around this
9 fallen tree?
10 A Yes. And you know, for sea swamp waters I would
11 expect to see fallen trees and beaver dams, and I would
12 expect to see aquatic plants. The definition of sea swamp
13 are slow moving waters where there's not much velocity, and
14 this is what I'd expect to see in a sea swamp situation.
15 Q And if you will turn to Exhibit 27M?
16 A M.
17 (Witness complies.)
18 Yes. Well, I mean I see the tree there. I need
19 to look at the legend and see where that was at.
20 (Witness peruses document.)
21 Let's see; photo 4--okay. That's downstream and--
22 you know, basically, same comment.
23 Q And 27N, the same comment?
24 A The same comment. I mean we do expect to see
25 beaver dams and fallen trees and we do expect the stream

1 channel to meander. It's a slow moving system.
2 Q Now, 27O is at Cabin Branch where the channel
3 opens and the appearance is a little different.
4 A Yeah. I don't quite know what to think of that.
5 Q Okay. And 27Q, same?
6 A 27---
7 Q (interposing) Is that the same or what?
8 A Q?
9 (Witness peruses photograph.)
10 Same.
11 Q Now, in Exhibits 27R--in Exhibit 27R and some
12 specific exhibits follow it with closer and bigger and larger
13 pictures.
14 A Uh-huh.
15 Q I want you to--Mr. Holley indicated these are
16 possible sources---
17 A (interposing) Uh-huh.
18 Q ---of sludge. And I'd like to know--and I'd like
19 you to turn to Exhibit 27S with the understanding that the
20 previous exhibit tells you where on the map that particular
21 location is---
22 A (interposing) Okay.
23 Q ---all right, and ask you if you have an opinion
24 as to this picture of a wastewater disposal facility behind
25 Magnolia Elementary School---

1 A (interposing) Well, and---
2 Q ---or the sanitary---
3 A (interposing) Yeah.
4 Q ---sewer standpipes?
5 A Yeah. I guess my comment would be, you know, this
6 system, according to our records, was abandoned in roughly
7 1985. It's been out of use for 26 years. The permit that
8 was issued for their--to connect to the town of Rose Hill was
9 sometime in 1985. We assume they did it around the same time
10 they got their permit.
11 Any wastewater in that system basically is not
12 much of an issue at this point. You know, I think--I think
13 that in terms of the sewers, I don't think there's any
14 source. He didn't report that there was any breakout of
15 sewer or sludge---
16 Q (interposing) Wouldn't you expect a smell or what
17 would---
18 A (interposing) Well, I don't---
19 Q ---you expect?
20 A I don't know. After 26 years I'm not sure what
21 kind of smell it would have had. I think basically whatever
22 waste or sludge had been there would basically have dis-
23 integrated over a 26 year period. I don't know what he was--
24 I mean what he was trying to say is it was a potential
25 source. I'd like---

1 Q Wouldn't you have some signs?
2 A Well, if it was a source, you would--and what we
3 see at these sources where you have breakout at a low
4 pressure piping system or a nitrification field or breakout
5 from a wastewater treatment plant itself, you would see some
6 indication of it. But I mean if they've been--if they've
7 been connected for 26 years, I doubt there's anything to
8 break out at this point.
9 Q Now, would you expect to see sludge from a sewer
10 collection system?
11 A You could, depending on what kind of system you
12 have. I don't know what kind of system they had and so I
13 can't address that, that question.
14 Q And if you will turn to Exhibit 27X?
15 A 27X?
16 Q X as in Xavier.
17 A Okay.
18 (Witness complies.)
19 A Okay.
20 Q Does it surprise you to see--for there to be a
21 picture of a beaver dam on Cabin Branch?
22 A Absolutely not. It would surprise me if there
23 weren't a lot of beaver dams on Cabin Branch, or for that
24 matter, most of the streams in the central and outer coastal
25 plains.

1 Q In 27Z, Z as in zebra, there is a picture of a
2 ditch beside railroad tracks near Carolina By-Products. Does
3 this alarm you?
4 A I don't see anything in it except some floating
5 algae mats. And you know, again, fallen trees--I mean that's
6 what you see in low flow streams, swamp waters.
7 Q What about in 27BB?
8 A 27 what, now?
9 Q B as in boy, B as in boy, double B.
10 A BB? It looks like algae mats to me, floating
11 algae mats. There is a little bit of aquatic vegetation in
12 the background. So I see algae mats and aquatic vegetation.
13 Q And if you'll look at---
14 A (interposing) And the other thing is if Mr.
15 Holley wanted to call this wastewater, I'd like to see a
16 sample results. It's not a wastewater or a sludge until you
17 do, you know, basically the wastewater analyses on it.
18 He has no proof. All he has is a picture of an
19 algae mat and he says it's looking sludge-like. Well, that
20 looks like an algae mat to me, and I don't see any analytical
21 data to call it a waste.
22 Q Okay. And Mr. Shiver, you sat through Mr.
23 Holley's testimony. And he came to several conclusions and
24 they start on 27FF. And you said you reviewed this---
25 A (interposing) Yes.

1 Q ---this document, and I'd like you to address
2 those conclusions, please.
3 A Well, the first one is "Wastewater discharges in
4 the Cabin Branch upstream of the House of Raeford Farms...are
5 confirmed to exist prior to and concurrent with the observed
6 'sludge' behind the HORF lagoons." That's absolutely false.
7 We went upstream. We did our investigation, tracking down
8 the source. We found no proof that there was a source
9 upstream of House of Raeford.
10 Q What about the second point, the next point?
11 A No. There's no--again, no proof that there were
12 wastewater discharges from Carolina By-Products.
13 Q What about discharges from Duplin Winery?
14 A There were discharges from Duplin Winery, and I
15 think Linda has addressed those issues. We discovered this
16 discharge. We made them eliminate it. We made them put in a
17 storage facility until they could decide what they were going
18 to do with it.
19 They had three options. One was to land apply it,
20 the second one was to apply for an NPDES permit, which we
21 told them there wouldn't be much chance they'd get it, and
22 the third, the recommended one, was to connect to Rose Hill.
23 And as I was heading--I think about six months before I
24 headed out the door to retirement, they had connected onto
25 the Rose Hill facility.

1 But this one is accurate in the sense that we
2 did--we did find a discharge from Duplin Winery and we made
3 them--we made them correct it. And with---
4 Q (interposing) And there's two other---
5 A ---respect to this---
6 Q (interposing) There's two other things, though,
7 Mr. Shiver.
8 A Yeah.
9 Q Isn't it fair to say that it went to a ditch that
10 was not moving or slow moving, and secondly, that the waste
11 produced did not look anything near to what was observed
12 at---
13 A (interposing) Well, I'm not sure. I don't
14 have---
15 Ms. Jones: (interposing) Objection, Your
16 Honor.
17 The Court: That's sustained.
18 Ms. LeVeaux: I'm sorry?
19 The Court: She objected on the leading
20 part, so let's let him---
21 Ms. LeVeaux: (interposing) Okay. That's
22 fair.
23 By Ms. LeVeaux:
24 Q If you will, just--if you recall what Ms. Willis
25 said about Duplin Winery, if you will just--if you will just

1 go through that analysis, actually recall it and indicate if
2 it was the same as--if it's consistent with what was observed
3 behind House of Raeford?
4 A No, it's inconsistent. What--in looking at this
5 conclusion here, I think what they're referring to--and I
6 don't have the documents. I mean he goes through a number of
7 things up front where he takes out of a context from a number
8 of documents. I can't even tell really what they are.
9 They're a line or two from a document. He comes, you know--
10 he says, "It's awful because of this line or two." And I
11 can't tell, you know, without looking at the document. I
12 can't address what he takes out of context.
13 But when we get down to here, he's doing it again,
14 the "'black septic wastewater with putrid odor'." And point
15 of matter, the lagoon that they were using was black, it was
16 septic, and it did have a putrid odor. And we did not catch
17 them discharging directly.
18 What we did was there was wastewater that we think
19 had come from their two lagoons that was in the ditch just
20 north of these lagoons which was black and septic and had a
21 low DO. And I don't think there was--probably at the time we
22 did the investigation there was less than 100 gallons that
23 was in the ditch itself.
24 And the ditch itself, we had to run it a number of
25 times to--we think that the flow in that ditch basically went

1 to the east and not to the north. So later on we had to walk
2 all those ditches to get a better idea of what the direction
3 of flow was.
4 Q And what about the removal of beavers and beaver
5 dams?
6 A Well, yeah. I mean I get it. If you remove
7 beaver dams, then it would--would improve the flow. But if
8 you read the total document from NRCS, they said even though
9 the beaver dams were removed, you would still have drainage
10 problems north of Duplin Winery and north of Carolina
11 By-Products.
12 And by the way, one of the reasons for making a
13 big deal out of intermittent streams is we know at sampling
14 station number 1, sometimes during the summertime there's no
15 water in that stream. So it's also an area where the USGS
16 map says that it's intermittent.
17 Q Now, is it fair to say--and I'm going to 27GG,
18 which is the next page. Did you observe or are you aware of
19 any direct evidence which showed--and when I say direct
20 evidence, something you observed--showing a discharge from
21 House of Raeford to the waters?
22 A Please--I---
23 Q Was there any direct evidence, meaning something
24 that was actually seen, showing discharge or overtopping from
25 the House of Raeford to Cabin Branch?

1 A No. All we know is that the sludge that's in the
2 primary lagoon is the same as the floating sludge in Cabin
3 Branch. We did not have any direct evidence. Our case is
4 circumstantial.
5 Q And the DO concentrations--you indicated that you
6 expect low DO. So tell me about the DO that was--because
7 this is part of his conclusion as well.
8 A The low DO, are you referring to a particular---
9 Q (interposing) 27HH as in house.
10 A 27HH? We were on GG. Have we---
11 Q 27HH. It's just two pages back.
12 A Okay.
13 The Court: Before you do that, can you
14 clarify for the record when you said the sludge in the
15 primary lagoon is the same as in Cabin Branch? How do you
16 know that?
17 The Witness: Well, it looks the same from
18 the photographs. It has the same appearance. The sludge
19 that's in the primary lagoon has--the floating sludge has the
20 same appearance as the floating sludge in Cabin Creek. We
21 did some analytical work, both in the primary lagoon and the
22 sludge that was floating on top of Cabin Creek.
23 Ms. Jones: Objection, Your Honor, to the
24 extent he may be testifying about testing performed by an
25 expert that's been identified, Dr. Song.

1 The Witness: No. I'm sorry. I should shut
2 up. I apologize.
3 The Court: Well, I'm asking how he knows,
4 how he's--the reasons he's made that conclusion. So I guess
5 to satisfy the objection--I can understand that--you're
6 basing it not only on it looks the same, but on test results
7 from---
8 The Witness: (interposing) On the test
9 results too, to include---
10 The Court: (interposing) Okay. And
11 that's what I had---
12 The Witness: (interposing) Would you like
13 for me to continue or---
14 The Court: Yes, but don't testify as to
15 what somebody else--but if that's what you looked at and what
16 led you to this conclusion.
17 The Witness: Yes.
18 Ms. LeVeaux: And Your Honor, he might want
19 to look at Exhibit 5I. That might assist him.
20 The Witness: 5I.
21 By Ms. LeVeaux:
22 Q And if you go to the second page?
23 The Court: I'll sustain the objection.
24 (Witness peruses documents.)
25 A 5I?

1 Q Yes, sir.
2 A Okay. To answer your question---
3 Q Will just 5I assist you, the second page of 5I---
4 A (interposing) Yes, it does.
5 Q ---which shows the House of Raeford---
6 A (interposing) Yes.
7 Q ---and Cabin Branch---
8 A (interposing) Yes.
9 Q ---comparative?
10 A Yes.
11 The Court: What about interpreting
12 whatever--just tell me what you saw that has led you to that
13 statement.
14 The Witness: Well, I---
15 The Court: (interposing) You saw the
16 color and you saw---
17 The Witness: (interposing) And the---
18 The Court: ---the test results?
19 The Witness: That's right. It has the same
20 color. It's floating sludge. It floats in the primary
21 lagoon. It floats in Cabin Creek. And the analytical
22 parameters for the sample taken from the sludge in the
23 primary lagoon and the analytical properties taken on the
24 floating sludge in Cabin Creek are similar.
25 The Court: Okay.

1 The Witness: The concentrations are not, but
2 the constituents are similar.
3 By Ms. LeVeaux:
4 Q And Mr. Shiver, you had to make that determination
5 before you recommended enforcement, did you not?
6 A Absolutely. The worst thing we can do is get it
7 wrong. So I will not let an enforcement case go past me that
8 we can't--we can't prove it in a court of law. I mean that's
9 the test.
10 Q Well, you don't know that it's going to be proved
11 in a court of law, but you think it's enough to go forward;
12 correct?
13 A That's correct.
14 Q So finally, Mr. Shiver, in Mr. Holley's report, he
15 formed the opinion--he formed--or produced a document which
16 expresses an opinion that there is no evidence to support
17 North Carolina DWQ's claim that the House of Raeford is
18 responsible for the accumulation of wastewater sludge in the
19 Cabin Branch, but he believes that it's probably something
20 that came from Duplin Winery or Carolina By-Products that
21 migrated downstream over a period of weeks of months per
22 the--or following removal of beaver dams.
23 First of all, do you agree with this, and if you
24 don't agree with it, the basis for your agreement or
25 disagreement?

1 A Well, I don't agree with his conclusion that the
2 sludge came from upstream, and there are several reasons.
3 One, the key day of investigation is September 10, 19--
4 September 10, 2009. And that investigation shows--clearly
5 shows that upstream of House of Raeford there is no source of
6 sludge or of wastewater that's found its way down to House of
7 Raeford.
8 Secondly, we've had the testimony of Mr.
9 Poindexter that not only do they have a good compliance
10 record at the Carolina By-Products, but he recollects that
11 there has been no incident around that time period. And in
12 fact they had removed all of their sludge in the year 2008.
13 It was--I want to say it was 500,000 pounds, an ungodly
14 amount of sludge, that was removed from their lagoons and
15 taken to various land farms throughout Duplin County.
16 And with respect to Duplin Winery, they did not
17 have any kind of--they don't generate any sludge that I know
18 of. They do generate solid waste that includes the leaves
19 and the vines which are removed by a special machine before
20 the grapes are put into a press. And after the press presses
21 the juice out, the leaves, the vines, the grapes, and the
22 hulls are land applied on lands around Duplin Winery.
23 So the wastewater that we observed and made them
24 make a fix to it there is a wastewater. It is not a sludge.
25 And from the topographic map, it looks to me like whatever

1 wastewater they put in there, it looks like it would go more
2 of an easterly direction in a ditch before it ended up in
3 Cabin Branch.
4 But I do admit that that issue is unresolved. We
5 had to walk it and come to terms with what the flow was from
6 Carolina By-Products and Duplin Winery to Cabin Branch down
7 to House of Raeford. And I think it was not wet at that
8 time. We could observe the ditches, the outfall into the
9 wetland, and then Cabin Branch that connects with the
10 wetland. And I don't think we observed a flow of water to
11 basically say, but we could see that, yeah, there was a
12 connection with--a connection with Duplin Winery and Carolina
13 By-Products, most of that via ditching.
14 Q Okay.
15 The Court: What I'd like you to---
16 A (interposing) If they lost anything, it was going
17 to end up in the wetland before it ended up in Cabin Branch.
18 The Court: What I'd like you to do is put
19 Mr. Shiver--what he just said in context. Can you--what is
20 he in relationship--I'd like it for the record; I know--as
21 far as this penalty concerns. Did he approve the penalty?
22 Did he recommend the penalty? I'd like to put it in context
23 what he is to this particular case.
24 Ms. LeVeaux: To this division?
25 The Court: Yes.

1 By Ms. LeVeaux:
2 Q So Mr. Shiver, why don't you explain that to the
3 Court, exactly who you are, what you do, and what your role
4 is as it relates to a recommendation that's sent out to the
5 central office?
6 A Well, the investigation is done, Your Honor, and
7 we gather all the evidence. And then we have a special
8 operating procedure for how to do an enforcement at the point
9 that we decide we're going to do an enforcement.
10 The Court: Can you be specific to this
11 case?
12 The Witness: Yeah, to this case.
13 The Court: Okay.
14 The Witness: So basically, we look at the
15 evidence. We identify the source. We identify the
16 responsible party. And the first thing we do is we send a
17 notice of violation, and---
18 The Court: (interposing) And tell me who
19 "we"---
20 The Witness: ---I sign that.
21 The Court: And tell me who "we" is.
22 The Witness: Well, Linda Willis in this
23 particular case, she wrote the notice of violation. I edited
24 it. It went through several edits. I signed it. It got
25 sent out. We received a letter of denial from House of

1 Raeford.
2 We then had to make decisions about whether or not
3 we were going to move for enforcement. We eventually did
4 move towards enforcement, so Linda put together an enforce-
5 ment report. I reviewed it, edited it, and it eventually
6 went to the section chief, who is Mr. Matt Matthews.
7 And so in that report are all of the facts and we
8 address the eight assessment factors and lay out our case.
9 And so at that point---
10 The Court: (interposing) And then do you
11 sign the report?
12 The Witness: I'm sorry, sir.
13 The Court: Did you sign that report or---
14 The Witness: I would sign--I would sign the
15 enforcement report that goes to Matt Matthews.
16 The Court: Okay. Thank you. I just
17 thought the record needed to clear on your role as to making
18 the decisions that you just talked about.
19 By Ms. LeVeaux:
20 Q And in fact, if you will, Mr. Shiver, look at
21 Respondent's Exhibit Number 22.
22 (Witness complies.)
23 Q So when there's reference to "we," you and Linda
24 as far as it references to the enforcement recommendations;
25 correct?

1 A That's correct.
2 Q And your name is on that document, is it not?
3 A Yes.
4 Q As the regional supervisor; correct?
5 A Yes.
6 Q And does this in fact embrace all of what you've
7 testified to thus far and your conclusions for saying what
8 you've said?
9 A Yes.
10 The Court: And with that, I'd like to take
11 about a 15 minute break. Thank you.
12 The Reporter: Off the record. 3:22 p.m.
13 (A brief recess was taken.)
14 The Reporter: On the record. 3:44 p.m.
15 (Respondent Exhibit 31A was
16 marked for identification.)
17 The Court: This hearing will come to
18 order. It's now 3:45 on December the 2nd, 2011. All parties
19 present when we recessed are again present. Ms. LeVeaux, you
20 may continue.
21 Ms. LeVeaux: Yes, Your Honor. If I may
22 approach the court reporter, Your Honor, to present my offer
23 of proof. And thank you for the envelopes.
24 The Court: And what I'll do is seal them,
25 put this case number, and it will--I won't be looking at

1 them, but they'll accompany the file.
2 Ms. LeVeaux: Okay. Thank you, sir.
3 (Pause.)
4 Ms. LeVeaux: Your Honor, if I may approach
5 the witness with spray field records reflecting the
6 temperature or the lack of rain for the period between
7 September 1, 2009 and September 11, 2009?
8 Ms. Jones: Objection to her characteriza-
9 tion of the document that she's presenting to the witness as
10 what it evidences.
11 Ms. LeVeaux: No. I was describing what it
12 was.
13 Ms. Jones: The lack of rain for a
14 period---
15 Ms. LeVeaux: (interposing) I apologize; the
16 rain records from Joe Teachey for 2001 through 2011. If I
17 may approach, Your Honor?
18 The Court: Yes, you may.
19 Ms. LeVeaux: And I believe these have
20 already been sent out in the trial notebooks, Your Honor, for
21 everyone.
22 The Court: Okay.
23 Ms. LeVeaux: Do you have that in the trial
24 notebooks already?
25 The Reporter: I don't have any trial

1 notebooks.
2 Ms. LeVeaux: Oh. It should be in the trial
3 notebooks already. It should be in there.
4 The Reporter: Do you mean it's part of the--
5 under the tab Rain Records?
6 Ms. LeVeaux: Yes, ma'am. These are the rain
7 records.
8 The Reporter: Okay. And Your Honor, I
9 believe Ms. LeVeaux has marked that as Exhibit 31A; is that
10 correct?
11 Ms. LeVeaux: It is marked as 31A. And Madam
12 Court Reporter did provide extra stickies for 31A if anyone
13 wanted a sticky to put on the respective copies.
14 By Ms. LeVeaux:
15 Q And Mr. Shiver, if you could describe what you
16 have before you, if you recognize that document?
17 A I have handwritten notes that have to do with
18 lagoon freeboard, the ambient air temperature, the cumulative
19 rainfall, the weather, the date. Exhibit 31A begins with
20 9/11/09, Friday, and then it has spray records for the
21 various spray zones.
22 Q And do you know whose spray field records those
23 are?
24 A It doesn't say.
25 Q Do you recognize them?

1 A I assume that they're House of Raeford, assume.
2 Q Do you know if they're House of Raeford's? Is
3 there anything that might indicate that they're House of
4 Raeford's? Look at the signature at the bottom, please.
5 A I don't have any signature at the bottom.
6 Ms. LeVeaux: Your Honor, I'll---
7 The Court: (interposing) And neither do
8 I.
9 Ms. LeVeaux: Your Honor, I'll withdraw that
10 and I'll recall Ms. Willis on that document.
11 The Reporter: But you're not withdrawing the
12 fact that it's marked as 31A?
13 Ms. LeVeaux: Yeah, just we'll not have him
14 identify it if he can't identify it.
15 The Reporter: I'm sorry. Are you withdrawing
16 the fact that it's marked as an exhibit, as 31A?
17 Ms. LeVeaux: I am not.
18 The Reporter: Okay. Thank you.
19 By Ms. LeVeaux:
20 Q Do you know what the weather was like in the
21 period of September the 1st, 2009 through September 11th,
22 2009?
23 A I don't remember.
24 Q Do you remember if it was rainy or if there was a
25 drought?

1 A Well, I remember after the investigation there was
2 a big rain that pushed through.
3 Q Do you remember what it was like prior to that
4 time?
5 A I don't recall what the weather was prior to that
6 time.
7 Q Okay. And there was reference to an anonymous
8 call and there was reference to an odor. Do you have an
9 opinion as to what might have caused that odor?
10 A Well, what I recall is, is that we received an
11 anonymous complaint about a foul odor in the creek downstream
12 of House of Raeford. So we received that complaint late
13 September 9th, 2009.
14 So staff went out first thing the next morning and
15 went to the site where the complaint had been made, and they
16 started their investigation. And if--what we knew at that
17 time is that the DO was down. The DO was low, low, low. I
18 want to recall it was 0.2 milligrams per liter, and the
19 standard for swamp sea waters is an instantaneous 4.0.
20 And if I had to--and then staff went further
21 upstream--identified a problem at the House of Raeford, went
22 further upstream and the water was clean. But if I had to
23 make a guess why there was an odor there, as this waste moves
24 downstream and it sucks up all the oxygen in the stream, then
25 the stream goes septic.

1 Ms. Jones: Your Honor, he said he would be
2 guessing about the source of the odor. He doesn't have
3 knowledge of it, then I have to object.
4 Ms. LeVeaux: Your Honor, he's just
5 explaining his basis for his opinion as to the odor.
6 The Court: I'll overrule it, but I'm
7 certainly taking for the weight of it the fact he's simply
8 making a guess.
9 A So basically as this waste--this waste plug moves
10 downstream, it sucks up all the oxygen in the Beaverdam
11 Creek--Cabin Creek, Beaverdam Creek. And the waste--
12 basically the waste in the stream goes anaerobic. And
13 anaerobic--when the waste in the water goes anaerobic, then
14 you get methane, hydrogen sulfide, mercaptans, and other
15 odors that come off the water from basically the waste that's
16 in there.
17 Q And Mr. Shiver, if you will look at Respondent's
18 Exhibit 19C?
19 (Witness complies.)
20 Q And if you will look through those pages--take a
21 minute to look through the pages and tell me if you recognize
22 this.
23 (Witness peruses documents.)
24 A Okay.
25 Q Do you recognize it?

1 A Yes.
2 Q Okay. What is it?
3 A This is a series of e-mails essentially between
4 Dr. B.K. Song and myself as well as some other players. But
5 most of them are with Dr. B.K. Song.
6 Q Okay. These are your e-mails; correct?
7 A That's correct.
8 Q And can you describe for the Court just overall
9 what these e-mails relay?
10 A Well, with respect to Dr. Song, I had read some
11 of--one of Dr. Song's publications where he had used his DNA
12 technology to identify various species of both humans and
13 animals that were contributing to the fecal coliform
14 contamination of various body waters. And what he was able
15 to do was he was able to tell whether or not the fecal
16 originated from humans, whether it originated from birds,
17 whether or not it originated from dogs.
18 And so I found this an interesting technology, and
19 I knew also that a friend and associate, Dr. Larry Cahoon,
20 had been involved in some of this research. And so I was
21 interested in talking to Dr. Song about his DNA technology
22 there.
23 And so there's an e-mail that goes to Larry and
24 says, "Larry, you know, we have this issue. We want to see
25 if this DNA technology has any capacity to help us." And he

1 says, "Well, my associate, Dr. B.K. Song, does it." And so
2 we start a back and forth between Dr. Song and myself,
3 whether or not he could accept a sample from us for DNA
4 analysis. That's the upshot of the e-mails.
5 Q And the fact of the matter is you did come to the
6 conclusion to use Dr. Song, did you not?
7 A We did. There was some--you'll see one e-mail--we
8 talked to Ken Rhame about it. And the EPA has some research
9 technology through a facility in Cincinnati. We determined
10 that Dr. Song is basically renowned for this type of work,
11 and so I started a dialogue with Dr. Song about whether or
12 not he'd accept a sample.
13 Q And did Dr. Song ever indicate to you if he were
14 called to testify at trial what he would charge?
15 A No.
16 Q He never told you?
17 A No.
18 Q You never communicated that to me?
19 A No. At the time of the--are you talking about at
20 the time of the e-mails?
21 Q No, at any point---
22 A (interposing) Oh, yeah, yeah, yeah, yeah. Right.
23 Well, you know, essentially as this thing developed, Dr. Song
24 did some analyses and he reported some results. And then
25 basically we do our enforcement. HORF files a petition to go

1 to court. And at that point we start talking about the fact
2 that we're probably going to have to go to court. And Dr.
3 Song says, "Well, if I have to go to court, then I expect a
4 fee for a witness." And so that's when we began talking
5 about it.
6 And then, you know, basically it came to--I recall
7 that it got to--the fee was going to be basically $300 an
8 hour. Everybody agreed to that. And so I understand that
9 House of Raeford has objected to it and we're not at a
10 point---
11 Q (interposing) I was just referencing to me, as
12 far as the state using---
13 A (interposing) Yeah.
14 Q ---Dr. Song.
15 A Right, the state, so---
16 Q (interposing) I'm not talking about the House of
17 Raeford. Okay. And if you will--Mr. Shiver, if you will
18 turn to Petitioner's Exhibit Number 6 and the second page of
19 that exhibit?
20 (Witness peruses documents.)
21 Q And there's reference to the fecal coliform that
22 we talked about earlier; correct?
23 A Exhibit 6?
24 The Reporter: This notebook (sic).
25 Q Of Petitioner's Exhibit 6, correct.

1 A Oh, Petitioner's Exhibit 6? Okay.
2 (Witness complies.)
3 I'm at Petitioner's Exhibit 6.
4 Q And the second page, which references to fecal
5 samples pulled on September 28th, 2010, do you see that?
6 A On the second page?
7 Q Yes, sir.
8 (Witness peruses document.)
9 A I have two pages. I'm on the second page.
10 Q Do you see the fecal, sir?
11 A I do.
12 Q Okay. And can you tell me if you were to receive
13 a fecal coliform sample with this type of result, would this
14 in and of itself be a violation?
15 A I'd want to know when they took the sample. This
16 is a sample that was taken with 4 inches of rainfall. And as
17 far as I'm concerned, if I knew it was taken during a 4 inch
18 rainfall, I wouldn't quite know what to think of the data.
19 I'm looking at the results and the results are quite high.
20 Q But isn't there--isn't there a procedure--for
21 example, don't you have to take more than one sample because
22 the determination of a geometric mean for fecal is
23 essential---
24 A (interposing) Well, if you were---
25 A ---to any violation?

1 A If you were trying to determine whether or not it
2 was a violation of swamp sea waters, then what you'd have to
3 do is you'd have to take five samples over a 30 month--a 30
4 day period and apply a geometric mean test to it before you
5 could determine whether or not it was a violation of the
6 stream standard, or you could have an instantaneous one above
7 a certain level.
8 Q Does that appear to have been done here?
9 A No. They haven't taken five samples over 30 days
10 and applied a geometric mean.
11 Ms. LeVeaux: Your Honor, at this time we
12 would move Exhibit 19C and 31 into evidence.
13 Ms. Jones: I don't think I have an
14 objection, but let me double-check with---
15 Ms. LeVeaux: (interposing) I thought you
16 had said A, B, and C. And I was looking for my sheet. I
17 couldn't find it.
18 The Reporter: I have that the judge is
19 withholding his ruling on 19A, B, and C.
20 Ms. LeVeaux: 19C was--A and B were Dr. Song,
21 but C was Rick Shiver.
22 Ms. Jones: I don't have an objection to
23 19C.
24 Ms. LeVeaux: And the other one was 31.
25 Ms. Jones: No objection.

1 The Court: Those are admitted.
2 (Respondent Exhibits 19C and 31
3 were received in evidence.)
4 Ms. LeVeaux: Thank you, sir, and no further
5 questions.
6 The Court: Cross-examination, Ms. Jones.
7 **C R O S S - E X A M I N A T I O N** 4:01 p.m.
8 By Ms. Jones:
9 Q Mr. Shiver, did you visit the House of Raeford
10 Farms facility in September of 2009?
11 A No.
12 Q Did you visit any area of Cabin Branch or
13 Beaverdam Branch creek since September of 2009?
14 A No.
15 Q So you have no firsthand knowledge of the color of
16 the material that was in the creek, do you?
17 A I did not see the color of the material in the
18 creek at the site. However, the photos were--were pretty
19 definitive.
20 Q Well, that's in fact the only thing you have to
21 base your conclusion on that they looked the same are photos
22 that you were provided?
23 A That and the analytical data that showed that they
24 were similar materials. The sludge in primary lagoon
25 number 1 was similar to the materials--the analytical makeup

1 of the materials floating on Cabin Branch except for the
2 concentrations, which naturally would vary.
3 Q But as far as the look of the material, that's---
4 A (interposing) Other than the photos.
5 Q And the only information you have regarding the
6 investigation that went on in that time period is from Linda
7 Willis or other personnel that were on the ground; is that
8 correct?
9 A That's correct, during the September event.
10 Q Mr. Shiver, isn't it true that the turkey and
11 chicken hatcheries that you referenced are owned by Johnson
12 Breeders?
13 A They're owned by, I think, Nash Johnson Farms; is
14 that correct?
15 Q That is not House of Raeford Farms, though, is it?
16 A Is it a subsidiary company of House of Raeford?
17 Q I'm asking to your knowledge are those hatcheries
18 owned by House of Raeford Farms?
19 A I think they're owned by a subsidiary of House of
20 Raeford is what I remember.
21 Q And you believe that to be Nash Johnson?
22 A I believe that the hatchery and the turkey are
23 subsidiaries of House of Raeford Farms, Incorporated.
24 Q Nash Johnson or Johnson Breeders would be a
25 different permittee than House of Raeford Farms, would it

1 not?
2 A They would show up differently on the permit.
3 Q If I can direct your attention to Respondent's
4 Exhibit 27?
5 A 27?
6 Q 27, and particularly 27A.
7 A 27A, yeah.
8 (Witness complies.)
9 Q Would you agree that this map was not prepared to
10 USGS standards?
11 A I don't know what USGS standards are. What
12 standard would that be?
13 Q I believe you testified that this map doesn't show
14 dashes and dots, for example, for intermittent streams?
15 A That's correct. It does not.
16 Q What is the title of this map?
17 A It's says "Air Photograph of Site and Vicinity."
18 Q Okay. And again, is it your understanding that
19 this was prepared to rise to USGS standard levels for
20 depiction of intermittent streams?
21 A All I know is that it should show intermittent
22 streams because it becomes important when you're trying to
23 figure out what the flow of the streams are.
24 Q And actually the code for the blue that's on there
25 says "Water Feature"; is that correct?

1 A That's all it says.
2 Q If you look at page 27B, I believe you testified
3 that this map was pretty accurate with the exception of
4 intermittent streams not being designated by dash marks; is
5 that correct?
6 A That's correct. And also it doesn't show arrows
7 showing the direction of flow from the storage pond and the
8 spray fields that are owned by House of Raeford, which is
9 another source that your consultant should have looked at in
10 terms of trying to figure out what was going on---
11 Q (interposing) And which storage---
12 A ---in Cabin Branch.
13 Q Which storage pond are you referring to?
14 A The 63 day storage pond that you see in the
15 outline there to the west of US 117. They have a spray field
16 and storage pond at the intersection of Nash Johnson pond and
17 Nash Johnson Road. My point is if your consultant was going
18 to look at all the sources in the area that he should have
19 looked at all the sources.
20 Q If I can direct your attention to 27E?
21 (Witness complies.)
22 Q This is a map depicting minimum dissolved oxygen
23 for September of 2009; correct?
24 A That's what--that's what it says.
25 Q And you in fact were here when Mr. Holley

1 testified regarding this information, were you not?
2 A I was.
3 Q And he did testify that these were minimum
4 dissolved oxygen levels for the month of September, did he
5 not?
6 A That's right.
7 Q If you'll go to page 27---
8 A (interposing) Wait a minute. Before you go to
9 page 27E, my problem with this was, is if you are going to
10 scientifically present a case of what the DO is, you do it
11 for synoptic data for that day.
12 Q If you could turn to page 27F?
13 (Witness complies.)
14 Q Again, this is a map depicting minimum dissolved
15 oxygen for September 2010.
16 A And what does that have to do with the investiga-
17 tion that was done on September 10th---
18 The Court: (interposing) Let her ask the
19 question.
20 The Witness: ---2009?
21 The Court: Let her ask the---
22 The Witness: (interposing) Sir?
23 The Court: Let her ask the questions.
24 The Witness: Yes, sir.
25 By Ms. Jones:

1 Q And my point, Mr. Shiver, is that Mr. Holley
2 testified that these were minimum dissolved oxygens in
3 September of 2010 for the month; isn't that correct?
4 A But there's no science to it. He did testify
5 that.
6 Q If we could move to page 27G, maximum fecal
7 coliform, September 2009?
8 (Witness complies.)
9 Q Do you recall Mr. Holley testifying that these
10 were in fact fecal coliform levels for the month of September
11 2009, the maximum?
12 A Yes. Again, it's not a scientific document.
13 Q And the same question for Exhibit 27H: Mr.
14 Holley's testimony was that these were maximum fecal coliform
15 samples for September of 2010, as it's labeled; is that
16 correct?
17 A Yes, that's correct. And these samples were taken
18 during a 4.1 inch rainfall.
19 Q Mr. Shiver, you testified that in the summer, you
20 would expect DO to be low in a Class C swamp water; is that
21 correct?
22 A Correct.
23 Q And in fact it would not be unusual for DO to be
24 lower than 4.0, would it?
25 A Not in a Class C swamp.

1 Q That would include Cabin Branch creek; is that
2 correct?
3 A It is a Class C swamp.
4 Q And that would include Beaverdam Branch?
5 A Beaverdam Branch too.
6 Q Would that include September of 2009?
7 A Yes, but I think what's at issue here is what does
8 a waste source do to the Class C swamp, and what the waste
9 source does is it takes it down from a low DO to almost no
10 DO.
11 Q Mr. Shiver, if you'll look at page 27FF?
12 A I'm sorry?
13 Q 27FF.
14 A 27---
15 (Witness peruses documents.)
16 A Yes, ma'am.
17 Q I believe you testified that that first point
18 which reads, "Wastewater discharges into Cabin Branch
19 upstream of the House of Raeford Farms...property are
20 confirmed to exist prior to and concurrent with the observed
21 'sludge' behind the House of Raeford lagoons"--I believe you
22 testified that you disagreed with that statement?
23 A I do.
24 Q Do you disagree with a site inspection performed
25 by North Carolina Division of Water Quality citing ponding or

1 stagnated water by a railroad track in April 16th of 2009?
2 A Well, let me address your previous question, which
3 the reason why I disagree with the first one is, is that we
4 did our evaluation on September 10th, 2009 and it did not--
5 our upstream samples did not show that there were any
6 wastewater discharges upstream from House of Raeford.
7 Q Okay. Now---
8 A (interposing) And the second question?
9 Q That was September 10th, 2009.
10 A I'm sorry; September 10th, 2009.
11 Q Would you agree that there were wastewater
12 discharges upstream that existed prior to that date?
13 A Yes. There was a wastewater discharge from Duplin
14 Winery that we discovered months prior to this, and we fixed
15 it.
16 Q Okay. And would you agree that there were
17 violations and discharges observed concurrent with this, in
18 September of 2009?
19 A There was no wastewater violations. There were
20 violations of their stormwater permit, their NPDES stormwater
21 permit.
22 Q A discharge?
23 A That's right. Stormwater and wastewater are
24 different.
25 Q And you were present when exhibits were introduced

1 related to Carolina By-Products and Duplin Winery and
2 compliance inspections that Ms. Willis conducted; is that
3 correct?
4 A Yes. I am familiar with them, although I only--in
5 this report I only see bits and pieces of it. It's taken out
6 of context.
7 Q Do you have any reason to disagree with the
8 observations and notes made by Ms. Willis in those inspection
9 reports?
10 A Not Ms. Willis, but what I'd like to see here--if
11 we're taking bits and pieces, I'd like to see the whole
12 document and reference it to what's been taken out of context
13 by your consultant.
14 Q But again, you don't have any reason to disbelieve
15 or doubt any of the information that would be contained in
16 reports prepared by Ms. Willis or other representatives of
17 the DWQ in relation to Valley Proteins or to Duplin Winery?
18 A No. But as I recall, most of the documents were
19 violation of NPDES stormwater permits---
20 The Court: (interposing) Mr. Shiver, I
21 absolutely promise that I will turn you back over to Ms.
22 LeVeaux to follow up with any questions, but---
23 The Witness: (interposing) Yes, sir.
24 The Court: ---I think for judicial economy
25 if you would kind of just answer the question, and then Ms.

1 LeVeaux can follow through with any other questions that she
2 might want to.
3 The Witness: Okay.
4 The Court: Thank you.
5 The Witness: May I ask a---
6 Ms. LeVeaux: (interposing) Your Honor, can
7 I just ask him to explain---
8 The Witness: (interposing) May I ask a
9 question of the judge?
10 The Court: Sure.
11 The Witness: Excuse me.
12 The Court: You can ask after--if you
13 would, just answer the question. And then if you'd like to
14 follow through, indicate to counsel you'd like to follow
15 through. And then she can see if that's something she would
16 like to do.
17 Ms. LeVeaux: So Your Honor, just for
18 clarification because they've been prepped and I've always
19 told them to answer the question, but if they wanted to
20 explain--but you're asking him to ask counsel if he can
21 explain his answer?
22 The Court: Well, what I'm hearing is a
23 lengthy dissertation on exactly what he's testified to your
24 questions.
25 Ms. LeVeaux: Okay.

1 The Court: I've now heard the same thing
2 about four times. And so for moving us along purposes, what
3 I'd like is to answer the question. And then if you'd like
4 to add to that, then you can ask Ms. Jones and say, "I'd like
5 to further explain" or something. She can say yes or no, but
6 that will be your hint. And then if you want to follow up---
7 Ms. LeVeaux: (interposing) Okay.
8 The Court: ---and me hear the same thing
9 again, I'd be glad to entertain that, but I'm having a lot of
10 redundancy.
11 Ms. LeVeaux: Okay.
12 The Witness: Yes, sir.
13 The Court: I notice that as I'm taking
14 notes, that I'm---
15 The Witness: (interposing) Yes, sir.
16 The Court: ---writing the same thing.
17 Ms. LeVeaux: Okay. Thank you, Your Honor---
18 The Court: (interposing) Thank you.
19 Ms. LeVeaux: ---and Mr. Shiver.
20 The Witness: Yes, ma'am.
21 By Ms. Jones:
22 Q Mr. Shiver, if you could direct your attention
23 back to 27FF?
24 A 27FF?
25 Q Yes, sir.

1 A Yes, ma'am.
2 Q The second bullet point on that page which states,
3 "Wastewater discharges from the Carolina By-Products facility
4 included animal by-products (runoff from offal truck staging
5 areas) that impacted Cabin Branch. Impacts included the low
6 dissolved oxygen and high fecal coliform bacteria." And I
7 believe you testified that you disagree with that statement?
8 A Yes, with explanation.
9 Q What part of the explanation do you disagree with?
10 A They were not wastewater discharges. They were
11 stormwater discharges.
12 Q So you would agree that there were some sort of
13 discharges from Carolina By-Products' facility including
14 animal by-products, and you would agree that impacts included
15 low dissolved oxygen and high fecal coliform to Cabin Branch
16 creek---
17 A (interposing) The data did---
18 Q ---from---
19 A (interposing) The data did show low DO and high
20 fecals, but it's not a wastewater discharge. It's a storm-
21 water discharge.
22 Q Mr. Shiver, did you ever learn the identity of the
23 individual who made the complaint that alerted the division?
24 A No, ma'am. It was an anonymous complaint.
25 Q Do you know where the complainant was when the

1 conditions were observed?
2 A No, ma'am.
3 (Pause.)
4 Q Mr. Shiver, were you present at Dr. Song's
5 deposition?
6 A No, ma'am.
7 Q At Dr. B.K. Song's deposition in Wilmington?
8 A No, ma'am, I was not present. Oh, wait a minute.
9 I can't remember, Ms. Jones.
10 Q That's fine.
11 A I don't believe I--I don't believe I was present,
12 but---
13 Q Do you recall hearing Dr. Song indicate at any
14 point that he was only going to charge the state $200 an hour
15 for his time?
16 A No.
17 Ms. Jones: No further questions.
18 The Court: Redirect, Ms. LeVeaux.
19 Ms. LeVeaux: Just one minute, Your Honor.
20 The Court: Sure.
21 (Pause.)
22 Ms. LeVeaux: Just one question, Your Honor.
23 **R E D I R E C T E X A M I N A T I O N** 4:15 p.m.
24 By Ms. LeVeaux:
25 Q Mr. Shiver, if you'll look at Respondent's

1 Exhibit 27A?
2 A I'm sorry. I didn't hear the number.
3 Q 27A.
4 A 27A.
5 (Witness complies.)
6 Yes, ma'am.
7 Q Do you have that before you?
8 A Yes, ma'am.
9 Q And in cross-examination it was pointed out to you
10 that this was an air photograph of the site and vicinity;
11 correct?
12 A Yes.
13 Q But you have that picture in front of you. Does
14 it look to you like the water sources have been filled in
15 with color or does that look like a photograph?
16 A I'm sorry. Please reask the question.
17 Q Does that look like a photograph of the water
18 sources or have they been filled in, from what you can see?
19 A I think the consultant has filled in the water
20 courses with a blue line.
21 Q So it's a photograph, but there's been some
22 fill-in; correct?
23 A It's a photograph where he's filled it in with a
24 blue line. The photograph wouldn't show the blue line.
25 Ms. LeVeaux: Thank you, Your Honor. That's

1 the only question I had.
2 The Court: Any---
3 (Ms. Jones shakes head negatively.)
4 The Court: I appreciate your enthusiasm.
5 I did not mean to stifle that, but I can assure you that once
6 I hear testimony, I pretty much know what has been said.
7 **E X A M I N A T I O N** 4:17 p.m.
8 By The Court:
9 Q While you're there, let me ask you though---
10 A (interposing) Yes, sir.
11 Q ---since I have asked you about Dr. Song, do you
12 know if he's a state employee?
13 A He is a state employee.
14 Q What time of day--or do you know when he did this
15 testing? Was it during normal working hours?
16 A I don't know when he did the testing, Your Honor.
17 Q Okay. And you don't know if he did it in state
18 facilities or not?
19 A I know he did it in a state facility. He did it
20 at the Marine Science Research Center in Wilmington.
21 The Court: All right. Okay. Thanks very
22 much. Any questions based on my questions of Mr. Shiver?
23 Ms. Jones: No.
24 The Court: Ms. LeVeaux?
25 Ms. LeVeaux: No, Your Honor.

1 The Court: You may step down. Thank you,
2 sir.
3 Ms. LeVeaux: I think I'll call Ms. Willis to
4 the stand just to get that document so it's not floating
5 around, Your Honor. I just want to move it into evidence.
6 The Court: Okay.
7 Ms. LeVeaux: I'll just ask her if she
8 recognizes it.
9 (Whereupon,
10 **LINDA WILLIS**
11 was recalled to the stand, and having been previously sworn,
12 testified further as follows:)
13 The Court: And I'll remind you, Ms.
14 Willis, you remain under oath.
15 The Witness: Yes, sir.
16 The Court: You may proceed.
17 Ms. LeVeaux: Thank you, Your Honor.
18 **D I R E C T E X A M I N A T I O N** 4:18 p.m.
19 By Ms. LeVeaux:
20 Q Ms. Willis, you have before you Exhibit 31A. Do
21 you recognize that exhibit?
22 A I do.
23 Q And describe for the Court what you have before
24 you.
25 A It's a record--spray irrigation records that Joe

1 Teachey--that was provided from the House of Raeford.
2 Q And for what period of time, if it's indicated?
3 A From September 1st, 2009 to September 11th, 2009.
4 Q And where are the various--in those records---
5 The Court: (interposing) Now, what are
6 you looking at?
7 The Witness: I'm sorry. I was looking at
8 the date. She had asked me what records I was looking at
9 between---
10 The Court: You're looking at the
11 handwritten---
12 The Witness: Yes, basically, the handwritten
13 dates on the--this is a spray application or spray irrigation
14 record form. And the date is September 1st, 2009. And the
15 last are the most--she gave me from September 1st, September
16 2nd, September 3rd, and I'm reading the date at the upper
17 left-hand corner.
18 The Court: Okay. I think that might have
19 been what was confusing to Mr. Shiver. My first thing says
20 9/11.
21 The Witness: Yes. And I'm going backwards
22 because it made more sense to start from---
23 Ms. LeVeaux: (interposing) From the
24 reverse?
25 The Witness: ---September 1st to

1 September 11th.
2 The Court: I get it.
3 Ms. LeVeaux: And it was already in the trial
4 notebook, and I didn't know that. And I realized it hadn't
5 been introduced and that's why I---
6 The Court: (interposing) Okay. I think
7 that's what was confusing Mr. Shiver. He was trying to
8 find---
9 Ms. LeVeaux: (interposing) Right. And I
10 just---
11 The Court: (interposing) I couldn't find
12 what he couldn't find either.
13 Ms. LeVeaux: Okay.
14 The Court: Okay. Thank you.
15 By Ms. LeVeaux:
16 Q And on those rain records---
17 Ms. LeVeaux: Do you have yours?
18 Mr. Jones: I do.
19 Q And on those rain records does it indicate the
20 rainfall for the period of time between September the 1st,
21 2009 through September the 11th, 2009?
22 A It does. There's a--there is an entry place for
23 rainfall. And the rainfall data is written in--or on these
24 forms for each day from September 1st through September 11th.
25 Q And what does that data show?

1 A On September 1st--it shows .2 inches of rainfall
2 on September 1st, 0 inches of rainfall on September 2nd, 0 on
3 September 3rd, '09, 0 for September 4th, '09, 0 for September
4 5th, '09, 0 for September 6th, '09, 0 inches of rainfall for
5 September 7th, '09, 0 for September 8th, 0 for September 9th,
6 0 for September 10th, and then finally 0 for September 11th.
7 Ms. LeVeaux: Your Honor, I have no further
8 questions. I just wanted to move those into evidence at the
9 appropriate time.
10 The Court: Any questions based on what
11 you've just heard, Mr. Jones?
12 Mr. Jones: Just a couple of things.
13 **C R O S S - E X A M I N A T I O N** 4:21 p.m.
14 By Mr. Jones:
15 Q Ms. Willis, do you know--where are these measure-
16 ments taken?
17 A The rainfall data?
18 Q Yes, ma'am, that we've just read.
19 A I'm assuming in the vicinity of--it should be in
20 the vicinity of House of Raeford because there are--yes.
21 Q But I mean what facility? Are these at the spray
22 fields?
23 A House of Raeford spray field. Yeah, this is for
24 their spray field.
25 Q So not at the plant, but at the spray field site?

1 A Well, it's in the vicinity of the--their spray
2 fields are in the vicinity of the facility.
3 Q Well, I mean they are separated, though, by land,
4 aren't they?
5 A Well, if you get a rainfall, I would expect that
6 it's probably going to represent the rainfall in the vicinity
7 of the facility as well.
8 Q Ms. Willis, I just asked these were taken at the
9 spray field most likely; correct?
10 A I'm not sure where his rainfall gauge is.
11 Q So you don't know?
12 A I don't know specifically where his rainfall gauge
13 is at, but it should be in the vicinity of the spray fields.
14 Mr. Jones: Okay. Thank you.
15 Mr. LeVeaux: And just one.
16 **R E D I R E C T E X A M I N A T I O N** 4:22 p.m.
17 By Ms. LeVeaux:
18 Q And whose records are those?
19 A These records are--belong to House of Raeford.
20 Q Do you know who had those records?
21 A Joe Teachey.
22 Q And who is Joe Teachey?
23 A He's the operator of responsible charge for the
24 wastewater treatment system for the House of Raeford---
25 Q And that's---

1 A ---chicken slaughter facility and the spray--and
2 the spray irrigation fields.
3 Ms. LeVeaux: Okay. Thank you. No further
4 questions.
5 The Court: Any objection to 31A?
6 Mr. Jones: No.
7 Ms. LeVeaux: We would move it into evidence,
8 Your Honor.
9 The Court: Respondent's 31A is admitted.
10 (Respondent Exhibit 31A was
11 received in evidence.)
12 The Court: You may step down, Ms. Willis.
13 Well, being Friday, I think we're probably good for two or
14 three more witnesses, don't you? Now, it's my understanding
15 that September the 19th and September the 20th--
16 Ms. LeVeaux: (interposing) Are we on the
17 record or off the record?
18 The Court: I'm sorry; thank you. We're
19 still on the record. December the 19th and December the 20th
20 was a satisfactory time to complete the hearing?
21 Mr. Jones: That is correct.
22 The Court: Okay. That being the case,
23 what I would like to do is have us to meet at 10:00 on
24 December the 19th, and then we can kind of push that back on
25 the next day. So December the 19th, we will resume. I will

1 try to get this exact courtroom. Check up front to be sure.
2 We certainly will be in one of these courtrooms here,
3 hopefully this one, on December the 19th of 2011. With that,
4 we are adjourned till then.
5 Ms. LeVeaux: Thank you, Your Honor.
6 Mr. Jones: Thank you.
7 (The hearing was adjourned at 4:24 p.m. to
8 reconvene at 10:030 a.m. on Monday, December 19,
9 2011.)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**C E R T I F I C A T E**

I, Kay K. Rohde, do hereby certify that the foregoing pages 957 through 1069 and page 1131, line 14 through page 1163 represent a true and accurate transcript of a portion of the proceedings held at the Office of Administrative Hearings on Friday, December 2, 2011.

I do further certify that witnesses Kenneth Rhame, Robert Poindexter, Geoffrey Kegley, and Linda Willis on this day of the proceedings in the above action were duly sworn or affirmed by me in my capacity as a notary public in and for the County of Wake, State of North Carolina.

I do further certify that I am not counsel for or employed by any party to this action, nor am I interested in the results of this action.

In witness whereof, I have hereunto set my hand this 13th day of January, 2012.

_____

Kay K. Rohde, CVR-CM
Notary No. 19971050205

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**C E R T I F I C A T E**

I, Carolyn M. Kleitsch, do hereby certify that the foregoing pages 1070 through 1131, line 13 represent a true and accurate transcript of a portion of the proceedings held at Office of Administrative Hearings on Friday, December 2, 2011.

I do further certify that witnesses Stephanie Garrett and Richard Shiver on this day of the proceedings in the above action were duly sworn or affirmed by me in my capacity as a notary public in and for the County of Wake, State of North Carolina.

I do further certify that I am not counsel for or employed by any party to this action, nor am I interested in the results of this action.

In witness whereof, I have hereunto set my hand this 13th day of January, 2011.

_____

Carolyn M. Kleitsch, CVR
Notary No. 20021260279