STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS	
COUNTY OF DUPLIN	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 Aug Administrati	-	
THURSDAY, DEC	EMBER 1, 2011	
Courtroom B		
Office of Administrative Hearings		
1711 New Hope Church Road		
Raleigh, North Carolina		
9:3	0 a.m.	
Volume	5 of 8	
Pages 748 t	chrough 949	

APPEARANCES

ON BEHALF OF PETITIONER:

Henry W. Jones, Jr., Esquire
Lori Peoples Jones, Esquire
Jordan Price Wall Gray Jones & Carlton, PLLC
1951 Clark Avenue
Post Office Box 10669
Raleigh, North Carolina 27605-0669
(919) 828-2501,
hjones@jordanprice.com
ljones@jordanprice.com

ON BEHALF OF RESPONDENT:

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30	résumé, Richard Shiver	816	

```
1
               FURTHER PROCEEDINGS
                                                       9:31 a.m.
2
              (Whereupon,
3
                           LINDA WILLIS
4
   the witness on the stand at the time of adjournment, resumed
5
   the stand and testified further as follows:)
6
              The Court:
                                 This hearing will come to
           It's now 9:30 on December the 1st, 2011. All parties
7
8
   present when we recessed are again present. I'll remind you,
9
   Ms. Willis, you remain under oath. Ms. LeVeaux.
10
              Ms. LeVeaux:
                                 Thank you, Your Honor.
                DIRECT EXAMINATION
11
                                                       9:31 a.m.
12
                            (resumed)
13
              By Ms. LeVeaux:
14
              Ms. Willis, yesterday you were talking about
         Q
15
   photos that were taken on or about 9/11. What was the period
16
   of time for which those photos were taken?
17
         Α
              They were taken between September--September 11th,
18
   2009 through September 23rd, 2009.
19
              Through September 23rd, 2009?
20
         Α
              Right, for -- in relation to the incident.
21
         Q
              And those are both in Exhibits 14 and 15; correct?
22
         Α
              Those are Exhibits 14 and 15, yes, section 14 and
23
   15.
24
              Ms. Willis, if I can take you to Respondent's
         Q
25
   Exhibit Number 4A?
```

```
1
               (Witness complies.)
2
          Q
               Could you explain to the Court what you have
3
   before you in Exhibit 4A?
4
               This is DWQ and the EPA's sample data for the
5
   samples collected in and around House of Raeford between
6
   September 10th of 2009 and September 23rd, 2009.
7
               Are you familiar with these samples at all?
          0
8
          Α
               I am.
9
          0
               Did you pull these samples?
10
               I helped to collect some of these samples, yes.
          Α
11
               And would these samples be helpful to you as far
          Q
12
   as what you did or would Exhibit 5A be--assist you more as it
13
   relates to your testimony?
14
          Α
               You said 5A?
15
          Q
               Yes.
               (Witness peruses documents.)
16
17
          Q
               Strike that. Let me just have you go to
18
   Exhibit 6.
19
               (Witness complies.)
20
               Are you familiar with Exhibit 6?
          Q
21
          Α
               Yes.
22
               And tell--describe for the Court what you have
          0
23
   before you, and also if you can--I don't know if you're able
24
   to do this--but if you go to Exhibit 17, I believe those may
25
   be your notes, which may assist you in explaining Exhibit 6.
```

```
1
   And to the extent that they are, you can pull them out.
2
               I think I will pull those out, Exhibit 17.
3
               The Reporter:
                                  Excuse me, Ms. LeVeaux.
4
   the record is there an Exhibit 17 and then a 17A and a 17B?
5
              Ms. LeVeaux:
                                  There is.
6
              The Reporter:
                                  Okay.
                                         Thank you.
7
              By Ms. LeVeaux:
              And this is--for clarity, thank you, this is 17A
8
         Q
9
   that I'm referencing to. And 17B actually goes right to the
10
   travel log. So you can take all of 17A out, if that assists
11
   you, and if you'll just let the Court know when you're going
12
   to Exhibit 17 and when you're back at Exhibit 6.
13
              Exhibit 6 is called Figure 1. It's the dissolved
14
   oxygen levels in Beaverdam Branch and tributaries on
15
   September 10th, 2009. These are dissolved oxygen readings
16
   that were collected by myself and Geoff Kegley on September
17
   10th when we responded to the complaint about the problem in
18
   Beaverdam Branch.
19
              And the upside-down triangles on this map show the
20
   locations that the dissolved oxygen readings were taken.
21
   There is a number by these upside-down triangles on this map
22
   numbered 1, 2, 3, 4, 5, 6, and 7. And these are the--this is
23
   how we defined these particular station numbers on that day
24
   that we collected the dissolved oxygen.
25
              And it also is--they're not in order as to how we
```

```
1
   progressed through this area in our investigation, but they
2
   are indicative of the locations where we did take the
3
   dissolved oxygen readings, and there's also the result of the
   dissolved oxygen reading on this map as well. And it's
4
5
   listed next to the acronym DO.
              And also, will you align you with your notes,
6
7
   which is on the second page of Exhibit 17A?
8
               (Witness peruses document.)
9
         Α
               The second page of 17A starts--the entry number
10
   1--you see a "1" with a circle in the upper left-hand corner.
   This is a field note. This is a field logbook, and this
11
12
   happens to be my field logbook. The date at the top of the
13
   logbook is described as September 10th, '09 at 10:38 a.m.
   And there's a small map drawn, just a crude map drawn next to
14
15
   number 1.
16
               The number 1 station--if you reference the map,
17
   Respondent's Exhibit Number 6, sample--the first station that
18
   we're calling number 1 is located at the Brooks Quinn Road
19
   bridge, and it is the crossing where the upside-down triangle
20
   is. It's located right where Beaverdam Branch crosses under
21
   Brooks Quinn Road. The dissolved oxygen reading at that
22
   location was 0.2.
23
              And I'll just have you just go forward. And just
24
   every time you reference to Exhibit 17A, if you'll just let
25
   the Court know, and when you're back at the map at Exhibit 6,
```

1 if you'll just let the Court know? 2 Α Okay. 3 And if you can just go through and describe your progress on September the 10th, 2009? 4 5 If you reference the second page of the field book 6 beneath--next to location number 1, there's "%S," which is 7 percent saturation. It was at 12 inches. We took two 8 different readings, one at a depth of about 12 inches, one at 9 a depth of around 36 inches. 10 The percent saturation at 12 inches was 2.7. 11 temperature was 20.9 degrees. The dissolved oxygen was 0.22 12 milligrams per liter. Conductivity was at 515 microsiemens, 13 and salinity was measured at 0.3. The pH was at 6.25, and 14 that was--there isn't a depth reading there. Our pH meter 15 does not have a long probe on it, so that was taking -- the pH 16 reading was taken from a sample collected. The samples that were collected at that station--17 18 and we call it sample BQ1--were fecal coliform, BOD, and TKN. 19 And TKN stands for total Kjeldahl nitrogen. 20 And what's the purpose of taking the fecal? 21 mean I would almost expect fecal to be in all of the water 22 samples, so tell me if there's any significance in taking 23 fecal, BOD, and TKN. 24 The fact that we took fecal, BOD, and TKN was

indicative of the fact that we felt like there was--this was

25

```
1
   a wastewater related situation, so we were expecting to see
2
   perhaps some elevated fecal coliform.
3
               The fecal coliform--you can get elevated fecal
   coliform in a stream system like this, but if we get
4
5
   extremely high levels of fecal coliform, then it would
6
   indicate that you have a -- that we'd have a point source
7
   introduction of wastewater in the area.
               BOD is another good indicator for the presence of
8
9
   organic matter or wastewater, and TKN is the same. You would
10
   expect nitrogen if you--if it were a wastewater that was
11
   human or animal related.
12
               If you will, if you'll briefly turn to Exhibit 9,
13
   does 9 run parallel to what you're telling us about Exhibits
14
   6 and 17A?
15
               (Witness complies.)
16
               Yes. Exhibit 9 is describing--there's a map.
         Α
17
   It's showing the location number 1, which does match the same
18
   location as number 1 on Exhibit -- Respondent's Exhibit 6.
19
   this was just another depiction of the map using GoogleEarth.
20
               And under September 10th, 2009, it's describing
21
   what the other field statistics besides the dissolved
22
   oxygen--it indicates what the temperature, the dissolved
23
   oxygen, the conductivity, pH, and percent saturation were at
24
   each one of these locations.
25
         Q
               Okay.
```

1 Sometimes we have to put data on several different Α 2 maps because the maps get a little crowded and hard to read 3 if you're trying to put all the data on one map. And also Respondent's Exhibit 9, there was also reference to stream 4 5 statistics taken on September 15th as well, 2009. 6 So just stay with September 10th right now. 7 if you will, take the Court through the course of samples 8 that you took and just move through those, please. 9 Α Geoff and I drove north on this Brooks Ouinn and 10 stayed on it looks like 19--my map, it looks like it reads 11 1911. The first road to the left that goes to station 12 number 2 where the upside triangle--upside-down triangle is 13 at station number 2, where it reads "DO 0.3," this is the--a 14 small unnamed tributary that feeds into Beaverdam Branch. 15 If you follow the bottom point on that triangle, 16 you can see the stream. The way the stream flows down, it 17 basically meets Beaverdam Branch somewhere halfway between 18 the Sheffield Road bridge, which would be station number 3, 19 and Brooks Quinn Road bridge, where station number 1 is 20 depicted. 21 The dissolved oxygen reading there was 0.3. 22 the field book on the second page where there's a number 2 23 encircled, the percent saturation for that station was 3.8.

The temperature was 21.5 degrees Centigrade. Dissolved

oxygen was 0.32 milligrams per liter. Conductivity was

24

25

240.6 microsiemens. Salinity was 0.1 and pH was 6.11. And here the dissolved oxygen was low as well, which prompted us at that particular time in our investigation to look upstream for sources.

And this is when we went to--took some time. You see the time was 11:16 a.m. for our location, the UT of Beaverdam off Johnson Parker Road at station number 2. We were there at 11:16. We did not go on to station number 3 until 11:50. That time lapse in between was our investigation of the hog farms that was right adjacent to this unnamed tributary.

One thing that I would bring to your attention here is that while the dissolved oxygen is low, 0.32, the conductivity is not as high. If you compare this conductivity, 240, to a conductivity of 515, it's indicating here to me that we weren't seeing--conductivity wasn't suggesting that we had an input of pollutants in the water in any significant amount.

In reviewing the data later, you could draw the conclusion that because—and this was an area that I had mentioned before was not flowing. It was standing still.

There was no flow coming from upstream. And this is a—it's a—it holds water at that point. Every time that I have been to this station it does hold water, but it appeared to be just still. And so it is possible that you could have low DO

```
1
   in a stagnant or still water.
2
              Now, Ms. Willis, you indicated that you and Mr.
3
   Kegley went to the hog farms. I'm looking at Exhibit
   Number 9. I'm not sure if these are the hog facilities that
4
5
   you went to that I'm looking at on the map, but if they are,
6
   can you just point them out to the Court?
7
              Yes. On that map, Respondent's Exhibit 9, where
   there's a teardrop with a circle in the middle and a 2 above
8
9
   it as station number 2, if you go to the left on that map and
10
   follow that road, you'll see what looks like three long barns
   with a lagoon behind them and then just a little down the
11
12
   road again a dirt road that leads back to another area that
13
   looks like three long barns with a lagoon. Those are the two
14
   hog lagoons that Geoff and I went and investigated due to the
15
   low DO that we saw at that location number 2.
16
              Okay. You can go on with your testimony. I just
         Q
17
   wanted to point that out. Station number 3?
18
              Station number 3; we followed Johnson Parker Road
19
   around to State Route 1915, which is Sheffield Road. And we
20
   look a left on Sheffield Road, headed back south on Sheffield
21
   Road, and came to station number 3, which is actually where
22
   Beaverdam Branch crosses the Sheffield Road crossing.
23
              The dissolved oxygen there was also low. It was a
   DO of 0.2. That station we named 3. We were there at
24
25
   11:50--if you look at the second page of the field book, we
```

```
1
   were there at 11:50 a.m., Beaverdam at Sheffield Road. The
2
   percent saturation there was 2.8, very low. Temperature was
3
   22.9; the dissolved oxygen, .19. For our map's purpose, we
4
   rounded that up to .2.
5
              Conductivity was 490, again, a very elevated
6
   conductivity relative to station number 2, which the
7
   conductivity was 240 there, and a little more in line with
8
   what we saw at the conductivity at the Brooks Quinn Road
9
   bridge, which was 515 microsiemens. Salinity was .2 and pH
10
   was 6.34, and it was also at this location that we noticed
   the brown film slick on the surface of the water along with
11
12
   some algae growth and duckweed formation.
13
              We left station number 3. And if you go to the
14
   field book, page 3, station number 4--we drove Sheffield Road
15
   back to Brooks Quinn ---
16
               (interposing) When you say field book, you're
         Q
17
   referencing to Exhibit 17A?
18
              Yes, I'm sorry, yes, Exhibit 17A. I believe
19
   that's the third page of 17A.
20
               (Witness peruses document.)
21
              Yes, the third page of the field book, of Exhibit
22
         Station number 4, we arrived there at 12:05. That's
23
   Cabin Branch at Brooks Quinn. And station number 4 is--we
24
   are now--this bridge crossing or this--it's actually a
25
   culvert under the road at this point. It's not a bridge
```

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 crossing. It's two large culverts under the road where--that 2 allows Cabin Branch to pass underneath Brooks Quinn Road. 3 And that is an upstream location. It is upstream of the House of Raeford facility. 4 5 The dissolved oxygen for station number 4 was 6 4.92. The percent saturation was 55. The temperature was 20.4 degrees Centigrade. Conductivity was 268. The salinity 7 was 0.1 and the pH was 6.23. And the conductivity here also 8 9 was not elevated. It was not in the 400, 500 range like we

saw at the station locations 3 and 1.

The next location we went to--we're now facing--we're on Brooks Quinn Road pointing south. We followed Brooks Quinn Road south down to Highway 117 and turned right onto Highway 117 and drove back up to station number 7. We arrived there about 12:15. This was the unnamed tributary to Beaverdam Branch off 117. And what we were trying to do here was to look at all of the--we were trying to locate what the source of this pollutant was at--that we saw at locations number 1 and 3.

At number 2, we had ruled that out basically due to the visual observations, not seeing any of the floating pollutants in the water at that point. And with due diligence, we went to these hog farms to ensure that they weren't having any problems or they hadn't had a spill from their lagoons. We also looked in the ditches adjacent to the

```
1
   lagoons for any evidence of any wastewater in the ditches
2
           So we knew we had a problem at station number 2
   there.
3
    (sic). We knew we had a problem at station number 3.
               The indication at Cabin Branch--Brooks Quinn Road/
4
5
   Cabin Branch location -- that's number 4--did not indicate any
6
   issues there. We knew that there was another unnamed
7
   tributary that came into Beaverdam Branch that was upstream
8
   of the location at sample station number 3.
9
              And so we went up there to check that station to
10
   see if there was anything out of the ordinary at station
   number 7. We call it number 7. That's the unnamed tributary
11
12
   to Beaverdam up 117.
13
              The percent saturation was 54.3. The temperature
14
   was 20.2. Dissolved oxygen was 4.75, which is a--it's a good
15
   dissolved oxygen reading. The conductivity was 143.
16
   salinity was 0.1. We were getting--there's a little question
17
   mark next to 143. It was -- our conductivity meter was
18
   drifting a little bit, but it seemed to stabilize on 143.
19
              But the dissolved oxygen reading told us that we
20
   did not have any issues there. And we also did the visual
21
   check. There was nothing in the creek at that location.
22
   There was no signs of any kind of pollutants on the surface
23
   of the water or in the vegetation or anything adhering to the
24
   shoreline.
25
              So we knew that there's only--there were two
```

industries in between station location 1 and 3 and station location 4. Station locations 1 and 3, again, are the two downstream locations from Parker Bark and House of Raeford. Station location number 4, again, was the upstream location from House of Raeford and Parker Bark in Cabin Branch.

When we came back down--one thing I forgot to say,

as we were traveling up to this station number 7, we did pass Beaverdam Branch where it crosses Highway 117 just adjacent to the Parker Bark facility. There's a road—if you look at the map, there's a road that goes to the left, and it runs adjacent to Johnson's Lake. You'll see Johnson's Lake on that map about mid-way down the map on the left-hand side.

This--Beaverdam actually flows through Johnson Lake and it becomes a stream. When it exits Johnson Lake, it goes under a railroad track and crosses Highway 117 just north of the--I'm not sure what the name of that road is, but it's--and I can't quite make out what the state route number is.

But this is the area that I had referenced yesterday that was very choked in weeds. There's a lot of vegetation that's growing in the creek itself, in the creek bed. And to me it looks like alligator weed, but it's been a difficult station to be able to monitor or measure with the DO meter because you can't--unless you put a heavy weight sinker or something on that DO probe, you can't get it to

penetrate the vegetation.

But the one thing that was very evident there with that kind of vegetation, that choking vegetation, it was easy enough to see that there was no pollutants like we saw at location 1 and 3 downstream of House of Raeford and Parker Bark facility. There was no pollutants such as that in the vegetation there, and we would have easily seen---

Q (interposing) Let me have you go up to the next station.

A We came back and our next stop was at the Parker Bark-we came to the Parker Bark facility, went to the office. Mr. Parker wasn't in that day. His daughter wasn't in that day. The secretary told us that he was not in.

I had his cell phone number, so I called him--or actually the secretary called him for me, and I spoke with him. I asked him for permission to access his property to see the creek behind his facility, and he did not grant me permission. So we drove down to the next facility, which was House of Raeford, and requested to see the operator, Joe Teachey, and requested to see the river behind--the creek behind the House of Raeford facility.

And so the next--the next measurement we took was a station we call station number 5, and it's directly behind the House of Raeford south lagoon. And station number 5 was--there was a picture we looked at yesterday that I can

```
show you. I'll reference a map.
1
               This is where the House of Raeford has a foot-
2
3
   bridge across Cabin Branch for access for the operator of
4
   responsible charge to take -- to collect samples from his
5
   monitoring well. There's a monitoring well for the House of
6
   Raeford's lagoon system on the other side of Cabin Branch
7
   there. And I'm trying to find that picture.
8
               (Witness peruses documents.)
9
               And that would be the location at Exhibit LW2 in
10
   section 15.
11
               So in Exhibit -- Respondent's Exhibit Number 15,
12
   LW2?
13
         Α
               Yes.
14
         Q
              And that's the footbridge?
15
               Yes. You can see the footbridge there, so this
16
   was--number 5 was at the footbridge. We took a percent
   saturation. It was 35.8. The temperature was 20.9 degrees
17
18
   Centigrade.
                The dissolved oxygen was 3.16 milligrams per
19
           The conductivity was 365.8 microsiemens and the
20
   percent salinity was .2.
21
               We then walked from that location north along the
22
   east end of lagoon number 2 and stopped at the northeast
23
   point of the secondary lagoon. We call that station
24
   number 6. And in the field notebook, number 6 is described
   as BD or--BD for Beaverdam--behind House of Raeford lagoon.
25
```

```
1
   Percent saturation was 24.1. Temperature was 20.9.
2
   Dissolved oxygen was 2.29 milligrams per liter. Conductivity
3
   was 412.8, and the salinity was 0.2 at that location.
4
               Okay. And so did you go and take any other DO
5
   readings that day?
6
               (Witness peruses document.)
7
               No, not on the 10th.
         Α
8
               And you did go back out on the 15th; correct?
          Q
9
         Α
               Yes.
10
               And what was the purpose in going back out on the
         Q
11
   15th?
12
               (Witness peruses document.)
13
               On the 15th was--I had met Ken Rhame with the EPA
14
   at the site on the 15th. It was to meet with Ken Rhame and
15
   the operator there at the lagoon so that Ken could see what
16
   it was we had found in the creek there right behind the House
17
   of Raeford facility.
18
               Okay. If you will, please, going to Exhibit 9 and
19
   Exhibit 17A, do you reference to this meeting and what you
20
   did on that day?
21
               Exhibit 9; that's Figure 4? Exhibit 9 is Figure
22
   4, physical parameters?
23
          Q
               Yes.
24
               (Witness peruses document.)
25
         Q
               Well, I look at Exhibit 9 and there's a reference
```

1 to September the 15th, 2009. 2 Right, yeah, two locations, location 1 and 3. 3 stayed consistent in calling--that station there at Brooks Quinn, the downstream--furthest downstream point that we 4 5 investigated on the 10th we named 1. And we stayed 6 consistent with that, called that location 1 again and just 7 did some follow-up. We had the DO meter with us and did some follow-up stream stats just to take the readings. We took 8 9 readings at location 1 and location 3. 10 Anything significant, any notations? Q 11 Well, just basically that the dissolved oxygen is 12 still very low. It's actually sinking--it's actually 13 depressed more on the 15th than what it was on the 10th, so 14 it's still worsening rather than recovering. 15 The conductivity was about in the same range 16 basically. The location number 3, the conductivity was a 17 little elevated from what the conductivity was at location 3 18 on September 10th. The percent saturation was extremely low 19 still. So there was I mean maybe slightly worsening 20 conditions, but the station looked pretty much the same,

The purpose of that day's investigation was primarily to accompany the--Ken Rhame with the Environmental Protection Agency to familiarize himself with the area and

probably with a little more algae growth or duckweed

21

22

23

24

25

blooming.

```
1
   the locations that we had conducted our investigation.
2
               Ms. Willis, then going to State's Exhibit, again,
         Q
3
   17A and moving past the dissolved oxygen and the various
4
   samples that were taken, the page begins September 9th. Can
5
   you describe for the Court what that is?
6
               I'm sorry; where are you?
7
               I'm in Exhibit 17A, past your notes for the
8
   samples.
9
               (Witness peruses document.)
10
               Those are some field notes of the -- some of the
         Α
11
   details that I had documented on September 9th that's on
12
   page 274 of the field book.
13
               So those are your field notes?
14
         Α
               Those are my field notes, yes.
15
               And did you prepare these at the time that you
16
   were--when did you prepare these field notes?
17
         Α
               Those were prepared after the incident. I did not
18
   write these field notes at the time that I was on the site on
19
   September 10th.
20
               So on or about the time of the incident; is that
21
   correct?
22
         Α
               Right.
                       It was just a--basically it's a descrip-
23
   tion of what events took place throughout--September 9th
24
   through---
25
               (Witness peruses documents.)
```

1	Q So you testified to the sequence of events as you
2	remembered them. But as it relates to these notes, what
3	would be more correct, your testimony or what's set out in
4	these notes?
5	A Well, what's said in the notes would be. I mean I
6	took those noteswell, for instance, they were right during
7	the time that we were conducting this investigation and
8	during the time that we had been going onto the House of
9	Raeford site and in the area. So that's going to be a pretty
10	fresh recollection had happened. My testimonyI believe my
11	testimony is true. It was two years ago, so I do believe my
12	field notes are probably going to be pretty accurate.
13	Q Going to the first entry on or about September
14	9th, 2009, you reference to the fact that you and Geoff went
15	out. But when you reference to the two hog farms, did you
16	have an occasion to look at the freeboard of those hog farms?
17	A Yes, we did.
18	Q And what did you discover at those hog farms?
19	A They had adequate freeboard. There was well over
20	2 feet, did not havethere was no indication of any kind of
21	problems at either one of those hog farms.
22	Q And again, you've noted the appearance of the
23	stream at that juncture?
24	A Yes, we did.
25	Q And did you see anything floating at all on the

```
1
   stream---
2
          Α
               (interposing) There was nothing---
3
               ---or the creek?
                                 Sorry.
               There was nothing floating in the creek at that
4
5
   downstream location from either one of these hog farms.
6
               And then later towards the end of that initial
7
   entry, you do represent the fact that you met with Mr.
8
   Teachey?
9
               (Witness peruses document.)
10
          Α
               Yes.
11
               And is there anything here that's different from
12
   your earlier testimony that you'd like to speak to as it
13
   relates to that meeting with Mr. Teachey?
14
               (Witness peruses document.)
15
          Q
               And that's okay if there's not.
16
               Not on--not in particular on September 10th.
17
          Q
               Now, you do say that you took samples for BOD
18
   also; is that correct?
19
          Α
               Yes.
20
               And those samples for BOD, is that set out in
21
   Respondent's Exhibit 7?
22
               (Witness peruses documents.)
23
               In Exhibit 7, most of this data is for samples
24
   collected on September 23rd.
25
               Okay. Let me see if I can find the BOD, then.
```

1	(Pause.)
2	Q Look at Exhibit 5, 5H.
3	(Witness complies.)
4	A Yes. Respondent's Exhibit 5H is the report of
5	analysis, the data for the samples collected on September
6	10th, 2009 that I testified to.
7	Q Okay. And will you just go through those samples,
8	please, for the record?
9	A BQ1, station number 1, ison this report of
10	analysis there is a chart. The chart shows a parameter. It
11	shows ain that first row it shows parameter; the station
12	number, BQ1, which is station number 1that's the Beaverdam
13	Branch location at the Brooks Quinn Road crossing downstream
14	of the House of Raeford.
15	BD at HR, that isand there's a 6 in parentheses.
16	That was sample number 6 collected at that northeast point
17	in Cabin Branch just off the northeast point of the House of
18	Raeford secondary lagoon. And then the last column there is
19	Date Analyzed, was the date that the samples were analyzed by
20	the lab.
21	The parameter for biochemical oxygen demand or BOD
22	for Brooks Quinn Road numberstation number 1 was 20. At
23	Beaverdam at the House of Raeford, BD at HR or sample
24	number 6, the biological oxygen demand was 3,595. The
25	nitrate nitrogen at the downstream location 1 was less than

```
1
   .02. Right there at the House of Raeford at location
2
   number 6, it was .07.
3
               Nitrite nitrogen for station number 1 and station
   number 6 respectively was less than .02 and less than .02.
4
5
   And the total Kjeldahl nitrogen for station number 1 was
6
   14.2, and at the House of Raeford at sample location number 6
7
   in Cabin Branch it was 168.
               The fecal coliform analysis showed 27,000 fecal
8
9
   coliform bacteria colonies per 100 mL at station number 1.
10
   And at the House of Raeford station location number 6, the
11
   fecal coliform concentration was greater than 60,000, and it
12
   was estimated.
13
               Then 5I?
         0
14
               (Witness peruses document.)
15
               The Court:
                                  Let me take about a five minute
16
   break and let me talk to the three attorneys a minute.
17
               The Reporter:
                                  Off the record.
                                                        10:11 a.m.
18
               (A brief recess was taken.)
19
                                  On the record.
                                                        10:22 a.m.
               The Reporter:
20
                                  This hearing will come to
               The Court:
21
           It's now 20 minutes after 10:00 on December the 1st,
22
   2011 and all parties present when we recessed are again
23
   present. Ms. LeVeaux.
24
              Ms. LeVeaux:
                                  Thank you, Your Honor.
25
               By Ms. LeVeaux:
```

```
1
              Ms. Lewis, we've been talking about dissolved
         0
2
   oxygen and we've been talking about various parameters.
3
   I'd like you to do is explain to the Court how you pulled the
   parameters (sic) as it relates to dissolved oxygen and BOD.
4
5
              And if you'll just go to the maps--you have the
6
   trial notebooks in front of you, and we've referenced to a
7
   couple of pages. And I'm just going to ask you to direct the
   Court's attention and to explain those parameters. As you
8
9
   explain those results, just let the Court know where you are
10
   as relates to those maps.
11
         Α
              Okay.
12
               (Witness peruses documents.)
13
              Okay. I'd like to go back to the Respondent's
14
   Exhibit 6, the map.
15
              Okay. Looking at Respondent's Exhibit 6, you were
16
   talking about the parameters of dissolved oxygen; correct?
17
         Α
              Right.
                      Yes.
18
         0
              And what did this indicate to you as you pulled
19
   these samples?
20
              Routinely, when we are investigating any kind of
21
   spill or complaint, we go to the location where the pollutant
22
   has been seen or the complainant feels there's something in
23
   the water or where the fish are in distress or where we have
24
   a fish kill. We go to that location first, and as routine,
   before we leave the office we all have gazetteers.
25
                                                        That's a
```

map that has the surface water bodies on the map. It also has all the roads so you know how to navigate through an area.

I had actually been very familiar with this area because I had responded to a previous complaint back in March of '09, so I saturated this area back in March. While we weren't able to pinpoint where a problem came--where the problem that we saw, which--when we responded to the complaint in March '09, it was the same two locations, this station 1 and station 3 that's indicated on this Respondent's Exhibit 6. Those two locations were the two locations where there was a problem in the creek that the complainant had complained about a fish kill.

Q That was in March of '09?

A That was March of '09. And unfortunately, by the time in--I kind of fussed at the complainant a little bit because I said--I asked them how--when did they first see fish in distress or dead fish. And they said that they noticed something wrong a couple of weeks ago.

And typically it's hard to track down a problem if it's a couple of weeks old just because of flow in the creek. These systems move and the plug of whatever happens ends up moving downstream. It makes it very difficult for investigators. We investigate every complaint anyway, nonetheless.

So in March, I had spent a tremendous amount of

time just saturating this area with basically inspections of
the facilities in the vicinity. And when I conducted the
inspectionwhen I conducted the investigation back in March,
I had looked at every one of these what you would consider
upstream locations to stations number 1 and 3, so I knew what
this creek system did. I knew where BeaverdamI knew where
all the unnamed tributaries come into Beaverdam. I knewI
had an advantage for the complaint in September because I was
really familiar with this area by then.
I also had a pretty good feel for what type of
problems we had at some of our facilities in that area
because some of these facilities do have permits, NPDES
permits, that we have the compliance responsibilities for.
And the facilities in this region that I had
visited back in March wasor inspected back in March was the
Carolina By-Products facility, the Duplin Winery, the Big Ed
Feed Mill. I went to the turkey hatcheries. I went to
Parker Bark. And so we're talking about one, two, three,

Q (interposing) Okay. And without giving the detail, just go on and tell us how this relates to the dissolved oxygen as you discovered it on or about September the 10th.

four, five, six--we're talking about six different facilities

in that area. And---

A Well, what I'm trying to--what I'm trying to indicate here is why I had such a good feel for this area and why it was not that difficult to figure out. First of all, we knew exactly where to go when it came--on September 9th because I've been to all of these creek systems before. I knew what was upstream. I knew what was downstream.

And when I conducted my investigation, it was—it was just logical and it was to track—to go from the points where we were seeing contaminants in the stream. And how we knew we had contaminants in the stream is that those dis—solved oxygen levels were extremely low. You don't typically see dissolved oxygen readings that low without some kind of pollutant that's influencing those dissolved oxygens, especially in a main creek body.

You may see lower DOs, Your Honor, in places where you have unnamed tributaries that come in that are barely feeding the creek, that are slow moving, can be stagnant. We expect in an area like this that's heavily agricultural that you can get runoff of pollutants such as nitrogen from the agricultural fields.

Some of these facilities--House of Raeford Rose
Hill chicken processing plant have spray irrigation fields
that are located south of this Johnson's--where Johnson's
Lake is on this map. So there's spray application fields for
wastewater in this vicinity. Carolina By-Products also has

```
1
   spray application fields in the area.
2
               I was able to inspect all of these industries with
3
   the exception of House of Raeford that -- when our complaint
4
   came in about a fish kill on March 2009. I had had my boots
5
   on the ground at all these facilities. I knew what their
6
   stormwater quality looked like. Some of the facilities were
7
   conducting their stormwater monitoring. Some of them
   weren't. Most of them were out of compliance with their
8
9
   NPDES permits. And the---
10
               (interposing) So pull us again back--because I
         Q
11
   don't know if you're still in March or---
12
               (interposing) I'm building--I'm building how
13
   I'm--no, I'm back in March at this point explaining how I
14
   know the area so well, how do I know these facilities, how
15
   did I know that what I saw on---
16
               (interposing) September---
         Q
17
               ---September 9th was not stormwater related.
18
   I knew it wasn't stormwater related is that we actually had a
19
   floating pollutant in that creek system at that point and it
20
   was pretty significant. It was a --it was a complete film and
21
   sheen all across the surface of the water. I have seen---
22
         0
               (interposing) But just stay to the dissolved
23
   oxygen for right now.
24
         Α
              Okay.
25
              Let's just go through that ---
```

A (interposing) Okay.

Q ---because you testified to what you saw yesterday.

A So we worked--what you do is you work your way upstream. You keep--what you're trying to do is find where the point of entry that a pollutant would hit surface waters, so you work your way upstream. And you keep working your way upstream until you find either the source or you find a point of clear water.

And then you know--if you come to a point where there's--the dissolved oxygen is normal--and what I would consider normal in this--when we look at data, Your Honor, you have to consider what the dissolved oxygen readings are for that day.

You can look at dissolved oxygen readings—if we went out to this creek system every day of the year and took dissolved oxygen readings, there would probably be times that you're going to find depressed dissolved oxygen depending on weather conditions, how long it's been since there's been rain input, whether there are stagnant conditions, and certainly if there's been pollutants of concern that have been introduced to the creek system. But when you are doing an investigation, you're—the indicators that you have is what the snapshot of the quality of this creek system looks like on that day.

1 At this location -- at the station location number 2 4, which is Cabin Branch upstream of House of Raeford, that 3 dissolved oxygen was high. It was 4.9 milligrams per liter. That is an excellent dissolved oxygen reading for a Class C 4 That is a--that indicated to us that we did not have 5 6 a pollutant that had come through that station. 7 And I think if we--and I'm not going to take us all through the data, but if we looked at the data that has 8 9 been collected from September 10th on--and the Division of 10 Water Quality was collecting samples in this creek system every month, basically starting in--I think in October of 11 12 2009, and we're still collecting data in stream. 13 mentioned that we adopted this as our stream--our stream 14 study. 15 Okay. So then we have this dissolved oxygen Q 16 And so what was your conclusion---17 Α (interposing) Well, the---18 ---if I have this information---Q 19 (interposing) Well, for one thing---Α 20 ---if I've secured this information? 0 21 For one thing, the dissolved oxygen remained 22 depressed for a long period of time in this creek system. 23 a matter of fact, we were getting depressed levels even at 24 the Highway 11, which is further east yet towards the 25 northeast Cape Fear River. This event lasted a long time.

1	Q And what's a long time?
2	A Well, it impaired the waters for at least two
3	months. For two months the dissolved oxygen was depressed in
4	this creek system fromand it began to recover of course
5	sooner behind the House of Raeford because that was the point
6	of origin. That was where the sludge hit the creek is right
7	behind House of Raeford.
8	So where we began to see the recovery first, and
9	Clay to alluded to that, was right behind the House of
10	Raeford because you're getting clean water that's coming down
11	from above and it's pushing the pollutants on downstream.
12	But it did impairthese stations were still showingstation
13	number 1 and station number 3 were still showing impairment
14	and depressed dissolved oxygen for at least two months.
15	One of the other things that it did, the sludge
16	did, is that some of this sludge settles out to the bottom
17	and it createsin this low, slow moving creek system it
18	creates a sink in the bottom of the creek, and
19	Q (interposing) You heard me reference to a
20	nutrient sink in talking with Petitioner's expert, Mr.
21	Holley. Have you heard the term "nutrient sink" before?
22	A Yes.
23	Q And tell the Court what that is.
24	A A sink is something that canthat can contribute
25	pollutants over time. It can justa sink means that it can

```
1
   continue to release pollutants over, you know, a period of
2
   time. A period of time can be X period of time. I can't
3
   define what period of time that is.
               But what manifests---
4
               (interposing) But it continues ---
5
6
               ---as a result of this release?
7
               Because the--just the breakdown of those solids
         Α
   that settle out, it takes time for this--I mean that's a lot
8
9
   of solids. When you--all you have to do is look at the
10
   pictures to get some kind of idea of what the volumes of
11
   sludge in that creek was. The pictures are worth a million
12
   words.
13
               What do you see as a result of this nutrient sink
14
   a lot of times on the surface of the water?
15
         Α
               They continue to--it takes a long time for the
16
   creek system to recover because -- you know, all of this has to
17
   either be biodegraded -- and in order for it to be biodegraded,
18
   it's either--it either has to be biodegraded anaerobically or
19
   aerobically. And it's the bacteria that eventually will
20
   consume the -- what we call the BOD, the biological oxygen
21
   demand or the carbon--carbon source.
22
               Okay. And Ms. Willis, I don't want to cut you off
         0
23
   on the dissolved oxygen, but I think you've addressed that.
24
   What about fecal? Do you find Exhibit -- fecal or BOD -- do you
```

find Exhibit 5I helpful at all as it relates to fecal and

25

BOD? And also, if you'll take a look at Exhibit 8 and just explain--I don't know if these two will help you in your explanation of BOD and fecal.

(Witness peruses documents.)

A Exhibit 5I is the--these are the samples that we collected on--actually, Rufino collected these samples on September 17th, 2009. One of the samples collected was in the House of Raeford--PL stands for primary lagoon--and then in Cabin Creek, right behind the House of Raeford lagoon. Biological oxygen demand was at 13 and 12 in the creek.

Q And what significance, if any, does that--I mean what does that mean?

A That means you've got--you've got a pollutant in the water. Typically if you--if you want to talk about pure water BODs, you might consider a BOD of maybe 3 as, you know, somewhat pure. When it starts getting elevated into the teens, then that's indicating that there's some kind of pollutant of concern in the waters that's causing this biological oxygen demand.

The House of Raeford had a source--they had a source of sludge right there at their facility. The fact that we took the samples--a lot of what our sample efforts were, Your Honor, was basically to be able to answer any concerns that the public would have about what the impact to the creek was due to this incident.

```
1
              We had a complainant call in and was concerned
2
   about the condition of the creek. It was -- it's amazing that
3
   we didn't get other calls, but we certainly could have.
   There's people in that area that fish this creek system.
4
5
   so for public health and to determine just how long we---
6
              Mr. Jones:
                                  (interposing) Your Honor, with
7
   apologies to everybody, can we maybe instruct the witness to
8
   answer the questions as opposed to this monologue?
9
              Ms. LeVeaux:
                                  We are---
10
                                  (interposing) Well, I want her
              The Court:
11
   to explain as she is. I'll let her attorney decide when to
12
   cut off.
13
                                  I'd like for her to explain,
              Ms. LeVeaux:
14
   Your Honor, because I sort of find myself between a rock and
15
   a hard spot. I could have her go through page by page or I
16
   could have her explain it. And I'd like for her to explain
17
   it, if the Court will indulge me.
18
              The analytical -- in particular to respond to
19
   Exhibit 5I, what this indicates, Your Honor, is that the
20
   House of Raeford had a source of sludge in wastewater right
21
   there at their facility, very close to--I mean right adjacent
22
   to the creek where we found the first signs, the point--what
23
   we consider and call the point of origin for this wastewater
24
   and sludge in the creek.
25
               They certainly had--one of the things that you
```

```
1
   would consider in an investigation is for instance Parker
2
   Bark. Parker Bark is located right next to the House of
3
   Raeford, but Parker Bark does not generate a sludge.
                                                          They do
4
   not generate a wastewater.
5
              Who in the area would generate--generates waste-
6
   water at their industry that would be a sludge, a wastewater
7
   sludge or a wastewater--or a wastewater? And we only have
8
   two in that vicinity. And one is Carolina By-Products, which
9
   is several miles upstream, and the other one is House of
10
   Raeford. And the fact that we did not see any signs of any
11
   pollutants or sludge--and this, again, and I explained this
12
   yesterday, how fresh this sludge was.
13
              Okay. So you didn't see any staining or any
14
   fingerprint as relates to the nexus between the sludge and
15
   Carolina By-Products; is that correct?
16
         Α
              Exactly.
17
              And you know this is not the kind of waste that is
18
   produced by Parker Bark, which is right next door, a mulching
19
   operation; correct?
20
         Α
              Correct.
21
              Now, did you see any evidence of overtopping of
22
   the lagoon at the House of Raeford? I mean tell the Court
23
   what you saw.
24
         Α
                    There was no evidence of overtopping of the
```

The only--there was one place on the primary lagoon

25

lagoon.

```
1
   that was at the northwest corner where the wastewater in the
2
   lagoon--the sludge and wastewater in the lagoon was right
3
   close to the top of the berm, which is also the road that Mr.
   Teachey drives to check his lagoons.
4
5
               It was right at--it was right at the top, but it
6
   wasn't overtopping. It wasn't--it would have to flow over a
7
   road, which is the top of the berm, and there was no signs of
8
   a spill, which is part of the reason--one of the things that
9
   I look for is could have this thing been accidental. And
10
   there was no signs of an accidental release. It wasn't that
11
   the lagoons had overtopped. It wasn't that the lagoon dike
12
   wall had breached in any way, but that's---
13
               (interposing) And you didn't see a hose directly
14
   discharging either, did you?
15
               I did not see a hose discharging. We saw hoses,
16
   but we did not see -- we did not see on that day a pump.
17
         Q
               So you recognize that this is a circumstantial
18
   case? You did not see anybody doing anything directly;
19
   correct?
20
               That's correct.
21
              But do you have an opinion as to the cause of the
22
   discharge?
23
                    My opinion was they were doing construction
24
   on the dike. It was -- we've had -- we've heard testimony that
25
   there was a problem with the knife valve. The knife valve,
```

1 the valve that opens from--to open flow from lagoon number 1
2 to lagoon number 2, was not operable. They had to do some
3 pumping, and in my opinion they pumped this to the creek.
4 They pumped it to the creek.

They also had a million gallons of wastewater that's coming into this lagoon, a lagoon that is choked full of vegetation. It is taking up storage space in this lagoon. The lagoon is only 7,000,000 gallons. It holds a volume of about 7,000,000 plus gallons.

They have a million gallons coming in of waste-water every day. It's choked--as you can see by the pictures, it's choked in most areas with a thick vegetation. And they have never cleaned the solids out of this lagoon, which is one of the operations and maintenance activities that you would expect for a facility such as this.

As a matter of fact, Carolina By-Products, who has the same kind of lagoon--it's a smaller primary lagoon--but they cleaned out solids for instance in their lagoon in 2008. You have to take solids out of these primary lagoons. If you don't take solids out of these lagoons, they get choked with solids.

We had another incident where we had a facility who allowed solids to build up a little too much in their lagoons and they had a pump failure. And they lost some of their activated sludge out of their lagoon, which went to a

```
1
   creek. We made them clean all the solids out of the creek.
2
   But what they found one of the problems was, they had a
   buildup of solids in their aeration basin.
3
               You have to remove solids. That's part of the O &
4
5
   M, operations and maintenance, for these type of systems.
6
   You've got to remove solids or all they do is build up till
7
   it gets to the point that you don't have adequate storage
8
   capacity anymore. And I think---
9
               (interposing) All right, so you've referenced to
10
   the---
11
         Α
              ---if push came to shove---
12
              You've referenced to the inadequacies as it
13
   relates to storage of the primary lagoon and that being
14
   something that persuaded you -- that drew you to your opinion.
15
   Anything else? Did you talk with Mr. Teachey? He has--as an
16
   operator in charge, doesn't he have a duty and responsibility
17
   to inspect?
18
         Α
              He does have a responsibility to inspect the
19
              He did tell us that he inspects the lagoons twice a
20
   day. One of the responsibilities is also inspecting the toe
21
   of the lagoon to make sure that there's no leaks or seepage
22
   from the lagoon.
23
               There is absolutely no reason why Joe Teachey
24
   could drive around that northeast point of that lagoon and
25
   not see that sludge sitting in the creek. It was so obvious.
```

```
It was a show stopper. The minute you looked in the creek
1
2
   it's like, "Oh, my." You couldn't miss it. You could not
3
   miss it. He told us he drove that lagoon twice a day.
   was no reason for him to miss it.
4
5
              And then an operator that has 20 years' experience
6
   in the wastewater industry, his best explanation of where
7
   this material and where this sludge in the creek came from
8
   was from some cows in a pasture upstream.
9
         Q
              Do you have an opinion as to whether or not those
10
   cows in fact could cause something ---
11
               (interposing) No, they could not. This was a
12
   processed -- this was sludge out of a wastewater process. This
13
   was processed wastewater. This wasn't a raw wastewater.
14
   doesn't look like a sludge like that because it's raw.
15
   is--this is a type of wastewater that comes out of a waste-
16
   water treatment process.
17
         Q
              And you didn't recommend an assessment for fecal
18
   in any event, did you?
19
              No. No, I did not.
              And so you've referenced to these various factors
20
21
   which led you to draw your opinion. Also, what about the
22
   appearance of the sludge that you saw? Was there anything
23
   else that affected your opinion as it related to the
24
   appearance---
```

(interposing) Well, the fact that it was fresh.

(800) 255-7886

Α

25

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 It was a fresh sludge. It hadn't gone septic. You could see in the pictures--if you just look at the pictures from the 11th through the 17th, you can see how quickly that wastewater breaks down. And it did. It broke down.

Had that been--had that come from upstream, we would have seen -- it would have looked septic. It would have -- if that spill would have occurred upstream at the only other -- at the only other facility that even generates that type of sludge, Your Honor, it would have been septic. would have appeared septic already by the time it came behind the House of Raeford lagoon. It takes time for sludge to move downstream if it's going to even be able to flow.

Furthermore, you would have seen traces. leaves a fingerprint. It smears sludge along the creek banks. We've seen pictures where the sludge is laid out on the sides of the bank.

Q Look at me. Look at me, okay? So I want to ask you a question. As it relates to the weather during that time, tell me what was going on with the weather and tell me how that might or might not affect the flow.

On September 10th when we--when Geoff and I got to the House of Raeford, we did talk to Joe Teachey. He was the only individual at House of Raeford that we talked to that day. He had indicated to me that he was not able to cut some fields. He wanted to cut some of the fields they had for

```
1
   their spray fields. And the reason he couldn't cut fields
2
   was that he was expecting a big rain.
3
               I think it--I think that's supportive of the fact
   that I think Mr. Teachey thought that a large rain was
4
5
   supposed to come into the area. And in fact we did get a
6
   large rain, but it didn't come all the way inland. It only--
7
   instead of coming inland like it was expected to come in, it
   didn't. It skirted the coastline.
8
9
               And that big rain I think was on September -- it was
10
   9th or 10th. You could look at the rainfall data and see
11
   that there was a very heavy rain. I think it was like a 3
12
   inch rain that came through and it just skirted the coastline
13
   instead of coming in. So I think Joe felt like there was
14
   going to be a rain event that would have helped flush this
15
   material down away from the facility.
               And how does -- tell me this. How does rain affect
16
         0
17
   fecal--you've been here throughout the trial; is that
18
   correct?
19
         Α
               Yes.
20
              And you heard Mr. Holley testify there were some
21
   lab results that he had drawn from Environmental Chemists
22
   that he spoke to; is that not correct?
23
         Α
               Yes.
24
              And one of the results showed a really high fecal.
25
   Tell the Court, if you will, how a rain event--because he
```

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conceded that there was a rain event either on the date that that fecal was pulled or right before. Tell us how a rain would affect a fecal parameter reading.

A Well, this is an agricultural area, so there are--first of all, you've got spray application fields for both House of Raeford, Carolina By-Products. You have cows in the area. It is a--in this area it's not residential. There's a lot of wooded areas. You have wildlife in the area.

When you have heavy rains, it is expected that when the ground is—when the stormwater runoff comes across the ground or across agricultural areas, it's going to pick up and carry fecal coliform bacteria with it. It's not unusual to see elevated fecal coliform bacteria after rain events.

And the fecal coliform bacteria can—it doesn't take but maybe a few grams of waste material from an animal to elevate the fecal coliform levels. And fecal coliform may not be the best indicator to assess a case for in an agricultural area because you can have elevated fecal coliform. But you don't ever expect to see stormwater runoff that would look like a—that would deposit a sludge in the creek, Your Honor.

Q Okay, so---

A (interposing) You can have elevated fecal

```
1
   coliform. And as a matter of fact, some of the stormwater
2
   runoff from some of our facilities, especially the feed
3
   mills, the rendering plant, the slaughterhouses -- while we
   don't have any stormwater data from House of Raeford in Rose
4
5
   Hill because they just recently got their permit, their
6
   stormwater permit--and I'm hoping that they are doing their
7
   stormwater monitoring.
               Their facility in Wallace--there's another House
8
9
   of Raeford slaughterhouse in Wallace. They have been
10
   conducting stormwater monitoring from their facility, and
   some of the samples they've pulled have had fecal coliform
11
12
   counts as high as 600,000 in the stormwater. That's pretty
13
   elevated. That's high, but that does not mean that that's
14
   going to look like a sludge. It may have fecal coliform
15
   bacteria in it, but it's not going to look like a sludge.
16
               So do you have any doubts what you observed on
         Q
17
   that day, whether it was---
18
         Α
               (interposing)
                              I have---
19
              The Reporter:
                                  (interposing) Let her finish
20
   her questions, please.
21
              The Witness:
                                  I'm sorry.
22
              Do you have any--could you just--do you have any
23
   doubts about what you observed on or about September the 9th,
   10th, 23rd, 15th of 2009?
24
25
               I have absolutely no doubts.
```

1	Q And what was it that you observed?
2	A A sludge in Cabin Branch directly behind House of
3	Raeford, an impacted stream from there on downstream, and
4	upstream of that the creek had absolutely no signs of any
5	pollutants on the surface, in the water, in relation to our
6	dissolved oxygen readings.
7	There was no signs of any pollutant that came down
8	or sludge that came down from upstream. That point of
9	originthere was no doubt in my mind that the point of
10	origin was right there at the House of Raeford.
11	Q And very briefly
12	A (interposing) No doubt.
13	Qyou've talked about your DO and we've gone
14	through the map showing the DO readings. And we know the DO
15	can be depressed you've indicated, depending uponfrom day
16	to day factorsit depends upon all the factors. And
17	temperature, et cetera, will affect that particular point of
18	the creek and will result in different DO readings.
19	So just briefly just sum up for the Court why
20	these DO readings also contributed to your determination that
21	the House of Raeford was responsible for this discharge and
22	for this sludge affecting the waters of the state.
23	A For the volume of sludge that we saw in the creek,
24	there waswe would certainly have seen depressed dissolved
25	oxygen readings at thatat the station just upstream of the

```
1
   House of Raeford. That location was only maybe--I'm trying
2
   to think how many yards, if I could put yards to it. But I
3
   mean you can see the maps, and it shows that that upstream
   location is probably several hundred yards just upstream of
4
5
   the location where the pictures show an enormous amount of
6
   sludge.
              The sludge would not have traveled in a plug flow
7
   fashion. It would have--if this came from upstream or even
8
9
   if someone were to dump it right there at the bridge, you
10
   still would have had signs of sludge. You would have had a
11
   dissolved oxygen that was depressed.
12
              And as a matter of fact, it took some time for the
13
   dissolved oxygen readings to recover at the downstream
14
   locations. It took awhile for this slug that was introduced
15
   at the House of Raeford--behind the House of Raeford in Cabin
   Branch--it took two months---
16
17
         Q
               (interposing) Okay, and we've---
18
         Α
               ---to repair.
19
               ---talked about that already.
20
         Α
              We would have seen depressed dissolved oxygen.
21
              Right. And then you've also talked about BOD, so
22
   the difference between BOD versus dissolved oxygen, briefly?
23
               BOD is a--it's just an indicator for a pollutant.
         Α
24
   It's a biological oxygen demand. It is the amount of oxygen
25
   that's taken up by microorganisms, and it's an indicator for
```

```
1
   the amount of carbonaceous material that is in the water.
2
               Okay. And if you'll look at Respondent's
         Q
3
   Exhibit ---
4
               (Ms. LeVeaux peruses documents.)
5
               ---Respondent's Exhibit Number 20?
                                                   Do you
6
   recognize Respondent's Exhibit Number 20?
7
               (Witness peruses documents.)
               The notice of violation?
8
         Α
9
          0
               You spoke to this earlier.
10
               Yes.
         Α
11
               And did you prepare this document?
          0
12
          Α
               Yes.
13
               And summarily, can you tell us why you thought
14
   this notice of violation was warranted?
15
         Α
               It's pretty well summarized in paragraph number 3,
16
   indicating that "Samples collected behind [the] facility in
17
   Cabin Branch confirmed a fecal coliform density greater than
18
   60,000 colonies per 100 [mL]." The BOD five day concentra-
19
   tion was 3,595. That's an enormous BOD. That is an enormous
20
   BOD reading. That is a very large BOD reading--"and a total
21
   Kjeldahl nitrogen...concentration of 168 milligrams per
22
   liter."
23
              And also what you observed with---
24
         Α
               (interposing) And also what we observed. We also
25
   had--it was not only my opinion, but we had the EPA officials
```

```
1
   there at the site. They came---
2
               (interposing) And you don't need to speak to
         Q
   their opinion.
3
4
5
              You can just tell the Court what your opinion was
6
   that relates to this. So you did prepare this document?
7
              Right. And it was--this was basically a notice of
   violation for a dissolved oxygen standard violation in Cabin
9
   Branch. And it was warranted because the dissolved oxygen
10
   upstream was normal. It was at 4.6. The dissolved oxygen
11
   downstream of the point where we located the sludge in the
12
   creek was depressed at .19, .2 milligrams per liter, which is
13
   well below the dissolved oxygen standard. The dissolved
   oxygen standard, again, for Class C-Sw waters is 4 milligrams
14
15
   per liter.
16
         Q
              And anything else?
17
               (Witness peruses documents.)
18
         Q
              What you observed; correct?
19
         Α
              Of course, yes.
20
              Okay. And then I'll take you to Respondent's
21
   Exhibit Number 22. Did you prepare this document?
22
         Α
               Yes.
23
              And so what's the protocol to enforcement
24
   recommendations? Is there a protocol?
25
         Α
              We--the inspector shares the data that was
```

```
1
   collected, the stream statistics, the pictures, the descrip-
2
   tion of what we found, to our supervisor. Our supervisor
3
   reviews the incident information and recommends us to either
   move forward or not move forward with the notice of viola-
4
5
   tion. And depending on the responses by the violator deter-
6
   mines whether enforcement is warranted or not or a continua-
7
   tion of an assessment is---
8
         Q
               (interposing) So you gathered all the data,
9
   including the data from the EPA, and you came to the
10
   following violations. And explain to the Court how is it
   that you came -- that these particular violations happened --
11
12
   were in fact pertinent as it relates to the House of Raeford.
13
               You're referring to---
         Α
14
         0
               (interposing) The second page.
15
               --- the second page. And this is referring to--
16
   this would be paragraph one, two, three---
17
         Q
               (interposing) Let's--first let's just talk about
18
   the discharge. What warranted -- what in your opinion showed a
19
   discharge since you didn't see them discharging?
20
              No, I do not see them discharge. But it was the--
21
   it was my opinion that this sludge did come from the House of
   Raeford, and so therefore they did permit a waste to be
22
23
   introduced directly or indirectly into waters---
24
         Q
               (interposing) And then your opinion---
25
               ---of the state.
```

```
1
         Q
               ---is based upon what? I don't want you to state
2
   the law, but---
3
               (interposing) Visual---
               ---reference to the facts to the Court why you
4
         0
5
   felt---
               (interposing) Well, all of the---
6
         Α
7
               ---this was pertinent.
          Q
               All of the evidence---
8
         Α
9
               The Reporter:
                                  (interposing) Please don't
10
   talk at the same time.
11
               Well, I'm asking the question, so just wait till I
12
   finish asking the question, okay? So just explain to the
13
   Court -- I don't want you to go to the law, but explain to the
14
   Court what in your opinion supports the fact that there was
15
   in fact a discharge and that the House of Raeford caused this
16
   discharge.
17
               Because we found no evidence of any waste upstream
18
   of the House of Raeford. It was right directly behind their
19
              There was nothing upstream that -- there was no
   property.
20
   evidence, whether you're looking at dissolved oxygen or BOD
21
   or the visual inspections -- there was nothing upstream of the
22
   House of Raeford.
23
               And what, if any, use was removed by this
24
   discharge?
25
         Α
               Class C-Sw waters are waters that can be used for
```

1	secondary recreational use. Secondary recreational use is
2	basically boating or fishing, not primary. Primary is for
3	swimming, body contact.
4	But it is a creek that people fish, so it did
5	remove the use. You couldn't fish in the creek with that
6	much standing sludge in it. And with the dissolved oxygens
7	depressed, there wasn't anything to fish for anyway.
8	The violationthe stream standards for dissolved
9	oxygen had been impaired. The stream standard for dissolved
10	oxygen had been impaired at the point behind House of Raeford
11	lagoon all the wayand the subsequent downstream locations
12	in Beaverdam Branch.
13	And the thirdthe third violation was "for
14	adversely affecting the aesthetic quality of the surface
15	waters as a result of floating sludge and film associated
16	with a wastewater and sludge release."
17	Q And did the settleable solids go to the septic
18	the site becoming septic and sinking or
19	A (interposing) A lot of solids, yes, did settle to
20	the bottom.
21	Q These enforcement costsyou said you drafted
22	this. And briefly, what do these represent?
23	A These are the enforcement costs for myself and the
24	environmental senior tech. That would be Stephanie Garrett.
25	Q Do these hoursand there's 32.5 hours in here.

```
1
   Does that in fact represent all the time that you were out
2
   there?
3
          Α
               No.
               And the reference to the -- are those vehicles?
4
5
               Yes. Those are four vehicles that were used
6
   during the investigation.
7
               And did you also prepare the F and D that's right
   behind--that's on the next page of Exhibit 22?
8
9
          Α
               Yes.
10
               And this sort of more or less chronicles what
          0
11
   you've already spoken to, the facts of this case; correct?
12
               Yes. Staff prepares the document, Rick Shiver
13
   reviews the document, and then it is sent to the -- in this
14
   case it was sent to Matt Matthews.
15
               Okay. And so you don't put a dollar amount in
   there; correct?
16
17
          Α
               We don't assess the violations for the---
18
          Q
               (interposing) But you submit all this information
19
   to downtown Raleigh; is that correct?
20
          Α
               Yes.
21
          Q
               And also they have access to you---
22
          Α
               (interposing) Yes.
23
          Q
               ---as well, or anyone; correct?
24
          Α
               Yes, that's correct.
25
          Q
               Do you recognize Exhibit 23?
```

```
1
               (Witness peruses document.)
2
               You indicated you did earlier; is that correct?
         Q
3
   I'm just asking if---
4
               (interposing) Yes.
5
               ---you recognize it?
6
         Α
               Yes.
7
               Looking to--looking to paragraph number 6 of
         Q
8
   Exhibit 23, there's a question on whether the violation was
9
   committed willfully or intentionally. Was that the response
10
   that you had recommended to the division?
11
               (Witness peruses documents.)
12
         Α
               I'm sorry. Which one are you on?
13
                                  Where are you?
               Mr. Jones:
14
         Α
               I'm still in Exhibit 23 and paragraph number 6.
15
               Mr. Jones:
                                  We don't---
16
               The Court:
                                   (interposing) Is that on the
17
   reverse of Exhibit 22?
18
               Ms. LeVeaux:
                                 You don't have it?
19
               The Court:
                                  I do not have that either.
20
   that on the reverse page? It failed to copy, if that's the
21
   case.
22
               Ms. LeVeaux:
                                  It is on the reverse page.
23
               The Court:
                                  There's 1 through 4 and then
24
   there's---
25
               Ms. LeVeaux:
                                   (interposing) Okay. Well,
```

```
1
   I'll address that after--I think we're close to a break.
   I'll get that page for everyone.
2
3
               By Ms. LeVeaux:
               How about Exhibit -- how about Exhibit 24? And I'm
4
          0
5
   looking at item number 6.
6
               The Reporter:
                                   Would this be 24A?
7
                                   This is 24A.
               Ms. LeVeaux:
8
               The Reporter:
                                   Thank you.
9
               (Witness peruses documents.)
10
          Q
               Was that what you recommended to the division?
11
               (Witness peruses documents.)
12
          Α
               You said 22A?
13
               24A.
          0
14
          Α
               24A.
                     This is the assessment factors---
15
          Q
               (interposing) Item number 6. I'm sorry?
16
               This is the assessment factors---
          Α
17
          Q
               (interposing) Yes, ma'am.
18
          Α
               ---that were determined by Jeff Poupart.
19
               This is prepared by Jeff Poupart.
          0
20
          Α
               Okay. Right.
21
               But you indicated earlier that you drafted the
22
   recommended -- the recommendation. Was this the recommendation
23
   you made to the division, item number 6?
24
               (Witness peruses document.)
25
          Α
               Yes.
```

```
1
              This was the recommendation you made, number 6?
2
                   Jeff has "not indication" -- "no indication of
              No.
3
   accident, insufficient freeboard in lagoons." I recommended
4
   that it was willful and--my position was it was willful and
5
   intentional because it wasn't accidental. I recommended,
6
   yes, that it was willful.
7
              So it wasn't the recommendation that you made;
8
   correct?
9
         Α
              No. I did agree with Jeff that there was no
10
   indication of accident.
11
              Ms. LeVeaux:
                              Your Honor, this might be a
12
   good juncture to break.
13
              The Court:
                                 Okay. Let's take a recess for
14
   about ten minutes, please.
15
              Ms. LeVeaux:
                                Okay.
                                        Thank you, sir.
16
                                 Off the record.
                                                      11:06 a.m.
              The Reporter:
17
              (A brief recess was taken.)
18
              The Reporter:
                                On the record.
                                                      11:22 a.m.
19
              The Court:
                                 This hearing will come to
   order. It's now 20 minutes after 11:00 on December the 1st,
20
21
   2011. All parties present when we recessed are again
22
   present. Ms. LeVeaux.
23
              Ms. LeVeaux: Thank you, Your Honor.
                                                         Your
24
   Honor, at this time I would move State's Exhibits 1 through
   30 into evidence. They've already been identified.
25
```

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```
1
                                  Any objection?
               The Court:
2
              Mr. Jones:
                                  Your Honor, partially yes and
3
       We have no objection to the bulk of these exhibits, but
4
   I think Ms. Jones is going to pinpoint the ones that we do
5
   have some objections to.
6
              Ms. Jones:
                                  Your Honor, I think that our
7
   main objections relate to Exhibit Number 3, 4B, 19A, and 29
8
   and 30. Exhibit 3, Your Honor, is a document---
9
               The Court:
                                   (interposing) Wait a minute.
10
   Say that again, please.
11
              Ms. Jones:
                                  Exhibit 3, 4B, 19A, 29, and 30.
12
               The Court:
                                  Okay, so right this minute what
13
   I will do is go ahead and admit Respondent's Exhibits 1
14
   through 2, the remainder of 4, 5 through 19, the remainder of
15
   19 besides 19A, 20 through 28. And 30 was your last--so
16
   we'll talk about the four or five that you have.
17
               Ms. LeVeaux:
                                  Your Honor, I think she objects
18
   to 29 and 30.
19
               The Court:
                                  Right.
                                          I mean up to 29 and 30.
20
                                   (Respondent Exhibits 1, 2, 4A,
21
                                  5-18, 19B, 19C, and 20-28 were
22
                                  received in evidence.)
23
                                  Let's talk about 3 first.
               The Court:
24
               Ms. Jones:
                                  Your Honor, Exhibit Number 3 is
25
   a--DNA fingerprint analysis is what it's titled at the top.
```

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```
1
   Ms. Willis testified that she is not an expert in DNA. The
2
   extent of her testimony as to this document is that she
3
   recognized it. It was not prepared by Ms. Willis. There's
   no foundation for its admittance. In fact it wasn't prepared
4
5
   by anyone with DENR or DWQ.
6
              And Your Honor, frankly, we have serious issues
7
   regarding the reliability of the tests, which we brought up
   in our initial motion in limine. This was a test that was
8
9
   performed by Dr. Song. He's really the only one that can
10
   testify as to those results and the validity of that
11
   document.
12
              The Court:
                                  Dr. Song will be testifying?
13
                                  Your Honor, we're still trying
              Ms. LeVeaux:
   to figure out if we're going to have Dr. Song testify, but we
14
15
   would like to speak directly to that. Can I take each
16
   objection as she raises it, Your Honor?
17
              The Court:
                                  Sure.
                                         Sure.
18
              Ms. LeVeaux:
                                  Your Honor, we would submit
19
   that admissibility doesn't go to the weight to be given to
20
   the evidence. Ms. Willis has indicated that she's identi-
21
   fied--she recognizes this document. She looked at the peaks.
22
   But other than that, it should be something that should be
23
   admitted. Now, the weight to be given this evidence I think
24
   would be more dependent or less dependent upon Dr. Song and
25
   other information as it comes through.
```

1	But we would submit that we show the chain of
2	custody for this resultfor the results here. We show that
3	the samples were delivered. We show that she reviewed this.
4	She looked at it. She saw the peaks. She compared the
5	peaks.
6	She's not an expert. She said she's not an
7	expert, but there have been many documents that have already
8	been admitted and the person hadn't prepared the document.
9	It was more or less a question of whether or not they
10	recognized the document, did they receive the document, did
11	they have an occasion to review the document. She did all
12	those things, Your Honor.
13	We submit that it should be admitted and we ask
14	this Court that any weight goes to theanyany objection
15	goes to the weight of the evidence and not the admissibility
16	of the evidence.
17	The Court: Okay. 4B.
18	Ms. Jones: Your Honor, 4B are documents
19	that were prepared by the EPA and the EPA's independent
20	contractor. It's hearsay documentation. The EPA conducted
21	its own investigation. Ms. Willis didn't prepare this
22	document. She did not have a role in the EPA's investigation
23	other than being out there with them.
24	And we also have direction from the EPA as to what
25	their investigator is allowed to testify to and not testify

```
1
   to. That was also brought up in our motion in limine and the
2
   supporting documents there. Your Honor, there's no basis for
3
   allowing this in if she's not the author. She didn't prepare
   it. It's not her investigation and it is a hearsay document.
4
5
                                  I'd also add to that, Your
              Mr. Jones:
6
   Honor, it's our conclusion part of that document contra-
7
   dicts--has information that contradicts the directive we got
   from the EPA and the letter that we described in the motion
8
   in limine.
9
10
              The Court:
                                  Okay.
11
              Ms. LeVeaux:
                                  Your Honor, we would point out
12
   that to the extent that the Court does not want to accept
13
   this evidence at this juncture for substantive, we ask this
14
   court to allow its admissibility for corroborative purposes
15
   because on these dates in fact they were together. They were
16
   out in the field together. There is a lot of the information
17
   which parallels information which Ms. Willis has already
18
   spoken to.
19
               So if this Court is not inclined to accept it as
20
   substantive purposes right now--we intend to call Mr. Rhame
21
   to the stand. We will ask him about this document.
22
   document produced in the ordinary course of business for the
23
   EPA. But more importantly, it parallels exactly what Ms.
24
   Willis observed on or about those dates in question as it
25
   relates to that time in September 2009.
```

```
1
               So if this court is not inclined to accept it for
2
   substantive purposes, we ask that this court accept it for
3
   corroborative purposes.
4
              The Court:
                                  Okay. And you say you plan on
5
   him testifying?
6
              Ms. LeVeaux: I am going to have him testify,
7
   Your Honor.
8
              The Court:
                                  Okay.
                                         19A.
9
              Ms. Jones:
                                  Your Honor, if I may ask a
   question about 13, I didn't mention that, but Ms. Willis
10
11
   testified that there was an extra page in her exhibit that
12
   the rest of us didn't have that appeared between 13H and 13J.
13
   I don't think that was offered as an exhibit, but I would
14
   like to---
15
              Ms. LeVeaux:
                                  (interposing) We took it out.
16
   It was just a page that was just there and it belonged
17
   someplace else.
18
              Ms. Jones:
                                 Okay, as long as it was
19
   removed.
20
              The Court:
                                  Okay.
21
              Ms. Jones:
                                  The next document is 19A, Your
22
   Honor. Again, this is the résumé of Dr. Song. Ms. Willis
23
   didn't prepare this. The most she can say is that she's read
24
   over the résumé. In fact it also contains, it looks like--
25
   actually, I'm sorry; that's 19B.
```

1 Then I have to object to 19B as another copy of 2 Exhibit 3 that I did not realize was attached to this Exhibit 19. The entirety of Exhibit 19 we'll be objecting to. Those 3 are the résumé of Dr. Song, testing of Dr. Song. 4 5 If that needs to be admitted somehow, Dr. Song is 6 the only one that can authenticate that résumé. He's the 7 only one that, again, can talk about the sampling. And he's the only that can talk about the lab results and the notes 8 that are attached to this document. This is not in the 9 10 purview of Ms. Willis, nor has she testified as to foundation 11 for introduction of any of these documents, Your Honor. 12 The Court: Okav. Ms. LeVeaux? 13 Your Honor, again I'll echo the Ms. LeVeaux: 14 arguments I've made as to 19B. I do find--I do submit, Your 15 Honor, that 19B is admissible to the extent that we are 16 talking about that DNA fingerprint. She did testify she 17 reviewed this page and she looked at it. 18 And Your Honor, we can take out--we certainly can 19 take out the pages as relates to Dr. Song's CV until he 20 testifies as it relates to his experience and his background, 21 if we do in fact decide to call him. 22 Similarly, Your Honor, the pages that follow, I 23 believe, the fingerprint--again, the fingerprint has been 24 handled. It's been reviewed by Ms. Willis, by Rick Shiver, 25 by witnesses that we propose to call. So we submit that that

```
1
   should be admissible.
2
              But again, as it relates to that slide and these
3
   lab work sheets after that, if we don't call Dr. Song, we can
   certainly see why the Court may be disinclined to allow those
4
5
   pages into evidence.
6
              Going to 19C, we do intend to put Mr. Shiver on
7
   the stand and he can testify to the e-mails that he received.
   So we think that that --we ask that the Court conditionally
8
9
   allow that since we are going to call Mr. Shiver to the
10
   stand. And I believe that's the end of that.
11
               The Court:
                                  Okay. Number 29?
12
              Ms. Jones:
                                  Your Honor, if I could just
13
   briefly say, if Ms. LeVeaux intends to call the individuals,
14
   that's the proper time for admitting these. And the fact
15
   that Ms. Willis has reviewed a document does not go to its
16
   reliability, its credibility, and its foundation.
17
              With regard to Exhibits 29 and 30, Your Honor,
18
   Exhibit 29 is--it looks like a résumé of Joe Bushardt. I'm
19
   not sure if I'm pronouncing the last name correctly. Again,
20
   there's been no testimony that Ms. Willis prepared that
21
   document. That is the résumé of another individual. If that
22
   individual is called as a witness, he can speak to that, but
23
   it's not something that there's been any foundation laid for.
24
   And the same applies to Exhibit Number 30, Your Honor, which
25
   is the exhibit--I'm sorry, the résumé for Rick Shiver,
```

```
1
   retired.
2
              Ms. LeVeaux:
                                  And Your Honor, I would just
3
   speak briefly to the fact that there have been a lot of
4
   documents which have been introduced in the course of this
5
   hearing already by Petitioner, which a proponent of that
6
   document has merely received it, read it, and reviewed it.
7
   And that has been the -- that has been the level of review.
8
   And I have not objected to that because my thinking is that
9
   we're preparing a record and the record should be as complete
10
   as possible.
11
              Ms. Willis has looked at these. She has reviewed
12
         She testified to that and that's the reason I had her
13
   going through them, so she is familiar with them. And that's
14
   the way I'm presenting my case, and that's the way I choose
15
   to present my case, Your Honor.
16
                                  Let me--I'm not going to
               The Court:
17
   disallow them, but I'm going to withhold ruling on those at
18
   this particular point in time.
19
              Ms. LeVeaux:
                                  Okay, Your Honor.
                                                     Thank you.
20
               The Court:
                                  And I think particularly the
21
   résumés will make more sense as you introduce the folks
22
   themselves, that they might speak to them. But I'm not going
23
   to disallow them. If they don't testify, we'll revisit them.
24
              Ms. LeVeaux:
                                  Okay. And Your Honor, so what
25
   about 3 and--3 was the---
```

```
1
                                  (interposing) That's the same.
               The Court:
2
   I think that's kind of combined, in my thinking, with Dr.
3
   Song himself since it was part of the résumé as well. What I
   want to do is just withhold ruling on all of those. I
4
5
   understand the points being made.
6
              And counsel is right. A lot of this does go to
7
   the weight of stuff, particularly if I don't even understand
   it, it might not have much weight. So I'm not disallowing it
8
9
   at this time, but I'm just withholding ruling on those
10
   particularly--and I'm going to make 19A, B, and C, so I will
11
   withhold ruling on 3, 4B, 19A, B, and C, 29, and 30.
12
               The Reporter:
                                  So that will correct what you
13
   said before---
14
               The Court:
                                  (interposing) Correct.
15
               The Reporter:
                                  ---about taking the rest of 19?
16
               The Court:
                                  Correct.
17
               The Reporter:
                                  Okay, thank you.
18
                                  (Respondent Exhibits 19B and
19
                                  19C were withdrawn from
20
                                  evidence.)
21
               The Reporter:
                                  And just for the record, Your
22
   Honor, during the break I made a copy of the second page of
23
   Exhibit 23, I think it is, that was missing. And I put that
24
   in your notebook and the witness's notebook.
25
               The Court:
                                  Thank you very much.
```

```
1
              Ms. LeVeaux:
                                  Thank you.
2
                                  I've recently had that happen a
              The Court:
3
   couple of times where it was on the back. Anything further
4
   from this witness, Ms. LeVeaux?
5
              Ms. LeVeaux:
                                 Yes, Your Honor, one more
6
   question.
7
              The Court:
                                  Okay.
8
               (Pause.)
9
                DIRECT EXAMINATION
                                                       11:34 a.m.
10
                              (resumed)
11
              By Ms. LeVeaux:
12
              Ms. Willis, I just have one final question. You
13
   indicated that you are familiar with Exhibit Number 2, which
14
   has been admitted into evidence; correct?
15
         Α
              Yes.
16
              And I'm going to ask you if at any point in time
17
   you told the operator in charge to put the matter that was in
18
   the creek, as you observed it on or about September the 10th
19
   through the 15th--through that entire period did you ever
20
   tell him to put it into his lagoon?
21
         Α
              No.
22
              If you will, I'm going to ask that you look--and
         0
23
   you said you're familiar with Respondent's Exhibit 2. Do you
24
   know of any section which speaks to in fact doing something
   along those lines, that is putting an unknown substance into
25
```

```
1
   the lagoon?
2
               (Witness peruses documents.)
3
         Α
               Yes.
               It's on page 3.
4
5
               Actually, at the time that -- at the time that I was
6
   approached about putting the sludge back into the lagoon, it
7
   wasn't--I was not--hesitant to agree to that due to what is
8
   in their permit, that there is -- there is a statement or a
9
   requirement in their permit that would disallow them from
10
   being able to put something in their lagoon that did not
11
   originate from their lagoon.
12
               But my concern at the time and the reason why I
13
   was not--why I was--would not agree to--for pumping the
14
   sludge back into the lagoon was that the primary lagoon
15
   especially did not have adequate freeboard in my opinion to
16
   put that -- put any material back in there.
17
               I was afraid--and not only--there was a couple of
18
              one, the freeboard issues in the primary lagoon,
19
   and secondly, this is a -- this is a system that the compliance
20
   oversight is handled by Aquifer Protection. And I felt that
21
   they needed--and I directed them to contact Aquifer
22
   Protection for guidance where that was concerned.
23
               And in fact Mr. Kegley is with Aquifer Protection,
24
   is he not?
25
         Α
               He is.
```

```
1
               And he did not--do you know whether or not he
         0
2
   instructed them to put any of that into the lagoon?
3
               We didn't talk about mitigative measures on the
4
   date that Mr. Kegley was with me on the 10th. We did not
5
   discuss any remediation at all.
6
               So you never heard him---
7
         Α
               (interposing) No.
               ---say anything about putting it into the lagoon?
8
          Q
9
         Α
               No. When he--no, huh-uh. No.
10
              Ms. LeVeaux:
                                  Thank you, Your Honor.
11
   further questions.
12
               The Court:
                                  Thank you.
13
                        E X A M I N A T I O N
                                                        11:37 a.m.
14
              By the Court:
15
               Just as a thought, were you surprised that they
16
   pumped it back into the lagoon? In other words, I'm under-
17
   standing from your testimony you didn't give permission, so
18
   to speak, or direct them to do that because of---
19
               (interposing) Right.
20
               ---these reasons.
21
               No, I wasn't. I knew they were working with Ken
22
   Rhame. And Ken felt like removing -- if they could pump a
23
   million gallons of that sludge back out of the creek, it
24
   might alleviate some of the environmental impacts in the
25
   stream or lessen the amount of time that we would see impacts
```

```
1
   in-stream.
2
              So it didn't surprise me, but I wasn't comfort-
3
   able. I wanted them to contact Aquifer Protection and talk
4
   to them about it since it was a system that I don't have
5
   compliance oversight for.
6
              The Court:
                                 Okay.
                                         Thank you. Cross-
7
   examination, Mr. Jones?
8
              Mr. Jones:
                                  Thank you.
9
              Ms. LeVeaux:
                                 Your Honor, I just have one
10
   question as a result of your question.
11
              The Court:
                                  Sure. Sure. My question was,
12
   was she surprised they did it.
13
                                 Was she surprised, right.
              Ms. LeVeaux:
14
              The Court:
                                  I think her answer was no
15
   since---
16
              Ms. LeVeaux:
                                  (interposing) Okay.
17
                DIRECT EXAMINATION
                                                       11:38 a.m.
18
                             (resumed)
19
              By Ms. LeVeaux:
20
              Did it surprise you when Mr. Teachey--you were at
21
   his deposition; is that correct?
22
         Α
              Yes.
23
              Did it surprise you when he said that you had told
24
   him to do that?
25
         Α
              Yes, that did surprise me.
```

```
1
               Ms. LeVeaux:
                                  Okay. Okay, thanks.
2
               The Court:
                                  Thank you.
3
               Mr. Jones:
                                  Thank you, Your Honor.
4
                  CROSS-EXAMINATION
                                                        11:38 p.m.
5
               By Mr. Jones:
6
              Ms. Willis, I'm Henry Jones. I'm cocounsel for
7
   the petitioner, and this is Lori Jones, no relation, who is
8
   assisting me in this case. And we'll be asking you some
9
   questions about your direct testimony.
10
               First of all, during the direct examination you
11
   talked about your education and background. You said you had
12
   studied environmental engineering?
13
               I have a master's degree.
         Α
14
         Q
              Master's? Are you a licensed engineer?
15
         Α
               No.
16
               You're not a professional engineer in North
         Q
17
   Carolina?
18
         Α
               No.
19
               Are you in the state of New Mexico?
         0
20
         Α
               No.
21
         Q
               Are you licensed by any state agency?
22
         Α
               No.
23
               During the course of your studies, either here or
         Q
24
   in New Mexico, did you take any courses in hydrogeology?
25
         Α
               Yes.
```

```
1
          Q
               How many?
2
          Α
               One.
3
               How many hours would that consist of?
          0
               Four.
4
          Α
5
               Four hours?
          0
6
          Α
               Four credit hours.
7
               Four credit hours. What--give me just a summary
          0
8
   of what that course consisted of.
9
          Α
               Primarily--a lot of it was in relation to
10
   construction of dams and dikes, determining groundwater flow
11
   through a cross-sectional area of--basically groundwater
12
   flows.
13
               And when did you take that course?
14
          Α
               Probably 1995.
15
               Was that at the University of--I mean New Mexico
16
   State University or UNCG?
17
               New Mexico State University.
18
          Q
               Now, you testified that you inspected Valley
19
   Proteins from time to time; is that correct?
20
          Α
               Yes.
21
               That was primarily related to their stormwater
22
   permit, though; correct?
23
          Α
               Yes.
24
               The Court:
                                   Just to make sure the record is
25
   clear, she kept saying Carolina By-Products and Valley
```

```
1
   Proteins are one and the same; correct?
2
               Mr. Jones:
                                  Correct.
3
               The Witness:
                                  Yes.
               The Court:
4
                                  I just want to make sure the
5
   record reflects that.
6
               Mr. Jones:
                                  For some reason I have a
7
   tendency to say Valley Proteins.
8
                                  That's fine.
               The Court:
9
               Mr. Jones:
                                  I don't know why that it is,
10
   but they are the same thing.
11
               The Court:
                                  I understand that. I just
12
   wanted to make sure.
13
               By Mr. Jones:
14
               You've never really done a full lagoon inspection
         Q
15
   at Valley Proteins, though, have you?
16
               I have inspected the area around the lagoons as
         Α
17
   part of my stormwater inspections.
18
               But you've never done a lagoon compliance inspec-
19
   tion, have you?
20
               It is not my responsibility to do so.
21
               So the answer is you've never done that?
22
         Α
               I have inspected the lagoons from the standpoint
23
   of any potential that it could cause a problem for stormwater
24
   runoff.
25
               But only--stormwater runoff only?
```

1	A Yes.
2	Q The area of the lagoons on the Valley Proteins
3	propertyif the lagoons overtopped or had a spill out of the
4	Valley Protein lagoons, they would drain to Cabin Branch;
5	correct?
6	A Not necessarily.
7	Q Why not?
8	A Because there isthe lagoons havethere's two
9	sides to the lagoons, and the area slopes from both sides of
10	these lagoons. And ifon one side of the lagoon, on the
11	south side, it could conceivably go to a ditch system that
12	would actually convey to the south.
13	Q But the larger aspect of those lagoons is on the
14	Cabin Branch side of that drainage area, isn't it?
15	A No, sir.
16	Q If the lagoons drain to the general north, they
17	will drain to Cabin Branch; correct?
18	A Could you repeat your question?
19	Q Sure. If the lagoons overtopped or breached, any
20	lagoon contents are goingfrom the northern direction of the
21	Valley Protein lagoons, they're going to drain to Cabin
22	Branch?
23	A From the north face
24	Q (interposing) Yes, ma'am.
25	Aof the lagoons? It would have to go across dry

```
land. There is not a direct conveyance--it would go into the
1
2
   drainage for Cabin Branch, but I would not say it would go
3
   directly into Cabin Branch.
              Okay, but the drainage areas for Cabin Branch?
4
5
         Α
               Yes.
6
         0
               It would be the Cabin Branch drainage area?
7
              Well, there's another drainage also, though, to
         Α
8
   the west, and I did not investigate that. There is a ditch
9
   that comes in along a field to the west of their--one of
10
   their lagoons. It may -- it could drain to the west.
11
              Well, at least a portion of the lagoons at Valley
12
   Proteins, if water overtopped from their lagoons, would drain
13
   to the Cabin Branch drainage area?
14
               I'm not sure that's--I'm not sure that would be
15
   the case.
              It could. I did not investigate what the
16
   topography is. I know that they're on a--they're on a--
17
   they're elevated at the Carolina By-Products site.
18
              But there is a ditch system that comes in from the
19
   west on the north side. You can see it from a map.
20
   appears that it conveys to the west, so it could actually
21
   probably go either direction. But I don't know which
   direction it would tend to have because I don't know what the
22
23
   topography is downgradient from that north face of their
24
   lagoons.
25
         0
              Well, you testified earlier, I think, that part of
```

```
the Valley Proteins lagoon is in the Cabin Branch drainage
1
2
   district; correct?
3
              Yes, it could be, but there's actually two
4
   drainages. There are two drainage areas. It could go to
5
   Cabin Branch or it could go the other way, so I can't really
6
   testify that it would definitely go to Cabin Branch or the
7
   other. I'm not sure, but -- there is an opportunity that it
   could go either direction, but I'm not sure. I just ---
8
9
         Q
               (interposing) An opportunity--it could go to
10
   Cabin Branch?
11
               I would agree.
12
               You talked during your direct examination a little
13
   bit about your inspection. And I want to talk about one of
14
   the least pleasant aspects of that, and that would be the
15
   odor part. When you went out there on September the 10th,
16
   did you--when you got close to the creek behind House of
   Raeford, did you smell anything?
17
18
               Not as it related to the sludge in the creek, no.
19
              As it related to anything?
20
         Α
              Well, the plant---
21
         Q
               (interposing) Did you smell anything?
22
         Α
               The plant can have an odor. The plant--the
23
   processing facility itself can have an odor, but I did not -- I
24
   did not notice any odor on the day that I was on there on the
25
   10th.
```

Raleigh, North Carolina 27609-4380

```
1
               When you went there on the 10th, how long had the
         Q
2
   material on the creek been there?
3
               I can't give a time how long it was there.
4
               You don't know how long it had been there, in
5
   other words?
6
         Α
               I know it was there at least on September 9th---
7
         0
               (interposing) Okay.
8
               ---because that was---
9
         0
               (interposing) How about before September 9th?
10
   How long had it been there?
               I don't recall that the complainant had indicated.
11
12
   I'd have to--I'd probably have to think about that.
13
               Well, the complainant called, you said, on the
14
   afternoon of September the 9th?
15
         Α
               Yes.
16
               Okay. Do you know how long it had been there
   before that?
17
18
         Α
               I don't know.
19
               And the complainant didn't indicate either, did
20
   he?
21
         Α
               I'm trying to recall if they indicated.
22
               (Pause.)
23
               I don't think I recall if they stated how long
24
   that they had seen--how long they had noticed it in the
25
   creek.
```

```
1
               And you haven't talked to anybody in the course of
          Q
2
   your investigation who revealed how long that had been in the
3
   creek there either, have you?
4
          Α
               No.
5
               Go to Exhibit -- your Exhibit Number 22.
          0
6
               (Witness complies.)
7
          Q
               Are you there, Ms. Willis?
8
          Α
               Yes, I am.
9
          0
               Do you recognize that document?
10
          Α
               Yes.
11
               And you prepared this document, didn't you?
          Q
12
          Α
               Yes.
13
          Q
               Okay. Did you prepare this on June the 22nd,
14
   2010?
15
          Α
               Yes.
16
               Now, does this state the facts of this case as you
17
   knew them at that time?
18
          Α
               Yes.
19
                      If you would, read that first sentence.
          Q
20
               "Enclosed is an enforcement recommendation package
21
   for House of Raeford Farms, Inc., Rose Hill Fresh/IQF Chicken
22
   Plant in Duplin County, N[orth] C[arolina]."
23
          Q
               Okay.
                      Read the second one.
24
               "Linda Willis and Geoff Kegley of this office
25
   conducted a complaint investigation on September 10[th], 2009
```

```
pursuant to a complaint concerning a foul odor in Beaverdam
1
2
   Branch at the Sheffield and Brooks Quinn Road bridge
3
   crossing."
              Okay. Did that report the complaint that your
4
5
   agency received on September the 9th, 2010 (sic)?
6
         Α
               Yes.
7
               So part of the complaint was that there was a foul
8
   smelling odor coming from that area?
9
         Α
               That's what the complainant said.
10
               So the complainant smelled an odor and you didn't;
         0
11
   correct?
12
         Α
               Well, he indicated there was a foul odor, but I
13
   did not smell a foul odor. That is correct.
14
              Now, in terms of timing, you testified on direct
15
   that this issue of odor bore upon how long the material had
16
   been in the creek. Can you tell me what that was again?
17
         Α
               Can you repeat that?
18
               Sure. On direct examination you said that the
19
   odor had a relationship to the amount of time that the
20
   material in the creek had been in the creek.
21
         Α
               I don't---
22
         0
               (interposing) Is that true?
23
               I don't know if I recall--that's kind of a broad
   statement where--foul odors and material in the creek. I
24
25
   never noticed a foul odor due to the material in the creek.
```

```
1
              Would the material become more odorous, if there
         Q
2
   is such a word, the longer it was in the creek?
3
               It could.
4
               It could?
5
               It depends on the constituents in the pollutant--
6
   in the sludge.
7
              Go to Petitioner's Exhibit Number ---
         Q
8
              Mr. Jones:
                                  Does she have a copy of our
9
   exhibits?
10
                                 Yes, she does.
              The Reporter:
11
               (Pause.)
12
         Q
              Ms. Willis, do you know Stephanie Garrett?
13
         Α
              Yes.
14
              Does she have a position with your agency?
         Q
15
         Α
              Yes.
16
              What position does she have?
         Q
17
         Α
              She's a senior environmental specialist.
18
         Q
              Okay. Do you have occasion to work with her
19
   occasionally?
20
         Α
21
              Let me ask--I'm going to hand you something and
22
   see if you recognize it.
23
              The Reporter: Has it been marked yet?
24
              Mr. Jones:
                                 We'll mark it the next number,
25
   whatever that would be.
```

```
1
                                  That would be 34.
               The Reporter:
2
                                   (Petitioner Exhibit 34 was
3
                                   marked for identification.)
               Have you seen this document?
4
         Q
5
                                  Wait a minute, Mr. Jones. I'm
               The Reporter:
6
   getting a number on this one so it won't get mixed up.
7
   you go.
8
               (Document handed to witness.)
9
         0
               Have you seen this document before, Ms. Willis?
10
               Yes.
         Α
11
          0
               What is this document?
12
               It is a memorandum that was prepared by Stephanie
13
   Garrett concerning a complaint that we received, referencing
14
   incident number 200900892.
15
               Did this involve the fish kill in the spring of
16
   2009 that you testified about before?
17
         Α
               Yes.
18
         Q
               Okay.
                      The incident--this report is dated April
19
   the 7th, 2009; correct?
20
         Α
               Yes.
21
               It says, "On March [the] 31[st], 2009, the WIRO"--
22
   what is WIRO?
23
               That stands for Wilmington Regional Office.
         Α
24
         Q
               ---"received an incident report of a fish kill in
25
               Beaverdam Creek between the towns of Magnolia and
```

```
1
               Rose Hill. The kills was first observed on or
2
               before March 23rd and was reported to involve 20
3
               to 50 assorted fish, believed to be the result of
               agricultural runoff."
4
5
   Do you remember that incident?
6
               I remember that incident.
7
               It says that "WIRO staff investigated the kill the
8
   next morning." Were you part of that staff?
9
         Α
               I believe I was, yes.
10
               It says, "Due to the age of the kill, no samples
         0
11
   were [taken]." I think you testified to that yesterday,
12
              There were no samples taken?
13
               I don't--I can't remember if we took samples
         Α
14
   during this or not.
15
         Q
               Okay.
16
               If we took samples, we would have indicated such
17
   in the report.
18
               Do you remember who the complainant was in that
19
   particular matter?
20
               (Pause.)
21
               I'm not sure.
22
               Do you recall the sentence that begins, "The
         Q
23
   complainant stated"--read that, so "The complainant stated he
24
   thought the kill was from agricultural spray." Do you
25
   remember that?
```

```
1
         Α
              Yes.
               It says, "There was no visible indication of any
2
3
   causes, although two mechanical sprayers were observed
4
   traveling the roads in the vicinity." Do you remember that
5
   part of this?
6
         Α
               I don't believe I was there on that first day. As
7
   the report goes on to indicate, myself and Jean Conway
8
   investigated potential sources. I believe we came onto the
   site afterwards.
9
10
               It says -- in fact it says, "The following day" ---
11
               (interposing) Yes.
12
               ---"Linda Willis and Jean Conway investigated
13
   potential sources and took physical measurements in the creek
14
   and feeder tributaries." Is that what you did?
15
         Α
              Yes.
16
              Okay. So that describes the activity you took;
17
   correct?
18
         Α
               Yes.
19
              It says, "The dissolved oxygen had recovered
20
   somewhat at the station [at] State Road 911." Where is State
21
   Road 911?
22
              Ms. LeVeaux: Objection. It says 1911.
23
         Q
              Excuse me, 1911.
24
              I'd like to refer to a map to answer that, but
25
   that would probably be either Brooks Quinn or the Sheffield
```

```
1
   Road.
2
               Near House of Raeford?
         Q
3
               Yes.
               Around Cabin Branch?
4
5
                     I'm a lot more familiar with the road names
6
   rather than the state route. I'm sorry.
7
         Q
               It says next:
               "Over the next couple of weeks, Willis and Conway
8
9
               concentrated inspections in the area and found
10
               that some of the facilities in the watershed
11
               (Parker Bark, two Nash Johnson feed mills, and the
12
               House of Raeford) needed to be covered under NCG
13
               Stormwater permits."
14
   Is that correct?
15
               Parker Bark required a permit. I believe Nash
16
   Johnson Feed Mill had the NCG060 permit, but I don't believe
17
   they were conducting any of the stormwater monitoring as
18
   required by. And House of Raeford required the permit, but
19
   did not have the permit.
20
               Was there any cause found for this fish kill?
21
         Α
               I'm sorry?
22
               Was there any cause found by you or your agency
         Q
23
   for this fish kill?
24
         Α
               No.
25
         0
               There were no citations issued to anyone in that
```

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```
1
   area?
2
               No.
          Α
3
               You made a number of visits to industries in 2009
4
   that you testified to earlier. Were those--like, for example
5
   I think you said you visited Valley Proteins and Duplin Wine
6
   facility.
7
               That's one I really had trouble saying. For some
8
   reason I always say Duplin Wine Cellars, Your Honor,
9
   C-e-l-l-a-r-s. I don't know if that's their name or not, but
10
   I think you said you visited Duplin Wine and Valley Proteins
11
   in March of 2009; correct?
12
          Α
               Yes.
13
               Okay. Was that in conjunction with this fish
          Q
14
   kill?
15
          Α
               Yes.
16
               What did you find in relation to Valley Protein in
          Q
   connection with this fish kill?
17
18
          Α
               Nothing from Valley Protein.
19
               How about Duplin Wine Cellar?
          0
20
               Duplin Winery had a -- we found a wastewater in the
21
   ditch behind Duplin Winery.
22
          0
               Okay. Did you issue a citation to them for that?
23
          Α
               No.
24
               Was it a violation of their permit?
          Q
25
          Α
               We had a problem with their permit at the time.
```

```
1
   They had the permit, but they weren't -- their permit was -- they
2
   thought the permit was covered for the retail location.
3
   so they had not -- in effect didn't have the permit covered --
4
   covering that processing facility, the winery.
5
               But was the wastewater you found in the ditch a
6
   violation of the Duplin Winery permit?
7
          Α
               They didn't have a permit.
               Okay. Was it a violation---
8
          Q
9
          Α
               (interposing) I mean---
10
               Was it a violation of any water quality law?
          Q
11
          Α
               Well, it was in a ditch. It was--it would be a
12
   discharge without a permit.
13
               Were they cited for that violation?
          0
14
          Α
               No.
15
               Would that ditch have drained to the Cabin Branch?
          Q
               It has connectivity to Cabin Branch.
16
          Α
17
               So it could drain to Cabin Branch?
          0
18
          Α
               It could.
19
               The period--Valley Proteins--I think you testified
20
   some time ago that -- when we deposed you, Ms. Willis, on
21
   January the 5th, 2010--do you remember that, in Wilmington?
22
          Α
               Yes.
23
               You testified--I asked you a question, "There were
24
   two locations in the area that could have generated sludge.
25
   One was House of Raeford. What was another one?"
```

```
1
   testified, "Carolina By-Products or Valley Proteins." Do you
2
   remember that?
3
               Carolina By-Products or Valley Proteins?
4
               Same thing. You said, "They have a similar
          Q
5
   sludge."
              Was that correct?
6
          Α
               Yes.
7
               And you know that -- I think that Valley Proteins
          Q
8
   collects offal from House of Raeford?
9
          Α
               Yes.
10
               And offal, o-f-f-a-l, is what?
          Q
11
          Α
               The intestines, innards, of the chickens.
12
               Those are collected from the DAF at House of
13
   Raeford in Rose Hill and taken to Valley Proteins?
14
               They're not collected from the DAF. That's--
15
   they're collected from a bar screen is my understanding.
16
          Q
               Okay.
17
          Α
               Yeah, and---
18
               (interposing) Valley Proteins comes and picks it
19
   up as a recyclable material and carries it away to Valley
20
   Proteins; correct?
21
               I believe they take the offal, yes.
22
               You indicated during direct examination that this
          0
23
   area around House of Raeford on Cabin Branch is--you said a
24
   low flow system?
25
          Α
               Yes.
```

```
It's a creek. What do mean by low flow system?
1
2
              Often you don't see a current. It's--the input to
3
   that creek is usually precipitation driven, so it's low flow.
4
   It doesn't flow.
5
               Without precipitation, then, I take it that creek
6
   can just kind of stand still, can't it?
7
               There may be some gradual flow, but it's not going
         Α
   to be much in the way of flow.
8
9
         0
               And the area behind the House of Raeford lagoons,
10
   secondary lagoon--here (indicating), showing you the map
11
   where you said a lot of material was sitting in the creek
12
   when you got out there on September the 10th, that is a low
13
   flow area, isn't it?
14
         Α
               It appears to be a low flow area.
15
          Q
               And it wasn't flowing when you were there on
16
   September the 10th, was it?
17
         Α
               You could not see the creek on September the
18
   10th---
19
               (interposing) But I mean---
         0
20
               --- due to the sludge.
         Α
21
               But the material was not---
22
         Α
               (interposing) The sludge was not moving. It did
23
   not appear to be moving at all.
24
               Okay.
                    If it's a precipitation driven area, that
25
   means it requires rain or precipitation to move it down the
```

```
1
   stream; correct?
2
               I don't know if I exactly agree with that, but--
3
   the gradient can also cause it to flow, but it primarily
4
   flows due to precipitation, yes, input from precipitation.
5
               The area upstream of House of Raeford Farms for
6
   about the next mile or mile and a half is a low flow area as
7
   well, isn't it?
8
         Α
               Yes.
9
               So it would be precipitation driven as well?
10
               Yes.
         Α
               If there were material in that portion of the
11
12
   creek between House of Raeford and say Duplin Wine Cellars
13
   upstream of House of Raeford on Cabin Branch, that material
14
   would be in a low flow area as well, wouldn't it?
15
         Α
               I would agree.
16
               And it could be driven down by precipitation;
17
   correct?
18
         Α
               Yes.
19
               So if there were waste materials generated from
20
   those two plants upstream that got into Cabin Branch, they
21
   would be driven down by precipitation?
22
         Α
               It depends on the precipitation, but it---
23
               (interposing) But I mean with sufficient ---
          Q
24
         Α
               (interposing)
                              They'll tend to---
25
         0
               ---precipitation---
```

1	А	(interposing) It would move downstream.		
2	Q	It would convert it from a low flow area down-		
3	stream an	stream and move it downstream?		
4	А	It would moveit would move downstream.		
5	Q	And any discharge or any material that is dis-		
6	charged f	rom Duplin Winery or Valley Proteins must go by		
7	House of	Raeford's area on Cabin Branch; correct?		
8	А	I don't agree with the Carolina By-Products.		
9	Q	Well, okay. Some material from Carolina		
10	By-Produc	ts and material generated by Duplin Wine Cellars		
11	would eve	ntually have to go by House of Raeford's portion of		
12	Cabin Bra	nch behind House of Raeford; correct?		
13	А	It depends.		
14	Q	But I mean it could?		
15	А	It could.		
16	Q	And it probably would?		
17	А	I don't know if I could testify to thatit		
18	depends o	n if the waste is there toyes. Ultimately it		
19	would go	past the House of Raeford if it wasif it flows.		
20	Q	And you would agree as a low flow area behind		
21	House of	Raeford, it's going to stop right there behind House		
22	of Raefor	d, isn't it?		
23	А	No, I don't agree with that.		
24	Q	Why not?		
25	A	Because it has athis is a creek system that has		

```
1
   a gradual flow, but it doesn't necessarily mean that it's
2
   going to stop right behind the House of Raeford.
3
               But it could?
4
          Α
               It could.
5
               The period around September the 9th and September
6
   10th, that was a drought period, wasn't it?
7
          Α
               Yes.
8
               Very low rain for the most part?
          Q
9
          Α
               Yes.
10
               And I think you said on direct examination low
          Q
11
   precipitation, low flow; correct?
12
               Yes.
13
               And that low precipitation drought period also
14
   impacts the dissolved oxygen levels in that whole area,
15
   doesn't it?
16
               It can.
          Α
17
               If it's drought, does that tend to increase the
18
   possibility of lower dissolved oxygen levels?
19
               It depends on where in this creek--it depends on a
20
   lot of factors.
21
               Well, isn't it true that it's more likely to have
22
   a dissolved--low dissolved oxygen level in Cabin Branch
23
   during a drought period than a period of high rain?
24
          Α
               I'd probably agree with that, yes.
25
               And this was a period of drought?
```

```
1
         Α
               Yes.
2
               The area behind House of Raeford--let me ask you
3
   this. Exhibit Number 6, turn to Respondent's Exhibit
   Number 6.
4
5
               (Witness complies.)
6
               There are various points of reference. I'm going
         0
7
   to direct your attention to I guess point of reference number
8
   2 on there. Can you just generally describe where that
9
   number 2 is?
10
         Α
               Number 2 is off Johnson Parker Road at a crossing
   for an unnamed--small unnamed tributary to Beaverdam Branch.
11
12
               Ms. Willis, is that on that poster board that
13
   we've got up there right now?
14
               I can't see because of the reflection from the
15
   lights. It would be up in the corner---
16
               (interposing) Come down if you want to.
         Q
17
   trying to place it.
18
               (Witness approaches photograph.)
19
               No, it is not on that map.
         Α
20
               Is it on this one (indicating)?
         Q
21
         Α
               No, it's not on that map either.
22
               (Witness returns to stand.)
23
         Q
               Let me ask you this, then. The dissolved oxygen
24
   level at reference point number 2 was .3---
25
         Α
               Yes.
```

1	Qwhich is an extremely low DO, isn't it?
2	A Yes.
3	Q And lower than the 4.0 legal standard; correct?
4	A Yes.
5	Q Is that area on Cabin Branch?
6	A It's in Beaverdam.
7	Q It's in Beaverdam. Is it downstream from House of
8	Raeford?
9	A It would be consideredwhere it inputs into
10	Beaverdam would be considered at a downstream location to
11	Beaverdam (sic).
12	Q So more likely than not, any wastewater from House
13	of Raeford Farms would not have impacted that particular
14	dissolved oxygen reading, would it?
15	A I'm not sure if I can state that.
16	Q Well, I mean since House of Raeford is upstream
17	and this is a different system on Beaverdam, House of Raeford
18	could not have discharged anything that would have impacted
19	that dissolved oxygen reading, would it?
20	A I don't really know. If there was a large input
21	of wastewater behind the House of Raeford, because that is
22	still downstream, I don't knowwith no input or flow pushing
23	against an input of a wastewater discharge, I'm not sure that
24	you wouldn't get a pollutant of concern there through
25	intermixing.

```
1
               Well, at that point ---
         0
2
               (interposing) But I wouldn't expect it.
3
   wouldn't expect it. I don't know what the topography is
4
   like. I don't know the depth of that little unnamed
5
   tributary to Beaverdam.
6
              You would agree with me it would be unusual for it
7
   to impact it there, wouldn't you?
8
         Α
               Well, I didn't see any evidence of a sludge at
9
   that point, so---
10
         0
               (interposing) Okay.
11
               It was not suspect to me.
12
              And I think you heard through some of the testi-
13
   mony yesterday and maybe the day before, there are areas
14
   along Cabin Branch and Beaverdam that have low DO and have
15
   had low DO in 2010 and other times at various times during
16
   the year other than this time during 2009; correct?
17
         Α
               Yes.
18
          Q
               And you've seen those measurements?
19
         Α
               Yes.
20
               Okay. And I think Mr. Holley testified yesterday
21
   in looking at the agency's sampling results, there's actually
22
   a generalization he made that the DO levels tend to get very,
23
   very low, substandard, during the late summer, early fall,
24
   then rise again during the winter. Did you hear that?
25
         Α
               I probably heard that.
```

1	Q And you saw the data that was based on, didn't		
2	you, as he was testifying up there?		
3	A I don't know if that is always a trend. I think		
4	we also have data that shows normal or elevated dissolved		
5	oxygen in the summertime as well.		
6	Q Or depressed DO during the winter?		
7	A Right.		
8	Q Okay. So I mean there's nothing unusual about low		
9	level DO in this system, this drainage system, anytime during		
10	the year, is there?		
11	A We have seen low DO in this system at other times.		
12	Q It would not have startled you on September the		
13	10th to see depressed DO behind the House of Raeford plant		
14	even without all that material in the creek, would it?		
15	A I don't know if I could agree with that. There		
16	has been times that we've measured, like I say, dissolved		
17	oxygen in the summertime and the dissolved oxygen levels are		
18	normal.		
19	Q And times when they've been subnormal?		
20	A Yes. I don't know about behind the House of		
21	Raeford because we don't have a stream station behind the		
22	House of Raeford. It was only readings relative to this		
23	incident that we have dissolved oxygen readings right behind		
24	the House of Raeford.		
25	Q Well, given the fact that there are low DO levels		

```
1
   in Cabin Branch during times of the year, many times during
2
   the year, many times -- strike that.
3
               Given the fact that there are low levels of dis-
   solved oxygen in the area where House of Raeford is on Cabin
4
5
   Branch, how would you discern the degree of the depressed
6
   levels of DO behind House of Raeford there on September the
7
   10th and 15th--how would you discern the degree that that was
8
   contributed to by the material in the creek versus just
9
   regular, periodic low DO?
10
               Because we had an enormous amount of sludge in the
11
   creek right there behind the lagoon that was depressing the
12
   dissolved oxygen.
13
               How much of it was just due, though, to just
14
   normal low DO during that particular time of year?
15
               I'd say it was entirely due to the sludge.
16
         0
              How do you know that?
17
               Because the upstream location at Brooks Quinn and
18
   Cabin Branch had a dissolved oxygen of 4.9 milligrams per
19
   liter.
20
               But you also have an area down here in point of
21
   reference number 2 on September the 10th with an extremely
22
   low level of DO, which you've said was probably not
23
   attributable to House of Raeford or sludge.
24
         Α
               I said I couldn't say whether it was or not. I
25
   don't know--I don't know how--exactly how much--how much
```

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```
1
   sludge had been pumped into the creek.
2
               How would I know if that introduction--if you pump
3
   a tremendous amount of sludge into the creek at the point of
   House of Raeford, how do you or I or anybody know how that's
4
5
   going to impact any of these other tributaries that are
6
   actually downstream of House of Raeford without knowing a lot
7
   more information about that little tributary itself?
8
         Q
              Well, again, given that creek and the quality of
9
   this water, it would be impossible to know whether the DO
10
   behind House of Raeford was going to be below normal
11
   standards whether that material was in the creek or not,
12
   wouldn't it?
13
               If you have sludge standing in the creek and you
14
   have a dissolved oxygen reading upstream in that same stream
15
   segment that has a dissolved oxygen of 4.9, there would be no
16
   reason that you wouldn't see an elevated -- an elevated
17
   dissolved oxygen level behind the House of Raeford.
18
         0
               Does the fact that ---
19
               The Court:
                                  (interposing) Let me ask too,
20
   for clarity of the record--sorry to interrupt, but how far
21
   upstream was the 4.9 from the House of Raeford, if you could
22
   measure---
23
               The Witness:
                                  (interposing) Yeah, I'm---
24
               The Court:
                                  ---in feet or yards or
25
   something of that sort?
```

```
1
               The Witness:
                                 I'd say probably 300 or 400
2
   yards.
3
               The Court:
                                  Okay.
                                          Thank you.
4
               By Mr. Jones:
5
               Does the low flow have any impact on the DO level?
         Q
6
         Α
               Does--I'm sorry.
7
               Does the fact that it's a low flow area have any
         0
8
   impact on the DO level?
9
               I think the low DO in Cabin Branch at the House of
   Raeford and downstream in Beaverdam Branch was due to the
10
11
   sludge in the creek.
12
               I didn't ask that. I said does low flow have any
13
   impact on the level of dissolved oxygen?
14
         Α
               Are you referring to this particular day?
15
         Q
               Just generally.
16
               In general, it could.
         Α
17
               It could. So you could have -- in that low flow
18
   area behind the House of Raeford, you could have low dis-
19
   solved oxygen whether that material was in the creek or not?
20
               I believe that's a main stem for Cabin Branch.
21
   don't think we would expect to see a DO reading of .2 or .3.
22
               Meaning it would be---
         0
23
         Α
               (interposing) That's extremely low.
24
   indicating a pollution -- a source of pollutants.
25
               But still lower than normal?
```

1	A Lower than 4? Yes. You could see, yes.
2	Q Now, in connection with the investigation you did
3	starting September the 10th, I think you said that you went
4	upstream to some extent, probablyif you look at Exhibit
5	Number 6, Ms. Willis, did you go any further upstream than
6	the area that the judge referred to, point number 4?
7	A Yes. There's a location off Highway 117.
8	Q Where is that?
9	A It's upstream on Cabin Branch. We did not take
10	dissolved oxygen readings there.
11	Q Okay. You looked at it, but you didn't do any
12	A (interposing) Didn't take any readings.
13	Q And why didn't you do any dissolved oxygen
14	readings there?
15	A Because we had dissolved oxygen at the station
16	location number 4.
17	Q If the level of dissolved oxygen was low at that
18	area, though, you wouldn't have known about that?
19	A Without taking dissolved oxygen readings, no.
20	Q So it could have been low there too?
21	A I wouldn't expect it.
22	Q But I mean it could have been; correct?
23	A I would not have expected it on that day.
24	Q Well, but it could have been low. You just didn't
25	sample it?

1	А	I didn't have a reason to sample there.
2	Q	And you didn't sample anywhere between there and
3	Carolina By	y-Products or Duplin Wine Cellars either, did you?
4	А	No.
5	Q	In the area further upstream than reference point
6	number 4, v	was there any material floating on the surface?
7	А	BetweenI'm sorry.
8	Q	Around the area of point of reference number 4.
9	А	No.
10	Q	Further upstream, as you looked upstream, did you
11	see any flo	pating material?
12	А	Notno.
13	Q	Okay. What is your definition of sludge?
14	А	It is ait's a wastewater by-product from a
15	wastewater	treatment process. It's what is wasted out of a
16	wastewater	treatment system.
17	Q	And what is a settleable solid?
18	А	A settleable solid can be anything thata solid
19	that can se	ettle.
20	Q	Is a settleable solid sludge?
21	A	Sludge can result in settleable solids.
22	Q	Okay. So sludge can be a settleable solid?
23	А	Sludge contributes to settleable solids, yes.
24	Q	Were theredo you know whether there were any
25	settleable	solids further upstream than reference number 4?

```
1
          Α
               No.
2
               How did you know that?
3
               A visual observation.
4
               But I mean if you couldn't see beneath the surface
5
   of the water, you wouldn't see that, would you?
6
          Α
               No.
7
               The only way to test for that would be to do
8
   samples that determine whether there was material beneath the
9
   surface; correct?
10
          Α
               Yes.
11
          0
               And you didn't do those?
12
          Α
               No.
13
               When you take solids that have settled beneath the
14
   surface and you--I'm groping for a word--when you disturb
15
   them by stirring or you're walking around in the creek or
16
   something, what happens?
17
               I think it depends on the settleable solids,
   characteristics of the solids.
18
19
               Okay. Well---
20
               (interposing) In some cases you can cause them to
21
   churn up from the bottom.
22
          0
               And they rise---
23
               (interposing) Sometimes settleable solids may not
24
   be settled out on the bottom.
25
          0
               But they occasionally do rise to the top?
```

```
1
               It depends on the solids.
          Α
               What kind of solids don't rise to the top?
2
          0
3
          Α
               Inert.
4
               I'm sorry?
          0
5
               Inert solids.
          Α
6
               How about wastewater solids?
          Q
7
               If they're fully digested, they won't rise to the
          Α
8
   top.
9
          Q
               But if they are not, they will rise to the top?
10
               Not necessarily, but they could.
          Α
11
               Okay, they could. Do you remember hearing the
12
   fellow who got into the creek behind House of Raeford--I
13
   think his name is Mr. Register. Do you remember when he
14
   testified the other day?
15
          Α
               Yes.
16
               Do you remember when he said he got into the creek
17
   and they were trying to squeegee the water and they were
18
   disturbing the creek and there was material coming up from
19
   the bottom?
20
               I think so.
21
               Okay, which would have been pretty natural;
22
   correct?
23
               I don't know--I wouldn't consider--I don't--the
          Α
24
   sludge in the creek isn't natural, so--but I would expect
25
   that there was solids settled out from the sludge.
```

```
1
         Q
              And when Mr. Register got in there and disturbed
2
   the water, some of that raised to the top?
3
               I think he was intermixing the sludge that's on
4
   the surface as well as--I mean he was--when he's disturbing
5
   the water, he's mixing the water, so you've got sludge being
6
   mixed in. And whatever settleable solids were dropping out
7
   of the sludge, he was probably disturbing those from the
   bottom.
8
9
               I think you also said that when you were there
10
   September 10th and maybe thereafter, you thought you noticed
11
   grease.
           Was there grease in the water?
12
         Α
               It was a slick sludge.
13
               Slick. Would that indicate the presence of
         Q
14
   grease?
15
         Α
              Grease and oil.
16
              Grease and oil. Did you do a grease and oil test
         Q
   in this area of the creek?
17
18
         Α
               No.
19
               But that is a standard test, isn't it?
          0
20
         Α
               It is a test you can run on water, surface waters.
21
         Q
               But you didn't do that test?
22
         Α
               No.
23
               (Ms. Wright enters at 12:28 p.m.)
24
               The Court:
                                  Can you hold just a second, Mr.
25
   Jones?
```

```
1
               (Pause.)
2
               The Court:
                                  You can proceed.
3
               Mr. Jones:
                                   Thank you.
4
               By Mr. Jones:
5
               Part of the wastewater treatment system at House
6
   of Raeford involves the use of a dissolved air flotation
7
   system; correct?
8
         Α
               Yes.
9
               One of the purposes of that system is to separate
10
   grease and oil from the other material, isn't it?
11
         Α
               Yes.
12
               What happens to the grease and oil from the
13
   dissolved air flotation system?
14
         Α
               It floats to the surface of the dissolved air
15
   flotation -- the dissolved air flotation system. If it's
16
   working correctly, it's going to be skimmed off the top.
17
         Q
               Skimmed, and that's part of the material that goes
18
   to Valley Protein, isn't it?
19
         Α
               Yes.
20
               Ms. Willis, when you first got the complaint
21
   September 9th, I think you said you went out there the
22
   following day, on September the 10th. I forget what days
23
   those were, Wednesday, Thursday, something---
24
         Α
               (interposing) Correct.
25
               ---like that. Earlier in the proceedings I think
```

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```
1
   you said your first reaction was that these were human
2
   solids; correct?
3
               That's what I'm used to inspecting is domestic
4
   wastewater treatment plants.
5
               And there is a domestic wastewater treatment plant
6
   in Rose Hill; correct?
7
         Α
               Yes.
8
               There are also septic fields in this drainage
         Q
9
   system, aren't there?
10
         Α
               Probably.
               I mean not even--not only the Magnolia school's
11
12
   sewage system we're talking about, but I mean there are
13
   mobile home parks and subdivisions in the same drainage
14
   system that have septic systems; correct?
15
               I don't know if they're on collection system or
16
   not. I really--I don't know that. I know there's--House of
17
   Raeford has a septic system.
18
               But on the other side of Cabin Branch there are
19
   neighborhoods and subdivisions, residential subdivisions;
20
   correct?
21
         Α
               Yes.
22
               Do you know whether they have septic systems?
         Q
               I don't know for certain.
23
         Α
24
               And you didn't go that far looking for it;
25
   correct?
```

```
1
               Not on the 10th.
          Α
2
               How about the 15th?
3
          Α
               Yes.
4
               Did you go looking at those septic systems?
5
               No, I didn't look at the septic systems.
6
   looked at the creek, the wetlands adjacent to the creek on
7
   that east side of Cabin Branch. I did not walk to the
8
   trailer park, the residential area.
9
          0
               Okay, but you know where I'm talking about?
10
               I do, yes.
          Α
11
               And it's in that same Cabin Branch drainage
12
   system, isn't it?
13
          Α
               Yes.
14
               One issue--you testified about something yesterday
          Q
   about the pump house. Do you remember the pump house next to
15
16
    the, I think--is it the secondary lagoon?
17
          Α
               Yes.
18
               The pump house would be generally--I'm going to
19
                       Is it right about there (indicating)?
   point to an area.
20
               I think it's mid-section between---
21
               (Mr. Jones indicates.)
22
          Α
               Yeah, down a bit.
23
          Q
               Down here (indicating)?
24
          Α
               Yeah, more in that--yes.
25
          Q
               Mid-way along the southern side of the secondary
```

```
1
   lagoon?
2
          Α
               Yes.
3
               Okav.
                     And the function of that is to pump
4
   secondary lagoon water to spray fields further west I guess
5
   it would be; correct?
6
          Α
               It pumps it to the storage lagoon.
7
               (Mr. Jones indicates.)
               Which is---
8
          Q
9
          Α
               (interposing) Yes, the storage lagoon.
10
               Which is further west where they irrigate the
          Q
   fields; correct?
11
12
          Α
               West of 117.
13
               And those--that pumping is done from the secondary
14
   lagoon and it goes west with buried pipe; correct?
15
          Α
               Well, I don't know the piping system.
16
               Well, you don't see it on the ground?
          Q
17
          Α
               No, no.
18
               More than likely it's---
          Q
19
               (interposing) I can't tell you where the piping
20
   system goes, but I know that pump station pumps wastewater
21
   from the secondary lagoon to a storage lagoon.
22
          0
               Okay. Elsewhere?
23
          Α
               Yes.
24
               The area of the creek behind House of Raeford, if
25
   you drive along the road behind House of Raeford, the
```

```
1
   slaughter plant, to the north side of the secondary lagoon--
2
   and you can go all way around the lagoon; correct?
3
               Yes.
               On a truck or four wheel drive or something.
4
5
   if you're looking at the lagoon, you're really not looking
6
   down at the creek, are you?
7
               If you're looking at the lagoon, you're not
8
   looking at the creek.
9
         0
               Right. And Mr. Teachey's job was to monitor the
10
   lagoons; correct?
11
               He has a condition in his permit to also ensure
12
   that there's no discharge from this lagoon and inspect the
13
   toes and also -- the toe of the lagoon and also the dike wall
14
   for vegetation growth.
15
               Well, if he's on the dike wall and he's monitoring
16
   the progress of the lagoon, he's looking in the opposite
17
   direction of the creek; correct?
18
               If he's only looking at the lagoon level.
19
               Now, the creek is not on the same level as the
   dike of the lagoon, is it?
20
21
         Α
               No.
22
               It goes down a considerable distance, doesn't it?
         Q
23
         Α
               It drops down probably about 10 or 12 feet maybe.
24
               10 or 12 feet, and in the meantime there's vegeta-
25
   tion between the dike top and the creek as well, isn't there?
```

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```
1
         Α
              Not entirely.
2
               There are trees?
3
               There's one area--there's one area, that northeast
4
   point, that is open with a very good view to the creek.
5
              But there's vegetation and there are trees between
6
   the dike top and the creek?
7
              Not in the entire location along that eastern
         Α
   perimeter of that secondary lagoon.
8
9
               Well, if you're driving along that dike trying to
10
   pay attention and you're looking at the lagoon, you're not
11
   looking at the creek, are you?
12
               If you're driving--can you repeat your question?
13
   I'm not---
14
               (interposing) Well, I'm just saying if you're
15
   looking at the lagoon, you're not looking in the same
16
   direction as the creek?
17
         Α
               If you are--that's correct. You're looking at the
18
   lagoon.
19
              Exhibit Number 17, Ms. Willis.
         0
20
               Is that in your book or---
         Α
21
               (Pause.)
22
               The Reporter: Petitioner or Respondent's, Mr.
23
   Jones?
24
              Mr. Jones:
                                  Respondent's.
25
               (Witness peruses documents.)
```

1	The Court: I think at this point I don't
2	have a pressing need for the time for today, so I think it's
3	a good point to stop for lunch. And can we return back at
4	1:45?
5	(The hearing was recessed at 12:33 p.m. to
6	reconvene at 1:45 p.m. this same day.)

```
1
               FURTHER PROCEEDINGS
                                                       1:47 p.m.
2
               (Whereupon,
3
                            LINDA WILLIS
4
   the witness on the stand at the time of recess, resumed the
5
   stand and testified further as follows:)
6
              The Court:
                                 This hearing will come to
7
           It's now 1:47 on December the 1st, 2011. All parties
8
   present when we recessed are again present. Mr. Jones.
9
              Mr. Jones:
                                 Okay.
10
                 CROSS-EXAMINATION
                                                       1:47 p.m.
11
                             (resumed)
12
              By Mr. Jones:
13
              Resuming, and I really don't want to belabor this
14
   but, Ms. Willis, let me ask you to turn to the dike in
15
   relation to the creek. You said that it was open space at
16
   the northwest point here (indicating) of the secondary lagoon
17
   as it goes towards the creek; correct?
18
         Α
              Northeast.
19
              Northeast. I mean generally it would be this area
20
   here (indicating); right?
21
         Α
              Yes.
22
              And that's the area where if you're driving in a
         0
23
   vehicle, you're actually having to turn right sharply;
24
   correct?
25
         Α
              You're also looking directly at the creek.
```

```
1
               But in order to make that turn, you would turn
          Q
2
   sharply; correct? It's even more than 90 degrees?
3
               You have to make a turn right there.
4
               Again, not to belabor the point, but look at
5
   Exhibit--your exhibit, Respondent's Exhibit 15--I think it's
6
   LW8.
         Yeah.
7
               (Witness complies.)
8
          0
               Are you there, Ms. Willis?
9
          Α
               Yes, I am.
10
               Is that the area of--standing on the dike looking
          0
11
   down towards Cabin Branch?
12
               That is the area just down from the open space
13
   where you can actually see the creek.
14
               But that depicts one area there standing on the
15
   dike, and there's someone standing there on the dike
16
   apparently?
17
          Α
               Yes.
18
          Q
               Also, look at 15-LW4.
19
               (Witness complies.)
20
          Q
               Now, tell me where that is.
21
          Α
               That is standing at the -- just north of the north-
22
   east point on the creek bank.
23
          Q
               So you're actually on the creek bank there?
24
          Α
               Yes.
25
          0
               If you were on the dike, you'd be I think you said
```

```
1
   10 or 12 feet above that; correct?
2
          Α
               Yes.
3
               And as you look at that picture, to the left that
4
   depicts the area along the creek bank as you look downstream;
5
   correct?
6
          Α
               Yes.
7
               When you went to the facility on September the
          Q
   10th, to the House of Raeford, did you look at the lagoons at
8
9
   that point?
10
          Α
               Yes.
11
               You did; specifically the primary lagoon?
12
          Α
               You have to drive right by the primary lagoon to
13
   get to this location ---
14
          Q
               (interposing) Okay.
15
          Α
               ---to the creek.
16
               Did you get out of the car and inspect the lagoon?
17
               Well, we drove the perimeter of the lagoon because
18
   we came in--we came in on the south end. We came out on the
19
   south side of the lagoon.
20
               The Court:
                                  Now, for the record could you
21
   say who the "we" are?
22
               I'm sorry; Geoff Kegley, myself, and Joe Teachey.
23
          Q
               Okay.
24
               So when we drove to the creek, we drove along the
25
   south side of the lagoon and came around--I think I actually
```

```
1
   drove the vehicle. I think I drove a vehicle and I think
2
   we--I think we followed Joe back, if I recall. We were--
3
   Geoff and I were in our vehicle. Joe was in his vehicle.
4
   And so we ended up driving around the perimeter of the lagoon
5
   that day.
6
         0
               I'm talking specifically about the primary lagoon.
7
          Α
               Yes.
8
               You did. Did you get out of the car?
9
         Α
               I believe we were out of the car, yes, on the
10
   dike--on the dike between the two lagoons.
11
               Okay. How did the primary lagoon smell?
12
               I couldn't smell the primary lagoon. It didn't--
13
   to me it did not have an odor.
14
               Okay. Did you get around the dissolved air
         Q
15
   flotation system?
16
               Not on the 10th.
          Α
               Anytime after that?
17
         Q
18
          Α
               Yes, I did.
19
               When would you have done that?
          0
20
               I took a photo on September 15th and I was
21
   standing on top of the DAF on the 15th.
22
         0
               Was the DAF operational that day?
23
         Α
               It was operating, yes.
24
               What did it smell like?
          Q
25
         Α
               I don't think that I recall anything other than
```

```
maybe a kind of an earthy sort of, you know, wastewater
1
2
   smell. It wasn't--it wasn't a--it wasn't a foul odor.
3
               There was a lot of yucky stuff in there, though,
4
   you'd agree?
5
               Scum and wastewater, yes.
6
               Where we left off, I believe, was we were looking
7
   at, before we went to lunch, Exhibit -- Respondent's Exhibit
8
   Number 17, or 17A?
9
               (Mr. Jones peruses documents.)
10
               I don't know how to refer you to this, but there's
11
   a page 275 on the top right-hand corner of the page I'm
12
   looking at.
13
               (Witness peruses documents.)
14
               Page 275--I'm going to ask you a question about a
         0
15
   sentence in here. I don't want you to read that whole
16
   narrative there on September the 15th, Ms. Willis, but if you
17
   would, go down about one, two, three, four, five, six, seven,
18
   eight, nine, ten, 11, 12, 13, 14, 15, 16, 17, 18--19 lines
19
   down.
20
               (Witness peruses document.)
21
               Do you see that? Do you see a sentence that
22
   begins, "The ORC"?
23
         Α
               Yes.
               Now, it says, "The ORC." Who is the ORC?
24
          Q
25
         Α
               Joe Teachey.
```

```
1
         0
               Okay. And isn't it true that the day you wrote
2
   this was September the 15th?
3
               (Witness peruses document.)
                    That's--September the 15th is the day that
4
         Α
5
   these events---
6
               (interposing) Okay, that's what I meant.
                                                           The
7
   diary--this occurred September the 15th?
8
         Α
               Yes.
9
               Okay. Your sentence says, "The ORC had attempted
10
   pumping the previous day with septic trucks and push brooms."
11
   So that would be--September the 14th is when the ORC began
12
   that activity of pumping and brooming; correct?
13
         Α
               Yes.
14
         0
               And I think, if I remember correctly, they did
15
   that procedure for three or four days in continuity; correct?
16
               I have notes that refer to conversations with
         Α
17
   Clay.
18
               (Witness peruses documents.)
19
               "On September 22nd, '09, Clay Howard called. Said
20
   1,000,035 gallons were pumped from the creek back to the
21
   secondary lagoon" -- "back to the lagoon," in parentheses,
22
   "(secondary) and that creek looked good."
23
          Q
               But it started on September the 14th and continued
   thereafter; correct?
24
25
               I don't know how--I don't know whether it--all I
```

```
1
   could--all I know is--I wasn't there the whole time, but
2
   these are the notes I took as I was either told by somebody
3
   at the House of Raeford, whether it was Clay or the ORC.
               You were there during part of the time, though?
4
5
         Α
               Yes.
6
               Do you recall that at the beginning of that
7
   procedure, they pumped and hauled to the primary lagoon;
8
   correct?
9
         Α
              And what day are you referring?
10
               I'm talking about at the beginning of the
         Q
11
   procedure. It went on for several days, but at the beginning
12
   do you recall that they pumped to the primary lagoon?
13
               I never saw them pump to the primary lagoon.
14
         Q
               Okay. Did you ever see them pump to the secondary
   lagoon?
15
16
               I saw a pump--a pump set up on the bank of the
17
   creek and it's got a photo date. I can't remember what date
18
   that photo was, but there was a small pump that was set up.
19
   And I think because it wasn't really -- they couldn't pump
20
   enough to their satisfaction, that they began hauling -- I have
21
   another note later on where Clay Howard said that he hauled--
22
   that they pumped aggressively.
23
          Q
               Okay. Do you remember when that would have
24
   occurred?
25
               (Witness peruses documents.)
```

```
1
               It was during that period between the 14th and the
         Q
2
   22nd, then?
3
               I'm looking in my notebook here.
               (Witness peruses documents.)
4
5
               The only thing I can really refer to as far as
6
   seeing any attempts in the creek would be--the first day
7
   would be on day 15th that -- excuse me.
8
               (Witness peruses document.)
9
               Actually, no; day 15th there was still sludge
10
   standing on the creek. I think the first time I got--other
   than the note that references--let me turn back--Joe
11
12
   indicating that they were going to use a septic truck to pump
13
   was when Clay called me and said that they were--they had
14
   begun aggressive pumping.
15
               When you said day 15, do you mean September 15,
16
   because I notice it's on the same paragraph with the
17
   September 15th note.
18
               (Pause.)
19
               I can't be sure if I'm referring to day 15 into
20
   the incident or whether that was September 15th.
21
               But it's under the heading paragraph---
22
               (interposing) That's September -- it is under the
         Α
23
   heading of September 15th, '09.
24
               So wouldn't that indicate it was probably that
25
   same day?
```

```
1
               I'm not sure. I don't--it seems strange that I
         Α
2
   would call it day 15. I mean why not September 15th?
3
              Well, it says, "Day 15, resurfaced sludge covered
4
   the creek." What did you mean when you said "resurfaced
5
   sludge"?
6
              They tried to squeegee--they were trying to push
7
   the sludge and squeegee it to push it back upstream. And
   they basically just mixed--they were--they couldn't really
8
9
   move the floating sludge. They were trying to--they were
10
   going to try to pick up the floating sludge and they really
11
   couldn't corral that floating sludge. It kind of eluded
12
   them. It mixed in and then immediately, you know, re-formed
   on the surface again after they pushed it with--tried to push
13
14
   it with the squeegee brooms.
15
               The day that you went--I think you said on
16
   September the 17th you went and took a sample of the creek
17
   and of the lagoon is what you said on direct exam?
18
         Α
               Yes.
19
              Do you remember that?
20
         Α
              Uh-huh.
21
              You said that you took the sample at the primary
22
   lagoon; correct?
23
               I did.
         Α
24
              And as I recall, you said you went a distance
25
   from--well, you said you went from the dike--between the two
```

```
1
   lagoons you went a distance of some number of feet.
                                                          I don't
2
   remember how many feet it was. Do you recall?
3
               Probably approximately 400 feet or so.
               Why did you pick that area?
4
5
               One of the reasons I picked that area was it was--
6
   the sludge was open. I mean you could reach the sludge.
7
   There wasn't vegetation that -- I didn't have to try to get
8
   through vegetation to be able to pull a sample. And I wanted
9
   it away from where--the construction activity in the end of
10
   the secondary lagoon.
11
               Is it on the north side of the lagoon like I'm
12
   pointing to right now (indicating)?
13
               It was on the north side, yes.
         Α
14
         Q
               On the north side?
15
         Α
               Uh-huh.
16
               As I move my finger, show me about where you would
         Q
17
   have taken it.
18
         Α
               Probably right in there.
19
               Right in here (indicating)?
          0
20
         Α
               Yeah.
21
         Q
               About right in there (indicating)?
22
         Α
               Uh-huh, uh-huh.
23
               The Court:
                                  Can you give a verbal
24
   description of where "right there" is?
25
               Mr. Jones:
                                   "Right there" verbally is
```

```
1
   probably a little bit more than halfway down the length of
2
    the primary lagoon from the dike.
3
               The Court:
                                    Thank you.
4
               By Mr. Jones:
5
          Q
               When you took that sample, what did you do with
6
   it?
7
               I sealed it and put it in a cooler---
          Α
8
               (interposing) Okay.
          Q
9
          Α
               ---on ice.
10
               Did--and you put it on ice?
          Q
                      I had a cooler of ice, uh-huh.
11
          Α
12
               Did you apply any security tape to the cooler?
          Q
13
          Α
               No.
14
          Q
               Did you apply any security tape to the vial where
15
    the specimen was?
16
          Α
               No.
17
          Q
               Did you prepare a chain of custody document for
18
    that?
19
          Α
               No.
               Do you know if anybody else did?
20
          Q
21
          Α
               No.
22
               Where did you take the specimen at that point?
          Q
23
          Α
               I brought it back to our laboratory at the
24
    Wilmington regional office.
25
          Q
               What did you do with it then?
```

```
1
               I put it in the laboratory for Stephanie Garrett
          Α
2
   to transport to UNCW the following day.
3
               Did you take it to the laboratory physically?
               I did.
4
          Α
5
               And who did you give it to?
6
          Α
               I put it in the laboratory, which is in a--it's in
7
   a secure area of our building. The only access to that
8
   building is by keypad.
9
          0
               Was Ms. Garrett there?
10
               I believe she was.
          Α
11
               Was she in the laboratory?
          Q
12
          Α
               I--no, she was not in the laboratory.
13
               Was there anybody else in the laboratory?
          Q
14
          Α
               No.
15
          Q
               How did Ms. Garrett know that that was for her?
16
               I told her. She knew--she was expecting the
          Α
17
   sample.
             She knew that I was going to be bringing a sample
18
   back from House of Raeford lagoon for delivery to UNCW.
19
               Did you ever see that sample again?
20
          Α
               No.
21
          Q
               I'm looking for--Petitioner's exhibits.
22
               (Pause.)
23
          Q
               Go to 13.
24
          Α
               I'm sorry, 13?
25
          Q
               Go to 13.
```

```
1
               (Witness complies.)
2
               This is the notice of violation to Valley Proteins
3
   that is dated May 11, 2009. Just in summary, what is this
4
   violation for? What did they do, Ms. Willis? Do you know?
5
   Do you remember?
6
         Α
               I'd like to read it from the---
7
          Q
               (interposing) Sure.
8
         Α
               ---compliance issue, if you don't mind.
9
          0
               Sure.
10
               It's for proper--
         Α
11
               "Proper monitoring was not being conducted in
12
               accordance with Part II Section B. Permit
13
               requires monthly monitoring for all parameters at
14
               every outfall when two consecutive sampling events
15
               show exceedances above benchmarks," and "Illicit
16
               discharges occur from the offal parking/staging
17
                      The offal staging area does not provide
18
               sufficient containment to prevent the leakage of
19
               offal to the ground exposed to stormwater."
20
               In paragraph 4 under the inspection summary, it
21
   says, "Tier Two actions were not taken when monitoring values
22
   exceeded benchmark two times in a row." What does that mean?
23
         Α
               I'm sorry. Where are you?
24
               Look at paragraph 4 on page 2 of the compliance
25
   inspection report attached.
```

1	A Tier 2 actions are NPDES permits. The stormwater			
2	permit for the NC General 060000 permitupon renewal of that			
3	general permit, which I can't tell you when the permit was			
4	renewed, but the permit has tiered responses built into the			
5	permit so that if there are exceedances of the benchmarks for			
6	the pollutants of concern identified in that particular			
7	permit thatif there werefor ait's specified in like			
8	response activities.			
9	So for a Tier 1 response, you'd have to conduct an			
10	inspection of the facility in the area that had contributed			
11	the pollutants of concern and try to determine the source of			
12	the pollutant and work on good housekeeping practices or best			
13	management practices that would take care of that. If on the			
14	second sampling event they exceed a benchmark at that			
15	outfall, then they have to institute monthly monitoring at			
16	that outfall forI believe at all outfalls.			
17	Q Well, I notice the next sentence says, which I was			
18	really looking for, "Analytical monitoring indicates			
19	exceedances of the benchmark values for Fecal Coliform for			
20	more than four times." What does that mean?			
21	A That means their stormwater exceeded a benchmark			
22	of 1,000 milligrams per1,000 fecal coliform bacteria per			
23	100 mL for four consecutive sampling periods.			
24	Q And that inspection was in April of 2009?			
25	(Witness peruses document.)			

```
1
               April 22nd, 2009.
          Α
2
               And number 4--let's see. Go to Number 18.
          0
3
               (Witness peruses documents.)
               I'm sorry, Number 18?
4
          Α
5
               Number.
          0
6
          Α
               Oh, I'm sorry. Petitioner's 18.
7
               Go to the last page of that document.
          Q
8
               (Witness complies.)
9
          Q
               The inspector on April the 21st found that:
10
               "This facility has...[discharged] a wastewater
11
               from their wine processing operations to a lagoon
12
               with an overflow structure that discharges to the
13
               ditch behind the facility. The ditch is part of
14
               the headwaters to Cabin Branch.
                                                 The ditch travels
15
               to the west to the train tracks, turns north, and
16
               empties into a wetlands that is the headwaters to
17
               Cabin Branch. DO was taken in the stream and was
18
               .5 milligrams";
19
   correct?
20
          Α
               Yes.
21
               And "The ditch was full of black septic wastewater
22
   with putrid odor"?
23
          Α
               Yes.
24
               And that's what you found?
25
          Α
               I wrote this.
```

```
1
               You wrote that. Number 19 in our book, in
          0
2
   Petitioner's book, go to the last page of that, page 2.
3
               (Witness complies.)
               I notice in the last few sentences it says,
4
5
    "Neither the consultant nor Mr. Fussell." Is Mr. Fussell the
6
   owner down there?
7
          Α
               No.
               Who is Mr. Fussell?
8
          Q
9
          Α
               He was--he works at Duplin Winery.
10
               Is he the owner?
          Q
11
          Α
               No.
12
               Mr. Jones:
                                   There are a bunch of Fussells
13
   down there, Your Honor. I get them confused.
14
               The Court:
                                   Okay.
15
          Q
               "Neither the consultant nor Mr. Fussell knew how
16
               much wastewater discharges to the ditch during the
17
               course of a month. It is likely the discharge is
18
               not continuous throughout the year. The greatest
19
               volumes are generated during the grape season,
20
               August [through] November."
21
   Did you write that, Ms. Willis?
22
          Α
               Yes.
23
          Q
               Number 21 in our book and page 2 of that.
24
               (Witness complies.)
25
          Q
               Did you write this comment, "The illicit discharge
```

```
1
   from the lagoon appeared to have been removed. However, the
2
   ditch was full of wastewater again"?
3
               Yes.
               What was the illicit discharge?
4
          0
5
               It was a discharge from their--from the small
         Α
6
   lagoon.
7
         Q
               Their wastewater lagoon?
8
         Α
               Wastewater lagoon, yes.
9
         0
               And it was illicit, meaning it was unlawful?
10
               It was not permitted.
         Α
11
               Right.
                       It had been removed. Do you remember how
12
   long ago previously it had been removed?
13
               I can't recall when they actually removed it. I
14
   knew it was removed, though, because the pipe was laying -- it
15
   was pulled up out of the ground, and the hole where the pipe
16
   came through the back of the wastewater dike wall was back-
17
   filled.
18
               And it says, "the ditch was filled with wastewater
19
   again."
            Do you know where that wastewater would have come
20
   from?
21
                  And they didn't know where the wastewater
22
   came from either.
23
         Q
               Well, I notice the next says, "Carolina
24
   By-Products personnel requested sampling of the ditch that
25
   crosses their property to protect their interests concerning
```

1 the origin of the wastewater." Now, why did they do that? 2 Because we were working with both of the 3 facilities. This is -- this is again pursuant to the complaint that we had during March of 2009 of the fish kill. And these 4 5 are the two facilities that I had conducted stormwater 6 inspections at. 7 The--Carolina By-Products has a--one of their outfalls is located at the corner of the ditch behind--the 8 ditch behind Duplin Winery runs towards the railroad tracks 9 10 and makes a 90 degree turn. They have a stormwater sampling 11 location right there. 12 And the reason they have a stormwater sampling 13 location there is they also have a spray irrigation field 14 that is right adjacent to Duplin Winery. So they monitor 15 that ditch for pollutants of concern in accordance with the 16 NC General 060000 permit. 17 Q Well, tell me, was there a concern over the origin 18 of this discharge, whether it was from Carolina By-Products 19 or Duplin Winery? 20 I would say so. 21 Yeah. I mean they were disputing who was 22 responsible; right? 23 Α Yes. Well, I don't know that there was a dispute, 24 but Carolina By-Products had--they had already triggered Tier 2 monitoring, so they're conducting monthly monitoring 25

```
1
   on a stormwater outfall that they felt was--might be impacted
2
   by the neighboring facility. So we were--I was working with
3
   both of the facilities trying to bring them into compliance
   on their stormwater runoff.
4
5
               Go to in that same book Number 23.
6
               (Witness complies.)
7
         Q
               Did you write this inspection summary?
8
               "The ditches around the property have been
9
               inspected for wastewater. In the past, wastewater
10
               had been directly discharged to the ditch behind
11
               the facility. The ditch leads to a wetland to the
12
               north and west of the Duplin [Wine] property.
13
               This wetland runs to Cabin Branch in Cape Fear
14
              River Basin."
15
   Did you write that?
16
         Α
               Yes.
17
               Now, the "Other" down here--if you can, where you
18
   say, "Pictures were taken. A pipe seen in the lagoon during
19
   this inspection became missing during the September 15, 2010
20
   inspection." What was all that about?
21
               That was a--the riser barrel--I couldn't see the
22
   riser barrel because the volume inside -- it actually wasn't
23
   missing, but the volume inside the lagoon was high enough
24
   that the riser barrel--it's a barrel that allows a discharge
25
   to occur from the lagoon to the newly constructed pump
```

1 station that they put in. So that would be the structure 2 that would allow them to actually pump their--maintain the 3 wastewater levels in their lagoon, in their wastewater 4 lagoon. 5 And the operator was instructed to permanently cap 6 the pipe? 7 This wasn't--the pipe that they were to cap was a Α 8 small, probably about 2½, 3 inch pipe that appeared to be 9 coming from the location of the pump house, but it exited in 10 a ditch. The purpose of that pipe, according to Rob Cottle, 11 was to dewater the lagoon when they were constructing the 12 wastewater lagoon. They were required to eliminate the 13 discharge and determine what method they were going to use to 14 dispose of their wastewater. 15 So they had a lot of options, and the option they 16 chose was to build a wastewater lagoon, treat it--pretreat 17 it, and then send it to the town of Rose Hill. So in 18 constructing that lagoon, they needed -- in order to be able to 19 dig the lagoon as deep as they needed to, they had to dewater 20 the hole that they were digging for the lagoon. 21 Q Then go to Number 24, right behind that. 22 (Witness complies.) 23 Q Page 2 of that, the last two sentences says: 24 "A notice of violation was issued to Duplin Winery 25 on October [the 15th], 2010 concerning the issues

```
1
               found at the facility on September [15th], [16th],
2
               and 20th, 2010, requesting an explanation for the
3
               underground pipe and why the wastewater level was
               below the effluent pipe riser. The facility has
4
5
               yet to turn in an application for permit
6
               coverage...for the wine facility on Yellow Cut
7
               Road."
8
   Did you write that, Ms. Willis?
9
          Α
               Yes.
10
               So they were cited for violation of those issues?
          0
11
          Α
               Yes.
12
               And that notice of violation is at Number 25;
13
   correct?
14
          Α
               Yes.
15
               Just going back generally now, at some point
16
   during the investigation these two gentlemen from EPA came in
17
   named Mr. Rhame and Mr. LaPointe; correct?
18
          Α
               Yes.
19
               How many times did you meet with Mr. Rhame?
20
               Three times total, I believe, in the--you know,
21
   during the time frame of the incident investigation.
22
               Some times between September the 10th and
   September the 23rd, in there?
23
24
          Α
               Between the, yes, 15th and 23rd--14th and 23rd.
25
               Did Mr. Rhame do his own investigation?
```

```
1
          Α
               Yes.
2
               Did Mr. LaPointe come in?
3
          Α
               Yes.
4
               And Mr. LaPointe did some kind of investigation?
5
          Α
               Yes.
6
               Okay. Now, LaPointe of course is with the
7
   criminal division; correct?
8
          Α
               Yes.
9
               Rhame is--how does he fit in?
10
          Α
               He's the--he's an on scene coordinator for the EPA
11
   for emergency response for that region.
12
               But he conducted an investigation?
13
          Α
               Yes.
14
          Q
               Did you participate in that investigation with
15
   him?
16
               I introduced him to the area where we conducted
          Α
17
   our investigation and got him associated with the creeks -- the
18
   creek system in that area.
19
               Did he interview any of the company personnel?
20
          Α
               Yes.
21
          Q
               Did you hear any of those interviews?
22
          Α
               Yes.
23
               Did you hear Mr. Rhame tell Joe Teachey, "We
          Q
24
   cannot prove that you are responsible for this discharge"?
25
               (Pause.)
```

```
1
               I don't know if I necessarily heard him say that
         Α
2
   in particular, but we didn't--you know, he didn't see a pump
3
   or a hose either. It's possible he could say--he could have
4
   said that.
5
               Did you ever hear him say something---
6
         Α
               (interposing) I just---
7
               ---to that effect?
          0
8
         Α
               I just don't recall. I don't recall that.
9
         0
               But the fact is he did an investigation. He did
10
   not charge the company with any offenses; correct?
11
         Α
               Correct.
12
               And neither did Mr. LaPointe?
13
         Α
               Correct.
14
               Do you know whether those two--either one of those
         Q
15
   two gentlemen or individual went around and checked with any
16
   of the other companies around in the area to determine
17
   whether or not House of Raeford had purchased pumps, conduit
   pipes, or any other kind of equipment that they thought would
18
19
   have been necessary to move a wad of material, liquid
20
   material?
21
               I believe Kevin LaPointe did.
22
               Kevin LaPointe went around and checked suppliers
          0
23
   of trucks and pumps and pipe---
24
         Α
               (interposing) I don't know to what detail, but I
   know that--I had heard that he had checked some of the
25
```

```
1
   suppliers in the area.
2
               All right.
               But I don't know who specifically.
3
               Okay, but, you know, logically, it would have been
4
5
   suppliers of pumps and things like that; correct?
6
               I can't assume, but--I don't know what the total
7
   scope of his investigation entailed.
8
               Do you know what the outcome of that was, that
          Q
9
   investigation?
10
               He didn't pursue.
11
               And these are federal agents?
12
          Α
               Yes.
13
               With powers--with subpoena powers and those sorts
   of things?
14
15
          Α
               I would assume so.
16
               Let me have some--just a few additional documents,
17
   Ms. Willis. I won't take much time for these, but---
18
               Mr. Jones:
                                  This will be what, 35?
19
               The Reporter:
                                   Yes, sir.
20
                                   (Petitioner Exhibit 35 was
21
                                   marked for identification.)
22
               This appears to be a memo from Stephanie
          0
   PetterGarrett. Do you know who that is, Ms. Willis?
23
24
          Α
               Yes.
25
               Did you receive this memo?
```

1	А	Yes.	
2	Q	What job does Ms. PetterGarrett have?	
3	А	She's our ambient monitor.	
4	Q	Okay. Did she factor into this investigation in	
5	any respect	: ?	
6	А	She provided some fieldwork for determining what	
7	the stream	conditions were in the area on September 23rd.	
8	Q	Okay, of 2009?	
9	A	Yes.	
10	Q	Was this connected with the House of Raeford case	
11	or the Dupl	lin Wine case or some other case?	
12	А	This isthis is actually more pursuant to ourat	
13	the kickoff for our stream study.		
14	Q	It says here that "Mapped stations and D[issolved]	
15	O[xygen] fi	rom sampling on 9/23. DO on Beaverdam just below	
16	Johnson Lake was low, but the creek was completely covered by		
17	aquatic vegetation so it wouldn't have much anyway." What		
18	area is she	e talking about here?	
19	А	That is the location where Beaverdam Branch	
20	crosses Hig	ghway 117.	
21	Q	Whichcould it be shown on this	
22	A	(interposing) Yes, I spoke about it before being	
23	choked with	n aquatic weeds, with what I thought was alligator	
24	weed, but s	sheI think I've seen her refer to it as some	
25	other type	of aquatic weed.	

```
1
               Is that reference point here at 117?
         0
2
               Yes. Yes, that would be -- that would be it.
3
               Okay. And that is upstream from the area where
4
   Beaverdam crosses Cabin Branch, correct, because here's
5
   Beaverdam (indicating)?
6
               It's upstream of where Beaverdam joins Cabin
7
   Branch.
8
         Q
               Okay. And this area is where the lagoons are for
   House of Raeford?
9
10
               Yes. The lagoons would be upstream from the
11
   confluence.
12
               And she reports DO level was low?
13
               And that's due to the aquatic vegetation.
         Α
14
               The Reporter:
                                  36?
15
               Mr. Jones:
                                  Yes, ma'am.
16
                                   (Petitioner Exhibit 36 was
17
                                  marked for identification.)
18
               (Witness peruses document.)
19
               This is a memo from Rufino Salgado, who's been
20
   referred to previously. Now, Mr. Salgado doesn't work for
21
   DENR, does he?
22
         Α
               No.
23
               Who does he work for?
24
         Α
               He was a contract employee for the EPA to provide
25
   sampling and---
```

Volume 5, 12/1/11

```
1
         Q
               (interposing) He was involved in this investiga-
2
   tion, however?
3
          Α
               Yes.
4
                      I notice down at the bottom here it says:
          Q
5
               "The bible text I told you about is Revelation
6
               11:18, 'But the nations became wrathful, and your
7
               own wrath came, and the appointed time [came] for
8
               the dead to be judged, and to give [their] reward
9
               to your slaves the prophets and to the holy ones
10
               and to those fearing your name, the small and the
11
               great, and to bring...ruin those ruining the
12
               earth."
13
               And it says above that, "The bible text I told you
14
            Was that--y'all had a conversation, you and Mr.
15
   Salgado, about this bible text?
16
         Α
               Yes.
17
               Was that in relation to the House of Raeford case?
          0
18
          Α
               It was in relation to the House of Raeford case.
19
               Okay, because I notice the subject says "Beaverdam
20
   Creek release"?
21
               Well, it was in Beaverdam as well, but we called
22
   it Beaverdam. I mean it's referred to Cabin Branch or
23
   Beaverdam because it did end up in Beaverdam as well,
   Beaverdam Branch.
24
25
               Now, this was Friday, October the 2nd. Did you
```

Raleigh, North Carolina 27609-4380

```
1
   remember getting this a little--around lunchtime?
2
         Α
               Well, it--the time on the e-mail is 12:06. I
3
   can't say necessarily when I checked my e-mail.
4
              But Mr. Salgado was involved as an analyst or--
5
   what did he do in conjunction with this?
6
              He collected samples and took some stream
7
   statistics with a dissolved oxygen meter.
8
               Mr. Jones:
                                  The next one is 37?
9
               The Reporter:
                                  Yes, sir.
10
                                   (Petitioner Exhibit 37 was
11
                                  marked for identification.)
12
               (Witness peruses document.)
13
              Now, you already talked about who Stephanie
14
   PetterGarrett is. And you received a copy of this?
15
               Yes. I'm in the cc list.
16
               Okay. On that top thing, Ms. PetterGarrett says,
17
   "Sample results as requested. Send me your fax number and I
18
   will send the COC." Do you what the COC is?
19
              Chain of custody.
         Α
20
               "It was initially dropped because I neglected to
21
   fill in the 'Sealed by' portion of the form, but because I
   had taped the cooler shut, signed and date and timed the
22
   tape, they did decide to accept it." Now, what is she
23
24
   talking about here?
25
         Α
               She's talking about the cooler that we sent
```

```
1
   samples in. I don't know if she references the date of those
2
   particular samples.
3
               And this is October the---
               (interposing) It looks like--I'm sorry.
4
         Α
5
               ---October the 14th, 2009?
         Q
6
         Α
               That was when she sent the e-mail.
7
               Where does Ms. PetterGarrett work?
          0
8
         Α
               She works for Division of Water Quality.
9
         0
               I mean where?
10
               At the Wilmington regional office.
         Α
11
               Okay. She's the one that is in the lab down
         0
12
   there?
13
               She maintains the equipment in her lab, but she
14
   doesn't necessarily work in the lab.
15
         Q
               When she says -- if you know, when it says here, "It
16
   was initially dropped," what does that mean?
17
         Α
               The only--the only place on the form, on the chain
18
   of custody, that didn't have a signature was the "Sealed by"
19
   portion of the chain of custody. But she had secured the
20
   samples by taping the cooler shut, signing the tape, and
21
   dating it. And when the cooler was reached--when the cooler
22
   made it to the state lab, the tape had not been breached.
23
   it -- the lab accepted the chain of custody ---
24
         Q
               (interposing) Why was the ---
25
               ---because it was secure.
```

1	Q Why was the chain of custody important?
2	A Well, for these samples we didn't use any of the
3	data tofrom those samples to impose any kind of assess-
4	ments, so it actually was not consequential in this case.
5	Q Would it have been important if you had imposed
6	assessments in relation to this sample?
7	A If we were going to assess for those various
8	parameters, yes.
9	Q It would have been important, that chain of
10	custody?
11	A The chain of custody is just part of the process
12	for showing how the samples were handled from point A to
13	point B.
14	Q But I mean it would have been important in
15	building your case if you had assessed for violation of those
16	parameters?
17	A We would do a chain of custody for any samples
18	that we were going to assess penalties forfor the results.
19	Mr. Jones: One last document.
20	(Petitioner Exhibit 38 was
21	marked for identification.)
22	Q Do you recall this document, Ms. Willis?
23	A Yes.
24	Q Now, you actually prepared this document, didn't
25	you?

```
1
         Α
               Yes.
2
               And is this an enforcement recommendation in the
3
   House of Raeford case that you dated November the 13th, 2009?
4
               Yes.
5
               Okay. So this was really just two months after
6
   the incident was discovered; correct?
7
         Α
               Yes.
8
               At the top there's highlighting going on here, but
9
   the top sentence says:
10
               "Enclosed is an enforcement recommendation package
               for House of Raeford Farms, Inc., Rose Hill
11
12
               Fresh/IQF Chicken Plant in Duplin County, N[orth]
13
               C[arolina]. Linda Willis and Geoff Kegley of this
14
               office conducted a complaint investigation on
15
               September 10[th], 2009 pursuant to"--
16
   and then there's highlighting, but can you read what that
17
   next line says?
18
         Α
               That is supposed to be highlighted?
19
          0
               Yeah.
20
               "Pursuant to a"--it's hard to read--"complaint
         Α
21
   concerning a foul odor in Beaverdam Branch at the Sheffield
22
   and Brooks Quinn Road bridge crossing."
23
         Q
               Okay. And this would have been done approximately
24
   two months or so after the complaint was filed?
25
         Α
               It's dated November 13th, 2009, yes.
```

```
1
          Q
               Ms. Willis, go to your book, Respondent's book,
2
   Number 13, 13P.
3
               (Witness peruses documents.)
4
          Q
               Are you turned there yet?
5
               Petitioner 13?
          Α
6
          Q
               Yes, ma'am.
7
          Α
               Yes.
               13P.
8
          Q
9
          Α
               13P?
10
               The Reporter:
                                  He's talking about the
11
   respondent's book, ma'am.
12
               The Witness:
                                   Oh, I'm sorry.
13
               (Witness peruses documents.)
14
          Q
               Are you there?
15
          Α
               Yes.
16
               Tell me, when you were going through this in
          Q
17
   direct examination, I think you described where this is, but
18
   where is this exactly, Ms. Willis?
19
               It is upstream of the House of Raeford.
20
          Q
               Do you remember how far?
21
               It is in the stretch between the first Cabin
22
   Branch Brooks Quinn Road crossing and the second Cabin Branch
23
   Brooks Quinn Road crossing. It's in that--it's in that
24
   stretch of the river--in the stretch of the creek.
25
          0
               This is upstream from House of Raeford?
```

```
1
          Α
               Yes.
2
               Now, I notice that the photo date is April 4th,
3
   2011. Did you visit this site in September of 2009?
4
          Α
               No.
5
               I notice the Court directed attention to the mat
6
   on top of the water. Tell me again what that mat is.
7
               That is duckweed.
          Α
8
          Q
               And it's--it looks like it's backed up there at
9
   that particular site; correct?
10
               It's accumulated there.
          Α
11
          Q
               Could you tell how thick it was?
12
          Α
               Not in particular.
13
               But you did not visit that particular site in
          Q
14
   September of 2009?
15
          Α
               No.
16
               On 13T in your book---
          Q
17
               (Witness complies.)
18
          Q
               ---is this upstream from House of Raeford?
19
          Α
               Yes.
20
          Q
               Okay, about how far upstream?
21
               Oh, it's probably--it's probably between--well,
22
   probably about 200 feet maybe from Cabin--Brooks Quinn Road
23
   Cabin Branch crossing.
24
               Okay. I notice this has a photo date of April the
25
   4th, 2011. Did you look at this site in September of 2009?
```

```
1
         Α
               Yes.
2
               What did it look like?
3
               It didn't have--there wasn't this much water in
   here. This is--there's a lot of water standing in here.
4
5
   This water is basically pretty much out of the creek bank in
6
   this photo. When I was there in September of 2009, the creek
7
   did not--it was not outside of the creek bank. It was
8
   actually inside the creek bank.
9
               But this area along the edge of the creek was--it
10
   was low wetland area, but it didn't have this much standing
11
   water. And it didn't have the --it didn't have the duckweed
12
   that you see or the algae. This actually looks to me like an
13
   algae mat along the edge of the shoreline.
14
         0
              Would this be more consistent, though, with a
15
   spring, post-wet period time during the year, though?
16
   Wouldn't there be more water standing in the creek at this
17
   point than there would be five or six months earlier?
18
               It depends on the year, but typically the spring
19
   is the wet season.
20
               So that would be logical? You would have more
21
   water in there probably during the spring after the winter
22
   and the rain?
23
               It was this particular spring.
24
         Q
              Go to your book, 14I.
25
               (Witness peruses documents.)
```

```
1
               I'm sorry. Mine are out of order. I didn't put
         Α
2
   mine in order.
3
               I think mine were too.
4
         Α
               Okay.
5
               Have you got 14I there?
         Q
6
         Α
               Yes.
7
               Can you tell me, where is this location?
          Q
8
               That's in the bend of Cabin Branch on the House of
         Α
9
   Raeford property. It would be--I think this is actually
10
   south of the footbridge.
11
               Now, did you take this photograph yourself?
12
         Α
               Yes.
13
               You were standing on House of Raeford property;
   right?
14
15
         Α
               Yes.
16
               Okay. The area in the creek is not actually House
         Q
17
   of Raeford property, is it?
18
               I don't believe so.
19
               I want to clarify that. You're not saying that
20
   that material in the creek is on their property? It's in the
21
   creek; correct?
22
         Α
               Well, it's on the bank of their property.
23
               Well, let me ask you this. Show me---
24
               (interposing) I'm not sure if--I mean I think--
25
   and I don't know how far across the creek House of Raeford
```

```
1
   owns, but---
2
               Where were you standing? Why don't you come show
3
   me where you were standing when you took that photograph?
4
               (Witness approaches photograph.)
5
               I would be approximately in probably this location
6
   right here (indicating).
7
               Do you want to describe ---
8
          Α
               (interposing)
                              It was on the bend. There's a hook
9
   in the creek, like a bend in that corner of the lagoon, on
10
   the southeast corner.
11
               But wouldn't you agree the thicker area of
12
   material in the creek was further north in this area up in
13
   here (indicating)?
14
          Α
               It was very thick, yes, in that vicinity.
15
          Q
               Then that that you were pointing to is in this
16
   bend here to the south in that area right there (indicating);
17
   correct?
18
          Α
               It's south of this ditch that enters the creek.
19
   There was nothing -- and you'll see that in my field notes.
20
    There was no sludge in the creek above this adjacent ditch.
21
               (Witness returns to stand.)
22
               Do you see the ditch in this picture?
          Q
23
          Α
               No.
24
          Q
               Figure--go to your book, 14P.
25
               (Witness complies.)
```

```
1
         Q
               Would it be correct to say that's a picture of the
2
   primary lagoon?
3
               Yes.
               Which side of the lagoon are you standing on?
4
5
               That is on the north side.
         Α
6
               Okay, looking towards the south, so the branch
7
   would be towards the back of the picture at the top?
8
               It would be to the left of the little building
         Α
9
   that you see at the back of the -- you can see the little top
10
   of the building, the pump house. The creek is back basically
11
   to the left.
12
               To the left?
13
         Α
               Yeah.
14
               Okay. Now, I was intrigued by this picture.
         Q
15
   Pictures are deceiving. As you were out there that day,
16
   which was I guess September the 15th, what color was that
17
   material in the lagoon?
18
               It was--it varied from a light gray to areas where
19
   it was darkening on the surface, so there's light and dark.
20
               The Court:
                                  Are you describing the picture?
21
               The Witness:
                                  The sludge, I think. Am I---
22
               (interposing)
                              As you saw it that day.
         Q
23
               The Court:
                                  So this isn't the lagoon?
24
   is the creek; is that correct?
25
               Mr. Jones:
                                  This is the lagoon.
```

```
1
               The Court:
                                   This is the lagoon, okay.
2
               The Witness:
                                   Yeah.
3
               It varies in color in that lagoon. In this
4
   picture here there's area where it's---
5
               The Court:
                                   (interposing)
                                                   That's 14T?
6
               Mr. Jones:
                                   14P as in Paul.
7
               The Court:
                                   Oh, P. No wonder it didn't
8
   look like a lagoon. Thank you.
9
               By Mr. Jones:
10
               And to back up, you were standing that day on the
          Q
11
   north side of the lagoon; correct?
12
               I was on the north side of the lagoon, yes.
13
               And the creek is over sort of to the top to the
14
   left?
15
          Α
               Yes.
16
               The color of the lagoon that day was multicolored?
          Q
17
          Α
               It has various shades of tannish-grayish, yes.
18
          Q
               Brown?
19
               Yeah.
          Α
20
               So depending on where you're looking, it was
21
   different colors?
22
          Α
               Yes.
23
               On 14S as in Smith, which really ought to be
24
   pretty close to that -- have you found that, Ms. Willis?
25
          Α
               Yes.
```

```
1
               This appears to be a picture of the creek behind
          Q
2
   House of Raeford down on the bank looking downstream;
3
   correct?
4
          Α
               Yes.
5
               All right. Now, this was taken September the
6
   17th, 2009; correct?
7
          Α
               Yes.
8
               At this point Mr. Register has been in the creek
          Q
9
   for several days pumping; correct?
10
               I don't know how many days he had been in the
   river--in the creek--necessarily.
11
12
               But you did say he came in September the 14th?
13
               I think--I'd have to look back at my notes, but I
14
   can't--I can't recall if my notes said he was there on the
15
   14th. I don't know that I had--we had resolved the issue of
16
   whether that was day 15 that I was referring to or September
17
   15th.
18
               Well, remember in Exhibit -- go back and pull 17--
19
   17A.
20
               (Witness complies.)
21
               It says, "The ORC had attempted pumping the
22
   previous day," and this is September the 15th?
23
          Α
               Yes.
24
               So would it be fair to say, then, that if you
25
   match those two exhibits ---
```

```
1
               (interposing) Yes.
          Α
2
               ---to the photograph---
3
          Α
               (interposing) Yes.
4
               ---there's likely been pumping going on for
          Q
5
   several days?
6
          Α
               This only indicates the previous day, not several
7
   days.
8
               Okay, but it had started the 14th?
          Q
9
          Α
               If I--yes. Yes.
10
               And this---
          Q
11
          Α
               (interposing) I would agree, yeah.
12
          Q
               ---was several days later?
13
               What was several days---
          Α
14
          Q
               (interposing) Your picture was taken several days
15
   later?
16
               On the 17th, right. In the creek, the creek
          Α
17
   picture, S?
18
          Q
               Yes, ma'am.
19
               Yes, that was on the 17th.
          Α
20
               Go to 14W in your book.
          Q
21
               (Witness complies.)
22
          Q
               Are you there, Ms. Willis?
23
          Α
               Yes.
24
          Q
               This is a picture of the--I guess the north rim of
25
   the secondary lagoon; correct?
```

1	А	That would be the west rim
2	Q	(interposing) West rim.
3	А	of the secondary lagoon.
4	Q	And the primary lagoon would be to the right
5	А	Yes.
6	Q	beyond where that piece of equipment is, that
7	Case equip	ment is; correct?
8	А	Yes.
9	Q	Now, let me ask you, did you make note of the
10	freeboard	that's present in the lagoon at this point?
11	А	I noticed the freeboardthere was freeboard in
12	the second	ary lagoon, yes.
13	Q	I mean that looks like a lot of freeboard to me.
14	А	Yeah, it has freeboard, especially along the
15	Q	(interposing) There is quite a bit of
16	А	(interposing) Yes.
17	Q	distance between the top of the lagoon and the
18	water leve	l; correct?
19	А	It's probablyit's hard to tell how many feet,
20	but yes, t	here's adequate freeboard there from
21	Q	And if the operator wanted to lower the water
22	level in t	he primary lagoon to the secondary lagoon, what he
23	needed to	do was turn the valve and that would by gravity
24	feed the w	ater from the primary lagoon to the secondary
25	lagoon; co	rrect?
	İ	

```
1
          Α
               Yes.
2
               I mean that's the logic behind it; correct?
3
          Α
               Yes.
               And that picture was taken on September the 15th
4
          Q
5
   of 2009?
6
          Α
               Yes.
7
               Also, if you look at 14X?
          Q
8
               (Witness complies.)
9
          Q
               Okay. Are you there at 14X?
10
               Yes.
          Α
11
               There again, that -- on the right is the secondary
12
   lagoon and on the left is the primary; correct?
13
          Α
               Yes.
14
               Okay. And again that is an adequate, accurate
15
   depiction of the amount of freeboard in the secondary lagoon;
16
   correct?
17
          Α
               You can see the shoreline, yes, the dike wall on
18
   the opposite bank on lagoon number 2.
19
               And again, a good bit of distance there between
20
   the top of the lagoon and the water level?
21
          Α
               Yes.
22
               And I suppose where you were--you were probably
          Q
23
   over there where that SUV is taking the picture previously;
24
   correct?
25
          Α
               Yes.
```

```
1
               On 14Y, did you take the picture in 14Y, Ms.
          Q
2
   Willis?
3
               I did.
4
               Okay. Where were you standing when you took that?
5
               I was standing at the--I was standing on the west
6
   edge of the dike wall between the primary and secondary
7
   lagoon facing west.
8
               And this hose, if you want to call it that, was
          Q
9
   going down into the primary lagoon; correct?
10
          Α
               Yes.
11
               Do you know who that hose belonged to?
          0
12
          Α
               Not the day I took the -- no.
13
               September the 15th?
          Q
14
          Α
               No.
15
          Q
               Well, you heard Mr. Register's testimony yesterday
16
   about his pump and haul procedure?
17
          Α
               I heard him.
18
               Would you imagine that that's probably Mr.
19
   Register's hose there that he was using to pump the material
20
   from his truck into the secondary lagoon?
21
               I wouldn't know for sure if that was Mr.
22
   Register's, but I did hear him say that he had a hose that he
23
   used.
24
               And that was September the 15th?
          Q
25
          Α
               Yes.
```

```
1
         Q
              And this is going into the primary lagoon, to
2
   clarify that?
               It's going into the far east end.
3
              Of the primary---
4
5
              (interposing) Of the primary lagoon.
         Α
6
         0
              Okay. Ms. Willis---
7
              The Court:
                                  (interposing) Are we through
8
   with the pictures?
9
              Mr. Jones:
                                  Yes, sir.
10
                                  Okay. I think it's a good time
              The Court:
11
   to take a break. I wanted to kind of get through the
12
   pictures, so let's take about a 15 minute break.
13
                                  Off the record.
              The Reporter:
                                                        2:56 p.m.
14
               (A brief recess was taken.)
15
              The Reporter:
                                 On the record.
                                                        3:28 p.m.
16
                                  This hearing will come to
              The Court:
17
   order. It's now 3:27 on December the 1st, 2011 and all
18
   parties present when we recessed are again present.
19
   Jones.
20
              Mr. Jones:
                                  Thank you, Your Honor.
21
              By Mr. Jones:
22
              Last thing in the book, Respondent's book,
         0
23
   Number 24A, Ms. Willis?
24
               (Witness complies.)
25
         Q
               I know Ms. LeVeaux questioned you about this
```

```
document called Assessment Factors. Did you prepare this
1
2
   document or did Mr. Poupart?
3
               Jeff Poupart.
               You had input into it, though; correct?
4
5
               He received my assessment factors that I developed
6
   and Rick Shiver reviewed.
7
               And then he drafted this based upon the material
8
   you sent to him?
9
               His review of our enforcement documents that were
10
   sent to him, yes.
11
               Now, on the paragraph number 6 that Ms. LeVeaux
12
   asked you about where it's written here "Whether the
13
   violation was committed willfully or intentionally," the
14
   finding I guess in Mr. Poupart's writing is "no indication of
15
   accident"; correct?
16
         Α
               Yes.
17
               And was that something that you had recommended to
         Q
18
   him?
19
         Α
               Yes.
20
               And it also says, "and sufficient freeboard in
21
              So Mr. Poupart found that because there was
22
   sufficient freeboard in the lagoons, there was no indication
23
   of an accident; correct?
24
         Α
               Yes.
25
               And you had input into this as Mr. Poupart was
```

```
preparing these assessment factors?
1
2
              He received my enforcement recommendations that
3
   were prepared by me and reviewed by Rick Shiver.
               The Court:
                                  And for the record particularly
4
5
   at this juncture can you give your relationship to Mr.
6
   Poupart, where he is in your chain of command, so to speak?
7
              The Witness:
                                  Where are you at now?
8
   well, he's--originally the enforcement recommendation went to
9
   Matt Matthews. He was our section chief. Jeff Poupart is
10
   the supervisor of the NPDES permitting unit--branch, sorry,
11
   branch. And Rick Shiver is -- at that time was our Wilmington
12
   regional supervisor for the Surface Water Protection Section.
13
               The Court:
                                  So your chain would be to send
14
   these matters to Mr. Poupart; right?
15
               The Witness:
                                  It would go--yes. If I prepare
16
   enforcement documents, it would go to my supervisor, which
17
   would be Rick Shiver, and then Rick Shiver would offer that
18
   up to Jeff Poupart for -- or Matt Matthews. We sent it up to --
19
   or Rick sent it up to Matt Matthews, had it directed to Matt
20
   Matthews.
21
               The Court:
                                  Thank you. I just thought at
22
   this point it's important to inject that into the record.
23
              Mr. Jones:
                                  You're correct. We kind of
24
   play inside baseball. We know, but we don't put it on the
25
   record.
```

```
1
                                 And that's the same. I catch
               The Court:
2
   myself when I'm looking at pictures. I know exactly what
3
   you're talking about. It dawns on me I need to make sure
4
   someone else understands it as well.
5
              By Mr. Jones:
6
         0
              Now, in terms of the finding of no indication of
7
   accident, if you went out to the site on September the 10th,
8
   what evidence would you be looking for of an indication of an
   accident?
9
10
              A breach in the lagoon. First of all, I'd have to
11
   determine what the material was that was in the creek or in
12
   surface waters. And we determined it was sludge, so the
13
   lagoon in particular that has the majority of the sludge or
14
   basically all the sludge in it is that primary lagoon.
15
   you would look to see whether the lagoon had overtopped or
16
   you had a breach in the dike wall or there was some kind of
17
   seepage from the lagoon.
18
              Did you find any of that?
19
              We didn't find any--no, nothing that would be
20
   accidental.
21
              Did you find any, as you say, evidence of sludge,
22
   remnants of -- residue of sludge on the ground around the
23
   lagoons anywhere between the lagoons and the creek?
24
         Α
              Geoff Kegley had noticed some material in the
25
   adjacent ditch to the lagoons on the south side of the
```

```
1
   lagoon, but it was in small enough quantities that we
2
   couldn't quite tell what it was or--I actually walked down in
3
   the ditch and investigated one location. But we weren't able
   to link large--a large quantity of sludge through that
4
5
   adjacent ditch with the volumes that we saw in the creek
6
   behind.
7
              But I do know that the House of Raeford has the
   ability to flush the creek with a groundwater well. And as a
8
9
   matter of fact, they did offer as--part of their mitigative
10
   efforts was to flush the creek using their groundwater wells.
11
              Well, let me ask you--you were talking about the
12
   ditch. If---
13
                                  (interposing) Do you mean
               The Court:
14
   flush the creek or flush the ditch?
15
              The Witness:
                                 Well, the fact that they could
16
   even flush the creek would tell me that they'd also have the
17
   ability to flush that ditch if they wanted to.
18
              The Court:
                                  Okay.
19
              By Mr. Jones:
20
              What do you mean by flush the ditch?
         Q
21
               I mean wash the sludge out of that adjacent ditch
   to the creek.
22
23
         Q
              Well, if there was as much sludge in the creek as
24
   y'all contend, there would have had to have been an enormous
25
   amount of sludge residue left in the ditch; correct?
```

A NOT II YOU WASH IT GOWN, NOT II YOU WASH
Q (interposing) How would you wash it down?
A With a hose; hook a hose up to the well, pump the
well through the hose, spray down the ditch, or spray out the
ditch. And I would imagine if you're going to pump to a
ditch, you probably would lay it in the bottom of the ditch,
and it would be easy enough to be able to flush that ditch
out.
Q So is that y'all's contention now, that it was
pumped from the lagoon to the ditch?
A I think it's a possibility.
Q Well, earlier in the case, the state's contention
was that they had pumped it from the primary lagoon to the
creek. Are you now saying that the theory is that you're
pumping tothe company pumped to the ditch?
A I think we have admitted all along that we weren't
exactly sure how they got the sludge to the creek, but it was
ourthe result of this investigation was that this sludge
came from their primary lagoon.
Q Ms. Willis, you've got a notebook here full of
exhibits that you have testified to, most of which have been
admitted into evidence already, virtually all of them
pictures. Do you have any pictures of the ditch that you're
talking about where supposedly there were remnants of sludge?
A I don't have a picture of the ditch.

```
1
               You have no pictures of this piece of evidence
         Q
2
   that you contend shows that it might have been pumped to the
3
   ditch to the creek?
               I did not have---
4
5
                                  (interposing) Objection, Your
               Ms. LeVeaux:
6
            I believe Ms. Willis was responding to a question
7
   presented by opposing counsel which was, "Did you see
   anything anywhere?" And it was only after he asked that
8
9
   question that she responded that yes, Mr. Kegley did see some
10
   remnants. She didn't make that -- she's saying certainly
11
   anything can happen, but that's the only reason she
12
   responded.
13
               The Court:
                                  That's overruled.
                                                      He just
14
   asked does she have a picture of it. I don't think he--he's
15
   following up the testimony.
16
              By Mr. Jones:
17
         Q
               Do you have a picture of the ditch area?
18
               I don't have a picture of the ditch, but I have a
19
   picture of the receiving stream right adjacent to the ditch
20
   with no sludge north of that adjacent ditch.
21
              Ms. Willis---
22
         Α
               (interposing) And it is also a convenient
23
   conveyance for the close proximity of that adjacent ditch to
24
   the primary lagoon.
25
              Ms. Willis, you've got pictures of both lagoons.
```

```
1
   You've got pictures of the dikes. You've got pictures of the
2
   creek upstream and downstream of the site showing all kinds
3
   of sludge and material in the creek. You have no pictures of
4
   the ditch?
5
                                  Objection, asked and answered.
              Ms. LeVeaux:
6
               The Court:
                                  Overruled.
7
              I have pictures of the creek directly adjacent to
   that ditch. I have pictures of the creek north of that ditch
8
9
   and there was no sludge in the creek north of that ditch.
10
   I'm just saying that ditch is -- there was -- there could be the
11
   potential for it being used as a conveyance. It's handy.
12
   It's right there adjacent to the primary lagoon.
13
               I've got pictures of the primary lagoon completely
14
   choked with vegetation, all but for a few open spaces.
15
   got pictures of the secondary lagoon that after even the
16
   construction and the repairs on the dike wall and the gate--
17
   the new knife valve that was put in, a trickle of flow
18
   through the pipe between the dike from the primary to the
19
   secondary lagoon.
20
               I believe there was still--the issue with this
21
   lagoon system is not with the secondary lagoon. It is with
22
   the primary lagoon and it continues to be with the primary
23
   lagoon at the point that all of our pictures were taken, even
24
   after the repairs.
25
              Ms. Willis, you know, you've helped me. You've
```

```
1
   got all of these pictures and all of this evidence, but
2
   you're saying now that they could have pumped it from the
3
   lagoon to the ditch and there was residue in the ditch. But
   you have no pictures of the ditch; is that correct?
4
5
               I'm saying that there was a direct--there was an
6
   adjacent ditch in close proximity---
7
               The Court:
                                   (interposing) You don't have
8
   any pictures in the---
9
               The Witness:
                                  (interposing)
                                                 No, I don't have
10
   pictures of the ditch.
11
               The Court:
                                 Do you have any pictures, not
12
   in the exhibits, but that you might personally have or in the
13
   office?
14
               The Witness:
                                  I don't think so.
15
               The Court:
                                  Okay.
16
              The Witness:
                                  Yeah. I don't think we do.
17
              By Mr. Jones:
18
               Finally, Ms. Willis, if you're going to present
19
   evidence of a discharge under y'all's theory, wouldn't it
20
   have been logical to show how the water was conveyed from the
21
   primary lagoon to the creek using the ditch?
22
              Ms. LeVeaux:
                                  Objection.
23
              We didn't know how---
         Α
24
               The Court:
                                   (interposing) It's overruled.
25
         Α
               We admitted when we were on site that we could
```

1 not--we did not have pictures of pumps. We have pictures of 2 hoses. This is a facility that has the ability to--it is 3 impossible to believe that this facility would not have some 4 kind of pumps on site that would allow them to convey waste-5 water any way they needed to as just part of operation and 6 maintenance when--if and when they're having problems with 7 operation and maintenance. We have a lagoon system where the primary lagoon 8 9 is choked full of weeds, doubtful if there's hardly any room 10 in this lagoon for fresh -- a million gallons of fresh waste-11 water coming into this lagoon. We have pictures of the 12 primary and the secondary lagoon after repairs have been 13 done. And even with the valve open, you can still see--you 14 can see a trickle of water being transferred from the primary 15 lagoon to the secondary lagoon, but we still see evidence of 16 high freeboard in that primary lagoon in some of these 17 pictures. 18 Even though Mr. Poupart found that there was 19 adequate freeboard in both lagoons? 20 He didn't state which lagoons he was talking 21 about. There are several -- there are three lagoons. 22 the primary lagoon, the secondary lagoon, the storage lagoon. 23 Well, Ms. Willis, he didn't say lagoon. He said Q 24 lagoons, with---25 Α (interposing) I know he said lagoons.

```
1
         Q
               ---an s. It's plural.
2
         Α
               Lagoons can be more than two, two or more.
3
               He found no freeboard violation, no freeboard
          0
4
              He said adequate room, adequate freeboard in the
   problem.
5
   lagoons.
6
              As it pertains to an overflow, an accidental
              There was no accidental overflow. We told him
7
   overflow.
8
   there was no accidental overflow and that's what he's
9
   referring to is there is no--there was--there's adequate
10
   freeboard from the standpoint there was no accidental
11
   release.
12
               I'll ask one more time. If there was residue of
13
   material in the ditch, if it was similar to what was in the
14
   primary lagoon and/or in the creek, and you were out there
15
   taking photographs for over a period of time like two weeks,
16
   didn't it occur to you to take a picture of the ditch if
17
   there was any residue of material in there?
18
               I actually walked down in the ditch.
         Α
19
              But you took no photographs?
20
               I didn't take any photographs.
         Α
21
              All right. Ms. Willis, go to Exhibit 17A in your
22
   book.
23
               The Court:
                                  That would actually be
24
   Respondent's book.
25
                                  Yes, Respondent's.
              Mr. Jones:
```

```
1
               If it helps, it's page 275 in your field notes.
          Q
2
               (Witness peruses documents.)
3
               Are you there?
          0
4
          Α
               Yes.
5
               Look at the entry for September 15th, '09 and go
6
   down eight lines.
7
               (Witness peruses document.)
8
          Q
               All right. Do you see the sentence that begins
9
   with "Adjacent"?
10
          Α
               Yes.
11
               All right. Read that sentence in your field
12
   notes, if you would.
13
          Α
               "Adjacent ditch to south of lagoons was clear of
14
   sludge."
15
               Okay. That's the same ditch that you claim
16
   conveyed the material from the lagoon to the creek; correct?
17
          Α
               Yes.
18
          Q
               It was clear?
19
               I didn't see any sludge in it, but it was
20
   certainly a convenient conveyance.
21
               Ms. Willis, were you in the deposition--you were
22
   attending the deposition of Jeff Poupart in Wilmington on
23
   January the 5th; correct?
24
          Α
               Yes.
25
               And you were in the room when he was deposed;
```

```
1
   correct?
2
          Α
               Yes.
3
               Even though it was his deposition, but you were
          0
4
   present?
5
          Α
               Yes.
6
          Q
               And you listened to his deposition?
7
               I did.
          Α
8
               Do you remember I asked him a question, and I'm
          Q
9
   going to read it right out of the deposition:
10
               "So there was no evidence of breach.
                                                      And I know
11
               there is a ditch that runs--if you face the plant,
12
               there's a ditch to a person's right that runs sort
13
               of parallel with the property line from the
14
               property from the--roughly to the area of the
15
               plant to the creek. Was there any evidence that
16
               any of this had been pumped to the ditch?"
17
               Answer by Mr. Poupart, "Not to my knowledge."
18
   you remember that?
19
          Α
               Yes.
20
               The Court:
                                   Do you pronounce your name
21
   Poupart or Popehart (phonetic)?
22
               Mr. Poupart:
                                  It's Poupart.
23
               By Mr. Jones:
24
               Do you remember him saying that?
          Q
25
          Α
               Yes.
```

1	Q Did you indicate in your deposition that it had
2	been pumped to the ditch?
3	A No.
4	Q Did Mr. Kegley indicate during his deposition that
5	it had been pumped from the lagoon to the ditch?
6	A No.
7	Q Is there anything in this book that gives any
8	evidence that the material from the primary lagoon was pumped
9	to a ditch?
10	A No. We don't have evidence that shows that it was
11	pumped to that ditch.
12	Q Now, failing that, the state has charged the
13	company with making a discharge to Cabin Branch creek. Where
14	was thein your theory, where did the material come from
15	that was conveyed from the company to the creek?
16	A It could have come from the primary lagoon. It
17	could have come from a combination of the primary lagoon and
18	even maybe the DAF unit.
19	Q Okay. Now, we've heard testimony that the primary
20	lagoon is 650 feet more or less to the creek, a distance of
21	650 feet; correct?
22	A Yes.
23	Q Now, according to the state, how did the waste-
24	water get from the primary lagoon to the creek?
25	A I don't know how they took the materialI don't

```
1
   know how House of Raeford got the material from the primary
2
   or the DAF to the creek, but they got it there. And there
3
   are--I am certain with this type of industry they are going
   to have -- they can have pumps and hoses, although they have
4
5
   testified that they don't have pumps and hoses.
6
   really conceivable that they would not have pumps and hoses.
7
               Joe Teachey talked about submersible pumps. A
   submersible pump could be used. He had that in the--where
8
9
   they keep their spare pumps he stated in his deposition.
10
   heard him say that. There were hoses on site.
11
              Ms. Willis, did you see 675 feet of hose?
12
               I did not, but we didn't get--we didn't get
13
   direct -- we did not get access to the plant immediately. When
14
   we went to the plant and signed in, we had to wait on Joe
15
   Teachey.
16
              Would that have been--how much time did you have
         0
17
   to wait?
18
         Α
               It was probably 15, 20 minutes.
19
              And so your contention is that in 15 or 20
20
   minutes, they hid 675 feet or more of hose?
21
               I don't know if--I don't know--I mean I'm just
22
   saying he had time. I'm certain he would know that having a
23
   pump and hose at the lagoon would be incriminating.
24
              Can you imagine -- what kind of pump would it take
25
   to pump this kind of material from inside the lagoon to a
```

```
1
   creek 650 feet away?
2
              He could use a submersible pump. I don't know--
3
   it varies. You could use any size pump. You could use any
4
   size hose. It depends on the pump's horsepower.
5
               It takes some considerable horsepower to pump a
6
   material that thick---
7
               (interposing) Depends on how long you're pumping
         Α
8
   it.
9
         Q
              And how far you're pumping it; correct?
10
              But you can still pump it. You can pump--you can
         Α
11
   pump wastewater -- I mean you can pump wastewater any distance
12
   you want.
13
              Well, let me ask you, during all your interviews
14
   of all the people at the plant, did any of them ever say,
15
   "That material is ours. We pumped it to the creek"?
16
         Α
              No.
17
               Did you see when you were out there a pump that
18
   could do that kind of pumping action or that much hose that
19
   could convey it from the primary lagoon to the creek?
20
              We've had enough conflicting information from
21
   personnel at House of Raeford that have said they have pumps,
22
   they don't have pumps, "We have pumps," "We don't have
23
   pumps." I believe they have pumps. I know Robert Poindexter
24
   that works for Carolina By-Products has borrowed pumps from
25
   House of Raeford. He has indicated that to me.
```

1	Q Do you have any idea
2	A (interposing) That equipment is
3	Q (interposing) Do you know how much money it would
4	cost to rent that kind of equipment and move that kind of
5	material over that period of time to the creek?
6	A It would depend on the pump.
7	Q I mean evencan you estimate? Do you know?
8	A Well, they contracted Register's septic truck to
9	haul 155 loads for \$20,000. That's some indication.
10	Q When Register was doing that procedure, you said
11	you were not there the whole time. Were you there any?
12	A I was there whenI saw theit was a small tanker
13	truck, probably a 2,000 gallon tanker trucker sitting on the
14	back dike wall. And I can't recall which day that was.
15	Q Do you recallwhen that was pumped out of the
16	creek into his hauler, was he obtaining water and thick
17	material or was he just getting thick material?
18	A I wasn'tI don't believe they were pumping at the
19	time because the truck wasn't running. You can hearyou can
20	hear it when it's running. The truck was not
21	Q (interposing) You don't know how much was which?
22	(Pause.)
23	Q What part was water and what part was
24	A (interposing) No. No.
25	Q Ms. Willis, you mentioned the DAF. Can you show

```
1
   us on this picture of the plant site where the DAF is
2
   located?
3
               (Witness approaches photograph.)
               The DAF is located on the road coming out of the--
4
5
   heading east from the House of Raeford facility at the north
6
   and west corner of the primary lagoon.
7
               So this area to the left of the primary lagoon?
8
               It's this right here (indicating).
9
         0
               So that's even farther away from the creek than
10
   the farthest point of the primary lagoon; correct?
11
               (Witness resumes stand.)
12
               Well, he uses a tank truck for the skimmings to
13
   go--they load that into a tanker truck. They have their
14
   own--I don't know if it's their tanker truck or whether it's
15
   a tanker truck that belongs to the company that they send
16
   their--send the skimmings to.
17
         Q
               Do you mean Valley Protein?
18
         Α
               Valley Protein.
19
               Well, did you hear Clay Howard testify that that
20
   is--Valley Protein trucking is their trucks and they take it
21
   away?
22
               And there wasn't a truck there at the time either,
23
   the day of our investigation.
24
               Do you remember Clay Howard testifying to that?
25
         Α
               I remember that.
```

```
1
               Has Valley Protein been questioned about whether
         Q
2
   or not they conveyed any of this material to the creek?
3
               Yes.
4
               And what did they say?
5
               They said they did not. They did not have any
6
   problems.
               We questioned them. We questioned the Town of
7
   Rose Hill. We questioned the Town of Magnolia.
8
   questioned the Town of Wallace.
9
         Q
               Now, you misunderstand my question. Did you
10
   question Valley Protein---
11
               (interposing) Yes.
12
               ---about whether or not they took the material
13
   from the House of Raeford DAF---
14
         Α
               (interposing) Oh.
15
          Q
               ---to the creek?
16
               If they took the---
         Α
17
         Q
               (interposing) Using their trucks to take it to
18
   the creek.
19
         Α
               No.
20
               You didn't question them?
         Q
21
         Α
               No.
22
               (Pause.)
23
               But they would have to take several--with that
24
   truck that you're referring to, they would have to haul many,
25
   many truckloads to put that much sludge in that creek.
                                                             It's
```

```
1
   not feasible. It's just not feasible, not for as fresh as
2
   the sludge was.
3
               (Pause.)
               They wouldn't have a motive either, not when they
4
5
   render it. This is a product to them. They bring it in and
6
   render it, and House of Raeford pays them to take it.
7
              And they---
8
         Α
               (interposing) They have no motive to put it in
9
   the creek, none.
10
               And they take it away from House of Raeford, turn
         Q
11
   it into chicken feed, and sell it back to us; correct?
12
               Back to us?
13
               Back to the House of Raeford.
               I don't know if they--I imagine they--I don't know
14
         Α
15
   where House of Raeford buys their food from, but I'd imagine
16
   the chicken food probably comes from a local--from a local
17
   renderer.
18
         Q
               Well, Ms.---
19
               (interposing) You can't ignore a motive.
         Α
20
               I agree. What motive does House of Raeford have
21
   to empty their primary lagoon into the creek?
22
         Α
               Where do they have to dispose of that material in
23
   the primary lagoon? They can't take it to Valley Protein.
24
         Q
              Ms. Willis, if---
25
         Α
               (interposing) They can't take it. They have to
```

```
1
   pay to dispose of it. They can't take it to Valley Protein.
2
   I don't believe they can--I don't think they can land apply
3
   that because it's loaded with oil and grease. They had a
              They had a serious problem here.
4
5
              Ms. Willis, go back to your Respondent's
6
   Exhibit 14W.
7
               (Witness complies.)
              Yes, sir.
8
         Α
9
               Why would the company spend the time and money to
10
   rent equipment, convey that material in the primary lagoon to
11
   the creek when all they had to do is open that valve and
12
   lower the water level in the primary lagoon, because as you
13
   can see in Figure 14W, there's plenty of freeboard within the
14
   next week to hold that water?
15
         Α
               There appears to be plenty of freeboard in that
16
   secondary lagoon. The question I'd have to ask is if they've
17
   opened this valve and we can see the valve is open here, why
18
   aren't they lowering the level in the primary lagoon? Why on
19
   September 15th are other pictures showing the primary lagoon
20
   right there at the bank at the level of the top of that dike?
21
   Why is this not conveying ---
22
               (interposing) Ms. Willis, I'll ask the questions,
23
   please. Your job is to answer.
24
         Α
               I'm sorry. It's--the answer--my answer to that is
25
   that they have the valve open right here and you can see a
```

```
1
   trickle of wastewater coming out of that pipe. Why isn't it
2
   flowing--it should be flowing out of that pipe if there was
3
   not some issue that's continuing to be a problem for that
   primary lagoon, which happens to be it's choked with solids.
4
5
   It's still choked with vegetation. Wastewater is not flowing
6
   well out of that primary lagoon into the secondary lagoon.
7
   They should have -- if it was so easy to open that gate valve
8
   in that structure, they should have been already able to
9
   control the lagoon levels in the primary lagoon.
10
              Ms. Willis, every one of the witnesses has come
         Q
11
   and testified that those components were working properly.
12
   They were functional. What evidence do you have that that
13
   was not operating?
14
         Α
               Because the lagoon levels in primary--in that
15
   primary lagoon is still high.
16
               You can't see the lagoon level---
         Q
17
         Α
               (interposing) Yes, you can see the lagoon level.
18
               ---in the primary lagoon.
         Q
19
               You can see the lagoon level. We have pictures,
20
   picture Q, Exhibit Figure Q in section 14. You can see -- this
21
   is a snapshot of the edge of the dike and the level of the
22
   wastewater in the primary lagoon, and it's right there at the
23
   top of the lagoon. There isn't--you can't see--there's not
24
   like a drop between that and the bank in the top of that dike
25
   wall.
```

```
1
         0
              Ms. Willis, it looks to me like you're looking
2
   down on this---
3
               (interposing) I am looking down on this.
4
               ---from the top.
5
               It is right at--it is right there at the edge.
6
   And furthermore I had made a phone call later in--it was
   maybe September or October. I made a call to Aquifer
7
   Protection because I had the occasion to be able to see the
8
9
   lagoon level again at that particular location. And it was
10
   actually flowing into the road. I reported that to Jim
11
   Bushardt.
12
               Ms. Willis---
13
         Α
               (interposing) And so there was still a problem.
14
         Q
               ---look at Figure 14U, as in United States.
15
               (Witness complies.)
16
         Q
              Are you there?
17
         Α
               I'm there.
18
         0
               It looks to me like there's adequate freeboard
19
   there to me.
20
               I think there's other pictures--if you look beyond
21
   that structure there, this is a structure also where they
22
   actually built--you can see fresh dirt. They built the level
23
   of the lagoon wall up in this particular location, but it is
24
   not at that level all the way around the primary lagoon.
25
   There are other areas in that primary lagoon where it's right
```

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```
1
   at the top.
2
               They added soil right there. You can see the
3
   fresh--you can see all the fresh dirt that they brought in.
4
   Obviously they've built that area up, so yes, there is some
5
   freeboard on this end. But if you even look beyond that gate
6
   valve structure, you can see the wastewater is still pretty
7
   close to the top of even the new dirt that was brought in.
               Well, Ms. Willis, a number of witnesses have
8
         Q
9
   testified, and you've heard them, that there was adequate
10
   freeboard in this lagoon, there was adequate freeboard in the
11
   secondary lagoon, there was adequate freeboard in the storage
12
   lagoon where the spray field is. All they had to do was open
13
   this valve, release the water into the secondary lagoon and
14
   then to the irrigation ---
15
               The Court:
                                   (interposing) What's your
16
   question to Ms. Willis?
17
                                 Beg pardon?
              Mr. Jones:
18
               The Court:
                                  What's your question to Ms.
19
   Willis?
20
              By Mr. Jones:
21
         Q
              Have you heard that testimony?
22
         Α
               I heard their testimony.
23
               And that would be a heck of a lot cheaper and
         Q
24
   easier than trying to pump it 600 or 700 feet to a creek,
25
   wouldn't it?
```

1	A it would be cheaper? I don't think so.
2	Q Why not?
3	A Well, ifunless you get caught. Then it's not
4	cheap. No cost of disposal. As a matter of fact, Jim
5	Bushardt had to push themJim Bushardt had to make a site
6	visit to this facility and ask them, "How are you going to
7	remove the vegetation out of this lagoon?" "How are you
8	going to adequately maintain this lagoon?"
9	If there were not problems in that lagoon, Mr.
10	Bushardt would not have gone to the site and requested them
11	to conduct some O and M to alleviate the issue with the
12	solids and the vegetation in this lagoon. He was concerned
13	about the freeboard in this lagoon.
14	Q And they removed it, didn't they?
15	A Yes, they did.
16	Q Again, if the company wants to remove water from
17	the primary lagoon, all they have to do is release it by
18	gravity into the secondary lagoon; correct?
19	A Ifprovided the valve and the piping in between
20	the primary lagoon and the secondary lagoon is working, but
21	we know it was not and that's why they did this construction.
22	There's an incentive here. There was a problem. They had a
23	maintenance problem with this lagoon structure. They had a
24	problem.
25	It wasthe knife valve wasn't working. Clay

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```
1
   Howard testified to that. He said the knife valve wasn't
2
   working. They had to replace the knife valve. They had to
3
   replace the culvert in between. They had to build this weir
4
   structure to help hold the solids back. And this sludge
5
   ended up in the creek in the same time frame as they were
6
   having to conduct this construction.
7
              Well, you heard Mr. -- the testimony of Mr.
8
   Cavenaugh--what's his name? Cavenaugh, Cavenaugh. Mr.
9
   Cavenaugh was there the entire time this procedure was done.
10
   He testified there was no pumping out of the lagoon to the
11
   creek. The only pumping that was done was to lagoon 1---
12
               The Court:
                                  (interposing) What is your
13
   question?
14
              Mr. Jones:
                                  Okay.
15
              The Court:
                                  You-all are getting more
16
   into---
17
              Mr. Jones:
                                  (interposing) I'm sorry.
18
              The Court:
                                  ---debates here than a question
19
   and answer.
20
              By Mr. Jones:
21
         Q
              Did you hear Mr. Cavenaugh's testimony yesterday?
22
         Α
               I heard Mr. Cavenaugh, but I was on site for four
23
   or five days, and I never saw Mr. Cavenaugh there.
24
         Q
              Were you there when they did this procedure?
25
               You said he was there all the time.
```

```
1
          Q
               When they did this procedure to change out the
2
   valve in the pipe.
3
               All I saw was the heavy equipment after the fact.
               Ms. Willis, were you there when they changed out
4
5
   the valve in the pipe?
6
          Α
               No, I was not there when they changed out--no.
7
               And you heard Mr. Cavenaugh say he was?
          Q
8
          Α
               Yes, I heard him say that.
9
          0
               He was there the entire time.
10
          Α
               Yes.
11
               Correct?
          Q
12
          Α
               Yes, I heard him say that.
13
               And he testified that there was no pumping from
          Q
14
   the lagoon to the creek?
15
          Α
               I heard him say that.
16
               Does Mr. Cavenaugh work for the company?
          Q
17
          Α
               He was paid by the company.
18
               Is he an employee of the company?
          Q
19
               He's not an employee of the company, no.
          Α
20
          Q
               He is an independent contractor?
21
          Α
               Yes.
22
               Would he have any reason to lie in this court
          Q
23
   under oath?
24
               Ms. LeVeaux:
                                   Objection.
25
               The Court:
                                   I'm going to sustain that.
```

1	Q There was testimony about the cleanup in the		
2	creek. Did Clay Howard speak with you in advance before he		
3	started the cleanup of the creek?		
4	A Yes.		
5	Q All right. Did you tell him he could not clean up		
6	the creek?		
7	A I didn't tell him he could not clean upno, I		
8	don't recall telling him that.		
9	Q You were around generally during the period of		
10	time that that cleanup was occurring; correct?		
11	A I saw some of the cleanup efforts as far as the		
12	men in the creek trying to squeegee sludge. And I also saw		
13	the aeration system that they tried to put in to increase the		
14	dissolved oxygen levels at the Sheffield Road bridge.		
15	Q And did you testify that the EPA representatives		
16	gave permission for those people with the company to clean up		
17	the creek in that fashion?		
18	A I don't know if II mean I know that was the		
19	EPAKen Rhame was working with them on trying to help them		
20	with mitigative efforts.		
21	Q And he encouraged them to mitigate the creek?		
22	A Sure, yes.		
23	The Court: Let me take about a five or ten		
24	minute break and let me speak to the three attorneys here.		
25	The Reporter: Off the record. 4:05 p.m.		

```
1
              (A brief recess was taken.)
2
                                On the record.
              The Reporter:
                                                       4:21 p.m.
3
              The Court:
                                  This hearing will come to
4
           It's now 4:17 on December the 1st, 2011 and all
5
   parties present when we recessed are again present.
6
              Let me make mention just on the record so we have
7
   it because it's a situation I've not had before that I do
   want to make mention on the record. And that is I certainly
8
9
   noticed this morning that there was a petitioner. Obviously,
10
   a petitioner is well represented by my two counsel.
11
              And this afternoon I have noticed there is no
12
   petitioner in the courtroom. And I wasn't sure if one of the
13
   persons in the audience might be the petitioner's repre-
14
   sentative, and I was informed by counsel and Ms. LeVeaux that
15
   that was not the case.
16
              So I do want to make mention on the fact that we
17
   certainly are proceeding. And certainly, as I said, the
18
   petitioner is well represented, but I did want to make
19
   mention that there is not a petitioner in the room at this
20
   point in time, nor--I guess they have not been here this
21
   afternoon either.
22
              Mr. Jones:
                                 Since 2 o'clock.
23
              The Court:
                                  Okay.
24
              Mr. Jones:
                                  We sent Mr. Holley home because
25
   of a situation. I frankly didn't realize it was a problem.
```

```
1
                                  Well, I quess--I don't know
               The Court:
2
   that it's a problem. I don't consider it a problem, but it's
3
   something that I've not ever had happen before, that there
4
   is--again, I've not ever had a respondent not be present or a
5
   petitioner not be present.
6
               So I did want to make mention on the record,
7
   mainly to say it's fine with me. I don't see a problem with
8
   it and nobody has expressed a problem with it at this point
9
   in time.
10
              Mr. Jones:
                                  For good measure, we've
11
   rectified that. There will be somebody here tomorrow.
12
               The Court:
                                  Okay, excellent. You may
13
   continue, Mr. Jones.
14
              Mr. Jones:
                                  Thank you, Your Honor.
15
              By Mr. Jones:
16
               Just briefly, Ms. Willis, go to 15,
         Q
17
   Respondent's 15 LW22.
18
               (Witness complies.)
19
              Are you there, Ms. Willis?
20
         Α
               I am.
21
               Just for my edification, is this a separate
22
   photograph or is this a zoom of--zoom-in of one of those
23
   previous photographs? I think maybe it might have been 14W?
24
               (Witness peruses documents.)
25
         Α
               I'm trying to get to 14W. I believe it is a zoom.
```

```
1
              That's a zoom-in?
         0
2
               I believe it is, but let me look at 14W, please.
         Α
3
               (Witness peruses photograph.)
               I might have shifted my position just a little.
4
5
   I'm not sure. But it is definitely pretty close to the same
6
   location I probably took the picture at for Figure W.
7
              Okay. And LW22, Exhibit 15 LW22, depicts the
         Q
8
   outlet pipe into the secondary lagoon; correct?
9
         Α
              Yes.
10
              And from this vantage point with a the little bit
11
   more zoom, you can actually see water pouring out of the
12
   outlet pipe into the secondary lagoon; correct?
13
         Α
               Yes.
14
              And you also get a depiction of the level of
         Q
15
   freeboard in the secondary lagoon; correct?
16
         Α
               Yes.
17
              Mr. Jones:
                                  Your Honor, I don't think I
18
   have any more questions.
19
              The Court:
                                  Redirect, Ms. LeVeaux.
20
              Ms. LeVeaux:
                                  Thank you, Your Honor.
21
              REDIRECT EXAMINATION 4:25 p.m.
22
              By Ms. LeVeaux:
23
              You also have in Petitioner--Respondent's LW22--
         Q
24
   what's the background of that picture?
25
         Α
              Vegetation in primary lagoon number 1, a lot of
```

```
1
   vegetation in primary lagoon number 1, basically choked.
                                                               Ιt
2
   doesn't appear to have any openings.
3
              Okay. Ms. Willis, earlier on in cross-
   examination, counsel asked you if you knew about how old the
4
5
   sludge was or the film was downstream, and you indicated you
6
   didn't know. How can you gauge how old sludge is?
7
               It changes -- it does change color, if I can
8
   reference a couple of photos, because what we see floating in
9
   the primary lagoon, for instance, in picture--Figure Z in
10
   14---
11
               14D?
         Q
12
         Α
               14 Figure Z.
13
                  And what do you have in 14 Figure Z?
          Q
14
         Α
               This is the floating sludge that is on the surface
15
   of the primary lagoon. But we know that the source of this
16
   sludge comes from the DAF unit, which is not working effi-
17
   ciently enough to keep that sludge from being discharged to
18
   the primary lagoon from the wastewater that's going to the
19
   primary lagoon.
20
               If you reference section 14, Figure AA, you can
21
   see what the sludge would look like very fresh, freshly
22
   skimmed off the top of the DAF unit, and it's a very light
23
   color. So that's what it---
24
         Q
               (interposing)
                              Well, you---
25
         Α
               (interposing)
                              I'm sorry.
```

Q I'm sorry.

A That's what it looks like when it's being--when it is being removed from the wastewater.

Q Well, you would expect it to look differently sitting in an open lagoon as opposed to sitting in a container, wouldn't you?

A Well, as far as maybe the consistency—I mean as far as the consistency and the color is concerned, that's what—your original question was can I talk to how—what sludge looks like as it gets older.

And as it gets older, it does dry out on the surface. It gets crusty. You can see the--you can see kind of the dry, crusted sludge on the surface of the lagoon. You can see that it's a little bit darker in color. It's more of like a light grayish color in areas where it is beginning to turn somewhat septic at the surface because there is not any dissolved oxygen there to basically keep it fresh. It's darkening in some places in the photo in Figure Z, and the consistency is a little different.

Q Thank you. In cross-examination a question was raised about whether or not in driving along and around the lagoon you can in fact see the creek. You indicated that you were aware of some of the duties and responsibilities of the ORC. Beyond inspecting the lagoon, do you know whether or not the ORC has additional duties as relates to the walls of

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```
1
   that lagoon?
2
              He's required to check the toe of the dike wall
3
   for problems such as seepage. There's a requirement to keep
   woody vegetation out of the dike wall because it can
4
5
   compromise the integrity of the dike. So yes, there's--it
6
   would stand to reason that the operator would have to inspect
7
   on a somewhat regular basis the lagoon structure.
               What about animals burrowing into the dike wall?
8
         Q
9
         Α
               Burrowing animals are not---
10
               (interposing) Do you know if that's ever been a
         Q
11
   concern?
12
         Α
               They can be a concern for wastewater lagoons.
13
               When you drove around the lagoon, could you see
14
   Cabin Branch?
15
         Α
               I could.
16
               (Pause.)
17
               There was also a question in cross-examination
18
   about a sample that was submitted to the state lab, and a
19
   question was asked about the chain of custody. You answered
20
   the question, but will you explain to the Court whether or
21
   not there's a difference between the procedures for taking a
22
   sample to the state lab versus Environmental Chemists, for
23
   example?
24
               There is a different process for establishing
   chain of custody for the state lab. We have--our form is a
25
```

```
1
   lot more rigorous than the Environmental Chemists form, chain
2
   of custody form. They don't require the samples to be taped,
3
              They don't require the lids to be taped.
4
   don't require the cooler to be taped.
               It doesn't--I mean because there is no tape
5
   associated with Environmental Chemists' chain of custody,
6
7
   then there wouldn't be a signature--they don't have a place
   on their chain of custody form for a signature for the
8
9
   individual that would have put the tape on the cooler.
10
              Also, in Exhibit Number 17A the top of the page is
         0
11
   numbered 278.
12
               (Witness peruses documents.)
13
              And going down almost to the bottom third of the
14
   page, I'm looking at your notes where you referenced to
15
   having spoken with Clay Howard. There's a reference to
16
   480,000 gallons, and then later there's a reference to
17
   1,000,035 gallons. Can you distinguish those two quantities
18
   for me?
19
                     On the 18th--it says, "18th Clay Howard
              Yes.
20
   called to let us know they had begun pumping aggressively."
21
   And of course on the 18th was the day after Clay was able to
22
   witness myself pulling samples from that primary lagoon.
23
   that time, Clay indicated that they had pumped about 480,000
24
   gallons from the creek at 160 gallons per minute for 50
```

25

hours.

1	In this conversation if you look a little above			
2	that sentence, there is aI state above where it says,			
3	"18th, Clay Howard called to let us"he had asked me about			
4	flushing the creek with groundwater also, pursuant to that			
5	conversation. And so I had answered him then not to pump			
6	groundwaternot to try to flush the creek with groundwater.			
7	I indicated that we were expecting a rain and that we'd let			
8	the natural rain take its course with the conditions in the			
9	creek.			
10	Q And then there's later reference to September			
11	22nd.			
12	A And then on September 22nd, Clay Howard called me			
13	back and said that they had transferred"1,000,035 gallons			
14	were pumped from the creek back to [the] lagoon." I asked			
15	him specifically which lagoon and he said the secondary			
16	lagoon, which is why I put the secondary lagoon in paren-			
17	theses. And he also referenced that the creek looked good.			
18	Q Now, you pulled samples; isn't that correct?			
19	A I did.			
20	Q What date did you pull the samples?			
21	A Iin reference to the DNA sample that I pulled, I			
22	pulled on the 17th.			
23	Q So you've been sitting in this courtroom through			
24	the course of the progress of this case, have you not?			
25	A Yes.			

```
1
               And you've heard different testimony. Is that a
         0
2
   fair statement?
3
         Α
               Yes.
               So what have you heard as it relates to where
4
5
   this -- where the pumping took place? What was your under-
6
   standing at the point that you wrote these notes?
7
              At this point I did not have the indication that
         Α
   any wastewater had been pumped to the primary lagoon.
8
9
         0
               Had anyone told you that any wastewater--prior to
10
   your talking with Clay, anyone told you that it had been
   pumped to the primary lagoon?
11
12
               No, not at this point. It would not seem logical
13
   either to pump wastewater from the creek back into the
14
   primary lagoon when the primary lagoon is choked with
15
   vegetation and the lagoon levels are so high to begin with.
16
   It would make more sense to pump wastewater--especially if
17
   they're not picking up the oils and greases as they indicated
18
   and they were primarily pumping water, it would have made a
19
   lot more sense to go to the secondary lagoon that had
20
   adequate freeboard in it.
21
               But you were also present at Joe Teachey's deposi-
22
   tion, were you not?
23
         Α
               Yes.
24
              And did you hear Mr. Teachey testify to the fact
25
   that he put it into the primary lagoon?
```

1	A Yes.			
2	Q And you were also here yesterday and you heard Mr.			
3	Register also say that he pumped to the primary lagoon; is			
4	A (interposing) Yes.			
5	Qthat correct?			
6	A I did. Yes.			
7	Q Did you see any floating solids in the secondary			
8	lagoon anytime you were out there?			
9	A I think there was aI think there was a thin film			
10	in one of the pictures at themaybe the front end of the			
11	lagoon, but nothingno, not any floating mats. There might			
12	have been like a very, very, very light scum.			
13	Q Is it fair to say that the wetlandsthe base			
14	systems are less affected by rainfall events? That is, they			
15	don't flash up like a piedmont creek because the wetlands			
16	provide storage-like capacity? Is that a fair statement?			
17	A I'm sorry. Could you repeat it?			
18	Q As relates to rain events, is it fair to say that			
19	wetlands are less affected by rain events to the extent that			
20	they flash up like a piedmont creek might because the			
21	wetlands provide storagea storagehave a storage capacity?			
22	A They have the ability to store water depending			
23	onyes, they do.			
24	Q So would you expect that they would react the same			
25	way a piedmont creek might react?			

```
1
                                  Your Honor, could I ask--I
              Mr. Jones:
2
   don't even know what a piedmont creek is.
3
               The Court:
                                  Could you clarify that in your
4
   question first? It's obvious that she knows what it is.
5
                                  Well, I'll establish that she
              Ms. LeVeaux:
6
   knows.
7
              By Ms. LeVeaux:
8
              Do you know what a piedmont creek is?
         Q
9
         Α
               It would be--my guess would be it would be a creek
10
   in the piedmont area which is in a--it's in an area that has
11
   more of a elevation difference. We're at the coast.
12
   in a coastal plain. The elevations do not change much within
13
   this coastal plain.
14
              And we--as a matter of fact, Cabin Branch--and I
15
   believe your question is kind of getting to the headwaters of
16
   Cabin Branch, which is a large wetland. The classification
17
   for Cabin Branch is a Class C-Sw water. And the fact that it
   has a classification of Sw indicates that it is fed by swamp
18
19
   water. And I'd like to read the classification, if I may,
20
   from the 2B regulations.
21
               The Court:
                                 Why don't you answer Ms.
22
   LeVeaux's question first?
23
              The Witness:
                                  Okay.
24
              Do you have the regulations?
         Q
25
               I do.
         Α
```

```
1
         Q
               Okay.
2
               I think it would answer the question about---
3
               (interposing) Well, why don't you read the
4
   regulations, then?
5
               (Witness peruses document.)
6
               The Court:
                                  So can you repeat the question,
7
   and Instead of using piedmont swamp, use it as she's under-
8
   standing it---
9
              Ms. LeVeaux:
                                  (interposing)
                                                Okay.
10
                                  ---because she said, "I guess
               The Court:
11
   you mean."
12
              Ms. LeVeaux:
                                  Okay.
13
               By Ms. LeVeaux:
14
              Could you describe for the Court, consistent with
         Q
15
   the regulation, what constitutes Class C waters or swamp
16
   waters?
17
         Α
               Class C waters is for secondary recreation.
18
   classification for C is due to the use of the water.
19
   water quality standards" -- and I'm reading this from the
20
   Class C waters. It's the 15A NCAC 02B .0211 Fresh Surface
21
   Water Quality Standards for Class C Waters. "The water
22
   quality standards for all fresh surface waters are the basic
23
   standards applicable to Class C"--let's see.
24
               "Best Usage of [the] Waters [is for] aquatic life
25
              propagation, maintenance of biological integrity
```

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1	(including fishing and fish), wildlife, secondar			
2	recreation, agriculture and any other usage exce			
for primary recreation or as a		rimary recreation or as a source of water		
4	supply	y for drinking, culinary or food processing		
5	purpos	ses."		
6	Q Okay.	Thank you.		
7	A And st	wamp watersthe definition of swamp waters		
8	are "waters which have low velocities and other natural			
9	characteristics which are different from adjacent streams,"			
10	so it alludes to very low velocities. Even during rain			
11	events, it's still a Class C-Sw water where you would			
12	Q (inter	rposing) Okay. Thank you. And you were		
13	presentI mean in cross-examination there was some reference			
14	to pumps and whether you had seen a pump. And you've			
15	indicated that both Joe Teachey and Mr. Howard indicated that			
16	there were some p	pumps, but you were also present at Mr.		
17	Teachey's deposit	tion, were you not?		
18	A Yes.			
19	Q Do you	u remember when asked whether or not House of		
20	Raeford had any h	hosesdo you remember what his answer was?		
21	A He sa:	id they don't have any hoses on site.		
22	Q Okay.			
23	A They	don't use them.		
24	(Pause	e.)		
25	Ms. Le	eVeaux: No further questions.		

```
1
              The Court:
                                 Recross, Mr. Jones?
2
               RECROSS-EXAMINATION
                                                      4:41 p.m.
3
              By Mr. Jones:
4
              On the issue of the chain of custody, you
5
   mentioned that there was a difference in chain of custody
6
   issues between the state lab and Environmental Chemists;
7
   correct?
8
              There's a difference in the chain of custody
         Α
9
   process.
10
                     Environmental Chemists, though, still has
         Q
              Okay.
11
   some sort of protocol for chain of custody, don't they?
12
         Α
              They do.
13
              And they have their own documentation; correct?
         Q
14
         Α
              Yes.
15
              So they're not without a protocol and without
16
   documentation? They require that as well?
17
         Α
              Yes. I didn't mean to implicate that.
18
              Mr. Jones:
                                 Your Honor, can I pause just
19
   one second?
20
              The Court:
                                  Sure you can.
21
              (Pause.)
22
              Mr. Jones:
                                I believe that's all we have,
23
   Your Honor.
24
              The Court:
                                 Anything further, Ms. LeVeaux?
25
              Ms. LeVeaux:
                                 Your Honor, nothing further for
```

```
1
   this witness. Your Honor, we would reserve the right, just
2
   in case we need her on rebuttal, to recall the witness if
3
   that's all right.
4
              The Court:
                                  You may step down. Thank you
5
   very much. And I think we're probably at a good stopping
6
   point. The time has crept on us. And does 9:30 still seem
7
   like a good time to everybody involved?
8
               (No audible response.)
9
              The Court:
                                  That being the case, we will be
10
   adjourned until tomorrow at 9:30.
11
               (The hearing was adjourned at 4:43 p.m. to
12
               reconvene at 9:30 a.m. on Friday, December 2,
13
               2011.)
```

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

CERTIFICATE

I, Kay K. Rohde, do hereby certify that the foregoing pages 757 through 948 represent a true and accurate transcript of the proceedings held at the Office of Administrative Hearings on Thursday, December 1, 2011.

I do further certify that the witnesses 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 12th day of January, 2012.

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