

STATE OF NORTH CAROLINA  
COUNTY OF DUPLIN

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

HOUSE OF RAEFORD FARMS, INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 NORTH CAROLINA DEPARTMENT OF )  
 ENVIRONMENT AND NATURAL )  
 RESOURCES, )  
 )  
 Respondent. )

TRANSCRIPT OF HEARING

Before Honorable Augustus B. Elkins II  
Administrative Law Judge

MONDAY, DECEMBER 19, 2011

Courtroom B  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, North Carolina  
10:00 a.m.

Volume 7 of 8  
Pages 1166 through 1357

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T A B L E O F C O N T E N T S

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25	letter re assessment of civil penalties, DV 2009-0046, 8/10/10, with attachments	1183	
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1 Ms. LeVeaux: Thank you.

2 D I R E C T E X A M I N A T I O N 10:09 a.m.

3 By Ms. LeVeaux:

4 Q Thank you, Mr. Poupart. I'm going to call you  
5 Jeff. Jeff, will you please state your name and occupation  
6 for the Court?

7 A Jeff Poupart; I'm the point source branch chief,  
8 Division of Water Quality.

9 Q And if you will, will you briefly tell us about  
10 your education and how you came to work with DENR and your  
11 various positions while you've been at DENR?

12 A I graduated Aquinas College in 1990 with a  
13 bachelor's in chemistry. I worked in an engineering company  
14 in the laboratory for a year, then BASF Corporation, also in  
15 their wastewater laboratory, for about--a little less than a  
16 year.

17 I moved to North Carolina. I worked for Laidlaw  
18 Environmental Services till 1992, late 1992, when I started  
19 with the state Division of Water Quality in the pretreat-  
20 ment--industrial pretreatment unit, transferred to the  
21 Division of Pollution Prevention in 1996, '7, somewhere  
22 around there, for a couple of years, transferred back to the  
23 Division of Water Quality in 1998 as the supervisor of the  
24 Non-Discharge Compliance and Enforcement Unit.

25 The division reorganized in 2004 and I was placed

1 in charge of the Pretreatment Emergency Response and  
2 Collection Systems Unit. In 2008 I was promoted to the  
3 branch chief position.

4 Q Is that the position you're in right now?

5 A That's correct.

6 Q And what are the duties and responsibilities of  
7 the branch chief?

8 A I oversee permitting and compliance for all point  
9 source wastewater processes in the state, including pre-  
10 treatment, and also oversee emergency response and sewer  
11 systems.

12 Q Were you in that position on or about October-  
13 September 2009?

14 A Yes.

15 Q And if you will, please--if you will turn to  
16 Respondent's Exhibit Number 20?

17 (Witness complies.)

18 A Notice of violation?

19 Q Yes. Do you recognize that document?

20 A I do.

21 Q And tell us about this document.

22 A It's a copy of the notice of violation sent by Mr.  
23 Shiver, the regional supervisor, to the House of Raeford's  
24 facility at Rose Hill.

25 Q And generally what was your familiarity--did you

1 have any familiarity with this facility that's noted in this  
2 notice of violation?

3 A I was aware that there had been a discharge at the  
4 facility and that we were--they were preparing to send an  
5 enforcement case up to Raleigh.

6 Q And if you will, please, describe for the Court  
7 when you get these enforcement cases, what do you usually  
8 look at when you receive these cases, or just tell the Court,  
9 if you will, generally what you usually consider when you're  
10 assessing these cases.

11 A I look at the notice of violation. I look at the  
12 facility's response. I look at any sampling data, maps,  
13 photographs. Also, the region prepares their factors and  
14 their opinion of the case.

15 Q Okay. And also, will you look at Respondent's  
16 Exhibit Number 21? Do you recognize that document?

17 (Witness complies.)

18 A Yes. It appears to be the House of Raeford's  
19 response in October 2009 to our notice of violation.

20 Q And did you review that document as well?

21 A Yes.

22 Q And attached to that document is--if you'll go to  
23 the second to the last page and the last page, do you  
24 recognize that document?

25 A Let's see.

1 (Witness peruses document.)

2 Page 3?

3 Q It's in Exhibit 21 and the second to the last page  
4 and the last page. Do you have---

5 A (interposing) Oh, yes. This is the region's  
6 recommendation of the assessment factors.

7 Q So these aren't your assessment factors?

8 A No.

9 Q So tell me what you do with this document when you  
10 receive it.

11 A I look at what the region's opinion is and I  
12 weight that against my experience from other cases and use  
13 portions of it in my factors consideration.

14 Q Do you also talk with other individuals or are you  
15 limited in any way with whom--speaking with folks?

16 A No, I'm not limited in any way. Normally I have a  
17 staff from my office--or if we have questions about the case,  
18 we'll call the regional inspector or the regional supervisor.  
19 And I believe we did on this case.

20 Q So is it fair to say that you did not adopt this  
21 entirely as it is?

22 A That is fair to say. I did not adopt this  
23 entirely.

24 Q If you will, turn to Exhibit 22. Do you recognize  
25 that document?

1 (Witness complies.)

2 A That's the cover page--the first page or the cover  
3 page that's sent up with the case from the region to my  
4 supervisor, Mr. Matthews.

5 Q Did you consider this document?

6 A Yes, I read this document before I assessed the  
7 case.

8 Q Is this your document--or is this the document  
9 that you produced or is this again a recommendation?

10 A No. The first two pages are--this is the--appears  
11 to be the recommendation from the region. They draft the  
12 case up and then staff at the central office check it for  
13 consistency with other cases and typographical errors and  
14 then redraft it--or make changes, such as the signature line  
15 here says Mr. Matthews and not me--mine, so---

16 Q (interposing) And who is Matt Matthews?

17 A He's the point source section chief.

18 Q Has he delegated the authority to assess to you?

19 A Yes, he has, delegated by the director actually.

20 Q Okay. And if you will look at Exhibit 23?

21 (Witness complies.)

22 Q Actually, Exhibit 23 may be more--is this the same  
23 document or is this your document?

24 A It appears to be a duplicate of the one in 21  
25 (sic).

1           Q     Okay.  If you will turn to Exhibit 24A?  Do you  
2 recognize this document?

3                     (Witness complies.)

4           A     Yes, I do.

5           Q     And is this a document prepared by you?

6           A     Yes.

7           Q     And will you describe for the Court what it is and  
8 what you did?  And I'd like you to go through each assessment  
9 factor, please.

10          A     North Carolina Statute 143-282 requires--it  
11 doesn't require.  It says we may consider eight factors when  
12 we're assessing a case.  So we in the office have made up  
13 this sheet that can be handwritten while you're assessing the  
14 case to ensure that you consider eight factors and give you  
15 some notes to refer back to.

16                     And this is that sheet for this particular case  
17 filled out by me at the time I was actually assessing the  
18 case.  I'm sorry.  The second part of your question, Ms.  
19 LeVeaux, was to go through---

20          Q     (interposing)  Yes.  Will you please go through--  
21 so this is a sheet prepared by you as relates the petitioner  
22 in this case, correct, House of Raeford?

23          A     Okay.

24          Q     And you prepared it on August the 10th, 2010?

25          A     Yes.

1           Q     And so if you will, please go through each  
2 assessment factor stating what it is and then your response  
3 to it, please.

4           A     Okay. The first factor is "The degree and extent  
5 of harm to the natural resources of the state, to the public  
6 health, or to the private property resulting from the  
7 violation." And my handwritten note is "depressed DO in  
8 solids would have...severely"--"would have a severely adverse  
9 effect on [the] water environment."

10          Q     What do you mean by that?

11          A     The DO numbers that I've reviewed from the  
12 sampling data that was provided indicated that--far below  
13 what would be typical. I think it was .97 or--it wouldn't be  
14 able to sustain the ecosystem. And the solids that were bank  
15 to bank would have completely choked off movement of the  
16 aquatic life and would have--this overall would have had an  
17 adverse effect on the water environment, sort of summarizing,  
18 ecosystem effects, aesthetics, propagation.

19          Q     And what about number 2?

20          A     The second factor is "The duration and gravity of  
21 the violation." And I wrote, "DO," meaning dissolved oxygen,  
22 was "very depressed for 13 days." The third factor--and what  
23 this meant was that both the gravity and the duration of very  
24 depressed was the fact that DO was so low, and the 13 days  
25 was that it stayed low for a significant period of time after

1 the event, even though that--only one day can be considered.

2 Q And you looked at all--there were a variety of  
3 locations. Is that fair to say?

4 A Yes, downstream and reference upstream, reference  
5 value upstream.

6 Q And point number 3?

7 A "The effect on ground or surface water quantity or  
8 quality or on air quality." The water in this--my  
9 handwritten note is "[the] water in [the] creek was septic  
10 for a significant stretch," meaning that for a significant  
11 stretch downstream of the incident, it was below the point at  
12 which it would--it was actually septic it was so low in DO.

13 The fourth factor is "The cost of rectifying the  
14 damage," and I wrote, "significant, not calculated." And  
15 that was the fact that the cleanup was a significant cost,  
16 but we did not have those numbers provided to us at the time.

17 So I knew it was significant, the cost of pumping  
18 those solids and waste back out of the creek, but I didn't  
19 know the exact--but I knew it was significant, so I put "not  
20 calculated" because we didn't have the means to calculate the  
21 exact cost of that cleanup.

22 The fifth factor is "The amount of money saved by  
23 noncompliance." And my handwritten note is "[the] cost of  
24 properly managing the water." What I meant was that, again,  
25 we don't have the ability to figure out exactly what the cost

1 would have been to properly--to properly manage that waste if  
2 it had to be hauled off or spread on fields. But that would  
3 be the cost that was avoided by discharging the water.

4           Number 6 factor is "Whether the violation was  
5 committed willfully or intentionally." There's "no  
6 indication of an accident and sufficient freeboard in  
7 lagoons." And what I meant by that was that there had not  
8 been a breach of the lagoon or some kind of accident that had  
9 caused--a pipe bursting or something that indicated that  
10 there had been an accident. And there was sufficient  
11 freeboard in the tertiary, the pumping lagoon, and the  
12 secondary lagoon, so it wasn't a matter of rainfall, often  
13 like a hurricane or a severe weather event, or some event  
14 that would have caused them to overtop the lagoon.

15           Q     So when you're speaking to freeboard here, it's  
16 just as it relates to the accident; is that correct?

17           A     Yes, that there wasn't--it wasn't an event related  
18 to an overtop. Factor number 7 is "The prior record of the  
19 violator in complying or failing to comply with programs over  
20 which the Environmental Management Commission has regulatory  
21 authority." And I wrote here that there had been at least 25  
22 CPA, which means civil penalty assessments, and several other  
23 actions and that this was a significant factor.

24                     And number 8 is "The cost to the State of the  
25 enforcement procedures," and I put "moderately significant."

1 And that's the--sometimes our sampling costs or travel or  
2 preparation costs are very high for a case, almost to the  
3 point where they're higher than the penalty. But for this  
4 case the cost to the State of the monitoring was not--was not  
5 greater than the penalty. And that's it.

6 Q And will you look at the next page, which is  
7 Respondent's Exhibit 24B.

8 (Witness complies.)

9 Q Do you recognize that?

10 A Yes, I do.

11 Q And describe for the Court what it is and if it  
12 was included in your assessment factors that you just  
13 referenced to.

14 A Well, actually, as you may remember, this is not  
15 the exact document that was prepared at the day I assessed  
16 the case. That document was not available. This was  
17 prepared October 24th, but it's similar to the document that  
18 would have been before me. It's a pull from our computer  
19 systems, BIMS, of all the violations against House of Raeford  
20 Foods (sic) in the state.

21 And we're only allowed to consider the factors  
22 five years back from the date of violation because the  
23 statute says so. So even though if it reaches back to '86,  
24 we would only reach back to probably 2000--in the 2000s. But  
25 it does show a significant factor of--a significant history

1 of continued noncompliance.

2 Q And so the violator--I see Rose Hill, but I also  
3 see Wallace. What does that mean?

4 A Wallace is a facility that they have in the--  
5 another facility in the region that's a direct discharge  
6 facility.

7 Q If you will, if you'll turn to Respondent's  
8 Exhibit 24C? Do you recognize that document?

9 (Witness complies.)

10 Q And tell the Court whether or not you reviewed  
11 that document in the assessment--in consideration of the  
12 assessment.

13 A This is a notice of violation as a follow-up to  
14 the--an inspection that was conducted in 2004, indicating  
15 that the lagoons were in poor condition, unacceptable  
16 volumes, floating vegetation. It's from---

17 Q (interposing) And if you'll just look through the  
18 documents and just let the Court know if you recognize any of  
19 these documents? And if you don't, that's fine.

20 A I--the next one is also a--the compliance  
21 inspection report from that notice of violation. And I  
22 reviewed that before I assessed the case.

23 Q If you will, turn to Respondent's Exhibit  
24 Number 25?

25 (Witness complies.)

1           A       That appears to be the cover page and the  
2 company's violation and also the findings and decisions for  
3 this assessment.

4           Q       So if you will, please, explain to the Court how  
5 you arrived at this number and what you did. This is your  
6 document; correct?

7           A       Yes, it is my document.

8           Q       And there's a document attached. There's  
9 another--I mean the document encompasses actually two. Right  
10 behind it is the F and D, so if you'll go through both of  
11 those, please?

12          A       The cover page is pretty much--the cover letter is  
13 pretty much a standard form that just transmits the penalty  
14 and gives them their appeal rights. Then the findings and  
15 decision goes through a list of facts of how the violation  
16 was discovered, what was observed.

17                   And then the conclusions of law are how did those  
18 findings affect--how are those affected--how does the law  
19 conclude that those should be dealt with. And then after  
20 reviewing that, I make a decision which is in part III of  
21 that document. And I maximized the penalty for--I used the  
22 statutory maximum for the three violations, which is \$25,000.

23          Q       And that's what you did in this case?

24          A       Yes.

25          Q       And if you turn the page to the F and Ds---

1 (Witness complies.)

2 Q And the last page, or I should say the--go to your  
3 decision, Roman numeral number III. Does that in fact  
4 encompass what you just spoke to?

5 A Yes, it's in my handwriting, the three violations.

6 The first violation is

7 "causing or permitting...to be"--"waste to be  
8 discharged...in [a] manner intermixed with the  
9 waters of the State in violation of water quality  
10 standards applicable to the assigned classifica-  
11 tion or violation of any effluent standard or  
12 limitation established for any point source unless  
13 allowed as a condition of a permit, special order,  
14 or other appropriate instrument."

15 Q And what evidence did you have that supported that  
16 assessment?

17 A I had photographic evidence. I had the word of  
18 the inspectors. I had--sampling had indicated the depressed  
19 DO, which would be indicative of it. I also--there was also  
20 a genetic report from the University of North Carolina at  
21 Wilmington.

22 Ms. Jones: Objection, Your Honor, to any  
23 reference to a report without Dr. Song's testimony. He's the  
24 only one that can speak to that report. It's not been  
25 admitted into evidence. The conclusions are Dr. Song's to

1 make.

2 Ms. LeVeaux: But he saw it and he viewed it  
3 and he considered it.

4 The Court: It's overruled.

5 A I took all that--I guess pondered on all that,  
6 different documents, and also had telephone conversations  
7 with Ms. Willis and Mr. Kegley and Mr. Shiver and assessed  
8 the penalties accordingly.

9 Q And so the first one, is that for the discharge?

10 A That would be for the discharge because they  
11 didn't have a permit to discharge waste directly into the  
12 waters of the state for this facility.

13 Q And what about the second \$25,000?

14 A That was for the depressed DO, dissolved oxygen,  
15 into the waters. And the third one was for the solids,  
16 settleable solids and sludge.

17 Q And in the earlier documents you had, there was a  
18 mileage--in fact let me take back to--I think it's in  
19 Respondent's Exhibit 24.

20 (Witness complies.)

21 Q If you'll look at Respondent's Exhibit Number 23  
22 and the second to the last page, the cost to the state of the  
23 enforcement procedures?

24 A Yes.

25 Q Were these enforcement costs a part of that?

1           A       The enforcement costs are added to the penalty.  
2 They're recovered fully. Under the state constitution, all  
3 of our fines are referred--are reverted to the school board  
4 to be distributed to the counties. But our enforcement costs  
5 we're allowed to keep to support the Environmental Management  
6 Commission's costs.

7           Q       So I'm seeing here total enforcement costs, at  
8 least that were tendered to you, of \$2,070.43. Is there a  
9 reason that wasn't included in its entirety?

10          A       I can't remember. If you'll give me a moment?  
11 Where's the---

12                       (Witness peruses documents.)

13                       I honestly can't remember why the enforcement  
14 costs were not included in their entirety.

15          Q       And then you spoke to factors earlier, and I'm  
16 back in Exhibit Number 25 and your assessment sheet. You  
17 reference to 143B-282. Are these in fact the factors again?

18          A       The factors listed on this page are the factors  
19 listed in 282.1.

20          Q       And if you will, tell the Court what you did as it  
21 related to these factors.

22          A       Well, I used that sheet--I filled out the factor  
23 sheet based on the documents and information available to me.  
24 And then I--after I look at those factors, I assess the case  
25 and consider the penalty amounts.

1           Q     You remember having been deposed in this case, do  
2 you not?

3           A     Yes, in January of this year.

4           Q     Okay. Do you remember referencing to considering  
5 the fact that you saw a pump on top of the berm?

6           A     Yes. At some point I--there's photographs of both  
7 the cleanup and the--there's photographs of the cleanup and  
8 the site. And I'd interposed--and I'd assessed several other  
9 cases since then and I'd mixed--become confused about the  
10 fact that the pumps were actually there for the cleanup  
11 post--there was an excavator on the site. I remember that,  
12 but---

13          Q     (interposing) But not a pump?

14          A     Not a pump; that was actually a pump being used  
15 for the cleanup.

16          Q     So that was a mistake?

17          A     Yes.

18                Ms. LeVeaux:           No further questions.

19                The Court:             Cross-examination, Mr. Jones.

20                Mr. Jones:            Your Honor, just for a point of  
21 order, Mr. Teachey is here now. And I don't know whether Ms.  
22 LeVeaux wanted to go ahead and conclude this witness or do  
23 you want to do a---

24                Ms. LeVeaux:           (interposing) I'll conclude  
25 this witness.

1           The Court:                   Okay.

2                           C R O S S - E X A M I N A T I O N    10:34 a.m.

3           By Mr. Jones:

4           Q    Mr. Poupart, I'm Henry Jones. Good morning. When  
5 you sat down and did the findings and decisions and all that,  
6 do you remember what date that was?

7           A    Let me get--August 10th is the date I signed it.  
8 I signed it the day I was actually filling it out.

9           Q    And where were you when you did that?

10          A    In my office in the Archdale Building downtown.

11          Q    Have you ever been to House of Raeford's facility  
12 near Rose Hill?

13          A    I don't believe so.

14          Q    And you've worked in your present capacity for how  
15 long now?

16          A    Since November of 2008.

17          Q    Okay. Since then you have never had occasion to  
18 be at their processing plant or behind the processing plant  
19 or that area of Cabin Branch where the supposed discharge  
20 occurred; correct?

21          A    That's correct.

22          Q    When you filled out this report, this decision,  
23 and you looked at the various documents that you referred to,  
24 you were relying on things that other people reported to you;  
25 correct?

1           A     And monitoring data and photographic evidence.

2           Q     Okay. And that was all done locally and sent to  
3 you?

4           A     The package is sent from the region to the central  
5 office and then one of my staff members compiles it.

6           Q     Again, you were relying not so much on personal  
7 observations of the site, but on the material in the file;  
8 correct?

9           A     That's correct.

10          Q     Now, was it your understanding, because you didn't  
11 see any of this, that there was really no objective evidence  
12 of a discharge from the company's facility? Correct?

13           Ms. LeVeaux:        Objection to the phraseology of  
14 it being objective evidence.

15           The Court:            It's overruled.

16          A     There was no--nobody admitted to the discharge.  
17 There was no actual--nobody--there was no direct witness to  
18 the discharge that was submitted to me. So I guess if there  
19 was--if that's objective evidence, there was no--I was not  
20 told specifically by a company representative or photographic  
21 or video evidence that it was a discharge directly from the  
22 facility.

23          Q     Then there was also no evidence on the company's  
24 property of a discharge to the creek either, was there?

25           Ms. LeVeaux:        Objection.

1                   The Court:                   It's overruled.

2           A     I don't know the actual property boundaries of the  
3 corporation. I know that there was--the main thing I would  
4 use is that there was photographic evidence indicating that  
5 the discharge was in front of their facility or on property  
6 directly adjacent to their facility and that upstream of that  
7 there was absolutely no indication of a discharge. There was  
8 no staining of the vegetation. The water looked to be a  
9 pristine coastal creek.

10           Q     Okay. Is that all the evidence you had of a  
11 discharge at the time you filled out your findings and  
12 decision?

13           A     No. I had the genetics report. I had the opinion  
14 of the inspectors on site. I had other photographs that  
15 indicated to me that it looked like a similar type substance  
16 that was located in the primary lagoon.

17           Q     Okay. Separate and apart--not considering the UNC  
18 report, what evidence did you have that the discharge  
19 occurred from House of Raeford's property?

20           A     The fact that there was no evidence upstream of  
21 the facility of a discharge and that there was certainly a  
22 sufficient amount of waste at the facility to cause that  
23 amount of waste to be in the creek and that it looked to be  
24 of a similar type that was in the primary lagoon and---

25           Q     (interposing) Let me ask you, who told you that?

1           A     I could tell from the photographic evidence and my  
2 own personal knowledge of what sludge looks like.

3           Q     What photographic evidence are you talking to?

4           A     With the---

5           Ms. LeVeaux:           (interposing)    You have  
6 (inaudible).

7           The Reporter:           I didn't hear you, Ms. LeVeaux.

8           Ms. LeVeaux:           I said he would have the trial  
9 notebook in front--the respondent's trial notebook, if that's  
10 what you're looking for. I don't know if you're looking for  
11 mine or for his.

12          A     The photographs that were available at the time of  
13 assessment.

14          Q     Okay. Are those photographs in your evidence  
15 book?

16          A     Yeah. What--I don't know what tab.

17          Q     Are they in the evidence book?

18          A     I think they're the same photographs that Ms.  
19 Willis referred to when she was doing her testimony, when  
20 she---

21          Q     Well, I mean can you tell---

22          A     (interposing) I don't--I don't know where---

23          The Court:           (interposing)    Do you want to  
24 take a look?

25          The Witness:           Yeah.

1                   The Court:                   Take a minute.

2                   (Witness peruses documents.)

3                   The Court:                   Do you know what exhibit  
4 numbers those are, Ms. LeVeaux?

5                   Ms. LeVeaux:                They start--and they're all  
6 throughout, but I think it starts at Respondent's  
7 Exhibit 14--oh, Respondent's Exhibit 15 and there's more  
8 stuff on 16, 17, 18.

9                   The Court:                   Look and see if any of those  
10 are what you recall being in your file at the time.

11                   (Witness peruses documents.)

12                   The Witness:                 It's mostly on 14, I guess.  
13 Could you repeat the question? I guess I'm---

14                   By Mr. Jones:

15                   Q       Yeah. You said you relied on photographs. Which  
16 photographs did you rely on?

17                   A       I guess 14Z, 14Y, Figure Y, 14 Figure X, 14  
18 Figure W, Figure V, U, Figure T. I mean I reviewed all the  
19 photographs--N, P, O, M, H. I don't remember A or G; E. You  
20 can see that, for example, H is upstream and there's no  
21 evidence. And M shows bank to bank solids, Figure M; Figure  
22 N, bank to bank solids. Figure U indicated recent  
23 construction. You can see the waste behind there.

24                   Q       Did the waste--and look at Figure U, Mr. Poupart.  
25 Did you note that that was--at the time you did the

1 assessment that that was the company's wastewater lagoon?

2 A Yes. It was--they took pictures of the primary  
3 lagoon and secondary lagoon.

4 Q Did the material there that's shown in Figure U  
5 look like the material in the creek to you at that time?

6 A It looks to be a similar color.

7 Q How about the vegetation? Did you notice any  
8 vegetation in the creek that was similar to the vegetation in  
9 the lagoon?

10 A What vegetation? I didn't see vegetation in the  
11 creek other than leaf litter.

12 Q Okay. Just asking. Keep going.

13 A I don't know where we are on the figures.

14 Q Just any other photographs you relied on?

15 A Let me check the next---

16 (Witness peruses photographs.)

17 A Well, I guess 15, LW-1, 2, 3, 4, 5, 6, 7, 8, 9,  
18 and number 10, to tell you the truth, but just shows  
19 wetness--11, 12, 13.

20 Q Do you know what 11, 12, and 13 represent?

21 A They look to be the DAF unit. It looks like the  
22 scum scrapings from the floating--from the DAF with the  
23 LW-11. And 12 and 13, the pictures are similar.

24 (Witness peruses photographs.)

25 And some of these pictures are duplicates. We've

1 already discussed 17; 19, 21, 23.

2 (Witness peruses photographs.)

3 28, 29.

4 (Witness peruses photographs.)

5 Q Is that it?

6 A I believe so.

7 Q Did you in your review notice---

8 (Mr. Jones peruses documents.)

9 Q ---number 22?

10 A LW-22?

11 Q Correct.

12 The Court: Is that behind Exhibit 15, Mr.

13 Jones?

14 Mr. Jones: It is.

15 The Court: All right.

16 A I believe I said that number. I don't know if I  
17 said all of them.

18 Q Do you know what that photograph represents?

19 A The new pipe discharging from the primary to the  
20 secondary lagoon.

21 Q Did you make note of the amount of storage  
22 available in that lagoon number 2?

23 A I just--it appears to be operating correctly,  
24 cascading down, so it's lower than the pipe.

25 Q Okay. When you were doing your assessment report,

1 did you consider at all the--or were you aware of the May or  
2 April 2009 condition of Cabin Branch and Beaverdam Branch  
3 that resulted in a fish kill? Did you think about that when  
4 you were doing your assessment report?

5 A I don't believe so.

6 Q Were you aware of it before this particular  
7 incident?

8 A I don't believe so.

9 Q Okay. When you heard testimony of that earlier in  
10 this hearing, whenever it was, did that bring back any  
11 memories of that fish kill in the spring of 2009?

12 A I don't believe I was aware of that fish kill.

13 Q Were you aware of any episodes by any upstream  
14 industries on Cabin Branch upstream from House of Raeford--  
15 were you aware of any instances of any violations that had  
16 occurred by any industries upstream?

17 A I don't believe so.

18 Q Okay. And this was in September of 2009?

19 A Right. It's hard to differentiate from who has  
20 ever---

21 Q (interposing) Specifically were you aware of any  
22 violations that might have been occurring at Duplin Winery,  
23 upstream of this plant---

24 A I don't believe so.

25 Q ---in September of 2009?

1           A     I don't believe so. It wouldn't have been  
2 likely--it wouldn't have been a common occurrence for a  
3 violation of that nature to be forwarded to my attention  
4 because we oversee the whole state. And that would be a  
5 regional level type action.

6           Q     When you did this assessment report, were you  
7 aware of any investigation of any of the upstream industries  
8 from House of Raeford?

9           A     I know that the inspectors walked upstream and  
10 didn't see any other sources.

11          Q     But your awareness of the condition of the creek  
12 upstream was limited to as far as they went when they did  
13 their investigation; correct?

14          A     That's correct.

15          Q     So if it went--any conditions that were further  
16 upstream than that you were not aware of?

17          A     That's correct.

18          Q     Look at the assessment factors, 24A, Mr. Poupart.

19                   (Witness complies.)

20          A     Okay.

21          Q     Number 1, where you talked about the degree and  
22 the extent of harm, were you aware from any evidence done by  
23 the state, your agency, that there was depressed DO  
24 conditions upstream from House of Raeford when you prepared  
25 this report?

1           A     Yes, I was.  There's--it's common for swamp waters  
2 to have depressed DO, especially in warm months, but not  
3 depressed to the point where--I don't have the--not depressed  
4 to the level that they were below, downstream.

5           Q     But you were aware that there were other depressed  
6 DO conditions in Cabin Branch in areas that House of Raeford  
7 could not have contributed to; correct?

8           A     That's correct.

9           Q     And you knew that when you did this?

10          A     Yes.  They prepared a map of the--a map of the,  
11 you know, layout of all the sampling data.

12          Q     If that's true, Mr. Poupart, how much--as you were  
13 sitting there doing this assessment, how much of the DO,  
14 depression in DO, did you attribute to House of Raeford  
15 versus any other contributor?

16          A     I don't think I can make that assertion from  
17 Raleigh.  It was a mixture of both the solids and the DO that  
18 I considered.

19          Q     But that would mean--that would be based upon your  
20 evidence that House of Raeford had created the solid  
21 condition in the creek; correct?

22          A     I'm not sure I understand the question.

23          Q     That would mean that your findings were based  
24 exclusively upon House of Raeford's creation of the condition  
25 in the creek with solids?

1           A       The House of Raeford waste created both the solids  
2 condition and the depressed DO condition.

3           Q       Okay. But again, since there were depressed  
4 conditions of DO in the creek, how much did House of Raeford  
5 contribute to that condition and how much could other  
6 contributors have contributed to that condition?

7           A       I don't think I could make--the point is the  
8 downstream--despite the fact that there were lower concen-  
9 trations upstream, the concentrations downstream were very--  
10 were extremely low, almost to the point of the bottom of the  
11 instrument's ability to record them. So that would be that  
12 the waste had created the difference between the upstream and  
13 the downstream.

14          Q       Now, if there's evidence from the state agency  
15 that there were depressed conditions of DO without even the  
16 presence of sludge at various times in the investigative  
17 history of this case, were you aware of that?

18          A       I was aware that there was depressed DOs in other  
19 areas, which is common, as I stated, in coastal waters in  
20 summer--in warm months.

21          Q       Okay. But apparently you didn't consider those  
22 conditions when you were assessing House of Raeford on this  
23 case for depressed DO conditions; correct?

24          A       The depressed DO conditions I considered were the  
25 fact that these were unnatural conditions below the point at

1 which aquatic life could be sustained in a typical--in its  
2 normal way.

3 Q Did you consider the fact that other industries or  
4 other contributors on the creek could have also created a  
5 portion of those conditions when you did this assessment  
6 report?

7 A In terms of the DO, I don't know if I considered  
8 that factor.

9 Q The number 2 category on that same page, Mr.  
10 Poupart, it says, "The duration and gravity of the  
11 violation." And you said--read your answer there.

12 A "DO very depressed"--I wrote "very" sort of  
13 sideways--"depressed for 13 days."

14 Q Okay. Do you remember what those 13 days were?

15 A I don't remember the exact days. I had sampling  
16 data in front of me at the time.

17 Q But your penalty and assessment relates to 13  
18 days?

19 A No, it does not. There was a Supreme Court--I  
20 believe it was a Supreme Court or Court of Appeals decision  
21 that says we can only consider the day of--that only one day  
22 can be considered for a water quality standard violation. I  
23 believe it was--I don't remember the court case, but I was  
24 aware of it.

25 So I can consider the duration because--I can

1 consider the duration, but I can't consider the duration in  
2 terms of I can't assess them for 13 days of depressed DO.

3 Q Okay. I'm not going to argue with you, but that  
4 would be--was that the *Murphy Family Farms* case?

5 A I think that's possible. I'm not aware.

6 Q That's what I was getting at, by the way. The  
7 paragraph 3, the effect on ground or surface water quantity  
8 or quality, you reported that the water in the creek was  
9 septic. How did you know that it was septic?

10 A The DO numbers were such that it would be septic  
11 and the photographic evidence of the dark color indicated,  
12 even for a coastal creek, that it was septic, and then the  
13 reports of odor.

14 Q Okay. What were the reports of odor?

15 A It said that somebody had noted a--I can't  
16 remember if the original complainant or the inspectors had  
17 noted an odor in the creek, which is common when a septic  
18 water is disturbed and we--you know, when you walk through  
19 it, it will bring it to the surface. But the dark color and  
20 the depressed DO would indicate septic conditions.

21 Q Do you recall that the complainant had also said  
22 something about odor?

23 A I knew that it was an anonymous complaint and that  
24 they had noted an odor and solids in the creek. That's all I  
25 knew.

1 Q Did you know who the complainant was?

2 A No. We get a lot of anonymous complaints.

3 Q Number 4, it says, "The cost of rectifying the  
4 damage" and you said, "significant, not calculated." And I  
5 think you said on direct that you didn't know the amount that  
6 the company had spent to remediate the problem; is that  
7 correct?

8 A That's correct.

9 Q Mr. Poupart, look at--I think it's Exhibit Number  
10 23--excuse me, Number 21.

11 (Witness complies.)

12 The Reporter: Respondent's Exhibit; correct?

13 Mr. Jones: Respondent's Exhibit Number 21.

14 Q Are you there, Mr. Poupart?

15 A Yes.

16 Q Have you seen that document before?

17 A Yes.

18 Q Did you have this document before you when you  
19 were doing the penalty and the assessment?

20 A Yes.

21 Q Okay. Go to the last sentence of paragraph 2.

22 A It says, "We have been billed a total of \$20,000  
23 for pumping and other mitigation services."

24 Q Okay. Were you aware of that fact when you did  
25 your assessment?

1           A       Yeah, but what I was saying was I didn't know that  
2 that was the final cost. A lot of these cleanups take weeks  
3 and months, and that was just--this letter was written only a  
4 month after the incident occurred. So we have cleanups that  
5 last years, so I didn't know if that was the final cost or  
6 just the preliminary billing that they had received.

7           Q       And so none of that cost was factored into your  
8 penalty or assessment?

9           A       That's why I put "significant, not calculated"  
10 because I didn't know all the costs that they had incurred in  
11 the cleanup.

12          Q       Okay. Paragraph 5, "The amount of money saved"--  
13 go back to paragraph--I mean Exhibit 24A, Respondent's 24A.

14                   (Witness complies.)

15          A       Okay.

16          Q       "The amount of money saved by noncompliance," you  
17 say, "cost of properly managing the water." Now, what did  
18 you mean by that?

19          A       I meant that the cost of--if they had been forced  
20 to land apply those solids or have them hauled to another  
21 operation, a commercial operation that handled those types of  
22 wastes, that would have been the cost that they would have  
23 saved versus discharging them directly into the waters.

24          Q       In this paragraph 5 did you note how much that  
25 cost would be?

1           A     No. I just---

2           Q     (interposing) Did you factor in there the cost  
3 that you were aware of in paragraph 4, the cost of  
4 remediating the damage?

5           A     No. That factor is separate from 4. 4 is the  
6 cost of after the mistake and 5 is the cost of what the  
7 mistake--or what the discharge would have saved the  
8 permittee.

9           Q     Let me ask you this, Mr. Poupart. As you were  
10 filling out your answer to paragraph 5, did you know how the  
11 company has moved the water from lagoon number 1 to the creek  
12 in order to get it from point A to point B? Were you aware  
13 of that?

14          A     I don't--because there was no direct witness, I  
15 wouldn't know how they--how the waste got in the creek. I  
16 just know that there was a waste in the creek of a similar  
17 nature and there was no waste upstream.

18          Q     Okay. This may seem like a silly question, but if  
19 the company had incurred costs to get wastewater from  
20 lagoon 1 to the creek, did you consider that cost in your  
21 computation of that?

22          A     I would not have considered the cost of making an  
23 illegal discharge versus--as a cost, I guess. I---

24          Q     The--paragraph 6, "Whether the violation was  
25 committed willfully or intentionally," you said there was no

1 indication of an accident. Now, what would you have been  
2 looking for if there had been an accident?

3 A A burst pipe, a mud slide that had caused lagoon  
4 failure. Sometimes people have a health condition while  
5 they're operating a valve, something like that that was an  
6 actual accident. Motor vehicles driving through a pump  
7 station sometimes can cause them to overflow, something where  
8 there was an actual, unpreventable accident.

9 Q There was no evidence of an overtopping of the  
10 lagoon?

11 A That's--well, that's why I said sufficient free-  
12 board.

13 Q Okay. And there was no breach of the lagoon that  
14 you were aware of?

15 A Or a burst pipe or---

16 Q And so was it the absence of an accident that gave  
17 you the inference it was intentional?

18 A No. I did not--again, I'm not a lawyer, but I've  
19 been trained that the bar for willful and intentional is  
20 quite high and that this factor is rarely used or not used  
21 very often because the bar is so high to prove an intentional  
22 nature, so if it had been direct witness of the incident or  
23 something like that, but we did not have that. All we had  
24 was evidence after the fact.

25 Q Okay. As you filled this answer out--when you

1 responded to this particular factor, what did you think--how  
2 do you think that the company actually got the wastewater to  
3 the creek?

4 A I don't--I have to assume there was a pump or  
5 maybe siphoning.

6 Q I'm sorry?

7 A It could have been a pump or they could have  
8 siphoned it because it's a high--a change in elevation. I--  
9 it's not my--again, it was after the fact. We had waste in  
10 the creek. I didn't consider how the waste got in the creek,  
11 just that it had gotten to the creek.

12 Q Okay. But you said in your opinion it was  
13 intentional?

14 A I did not. I said it was intentional, but not  
15 willful.

16 Q Based on what you just said?

17 A That's correct.

18 Q And you said there was sufficient freeboard in the  
19 lagoons. So in other words, there was no overtopping?

20 A Right.

21 Q And there was no rain event that you were aware of  
22 that would have caused it to overtop?

23 A That's correct.

24 Q And that's lagoon 1?

25 A Any of the---

1 Q (interposing) Any of the lagoons in the system?

2 A Right.

3 Q Paragraph 7, you said that there were at least  
4 25--what does CPA mean?

5 A Civil penalty assessment.

6 Q Okay. Mr. Poupart, go to 24B.

7 (Witness complies.)

8 Q Were these the episodes of violations that you  
9 considered?

10 A Well, I also am aware--from my other duties, I'm  
11 aware of other House of Raeford actions.

12 Q But I mean was this the document that was before  
13 you?

14 A As I said, this was not the actual document. The  
15 actual document has been lost. This is a re-creation from  
16 the computer system.

17 Q Okay. Well, of these cases on this sheet, 24B,  
18 which ones did you consider in setting the penalty?

19 A I don't remember the exact number, the exact cases  
20 that I considered, but it just indicated a strong history of  
21 noncompliance with---

22 Q Well, I mean did you consider one that would have  
23 closed--I notice on the right margin it says "Case Closed,"  
24 "3/17/88."

25 (Witness peruses document.)

1           A     "Case Closed." If a case is closed, it just means  
2 that it was paid.

3           Q     Okay.

4           A     Or just---

5           Q     (interposing) How about date assessed? Would  
6 that be a better indicator of when it occurred?

7           A     More than likely, yes.

8           Q     Okay. If you would, look down that piece of paper  
9 and tell me which of these you considered when you set the  
10 penalty.

11          A     I don't remember exactly which facilities. I just  
12 remember which cases. And I also may have--I was also aware  
13 of other actions by the House of Raeford Foods (sic) in the  
14 town of Raeford.

15          Q     Well, I notice that there are several here  
16 involving--it says Wallace. Is that another plant?

17          A     It's another plant owned by the same corporation.

18          Q     Okay, a totally different plant and different  
19 wastewater system; correct?

20          A     It's my understanding that we can consider a  
21 corporate umbrella, corporate---

22          Q     (interposing) But I mean it's a different plant,  
23 different wastewater system---

24          A     That's correct.

25          Q     ---in a different area; correct?

1           A     A different county I believe, yeah.

2           Q     Do you know what the facts and circumstances were  
3 in that case, the Wallace case?

4           A     I don't remember the Wallace case. I probably  
5 actually assessed one of those by the amounts.

6           Q     Were those--has that case been closed?

7           A     Which Wallace case?

8           Q     The--well, any--all of them?

9           A     I don't know without searching the computer. I  
10 assess--am responsible for a lot of cases. It's impossible  
11 to tell from this sheet. It's just a matter of the fact that  
12 it was assessed and that it's been--part of it has been  
13 collected.

14          Q     And Mr. Poupart, go back to Exhibit 23.

15                   (Witness complies.)

16          Q     Paragraph 7.

17          A     Okay.

18          Q     It says, "The prior record of the violator in  
19 failing to comply with programs." Who prepared this report,  
20 Mr. Poupart?

21          A     The regional staff.

22          Q     Okay. Were you aware of these cases when you did  
23 your assessment report?

24          A     I read this document. I used this document as--  
25 but it also didn't match up with the other facilities.

1 Q For example, it didn't list the Wallace case?

2 A Right.

3 Q On the findings and decision--I think that's  
4 Exhibit 25.

5 (Witness peruses documents.)

6 A Okay.

7 Q Have you got that, Mr. Poupart?

8 A Yes.

9 Q On the back page of that report--it's not  
10 numbered, but is that your signature on the last page there?

11 A After the number (8)?

12 Q Yes, sir.

13 A Yes.

14 Q And that says "10 August 2010"; correct?

15 A Yes.

16 Q On the page before that where you've actually  
17 rendered a decision, would you--tell me if you would--these  
18 \$25,000 penalties, those are actually the maximum penalty  
19 that you can assess for these, aren't they?

20 A That's correct.

21 Q Okay. So you could have assessed---

22 (Interrupted by telephone.)

23 Mr. Jones: Pardon me, Your Honor.

24 Q You could have assessed lower amounts; correct?

25 A Yes.

1           Q     Okay. On the first paragraph, for violation of  
2 N.C. Gen. Stat. Section 143-215.1, what exactly was that  
3 violation for?

4           A     Making the discharge, basically.  
5                   (Interrupted by telephone.)

6           Mr. Jones:                   (Addressing Ms. Jones) Please  
7 turn that off.

8           Q     I'm sorry; what was that answer?

9           A     For making a discharge, permitting a waste to be  
10 discharged into--or intermixed with waters of the state.

11          Q     Okay. It says:  
12                   "in any manner intermixed with the waters of the  
13 state in violation of water quality standards  
14 applicable to the assigned classifications or in  
15 violation of any effluent standards or limitations  
16 established for any point source unless allowed as  
17 a condition of any permit, special order, or other  
18 appropriate instrument issued or entered into by  
19 the Commission under the provisions of the  
20 article."

21          Go back, Mr. Poupart, and tell me--where it says,  
22 "discharged to or in any manner intermixed with the waters of  
23 the state in violation of water quality standards applicable  
24 to the assigned classifications," what were the water quality  
25 standards applicable to the assigned classifications that the

1 company violated?

2 A Well, it's separate from--I don't have the  
3 statutes in front of me, but there's a separate classifica-  
4 tion for the actual water quality standards violations of the  
5 numerics which are in the rule and for the overall dis-  
6 charging to the waters--or discharging waste to the waters.

7 Q Well, it says here that they caused or permitted  
8 waste to be discharged in violation of water quality  
9 standards. And I'm interested to know what water quality  
10 standards were you aware they violated.

11 A Well, settleable solids and DO, but that's not  
12 what this--this would be discharge of the waste--discharge of  
13 the waste to the waters as described in the red--it's been  
14 called the red book, the rules that describe all the  
15 standards for water quality for Class C.

16 Q Okay. Well, let me help you, Mr. Poupart. Are  
17 those listed--is one of those listed down in the next  
18 paragraph, 15A NCAC 2B .0211(3)(b), which is the dissolved  
19 oxygen water quality standard for Class C swamp waters?

20 A That was a separate classification.

21 Q That's not one of the classifications they  
22 violated in the first paragraph?

23 A I guess there's some intricacies in the law where  
24 you can refer to for making an outlet without a permit.

25 There's some intricacies that can be assessed under numerous

1 different parts of the statute. And this is the one that was  
2 picked for this particular--for number 1. For number 2, it's  
3 a very specific thing in the rules, which are derived from  
4 the statutes, for that standard for dissolved oxygen.

5 Q All right. Was dissolved oxygen one of the  
6 standards that was violated that you assessed for in the  
7 first paragraph?

8 A No. It was for the overall classification of  
9 discharging without a permit in violation of the statutes.

10 Q Well, let me back up and ask you again. It says,  
11 "in violation"--go back to the first paragraph. It says,  
12 "causing or permitting waste to be discharged to or in any  
13 manner intermixed with the waters of the state in violation  
14 of water quality standards." Where it says "water quality  
15 standards," what water quality standards did they violate?

16 A Actually it's not a water--it's the "or," "in  
17 violation of any effluent standards or [any limitations  
18 assigned]"--"or limitations established for any point  
19 source." And their permit did not allow them--their non-  
20 discharge permit did not allow them to discharge this waste,  
21 so it's the "or." It's the second part, not the first part.  
22 We just quoted the entire part of the statute, not the--not  
23 just the excerpt or the part that we used, I guess.

24 Q Okay. So in other words, if there was a  
25 discharge, but it didn't violate a water quality standard,

1 then there would still be a violation?

2 A If there's a discharge of waste into a water of  
3 the state unless you have a permit to allow such discharge,  
4 it's a violation.

5 Q Even though there was no water quality standard  
6 violated?

7 A You could--for example, you have a illegal  
8 discharge to the main stem of the Cape Fear River and have no  
9 effect on the river at all ecosystem, but it would still be a  
10 violation of the statute, or you could have a very small  
11 discharge to a small creek and have a--it would cause a--as  
12 part of your permit and legally allowed by your permit and  
13 have a standards violation. So that's--it's except as  
14 allowed by a permit, and there was no permit in place to  
15 discharge.

16 Q So in paragraph one when you did your assessment  
17 there, you were not considering any water quality standard  
18 when you assessed that?

19 A No. I was considering the discharge without a  
20 permit.

21 Q Okay. And then in paragraph two, tell me what you  
22 meant there.

23 A Violation of the dissolved oxygen water quality  
24 standard for Class C swamp waters.

25 Q Okay. Explain that to me.

1           A       The DO was severely depressed downstream by the  
2 sampling data in violation of the standard, which the swamp  
3 allows you to go below--I don't have it in front of me  
4 for--but not to the point where you can't--where you cause  
5 a---

6           Q       (interposing) And that was the water quality  
7 standard that they--one of the water quality standards  
8 applicable to this water that you found they violated?

9           A       Yes.

10          Q       All right. Paragraph 3, "For violation of  
11 15A NCAC 2B .0211(3)(c) by allowing settleable solids and  
12 sludge in excess of the water quality standard for Class C...  
13 waters of the state." Why did you assess them for that?

14          A       Well, because the solids were of such a manner  
15 to--the water quality standard--and I don't have it in front  
16 of me--allows you only to discharge solids in an amount that  
17 won't affect the environment. And the bank to bank solids,  
18 as indicated in the photographs, would definitely interfere  
19 with the water environment in violation of the standard.

20          Q       So that would also be, I assume, a violation of  
21 water quality standards that was applicable to the assigned  
22 classification for this water that you found the company  
23 violated?

24          A       Could you restate, please?

25          Q       Sure. In other words, this is another water

1 quality standard that was applicable to the assigned  
2 classification of this class of---

3 A (interposing) It's a narrative standard in the  
4 beginning of this--it's not a numeric standard. It's a  
5 narrative standard that says settleable solids--I forget the  
6 exact wording.

7 Q But I mean that was a water quality standard that  
8 the company violated; correct?

9 A Yes.

10 Q Pursuant to that regulation?

11 A Correct.

12 Q Now, you mentioned earlier that there was a UNCW  
13 report, correct---

14 A (interposing) Yes.

15 Q ---that you had before you?

16 A Yes.

17 Q Who prepared that report?

18 A Dr. Song.

19 Q I'm sorry?

20 A Dr. Song, the--I don't know his exact title.

21 Q Have you ever met Dr. Song?

22 A No, I have not.

23 Q The report that you got, had the state agency  
24 prepared that report?

25 A I believe it was just a report from Dr. Song's

1 laboratory. I don't know if it's a state agency, but---

2 Q But it was done by Dr. Song and his people at  
3 UNCW; correct?

4 A To my knowledge.

5 Q Okay. Is there some reason why it was done by  
6 UNCW and not by your agency?

7 A Our laboratory is not equipped to do that. Our  
8 laboratory in Raleigh is not equipped to do that type of  
9 analysis.

10 Q Do you recall whether it was an accepted method of  
11 analysis that was done by Mr.--by Dr. Song?

12 A It was not an--it's not in the standard methods  
13 book as an accepted method. It was--and I considered it as  
14 such.

15 Q Okay, meaning what? What do you mean by that?

16 A That it's not--it's--I can't draw an analogy, but  
17 that it was not an approved method by a certified lab, so I  
18 considered it only as supplemental information.

19 Q Okay. You didn't consider that as a reason alone  
20 for assessing the company or penalizing them?

21 A No.

22 Mr. Jones: Excuse me, Your Honor, if I  
23 could---

24 The Court: All right.

25 (Pause.)

1           Mr. Jones:           I don't think I have any more  
2 questions, Your Honor.

3           The Court:           Okay. Redirect.

4           Ms. LeVeaux:           Yes, sir.

5           **R E D I R E C T   E X A M I N A T I O N** 11:19 a.m.

6           By Ms. LeVeaux:

7           Q     Mr. Poupart, when--there was a reference in cross-  
8 examination to accepted methods. How does something gather  
9 or garner the category of an accepted method?

10          A     I really don't know if there's a vetting process.

11          Q     Well, is it a quick process? Is it a long  
12 process?

13          A     Oh, it takes years---

14          Q     (interposing) What do you know about it?

15          A     ---years and years to add a new parameter to the  
16 standard methods, from my understanding. The book only comes  
17 out every ten years.

18          Q     Ten years?

19          A     I mean I don't know exactly, but it comes out  
20 several years between versions.

21          Q     There has been reference to what you considered  
22 and things you considered. I'm going to ask you to look at  
23 Respondent's notebook. And if you will, please, go to  
24 Exhibit Number---

25                   (Pause.)

1           Q     If you will go to Exhibit Number 2? Do you  
2 recognize that document?

3           A     One moment.  
4                   (Witness peruses documents.)

5           Q     Exhibit Number 2, Respondent's Exhibit Number 2.

6           A     It appears to be the--I don't know if I recognize  
7 this document.

8           Q     Okay.

9           A     It was prepared after the---

10          Q     Okay. Okay. And what I want you to do, go to  
11 Respondent's Exhibit Number 3. Did you look at that  
12 document?

13                   (Witness complies.)

14          Q     In your consideration and in assessing your  
15 records, did you look at that document?

16          A     Yes.

17          Q     And what about Respondent's Exhibit Number 4? Did  
18 you look at that document?

19          A     Yes.

20          Q     And what about Respondent's Exhibit Number 5,  
21 which spoke to the calibrations that Ms. Willis undertook?  
22 Did you look at that document?

23          A     Yes.

24          Q     And if you will, in Respondent's Exhibit  
25 Number 5I--will you turn to that page, please?

1 (Witness complies.)

2 Q Do you have that in front of you?

3 A Yes.

4 Q And that's speaking to the chemical composition of  
5 something. What is that? Describe for the Court what it is,  
6 if you know.

7 A It's just a report of analysis and has different  
8 locations for several different parameters: biological  
9 oxygen demand, ammonia, fecal coliform, and total Kjeldahl  
10 nitrogen.

11 Q And what's being compared here?

12 A The water in two different locations in Cabin  
13 Creek, the House of Raeford primary lagoon, and the House of  
14 Raeford primary---

15 Q (interposing) So it's a comparison between what  
16 was in the creek and what was at House of Raeford; correct?

17 A That's correct.

18 Q And the variance seems to be in the concen-  
19 trations; is that a fair statement?

20 A Yes.

21 Q Anything else you want to tell us about that  
22 document?

23 A No. It would be expected, I guess, that the  
24 concentrations would be less in the creek due to dilution.

25 Q Why is that?

1           A     It would be diluted. Any waste would be diluted.

2           Q     Okay. And the rest of those Exhibit 5s are just  
3 different other locations; is that correct?

4                     (Witness peruses documents.)

5           A     It looks like further parameters.

6           Q     And you looked at those, did you not?

7           A     Yes, but most of them were below detection.

8           Q     But the stuff looks to be the same, does it not?

9           A     It appears to have several of the same parameters,  
10 so the same.

11          Q     Okay.

12          A     They're chemically the same.

13          Q     Okay. And Respondent's Exhibit Number 6 talked  
14 about the DO locations and in cross-examination you were  
15 asked about DO, as does Respondent's Exhibit Number 7;  
16 correct?

17          A     Yes.

18          Q     Now--but when you were looking at DO, you were  
19 looking for a particular day; isn't that correct?

20          A     Well, the day that the sample was first--the  
21 investigator first went out.

22          Q     Let me rephrase where I'm going to. The time in  
23 question here was the date of on or about September the 10th,  
24 2009; is that not correct?

25          A     That's correct.

1 Q So you might see variations in the DO. Do you  
2 expect to see variations in the DO from day to day?

3 A Yes, based on temperature.

4 Q Why?

5 A Temperature, precipitation, flow of the creek.

6 Q Again, looking at Respondent's Exhibit Number 8,  
7 did you consider that information?

8 (Witness peruses document.)

9 A Yes.

10 Q What about Exhibit Number 9?

11 (Witness peruses document.)

12 A Yes.

13 Q And just turn through--in fact go through the  
14 exhibits and tell me if there's an exhibit that you didn't  
15 consider. Now, I don't need you to look through Exhibit  
16 Number 13 because that is the Cabin stream walk. But if  
17 you'll skip 13 and just go through all the other tabs and  
18 tell me if there was a tab or an exhibit that you did not  
19 consider?

20 A Did not---

21 (Witness peruses documents.)

22 To what point? I mean where should I start?

23 Q I'm sorry?

24 A Where should I--I don't have the---

25 Q (interposing) Start with where we stopped,

1 Exhibit Number 8.

2 A Oh, I considered through Number 8 all the way up  
3 through---

4 Q (interposing) I took you through 8. I took you  
5 up through 8. So now I'm asking you to take me through---

6 A (interposing) I don't believe I had 17, which  
7 looks to be field notes. I don't remember any field notes.

8 Q Okay. And without going into Dr. Song's CV and  
9 this other document, but you considered the entire record; is  
10 that a fair statement?

11 A That's correct. I didn't have 18, I don't  
12 believe, the COC, and not Dr. Song, 19 and---

13 Q (interposing) Okay. That's fine. You don't have  
14 to go through any more. You reviewed all the evidence and  
15 you issued the assessment sheet that--in Exhibit---

16 (Ms. LeVeaux peruses documents.)

17 Q If you will turn to Exhibit Number 23--I'm sorry,  
18 Exhibit 25?

19 (Witness complies.)

20 A Okay.

21 Q And going to Roman number III, and you assessed  
22 \$25,000 for each violation?

23 A That's correct.

24 Q And briefly, those violations were what, if you  
25 will?

1           A     For making an unpermitted discharge, the first  
2 one, the second one for dissolved oxygen, the third one for  
3 settleable solids.

4           Q     And do you have an opinion satisfactory to  
5 yourself based upon everything that you reviewed that those  
6 assessments were appropriate--are appropriate?

7           A     Well, I was limited by the statute, but yes,  
8 they're appropriate.

9           Q     Has anything changed your mind on the assessment  
10 that you wrote for those individual violations?

11          A     No.

12          Q     Do you stand by those assessments today?

13          A     Yes, I do.

14          Q     Do you know--do you have an opinion satisfactory  
15 to yourself as to whether or not the sludge removed the use  
16 of the--the sludge in the creek removed the use of the creek?

17          A     Yes.

18          Q     And what is that opinion?

19          A     I do believe it removed the use of the creek.

20                Ms. LeVeaux:           Thank you, Your Honor. No  
21 further questions.

22                The Court:            Recross?

23                Mr. Jones:            I don't think we have any more  
24 questions.

25                The Court:            I have just a couple.

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**EXAMINATION**

11:27 a.m.

By the Court:

Q What were some of the specific reasons that you decided on \$25,000 instead of something less?

A The history and the gravity would probably be the strongest.

Q Okay. And the other is, in your experience is it a violation--you talked about taking something out and putting it into a creek. Is there some violation of putting something in a creek back into a lagoon? Are you allowed to put---

A (interposing) No. That would be--especially an unknown, that would be unheard of to accept--there's specific companies, combined waste treaters, that take unknown wastewaters. But first they'd be completely characterized before they would accept it in their facility.

So no one to my knowledge would ever take an unknown waste and put it into their system because even though it's an anaerobic system, it's actually doing some-- there are certain bugs in there that are breaking the waste down. And it would--could upset their system. And they could be--if it was laden with heavy metals or something, they could be stuck with millions of dollars of cleanup without characterizing it completely.

The Court: Thank you. Any questions based

1 on my questions by either of the parties?

2 Ms. LeVeaux: No.

3 Mr. Jones: I have one, Your Honor.

4 The Court: Yes.

5 **RECROSS - EXAMINATION** 11:28 a.m.

6 By Mr. Jones:

7 Q Mr. Poupart, other than the cases that you said  
8 that you looked at in Exhibit 24B that included Wallace and  
9 some others, what other cases did you rely on in arriving at  
10 your judgment of the prior violations of the company?

11 A Well, I oversee the pretreatment program and I'm  
12 aware of severe violations in the Raeford facility in the  
13 town of Raeford for discharge of oil, bypass, a criminal  
14 complaint. I'm a witness to the federal criminal complaint  
15 for---

16 Q (interposing) I mean that's one case; correct?

17 A And there was also a discharge of oil, heating--I  
18 can't remember if it was number 2 or number 6 heating oil.

19 Q Have you got any evidence of that today?

20 A I do not. I just--I considered it at the time as  
21 personal knowledge because I was aware of it.

22 Q Is there a disposition of that case?

23 A There's a disposition of the fine that the Town of  
24 Raeford assessed them for discharging oil.

25 Q When was that?

1           A     I don't remember the exact year, but I have  
2 personal--I mean I was aware of it.

3           Q     I mean, well, you're given a five year window.

4           A     Well, it's been less than five years since--I  
5 can't remember the exact date.

6           Q     But you don't remember the exact date?

7           A     No, but it was fairly recent, the last few years.

8           Q     All right. Well, how about any other case? Were  
9 there any other cases that have been disposed of since then?

10          A     Against the House of Raeford?

11          Q     Yeah.

12          A     I'm not aware of any at this juncture.

13                Mr. Jones:                That's all.

14                The Court:                Anything further, Ms. LeVeaux?

15                Ms. LeVeaux:            No, Your Honor.

16                The Court:                You may step down. Thanks very  
17 much. And with that, I'd like to take about a 15 minute  
18 break, please.

19                The Reporter:            Off the record.            11:30 a.m.

20                        (A brief recess was taken.)

21                The Reporter:            On the record.            11:47 a.m.

22                The Court:                This hearing will come to  
23 order. It's now 11:45 on December the 19th, 2011 and all  
24 parties present when we recessed are again present with the  
25 exception of our last witness, who completed his testimony.

1 Your next witness, Ms. LeVeaux.

2 Ms. LeVeaux: Your Honor, at this time I  
3 would call Mr. Joe Teachey.

4 The Court: I'll have you approach to this  
5 side (indicating), Mr. Teachey. And as you do, it would be  
6 our normal procedure to swear you in unless you prefer to be  
7 affirmed.

8 Mr. Teachey: I'll swear.

9 The Court: Okay. If you'll place your  
10 left hand on the bible, please, raise your right, and face  
11 the court reporter.

12 (Whereupon,

13 **JOSEPH TEACHEY**

14 was called as a witness, duly sworn, and testified as  
15 follows:)

16 The Court: Make yourself comfortable  
17 there.

18 The Witness: Okay.

19 The Court: If you would state your first  
20 and last name and spell them both?

21 The Witness: Joseph Teachey, J-o-s-e-p-h  
22 T-e-a-c-h-e-y.

23 The Court: Thank you. You may direct your  
24 attention to Ms. LeVeaux.

25 **D I R E C T E X A M I N A T I O N** 11:48 a.m.

1           By Ms. LeVeaux:

2           Q     Thank you, Mr. Teachey. Thank you for being here.  
3 Mr. Teachey, please state your name and occupation for the  
4 Court.

5           A     My name is Joseph Teachey, wastewater manager for  
6 House of Raeford, Rose Hill.

7           Q     And Mr. Teachey, were you in that position or  
8 about September the 5th, 2009?

9           A     Yes, ma'am.

10          Q     And how long have you been in that position?

11          A     20 years.

12          Q     And if you will--are you aware of the reason that  
13 you're here today?

14          A     Yes, ma'am.

15          Q     And what I'm going to ask you to do to the best  
16 that you can recall--I'm going to take you to a point in time  
17 on or about the week prior--in fact I'll take you to the  
18 point in time that you were going to replace your valve. At  
19 some point in 2009, you replaced your valve between the two--  
20 out at the House of Raeford; is that correct?

21          A     Yes, ma'am.

22          Q     And what was the reason for that?

23          A     The valve needed to be replaced. It was getting  
24 to be hard to open and close. And the transition pipe from  
25 that valve to number 2 lagoon, on the exposed end I could see

1 some corrosion.

2 Q Okay. And so tell me the process for replacing  
3 the valve. Did you have to put it through a requisition,  
4 with whom you spoke. Just explain to me what happened, what  
5 you did.

6 A I went to my supervisor and asked could I have  
7 enough funds to replace that valve and transition pipe.

8 Q Do you remember about what date that was?

9 A No, ma'am, I do not.

10 Q Do you remember if it was on or--if it was after  
11 or before the alleged discharge from the House of Raeford?

12 A I'll put it this--it took a while to get this  
13 valve fabricated, so it had to be sometime in May.

14 Q May of 2009?

15 A Yes, ma'am.

16 Q And so in May of 2009 what was going on with that  
17 valve?

18 A It was just hard to open and close. We'd have to  
19 use a leverage to operate it.

20 Q And prior to--did you have another valve there on  
21 site?

22 A No, ma'am.

23 Q There's a casing--it looked like an old valve.  
24 What is that? There's some sort of casing right on top of  
25 the valve.

1           A     Yes, ma'am.

2           Q     What is that?

3           A     On the north corner of that lagoon is an abandoned  
4 valve.  It's the old original valve.

5           Q     And when did you-all abandon that valve?

6           A     I'm not certain of the date.  It would have been  
7 sometime---

8           Q     (interposing)  Was it a year, two years, three  
9 years, four years?

10          A     I'd say it would be more like eight to ten years.

11          Q     Eight to ten years prior?

12          A     Yes, ma'am.

13          Q     And so you put through this request for valve and  
14 then what happened?  For money you said; correct?

15          A     Excuse me?

16          Q     For money; you put through a request for money?

17          A     Yes.

18          Q     So tell the Court exactly what happened and the  
19 sequence and when things started to take place.

20          A     After I got approval to replace the existing valve  
21 and pipe, I went through Ashley Guy.  He ordered it for me.

22          Q     Who did?

23          A     Ashley Guy; he's the maintenance supervisor.

24          Q     Okay.  And if you just go on and tell me, you  
25 know, just sequentially, to the extent that you can remember,

1 what happened, how long it took, what you did, what--you  
2 know, just describe for the Court---

3 A (interposing) Well, after it was ordered, it was  
4 just a waiting time until it came in. And as soon as I--  
5 probably a week to ten days prior to the delivery date, I  
6 started gradually lowering number 1 lagoon---

7 Q (interposing) And how---

8 A ---in preparation to install this new valve.

9 Q Okay. So how much did you have to lower the  
10 number 1 lagoon?

11 A I finally got it down maybe a foot.

12 Q A foot? Why a foot?

13 A That's--well, that's as much as I could GET out of  
14 it in the week to ten days.

15 Q Well, what do you mean by that?

16 A I had to put the number 1--I had to put more over  
17 into number 2 pond.

18 Q Because?

19 A Well, we had to lower the--get it low as possible.  
20 So I had to move that water over to number 1 pond--number 2  
21 pond, I'm sorry.

22 Q And as low as possible--you said a foot. What  
23 does a foot represent?

24 A A foot--The level of the pond went down a foot.

25 Q But why a foot? Why was it necessary to lower it

1 a foot?

2 A It wasn't necessary but just a foot. I was  
3 getting as much out as possible during that week to ten days.

4 Q Did someone tell you to lower it to a certain  
5 level?

6 A No, ma'am.

7 Q So then how did you know that a foot was going to  
8 facilitate the work that was going to be done?

9 A I had--I had in mind how I was going to do it. I  
10 could have done it without lowering it, but it would have  
11 been easier by lowering it.

12 Q How would you have done it without lowering it?

13 A The same way I did it with it lower.

14 Q So explain to me what you did.

15 A We built a berm out in front of the existing valve  
16 which stopped any water from coming to number 2 lagoon,  
17 opened the old existing valve, which left that excess water  
18 that was in that inside of the berm flow to number 2, and we  
19 changed it out.

20 Q And so you said "we" changed it out. Who is "we"?

21 A Davey Cavanaugh and his crew.

22 Q So--and you said it occurred before. This  
23 occurred sometime after May; correct?

24 A Yes.

25 Q But do you know about when this occurred?

1           A     It was the first week in September.

2           Q     And so before Davey Cavanaugh came out, you had  
3 lowered it a foot; is that correct?

4           A     Yes, ma'am.

5           Q     And then what was going on with the business?  
6 Were they still--did you shut down the business at all?

7           A     No, ma'am.

8           Q     So the House of Raeford was still operating;  
9 correct?

10          A     Yes.

11          Q     So describe for the Court, if you will, what  
12 happens with the House of Raeford? How do you get what you  
13 get into your lagoons because you're responsible for all that  
14 area; correct?

15          A     Yes, ma'am.

16          Q     So describe that for the Court, please.

17          A     The water is--the wastewater from the processing  
18 system goes through an offal, which removes the solids, and  
19 then it goes to my waste treatment plant, which is called a  
20 DAF. Solids from it floats to the top. It's skimmed off,  
21 what we call sludge. And the water part is transferred or is  
22 gravity flowed to number 1 pond. The sludge is shipped off  
23 to Carolina By-Products.

24          Q     And about how many gallons goes into--is processed  
25 a day?

1           A     Anywhere from 650,000 gallons to 700,000.

2           Q     And what's the capacity of lagoon number 1?

3                     (Pause.)

4           A     Just a moment.

5                     (Pause.)

6                     4.8 million.

7           Q     And so do you know how deep lagoon number 1 is?

8           A     Yes, ma'am.

9           Q     How deep is it?

10          A     4 feet.

11          Q     Have you ever had the occasion to clean out lagoon  
12 number 1?

13          A     We removed the grass matter in 2010.

14          Q     You removed the matting on top?

15          A     Grass--the vegetation.

16          Q     But DWQ told you to remove it, did they not?

17          A     Yes.

18          Q     Prior to 2010 have you ever had the occasion to  
19 clean out lagoon number 1?

20          A     No, ma'am.

21          Q     So how many days did it take Mr. Cavanaugh to--for  
22 you and Mr. Cavanaugh to work out that exchange valve?

23          A     We did the exchange valve in a day.

24          Q     How long was the entire process from the moment  
25 Mr. Cavanaugh came out to the moment Mr. Cavanaugh left?

1           A     Three days.

2           Q     Three days?  What else took so long?

3           A     We built a salt treated barrier that held the  
4 valve in place and we made it look nice.

5           Q     Tell me--you're the operator in charge; is that  
6 correct?

7           A     Yes, ma'am.

8           Q     Tell me the duties and responsibilities of the  
9 operator in charge.

10          A     I maintain the lagoon--maintain the lagoons and we  
11 spray irrigate our wastewater.

12          Q     So briefly if you could just sequentially go  
13 through your day-to-day operations, what would that entail?

14          A     I go to--my first stop is the DAF, the waste  
15 treatment.  And I go down to--around number 1 pond and I go  
16 down and check my pump pressure if it's running and make sure  
17 everything's all right there.  Then I go over to the farm,  
18 which is the irrigation site, and if needed we irrigate the  
19 water.

20          Q     How do you determine if it's needed?

21          A     By the level of the pond.

22          Q     And how do you determine the level of the pond?  
23 You're talking about lagoon 1 and lagoon 2?

24          A     I'm talking about lagoon 3.

25          Q     Okay.  Okay.  Go on.  I stopped you.  Keep going

1 with your day to day.

2 A During the spring and summer months, we grow hay  
3 and we cut and bale hay, maintenance. That's about it.

4 Q Tell me what your duties and responsibilities on a  
5 day-to-day basis relate to--I mean tell me about your  
6 day-to-day responsibilities as they relate to lagoons number  
7 1, 2, and the DAF.

8 A Mainly, the DAF is--we check all our pumps, check  
9 our--if we need to do error adjustments on our sludge, make  
10 sure we're making sludge. We load tankers with the sludge  
11 that's going to Carolina By-Products.

12 Q Tell me, what's sludge?

13 A That is chicken fat mainly.

14 Q I'm sorry?

15 A Chicken fat mainly, greasy water.

16 Q Well, why do you call it---

17 A (interposing) Processed---

18 Q (interposing) I'm sorry?

19 A The greases and fat will float to the top, which  
20 is skimmed off, and we send it to Carolina By-Products.

21 Q Okay. So I know that's grease and I know it's  
22 fat, so what makes it sludge?

23 A Well, we add--return processed water and--with  
24 air. That causes the fat and the solids to float to the top.

25 Q Okay. So what do you describe the stuff that's

1 floating on top of lagoon number 1, or that was floating on  
2 top of lagoon number 1 on or about September the 10th, 2009?

3 A It was--it's a mixture of sludge and--we're  
4 adjacent to Parker Bark. When the wind blows, we get some of  
5 his dust and wood chips.

6 Q So you're saying that their wood chips are  
7 floating on top of your lagoon number 1?

8 A At some times, yes.

9 Q But what I'd like for you to do is describe for  
10 the Court what's on top of your lagoon all the time up until  
11 about September the 10th, 2009.

12 A We had a vegetation growth on top of the wood  
13 chips and some sludge.

14 Q So the fact that you have sludge meant that sludge  
15 or particles were getting into--were not being caught by the  
16 DAF, correct, and were going into lagoon number 1?

17 A Yes.

18 Q And what prevents that sludge from going over into  
19 lagoon number 2?

20 A The gravity pipe from number 1 to number 2 is  
21 underneath the vegetable matter that's on top--vegetation  
22 that's on top.

23 Q Have you ever had the occasion for the valve to  
24 become clogged up?

25 A No, ma'am.

1           Q     You talked about the duties and responsibilities  
2 of the operator in charge. Don't the duties and responsi-  
3 bilities also include the duty to inspect?

4           A     I do.

5           Q     And so when I asked you about your day-to-day  
6 responsibilities, you didn't reference to that. Could you  
7 tell me a little bit more about that, please?

8           A     I did tell you. I went---

9           Q     (interposing) Okay. I'm sorry. Then I didn't  
10 hear. Could you describe for me exactly what you do?

11          A     First of a morning, I go to my treatment plant,  
12 which we call the DAF. then I go from--and if everything is  
13 fine there, I go to number 1 and number 2 lagoon and inspect  
14 those and make sure things is right there. Then I go over to  
15 the farm and I---

16          Q     (interposing) Okay. I'm sorry. You did say  
17 that. As it relates to inspecting lagoon number 1 and  
18 number 2, I want you to be a little more specific and  
19 describe for me not only what you do when you inspect, what  
20 you're in when you inspect, but what you look for while  
21 you're inspecting.

22          A     I look for any breaches of the lagoon and make  
23 sure my pump is running, if needed.

24          Q     Well, lagoon number 1 is an inground lagoon;  
25 correct?

1           A     Yes.

2           Q     So you wouldn't expect a breach there, would you?

3           A     You need to--well, you just need to inspect---

4           Q     (interposing) Okay. What---

5           A     ---the walls of the lagoon. Yes, you do.

6           Q     I'm sorry?

7           A     You do need to inspect the walls of the lagoon.

8           Q     Of lagoon number 2, but---

9           A     (interposing) Of number 1 also.

10          Q     ---I'm talking about lagoon number 1.

11          A     Both of them are inground.

12          Q     Well, lagoon number 2 has a berm, does it not, and  
13 it's built higher up; is that not correct?

14          A     No.

15          Q     Okay. Tell me about lagoon number 2.

16          A     It's an inground lagoon.

17          Q     Describe for me what's around it, please, just so  
18 the Court can kind of understand what---

19          A     (interposing) I don't know exactly what you're  
20 asking me to describe. It's a pond and it's inground.  
21 That's about all I can tell you.

22          Q     Is it fair to say the back side of lagoon number 2  
23 is adjacent to Cabin Branch?

24          A     Yes.

25          Q     Is it fair to say that there is actually a berm

1 there that animals could burrow in?

2 A It's possible, yes.

3 Q So wouldn't your duty to inspect include looking  
4 for that, looking for weaknesses in that particular area?

5 A I do on the inside. Yes, I do.

6 Q On the inside. What do you mean by that?

7 A Inside of the pond, the pond.

8 Q I'm sorry?

9 A Inside of the wall of the pond.

10 Q Okay. Well, what about the outsides of the walls?

11 A If there was a--if there was a breach there, I  
12 could tell from the inside.

13 Q Okay. And when you inspect, tell me how you  
14 inspect.

15 A I use my vehicle to ride around the pond.

16 Q Well, how can you observe the integrity of the  
17 back side from your vehicle?

18 A I--up to that point, I did not look over toward  
19 the creek. I know how much water is pulled--if I'm running  
20 my pump, I know how much has come out. And if it was more  
21 than that, then I would look.

22 Q But it's fair to say that your pump has had an  
23 occasion to break, to malfunction; is that not correct?

24 A I have a backup pump.

25 Q So it's only at the point that it breaks down that

1 you know it's malfunctioning; correct?

2 A Yes.

3 Q So you don't inspect it for its workability, if  
4 you will, before it breaks down?

5 A Every day.

6 Ms. LeVeaux: May I approach the witness,  
7 Your Honor?

8 The Court: Yes, you may.

9 Ms. LeVeaux: Madam Court Reporter, I'm going  
10 to need a number for this respondent's exhibit.

11 The Reporter: By my records it's 32. Is that  
12 right? Can we look at a notebook?

13 Ms. LeVeaux: Yeah. That's what I was  
14 looking at right now. I do have 31, but I don't have 32.

15 The Reporter: I have 31A.

16 Ms. LeVeaux: Okay.

17 (Respondent Exhibit 32 was  
18 marked for identification.)

19 By Ms. LeVeaux:

20 Q Mr. Teachey, do you recognize the document that's  
21 in front of you?

22 A Yes, ma'am.

23 Q Tell the Court what it is.

24 A It's a log that I keep.

25 Q And if you will, please, I want you to start

1 with--if you will, I want you to start with September the 1st  
2 and just go through your log, please.

3 A Okay. At that point I was--69 degrees, partly  
4 cloudy, and I had 2/10ths of rain. And that "5/9" represents  
5 number 3 lagoon.

6 Q And that's your storage lagoon; correct?

7 A Yes, ma'am.

8 Q And it doesn't--there's no indication of what you  
9 did at the facility for that date, is there?

10 A No, ma'am.

11 Q And if you'd just go on?

12 A Excuse me?

13 Q If you'll go on, please, and just go through the  
14 dates?

15 A September the 2nd---

16 Q (interposing) Now, this is the original log;  
17 correct?

18 A Yes, ma'am. I said--it was 68 degrees, partly  
19 cloudy. And then I was off the 3rd and the 4th.

20 Q Now, do you make these entries first thing in the  
21 morning or do you make them at the close of the day or what?

22 A Normally speaking, I make them first thing in the  
23 morning.

24 Q What is--for Friday the 4th, what does that say?

25 A I was off that day and I called in. And when I

1 come back, I wrote that in as "lowering number 1 lagoon for  
2 new transfer pipe."

3 Q Okay. And then for the--and then if you'll go  
4 through the next day---

5 A (interposing) The 5th---

6 Q ---the 5th and 6th?

7 A ---the Saturday, was--lagoon 3 was 5'4" and it was  
8 65 degrees and sunny. Go on?

9 Q Yes, sir.

10 A The 7th I was off.

11 Q What about the 8th?

12 A The 8th, lagoon 3 was on 5 feet, 70 degrees,  
13 partly cloudy. I inspected the site. Plant was okay,  
14 "working"---

15 Q (interposing) Now, what's the plant? When you  
16 say "Plant OK," what do you---

17 A (interposing) That's number 1 and number 2 lagoon  
18 and the DAF.

19 Q That's what the plant means?

20 A Yes, ma'am. And we're working on the transfer  
21 pipe.

22 Q And if you go to the 9th?

23 A The 9th, 68 degrees and sunny. Number 3 lagoon  
24 was on 4'11", "inspected site." It looks like we teddered  
25 some hay in L10, L9, and 5A. And over at the plant, that's

1 where I checked number 1 and number 2, still working on the  
2 transfer pipe.

3 Q Now, what does this say--you say "plant." And  
4 here you've added--you said the plant means lagoon number 1  
5 and number 2, but here you've written "Plant" and lagoon  
6 number 1 and lagoon 2. So how would you differentiate that  
7 plant in the earlier date versus plant at lagoon 1 and lagoon  
8 2 here?

9 A I normally put number 1 and number 2. Why I  
10 didn't up there I do not know.

11 Q And what does this say?

12 A Number 1 lagoon is down. Number 2 lagoon is  
13 dropping. "Good pressure on"--it looks like "number 2 pump,  
14 work[ing] on transfer pipe."

15 Q Now, what would have caused lagoon number 1 to be  
16 down?

17 A That's where we--I had been lowering it prior to  
18 that--our starting the work.

19 Q Okay. And then go on to the 10th.

20 A Number 3 was 4'10", 64 degrees, cloudy, and  
21 "inspected site"; over at the plant number 1 and number 2  
22 okay, "working on transfer pipe."

23 Q Okay. So now for the 10th you're saying "OK  
24 down." Again, what does that mean?

25 A It means it's okay. It means that---

1 (Witness peruses document.)

2 That means it's not high on the---

3 Q It continued to be lower?

4 A It's not--it's down, but it's not--it's coming  
5 back up at that point, the best I can remember.

6 Q But it doesn't say it's coming back up. It says  
7 "down"; correct?

8 A Yes, ma'am.

9 Q Do you remember doing anything---

10 A No, ma'am.

11 Q Okay. And then on Friday the 11th?

12 A Number 3 was 4'8", 63 degrees and cloudy.

13 Number 1 lagoon okay and still down. Number 2 is okay.

14 "Completed work on transfer pipe."

15 Q So actually, you started lowering that lagoon from  
16 the 4th through the 11th; is that correct?

17 A Yes.

18 Q And did the---

19 The Court: For clarity of the record, let  
20 me--when did you build the berm around it in anticipation of  
21 a pipe coming in?

22 The Witness: Back on--we started putting it  
23 in on the 8th.

24 The Court: So when was it finished?

25 The Witness: On the 11th.

1                   The Court:                   The berm itself?

2                   The Witness:                   No, ma'am. No, sir. We did

3 all of it on the 8th, the berm and---

4                   The Court:                   (interposing) Okay. So you

5 lowered it before the 8th; right?

6                   The Witness:                   Yes, ma'am.

7                   The Court:                   You said a week---

8                   The Witness:                   (interposing) Or sir; I'm

9 sorry.

10                  The Court:                   ---a week to ten days before?

11                  The Witness:                   Yes, sir.

12                  The Court:                   And so you had it lowered, and

13 by the 8th you--how long did it take you to build the berm

14 you said, about---

15                  The Witness:                   (interposing) We did it all in

16 one day.

17                  The Court:                   Okay. So from like the 1st to

18 the 8th or so, you lowered it and then you built the berm on

19 the 8th?

20                  The Witness:                   Yes, sir.

21                  The Court:                   Okay, okay. Thanks. I'm sorry

22 to interrupt. I was trying to see where that came in.

23                  By Ms. LeVeaux:

24                  Q                   Looking at the 12th, what does this say or what

25 does it reference to? What does it indicate that you did?

1           A       That was a Saturday and lagoon 3 was 4'6", 64  
2 degrees and sunny, "inspected site," and over at the plant  
3 number 1 and number 2 was okay, lagoon--number 1 and number 2  
4 lagoons okay.

5           Q       And what about the 13th?

6           A       That was a Sunday. Number 3 lagoon was on 4'3".  
7 I got there at 8 o'clock, 65 degrees and sunny, "inspected  
8 site," had just a trace of rain and the plant was okay.

9           Q       And if you'll go forward to the 14th?

10          A       14th, number 3 was on 4 feet, 66 degrees and  
11 sunny. I inspected the site and that. Number 1 and number 2  
12 lagoon was okay. And that's the date we started cleaning the  
13 creek.

14          Q       Now, tell me, what does cleaning the creek mean?

15          A       Linda Willis had suggested to my benefit to get it  
16 cleaned up.

17          Q       To get what cleaned up?

18          A       Ever what was in the creek.

19          Q       What was in the creek?

20          A       I'm not sure.

21                   The Court:                   Who suggested it was to your  
22 benefit?

23                   The Witness:                   Linda Willis.

24                   The Court:                   Okay.

25                   By Ms. LeVeaux:

1           Q     You're not sure?

2           A     I don't know what it was. It didn't look like  
3 what was in number 1.

4           Q     I'm sorry?

5           A     It did not look like anything that we had or  
6 number 1 lagoon.

7           Q     What did it look like?

8           A     It was a gray substance.

9           Q     So what would you call it?

10          A     I didn't call it anything. I wouldn't call it  
11 anything. I didn't know what it was.

12          Q     In over 20 years of working as an operator in  
13 charge, if you saw this, whatever you saw, how would you  
14 describe it? What would you say to your manager if he said,  
15 "Well, what's in the creek?" What would you have said to  
16 him?

17          A     What I told my manager was that something that was  
18 in the creek that had been a complaint, that Linda Willis was  
19 out.

20          Q     I'm sorry?

21          A     Someone had complained to the state that they  
22 smelled something, and that's when Linda Willis was out and  
23 we went and looked at it. I didn't give it a name. I didn't  
24 know what it was.

25          Q     Did anybody else around you give it a name?

1           A     Not to my knowledge.

2           Q     And did it have a smell?

3           A     Not real bad, no; it had a slight odor.

4           Q     Like an earthy smell?

5           A     Earthy or mud.

6           Q     And how much was in the creek? You said you were  
7 cleaning the creek. How much was in the creek that you saw,  
8 whatever this was?

9           A     It was a--just a section of the creek there is the  
10 only part that I saw, was just the small section there.

11          Q     So if you had to put an amount on there, what  
12 would be your guess?

13          A     I wouldn't know how to put an amount on it.

14                   (Pause.)

15          Ms. LeVeaux:           Just a moment, Your Honor.

16                   (Pause.)

17          Ms. LeVeaux:           Your Honor, if I may approach  
18 the witness, please?

19          The Court:            Yes, you may.

20          Ms. LeVeaux:           Madam Court Reporter, if you  
21 could mark this Respondent's Exhibit 33?

22                                   (Respondent Exhibit 33 was  
23                                   marked for identification.)

24          By Ms. LeVeaux:

25          Q     Mr. Teachey, if you'll turn to page 82?

1 (Witness complies.)

2 Q And if you will, please, read into the record, Mr.  
3 Teachey--we talked about what you saw and versus the amount  
4 that you saw. And you just indicated to the Court you don't  
5 have an idea of what you saw. Could you start with  
6 line number 2 on page 82?

7 (Witness peruses document.)

8 Q And it's four pages on a sheet and page 82 is the  
9 bottom left-hand corner.

10 A Okay. You want to me answer--you want me to  
11 read---

12 Q (interposing) If you'd just read from line 1 all  
13 the way down, please?

14 A Okay.

15 "anything in the water [that] would you say?" And  
16 "I'd say yes." And question, "And what would you  
17 say you saw?" "I'd tell him what I thought it  
18 looked like. That's...leaves and other stuff,  
19 after was I confronted because I [didn't]  
20 look"--"I don't look at the creek." "How much  
21 of...duckweed and leaves did you see? And I'll  
22 pick up your words. You said duckweed and weeds."  
23 Answer, "No, leaves, duckweed, and a floating  
24 material."

25 On Number 12:

1            "Tell me about the floating material. What did it  
2            look like?" Answer, "It was gray in color and it  
3            wasn't moving. That's about it. Very little  
4            odor."

5            Number 16:

6            "Do you have any idea about how much you saw  
7            behind lagoon number two?" "No, ma'am." "Was it  
8            a gallon?" Answer, "More." "Ten gallons?" "More  
9            than that." "A hundred gallons?" "Maybe." "So  
10           about 100 gallons?"

11           Q        So is that your final conclusion, about 100  
12           gallons?

13           A        Best I can remember, yes.

14           Q        And so I'm going to back you up a little bit, Mr.  
15           Teachey. You said that you started cleaning the creek, but  
16           when did you first get the call from anyone as it relates to  
17           what was in the creek?

18           A        On--I think it was on--the best of my knowledge, I  
19           think it was the 10th.

20           Q        And describe for the Court what happened on the  
21           10th, on or about the 10th.

22           A        I got a call from Linda Willis that she had a  
23           complaint call, and I escorted her to where she thought it  
24           may be coming from.

25           Q        And what happened?

1           A     And we looked at the creek and saw this material  
2 on the creek.

3           Q     On the 14th?

4           A     On the 10th.

5           Q     Okay. So you went on the 10th, but on the 10th in  
6 your notes, it wasn't---

7           A     (interposing) I did not note it.

8           Q     ---a note--a point of interest?

9           A     I didn't note it.

10          Q     Didn't note it. And you didn't note it on the  
11 11th either, did you?

12          A     No, ma'am.

13          Q     And you didn't note it on the 12th?

14          A     No, ma'am.

15          Q     Or the 13th?

16          A     No, ma'am.

17          Q     In fact it wasn't till the 14th that you put your  
18 first note, "clean creek"?

19          A     Yes.

20          Q     Now, to clean the creek, did you need--did you get  
21 any authorization to clean the creek?

22          A     From--I told my supervisor what I anticipated  
23 doing.

24          Q     So tell me what you told your supervisor, and who  
25 is your supervisor?

1           A     Chris Murray.

2           Q     I'm sorry?

3           A     Chris Murray.

4           Q     And what did you tell him?

5           A     That Linda Willis had been out that day. She had  
6 had a complaint and I had escorted her there. And there was  
7 something floating on the creek, and she suggested I get it  
8 cleaned up for my benefit. And that's when I started trying  
9 to arrange--figure out some way of getting this stuff off the  
10 creek.

11          Q     And then what did you decide to do?

12          A     Use a pumping truck and put it back--they  
13 suggested putting it back in number 1.

14          Q     But you didn't know what it was?

15          A     Well, they told me that's where I needed to put  
16 it.

17          Q     I see. And then what did you do?

18          A     On the 14th is when we had Register's septic tank  
19 truck come out and start removing the matter that was on the  
20 creek, which takes more than the matter to get it to suction  
21 into the truck. The first day we put it in number 1. After  
22 that, I don't remember who told us, but they said, "Just put  
23 it in number 2."

24          Q     Was it DWQ that told you to do--put it in  
25 number 2?

1           A       I'm not positive.

2           Q       I'm sorry?

3           A       I'm not sure.

4           Q       So just--if you will, I want you to tell me what  
5 happened. You got the call from Ms. Willis and then--so if  
6 you could just go through that on your own and just tell me  
7 exactly what happened, exactly what you did when you called  
8 up Register?

9                   Ms. Jones:                Your Honor, if I can just  
10 object, if Ms. LeVeaux has a question instead of asking for  
11 this long narrative about "if you can tell me this, this, and  
12 this"--it's her job to ask the questions. It's not Mr.  
13 Teachey's job to come up with this long narrative.

14                  The Court:                It's overruled. Just kind of--  
15 the best you can remember kind of the flow of events, as you  
16 remember them.

17                  The Witness:             Could I get a drink of water,  
18 please?

19                  Ms. LeVeaux:            At any time you need a drink of  
20 water---

21                               (Pause.)

22                  Ms. LeVeaux:            Your Honor, if you just let Mr.  
23 Teachey know if he needs a break, it's---

24                  The Court:                (interposing) Uh-huh.  
25 Absolutely too. That applies if you need a break for any

1 reason, let me know.

2           The Witness:           Okay. Thank you.

3           The Court:            Sure.

4           A        The best of my recollection on the 10th when Mrs.  
5 Willis came out and we--and I escorted her down to the creek,  
6 after that point I went to my supervisor and told him the  
7 situation and that I was advised to start cleaning it up.  
8 And I was told to go ahead and do what I needed to do.

9           So that's when I was trying to prepare--trying to  
10 find someone that had the equipment to--the only way I knew  
11 how to get it up was to vacuum it up into a truck.

12          Q        But if it was just a couple of hundred gallons or  
13 100 gallons, why would you even need a truck?

14          A        That's the only way I knew to get it out.

15          Q        So then what happened?

16          A        I called Register's and he thought he could do it.  
17 And he come out with his truck, his vacuum truck, and they  
18 physically got into the creek and pushed this substance to  
19 his suction line, which takes--you have to have water. He  
20 was sucking more water than he was this matter that was on  
21 the creek. He pumped it into the truck, carried it down to  
22 number 1 pond that first day, and discharged it there.

23          Q        So what was the capacity of the truck?

24          A        I'm not--I'm not certain.

25          Q        Do you have a guess as to--was it 10--100 gallons?

1           A       I'd be scared to guess how many gallons it holds.

2           Q       How many trips did he make?

3           A       I don't remember.

4           Q       When did you decide--you said that--you said that  
5 Ms. Willis told you to do that, put it in lagoon number 1?

6           A       She said it would be in my best interest to get it  
7 cleaned up.

8           Q       Okay. And did you see the hose that he used?

9           A       Did I see the hose that he used?

10          Q       Uh-huh.

11          A       Yes, ma'am.

12          Q       Do you remember what the dimensions of it were?

13          A       4 inch.

14          Q       Do you remember the suction--do you remember how  
15 fast it was--do you know anything about the speed with which  
16 it was taking up the substance that you saw in the creek?

17          A       I don't know how to answer that other than it is--  
18 it's a slow process.

19          Q       I'm sorry?

20          A       A slow process.

21          Q       So how long did it take?

22                   (Pause.)

23          A       Three days.

24          Q       It took three days?

25          A       I'm sorry; four days. Yes, ma'am.

1           Q     I'm saying--I'm talking about day one Register is  
2 out there. You said it was a slow process. And I'm asking  
3 you how long did it take for him to suck it out?

4           A     Four days. Are you talking about in hours or---

5           Q     (interposing) Yeah. I'm talking about in hours.

6           A     I know it was in a four day period. I don't know  
7 how many hours.

8           Q     Okay. The first day--and let's go to what you had  
9 on the 14th, "clean creek." What time did he come out on  
10 that day?

11          A     I don't remember. It was in the morning.

12          Q     Do you what time he finished that day?

13          A     I do not.

14          Q     And you don't know the capacity of the truck?

15          A     No, ma'am.

16          Q     But you do remember there was a 4 inch---

17          A     Yes, ma'am.

18          Q     If you will, if you will turn to Respondent's  
19 Exhibit Number 33 and if you'll look at page 127--I'm sorry,  
20 126?

21                     (Witness complies.)

22          Q     You indicated that someone from DWQ told you to  
23 clean up, but you didn't indicate it was Ms. Willis at that  
24 juncture. Do you recall saying that or maybe I'm just  
25 misreading it?

1 (Witness peruses document.)

2 A I don't recall. All I recall is that Ms. Willis  
3 was the only one from DWQ at that first day.

4 Q And you also say on page 127 that someone from DWQ  
5 told you to put it in lagoon number 2; is that correct?

6 A Yes, ma'am.

7 Q If you will--Mr. Teachey, going back to  
8 Respondent's Exhibit Number 32 and going to Tuesday the 15th,  
9 describe for the Court your entry there, please.

10 A Okay. 15th, number 3 was on--was like 3'10", 69  
11 degrees and sunny. I inspected the site and I wrote the  
12 plant number 1 and number 2 lagoon okay, opened number 1  
13 lagoon three turns and still cleaning the creek.

14 Q Now, what significance, if any, does three turns  
15 have?

16 A That's the amount of flow I can get from number 1  
17 to number 2.

18 Q And you were still monitoring the cleanup;  
19 correct?

20 A Yes, ma'am.

21 Q Do you remember on or about the 15th meeting with  
22 Kenneth Rhame from the EPA?

23 A I remember meeting with the EPA. I don't remember  
24 the names.

25 Q Do you remember you and Chris Murray talking with

1 Linda Willis and some other folks about what was going on on  
2 or about the 15th?

3 A Yes, ma'am.

4 Q And tell me about the 16th.

5 A Number 3 was on 3'8", 75 degrees and sunny. I  
6 inspected the site, number 1 and number 2 lagoon okay. "Good  
7 pressure on number 2 pump." I opened up number 1 lagoon two  
8 more turns, cleaning the creek.

9 Q Do you remember what you were doing--you said  
10 cleaning the creek, so what are you doing? What are you  
11 doing? You're saying--apparently this is something you're  
12 doing; correct?

13 A Not me personally; that's why Register was out  
14 there removing that substance that was on the creek.

15 Q So it was an observation that you made?

16 A Yes.

17 Q Would it surprise you to know that you were  
18 reaerating or that House of Raeford did some reaeration on or  
19 about the 16th?

20 A Yes.

21 Q Yes, what?

22 A Yes, I knew about it---

23 Q (interposing) You knew?

24 A ---because I did it.

25 Q Were you doing---

1           A     (interposing) I did it.

2           Q     You were doing the reaeration?

3           A     Yes.

4           Q     Tell me about that.

5           A     One of the--and he wasn't from EPA. I don't  
6 remember who he was. It seemed like he was from DWQ--told me  
7 to--over there at Sheffield Creek to install a submersible  
8 pump to pull the water out of the creek and just let it flow  
9 in there and fall back into the creek. And I installed two  
10 of them with a generator.

11          Q     So whose pumps were those?

12          A     Came from our plant.

13          Q     So you have pumps?

14          A     Sure.

15          Q     You have hoses?

16          A     I'm sure there's some hoses there, yes.

17          Q     So this gray matter that you saw had made its way  
18 all the way down to Sheffield. Is that what you're saying?

19          A     No, I didn't say that.

20          Q     So when you say you were aerating, what were you  
21 aerating?

22          A     The dissolved oxygen was low and he thought that  
23 would bring the dissolved oxygen up.

24          Q     So you didn't see anything at Sheffield when you  
25 were doing this work?

1           A     Nothing but fish jumping.

2           Q     I'm sorry?

3           A     Fish were jumping.

4           Q     What does that mean?

5           A     That means they were alive.

6           Q     And you said that you-all were still cleaning the  
7 creek?

8           A     Yes.

9           Q     Had you done any sampling or asked anyone to do  
10 any sampling on or about the 16th?

11          A     I did some, but I don't remember the date.

12          Q     Tell me, if you will--you said you started doing  
13 this cleaning--you started cleaning the creek on the 14th and  
14 you said it was a gray matter. On the 16th had the color of  
15 it changed at all?

16          A     Not that I remember.

17          Q     Do you recall Ms. Willis or anyone from DWQ  
18 telling you that it was going to go septic?

19          A     No, I do not.

20          Q     And on the 17th, please, you have an entry there.  
21 Could you describe it or explain it to the Court, please?

22          A     69 degrees, cloudy, "inspected site," had a tenth  
23 inch of rain; over at the plant, number 1 and number 2  
24 lagoons okay, "Good pressure on number 2 pump, clean matter  
25 from creek behind number 2 lagoon, installed pump and

1 generator at creek bridge for aeration."

2 Q Okay. So this is a--so this is a separate attempt  
3 to aerate again in another location?

4 A No, ma'am.

5 Q I'm sorry?

6 A This is Sheffield Creek.

7 Q Okay, but is this bridge location here different  
8 from the earlier one or is this the same?

9 A Same.

10 Q But you said "at creek bridge"?

11 A Yes, ma'am.

12 Q Was that the only location you did aeration?

13 A Yes, ma'am.

14 Q Do you recall bringing in a second pump?

15 A For aeration? I put two in there.

16 Q At this juncture, that is on or about the 17th,  
17 had you contacted Mr. Howard?

18 A Had I contacted who?

19 Q Had you contacted Mr. Howard?

20 A No.

21 Q At any juncture did you contact Mr. Howard?

22 A Me personally, no.

23 Q You've never talked with Mr. Howard?

24 A No, ma'am.

25 Q Do you recall taking a walk with Mr. Howard and

1 Ms. Willis?

2 A Ms. Willis, yes, but I can't--I don't recollect  
3 Howard. His first name is?

4 Q Clay Howard.

5 A Oh, Clay Howard. Oh, yes. Yes, I do.

6 Q So at what point did you contact Clay Howard?

7 A I'm not sure. I went to my immediate supervisor.

8 Q Do you have a guess when you--oh, you never did  
9 speak to Mr. Clay Howard?

10 A Oh, yes. I speak to him every day, but about this  
11 incident I did not.

12 Q You did not talk with him, okay. If you will,  
13 look at Respondent's Exhibit Number 33 again--I'm going to  
14 have you looking at that a couple of times--at page 122.

15 (Witness complies.)

16 A Okay.

17 Q And I'm sorry; at page 121.

18 (Witness complies.)

19 Q And if you'll begin at line--if you will read,  
20 please, at--if you'll read, please, starting at line 24 on  
21 page--sorry, page--line number 25, the last line, on  
22 page 121.

23 A "Where do you keep the hoses for doing that?"

24 Q And go on to page 122.

25 A Okay. "There is no hoses." Continue?

1 Q Yes, sir.

2 A "Okay. Tell me how many hoses you have on site."  
3 Answer, "Hoses?" Question, "Hoses at House of Raeford." It  
4 says to go ahead with your answer. "I got wash down hoses --  
5 one inch"---

6 Ms. Jones: (interposing) I'm sorry; if he  
7 could read the objection into the record as well, Your Honor?

8 The Court: All right. Could you read that  
9 as well? It says--well, I'll read it. It says, "Ms. Jones:  
10 Objection." "What -- go ahead if you can answer that."

11 The Witness: Okay.

12 The Court: And now your answer was?

13 A "I got wash down hoses -- one inch wash down  
14 hoses." And question, "That's the only hose you  
15 have [in] the entire facility...?" "Oh, I don't  
16 know about -- that's just me." Question, "Within  
17 your control and at your direction, how many hoses  
18 do you have?" I've got one. The answer was  
19 "One." Question, "And describe the...hose that  
20 you have for me, please." "One inch wash down  
21 hose." "And what do you do with that?" "I wash  
22 down...the concrete area around the DAF, keeping  
23 it clean. For cleaning purposes." And question,  
24 "Okay. So again, clarify for me -- I misunder-  
25 stood how you're transporting that"---

1 Q (interposing) And go to 123.

2 A ---"effluent back into the DAF. And I know you  
3 got to get it to a pipe. I understand that. And  
4 I know you get it to the DAF unit which is round.  
5 I understand that. I'm just trying to understand  
6 that transition point from the lagoon number one  
7 to the pipe. What's the transition."

8 All right. This is--

9 "It's drawn out of number one by a Gorman-Rupp  
10 pump." Answer (sic), "Okay." Answer, "Ten inch  
11 suctions, six inch discharge. The discharge goes  
12 into my DAF tank." "A Gorman-Rupp pump?" Answer,  
13 "Yes." "You indicated that you hose down around  
14 the DAF. What about mowing that takes place on  
15 site? Are there any records for mowing and that  
16 kind of maintenance?" "It's in [my] log [book]  
17 when we mow." "So those records [will] be [on]  
18 your log book?" "Not all the time." "Where would  
19 [these] records be?" "If there's any...in my log  
20 book." "If there's"--[it is] in my log book."  
21 "But you said not all the time, so where"--

22 continue?

23 Q No. That's--if you just read the first--just your  
24 answer on page 124.

25 A "Not all the time I would write it down.

1 Sometimes they just mow. If they get caught up with the work  
2 they get on the tractor and mow."

3 Q Okay. Thank you. If you will, Mr. Teachey, if  
4 you will go--and I'm at Thursday, the 17th of September. The  
5 last sentence, what does that say? Does that say, "installed  
6 pump"?

7 A "Installed pump and generator at creek bridge for  
8 aeration."

9 Q Okay. And then the 18th?

10 A "67 degrees, partly cloudy, inspected site,  
11 Plant," number 1 and number 2 lagoon okay, "good pressure on  
12 number 2 pump."

13 Q So at this point Mr. Howard is working with you;  
14 correct?

15 A I'm not sure.

16 Q At this point Mr. Clay Howard is working with you;  
17 correct?

18 A Working with--I don't know exactly what you mean  
19 by that.

20 Q Is he working, helping you with the cleanup?

21 A Not really.

22 Q Is he coming out there on the cleanup?

23 A Some, yes.

24 Q He's walking with you?

25 A Some.

1 Q And on September the 20th--I mean 19th, would you  
2 just read that entry into the Court--into the record, please?

3 A Okay. This is on a Saturday. It was 68 degrees  
4 and sunny. I inspected the site. We baled hay in zone 6B  
5 and finished L7 and 8. Number 1 and number 2 lagoon okay,  
6 "good pressure on number 2 pump," checked creek.

7 Q And then if you'll go to 20, please?

8 A I'm not---

9 (Witness peruses document.)

10 A I'm sorry; I can't quite make out my writing. It  
11 looked like "checked creek and number 2 lagoon" for the  
12 second time.

13 Q That's for---

14 A (interposing) 19th.

15 Q ---the 20th?

16 A 19th.

17 Q Okay.

18 A On the 20th, 67 degrees and sunny. I inspected  
19 the site. Number 1 lagoon was dropping. Number 2 lagoon is  
20 okay, "pump good pressure," still "pumping from the creek to  
21 number 2 lagoon."

22 Q So you're not making any observations on what's  
23 happening to lagoon number 2? You're just loading the stuff  
24 in and no observations, at least in this logbook, on what's  
25 happening; correct?

1           A     I'm making observations.  Yes, I am.

2           Q     But you're not noting them for the---

3           A     (interposing)  I did not note it.

4           Q     ---record, are you---

5           A     (interposing)  No, ma'am.

6           Q     ---in the book; correct?

7           A     That's correct.

8           Q     Is Mr. Register still out there pumping?

9           A     Yes.

10          Q     And how do you know that?

11          A     Because it's pumping from the creek to number 2.

12          Q     And what about the 21st?

13                     (Witness peruses document.)

14          A     66 degrees and sunny, "inspected site; number 1  
15 lagoon okay."  It was down.  "Number 2 lagoon okay [and]  
16 rising due to pumping from creek, good pressure on number 2  
17 pump."

18          Q     Now, did you cross off--right here did you do some  
19 sampling or did you not do some sampling?

20                     (Witness peruses document.)

21          A     I'm not positive of that.  I don't know why I  
22 would mark it out, but I did.

23          Q     Do you have an occasion--I know you said you  
24 utilized Register, but do you have occasion to borrow  
25 equipment from neighbors?

1           A     No, ma'am.

2           Q     Never? You've never borrowed any equipment from  
3 Carolina By-Products?

4           A     No, ma'am.

5           Q     Have they borrowed any equipment from you?

6           A     Not to my recollection.

7           Q     And the 22nd?

8           A     "72 degrees, partly cloudy, inspected site," had  
9 3/10ths of rain; "Plant, number 1 lagoon okay," number 2  
10 okay, but rising, pressure was down, "clean strainer and  
11 restart [it], looked at creek, muddy, DO up some."

12          Q     And what does that mean?

13          A     The dissolved oxygen level was up, but the creek  
14 was muddy.

15          Q     Well, that's what you wrote, but how do you know  
16 it was up?

17          A     We bought a meter to check the DO.

18          Q     So you took the DO readings? Where are those  
19 readings?

20          A     I have--we had a logbook with those DO readings in  
21 it.

22          Q     When you say that the creek was muddy, what do you  
23 mean by that?

24          A     It was muddy due to that 3/10ths of rain probably.

25          Q     You got 3/10ths of an inch of rain?

1           A     Yes, ma'am.

2           Q     But would that cause the creek to get muddy?

3           A     It's possible.

4           Q     Well, do you recall if it did on that date?

5           A     I wouldn't note it, but I would assume that's what  
6 it--what I meant.

7           Q     Could it have been that it had gone septic?

8           A     Excuse me?

9           Q     Could it have been that the creek actually went  
10 septic?

11          A     I don't think so.

12          Q     Why?

13          A     There was no odor. There was no odor there.  
14 That's the only reason I could say. It really wouldn't have  
15 gone septic because we cleaned it.

16          Q     And the 23rd?

17          A     72 degrees and partly cloudy, had another 3/10ths  
18 of rain, "number 1 lagoon okay, number 2 lagoon...(rising),  
19 good psi on number 2 pump. Creek looks good. Sampled...DO."  
20 It was low.

21          Q     What significance does that have, the DO low  
22 versus the previous day when the DO was up some? What  
23 significance does that have, if you---

24          A     (interposing) It was just for our records to  
25 check the DO every day.

1 Q Where did you--where did you sample?

2 A Where did I sample? I did--behind number 2  
3 lagoon, at Sheffield Creek, and there's a--I had one other  
4 place. There's a creek that fed into--that led--there's a  
5 creek that feeds into that creek behind number 2 lagoon.

6 Q How did you take the samples?

7 A With a meter.

8 Q What did you do to the meter before you took the  
9 samples?

10 A I did--first of all, you calibrate it.

11 Q How did you calibrate it?

12 A By the instructions. I'm not--it calibrates  
13 itself. You mash a button and it calibrates it. And you put  
14 the probe in the water and it gives you a reading.

15 Q And then the 24th?

16 A "66 degrees and sunny, a trace of rain, "number 1  
17 lagoon okay," number 2 lagoon was rising, "good pressure on  
18 number 2 pump, DO readings recorded."

19 Q But you don't say if it was good, if it was bad,  
20 if it was high, if it was low, do you?

21 A It's in that book.

22 Q I'm sorry?

23 A It's in the book that I---

24 Q (interposing) What book?

25 A I have---

1 Q (interposing) Did you bring---

2 A ---a book.

3 Q ---that book with you?

4 A No, I did not.

5 Q But your subpoena asked you to bring your books  
6 with you.

7 Ms. Jones: Objection, Your Honor. Ms.  
8 LeVeaux and I had a conversation about the subpoena, which  
9 was a very broad subpoena. And I had asked specifically  
10 which records Ms. LeVeaux was indicating. She indicated the  
11 spray field records and the---

12 Ms. LeVeaux: (interposing) And his logbook  
13 records. That's right. And he says it's in his book.

14 The Court: Okay. The answer is he didn't  
15 bring the book right now. There is a book that exists, but  
16 he didn't bring it.

17 By Ms. LeVeaux:

18 Q What book is it in? I'm just curious.

19 A It's just a record book.

20 Q That says what? What kind of record book?

21 A It's called a record book, and we took a daily  
22 reading for a period of time.

23 The Court: And with that, what I'd like to  
24 do is take a lunch break---

25 Ms. LeVeaux: (interposing) Okay.

1                   The Court:                   ---at 1 o'clock, and let's be  
2 back here at 2 o'clock, please.

3                   Ms. LeVeaux:                   Thank you.

4                   The Court:                   Thank you.

5                   (The hearing was recessed at 1:03 p.m. to  
6 reconvene at 2:00 p.m. this same day.)



1 (Witness complies.)

2 A Okay.

3 Q Do you have that in front of you, sir?

4 A Yes.

5 Q And you're talking about lagoon number 3, but if  
6 you'll start with line number 23 and read that into the  
7 record, please? It's a question.

8 A "[Are] you saying it's cloudy. The temperature  
9 was 69. But you don't speak at all to what's going on with  
10 lagoons number one [and] number two"---

11 Q And then turn to 209.

12 (Witness complies.)

13 A ---"do you?" I say, "No." Question, "And why  
14 not?" "I'm not sure why not. I don't know why I didn't."

15 Q Okay. And if you'll stop right there and if  
16 you'll go to--go to page 210.

17 (Witness complies.)

18 Q And start with line 14.

19 A "Tell me what does it say for Friday the 4th of  
20 September?" "It says lowering number 1 lagoon for new  
21 transfer pipe." "And now, what's the arrow going down  
22 through to Sunday?" "That means I was without"---

23 (Witness peruses document.)

24 ---"without lowering it all at one time I was  
25 doing it through Sunday." "But there's no entry showing that

1 rate in which the lagoon was lowered or to the extent [in]  
2 which the lagoon was lowered, is there?" "No, ma'am."

3 Q And go to the top of 211, please.

4 (Witness complies.)

5 A "Wouldn't that be important?" "It would be--yes,  
6 it's important." "And you were back at work on  
7 Saturday the 5th of September?" "Yes, ma'am."  
8 "And you referenced here to lagoon number three;  
9 is that correct?" "Yes." "But nothing  
10 referencing to lagoons one or two, correct?"  
11 "That's right." "Did someone give you the  
12 information for Friday the 4th?" "Yes." "Was  
13 that person Chris or was that one of your crew  
14 that gave you--" "One of my crews that I have."  
15 "Was the transfer of the pipe completed on Sunday  
16 the 6th of September 2009?" "Work was  
17 completed...Friday the 11th." "Oh, the transfer  
18 line -- the transference was completed on Friday,  
19 September the 11th?" "Yes."

20 Q That's fine. That's fine to stop right there.

21 (Pause.)

22 **EXAMINATION** 2:12 p.m.

23 By the Court:

24 Q Let me see if I can clarify the record too, Mr.

25 Teachey. So did--you said it took five to ten days to lower

1 it, so did you start on the 4th or did you start before the  
2 4th?

3 A I'm not--I started on the 4th.

4 Q Okay. And you lowered it for four days then, and  
5 on the 8th you built the berm you were telling me about?

6 A Yes, sir.

7 Q Okay. And then it has that you were off a couple  
8 of--who continued with lowering it when you weren't there?

9 A I had set it--I was out of town for a couple of  
10 days. And I--one of my guys that worked for me, I had him--I  
11 would call him daily.

12 Q And what's his name?

13 A Either--Tommy Baker.

14 Q Okay. So they were the one you left in charge of  
15 lowering things?

16 A Yes, sir.

17 Q Okay. And then on the 8th when the berm was  
18 finished, then no water flowed for three days; is that right?

19 (Witness peruses document.)

20 A Yes, sir.

21 Q Okay, thank you.

22 Ms. LeVeaux: Did you say the facility was  
23 not operating on the 8th?

24 The Witness: The facility was working.

25 Yeah, it was.

1                   Ms. LeVeaux:            The facility didn't stop  
2 working?

3                   The Witness:                No, ma'am.

4                   Ms. LeVeaux:                And you kept receiving---

5                   The Witness:                (interposing) Yes.

6                   By the Court:

7           Q        To clarify my question on the record, though, you  
8 were still getting 650,000 to 700,000 gallons into lagoon 1,  
9 but there was no transfer from lagoon 1 to lagoon 2 for about  
10 three days while you were putting in the valve?

11           A        Yes. There was some transfer, yes, but not the  
12 flow that I had.

13           Q        How did it get past the berm, then?

14           A        After we finished the--after we finished that  
15 project, I could open my valve back up.

16           Q        Okay, but for that three days when you--maybe I'm  
17 misunderstanding---

18           A        (interposing) We---

19           Q        ---your testimony.

20           A        We completed the--we built the berm and installed  
21 the pipe in one day. And then we could remove the berm and I  
22 was able to flow water through there. The rest of the days  
23 were just dressing up the road where I had hauled some clay  
24 and fixing a nice bulkhead around that valve.

25           Q        Oh, okay. So how long did it take you to build

1 the berm?

2 A We did it all in one day, just one day.

3 Q About how many hours to do the berm, then?

4 A We spent with the--just the berm? It only took  
5 less than an hour.

6 Q Okay. And then the rest of the hour (sic) was  
7 spent removing the pipe and then installing the new pipe?

8 A Yes, sir.

9 The Court: Okay. That helps me. Thank  
10 you. Ms. LeVeaux?

11 Ms. LeVeaux: Thank you, sir.

12 **D I R E C T E X A M I N A T I O N** 2:15 p.m.

13 \_\_\_\_\_ (resumed) \_\_\_\_\_

14 By Ms. LeVeaux:

15 Q You also didn't know how much was being sucked  
16 from the creek and put into the lagoon, did you?

17 A Not an exact amount, no, ma'am.

18 Q But wouldn't that information be important to you  
19 as it relates to the lagoon capacity?

20 A I go by the levels, not by the gallons.

21 Q Well, at some point wouldn't you want to know how  
22 much was being put in?

23 A For that--for my information, no, ma'am.

24 Q Well, isn't it fair to say that you rely on other  
25 folks for that information?

1           A     Yes.

2           Q     Who?

3           A     That would have been the--Clay Howard.

4           Q     You would rely on folks outside of your company  
5 also; correct?

6           A     For what--for---

7           Q     For how much was being put into your lagoon;  
8 correct?

9           A     Mr. Register kept up with that.

10          Q     So you were relying on someone outside of your  
11 company to keep up with what was going on in your lagoon;  
12 correct?

13          A     What was pulled out of the--what was taken from  
14 the creek to put into the lagoons, yes.

15          Q     And put into your lagoon; correct?

16          A     Yes.

17          Q     But you're the operator in charge; correct?

18          A     Yes.

19          Q     What is your freeboard in lagoon number 1?

20          A     Present? Now?

21          Q     What was your freeboard in lagoon number 1 on or  
22 about September the 10th, 2009?

23          A     It was--it was running high. The freeboard was  
24 less than a foot.

25          Q     So that was a violation of your permit; correct?

1           A     Yes.

2           Q     And the system--when the effluent water comes from  
3 the DAF, the system doesn't remove 100 percent of the solids;  
4 correct?

5           A     No, ma'am.

6           Q     And that's why there's two settling ponds;  
7 correct?

8           A     Yes, ma'am.

9           Q     Tell me what happens to the solids that goes into  
10 the first lagoon.

11          A     Normally speaking they'll go to the bottom.

12          Q     But if we observed a lot of solids on the  
13 surface--or if you observed a lot of solids on the surface,  
14 what would that tell you was going on with that lagoon?

15          A     With the--with the chipping process next door to  
16 us, I would--it was putting a lot of their solids on top. So  
17 I guess that answers your question, don't it?

18          Q     You're putting a lot of their solids on top?

19          A     When the wind blows their sawdust or when they're  
20 doing their process over there, which they run pretty much  
21 five days a week.

22          Q     Have you ever conducted an evaluation of the  
23 accumulated settled solids in your primary--in your first  
24 lagoon?

25          A     In the past I have.

1 Q When is the last time you did something?

2 A It's been several years ago.

3 Q What happens if you get a lot of sludge, if the  
4 entire surface is covered with sludge on that first lagoon?

5 A I've never had to clean that surface.

6 Q I'm sorry?

7 A I've never had to clean the top surface of sludge.  
8 I removed the vegetation.

9 Q So it's okay to have the top surface full of  
10 sludge?

11 A Yes.

12 Q And if the sludge keeps going in and going in and  
13 going in, it just piles up?

14 A It doesn't keep going in and going in. If the--  
15 when the DAF is operating, it doesn't settle in. It doesn't  
16 take out all of it, but it takes out 90 percent of it.

17 Q And a lot of it drops; right? There are settled  
18 solids; is---

19 A (interposing) Yes.

20 Q ---that correct?

21 A That's right.

22 Q Do you believe that there are settled solids in  
23 the creek right now?

24 A I do not know.

25 Q Right behind--do you have an opinion as to whether

1 or not there are settled solids as a result of the cleanup  
2 effort of House of Raeford back in 2009?

3 A I don't have an opinion on that.

4 Q So are you saying, then, that the sludge blanket  
5 is okay on lagoon number 1?

6 A Yes, ma'am.

7 Q And are you saying the vegetation on top of that  
8 is okay?

9 A No.

10 Q But that's the way it's existed for years; is that  
11 not correct?

12 A For some years, yes.

13 Q In fact with the vegetation on top, it's hard to  
14 tell where the levels are; isn't that correct?

15 A You can still tell where the levels are, yes.

16 Q How can you tell--if the vegetation is on top, how  
17 can you tell what the level is?

18 A It's not covered. It wasn't covered, the whole  
19 lagoon. There's still water.

20 Q So is it fair to say--is it fair to say, then,  
21 that what's in lagoon number 1 is sludge?

22 A Some sludge and particles from Parker Bark.

23 Q Part of your duties and responsibilities as the  
24 operator in charge is to be aware of the weather and to try  
25 to adjust your duties and responsibilities for the next day

1 based upon that weather forecast; is that not correct?

2 A Yes, ma'am.

3 Q And so you would access the weather daily. Is  
4 that a fair statement?

5 A Yes.

6 Q Have you ever had any problems in 20 years with  
7 your DAF?

8 A No problems, no.

9 Q Well, you have to clean out the grit, don't you?

10 A Yes, but that's not a problem.

11 Q It can be a problem if it's not cleaned out; isn't  
12 that fair?

13 A Yes, but it's done on a regular basis.

14 Q You're cleaning out the dirt that comes from the  
15 chicken craw; is---

16 A Yes.

17 Q ---that correct? How often do you take your  
18 products--you have an on-site truck from Carolina

19 By-Products; is that correct?

20 A Yes, ma'am.

21 Q How often is that taken to the rendering plant?

22 A Twice a week.

23 Q If it's okay--if it's okay to leave that stuff--  
24 the sludge on the surface of lagoon number 1, then why is it  
25 that you push--that you're now pushing it back through the

1 DAF unit?

2 A Just to try to make it work--that 10 percent that  
3 the DAF doesn't take out, I want to try to return it back  
4 through, re-treat it.

5 Q Why? If it doesn't make any difference, why?

6 A Well, you wouldn't want it to--I mean it will make  
7 your lagoon last longer.

8 Q You said that--you said it took four days for  
9 Register to finish his work; correct?

10 A Yes, ma'am.

11 Q And you said that you did observe a matter behind  
12 lagoon number 2, but you said that it did not look like what  
13 was in lagoon number 1. What was different about what was in  
14 the creek versus what was in lagoon number 1?

15 A The feel and the odor.

16 Q What do you mean the feel?

17 A If you touch it; it didn't feel greasy.

18 Q It didn't feel what?

19 A Greasy.

20 Q And what's in lagoon number 1 feels greasy?

21 A At some times, yes.

22 Q And what else?

23 A The odor.

24 Q Tell me about the odor.

25 A It smelled more like mud.

1           Q     Where, in lagoon number 1 or in--behind in the  
2 creek?

3           A     In the creek.

4           Q     Was that the only difference?

5           A     That's all I can remember, yes.

6           Q     And about how far is the dike wall from Cabin  
7 Branch?

8           A     I'd say 25, 30 feet.

9           Q     So Mr. Teachey, you're saying that the DAF removes  
10 enough of the fats and oil and grease to avoid a buildup of  
11 sludge in the primary lagoon?

12          A     I didn't say that.

13          Q     Well, tell me, does it?

14          A     It would, yes; over time, yes.

15          Q     And when you pump the grease back through the DAF,  
16 how are you doing that?

17          A     With--and I only do that on weekends.

18          Q     And tell me what you do.

19          A     There's a fixed--I have a floating container  
20 that--with a 10 inch suction that sucks it back out of  
21 number 1 lagoon to the DAF tank. And that keeps the level--  
22 equalizes the level in the DAF.

23          Q     And so I understand you have this unit, but what  
24 conveys it to the unit, a hose or pipe? What conveys it?

25          A     It's a pipe.

1 Q A pipe?

2 A Yes.

3 Q Where does the pipe come from?

4 A We purchased it. It's a stainless pipe.

5 Q I'm sorry?

6 A A stainless steel pipe.

7 Q That you can just assemble it and disassemble?

8 A No. After you--it's there to stay.

9 Q I'm sorry?

10 A It's there to stay. It's in the ground.

11 Q How long are the pipes?

12 A 75 feet.

13 Q And you use a pump?

14 A Yes.

15 Q And where are the pipes located?

16 A They run from the pump to the DAF. It's under-  
17 ground.

18 Q I'm sorry?

19 A It's underground from the pump to the DAF.

20 Q Have you ever pointed that pipe out to DWQ?

21 A No. I haven't had my annual inspection, so  
22 there's--no, I have not.

23 Q You've never pointed it out to them; is that  
24 correct?

25 A No.

1           Ms. LeVeaux:           Your Honor, that would be all  
2 the questions we have. We would introduce Exhibits Number 32  
3 and 33, though.

4           The Court:           Any objections to those?

5           Ms. Jones:           Your Honor, I have an objection  
6 to Exhibit Number 33, which I believe is the deposition  
7 transcript. I don't have an objection to the portions of the  
8 transcript that were read into evidence, but the witness is  
9 here and is available to answer questions. And I don't the  
10 entire deposition transcript is appropriate.

11           The Court:           Your response to that, Ms.  
12 LeVeaux? Do you want to just---

13           Ms. LeVeaux:           (interposing) No, Your Honor.

14           The Court:           ---limit it to the pages you've  
15 had him read?

16           Ms. LeVeaux:           I don't know what pages I went  
17 through. I was just going through pages, but---

18           Ms. Jones:           (interposing) I think that I  
19 have---

20           Ms. LeVeaux:           ---I don't have any problem---

21           Ms. Jones:           I think that I have them, but I  
22 think they were also all read into the record. But I can  
23 work with Ms. LeVeaux to identify those pages/

24           The Court:           Okay. I certainly will let--  
25 you're right they were read into the record, so they're sort

1 of there for you. If you feel a need, I certainly would  
2 allow those portions that he went through---

3 Ms. LeVeaux: (interposing) Okay, and---

4 The Court: ---and that you asked him  
5 about--at this point in time. Now, counsel may point out  
6 other pages if they want to. So let me withhold ruling on  
7 that altogether until cross-examination is through.

8 Ms. LeVeaux: Okay. Thank you.

9 The Court: I certainly will admit Exhibit  
10 Number 32.

11 Ms. LeVeaux: Thank you.

12 (Respondent Exhibit 32 was  
13 received in evidence.)

14 The Court: Cross-examination, Ms. Jones.

15 Ms. Jones: Thank you.

16 **C R O S S - E X A M I N A T I O N** 2:32 p.m.

17 By Ms. Jones:

18 Q Good afternoon, Mr. Teachey. I want to ask you a  
19 few questions about some things that Ms. LeVeaux went over.  
20 First of all, you've been wastewater manager out at House of  
21 Raeford for how long?

22 A Actually, going on 23 years.

23 Q Okay. And you're very familiar with the lagoon  
24 system?

25 A Yes, ma'am.

1           Q     Were lagoons 1 and 2 there when you first began  
2 your work?

3           A     Yes, ma'am.

4           Q     Was lagoon 3 there? And that's been referred to  
5 as the storage lagoon, I believe.

6           A     I was there on--during construction.

7           Q     Okay. And so you're familiar with the transfer  
8 pipe that exists now between lagoon 1 and lagoon 2---

9           A     (interposing) Yes.

10          Q     ---and the mechanisms that were in place before  
11 that?

12          A     Yes.

13          Q     Back in 2009 when that transfer pipe between  
14 lagoon 1 and lagoon 2 was replaced, was the valve working at  
15 that point in time?

16          A     Yes. It was just getting worn and it was hard to  
17 turn. We had to use a leverage pipe to make it work.

18          Q     So you mean like a wrench or something?

19          A     Like a pipe wrench.

20          Q     But it would still stop the flow of water?

21          A     Yes, it would.

22          Q     And it would still allow the flow of water if you  
23 wanted it to?

24          A     Yes.

25          Q     And I believe there's been testimony, but how does

1 water get from lagoon 1 to lagoon 2?

2 A It's gravity.

3 Q Is there any pump there?

4 A No.

5 Q There was also some testimony--and I may be able  
6 to direct your attention to a photograph that will help--  
7 about an old portion of the transfer system. If you will  
8 look in Respondent's notebook--it's that black one up there.  
9 If you'll look at tab number 15 and there are some pictures  
10 there. If you'll turn to the one that says LW-14?

11 The Court: Would you repeat that?

12 Ms. Jones: LW-14.

13 The Court: Thank you.

14 (Witness complies.)

15 A Okay.

16 Q Do you recognize what that is a picture of?

17 A Yes, I do.

18 Q And what is that?

19 A That's the--that's the old transition section from  
20 number 1 to number 2.

21 Q And I believe you testified that was abandoned  
22 eight to ten years ago?

23 A Yes, it was.

24 Q Does it still work?

25 A No, it does not.

1 Q And how do you know that it doesn't?

2 A We blocked--we got down there and we blocked off  
3 the entrance of that--where the entrance used to be, we  
4 blocked it off there.

5 Q Okay. Now, I believe you testified earlier that  
6 one of the reasons that you replaced the valve and transition  
7 site is because you saw some corrosion?

8 A Yes.

9 Q If I can get you to turn to LW-22, which is in  
10 that same tab 15?

11 (Witness complies.)

12 A Okay.

13 Q Using this photograph, can you point out the areas  
14 of corrosion that you observed?

15 A If you're looking on the left side of that picture  
16 and you see the--that's the new pipe there. But at the top  
17 it primarily looked about the same except for that it stuck  
18 out maybe 4 foot further into number 2 lagoon. And I could  
19 see some top of it had some rust---

20 Q (interposing) Okay.

21 A ---at the top of it.

22 Q Was the pipe still working?

23 A Yes.

24 Q So water was still flowing through it?

25 A Yes, it was.

1           Q     And if you wanted to stop the water, was the water  
2 stopped?

3           A     Yes, it would.

4           Q     And I believe you testified this is the new pipe  
5 that's currently in place?

6           A     Yes, it is.

7           Q     And is it also gravity fed?

8           A     Yes, it is.

9           Q     If you look on that photograph, you can see the  
10 vegetation. What's on the--where's that vegetation located?

11          A     That's in number 1 lagoon.

12          Q     Okay. Is that a floating mat of vegetation?

13          A     It's floating there. Water is underneath.

14          Q     Okay. And how does the--how does the pipe that's  
15 the transition pipe work with that water? Is that below the  
16 vegetation line?

17          A     Where the water comes into that pipe, it's below  
18 that vegetation.

19          Q     I believe you testified that you've never had that  
20 pipe get clogged up with anything?

21          A     No.

22          Q     While we're looking at photographs, let me get you  
23 to turn to tab number 14 in that same book.

24                   (Witness complies.)

25          Q     And then look at Figure U.

1 (Witness complies.)

2 Q Okay. What's that structure right there?

3 A That's the bulkhead I built around that new valve  
4 that I installed.

5 Q Okay. And just to clarify, how long did it take--  
6 when you were doing this construction to replace that  
7 transfer pipe and valve, how long did it take you to build  
8 the clay berm that you testified to and to put the pipe and  
9 valve in?

10 A We put the pipe and valve in in one day, and it  
11 took us about three days to build our bulkhead.

12 Q Okay. And did you do work on the road also?

13 A Yes, we did.

14 Q Okay. Were you able to allow flow of water  
15 through that valve while you were doing the roadwork?

16 A Yes, I was.

17 Q And were you able to allow flow of water through  
18 that valve when you were doing that bulkhead work?

19 A Yes, I was.

20 Q Let me get you to turn to Figure Y.

21 (Witness complies.)

22 A Okay.

23 Q Do you recognize what's in that photograph?

24 A Yes, I do.

25 Q And what is that?

1           A       That's the pipe that Register used when we--when  
2 he would load the truck, he would drive the truck around and  
3 hook this hose to unload the matter that came out of the  
4 creek into number 1 lagoon.

5           Q       Okay. And is that hose actually coming out of  
6 lagoon number 1 in this photograph?

7           A       It's--yes.

8           Q       Okay. And you first--when you took--when  
9 Register's took matter out of the creek, the first place that  
10 it was taken to was lagoon number 1; is that---

11          A       (interposing) Yes, ma'am.

12          Q       And why did you decide to start taking matter out  
13 of the creek?

14          A       After Linda Willis visited us and I escorted her  
15 back to that pond, she told me it was in my best interest to  
16 clean it up.

17                   (Pause.)

18          Ms. Jones:                Sorry. Hold on one second,  
19 Your Honor.

20                   (Pause.)

21          Ms. Jones:                If I may approach, Your Honor?

22          The Court:                Yes, you may.

23          Ms. Jones:                I don't have this exhibit. Do  
24 you have Volume 2 of his deposition?

25          Ms. LeVeaux:              I do.

1           By Ms. Jones:

2           Q     Mr. Teachey, I've handed you what's been marked,  
3 and you can see that on the front cover, as Volume 2 of your  
4 deposition, June 9th, 2011. And if you could turn to  
5 page 21?

6           A     Okay.

7           Q     And do you see there in the middle, line  
8 number 10? Can you begin reading there?

9           A     "Basically, it was cleaning of the--making sure  
10 that the creek was being cleaned properly as I was  
11 instructed." "Who instructed?" "Linda Willis."  
12 "How did she instruct you?" "She told me it would  
13 be to my advantage to get it cleaned out."

14          Q     Okay, that's enough. Thank you. And so based on  
15 that instruction, you did proceed with hiring Register's to  
16 attempt to get the creek cleaned out?

17          A     Yes, I did.

18          Q     Did anyone tell you that that was a violation of  
19 your permit?

20          A     No, ma'am.

21          Q     Let me get you to turn--and you can set that  
22 deposition aside.

23                   (Witness complies.)

24          Q     Let me get you to turn to Figure AA in that same  
25 tab, number 14.

1           A     Figure A?

2           Q     Two As, double A. It should be near the end, if  
3 not the very last photo.

4                     (Witness peruses documents.)

5           The Court:            It might not be in order, Mr.  
6 Teachey. You might have to look.

7           The Witness:           Okay.

8           The Court:            Like after AA, I have Q.

9           The Witness:           Okay. All right.

10          Ms. Jones:            I'm sorry. In mine it's the  
11 very last picture. I may have reorganized.

12          The Witness:           Okay.

13          By Ms. Jones:

14          Q     Are you on AA?

15          A     Yes, I am.

16          Q     Can you tell me what that's a picture of?

17          A     This is a picture of my DAF, or D-A-F, water  
18 treatment.

19          Q     Okay. And on the right side of the picture,  
20 what's in that right-hand corner? Can you just describe  
21 that?

22          A     On the right side is the DAF unit itself. It's  
23 where the chicken processing water enters.

24          Q     Okay. And then what's that barrel looking thing  
25 right in the middle there?

1           A       That's the collection tank. In other words,  
2 that's--when the solids rise to the top, they're skimmed off  
3 and dropped into this collection tank.

4           Q       Okay. What happens to the material that's in that  
5 collection tank?

6           A       It's then transferred from there to the bigger  
7 tank that's at the top of the page.

8           Q       Okay. How does it get to that bigger tank?

9           A       It's a called a Moyno pump.

10          Q       Okay. Is that a built-in mechanism?

11          A       Yes, it is.

12          Q       And then what happens after the material goes from  
13 that storage--what happens to it after it goes into the  
14 storage tank?

15          A       That larger tank is built with a cone on the  
16 bottom. And my solids rise to the top, and I gravity feed  
17 excess water, which stays at that bottom down in that cone,  
18 back for retreatment.

19          Q       Retreatment through the DAF?

20          A       Through the DAF.

21          Q       Are there any hoses that lead from that barrel  
22 where--the collecting barrel to the storage tank?

23          A       Hoses, no.

24          Q       You had some testimony you gave about a system  
25 that you use now to pump from lagoon number 1 to the DAF

1 unit; is that correct?

2 A Yes.

3 Q When did you start that system?

4 A May of this year.

5 Q May of this year?

6 A Yes.

7 Q Have you had an annual inspection since May of  
8 this year?

9 A No, I have not.

10 Q And I believe you said that there is matter that  
11 goes via a 10-inch suction device. Does that go from the  
12 lagoon to the DAF or the other way around?

13 A Repeat that, please?

14 Q You testified regarding a 10-inch suction device  
15 on that new system that you're utilizing.

16 A Yes.

17 Q What does that lead to and from?

18 A It leads from number 1 lagoon back to the DAF.

19 Q Okay. And did you testify that was steel pipe?

20 A Steel pipe.

21 Q And is that underground?

22 A Underground.

23 Q How do you get the material from the DAF to lagoon  
24 number 1?

25 A It's gravity fed on the discharge side of the DAF.

1 Q Okay. And is that through some sort of pipe?  
2 A Yes, a concrete pipe from the wet well to number 1  
3 lagoon.  
4 Q Is that underground?  
5 A Underground.  
6 Q Are there any hoses associated with that system?  
7 A No, ma'am.  
8 Q And again, that was not in place until May of this  
9 year?  
10 A That's right.  
11 Q And what kind of pump do you use on that system?  
12 A On the return water from--that's Gorman-Rupp.  
13 Q A Gorman-Rupp?  
14 A Yes.  
15 Q And when did you acquire that pump?  
16 A That was May.  
17 Q May of this year?  
18 A May of this year.  
19 Q Mr. Teachey, you testified about the material in  
20 the creek and how it looked in comparison to the material in  
21 the lagoon. Were they the same color?  
22 A No, it was not.  
23 Q And what was the difference in color that you saw?  
24 A My sludge is more of a tannish color, and that in  
25 the creek was gray. There was very little odor.

1 Q And does your sludge smell?

2 A It smells terrible.

3 Q Does it smell in the DAF system?

4 A Yes.

5 Q Does it smell in the lagoon?

6 A Yes.

7 Q You testified regarding the fact that you--part of  
8 your daily inspection is inspecting pumps at the pump house.  
9 What pump--what are those pumps used for?

10 A Over at number 2 lagoon, I have two pumps inside  
11 of the pump house that transfers water from number 2 lagoon  
12 over to number 3.

13 Q Do you use both pumps at the same time?

14 A No, I do not.

15 Q If you wanted to or needed to switch from one pump  
16 to the other, what would you have to do?

17 A Basically with a switch.

18 Q I'm sorry?

19 A Just a switch.

20 Q Flip a switch?

21 A Flip a--yeah.

22 Q Are those pumps affixed?

23 A They're affixed.

24 Q Are there hoses associated with those pumps?

25 A No.

1 Q Well, then how do you get the material from that  
2 area--from lagoon 2 to lagoon 3?

3 A It's a steel pipe and PVC pipe.

4 Q Is the steel pipe underground?

5 A All underground.

6 Q And if something went wrong with one of those  
7 pumps, again, you'd just flip a switch to---

8 A (interposing) Flip a switch to start up the other  
9 one.

10 Q ---to move to the other pump? Mr. Teachey, you  
11 were asked some questions about Respondent's Exhibit 32,  
12 which I believe you testified was your daily logbook.

13 A Yes.

14 Q If you can pull that out?

15 (Witness complies.)

16 Q And take a look at let's just say the September  
17 10th entry.

18 A Okay.

19 Q Do you see where it says "number 1 lagoon OK  
20 down"?

21 A Yes.

22 Q "Number 2 lagoon OK dropping"?

23 A Yes.

24 Q Is there a difference between down and dropping?

25 A For my record, I know that number 1 was down and

1 it was okay, but it was not dropping.

2 Q Okay. And number 2, does that refer to the fact  
3 that there was a change in level?

4 A Yes, it is.

5 Q And if you'll look on page--I'm sorry, Thursday  
6 the 17th, that date?

7 (Witness complies.)

8 A Okay.

9 Q There's a notation you were asked about at the  
10 bottom that says, "installed pump and generator at creek  
11 bridge for aeration"?

12 A Yes.

13 Q And was that the only location that you aerated?

14 A Yes, it was.

15 Q And is that the day that you believe you began  
16 aerating?

17 A Yes, it is.

18 Q Do you know how long that lasted?

19 A It was several days, but I couldn't--I don't know  
20 exactly how long.

21 Q And what kind of pumps did you use for that work?

22 A They were little half horse submersible pumps.

23 Q Where did you get them?

24 A We had them in our storage at the processing  
25 plant.

1 Q Were they part of the wastewater system?

2 A No.

3 Q How much horsepower was that?

4 A I think it was either a quarter or a half horse.

5 Q How big were the pumps?

6 A Oh, maybe 4 or 5 inches in diameter.

7 Q Okay.

8 A In diameter and had a 1 inch discharge.

9 Q A 1 inch discharge?

10 A Uh-huh.

11 Q If you had wanted to use those pumps to move

12 material from lagoon 1 to the creek, would they have worked?

13 A No, ma'am. No.

14 Q And you had a generator out there?

15 A Yes, I did.

16 Q And is that your generator or---

17 A (interposing) It's the one that--the company had

18 a spare one that I could borrow.

19 Q Okay. And was that generator powerful enough to

20 move material from lagoon 1 to the creek?

21 A No. Oh, no.

22 Q What type of generator was it?

23 A It was a little portable generator, a 110 volt.

24 It would pull those two pumps.

25 Q What does it run off of?

1           A     Gasoline.

2                     (Pause.)

3           Q     Mr. Teachey, are there any other pumps that we  
4 haven't discussed that you use in your wastewater operations?

5           A     We have--in my wet well that transfers water from  
6 the plant to the DAF system, which are submersible fixed  
7 pumps.

8           Q     What's the wet well?

9           A     That's where the water--the processed water comes  
10 from the plant, or from the--and it will come into a wet well  
11 where these two pumps are in place. And it pumps it over to  
12 the DAF.

13          Q     Okay. You said they're fixed?

14          A     Yes.

15          Q     Underwater?

16          A     Underwater.

17          Q     And they're tied into the DAF system?

18          A     They're tied into the steel pipe.

19          Q     Have you ever--you know, back in this time frame  
20 did House of Raeford own a pump that was capable of pumping  
21 material from lagoon number 1 all the way to the creek?

22          A     No, ma'am.

23          Q     Do you know how far that is?

24          A     Not exactly; I know it's---

25          Q     I believe there's been testimony it's 600 to 700

1 feet away?

2 A That would be my guess.

3 Q Have you ever seen any hose at House of Raeford  
4 long enough to reach from lagoon number 1 to the creek?

5 A No, ma'am.

6 (Pause.)

7 Q Did you have a Gorman-Rupp pump before this year?

8 A No.

9 Q You were asked wouldn't it be important for you to  
10 how much material was being pumped from the creek back into  
11 lagoon 1 or lagoon 2. Can you see the levels of those  
12 lagoons?

13 A Yes, I can. Yes.

14 Q And you're not required by your permit to record  
15 the exact levels of those lagoons, are you?

16 A No, ma'am.

17 Q You are required to record it for lagoon number 3?

18 A Yes.

19 Q And you do that?

20 A Yes.

21 Q In this September 2009 time frame, was there any  
22 issue with the freeboard availability or level in lagoon  
23 number 2?

24 A After--yes.

25 Q And when was that?

1           A     It was after the--I installed the pipe, the  
2 transition pipe from number 1 to number 2.

3           Q     And explain. What do you mean by that?

4           A     That--I was adjusting levels trying to get rid of  
5 water back over to my storage lagoon.

6           Q     Okay. Did the lagoon ever overtop?

7           A     No, it did not.

8           Q     Did it ever breach?

9           A     No.

10          Q     Okay. It was just higher than you would have  
11 liked it to be?

12          A     Yes.

13          Q     Was it at a dangerous level?

14          A     No.

15          Q     Mr. Teachey, you were asked about if you'd ever  
16 had any issues with the DAF unit in the last 20 years. And  
17 you talked about cleaning it out. Is that a routine process?

18          A     We do it every six months.

19          Q     And how long does that take?

20          A     Approximately four hours.

21          Q     Do you remember at any time in 2009 the DAF unit  
22 being down for any extended period of time?

23          A     No, ma'am.

24          Q     Mr. Teachey, to your knowledge did Valley Protein  
25 or Carolina By-Products pick up offal on schedule in August

1 and September?

2 A Yes, they did.

3 Q Of 2009?

4 A 2009, yes.

5 Q And so all of that material was being removed on  
6 schedule?

7 A Yes.

8 Ms. Jones: Those are all my question  
9 s now, Your Honor.

10 The Court: Redirect, Ms. LeVeaux.

11 **REDIRECT EXAMINATION** 2:57 p.m.

12 By Ms. LeVeaux:

13 Q You indicated that you didn't have--you don't have  
14 to report freeboard, but you are required to maintain proper  
15 freeboard in lagoons 1 and 2; correct?

16 A Yes, ma'am.

17 Q And if you will, turn to Respondent's Exhibit--  
18 it's that book in front of you that's somewhat out of order,  
19 and I apologize for that.

20 A This one (indicating)?

21 Q My book, my thick book in front of you. And if  
22 you'll turn to Exhibit 14AA--you were asked to look at that  
23 exhibit---

24 A (interposing) Okay.

25 Q ---in your cross-examination.

1 (Witness complies.)

2 Q Do you have that in front of you?

3 A Yes.

4 Q And in that exhibit you see the--that material;  
5 correct?

6 A Yes, ma'am.

7 Q And what color is that material? What color would  
8 you say that material is?

9 A Beige.

10 Q Beige. But it is true, is it not, that this  
11 material, this sludge--is it fair to call it sludge?

12 A If you like.

13 Q Is that what you call it? What would you call it?  
14 I want to call it what you would call it.

15 A This is sludge that's in this tank.

16 Q Okay. That's sludge that's in that tank?

17 A That's what I call sludge.

18 Q This sludge, it is fair to say that it changes  
19 colors, does it not?

20 A If it was--yes, it would change some.

21 Q And in fact it goes from a light color to a dark  
22 color, does it not?

23 A No, ma'am.

24 Q Okay. Tell me what it does.

25 A If anything, it would get lighter.

1 Q It would get lighter?

2 A Yes.

3 Q Okay. And if you will, please, turn to  
4 Respondent's Exhibit 14P.

5 (Witness complies.)

6 Q Do you recognize that?

7 A Yes, ma'am.

8 Q And what is that a picture of?

9 A Number 1 lagoon.

10 Q And in fact it's the sludge in number 1 lagoon, is  
11 it not?

12 A Yes, it is.

13 Q And how--what would you say the color of that  
14 sludge is?

15 A Mostly beige.

16 Q Okay, but it's gotten darker, has it not?

17 A That's coming from Parker Bark.

18 Q I'm sorry?

19 A The darker part is coming from Parker Bark.

20 Q All of this darker part from--all that is Parker  
21 Bark?

22 A Yes, ma'am.

23 Q Look at Exhibit Figure Q, next page.

24 (Witness complies.)

25 Q Do you recognize that?

1           A     Yes, ma'am.

2           Q     And what is that a picture of?

3           A     That's a picture of the creek.

4           Q     This is a picture of the creek?  Would it surprise  
5 you to know this is a picture of lagoon number 1?

6           A     Excuse me.  Ask that again, please?

7           Q     What is this a picture of?

8           A     This is the creek behind number 2.

9           Q     Would it surprise you to know that this is a  
10 picture of lagoon number 1?

11           Ms. Jones:           Your Honor, if I could just  
12 say, mine are out of order on that as well.  And---

13           The Witness:         You did say 2?

14           Ms. Jones:         ---Q is not after P in this---

15           The Witness:         (interposing)  P?

16           Ms. LeVeaux:        Your P doesn't have Figure Q  
17 following it?

18           Ms. Jones:         No, it does not.

19           The Court:         Are you where Q is?

20           The Witness:         No.

21           Ms. LeVeaux:        May I approach the witness,  
22 Your Honor, just for verification?

23           The Court:         Yes, you may.

24           Ms. LeVeaux:        Okay.  I'm sorry about that.  I  
25 just want to find it in your book.

1                   The Court:                   It might be the last two.

2                   By Ms. LeVeaux:

3           Q        I'll show you---

4           A        (interposing) That's number 1.

5           Q        Number 1, I apologize. These should not be out of  
6 order. Try the last two.

7                   (Ms. LeVeaux peruses documents.)

8           Q        Okay. This is completely out of order. This is--  
9 do you recognize--this is what I'm looking at?

10          A        Yes, ma'am.

11          Q        And it's--I have it as Number Q and I apologize.

12                   (Pause.)

13          Q        I'm going to hand you up my Q just because I want  
14 you---

15                   (Document handed to witness.)

16          Q        And in my Q, which is--can you describe the color  
17 that you see there in that picture? Is it lighter or darker  
18 than what you observed in that--in Respondent's Exhibit 14AA?

19          A        Well, some of it looks the same and some of it is  
20 darker.

21          Q        Okay. Thank you.

22                   The Court:                   And would you describe it as  
23 grayish or tannish?

24                   The Witness:                   The one I'm looking at here,  
25 this is tan, and the rest of it is--yeah, I can see--I can

1 still see some of Parker Bark's stuff right in here  
2 (indicating), the dust off of it.

3 The Court: Okay.

4 Ms. LeVeaux: May I approach the witness,  
5 Your Honor?

6 The Court: Yes, you may.

7 (Pause.)

8 By Ms. LeVeaux:

9 Q Mr. Teachey, if you will go to Respondent's  
10 Exhibit Number 33, page 93? And if you would start at---

11 A (interposing) Did you say 33?

12 Q It's Respondent's Exhibit--page 93 and it's  
13 line 16 on page 93.

14 The Reporter: It's Exhibit 33; is that  
15 correct?

16 Ms. LeVeaux: It's Exhibit 33, correct, and  
17 it's page 93.

18 (Witness complies.)

19 A Okay.

20 Q And if you'll start at line 16, please?

21 A "Yes, ma'am." "You indicated that the blanket on  
22 top of the lagoon number one was a different  
23 color, correct?" "Yes, ma'am." "But is it also  
24 possible that even though there's a--that there's  
25 a blanket on top of lagoon number one that some of

1 the solids have settled down?" "It's possible,  
2 yes." "And what color would the solids be?"  
3 "It's more of a black color."

4 Keep on?

5 Q Keep going on the next page.

6 A "So it's" "-- on the very bottom." "So it's  
7 darker than the surface?" "Yes, ma'am." "Is it  
8 fair to say that right now in [the] lagoon...one  
9 that there are settled solids under [the]  
10 blanket?" "Yes." "And then on top of that  
11 floating blanket there's floating vegetation. Is  
12 that a fair statement?" "Yes." "So when you  
13 would cut the grass, you would be cutting it from  
14 that floating vegetation. Is that a fair  
15 statement?" "Repeat that." "When you cut the  
16 grass that's on top of that --" "I don't cut  
17 that." "Who would cut that?" "Nobody." "You  
18 would just leave it there?" "No, we don't just  
19 leave it there. We clean it. In 2010 we took the  
20 vegetation off."

21 Q Okay. You can stop right there. Now, you  
22 indicated here in your--this was your earlier testimony--that  
23 it's darker than the surface. Why does that sludge get  
24 darker when it goes down under the surface?

25 A After the microorganisms eat what they--when they

1 go through their digestive systems, that part turns black and  
2 goes to the bottom.

3 Q So all the sludge naturally will eventually turn  
4 black; is that correct, then?

5 A No. I'm not certain. I don't know whether all  
6 the---

7 Q (interposing) But it started off--I'm sorry.

8 A It's possible it may be different colors.

9 Q But it started off a creamy color---

10 A (interposing) Yes.

11 Q ---and then it ends up the dark color; correct?

12 (Pause.)

13 A No, not--no, not all the time. No.

14 Q And you were asked to look at Respondent's  
15 Exhibit LW-14. Can I have you turn to that exhibit as well,  
16 please?

17 A Is that Exhibit 33?

18 Q Exhibit LW-14. That's the old valve box; 14,  
19 LW-14.

20 The Reporter: Is that in a larger exhibit,  
21 Ms. LeVeaux?

22 Ms. LeVeaux: It may be. I thought it was in  
23 14.

24 The Reporter: Exhibit 14?

25 The Court: It's behind Exhibit 15.

1 Ms. LeVeaux: Exhibit 15?

2 By Ms. LeVeaux:

3 Q 15.

4 (Witness peruses documents.)

5 Q It's in Exhibit 15 and it's LW-14. I pulled it  
6 out and then it got out of order, so I apologize.

7 (Witness complies.)

8 A Okay.

9 Q And you said this is the old valve; correct?

10 A Yes, ma'am.

11 Q That was replaced; correct?

12 A Yes.

13 Q And I'm looking at this picture and your attorney  
14 had you look at this picture. And it looks like there's  
15 fresh dirt there. Why would you have fresh dirt around the  
16 edge? Do you see that fresh dirt there?

17 A I do not.

18 Q Well, do you see it there now? In looking at the  
19 picture do you see the fresh dirt?

20 A That's a concrete wall around there. There's no  
21 fresh dirt there.

22 Q You don't see the fresh dirt--you don't see any  
23 fresh dirt in that picture?

24 A No, ma'am, I do not.

25 Q Do you see that valve at the bottom?

1           A     Yes, I do.

2           Q     And right above the valve do you see the fresh  
3 dirt---

4           A     (interposing) That's not---

5           Q     ---right there?

6           A     I don't think that's dirt.

7           Q     But you're looking down on it; correct?

8           A     Yes, ma'am.

9           Q     Okay. So what is that a picture of, then?

10          A     I have no idea.

11          Q     Okay. And then inside it looks like there's a  
12 matter in the bottom and you had--you had the opportunity to  
13 look at it. Can you tell us what the matter is inside?

14          A     I have no idea. It's been abandoned for a long  
15 time.

16          Q     And also there's a metal rod in there. It looks  
17 like a valve control. Do you know why that's in there for a  
18 box that's so old?

19          A     That's--when we abandoned this site here, we just  
20 left all that stuff in there.

21          Q     But actually this valve that's to the lower  
22 right-hand corner is what you would open and close it with;  
23 is that not correct?

24          A     It's not operational.

25          Q     But if it were operational, that would be what you

1 would do with it; correct?

2 A Yes.

3 Q And that looks like--and right there sitting on  
4 top of something, it looks like the valve is sort of buried  
5 under dirt. Does that look like that to you, a part of it's  
6 buried under dirt?

7 A It's buried under something, yes.

8 Q But you don't know what that something is?

9 A I don't know what that is.

10 Q Are there any other underground pipes at House of  
11 Raeford other than the pipe going to lagoon number 3?

12 A Not that I deal--not that I deal with.

13 Q Not that you've dealt with or not that you're  
14 aware of?

15 A Not that I'm aware of.

16 Q You said that you recently installed this 75 foot  
17 stainless steel pipe in May; correct?

18 A Yes, ma'am.

19 Q But isn't it true that you have to get authoriza-  
20 tion to do something like that from DWQ?

21 A This was just--this was just an equalization to  
22 keep the DAF at the same level all the time. It serves two  
23 purposes.

24 Q But you didn't answer my question, Mr. Teachey.  
25 Don't you---

1           A       (interposing) Should I? I did not get authority.

2           Q       Okay. And what is your storage capacity of the  
3 DAF? Do you know?

4           A       850 gallons--850,000 gallons a day.

5           Q       Now, you said that the--you said the creek was  
6 about 25 feet to 30 feet from the back side of lagoon  
7 number 2; correct?

8           A       Yes, ma'am.

9           Q       And you were talking about the smell. But if the  
10 smell is so outrageous for lagoon number--for the lagoons,  
11 then how would you discern the smell from the creek versus  
12 the smell from the lagoon if they're that close?

13          A       You go down the hill. You're nowhere--you're down  
14 the hill from 2. I said number 1 is what smelled so bad.  
15 Number 2 doesn't smell.

16                   Ms. LeVeaux:           No further questions.

17                   The Court:                Recross?

18                   Ms. Jones:                Just a few questions, Your  
19 Honor.

20                   The Court:                All right.

21                           RECROSS - EXAMINATION     3:11 p.m.

22                   By Ms. Jones:

23           Q       Mr. Teachey, are you still on LW-14?

24           A       Yes, I am.

25           Q       That picture? Is there any roof over this?

1           A     No, there's not.

2           Q     Does it rain down in that?

3           A     Yes.

4           Q     And again, this hasn't been operational in eight  
5 to ten years?

6           A     At least that long, yes.

7           Q     And you were asked a question about underground--  
8 if there was any underground pipe at House of Raeford other  
9 than what goes from lagoon number 2 to lagoon number 3.  
10 There are underground pipes associated with the DAF lagoon  
11 number 1 recirculation system; is that correct?

12          A     Oh, yes. Yes.

13          Q     And isn't it true that in order for you to be  
14 required to get DWQ approval, you must be making a material  
15 change to your operation?

16          A     Yes.

17          Q     And the dust from Parker Bark that you mentioned,  
18 when that is on the lagoon, I believe you said it was darker  
19 in color?

20          A     Yes.

21          Q     It was a dark dust? And that's what, I believe  
22 you testified under that photograph, made the dark grades in  
23 colors?

24          A     Yes, ma'am.

25          Q     It's not the sludge itself?



1 when was that September 8 date set? Was that set in August?

2 When did they set the---

3 A (interposing) Probably it was done at--I ran for  
4 the contractors as soon as I heard when that valve would be  
5 there--valve pipe.

6 Q So I'm trying to get an idea when--you may have  
7 set September 8th as---

8 A (interposing) I had been talking to--since the  
9 time we ordered it, I had been talking to the contractor that  
10 I wanted--as soon as it got there, I wanted the work done and  
11 get it over with.

12 Q Okay. When did you set the September 8th date?  
13 Do you remember?

14 A Probably somewhere about a week prior to that.

15 Q Okay. And then you had described that 650,000 to  
16 700,000 gallons went from the plant to lagoon 1 each day?

17 A Yes, ma'am. Yes, sir.

18 Q How much goes from lagoon 1 to lagoon 2 each day?

19 A On a five day week, I try to--about 500,000.

20 The Court: Okay. Do any parties have any  
21 questions based on my questions?

22 Ms. LeVeaux: No.

23 (Pause.)

24 Ms. Jones: Just one question, Your Honor.

25 The Court: All right.





1 the waste that was in Cabin Branch behind lagoon number 2?

2 A No, I did not.

3 Q Do you know if anybody else from DWQ told him and  
4 maybe he was confusing individuals?

5 A No.

6 Q And why wouldn't you tell him to do that?

7 A On September 10th Joe Teachey had indicated to us  
8 that he didn't know where the sludge came from. We would not  
9 recommend that he would pump something into his lagoons that  
10 we did not--he did not know where it came from.

11 And I also am not the compliance person for the  
12 nondischarge permitted system. And he--I specifically  
13 instructed him to call the Aquifer Protection Section and  
14 talk to them about it because they would know the permit and  
15 they could--they could advise him where that was concerned.  
16 But I could not. I was not in a position to do that.

17 Q And one final question: again, you've been in the  
18 courtroom throughout Mr. Teachey's testimony. He indicated  
19 that there were particles on his lagoon number 1 from Parker  
20 Bark. Have you had an occasion to observe lagoon number 1 on  
21 or about September the 10th, 2009?

22 A Yes.

23 Q And did you notice Parker Bark's material mulch on  
24 lagoon number 1?

25 A There was not any bark that--sitting on the

1 surface of that lagoon to any amount that is even signifi-  
2 cant. What they have in that first lagoon is sludge and  
3 wastewater and vegetation.

4 Ms. LeVeaux: Thank you, Your Honor. No  
5 further questions.

6 The Court: Okay. Mr. Jones?

7 **C R O S S - E X A M I N A T I O N** 3:38 p.m.

8 By Mr. Jones:

9 Q Ms. Willis, did you explain to Mr. Teachey that if  
10 the material had not come from House of Raeford, it could be  
11 a violation of the permit to pump into either of the lagoons?

12 A No, I did not.

13 Q When that pumping operation was going on, do you  
14 remember Mr. Rhame being around from the EPA?

15 A Mr. Rhame was there during--I'm not sure if he was  
16 there when Register's septic trucks were there or during the  
17 time that they actually put the pump on the creek bank and  
18 started pumping with a pump.

19 Q But you did hear Mr. Rhame's testimony several  
20 weeks ago, didn't you?

21 A Yes.

22 Q Were you in the courtroom then?

23 A Yes.

24 Q Do you remember when he said that he was relieved  
25 when they had a plan to remediate the creek and did not

1 object to them taking that remediation action?

2 A Yes. That was his function. That was why he was  
3 there.

4 Q Mr. Rhame?

5 A Yes.

6 Q And Mr. Rhame is with EPA?

7 A Yes.

8 Q And he's an enforcement agent with them?

9 A We take--the Division of Water Quality takes lead  
10 on these type of incidents, not the EPA.

11 Q I didn't ask you that. I said he was from EPA?

12 A But he didn't have the compliance--Division of  
13 Water Quality has compliance oversight for this, not the EPA.

14 Q But Mr. Rhame was from EPA?

15 A Yes.

16 Mr. Jones: No further questions.

17 The Court: Anything further?

18 Ms. LeVeaux: No, Your Honor.

19 **EXAMINATION** 3:40 p.m.

20 By the Court:

21 Q Let me ask because the specific words that Mr.  
22 Teachey said that you had told him was that you told him it  
23 would be in his best interest to clean it up or pump it out.  
24 Did you use any words to that effect? I know Ms. LeVeaux  
25 asked you did you tell him to pump it out, but did you

1 express anything that he could infer that it was in his best  
2 interest to---

3 A (interposing) I did, but that was not on the  
4 10th. And if it was at any time, it would have been on the  
5 15th when we were conversing with Mr. Howard because that was  
6 the first time that we had heard that House of Raeford was  
7 going to offer up any assistance in cleaning up the creek.  
8 And that was Mr. Howard did that.

9 The Court: Okay. Do either parties have  
10 any questions based on my question?

11 **C R O S S - E X A M I N A T I O N** 3:40 p.m.

12 \_\_\_\_\_ (resumed)

13 By Mr. Jones:

14 Q I'm confused by that. Mr. Howard did what?

15 A He is the one that offered to do anything they  
16 could to mitigate the issue.

17 Q But to the judge's question--to the statement, did  
18 you say anything that it would be to their benefit?

19 A It's always to their benefit. If they have caused  
20 an incident that impacts a surface water, it always is, you  
21 know, taken into consideration an effort to try to mitigate  
22 if it--if the mitigation is, you know, an effort that makes a  
23 difference in the duration, the gravity, you know, the extent  
24 of impact in the surface waters.

25 Q Would you say that that occurred in this case,

1 that it had an impact on the gravity and the duration?

2 A I know the gravity and the duration was excessive.  
3 We had impacts in the creek all the way out to November, so I  
4 don't know. It might have alleviated the impacts. We might  
5 have not seen--instead of having impacts, you know, through  
6 November, we might have seen impacts all the way into January  
7 had they not pumped over a million gallons back into their  
8 lagoon.

9 Q So it did have a positive impact?

10 A It couldn't hurt, yes. I mean I would--if you're  
11 going to take waste out of the creek, then it's not going to  
12 impact the creek if that's being removed and put back into  
13 their wastewater lagoons.

14 Q And did you provide that as some form of  
15 implication to the company that that would be a positive  
16 impact?

17 A Yes.

18 The Court: And you said that date would  
19 have been around the 15th, though, when Mr. Howard---

20 The Witness: (interposing) Yes.

21 The Court: ---did offer to---

22 The Witness: (interposing) Yes.

23 The Court: Okay.

24 The Witness: Yeah.

25 The Court: Any further questions for Ms.

1 Willis?

2 Ms. LeVeaux: No.

3 Mr. Jones: No, sir.

4 The Court: You may step down. Thanks  
5 again. Your next witness, Ms. LeVeaux?

6 Ms. LeVeaux: Yes, Your Honor. At this time  
7 I call Mr. Bushardt to the stand.

8 The Court: Well, there's somebody I  
9 recognize who has been sitting there patiently for a while.  
10 Do you have a preference to be sworn or affirmed?

11 Mr. Bushardt: Sworn.

12 The Court: Okay. If you'll place your  
13 left hand on the bible, raise your right, and face the court  
14 reporter?

15 (Whereupon,

16 **JAMES BUSHARDT**

17 was called as a witness, duly sworn, and testified as  
18 follows:)

19 The Court: If you would state your first  
20 and last name and spell them both, please?

21 The Witness: James Bushardt, J-a-m-e-s,  
22 Bushardt, B-u-s-h-a-r-d-t.

23 The Court: Thank you. You may direct your  
24 attention to Ms. LeVeaux.

25 Ms. LeVeaux: Thank you, Your Honor.

1                                    **D I R E C T   E X A M I N A T I O N**                                    3:43 p.m.

2                                    By Ms. LeVeaux:

3                                    Q     Mr. Bushardt, please state your name and  
4 occupation for the Court.

5                                    A     I'm James Bushardt. I go by Jim. I work for the  
6 Division of Water Quality. I've been an Engineer II there  
7 for my whole career. They don't call it that now. They call  
8 it journey level engineering, but I've been there since '91.

9                                    Q     And if you will, Mr. Bushardt, please state your  
10 education and if you'll go through your employment history,  
11 please?

12                                    A     I graduated Winyah High School in 1972 in  
13 Georgetown, South Carolina, went to Horry-Georgetown  
14 Technical College and graduated in 1975. I worked for three  
15 years for the City of Wilmington as a--I implemented their  
16 cross-connection control program.

17                                    I went back to school at UNC Charlotte in 1978 to  
18 1980 and got a bachelor in engineering technology degree.  
19 I'm a licensed engineer in the state of North Carolina.

20                                    Q     Did you get any other degrees?

21                                    A     No, that's it.

22                                    Q     And how long have you been--and what division do  
23 you work with?

24                                    A     I work for the Division of Water Quality in their  
25 Aquifer Protection Section.

1 Q And how long have you been in that section?

2 A I came to work with the state of North Carolina in  
3 February of 1991.

4 Q And are you familiar with the House of Raeford?

5 A Yes, I am. I've been out there doing compliance  
6 inspections for just about my whole career.

7 Q And are you familiar with the lagoons out at the  
8 House of Raeford?

9 A I'm familiar with their wastewater system.

10 Q Okay. And so can you explain the House of  
11 Raeford's wastewater system?

12 A Sure. It's--well, the permit calls it an 800,000  
13 gallon a day system. We've heard all kinds of flow numbers  
14 throughout all this, but they're permitted for an 800,000  
15 gallon a day capacity.

16 And basically they have some rough screens for  
17 removing the big solids, the things that they wouldn't want  
18 to go through pumps and mechanical systems, followed by  
19 physical separation in their dissolved air flotation unit,  
20 where sludges are physically separated from wastewater.

21 The wastewater goes to the lagoon systems. The  
22 sludges is removed as a resource recoverable item. It goes  
23 to a rendering plant, and they probably make some kind of  
24 animal supplements out of it, food supplements. They have  
25 three lagoons. Lagoon 1 and lagoon 2 are facultative

1 lagoons.

2 Q What does that mean?

3 A It's a facultative treatment. That's a  
4 combination of aerobic and anaerobic treatment processes.  
5 You've got both types of microbes in a facultative lagoon.  
6 And for instance, in a facultative lagoon the aeration part  
7 would come from wind blowing across the surface of the water.  
8 Also the algae that forms in the photic zone where the light  
9 can get through due to photosynthesis, that's producing  
10 oxygen.

11 So basically you've got that aerobic bacteria that  
12 are stabilizing the organic waste on the top part of the  
13 lagoon. And then in the lower part of the lagoon, you've got  
14 the anaerobic bacteria that's doing kind of the same thing.

15 And then they go through a force main pumping  
16 station over to their storage lagoon, which is also giving a  
17 little bit of facultative treatment. And it's providing  
18 storage so they don't have to spray during rainfall or  
19 anything like that. They can kind of stage their irrigation  
20 events.

21 After it's pumped out of the lagoon number 3, it's  
22 disinfected with liquid chlorine and then it's spray  
23 irrigated out on cropland. And the rates--the spray rates  
24 are controlled based upon the nutrient uptake of the crops.  
25 Pollutants would be nutrients and germs, pathogens.

1           And so how the treatment systems handles the  
2 nutrients is it's loading a crop at a certain rate that the  
3 crop can uptake, and so it doesn't get away from the root  
4 zone and go to adding any kind of insult to the surficial  
5 aquifer.

6           Q     I don't know what you just said, but I do have  
7 another question. Does the DAF, the D-A-F, aerate waste-  
8 water?

9           A     Well, what happens in the DAF is--I don't know if  
10 you've ever been swimming in the ocean. After a wave breaks  
11 on you, it's really hard to stay up because you have--all the  
12 buoyancy is from the air bubbles. Everything is--the water  
13 is lighter than it would be, so you don't float as well in  
14 it. And so basically in a DAF you're getting separations due  
15 to that kind of scientific situation.

16          Q     Can you explain the operational requirements for  
17 the House of Raeford facility?

18          A     Well, the ROC should--when you're looking at the  
19 permit requirements, the ROC is going to be very interested  
20 in determining what the influent flow is on a daily basis,  
21 what kind of spray rates that he's putting out on each of his  
22 fields.

23                   He's going to make some observations like the  
24 lagoon freeboards to make sure they're not up too high. He's  
25 going to make observations looking for any kind of threat of

1 a dam safety problem with the elevated berm.

2 Q Now, explain that a little bit because--I know you  
3 were in the courtroom when Mr. Teachey was testifying, but he  
4 was saying that there really wasn't--he was talking about  
5 those two lagoons and the berm, if you will. Explain that.  
6 Describe that, if you will, and---

7 A (interposing) Oh, okay. The dam safety part of  
8 it?

9 Q Right.

10 A Well, lagoon 1 is largely in the ground. They  
11 don't really have any containment berms around that. I guess  
12 you could--you know, you might have like a 1 or a 2 foot  
13 increase in elevation right around the perimeter of that.

14 Lagoon number 2, the beginning part of it back  
15 towards lagoon number 1, is probably dug into the ground  
16 also. But as you get back towards the creek--I don't know if  
17 you've ever noticed when you're going down the highway and  
18 you're coming to a creek, you know, you may go across a  
19 bridge that's only 50 feet wide, but you'll start going down,  
20 you know, sometimes a thousand feet, going down an elevation  
21 before you even get to the creek.

22 Well, that's the way all creeks are. They've been  
23 there since the beginning of time. And so lagoon number 2 is  
24 partially dug into the side of the hill. And there's a  
25 portion of it where it's probably at the top of the land

1 surface.

2           And back towards the east end of the lagoon, back  
3 where the Cabin Branch is, it's got an elevated lagoon berm  
4 that's--I don't know. It's been a few years since I've been  
5 back there, but I'd say it might be at least 10 feet high.

6           And I can tell you some more about that berm.  
7 It's so close to the creek that you would normally want a  
8 good healthy slope on the outer berm, something maybe 3 feet  
9 horizontal to 1 foot vertical, a 3 to 1 slope. It's so close  
10 to that creek it's--I don't think you even have a 3 to 1  
11 slope on it. So it's a particular dam safety threat at that  
12 point.

13           Q       And so as relates to the duties of an operator in  
14 charge, do you know what his duties and responsibilities are  
15 as they relate to that berm or the conditions around the two  
16 lagoons?

17           A       Well, our division has--whenever a lagoon--a berm  
18 collapses and spills wastewater, unfortunately it's--our  
19 division is always the one that's responsible for it. So we  
20 try to rectify that problem by getting out and doing our  
21 inspections and letting people know that they need to be  
22 looking for things that can cause this to happen.

23                   Now, things such as--we require them to keep those  
24 berms clean enough to where--or clear enough to where they  
25 can make a pretty detailed inspection. Rodents can bore in

1 the berms. We don't allow trees to be on berms, but if  
2 you've got a big, big, you know, 100 foot wide berm or  
3 something, we probably wouldn't concern ourselves so much  
4 with the trees. But a tree on a narrow berm can overturn--I  
5 mean can blow over in a hurricane and the roots can be  
6 exposed and it can cause an avenue for discharge.

7 Q Well, let's talk about this--let's talk about  
8 these two lagoons and let's talk about the berm around these  
9 two lagoons at House of Raeford---

10 A (interposing) Okay. Well---

11 Q ---based upon your observations.

12 A Well, once again, berm--lagoon number 1 is in the  
13 ground, so we're not too concerned about the dam safety  
14 aspects of that. Lagoon number 2, the east end certainly  
15 requires good careful inspections. Their lagoon number 3, a  
16 lot of that--most of it is--has got real high containment  
17 berms.

18 And you know, we're not only looking for holes and  
19 things like that. We're looking for wet areas. So, you  
20 know, you can have something there that was growing a root  
21 and it died, and the root finally decays and it causes what a  
22 dam safety expert would call piping, where water can start  
23 going down that little path where that decayed root is. And  
24 the next thing you know, everything is just getting unstable  
25 and collapsing.

1           Q     So the inspection, is it something that you can do  
2 from your vehicle?

3           A     No. You've got to--it's got to be clean. It's  
4 got to--the grass has got to be mowed. You've got to be able  
5 to look for holes. You've got to be able to look for wet  
6 areas, seeps, and things of this nature.

7           Q     So how would you do such an inspection out at the  
8 House of Raeford as it relates to the berms and surrounding  
9 areas of the---

10          A     (interposing) It would be most important to be  
11 inspecting a berm from the outer surfaces, looking particu-  
12 larly down around the bottom part of the berm, what would be  
13 called the toe. That would be of particular interest.

14          Q     So in your--on a bike, in a cart, in a car, on  
15 what?

16          A     On foot.

17          Q     Okay.

18          A     On foot. That's the steep berm there and, you  
19 know, the only way you're going to inspect it good is to walk  
20 on down it.

21          Q     And you said you've been out to the facility. Can  
22 you see Cabin Branch?

23          A     If you were doing a thorough inspection, dam  
24 safety inspection of lagoon number 2, on the eastern end  
25 would be where you would want to--that would be your primary

1 area to look for a potential problem. It's right next to the  
2 creek.

3           As I mentioned, that creek is so close, when that  
4 structure was built, they couldn't have what I would call a  
5 good, firm exterior berm slope on it, a 3 to 1. It's steeper  
6 than that.

7           Q     Okay. And did you observe the freeboard out at  
8 Cabin Branch (sic) lagoons number 1 and lagoons number 2?

9           A     Yeah. I was--the last time I was there was in--  
10 well, I was there in 2011 when they were removing the  
11 vegetation from the lagoons. But I went there in 2010 in  
12 July and wrote a notice of violation for my supervisor's  
13 signature, and it was of a couple of things.

14           One of the things was the accumulation of the  
15 sludge and the marsh grass in lagoon number 1. And I did  
16 notice the level, and the level was high. But I did not  
17 include that as an offense because they are required to  
18 maintain a 2 foot freeboard, but they are not required to  
19 report it. They do not have a measurement gauge in the pond  
20 to look at to tell what it is. And a measurement gauge is  
21 put in from a survey.

22           And when you're looking at a pretty large lagoon,  
23 you really can't look and see the low area. I mean you can--  
24 you can kind of get close, but you can't really tell by  
25 inches. And you know, over the years we've been kind of

1 thrashed around by being unscientific with our lagoon  
2 freeboard measurements, so I just chose to say it was high,  
3 couldn't tell what it was.

4 Q And if lagoon number 1 were to overtop, where  
5 would it go?

6 A It would go over on Parker Bark's side. They  
7 had--I think we probably heard testimony earlier on where,  
8 you know, the House of Raeford folks are kind of having a  
9 hard time with their neighbors riding their big equipment  
10 over on their lagoon berm and causing it to be compacted down  
11 and whatnot.

12 Q What is your opinion of the sludge--oh, let me ask  
13 you this. Have you been out to House of Raeford and seen  
14 lagoon number 1 prior to--prior to 2010?

15 A Yes.

16 Q And on those other occasions when you've observed  
17 lagoon number 1, tell the Court--or describe lagoon number 1  
18 for the Court.

19 A It's got floating sludge on it and heavy  
20 accumulations of marsh grass, floating marsh grass. And both  
21 of those, the sludge and the marsh grass, they just blow  
22 around depending on what the wind direction there is. They  
23 could--they could potentially blow up against the influent  
24 pipe or blow up against the effluent pipe.

25 Q Well, what's the impact of this vegetation being

1 on top of lagoon number 1? You've been in the courtroom  
2 while Mr. Teachey was testifying. If there's sludge across  
3 the top with vegetation, what impact, if any, does that have  
4 on that lagoon?

5 A Well, it's not being a facultative lagoon. You  
6 know, all they're going to be getting is anaerobic stabiliza-  
7 tion. They're not going to be getting any wind--they're not  
8 going to be getting any aeration from winds transfer across  
9 the surface of the water because the surface of the water is  
10 not getting the wind coming across it. Everything that's on  
11 the top of that lagoon is shielding sunlight, so there's no  
12 photic zone. There's no algae to produce aeration via photo-  
13 synthesis.

14 So I mean to continue on, in addition to that,  
15 these are solids. They're displacing treatment volume. I  
16 was out there when--periodically, when they were removing the  
17 marsh grass off of it. And it would be my guess, but I would  
18 say that once all the marsh grass was pulled off they gained  
19 a little over a foot of freeboard in that lagoon.

20 Q And do the solids in the lagoon have an effect on  
21 the DAF?

22 A No. The DAF is located after--I mean before the  
23 lagoons.

24 Q So what would the--let me put it another way.  
25 What would the solids in the lagoon reflect of the DAF---

1           A     (interposing) Oh.

2           Q     ---if anything?

3           A     Well, an inefficient DAF. It's not common to see  
4 accumulations of sludge on a facultative lagoon, and it would  
5 point to an inefficient treatment unit. Why? I could make a  
6 guess. It could be due to the heat of the wastewater not  
7 allowing good coagulation to go on in that treatment unit.  
8 It could be the pH of the wastewater. It could be a  
9 hydraulic overload on that 850,000 gallon a day treatment  
10 unit. I've heard testimony of 900,000 gallons a day going  
11 through that treatment system, so---

12          Q     It's not being treated?

13          A     Well, it's not being treated efficiently.

14          Q     And could that in turn impact upon the transfer  
15 from lagoon number 1 to lagoon number 2 or lagoon number 2 to  
16 lagoon number 3?

17          A     Well, you know, if I was operating a system that  
18 had solids like that, I would be trying everything that I  
19 could do to keep the fats, oils, and greases from getting  
20 into any mechanical system.

21                 When they're pulled out of lagoon number 2,  
22 they're pumped via a force main over to lagoon number 3.  
23 That force main is probably 2 or 3 miles long. They don't  
24 pump continuously. They'll pump on occasion. They stage--  
25 you know, they'll send some over and then they'll stop.

1           Okay. In these periods when there's no pumping,  
2 you can have sags in those lines that will accumulate solids.  
3 And you know, if solids are allowed to settle out in these  
4 sags, I mean they can--it's a potential that they can cause  
5 clogging. And if that force main gets clogged, they're out  
6 of the chicken processing business because that would be a  
7 single point failure. They would not have any other way to  
8 get that wastewater over to their spray system.

9           Other than that, the act of getting solids over  
10 into their spray system, they disinfect after--when they're  
11 sending it out to their spray fields. If they've got  
12 excessive solids in their wastewater, they're not going to  
13 get efficient disinfection. You cannot burn through a solid  
14 with chlorine or UV. And pathogens are one of the pollutants  
15 of concern.

16           House of Raeford doesn't have a permit that limits  
17 them to an effluent limitation, but I mean they're supposed  
18 to operate--they're supposed to maintain and operate  
19 properly.

20           Q     Well, let me ask you this. Could that sludge be  
21 sent to the renderer--taken off and sent to the renderer?

22           A     From the DAF it can. It wouldn't---

23           Q     (interposing) What about from the lagoon?

24           A     The lagoon is wastewater. There comes a point  
25 where--a resource recoverable item is something that's

1 regulated through our sister agency, the Division of Waste  
2 Management. We, Division of Water Quality, regulate the  
3 wastewater and how it is disposed. So you can't send a  
4 wastewater to a rendering plant, or you shouldn't. You're  
5 not supposed to.

6 Q Has DWQ asked the House of Raeford to remove the  
7 solids from lagoon number 1?

8 A Yeah.

9 Q Let me have you look at Exhibit 24C and see if  
10 that will assist you. And that's in tab 24, I hope, and then  
11 it's 24C.

12 (Witness complies.)

13 A I'm there.

14 Q Okay. And so if you want, I can repeat the  
15 question if you don't---

16 A (interposing) I'm looking at a notice of  
17 violation that's dated September 7th, 2004. And let's see;  
18 I'll just scan over this:

19 "By observation, many of the irrigation fields now  
20 meeting hydraulic loading limits as compared to  
21 the previous permit renewal. However, fields L4  
22 and L7 are still over the permitted hydraulic  
23 limits. Several fields are below the annual  
24 irrigation limits and efforts could be made to  
25 reduce the irrigation volume on L4 and L7,"

1 those fields.

2 "Cursory PAN calculations for Field [4] (based on  
3 a twelve month floating total of 50.9 inches and a  
4 PAN concentration of 35.5 milligrams per liter)  
5 indicate...409 pounds per acre per year are being  
6 applied."

7 That's plant available nitrogen.

8 "The permit allows a maximum PAN," plant available  
9 nitrogen. "loading of 300 pounds per acre per year for a  
10 double crop of Coastal Bermuda and winter small grain."

11 Here's the part about the treatment lagoons.

12 "The treatment lagoons contained less floating  
13 sludge & grass accumulations as compared to the  
14 previous inspection. However, efforts should be  
15 made to either provide better solids removal via  
16 DAF or develop a sludge management plan designed  
17 to minimize solids build-up on the lagoons. The  
18 floating vegetation should be removed from the  
19 lagoon."

20 Will you let me go on?

21 Q No. I'm just really more--I was concerned about  
22 the last paragraph of that cover letter actually.

23 A Oh.

24 Q It's the full paragraph before you get to the  
25 phone number.

1           A       The last paragraph--"A review of the irrigation  
2 record shows...the site is no longer hydraulically overloaded  
3 (based upon a twelve month"---

4           Q       (interposing) No, no, no. I'm looking at page 2  
5 of Mr. Robert Johnson's letter.

6           A       Oh, oh. Oh. "It is requested that the House of  
7 Raeford provide a plan and schedule to the writer within 10  
8 days of the receipt of this letter that covers removing  
9 floating residuals and vegetation accumulations from the  
10 treatment lagoon(s)."

11          Q       And the operator in charge was Joseph Teachey;  
12 correct?

13          A       That's right.

14          Q       And--again, and if you'll look at 24D--and I'm  
15 going to direct you to page 2 which goes right into the--it  
16 says "Page: 2" at the bottom. And I'm going to direct your  
17 attention to the first treatment lagoon. That's the third  
18 paragraph down of the inspection summary.

19                   (Witness peruses documents.)

20          A       Okay. 24D and page 2 and--could you repeat that,  
21 please?

22          Q       The third paragraph.

23          A       Third paragraph.

24                   "The first treatment lagoon in succession is  
25 covered [with] a thick floating mat of vegetation

1 and sludge. This needs to be mechanically  
2 removed. Sludge needs to be hauled out by  
3 approved methods and disposal must be approved by  
4 the Division. These activities will improve the  
5 capacity of the lagoon and bring the facility into  
6 compliance. The vegetative mat was removed three  
7 years ago and came back within...1 year. This  
8 warrants removal of the sludge base to prevent  
9 recolonization of...vegetative matter."

10 Q Okay. And I ask you if you recognize Exhibit 24E?  
11 (Witness peruses document.)

12 A This looks like it was a compliance report that  
13 Erin Carey has performed. I work with Erin. I trained her.

14 Q No, I'm sorry; 24E is---

15 A (interposing) Oh, oh; excuse me.

16 Q ---a letter dated April 23rd, 2007.

17 A Oh, oh, oh; excuse me.

18 Q It's to DENR from House of Raeford.

19 A I see, yeah. This is a letter to--that last  
20 inspection report was done by Tara Croft, and this is a reply  
21 to Ms. Croft.

22 "This letter is to inform you that we are  
23 currently obtaining quotes on the best possible  
24 way to clean out [the] first primary lagoon to  
25 bring our facility [into] compliance. We will

1 review these quotes upon completion and implement  
2 the best process for...weed mat removal."

3 Q And then 24F on the next page dated January 5th,  
4 2009, do you recognize that?

5 A Yes. This is another compliance inspection that  
6 was done by Erin Carey.

7 Q And then if you go to the second paragraph?

8 A "The primary treatment"---

9 Q (interposing) In fact the whole paragraph (sic);  
10 start with paragraph 1.

11 A Okay. It's addressed to Mr. Krum.

12 "Enclosed is the inspection report for [the]  
13 House of Raeford Farms, Incorporated conducted on  
14 December 12[th], 2008. The Division would like to  
15 thank you...Joe Teachey for his time and  
16 assistance during the site evaluation. The  
17 current treatment components and disposal units  
18 are not compliant. Please review the attached  
19 report in detail."

20 "The primary treatment lagoon remains out of  
21 compliance and in need of dredging and solids  
22 disposal. The Division received correspondence  
23 from David Meyer at Protocol Sampling Service,  
24 Inc[orporated] outlining a plan to dredge out the  
25 primary lagoon. However, the Division will not

1           issue compliance until this project is complete.  
2           Please make certain that I am contacted for [the]  
3           follow-up inspection when the lagoon is dredged or  
4           a Notice of Violation will be issued against this  
5           permit. If you have any questions concerning  
6           [this] enclosed report, or this letter, please  
7           feel free to contact me at (910) 796-7215."

8           Q     And finally, Exhibit 24G dated August 6th, 2010,  
9 do you recognize that?

10          A     Yeah. This--I wrote this notice of violation for  
11 my supervisor's signature. And this was an inspection that  
12 was done after--sometime after the sludge was found in the  
13 adjacent creek. This was in July of 2010.

14          Q     And again, what does it tell you, if anything?  
15 What did you cite about the primary lagoon?

16          A     Would you like for me to read---

17          Q     (interposing) No, just if--you can paraphrase. I  
18 think you've spoken to the---

19          A     (interposing) Well, once again, we've asked that  
20 the sludge accumulations and the vegetation accumulations be  
21 removed.

22          Q     Now, you heard Mr. Teachey testify that in his  
23 daily inspections, which occur twice a day at it relates to  
24 the two lagoons and the areas around there, he didn't observe  
25 sludge in the creek. Do you have an opinion as to whether

1 he--based upon your visits out there, whether or not he  
2 should have observed the sludge in the creek?

3 A Well, in my opinion had acceptable dam safety  
4 inspections been performed on a daily basis, I don't see how  
5 he could have missed it.

6 Q And it is true, though, is it not, that the House  
7 of Raeford maintains a sludge permit?

8 A Yeah. They've got a--they've got a permit for  
9 disposal of residual solids, sludge, and to my knowledge  
10 they've never used it.

11 Q Did you have an occasion to look at the 9/28/2010  
12 sampling event as---

13 A (interposing) Yes.

14 Q ---relates to fecal coliform?

15 A Yes, I did.

16 Q Do you have an opinion of that?

17 A Well, you know, that sampling was done a year or  
18 so after the event we're talking about, so I don't know how  
19 relative it is. But we took a look at those dates and we  
20 found on division monitoring reports that are performed by  
21 House of Raeford--they're required--one of the things they're  
22 required to do every day is observe the meteorological data.

23 And on the 27th, I think I remember--in that area  
24 where he's checking rainfall is probably within a couple of  
25 miles of this industrial facility. It's over at his spray

1 site. And we observed on the 27th, it was a 2.2 inch  
2 rainfall, I believe. And then on the sample date, the 28th,  
3 it was a 4.1 inch rainfall.

4 Q And what significance, if any, does that have?

5 A That's a whole lot of rainfall to be getting a  
6 measurement for fecal coliform bacteria. You know, you--you  
7 know, you can kind of assume that you're going to have  
8 impacts to water quality after rainfall like that.

9 And in fact that's a C swamp stream. And so the--  
10 to really get an idea about how bad it's polluted, our  
11 standard requires--the division standard requires that you  
12 take five samples in a 30 day period and take the geometric  
13 mean of those five samples. And it is like that just because  
14 of situations where you can have rainfall data that's really  
15 skewing things.

16 And so that's the geometric mean and not the mean  
17 and--you know, so definitely if you have a case like that  
18 where you're getting samples of a few hundred colonies per  
19 100 mL and all of a sudden you get something that's 40,000,  
20 in five samples it's going to bring that 40,000 down a good  
21 bit. It's--you know, things are--you know, it's like the  
22 squares of numbers kind of thing.

23 Q Is it reasonable to expect high fecal coliform  
24 bacteria in a stream during low flow conditions?

25 A Well, yeah, it's possible. If you've got a pocket

1 of water that's stagnant and it entered that pocket of water  
2 with fecal coliform bacteria and that pocket of water has  
3 organics in it and also it's shaded from sunlight, then yeah,  
4 you can have fecal growing in it. I mean it's not--you know,  
5 it's not in--I mean it's got to be warm conditions too. But  
6 yeah, it's not impossible.

7 Q Let me ask you this. There's been some specula-  
8 tion as to how this occurred or how this stuff, this sludge,  
9 got from lagoon number 1 to Cabin Branch. Is it possible to  
10 pump wastewater to the ditch there at House of Raeford into  
11 Cabin Branch?

12 A I would say that yeah, it could be possible. You  
13 know, there's--there was a situation where waste was removed  
14 from the creek and brought back into lagoon number 1. So  
15 that's just the opposite. I mean it would take a tanker  
16 truck, but yeah, you could do that.

17 And also, I mean there's a drainage ditch that  
18 runs parallel with the way those lagoons run that's roughly  
19 80, 90 feet away. You know, you could pump to that--pump to  
20 that ditch. It's possible.

21 Q But you would expect to see some remnants;  
22 correct?

23 A Yeah, yeah. You would--you know, as we heard the  
24 gentleman from EPA, you know, he'd expect to see, you know, a  
25 bathtub ring effect like around any conduit areas, any

1 culverts, or anything where water can kind of back up and  
2 then go down slowly and leave indication.

3 Q And the same thing could be said of a facility  
4 that's upstream; is that not correct?

5 A Right.

6 (Pause.)

7 Q Mr. Bushardt, if you will--you have the  
8 respondent's trial notebook in front of you. Turn to tab  
9 number 15.

10 (Witness complies.)

11 A And I'm going to ask you to look at 15 LW-1 and  
12 just--there's different pictures of what was observed--2, 3,  
13 4, 5. And my question to you is if you can tell, and maybe  
14 you can't--if you can tell--determine the age or if this is a  
15 fresh sludge or if this is an old sludge or if this is a--  
16 just how would you describe---

17 A (interposing) Well, the mere fact that it's got  
18 leaves on it, I'd say it's probably got a little bit of age.

19 Q Like a little bit meaning what?

20 A You know, it might be up to a week old.

21 Q And if you'll keep going through the pages,  
22 please?

23 (Witness peruses photographs.)

24 A It's kind of light in color. I've noticed that,  
25 and---

1 Q (interposing) Just if you'll look at all the  
2 pages? I'm just asking you just to get a feel for it because  
3 you didn't--you didn't go out the day of the sludge, did you?

4 A I didn't respond---

5 Q (interposing) Okay, so I'm just asking you to  
6 get--if you'll just flip through the exhibits all the way  
7 through to I guess 10.

8 (Witness peruses photographs.)

9 Q So can you garner an opinion on--and I know you  
10 said it could be a week. You don't know. You don't know.

11 A I would be guessing. I'm just--the only way I  
12 could gauge any time is just by looking at stuff on top of  
13 it. And you know, it's kind of light colored. That tells me  
14 that, you know, at that point it was probably getting a  
15 little aeration from the stream.

16 I've been listening just about the whole time.  
17 Some people said, "Oh, it stunk." Some people said, "I can't  
18 tell if it's stinking because of the lagoons." Put me down  
19 in that category.

20 Q But again, you sat here through the testimony.  
21 There's been some assertion that it could have been Carolina  
22 By-Products or it could have been Duplin Winery. But again,  
23 you referenced to that bath ring. You referenced to that  
24 fingerprint. Wouldn't you expect to see that?

25 A Well, certainly the winery wouldn't have a fat,

1 oil, and grease kind of residual. They don't have that. I  
2 guess it's possible that the rendering plant could. I heard  
3 Mr. Poindexter, and he talked about removing the sludge from  
4 one lagoon. He said it was from lagoon number 2, and he also  
5 said lagoon number 2 was their stormwater lagoon. So what I  
6 surmise there is they were removing sand from that lagoon.

7 Q If it were possible, wouldn't you expect to see  
8 some sort of staining fingerprint?

9 A If it came down from upgradient? Well, yes.

10 Ms. LeVeaux: No further questions.

11 The Court: Cross-examination, Mr. Jones?

12 Well, actually, I know we were going to end at 4:30 today.  
13 It's getting close, and I actually do want to have a bit of a  
14 conference about tomorrow's person as well. So let's adjourn  
15 for the day and we'll take up cross-examination tomorrow at  
16 9:30. We'll be adjourned till then.

17 (The hearing was adjourned at 4:23 p.m. to  
18 reconvene at 9:30 a.m. on Tuesday, December 20,  
19 2011.)

Horf7STATE OF NORTH CAROLINA  
COUNTY OF WAKE

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

I, Kay K. Rohde, do hereby certify that the foregoing pages 1171 through 1356 represent a true and accurate transcript of a portion of the proceedings held at the Office of Administrative Hearings on Monday, December 19, 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 14th day of January, 2012.

---

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