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UNITED STATES DISTRICT COURT

Civil Action  
No. 82-1672-S

DISTRICT OF MASSACHUSETTS

ANNE ANDERSON, for herself, and as parent and next friend of CHARLES ANDERSON, and as Administratrix of the estate of JAMES ANDERSON; CHRISTINE ANDERSON; RICHARD AUFIERO, for himself, and as parent and next friend of ERIC AUFIERO, and as administrator of the estate of JARROD AUFIERO; LAUREN AUFIERO; DIANE AUFIERO, for herself, and as parent and next friend of JESSICA AUFIERO; ROBERT AUFIERO; KATHRYN GAMACHE, for herself, and as parent and next friend of AMY GAMACHE; TODD L. GAMACHE; ROLAND GAMACHE; PATRICIA KANE, for herself, and as parent and next friend of MARGARET KANE; KATHLEEN KANE; TIMOTHY KANE and KEVIN KANE, Jr.; KEVIN KANE; DONNA L. ROBBINS, for herself, and as parent and next friend of KEVIN ROBBINS, and as Administratrix of the estate of CARL L. ROBBINS, III; MARY TOOMEY, for herself, and as parent and next friend of MARY EILEEN TOOMEY, and as Administratrix of the estate of PATRICK TOOMEY; RICHARD J. TOOMEY; JOAN ZONA, for herself, and as Administratrix of the estate of MICHAEL ZONA; RONALD ZONA; ANN ZONA; JOHN ZONA; and PAT ZONA,

Plaintiffs,

vs.

CRYOVAC, Division of W. R. Grace & Co.; W. R. GRACE & CO.; JOHN J. RILEY COMPANY, Division of Beatrice Foods Co.; BEATRICE FOODS CO.; and XYZ Company (ies),  
Defendants.

FIRST DAY OF THE DEPOSITION OF RICHARD K. STEWART, taken on behalf of the Plaintiffs, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Kathleen L. Good, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Schlichtmann, Conway & Crowley, 171 Milk Street, Boston, Massachusetts, on Wednesday, May 15, 1985, commencing at 10:00 a.m.

## APPEARANCES:

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EXHIBITS

<u>No.</u>		<u>For Id.</u>
1	Photograph	30

\* \* \* \* \*

1  
2 MR. CHEESEMAN: Why don't we work under the  
3 same stipulations which were, I think, originally  
4 stated in the deposition of Paul Shalline.

5 MR. SCHLICHTMANN: Fine.

6 MR. CHEESEMAN: Let me also make a brief  
7 statement. I understand that this deposition is  
8 being taken under a notice of deposition that was  
9 addressed to W. R. Grace and directed Grace to  
10 produce the person or persons most knowledgeable  
11 concerning environmental matters and/or chemical  
12 and/or hazardous waste matters.

13 I was starting to read from the wrong notice.  
14 I'll just describe it since I don't have the right  
15 one.

16 It was the other Rule 30(b)(6) notice addressed  
17 to Grace and directing it to produce the person or  
18 persons knowledgeable regarding environmental and  
19 disposal matters at the Woburn plant.

20 We had already produced Paul Shalline as a  
21 deposition witness pursuant to another notice at the  
22 time that this notice was served and I will state now  
23 that Paul Shalline was a person who met the criteria  
24 set forth in this deposition notice, and so I'll  
25 retroactively designate Paul Shalline as one of the

1  
2 people who was produced responsive to the current  
3 deposition notice.

4 Mr. Stewart is also being produced today in  
5 response to this deposition notice to testify on  
6 behalf of Grace regarding practices and policies of  
7 Grace and of the Cryovac Division in connection with  
8 the use and disposal of chemicals insofar as they may  
9 have affected or relate to the Woburn plant.

10 MR. SCHLICHTMANN: Okay.

11 MR. CHEESEMAN: As I had advised you  
12 previously, we will be filing a motion to quash the  
13 other Rule 30(b)(6) notice which was addressed to  
14 environmental and disposal matters at all plants  
15 owned or administered by Grace as being too broad and  
16 gone from relevant matter.

17 (Discussion off the record.)

18  
19 RICHARD K. STEWART, a witness called by the  
20 Plaintiffs, having first been duly sworn, on oath  
21 deposes and says as follows:  
22  
23  
24  
25

Direct Examination by Mr. Schlichtmann

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2

3

4 Q Would you please state your name for the record.

5 A My name is Richard K. Stewart.

6 Q Mr. Stewart, what's your position at Grace?

7 A Manager, Engineering Services.

8 Q What are the duties of a manager at Engineering  
9 Services?10 A Manager of Engineering Services has cognizance over  
11 construction, buildings, sites, services, utilities  
12 and safety and health matters and environmental  
13 matters and those matters pertaining to energy and  
14 energy conservation.

15 Q How long have you held that position?

16 A I have held that position since 1977.

17 Q And you've held that until today?

18 A That's correct.

19 Q Have your duties been essentially the same from 1977,  
20 till today?

21 A That's correct.

22 Q Prior to 1977, what were your duties? Were you  
23 working for Grace prior for 1977?

24 A That's correct.

25 Q What was your job?

- 1
- 2 A Assistant to the chief engineer.
- 3 Q What did those duties entail?
- 4 A Essentially the same duties.
- 5 Q How long did you hold that position as assistant to
- 6 the chief engineer?
- 7 A From the time I joined Cryovac.
- 8 Q What year was that?
- 9 A 1965.
- 10 Q Do you have any college degrees?
- 11 A I have a degree, BS in economics.
- 12 Q Other than BS in economics, have you had any other
- 13 training or experience in engineering matters?
- 14 A I have had experience in engineering matters. Formal
- 15 training, no.
- 16 Q And the experience you have received is the
- 17 experience you received while working for Grace?
- 18 A And previous employers.
- 19 Q What were your previous employers?
- 20 A From Cryovac working backwards, Deering Milliken.
- 21 Q Where are they located?
- 22 A Spartanburg, South Carolina.
- 23 Q What were your job duties there?
- 24 A I was on the Central Industrial Engineering staff.
- 25 Q What what did your job include?

1

2

What were your duties?

3

A It included typical industrial engineering functions such as improving efficiency of equipment, improving efficiency of personnel, making audits of maintenance of equipment, maintenance of buildings. In essence, looking at the effectiveness of Milliken plants.

4

5

Q How long did you hold that position?

6

A Approximately three years.

7

Q Prior to that, where did you work?

8

A Burlington Industries.

9

Q What was your job there?

10

A Chief Industrial Engineer, for the Bloomenthal Division of Burlington Industries.

11

12

Q What did your duties include?

13

A The same as the previous answer.

14

Q Prior to that, where did you work?

15

A Prior to that, it was in the service, immediately prior to that.

16

17

Q What branch of the service?

18

A Marine Corps.

19

Q Did you receive any special training in the service?

20

A No.

21

Q Prior to your time in the service, were you employed?

22

A I was employed by Dan River Mills.

1

2 Q What was your job there?

3 A Assistant to the Production Control Manager.

4 Q How long did you have that job?

5 A Approximately two years.

6 Q Prior to that?

7 A I was in the service.

8 Q And prior to your time in the service?

9 A Graduated from high school.

10 Q You fit college in there somewhere?

11 A In there somewhere is college.

12 Q Where did you go to college?

13 A University of North Carolina.

14 Q And that was a four-year degree and ended up with a  
15 BS in economics?

16 A That's correct.

17 Q Mr. Stewart, at sometime, were you made aware that  
18 the Environmental Protection Agency had sent a letter  
19 written under the RCRA, Resource Conservation and  
20 Recovery Act, requesting information from the Woburn  
21 plant of the Cryovac Division?

22 A Yes.

23 Q Do you remember that that took place in 1982?

24 A Yes.

25 Q And that was a letter from the EPA of January 1982?

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A That's correct.

Q How were you made aware that such a letter was received by the Woburn plant?

A I received a call from the plant manager.

Q And the plant manager was Vincent Forte?

A Yes.

Q What did Mr. Forte tell you?

A That he had a letter from EPA and asked if we would look at it and help him in coming up with the answers.

Q Did he describe the letter over the phone?

A Very briefly.

Q What did he tell you? What do you remember him telling you?

A He read a couple of paragraphs out of the letter as to questions that he thought we might be of assistance in answering.

Q What were those?

A I think there was a question about tanks and a pit.

Q Now, did Mr. Forte, when he said something about a pit, did he indicate anything about the pit?

A No.

Q Did he say anything to you about it?

A He just asked about it.

1

11

2 Q When you say, "asked about it," what exactly did he  
3 ask you?

4 A He asked if we had information about the pit that we  
5 could supply him to help him answer the letter.

6 Q What did you say in response to his asking that?

7 A I asked him to send us a copy of the letter.

8 Q Did have any discussions with Mr. Forte about what  
9 pit he was referring to?

10 A None.

11 Q Did you know what he was referring to?

12 A At that time, no.

13 Q Did you question him when he mentioned the pit, about  
14 what he was referring to, or you didn't question him?

15 A I simply said I would like to see the letter and we  
16 will try and find out what it's all about.

17 Q Did he discuss anything else with you in that  
18 telephone conversation?

19 A No.

20 Q Now, after that telephone conversation, did you  
21 receive the letter?

22 A We received a telecopy, which was unreadable, and  
23 then received a hard copy in the mail.

24 Q What did you do after you received the copy?

25 A Read the letter, discussed it with my superior and

1

2 decided --

3 Q Who was your superior?

4 A Engineering Director.

5 Q What was his name?

6 A Stan Holbrook.

7 Q I'm sorry. I interrupted you. You discussed it with  
8 your superior?9 A Decided that I should go to Woburn and see if we  
10 could assist in putting together the information  
11 necessary to answer the question.

12 Q Did you go to Woburn?

13 A I did.

14 Q Prior to your going to Woburn, did you have any other  
15 conversations with Mr. Forte?

16 MR. CHEESEMAN: On this subject?

17 MR. SCHLICHTMANN: On this subject?

18 A Yes.

19 Q Do you remember that first conversation with  
20 Mr. Forte?

21 A Yes.

22 Q When was the next time you remember him talking to  
23 you?

24 A A few days later.

25 Q Did he call you?

1

2 A He called.

3 Q What was the nature of that phone call?

4 A Mr. Forte informed me that Manzelli was the  
5 contractor in the Boston area who had done work for  
6 Cryovac Woburn plant, had received a similar letter,  
7 had called Vin to ask what it was all about.

8 Q What did he say Mr. Manzelli said to Mr. Forte? Did  
9 he say Mr. Forte talked to Mr. Manzelli? Did he say  
10 he talked to Mr. Manzelli?

11 A Mr. Forte talked to Mr. Manzelli.

12 Q What did he tell him?

13 A That he had received a letter.

14 Q What did they discuss about a letter?

15 A Mr. Manzelli asked what it was all about.

16 Q What did Mr. Forte tell him?

17 A Mr. Forte told him that we had received a letter;  
18 that he should go ahead and answer the letter.

19 Q Did they have any discussion other than that?

20 A I have no way of knowing that.

21 Q Did Mr. Forte indicate that Mr. Manzelli talked to  
22 him about the pit or the burial of waste products on  
23 the property?

24 A I have no way of knowing that.

25 Q Mr. Forte didn't indicate that to you?

1

2 A No.

3 Q Now, after that, what did you say to Mr. Forte when  
4 he related this conversation he had had with  
5 Mr. Manzelli?

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

7 Q What was your response to Mr. Forte when he relayed  
8 this information to you that he had just had a  
9 contact with Mr. Manzelli?

10 A Simply that Mr. Manzelli would answer the question --  
11 answer the letter and we would answer our letter.

12 Q What did you say to Mr. Forte, if anything.

13 MR. CHEESEMAN: I think that's what he told  
14 you.

15 A That's it.

16 Q Did you discuss anything else with Mr. Forte?

17 A I'm sure we discussed something and I have no idea  
18 what it was.

19 Q You have no other memory of the conversation?

20 A No.

21 Q During that conversation, did you discuss with  
22 Mr. Forte, the pit or pits at the property or the  
23 disposal of material on the property?

24 A No.

25 Q No discussion at all?

1

2 A No.

3 Q Did you have any questions at that time? Were you  
4 curious about whether they had -- how they had been  
5 dumping waste at the Woburn plant or did you think  
6 you knew how they had been dumping the waste?

7 MR. CHEESEMAN: Objection. Double  
8 question.

9 MR. SCHLICHTMANN: It is?

10 A Your question was --

11 Q Were you curious at that time as to how the Woburn  
12 plant was disposing of waste on their property?

13 A Obviously having received a question from the EPA  
14 about a pit on the property, I was curious.

15 Q Had you had any information prior to receiving that  
16 letter as to how the Woburn plant was disposing of  
17 waste on their property?

18 MR. CHEESEMAN: In general?

19 MR. SCHLICHTMANN: In general.

20 A I was not aware that Woburn was disposing of waste on  
21 their property.

22 Q Now, after the phone call from Mr. Forte, did you  
23 have any other phone calls from Mr. Forte prior to  
24 your going to the Woburn plant?

25 A No.

1

2 Q Who did you go to the Woburn plant with?

3 A I took Sam Knight.

4 Q Anybody else?

5 A No.

6 Q And Sam Knight's position at that time?

7 A Environmental Control Officer, Cryovac Division,  
8 working for me.

9 Q He worked for you?

10 A Yes.

11 Q So he was in charge of the environmental affairs  
12 under your office?

13 A Correct.

14 Q How long had Mr. Knight been working there in that  
15 division, with those duties?

16 A Approximately three years.

17 Q Now, did you have any discussions with Mr. Knight  
18 concerning this EPA letter prior to or during the  
19 time that you were traveling to Woburn?

20 A Certainly.

21 Q Did Mr. Knight indicate that he had any information  
22 about the Woburn plant and its previous past disposal  
23 practices?

24 A No.

25 Q He had none?

1

2 A None.

3 Q Did he indicate that he was surprised by the fact  
4 that there was an indication that there might be pit  
5 or pits used by the plant to dispose of waste?

6 MR. CHEESEMAN: Objection. Go ahead.

7 A I'm not sure that he indicated any measure of  
8 surprise.

9 Q Were you surprised?

10 MR. CHEESEMAN: Objection. Go ahead.

11 A Yes, I was.

12 Q Why were you surprised?

13 A Because I had no knowledge prior to that time.

14 Q No knowledge of what?

15 A The pit.

16 Q Now, you went to the Woburn plant?

17 A I did.

18 Q Would you please tell me what you did when you  
19 arrived there?

20 A As is my usual custom, I first went to Mr. Forte's  
21 office, told him I was there, why I was there.

22 Q Please tell me what you remember saying to him when  
23 you met him?

24 A That I am here to help put together the information  
25 necessary to answer the letter to the EPA.

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Q What did Mr. Forte say?

A He probably said something like: I'm glad you're here.

Q Do you remember him saying anything else?

A No.

Q Did you indicate to Mr. Forte in that conversation what you were going to do in order to answer that letter or what it was necessary to do to answer that letter?

A I asked Mr. Forte to whom I should talk to get the information since it's Mr. Forte's plant, Mr. Forte is in charge, Mr. Forte is responsible for his plant.

Q What did Mr. Forte say?

A He told me to talk to Paul Shalline.

Q What else did Mr. Forte say at that meeting?

A In essence, that was it.

Q Did you say anything else to Mr. Forte?

A Not that I recall.

Q Well, did he show you the letter from the EPA -- you already had a copy?

A I had a copy.

Q Did you go over the letter at that time with him?

A No.

Q Did you discuss any of the questions involved in the

1

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letter?

3

A No.

4

Q Did you indicate to Mr. Forte what else you wanted to do other than to talk to -- other than finding out to whom you should talk to about all of this? Did you indicate what it was necessary to do to answer this letter?

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6

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8

9

A Only that I was there in a capacity to assist Mr. Forte, who had the responsibility for answering the letter, in gathering information so that he could answer the letter.

10

11

12

13

Q In your capacity with the Grace Company, were you aware of the Resource Conservation Recovery Act?

14

15

A I was.

16

Q You understood that it was a Federal statute?

17

A I did.

18

Q That there were certain obligations on the part of industry imposed by that statute?

19

20

A Certainly.

21

Q Were you aware that this request by the EPA was a formal request under the statute?

22

23

A I did.

24

Q Did you know that it was an obligation on the part of Grace to answer the EPA letter truthfully and

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accurately?

A I did.

MR. CHEESEMAN: Objection.

Q Did you take your responsibilities in helping the Woburn plant answer that letter seriously?

MR. CHEESEMAN: Objection. Go ahead.

A Yes.

Q Did you think it was part of your responsibilities to help Mr. Forte who was responsible for answering the letter, to help him to insure that he answered that letter to the EPA in an accurate and truthful manner?

A I have no control over Mr. Forte, the manner in which he answers letters.

I performed a service and performed that kind of function, to assist him in gathering facts, and it's up to him to answer the letter.

Q My question is: Did you consider that it was your responsibility, in your capacity, in your position with the Grace Company, in charge of environmental affairs affecting plants of the Cryovac Division of W. R. Grace, that it was your responsibility to insure or assist Mr. Forte to make sure that in his answer to the EPA, that the answer that he provided would be true and accurate information?

1  
2 MR. CHEESEMAN: Objection. That's  
3 argumentative. Go ahead and answer it.

4 A Certainly.

5 Q You believe that was part of your responsibilities?

6 A Certainly.

7 Q Now, did you, in that meeting with Mr. Forte, other  
8 than indicating that you wanted to know who you  
9 should talk to -- when you said you asked  
10 Mr. Forte who you should talk to, did you indicate  
11 the kind of person you wanted to talk to?

12 A No.

13 Q Were you just asking for a person to report to or  
14 were you asking for the person he believed was the  
15 most knowledgeable who would be helpful in gearing up  
16 an investigation or determining who should be talked  
17 to in that investigation or what records should be  
18 looked at?

19 MR. CHEESEMAN: Objection. Multiple  
20 question. Go ahead.

21 A Obviously, I was seeking the person who, in  
22 Mr. Forte's opinion, would have the information  
23 necessary to answer the question.

24 Q He indicated that would be Mr. Shalline?

25 A Correct.

1

2 Q Had you met Mr. Shalline previously?

3 A Yes.

4 Q You knew who Mr. Shalline was?

5 A I do.

6 Q Did you understand what Mr. Shalline's  
7 responsibilities were at the plant at that time?

8 A Yes.

9 Q What was your understanding as to Mr. Shalline's  
10 responsibilities at that time?

11 A He was a production supervisor, and that's small "p"  
12 and small "s." Production supervisor.

13 Q Why do you say small "p," small "s"?

14 A I don't know his exact title. And was our contact  
15 for environmental safety and health and energy  
16 matters.

17 Q Now, after that meeting with Mr. Forte, what did you  
18 do next?

19 A Met with Mr. Shalline.

20 Q Did you just go to his office right from Mr. Forte's  
21 office?

22 A We went to a conference room.

23 Q When you say, "we," who is that? You and Mr. Forte?

24 A Myself, Sam Knight, Paul Shalline.

25 Q Did Mr. Knight say anything to Mr. Forte in that

1

2 initial meeting?

3 A No.

4 Q Didn't say a word that you remember? Didn't make any  
5 comments at all?

6 A No.

7 Q None?

8 A None.

9 Q Is it Mr. Knight's nature not to make conversation?  
10 Is he a very quiet man, not given to speaking unless  
11 spoken to?12 MR. CHEESEMAN: Objection. Why don't you  
13 ask if Mr. Knight was present first.14 MR. SCHLICHTMANN: Very good. I think you  
15 got me.

16 Q Mr. Knight wasn't there at that meeting?

17 A No.

18 Q He was out having coffee? Where was Mr. Knight?

19 A In the lobby.

20 Q Was he talking to anybody, do you know?

21 A I have no idea. I wasn't there.

22 Q Did you then go with Mr. Knight to Mr. Shalline's  
23 office?24 A Mr. Knight, Mr. Shalline and myself went to the  
25 conference room.

1

2 Q Did you go to Mr. Shalline's office? How did  
3 Mr. Shalline appear? Did you contact him?

4 A Mr. Forte contacted him.

5 Q And he came to the office?

6 A Met us in the lobby.

7 Q Mr. Shalline didn't come to Mr. Forte's office?

8 A No.

9 Q No conversation took place between Mr. Shalline,  
10 Mr. Forte and yourself?

11 A I have no idea.

12 Q You met Mr. Shalline in the lobby?

13 A Yes.

14 Q Then what happened?

15 A We went to the conference room.

16 Q What happened in the conference room?

17 A We read the letter in detail; decided how we would  
18 gather information in order to prepare an answer in  
19 answer to the letter through Mr. Forte.

20 Q Now, when you said you read it in detail, it was you,  
21 Mr. Knight and Mr. Shalline?

22 A Yes.

23 Q And nobody else?

24 A No.

25 Q All three of you read the letter? Did you read it

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2

out loud?

3

A We each had copies.

4

Q Did you go through the letter from the EPA and say

5

here's what we have to answer and go through each

6

question?

7

A We went through each question.

8

Q Did you then say to Mr. Shalline: What do you have

9

to say about this or do you have any information

10

about this particular question?

11

MR. CHEESEMAN: Objection. Go ahead.

12

A We discussed how we were going to gather the

13

information to answer that specific question.

14

Q All right. Now, you started with Question No. 1 and

15

went through the letter question by question?

16

A In all probability, it went one, two, three, four,

17

like that, yes.

18

Q Now, Mr. Stewart, approximately how long did you

19

spend at the Woburn plant in this investigation?

20

A Two days.

21

Q At the ends of two days, you left?

22

A Correct.

23

Q At the end of that two-day investigation, you talked

24

to a lot of people or some people?

25

A That is correct.

1

2 Q You went through records?

3 A Yes.

4 Q Based on your investigation, you came to some  
5 conclusions about where the Woburn plant had been  
6 disposing of waste on their property; is that right?

7 A I arrived at no conclusions. I gathered some facts  
8 that were told to me by others and wrote them down.

9 Q Now, you made a physical inspection of the plant; is  
10 that right?

11 A Correct.

12 Q You went around the property?

13 A Yes.

14 Q You went around the property with various people?

15 A With Paul Shalline.

16 Q That was part of your investigation?

17 A Yes.

18 Q Now, in going around the plant with Mr. Shalline and  
19 during your investigation, you came to some  
20 conclusions about where waste was disposed of on the  
21 Grace property; isn't that right?

22 A I did not.

23 Q You came to no conclusions at all?

24 A No.

25 Q Weren't various areas shown to you or pointed out to

1

2

you where waste material was disposed of on their property?

3

4

A The area in which the pit that was asked about had been dug, we looked at.

5

6

Q Mr. Stewart, I'm going to ask you examine this aerial photograph.

7

8

MR. CHEESEMAN: Can you tell us when this was taken, just for our information.

9

10

Q In looking at that aerial photograph, if I told you that Washington Street was here and the Grace plant was located in this property, would that help you in orienting yourself in that photograph?

11

12

13

14

MR. CHEESEMAN: Before you question him about this, I would appreciate it if you would tell us when this photograph was taken, if you know.

15

16

17

MR. SCHLICHTMANN: I do know.

18

MR. CHEESEMAN: Would you tell us.

19

MR. SCHLICHTMANN: I will. Let me first find out --

20

21

MR. CHEESEMAN: Let's stop right here.

22

Q Looking at that photograph, can you point out -- can you pick out the Grace plant there?

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MR. CHEESEMAN: Jan, just do us the favor of telling us when the photograph was taken.

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MR. SCHLICHTMANN: March of '75, April of '75.

Q In examining that photograph, which I'm going to represent to you was taken March of '75, would you be able to point out where the Grace plant is?

A Yes.

Q Do you see on that plant where the warehouse is?

A Yes.

Q And the main building?

A Yes.

Q And the additions to the plant?

A Yes.

Q Now, in looking at that photograph, do you see the area behind the plant?

A Yes.

Q Now, that area behind the plant is the area that you physically examined; is that right?

A That is correct.

Q Now, in looking at that photograph and in looking at the area behind the plant, would you be able to indicate, sir, where it was that various or where places were pointed out to you where waste material was disposed of on the ground?

A The area was pointed out to me where the pit in

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question was dug.

3

Q Would you examine the photograph, look at the area behind the plant and as best you can, would you please point out to us, where this area was pointed out to you, in examining the photograph?

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A Where the pit was dug?

8

Q Yes.

9

A Within plus or minus, there.

10

Q Have you had an opportunity to examine the photograph so that you're familiar with the area depicted?

11

12

A I have.

13

Q In examining that photograph, you have selected out the area that was pointed out to you as an area where waste material was disposed of; is that right?

14

15

16

A An area where the pit was dug.

17

Q I give you a red pen and ask for you to circle on the photograph, the area that was pointed out to you --

18

19

MR. CHEESEMAN: Before you mark on it, rather than using a circle --

20

21

MR. SCHLICHTMANN: He can use a square.

22

MR. CHEESEMAN: I don't want his circle to misrepresent or be misunderstood to represent the area of the pit unless he's able to know because people just told him where it was. An X would be

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more appropriate.

Q Was it indicated to you the area of the pit; in other words, how big the pit was?

A No.

Q But the area was shown where material was disposed of?

A The area where the -- the general area where the pit was dug.

Q So would you be able to indicate the dimensions of the pit or were the dimensions of the pit pointed out to you?

A No.

Q You'd be able to just indicate where the pit was, essentially?

A Where it was pointed out to me that the pit was dug.

Q Why don't you use an X then to indicate where that was pointed out to you, where the pit was?

A This being plus or minus.

Q Yes.

(Stewart Exhibit No. 1, Photograph, marked for identification.)

Q Now, Mr. Stewart, let's go back to your conference room meeting. You were there with Mr. Shalline and Mr. Knight and you went through each of the

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questions; and in answering each of the questions, the three of you determined how those questions were to be answered; is that right?

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A We discussed each of the questions to decide who was the best person or persons to help us gather the information necessary to answer the question.

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8

Q I'm going to show you Shalline Exhibit No. 17, which is a letter from the EPA to Mr. Forte.

9

10

Do you recognize that as the letter that was sent to Mr. Forte by the EPA which you investigated to determine how to respond to that letter?

11

12

13

A No.

14

Q That is not the letter?

15

A The letter is here. There's an attachment to it that I don't recognize as being part of the letter.

16

17

Q You recognize the letter, though you don't recognize the attachment?

18

19

A That's correct.

20

Q But other than the attachment, you recognize the letter as the one that you were responding to?

21

22

A I do.

23

MR. CHEESEMAN: I don't remember that this was attached to it when the deposition exhibit was marked at Paul Shalline's deposition.

24

25

1  
2 MR. SCHLICHTMANN: I don't think so either.  
3 I think you're correct. This is one of my excellent  
4 support staff. This is the sewer map that I think  
5 you provided us later. We'll just remove it. We'll  
6 take it off there, unless you need another copy.

7 MR. CHEESEMAN: No.

8 Q Shalline Exhibit No. 17 is the letter you remember  
9 answering?

10 A That's correct.

11 Q Now, in Question No. 1, when it came to Question No.  
12 1, which asked for you to essentially list all the  
13 products manufactured by Grace at their Woburn plant,  
14 what did you determine? How was that question going  
15 to be answered?

16 A It was not necessary to get that information at the  
17 Woburn plant. The information was available at  
18 Cryovac headquarters.

19 Q Is that all the discussion was essentially about,  
20 that point?

21 A That's correct.

22 Q When you got to Question No. 2, it says:

23 "List any and all chlorinated solvents  
24 generated, used, or otherwise kept by W. R. Grace or  
25 any subsidiary, branch and/or division at 369

1  
2 Washington Street branch location."

3 When you came to that question, what did you  
4 decide as to how that question should be answered or  
5 how the information should be gathered to answer that  
6 question?

7 MR. CHEESEMAN: I object insofar as you  
8 misread the document. But if the question is  
9 referring to Question No. 2, go ahead.

10 Q Question No. 2, does it essentially ask to list any  
11 and/or all chlorinated solvents used at the Woburn  
12 plant?

13 MR. CHEESEMAN: Objection. Go ahead.

14 A That was a question that we gave to Mr. Shalline and  
15 asked him to answer as best he could and get any  
16 other person or persons in the plant who might have  
17 knowledge to assist in answering the question.

18 MR. CHEESEMAN: That answer was not  
19 responsive to the question that was before you at the  
20 time. The question before you was asking you to  
21 characterize the question.

22 MR. SCHLICHTMANN: I'll reask the question.  
23 It was a perfectly nice answer; now we'll give it a  
24 nice question to go with it.

25 MR. CHEESEMAN: Good.

1

2 Q When you came to Question No. 2 in the EPA letter, it  
3 asked for certain information; is that right?

4 A That's correct.

5 Q It asked for certain information concerning  
6 chlorinated solvents?

7 A That's correct.

8 Q When you came to that Question No. 2, what did you  
9 say, if anything, at the meeting?

10 A I asked Paul Shalline if he could supply information  
11 as to chlorinated solvents used at the plant; and if  
12 there were other persons who could assist in  
13 answering the question, if he would let us talk to  
14 those people.

15 Q Did you indicate anything about looking at records?

16 A Yes.

17 Q What did you say to Mr. Shalline about records?

18 A Find any records that were available pertaining to  
19 the use of chlorinated solvents.

20 Q Did you say anything else to Mr. Shalline other than  
21 that?

22 A No.

23 Q How did Mr. Shalline respond?

24 A That he would.

25 Q That he would get the records and look at them and

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would also talk to whoever was necessary to talk to  
to find out about the chlorinated solvents used at  
the plant?

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4

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A Correct.

6

7

Q Now, did he indicate he would gather those records so  
you could look at them?

8

A Yes.

9

Q Did you ask him to do that?

10

A Yes.

11

12

Q Did Mr. Knight say anything in reference to Question  
No. 2?

13

14

15

A I am sure that Mr. Knight had suggestions, comments,  
ideas. I don't specifically remember any comments  
that he might have made.

16

17

Q Now, was that the only discussion that you remember  
having about Question No. 2?

18

MR. CHEESEMAN: At this conference?

19

20

Q Right. At this time. Did you then go on to Question  
No. 3?

21

A That's correct.

22

23

Q Now, when it came to Question No. 3, it referred to  
identifying certain chemicals. Is that right?

24

A That's correct.

25

Q And whether any of those chemicals listed there might

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have been generated, used or otherwise kept at the

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Woburn plant?

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A That is correct.

5

Q Now, when you came to that question, what did you

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indicate about that question?

7

A I asked Mr. Shalline to look at the list and indicate

8

if any of those chemicals were used at the Woburn

9

plant.

10

Q Did you ask him to get the records as to chemical

11

use?

12

A Yes.

13

Q Obviously, you wanted to see those records?

14

A We're talking about the chemicals in Question No. 3?

15

Q Yes.

16

A Yes.

17

Q So you asked him to get the records for you so you

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could review them?

19

A Yes.

20

Q Did you ask him also to talk to anyone who it was

21

necessary to talk to about chemical use; in

22

particular, those chemicals listed there?

23

A Yes.

24

Q What did Mr. Shalline say to that?

25

A He indicated in the affirmative, that he would.

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2 Q Did you indicate that you wanted also to speak to  
3 those people as well?

4 A Yes.

5 Q And he indicated that he would provide those people  
6 for you to talk to?

7 A Yes.

8 Q Did Mr. Knight say anything about Question No. 3? Do  
9 you remember him saying anything?

10 A No.

11 Q Do you remember any other discussion about Question  
12 No. 3 or did you move on to Question No. 4?

13 A We moved on to Question No. 4.

14 Q Do you remember in Question No. 3, did you go down  
15 the list of those chemicals listed there or just ask  
16 Mr. Shalline if offhand he had any information about  
17 those chemicals or were you waiting to look at the  
18 records and talk to people who had knowledge?

19 A We initially asked offhand if he had knowledge of the  
20 use of any of these chemicals at the Woburn plant.  
21 He indicated those that he could recall. We asked  
22 him to then get further information.

23 Q Well, when you went down the list, you asked  
24 Mr. Shalline if he had any knowledge about use of  
25 1,2-trans-dichloroethylene; is that right?

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2 A Yes.

3 Q What did he indicate about that?

4 A He didn't recall any use.

5 Q When you asked about him about Section 3(b),  
6 trichloroethylene, what did he say?7 A He recalled that perhaps that one might have been  
8 used.

9 Q Did he indicate how long it had been in use?

10 A No.

11 Q Did he indicate how much had been used?

12 A No.

13 Q All right. Did he indicate anything else about  
14 trichloroethylene?

15 A No.

16 Q Then you asked him about tetrachloroethylene?

17 A Yes.

18 Q What did he say about that?

19 A He didn't recall.

20 Q The use of tetrachloroethylene?

21 A That are that's right.

22 Q And toluene, what did he say about toluene?

23 A I believe he indicated from memory, toluene may have  
24 been used in the plant sometime in the past.

25 Q Did he indicate whether it was still being used?

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2 A He did not.

3 Q Did he indicate the amounts?

4 A He did not.

5 Q Any other discussion about toluene?

6 A No.

7 Q Then you asked him about chloroform?

8 A Yes.

9 Q What did he say about the chloroform use?

10 A He had no recollection of chloroform.

11 Q You then asked him about about 1,1,1-trichloroethane?

12 A Yes.

13 Q What did he indicate about 1,1,1-trichloroethane?

14 A His indication was that out of memory, he believed  
15 that 1,1,1-trichloroethane may have been a component  
16 of a chemical used in the plant, material used in the  
17 plant, excuse me.

18 Q Which one, which material?

19 A I believe he indicated cutting fluid.

20 Q Did he indicate the amounts that they used?

21 A No.

22 Q Or how long they had been using it?

23 A No.

24 Q Did you discuss anything else about  
25 1,1,1-trichloroethane?

- 1
- 2 A No.
- 3 Q Then went on to methylene chloride?
- 4 A Yes.
- 5 Q What did he indicate about use of --
- 6 A He had no recollection.
- 7 Q And 1,1-dichloroethylene?
- 8 A No recollection.
- 9 Q Acetone?
- 10 A Recollection that it may have been used in the plant.
- 11 Q Did he indicate how long or how much?
- 12 A No, no.
- 13 Q How about the methyl isopropyl ketone?
- 14 A No recollection.
- 15 Q And then you came to benzene?
- 16 A No recollection.
- 17 Q No recollection of benzene use?
- 18 A That is my recollection.
- 19 Q Did you have any discussion at all about benzene or  
20 did he make any statements about benzene use?
- 21 A No.
- 22 Q Did Mr. Knight say anything about benzene?
- 23 A No.
- 24 Q Chlorobenzene?
- 25 A No recollection.

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Q And now, after you went through that list with Mr. Shalline, you said that based on his responses, that he should gather all the records together that he has about chemical use so that you could review them and also make sure that we talk to anybody who has any knowledge about these chemicals at the plant; is that correct?

A That is correct.

Q And he indicated he would do that?

A Yes.

Q You then went to Question No. 4, and that asked:

"For each chemical listed in response to Question No. 3, list all methods of disposal used for each prior to November 19, 1980."

When you came to that question, what did you say, if anything?

A Asked that Mr. Shalline, from his recollection and finding whoever else in the plant could be of assistance, to find the information as to how these chemicals were disposed of.

Q Did Mr. Shalline indicate that he had any knowledge about disposal at that time?

A Only a general statement that all waste material was removed from the Woburn plant by contractors.

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2 Q Do you know who those contractors were?

3 A I don't know.

4 Q Did he mention the name Axton & Cross?

5 A At that moment, no.

6 Q But he indicated that there was a contractor who  
7 removed all chemical waste from the plant?

8 A That is correct.

9 Q Did he indicate that that had always been the case?

10 A Yes.

11 Q Did he indicate that that was the case prior to  
12 November of 1980?

13 A He indicated that to the best of his knowledge and  
14 recollection, that that had always been the case;  
15 there had been a contractor who removed all waste  
16 from the Woburn plant.

17 Q From the beginning of the plant's existence in 1960?

18 A As far back as Mr. Shalline was connected with the  
19 plant.

20 Q Were you aware that he came with the plant? In other  
21 words, he started out when the plant started out,  
22 1960?

23 A I have no knowledge of the date of Mr. Shalline's  
24 appearance at Woburn.

25 Q But you knew he was there a long time?

1

2 A Yes.

3 Q Now, what did you say to Mr. Shalline when you talked  
4 about Question No. 4? Did you say: Was that the  
5 only method of disposal, removal by contractor? Was  
6 there any other method of disposal? Did you mention  
7 anything like that?

8 MR. CHEESEMAN: Objection. Go ahead.

9 A Again, we indicated that we would like to talk to  
10 anybody who had any knowledge of disposal of waste.

11 Q Did you want to look at any documents or records that  
12 he had about disposal of waste?

13 A If any were available.

14 Q And Mr. Shalline indicated that he would provide you  
15 with any documents or records that he had about  
16 disposal of waste and make sure that you talked to  
17 anybody who had knowledge of disposal of waste?

18 A Yes.

19 Q Did you discuss anything else about Question 4 at  
20 that time?

21 A No.

22 Q Now Question No. 5 says:

23 "For each chemical listed in response to  
24 Question No. 3, list all methods of disposal used for  
25 each since November 19, 1980."

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2           What did you say at that meeting in reference to  
3 Question No. 5?

4   A   Simply asked him to find anybody in the Woburn plant  
5       who would have knowledge of methods of disposal of  
6       chemicals listed in Question No. 3, and their  
7       disposal, method of disposal, since November 19,  
8       1980.

9   Q   Did you indicate you wanted to see any records that  
10      they had pertaining to disposal methods since  
11      November 19, 1980?

12   A   No.

13   Q   You didn't indicate that?

14   A   No.

15   Q   That you wanted to see any records?

16   A   No.

17   Q   But you did want to talk to people?

18   A   Yes.

19   Q   Mr. Stewart, I want you to think back on that meeting  
20      now. Is it very clear in your mind that in  
21      discussing Questions 4 and 5 about the disposal of  
22      chemicals, is it your memory that Mr. Shalline  
23      clearly indicated to you that chemical waste was  
24      disposed of throughout the period of existence of the  
25      plant by a contractor?

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MR. CHEESEMAN: You're asking about  
chemical waste now?

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MR. SCHLICHTMANN: That's what these  
questions are referring to.

5

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A It is my recollection that as to the disposal of  
chemical waste, Mr. Shalline stated that chemical  
waste was removed from the Woburn plant by a  
contractor.

7

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Q Again, did he make it clear to you that this was the  
case prior to November 19, 1980?

11

12

A That is correct.

13

Q And that it was the case, according to him,  
throughout the plant's existence, as far as he knew?

14

15

A That is correct.

16

Q Did he indicate there was any other method of  
disposal of waste at the plant other than having a  
contractor to remove it?

17

18

19

A No.

20

Q Again, Mr. Stewart, you have a very clear memory of  
that taking place; is that true?

21

22

A Yes.

23

Q Now, Question No. 6:

24

"At any time, past or present, has there been  
any aboveground or underground storage tanks, vessels

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1  
2 or containers at the 369 Washington Street, Woburn,  
3 Massachusetts, location of W. R. Grace and/or any  
4 subsidiary, branch or division?"

5 What if anything did you say when you read that  
6 question?

7 A I asked Mr. Shalline if he had any recollection of  
8 any aboveground or underground storage tanks at the  
9 Woburn plant, past or present.

10 Q What did he say?

11 A None.

12 Q Was he very clear on that?

13 A Very clear.

14 Q Did you say anything else after he answered that  
15 there were none?

16 A I commented that that was my recollection also.

17 Q Did Mr. Knight say anything, do you remember?

18 A No.

19 Q Anything else discussed as to Question No. 6 at that  
20 time?

21 A No.

22 Q Now, Question No. 7, that says:

23 "If the answer to Question 6 is yes, please  
24 state" -- and asks a few questions.

25 When you read that question, what did you say,

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if anything?

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A If there were no aboveground or underground storage tanks past or present at the Woburn plant, Question No. 7 was obviously unanswerable.

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Q Did you indicate that at that time?

7

A Yes.

8

Q Did Mr. Shalline say anything at that time?

9

A No.

10

Q Did Mr. Knight say anything?

11

A No.

12

Q You then went to Question No. 8?

13

A Yes.

14

Q "Did such tanks or vessels ever rupture, spill or otherwise lose its contents?"

16

What if anything did you say when you came to Question No. 8?

17

18

A The same answer again. If there are no tanks above or below ground tanks, ever, at the Woburn plant, then obviously there couldn't have been rupture or spill.

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Q Did Mr. Shalline say anything when it came to that question?

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A He agreed.

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Q In answering 6, 7 or 8, did you understand that the

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question would have referred to any drums that might have been buried on the property, any metal drums?

A I think the question is very specific: Underground storage tanks, vessels or containers.

Q Did you consider that a 55-gallon drum was a container?

MR. CHEESEMAN: In the context of this question?

Q Did you consider it a container at that time? Not in context with this question. Just in general.

MR. CHEESEMAN: You're asking if a 55-gallon drum is a container?

MR. SCHLICHTMANN: Exactly.

A In the context of these questions, you're asking me?

Q No. I'm asking you just in general, did you consider a 55-gallon drum to be a container?

A You asked if a 55-gallon drum is a container, the answer is correct, yes, it is.

Q At the time you were helping Mr. Forte answer these questions, you considered a 55-gallon drum to be a container?

MR. CHEESEMAN: You're now asking in the context of this question?

MR. SCHLICHTMANN: No. This is a

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foundation.

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MR. CHEESEMAN: As to January or February 1982, did he think that a 55-gallon drum is a container?

6

A That is correct.

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Q Now, in the context of Question 6, 7 and 8, did you consider that the Question 6, 7 and 8 referred to whether there were any 55-gallon drums which had been buried on the property?

11

A No.

12

13

14

Q If it had come to your attention that 55-gallon drums had been buried on the property, you would not consider that Question 6, 7 or 8 referred to that?

15

16

17

MR. CHEESEMAN: Perhaps the witness should read the rest of the questions before he answers that question.

18

A Would you repeat the question.

19

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22

23

Q If it had come to your attention that 55-gallon drums had been buried on the property, would you have considered that Question 6, 7 and 8 would have requested information concerning that 55-gallon drum or drums?

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A No.

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Q Would not?

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A No.

Q Your understanding is that that was referring to things other than 55-gallon drums that had been buried on the property?

MR. CHEESEMAN: Objection. You're asking him whether these questions referred to items that had been buried on the property?

MR. SCHLICHTMANN: Exactly.

MR. CHEESEMAN: Well, the questions speak for themselves. It refers to underground as well as aboveground --

MR. SCHLICHTMANN: Yes.

MR. CHEESEMAN: -- storage tanks.

MR. SCHLICHTMANN: All right.

Q Did you consider that that Question 6, 7 or 8 were referring to any information concerning the use of 55-gallon drums to store chemical waste, whether aboveground or below ground?

A No.

Q So if it came to your attention that the Woburn plant used 55-gallon drums to contain chemical waste and these were stored aboveground at the plant site, you would not have considered that Question 6, 7 or 8 were referring to that?

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2 A That is correct.

3 Q No. 9 says:

4 "If the answer to Question No. 8 is yes, please  
5 describe in detail the circumstances surrounding the  
6 rupture, spill, or leak, including but not limited  
7 to" -- and it asks several questions.

8 Coming to Question 8, what did you say, if  
9 anything?

10 Sorry. Question 9. What did you say, if  
11 anything?

12 A In the context of my understanding of underground  
13 storage tanks or vessels, the answer to No. 9 would  
14 have been the same as 7 and 8. There was no answer  
15 to be given.

16 Q If it had come to your attention that metal drums  
17 which were used to contain chemical waste had on  
18 occasion spilled or ruptured or otherwise leaked,  
19 would you have considered Question No. 9 was asking  
20 information concerning that?

21 MR. CHEESEMAN: May I have the question  
22 read.

23 (Question read.)

24 A No.

25 Q Was anything else discussed about Question No. 9,

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to your knowledge?

A No.

Q Question No. 10 asked:

"Did W. R. Grace and/or any subsidiary, branch or division at 369 Washington Street, Woburn, Massachusetts, ever dig, or hire someone to dig, any holes, trenches, pits or any other excavation at 369 Washington Street, Woburn, Massachusetts?"

What did you say if anything when you came to that question?

A We asked if --

Q You say, "we," now. You have to be very specific. Did you say anything?

A I asked Mr. Shalline if there had been any holes, trenches or pits or other excavations at Woburn, Massachusetts, other than those obviously dug for construction purposes.

Q What did Mr. Shalline say?

A That he recalled a pit dug after a construction job at Woburn for the disposal of construction waste.

Q Yes?

A Specifically, construction waste.

Q Yes. What else, if anything?

A That's what he answered.

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2 Q Did he say anything about that pit that was used for  
3 construction waste?

4 A No.

5 Q Well, did he indicate what went into that pit other  
6 than construction waste?

7 A I don't think we asked that question at that  
8 particular time.

9 Q When he made that statement to you, that there had  
10 been a pit used for construction waste, did he  
11 indicate the year?

12 A At the end of the last expansion on the Woburn main  
13 plant.

14 Q That would have been the second addition to the main  
15 building?

16 A Correct.

17 Q Was it your understanding that was in 1974?

18 A I believe that's correct.

19 Q Now, when Mr. Shalline indicated to you that a pit  
20 had been dug for construction waste, did he indicate  
21 that any chemical waste products went in there?

22 A No.

23 Q Did you ask him about it?

24 A No.

25 Q Did Mr. Knight say anything about it?

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A No.

Q Did you consider when he gave you that answer that he was indicating to you that no holes, trenches, pits or other excavation took place at the Woburn plant for the disposal of chemical waste products?

MR. CHEESEMAN: Question 10 doesn't ask that.

MR. SCHLICHTMANN: I know.

MR. CHEESEMAN: You're asking in general?

MR. SCHLICHTMANN: Yes. I'm just asking as to that question.

A Question 10, we simply inquired as to any pits, holes, or trenches dug at Woburn.

Q In general?

A Yes.

Q You said other than what was used for construction?

A That's correct.

Q His answer to you was there was a pit dug for the disposal of construction debris?

A That's correct.

Q He didn't indicate anything else?

A No.

Q Did you say anything else?

A No.

1

2 Q Or Mr. Knight?

3 A No.

4 Q You then went to Question 11?

5 A Yes.

6 Q Did you ask Mr. Shalline to gather together any  
7 information or talk to anybody concerning the pit  
8 used for construction debris?

9 A No.

10 Q Now, Question 11 says:

11 "If the answer to Question No. 10 is yes, please  
12 state the approximate date or dates when such  
13 excavation took place; the purpose of such excavation  
14 or excavations; the individual or individuals hired  
15 to do such excavations; the approximate location on  
16 the site of such excavations."

17 What did you say?

18 MR. CHEESEMAN: I object to your misreading  
19 the question.

20 Q When you came to Question No. 11, it asked you  
21 certain questions if your answer to Question 10 was  
22 affirmative; is that right?

23 A That is correct.

24 Q It asks you a series of questions?

25 A That is correct.

1

2 Q And asks for some detailed information?

3 A That is correct.

4 Q When you read that question, what, if anything, did  
5 you say?

6 A Asked when the construction pit was dug.

7 Q What, if anything, did Mr. Shalline say?

8 A Immediately after the end of construction of the  
9 second addition to Woburn.

10 Q Did he say anything else?

11 A No.

12 Q What else did you say?

13 A Nothing.

14 Q Did you ask him what the purpose of the excavation  
15 was?

16 A He had already indicated that a pit was dug behind  
17 the plant, at the end of the construction, in order  
18 to dispose of construction debris.

19 Q Did he indicate who dug the pit?

20 A To his recollection, the contractor who did the  
21 construction work dug the pit.

22 Q Would that be the Manzelli Construction Company?

23 A Correct.

24 Q Did he say anything else about that, who had dug the  
25 pit?

1

2 A No.

3 Q Did you then ask him the approximate location on the  
4 property of that excavation?

5 A To his best recollection, yes.

6 Q Did you ask him where the approximate location was?

7 A Yes.

8 Q What did he say to you?

9 A He indicated a general area to his best recollection.

10 Q What general area did he indicate to you?

11 A Somewhere behind the plant.

12 Q Now, was he more specific than that when he said  
13 somewhere behind the plant?

14 A No.

15 Q Did he indicate how close to the building it was or  
16 how close to the warehouse it was or how close to the  
17 property lines it was?

18 A No.

19 Q Did you ask him?

20 A I asked him if he could show me the approximate  
21 location.

22 Q What did he say?

23 A He said, yes, he could.

24 Q Did you then go out and look at it at that point or  
25 did you go on to the next question?

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2 A We did not go out and look at it at that point.

3 Q Did you say: I'd like you to show me that area?

4 A Yes.

5 Q And he said he'd be happy to?

6 A Yes.

7 Q He indicated he knew where it was?

8 A Yes.

9 Q Did you say anything else in regard to Question No.  
10 11 that you remember?

11 A No.

12 Q Did Mr. Knight say anything?

13 A No.

14 Q Very quiet man, Mr. Knight?

15 A Yes.

16 Q Question No. 12, it says:

17 "Were these pits, trenches, or other excavated  
18 areas ever used to dispose, dump or otherwise hold  
19 any waste materials?"

20 When you read that question, what did you say,  
21 if anything?

22 A As regards to the construction pit, I asked  
23 Mr. Shalline if anything went, to his recollection,  
24 if anything went into that pit other than  
25 construction debris.

- 1
- 2 Q What did Mr. Shalline say?
- 3 A He indicated that he would need to talk to somebody
- 4 else in the plant before he could answer the
- 5 question.
- 6 Q Did he say who he'd have to talk to?
- 7 A He indicated two people.
- 8 Q Who were those two people?
- 9 A Mr. Kelly and Mr. Barbas.
- 10 Q Did he indicate anybody else?
- 11 A No.
- 12 Q What else did he say about Mr. Kelly and Mr. Barbas?
- 13 Did he say who they were?
- 14 A I knew who Mr. Kelly and Mr. Barbas were. He did not
- 15 indicate at that time.
- 16 Q Who did you know Mr. Kelly was?
- 17 A Mr. Kelly was in charge of shipping and receiving.
- 18 Q And he was somebody you knew?
- 19 A Yes.
- 20 Q You'd had dealings with him previously?
- 21 A Yes.
- 22 Q And Mr. Barbas, did you know who he was?
- 23 A Mr. Barbas was the -- I believe called painter.
- 24 Q You knew who he was? You had met him before?
- 25 A I had met him.

1

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Q So he said that Mr. Kelly, he'd have to talk to  
3 Mr. Kelly and Mr. Barbas to find out if anything went  
4 into that pit that was dug for construction debris,  
5 if any waste went into there?

6

7

8

A That is correct. Whether any other material went  
into the construction pit other than construction  
debris.

9

Q Did he indicate that he had any knowledge about it?

10

A He indicated an uncertainty in his recollection and  
11 suggested that we talk to these two other gentlemen.

12

Q Did he indicate what they might know?

13

A No.

14

Q Did he indicate what his uncertainty revolved around?

15

A No.

16

Q He just indicated to you he was uncertain as to  
17 whether other things went into there but he would  
18 have to check with Mr. Kelly and Mr. Barbas so that  
19 he could be more sure?

20

A That is correct.

21

Q Did he indicate anything else to you in answer to  
22 Question No. 12?

23

A No.

24

Q Did you ask him to gather together any documents or  
25 get a hold of any witnesses who might have

1

2 information to answer Question No. 12?

3 A As I mentioned before, he had indicated Mr. Kelly and  
4 Mr. Barbas might have information, and I asked him if  
5 we could talk to them.

6 Q And he said you could?

7 A Yes.

8 Q Did you have any other discussion about Question No.  
9 12?

10 A No.

11 Q Did Mr. Knight say anything?

12 A No.

13 Q Question No. 13 asks:

14 "If the answer to Question 12 is yes, or if  
15 waste materials were disposed of by W. R. Grace  
16 and/or any subsidiary, branch or division at 369  
17 Washington Street, Woburn, Massachusetts, in any  
18 unexcavated area of the property, please state" --  
19 and it asks several detailed questions.

20 After you read Question No. 13, what if anything  
21 did you say?

22 A We asked --

23 Q You said, "we." Did you?

24 A I. Sorry. I asked Mr. Shalline if anything in the  
25 nature of trash, waste, what have you, had ever been

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disposed of anywhere else on the property.

Q What did Mr. Shalline say?

A No. His answer was no.

Q Was he very clear on that?

A He was very clear.

Q He was very definite to you that no other area had been used to dispose of waste on the property?

A That is correct.

Q Did Mr. Knight say anything?

A No.

Q Did you say anything further on the issue?

A No.

Q Did Mr. Shalline say anything further on the issue?

A Not at that time.

Q Did you press him at that time? Did you say: Are you sure, Mr. Shalline? Or indicate in any way, try to confirm how strongly he felt that there was no other area in the plant that was used for the disposal of waste?

A No.

MR. CHEESEMAN: Objection. Go ahead.

A No.

MR. SCHLICHTMANN: He's objecting to me, not you.

1

2 Q You didn't ask him any further questions on it?

3 A Not at that time.

4 Q Now, Question No. 14, did you then go on to Question  
5 No. 14?

6 A That is correct.

7 Q Question No. 14 asks:

8 "Has W. R. Grace or any subsidiary, branch or  
9 division at 369 Washington Street, Woburn,  
10 Massachusetts, ever analyzed, or hired or requested  
11 anyone else to analyze, samplings from any wells,  
12 ground water or tap water?"

13 What did you say, if anything, when you read  
14 that question?

15 A I indicated to Mr. Shalline that to my knowledge,  
16 there were no wells on the site, and asked if any  
17 samples had been taken of ground water -- using  
18 ground water in its most general term.

19 Q Yes.

20 A Or tap water.

21 Q All right. What did Mr. Shalline say?

22 A Mr. Shalline indicated that he had had a sample of  
23 tap water analyzed.

24 Q Did he say why or when?

25 A He indicated that the employees had complained of the

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taste, odor, of the tap water, and he had had it analyzed.

3

4

Q Did he indicate that the employees were concerned about the reports that Wells G and H were contaminated?

5

6

7

A No.

8

Q Did he indicate that the employees were, or that some employees had indicated concern that maybe the water that the plant was receiving had some of the contamination found in Wells G and H?

9

10

11

A No.

12

Q Did he indicate when he analyzed the water?

13

A He was not specific at that time.

14

Q Was that all that was discussed about Question No. 14?

15

16

A That's correct.

17

Q Did Mr. Knight contribute anything to that conversation?

18

19

A No.

20

Q Question No. 15:

21

"If the answer to Question 14 is yes, please state what tests were performed and the results of such tests, the origin of the samples tested and the approximate date of such tests."

22

23

24

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Did you have any discussion with Mr. Shalline about answering that question?

3

4

A Mr. Shalline had indicated that he had had tap water tested. I asked if he had dates, the results, who did it and he would get the information for me.

5

6

7

Q How long did that meeting last?

8

A If you're specifically speaking of --

9

Q That meeting in the conference room?

10

A The meeting with Mr. Knight, Mr. Shalline and myself, probably two hours.

11

12

Q After you went through those questions, what if anything did you then say or what took place at the meeting?

13

14

15

A At that point, we asked that Mr. Shalline get the information from the files on any of the -- that pertained to any of the questions that had been asked in the letter, and to arrange for us to talk to Mr. Kelly and Mr. Barbas.

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Q Did Mr. Shalline say anything in response to that?

21

A He said he would.

22

Q What else was discussed?

23

A Probably discussed going to lunch about that time.

24

Q Were you hungry?

25

A Yes.

1

2 Q What did you discuss about going to lunch? Do you  
3 remember where you went to lunch?

4 A To the cafeteria at the plant.

5 Q Did you go to lunch at that point?

6 A To the best of my recollection, yes.

7 Q Was that just you and Mr. Knight or did you, Mr.  
8 Knight and Mr. Shalline go to lunch together?

9 A The three of us went together.

10 Q Did anybody join you at lunch?

11 A No.

12 Q Did the three of you eat by yourselves or did you eat  
13 in a group of other people?

14 A The conditions of the cafeteria at Woburn are such  
15 that it is very difficult to have a table by  
16 yourself, and normally, somebody comes and sits down  
17 at the table, which was indeed very welcome.

18 Q But you do remember going to lunch and sitting down  
19 at a table, the three of you. Were you joined by  
20 anybody at lunch?

21 A I believe so.

22 Q Do you remember who that was?

23 A I have no idea.

24 Q Was it Mr. Forte?

25 A No.

1

2 Q Nobody you recognized?

3 A No.

4 Q Just an employee at the plant?

5 A An employee at the plant.

6 Q What took place during lunch? Did you have any  
7 discussions at lunch about your trip or what you were  
8 doing?

9 A We did not discuss this matter during lunch.

10 Q Did you discuss matters related to answering the EPA  
11 letter?

12 A No.

13 Q Did you discuss disposal practices?

14 A No.

15 Q Use of chemicals?

16 A No.

17 Q What were the things that you remember discussing at  
18 the lunch?

19 A Probably the weather, the infallibility of Eastern  
20 Airlines, sports, various subjects of general  
21 interest.

22 Q Do you remember how long lunch lasted?

23 A Not specifically. It's our usual routine to take  
24 about 30 minutes.

25 Q Is that Grace policy, 30 minutes for lunch?

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A It's not policy.

Q You get indigestion eating lunch in 30 minutes.  
Nobody ever told you that? I get a lot of  
indigestion from 30-minute lunches.

After the 30 minutes, do you remember what you  
did?

A Mr. Knight and I went back to the conference room and  
waited for Mr. Shalline.

Q He was with you throughout the lunch and then he left  
to gather the documents for you?

A That's correct.

Q Do you remember how long you waited in the conference  
room, approximately?

A Fifteen minutes.

Q Did you have any discussion with Mr. Knight about  
this particular problem or did you discuss other  
things unrelated to it?

A We undoubtedly discussed this subject.

Q Do you remember?

A I have no recollection of the contents of the  
discussion.

Q All right. Now, Mr. Shalline returned in about 15  
minutes, you think?

A Yes.

1

2 Q Did he bring any records with him or any documents?

3 A Yes.

4 Q What did he bring with him?

5 A He brought a list of paint, paint thinners and  
6 similar material that he had been provided by an  
7 employee.

8 My recollection is -- I beg your pardon. He  
9 brought the report on the tap water, something.

10 Q You said he brought a list of paint and list of paint  
11 thinners?

12 A That's correct.

13 Q Any other documents did he bring?

14 A That's all at that particular time, as I recall.

15 Q Do you remember him --

16 MR. CHEESEMAN: He also mentioned the tap  
17 water report.

18 MR. SCHLICHTMANN: Those three things.

19 MR. CHEESEMAN: I don't know he necessarily  
20 said there were three things, Jan.

21 MR. SCHLICHTMANN: List of paints, list of  
22 thinners, reports.

23 MR. CHEESEMAN: That is what you said.

24 MR. SCHLICHTMANN: That's not what he said?

25 Q Was it just one-page list?

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2 A It may have covered two or three pages.

3 Q How many records, how many pages do you remember him  
4 bringing in?

5 A My recollection is three.

6 Q Three pages?

7 A Yes.

8 MR. CHEESEMAN: You're referring to the  
9 list right now or are you including the tap water  
10 report in there?

11 THE WITNESS: You are referring to the  
12 list.

13 Q We'll start at the top and work down.

14 How many documents do you remember him bringing in to  
15 the -- a lot of documents? Just a few pages?

16 A A few pages.

17 Q Approximately how many pages, do you think?

18 A A three-page handwritten list of paint, paint  
19 thinners and probably a three-page document about the  
20 testing of the tap water.

21 Q Other than that --

22 A This is my best recollection.

23 Q Do you remember him bringing any other documents at  
24 that time?

25 A At that time, no.

1

2 Q He didn't bring any purchase orders?

3 A No.

4 Q Did you then examine those documents?

5 A We did.

6 Q What do you remember the documents revealing as to  
7 paint and paint thinners?

8 Was it thinners other than paint thinners or was  
9 it paint and paint thinners?

10 A Paint and paint thinners.

11 Q What did it reveal, if anything?

12 A The document was a list of the brand names, colors of  
13 paint and the generic description of paint thinners  
14 that had been used.

15 Q Did you examine them at that time?

16 A The list?

17 Q Yes.

18 A Yes.

19 Q Did you ask for a copy?

20 A Yes.

21 Q Did he give you a copy?

22 A Yes.

23 Q Do you still have that copy?

24 A Yes.

25 Q That's in your possession in South Carolina?

1

2 A Yes.

3 Q You didn't happen to bring it with you today?

4 A I did not.

5 Q Have you shown your attorney?

6 MR. CHEESEMAN: I don't think you're  
7 entitled to know that.

8 MR. SCHLICHTMANN: You're right, I'm not.

9 (Discussion off the record.)

10 MR. CHEESEMAN: We have not produced the  
11 list that the witness is referring to. We'll obtain  
12 it and decide, let you know whether we'll produce it.13 Q Mr. Stewart, when Mr. Shalline came back with these  
14 documents, what took place at that meeting, in the  
15 conference room?

16 A We examined the documents.

17 Q Do you remember what the documents revealed, if  
18 anything, about the use of chemicals?19 A It revealed those chemicals, those -- not  
20 chemicals -- those paint, paint thinners that  
21 Mr. Barbas had used in the plant and that were in the  
22 plant at that time.23 Q Do you remember any particular chemicals or were you  
24 aware of what the constituents were of these items  
25 listed in this document?

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A I am aware of what paint is and I'm aware of what paint thinner is. As far as the specific constituents, at that time, I did not make any judgment or did not know specifically the particular constituents of the paint and paint thinners.

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Q Were you aware of what chemicals were involved in this? If any chlorinated hydrocarbons, for instance.

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MR. CHEESEMAN: Specific paints that were on this list?

Q In your examination of this list, did you become aware that in fact the plant was making use of chlorinated hydrocarbons or solvents, in looking at this list?

MR. CHEESEMAN: I object to that question. You're joining two unrelated things and I don't understand the question.

Q In looking at that list, did it indicate to you whether the Woburn plant was making use of materials which contained the chemicals which were listed in the EPA letter under Question No. 3?

A I don't recall.

Q In other words, in examining that list, did it come to your attention or did you become aware that the plant used trichloroethylene?

1

2 A I don't recall.

3 Q You don't recall what if anything it made you aware  
4 of, of chemical use, at that time?

5 MR. CHEESEMAN: I think he already  
6 testified to some extent about it.

7 MR. SCHLICHTMANN: Save me some questions,  
8 so I don't have to go through the list.

9 Q It wouldn't help to go through the list with you?

10 A No.

11 Q Because you don't recall if it listed what chemicals  
12 were in there?

13 A That's correct.

14 Q After you examined these things, what discussion took  
15 place, if any?

16 A We looked at the list and decided that we would have  
17 to find out what these generic names, paint thinners  
18 referred to.

19 Q In other words, what chemicals were contained in  
20 them?

21 A True.

22 Q Did looking at that list indicate the amounts that  
23 were used of paint and paint thinners?

24 A It did not indicate the amounts used.

25 Q Did you have any other discussion with Mr. Shalline

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at that time?

3

A Asked if we could talk to Mr. Barbas about the list.

4

Q What did Mr. Shalline say?

5

A Yes.

6

Q Then what happened?

7

A I believe we talked to Mr. Barbas.

8

Q Did Mr. Shalline bring Mr. Barbas into the conference room?

9

10

A He asked somebody to go get Mr. Barbas.

11

Q Do you remember who he asked to get Mr. Barbas?

12

A I have no idea.

13

Q Did Mr. Barbas come there?

14

A He did.

15

Q Did you have any discussion while you were waiting for Mr. Barbas?

16

17

A Not to my recollection.

18

Q Now, Mr. Barbas then arrived at the conference room?

19

A Yes.

20

Q What took place when Mr. Barbas arrived?

21

A We asked Mr. Barbas --

22

Q You say, "we" again. You have to be more specific.

23

A I. I'm sorry. I asked Mr. Barbas about his

24

recollection of quantities of paint, where they came

25

from, what they were used for, and asked what he knew

1

2 about the paint thinners as to what they specifically  
3 were chemically.

4

Q What did Mr. Barbas say?

5

A Mr. Barbas did not know specifically what the  
6 chemical constituents of the paint thinners were.

7

Q What did you say, if anything?

8

A We asked if we could see labels, cans.

9

Q And Mr. Shalline said, yes, you could?

10

A Mr. Shalline said yes.

11

Q Was Mr. Shalline present at this conversation?

12

A He was.

13

Q Did Mr. Shalline indicate whether he knew what was  
14 contained in the paint thinners or the paint?

15

A No.

16

Q He had no idea?

17

A No.

18

Q At this time, up to this point, were you and  
19 Mr. Knight taking any notes at all?

20

A We had taken notes from the beginning of the  
21 conversation in the conference room that morning.

22

Q Who was taking the notes, you or Mr. Knight?

23

A Both.

24

Q How were you taking these notes? Was this a pad of  
25 paper?

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2 A Yes.

3 Q Was it pencil notes or ink notes?

4 A Pencil notes.

5 Q Just notes to help you?

6 A Yes.

7 Q And notes that Mr. Knight took?

8 A Yes.

9 Q Now, you took those notes with you back to South  
10 Carolina?

11 A That is correct.

12 Q And did you keep those notes?

13 A Those pencil notes may or may not be available. I  
14 have not looked for them.15 Q Is there reason for you to believe they may be in  
16 your file in South Carolina?17 A There's reason to believe they would not be in my  
18 file.

19 Q Would not be?

20 A That is correct.

21 Q Why would you have reason to believe that?

22 A We used the notes in order to prepare answers for the  
23 questions and the notes were then no longer of any  
24 value.

25 Q But these notes were taken back to South Carolina?

1

2 A That's correct.

3 Q So you prepared answers to these questions in South  
4 Carolina using these notes?

5 A That is correct.

6 Q Do you remember destroying these notes?

7 A I don't have a recollection.

8 Q So is it conceivable they may still be in a file in  
9 your office?

10 A Since I don't recall destroying them, it is  
11 conceivable that they may be in my office somewhere.

12 Q Mr. Stewart, I take it you have a file in your office  
13 which you probably started concerning this  
14 investigation you did; is that right?

15 A Yes.

16 Q And that file is still in existence; isn't that  
17 right?

18 A Yes.

19 Q Is that a file to which Mr. Knight would have  
20 contributed as well? In other words, would it be the  
21 same file for you and Mr. Knight or would Mr. Knight  
22 have his own file?

23 A Mr. Knight had his own files.

24 Q So he might have his own file or you know he in fact  
25 had his own files?

1

2 A That is correct.

3 Q What would be the name of this file or files  
4 regarding your investigation? What would be the name  
5 of it, if it had a name?

6 A To my best recollection, it would have said,  
7 "Woburn/EPA letter."

8 Q Now, when Mr. Barbas came in, you were still taking  
9 notes with Mr. Knight?

10 A Correct.

11 Q Is it fair to say then throughout your visit there,  
12 over the two-day period, you had continued to take  
13 notes, you and Mr. Knight?

14 A That's a fair statement.

15 Q You asked Mr. Barbas some questions and Mr. Barbas  
16 said he couldn't tell you anything about what was  
17 contained in these paint or paint thinners and you  
18 asked them if you could look at the labels?

19 A Mr. Barbas had no knowledge of the chemical  
20 constitution of those materials.

21 Q Now, did you discuss anything else with Mr. Barbas?  
22 Did you discuss the amount of materials that he used?

23 A You asked two questions.

24 We did not ask specifically the amount of  
25 chemicals that Mr. Barbas had used, the amount of

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materials as listed on the list, that he had used.

3

Q All right. You didn't ask him at that time?

4

A That is correct.

5

Q Did Mr. Barbas then leave or did you ask him to leave

6

or did you continue to discuss things with Mr. Barbas

7

there?

8

A We asked him to continue to think about other

9

materials that he might have used or that might have

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been in his possession in the plant; and if he

11

thought of any other materials, to please make a list

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for us or let us know.

13

Q Did he then leave?

14

A He did.

15

Q Now, what then took place at the meeting?

16

A To the best of my recollection, at that point, we

17

asked to talk to Mr. Kelly.

18

Q When Mr. Barbas was there, did you talk to Mr. Barbas

19

at all about the construction pit, whether anything

20

had been put in there?

21

A No.

22

Q And Mr. Shalline said he'd get Mr. Kelly?

23

A Yes.

24

Q Did he himself get Mr. Kelly?

25

A He asked somebody to get Mr. Kelly.

1

2 Q While you were waiting for Mr. Kelly to arrive, did  
3 you discuss anything together, do you remember?

4 A We asked if Mr. Barbas would come up with any other  
5 chemicals. Mr. Shalline said he probably would.

6 Q Anything else you remember discussing then?

7 A No.

8 Q Then Mr. Kelly arrived?

9 A Yes.

10 Q What took place when Mr. Kelly arrived?

11 A When Mr. Kelly arrived, the conversation then  
12 revolved around the pit that was dug in the backyard  
13 after the construction, for the disposal of  
14 construction debris.

15 Q I want you to try to be as specific as you can now.  
16 Mr. Kelly came to the meeting?

17 A Yes.

18 Q Who was the first one to speak? Was that you?

19 A I have no recollection. We probably all shook hands,  
20 said hello, how are you feeling, how's the weather.

21 Q Did you explain why you were there?

22 A Yes.

23 Q Did you tell him you were there to answer a letter to  
24 the EPA?

25 A Yes.

1

2 Q Did you indicate to him that this was important for  
3 you to get the information to the EPA.

4 A Yes.

5 Q Did you indicate that it was important that it be  
6 true and accurate information?

7 A I would not have anticipated anything else from  
8 Mr. Kelly.

9 Q But you indicated that it was important that he give  
10 you this information?

11 A Yes.

12 Q Then what did you say to Mr. Kelly, if anything?

13 A If he recalled the construction pit.

14 Q And?

15 A If he recalled its location, if he recalled who dug  
16 it, if he recalled what was put into it.

17 Q What did Mr. Kelly say, if anything?

18 A Mr. Kelly said he recalled the pit. He remembered,  
19 to the best of his recollection, that Manzelli dug  
20 it. He recalled the approximate location and said  
21 that while the pit was open, that he recalled paint  
22 sludge being dumped into the pit.

23 Q What did he say about it?

24 A That he recalled paint sludge being dumped into the  
25 pit.

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2 Q What did you say?

3 A Where did the paint sludge come from?

4 Q What did he say?

5 A He said paint sludge normally stored behind the plant  
6 in 55-gallon drums, awaiting the waste contractor to  
7 haul it away.

8 Q What did you say?

9 A To the best of my recollection, I asked how many  
10 drums may have been dumped into the pit.

11 Q What did he say?

12 A His initial recollection was four, five. He was  
13 rather vague.

14 Q What did you say?

15 A I believe I asked who dumped the drums and I believe  
16 Mr. Kelly indicated he didn't know.

17 Q What did you say?

18 A I asked Mr. Shalline if he could find out.

19 Q What did Mr. Shalline say?

20 A He said he would try.

21 Q What else did you say?

22 A I asked if that was all that went into the pit.

23 Q What did Mr. Kelly say?

24 A To his recollection, that was all that went into the  
25 pit, other than construction debris.

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2 Q What did you say?

3 A I thanked Mr. Kelly for his information, asked  
4 Mr. Shalline if we could find out more specifically  
5 how many drums of paint sludge were dumped in the  
6 pit, who dumped them.

7 Q What did Mr. Shalline say?

8 A He said he would try.

9 Q Did he indicate who might have that knowledge?

10 A No.

11 Q Did Mr. Kelly indicate who might have that knowledge?

12 A Mr. Kelly suggested a name and I don't recall the  
13 name.

14 Q Did he suggest --

15 A Name of an employee. I don't recall who.

16 Q Employee who did the dumping?

17 A Who specifically dumped the paint sludge from the  
18 drums into the pit, with construction debris.

19 Q Thinking back now, can you remember who that employee  
20 was?

21 A I don't have a recollection.

22 Q Did you write his name down in your notes?

23 A I don't believe I did.

24 Q Don't you think that name was important to you?

25

MR. CHEESEMAN: Objection.

- 1
- 2 A At that time, Mr. Shalline was going to ascertain
- 3 from the individual if he was the person who dumped
- 4 the paint sludge into the pit, and the other
- 5 questions, how much, how many drums.
- 6 Q Did Mr. Kelly mention this name, right?
- 7 A I believe he mentioned a name, yes.
- 8 Q Did Mr. Shalline say: I know that person or I will
- 9 get that person over here right away? What did he
- 10 indicate about the name?
- 11 A He said he'd find out.
- 12 Q From that person?
- 13 A Yes.
- 14 Q Did that person work there that day? Was he there?
- 15 Was he around at shop?
- 16 A I don't know.
- 17 Q Was that person's name Ed Orazine?
- 18 A To the best of my recollection, no.
- 19 Q Was that person's name Bob Allen?
- 20 A To the best of my recollection, no.
- 21 Q Was that person Paul Kelly?
- 22 A To the best of my recollect, no.
- 23 Q Was that Stanley Bialach?
- 24 A To the best of my recollection, no.
- 25 Q Do you remember what nationality that

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person's name was?

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A The name may have indicated to me a person of Italian descent.

4

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Q Would that person be Joe Miola?

6

A To the best of my recollection, no.

7

Q All right.

8

Q Ed Orazine doesn't ring a bell for you?

9

A No.

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Q But it was a person with an Italian sounding name?

11

A That is correct.

12

Q And you indicated to Mr. Shalline that you wanted to talk to this person with the Italian sounding name?

13

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A I indicated to Mr. Shalline that I wanted him to get the information on who dumped paint sludge into the pit, how much.

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Q Now, did Mr. Shalline go and do that?

18

A Not at that particular moment.

19

Q But he said he would do that?

20

A Yes.

21

Q Then what took place after Mr. Kelly said this is the person who might have dumped this stuff?

22

23

A I believe we'd run out of questions to ask Mr. Kelly at that point.

24

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Q I want you to think back now. Is it your memory, is

1  
2 it a very clear memory, that Mr. Kelly indicated to  
3 you very clearly that he was not involved in the  
4 dumping of this material?

5 MR. CHEESEMAN: Are you asking him if he  
6 said he was not involved?

7 MR. SCHLICHTMANN: If he clearly indicated  
8 to you by one means or another, clearly indicate to  
9 you that he was not involved in the dumping of the  
10 material?

11 MR. CHEESEMAN: Object to the form. Go  
12 ahead.

13 A Mr. Kelly indicated that someone had dumped, emptied  
14 some drums of paint sludge into the pit.

15 Q And he indicated who he thought that person was?

16 A He gave us a name of someone whom he thought could  
17 give us the information on who dumped it.

18 Q All right. More information but not necessarily the  
19 person who actually did it?

20 MR. CHEESEMAN: You're asking him to read  
21 Mr. Kelly's mind or are you asking him what Mr. Kelly  
22 told him.

23 MR. SCHLICHTMANN: What did Mr. Kelly  
24 indicate to Mr. Stewart?

25 MR. CHEESEMAN: What Mr. Kelly told him?

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MR. SCHLICHTMANN: What he indicated. He may have indicated all sorts of ways.

MR. CHEESEMAN: I object to the question. Go ahead.

MR. SCHLICHTMANN: He wrote it down in a note or used sign language?

A To the best of my recollection, Mr. Kelly mentioned that we might talk to a Mr. X to get the answer to how many drums were emptied into the pit.

Q Now, Mr. Shalline said he would talk to Mr. X?

A That's correct.

Q Did he say he would go and find Mr. X?

A He said he would get the information.

Q From Mr. X?

A Yes.

Q You then ran out of questions for Mr. Kelly and Mr. Kelly left?

A That is correct.

Q Then what took place?

A To the best of my recollection, we at that point went out and looked in the plant and around the plant, took a tour.

Q With Mr. Shalline?

A Mr. Shalline, Mr. Knight and myself.

1

2 Q Where did you go?

3 A We went through the machine shop to the area where  
4 cutting fluid is stored.

5 Q What did you notice there?

6 A Drums of cutting fluid.

7 Q 55-gallon drums?

8 A That is correct.

9 Q What were the color of the drums?

10 A Black or green or both.

11 Q Black or green or both black and green; is that  
12 right?

13 MR. CHEESEMAN: Are you interpreting his  
14 answer?

15 MR. SCHLICHTMANN: I am interpreting the  
16 answer. It can take me six questions to get it.

17 MR. CHEESEMAN: I think he gave you the  
18 answer when you asked the question the first time.

19 MR. SCHLICHTMANN: I'm getting older, my  
20 hearing is getting bad, body is falling apart.

21 A There were a number of drums, some of which were  
22 black and some of which, to my recollection, were  
23 green.

24 Q They were either black or green?

25 A Correct.

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2 Q Some were black; some were green?

3 A That is correct. They were not striped.

4 Q How many drums were there?

5 A To the best of my recollection, approximately six.

6 Q Do you remember how many of the six were black and  
7 how many were green?

8 A I don't.

9 Q Was it roughly half and half, do you think? Was it  
10 more green than black, more black than green or you  
11 have no recollection?

12 MR. CHEESEMAN: Objection to the form of  
13 the question.

14 MR. SCHLICHTMANN: It was a good form.

15 MR. CHEESEMAN: Go ahead and answer.

16 A If you would like to have me guess --

17 MR. CHEESEMAN: No.

18 MR. SCHLICHTMANN: There hasn't been one  
19 witness that has been allowed to guess.

20 A I have no recollection.

21 MR. SCHLICHTMANN: I have to do all the  
22 guessing.

23 Q Were these drums covered, had lids on them?

24 A These were 55-gallon drums with bungs, not lids.

25 Q And the bungs would be opened up, that's how you get

1

2 the liquid out --

3 A That's correct.

4 Q -- with a pump?

5 Did some have pumps on them?

6 A I beg your pardon. You asked two or three questions.

7 MR. CHEESEMAN: In that case, I object to  
8 the question. Go ahead.9 A The drums have bungs and you open the bung and by  
10 that manner either pump, put a faucet into the bung,  
11 in some manner remove the liquid.12 Q Or you can tip it over and it will pour out of the  
13 bunghole?

14 A You could.

15 Q Now, were any of these drums, were these all sealed  
16 drums at that time or did they have any pumps,  
17 faucets or were they open in any way?

18 A As I recall, one was open.

19 Q How was it open?

20 A With a faucet.

21 Q And the others?

22 A All sealed, to my recollection.

23 Q Now you examined the drums, didn't you?

24 A Yes.

25 Q What did your examination show you?

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2 A That the drums contained cutting fluid.

3 Q Did you take notes of what was on the drum?

4 A Yes.

5 Q Was there a label on there calling it cutting fluid?

6 Was that stenciled on that?

7 A There was a label on the drum describing it as a  
8 trade name of cutting fluid.

9 Q What was the trade name, do you remember?

10 A I don't recall.

11 Q Do you know if there were any trademarks on it,  
12 Mobil, Dow?

13 A I don't recall.

14 Q There was some trademark on it?

15 A Yes.

16 Q What else did your examination of the drum reveal?

17 It was cutting fluid and what did it say about it?

18 A The information on the drum told of the -- of a  
19 constituent of the cutting fluid and the method by  
20 which the cutting fluid would be used, instructions  
21 for mixing, if you will.

22 Q What was the chemical constituent?

23 A The best of my recollection, it was  
24 1,1,1-trichloroethane

25 Q Was that true of all six drums?

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2 A Yes.

3 Q Other than 1,1,1-trichloroethane, did it indicate it  
4 had any other chemicals in it?

5 A No.

6 Q And after you examined the drums, what did you do?

7 A Moved on to the paint area.

8 Q You did examine the machine shop?

9 A We walked through the machine shop.

10 Q Did you notice there was a degreasing tank there?

11 A No.

12 Q You didn't notice a degreasing tank?

13 A No.

14 Q Did you notice any tanks at all which were used to  
15 hold the 1,1,1-trichloroethane, to do anything?

16 A No.

17 Q Did anybody explain to you what --

18 MR. CHEESEMAN: You're asking about the  
19 trichloroethane and I don't think your reference is  
20 clear.21 Q Did anybody indicate to you what the  
22 1,1,1-trichloroethane was used for?23 MR. CHEESEMAN: Asking about the cutting  
24 fluid?

25 Q Did you understand the 1,1,1-trichloroethane to be

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the cutting fluid?

A The label indicated that 1,1,1-trichloroethane was a constituent of the cutting fluid.

Q Did anyone explain to you how the cutting fluid was used or did you have an understanding of how the cutting fluid was used?

A Mr. Shalline explained how the cutting fluid was used.

Q Did he do it at that time?

A At that time.

Q Or had he done it previously?

A At that time.

Q What did he tell you?

A That the material from the drum was diluted and was then used as cutting fluid on the metal working equipment in the plant.

Q What quantities?

A I have no idea.

Q Did he indicate the quantities?

A No.

Q Did he indicate how many drums of 1,1,1-trichloroethane cutting fluid would go through the machine shop?

A No.

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2 Q During what period of time?

3 A At that time, no.

4 Q Did he indicate how many drums were on the site at  
5 any one given time?

6 A He indicated that the number of drums we saw was  
7 typical.

8 Q He said that to you?

9 A Yes.

10 Q Did he say how quickly they would go through six  
11 drums of cutting fluid?

12 A No.

13 Q Did he indicate it would be a weekly basis, monthly  
14 basis or yearly basis?

15 A He gave me no indication at all.

16 Q You had no idea how many drums a day would be used of  
17 cutting fluid?

18 A I had no idea.

19 Q Did you ask him at that time?

20 A No.

21 Q Did you ever ask him at any time as to how many drums  
22 of cutting fluid they would use during any particular  
23 period of time?

24 A At some later period during these two days, we did  
25 discuss the usage of cutting fluid.

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Q During your discussion of that usage of cutting fluid, did you try and get from Mr. Shalline or try and get from any source, how many drums of cutting fluid the plant would use during any particular time?

A I asked Mr. Shalline if he would get the records.

Q As to the use of cutting fluids?

A That's correct.

Q Did he?

A Not at that particular moment, he did not, but he did, yes.

Q So at some point, you did get an indication from Mr. Shalline as for how many drums of cutting fluids the company would use on any particular period, through any particular period of time?

A An approximation, yes.

Q What was the approximation that was --

A I don't recall.

Q Some information was given to you by Mr. Shalline?

A Yes.

Q Was this information you derived from examining records?

A By Mr. Shalline.

Q Your understanding was Mr. Shalline reviewed records to give you that information?

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2 A That is correct.

3 Q He did that in your presence?

4 A No.

5 Q Your understanding was he did look at records?

6 A Yes.

7 Q But you can't remember what he told you about how  
8 many drums of cutting fluid the plant used during any  
9 particular time?

10 A I do not have a recollection.

11 Q Would that be in your notes?

12 A It probably would have been in my notes.

13 Q Now, did you do anything else at the machine shop?

14 A No.

15 Q Did you talk to anybody in the machine shop?

16 A No.

17 Q Did Mr. Shalline indicate to you what was done with  
18 the spent cutting fluid?

19 A No.

20 Q Did you later determine what was done with the spent  
21 cutting fluid?

22 A Yes.

23 Q How did you determine that?

24 A By asking Mr. Shalline.

25 Q At some later point?

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2 A Yes.

3 Q What did Mr. Shalline indicate to you was done with  
4 the spent cutting fluid?5 A That cutting fluid was diluted and when it was used  
6 up, to use a phrase, would be disposed of in the  
7 sanitary sewer.8 Q So that your understanding was that the dirty cutting  
9 fluid, once it had been used, would be poured down  
10 the sewer?11 MR. CHEESEMAN: Objection. If "dirty" is a  
12 correct term to use?

13 A I don't know dirty is a good term.

14 Q Was it your understanding it was dirty and that's why  
15 they couldn't use it anymore?16 A Cutting fluid has to be changed periodically because  
17 it tends to have an odor.18 Q Well, your understanding is that when you use the  
19 cutting fluid, in the process, it picks up particles  
20 and various other contaminants and isn't useful  
21 anymore and therefore has to be disposed of in some  
22 manner?

23 MR. CHEESEMAN: Objection. Go ahead.

24 A I am not a machinist. My layman's recollection would  
25 be that cutting fluid conceivably could pick up some

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2 kind of contaminant merely from being exposed to the  
3 air; but that cutting fluid eventually begins to  
4 smell, and at that time, it is usually disposed of.

5 Q It's still in liquid form, right?

6 A In liquid form.

7 Q Your understanding was that the cutting fluid, when  
8 it would begin to smell and would have to be disposed  
9 of, your understanding is it would be disposed of  
10 through the sanitary sewer?

11 A That is correct.

12 Q And that was told to you by Mr. Shalline?

13 A That is correct.

14 Q Did he indicate to you that was their practice of  
15 disposal of cutting fluids throughout the existence  
16 of the use of cutting fluids at the plant in Woburn?

17 A I don't know that I asked him that specific question  
18 but he indicated that that was their normal procedure  
19 for disposing of cutting fluid.

20 Q And your understanding was, and based on your  
21 examination of the drums containing cutting fluid,  
22 that you knew for a fact that that cutting fluid  
23 contained 1,1,1-trichloroethane; is that right?

24 A That is correct.

25 Q And that the cutting fluids which contain

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1,1,1-trichloroethane, the normal practice at the Woburn plant was to dispose of that cutting fluid containing 1,1,1-trichloroethane into the sanitary sewer?

A The diluted cutting fluid as used in the plant, which contained as one of its constituents, 1,1,1-trichloroethane, was disposed of down the sanitary sewer.

Q Now, your investigation took place in March of '82, February of 1982?

MR. CHEESEMAN: Exhibit 18 is the Cryovac answer to EPA and it's dated February 5, 1982.

Q It didn't take place in January of 1982, do you think, or early February of '82?

A January.

Q Of 1982?

A That is correct.

Q And your understanding from your investigation and talking to Mr. Shalline is that cutting fluid containing 1,1,1-trichloroethane had and was at that time being disposed of through the MDC sewer?

A The dilute, spent cutting fluid was disposed of in the sanitary sewer.

Q Now, did you actually see that take place?

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2 A I did not.

3 Q This was certainly told to you by Mr. Shalline?

4 A It was.

5 Q And he was very clear about that?

6 A Yes.

7 Q Was Mr. Shalline aware that one of the constituents  
8 of the cutting fluid was 1,1,1-trichloroethane?

9 A Yes.

10 Q You discussed that with him?

11 A We both read the constituents on the drum.

12 Q In fact, it was Mr. Shalline who brought it to your  
13 attention, in the EPA letter, that one of the  
14 constituents of the cutting fluid, it was his  
15 understanding, was 1,1,1-trichloroethane?

16 A That is correct.

17 Q Now, after you left the machine shop, which shop did  
18 you go to next?

19 A I went to the paint shop.

20 Q What took place at the paint shop?

21 A We looked at the paint booth, the storage area for  
22 paint, paint thinners.

23 Q What did you observe at the paint shop?

24 A Many cans of different colored paint, some safety  
25 cans of paint thinner, some small containers of paint

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thinner.

Q Anything else?

A And some sludge in the bottom of the paint booth.

Q Did you notice any drums?

A I did not.

Q You didn't notice any 55-gallon drums?

A I did not.

Q And you noticed paint sludge at the bottom of the booth?

A Yes.

Q Approximately how much sludge would you say?

MR. CHEESEMAN: If you can --

Q If you can tell?

A I have no idea.

Q Well, do you have any idea as to how deep the sludge was or how much of an area?

A I have no idea. I did not stick my finger in it.

Q Did you ask anybody at the paint shop?

A I did not.

Q What took place at the paint shop? Did you discuss anything with anybody? Did you talk to Mr. Barbas? Did you talk to Mr. Shalline? Did you talk to anybody?

A Mr. Barbas was present soon after we arrived.

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2 Q What took place at that meeting? Did you have any  
3 discussion with anybody?

4 A Mr. Barbas pointed out the paint that he used, the  
5 manner in which he stored paint thinner. We reviewed  
6 the operation of the paint booth and generally what  
7 he did in that area.

8 Q Did he indicate what he did with the paint sludge  
9 when it was time to remove it or dispose of it?

10 A Yes.

11 Q What did he say?

12 A That the paint sludge was skimmed from the water in  
13 the bottom of the paint booth and put into a  
14 55-gallon drum.

15 Q Then what was done with it?

16 A With what?

17 Q With the drum of paint sludge.

18 A The drum?

19 Q Yes. With the waste sludge?

20 A The drum was taken outside and stored in an area  
21 outside with the lid on it.

22 Q And? Then what?

23 A As soon as the drum was full, it would be removed by  
24 a contractor.

25 Q Did Mr. Barbas indicate to you how often he would put

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2           sludge into the 55-gallon drum?

3       A    He did not.

4       Q    Did you at any time ever determine from any source  
5           whatsoever as to how often Mr. Barbas would put  
6           sludge into the 55-gallon drum and how often it would  
7           be filled and put out back for removal?

8       A    Not specifically.

9       Q    Did you have any determination as to what period of  
10          time the sludge, it would take to accumulate until  
11          the 55-gallon drums were removed?

12      A    I have no idea.

13      Q    Still to this day?

14      A    To this day.

15      Q    Never in your investigation made a determination as  
16          to how much sludge or how long a period it would take  
17          before the sludge would fill up the 55-gallon drum or  
18          the drum containing the sludge would be put out in  
19          the back?

20      A    No.

21      Q    Now, did you examine the paint cans there, the paint  
22          thinners?

23      A    I did.

24      Q    Did you determine what chemicals were in the paint  
25          thinners and the paint?

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A It is not possible to determine the chemical content of a can of paint by looking at the can.

Q It's not indicated on the can?

A It is not.

Q Was it indicated on the paint thinner.

A Yes.

Q What were the chemicals indicated that were contained in the paint thinner.

Q I believe one -- scratch that. One of the cans indicated TCE.

Q What else?

A Best of my knowledge, that's all I recall.

Q Examining the paint thinners, did it make any indication whatsoever that it contained benzene?

A No.

Q Did you examine it completely, the label for the paint thinners?

A Yes.

Q Did you have any discussions with Mr. Shalline at that time as to what was contained in the paint thinners?

A Again, we asked if we could get a list of all of the chemical constituents of the paint thinners.

Q And Mr. Shalline said?

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2 A Yes.

3 Q You said one of the constituents in some of the paint  
4 thinners was trichloroethylene?5 MR. CHEESEMAN: I don't believe that's what  
6 he said.

7 MR. SCHLICHTMANN: TCE.

8 MR. CHEESEMAN: You misquoted him all  
9 together.10 MR. SCHLICHTMANN: I did? Glad you're here  
11 to catch me.

12 MR. CHEESEMAN: So am I.

13 Q You used the phrase TCE, do you remember?

14 A Yes.

15 Q What does TCE refer to?

16 A One of the cans, safety cans in the paint area had  
17 TCE written on the side of it.

18 Q The initials TCE?

19 A Actually, it had, trichloroethylene.

20 Q Stenciled on to it?

21 A Written.

22 Q Painted on it?

23 A Marker.

24 Q What kind of a marker? Like an magic marker?

25 A I have no idea.

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Q Was it painted or stenciled on there?

A It was marked on there with a marker.

Q On a label?

A No.

Q Just on the can?

A Yes.

Q How big was the can?

A Five gallon.

Q Was that the only one you observed at the paint shop?

A It was the only can I observed that was so labeled.

Q But there were other cans there?

A Yes.

Q They weren't labeled?

A No.

Q Do you know what was contained in those cans?

A I asked Mr. Shalline to ascertain the contents of the cans.

Q Did he know at that time?

A He didn't.

Q Did Mr. Barbas know?

A Not the chemical constituents of the contents of the can.

Q How many safety cans were there?

A Three.

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2 Q How big were they?

3 A Five gallon.

4 Q Was this five-gallon can, safety can that had  
5 trichloroethylene written on it, was that filled,  
6 half filled, empty?

7 A It had some material in it. I have no idea how much.

8 Q It had liquid in it?

9 A Yes.

10 Q Did you ever determine how much was in there?

11 A No.

12 Q Did you have any discussions about it with anybody at  
13 that time?

14 A No.

15 Q Did you observe any other or were you informed of  
16 anything that you observed in the paint shop had any  
17 other chemicals in it?

18 A No.

19 Q And you saw no drums?

20 A No.

21 Q And you weren't told what was done with the  
22 trichloroethylene?

23 A That's a negative question. You're asking me if I  
24 was told what was done with the trichloroethylene?

25 Q Yes. At any time?

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2 A Yes.

3 Q At that time?

4 A Yes.

5 Q What was told to you at that time? By who?

6 A Paul Shalline.

7 Q What did he say to you?

8 A It was used to wipe metal parts and clean them.

9 Q Did he say how long it had been used?

10 (Pause.)

11 Q Are you thinking about the question?

12 A Repeat the question.

13 (Question read.)

14 A My mind went off.

15 (Discussion off the record.)

16 (Recess.)

17 THE WITNESS: Before we start, I don't know  
18 how much further you're going to pursue the visit to  
19 the paint area. I can wait for you to ask questions  
20 or I can make a statement.

21 MR. SCHLICHTMANN: Please.

22 THE WITNESS: In the visit to the paint  
23 area, in looking at paint, cans, thinner cans and so  
24 forth, safety cans and so forth, we found the one can  
25 that was labeled with the content, labeled

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2 trichloroethylene, written on the side, with a marker  
3 of some sort.

4 We asked -- I asked Mr. Shalline at that time  
5 what that thinner was used for, what that material  
6 was used for and he said for cleaning metal.

7 I said to him at that time, I didn't think we  
8 were using trichloroethylene in the plant any longer.  
9 As a matter of fact, I think I had been assured at  
10 some point in time that we weren't using  
11 trichloroethylene any longer. And he indicated we  
12 weren't using trichloroethylene.

13 And I said: The can says trichloroethylene.

14 And he said: The can just hasn't been painted.  
15 The label, the description on there hasn't been  
16 removed -- or words to that effect.

17 Q What was in the can?

18 A I asked Mr. Shalline to ascertain what was in the  
19 can.

20 Q Did he?

21 A And at a later date, he did.

22 Q What did he say it was?

23 A I'm trying to be specific. He said it was the paint  
24 thinner that they were currently using.

25 Q Toluene? Did he tell you it was toluene?

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2 A My recollection is hazy. He may have said mineral  
3 spirits.

4 Q Now, then you left the paint shop; is that right?

5 A Yes.

6 Q Then where did you go?

7 A We then went to the backyard.

8 Q What exactly took place out there?

9 A I asked Mr. Shalline if he could indicate where the  
10 pit was dug after the construction, the pit to be  
11 used for dumping construction debris, and he said he  
12 could indicate an approximate location and did so.

13 Q Now, he then took you to where this spot was, where  
14 the construction debris was disposed of in the pit?

15 A He indicated that location, that is correct.

16 Q Now, Stewart Exhibit No. 1, you have placed a red  
17 mark on the photograph to the rear of the plant, and  
18 is that the area that Mr. Shalline pointed out to you  
19 was the pit where the construction debris was  
20 disposed of?

21 A That general area, that's correct.

22 Q What else did you do in the backyard, if anything?

23 A Looked at the drums of waste material.

24 Q In the back?

25 A In the backyard.

1

2 Q How many drums were out there?

3 A Six or seven.

4 Q What colors?

5 A All black; may have been a green one. I'm not really  
6 sure.

7 Q Any markings on them?

8 A No.

9 Q Where were they located?

10 A Outside of the fence, directly behind the plant at  
11 the end towards shipping and receiving.

12 Q If I showed you this Stewart Exhibit No. 1, would you  
13 be able to indicate on that photograph, the area  
14 where the drums were located?

15 A Yes.

16 Q Would you draw a red mark, line, on that photograph  
17 indicating where the drums were that you observed to  
18 the rear of the plant?

19 MR. CHEESEMAN: I suggest a very small  
20 circle.

21 MR. SCHLICHTMANN: Maybe a line would be  
22 better.

23 MR. CHEESEMAN: We don't know they were in  
24 a line.

25 Q How were they organized? In a line or together in a

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circle?

A They were in a line along a fence.

MR. CHEESEMAN: Then a line would do just fine.

MR. SCHLICHTMANN: I won one. Use a thick line.

A It's very thick. The line indicates one row, approximately, six drums or something of that nature.

Q Now, other than that, did you notice any other drums out there?

A No. Yes.

Q You did?

A Yes.

Q Where?

A There was a drum being used to accumulate small pieces of scrap metal.

Q Was that located near the place where the drums were that had waste material in them?

A Located at the other end of the plant.

Q These drums which you have indicated with the red mark, were you told what the contents of these drums were?

A Paint sludge, waste paint or waste solvents.

Q Did anybody indicate what types of waste solvents

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were contained in the drums?

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A Solvents that had been used, as an example, to clean a paint gun or solvents that had been used to clean a metal part by wiping down the metal part with the solvent to get the grease off or fingerprints or whatever.

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Q What solvent was that or what solvents were they? Were you ever told?

9

10

A I was not told other than that they were generically paint thinners and solvents used to wipe down metal parts.

11

12

13

Q You have no idea what solvents they were talking about?

14

15

A Do I have an idea or did I have an idea at that specific moment?

16

17

Q Yes.

18

A I had no idea at that specific moment.

19

Q Later, did you get an idea?

20

A I asked what the solvents were.

21

Q At that time, when you were with Mr. Shalline out in the back and you saw the drums?

22

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A Yes.

24

Q Did he tell you what solvents were in there?

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A He said he'd find out.

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Q He couldn't tell you right then?

A No.

Q Did he check?

A Yes.

Q Did he get back to you?

A Yes.

Q What did he tell you?

A That those were the normal paint thinners that they used, mineral spirits, et cetera, and that there were some solvents in there used for cleaning metal parts.

Q Right. Did he indicate what kind of solvents?

A He did and my recollection is not -- has failed me. I believe we indicated the solvent in our answer to the EPA letter.

Q Do you remember now what that is or do you have to refer to the letter?

A My memory fails me.

Q Now, did he indicate to you how long those six drums had been there or how often or how representative a sample of drums these were of what is removed from the property on a regular basis?

A He indicated that the number of drums that were there was probably typical. It could be a few more but probably not very many more than this six or seven

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2           that were there.

3       Q    Did he indicate how long the six or seven had been  
4           there?

5       A    He did not.

6       Q    Did you ever determine how long the six or seven had  
7           been there?

8       A    I did not.

9       Q    Did he ever indicate to you how often drums would  
10          accumulate out in the back before they'd be removed?  
11          Strike that.12                 Did he indicate to you how many drums would  
13          accumulate out in the back before they would be  
14          removed?

15       A    He did not.

16       Q    Did he indicate to you at that time what would happen  
17          to these drums?18       A    That those drums would be hauled off, the drums  
19          behind the plant, with paint sludge, et cetera, those  
20          drums would be hauled off by waste contractor.21       Q    Did he indicate to you how often the waste contractor  
22          came to take drums away?

23       A    He did not.

24       Q    Did you ever determine at any time --

25       A    We asked that he review the records on disposal, by

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the contractor.

Q Did he do that?

A He did.

Q Did he come back and tell you?

A He accumulated the records.

Q Did you review them?

A I looked at them.

Q What did it indicate to you?

A Varying periods of time and I wouldn't try to characterize it because the times varied.

Q Do you know if it was on a daily, weekly, monthly or yearly basis that the drums would be removed from the back?

MR. CHEESEMAN: He said varying periods of time.

MR. SCHLICHTMANN: It's a very important point.

THE WITNESS: He wants to get specific.

MR. SCHLICHTMANN: I like to get specific and no one seems to have a memory.

A It was not daily; it was not yearly.

Q Somewhere between daily and yearly?

A Yes.

Q If you had to choose between weekly and monthly,

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which would it be?

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MR. CHEESEMAN: Objection.

4

A You're asking me to characterize varying periods of time, and if you ask me to characterize that, I will, and say monthly.

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6

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Q Did he indicate how many drums on a monthly basis would be removed?

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MR. CHEESEMAN: Objection.

10

A I have no idea.

11

Q Did you ever determine how many drums on a monthly basis would be removed?

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MR. CHEESEMAN: If it's not being removed on a regular, periodic basis, then it isn't possible to answer that question.

14

15

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MR. SCHLICHTMANN: Everything is possible in this world.

17

18

MR. CHEESEMAN: I think not.

19

Q How many drums on a yearly basis would be removed from the plant by the contractor?

20

21

A I have no idea.

22

Q Didn't you determine in reviewing the paperwork?

23

A We looked at the records. I did not count the number of drums and I couldn't tell you from memory how many drums were removed on an annual basis.

24

25

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2 Q Could have been 50, 200, 300, 500 drums, you wouldn't  
3 know.

4 MR. CHEESEMAN: Objection to the question.

5 Q Is that true?

6 MR. CHEESEMAN: He's answered that he  
7 doesn't remember the number.

8 A I don't have any idea.

9 Q Did you think that was important information to know  
10 how many drums were removed on a yearly basis from  
11 the plant?

12 MR. CHEESEMAN: Objection.

13 A In order to answer the questions in the EPA letter,  
14 which was my purpose during that visit, I did not  
15 necessarily think that it was necessary to count the  
16 number of drums.

17 Q So you never did?

18 A I looked at some records of the disposal waste  
19 contractor who hauled away the drums; I did not  
20 tabulate the number of drums, the exact periods  
21 between visits of the disposal, how many drums he  
22 picked up on each load or anything of that nature.

23 Q Did you ever determine the range of amount of drums  
24 that were taken at any one time or did it vary?

25 A It varied.

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2 Q Do you know what the range was?

3 A No.

4 Q So you don't know if it was one drum or whether it  
5 was six that he usually took away or ten or fifteen?

6 MR. CHEESEMAN: Objection.

7 A Obviously, I was not present at the time that this  
8 occurred.

9 Q Based on the records?

10 A The records would indicate several drums -- several  
11 being more than one; less than twenty.

12 Q Somewhere between one and twenty at a time?

13 A Yes.

14 Q What period of time did you look at records, for what  
15 period of time?

16 A I believe that initially, initially, the records  
17 covered a period of two to three years.

18 Q You looked at the records between a two- and a  
19 three-year period; is that right?

20 A Yes.

21 Q How many total times had the disposer, had the  
22 contractor come to the plant to remove drums during  
23 that two- to three-year period?

24 A I have no idea.

25 Q You can't estimate how many times he came?

1

2 A I cannot.

3 Q You can't estimate how many times he came on a yearly  
4 basis?

5 A I cannot.

6 Q And you can't estimate how many times on a monthly  
7 basis?

8 A I cannot.

9 Q And you don't know the total number of times during  
10 that two to three years?

11 A I cannot.

12 Q Do you know whether it's more than a dozen times on a  
13 yearly basis or you cannot tell me at all?

14 A I cannot tell you at all.

15 Q Do you know whether it was more than two dozen times  
16 on a yearly basis?17 A I would be guessing and I am sure you don't want me  
18 to guess.

19 Q I would be happy to have you guess.

20 MR. CHEESEMAN: I don't want you to guess.

21 MR. SCHLICHTMANN: I think for these  
22 purposes, it might be better if he guessed.23 MR. CHEESEMAN: I don't think the judge  
24 will let you guess either.

25 MR. SCHLICHTMANN: Others will have to

1

2 guess then.

3 Q You can't tell me how many times the contractor came  
4 during that two- to three-year period?

5 A No.

6 Q You know it was more than once?

7 A Yes.

8 Q But you don't know if it was less than 500 times?

9 A I have no idea.

10 Q Now, did you go around the property at all with  
11 Mr. Shalline to make an inspection of the back area  
12 to the rear of the plant?

13 A We walked out into the back area to the area that he  
14 indicated, the general area that he indicated where  
15 he believed the pit had been dug by Manzelli for the  
16 disposal of construction debris.

17 Q Did you examine the area that he pointed out?

18 A I looked at it.

19 Q What did the ground look like?

20 A The ground looked like all of the rest of the area in  
21 back of the plant. It had bushes, shrubs, trees,  
22 grass and was typical gravel type soil of that area.

23 Q Did he indicate that it had ever been turned over or  
24 been dug or excavated?

25 A There was really no indication. It looked very much

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like all of the rest of the back of the plant.

Q Did Mr. Shalline, when he showed you this area, did he indicate the dimensions of this area?

A He did not.

Q Did Mr. Shalline at any time indicate that he had firsthand knowledge about the disposing of material into this pit that he pointed out to you?

A You are asking me if he was there and saw it done?

Q Yes. Or did he ever indicate to you that he had witnessed it being done?

A He did not.

Q Did he ever indicate to you that he had no participation in it whatsoever?

A He indicated that he did not participate in the dumping of the drums into the pit.

Q He indicated that to you?

A Yes.

Q Did he indicate it strongly to you that he had no knowledge of it?

MR. CHEESEMAN: That's not what the witness said.

MR. SCHLICHTMANN: I'll clarify it. He didn't say that. I'm not trying to put words in his mouth. I'm trying to find out if this is a true

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statement of fact.

MR. CHEESEMAN: Did he strongly indicate that he had no knowledge of the dumping?

Q Did he strongly indicate to you that he did not participate in the dumping of the drums?

A That is correct.

Q And he was clear in indicating that he had no participation?

A That is correct.

Q Now, in examining Stewart Exhibit No. 1, did you, in looking at the property to the rear of the plant, did you go around the perimeter of that property at all.

MR. CHEESEMAN: Before you go into that, by participation, you meant the physical act of dumping?

MR. SCHLICHTMANN: That's right. Dumping.

MR. CHEESEMAN: Next question.

Q Did you physically go around the perimeter of the property at the rear of the plant?

A Did not.

Q Did you, in your examination of --

A Perimeter being the property line?

Q Property lines, that's right.

A We did not go around the property lines.

Q Did you, in your inspection of the property to the

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rear of the plant, ever notice in any part of the property, any areas where it looked like excavation had taken place at some time in the past?

A Other than construction?

Q No. Just any excavation whatsoever to the rear of the property?

A At any time?

Q At any time?

A I have been present at the plant when excavation was being performed in order to put additions on the back of the plant; and I have been present at the plant when excavation was being performed to put the warehouse out there; I have been present at the plant when excavations were being performed to repair fire protection; I have been present at the plant when a contractor was clearing storm drain ditches.

As far as excavation, that is all that I know.

Q Now, specifically when you were on that inspection with Mr. Shalline and you went to the property to the rear of the plant, did you notice any areas in the property to the rear of the plant which indicated that they had been excavated at some time in the past for whatever reason?

A On the day that I visited the back of the plant with

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Mr. Shalline, we went to the area where he indicated that the construction trench had been dug, and that area only.

Q It didn't look at that area like there had been any excavation some time in the past, did it?

A As I answered before, that area showed no signs of excavation, if you want to use that terminology, in that it was grown up in small trees, shrubs, grass, weeds, as was normal with the rest of the rear of the building.

Q On that day, in your inspection of the property at the rear of the plant, did you notice at any point in the property to the rear of the plant now, any point where there was an indication that there had been excavation in the past?

A On that day, we only visited one area in the rear of the plant.

Q So your answer is?

A Repeat the question.

Q In your inspection of the property to the rear of the plant on that day, did you notice any areas to the rear of the plant where it was indicated to you -- where there was an indication in your examination of that area, that there had been some excavation of

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some type in the past for some reason?

A No.

Q But you didn't examine any part of the property except the area that Mr. Shalline pointed out to you?

A That is correct.

Q And that's the area you've marked with an X?

A That is correct.

Q How long did that inspection of the property take, the property at the rear of the plant, approximately?

A May have taken an hour.

Q Now, it was the middle of the winter, isn't that right?

A Yes.

Q Was there snow on the ground?

A Yes.

Q So the area was covered with snow?

A No. There was snow on the ground but the area was not totally covered with snow.

Q Was the area that Mr. Shalline pointed out to you, covered with snow?

A To my recollection, no.

Q Were the other areas around that area, covered with snow?

A In the middle of the winter in Massachusetts, there

1  
2 is always snow somewhere; and up against the sides of  
3 a building where snow will drift or where snow had  
4 been pushed off the parking lot or something of that  
5 nature, there was snow around.

6 Q There was some snow on the ground but you can't say  
7 exactly where the snow was but you noticed there was  
8 snow on the ground?

9 A In the middle of the winter, there was snow on the  
10 ground.

11 Q After your inspection of the property to the rear of  
12 the plant, what did you do?

13 A We discussed the condition --

14 Q Who is "we"?

15 A Mr. Shalline and myself discussed the condition of  
16 the paving in the back of the plant and storm  
17 drainage.

18 Q Where did this conversation take place?

19 A Standing out behind the plant.

20 Q What condition of the asphalt, particularly, were you  
21 discussing?

22 A The fact that there was a puddle, large puddle in the  
23 paved area behind the plant and that it ought to be  
24 repaved, patched, drained. We needed to do something  
25 to reduce the accumulation of water in that area so

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that it wouldn't freeze up the asphalt.

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Q Was the asphalt itself -- did you notice that the asphalt had settled in places?

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A I will answer the question in generalities. Asphalt and paving always settles.

6

7

Q You said you had a specific conversation with Mr. Shalline about the condition of asphalt. Did you notice that there were areas in the asphalt which seemed to have settled considerably?

10

11

MR. CHEESEMAN: Objection. Go ahead.

12

A I cannot make that assumption.

13

Q You say you saw a large puddle on the asphalt; is that right?

14

15

A Yes.

16

Q Was there an indication that the asphalt had caved in at spots, causing the puddle to form?

17

18

A Caved in, no.

19

Q Settled?

20

A No.

21

Q Or that the asphalt was in good condition and was level, generally on a level condition?

22

23

A Now, the asphalt could hardly be on a level condition if there was a puddle there.

24

25

Q Exactly. So I'd like to know: Did the puddle

1  
2 indicate to you that the asphalt underneath the  
3 puddle had essentially settled in, in relationship to  
4 the asphalt outside the puddle area?

5 MR. CHEESEMAN: You're asking him whether  
6 he knows it used to be more level than the day he  
7 told you he saw it and I think he's telling you he  
8 doesn't know.

9 MR. SCHLICHTMANN: We will see if he knows  
10 or doesn't know. He's a man that knows things.

11 A Thank you. The indication of a puddle in paving  
12 usually indicates that drainage from that paving is  
13 insufficient to drain off the water; and normally, we  
14 would prefer to have the water drain off paving  
15 because water standing on paving tends to freeze and  
16 crack the paving.

17 Q Would you be able to indicate on that photograph,  
18 Stewart Exhibit 1, where that puddle was?

19 A In a general area, yes.

20 Q Would you draw a circle around the puddle area?

21 A Certainly.

22 (Witness complies.)

23 Q Other than the area that you've circled that  
24 contained a puddle, did you notice the condition of  
25 the asphalt at any other areas to the rear of the

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plant?

A Since we were talking about asphalt, we continued to walk around the plant and look at the asphalt.

Q What did you notice, if anything?

A There were another place or two where there were puddles and something needed to be done about it.

Q Did you notice anything about the condition of the asphalt?

A That it was broken up.

Q Would you be able to indicate those places where you saw asphalt broken up?

A You're testing my memory now. I can indicate one other place that I recall specifically.

Q All right. That's fine. Please do so.

A Circle?

Q Absolutely.

MR. CHEESEMAN: Wait a second. For this one, let's draw a circle and fill the circle in.

MR. SCHLICHTMANN: Circle with an X.

MS. WINKLER: Circle 2.

MR. SCHLICHTMANN: Circle with an X. It will be broken up, as opposed to a puddle.

MR. CHEESEMAN: I thought we were asking about a puddle.

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2 MR. SCHLICHTMANN: This is the area you are  
3 going to indicate would be the broken up area, right?

4 MR. CHEESEMAN: Mr. Schlichtmann now  
5 assumes that your statement that you saw two other  
6 areas where you saw puddles and your statement that  
7 the asphalt was broken up are describing the same two  
8 locations. That may or may not be true. The record  
9 doesn't tell us.

10 THE WITNESS: It is true. What he said.

11 MR. CHEESEMAN: That the record doesn't  
12 tell us?

13 MR. SCHLICHTMANN: I thought you were going  
14 to agree with me.

15 THE WITNESS: The record doesn't tell us.

16 Repeat the question.

17 Q You said you examined other parts of the asphalt and  
18 you noticed there were areas where it was broken up;  
19 is that right?

20 A Yes.

21 Q Would you be able to indicate where those areas were  
22 that were broken up that you noticed?

23 A I can indicate one area specifically.

24 Q Would you do that by indicating a circle with an X  
25 indicating the --

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A A circle which you asked me to indicate the area where a puddle was. Now you want a circle with an X in it indicating an area with broken-up asphalt.

Q Absolutely.

(Witness complies.)

Q Now, other than those two areas, did you notice anything else about the condition of the asphalt other than the two areas that you've indicated that you remember specifically some problem with the asphalt?

MR. CHEESEMAN: Apart from the two puddles?

Q Apart from the two areas you indicated with circle and circle with X.

MR. CHEESEMAN: You're asking him to exclude the areas where he saw other puddles?

Q You saw other puddles?

A Yes.

Q You don't remember where those puddles were or you do?

A I couldn't remember where the puddles were.

Q So you don't remember. Do you remember any other conditions of the asphalt that looked like there was a problem?

MR. CHEESEMAN: Objection.

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2 A I have no idea what you're asking.

3 Q Well, you did examine the rest of the asphalt, right?  
4 You determined there was some problems in a couple of  
5 areas?

6 A We walked around the plant and looked at the paving  
7 after having seen the puddle and walked around the  
8 plant and saw one other area with broken asphalt and  
9 suggested that those areas needed to be, one,  
10 drained, the other, patched.

11 Q In particular, I'm concerned with the asphalt to the  
12 rear of the plant. Do you remember examining that  
13 asphalt?

14 A Mr. Schlichtmann, I was not there that day to examine  
15 asphalt. In my usual performance of my duties in  
16 looking at plants and plant sites, I usually pick up  
17 areas where there are problems with the plant or  
18 plant site; and happen to, on this day, see a puddle  
19 and indicated that it ought to be drained; and we  
20 walked further around the plant and saw some broken  
21 asphalt and indicated that it ought to be fixed.

22 Q All I'm asking is -- I note that that was not the  
23 sole purpose of your visit there but that was part of  
24 your duties and you did indicate that you did examine  
25 the asphalt and I'm asking you if you remember

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examining the asphalt to the rear of the plant?

You either remember it or you don't. If you do remember it, I would like to know what you remember about it?

A I did not examine the asphalt at the back of the plant.

Q We'll go on then.

You did your examination of the property and you examined the asphalt. What did you do next?

A To the best of my recollection, Mr. Knight and I returned to the conference room to review what we had found out, to ascertain what other questions we needed to ask.

Mr. Shalline went about performing some of his normal duties at the plant.

Q Did you go back to the conference room?

A Mr. Knight and I.

Q What did you and Mr. Knight discuss in that conference room?

A We discussed the questions that were requested in the EPA letter and the information that we had ascertained during our visit, what other information we would like to have and where we would get it.

Q Now I'm asking you -- you indicated the nature of

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them; now I want to know the details.

What in particular did you discuss?

A We made notes to ourselves to find out specifically what the chemical constituents of paint thinners and solvents in use in the plant at that time --

Q When you say, "at that time," you mean when? In 1982 or previously?

A In 1982.

We made notes to ourselves to -- may I refer to the questions?

Q Yes. Please. You want to refer to the EPA letter.

A Prepare a list of all products that were manufactured; go back and specifically ask about chlorinated solvents; find out what Mr. Shalline had ascertained about somebody dumping paint sludge into the pit at the back of the plant.

Those were the subjects that we discussed.

Q Then what happened?

A By that time, since Mr. Shalline had other duties to perform, I believe we left the plant.

Q Where did you go then?

A To a motel.

Q That night, did you and Mr. Knight have any discussions about what had taken place that day or

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what your duties were, what you were going to do for the next day?

A No.

Q I take it then that you ate and retired for the evening?

A Correct.

Q No other investigation was done by you or Mr. Knight, to your knowledge?

A That is correct.

MR. CHEESEMAN: That night?

MR. SCHLICHTMANN: That night of the first day.

Q And no discussions took place between you and Mr. Knight or you and any other individual concerning the purpose of your trip or the information you were to obtain; is that right?

A You asked two questions. We did not discuss anything with any other individual that evening after we had left the plant.

We may have casually discussed the purpose of our trip but only in a casual manner, since we had already ascertained what questions were needed answered and there was no need to rehash it. We might just as well have a pleasant evening.

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2 Q Did you make any phone calls to the office?

3 A I did not.

4 Q You don't know if Mr. Knight made any phone calls?

5 A I don't have that knowledge.

6 Q You didn't talk to any other individual? You didn't

7 talk to Mr. Forte? You didn't talk with anybody

8 associated with W. R. Grace or any individual about

9 the purpose of your visit or what information you had

10 obtained that day?

11 MR. CHEESEMAN: When is this?

12 MR. SCHLICHTMANN: That night.

13 A No.

14 Q Now, the next morning, did you make any phone calls  
15 prior to going back to the plant?

16 A No.

17 Q Did you have any discussions with Mr. Knight  
18 concerning the purpose of your visit or the  
19 information you obtained, prior to going back to the  
20 plant?

21 A We may have casually mentioned it at breakfast.

22 Q Was there anything in particular that was bothering  
23 you or Mr. Knight that came up in the conversation  
24 about information that you had obtained; in other  
25 words, that you had a lot of questions about

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something? Was there anything in particular that bothered you?

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MR. CHEESEMAN: Objection to the form of the question.

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MR. SCHLICHTMANN: It's called a fishing question. A little lure.

7

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A No. At that stage of our investigation, nothing bothered me about the information that we were getting. I felt that we were getting sufficient information and would be able to adequately answer the EPA request.

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Q Is it fair to say, though, that at that particular point, you still hadn't gotten detailed information about the chemicals that had been used at the plant, the quantities of the chemicals and exactly what had happened in the disposal in the pit? Isn't that true?

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A At that point, we had not gotten specific information on the chemical constituents of the solvents, thinners.

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We did not have an answer as to specifically who dumped the paint sludge into the pit.

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We did not have specific answer as to exactly how many drums were dumped, drums of paint sludge

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were dumped into the pit.

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Q Now, Mr. Stewart, at that point, prior to your

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returning to the plant there on the second day, you

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still didn't know what exactly had gone into that pit

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in the form of waste material; isn't that right?

7

A At that point, we had been told that some drums of

8

paint sludge had been emptied into the pit.

9

Q Isn't it true, Mr. Stewart, that you had been told

10

that paint sludge might have been dumped into the pit

11

but you didn't have any person with firsthand

12

knowledge that had spoken to you yet?

13

MR. CHEESEMAN: Objection.

14

A Correct.

15

Q So you didn't know exactly what had gone into that

16

pit; isn't that true?

17

MR. CHEESEMAN: You're asking if he knew

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what the chemical constituents were?

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MR. SCHLICHTMANN: I'm asking if he had any

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information which could indicate to him what went

21

into that pit.

22

MR. CHEESEMAN: He told you several times.

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MR. SCHLICHTMANN: I'm asking if I'm fairly

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characterizing the state of your information.

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MR. CHEESEMAN: Is he fairly characterizing

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the state of your information?

THE WITNESS: Since I was not there at the time the material was dumped into the pit, I am forced to rely upon what I was told; and at that point, I had been told that some drums of paint sludge had been dumped into the pit. I accepted that.

Q But the persons who told you that information were Mr. Shalline and Mr. Kelly; isn't that right?

A That the information had come through Mr. Shalline and Mr. Kelly.

Q And these people told you that they didn't participate in the dumping of this material into the pit; is that right?

A That's correct.

Q And that they were not sure who was involved but that Mr. Kelly thought that maybe somebody had some information on a Mr. X; isn't that right?

A That's correct.

Q So you didn't know -- at that point, you hadn't yet gotten information directly from people who had participated in the events, to your knowledge; isn't that correct?

A That's correct.

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2 Q So that the information Mr. Shalline and Mr. Kelly  
3 gave you at that point was only an indication of what  
4 they thought might have gone in there; isn't that  
5 right?

6 MR. CHEESEMAN: You're asking him what they  
7 thought?

8 MR. SCHLICHTMANN: Yes. Isn't that the way  
9 you understood the information to be?

10 MR. CHEESEMAN: Ignore the tone of voice  
11 and the way he's leaning across the table and staring  
12 at you. Just answer the question.

13 MR. SCHLICHTMANN: I am leaning forward and  
14 staring at him. I'll lean backwards if it will make  
15 you more comfortable. I'll lean backwards to ask the  
16 questions. I'll stand on my head.

17 MR. CHEESEMAN: I can't remember the  
18 question.

19 THE WITNESS: I don't object to anything  
20 you do.

21 MR. SCHLICHTMANN: Thank you. I don't  
22 object to anything you do.

23 THE WITNESS: Would you repeat the  
24 question, please.

25 Q My question is that the state of your knowledge

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before you went back to the plant on the second day of your investigation, you had not heard information from people who actually participated in the event as to what went into that pit; isn't that right?

A That's correct.

Q And that the people who did provide you information did not indicate to you that they actually knew what went into the pit; isn't that true?

A That is true. They indicated to me that they had not been specifically involved.

Q But did they indicate -- didn't they indicate to you that they didn't have specific knowledge as to what exactly went into that pit?

MR. CHEESEMAN: Personal knowledge?

MR. SCHLICHTMANN: Whatever. That they had no definite knowledge as to what went into that pit?

A They were not involved. I don't think they could have had personal, definite knowledge.

Q Isn't it fair to say then that before you went back to the plant on the second day of your investigation, you did not know what had gone into that pit?

MR. CHEESEMAN: Other than what he was told?

Q Other than indications that had been given to you by

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people who didn't participate in the events, to your knowledge? Is that correct?

A That is correct.

Q Isn't it fair to say on the second day of your investigation, that one of the things that you wanted to do during that second day was to interview a person who had actually been involved in the dumping of material into the pit to determine what exactly had gone into that pit? Isn't that true?

A I wanted to obtain information, specific information as to what had been dumped into the pit, how many drums, yes.

Q That was important information, wasn't it?

MR. CHEESEMAN: Objection. Go ahead.

Q Didn't you consider that to be important information?

MR. CHEESEMAN: Objection.

A That was important information.

Q Wasn't that information which you believed the EPA was requesting of Grace to provide?

A I have to go back and review the EPA letter again, with your permission.

(Pause.)

A One of questions asked in the EPA letter was the nature, type, chemical name of materials that might

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have been disposed of in the pit behind the plant.

Q Right.

A Yes.

Q Isn't it fair to say, Mr. Stewart, that you had been informed that there was a Mr. X who had this information?

MR. CHEESEMAN: I think he said he was actually given the name of the person but can't now recall it.

Q You refer to this person who had the information as Mr. X; isn't that correct?

A Yes.

Q Isn't it fair to say then that it was one of your intentions on the second day of your investigation, that sometime during that day, that you had a conversation with this person who you referred to as a Mr. X?

A It was my intention to find out what Mr. X had dumped into the pit. I didn't necessarily need to talk to him.

Q So you didn't attempt to talk to him but you wanted to find out what Mr. X knew?

A Certainly.

Q Didn't you think that the best way to find out that

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information would be to talk firsthand with Mr. X?

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A You're asking my opinion?

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Q Yes.

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A My opinion is that that's not necessarily so.

6

Q Isn't it true, sir, that when you wanted to find out information about the use of chemicals, that you went right to the sources, right to the people who Mr. Shalline indicated had firsthand knowledge?

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A That is correct.

11

Q In fact, you talked to Mr. Kelly?

12

A Yes, sir.

13

Q And talked to Mr. Barbas?

14

A Yes, sir.

15

Q You didn't rely on Mr. Shalline talking to them?

16

A That is correct.

17

Q You wanted to talk to them personally?

18

A That's correct.

19

Q Because you wanted to ask them questions and find out what they knew?

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A That is correct.

22

Q So will you agree, sir, that this Mr. X was a person who had important information that you wanted to obtain?

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MR. CHEESEMAN: Objection. Go ahead.

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2 A That is correct.

3 Q Don't you agree, sir, that the best way to obtain  
4 that information would be a face-to-face meeting  
5 between you and Mr. X in which you could ask specific  
6 questions and he could give and you could hear the  
7 specific answers?

8 A That is not necessarily true.

9 Q Why is it not necessarily true?

10 A I rely upon the integrity of employees of the Woburn  
11 plant to give me the information that I requested.

12 Q You relied on Mr. Shalline?

13 A I did.

14 Q You relied on Mr. Shalline's integrity?

15 A I did.

16 Q But you didn't rely on Mr. Shalline's integrity  
17 relating to what information Mr. Barbas had and  
18 Mr. Kelly had; is that right?

19 MR. CHEESEMAN: Objection.

20 A I relied entirely upon Mr. Shalline's integrity in  
21 the answer that he gave me.

22 Q But you still thought it necessary to talk to  
23 Mr. Barbas and Mr. Kelly personally, didn't you?

24 A Yes.

25 Q You didn't ask Mr. Shalline to talk to them and

1

2 gather information?

3 A I did not.

4 Q You wanted to talk to them?

5 A I did.

6 Q But as to Mr. X, this person who supposedly had  
7 firsthand knowledge of what went into this pit, you  
8 didn't want to talk to that person?9 A I have never said that I didn't want to talk to the  
10 person. I have said that I wanted the information  
11 from that person on what was dumped into the pit.12 Q Did you indicate to Mr. Shalline that you wanted to  
13 talk to Mr. X personally?

14 A I did not.

15 Q Did you indicate to Mr. Shalline that he could talk  
16 to Mr. X and tell you what Mr. X had to say?

17 A Yes.

18 Q Did you find that to be an unusual procedure that you  
19 relied on Mr. Shalline to get this information from  
20 Mr. X rather than for you to talk face-to-face with  
21 Mr. X?

22 MR. CHEESEMAN: Objection. Go ahead.

23 A I don't think that is an unusual procedure. I rely  
24 upon the integrity of the people who work for Cryovac  
25 and I expect to get straight and honest answers.

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Q Mr. Stewart, isn't it true that based on your initial investigation and based on your conversations with Mr. Shalline and Mr. Kelly and Mr. Barbas, isn't it true, sir, that you had the suspicion that in fact Mr. Kelly and Mr. Barbas had participated in the dumping of the drums in the pit?

Isn't that true, sir?

A No.

Q You had no suspicion of that whatsoever?

A No.

Q And nothing that Mr. Shalline told you and nothing that Mr. Kelly told you and nothing that Mr. Barbas told you indicated to you that either Mr. Shalline, Mr. Barbas or Mr. Kelly had actively participated in the dumping of material to the rear of the plant?

A That is correct.

Q Isn't it true, sir, that because you suspected that Mr. Kelly and Mr. Barbas had actively participated in this event, that you allowed them to indicate to you that there was a Mr. X who had information and that you allowed Mr. Shalline to get this information from Mr. X but found it unnecessary for yourself to talk directly to this Mr X? Isn't that true, sir?

MR. CHEESEMAN: Objection.

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2 A Would you read the question back.

3 (Question read.)

4 A That is not true.

5 Q Now, what did you do when you arrived in the plant  
6 the second day of your investigation?

7 A We looked at some additional paper that Mr. Shalline  
8 had provided from the files as to disposal of drums,  
9 as to types of paint thinners and solvents.

10 Q What were these documents?

11 A He had some purchase requisitions and that may not be  
12 the specific name of the document. That's what I  
13 would call them.

14 Q What period of time did these purchase requisitions  
15 involve?

16 A A couple of years.

17 Q From 1982?

18 A Yes.

19 Q No purchase orders in the 1960s?

20 A No.

21 Q No purchase orders in the 1970s?

22 A No.

23 Q Did Mr. Shalline show you at that meeting any  
24 documents which indicated the purchase of chemicals  
25 by the Woburn plant from the 1960s, at that meeting?

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A No.

Q Did Mr. Shalline at any time during your two-day investigation ever show you documents which indicated the chemicals they had used in the 1960s, and used at the Woburn plant?

A No.

Q Did Mr. Shalline ever show you, during your two-day investigation, any documents which indicated the use of chemicals at the Woburn plant in the 1970s?

A The documents that I saw dated, were dated probably two, maybe three years prior to January of 1982, so it would have been the latter part of the 1970s.

Q But you didn't see any other documents during that two-day investigation which indicated to you what chemicals were used at the Woburn plant either in the 1960s or the 1970s?

A No.

Q Now, other than these purchase orders, what other documents did Mr. Shalline show you?

A Documents indicating the disposal of waste materials by a contractor.

Q What were these documents? Describe them.

A They could be described as shipping documents or documents ordering the shipment of chemicals, waste

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materials from the plant.

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Q How many documents were there?

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A I have no recollection.

5

Q Does this have to do --

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A Several.

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Q Several pages?

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A Several pages.

9

Q Were these documents concerning a particular company

10

or several companies?

11

A My recollection, it was one company.

12

Q That's the Axton & Cross Company?

13

A That is correct.

14

Q That's correct?

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A Yes.

16

Q The period of time for the Axton & Cross Company,

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these records spanned what period of time?

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A Records that I saw that day spanned two-, three-year

19

period.

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Q Other than those documents, did Mr. Shalline show you

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anything else?

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A No.

23

Q What did you discuss at that meeting? Did this take

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place in the conference room?

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A Yes.

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2 Q What discussion took place at that meeting when  
3 Mr. Shalline showed you these documents?

4 A We discussed the removal of waste materials from the  
5 back of the plant and the fact that this company had  
6 removed the drums from the back of the plant as they  
7 were contracted to do.

8 Q You say you discussed the removal. I'm sorry.

9 A We asked what Mr. Shalline had found out -- I asked  
10 what Mr. Shalline had found out about the drums that  
11 were emptied into the pit, construction pit, in the  
12 back of the plant.

13 Q What did Mr. Shalline tell you?

14 A He told me that the drums that were emptied into the  
15 pit at the back of the plant -- and there may have  
16 been more than the three or four previously  
17 indicated -- were paint sludge.

18 Q What did he tell you?

19 A We discussed the solvents that were currently being  
20 used in the Woburn plant.

21 Q What did he tell you?

22 A We made a list of those solvents and they appear in  
23 our answer to the EPA.

24 Q Did Mr. Shalline give you this list?

25 A Yes.

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2 Q Did he give it to you verbally?

3 A Yes.

4 Q He didn't have a list typed up?

5 A No.

6 Q Did he show you any documents to document the use of  
7 chemicals?

8 A The purchase requisitions indicated the purchase of  
9 those types of chemicals for use at the plant.

10 Q You said that Mr. Shalline said to you that maybe  
11 three or four drums were involved in this incident;  
12 is that right?

13 A That is correct.

14 Q What exactly did he indicate to you?

15 A He said that it may have been as many as ten.

16 Q What did he indicate about what happened to those  
17 drums?

18 A He indicated that the contents of perhaps as many as  
19 ten drums of paint sludge were -- could have been  
20 emptied into the pit.

21 Q What else did he indicate to you?

22 A That's it.

23 Q Did he indicate it was more than ten?

24 A He indicated that perhaps as many as ten could have  
25 been emptied into the pit.

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2 Q Did he indicate it was more than ten?

3 A No.

4 Q Did he indicate that it might have been more than  
5 ten?

6 A No.

7 Q Did he indicate whether any of those drums were  
8 dumped into the pit and left in the pit?

9 A No.

10 Q Did he indicate what happened to the drums after they  
11 were emptied?

12 A No.

13 Q Did you ask him?

14 A No.

15 Q Did you ask him if it was more than ten drums?

16 A No.

17 Q Were you disturbed by the fact that this was new  
18 information than what you had heard from Mr. Kelly  
19 the day before?

20 MR. CHEESEMAN: Objection.

21 A No.

22 Q Didn't bother you at all?

23 MR. CHEESEMAN: Objection. Go ahead.

24 Q Didn't bother you at all that the information had now  
25 been changed from three or four drums that you had

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heard from Mr. Kelly the day before to now maybe as many as ten drums?

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A No.

5

Q Did Mr. Shalline indicate where he got this information?

6

7

A From talking to the employee that Mr. Kelly had indicated on the previous day might have some knowledge about the dumping of the drums, some specific knowledge.

10

11

Q This is Mr. X?

12

A Mr. X.

13

Q Did you ask Mr. Shalline to talk to Mr. X?

14

A Mr. Shalline had already talked to Mr. X.

15

Q When Mr. Shalline told you this new information, that now it looked like it might be as many as ten drums, did you then say: I'd like to talk to Mr. X myself?

16

17

18

A No.

19

Q Did you think it was necessary to talk to Mr. X at that time?

20

21

A No.

22

Q You were satisfied with Mr. Shalline's answer?

23

A Certainly.

24

Q You didn't want to confirm it by talking directly to Mr. X?

25

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2 A No.

3 Q Did Mr. Shalline tell you who this Mr. X was?

4 A I'm relatively certain that he mentioned that he had  
5 talked to -- whatever the name was -- Mr. X.

6 Q What was the name that Mr. Shalline used?

7 A I still have no recollection.

8 Q Still don't know?

9 A I had no recollection from the first day and I have  
10 no recollection from the second day.11 Q Did you write this down in your notes, the name of  
12 the person?

13 A I may very well have.

14 Q Did Mr. Knight ask to speak to this person?

15 A No.

16 Q Did you ask if that person was working that day?

17 A I did not.

18 Q Do you know if Mr. Shalline had talked to him the day  
19 before or talked to him that morning?

20 A I do not.

21 Q Subsequent to that investigation, up until this  
22 morning, are you aware of who that individual was  
23 that Mr. Shalline talked to?

24 A It is probably written somewhere in my notes.

25 Q What I'm asking you now, though, is from whatever

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2 source, have you learned, do you know today, sitting  
3 here, who that person was that Mr. Shalline talked to  
4 that you have referred to as Mr. X?

5 A You're asking me for a name and I have told you in my  
6 recollection, I do not recall the name; and I have  
7 indicated him as Mr. X for the benefit of your asking  
8 questions.

9 MR. CHEESEMAN: I don't think you heard the  
10 question quite right. Even though Mr. Schlichtmann  
11 has heard several times that you cannot recall the  
12 person's name, he's asking between then and now, were  
13 you ever told that person's name.

14 I assume the answer is yes, you were told that  
15 very day what his name was?

16 THE WITNESS: Yes, I was told what his name  
17 was.

18 Q On that day?

19 A Yes.

20 Q Now, you can't remember what they told you that day.  
21 Now I'm asking, from whatever source, do you now know  
22 who that person was that Mr. Shalline talked to?

23 MR. CHEESEMAN: If he could remember as he  
24 sits here now, I assume he would have told you the  
25 first time you asked the question.

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2 MR. SCHLICHTMANN: I wish that were the  
3 case. Unfortunately it's not often the case in  
4 depositions.

5 A Again, my answer is -- it may be in my notes -- but  
6 that I have no recollection now and I do not have a  
7 recollection of the specific name that was mentioned  
8 on the first or second day when we were at the plant.

9 Q Now, Mr. Shalline then told you what the chemicals  
10 were, the solvents that were used at the plant; is  
11 that right?

12 A Yes.

13 Q Did he indicate the period of time that these  
14 solvents were used?

15 A No.

16 Q Did he indicate the quantities of the solvents used?

17 A No.

18 Q At that point, you didn't have any documents  
19 indicating how long the solvents had been used, what  
20 solvents had been used or the quantities of solvents?

21 A That is correct.

22 Q What else was discussed at this meeting?

23 A I believe I asked if Manzelli had closed the pit,  
24 covered it up; and the answer, to the best of my  
25 recollection, is that, yes, Manzelli -- Manzelli

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Corporation -- it would be one of his employees, with

3

a piece of his equipment -- was the one who closed

4

the pit.

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Q Mr. Shalline told you that?

6

A Yes.

7

Q Did Mr. Shalline indicate that he had firsthand

8

knowledge that that was the case?

9

A Yes.

10

Q That he had seen it done himself?

11

A He did not say that he had seen the pit closed.

12

Q Did he indicate that Mr. X had seen it closed?

13

A He did not indicate the name of any person who had

14

seen it closed; only that it had been closed.

15

Q Did he indicate to you that Mr. X had indicated what

16

was in these drums that had been dumped into this

17

pit?

18

A Paint sludge.

19

Q Mr. X had said it was paint sludge?

20

A That is correct.

21

Q Did Mr. Shalline indicate he had specifically asked

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Mr. X what was in the drums?

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A That is correct.

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Q Did he also indicate that he had specifically asked

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Mr. X whether all the drums were filled?

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A Yes. He had asked that question.

Q And the answer that Mr. X gave was?

A No, that all of the drums were not full.

Q What condition were they? Did Mr. X indicate?

A As a general answer, a couple of full drums and the others were only partially full.

Q Did he indicate how partially filled they were?

A No.

Q He didn't know if it was half, a quarter, a tenth or three quarters?

A No.

Q Did Mr. Shalline indicate that he had specifically asked Mr. X whether he had dumped any drums into the pit or left any drums into the pit?

A I don't know.

Q Did you ask Mr. Shalline if he had asked Mr. X this?

A I did not.

Q Did Mr. Shalline at any time indicate to you that drums had been left in the pit?

A No.

Q Did Mr. Shalline ever indicate to you that he had inquired of people who knew, might have known, whether in fact drums were put into the pit or not?

A No.

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2 Q So at no time during your investigation did you ever  
3 determine whether drums had been put into the pit or  
4 whether they hadn't been put into the pit; isn't that  
5 true?

6 A That is correct.

7 Q So isn't it fair to say then that you never had any  
8 information which you could give to the EPA which  
9 would affirmatively state that no drums had been  
10 placed into the pit? Isn't that true?

11 A I don't recall that the EPA asked that question.

12 Q What I'm asking you, sir, is that during your  
13 investigation, you never uncovered information which  
14 would have allowed you to affirmatively tell the EPA  
15 that in fact no drums had been placed into that pit.  
16 Isn't that true?

17 A The EPA did not ask that question.

18 Q That's not the question I'm asking you. What I'm  
19 asking you --

20 MR. CHEESEMAN: Don't argue. Just answer  
21 the question.

22 Q During your investigation, you never uncovered  
23 information which would have allowed you to make the  
24 affirmative statement to the EPA that no drums had  
25 been placed in the pit?

1

2 A That's correct.

3 Q That no drums had been placed into that pit prior to  
4 it's being covered over?

5 A That's correct.

6 Q And you never uncovered any information which would  
7 have allowed you to say to the EPA that no drums were  
8 placed into the pit prior to it's being covered over?

9 A That is correct.

10 Q Now, that is true concerning your investigation; is  
11 that right?

12 A That is correct.

13 Q Mr. Stewart, what else took place at that meeting  
14 with Mr. Shalline?

15 A I asked Mr. Shalline to continue to gather  
16 information on paint used at that particular time or  
17 just previous to that time, type thinners used, any  
18 information on chemicals at the plant that he could  
19 ascertain.

20 Q Did you also want him to give you more information  
21 about the types of chemicals used in the past and the  
22 quantities of the chemicals used in the past?

23 A I was concerned about the chemicals being used in the  
24 plant at that particular time period.

25 Q When you say, "that particular time period," which

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time period are you referring to?

A Immediately prior to January 1982.

Q Did you understand that the EPA was also asking in their letter for you to list any chemicals used prior to November 19, 1980?

A Yes.

Q So you understood that the EPA was requiring Grace to provide information about all chemicals used prior to November 19, 1980?

A Yes.

Q And the quantities used?

A Yes.

Q And the methods of disposal used?

A Yes.

Q And they weren't just asking you for information about the chemicals used during 1982?

A That is correct.

Q They wanted both before November 19, 1980, and after November 19, 1980?

MR. CHEESEMAN: You are asking what his understanding was?

MR. SCHLICHTMANN: Yes. His understanding.

A Yes.

Q Now, you still hadn't gotten that information from

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Mr. Shalline, had you?

A That is correct.

Q So what else was discussed at that meeting or did the meeting then break up?

A That meeting broke up, Mr. Shalline went back to his duties in the plant and presumably to gather more information.

Q What did you and Mr. Knight do?

A We inspected the plant and left that afternoon.

Q You say you inspected the plant. What exactly did you do?

A It is our normal routine when we visit a plant, to go through and look at the plant for the general condition of the plant, the compliance with OSHA regulations, things of that nature.

Q And you did that?

A I did that.

Q Then you and Mr. Knight left?

A That is correct.

Q You didn't have any meetings with Mr. Forte prior to your leaving?

A Did not meet with Mr. Forte.

Q The only time you met with Mr. Forte was the one time when you came to the plant, the day before?

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2 A To my recollection, that's correct.

3 Q When you left, Mr. Shalline was still to provide you  
4 information?

5 A That's correct.

6 Q After you left the plant, did Mr. Shalline provide  
7 you additional information?

8 A At what time period?

9 Q At any time period after you left?

10 A Up until the present?

11 MR. CHEESEMAN: Prior to the date of the  
12 answer to EPA?

13 MR. SCHLICHTMANN: Prior to the date of the  
14 answer to the EPA.

15 A To the best of my recollection, no.

16 Q Did anybody provide you with additional information  
17 after your leaving the plant, up until the response  
18 to the EPA?

19 A No.

20 Q Is it true, sir, that when you returned to South  
21 Carolina, that you prepared the response to the EPA?

22 A I did not prepare the response to the EPA; I prepared  
23 information and put it together in a manner in which  
24 it could be used for the response to the EPA.

25 Q And then you sent that information to who?

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2

Mr. Forte?

3

A We had contacted our attorney and the information was sent to our attorney.

4

5

Q Who was that attorney?

6

A Mario Favorito.

7

Q And that information was sent in the form of a letter?

8

9

A In the form of a draft of information that could be used in answer to the EPA request.

10

11

Q You have examined the response given by Mr. Forte to the EPA?

12

13

A I have.

14

Q In examining that response, is that essentially the draft that you sent to the attorney?

15

16

A No.

17

Q Were there additions made to it?

18

A There were changes in wording, in form, format.

19

Since I sent in my letter, the facts which were available to me, the wording of the letter was put together by Mr. Favorito.

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Q My question is: As to the factual information which you provided in the draft, the factual information that you provided in the draft was contained in the response by Mr. Forte to the EPA?

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A That is correct.

Q And the facts were not changed as you had given them to Mr. Forte?

A No.

Q So the response given by Mr. Forte was essentially, factually, all of the information you had given Mr. Forte?

A Yes.

Q And he didn't add any factual information?

A No.

(Whereupon, the luncheon recess was taken.)

AFTERNOON SESSION

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Q Now, Mr. Stewart, after you went back to South Carolina, did you then prepare a draft response to the EPA?

A That is correct.

Q You did that in South Carolina, at the South Carolina office?

A That is correct.

Q Who participated in your helping draft that?

A Mr. Knight and myself.

Q Any others other than Mr. Knight?

A No.

Q You never received any information from any source concerning drafting of that response other than what you have testified you did during that two-day investigation in Woburn?

A We obviously put other information that went with the reply together, such as the date that the Cryovac plant was built, the dates of the additions, the amount of property, that kind of information, plus layout of the property, that kind of information that went with the reply. We put that type of information together also.

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2 Q That's information you had in the South Carolina  
3 office?

4 A That's correct.

5 Q Other than the information as to construction dates,  
6 you never received any other information, whether  
7 from your own files or from the offices in South  
8 Carolina or from any other source other than the  
9 information you had already obtained in your two-day  
10 investigation in Woburn?

11 A That's correct.

12 Q You had no conversations with Mr. Forte over the  
13 phone?

14 MR. CHEESEMAN: Talking about after the  
15 visit to Woburn?

16 MR. SCHLICHTMANN: Yes. After the visit to  
17 Woburn and before you sent your draft response to the  
18 EPA letter to Mr. Favorito?

19 A Only to tell him -- I did call him, yes -- only to  
20 tell him I thought the visit had been successful. We  
21 had sufficient facts to reply to the letter and that  
22 the information I was putting together would be sent  
23 up to Mr. Favorito for review.

24 Q How many days after you left Woburn did you do the  
25 draft report?

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2 A Within a couple of days.

3 Q You only had one conversation with Mr. Forte?

4 A Yes.

5 Q You never discussed any additional information during  
6 that conversation?

7 A No.

8 Q It was just an informational call to tell him that  
9 the report was coming and you had enough information  
10 to write it?

11 A That's right.

12 Q Did you get any calls from Mr. Shalline at all?

13 A No.

14 Q Did you get any calls from any other individual who  
15 provided you information which you put into the  
16 report?

17 A No.

18 MR. CHEESEMAN: Talking about the same time  
19 period?

20 MR. SCHLICHTMANN: Yes.

21 Q To your knowledge, did Mr. Knight receive any  
22 information from any source?

23 A No, he did not.

24 Q Now, what was the form of your response that you sent  
25 to Mr. Favorito? What did it look like?

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2 A In addition to the information on the date that the  
3 plant was built, the dates of the additions to the  
4 plant, the amount of acreage, et cetera, and a layout  
5 of the plan of the property, it was simply Question  
6 1, this kind of information; Question 2, this kind of  
7 information; Question 3, this kind of information.  
8 In that sort of a form.

9 Q That was the form you sent. Was it in the form of a  
10 letter to Mr. Favorito?

11 A In the form of a draft with a cover letter on it.

12 Q So it was a cover letter to Mr. Favorito, and  
13 attached to the cover letter was a letter which --  
14 not a letter but a document which listed each  
15 question and provided an answer to each question?

16 A That is correct.

17 Q You used numbers in that report which corresponded to  
18 the number of the EPA request for information?

19 A Yes.

20 Q So you would say Question 1 -- would you repeat the  
21 EPA question or just provide the answer?

22 A I believe we just provided the answer.

23 Q Did it have a title on it?

24 A Not to my knowledge.

25 Q So it just was a page that had No. 1 and then the

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answer?

A Yes.

Q And No. 2, the answer?

A Yes.

Q And 3?

A Yes.

Q And it was all the way through all of the questions that the EPA asked?

A That is correct.

Q Which I believe are 15?

A Yes.

Q Now, do you still have a copy of that letter that you sent and the report that you sent to Mr. Favorito?

A I probably do somewhere in my files.

Q Now, after that report was sent, did you then have a conversation with anybody concerning the responses to be made to the EPA?

A No.

Q Now, you have had an opportunity to look at the response that Mr. Forte sent to the EPA?

A I have.

Q I'm going to show you Shalline Exhibit No. 18 and ask that you examine it. Is that the response that you remember reviewing?

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2 A That's correct.

3 Q Now, was this response sent to you prior to its being  
4 sent to the EPA?

5 A No. Yes, it was. I beg your pardon. Yes. The  
6 answer is yes, it was.

7 Q So you were sent a draft of Mr. Forte's response to  
8 the EPA?

9 A That's correct.

10 Q Did you examine it at that time?

11 A I did.

12 Q Did you go through it line by line?

13 A Yes.

14 Q Did you approve it?

15 A Mine was not the prerogative to approve or disapprove  
16 the letter; mine was -- the request to me was to go  
17 through it and see if it effectively put forth the  
18 facts in answer to the EPA letter.

19 Q So did you review that draft?

20 A I did.

21 Q The draft was sent to you. Did you make any changes?

22 A I did not.

23 Q And the draft that was sent to you was accurate and  
24 truthful based on the information that you had  
25 obtained in your two-day investigation in Woburn?

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A Yes.

Q Now, did you then send the draft back to or indicate to Mr. Favorito or anybody else that the draft of the response to the EPA was acceptable?

MR. CHEESEMAN: I'm trying to figure out just exactly where I should stop you and I think this is the point.

MR. SCHLICHTMANN: I agree. I don't want to have anything to do with the attorney.

Q You did indicate you were asked to check it for accuracy; is that right?

MR. CHEESEMAN: You're asking him what his attorney said to him and I don't think that is appropriate. He testified he approved it and he didn't suggest any changes. What more do you need to know?

MR. SCHLICHTMANN: Fine.

Q Was the letter then, to your knowledge, subsequently sent to the EPA under Mr. Forte's signature?

MR. CHEESEMAN: If you know. It certainly was but this witness isn't the one that has personal knowledge that that's the case.

Q Did it subsequently come to your knowledge that the letter was sent to the EPA under Mr. Forte's

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signature?

A Yes.

Q Now, you have examined this Shalline Exhibit 18?

A Yes.

Q Is this Shalline Exhibit No. 18, is this letter that was sent the same in its wording as the draft that you approved?

MR. CHEESEMAN: I don't think it's appropriate for you to ask that. It describes the physical layout of numbers and so on, which tells you it's of course different from the final product that went to the EPA, but I think the communication of the draft to Mr. Favorito is privileged.

MR. SCHLICHTMANN: All I'm asking is: Is the letter that was sent, the same that he approved?

MR. CHEESEMAN: I'm sorry. I misunderstood you.

Q Do you understand what I'm asking? In other words, you looked over a draft?

A Yes.

Q You checked it for accuracy?

A Yes.

Q As far as you were concerned, it was accurate?

A Yes.

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2 Q Now, you have looked at Shalline Exhibit No. 18?

3 A Yes.

4 Q Which you say is your understanding of the letter  
5 that was sent to the EPA?

6 A Yes.

7 Q Now in reading that Exhibit No. 18 and reviewing that  
8 letter, is that the same, is the wording in that  
9 letter the same as the draft that was sent to you,  
10 that you approved?

11 A To the best of my knowledge, it is.

12 Q There's nothing contained in this exhibit, Shalline  
13 Exhibit 18, which you note to be different than the  
14 draft of the response that you reviewed and approved?

15 A The factual information contained in this Exhibit No.  
16 18 is the same as the factual information that I saw  
17 in the draft.

18 As far as the actual wording of the letter or  
19 changes in wording, I can't respond to that.

20 Q I would like to go through some parts of the letter  
21 with you.

22 Now, on Page 2, in the first paragraph it  
23 states:

24 "In the course of its manufacturing activities,  
25 Cryovac has utilized a limited amount of chlorinated

1  
2 solvents which are associated with the small parts  
3 painting operation at the site or with parts cleaning  
4 and gluing/laminating of small parts as well as  
5 cutting fluids of the type customarily utilized in  
6 machine shops."

7 Was that information that you provided which was  
8 used in that letter -- scratch that.

9 MR. CHEESEMAN: I don't think that's the  
10 right way to go about it.

11 Q Is that statement a true statement of fact, as your  
12 investigation showed?

13 A Yes.

14 Q Then it says:

15 "These solvents and cutting fluids which are  
16 undoubtedly similar to those utilized by other  
17 manufacturing activities in the area and elsewhere  
18 have been used in small quantities over time as  
19 follows."

20 Then in the letter lists certain chemicals and  
21 the quantities used; is that correct?

22 A Yes.

23 Q As to trichloroethylene it states:

24 "One drum (55 gallons) purchased in 1973."

25 Based on your investigation, is that a true

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statement of fact?

A That is true based on my knowledge as of January of 1982.

Q Now, who provided you the information?

A Mr. Shalline.

MR. CHEESEMAN: The letter is dated in February.

Q February 1982.

MR. CHEESEMAN: His answer, I think, was perhaps correct.

Q Now, subsequently, have you learned that that information is incorrect?

A Yes.

Q When did you learn that that information was incorrect?

A At a time after the letter had been sent to EPA, it was discovered that indeed there had been more than one drum of trichloroethylene used in the plant at Woburn.

Q When did that come to your attention?

A I heard about it.

Q How many months or what period of time after the sending of the letter, February 5, 1982, did it come to your attention?

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2 MR. CHEESEMAN: Let me interject here that  
3 all of the investigation that was done subsequently  
4 to Exhibit 18, the letter to EPA, was conducted by  
5 counsel for Grace, in part, at least, in anticipation  
6 of litigation; so that the manner of the  
7 investigation, I think, is off limits to discovery  
8 under the work product rule and I would think that  
9 would extend even to questions of timing and the  
10 like.

11 You're asking about trial preparation matters,  
12 basically.

13 MR. SCHLICHTMANN: How about between the  
14 filing of the letter and the filing of the lawsuit?  
15 Were you retained before then.

16 MR. CHEESEMAN: I don't think it was done  
17 by me alone. It was done by in-house counsel as well  
18 as outside counsel.

19 MR. SCHLICHTMANN: In anticipation of  
20 litigation?

21 MR. CHEESEMAN: Absolutely.

22 Q You subsequently learned that that information was  
23 inaccurate, is that right, as to the  
24 trichloroethylene use?

25 A That is correct.

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Q Did you subsequently inform the EPA that the information was incorrect.

MR. CHEESEMAN: Asking him about personally now?

MR. SCHLICHTMANN: Yes.

A No.

Q Are you aware as to whether the EPA was informed that that information was incorrect?

A Yes.

Q Do you know when they were informed?

A No.

Q But you know that they were informed?

A Yes.

MR. CHEESEMAN: Just for your information, I personally informed them.

MR. SCHLICHTMANN: Did you?

MR. CHEESEMAN: Yes. To Miss Rikleen. I remember the conversation well.

Q It says as to toluene:

"Purchased in limited quantities, 5-gallon pails, and used as paint thinner to clean paint spray equipment. Use discontinued in 1975."

Was that a true statement of fact, based on your investigation?

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2 A That is true.

3 Q Did you subsequently learn that that information was  
4 untrue?

5 A No.

6 Q It says:

7 "Acetone. One 5-gallon pail purchased in 1978.  
8 Used for wiping parts prior to gluing/laminating."

9 Is that a true statement of fact?

10 A As to my knowledge in January of 1982, yes.

11 Q Did you subsequently learn that was untrue  
12 information?

13 A No.

14 Q So to this day, you believe it's true information?

15 A Yes.

16 Q The information as to toluene, you believe up until  
17 today that that is true information, the information  
18 given as to toluene use?

19 A Yes.

20 Q 1,1,1-trichloroethane, it states:

21 "This material is a constituent of cutting  
22 fluids used in the machine shop. Cutting fluids are  
23 used in metal cutting equipment for cooling and  
24 removing particles."

25 That was a true statement of fact?

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A Yes.

Q Then there's a paragraph of information concerning 1,1,1-trichloroethane. It states that it's received in 55-gallon drums and the average inventory of such material on hand at any time has historically been four or five drums.

Was that a true statement of fact, based on your investigation?

A To the best of my knowledge, four or five. As a matter of fact, I think I saw six drums but --.

Q Has it come to your attention that that information is incorrect?

A No.

Q It hasn't come to your attention even up until today?

A That is correct.

Q "As received from the supplier, the material is a solution containing approximately 33 percent 1,1,1-trichloroethane."

That was a true statement of fact at that time?

A That is correct.

Q And that is still true, to your knowledge as of today?

A Yes.

Q Then it says:

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2 "Spent cutting fluid is accumulated in 55-gallon  
3 drums for disposal, as are paint sludge and related  
4 paint equipment cleaning material from the spray  
5 booth operations used to paint small equipment parts,  
6 all of which were generally categorized as paint  
7 sludge."

8 Was that a true statement of fact at that time?

9 A The first part of the statement, "Spent cutting fluid  
10 is accumulated in 55-gallon drums for disposal" --  
11 It was my understanding in January of 1982, that  
12 spent cutting fluid was disposed of in the sanitary  
13 sewer.

14 Q So is that statement then, "Spent cutting fluid is  
15 accumulated in 55-gallon drums for disposal," is an  
16 untrue statement, based on your investigation?

17 MR. CHEESEMAN: Asking for his  
18 understanding of the facts?

19 MR. SCHLICHTMANN: Yes.

20 MR. CHEESEMAN: I think he just told you.  
21 Object. Repetitive questions.

22 MR. SCHLICHTMANN: You can say that to half  
23 of my questions, as you have no doubt -- you have not  
24 been lax in accusing me of.

25 MR. CHEESEMAN: Have to draw the line

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somewhere.

Q Based on your investigation, spent cutting fluid was disposed of into the sewer and was not accumulated in 55-gallon drums for disposal?

A That was what I was told.

Q Now, in the draft of the letter that you received, was a statement in there, to your knowledge, which stated what is stated in this exhibit, that spent cutting fluid was accumulated in 55-gallon drums for disposal?

A Yes.

Q Well, when you read that statement at that time, did you understand that to be an inaccurate statement?

A I understood that to be better, clearer, more factual information than I had received in my discussions at the plant.

Q So you understood that somebody else was supplying information as to that response that you didn't have?

A Somebody must have.

Q Did you ever check to determine where the source of that information came from?

A I did not.

Q You just assumed that somebody else who knew better was putting in more accurate information than you

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had?

A That is correct.

Q But based on your information, that was not true?

A That is correct.

Q This sentence says:

"The spent cutting fluid is accumulated in 55-gallon drums for disposal, as are paint sludge and related paint equipment cleaning material from the spray booth operations used to paint small equipment parts, all of which we generally categorize as 'paint sludge.'"

Was it your understanding, based on your investigation, that spent cutting fluid was accumulated in drums with paint sludge and that all of it together was referred to at the plant as paint sludge?

A It was my understanding that spent cutting fluid was disposed of in another manner; that paint sludge was accumulated in drums separately; and that the other materials, related paint equipment, cleaning material, was accumulated separately.

Q So that was not your understanding that spent cutting fluid was combined with paint sludge and generally referred to as paint sludge?

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A That is correct.

Q The next paragraph on Page 3, I'm going to ask that you look at the paragraph. Is that accurate information, based on your investigation over two days at the Woburn plant?

A Except for one word. The word in the last sentence of the paragraph says:

"The paint dries in the sump of the system which is periodically cleaned of the paint accumulation."

Q Yes.

A The paint is dry, if we are being technical, when it hits the water wall and does not dry in the sump. I'm speaking now of paint specifically.

Q Right.

A Particles of paint.

Q Well, in other words, it was your understanding that the paint wasn't dry in the sump; that it was sludgy?

MR. CHEESEMAN: That's not what he's saying.

MR. SCHLICHTMANN: It's eight feet away. You're closer.

Q Is that sentence, according to your knowledge, inaccurate in some respect?

A In a water wash wall paint booth, the overspray of

1  
2 the paint is essentially dry -- if you want to use  
3 that terminology -- when it hits the water and is  
4 carried down into the sump.

5 Q Right. How would you have changed that sentence to  
6 make it more accurate based on your investigation?

7 MR. CHEESEMAN: I'll object to the form of  
8 the question.

9 A I would have stated that the overspray of paint dries  
10 in the air, and as it hits the water wash wall and  
11 those flakes of, specks of dry paint are accumulated  
12 in the sump in a water particulate mixture, sludge,  
13 if you will.

14 Q Now, in the fourth paragraph, it says:

15 "With respect to our relationship with Donald M.  
16 Manzelli, Inc., our information is that in the summer  
17 of 1974, Manzelli was hired in connection with the  
18 construction of an addition to our plant."

19 That information was accurate based on your  
20 investigation?

21 A Yes.

22 Q "Incident to the construction, a pit was dug and used  
23 to bury construction debris as part of a general  
24 cleanup."

25 That was accurate?

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A Correct.

Q "We estimated that between 10 to 15 filled or partially filled drums of accumulated paint sludge were emptied into the pit in the belief that the paint sludge was generally innocuous in nature."

Was that a true statement, based on your investigation?

That was a true statement --

A That was true.

Q -- based on your investigation?

A At the point at which I left Woburn, the information I had was up to ten drums.

Q Did you subsequently receive information that it was more than ten drums?

A I did not receive the information.

Q When you read this in the draft report, did it state in there that estimate was that between 10 and 15 filled to partially filled drums had been emptied into the pit?

A Ask the question again.

Q In the draft report that you approved, did it also indicate, as this letter did, that between 10 to 15 filled or partially filled drums of accumulated paint sludge were emptied to into the pit?

1

2 A Yes.

3 Q That was new information?

4 A Yes.

5 Q You assumed that somebody else had provided that  
6 information?

7 A That is correct.

8 Q Do you know who provided that information?

9 A I have no idea.

10 Q Have you subsequently learned that that statement is  
11 an untrue statement as to the amount of drums that  
12 were emptied into the pit?

13 A I have not.

14 Q To this day, you haven't received any additional  
15 information?

16 A No.

17 Q It then states:

18 "No drums were placed in the pit, which was  
19 closed within a week after it had been opened."20 Is that a true statement, based on your  
21 investigation?

22 A That is true.

23 Q Well, didn't you answer previously that you did not  
24 have information which could indicate affirmatively  
25 that no drums were placed in the pit?

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A In the information that I had were that drums were emptied into the pit and that's all the information I had.

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4

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Q Did you have affirmative or did you have information which would have allowed you to state to the EPA that no drums were placed in the pit?

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MR. CHEESEMAN: I think he's just answered that.

9

10

A As far as I personally am concerned, it was stated to me that up to ten drums were emptied into the pit, the contents of those drums, and that's all I knew.

11

12

13

Q Then states:

14

"This incident was the only time in which a pit was opened on the property for waste disposal."

15

16

Is that a true statement, based on your investigation?

17

18

A Yes.

19

Q Have you subsequently learned that that information is untrue?

20

21

A No.

22

Q To this day, you haven't learned that information is untrue?

23

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A No.

25

Q To this day, you have received no information that

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there were other areas on the Cryovac plant property in Woburn in which drums were disposed of or waste material was disposed of?

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A That is correct.

6

Q To this day, you haven't received that information?

7

A That is correct.

8

Q It also stated in that sentence, before that:

9

"The pit was closed within a week after it had been opened."

10

11

Was that true, based on your investigation?

12

A I have no knowledge.

13

Q As to how long the pit was open?

14

A I have no knowledge.

15

Q So that information would have come from somebody else?

16

17

A Yes.

18

Q You don't know who?

19

A I do not.

20

Q Then states:

21

"The location of the closed pit is estimated to be approximately 100 feet behind (east of) the plant building, approximately 200 to 300 feet from the north and south boundaries of the property, and some 500 feet from the east boundary of the property."

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Is that an accurate description of the location of where the pit was?

A Yes.

Q Is that based on your investigation, those dimensions?

A Yes.

Q Did you supply those dimensions?

A Yes.

Q Now, in this letter, no reference is made to the use of tetrachloroethylene at the plant; is that right?

A That's correct.

Q During your investigation, did you receive any indications that in fact the plant had used tetrachloroethylene?

A No.

Q Did you ever see any documents which showed that the plant had used tetrachloroethylene?

A No.

Q Did Mr. Shalline ever indicate to you at any time during that investigation that the plant used tetrachloroethylene?

A No.

Q To this day, do you understand that the plant has used tetrachloroethylene in the past?

1

2 A No.

3 Q That is new information to you?

4 A Yes.

5 Q If I told you we have been supplied documents by  
6 W. R. Grace which indicate that tetrachloroethylene  
7 has been used, would that be new information to you?

8 A Yes.

9 MR. CHEESEMAN: In interrogatory answers as  
10 well.

11 Q Yes. In interrogatory answers as well.

12 A You're testing my memory. I believe that my answer  
13 still stands.

14 Q So until I just told you, you did not know that the  
15 Woburn plant had used tetrachloroethylene?

16 A That is correct.

17 Q To your knowledge, has the EPA ever been informed  
18 that in fact the Woburn plant did use  
19 tetrachloroethylene?

20 A I have no knowledge.

21 MR. CHEESEMAN: In fact, they have been.

22 MR. SCHLICHTMANN: They have?

23 MR. CHEESEMAN: By me.

24 MR. SCHLICHTMANN: They're very lucky to  
25 have you.

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Q Mr. Stewart, did you understand that it was your responsibility to conduct this investigation so that this information could be provided to the EPA, that that was your responsibility?

3

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A It was my responsibility to assist in the gathering of factual information to be supplied to EPA.

7

8

Q Other than yourself, was it your understanding that somebody else was also responsible for supplying the information that was going to be given to the EPA for the answering of their request for information?

10

11

12

A The plant manager.

13

Q Vince Forte?

14

A Yes.

15

Q Other than Mr. Forte, was anyone else, in your understanding, responsible for providing information to be given to the EPA in response to their request for information?

16

17

18

19

A No.

20

Q Your understanding, it was Mr. Forte and yourself who were responsible for gathering that information and providing it to the EPA?

21

22

23

A That is correct.

24

Q Mr. Forte has previously testified that he provided no information and that he relied totally on

25

1  
2 Mr. Shalline to provide information in response to  
3 the EPA. Is that your understanding?

4 MR. CHEESEMAN: I'm not sure that's an  
5 accurate summary of Mr. Forte's testimony.

6 Q I'm asking, was that your understanding?

7 A I would have no knowledge.

8 Q Do you know what information if any Mr. Forte  
9 supplied to answer this letter to the EPA?

10 A I have no knowledge.

11 Q At any time subsequent to the answering of this  
12 letter to the EPA, did you ever at any time request  
13 of Mr. Shalline that he provide you the information  
14 which he said he was going to provide you when you  
15 left the Woburn plant at the end of your  
16 investigation?

17 MR. CHEESEMAN: The question is whether  
18 that information was provided to Mr. Stewart  
19 personally?

20 MR. SCHLICHTMANN: Exactly. Or to  
21 Mr. Stewart's office.

22 A Any further information was supplied to legal  
23 counsel.

24 Q But it wasn't supplied to you?

25 A No.

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2

Q Mr. Stewart, you said that you had visited the Woburn plant at various times during the construction of various additions and buildings on the property; is that right?

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4

5

6

A That is correct.

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Q So at various times, you have observed the physical layout of the property and during your inspections; is that right?

10

11

12

A That is correct.

Q And you have observed what the property looked like at various times?

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14

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17

A That is correct.

Q Now, at any time during your inspections, for whatever reason you happen to be at the Woburn plant, did you happen to notice during any of these times that there were drums to the rear of the plant?

18

19

A I don't think that I have ever visited the plant when there were not drums to the rear of the plant.

20

21

Q During the times that you visited, you've seen 55-gallon drums stored to the rear of the plant?

22

23

24

A That is correct.

Q What's the most amount of drums that you've seen stored at the rear of the plant?

25

A My estimation would be 15.

1

2 Q Have they been stored in one particular place or is  
3 it changed from the various times you were visiting  
4 the plant?

5 A Basically stored in two different locations: One  
6 being the area indicated on the photo, where drums of  
7 waste paint sludge were stored or picked up by the  
8 contractor to be disposed of; and the other area  
9 would have been behind the assembly area where there  
10 might be a drum or two to collect scrap metal.

11 Q Now, in looking at Stewart Exhibit No. 1, would you  
12 be able to indicate on that map various places that  
13 you have seen drums stored at the plant?

14 A Yes.

15 Q Now, on that map, you've indicated one red line; is  
16 that right?

17 A Yes.

18 Q Have you observed drums being stored there during the  
19 various times you visited?

20 A That is correct.

21 MR. CHEESEMAN: That would be true after  
22 the second addition was put on there, I assume?

23 THE WITNESS: Yes.

24 Q Let's restrict yourself to after the second addition  
25 for the moment.

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A Fine.

Q What's the most amount of drums that you have seen stored in the area indicated with the red mark, after the second addition was put on?

A Ten or twelve.

Q Now, other than that area, was there any other area to the rear of that second addition where you saw drums stored?

A Yes. Occasionally there would be a drum, two, perhaps three, outside of the assembly area, used for gathering scrap metal.

Q At anytime, did you ever see closed drums, in other words, drums that weren't being used to contain scrap metal, were either empty or which were --

A Not to my knowledge.

Q So the area that you saw the drums stored is that area you indicated with the red mark?

MR. CHEESEMAN: He said two.

MR. SCHLICHTMANN: The other area is scrap metal.

Q The drums you saw with the red mark, did you understand that those drums contained waste material?

A Yes.

Q Chemical waste?

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2 A Paint sludge, paint solvents, paint material, of that  
3 nature.

4 Q And you have always observed those drums after the  
5 second addition was built, in the area where you have  
6 indicated with the red mark?

7 A That's correct.

8 Q Now, prior to the second addition being built, you  
9 visited the plant when the first addition had been  
10 built?

11 A Yes. —

12 Q You visited the plant when it was just the main  
13 building without an addition?

14 A Yes. —

15 Q During the times that you visited during those  
16 periods, did you also notice drums being stored to  
17 the rear of the plant?

18 A Yes.

19 Q Were these drums stored in essentially the same  
20 place; in other words, the same place on the first  
21 addition or the same place on the main building?

22 A In relationship to the back of the plant, the drums  
23 were essentially stored in the same location,  
24 proportionately.

25 Q Now, on the other end of the building to the rear of

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the plant, that was shipping; is that right?

Shipping and receiving?

A Shipping and receiving was on the -- how do you want me to describe it?

MR. CHEESEMAN: This is the south wall.

A Shipping and receiving is the south wall of the plant.

Q And the south wall is where you put a red mark?

A I put a red mark on the east wall.

MR. CHEESEMAN: The back of the building is the east wall.

Q The red mark, what's the direction of the red mark, what area is that?

A That's on the east side of the plant.

MR. CHEESEMAN: Or southeast corner.

Q So that have you ever seen drums on the other end of the building, stored?

MR. CHEESEMAN: Northeast corner?

MR. SCHLICHTMANN: Thank you. Northeast corner.

A The northeast rear of the plant was where there have been one, two, three drums with accumulated scrap metal.

Q Now, when the first addition was there, did you ever

1

2

notice drums containing chemical waste stored at

3

either the southeast corner or northeast corner of

4

the building?

5

A To my recollection, in the original plant, after the

6

first addition and after the second addition, the

7

drums containing paint sludge were always stored in

8

approximately the same location near the southeast

9

corner of the plant.

10

Q Did you ever notice when the first addition was

11

built, before the second addition, did you ever

12

notice drums containing waste material on the

13

northeast corner?

14

A No.

15

Q Did you ever notice drums along the chain link fence

16

on the northeast corner?

17

A No.

18

Q Did you ever notice drums on the southeast corner

19

near the chain link fence?

20

A That is the location that I have indicated.

21

Q Now, when the original building was built, did you

22

notice waste drums containing chemical waste as well?

23

MR. CHEESEMAN: Prior to the construction

24

of the first addition?

25

MR. SCHLICHTMANN: Yes.

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2 A Yes.

3 Q Where were they located?

4 A Near the southeast corner.

5 Q Now, what's the most amount of drums you saw in the  
6 southeast corner of the main building, the most  
7 you've ever seen at one time?

8 MR. CHEESEMAN: Before the first addition?

9 MR. SCHLICHTMANN: Before the first  
10 addition?

11 A Perhaps as many as ten.

12 Q Has that varied during the time before the first  
13 addition? Did that amount of drums vary? Sometimes  
14 it was a few; sometimes it was ten?

15 A The number of drums did not vary significantly in any  
16 of my visits.

17 Q Did you notice, though, the number did change from  
18 time to time during your visits?

19 A It might be five; it might be ten.

20 Q When the first addition was built, did the number of  
21 drums also vary between five and ten?

22 A Yes.

23 Q When the second addition was built, did it also vary  
24 between five and ten?

25 A Yes.

1

2 Q Were you aware or did you have reason to believe that  
3 these were not the same drums but these were  
4 different drums on different occasions?

5 A I could not swear that they were not the same drums  
6 over there over a period of X number of years. I did  
7 not mark them or indicate on them or anything of that  
8 nature.

9 Q But what is your opinion based on what you observed  
10 about them during the period of time that you saw  
11 them?

12 MR. CHEESEMAN: Objection. Go ahead. If  
13 you can say any more than you've already said.

14 A I don't have an opinion.

15 Q Well, you don't know if they were the same drums or  
16 they were different drums?

17 A I have no way of knowing that.

18 Q Do you remember the color of the drums?

19 A All the drums that I have ever seen in that location,  
20 southeast corner of the plant, were either black or  
21 green.

22 Q Did the mix of colors seem to change at various  
23 times?

24 A I have no recollection.

25 Q Did these drums appear to be rusty or did they appear

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to be fairly in good condition?

A They appeared to be in good condition.

Q All the times that you saw them?

A Yes.

Q What was the period of time that you observed these drums? Over what period of time?

A My first visit to the Woburn plant was 1966 or '67 -- I don't recall which -- which would have been the first time that I observed any drums behind the plant.

I have seen drums behind the plant on, I'm sure, every subsequent visit to the plant.

Q Always the drums appear to be in a new condition?

A Yes.

Q So they didn't appear to be the same drums which rusted over a long period of time?

A Absolutely not.

Q Did you notice that there was a ditch to the rear of the property?

A Yes.

Q On this photograph, Stewart Exhibit No. 1, do you see a ditch indicated on that photograph to the rear of the property?

A Yes.

1

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MR. CHEESEMAN: Which ditch are you asking

3

about?

4

A There is a ditch.

5

Q And you notice that near the warehouse?

6

A That is correct.

7

Q That ditch extended closer to the building at various times depending on the stage of construction?

8

9

A That is correct.

10

Q Now, when the building was originally built, that

11

ditch came all the way up to the rear of the building

12

and was used for storm runoff?

13

A It came close to the rear of the building, yes.

14

Q And as it came closer to the building, it made a

15

little turn in towards the building, didn't it?

16

A That is correct.

17

Q And the dimensions of that ditch were approximately

18

ten feet deep, maybe ten feet wide, narrowing down to

19

a V down at the bottom?

20

A At what period of time are we talking about now?

21

Q When the main building existed, was the dimensions of

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the ditch essentially ten feet wide and ten feet

23

deep, narrowing to a V?

24

MR. CHEESEMAN: The main building still

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exists. Prior to the first addition, you mean?

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MR. SCHLICHTMANN: Right.

A I would say six to eight feet wide, four to five feet deep.

Q Narrowing into like a gully?

A Yes.

Q How wide was it at the bottom, approximately?

A A couple of feet.

Q Did those dimensions extend all the way back or did the ditch get bigger? Did it continue to stretch into the rear of the property?

A Yes.

Q Did the dimensions get bigger?

A Essentially stayed the same.

Q When the first addition was built, that ditch was moved back?

A To be accurate about it, when the first addition was built, the pipe carrying the storm water from the plant was extended out beyond the plant, beyond the first addition construction, and connected on to the ditch, reconnected to the ditch.

Q So you know that the ditch was used for storm runoff?

A Yes.

Q Did you also know that the ditch used to the rear of the building prior to the first addition, was used on

1

2 occasion to dispose of chemical waste material  
3 generated by the plant?

4 A I did not know that.

5 Q Did you know that on occasions that Mr. Barbas, the  
6 painter, would dispose of chemical waste into the  
7 ditch?

8 A I did not know that.

9 Q Did you know Joe Miola, the maintenance man, would,  
10 on occasion, dump waste chemical material into the  
11 ditch?

12 A No.

13 Q Has it ever come to your attention?

14 MR. CHEESEMAN: I was going to remark just  
15 because Mr. Schlichtmann is asking the question that  
16 implies that that was a fact, doesn't mean it was a  
17 fact.

18 MR. SCHLICHTMANN: Only if they admit to it  
19 in testimony.

20 Q Did it ever come to your attention?

21 A No.

22 Q Do you know that today, that that is a fact?

23 A I do not know. I don't have any knowledge.

24 Q Do you know or am I telling you for the first time  
25 that Mr. Barbas has testified under oath that on

1  
2 occasion, he would dispose of waste material into  
3 that ditch to the rear of the plant?

4 MR. CHEESEMAN: In response to that  
5 question, let me say that in the past when you have  
6 stated that when you ask if someone knows something,  
7 you're asking if they have personal knowledge through  
8 observation. You now suggest that you mean by that  
9 whether he personally knows it or has heard it  
10 somewhere else. I think you need to clarify the  
11 question.

12 Q Have you learned from whatever source that Mr. Barbas  
13 has testified that on occasion he would dump waste  
14 material into that ditch to the rear of the plant?

15 A I have been informed of that fact.

16 Q Now, have you ever informed the EPA that the ditch to  
17 the rear of the main building, prior to the addition,  
18 was used on occasion to dispose of chemical waste  
19 materials?

20 A No.

21 MR. CHEESEMAN: You're asking as to him  
22 personally?

23 MR. SCHLICHTMANN: Yes. Or your office?

24 A No.

25 Q Now, when the first addition was built, the ditch was

1

2

moved back some feet from the first addition; is that right?

3

4

A Yes.

5

Q It was filled in?

6

A Yes.

7

Q Were you present when that ditch was filled in?

8

A No.

9

Q And that ditch came up alongside the warehouse and

10

stopped some feet from the front of the warehouse; is

11

that true?

12

A The warehouse was not there at that particular time.

13

Q After the first addition was built?

14

A That's true.

15

Q In 1970, the warehouse was built?

16

A Yes.

17

Q When the warehouse was built, the ditch ran alongside

18

the warehouse but stopped some few feet from the

19

front of the warehouse?

20

A That is correct.

21

Q And that ditch, the dimensions of that ditch was

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essentially eight to ten feet wide and about eight to

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ten feet deep and two or three feet wide at the

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bottom?

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A Eight feet wide, four or five feet deep, two feet

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wide at the bottom.

Q And that extended to the rear of the property?

A Yes.

Q Now, the second addition was built 1974?

A Yes.

Q Now, you were consulted during the construction of that second addition?

A Yes.

Q You visited the plant during your consultation for the construction of that addition?

A No.

Q You didn't visit it at all prior to the construction of the second addition? You had --

A You asked two different questions.

Q Because of your consultation on the building of the second addition, did you ever visit the plant because of the construction of the second addition?

A I made one visit because of the construction of the second addition.

Q When was that visit? Prior to the construction? During the construction?

A Prior to the construction.

Q Do you remember what time of year that was?

A I do not.

1

2 Q Do you know whether it was the spring or summer of  
3 '74?

4 A I don't know.

5 Q Do you know how many months it was in relationship to  
6 the actual construction of the addition?

7 A Just prior to it.

8 Q Within a month of it?

9 A Yes.

10 Q If I told you the construction took place in the  
11 summer of '74, would that help you at all in putting  
12 the time that you visited the plant prior to its  
13 construction?

14 A Must have been spring or early summer then because it  
15 was just before the construction.

16 Q When you visited the plant for the construction of  
17 the second addition, did you make an inspection of  
18 that area that was going to be constructed on?

19 A Yes.

20 Q Now, when you visited the plant prior to this  
21 construction of the second addition, did you notice  
22 that there was asphalt to the rear of the first  
23 addition?

24 A Yes.

25 Q Was the asphalt still there?

1

2 A Yes.

3 Q Then after the asphalt, there was then field?

4 A That's correct.

5 Q Now, when you visited the plant --

6 A With a garden in it.

7 Q When you visited the plant in the summer of 1974,

8 just immediately prior to the beginning of

9 construction, did you notice that parts of that field

10 had been bulldozed over or turned over in some

11 manner?

12 A The only thing that I noticed in the field was a very

13 neat garden used by the employees to raise tomatoes.

14 Q Did you notice that when you visited the plant just

15 prior to the construction of the second addition,

16 that part of the ditch had been filled in alongside

17 the warehouse?

18 A No.

19 Q You didn't notice that?

20 A No.

21 Q It hadn't been filled in?

22 A To my knowledge, it had not.

23 Q Now, when you visited the plant just prior to the

24 construction of the second addition, did you notice

25 that there were drums to the rear of the plant?

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2 A Yes.

3 Q Did you notice the approximate number of the drums at  
4 the rear of the plant?

5 A Approximately ten.

6 Q Could it have been more than ten?

7 A No.

8 Q How were they stacked?

9 A Lined up along the fence, up along the plant.

10 Q Southeast corner?

11 A Yes.

12 Q Were any drums in the northeast corner?

13 A No.

14 Q Did you notice any other drums out to the rear of the  
15 plant other than the ten that were in the southeast  
16 corner?17 A There may have been a drum near the northeast corner,  
18 used to accumulate scrap metal, which was a common  
19 practice.20 Q During your visit to the plant, did you consult with  
21 anybody or did anybody consult with you as to how  
22 those drums should be disposed of?

23 A No.

24 Q Did you return to the plant after the construction of  
25 the second addition?

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A I have been back to the plant subsequent to that construction.

Q How long was it before you returned to the plant after you visited it prior to the construction of the second addition?

A Sometime after the construction was complete.

Q You don't know how many months?

A May have been as many as six.

Q Now, in examining Stewart Exhibit No. 1, does that indicate that the picture was taken after the construction of the second addition?

A Yes.

Q In your visit to the property after the construction of the second addition, approximately six months after the construction, did you make an inspection of the rear of the property?

A No.

Q Did you for any reason go to the rear of the property and look at the second addition?

A No. I went, I looked at the second addition.

Q So you went to the rear of the property to look at the second addition?

A No. I went to the back of the plant and looked at the second addition.

1

2 Q Did you ever go outside?

3 A I went outside.

4 Q Do you remember what time of year that was?

5 A Probably in winter.

6 Q Now, did you notice, in examining Stewart Exhibit No.  
7 1, does that picture indicate that there are areas  
8 that have been excavated to the rear of the property?

9 A From an examination of the picture, I would have no  
10 way of telling whether or not there had been  
11 excavated areas in the rear of the plant.

12 Q Looking at Stewart Exhibit No. 1, does it indicate  
13 that the ditch has been filled in, that ran alongside  
14 the warehouse?

15 A In looking at this picture, the ditch terminates at  
16 the northeast corner of the warehouse, because the  
17 storm drain line had been run out to that ditch at  
18 that point.

19 Q Does it indicate in that photograph that the ditch  
20 was filled in for that part that ran alongside the  
21 warehouse?

22 A The ditch had to have been filled in -- the answer is  
23 yes.

24 Q Now, when you examined the area prior to the  
25 construction of the second addition, that ditch did

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run alongside the warehouse?

A That is correct.

Q So sometime after your leaving the plant and during the construction or sometime after the construction, that ditch that ran alongside the warehouse had been filled in; isn't that true?

A That is correct.

Q And in looking at that photograph, Stewart Exhibit No. 1, does that essentially show the amount of the ditch that was filled in, based on your personal observation?

MR. CHEESEMAN: Could you read the question back, please.

(Question read.)

MR. CHEESEMAN: That's a little confusing.

MR. SCHLICHTMANN: Fairly show.

MR. CHEESEMAN: You are asking him to judge from a photograph and then asking him based on personal observation. It seems to me we're beating a dead horse here.

Q You remember that the ditch alongside the warehouse was filled in sometime after or during the construction of the second addition; isn't that right?

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2 A The ditch extending from the rear of the plant to the  
3 outfall of the storm drain line was shortened because  
4 the building was being extended toward the rear of  
5 the property.

6 Q So the ditch had to be filled in?

7 A Certainly.

8 Q And do you know whether the ditch was filled in  
9 before the construction started, during the  
10 construction or after the construction?

11 A During the construction.

12 Q Was it filled in prior to the construction?

13 A No.

14 Q Now, you know that it was filled in during the  
15 construction; is that right?

16 A I was not there at the time. I have no personal  
17 knowledge. The outfall from the storm drainage of  
18 the plant is in a different location on this  
19 photograph than it was prior to the construction of  
20 the second addition.

21 If you want me to draw a conclusion from that, I  
22 will draw a conclusion and say, yes.

23 Q Do you know what was used to fill in that ditch?

24 MR. CHEESEMAN: You're asking personal  
25 knowledge? If you weren't there, you don't know.

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MR. SCHLICHTMANN: Yes.

A I didn't see it.

Q Has it ever come to your attention what was used to fill in that ditch?

A No.

Q Has it ever come to your attention whether drums containing waste material were poured into that ditch?

A No.

Q Has it ever come to your attention that drums were buried in that ditch?

A No.

Q Never come to your attention?

A No.

Q In examining that photograph, do you see an area that indicates that it's been excavated in the lower northeast corner at the rear of the property?

MR. CHEESEMAN: You certainly can't tell from looking at it whether there's any excavation there.

Q Does it look like earth has been turned over?

A I have no idea from looking at the photograph.

Q Did you ever observe the northeast corner of the property during the period that the second addition

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was constructed?

A No.

Q Never did?

A During the period that the second addition was being constructed, no.

Q After the second addition was constructed, did you ever have occasion to notice the northeast corner?

A I have walked the perimeter of the plant site in years since that period in time.

Q Have you noticed in the northeast corner that there is an area where excavation has taken place in the past?

A No.

Q In examining Stewart Exhibit No. 1, do you see an area in the northeast corner which appears to be an area where earth has been turned over?

MR. CHEESEMAN: I don't think you can tell from a photograph.

Q Does that photograph indicate to you that that area, the earth has been turned over?

A No.

Q Do you see a white spot there?

A I do.

Q Do you see it's different from the surrounding

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2

terrain?

3

A Yes.

4

Q That's not an indication to you that the earth has been turned over?

5

6

A No.

7

Q In examining that northeast corner, did you at any time subsequent to the construction of the second addition ever notice that that part of the property had been excavated?

10

11

A No. ---

12

Q The center of the picture, near the place where you indicated that Mr. Shalline said that's where the pit was dug for construction debris, do you see that area?

15

16

A Yes.

17

Q After the building of the second addition, did you ever notice whether that area had been excavated at any time after the construction of the second addition?

20

21

A No.

22

Q Mr. Stewart, did you ever send a cease-use order to the Woburn plant concerning the use of benzene?

23

24

A I did.

25

Q What year did you send that?

1

2 A I don't recall the year.

3 Q Do you remember, was it the early '70s, middle '70s  
4 or late '70s.

5 A I don't recall.

6 Q Do you remember that you sent cease-use orders for  
7 trichloroethylene to the Woburn plant?

8 A Yes.

9 Q And toluene?

10 A I remember sending a stop-use order on  
11 trichloroethylene.

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13 (Whereupon, the deposition suspended at  
14 4:35 p.m.)

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Excerpt from Rule 30(e):

Submission to Witness; Changes; Signing.  
When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them.

\*\*\*\*\*

I, Richard K. Stewart, have examined the above transcript of my testimony and it is true and correct to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this \_\_\_\_ day of \_\_\_\_\_, 1985.

\_\_\_\_\_

Sworn and subscribed to before me this \_\_\_\_ day of \_\_\_\_\_, 1985.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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1  
2 COMMONWEALTH OF MASSACHUSETTS  
3 COUNTY OF SUFFOLK

4 I, Kathleen L. Good, Registered Professional  
5 Reporter and Notary Public in and for the  
6 Commonwealth of Massachusetts, do hereby certify that  
7 there came before me on the 15th day of May, 1985,  
8 the person hereinbefore named, who was by me duly  
9 sworn to testify to the truth and nothing but the  
10 truth of his knowledge touching and concerning the  
11 matters in controversy in this cause; that he was  
12 thereupon examined upon his oath, and his examination  
13 reduced to typewriting under my direction; and that  
14 the deposition is a true record of the testimony  
15 given by the witness.

16 I further certify that I am neither attorney or  
17 counsel for, nor related to or employed by, any of  
18 the parties to the action in which this deposition is  
19 taken; and further that I am not a relative or  
20 employee of any attorney or counsel employed by the  
21 parties hereto or financially interested in the  
22 action.

23 In Witness Whereof, I have hereunto set my hand  
24 and affixed my notarial seal this 21<sup>st</sup> day of May,  
25 1985.

  
\_\_\_\_\_  
Notary Public

My Commission Expires

May 12, 1989

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\* \* \* \* \*

I, Richard K. Stewart, have examined the above transcript of my testimony and it is true and correct to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

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Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

-----  
Notary Public

My Commission Expires:

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